Date: 19990505

Docket: A-94-96

CORAM: STONE J.A.

LINDEN J.A.

McDONALD J.A.

BETWEEN:

ALLIANCE FOR LIFE

Appellant

- and -

THE MINISTER OF NATIONAL REVENUE

Respondent

Heard at Ottawa, Ontario, on Tuesday, November 24 and Wednesday, November 25, 1998.

JUDGMENT delivered at Ottawa, Ontario, on Wednesday, May 5, 1999.

REASONS FOR JUDGMENT BY: STONE J.A.

CONCURRED IN BY: LINDEN J.A.

McDONALD J.A.

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REASONS FOR JUDGMENT

STONE J.A.

This appeal is from a decision of the respondent dated November 30, 1995, giving notice to the appellant pursuant to paragraph 168(1)(*b*) of the *Income Tax Act*[1] (the "Act") that the respondent proposed to revoke the registration of the appellant as a charitable organization on the date of publication of that notice.

The effect of revocation on the appellant will be profound. No longer will the appellant be exempt from Part 1 tax as a registered charity nor, more importantly, be permitted to issue official receipts to donors for income tax purposes. Without that latter advantage the appellant is likely to lose much of its ability to pursue its objectives in Canada.

At the time of the hearing in this Court the Supreme Court of Canada had yet to render judgment in an appeal from this Court"s judgment of March 6, 1996 in *Vancouver Society of Immigrant and Visible Minority Women v. Canada (Minister of National Revenue)* .[2] After judgment was rendered by the Supreme Court on January 28, 1999,[3] the parties were accorded the opportunity of filing written representations with respect to the relevance of that judgment to the principal issue in this appeal. Both parties filed written representations, the appellant filing its reply representations on March 17, 1999.

BACKGROUND

I shall begin by summarizing the factual background of the dispute.

The background is revealed by the record, the contents of which were apparently agreed to by the parties. The entire record emanated from the files of the respondent and constituted the basis upon which the respondent decided to revoke the registration. It consists largely of correspondence between the parties and other documents, all of which was either sent or received by the appellant. The detailed audit that was conducted by the respondent"s internal auditors was not received by the appellant prior to the respondent"s decision of November 30, 1995. The audit runs to thirteen foolscap pages and has annexed to it a large number of working papers.

The appellant was incorporated as a corporation without share capital by Letters Patent issued by the Minister of Consumer and Corporate Affairs on March 28, 1973, with the following objects:[4]

1. TO promote respect for all human life from the moment of conception onwards;
2. TO exemplify the right to life which is the basic human right on which all other rights depend;
3. TO uphold and defend this right to life, both before and after birth;
4. TO contribute to the understanding of Canadians that society has a duty to protect this right by legislation;
5. TO stimulate the creation of local Pro Life groups (Chapters) in communities across Canada;
6. TO develop, guide and serve these Chapters, and individuals in their attempts to educate the people in the objects set out in paragraphs one to four hereof;
7. TO co-operate at all levels with other organizations where and in whatever manner it is necessary or desirable to accomplish the objects of the corporation;
8. FOR the attainment of the above objects to acquire, accept, solicit or receive by purchase, lease, contract, donation, legacy, gift, grant, bequest, devise or otherwise any kind of real or personal property; and to enter into and carry out agreements, contracts, arrangements and undertakings incidental thereto.

On August 9, 1973, the appellant submitted an application to the respondent for registration as a charitable organization. The application was accepted in November 1973 effective as of the date it was submitted. The appellant thus became a "registered charity" pursuant to paragraph 248(1)(*a*) of the Act.

The appellant is a broadly based organization. It is affiliated with numerous member groups across Canada. It carries on its activities in close harmony with those groups as well as with unrelated like-minded groups or organizations. In addition to the activities in dispute which will be discussed below, the appellant"s activities included the presentation of briefs to public and private bodies on such matters as reproductive technologies and child care. It has also funded a study of the social, religious and economic factors considered by women in deciding to parent or abort their pregnancies, and has acted as a referral source for speakers to schools and colleges across Canada.

Throughout the course of the ensuing fifteen years the respondent apparently did not raise any question concerning the charitable nature of the appellant"s purposes or activities. That situation changed in 1989. On October 30, 1989, the appellant was notified in writing that an audit of its operations for the fiscal periods ended April 30, 1985 and April 30, 1986 had been carried out. The appellant was advised that it "may be in contravention of certain provisions" of the Act and that "if these provisions are not complied with by a particular registered charity, the Minister of National Revenue may revoke its registration in the manner described in subsection 168(2) of the Act".[5] In the view of the respondent the appellant had failed to devote all of its resources to charitable activities carried on by it and, accordingly, did not meet the definition of "charitable organization" in paragraph 149.1(1)(*b*) of the Act. Specific examples were given of activities that were considered non-charitable, most of which were viewed either as not being for the advancement of education or as being primarily of a political nature.

There ensued much discussion and correspondence between the parties with respect to this challenge to the appellant"s status as a charitable organization. With that in view, the parties met to discuss the matter at the appellant"s Winnipeg office on May 7, 1990. Shortly thereafter, in a letter to the appellant of June 21, 1990, the respondent repeated much of what had been stated in the letter of October 30, 1989. The respondent also summarized what was perceived to be the framework by which the courts determine charitable status, noting that in order for an organization to be so classified at common law it must fall within at least one of four established heads of charity: the relief of poverty; the advancement of religion; the advancement of education; other purposes beneficial to the community, which the law regards as charitable. As there could be no argument that the appellant"s activities involved relief of the poor, the respondent focussed on the three remaining heads.

The respondent expressed the view that for activities to be deemed as being for the advancement of religion they must be directly related to the "promotion of spiritual teachings" and the "maintenance of doctrines" associated with the religion and that the fostering of ethical or moral standards would not be seen as satisfying this test. Elaborating on the point the respondent noted:[6]

> [W]hile the right to life from conception to natural death may in the broad sense be interpreted by Christians as the will of God, it is evident that a substantial portion of the Alliance"s printed literature has little relationship to the advancement of religion as defined at common law. In conclusion, we would explain that simply because an activity is undertaken in conformity with a religious conviction does not mean that the activity is a religious activity.

The respondent explained that for an activity to be deemed educational efforts must be directed toward the training of the mind and that materials used for the purpose must be presented in an unbiased manner so as to allow the reader to make up his or her own mind on the position being advocated. The respondent was of the opinion that materials provided to the public by the appellant were aimed at encouraging a pro-life attitude and designed to appeal in an emotional rather than analytical manner. Accordingly, the provision of such materials could not be considered educational. The respondent stated:[7]

> [T]he dissemination of knowledge to the public must encompass all sides of an issue so that the recipients of the information can draw their own conclusions. Although, we submit that no educational process is free from all bias, if the dissemination of information is directed at persuading the public to adopt a particular attitude of mind rather than to allow an individual to draw an independent conclusion on the basis of a reasonably full and unbiased presentation of the facts, the process is not regarded as charitable by the courts.
>
> Our review of the literature published and disseminated by the Alliance with respect to the abortion issue causes us some particular concern. It does not appear that the Alliance could offer abortion as a viable alternative based on its commitment to "pro-life". However, in order to advance education in the charitable sense, the dissemination of knowledge to the public must encompass all sides of an issue so that the recipients of the information can draw their own conclusions.
>
> Bearing the foregoing in mind, if the Alliance feels that it can operate within the parameters described above, we would ask for a fully executed undertaking to the

> effect that the operations and activities of the Alliance will be amended to reflect an unbiased presentation of the facts.

With respect to the fourth head of charity the respondent stated:[8]

> [I]t is important to note that not all endeavours which directly or indirectly benefit the community are necessarily charitable at law. Activities or programs that are considered charitable under this head of charity are derived from previously decided cases. In qualifying a particular purpose or activity as being "beneficial to the community", we must be able to draw an analogy to precedents which have specifically recognized similar purposes or activities as charitable. Based on our review of the relevant jurisprudence, we conclude that the Alliance could not be considered charitable under the fourth head of charitable purposes.

The respondent went on to acknowledge that the appellant may devote a limited amount of its resources to "political activity" provided such activity was both ancillary and incidental to its charitable activities.

The respondent then suggested several options for the appellant"s consideration, one of which was the formation of a non-profit organization to carry on non-charitable activities. If this option were adopted, none of the appellant"s resources could go toward maintaining such an organization and gifts made to that organization would not bestow a tax advantage on the donors.

In its reply letter of November 22, 1990 the appellant indicated the action it proposed to take in response to the position of the respondent. This would consist of the formation of a separate non-charitable organization"for the purpose of conducting the activities which you have described in your letter of June 21, 1990 as non-charitable in the department"s view",[9] coupled with an undertaking to "amend the operations and activities of Alliance for Life in a manner which will reflect the Department"s position". The letter included the following statement:[10]

> We confirm our understanding that the current audit will be terminated forthwith upon receipt by you of this undertaking. We further understand that a new audit could be commenced in approximately two years from the date of this undertaking, in order to verify compliance by us with this undertaking and that, in the interim, the charitable status of Alliance for Life would be fully preserved.

The respondent seemed content with this turn of events and, in a reply of September 16, 1991, offered some "general guidelines" for determining which of the appellant"s activities should be transferred to the proposed non-charitable organization. The respondent specifically requested that the appellant not destroy the records that had been examined "[a]s the organization may be again audited in the future to ensure compliance with the Act as a result of these negotiations".[11]

On January 24, 1992, the appellant advised that it had incorporated a non-profit organization called "Alliance Non-Profit Pro Life Action Inc." (which is referred to in the record as "Alliance Action" or as "AA") and that it planned to effect a "changeover" to the new organization on May 1, 1992.[12] The new organization would share office space and

office equipment with the appellant. Its board members were to be the same as those of the appellant.

After the respondent expressed concern with the "broad scope" of the appellant"s objects as set out in the Letters Patent of March 28, 1973, the parties soon agreed that they be modified. The proposed amendments were sent to the respondent early in 1992, and the respondent indicated approval of them on April 28, 1992.[13]At the annual general meeting of the appellant held on June 24, 1992, the objects so submitted were approved in substitution for the original ones:[14]

> 1. To educate Canadians on human development, human experimentation, reproductive technologies, adoption, abortion, chastity, euthanasia and similar issues affecting human life;
> 2. To provide counselling and referral services to the public with respect to unforeseen pregnancies and post abortion trauma;
> 3. To provide educational services and materials for member groups.

Supplementary Letters Patent so varying the appellant"s Letters Patent were issued on November 23, 1992.

Less than two years later, by letter of April 27, 1994, the appellant was notified that its books and papers had again been audited, this time for the fiscal period ending April 30, 1993. The audit was said to be by way of "follow-up to the undertakings provided by the Charity" as a result of the earlier audit. The appellant was advised that it continued to be in contravention of certain provisions of the Act. The allegations of non-compliance are set out in that letter which referenced the primary activities of the appellant, with the exception of its 1-800 "HELPline". The allegations read as follows:[15]

> ...The audit results indicate that the activities of the Charity are not sufficiently segregated from those of AA and that its activities are not exclusively charitable, as evidenced by the following factors:
>
> 1) **Fundraising**
>
> Although AA has been incorporated as a separate entity, the effect of this division has been to separate funds received based on whether an official donation receipt is requested, rather than to remove the activities which are not charitable from those of the registered charity.
>
> The fundraising campaigns for the Charity are printed on AA"s letterhead. The content of this fundraising activity is designed to persuade the public to adopt a particular viewpoint and/or resist change to existing legislation. This is evidenced in the fundraising campaigns entitled "Morgentaler", "SIRCH", "All Lives", and "RU-486".
>
> The fundraising documents state: "To help simplify our accounting procedures, please make your donation payable to "Alliance". This enables officials to deposit funds to the credit of either organization. In addition, AA has been allowed to give a choice to donors as to whether they receive an official income tax receipt or not.
>
> 2) **Loan Receivable from AA**

> As previously advised in our letter of March 11, 1992, should the Charity wish to loan funds to the non-profit entity, the transaction would have to be viewed as an investment. The loan should be for a reasonable term, be adequately secured and should be at arm"s length (the interest charged and received by the Charity would be similar to that charged in the open market between two entities acting independently of each other).

The audit results show that the funds transferred to AA were initially adjusted through the accounts receivable account; the amount owing to the charity was $41,192.43 as of April 30, 1993. The promissory note between the two entities was subsequently executed as of July 2, 1993, when the outstanding balance of the accounts receivable was transferred to this separate notes receivable account. Numerous entries were made to the account each month, the overall effect of which has been to artificially reduce the note receivable to a balance of $11,855.81 as of September 30, 1993. The following factors indicate that the adjusting entries are not reasonable:

- adjusting entries which are based on whether the donor requests an official tax receipt;
- the cost of joint fundraising is allocated based on whether the donor requests an official income tax receipt;
- $2,500 per month paid by the Charity for research/fundraising services provided by AA appears high in view of the fact that the research materials are also used by AA in the publication of the ProLife News, which is not a charitable activity;
- the allocation of services costs provided to AA appears to be very low (25% rent, 10% telephone and 15% equipment rental) due to the overlapping functions within the office, the fact that AA also uses the 1-800 line in its literature, and the method by which sales of catalogue materials are made.

The loan receivable cannot be considered to be an investment of the Charity as it is not structured in a way which would be considered to be operating at arm"s length. In addition, the loan is not adequately secured and there are no adjustments for interest payments.

3) **Sale of Catalogue Materials**

The catalogue does not sufficiently segregate between the two organizations both in fact and appearance. This is further evidenced by the order form which goes with the catalogue; pages 1 and 2 are for AA and pages 3 and 4 are for the Charity. Sales are attributable to the organization to whom the cheque is payable. Audit evidence indicates that the Charity continues to sell some of the publications which are listed as those of AA.

In addition, the publication and dissemination of many of the catalogue materials which are listed as being sold by the Charity do not constitute a charitable activity. Our review indicates that the Charity"s publications continue to support one side of controversial social issues. For example, these materials include those which are listed as "Articles and Research Materials", the three Alliance for Life T.V. Ads on video, promotional materials and Actualité Vie.

4) **Library Packages**

The fact that the library packages are distributed by the Charity to schools is not sufficient to characterize their dissemination as advancing education in the charitable sense. Our review indicates that the packages contain selected articles from the research files which support the charity"s pro-life viewpoint rather than providing information to allow the reader to make up his or her mind on controversial social issues.

5) **News Releases/Media**

AFL distributes news releases throughout the country. The content of these news releases is designed to persuade the reader to adopt the viewpoint of the organization; for example news releases dated September 30, 1993 respecting the Supreme Court of Canada"s decisions on Rodriguez and Morgentaler.

As a result, it appears that the Charity has failed to devote all its resources to charitable activities, and therefore does not meet the definition of a charitable organization pursuant to paragraph 149.1(1)(b) of the Act.

For a registered charity to retain its registered status, it is required to comply with the requirements of the Act relative to its registration as such. If a registered charity ceases to comply with these requirements, the Minister may give notice to the charity that he proposes to revoke its registration as provided by paragraph 168(1)(b) of the Act.

In essence, all of the above allegations are in respect to a central concern that the appellant"s activities were not charitable and were at root political. Such political activity, it was alleged, was being undertaken either directly by the appellant or indirectly through the alleged improper subsidization of the activities of Alliance Action and the improper intermingling of the two organizations" activities " one of which was to operate as acharity and the other not.

Expanding on the assertion that the appellant was engaged in political activities contrary to the Act, the respondent continued:[16]

The courts have established that activities which are designed essentially to sway public opinion on a controversial social issue are not charitable, but are political in the sense understood at law. These types of activities include the following:

1. publications, conferences, workshops;
2. advertisements in newspapers, magazines or on television or radio designed to attract interest in, or gain support for, a charity"s position on political issues and matters of public policy;
3. public meetings or lawful demonstrations that are organized to publicize and gain support for a charity"s point of view on matters of public policy and political issues; and,
4. mail campaigns - a request by a charity to its members or the public to write to the media and government expressing support for the charity"s views on political issues and matters of public policy.

The fact that such activities are carried out by an organization with charitable objectives does not make the nature of the activity less political.

As per enclosed Information Circular 87-1 entitled "Registered Charities - Ancillary and Incidental Political Activities", an organization may devote a limited amount of its resources including volunteer help, to political activity of a non-partisan nature provided that such activity is both incidental and ancillary to an organization"s objects.

It appears on the contrary that the Charity is devoting substantial resources, which includes financial, material and human, on political activities which are not incidental and ancillary to charitable objects. That is, purposes and activities that are directed at legislative change or change in public policy or attitudes are considered political in nature, and not charitable at law.

For example, these activities and related expenditures include fundraising, translation and publication of Actualité Vie and other publications, news releases and editorials.

Based on the above analysis, it appears that the Charity has not devoted substantially all of its resources to charitable activities, and therefore has failed to meet the prerequisite of subsection 149.1(6.2).

There then followed a further period of correspondence and discussions between the parties. The appellant steadfastly maintained that it was not in contravention of the Act and that it continued to be engaged solely in charitable activities i.e., advancement of education and other purposes beneficial to the community as a whole. The appellant put forth its basic position in a letter to the respondent of June 24, 1994:[17]

We are pleased to see that "the Department recognizes that no educational process is free from all bias". However, we believe that, notwithstanding our organization"s aims we present our material in as objective a manner as is possible.

Alliance For Life"s material is factually-based. We believe that we are providing a full and fair presentation of these facts, and the inferences that flow from them, which the recipient of the information is free to accept or reject. Clearly, if these facts were already being presented to the public in a full and fair manner, there would be no purpose for the existence of our organization. It is only because these facts are not being furnished in the "marketplace of ideas" by groups with opposing viewpoints that the need for our organization and others like it exists. In that light, the purpose of the dissemination of the material is not directed at persuading the public to adopt a particular attitude of mind, as much as it is directed to providing them with sufficient information to reach, independently, a conclusion we believe is obvious from assessment of all the facts. It is not a question of persuasion, as much as it is a question of providing "balance" in the information being disseminated to the public.

The appellant took particular issue with the respondent"s assertions that its fundraising activities, catalogue sales, library packages and news releases, were not charitable and denied that it had engaged in political activities contrary to the Act.[18] The characterization of a loan receivable from Alliance Action was also questioned.

In Revenue Canada"s response of January 5, 1995, it continued to insist that the appellant did not meet the definition of a "charitable organization" because its resources were not being devoted exclusively to charitable activities. According to the respondent, the appellant had allowed its resources to be used by an organization (i.e. Alliance Action) which was not a qualified donee and engaged in political activities that were in excess of acceptable ancillary and incidental activities. The respondent at this time also expressed concern with

respect to the use made of the appellant"s 1-800 "HELPline", asserting that it was being used for inquiries about pro-life issues, that counselling training for its operators was minimal and that the pro-life outlook of groups on the organization"s referral list as well as other evidence suggested that the organization was using the "HELPline" as a vehicle to persuade the undecided against having an abortion.[19]

In a letter of April 17, 1995 written by the appellant"s accountants, the charitable nature of the appellant"s activities continued to be asserted. The accountants stated:[20]

> We agree with you that the fact some organizations "disseminates one-sided information" has no bearing on this case. However, we cannot stress too strongly that Alliance is in fact providing educational materials whose sole purpose is to provide information to allow any interested individual to draw an independent conclusion on the basis of reasonably full and unbiased presentation of facts. It is not possible for anyone to judge whether Alliance has achieved these goals because each person would have a varying degree of opinion covering the whole spectrum. However, that is true of any and all educational programs. The fact some of the issues may be controversial does not mean they are no longer education. To the contrary, all education involves discussion, debate and often controversy and disagreement. As well, you cannot make judgements on results achieved through Alliance"s educational focus without having many years of history and doing an in-depth analysis of its programs. Let"s not forget that Alliance was reorganized in 1992 under the specific guidance of and in accordance with Revenue Canada"s suggestions.

The accountants commented upon the individual concerns raised by the respondent in the letter of January 5, 1995. They requested various "explanations" with respect to the respondent"s assertion that there was insufficient segregation between the appellant and Alliance Action, and asked: "Please advise on what basis you make that statement. Do you have a working paper with figures to support your statement?" No response was given to the accountants" letter of April 17, 1995 prior to sending the notice of November 30, 1995.

In the notification letter of November 30, 1995, the respondent summarized the reasons for the decision to deregister as follows:[21]

> You indicated in your letter of June 24, 1994 that you believe the audit was conducted just one year after the reorganization of activities between the Charity and Alliance Action ("AA"), a non-profit organization, and that this period should be considered a learning period. The audit was conducted seventeen months after the reorganization. We do not believe that the audit period should be considered a learning period and have determined that the Charity has not fulfilled its undertaking given to the Department on November 22, 1990.
>
> The Department initially sent a letter to the Charity on October 30, 1989, respecting an audit of the April 30, 1985 and 1986 fiscal periods, outlining the reasons why the Department did not believe the Charity met the requirements for continued registered status. The results of the Department"s audit showed that the Charity"s activities were not educational in the charitable sense, but rather political.
>
> Representatives of the Charities Division attended at your office in Winnipeg on May 7, 1990 to further clarify our concerns and receive your representations. The

> Department"s position was once again stated in a letter to the Charity dated June 21, 1990. The Charity replied by letter dated November 22, 1990 that it would form a non-profit organization (Alliance Action) to conduct those activities which the Department did not consider charitable.
>
> Your subsequently advised that the AA was incorporated on July 12, 1991. At your request, we accepted that the changeover of non-charitable activities from the Charity to AA would take place May 1, 1992. We believe that the Charity was given a sufficient time-frame to implement its November 22, 1990 undertaking.
>
> We have reviewed your representations made in letters dated June 14, 1994 and April 17, 1995 and must advise that the submissions did not alleviate our concerns. As a result, we have determined that the Charity does not satisfy the definition of a charitable organization in accordance with subsection 149.1(1) of the Act and does not meet the requirements of subsection 149.1(6.2) of the Act.

The respondent maintained at the same time that the appellant had exceeded the permitted 10% limit on resources devoted to political activities. Fundraising expenditures and costs for translating Alliance Action"s publication "Actualité Vie" in the 1993 fiscal year represented 15% of total revenues. Other resources said to be devoted to political activities included board and staff activities in co-sponsoring the annual conference of Campaign Life Coalition, news releases, various editorials and advertisements. In addition to interest foregone on the loan receivable, the respondent estimated that $55,851 had been advanced to Alliance Action, a political advocacy organization. On the basis of this analysis, the respondent believed that the appellant was not devoting "substantially all of its resources to charitable activities" as required by subsection 149.1(6.2) of the Act. The respondent continued to insist that there had been insufficient separation of the appellant"s activities from those of Alliance Action despite the fact that the two organizations had separate bank accounts, invoices, receipts and payroll. The respondent further asserted that "...the purpose of this separation has been to separate funds received which require an official donation receipt for tax purposes from those that do not require a receipt, rather than to transfer the non-charitable activities of the Charity to AA".[22] As for the "HELPline", while the respondent regarded counselling to aid and assist a woman wishing to bring her child to term as charitable, "counselling intended to persuade a woman against having an abortion is not".[23]

ISSUES

The primary issue in this appeal is whether the respondent"s decision to revoke the appellant"s registration as a "charitable organization" was well founded in law. If that determination was well founded, it would become necessary to address the remaining issues raised by the appellant. These are (a) whether the appellant was denied procedural fairness in the revocation process, (b) whether the appellant had a legitimate expectation that the respondent would conduct itself toward the appellant after the second audit in the way that it conducted itself after the first audit, (c) whether the respondent was estopped in his decision from withdrawing his prior approval of some of the appellant"s publications and, finally, (d) whether the right of the appellant to freedom of expression guaranteed by section 2(*b*) of the *Canadian Charter of Rights and Freedoms* was violated.

ANALYSIS

I shall begin by considering whether the respondent erred in determining that the appellant is not a "charitable organization" within the meaning of the Act.

Statutory provisions

The authority by which the respondent may revoke the registration of a charitable organization is provided for in subsection 168(1) of the Act. That subsection reads:

168(1) Where a registered charity or a registered Canadian amateur athletic association

(*a*) applies to the Minister in writing for revocation of its registration,
(*b*) ceases to comply with the requirements of this Act for its registration as such,

...

the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

168(1) Le ministre peut, par lettre recommandée, aviser un organisme de bienfaisance enregistré ou une association canadienne enregistrée de sport amateur de son intention de révoquer l''enregistrement lorsque l''organisme de bienfaisance enregistré ou l''association canadienne enregistrée de sport amateur, selon le cas:

a) s''adresse par écrit au ministre, en vue de faire révoquer son enregistrement;
b) cesse de se conformer aux exigences de la présente loi relatives à son enregistrement comme telle; ...

The term "charity" is defined in subsection 149.1(1) to include a "charitable organization", which term is defined in the same subsection to read in part:

"charitable organization" means an organization, whether or not incorporated,

(a) all the resources of which are devoted to charitable activities carried on by the organization itself, ...

"oeuvre de bienfaisance" Œuvre, constituée ou non en société:

a) dont la totalité des ressources est consacrée à des activités de bienfaisance qu''elle mène elle-même; ...

The definition of "charitable organization" must be read in conjunction with subsection 149.1(6.2), which reads:

149.1(6.2) For the purposes of the definition "charitable organization" in subsection (1), where an organization devotes substantially all of its resources to charitable activities carried on by it and

(*a*) it devotes part of its resources to political activities,

149.1(6.2) Pour l''application de la définition de "oeuvre de bienfaisance" au paragraphe (1), l''oeuvre qui consacre presque toutes ses ressources à des activités de bienfaisance est considérée comme y consacrant la totalité si les conditions suivantes sont réunies:

a) elle consacre la partie restante de ses ressources à des activités politiques;

(*b*) those political activities are ancillary and incidental to its charitable activities, and

(*c*) those political activities do not include the direct or indirect support of, opposition to, any political party or candidate for public office,

the organization shall be considered to be devoting that part of its resources to charitable activities carried on by it.

b) ces activités politiques sont accessoires à ses activités de bienfaisance;

c) ces activités politiques ne comprennent pas d''activités directes ou indirectes de soutien d''un parti politique ou d''un candidat à une charge publique ou d''opposition à l''un ou à l''autre.

A "registered charity" is defined in paragraph 248(1)(*a*) of the Act as follows:

248(1) In this Act,

...

"registered charity" at any time means

(*a*) a charitable organization, private foundation or public foundation, within the meanings assigned by subsection 149.1(1), that is resident in Canada and was either created or established in Canada, or

...

that has applied to the Minister in prescribed form for registration and that is at that time registered as a charitable organization, private foundation or public foundation.

248(1) Les définitions qui suivent s''appliquent à la présente loi.

...

"organisme de bienfaisance enregistré" L''organisme suivant, qui a présenté au ministre une demande d''enregistrement sur formulaire prescrit et qui est enregistré, au moment considéré, comme oeuvre de bienfaisance, comme fondation privée ou comme fondation publique:

a) oeuvre de bienfaisance, fondation privée ou fondation publique, au sens du paragraphe 149.1(1), qui réside au Canada ou qui y a été constituée ou y est établie; ...

Legal principles

The law of charity in Canada has its genesis in the judgment of Lord Macnaghten in *Commissioners of Income Tax v. Pemsel*,[24] where Lord Macnaghten defined "charity" in its legal sense as comprising four principal divisions:

> ...trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads.

The basis of these divisions was the 1601 *Charitable Uses Act*,[25] commonly referred to as the Statute of Elizabeth. The *Pemsel* classification remains the essential basis for the development of the law of charity both in England and in Canada.

The decided cases in both countries have recognized that the approach to be taken in any given case, though principled, ought to be flexible enough to accommodate changes in societal needs and attitudes of what is properly to be regarded as charitable. Thus in *In Re Hopkins" Will Trusts*,[26] Wilberforce J. (as he then was) stated:

> I come, then, to the only question of law: is the gift of a charitable character? The society has put its case in the alternative under the two headings of education and general benefit to the community and has argued separately for each. This compartmentalisation is derived from the accepted classification into four groups of the miscellany found in the Statute of Elizabeth (43 Eliz. 1, c. 4). That statute, preserved as to the preamble only by the Mortmain and Charitable Uses Act, 1888, lost even that precarious hold on the Statute Book when the Act of 1888 was repealed by the Charities Act, 1960, but the somewhat ossificatory classification to which it gave rise survives in the decided cases. It is unsatisfactory because the frontiers of "educational purposes" (as of the other divisions) have been extended and are not easy to trace with precision, and because, under the fourth head, it has been held necessary for the court to find a benefit to the public within the spirit and intendment of the obsolete Elizabethan statute. The difficulty of achieving that, while at the same time keeping the law"s view of what is charitable reasonably in line with modern requirements, explains what Lord Simonds accepted as the case-to-case approach of the courts: see *National Anti-Vivisection Society v. Inland Revenue Commissioners*[(1948) A.C. 31; 63 T.L.R. 424; [1947] 2 All E.R. 217, H.L]. These are, in fact, examples of accepted charities which do not decisively fit into one rather than the other category. Examples are institutes for scientific research (see *National Anti-Vivisection* case, per Lord Wright), museums (see *In re Pinion* [[1963] 3 W.L.R. 778]), the preservation of ancient cottages (*In re Cranstown* [[1932] 1 Ch. 537; [1932] 48 T.L.R. 226]), and even the promotion of Shakespearian drama (*In re Shakespeare Memorial Theatre Trust* [[1923] 2 Ch. 398; 39 T.L.R. 676]). The present may be such a case.
>
> [Emphasis added]

Sitting in the House of Lords four years later, Lord Wilberforce made much the same point in *Scottish Burial Reform and Cremation Society Ltd. v. Glasgow Corporation*,[27] where he described the law of charity as "a moving subject which may well have evolved even since 1891". This was echoed by the House of Lords more recently in *Inland Revenue Commissioners v. McMullen* .[28] In Canada as well, this Court has recognized that the law of charity must be adapted to meet peculiar needs and attitudes of Canadian society: *Native Communications Society of British Columbia v. M.N.R.*;[29] *Positive Action Against Pornography v. M.N.R.*.[30] On the other hand, this Court has confined a valid trust for "the advancement of education" under the second head of Lord Macnaghten"s classification to those whose goal is either the formal training of the mind or the improvement of a useful branch of human knowledge.[31]

Although a "moving subject" the law of charity has not looked particularly kindly upon political purposes or activities being accepted as charitable. The Act reflects this attitude in subsection 149.1(6.2) with respect to activities by laying down a requirement that political activities be "ancillary and incidental" to charitable activities and that the organization remain obliged to devote "substantially all" of its resources to those activities. "Substantially all" has been interpreted by Revenue Canada as meaning that no more than 10% of an

organization"s resources measured over a period of time is to be spent on permitted political activities.[32]Revenue Canada interprets the words "political activities" as embracing a "wide range of activities that have in common the goal of bringing about change in law and policy".[33] There remains, as we shall see, some difficulty of determining what activities are "political" in this branch of the law.

The trend of decisions of this Court in the last decade was to adopt views earlier expressed in the courts of England.[34] The categorization of "political purposes" of Slade J. (as he then was), drawing on lines of House of Lords and other decisions in *McGovern v. Attorney General* ,[35] is most often relied upon in this Court. The case was concerned with whether the objects of the Amnesty International Trust were exclusively charitable under the relevant English statute. In ruling that they were not, Slade J. stated:[36]

> Founding them principally on the House of Lords decisions in the *Bowman* case [1917] A.C. 406 and the *National Anti-Vivisection Society* case [1948] A.C. 31, I therefore summarise my conclusions in relation to trusts for political purposes as follows. (1) Even if it otherwise appears to fall within the spirit and intendment of the preamble to the Statute of Elizabeth, a trust for political purposes falling within the spirit of Lord Parker"s pronouncement in *Bowman"s* case can never be regarded as being for the public benefit in the manner which the law regards as charitable. (2) Trusts for political purposes falling within the spirit of this pronouncement include, inter alia, trusts of which a direct and principal purpose is either (i) to further the interests of a particular political party; or (ii) to procure changes in the laws of this country; or (iii) to procure changes in the laws of a foreign country; or (iv) to procure a reversal of government policy or of particular decisions of governmental authorities in this country; or (v) to procure a reversal of government policy or of particular decisions of governmental authorities in a foreign country.

Thus purposes aimed at promoting or advocating a change in the law or in its administration, or a change in public policy, is not regarded as charitable.[37] The underlying reason for refusing to treat a political object as charitable was articulated by Lord Parker of Waddington in *Bowman v. Secular Society, Ltd.*:[38]

> ...a trust for the attainment of political object has always been invalid, not because it is illegal, for everyone is at liberty to advocate or promote by any lawful means a change in the law, but because the courts have no means of judging whether a proposed change in the law will or will not be for the benefit of the public...

I take this to refer to the competence or ability of a court to control or reform a particular trust. Also, in the Canadian context the activities of a registered charity are, in effect, subsidized out of the public purse in that donations are deductible for income tax purposes.

In *McGovern, supra*, Slade J. made clear that his categorization of "political purposes" was not intended to be exhaustive.[39] In *Positive Action Against Pornography*,[40] this Court, building on that case, expressed the view that certain purposes not falling within it were nevertheless political in a legal sense. More recently, in *Human Life International of Canada, Inc. v. M.N.R.*,[41] this Court explicitly held that the "advocacy of opinions on various important social issues"[42] was a "political activity" and therefore not charitable in the context of that case.

The state of the law of charity in Canada has now to be considered in the light of the very recent decision of the Supreme Court of Canada in *Vancouver Society*.[43] It is important to examine that decision in some detail before considering whether the appellant remains a "charitable organization" within the meaning of the Act. The Supreme Court there considered the application of the law of charity in Canada for the first time in more than twenty-five years. Its decision represents a significant contribution to a proper understanding of the principles underlying this branch of the law and their application.

The amended purposes of the Vancouver Society of Immigrant and Visible Minority Women (the "Society") read as follows:

> 2. a. To provide educational forums, classes, workshops and seminars to immigrant women in order that they may be able to find or obtain employment or self-employment;
>
> b. To carry on political activities provided such activities are incidental and ancillary to the above purposes and provided such activities do not include direct or indirect support of, or opposition to, any political party or candidate for public office; and
>
> c. To raise funds in order to carry out the above purposes by means of solicitations of funds from governments, corporations and individuals.
>
> d.
>
> e. To provide services and to do all such things that are incidental or conducive to the attainment of the above stated objects, including the seeking of funds from governments and/or other sources for the implementation of the aforementioned objectives.

Registration of the Society as a "charitable organization" was denied by the respondent because the case was not analogous to that which was before this Court in *Native Communications Society of British Columbia*[44] and because the purposes of the Society were not "for the advancement of education". The respondent considered purpose (b) to be a "political purpose" and therefore not charitable. In its view, the Society had not demonstrated "that the organization devotes substantially all of its resources to charitable activities". Activities such as networking, referral services, liaising for accreditation credentials, soliciting for opportunities and maintaining a job skills directory were not considered to be charitable. This Court concurred that the Society was not registrable as a "charitable organization" principally on the basis that the Society"s purposes were too vague and uncertain.

By a bare majority the Supreme Court upheld the judgment of this Court, although it differed somewhat with the reasoning. Iacobucci J., for the majority, was of the view that purpose (a) was a valid charitable purpose as for "the advancement of education" under the second head of Lord Macnaghten"s classification in *Pemsel* . On the other hand, he disagreed that the goal of assisting immigrant women to integrate into society through helping them to obtain employment fell under the fourth head of Lord Macnaghten"s classification " "trusts for other purposes beneficial to the community, not falling under any of the preceding heads". The presence of purposes (b) and (c) did not disqualify the Society as a "charitable organization". Those clauses merely authorized the Society to carry on political activities and to raise funds as merely "incidental and ancillary" to purpose (a). In the end, Iacobucci J. considered purpose (e) to be "too vague and indeterminate to permit...charitable status under the fourth head of *Pemsel*", finding it difficult to discern

whether this purpose was "a means of fulfilment or an end in itself" due to the presence of the word "conducive".

Gonthier J., dissenting for the minority, agreed with Iacobucci J. that purpose (a) was a valid charitable purpose as for "the advancement of education". He disagreed, however, that the goal of the Society was not charitable under the fourth head of Lord Macnaghten"s classification in *Pemsel* . Gonthier J. agreed with Iacobucci J. that purposes (b) and (c) did not disqualify the Society from registration, but disagreed that purpose (e) was objectionable because of the language in which it was cast.

I shall now attempt to distill some of the specific guidance found in *Vancouver Society, supra*:

(a) As the Act does not define what is "charitable", the courts are to be guided by the meaning of that term at common law.

(b) The starting point in this process continues to be Lord Macnaghten"s classification in *Pemsel* , which is generally understood to refer to the preamble of the Statute of Elizabeth. While it is for the courts to decide what is "charitable", as stated by Iacobucci J. at paragraph 146, "the preamble proved to be a rich source of examples and the law of charities has proceeded by way of analogy to the purposes enumerated in the preamble".

(c) As was made clear in *Guaranty Trust Co. of Canada v. Minister of National Revenue*,[45] and again emphasized in *Vancouver Society*, to be viewed as charitable a purpose must also be for the benefit of the community or of an appreciably important class of the community. At paragraph 148, Iacobucci J. characterized this requirement as "a necessary, but not a sufficient, condition for a finding of charity at common law. If it is not present, then the purpose cannot be charitable".[46] This particular requirement is not the same as that referred to by Lord Macnaghten under the fourth head of his classification. It seeks the welfare of the public rather than the conferment of private advantage. As Iacobucci J. stated at paragraph 147: "This public character is a requirement that attaches to all the heads of charity, although sometimes the requirement is attenuated under the head of poverty".

(d) Despite the focus in subsection 149.1(1) of the Act on "charitable activities" rather than purposes, Iacobucci J. makes clear at paragraph 152 that although the activities of an organization need to be examined "it is really the purpose in furtherance of which an activity is carried out, and not the character of the activity itself, that determines whether or not it is of a charitable nature".[47]

(e) As pointed out by Iacobucci J. at paragraph 154, in view of the language in the definitions of "charitable foundation" and "charitable organization" in subsection 149.1(1), there is a clear requirement that "all of the purposes and activities of the foundation or organization be charitable". As he put it: "exclusivelycharitable activities would be those that directly further the charitable purposes and not other, non-charitable, purposes".[48]

(f) The requirement in subsection 149.1(1) that a charitable foundation or charitable organization devote its resources exclusively to charitable purposes is subject to the exceptions in subsection 149.1(6.1) and (6.2) of the Act, which permit such a foundation or organization to devote part of its resources to "political activities" provided the requirements of those subsections are met. As Iacobucci J. pointed out at paragraph 155, where the requirements of subsection 149.1(6.2) are not met, then "an organization that devotes substantially all of its resources, rather than all, to charitable activities would run afoul of the general requirement of

exclusive charitability found in the definitions of "charitable foundation" and "charitable organization" in s. 149.1(1)".

(g) Iacobucci J. made clear, at paragraph 157, that a purpose that cannot be viewed as charitable in itself may nevertheless be a valid charitable purpose if it be incidental to a charitable purpose. In this same connection, Iacobucci J. added the following at paragraph 158:

> The chief proposition to be drawn from this holding is that even the pursuit of a purpose which would be non-charitable in itself may not disqualify an organization from being considered charitable if it is pursued only as a means of fulfilment of another, charitable, purpose and not as an end in itself. That is, where the purpose is better construed as an activity in direct furtherance of a charitable purpose, the organization will not fail to qualify as charitable because it described the activity as a purpose.[49]

(h) The Canadian case law developed under the second head of *Pemsel* limiting the definition of "education" to the "formal training of the mind" or "the improvement of a useful branch of human knowledge" is unduly restrictive and should be modified for reasons explained by Iacobucci J.

At paragraph 168:

> There seems no logical or principled reason why the advancement of education should not be interpreted to include more informal training initiatives, aimed at teaching necessary life skills or providing information toward a practical end, so long as these are truly geared at the training of the mind and not just the promotion of a particular point of view.

At paragraph 169:

> As I said earlier, the purpose of offering certain benefits to charitable organizations is to promote activities which are seen as being of special benefit to the community, or advancing a common good. In the case of education, the good advanced is knowledge or training. Thus, so long as information or training is provided in a structured manner and for a genuinely educational purpose -- that is, to advance the knowledge or abilities of the recipients -- and not solely to promote a particular point of view or political orientation, it may properly be viewed as falling within the advancement of education.[50]

And at paragraph 170:

> Moreover, it [knowledge] can be sought in many different ways, and for many different reasons, whether for its own sake or as a means to an end. Viewed in this way, there is no good reason why non-traditional activities such as workshops, seminars, self-study, and the like should not be included alongside traditional, classroom-type instruction in a modern definition of "education". Similarly, there is no reason to exclude education aimed at advancing a specific, practical end. In terms of encouraging activities which are of special benefit to the community, which is the ultimate policy reason for offering tax benefits to charitable organizations, there is nothing to be gained, and much to be lost, by arbitrarily denying benefits to organizations devoted to advancing various types of useful knowledge.

Iacobucci J. added the following caution at paragraph 171:

> To my mind, the threshold criterion for an educational activity must be some legitimate, targeted attempt at educating others, whether through formal or informal instruction, training, plans of self-study, or otherwise. Simply providing an opportunity for people to educate themselves, such as by making available materials with which this might be accomplished but need not be, is not enough. Neither is "educating" people about a particular point of view in a manner that might more aptly be described as persuasion or indoctrination. On the other hand, formal or traditional classroom instruction should not be a prerequisite, either. The point to be emphasized is that, in appropriate circumstances, an informal workshop or seminar on a certain practical topic or skill can be just as informative and educational as a course of classroom instruction in a traditional academic subject. The law ought to accommodate any legitimate form of education.

(i) With respect to the fourth head in Lord Macnaghten"s classification of charity in *Pemsel* " other purposes beneficial to the community " Iacobucci J. reiterated the view that for a purpose to be beneficial to the community "in a way which the law regards as charitable" it must come within the "spirit and intendment" if not the letter of the preamble to the Statute of Elizabeth even though he viewed the approach to be somewhat "circular". At paragraph 177, he endorsed the approach which was adopted by the Privy Council in*D"Aguiar v. Guyana Commissioner of Inland Revenue*:[51]

> [The Court] must first consider the trend of those decisions which have established certain objects as charitable under this heading, and ask whether, by reasonable extension or analogy, the instant case may be considered to be in line with these. Secondly, it must examine certain accepted anomalies to see whether they fairly cover the objects under consideration. Thirdly -- and this is really a cross-check upon the others -- it must ask whether, consistently with the objects declared, the income and property in question can be applied for purposes clearly falling outside the scope of charity; if so, the argument for charity must fail.

Iacobucci J. again emphasized the additional requirement that the purpose must not be for private advantage but rather for the benefit of the entire community or an appreciably important class of the community.

(j) The purposes pursued by an organization should not be seen as limited and determined by reference solely to those that were initially and formally stated by an organization. An examination of activities can thus serve to reveal the possible adoption of other purposes by an organization. At paragraph 194, Iacobucci J. stated:

> In other words, as Lord Denning put it in *Institution of Mechanical Engineers v. Cane*, [1961] A.C. 696 (H.L.), at p. 723, the real question is, "for what purposes is the society *at present* instituted?"
>
> [Emphasis in original]

(k) To be registered as a "charitable organization", the organization"s purposes must not be vague or uncertain.[52]

Are the appellant"s purposes charitable?

I turn next to the application of the principles referred to above to the primary issue. This requires at the outset a consideration of whether all of the appellant"s purposes are for "the advancement of education" under the second head of the *Pemsel* classification or, alternatively, are for "other purposes beneficial to the community" under the fourth head of the *Pemsel* classification, because they are to promote public health or to improve moral and spiritual welfare in the community. The appellant submits that the respondent took an unduly narrow and inconsistent stance with respect to "education" by ruling that education is not advanced where activities actually pursued are designed to persuade the public to adopt a particular point of view on controversial social issues. The limiting of "the advancement of education" by earlier decisions of this Court to the "formal training of the mind" or the "improvement of a useful branch of human knowledge" is, in the appellant"s submission, too restrictive. The appellant further submits that its activities are otherwise beneficial to the community under the fourth head in *Pemsel* because they seek to promote public health or to improve moral or spiritual welfare in the community by informing the public that moral and spiritual principles are engaged in the debate about the use of contraception, sexuality and the termination of human life at any stage of existence.

In addressing the issue of charitable purposes it is necessary to observe that the circumstances which prevailed prior to November 22, 1990, when the appellant undertook to amend its operations and activities so as to conform to the position taken by the respondent in the letter of June 21, 1990, are not of direct relevance. As we have seen, in consequence of that position the appellant caused Alliance Action to be incorporated. Before that could be accomplished the respondent objected to the scope of the appellant"s original objects. The amended objects were approved at the annual meeting of the appellant held on June 21, 1992 and were formally authorized by Supplementary Letters Patent of November 23, 1992.

The narrow question here is whether the amended objects are "charitable". As I understand the guidance of*Vancouver Society , supra*, this question is to be addressed initially from the standpoint of the purposes set forth in an organization"s constituting document without regard to the activities engaged in to further those purposes. The appellant submits that the amended objects were accepted as charitable by Revenue Canada itself prior to their approval at the appellant"s June 1992 annual meeting. I have already referred to the evidence relied on by the appellant with respect to the alleged approval. While that evidence is somewhat scant it does appears to support the appellant"s submission. It was not contradicted by the respondent. Moreover, nothing in the record suggests that at any time between November 23, 1992 when the amended objects were formally approved and April 27, 1994 when the appellant was informed that it was operating in contravention of the Act, did the respondent overtly adopt the position that the amended objects were not charitable.

In my view the respondent"s approval of the appellant"s amended objects prior to their formal adoption cannot be readily ignored. It will be recalled that at the time this approval was communicated to the appellant on April 28, 1992, the dispute over the appellant"s continued registration as a charity had yet to be formally resolved. An important component of that resolution was that the appellant"s objects be amended. It appears that the respondent regarded and continued to regard the appellant"s revised purposes as "charitable" within the meaning of the Act once all elements of the settlement were finalized. While the appellant"s principal purpose as set forth in paragraph 1 of its amended charter is "to educate Canadians" on the subjects therein enumerated and a secondary object, in paragraph 3, is to provide "educational" services, these phrases should not be

construed in a loose sense but rather in the light of what the common law regards as education. It is apparent from decided cases already referred to that what may constitute "education" is not left by the law to the subjective judgment of the organization who claims it to be so but is a matter for the courts to determine. Activities actually engaged in would need to be examined to discover whether the organization is, indeed, advancing education in the legal sense.

I have not overlooked the respondent"s contention that Revenue Canada never changed its position on the true nature of the appellant"s amended objects nor failed to criticized them. While this is certainly so from April 27, 1994 onward, nothing in the record suggests that this position was clearly taken between the time the earlier dispute was settled in 1992 and April 27, 1994. The respondent argues, nevertheless, that even if the appellant"s amended objects could be interpreted as charitable, the appellant"s activities "do not manifestly or necessarily directly further its formal objects" or, put another way, that "the Appellant"s goals are not expressed in its formal objects". This contention requires a somewhat more detailed examination of the appellant"s activities.

Are the appellant"s activities charitable?

As we have seen, the respondent challenges a whole range of activities engaged in by the appellant as not charitable either because they do not further the appellant"s formal objects or because they are "political activities" that are not permitted by the Act.

Although I have already mentioned these challenges, it will be useful to examine the evidence on which they are based in greater detail at this juncture.

(a) Fundraising

The respondent quarrelled with the methods employed in fundraising. For some time solicitations were made on the letterhead of Alliance Action. A donor was to make a payment to "Alliance", allowing donations to be deposited either in the bank account of the appellant or Alliance Action. The donor was left to decide in each case whether to require a tax receipt. The respondent took the view that these activities, in any event, were designed to promote pro-life points of view. The appellant agreed that the fundraising material would be altered to ensure that donations be made either to the appellant or to Alliance Action, and that tax receipts be issued only for donations made to the appellant. In the view of the respondent this new format did not "sufficiently segregate the activities of Alliance from AA and that it is designed to support the advocacy activities of AA". In addition, the respondent noted that monies raised through a Bank of Montreal "Affinity MasterCard", while advertised to be in support of the appellant, in fact were deposited into the bank account of Alliance Action. That this was so was acknowledged by the appellant"s accountants in a letter of April 19, 1995, where the appellant undertook to correct it.

(b) Loan receivable

The overall thrust of the respondent"s assertion here is that various costs chargeable to Alliance Action were offset against the principal and interest of a loan owing to the appellant by Alliance Action, with the net effect that the appellant used a portion of its resources to support the non-charitable activities of Alliance Action. The respondent cited, by way of examples, the allocation of excessive fundraising costs, excessive monthly payments made by the appellant to Alliance Action for "research/ fundraising" and the insufficient allocation to Alliance Action of

charges for rent and for the use of office equipment. For its part, the appellant asserted that the account receivable arose from the sale of materials to Alliance Action at the time of the "changeover" and that they were found to have been overvalued, calling for an adjustment of the amount owing. The appellant further claimed that the breakdown of office expenses was reasonable in the circumstances.

(c) Library packages and related activities

The respondent objected to this service on the ground that it was not for the advancement of education but to support the appellant"s pro-life viewpoints. The packages were transmitted by the appellant to public and school librarians and were described by the appellant as "a selection of clippings...on a number of issues of concern to students doing research for assignments or debates".[53] It was considered it to be "more convenient and practical if students could locate the material in their public or school libraries" rather than request it directly from the appellant. As a part of this service, the appellant undertook to provide "up to date information and/or provide a balance for current collection in your vertical files"as well as a general update of the material every six months "where necessary".[54] There was no charge for the service.[55] The library packages[56]consisted of various items which, viewed objectively, can only be regarded as mirroring the appellant"s fundamental position that human life is to be preserved from conception to natural death. The majority of items exemplify the appellant"s stated opposition to abortion including eugenic abortion, fetal cell transplantation, *in vitro* fertilization and experimentation resulting therefrom, euthanasia including tube feeding and assisted suicides, and the prenatal screening of the unborn. There are far fewer items of a general scientific interest and others concerned with post-abortion trauma, the *in utero* environment of the unborn and the impact of external influences thereon, palliative care of the dying, declining population figures and adoption as an alternative to abortion.

(d) Catalogue materials and related activities

The appellant"s catalogue[57] advertises various printed items, videos, promotional buttons and posters and materials distributed by the appellant on a variety of subjects. Among items of catalogue materials are position papers opposed to abortion, contraception, *in vitro* fertilization and embryo transfer, fetal transplantation, euthanasia, organ transplantation, presentation to a parliamentary committee, news releases, the President"s report of August 1993, sexually transmitted diseases, AIDS prevention, adoption and other topics generally in sympathy with the appellant"s perceived mission. While the materials are weighted in favour of that mission, a few items are somewhat more balanced or of a scientific nature and still others are concerned with such topics as post-abortion trauma, pornography, care for the dying and infanticide. The materials were intended for expectant mothers, teenagers and others. The respondent objected to the catalogue materials as not sufficiently segregating between those that further the objects of Alliance Action and those that further its own, and also as continuing to support "one side of controversial social issues". This latter objection was more explicitly made in the respondent"s letter of January 5, 1995:[58]

> On the contrary, we believe that the overriding purpose of Alliance is to promote its viewpoint on pro-life issues such as abortion and euthanasia in order to influence public attitudes and beliefs, which is evidenced by the following:
>
> " The mission statement enclosed with your June 24, 1994 letter indicates that your goal remains one of advocacy:

"Alliance for Life is a national, educational organization, committed to working with our fellow Canadians to develop a society in which all human life, recognized as a gift from our Creator, is valued and protected from conception to natural death."

" August, 1993 President"s Report. ..."Today I am more convinced than ever that the majority of Canadians are opposed to abortion. Most Canadians ARE pro-life. Our job continues to be one of encouraging them to stand for and act on their convictions."

" May, 1992 editorial in the *Western Report* written for Alliance for Life by Anna Desilets ..."We know we"ll win because the factors are on our side; inevitably, they"ll overwhelm the standard pro-abortion/pro euthanasia propaganda delivered by the general media.."

(e) News releases/media activities

The record includes nine news releases of the appellant in 1992 and 1993, all of which were viewed by the respondent as one-sided and designed "to persuade the reader to adopt the viewpoint of the organization".[59]

(f) "HELPline" activities

As we have seen, the appellant maintains a 1-800 telephone line with a view to making counselling services available to callers. The services offered include pregnancy testing, prenatal and postnatal care, housing assistance, family support, adoption information, post abortion and rape counselling. The line is operated 24 hours a day year round by the appellant"s paid staff during office hours and by volunteers after office hours. The respondent"s basic objections to the "HELPline" is that it was used both by the appellant and Alliance Action, opening it to inquiries about pro-life issues, and that the volunteers were trained for approximately two hours on listening techniques but without any other formal training. Neither did it appear to the respondent that "the operation of the HELPline for charitable activities is significant in relation to the other activities of the organization".[60] The respondent regarded the counselling service as designed to persuade a woman caller against having an abortion rather than aiding or assisting in bringing her child to term.

The question here is whether any of these activities are in furtherance of the appellant"s stated purposes or, instead, are non-charitable.

I shall begin with the appellant"s "HELPline" activities. The appellant maintains that the uses made of this line are charitable as a referral for counselling service in such matters as prenatal and postnatal care, housing assistance, family support, adoption information, post-abortion and rape counselling, and for pregnancy testing. In short, the service promotes public health. It must be noted that counselling is not offered by members of the appellant"s staff or volunteers dialoguing with the callers but by outside community organizations to whom the callers are referred. It would appear, therefore, to make no difference that the volunteers received no formal training and that the training they did receive was limited to two hours in telephone techniques. Further, as late as September 18, 1991,[61] the respondent viewed as charitable the provision to the public through the "HELPline" of counselling and referral service with respect to crisis pregnancy and post-abortion trauma. Despite the above-noted comments concerning the "HELPline" in the respondent"s letter of January 5, 1995, I do not view its operation, by itself, as involving

clearly proven allegations of non-charitable activities but, rather, falling within paragraph 2 of the appellant"s stated objects as promoting public health and charitable under the fourth head of *Pemsel* " a subject to which I shall return somewhat more fully below.

Nor am I persuaded that the methods employed in fundraising rendered those particular activities clearly non-charitable in the sense that they did not further the appellant"s stated purposes. The record no doubt indicates that as initially conceived and implemented in 1992 and 1993, these activities were intertwined with those of Alliance Action to such a degree that they could not be reasonably seen as charitable. The appellant accepted that this was so and agreed to alter its fundraising methods to ensure that it would receive only those donations that were intended to support its purposes and not those of Alliance Action and that tax receipts would be issued for those donations only. The same would appear to be true with respect to the monies raised through the Bank of Montreal"s Affinity MasterCard. The appellant gave an undertaking that none of these monies would be deposited in the bank account of Alliance Action. There is no evidence that the appellant has not made good on this undertaking. It is not clear to me that the appellant, by these techniques, devoted its resources to non-charitable activities, as the respondent asserts. In summary, I am not persuaded that the fundraising activities in question were, as the respondent asserts, "designed to support advocacy activities of AA" at the time the impugned decision was made.

I must confess to some difficulty in following the arguments *pro* and *con* with respect to the treatment by the appellant of the account receivable owing to the appellant by Alliance Action as a result of the separation of the two organizations in 1992. The argument appears to be that the appellant improperly reduced this loan and interest thereon by offsetting amounts it claimed to be owing by Alliance Action for office space, equipment, research and fundraising services. The respondent asserts that this again shows that some of the appellant"s resources were applied to support the non-charitable activities of Alliance Action rather than to further its own stated purposes. On the other hand, although the loan receivable was not apparently structured in a way that one would expect an arm"s length transaction to be structured, the materials sold to Alliance Action were admittedly overvalued requiring a downward adjustment. Moreover, the breakdown of office expenses appears reasonable having regard to the worktime and use, and the rent charged to Alliance Action seemed based on actual occupation.

The appellant"s library packages and catalogue materials were viewed by the respondent as not being for the advancement of education. So too were the news releases put out by the appellant, its mission statement, certain editorials contributed by its officers and statements made by the appellant"s President in his August 1993 report, all of which were considered to be "political" in nature. As we have seen, subsection 149.1(1) of the Act imposes a requirement that all of the resources of a charitable foundation or charitable organization be devoted to charitable activities, a point that was emphasized by Iacobucci J. in *Vancouver Society , supra*, at paragraph 154, unless, of course, they consist of "political activities" that are permitted by subsection 149.1(6.2).

In *Vancouver Society, supra*, Iacobucci J. expressed the view, at paragraph 168, that the advancement of education should be interpreted to include"informal training initiatives, aimed at teaching necessary life skills or providing information toward a practical end".[62] To that end, the provision of "educational forums, classes, workshops and seminars" to enable the organization"s constituents "to find and obtain employment" was held to be charitable as coming within the expanded definition of education in that its purpose, as was stated by Iacobucci J. at paragraph 173, was "to train the minds of immigrant women in certain

important life skills, with a specific end in mind: equipping them to find and secure employment in Canada". He cautioned, however, at paragraph 171 that: "[s]imply providing an opportunity for people to educate themselves, such as by making available materials with which this might be accomplished but need not be, is not enough". It seems to me that the library packages in question must be viewed in this light.

Some of the articles in the library packages do not appear to be polemical or strident in language or to call explicitly for social or political change. Indeed, these seem to bear some relationship to the appellant"s stated objectives. Several articles are drawn from the mainstream press, while a few have the appearance of being scientific in nature as, for example, an article concerning the safety of RU-483. On the other hand, much of the materials in question, like that listed in the catalogue, seem clearly aimed at promoting the appellant"s avowed viewpoints on such issues as abortion and euthanasia.[63] Nor is the information provided in a structured manner that would genuinely advance education. While students accessing school or public libraries would be afforded the opportunity of drawing on these particular materials, there is no evidence that they would be required or be likely to do so. Neither is there evidence that such students would be in a position to weigh the viewpoints so advanced against opposing viewpoints in making up their minds one way or the other. Viewed in this light, I am unable to see that the dissemination of the library packages genuinely advanced education in the sense explained in *Vancouver Society, supra*. If that view be correct it must follow that the appellant would not satisfy the requirements of subsection 149.1(1) of the Act, that a charitable organization devote all its resources to charitable activities. I leave aside for the moment whether dissemination of the materials is a "political" activity to which subsection 149.1(6.2) applies and, if so, whether it is ancillary and incidental to the appellant"s stated purposes. In the meantime I shall canvass the remaining arguments in the event that I am wrong in viewing the dissemination of the library packages as not furthering those purposes.

The central objection to the appellant"s catalogue materials is much the same as that which is directed toward the library packages. It is that these materials, too, are aimed at presenting a one-sided view on such controversial social issues as abortion and euthanasia. Indeed that same objection is made to the press releases, the mission statement, editorials and the President"s report of August 1993. A statement at the front of the catalogue proclaims that the appellant"s mission is "to educate Canadians toward respect and protection of human life from conception to natural death". These words, of course, are somewhat broader than those which appear in paragraph 1 of the appellant"s amended objects. The pamphlet on adoption would not appear so much concerned with the process of adopting as presenting adoption as "a positive alternative to the destructive response of abortion". Other materials listed in the catalogue are of a similar tenor.[64] At the same time I would regard still other materials in the catalogue as furthering the appellant"s stated purposes such, for example, as the presentation to a parliamentary committee and those dealing with the prevention of sexually transmitted diseases and AIDS. That some of the materials may be in furtherance of the appellant"s stated objects cannot disguise the fact, however, that other portions of the materials do support the appellant"s particular viewpoints on issues of great social and moral import. It is difficult to characterize these materials as for the advancement of education in the sense explained in *Vancouver Society, supra* , or as furthering the appellant"s other objects.

Political activities

The respondent contends, further, that the catalogue, library packages and other materials are but examples of activities which are not, in any event, for the advancement of education

but are "political" in the sense that they are designed to promote one-sided points of view on controversial social and moral issues, and that this use of the appellant"s resources does not conform to the requirements of subsection 149.1(6.2) of the Act. As the respondent maintained in the letter of January 5, 1995: "...we believe that the overriding purpose of Alliance is to promote its viewpoint on pro-life issues such as abortion and euthanasia in order to influence public attitudes and beliefs". The issue thus arises whether the activities in question are "political" rather than for the advancement of education or for other stated purposes.

The subject of what may constitute "political activities" was not directly addressed in *Vancouver Society , supra*. Nevertheless, some comments in the majority judgment appear to have a bearing on the subject. Thus at paragraph 164, Iacobucci J. made clear that dissemination of strong anti-pornography material of the kind involved in *Positive Action Against Pornography*,[65] "in most cases, would disqualify an organization from the second head of charity without necessitating an inquiry into whether the organization pursued some kind of formal training of the mind, broadly understood". Later, at paragraph 169, he indicated that information provided to the public "solely to promote a particular point of view or political orientation" rather than for a genuinely educational purpose may not properly be viewed as education. Again at paragraph 171, Iacobucci J. reiterated that "..."educating" people about a particular point of view in a manner that might more aptly be described as persuasion or indoctrination" does not render a purpose educational.

I am not aware that the categorization of "political purposes" of Slade J. in *McGovern , supra*, has been seriously questioned. What gives difficulty, however, is in extending that categorization to purposes or activities that do not fall explicitly within it.[66] Furthermore, the Act itself does not condemn all political activities as non-charitable. Instead, by subsection 149.1(6.2), a charitable organization is permitted to engage in political activities that are "ancillary and incidental" to its charitable activities provided the organization continues to devote "substantially all of its resources to charitable activities".

The activity under scrutiny in *Human Life International*[67] was found by this Court to be political upon the premise that Slade J."s categorization of "political purposes" in *McGovern*[68] was not exhaustive. As Strayer J.A. stated at page 217, "the advocacy of opinions on various important social issues" is in essence a "political" activity. He added the following at page 218:

> ...Courts should not be called upon to make such decisions as it involves granting or denying legitimacy to what are essentially political views: namely what are the proper forms of conduct, though not mandated by present law, to be urged on other members of the community?
>
> ...Any determination by this Court as to whether the propagation of such views is beneficial to the community and thus worthy of temporal support through tax exemption would be essentially a political determination and is not appropriate for a court to make.

These views of Strayer J.A. are consistent with those articulated by Lord Parker of Waddington in *Bowman*.[69]

I have already noted that the appellant"s stated purposes were accepted by the respondent as good charitable purposes. Nothing on the face of any of them indicates that they fall within those which were categorized in*McGovern , supra*, as "political" and therefore non-

charitable. The true issue at this stage, therefore, is whether the appellant"s activities offend the requirements of subsection 149.1(6.2).

It seems to me that political activities may well be "ancillary and incidental" despite the fact they involve the advocacy of a particular point of view on controversial social issues.[70] This surely must depend on the scope of the organization"s objectives and the activities undertaken in pursuit thereof. It may well be that a charitable organization would want to adopt a relatively strong and controversial posture in order to effectively advance its charitable objectives even to the extent, if necessary, of advocating a change of law or policy or of administrative decisions, without incurring the risk of losing its status as a registered charity. The key consideration initially must be whether the activities actually engaged in, though apparently controversial, remain "ancillary and incidental" to the charitable activities.

I prefer therefore to approach the impugned activities as reflected in the appellant"s catalogue, library packages and other materials with this in mind in attempting to answer the questions of whether those activities were "political" and "ancillary and incidental" to the appellant"s charitable activities. If they were, then attention would need to be directed to the further requirement in subsection 149.1(6.2) that the appellant continue to devote "substantially all of its resources" to those activities and whether the appellant adhered to the respondent"s policy that not more than 10% of a charity"s resources measured over a reasonable period of time be devoted to political activities.

I have already referred to some case law in England and in Canada with respect to "political" purposes or activities in this branch of the law. It seems to me that the principles therein contained need to be consulted here as well in determining whether an activity engaged in by the appellant is to be viewed as "political". This is not an easy question to answer. As I have indicated, activities " like purposes " which fall within the categorization of Slade J. in *McGovern , supra*, are not usually regarded as charitable. A number of the additional cases bear on the issue of what sort of activities other than those falling within that categorization should be viewed as "political" in the law of charity.

In *Anglo-Swedish Society v. Inland Revenue Commissioners*,[71] Rowlett J. expressed the view that a trust "to promote an attitude of mind, the view of one nation by another" was not charitable. Later, in *Buxton v. Public Trustee* ,[72] Plowman J. was of opinion that objects for a political cause "by creation of a climate of opinion" was not educational but "really no more than propaganda". Likewise in *Re Bushnell v. Lloyd"s Bank*,[73] Goulding J. was of the view that the language of the trust instrument did not indicate a desire "to educate the public so that they could choose for themselves, starting with neutral information, to support or oppose what he called "socialised medicine"" but rather to promote his own theory of education by "propaganda". In *Human Life International , supra*, this Court was of opinion that "the advocacy of opinions on very important social issues" was political. By contrast, Slade L.J., sitting in the Court of Appeal in *In re Koeppler Will Trusts* ,[74] regarded the matter there before him as not falling within the *McGovern* categorization of "political" purposes. The trusts in question were directed towards the formation of an informed international public opinion and "the promotion of greater cooperation in Europe and the West", and included setting up of a conference centre and conducting seminars to enable persons in public life to discuss and examine mutual problems in an intellectually invigorating atmosphere and to learn from the British people. In upholding the trusts as charitable, Slade J.A. observed with respect to the activities engaged in by the trusts that "even when they touch on political matters, they constitute, so far as I can see, no more than genuine attempts in an objective manner to ascertain and disseminate the truth".[75]

I find it difficult to view the dissemination of the appellant"s library packages and catalogue materials in this way. While it is true that some of the materials therein may be viewed as scientific or certainly as not particularly one-sided, little attempt is made to promote genuine debate on such important issues as abortion and euthanasia but, rather, to advocate strong opposing positions. The belief is expressed in the appellant"s letter of June 24, 1994 with respect to all of its materials, and echoed in its accountants" letter of April 17, 1995, that it was providing only "a full and fair presentation of the facts" because such facts "are not being furnished...by groups with opposing viewpoints", and that "balance" was required in order for the public to reach an independent view. I do not find in much of the disseminated materials any real desire to ensure objectivity. It is not, in my view, farfetched to regard the bulk of these materials as "political". I would view in this same light statements made in the press releases, the mission statement, editorials and in the President"s report of August 1993.

Nor does it seem to me that these activities are "ancillary and incidental" to the appellant"s charitable activities, principally that of educating Canadians "on human development, human experimentation, reproductive technologies, adoption, abortion chastity, euthanasia and similar issues affecting human life". As Iacobucci J. stated in *Vancouver Society , supra*, ""educating" people about a particular point of view in a manner that might more aptly be described as persuasion or indoctrination" is not "education" in the charitable sense. The statements alluded to above suggest, if anything, that despite the objects stated in the appellant"s constituting document its true mission is more likely that of advocating its strongly held convictions on important social and moral issues in a one-sided manner to the virtual exclusion of any equally strong opposing convictions.

If I am correct that the appellant engaged in political activities that are not "ancillary and incidental" to its charitable activities, it must follow that these activities are not permitted by subsection 149.1(6.2). Moreover, the appellant would also offend the even more fundamental requirement found in the definition of "charitable organization" in subsection 149.1(1) that all of its resources be devoted exclusively to charitable activities. In the words of Iacobucci J. in *Vancouver Society , supra*, at paragraph 155, where the requirements of section 149.1(6.2) are not met, "an organization that devotes substantially all of its resources, rather than all, to charitable activities would run afoul of the general requirement of exclusive charitability found in the definitions of "charitable foundation" and "charitable organization" in s. 149.1(1)".

Fourth head of the *Pemsel* classification

Lastly, the appellant contends that its activities are charitable under the fourth head of the *Pemsel*classification as otherwise beneficial to the community on the basis that they are aimed at the promotion of public health or the improvement of moral or spiritual welfare in Canada.

Among trusts which may be regarded as "charitable" are those that are described in the preamble of the Statute of Elizabeth as being for "aged, impotent and poor people". It is accepted that the word "impotent" contemplates trusts for the relief of the sick. In the Canadian context relief of sick people has been held to include not only medical care but also health care services.[76] In *Vancouver Society, supra*, Iacobucci J. noted at paragraph 177 that the various examples enumerated in the preamble to the Statute of Elizabeth "seem to lack a common character or thread on which to base any coherent argument from analogy". On the other hand, as indicated above, he found a useful approach in the decision of the Privy Council in *D"Aguiar, supra*, in the words already quoted.

While the appellant"s stated purposes are not explicitly aimed at the promotion of health, the courts have recognized that charitable purposes actually pursued must be evaluated and their validity determined.[77] The appellant, as we have seen, is engaged in a wide variety of activities some of which it characterizes as for the promotion of health. The appellant places particular reliance on activities designed to disseminate information on matters affecting human reproduction, sexually transmitted disease, sexual abstinence and pregnancy as well as counselling and referral services with respect to post abortion trauma and unforseen pregnancies as designed to promote health and benefit to the community.

Certain decided cases were presented to the Court as demonstrating that activities of this kind may be regarded as charitable under the rubric of health promotion. In England research and education for the provision of "advice, treatment and assistance for women who are suffering from any physical or mental illness or distress as a result of or during pregnancy" have been accepted as charitable.[78] Some jurisprudence in New Zealand supports the argument that the activities there involved were directed toward the promotion of public health and therefore charitable.[79] In my view, however, these cases at best support the argument that the "HELPline" is of this nature, a possibility that I have already suggested. However, even if some of the appellant"s activities could be viewed as for the relief of the sick or for analogous purposes upheld in case law it remains that not all of the appellant"s resources are devoted to charitable activities as is required by the Act. Furthermore, nothing in the case law suggests that the impropriety of a political activity is limited to the context of promoting education.

The appellant"s remaining argument is that its activities are charitable in the sense that their goal is the moral and spiritual improvement of the community. I accept that case law in England and elsewhere lends some support to the notion of moral and spiritual improvement of the community as charitable.[80] It is not clear to me, however, that the situations treated as charitable in those cases were anything like that which obtain in the present case. In any event, even if it could be said that some of the appellant"s resources were devoted to the moral and spiritual development of the community in a charitable sense, not all of the resources were devoted to charitable activities.

In conclusion I should stress again that we are not here required to pass judgment upon the propriety and legitimacy of the appellant"s activities from a moral standpoint but only on whether they are charitable in a legal sense. I do not question for a moment that the appellant holds its views on the disputed activities with the utmost sincerity or, indeed, that they are shared by a significant portion of the community. It is plain as well that the moral questions here involved have divided the community and continue to do so. In engaging in the disputed activities the appellant, as I see it, is doing no more than what it regards as its perfect right and duty. Deregistration, however, would not absolutely bar the appellant from engaging in those activities even though the consequences for it would be serious.[81] Certainly, the respondent"s decision to deregister cannot be seen as "hasty", considering that the settlement reached in 1992 was premised on the fulfilment of the appellant"s undertaking to conform to the requirements of the Act and the understanding that a further audit would be carried out two years hence to verify that this was being done. Applying the relevant legal principles discussed above, I can find no warrant for interfering with the respondent"s decision of November 30, 1995.

This conclusion requires that the appellant"s four alternative arguments now be addressed.

Procedural fairness

The appellant submits that the respondent was under a duty to act fairly in the process by which it determined to revoke the appellant"s registration and that such fairness was denied. It contends that the respondent failed both to disclose the full case against the appellant and to give the respondent a full and fair opportunity to respond. According to the appellant, Revenue Canada continually altered its position by raising fresh allegations that activities of various kinds were "non-charitable". The appellant asserts that the respondent"s letter of November 30, 1995 contains a number of objections that had not earlier been fairly presented to the appellant.

The respondent submits that it fulfilled the duty to act fairly before deciding to revoke the registration in that numerous invitations were extended to the appellant to provide information regarding its activities and numerous responses were received from the appellant. The 1993 audit revealed that Alliance Action was not conducting all of the former non-charitable activities of the appellant as was undertaken by the appellant in its letter of November 22, 1990. The audit further revealed that much of the appellant"s resources were being devoted to political activities. These two general concerns, the respondent submits, were made known to the appellant well in advance of the decision and became the subject of detailed correspondence and discussions between the parties before that decision was made.

In *Syndicat des employés de production du Québec et de l"Acadie v. Canada (Canadian Human Rights Commission)*,[82] Sopinka J. stated that the rules of natural justice and the duty of fairness are "variable standards" the contents of which will depend "on the circumstances of the case, the statutory provisions and the nature of the matter to be decided". Sopinka J. reiterated these views in *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)* .[83] In *Knight v. Indian Head School Division No. 19*,[84] L"Heureux-Dubé J., for the majority, articulated the following test for determining the existence of a general duty of fairness in a decision to terminate an employment relationship:

> The existence of a general duty to act fairly will depend on the consideration of three factors: (i) the nature of the decision to be made by the administrative body; (ii) the relationship existing between that body and the individual; and (iii) the effect of that decision on the individual"s rights. This Court has stated in *Cardinal v. Director of Kent Institution*, *supra*, that whenever those three elements are to be found, there is a general duty to act fairly on a public decision-making body (Le Dain J. for the Court at p. 653).

In *Re Renaissance International and the Minister of National Revenue*,[85] this Court rejected the Minister"s argument that the appeal had the effect of curing any failure on the part of the Minister to comply with the requirements of procedural fairness. In doing so, Pratte J.A. stated:[86]

> I therefore conclude that the appeal created by s-s. 172(3) is what I would call an ordinary appeal which the court normally decides on the sole basis of a record constituted by the tribunal of first instance. It follows, in my view, that the decision of the Minister to send a notice of revocation under s-s. 168(1) must be arrived at in a manner enabling the Minister to create a record sufficiently complete to be used by this court in deciding the appeal. This presupposes, in my view, that the Minister must follow a procedure enabling him to constitute a record reflecting not only his point of view but also that of the organization concerned.

[Emphasis added]

Heald J.A, for the majority, arrived at the same conclusion:[87]

> Therefore, the appeal should be on a proper record of the evidence adduced before the director which persuaded him to make the decisions herein impugned. In this case, the record of the material before the director is incomplete since, admittedly, it does not contain all of the material that was before the director. Furthermore, the record of the material before the director has an even more serious defect " that is " it is a unilateral record since it contained no input from the appellant.

A review of the record upon which the respondent based his decision of November 30, 1995, persuades me that the appellant was not denied procedural fairness in the circumstances of this case. Concern that the appellant was not devoting all of its resources to charitable activities was first raised by the respondent as early as 1989 following audits of those activities. This resulted in extensive correspondence and discussions between the parties. The matter came to a head with the respondent"s letter of June 21, 1990 and the appellant"s response of November 22, 1990, in which the appellant undertook to "form a non-profit organization for the purpose of conducting the activities which you described in your letter of June 21, 1990 as non-charitable in the department"s view" and to "amend the operations and activities of Alliance for Life in a manner which will reflect the Department"s position". The respondent reminded the appellant on September 16, 1991 to retain the existing records because the appellant "may again be audited in the future to ensure compliance with the Act as a result of these negotiations". The further correspondence and discussions which followed in 1994 and 1995 prior to the notice of November 30, 1995, it seems to me, put the appellant on notice of the respondent"s essential concerns. These were that despite the formation of Alliance Action there was not sufficient segregation between the activities of the two organizations, that many of the appellant"s activities were not directed toward the advancement of education or other stated purpose and that the appellant continued to devote resources to political activities contrary to the Act.

While the respondent"s letter of November 30, 1995 may have raised some "fresh" points, I do not think that procedural fairness was thereby denied. Most of these points related to the basic concerns of the respondent as identified in his letter of April 27, 1994. At all events, practically all of these points had their basis in information which emanated from the respondent"s own records. The respondent"s overall concerns remained constant throughout, namely that despite its undertaking of November 22, 1990, the appellant had failed to sufficiently segregate its activities from those of Alliance Action, that the advancement of education was not being pursued and that political activities were being engaged in contrary to the Act.

Legitimate expectation

The argument here is that the practice adopted by the respondent of "negotiating" alleged irregularities with the appellant following the 1985 and 1986 audits and allowing the appellant to take certain "corrective measures" give rise to a legitimate expectation that this same practice would again apply following the 1993 audit. I am not persuaded by this contention. In my view, nothing emerges from the procedure that was followed during the earlier negotiations that would allow it to be viewed as a "practice" and surely not one that called for more negotiations and acceptance of further "corrective measures" ad infinitum. Moreover, the doctrine of legitimate expectation does not, in my view, apply to the

circumstances of this case. As was pointed out by Sopinka J. in *Reference Re Canada Assistance Plan (B.C.)* ,[88] the doctrine does not create substantive rights:

> There is no support in Canadian or English cases for the position that the doctrine of legitimate expectation can create substantive rights. It is a part of the rules of procedural fairness which can govern administrative bodies. Where it is applicable, it can create a right to make representations or to be consulted. It does not fetter the decision following the representations or consultation.

Estoppel

The appellant"s estoppel argument is based on a representation in the respondent"s letter of December 23, 1991, that sixteen of the appellant"s publications were then viewed as charitable and could be distributed without adverse repercussions and the withdrawal of that representation in the respondent"s deregistration letter of November 30, 1995. The basis of the withdrawal was that the respondent had erred in earlier approving the publications and that they would no longer be considered charitable. The respondent asserts that the change of position did not figure in the decision under appeal because the disputed publications constituted less than fifty percent of the publications that were considered non-charitable. Their removal from the appellant"s catalogue, the respondent submits, would not affect the belief that the appellant"s activities were not charitable.

I note that an estoppel argument was also raised in *Human Life International*[89] and was disposed of against the taxpayer. Admittedly the circumstances here are different. I am satisfied nonetheless that the record bears out the respondent"s position. It would seem as well that the respondent is not bound by the previous position if taken in error and could correct that error unhindered by that position: *Ludmer v. Canada* .[90]

Section 2(*b*) of the Charter

This same point was fully argued and disposed of by another panel of this Court in *Human Life International*. I can do no better here than adopt the views of Strayer J.A. for the Court:[91]

> With respect to the Charter argument based on alleged infringement of freedom of expression, the basic premise of the appellant is untenable. Essentially its argument is that a denial of tax exemption to those wishing to advocate certain opinions is a denial of freedom of expression on this basis. On this premise it would be equally arguable that anyone who wishes the psychic satisfaction of having his personal views pressed on his fellow citizens is constitutionally entitled to a tax credit for any money he contributes for this purpose. The appellant is in no way restricted by the *Income Tax Act* from disseminating any views or opinions whatever. The guarantee of freedom of expression in paragraph 2(*b*) of the Charter is not a guarantee of public funding through tax exemptions for the propagation of opinions no matter how good or how sincerely held. It is possible, of course, that if it could be shown that there was discriminatory treatment in the registration and revocation of registration of organizations in a way which would offend section 15 of the Charter there might be some basis for a constitutional attack. But the appellant does not allege and certainly has not demonstrated any such discrimination in this case.

I would dismiss the appeal but, as the respondent requests, without costs.

"A.J. Stone"

J.A.

"I agree.

A.M. Linden, J.A."

"I agree.

F.J. McDonald, J.A."

IN THE FEDERAL COURT OF APPEAL

Date: 19990505

Docket: A-94-96

BETWEEN:

ALLIANCE FOR LIFE

Appellant

- and -

THE MINISTER OF NATIONAL REVENUE

Respondent

REASONS FOR JUDGMENT

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[1] R.S.C. 1985, c. 1 (5th Supp.).

[2] [1996] 2 C.T.C. 88 (F.C.A.); (1996), 195 N.R. 235; 96 D.T.C. 6232.

[3] *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*, unreported, file no. 25359.

[4] *Case Material*, vol. II, at p. 307.

[5] *Case Material*, vol. I, at p. 242.

[6] *Ibid.*, at p. 231.

[7] *Ibid.*, at p. 232.

[8] *Ibid.*, at p. 231.

[9] *Ibid.*, at p. 202.

[10] *Ibid.*, at p. 203.

[11] *Ibid.*, at p. 170.

[12] *Ibid.*, at p. 166.

[13] *Ibid.*, at p. 160. This approval does not appear to have been formally conveyed, amounting instead to a handwritten note as to acceptability of the proposed change in an internal memorandum. This note suggests that the first two objects were "O.K." and that the third was apparently approved by telephone on April 28, 1992.

[14] *Ibid.*, at p. 156.

[15] *Ibid.*, at p. 98.

[16] *Ibid.*, at p. 102.

[17] *Ibid.*, at p. 85.

[18] *Ibid.*

[19] *Ibid.*, at p. 67.

[20] *Ibid.*, at p. 60.

[21] *Ibid.*, at p. 8.

[22] *Ibid.*, at p. 13.

[23] *Ibid.*, at p. 12.

[24] [1891] A.C. 531 (H.L.), at p. 583.

[25] 43 Eliz. 1, c. 4.

[26] [1965] 1 Ch. 669 (Ch.D.), at pp. 678-79.

[27] [1968] A.C. 138 (H.L.), at p. 154.

[28] [1981] A.C. 1 (H.L.), at p. 15.

[29] [1986] 3 F.C. 471 (C.A.), at p. 482.

[30] [1988] 2 F.C. 340 (C.A.), at p. 350.

[31] See *Positive Action Against Pornography, supra*, note 30; *Briarpatch Inc. v. The Queen*, 96 D.T.C. (F.C.A.);*Interfaith Development Education Association of Burlington v. M.N.R.*, 97 D.T.C. 5424 (F.C.A.).

[32] Information Circular 87-1, "Registered Charities " Ancillary and Incidental Political Activities", at paragraphs 12-17.

[33] Appendix A to Information Circular 87-1. That appendix refers to political activities as tending to fall into three basic groups, those being (a) partisan politics in support of a particular candidate or party, (b) the presenting of positions on matters to members of Parliament, committees, etc. and (c) mobilizing public opinion for the purpose of pressuring elected officials to take a certain course of action.

[34] See *Positive Action Against Pornography v. M.N.R., supra*, note 30; *N.D.G. Neighbourhood Association v. Revenue Canada*, 88 D.T.C. 6279 (F.C.A.); *Toronto Volgograd Committee v. M.N.R.*, [1988] 3 F.C. 251 (C.A.).

[35] [1982] Ch. 321 (Ch. D.). Cf. *Farewell v. Farewell* (1892) 22 O.R. 573, a case which upheld as charitable purposes which appeared to be avowedly political. See also *Lewis v. Doerle* (1898), 25 O.A.R. 206 (C.A.).

[36] At p. 340.

[37] Moreover, some courts have not regarded as charitable activities that promote or advocate maintenance of the present law. As Vaisey J. stated in *Re Hopkinson*, [1949] 1 All E.R. 346 (Ch. D.), at p. 350: "Political propaganda masquerading...as education is not education within the Statute of Elizabeth... In other words, it is not charitable". See *In re Koeppler Will Trusts* , [1984] Ch. 243, at pp. 260-61, reversed on other grounds [1986] 1 Ch. 423 (C.A.). See also D.W.M. Waters, *Law of Trust in Canada*, 2nd ed. (Toronto: Carswell, 1984), at p. 566. The learned author opined in this same connection that "there is little doubt that, if the genuine and sole object is to enlighten the public on the theories and concepts of political belief in general, this is educational". On the other hand, a trust to enforce existing law has been held to be charitable: *Inland Revenue Commissioners v. City of Glasgow Police Association* , [1953] A.C. 380 (H.L.). In determining that certain objects of the Amnesty International Trust were invalid for advocating an alteration of the law or policy, Slade J. distinguished the decision of the Supreme Court of Massachusetts in *Jackson v. Phillip* (1867), 96 Mass. 539, which upheld a trust for the abolition of slavery, and where Gray J. expressed the opinion at p. 567 that to "deliver men from bondage which the law regards as contrary to natural right, humanity, justice and sound policy, is surely not less charitable than to lessen the sufferings of animals".

[38] [1917] A.C. 406 (H.L.), at p. 442.

[39] *Supra*, note 35, at p. 340, where he underlined that "the mere fact that trustees may be at liberty to employ political *means* in furthering the non-political purposes of a trust does

not necessarily render it non-charitable". This position is to be contrasted with the requirements of ss. 149.1(6.2) of the Act.

[40] *Supra*, note 30.

[41] [1998] 3 F.C. 202. Leave to appeal to the Supreme Court of Canada dismissed, file number 26661, Judgment, January 21, 1999.

[42] *Ibid.*, at p. 217.

[43] *Supra*, note 3.

[44] *Supra*, note 29.

[45] [1967] S.C.R. 133.

[46] This position is reiterated in the dissenting judgment of Gonthier J. who noted at paragraph 41:

> There must be an objectively measurable and socially useful benefit conferred; and it must be a benefit available to a sufficiently large section of the population to be considered a public benefit.

[47] Such reasoning is concurred in by the dissenting judgment of Gonthier J. who notes at paragraph 53 "that purposes may be defined in the abstract as being either charitable or not, but the same cannot be said about activities". As such "we must begin by examining the organization"s purposes, and only then consider whether its activities are sufficiently related to those purposes".

[48] Gonthier J., in dissent, made fundamentally the same point, at paragraph 60.

[49] Once again Gonthier J. suggests general agreement on this point at paragraph 60, where he noted that "the key consideration is the nexus between the activity in question and the charitable purpose to be served".

[50] This definition of "education" was specifically concurred in by Gonthier J. at paragraph 77.

[51] [1970] T.R. 31, at p. 33.

[52] While the majority judgment does not address the rationale for this requirement, the dissent does. At paragraph 111, Gonthier J. mentioned the following two reasons for this requirement: "if the purposes of the organization are not specified with sufficient clarity, the charitable organization could make expenditures on non-charitable purposes"; the task of the courts in their supervisory role of charities "becomes impossible if thecharity"s purposes were too vague or uncertain".

[53] *Case Material*, vol. IV, at p. 719.

[54] *Ibid.*

[55] As stated in the respondent"s letter of April 27, 1994, these packages were viewed as containing "selected articles from research files which support the Charity"s pro-life viewpoint rather than providing information to allow the reader to make up his or her mind on controversial social issues".

[56] *Case Material*, vol. IV, at pp. 718-820.

[57] *Ibid.*, at pp. 823-835, 867 *et seq*.

[58] *Case Material*, vol. I, at p. 31.

[59] *Case Material*, vol. I, at p. 102.

[60] *Case Material*, vol. IV, at pp. 29-46.

[61] *Case Material*, vol. I, at p. 179.

[62] Cf. the views of Slade J. in *In re Besterman"s Will Trusts*, quoted by him in *McGovern, supra* note 35, at pp. 352-53: "...if a trust for research is to constitute a valid trust, it is not necessary either (a) that a teacher/pupil relationship should be in contemplation, or (b) that the persons to benefit from the knowledge to be acquired should be persons who are already in the course of receiving "education" in the conventional sense".

[63] While, as noted, certain articles which are in harmony with a pro-life position are culled from the mainstream press the materials within the library packages also reveal a more assertive form of pro-life positions. For example, an article entitled "Abortion and Dried Fruit" refers to Dr. Henry Morgentaler as an "infamous abortionist" and court decisions in this country as baffling to "Canadians who know the unborn are entitled to protection". Another article in opposing the fertilization of embryos for the purpose of IV procedures noted that "if abortion is wrong, then deliberately causing fertilization in the lab, knowing that life will be sacrificed to science, is doubly wrong". Even the presentation of statistics reveals a moral if not ideological position by referring to abortions as "fatalities".

[64] Pamphlets aimed at teenagers are said to "promote abstinence in unmarried relationships" or to "offer plenty of convincing facts [which] will encourage young people to delay sexual activity until marriage". Likewise, prenatal material seems to clearly present the foetus in a manner that can be equated with a living person despite court rulings to the contrary. For example, the promotional blurb for the "Very Much Alive" document is said to demonstrate:

> The human nature of the human being from conception to death is based on scientific evidence in this pamphlet. It destroys the outdated, overworked "just a bunch of cells" theory, illustrating we are splendidly functioning babies growing and developing from the moment of conception.

[65] *Supra*, note 30.

[66] Cf. *Re Collier (Deceased)* (1998), 1 NZLR 81 (H.C.), at pp. 89-96.

[67] *Supra*, note 41.

[68] *Supra*, note 35.

[69] *Supra*, note 38.

[70] Cf. *Public Trustee v. Attorney General of New South Wales and Ors*, [1997] NSW LEXIS 1180 (S.C. (Eq. Div.)), at * 56-7.

[71] (1931), 16 T.C. 34 (Ch. D.), at p. 38.

[72] (1962) 41 T.C. 235 (Ch. D.), at p. 242.

[73] [1975] 1 All E.R. 721 (Ch. D.), at p. 729.

[74] [1986] 1 Ch. 423 (C.A.). Cf. *Re Public Trustee and Toronto Humane Society et al.* (1987), 40 D.L.R. (4th) 111 (Ont. H.C.), at pp. 126-29.

[75] *Ibid.*, at p. 432. Cf. *Attorney General v. Scott*, [1985] 3 All E.R. 334 (Ch. D.). See also *Webb v. O"Doherty and Others*, The Times (London), 11 February 1991 (Ch. D.) and *Southwood and another v. HM Attorney General*, The Times (London), 9 October 1998 (Ch. D.).

[76] *Everywoman"s Health Centre Society (1988) v. M.N.R.*, [1992] 2 F.C. 52 (C.A.).

[77] Cf. *Vancouver Society, supra*, note 3, per Iacobucci J., at paragraph 194.

[78] *British Pregnancy Advisory Service*, [1976] Ch. Com. Rep. 26, at paragraph 83(b).

[79] *McGregor v. Commissioner of Stamp Duties*, [1942] NZLR 164 (S.C.); *Auckland Medical Aid Trust v. Commissioner of Inland Revenue*, [1979] NZLR 382 (S.C.).

[80] The case law on this point is summarized by H. Picarda, *The Law and Practice Relating to Charities*, 2nd ed. (London: Butterworths, 1995), at p. 149.

[81] In *Vancouver Society, supra*, note 3, at paragraph 67, Gonthier J. described the consequences of deregistration as "draconian".

[82] [1989] 2 S.C.R. 879, at pp. 895-96.

[83] [1990] 3 S.C.R. 1170, at pp. 1191-92.

[84] [1990] 1 S.C.R. 653, at p. 669.

[85] (1982), 142 D.L.R. (3d) 539.

[86] *Ibid.*, at p. 544.

[87] *Ibid.*, at p. 548.

[88] [1991] 2 S.C.R. 525, at pp. 557-8.

[89] *Supra*, note 41, at p. 220.

[90] [1995] 2 F.C. 3 (C.A.).

[91] *Supra*, note 41, at pp. 220-21.