

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230202

Docket: A-212-22

Citation: 2023 FCA 23

Present: WEBB J.A.

BETWEEN:

BRIGHTLINE FOUNDATION

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on February 2, 2023.

REASONS FOR ORDER BY:

WEBB J.A.

Federal Court of Appeal



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REASONS FOR ORDER

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[1] The Minister of National Revenue (the Minister) brought this motion for an order dismissing an application filed by Brightline Foundation (Brightline). Brightline's application was for an order postponing the date on which the Minister could publish, in the *Canada Gazette*, a copy of the notice of the proposed revocation of the registration of Brightline as a registered charity. The Minister brought the motion to dismiss Brightline's application on the

basis that it was moot because a copy of this notice has now been published in the *Canada Gazette*.

[2] Subsection 168(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act) provides that the Minister may send to a registered charity, by registered mail, a notice that the Minister is proposing to revoke the registration of that charity. The revocation is only effective once a copy of the notice is published in the *Canada Gazette* (subsection 168(2) of the Act). The copy of the notice can only be published after the expiration of 30 days from the day of mailing the notice to the registered charity or such longer period of time as may be fixed by this Court on an application as provided in paragraph 168(2)(b) of the Act:

(2) If the Minister gives notice under subsection (1) to a registered charity, to a registered Canadian amateur athletic association or to a registered journalism organization,

(a) if it has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the *Canada Gazette*, and on that publication of a copy of the notice, the registration is revoked; and

(b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such

(2) Si le ministre, dans le cas de l'alinéa a) et dans les autres cas, publie dans la *Gazette du Canada* copie de l'avis prévu au paragraphe (1), sur publication de cette copie, l'enregistrement de l'organisme de bienfaisance, de l'association canadienne de sport amateur ou de l'organisation journalistique est révoqué. La copie de l'avis doit être publiée dans les délais suivants :

a) immédiatement après la mise à la poste de l'avis, si l'organisme de bienfaisance, l'association ou l'organisation a adressé la demande visée à l'alinéa (1)a);

b) dans les autres cas, soit 30 jours après la mise à la poste de l'avis, soit à l'expiration de tout délai supérieur à 30 jours courant de la mise à la poste

extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the *Canada Gazette*, and on that publication of a copy of the notice, the registration is revoked.

de l'avis que la Cour d'appel fédérale ou l'un de ses juges fixe, sur demande formulée avant qu'il ne soit statué sur tout appel interjeté en vertu du paragraphe 172(3) au sujet de la signification de cet avis.

[Emphasis added.]

[Non souligné dans l'original.]

[3] A notice of the proposed revocation of the registration of Brightline as a registered charity dated September 8, 2022 (the Revocation Notice) was sent to Brightline. On October 5, 2022, Brightline filed an application, as provided in paragraph 168(2)(b) of the Act, for an order precluding the Minister from publishing, in the *Canada Gazette*, a copy of the Revocation Notice “until such time as [Brightline] has completed the objection process under subsection 168(4) of the Act and, if necessary, an appeal to this Court under subsection 173(2) of the Act”.

[4] In its Notice of Application, Brightline requested from the Minister “all materials produced by, referenced, consulted or relied upon in any way by the Minister” in relation to the proposed revocation of the registration of Brightline as a registered charity. Brightline indicated that it was making this request under Rules 317 and 318 of the *Federal Courts Rules*, SOR/98-106. On October 26, 2022, the Minister objected to the production of the requested material on the basis that Rule 317 did not apply to the application brought by Brightline. Brightline then requested that this Court provide directions under Rule 318(3) for the procedure for making submissions with respect to the objection raised by the Minister.

[5] A Direction setting out the timelines for the parties to make their submissions in writing was issued on November 2, 2022. Following the issuance of the Direction, a copy of the Revocation Notice was published in the *Canada Gazette* on November 19, 2022, 71 days after this notice was sent to Brightline.

[6] The parties provided their written submissions in compliance with the Direction on November 23, 2022, December 14, 2022 and December 21, 2022. All of the submissions were filed after a copy of the Revocation Notice was published in the *Canada Gazette* and, therefore, as provided in subsection 168(2) of the Act, after the registration of Brightline as a registered charity was revoked.

[7] In its submissions filed on December 14, 2022, Brightline stated:

9. Within the [Revocation Notice], the Director General threatened to publish the [Revocation Notice] 30 days after it was sent, but also promised not to publish the [Revocation Notice] until the Court has reviewed a s. 168(2)(b) (fr) application, if one was made:

However, please note that even if [Brightline] files a notice of objection with the CRA, this will not prevent the CRA from publishing the notice of revocation in the *Canada Gazette* immediately after the expiration of 30 days from the date of mailing of this notice.

[Brightline] has the option of filing an application with the Federal Court of Appeal (FCA), as indicated in paragraph 168(2)(b) of the Act, to seek an order staying publication of the notice of revocation in the *Canada Gazette*. The FCA, upon reviewing this application, may extend the 30-day period during which the CRA cannot publish a copy of the notice.

[8] There is nothing in this excerpt from the Revocation Notice that would support Brightline’s argument that the Minister had promised not to publish a copy of the Revocation Notice until Brightline’s application under paragraph 168(2)(b) of the Act had been heard and a decision had been rendered by this Court. There is no merit in Brightline’s argument.

[9] Brightline also argued that paragraph 168(2)(b) of the Act “enjoins the Minister from publishing a notice of intention to revoke while a potential s. 172(3) (fr) appeal right exists, and certainly, out of basic respect for Court procedure, once an application is made” (paragraph 21 of its submissions). However, this argument is not supported by the wording of paragraph 168(2)(b) of the Act:

... the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the *Canada Gazette*, ...

[10] Paragraph 168(2)(b) of the Act merely allows this Court (as a result of an application brought by a registered charity under this paragraph) to fix or allow a longer period of time before a copy of the notice sent to the registered charity under subsection 168(1) of the Act could be published in the *Canada Gazette*. There is nothing in the language of paragraph 168(2)(b) of the Act to suggest that the Minister is “enjoined” from publishing a copy of the Revocation Notice pending the hearing of the application brought by Brightline under paragraph 168(2)(b) of the Act.

[11] On December 15, 2022, the Minister brought this motion for an order dismissing Brightline's application for an order postponing the date on which a copy of the Revocation Notice could be published in the *Canada Gazette*. The basis for the motion was that the application was moot as a copy of the Revocation Notice was published in the *Canada Gazette* on November 19, 2022.

[12] Brightline, in its submissions in response to the motion to dismiss its application, does not make any argument that its application is not moot. Rather, it submits that the motion should be struck on the basis that it is redundant, vexatious or an abuse of process.

[13] The motion is not redundant. The Minister, in her written submissions filed in accordance with the Direction issued on November 2, 2022, raised the issue of whether Brightline's application was moot as a result of the publication of the copy of the Revocation Notice in the *Canada Gazette*. However, these were submissions on another issue (whether Rule 317 was applicable to Brightline's application to postpone the date on which a copy of the Revocation Notice could be published). Therefore, it would not have been appropriate to request an order dismissing Brightline's application in these submissions. As a result, the motion to dismiss Brightline's application is not redundant.

[14] The motion is not vexatious and it is not an abuse of the process of the Court. The Minister (in the absence of an order of this Court providing otherwise) had the right to publish a copy of the Revocation Notice after the expiration of 30 days from the date this notice was sent to Brightline. The period of time that must expire before the notice could have been

published could have been extended by an order of this Court. However, the filing of the application to this Court to request a postponement of the date on which a copy of the Revocation Notice could be published did not change the date on which the Minister could publish a copy of the notice. In this case, there is no order of this Court extending the period of time that must expire before the Minister could publish a copy of the Revocation Notice in the *Canada Gazette*. Therefore, on November 19, 2022, the Minister had the right to publish a copy of the Revocation Notice in the *Canada Gazette*. Publishing a copy of the Revocation Notice rendered moot Brightline's application to postpone the date on which a copy of this notice could have been published.

[15] It is not vexatious or an abuse of the process of the Court for the Minister to bring a motion to dismiss an application on the basis that it is moot. Rather, it is more efficient and less costly to bring this matter to a close now instead of proceeding to a hearing of the application where the same issue (that the application is moot) would be raised.

[16] Brightline also argues, in paragraph 20 of its submissions, that the motion to dismiss its application is an abuse of process because the Minister failed to “establish [*sic*] paragraph 5 of the Notice of Motion that the applicant's charitable status has actually been revoked. There is no evidence the Director General, Charities Directorate has been delegated the Minister's authority to publish notice of intention to revoke charitable status in the *Canada Gazette*. Consequently, there is no evidence the notice published in the *Canada Gazette* is operative.”

[17] Subsection 220(2.01) of the Act allows the Minister to authorize any officer or a class of officers to exercise the powers or duties of the Minister under the Act:

The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister under this Act.

Le ministre peut autoriser un fonctionnaire ou une catégorie de fonctionnaires à exercer les pouvoirs et fonctions qui lui sont conférés en vertu de la présente loi.

[18] The power to publish a copy of the Revocation Notice was delegated to the Director General, Charities Directorate (*Income Tax Act – Authorization to exercise powers or perform duties of the Minister of National Revenue* published on the website for the Government of Canada). There is no merit to Brightline’s argument that the publication of a copy of the Revocation Notice was not properly authorized.

[19] Brightline’s application is for an order postponing the date on which a copy of the Revocation Notice could have been published in the Canada Gazette. The publication of a copy of this notice rendered this application moot.

[20] The parties requested that the issue of whether Rule 317 applies to an application under paragraph 168(2)(b) of the Act should, in any event, be addressed. However, since Brightline’s application is moot, and therefore will be dismissed, any comments on the applicability of Rule 317 would be *obiter* and the issue of whether Rule 317 applies to an application under paragraph 168(2)(b) of the Act will not be addressed.

[21] It should be noted, however, that there is a short time frame of 30 days between the mailing of the notice of the proposed revocation and the date on which the Minister could publish a copy of that notice in the *Canada Gazette*. This short time frame raises the question of whether it was intended that Rule 317 (which would result in delays in hearing an application under paragraph 168(2)(b) of the Act) would apply to an application under paragraph 168(2)(b) of the Act. Delays in hearing the application would render it moot if, as in this case, a copy of the notice is published in the *Canada Gazette* before the application is heard and an order is obtained postponing the date on which a copy of the notice could be published.

[22] The Minister's motion will be allowed, with costs, and Brightline's application for an order extending the period of time that had to expire before the Minister could have published, in the *Canada Gazette*, a copy of the Revocation Notice, will be dismissed on the basis that this application is moot.

“Wyman W. Webb”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-212-22

STYLE OF CAUSE:

BRIGHTLINE FOUNDATION v.
MINISTER OF NATIONAL
REVENUE

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:

WEBB J.A.

DATED:

FEBRUARY 2, 2023

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