

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20250602**

**Docket: A-373-24**

**Citation: 2025 FCA 110**

**CORAM: WOODS J.A.  
MONAGHAN J.A.  
WALKER J.A.**

**BETWEEN:**

**JEWISH NATIONAL FUND OF CANADA INC.  
FONDS NATIONAL JUIF DU CANADA INC.**

**Appellant**

**and**

**MINISTER OF NATIONAL REVENUE**

**Respondent**

Heard at Toronto, Ontario, on May 28, 2025.

Judgment delivered at Ottawa, Ontario, on June 2, 2025.

**REASONS FOR JUDGMENT BY:**

**MONAGHAN J.A.**

**CONCURRED IN BY:**

**WOODS J.A.  
WALKER J.A.**

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**REASONS FOR JUDGMENT**

**MONAGHAN J.A.**

[1] In 1967, the Minister of National Revenue registered the appellant, Jewish National Fund of Canada Inc., as a registered charity. In 2024, the Minister revoked that registration by publishing a notice of intention to revoke (NITR) in the *Canada Gazette*. The appellant filed an application for judicial review of the Minister's publication decision in the Federal Court and,

within that application, brought a motion for an injunction and order compelling the Minister to publish a retraction of the NITR's publication in the *Canada Gazette*.

[2] The Federal Court, relying on the authority of *Stewards' Charitable Foundation v. Minister of National Revenue* (Federal Court File No. T-2706-22) [*Stewards'* ], concluded "that the Federal Court is without jurisdiction to entertain judicial review of the publication of a NITR": *Jewish National Fund of Canada Inc. v. Canada (National Revenue)*, 2024 FC 1796 (*per* Whyte Nowak, J.) at para. 42. With no jurisdiction to judicially review the publication decision, the Federal Court was without jurisdiction to grant the appellant the relief it sought and therefore dismissed the motion.

[3] The appellant appeals that decision, asserting that the Federal Court has jurisdiction to judicially review the Minister's decision to publish the NITR.

[4] I disagree and would dismiss the appeal.

[5] Before I explain why and describe the background to this appeal, it is useful to first outline the statutory framework governing revocation of charitable registration. While for simplicity I will refer to the Minister, the Minister's delegates employed by the Canada Revenue Agency acted for the Minister.

I. Revocation of Charitable Registration

[6] The Minister may revoke the registration of a charity on one or more grounds in the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.): ss. 168(1), 149.1(4.1). To do so, the Minister must issue a NITR to the charity and then publish it in the *Canada Gazette: Income Tax Act*, s. 168(1). Revocation is effective only when the NITR is published: *Income Tax Act*, s. 168(2).

[7] However, the Minister may not publish the NITR before the expiry of 30 days after the NITR is mailed to the charity or such longer period as this Court may order on application: *Income Tax Act*, s. 168(2)(b). The charity may bring such an application any time before the NITR is published or the charity's appeal of the NITR is determined: *Operation Save Canada Teenagers v. Canada (National Revenue)*, 2011 FCA 71 at para. 11; *Income Tax Act*, s. 168(2). The charity's right to seek an extension to the publication deferral period from this Court is independent of its right to object or appeal: *International Charity Association Network v. Canada (National Revenue)*, 2008 FCA 62 at para. 6.

[8] A charity cannot appeal the revocation itself: *Opportunities for the Disabled Foundation v. Canada (National Revenue)*, 2016 FCA 94 at para. 22. However, a charity may appeal the Minister's issuance of the NITR to this Court: *Income Tax Act*, ss. 172(3)(a.1), 180(1).

[9] Before appealing, the charity must serve a notice of objection to the NITR on the Minister: *Income Tax Act*, ss. 168(4), 172(3)(a.1). If the Minister neither vacates nor confirms the NITR within 90 days of the notice of objection's service, the charity may proceed with its

appeal in this Court or wait until the Minister confirms the NITR following the objection and appeal the confirmation: *Income Tax Act*, s. 172(3)(a.1). The appeal must be commenced no later than 30 days after confirmation, unless this Court extends that period on application: *Income Tax Act*, s. 180(1).

[10] Notwithstanding a charity's objection or appeal, the Minister is not required to, but may, defer publication of the NITR in the *Canada Gazette*.

[11] Against this legislative backdrop, I now turn to the background to this appeal.

## II. Revocation of the Appellant's Charitable Registration

[12] In August 2019 the Minister sent a NITR to the appellant. This followed an audit that identified several areas of concern regarding the appellant's activities and continued qualification for registration as a registered charity. The Minister informed the appellant that the revocation would become effective on the NITR's publication in the *Canada Gazette*.

[13] The appellant contacted the Minister by telephone to seek confirmation that revocation would not occur until publication and to advise that it would be objecting to the NITR. The Minister stated that, in that event, the process would be to await any decision on the objection and any possible appeals.

[14] In November 2019, the appellant served a notice of objection on the Minister.

[15] On June 26, 2024, the Minister issued a notice of confirmation of the NITR. That led the appellant, by letter of July 12, 2024, to ask the Minister to consider annulling its registration, rather than revoking it, and to stay the NITR's publication while considering that request. In a July 24, 2024 response, the Minister agreed to delay publication until the period for appealing the notice of confirmation expired, unless this Court ordered publication delayed for a longer period.

[16] On July 24, 2024, the appellant filed a notice of appeal in this Court but did not apply for an order extending the period before which the Minister could publish the NITR.

[17] On August 10, 2024, the Minister published the NITR in the *Canada Gazette* thereby revoking the appellant's charitable registration.

[18] The appellant then filed the application for judicial review of the Minister's decision to publish the NITR in the Federal Court and brought the motion for injunctive relief. The Federal Court's dismissal of that motion is the subject of this appeal.

[19] The appellant also filed an application for judicial review of the Minister's decision to publish the NITR in this Court. The notice of application is substantially the same as that in the Federal Court and states the application is "being brought on a protective basis in parallel with [the] application for judicial review" in the Federal Court. Neither that application nor the appellant's appeal of the decision to issue the NITR has been set down for hearing in this Court.

### III. The Decision Under Appeal

[20] Before the Federal Court, the respondent opposed the appellant's motion. The respondent claimed that the Federal Court had no jurisdiction to judicially review the publication decision. As a result, the Federal Court had no jurisdiction to grant the appellant the relief it sought in the motion.

[21] As I noted above, the Federal Court concluded it had no jurisdiction based on *Stewards'*.

[22] In *Stewards'*, an Associate Judge of the Federal Court granted a motion to strike an application for judicial review of the Minister's decision to publish a NITR previously issued to a registered charity. The Associate Judge concluded that the application was bereft of any possibility of success because the Federal Court had no jurisdiction to hear it.

[23] The Federal Court described the Associate Judge's reasons for that conclusion in *Stewards'* as follows:

[38] ... [The Associate Judge] gave three reasons why a publication decision cannot be the subject of a separate judicial review application in the Federal Court.

[39] First, where matters are specifically assigned to the Federal Court of Appeal, they are not within the jurisdiction of the Federal Court (citing section 18.5 of the *Federal Courts Act* and *Society of Composers, Authors and Music Publishers of Canada v Maple Leaf Sports & Entertainment Ltd*, 2005 FC 640 at paras 6-7).

[40] Second, Parliament, through the provisions of the [*Income Tax Act*], created a comprehensive scheme or "complete code"

related to revocation and related remedies. That scheme grants exclusive jurisdiction to the Federal Court of Appeal not only for an appeal of a revocation decision, but to fix the timing of the publication of a notice before the determination of any such appeal (subsection 172(3) and paragraph 168(2)(b) of the *Act* respectively). Moreover, the scheme expressly ousts the jurisdiction of the Federal Court via subsection 180(2) of the *Act*.

[41] Third, the act of publication is not a separate and distinct decision from a revocation decision. Rather it “is simply the mechanism or vehicle by which effect is given to the Minister’s decision to revoke” (*Stewards*’ at para 27). This is consistent with a line of jurisprudence that establishes that while a continuing course of conduct can be the subject of judicial review, acts that show a continued commitment to an original decision do not constitute a new decision or course of conduct...

[24] After doing so, the Federal Court expressed agreement with the *Stewards*’ reasons and accordingly concluded it had no jurisdiction.

#### IV. The Appeal

[25] The appellant says the Federal Court erred in concluding that it had no jurisdiction to entertain the judicial review application. The appeal provisions in the *Income Tax Act* only capture the decision to issue or confirm the issuance of the NITR. The appellant asserts that the decision to publish the NITR, which results in revocation of charitable registration, is a separate decision that the appellant cannot appeal. Therefore, only the Federal Court has jurisdiction to judicially review the publication decision, citing subsection 18(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

[26] I do not agree that the Federal Court has jurisdiction.



[27] Subsection 172(3) of the *Income Tax Act* provides that a registered charity may appeal to this Court the Minister’s decision to issue the NITR or to confirm it following objection. Section 180 provides as follows:

**180 (1)** An appeal to the Federal Court of Appeal pursuant to subsection 172(3) may be instituted by filing a notice of appeal in the Court within 30 days from

(a) the day on which the Minister notifies a person under subsection 165(3) of the Minister’s action in respect of a notice of objection filed under subsection 168(4),

[...]

(2) Neither the Tax Court of Canada nor the Federal Court has jurisdiction to entertain *any proceeding in respect of a decision of the Minister from which an appeal may be instituted under this section.*

[Emphasis added.]

**180 (1)** Un appel à la Cour d’appel fédérale prévu au paragraphe 172(3) est introduit en déposant un avis d’appel à la cour dans les 30 jours suivant, selon le cas :

a) la date à laquelle le ministre avise une personne, en application du paragraphe 165(3), de sa décision concernant l’avis d’opposition signifié aux termes du paragraphe 168(4);

...

(2) La Cour canadienne de l’impôt et la Cour fédérale n’ont, ni l’une ni l’autre, compétence pour connaître *de toute affaire relative à une décision du ministre contre laquelle il peut être interjeté appel en vertu du présent article.*

[Sans italique dans l’original.]

[28] The Supreme Court of Canada has said that “[t]he phrase ‘in respect of’ is probably the widest of any expression intended to convey some connection between two related subject matters”: *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, 144 D.L.R. (3d) 193 at 39 [*Nowegijick*]. The synonymous French expression, “relative à”, is equally broad.

[29] The NITR must be issued to the charity at least 30 days before it may be published. Revocation of charitable status is only effective on publication. Issuance of the NITR is thus a pre-condition to revocation. The decision to issue or confirm a NITR may be appealed, and any

appeal must be to this Court. Once the NITR is issued, only this Court can order the Minister to stay publication and thereby stay revocation. Publication gives effect to the revocation that is the subject of the confirmed NITR. The confirmed NITR, in turn, may be challenged in an appeal.

[30] Given this legislative scheme, there can be no doubt that an application for judicial review of the Minister's decision to publish the NITR is a proceeding "in respect of" (*i.e.*, "in relation to", "with reference to", or "in connection with") the Minister's decision to issue or confirm the NITR: *Nowegijick* at 39.

[31] Thus, subsection 180(2) is dispositive of the jurisdictional question in this appeal. If any court has jurisdiction to entertain an application for judicial review of the Minister's publication decision, it is this Court, not the Federal Court: *A.B.L.E. Association for Betterment of Literacy & Education v. The Queen*, [1998] F.C.J. No. 1962, 1998 CanLII 17653 (F.C.A.) at para. 21.

[32] As I noted, the Associate Judge in *Stewards'* went further, concluding that the publication decision is not a separate decision from the decision to issue the NITR and therefore cannot be judicially reviewed. The Federal Court agreed.

[33] The respondent asserts that proposition as an alternative ground for dismissing the appeal. It is unnecessary to address that issue and, given the appellant's judicial review application in this Court, it also is inappropriate to do so. Nothing in these reasons should be interpreted as expressing any view on whether the publication decision is a separate decision amenable to judicial review.

[34] For these reasons, I would dismiss the appeal with costs.

“K.A. Siobhan Monaghan”

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J.A.

“I agree.

Judith Woods J.A.”

“I agree.

Elizabeth Walker J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

A-373-24

**STYLE OF CAUSE:**

JEWISH NATIONAL FUND OF  
CANADA INC., FONDS  
NATIONAL JUIF DU CANADA  
INC. v. MINISTER OF  
NATIONAL REVENUE

**PLACE OF HEARING:**

TORONTO, ONTARIO

**DATE OF HEARING:**

MAY 28, 2025

**REASONS FOR JUDGMENT BY:**

MONAGHAN J.A.

**CONCURRED IN BY:**

WOODS J.A.  
WALKER J.A.

**DATED:**

JUNE 6, 2025

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