Canadian Charities Operating Abroad

RECENT FEDERAL COURT OF APPEAL CASES

Here are four cases over the last few years dealing with registered Canadian charities and their foreign activities. In the first three cases the charities lost their charitable registration for non-compliance with Canada Revenue Agency rules relating to Canadian charities operating abroad and in the last case the organization was not registered as a charity. These four cases are useful reading in addition to the CRA's Guide entitled "Registered Charities: Operating Outside Canada (RC4106)" and also the CRA's "Registered Charities Newsletter No. 20".

Mark Blumberg, B.A., LL.B., LL.M., TEP
Blumberg Segal LLP
Barristers & Solicitors
390 Bay Street, Suite 1202
Toronto, Ontario, M5H-2Y2

Tel. (416) 361-1982 ext. 237
Fax. (416) 363-8451
Email: mark@blumbergs.ca

www.blumbergs.ca
www.globalphilanthropy.ca

Canadian Committee for the Tel Aviv Foundation v. Canada

http://decisions.fca-caf.gc.ca/en/2002/2002fca72/2002fca72.html

Headnotes:

A-357-00

2002 FCA 72, Malone J.A.

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Statutory appeal from Minister's decision to notify appellant of intention to revoke appellant's registration as "charitable organization" pursuant to Income Tax Act, s. 168--S. 168(1)(*b*) permitting Minister to revoke charity's registration when ceases to comply with requirements of Act for registration--S. 149.1(2) setting out grounds for de-registration of charitable organization--Appellant registered as charity in 1985--Charitable objectives relating to promotion of education, relief of poverty, sickness in Tel Aviv, Israel--Registration predicated on representations to Minister that activities would be carried out through agent in Tel Aviv pursuant to written agency agreement-- Minister auditing appellant twice before audit of 1997 fiscal year, which gave rise to intention to revoke--After audit of 1993 fiscal year, Minister advising appellant of 11 contraventions of Act--In response appellant undertaking to conform strictly to requirements of Revenue Canada, including specific provisions of agency agreement--Based on undertaking, Minister allowing appellant to retain charitable organization status--1997 audit identifying seven repeat deficiencies, including lack of control over disbursement of funds by agent, failure to demonstrate adherence to system of continuous, comprehensive reporting as required by agency agreement, donation receipts not complying with Regulations, failure to issue T4A to entertainer to whom paid fees--As result, and because of perception appellant not observing undertaking, Minister advising appellant grounds for revoking charitable status--Appellant attempted to explain situation, address Minister's concerns, asked Minister to clarify concerns about spoiled receipts--Minister issued notice of intention to revoke charitable status--Appeal dismissed--(1) Canadian Bill of Rights, s. 2(*e*) providing no law of Canada shall be construed, applied so as to deprive person of right to fair hearing in accordance with principles of fundamental justice for determination of rights or

obligations-- Parliament intended statutory appeals involving charities should not involve rigid rules, cumbersome procedures--S. 168 silent on matters of procedure--S. 180(1) outlining appeal process to this Court--S. 180(3) limiting proceeding to summary hearing, determination-- *Renaissance International v. Minister of National Revenue*, [1983] 1 F.C. 860 (C.A.) holding rules of procedural fairness, natural justice requiring only that Minister give charity opportunity to respond to allegations against it before sending notice of intention to revoke--According to *Singh et al. v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177, principles of natural justice not imposing necessity of oral hearing in all cases; nature of legal rights at issue, severity of consequences to individuals concerned most important factors in determining procedural content of fundamental justice--While consequences of de-registration severe, s. 168 not depriving appellant of status without benefit of reasonable procedural protection--Appellant informed during two earlier audits of failure to comply with Act, and given opportunity to respond-- Knowing registration in jeopardy, provided undertaking which prevented de-registration, thus proving written submissions can prevent de-registration--Given detailed exchange of written submissions during 1997 audit, no need either for oral hearing or cross-examination of auditor--Legislative scheme not violating Bill of Rights, s. 2(*e*)--(2) As no evidence appellant either unaware of case against it or unable to respond meaningfully, Minister's administration of Act not contravening Bill of Rights--(3) No valid reason to depart from Strayer J.A.'s analysis in *Human Life International in Canada Inc. v. M.N.R.*, [1998] 3 F.C. 202 (C.A.) holding onus on charity to prove charitable organization status should not be revoked--That Parliament directed summary procedure with jurisdiction solely in Federal Court of Appeal, process much like application for judicial review, supporting Strayer J.A.'s conclusions as to burden of proof--Requirement to demonstrate compliance with undertaking, by meeting burden of proof, not working unreasonable or unjust hardship on appellant--Burden on appellant to convince Court Minister erred in issuing notice of intention to revoke--(4) Under scheme of Act, charity may conduct overseas activities through agent, but cannot merely be conduit to funnel donations overseas--Appellant ignored agency agreement--Minister not satisfied appellant's explanations of conduct overseas sufficient to overcome conclusion appellant had no direction, control over how funds spent--Evidence suggesting appellant merely acting as conduit for Canadian donors to overseas donees--Little evidence from which Court might conclude appellant exercising control, direction claimed--In light of conflict between agency agreement, alleged oral arrangements with agent, other concerns raised by Minister i.e. improper recording of expenditures, agent's failure to keep separate bank account, lack of documentary evidence of direction, control by appellant, not unreasonable for Minister to conclude appellant not in control of agent--(5) Pursuant to s. 149.1(1) charity must devote all its resources to charitable activities carried on by organization itself--While charity may carry on charitable activities through agent, charity must be prepared to satisfy Minister at

all times both in control of agent and in position to report on agent's activities--Minister's main reasons for revocation that appellant could not demonstrate, through documentary evidence that exercised sufficient degree of control over use of funds by agent and appellant not keeping proper books, records of activities carried on by agent--Even though reasons couched in terms of non-compliance with agency agreement, requirements under latter simply means of ensuring compliance with Act--S. 230(2) requiring every charity keep records, books of account containing information enabling Minister to determine whether any grounds for revocation of registration under Act, duplicate of each receipt containing prescribed information for donation--S. 230(3) providing Minister may require person to keep such records as Minister may specify--Appellant not maintaining proper records as required by s. 230(2), (3)--Minister not erring in concluding appellant not complying with requirements of Act--(6) Minister citing failure to file T4A slip as example of continuing failure to fulfil undertakings, not as leading to de-registration itself--In light of overwhelming evidence supporting Minister's main reasons for de-registration, issue of little significance--Income Tax Act, R.S.C., 1985 (5th Supp.), c. 1, ss. 149.1 (as am. by S.C. 1994, c. 21, s. 74), 168, 180 (as am. by S.C. 1994, c. 7, Sch. II, s. 142), 230 (as am. by S.C. 1994, c. 21, s. 105)--Canadian Bill of Rights, S.C. 1960, c. 44 [R.S.C., 1985, Appendix III], s. 2(*e*).

Date: 20020301

Docket: A-357-00

Neutral citation: 2002 FCA 72

CORAM: ROTHSTEIN J.A.

SHARLOW J.A.

MALONE J.A.

BETWEEN:

THE CANADIAN COMMITTEE FOR THE TEL AVIV FOUNDATION

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa, Ontario, on February 19, 2002.

Judgment delivered at Ottawa, Ontario, on March 1, 2002.

REASONS FOR JUDGMENT BY:
MALONE J.A.

CONCURRED IN BY:
ROTHSTEIN J.A.

SHARLOW J.A.

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REASONS FOR JUDGMENT

MALONE J.A.

INTRODUCTION

[1] This is a statutory appeal of a decision of the Minister of National Revenue (the "Minister") to notify The Canadian Committee for the Tel Aviv Foundation (the "Committee") of his intention to revoke the Committee's registration as a charitable organization pursuant to section 168 of the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1 (the "Act"). The intention to revoke arose as the result of the Minister's audit of the Committee's 1997 fiscal year ("the 1997 Audit").

[2] A charity that is registered under the Act has a number of advantages over unregistered organizations. One advantage is that a registered charity is exempt from tax. The other advantage, which may be more important than the tax exemption, is that those who make gifts to a registered charity are entitled to tax relief, provided the charity issues a receipt in the prescribed form.

[3] The situations in which a charity's registration may be revoked are set out in subsection 168(1) of the Act, the relevant portions of which read as follows:

168. (1) Notice of intention to revoke registration -- Where a registered charity or a registered Canadian amateur athletic association	168. (1) Avis d'intention de révoquer l'enregistrement -- 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
(b) ceases to comply with the requirements of this Act for its registration as such,	l'organisme de bienfaisance enregistré ou l'association canadienne enregistrée de sport amateur, selon le cas_:
(c) fails to file an information	b)cesse de se conformer aux exigences de la

return as and when required under this Act or a regulation,

(d)issues a receipt for a gift or donation otherwise than in accordance with this Act and the regulations or that contains false information,

...

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.

présente loi relatives à son enregistrement comme telle;

c) omet de présenter une déclaration renfermant des renseignements, selon les modalités et dans les délais prévus par la présente loi ou par son règlement;

d)délivre un reçu relativement à un don sans respecter les dispositions de la présente loi et de son règlement ou contenant des renseignements faux;

...

[4] The requirements of registration referred to in paragraph 168(1)(b) depend on whether the charity is a "charitable organization" or a "charitable foundation." Broadly speaking, a charitable organization must carry on charitable activities itself, while a charitable foundation may raise funds for other organizations that meet the definition of "qualified donee."

[5] The list of "qualified donees" includes registered charities. Generally, no foreign organization will be a "qualified donee" unless it is a university that meets certain conditions, or a foreign charitable organization to which Canada has made a gift during a specified period of time. This case involves a charitable organization. The grounds for de-registration of a charitable organization are stated as follows in subsection 149.1(2):

(2) The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization

(a) carries on a business that is not a related business of that charity; or

(2) Le ministre peut, de la façon prévue à l'article 168, révoquer l'enregistrement d'une oeuvre de bienfaisance pour l'un ou l'autre des motifs énumérés au paragraphe 168(1), ou encore si l'oeuvre_:

a) soit exerce une activité commerciale qui n'est pas une activité commerciale complémentaire de cet organisme de

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the total of

bienfaisance;

b) soit ne dépense pas au cours d'une année d'imposition, pour les activités de bienfaisance qu'elle mène elle-même ou par des dons à des donataires reconnus, des sommes don't le total est au moins égal au total des montants suivants_:

(i) the amount that would be the value of A for the year, and

(ii) the amount that would be the value of A.1 for the year,

in the definition "disbursement quota" in subsection (1) in respect of the organization if it were a charitable foundation.

(i)le montant qui représenterait, à son égard pour l'année, la valeur de l'élément A de la formule figurant dans la définition de « _contingent des versements_ » au paragraphe (1) si elle était une fondation de bienfaisance,

(ii) *le montant qui représenterait, à son égard pour l'année, la valeur de l'élément A.1 de cette formule si elle était une fondation de bienfaisance.

[6] As the detailed recital of facts below will demonstrate, the Committee was established and represented itself as a charitable organization, which meant that it was required to carry on its charitable activities itself. Raising funds for another organization would not entitle the Committee to registration as a charitable organization. Nor would the Committee qualify as a charitable foundation unless the intended recipient of the funds raised is a "qualified donee" as defined in the Act.

FACTS

[7] The Committee was registered as a charity in 1985. Its charitable objectives relate to the promotion of education and relief of poverty and sickness in Tel Aviv, Israel. Its registration was predicated on its representations to the Minister that its activities would be carried out through The Tel Aviv Foundation, its agent in Tel Aviv, pursuant to a written agency agreement dated July 10, 1986 ("the Agency Agreement"). It is common ground that a charitable organization is considered to be carrying on its own activities to the extent that it acts through an agent.

[8] The Minister had audited the Committee on two earlier occasions before the 1997 Audit. An audit for its 1990 fiscal year ("the 1990 Audit") revealed several instances of non-compliance with the Act, including the lack of documents to support its overseas expenditures, irregularities surrounding

preparation and issue of a proper T4 for its president, and improper payroll deductions for its employees. The Minister gave the Committee a written explanation of the instances of non-compliance as well as directions as to how to comply with the Act and its regulations. The 1990 Audit did not lead to any indication by the Minister that the Committee's status as a registered charity was in question.

[9] The Committee was again audited in 1995 for its fiscal year ending December 31, 1993 ("the 1993 Audit"). The Minister advised the Committee in writing on March 26, 1996 that it was contravening the provisions of the Act in eleven instances, several of which are germane to the present appeal. They are listed in paragraph [11], *infra*. In his letter, the Minister warned that he could give notice of his intention to revoke the Committee's registration, pursuant to paragraph 168(1)(c) of the Act, if the Committee failed to comply with the requirements of the Act and its regulations. The Minister gave the Committee 30 days to make representations as to why revocation should not occur, subsequent to which the Director of Charities would decide whether or not to proceed with the issuance of a notice of intention to revoke.

[10] The Committee responded to the Minister by letter of July 19, 1996, explaining that its agent had undergone a complete change in management since the Agency Agreement had been signed and was not aware of the reporting requirements in that agreement. Further, the Committee made the following undertakings to the Minister:

Both the Canadian charity [the Committee] and the agent have committed to conform strictly to the requirements of Revenue Canada, including the specific provisions of the Agency Agreement, which is still in force and effect ("1996 Undertaking").

On the basis of the 1996 Undertaking, the Minister informed the Committee, by letter dated February 10, 1997, that the charitable organization status of the Committee would remain unchanged.

[11] The 1997 Audit took place in 1999. The Minister advised the Committee in writing on December 15, 1999, that he continued to have serious concerns about the repeat of deficiencies noted in the 1993 Audit. The Minister identified the seven deficiencies, namely:

a. the Committee had again violated clauses 7 - 10 of the Agency Agreement in that it maintained little control over the funds disbursed to and by its agent;

b. details were not provided regarding $20,000 expended by the agent on scholarships;

c. the Committee was unable to demonstrate adherence to a system of continuous and comprehensive reporting as required by the Agency Agreement;

d. the Committee's funds did not remain apart from those of its representative and the Committee's role in any project or endeavour was not separately identifiable as its own charitable activity;

e. donation receipts issued by the Committee did not comply with the Regulation 3501 and IT-110R3 as follows:

i. the receipts did not show the full address of the Committee as recorded with Revenue Canada;

ii. spoiled receipts were neither marked cancelled nor retained by the Committee; and

iii. donation receipts could not be reconciled with T3010 information returns and financial statements;

f. the Committee improperly completed its T3010 information return in that many of the items reported were incorrectly identified or omitted; and

g. the Committee paid fees to an entertainer, but no T4A slip was issued and no invoice was provided.

[12] Because of these deficiencies and the Minister's perception that the Committee has failed to observe its 1996 Undertaking, the Minister advised the Committee that there were grounds for revoking its charitable status. The Minister also advised of the consequences of de-registration, and gave the Committee 30 days to make representations as to why its status should not be revoked. The Committee was similarly advised that subsequent to that date, the Director of Charities Division would decide whether or not to proceed with the issuance of a notice of intention to revoke its charitable registration. The deadline was later extended to February 28, 2000 and the Committee responded by letter of February 25, 2000 .

[13] The Committee attempted to explain its situation and address the Minister's concerns. It also asked the Minister to clarify its concerns about the spoiled receipts and the Information Return. The Minister was not satisfied with the Committee's response and, by registered letter dated April 27, 2000, issued a

notice of intention to revoke the charitable status of the Committee. In his letter of notification, the Minister advised the Committee that it had carefully reviewed the representations, including the Committee's letter, and concluded that the representations did not provide sufficient reason why the Committee's charitable status should not be revoked. The Minister gave extensive reasons for revocation in his written notice of intention to revoke dated April 27, 2000, and may be summarized as follows:

1. the agent did not demonstrate that it maintained detailed records of all amounts received from or for the account of the Committee and all expenditures incurred on behalf of the Committee in accordance with paragraph 8 of the Agency Agreement;

2. the separate bank account kept by the agent appeared to be a transfer account, i.e., money was not paid directly to suppliers, but was funnelled to the agent for disbursement such that the Committee did not exercise direction and control over the agent's expenditures;

3. the agent failed to provide unaudited quarterly statements and annual reports as required by paragraph 9 of the Agency Agreement;

4. the Committee's statement that its agent kept it currently and fully informed of its activities, pursuant to paragraph 10 of the Agency Agreement, was not supported by any documentary evidence;

5. the report in support of the Committee's assertion that the agent had no discretion whatsoever as to the expenditure of funds, and that the Charity hade direction and control over use of the funds, was not available at the time of the audit, contrary to paragraph 9 of the Agency Agreement;

6. the Committee failed to demonstrate that it authorized the projects and the amounts for the projects for which it claimed to have provided funds, contrary to paragraphs 5 and 6 of the Agency Agreement;

7. the agent's brochure mentioned specific Canadian donors for projects claimed as Committee projects, which reinforced the Minister's view that the Committee was acting as a conduit by which Canadian donors may funnel funds to overseas donees, i.e., that the donor or agent, but not the Committee, was in control of where and how funds were disbursed and contributions recognized;

8. the $20,000 grant to the Air Force Museum in the city of Beer Sheva was reported in the Committee's records as ‘scholarships,' which was misleading, and concealed the fact that the agent's activities occurred outside the city of Tel Aviv;

9. the Committee failed to take corrective measures to ensure that that spoiled donation receipts were not marked as cancelled or retained by the Committee, and further that donation receipts could not be reconciled with the Committee's T3010 information return and financial statements;

10. the Committee failed to address the discrepancies noted by the Minister with regards to its T3010 information return; and

11. salary paid to an employee was not reported on a T4 slip, similar to what had occurred in the previous audit.

ISSUES

[14] The Committee now appeals pursuant to subsections 172(3) and 180(1) of the Act on the following grounds:

a. Whether the legislative scheme for de-registration, insofar as it fails to provide a hearing, violates the Canadian *Bill of Rights*, thereby rendering section 168 of the Act inoperative in this case;

b. Whether the Minister's actions in administrating section 168 denied procedural fairness and the right to a fair hearing as provided under the *Bill of Rights*;

c. Whether the burden of proof for establishing the facts justifying de-registration is on the Minister, and if so, has the Minister met that burden;

d. Whether the Minister erred in considering the Agency Agreement between the Committee and the Tel Aviv Foundation and whether Minister acted unfairly in revoking the charitable status of the Committee;

e. Whether the Minister erred in law in concluding that the Committee ceased to comply with the requirements of the Act; and

f. Whether the Minister erred in making the failure to issue a T4 or T4A receipt a ground for de-registration, thereby taking irrelevant considerations into account.

ANALYSIS

Issue 1: Whether the legislative scheme for de-registration, insofar as it fails to provide a hearing, violates the Canadian Bill of Rights, thereby rendering section 168 of the Act inoperative in this case

[15] The Committee argues that the revocation of charitable status has such a serious impact on a charity that subsection 2(e) of the *Bill of Rights* is engaged. Subsection 2(e) of the *Bill of Rights* provides that no law of Canada shall be construed or applied so as to deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights or obligations. The Committee also asserts that the common law requirement placed on the Minister by this Court in *Re Renaissance International v. Minister of National Revenue*, [1983] 1 F.C. 860 (FCA), i.e., to outline the nature of the allegations in support of a de-registration and to merely give a charity the opportunity to respond in writing, does not go far enough. According to the Committee, such a requirement does not satisfy the principles of fundamental justice under the *Bill of Rights.* The Committee argues that charities should therefore be given an opportunity for full discovery and disclosure of the Minister's files, an oral hearing and cross-examination of the auditor on all materials upon which the Minister relies to invoke de-registration.

[16] In *Re Singh and Minister of Employment and Immigration*, [1985] 1 S.C.R. 177, Beetz J. stated that the principles of natural justice do not impose the necessity of an oral hearing in all cases. He stated at page 229 that "[t]he most important factors in determining the procedural content of fundamental justice in a given case are the nature of the legal rights at issue and the severity of the consequences to the individuals concerned". He cited the following passage from *Selvarajan v. Race Relations Board*, [1976] 1 All E.R. 12, per Lord Denning, at p. 19:

... that which fairness requires depends on the nature of the investigation and the consequences which it may have on persons affected by it. The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings or deprived of remedies or redress, or in some such way adversely affected by the investigation and report, then he should be told the case made against him and be afforded a fair opportunity of answering it. [emphasis added]

[17] It seems clear that Parliament intended that statutory appeals involving charities should not involve rigid rules and cumbersome procedures. Section 168,

reproduced at paragraph [3], *supra*, is silent on matters of procedure. Subsection 180(1) outlines an appeal process to this Court; a proceeding limited by subsection 180(3) to a summary hearing and determination. Equally telling is subsection 180(2), which states that neither the Tax Court of Canada nor the Federal Court - Trial Division have jurisdiction over any proceeding involving such statutory appeals.

[18] Against this statutory background, this Court was required in *Re Renaissance International*, *supra,* to determine what level of disclosure and response was appropriate in revocation cases. It held that the rules of procedural fairness and natural justice require only that the Minister give the charity an opportunity to respond to the allegations against it before sending a notice of intention to revoke. In that case, the Minister had issued a notice of intention to revoke without giving the charity any notice of the preceding investigation or of the allegations against the charity, nor was the charity given an opportunity to challenge those allegations or be heard by the Minister in response.

[19] While it is true that the consequences of de-registration for the Committee are severe, section 168 does not deprive the Committee of its status without the benefit of reasonable procedural protections. Instead, following *Re Renaissance International*, *supra*, it opens an exchange by which the Committee becomes aware of the case it has to meet, and is given an opportunity to reply. In this case, the Committee was informed during the 1990 and 1993 Audits that it had failed to comply with the Act and was given an opportunity to respond. In answer to the 1993 Audit, and knowing that its registration was in jeopardy, the Committee provided its 1996 Undertaking which prevented de-registration at that time; proof positive that written submissions can be effective in preventing de-registration under section 168.

[20] The same procedure was again followed in the 1997 Audit, with extra time being provided to the Committee to fashion its response. In my analysis, given the detailed exchange of written submissions during the 1997 Audit, there is no need for either an oral hearing or cross-examination of the auditor. In oral argument, counsel for the Committee could not identify any disadvantages without such procedures. Specifically, counsel could neither point to any of the auditor's factual assumptions which could have been contradicted in cross-examination, nor demonstrate how the Committee's submissions would have benefited from an oral hearing. Consequently, there has been no violation of subsection 2(e) of the *Bill of Rights* in this case.

Issue 2: Whether the Minister's actions in administrating section 168 denied procedural fairness and the right to a fair hearing as provided under the Bill of Rights

[21] The Committee argues that the Minister violated the *Bill of Rights* insofar as he failed to disclose internal audit reports and working papers relied upon in reaching his decision to revoke. The Committee relies on *Suresh v. Canada (Minister of Citizenship and Immigration),* 2002 SCC 1, for the proposition that the Minister has a duty to disclose all relevant documents and information, such that the Committee may meaningfully respond. *Suresh* was decided in the context of a decision affecting a refugee whose right to life, liberty and security of the person was potentially at risk because he was about to be deported to the country from he had sought refuge.

[22] I am prepared to assume, without deciding, that under subsection 2(e) of the *Bill of Rights*, a somewhat similar standard of procedural protection could apply to charities at risk of de-registration. Certainly that would be consistent with the decision of this Court in *Re Renaissance International*, although in that case the *Bill of Rights* was not specifically pleaded.

[23] However, in *Ahani v. Canada (Minister of Citizenship and Immigration),* 2002 SCC 2; [2002] S.C.J. No. 4 (QL), which was decided on the same day as *Suresh*, the Supreme Court of Canada held that the failure to adhere to the procedural protections mandated by *Suresh* is not fatal to an administrative decision that engages section 7 of the *Charter*, provided that the subject of the decision is not prejudiced. Applying *Ahani* to the present context, the substantive test is whether the Committee was fully informed of the case to be met and was given a full opportunity to respond.

[24] During oral argument, counsel for the Committee was unable to point to any information within the audit reports and working papers that had not already been provided by the Minister. Counsel for the Committee could not explain how its submissions would have differed had the audit reports and working papers been disclosed. Further, at no time did the Committee or its counsel request such material. According to counsel for the Minister such requests are somewhat routine and disclosure would not have been an issue in advance of the Committee's written response. Accordingly, in my view, there is no evidence that the Committee was either unaware of the case against it or was unable to respond meaningfully and therefore, the Minister's administration of the Act has not contravened the *Bill of Rights*.

Issue 3: Whether the burden of proof for establishing the facts justifying de-registration is on the Minister, and if so, has the Minister met that burden

[25] The Committee asserts that the burden of proof is on the Minister to prove the facts supporting revocation since de-registration would result in the imposition of a 100% penalty tax on all the assets of the Committee, pursuant to section 188 of the Act, and that subsection 163(3) of the Act provides that the burden of proof on any appeal in respect of a penalty lies on the Minister. I note, however, that subsection 163(3) is restricted in application to penalties imposed under sections 163 and 163.2 only. The subsection cannot have the application proposed by the Committee, given that the "penalty" alleged arises by operation of section 188.

[26] The Minister responds that section 188 imposes a tax, not a penalty and that this Court has stated in *Human Life International in Canada v. The Minister of National Revenue*, [1998] 3 F.C. 202 (FCA) that the onus is on a charity to demonstrate that a Minister erred with respect to a decision to de-register. Strayer J.A., for the Court, stated at p. 215 that:

I am satisfied that the onus is on an appellant bringing an appeal against revocation of registration to this Court under section 180 to demonstrate that the Minister erred in the conclusions upon which the registration was revoked. This position is the most consistent with the general principle of income tax law that, once the Minister has made an assessment, it is for the taxpayer to demonstrate that the assessment is incorrect, it being assumed that the taxpayer is in the best position to provide information about his own affairs. [emphasis added]

[27] I am not persuaded that the debate raised in this case would be advanced by determining whether section 188 imposes a tax or a penalty. It is obvious that the consequences of de-registration are substantial and onerous. However, I am unable to conceive of any valid reason in this case to depart from Strayer J.A.'s analysis in *Human Life*, *supra*, that the onus is on the Committee to prove that its charitable organization status should not be revoked. Given that Parliament has directed a summary procedure with jurisdiction solely in the Federal Court of Appeal, the process is much like an application for judicial review, as opposed to an appeal from a lower court, with the correlative benefit of sworn testimony and written reasons. Collectively, these features of this statutory appeal process support the conclusions of Strayer J.A. relative to the burden of proof.

[28] Regardless of the party on whom the burden may lie initially, I cannot ignore the fact that the Committee granted to the Minister its 1996 Undertaking to "conform strictly to the requirements of Revenue Canada, including the specific provisions of the Agency Agreement." Accordingly, in my view, the requirement to now demonstrate compliance with that Undertaking, by meeting the burden of proof, cannot be said to work an unreasonable or unjust hardship on the

Committee. I am satisfied that the burden is on the Committee in this case, and it must therefore convince this Court that the Minister erred in issuing his April 27, 2000 notice of intention to revoke.

Issue 4: Whether the Minister erred in considering the Agency Agreement between the Committee and the Tel Aviv Foundation and whether Minister acted unfairly in revoking the charitable status of the Committee

[29] The Committee asserts that the Minister erred insofar as he relied on non-compliance with the Agency Agreement to support revocation of the Committee's status. In the Committee's submission, the Agency Agreement is binding only as between the Committee and its agent, and is irrelevant for the purposes of determining compliance with the Act. The Committee submits that the Minister's decision to rely on breach of the Agency Agreement in his decision to revoke demonstrates his unfamiliarity with the law of agency, specifically with regard to the ability of a principal and agent to rearrange their affairs as they see fit, whether or not such changes supercede the written agreement.

[30] In my analysis, the Committee misconstrues the Minister's position. Under the scheme of the Act, it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations overseas. In this case, the Agency Agreement was ignored by the Committee, and the Minister was not satisfied that the Committee's explanations of its conduct overseas were sufficient to overcome his conclusion that the Committee had no direction or control over how funds were spent by its agent. The evidence that was provided would suggest that the Committee was merely acting as a conduit for Canadian donors to overseas donees. For example, the evidence discloses that the Committee sent the majority of the funds it raised to its agent in Israel, but provided little documentary evidence of the Committee's control over how those funds were spent. The Committee submits that the written Agency Agreement was superceded by subsequent oral arrangements with its agent, and asserts that its directors had travelled to Israel on numerous occasions specifically to oversee and direct the agent's activities pursuant to those oral arrangements. Again, however, there is little evidence on the record from which this Court might conclude that the Committee was, in fact, exercising the control and direction it claims.

[31] In my view, in light of this conflict between the Agency Agreement and alleged oral arrangements, and considering the many other concerns raised by the Minister, such as the improper recording of expenditures in the Committee's records, the agent's failure to keep a separate bank account, and the lack of documentary evidence of direction and control by the Committee, it was not unreasonable for the Minister to conclude that the Committee was not in control or

direction of its agent in Israel. His conclusion is all the more reasonable in light of the Committee's failure to comply with its 1996 Undertaking, whereby it undertook to abide by the terms of the written Agency Agreement.

[32] The Committee also asserts three specific instances whereby the Minister violated the requirements of fundamental justice:

a. By raising a new allegation in stating for the first time, in his April 27, 2000 letter, the assertion that the Committee had failed to comply with paragraphs 5 and 6 of the Agency Agreement;

b. refusing to provide a response to the Committee's requests for clarification in his February 25, 2000, letter to enable the Committee to properly respond to the Minister's letter of December 15, 1999;

c. refusing to consider evidence provided by the Committee in its February 25, 2000 letter, by simply stating in his April 27, 2000 letter that "... the above written report was not available at the time of the audit ...".

[33] Paragraph 5 of the Agency Agreement requires the Committee to provide to its agent a list of programs and activities it wishes to support and that it wishes it agent to carry out on its behalf. The list must state the amount allocated to each item on the list and constitutes authorization for the agent to carry on those programs and activities on behalf of the Committee. Paragraph 6 of the Agency Agreement requires that if the Committee wishes to acquire realty, sports and medical equipment, or construct community centres, youth centres and sports facilities, the agent can conduct a search for the equipment, building materials and/or realty, but the Committee must designate the type of equipment or area of land, or the total construction amount. Further, title to all realty, equipment and facilities constructed must remain with the Committee.

[34] Contrary to the Committee's claim, the Minister gave notice to the Committee in his letter dated December 15, 1999 concerning the 1997 Audit that the Committee's refusal to maintain further documentation on the agent's activities was in violation of clauses 5 to 10 of the Agency Agreement. The Minister stated that:

At the debriefing meeting, the Charity's accountant, Mr. Alex Serota informed the auditor that he (Mr. Serota) personally verified the activities and vouchers [of the agent] during his personal visits to Israel, as did the major donors. He further added that notwithstanding our letter of March 26, 199, maintenance of any further documentation on the Agent's activities was not deemed necessary. The seriousness of such a statement are as follows:

- Violation of subsection 230(2) of the Act.

- Violation of clauses 5 to 10 of the Agency Agreement.

- No documentary evidence of Mr. Serota's visit with the Agent, or his working papers relating to any reviews conducted by him.

Clearly, the Committee's complaint with regards to a lack of notice about non-compliance with paragraphs 5 and 6 of the Agency Agreement before the April 27, 2000 letter is without merit.

[35] With regard to the Committee's second complaint, the clarifications requested by the Committee in its letter dated February 25, 2000 are as follows:

9. The accountant is not aware of any requirement to provide more detailed information in the financial statements submitted in support of the Charity's Annual Information Return. If more detail is required, we would ask for information as to what detail should be included. ...

Mr. Serota does not understand the comments relating to "spoiled receipts". If they were easily discernible by your auditor as "spoiled", why was there a question? He does not understand the statement that spoiled receipts were not retained by the Charity.

Mr. Serota does not understand the reference to the lack of reconciliation of donation receipts with the T-3010 and the financial statements, unless the auditor is referring to the fact that donation receipts were not issued to all of the individual donors, which is correct. ...

13. Mr. Serota does not understand how the Information Return was properly improperly completed and asserts that it was completed on the computer program as requested by your Division.

[36] Dealing first with the Information Return, I would note that the Minister also states in his December 15, 1999 correspondence that:

Audit evidence and our review indicated that the Charity improperly completed the information return in that many of the items reported were incorrectly identified or omitted. Specifically, fundraising and administration costs were purported to be charitable expenses and included in the disbursement quota calculation. Also a donation receipt to another charity $5,000 was reported at Line 100 of the Return thus affecting the disbursement quota for the following year.

Given the foregoing, I can perceive no denial of fundamental justice surrounding the Information Return.

[37] The Committee's questions about the spoiled donation receipts and the discrepancy between the donation receipts and the T3010 information return and financial statements are also without merit given that the Minister's auditor noted on the Charity Audit Checklist that T3010, donation receipt and reporting issues were discussed with the Committee. Accordingly, it was not procedurally unfair for the Minister not to respond to the Committee's questions about the donation receipts and the Information Return discrepancy.

[38] Dealing with the Committee's third complaint, I am also satisfied that the Minister was entitled to reject the evidence in the written report submitted with the Committee's letter of February 25, 2000. The Committee was told by the Minister in his March 26, 1996, letter that if it chooses to administer its work through an agent, it must meet the following conditions:

(1) The charity should establish some sort of current, formal, written declaration which would state in each case that the organization/individual to be funded in this matter will be carrying out certain stated activities which the charity wishes to see accompanied on its behalf during the term of the agreement.

(2) Each organization or individual so funded should provide some system of continuous and comprehensive documented reporting, including expense vouchers, to the charity (on at least a quarterly or semi-annual basis) concerning its ongoing activities which are carried out on behalf of the charity. Such reports should be supplemented at least yearly by a financial report reflecting the use of funds transferred to the agent.

(3) The charity's funds should remain apart from those of its representative so that the charity's role in any particular project or endeavour is separately identifiable as its own charitable activity.

(4) Financial statements submitted in support of the charity's annual information returns should provide a detailed breakdown of expenditures made in respect of its own charitable activities including those performed by its agents, and the names of all qualified donees to which funds have been gifted in the year covered by the return.

[39] Further, the Minister stated that "[t]hese reports would have to be kept with the charity's other records and books of account at the address recorded with this Department". Clearly, the Committee had adequate notice of the need to maintain records on its premises with regards to the activities being carried out on

its behalf by the agent. The Committee should have had the documentation readily available at the time of the 1997 Audit. Providing the written report subsequent to the 1997 Audit was insufficient. From the Minister's perspective, it was the Committee's failure to have the report available at the time of the Audit, not the contents of the report, which was important. The Committee, in failing to have the report readily available, had again breached the Agency Agreement by which it had undertaken to abide. Given these facts, it was not procedurally unfair for the Minister to refuse to consider the written report submitted with the Committee's February 25, 2000 letter.

Issue 5: Whether the Minister erred in law in concluding that the Committee ceased to comply with the requirements of the Act

[40] Pursuant to subsection 149.1(1) of the Act, a charity must devote all its resources to charitable activities carried on by the organization itself. While a charity may carry on its charitable activities through an agent, the charity must be prepared to satisfy the Minister that it is at all times both in control of the agent, and in a position to report on the agent's activities. In this case, the Minister's main reasons for revocation are that the Committee could not demonstrate, through documentary evidence, that it exercised a sufficient degree of control over the use of its funds by its agent in Tel Aviv and the Committee did not keep proper books and records of activities carried on by its agent. Even though the Minister's reasons are couched in terms of non-compliance with the Agency Agreement, the requirements under the latter are, in my view, simply a means of ensuring compliance with the Act.

[41] Further, subsection 230(2) of the Act requires that every charity keep records and books of accounts containing: information that will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act; a duplicate of each receipt containing prescribed information for a donation received by it; and other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under the Act. Subsection 230(3) also provides that "[w]here a person has failed to keep adequate records and books of account for the purposes of [the Act], the Minister may require the person to keep such records and books of account as the Minister may specify and that person shall thereafter keep records and books of accounts as so required."

[42] It is clear from the auditor's comments surrounding the 1997 Audit that the Committee was not maintaining adequate records of the activities undertaken by its agent. It is also clear that there were no records from the agent for the 1997

fiscal year until the Committee submitted, with its February 25, 2000, letter, a written report dated January 6, 2000, from its agent together with its agent's brochure. The Committee states that the reason for the lack of records is the frequent changeovers in the administration of the organization responsible for the agent. This, however, is the same reason given by the Committee during the 1993 Audit, which gave rise to its 1996 Undertaking. Based on the record, it is evident that the Committee did not maintain proper records, as required by subsections 230(2) and (3) of the Act. Accordingly, the Minister did not err in concluding that the Committee ceased complying, if it ever did comply, with the requirements of the Act.

Issue 6: Whether the Minister erred in making the failure to issue a T4 or T4A receipt a ground for de-registration, thereby taking irrelevant considerations into account

[43] In his April 27, 2000 letter, the Minister stated that he noted the Committee's intention to comply with the need to issue T4 or T4A slips in the future, but that a similar situation had occurred during the 1993 Audit. The Committee argues that it is not required to file an information slip, such as a T4A slip, to a non-resident of Canada (*Income Tax Regulations*, C.R.C. 945, Reg. 202). Further, the Committee asserts that the failure to file a T4A slip is not grounds for revocation since charities are exempt from the penalty provision in subsection 162(7) of the Act.

[44] The Minister does not say that failure to file a T4A slip by itself would lead to de-registration, but rather says that it is an example of the Committee's continuing failure to fulfil its undertakings. Given this position, and in light of the overwhelming evidence that supports the Minister's main reasons for de-registration, this issue seems to me to be of little significance.

CONCLUSION

[45] I would dismiss the appeal with costs.

J.A.

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO.: A-357-00

STYLE OF CAUSE: The Canadian Committee for the Tel Aviv Foundation v. Her Majesty The Queen

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: February 19, 2002

REASONS FOR

JUDGMENT OF THE COURT: (Malone, Rothstein & Sharlow.J.J.A)

DATED: March 1, 2002

APPEARANCES:

Mr. Arthur Drache and

Mr. Paul Lepsoe FOR THE APPELLANT

Ms. Roger Leclaire and Mr. Nwachukwu FOR THE RESPONDENT

SOLICITORS OF RECORD:

Drache, Burke-Robertson and Buchmayer FOR THE APPELLANT Ottawa, Ontario

Morris Rosenberg FOR THE RESPONDENT Deputy Attorney General of Canada

Ottawa, Ontario

Canadian Magen David Adom for Israel v. M.N.R.

http://reports.fja.gc.ca/en/2002/2002fca323/2002fca323.html

Headnote:

A-433-01

2002 FCA 323, Sharlow J.A., Rothstein J.A. (dissenting)

13/09/02

51 pp.

Appeal under Income Tax Act, s. 172(3) from MNR notification proposing to revoke appellant's registration as charitable organization--Appellant incorporated as corporation without share capital--Stated corporate object to donate emergency medical supplies and ambulances directly to people of Israel--Two grounds stated as justifica-tion for revocation--First ground referring to gifting of resources to Magen David Adom (MDA); second ground relating to activities of appellant in contravention of Canadian public policy--Discussion of first and second grounds indicating Minister's real concern related to relationship between appellant and MDA, in particular appellant's failure to control and monitor use of ambulances and related equipment provided to MDA--Concerning contravention of Canadian public policy, Court found record in appeal fell far short of establishing definite, officially declared, implemented policy prohibiting Canadian charitable organization from operating in occupied territories--In absence of such legislation or some equally compelling public pronouncement, M.N.R. cannot justify revocation of registration of appellant solely on basis MDA operating in occupied territories--Minister's fundamental concern related to appellant not taking appropriate steps to ensure ambulances and related equipment provided to MDA would be used for charitable purposes-- Charitable organization having obligation to carry on charitable activities itself--Charitable organization wishing to operate in location without any officers or employees must somehow act through person living at location in question-- However, charitable organization must establish acts taken by charitable organization effectively authorized, controlled, monitored by charity--M.N.R. entitled to insist on credible evidence regarding activities of

charitable organization to make sure activities carried on by charitable organization itself--Remaining issue concerning whether Minister erred in finding charitable goods policy not applying to appellant's provision of ambulances and related equipment to MDA-- Court unable to find in record evidence supporting reasonable expectation establishing use of ambulances and related equipment provided to MDA only for charitable purposes-- Therefore Court concluded M.N.R. did not err in finding charitable goods policy not applying to ambulances, related goods provided to MDA by appellant--Appellant argued on existence of agency relationship between appellant and MDA --Court unable to find evidence supporting agency relationship between appellant and MDA or any evidence concerning appellant taking any steps to control or monitor use by MDA of ambulances and related equipment provided to MDA--Therefore, revocation of appellant's registration as charity justified--Preceding reasons sufficient to dismiss appeal, except for appellant's argument concerning breach of requirement of procedural fairness--M.N.R. may have taken into account three factual allegations without giving opportunity to appellant to comment--Even if three factual allegations disclosed in advance to appellant and refuted, revocation of appellant's registration still justified--Appeal dismissed--*Per* Rothstein J.A. (dissenting): Minister's decision flawed for two reasons--One based on irrelevant considerations and second based on breaches of procedural fairness during proceedings--Regarding irrelevant considerations, record indicating Minister did not consider gifting issue as independent ground for revocation--Gifting issue outstanding for some 15 years, suggesting gifting issue not of pressing importance for Minister--Regarding breach of procedural fairness, M.N.R. relied on evidence without giving appellant opportunity to comment in relation to evidence-- Evidence related to use of ambulances in occupied territories for transportation of armed personnel, ammunition and other Armed Forces activities not consisting in charitable activities --Evidence prejudicial to appellant, therefore appellant should have had opportunity to comment--Income Tax Act, R.S.C., 1985 (5th Supp.), c. 1, s. 172(3) (as am. by S.C. 1994, c. 7, Sch. II, s. 141; 1998, c. 19, s. 46).

Date: 20020913

Docket: A-433-01

Neutral citation: 2002 FCA 323

CORAM: LÉTOURNEAU J.A.

ROTHSTEIN J.A.

SHARLOW J.A.

BETWEEN:

CANADIAN MAGEN DAVID ADOM FOR ISRAEL/

MAGEN DAVID ADOM CANADIEN POUR ISRAËL

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Heard at Ottawa, Ontario on June 18, 2002.

Judgment delivered at Ottawa, Ontario on September 13, 2002.

REASONS FOR JUDGMENT BY:
SHARLOW J.A.

CONCURRED IN BY:
LÉTOURNEAU J.A.

DISSENTING REASONS BY:
ROTHSTEIN J.A.

Date: 20020913

Docket: A-433-01

Neutral citation: 2002 FCA 323

CORAM: LÉTOURNEAU J.A.

ROTHSTEIN J.A.

SHARLOW J.A.

BETWEEN:

CANADIAN MAGEN DAVID ADOM FOR ISRAEL/

MAGEN DAVID ADOM CANADIEN POUR ISRAËL

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

REASONS FOR JUDGMENT

SHARLOW J.A.

[1] This is an appeal under subsection 172(3) of the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1, from a notification dated July 10, 2001 that the Minister of National Revenue proposes to revoke the appellant's registration as a charitable organization. For the reasons stated below, I have concluded that this appeal should be dismissed.

Statutory framework

[2] Registration under the *Income Tax Act* gives a charity two important tax advantages. One is that, like other organizations established and operated for a purpose other than profit, a registered charity is exempt from tax on its own income. The other advantage is that a registered charity is entitled to issue official receipts for gifts it receives, so that its donors may claim tax relief. This tax relief represents an indirect tax subsidy to encourage the work of registered charities.

[3] Simply serving the public good does not entitle an organization to become registered as a charity under the *Income Tax Act*. Parliament has targeted the tax advantages of registration to organizations that meet specific requirements

as to their formal objectives and their actual activities. The statutory requirements vary depending in part upon whether the charity is a "charitable organization" or a "charitable foundation" as defined in section 149.1 of the *Income Tax Act* (enacted by S.C. 1976-77, c. 4, s. 60, effective January 1, 1977).

[4] A "charitable foundation" is a charity that raises money for one or more other organizations that meet the definition of "qualified donee". That definition is met by a registered charity, a registered Canadian amateur athletic association, a housing corporation that meets certain criteria, a Canadian municipality, the United Nations or an agency of the United Nations, a foreign university that meets certain criteria, a foreign charity to which a gift has made by the Crown in right of Canada within a certain period, and the Crown in right of Canada or a province.

[5] The term "charitable organization" is defined in subsection 149.1(1) of the *Income Tax Act*. As far as is relevant for the purposes of this case, that definition reads as follows:

"charitable organization" means an organization, whether or not incorporated,	« oeuvre de bienfaisance » Oeuvre, constituée ou non en société :
(a) all the resources of which are devoted to charitable activities carried on by the organization itself,	a) dont la totalité des ressources est consacrée à des activités de bienfaisance qu'elle mène elle-même,
[...]	[...]

[6] The requirement that a charitable organization must devote all of its resources to charitable activities carried on by itself is relaxed somewhat by subsection 149.1(6) of the *Income Tax Act*, which provides among other things that a charitable organization is considered to be devoting its resources to charitable activities carried on by itself to the extent that it carries on a related business, or disburses in any year not more than 50% of its income for that year to qualified donees.

[7] Any charity that ceases to meet the statutory requirements for registration may have its registration revoked, in which event the charity must be shut down. After the revocation of its registration, the charity can no longer issue official receipts, and it may become subject to a tax equal to the value of all of its assets remaining one year after the revocation. During that terminal year, the charity may use its assets only to discharge its liabilities and for specified charitable purposes.

[8] The circumstances under which a charity's registration may be revoked and the process for giving notice of an intent to revoke are set out in subsection 168(1) of the *Income Tax Act*, the relevant portions of which read as follows:

168(1) Where a registered charity [...]	168 (1) Le ministre peut, par lettre recommandée, aviser un organisme de bienfaisance enregistré [...] de son intention de révoquer l'enregistrement lorsque l'organisme de bienfaisance enregistré [...] :
(b) ceases to comply with the requirements of this Act for its registration as such,	b) cesse de se conformer aux exigences de la présente loi relatives à son enregistrement comme telle;
[...]	[...]
the Minister may, by registered mail, give notice to the registered charity [...] that the Minister proposes to revoke its registration.	

[9] Subsection 172(3) of the *Income Tax Act* gives a charity a right of appeal to this Court upon receipt of a notification under subsection 168(1). After 30 days from the mailing of the notification, or such extended period as may be allowed by this Court while an appeal is pending, the Minister may publish a copy of the notification in the *Canada Gazette*. The revocation of the charity's registration takes effect on the date of publication. The *Income Tax Act* does not specify the legal effect of a successful or unsuccessful appeal under subsection 172(2). It would appear that the only appropriate remedy following a successful appeal would be the quashing of the notice of intention to revoke the registration of the charity. However, an unsuccessful appeal would simply leave the notice in effect. That would mean that the Minister would be required to consider whether or not to publish the notice in the Canada Gazette. Thus, a charity could survive an unsuccessful appeal if the Minister could be persuaded not to publish the notice.

[10] The grounds for the revocation of the registration of a charity depend in part on whether the charity is a "charitable organization" or a "charitable foundation." Subsection 149.1(2) of the *Income Tax Act* deals specifically with the revocation of the registration of a charitable organization. The relevant parts of that provision read as follows:

149.1(2) The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization	149.1(2) Le ministre peut, de la façon prévue à l'article 168, révoquer l'enregistrement d'une oeuvre de bienfaisance pour l'un ou l'autre des motifs énumérés au paragraphe 168(1), ou encore si l'oeuvre :

(a) carries on a business that is not a related business of that charity; or	a) soit exerce une activité commerciale qui n'est pas une activité commerciale complémentaire de cet organisme de bienfaisance;
(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the total of	b) soit ne dépense pas au cours d'une année d'imposition, pour les activités de bienfaisance qu'elle mène elle-même ou par des dons à des donataires reconnus, des sommes dont le total est au moins égal au total des montants suivants :
(i) the amount that would be the value of A for the year, and	(i) le montant qui représenterait, à son égard pour l'année, la valeur de l'élément A de la formule figurant dans la définition de « contingent des versements » au paragraphe (1) si elle était une fondation de bienfaisance,
(ii) the amount that would be the value of A.1 for the year,	(ii) le montant qui représenterait, à son égard pour l'année, la valeur de l'élément A.1 de cette formule si elle était une fondation de bienfaisance.
in the definition "disbursement quota" in subsection (1) in respect of the organization if it were a charitable foundation.	

[11] This provision imports the rather complex definition of "disbursement quota" into the statutory obligations of charitable organizations. It is not necessary to understand that definition in detail. It is enough to note that, subject to certain adjustments, it requires a charitable organization to spend at least 80% of its receipted donations on charitable activities it carries on itself, and on gifts to qualified donees. Failure to meet that disbursement quota is grounds for revocation of the charity's registration.

Facts

[12] The appellant was incorporated on March 24, 1976 as a corporation without share capital under Part II of the *Canada Corporations Act*, R.S.C. 1970, c. 32. Its corporate object is stated as follows in Part III of its application for Letters Patent (Appeal Book, Volume I, page 21):

To donate emergency medical supplies and ambulances directly to the people of Israel.

[13] When the appellant applied for registration as a charity on July 21, 1976, it indicated that it proposed to carry on the following activities (Appeal Book, Volume I, page 23):

To donate emergency medical supplies and ambulances directly to the people of Israel.
The organisation will aid any disaster areas and poor and disadvantaged people in Israel.
The organisation will appoint a Canadian representative in Israel to look after the implementation of this plan. In order to do so he will be assisted by a committee which now exists in Israel of Canadians who presently permanently reside in Israel and who are sympathetic to the aims of this organisation.

[14] By letter dated September 9, 1976, the appellant was notified that its application for registration was accepted effective March 24, 1976 (Appeal Book, Volume I, pages 24-5). The appellant thus became a "registered charity" as defined in the *Income Tax Act* as it then read. The letter includes some general information, including the following statement substantially reflecting what was then the statutory definition of "registered charity" (Appeal Book, Volume I, page 24):
No part of the income of the organization may be distributed to other charitable organizations; its income must be expended on some charitable project carried on under the direct supervision and control of the organization itself.

[15] The appellant, like all organizations that were registered charities on January 1, 1977, when section 149.1 of the *Income Tax Act* came into force, automatically fell within the new statutory definition of "charitable organization" on that date. That was not in itself a substantial change, because the definition of the new term, "charitable organization", is similar to the definition of the former term, "registered charity". The appellant continued to be subject to the requirement that it carry on its charitable activities itself, and the requirement that it could not make gifts to other organizations, even foreign charities, except "qualified donees".

[16] What follows is an account of the rather long record of correspondence between the appellant and the Minister dealing with a number of issues, including the question of whether the appellant was carrying on charitable activities itself. Another recurring question was whether the appellant was issuing official receipts correctly. At the hearing of this appeal, counsel for the Minister conceded that the problems relating to official receipts would not by themselves have justified the revocation of the appellant's registration as a charity. In light of that concession, counsel for the appellant understood, reasonably in my view, that he was not required to make any submissions on the question of official receipts. I propose to say no more about that subject.

Audit of the appellant's 1983 and 1984 fiscal years

[17] The appellant was audited by the Minister for its 1983 and 1984 taxation years. In a letter to the appellant dated August 14, 1986 relating to that audit (Appeal Book, Volume I, pages 32-4), the following concerns were raised:

1) ambulances and medical supplies are being purchased and arranged for shipment to Israel by the American Red Magen David for Israel Inc. on behalf of the Organization; and

2) funds collected for the construction of a blood analysis centre are transferred to Magen David Adom in Israel.

[18] In response to the concerns raised in the August 14, 1986 letter, the appellant sent a letter to the Minister dated August 25, 1986 (Appeal Book, Volume I, pages 35-6). That letter reads in part as follows:

This organization [the appellant] devotes its' [sic] resources primarily to the people of the State of Israel through services which are rendered of a medical emergency nature. The funds, generally, are not used for current operating budgets, but are expended to acquire goods, services, and equipment to be used in a manner identical to many of the services rendered by the International Red Cross.

In particular, supplies, such as blood packs, emergency two-way radios, and ambulances are supplied on a regular basis. With regard to the ambulances, these mobile units must meet the unified specifications established by the Red Cross in Israel. Currently, the only company manufacturing the ambulance to these specifications is General Motors in the United States. For this reason, whenever an ambulance is acquired by the Canadian organization, funds are disbursed to the American sister organization to be used to acquire ambulances in conjunction with their own purchase order. We believe, that if there is a technical significance to this, we could arrange to purchase the ambulances directly from General Motors in the United States. It should be noted that the ambulances acquired by the Canadian organization bears the name of the Canadian organization and can always be so identified.
Recently, the organization made a commitment to build part of a blood refraction centre in Israel, in conjunction with a major project financed by various sister organizations in the world. As the Canadian undertaking represents only a small part of this project, it is virtually impossible for the Canadian organization to contract separately for its' [sic] undertaking and alternatively it had no choice but to disburse these funds to a central organization who would undertake to contract the entire project into a single plan for construction and erection.

The Canadian organization does not make contributions to other organizations for their general use, but instead, funds specific medical projects, and all disbursements in that regard are made specifically for an identifiable medical activity.

[19] This response apparently led to consideration of an internal staff memorandum dated December 11, 1985 (Appeal Book, Volume I, pages 39-40) which sets out what I will refer to as the "charitable goods policy". It reads as follows (emphasis added):

RE: Transfer of Goods and Services to Non-Qualified Donees

Section 149.1 of the Income Tax Act allows a registered charity to operate in two different ways: other [sic] by devoting its resources to charitable activities carried on by itself and/or by gifting to qualified donees. The inference sometimes drawn from this is that therefore gifts or other transfers to non-qualified donees can never be made by registered charities.
Such, of course is not the case. Gifts - and other transfers of goods and services - are often made by registered charities to non-qualified donees in complete compliance with the Act. Scholarships to students, assistance to the needy, salaries for the charity's employees, and payments for goods received are all examples of transfers of resources to non-qualified donees which are quite legitimate. They are transfers made in furtherance of charitable purposes and, more importantly, the expenditures are, themselves, evidence of charitable activities. The issue therefore, when determining whether a particular expenditure, activity or practice can be viewed as a charitable activity carried on by the activity [sic] or an inappropriate expenditure, depending on the nature of the transfer (i.e. cash, goods, services), who the recipient is and on the control exercised by the charity in the particular case at hand.

Where the recipient is an employee or agent of the charity who is obliged under the terms of a contract to use the resources that are transferred in the manner stipulated by the charity, objections should not be raised.
Equally acceptable are transfers of goods and services that are directed to a particular use by the very nature of the goods and services so transferred.
Examples of such transfers include:
- transfers, by a research organization, of books and scientific reports to anyone interested (including foreign governments, libraries, schools, etc.),
- transfers of books - on a subject of particular interest to an educational charity - to public libraries in major cities all over the world,
- transfers of medical supplies to a refugee camp,
- transfers of food, blankets, etc. to a charity coping with a natural disaster,

- transfers of drugs, medical equipment, etc. to poorly equipped hospitals,
- transfers of personnel to schools or hospitals (on loan).

There will, of course, be suspicious transfers which will require obtaining as much information as possible to avoid approving sham transactions. Since the issue is really one of interpretation of the facts in a particular case and not a "policy" issue, it is impossible to give precise guidelines to cover all situations.

However, some general comments, in addition to the examples given above, can be made. An applicant, whose only activity is to support (especially by cash) another organisation, could be viewed with suspicion. Generally, gifts of cash to another organization would indicate that the applicant was not operating within the requirements of the Act. Gifts of cash to an individual would less likely give rise to such concerns, in that individuals, unlike organizations, can themselves be objects of charity whose needs van [sic] be alleviated by cash. For example, giving money to poor person [sic] will relieve their poverty, but giving money to an organization acting on behalf of poor people will not directly relieve their poverty (assuming there is no agency relationship). Of course there are exceptions, such as the funding of individual (independent) missionaries (refer Staff memorandum II.1.f).

Transfers of goods or services can more easily be viewed as charitable activities per se. The transfer of a piece of equipment that is meant to be used only for charitable purposes to an organization that will clearly use it for such purposes is likely to be a charitable activity. The examples given earlier would be applicable here.

However, a gift of cash to such an organization merely on the basis of an understanding or assumption that the money will be used for charitable activities would likely be in contravention of the Act. There may be applicants or charities who cannot or will not accept such a distinction, and will argue that if a gift of goods or services is charitable, then so is a gift of cash. Our response should be that the transfer is only acceptable where it can reasonably be viewed as a direct charitable activity itself. In many instances (tough [sic] not all) a transfer of cash will only indirectly promote a charitable purpose whereas a transfer of goods or services will mote [sic] often directly accomplish a charitable purpose.

Aside from being in keeping with the wording of the Act, this approach allows us some flexibility. We can thus avoid having to take the rigid position that either all gifts to non-qualified donees are never acceptable, or that all such gifts are acceptable if they somehow eventually serve a charitable purpose.

Finally, it should be noted that our determination should not be influenced by whether or not the non-qualified donee is a Canadian or foreign entity. Where the transfer is to a foreign non-qualified donee who is an agent of the charity or who is a partner of a joint venture, or involves capital property, reference should be made to Staff Memo III.1.c.

[20] In reply to the August 25, 1986 letter from the appellant, the Minister sent the appellant a letter dated October 22, 1986 (Appeal Book, Volume I, pages 41-3), which contains these comments about the ambulances (at page 42):

... it is my opinion that the Organization does not maintain direction, control and supervision over the equipment it transfers to Israel and that the Magen David Adom for Israel does not act as an agent for the Organization. Furthermore the title of ownership of some of the equipment such as the ambulances is transferred to the Magen David Adom for Israel. The gifting or lending of assets by one entity to another entity to be used by the latter entity in the conduct of its own charitable activities does not constitute a charitable activity on the part of the first entity. Therefore, it appears that the Organization is not devoting all of its resources to charitable activities carried on by itself as required under subparagraph 149.1(1)(b)(i) of the Act.

[21] The same letter also indicates that the Minister did not consider the appellant's funding of the construction of the blood refraction centre to constitute a charitable activity carried on by the appellant itself. The letter invited a response by a certain date, failing which revocation proceedings would be considered. The appellant replied as follows by letter dated October 30, 1986 (Appeal Book, Volume I, pages 44-5):

... The relationship of this organization to the one in Israel is analogous to the relationship between the Canadian Red Cross and the International Red Cross.

The English translation of Magen David Adom is the Red Shield of David similar to the Red Cross or the Red Crescent for the Arabic countries. As the Canadian Red Cross supplies aid throughout the world through its' [sic] international organization, the Canadian Magen David Adom for Israel provides medical and emergency assistance through the Israeli organization.
We, therefore, believe that our problem does not rest with the nature of our activity but instead with the technical agreements between our organization and our sister organization in Israel, which apparently does not conform to Canadian regulations.
We have discussed this problem with Mr. Rainville of your department and we have informed him firstly that ambulances are now being purchased, and will be purchased in the future directly from the manufacturer. We understand from him that his would be acceptable to your department.
With regard to the disbursement of funds, we are in the process of creating an agency relationship, to be covered by an agency agreement with the Israeli Red Shield. However, there is a need to obtain approval of the Board of Directors of both organizations which are half the world apart and this will take some time. We

are therefore requesting a delay of sixty (60) days beyond the December 12th deadline which you have imposed.
We shall forward to Mr. Rainville a draft of the agreement for his review and approval as soon as it is available and prior to any official endorsement of such agreement.

[22] This response was apparently deemed satisfactory as far as the ambulances were concerned. It appears that the Minister accepted that the charitable goods policy applied to the appellant's provision of ambulances to Magen David Adom in Israel (MDA). I reach that conclusion because of the following comments in a letter dated October 19, 1987 from the Minister to the appellant (Appeal Book, Volume I, pages 47-9, at page 47) (emphasis added):

The Canadian Magen David Adom for Israel (hereinafter referred to as the "Organization") proposes to purchase ambulances and medical supplies directly from the manufacture [sic] and then transfer the items to Magen David Adom in Israel. If such an arrangement is put into place the resources used to acquire the items will be considered devotion of resources to charitable activities carried on by the Organization itself provided it can support the use of the funds with appropriate documentation such as vouchers indicating the use of the funds.

[23] However, the Minister was not satisfied with the appellant's response to the issue of the blood refraction centre. In the October 19, 1987 letter, the Minister advised the appellant as follows (Appeal Book, Volume I, pages 47-9, at page 48):
24) 2) Blood Refraction Center

25)

The Organization proposes to create an agency relationship to be covered by an agency agreement between it and the Israeli Red Shield. Before I can comment any further on this subject, a copy of the agreement should be submitted for my review, however I wish to remind you [sic] the following guidelines when establishing an agency agreement. To satisfy the requirement that a charity devotes its resources to charitable activities carried on by itself, funds transferred to an agent must be expended strictly in furtherance of the charity's own purposes. A satisfactory agency relationship does not exist where funds are supplied by a charity simply to fund projects of another organization. Furthermore, in carrying out its activities through an agent, a charity must ensure that the following conditions concerning expenditure of its funds are fulfilled:
(a) the charity must maintain direction, control and supervision over the application of its funds by the agent;
(b) the charity's funds must remain apart from those of its agent so that the charity's role in any particular project or endeavour is separately identifiable as its

own charitable activity;
(c) the financial statements submitted in support of the charity's annual information returns must include a detailed breakdown of expenditures made in respect of the charitable activities performed on behalf of the charity by its agent; and
(d) adequate books and records must be kept by the charity and its agent to substantiate compliance with the conditions outlined above.
Direction, control and supervision over the application of the funds by the agent include the concept of accountability by the agent to the principal. In turn, the principal must be able to account how the funds were spent on its behalf by the agent. The records in support of these disbursements must be maintained at the principal's address in Canada.
Amongst other possible arrangements where a registered charity will be considered carrying on its own charitable activities are partnerships and joint ventures.

[24] A letter dated November 17, 1987 from the appellant to the Minister (Appeal Book, Volume I, pages 50-1) indicates that the blood refraction centre issue soon became moot, or at least was represented by the appellant as having become moot. In any event, the appellant did not then enter into a formal agency agreement with MDA, although in its November 17, 1987 letter, it acknowledged the need to do so if a project similar to the blood refraction centre project were to be undertaken in the future. Again, the Minister appeared to be content with that response. By letter dated November 24, 1987 (Appeal Book, Volume I, page 53), the Minister advised the appellant that the audit for the 1983 and 1984 fiscal years was complete and that the appellant's status as a registered charity would remain unchanged.

Audit of the appellant's 1987 and 1988 fiscal years

[25] The appellant was audited again for its 1987 and 1988 fiscal years. The audit report is dated October 31, 1989 (Appeal Book, Volume I, pages 56-67). For present purposes, the only finding of note is that the appellant had, as of the end of 1988, a cumulative shortfall in its disbursement quota of $169,404 (an amount the appellant disputes; its calculation indicated a shortfall of $140,818). The Minister apparently did not consider the 1988 shortfall to be sufficiently grave to warrant a notification to revoke the appellant's registration. The matter of the disbursement quota, however, was followed up in subsequent audits.

Correspondence relating to special projects

[26] By letter dated October 5, 1993 (Appeal Book, Volume I, page 76), the appellant requested the Minister's permission to help MDA with the purchase of an identification system in the amount of $84,000 (US) and a new ambulance telecommunication system. That request led to discussions about the legal requirement that the appellant devote all of its resources to charitable activities it carries on itself. The following comments were made in a letter to the appellant from the Minister dated October 21, 1993 (Appeal Book, Volume I, pages 77-9, at pages 77-8) (emphasis in original):

> ... A registered charity may not simply act as a conduit to channel funds to those organizations to which a Canadian taxpayer could not directly make a gift and acquire some tax relief. Since there are very few "qualified donees" operating outside of Canada, it is therefore usually necessary for a registered charity interested in charitable relief abroad to become directly involved in those foreign charitable activities.
> Revenue Canada acknowledges that this is not always practical either because of the registered charity's own limited financial resources, because of the size of the project or because the charity lacks the necessary expertise to operate effectively in a foreign country. Accordingly, Revenue Canada will consider that a registered charity is involved outside Canada in its own charitable activities if the charity demonstrates that it has a sufficient amount of responsibility and control over those activities. A charitable organization is not at liberty to transfer funds unless the recipient is an employee of the charity, an agent of the charity under contract, or a qualified donee.
> A registered Canadian charity is expected to maintain the same degree of administrative control over the use of its resources outside Canada as it would if its activities were conducted in Canada.

[27] The letter continues with a detailed list of the elements of an agency agreement that, if adhered to, would meet the statutory requirements. The appellant followed up with a letter dated November 30, 1993 (Appeal Book, Volume I, pages 80-1) providing more information about the two expenditures it wished to have the Minister approve. The letter reads in part as follows:

> We have been requested by MDA, Israel to pay for a new system of telecommunications between the headquarters and the ambulances. This system consists of approximately 100 Motorola transceivers which both receive and transmit radio signals. The old radios in the ambulances are nearly 20 years old and are not functioning efficiently. The main transmitter located in Tel Aviv will also be replaced at a later date.
> As you know, the dispatching system of ambulances just as it is in Canada is done

through radio dispatch signals only and is vital for the proper functioning of the ambulance system.
We trust that your department will accept this one-time expenditure since the radios should be good for at least 10 years.
The second non-medical expense consists of a new identification system. This will enable the administration of the headquarters and the blood centre in Israel to determine which people came to work, at what time, and how long they worked. It is at the same time a security system as well as a time study system which permits computerization of payroll.
Each member of MDA, Israel carries a badge with a photograph and an incoded [sic] message on a microchip which when inserted into a slot of an uncoder [sic] machine will identify the person as well as make note of the date and time of arrival and upon leaving, identify the time and thereby establish the number of hours worked.
It is essential to streamline this particular aspect of the administration of the blood services and other functions as the present system of punch cards is unreliable, slow and provides no security. The new system will lead to considerable savings, especially in security staff and accounting procedures in the years to come.
Again, this is a one-time expense which we believe to be good for anywhere from 10 to 20 years.

[28] The Minister replied by letter dated March 23, 1994, which reads in part as follows (Appeal Book, Volume I, page 86):

Based upon the information provided, your organization may cover the expense incurred for the telecommunication system for the ambulances as it may be viewed as directly fulfilling your charity's charitable purposes. A charity may transfer certain goods or provide services to another organization in order that those goods and services can be used in the recipient's charitable programs if the goods and services provided can, by their very nature, be used only for a charitable purpose. Accordingly, we have determined that the purchase of the identification system is an administrative expense and, therefore, too indirect to be considered charitable.

[29] The Minister must have been aware at this time that there was no formal agency agreement between the appellant and MDA with respect to the ambulances, and that the telecommunication system was purchased for the ambulances. Again, it appears that the basis for permitting the purchase of the telecommunication system as a charitable activity was the charitable goods policy described above.

[30] Shortly thereafter, in September of 1994, MDA appealed to the appellant for $650,000 (US) (Appeal Book, Volume I, pages 89-90). MDA wished to use $350,000 (US) of that amount to purchase medical equipment for its first aid stations and ambulances (including semi-automatic monitors/defibrillators),

$100,000 (US) to computerize their new telecommunication system and $200,000 (US) for "command cars", described as mobile command posts intended to facilitate disaster response. The appellant apparently put an oral request to the Minister.

[31] The Minister notified the appellant by telephone that the purchase of a single frequency transmitter for the ambulance communication system was approved, but not the purchase of command cars, because the cost of command cars was considered too remote from the appellant's charitable purposes (Appeal Book, Volume I, pages 91-3). Again, the charitable goods policy referred to above was the most likely justification for approving the purchase of the transmitter as a charitable activity.

Audit of the appellant's 1993 fiscal year

[32] The appellant was again audited by the Minister for its 1993 fiscal year. The audit report dated January 13, 1995 (Appeal Book, Volume I, page 95-101) includes the following comments (at pages 97-98):

[B.2] Failure to maintain adequate books and records.

The charity has transferred funds to Magen David Adom in Israel for the purchase of emergency medical supplies, ambulances and other equipments [sic]. It has also purchased equipments [sic] and transferred it to the same organization in Israel. Magen David Adom in Israel acts as the agent of the charity in Israel. On the other hand there is no formal agreement between the two parties. See Paragraph C.3 of this report. [...]

Response

The charity's representative told us that he will try strongly to have a formal agreement with the organization in Israel but that he can not force them to sign an agreement. He told us that previous requests have been made to Magen David Adom in Israel regarding a formal agreement but that the organization does not appear to be interested.

[B.3] T3010 - Incorrect information

The charity has included in its charitable expenditures an amount of $113,994 transferred to Magen David Adom in Israel for the purchase of a magnetic card punch system. [...] This amount should have been considered as an administrative expense instead of a charitable expense.

In a letter dated November 30, 1993, the Charity asked Revenue Canada the [sic]

authorization to utilize its funds for the purchase of a telecommunication system and an identification system (magnetic punch card system) for Magen David Adom in Israel. Revenue Canada has indicated in its response dated March 23, 1994 that based upon the information provided, the telecommunication system may be viewed as directly fulfilling the charity's charitable purposes but that the purchase of the identification system is an administrative expense and, therefore, too indirect to be considered charitable.
Response

The charity's representative told us that he was not aware of that letter. He told us that the purchase of the magnetic card punch system is necessary to operate ambulances in Israel. He told us that this expense should be accepted as a charitable expense. He also told us that representations can be made by the charity to explain the situation if Revenue Canada requires it.

[33] The conclusion of the auditor that the purchase of the magnetic card punch system was not a charitable expense resulted in a shortfall in the appellant's disbursement quota, so that the cumulative shortfall as of the end of 1993, as calculated by the auditor, was $113,377 (this was based in part on the auditor's former calculation indicating a cumulative shortfall of $169,404 as of the end of 1988; see above).

[34] The January 13, 1995 audit report also contains these statements (at page 101):

[C.3] Charitable activities and expenditures

A review of the activities and expenditures was carried out to compare them to the stated objectives of the charity. The activities undertaken are consistent with those of the stated objectives and are charitable in nature. [...] The expenditures reviewed relate to those expected considering the activities undertaken and are also considered charitable in nature.
The charity's objective is to donate emergency medical supplies and ambulances directly to the people of Israel. The charity buys ambulances, spare parts and emergency medical supplies for Magen David Adom in Israel, which act [sic]as their agent. According to the documentation provided, Magen David Adom in Israel operates more than 600 ambulances and Mobile Intensive Care Units to respond to emergencies all throughout Israel. The charity does not, however, have an agency agreement with Magen David Adom in Israel as mentioned in Paragraph B.2 of this report.

[35] The January 13, 1995 audit report is important for two reasons. The first is that it discloses evidence that the appellant apparently paid for an identification system for MDA in the face of the express disapproval of the Minister. The second is the indication that the auditor considered the existence of a formal agency relationship to be an aspect of the appellant's activities with respect to the provision of ambulances to MDA. As noted above, the record suggests that the Minister had until then accepted the notion that the provision of ambulances to MDA fell within the charitable goods policy.

[36] By letter dated January 23, 1997 (Appeal Book, Volume I, pages 102-3), the Minister advised the appellant of the result of the audit, stating its concerns about the lack of an agency agreement, the unauthorized purchase of the identification system for MDA for $113,994 and the resulting shortfall in the appellant's disbursement quota. That letter indicated that if the appellant "addressed these concerns", its status as a registered charity would not be affected. The record does not contain any written response to this letter.

Audit of the appellant's 1996 fiscal year

[37] On June 24, 1997, the Minister instructed an auditor to conduct an audit of the appellant for its 1996 fiscal year, to follow up on deficiencies identified in the previous audit and to verify the validity of certain anonymous allegations of wrongdoing by the appellant (Appeal Book, Volume I, pages 104-5). The audit report dated October 31, 1997 (Appeal Book, Volume I, pages 106-10) indicates that the auditor noted and apparently accepted the representations of the appellant that the anonymous allegations were false. However, the auditor noted that the appellant was still providing emergency medical supplies, ambulances and related equipment to MDA without having in place a formal agency agreement, and that the appellant had accumulated further shortfalls in its disbursement quota of $26,931 for the 1995 fiscal year and $141,519 for the 1996 fiscal year.

[38] On April 15, 1998, the Minister sent the appellant a letter relating to the audit for the 1996 fiscal year (Appeal Book, Volume I, pages 111-4). That letter states among other things that the concerns being raised at that time were sufficiently serious to consider revoking the appellant's registration. The letter raises a number of issues, of which I will mention three. The first is the absence of an agency agreement between the appellant and MDA. The letter says the following with respect to that issue (at page 112):

... the Charity transferred funds to Magen David Adom in Israel for the purchase of emergency medical supplies, ambulances and other equipment. It also purchased equipment and transferred [sic] to the same organization in Israel.

However, there is no formal agency agreement between the two parties. This deficiency was also identified during our last audit for the fiscal period ending August 31, 1993 in our letter dated January 23, 1997. A review of the file has indicated that the need for and the purpose of the agency relationship was also communicated to you in our letter dated October 18, 1987.

[39] The second issue is the persistent failure of the appellant to meet its disbursement quota, with the shortfall of $113,377 as of the end of 1993 being increased by $26,931 in 1995 and a further $141,519 in 1996.

[40] The third issue is the auditor's discovery that the charity had acquired bullet proof vests for MDA. On that point the April 15, 1998 letter says this (at page 113):

The objects of the Charity, as filed with the Department, are to donate emergency medical supplies and ambulances directly to the people of Israel. The audit indicated that the *Charity* was involved in the purchase of 60 bullet proof vests at a cost of $US146.00 each for a total expenditure of $US10,249.00. A deposit of $US3,075 was transferred to Hagor Industries Ltd. in Israel, with the balance payable upon receipt of the merchandise by the Magen David Adom in Israel. Purchasing of bullet proof vests is not considered [...] to be an expenditure on a charitable activity. Accordingly, under paragraph 168(1)(b) of the Act, the minister may give notice to the *Charity* that he proposes to revoke its registration because it fails to comply with the requirements of this Act for registration as such.

[41] The appellant replied by letter dated April 21, 1998 (Appeal Book, Volume I, pages 115-7, at page 116):

... Concerning an agency agreement, there has been a tacit agreement with Magen David Adom in Israel since the inception of the Canadian charity, as evidenced by the use of the Canadian equivalent of the Israeli name. The objective of this charity [sic] to provide medical assistance and ambulance service to the people of Israel, as does the Canadian Red Cross in many countries worldwide. This mission is contained in the by-laws of the charity. We would be interested in your advising us specifically of the nature and form of [sic]agency agreement that your department requires so that we may pursue this matter. It should be noted that this charity does not give funds directly to its Israeli counterpart but acquires on its own, medical supplies and ambulances which it provides to the Israeli Red Cross. Concerning the disbursement quota, this charity has been donating medical supplies and ambulances to the Israeli Red Cross since its inception. These donations have qualified for the disbursement quotas since 1981. If there has been

a change in policy by your department, kindly provide me with a the [sic] appropriate interpretation bulletin.
Although the charity has been deficient in the quotas required at the end of 1996, this has been rectified in 1997. We are enclosing a copy of the 1997 statistics to illustrate this. We wish to add that the shortfall in 1995 and 1996 resulted from delays in disbursing funds for charitable purposes in order to safeguard and ensure that the funds disbursed fulfills the intentions of the Canadian board of directors.
You have commented that the purchase of bullet proof vests is not an expenditure of a charitable activity. We wish to point out that the ambulances that we supply are required to service areas unlike Canada, that are most dangerous, often having to assist people who have been subjected to terrorist attacks. To enter into such a scene requires equipment to protect the injured as well as the drivers. These vests provide such protection and cannot be separated from the rest of the equipment that is included with the ambulances.

The Minister's letter of December 14, 1998 putting revocation in issue

[42] The Minister found the appellant's April 21, 1998 response unsatisfactory, and sent the appellant a letter dated December 14, 1998 (Appeal Book, Volume I, pages 123-8) explaining why. The discussion about the need for an agency agreement begins as follows (at pages 124-5):

The Government of Canada's long standing position with respect to Israeli settlements in the Occupied Territories is that it does not recognize permanent control over territories occupied in 1967 (the Golan Heights, the West Bank, East Jerusalem and the gaza [sic] Strip), and opposes all unilateral actions intended to predetermine the outcome of negotiations concerning these territories. This includes the establishment of Israeli settlements in the territories and Israel's unilateral moves to annex East Jerusalem and the Golan Heights, which Canada regards as being contrary to international law and unhelpful to the peace process. This policy is grounded in Canada's support for the United Nation's Security Council Resolutions 242, 338 and 478 and in the belief that the Geneva Convention Relative to the Protection of Civilian Persons in the Time of War of August 12, 1949 (the "Fourth Geneva Convention") is applicable to the Occupied Territories and imposes certain obligations on Israel, as the occupying power. Resolutions 242 and 338 call for Israeli withdrawal from territories occupied in 1967 in exchange for secure and recognized boundaries. Resolution 478 censures the annexation of East Jerusalem by Israel, reaffirms the Fourth Geneva Convention to Jerusalem, and determines that any measures taken by Israel and altering the character of Jerusalem are null and void.
Article 49 of the Fourth Geneva Convention (which both Canada and Israel have

ratified) provides that the "Occupying Power shall not deport or transfer part of its own civilian population into the territory it occupies". Canada has also ratified the 1977 Protocols to the Geneva Conventions. Article 85 of Protocol I makes "the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies" a grave breach of that Protocol.
Consistent with these instruments, and with the position articulated by successive Canadian governments since 1967, it is the Department's view that providing assistance to Israeli settlements in the Occupied Territories, including assistance in establishing and maintaining physical and social infrastructure elements, serves to encourage and enhance the permanency of settlements and therefore is contrary to Canada's public policy on this issue. Consequently, it is our position that Canadian organizations that wish to sustain or augment services provided by the institutions within Israeli settlements outside Israel's 1967 borders are not eligible for registration as charities for Canadian income tax purposes.
Based on the above, a Canadian charity may operate in Israel, other than in the Occupied Territories under an agency agreement, the requirements for which are explained hereunder....

[43] There follows an explanation of the reason for the requirement of a formal agency agreement, which essentially repeats the explanation given in previous letters. There is also a detailed list of the kinds of provisions the agency agreement should contain. The agency discussion concludes with this (at pages 126-7):

Please note that if a Canadian charity operates outside the country without a written agreement in the suggested form, it will probably have serious difficulty establishing that a project is charitable and that it is carrying on its own activities. This could jeopardize the charity's registered status under the Act.
A charity also has to ensure that its resources are devoted to charitable purposes. Therefore, where resources the charity is proposing to send outside Canada are of [sic] general nature and could be used in a wide variety of non-charitable ways (money, for example, could be used for many things, while medicines, such as insulin, are only likely to be used to treat patients), the charity must be particularly careful to retain sufficient control to satisfy the requirements of the law. The more general the nature of the assets, the more structured and formal the arrangements should be for its distribution or use.
All of the above were explained to you in our letters dated October 22, 1986, October 19, 1987 and October 21, 1993. Despite your subsequent undertakings to comply accordingly per your letters dated October 30, 1986 and November 17, 1987, no corrective measures were taken by you to implement the agency requirement. It is noted that our letter of October 21, 1993 went unanswered,

hence it is uncertain of your stance on this matter.

[44] On the question of the disbursement quota, the December 14, 1998 letter says this (at page 127):

It is understood that the title of ownership in ambulances is transferred to Magen David Adom for Israel. The gifting or lending of assets by one entity to another entity to be used by the latter entity in the conduct of its own charitable activities does not constitute a charitable activity on the part of the first entity. Therefore it appears that the organization is not devoting all of its resources to charitable activities carried on by itself as required under subsection 149.1(6) of the Act. Since the Magen David Adom for Israel is not a qualified donee, the donations fall within the meaning of gifting to another entity and therefore the amounts so expended do not get included in the computation of the disbursement quota per subsection 149.1(1) of the Act.
In response to your question, we confirm that there is no change in the policy of the Department in the calculation of the disbursement quota.

[45] Finally, on the question of the bullet proof vests, the December 14, 1998 letter states as follows (at page 127):

The object of the Charity as per Letters Patent registered with the Minister of Consumer and Corporate Affairs of Canada is "To donate emergency medical supplies and ambulances directly to the people of Israel." With regards to the bullet proof vests, you claim that "the ambulances that we supply are required to service areas unlike Canada, that are most dangerous, often having to assist people who have been subject to terrorist attacks. To enter into such a scene requires equipment to protect the injured as well as the drivers." It would therefore be appreciated if you could provide us with at least ten instances of the locations (e.g. streets, towns or cities) where these ambulance drivers, while rendering their services, had to encounter terrorist bullets.
In our opinion, the donation of bullet proof vests (which may be used by anyone) are too indirect to be considered charitable.

[46] A number of observations may be made about the Minister's December 14, 1998 letter. First, the purported policy that a Canadian charity cannot operate in the Occupied Territories had not previously been raised with the appellant. Counsel for the Minister indicated at the hearing of this appeal that this alleged policy has never been published by Revenue Canada in any interpretation bulletin or in any other publication made available to the general public or to registered charities and their advisers. Nor does the record contain any indication that the

position stated in this letter has been authorized by Parliament or the Governor in Council.

[47] Second, while this is not the first time the appellant had been told that there ought to be an agency agreement with MDA with respect to the ambulances, it is the first time that the absence of a formal agency agreement was expressly named as a possible basis for the revocation of the registration of the appellant as a charity. It is also the first express explanation of the connection between the absence of an agency agreement and the failure to meet the disbursement quota. There is no indication in prior audits that any such expenditures were not included in the disbursement quota. Indeed, given the amount of money that the appellant must have spent on ambulances since 1976, the only inference that can be drawn from the various audit reports is that the cost of ambulances had in the past been accepted as qualified expenditures. Before this letter, the only expenditures relating to MDA that were identified as not qualified for the disbursement quota were the cost of the identification system and the cost of bullet proof vests.

[48] Third, the paragraphs about the bullet proof vests can be read in a number of ways. It may be a genuine request for further information about the use of the bullet proof vests by the MDA. More likely it is an expression of the conclusion that the provision of the vests to MDA is not a permitted charitable activity. I would not quarrel with that conclusion, although would I note that it is made in conjunction with a purported request for information that is unduly sarcastic. In any case, the letter of July 10, 2001, which states the basis for the Minister's intention to revoke the appellant's registration as a charity (see the discussion below), makes no mention of bullet proof vests. From that I conclude that ultimately the Minister did not rely on the appellant's purchase of bullet proof vests as a basis for revocation.

Correspondence and meetings in 1999

[49] The appellant responded to the Minister's letter on January 18, 1999 (Appeal Book, Volume I, pages 129-30). That letter acknowledges once again that there had been no written agency agreement during the years under audit, but asserts that all expenditures of the appellant's funds were under its control because of unwritten understandings between the appellant and MDA. The letter also indicates that the parties had finally entered into a formal agency agreement. Enclosed with the letter was an agreement dated January 11, 1999, apparently signed by the appropriate officials of the appellant and MDA, in which the latter undertakes to act as the appellant's agent in Israel, except in the Occupied Territories, for the supply of blood and blood plasma, the supply of ambulances,

the supply of medical equipment and the construction of medical facilities. The appellant asked the Minister to review the agreement, and to meet with them to discuss the remaining issues.

[50] The record includes notes of a meeting on May 17, 1999 between representatives of the appellant and officials of the Minister (Appeal Book, Volume I, pages 133-4). The notes were apparently taken by one of the Minister's officials. It is not clear whether the notes were made at the meeting or sometime later. In any event, taking the notes at face value, it appears that the issues referred to in the Minister's December 14, 1998 letter were discussed. The appellant was also presented with a request, expressed as follows in the notes: "Charity to provide a list of all the ambulances owned by it and the areas where they are located". It is common ground that this was intended to be a question about the location of the ambulances that the appellant had provided to MDA, but there is controversy as to whether the appellant had agreed at that meeting that it was the owner of the ambulances.

[51] On July 6, 1999, the appellant gave the Minister a list of the 23 ambulances it had "donated to Israel" (Appeal Book, Volume I, pages 135-6) from 1994 to 1996. Beside the name of each ambulance was the name of a station. The note beside one ambulance sent to Israel in 1996, however, said this: "Given to I.D.F. (14.6.99)" ("I.D.F." refers to the Israeli Defence Force, which is the Israeli army).

The notification of proposed revocation

[52] After the appellant sent the July 6, 1999 letter, it heard nothing more from the Minister for two years. During that period, discussions occurred among the Minister's officials, and some internal memoranda were prepared (Appeal Book, Volume I, pages 137-45). On July 10, 2001, following the internal communications, the letter of notification which is the subject of this appeal was sent to the appellant (Appeal Book, Volume I, pages 6-17).

[53] Three grounds are stated as justification for the revocation. One relates to alleged improper receipting practices, which I will ignore. The second ground refers to "gifting of resources to MDA". The third ground relates to activities of the appellant that were said to be in contravention of Canadian public policy. The discussion about the second and third grounds indicates that the Minister's real concern was the relationship between the appellant and MDA, and in particular the appellant's failure to control and monitor the use of ambulances and related

equipment provided to MDA. I will discuss first the argument relating to Canadian public policy, and then the remaining issues.

Canadian public policy

[54] The portion of the July 10, 2001 notification letter dealing with Canadian public policy repeats what was said in the December 14, 1998 letter on that subject, and concludes with the assertion that any activity of a Canadian charity that provides assistance to Israeli settlements in the Occupied Territories cannot be considered a charitable activity. Under the heading "CCRA findings" (Appeal Book, Volume I, at pages 12-3), the letter states as follows:

As it [MDA] has unfettered control over the use of its ambulances, nothing prevents MDA from using the ambulances where it wishes in fulfilling its stated mandate of operating throughout all of Israel. It should be emphasized that for MDA, "All of Israel" includes the Occupied Territories. For instance, on its Internet site at page http.magendavidadom.org/newsflash6.html, MDA speaks of its involvement in Arab Jerusalem as well as in Gaza. Furthermore, many of the first aid stations it lists at http.magendavidadom.org/stations.html are located in the Occupied Territories.
We further note that the aforementioned list compiled by MDA does not indicate where the ambulance gifted to the Israeli Defense Forces is stationed. But like all the other ambulances, where the ambulance is stationed is rather inconsequential given that there is no reason why it could not be used in the Occupied Territories by the I.D.F., or otherwise used for non-charitable purposes by its owners, the I.D.F.
As you may note from our guide RC 4106 *Registered Charities: Operating Outside Canada*, the CCRA exceptionally allows certain gifts of certain goods to non-qualified donees where it is demonstrated that the goods in question (i.e. medical supplies) can only be used by the recipient for charitable purposes. However, where the non-qualified donee plans to use those goods in a non-charitable manner for which the charity had prior knowledge, the gift in question cannot qualify as being for a charitable purpose and would thus not be allowed by the *Act ab initio*. On October 5, 1994, CAMDI wrote to ask permission to buy a telecommunication system in the amount of $84,000 to replace MDA's old ambulance communication system. We approved the project on the understanding that the goods would be used exclusively for a charitable purpose. However, CAMDI failed to inform us at the time that:
"MAGEN DAVID ADOM in Israel provides all the Emergency Medical Services in times of PEACE and WAR. The entire High Frequency FM Radio Network of the MDA system is immediately available to the Israeli Defense Forces in times of

crises." (emphasis as found on CAMDI's Internet site) (Copy attached for your convenience)
When CAMDI gifted the communication system and ambulances to MDA or the I.D.F., CAMDI should have known that these resources could be used for non-charitable purposes and purposes contrary to stated Canadian government policy. Therefore, these gifts could not be considered as charitable expenditures even by application of the aforementioned exception.

[55] This is followed by a paragraph entitled "Basis for revocation" (Appeal Book, Volume I, at page 13):

Gifts to non-qualified donees are not considered charitable expenditures for the purposes of the *Act*. For the most recent fiscal year that was audited, expenditures were made by CAMDI that were claimed to be charitable, but were in fact gifts made to non-qualified donees. Consequently, CAMDI has not demonstrated that these expenditures were charitable in nature. Moreover, CAMDI did not unequivocally show that all similar expenditures claimed in prior years were in fact charitable expenditures.

[56] The appellant argues that there is no legal foundation for the position of the Minister that, because of Canadian public policy, the appellant cannot be considered to be carrying out its charitable objectives to the extent that it or MDA operates in the Occupied Territories. I agree with that submission.

[57] The notion that public policy has a role in the determination of charitable status was recognized by this Court in *Everywoman's Health Care Society (1988)* v. *Canada (Minister of National Revenue - M.N.R.) (C.A.)*, [1992] 2 F.C. 52 (C.A.). In that case, the Minister had refused to register as a charity an organization that proposed to operate a health care clinic that would provide abortions. The Minister had argued that a charitable purpose could not be established if the object of the charity is politically controversial. Décary J.A., speaking for the Court, disposed of this argument as follows (at paragraphs 14-5, footnotes omitted):

[14] It is well established that an organization will not be charitable in law if its activities are illegal or contrary to public policy. As already noted, it is conceded here that the Society's activities are not illegal; they are contrary neither to criminal law nor to civil or "Anglo-Canadian law". But, argues the respondent, in the absence of clear statements of public policy on the issue of abortion, the Society's activities cannot be said to accord with public policy; the failure of Parliament to replace the provisions of the Criminal Code that were struck down

in the Morgenthaler decision, leads the respondent to submit that "it cannot be concluded that first trimester abortions by choice of the patient, while clearly legal, reflects public policy on abortion."

[15] I have found no support for such an approach in the case law. It is one thing to act in a way which offends public policy; it is a totally different thing to act in a way which is not reflected in any, adverse or favourable, public policy. An activity simply cannot be held to be contrary to public policy where, admittedly, no such policy exists. It would impose an unbearable burden on those who apply for charity registration to require that there be a clear public policy favouring their activities. As I read the cases, for an activity to be considered as "contrary to public policy", there must be a definite and somehow officially declared and implemented policy.

[58] I also note the following concern of Iacobucci J., speaking for the majority of the Supreme Court of Canada in *65302 British Columbia Ltd.* v. *Canada*, [1999] 3 S.C.R. 804, at paragraph 59:

... public policy arguments ask courts to make difficult determinations with questionable authority. ...

[59] The Minister's public policy argument in this case is based on an interpretation of a number of United Nations resolutions and conventions, which have consistently been supported by Canada. However, it is far from clear that these resolutions support the proposition, as the Minister seems to believe, that a Canadian charitable organization cannot operate in the Occupied Territories without offending Canadian public policy. I perceive no logic in the proposition that the provision of emergency medical assistance can be a charitable activity in downtown Tel Aviv, but not in the Occupied Territories. I would also note that it is difficult to reconcile the existence of such a policy with the Canada-Israel Free Trade Agreement (*Canada-Israel Free Trade Agreement Implementations Act*, S.C. 1996, c. 33) and related legislation which, taken together, appear to permit preferential tariff treatment for goods imported to Canada from the Occupied Territories.

[60] The record in this appeal falls far short of establishing, to paraphrase Décary J.A., that there is a "definite and somehow officially declared and implemented policy" that a Canadian charitable organization cannot operate in the Occupied Territories. Certainly no such policy has found expression in any Act of Parliament, in any regulation, or in any publicly available government document

of any kind. I have no doubt that it is open to Parliament, if it sees fit, to amend the *Income Tax Act* to preclude Canadian charities from operating in the Occupied Territories or any other part of the world, or to empower the Governor in Council to make regulations to that effect. In the absence of such legislation or some equally compelling public pronouncement, it seems to me that the Minister cannot justify the revocation of the registration of the appellant solely on the basis that it or MDA operates in the Occupied Territories.

[61] In this case, however, the existence of this supposed public policy was not the only basis for the proposal to revoke the registration of the appellant as a charity. The Minister's fundamental concern, even in the context of the stated public policy, was that the appellant did not take appropriate steps to ensure that the ambulances and related equipment it provided to MDA would be used for charitable purposes. I will therefore go on to consider that ground for the revocation.

Gifts to MDA: relationship between the appellant and MDA

[62] The July 10, 2001 notification letter substantially repeats much of what had been said to the appellant on other occasions about the need to establish an agency relationship between the appellant and MDA. There is an explanation of the relevant statutory provisions, and an explanation of the rationale for the requirement of an agency relationship between the appellant and MDA. Those explanations are followed by the following paragraphs under the heading "CCRA findings" (Appeal Book, Volume I, at pages 9-10):

As discussed at the May 17, 1999 meeting, the CCRA had audited the books and records of CAMDI [the appellant] on a number of occasions [...]. Each audit revealed that CAMDI exercised little or no control over the activities carried on in Israel to which its resources were devoted. In fact, CAMDI's only function was to raise funds in Canada and to gift its resources to MDA, a non-qualified donee [...]. Audit evidence, gathered during each of the previous audits shows that CAMDI did not implement an agency relationship between itself and MDA, notwithstanding our express recommendation to that effect, or CAMDI's undertakings to that effect. As a result, CAMDI could not prove that an appropriate principal-agent relationship existed between itself and MDA. In every tangible respect, CAMDI failed to establish that it acted as the principal in conformity with the *Act*. For all intents and purposes, all resources sent to Israel by CAMDI are controlled by non-qualified donees.
As a result of the meeting, it was decided that the CCRA would defer the

revocation of CAMDI's status as a registered charity as long as CAMDI could meet the following conditions:

, establish that it had not gifted its resources to non-qualified donees;
, implement an agency agreement which would allow it to maintain effective direction and actual control over its resources and the programs undertaken on its behalf;
, carry out exclusively charitable activities;
, not have its activities carried out in the Occupied Territories;
, not have its resources used in the Occupied Territories; and,
, respect all the other requirements of the *Act* as they pertain to registered charities.

[...]

[63] The letter then refers to the appellant's letter of July 6, 1999 and the enclosed list that indicated that an ambulance had been "given to the I.D.F.", and continues with these statements (at page 10):

... We take special note that this ambulance was gifted to the I.D.F. less than 6 months after CAMDI signed an agency agreement with MDA on January 11, 1999, and less than a month after the meeting. We conclude that by gifting its resources to non-qualified donees such as the I.D.F., CAMDI did not devote its resources to the pursuit of exclusively charitable purposes.
In addition, I further conclude that if CAMDI's [sic] had directed and controlled its resources as it could have by virtue of the January 11, 1999 agency agreement, the transfer of the ambulance to the I.D.F. would not have occurred. However, CAMDI chose to simply gift its resources to non-qualified donees even after it supposedly put in place the January 11, 1999 agency agreement. Therefore, even after signing the January 11, 1999 agency agreement, CAMDI was not responsible in a direct, effectual, and constant manner over its resources in a manner consistent with the *Act*.

[64] After the above statements, there follows this paragraph entitled "Basis for revocation" (Appeal Book, Volume I, at page 10):

Despite the myriad of letters and communications that have ensued since CAMDI [the appellant] was registered as a Canadian charity, your letter confirms the results of the fourth audit; namely, that CAMDI has continued its practice of simply gifting its resources to non-qualified donees.

[65] That paragraph should be read together with the "Basis for revocation" quoted above, which I repeat here for ease of reference (Appeal Book, Volume I, at page 13):

Gifts to non-qualified donees are not considered charitable expenditures for the purposes of the *Act*. For the most recent fiscal year that was audited, expenditures were made by CAMDI that were claimed to be charitable, but were in fact gifts made to non-qualified donees. Consequently, CAMDI has not demonstrated that these expenditures were charitable in nature. Moreover, CAMDI did not unequivocally show that all similar expenditures claimed in prior years were in fact charitable expenditures.

[66] As explained earlier, a charitable organization is obliged to carry on its charitable activities itself. If it does not do so, its registration may be revoked. A charitable organization that wishes to operate in a location where it has no officers or employees must somehow act through a person in that location. That obviously could be done by establishing an agency relationship between the charity and the person. Evidence that such a relationship has been established by contract, and that the contract has been adhered to, might well be the most straightforward means of proving to the Minister that a person purporting to carry out the charitable activities of a charity in a particular location is in fact acting on behalf of the charity. It is possible that the same result might be achieved by other means. However, a charity that choses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity.

[67] It should also be said, although the point is obvious, that the Minister is entitled to investigate whether registered charities are operating in accordance with the applicable provisions of the *Income Tax Act*. The Minister is entitled to insist on credible evidence that the activities of a charitable organization are, in fact and law, activities being carried on by the charitable organization itself.

[68] The appellant argues that the existence of an agency relationship is not always essential, and in particular it is not essential in this case. The appellant argues that the Minister has in the past accepted that the 1985 charitable goods policy applies, and that policy should continue to apply. It follows, according to the appellant's argument, that the appellant fulfilled its charitable objectives merely by donating ambulances and related equipment to MDA. If that is so, then

it would also follow that the appellant would have had no continuing obligation to control or monitor MDA's use of the donated goods.

[69] A preliminary question is whether the Minister, having taken the position in the past that the provision of ambulances and related equipment to MDA was within the charitable goods policy, must continue to take that position. In my view, the Minister is under no such obligation. The Minister's obligation is to interpret the relevant provisions of the *Income Tax Act* and to determine how those provisions should be administered in each case, while ensuring that the affected person is given the appropriate degree of procedural fairness. The Minister does not breach any legal obligation merely by considering afresh the application of the relevant statutory provisions, even if the Act is applied less generously as a result.

[70] A second preliminary question is whether the charitable goods policy is valid, in the sense of being well founded in law. The answer is not clear. However, as the point was not argued, I am prepared to assume, without deciding, that a legal justification could be found for the policy. Given that assumption, the issue is whether the Minister erred in finding that the charitable goods policy does not apply to the appellant's provision of ambulances and related equipment to MDA.

[71] The application of the charitable goods policy requires the Minister to accept that even if the appellant gave ambulances and related equipment unconditionally to MDA, the Minister could reasonably expect MDA to use such goods solely for charitable purposes. Such a reasonable expectation would have to be based on evidence as to the status and activities of MDA. In that regard, the appellant has relied upon its repeated assertions that MDA is like the Red Cross except that it operates primarily in Israel, and thus implicitly is an organization with solely charitable purposes.

[72] The record discloses little evidence to support those assertions. The documentation relating to the Minister's audit of the appellant for 1987 and 1988 includes a page that purports to contain general information about MDA (Appeal Book, Volume IV, page 156). The source of that document is apparently the appellant itself, although it is not clear when, why or by whom it was written. The document reads as follows:

11 GOOD REASONS WHY YOU SHOULD SUPPORT MAGEN DAVID ADOM

1 MAGEN DAVID ADOM is the SECOND LINE OF DEFENSE in Israel and

provides all the Emergency Medical Services in times of PEACE and WAR. The entire High Frequency FM Radio Network of the MDA system is immediately available to the Israel Defense Forces in times of crisis.

2 MAGEN DAVID ADOM has now completed its new 16 million dollar National Blood Bank Centre in Ramat Gan which will provide all the BLOOD PLASMA SERVICES for the Israel Defense Forces and all the hospitals of Israel.

3 MAGEN DAVID ADOM has a CARDIAC SURVIVAL SYSTEM with a fleet of Mobile Intensive Care Units equipped with two-way telemetry communication that operates immediately between the emergency vehicle and the receiving hospital.

4 MAGEN DAVID ADOM cooperates with all the hospitals and clinics throughout Israel and has instituted an Emergency Premature and High Risk Infant Ambulance Service together with Hadassah Hospital at Mt. Scopus.

5 MAGEN DAVID ADOM has an ongoing program for Emergency Lifesaving Training for all civil employees including postmen, policemen, firemen, tour guides, teachers and civilian guards.

6 MAGEN DAVID ADOM has built and maintains 63 MDA First Aid Stations throughout all of Israel which are on alert every minute of the day, every day of the year. Auxiliary services are maintained with Ambulances at all the critical border kibbutzim.

7 MAGEN DAVID ADOM is recognized as the "Outstanding Volunteer Organization of Israel" and has helped other Red Cross Service organizations in Europe and Africa. MAGEN DAVID ADOM, even after forty years, is not recognized by the family of International Red Cross Societies.

8 MAGEN DAVID ADOM is celebrating almost 60 years of dedicated efforts on behalf of the People of Israel - Christians, Moslems and Jews. It was actually established 17 years before the birth of the State of Israel.

9 MAGEN DAVID ADOM provides a nationwide program of Youth Activities, with emphasis on First Aid instruction. Young people are trained to help in times of disaster and to administer rescue services in their own schools and communities.

10 MAGEN DAVID ADOM maintains a modern Ambulance fleet of 650 lifesaving vehicles that stand ready throughout all of Israel. They are replaced at the rate of 80 vehicles per year as they become inoperable.

11 MAGEN DAVID ADOM receives no allocation of funds from the United Israel. Appeal MAGEN DAVID ADOM must depend upon support from contributions from their own local fundraising and from friends, volunteers and Chapters throughout the world.

[73] This document may provide some basis for the representations of the appellant that MDA bears some resemblance to the Red Cross. However, it also discloses facts that make such a comparison somewhat questionable. For example, the statement in item 7 to the effect that MDA "is not recognized by the family of International Red Cross Societies" calls for some explanation, although it must also be noted that the material does not disclose the significance, if any, of such non-recognition. Similarly, if there is cooperation between the MDA and the Israeli Defence Force with respect to the use of MDA's communication facility as suggested in item 1, questions might fairly be raised as to whether and to what extent MDA is involved in Israeli military operations.

[74] I am unable to find in the record evidence to support a reasonable expectation that the ambulances and related equipment provided to MDA by the appellant were used by the MDA only for charitable purposes. I conclude therefore that the Minister did not err in finding that the 1985 charitable goods policy does not apply to the ambulances and related goods the appellant provided to MDA. It follows that the Minister was entitled to insist on evidence that MDA's use of the donated goods in Israel is subject to an appropriate agency agreement, or at least alternative arrangements that are capable of demonstrating that MDA's use of those goods amounted to the carrying on by the appellant of its charitable activities.

[75] The appellant argues that although there is no written agreement, there is and always has been an agency relationship between the appellant and MDA, and that in any event that relationship has now been reduced to writing and so the requirement for a written agency agreement, if it exists, has been met. I am of the view that these arguments must fail. There is no evidence in the record that there was ever an agency relationship between the appellant and MDA except the appellant's bare assertions to that effect. Nor is there any evidence that the appellant took any steps to control or monitor the use by MDA of ambulances and related equipment that it provided to MDA.

[76] I do not ignore the fact that a document signed in 1999 was presented as evidence of an agency agreement, but that document is not capable of establishing the existence of an agency relationship prior to its execution. Also, the correspondence submitted with that document, far from suggesting that the appellant intended to adhere to the agency agreement, indicated that it was simply awaiting the Minister's review of the agreement.

[77] For the foregoing reasons, the revocation of the appellant's registration as a charity is justified. That would be sufficient to dismiss this appeal, except for

the argument of the appellant that the process leading to the July 10, 2001 notification letter was fatally flawed by a breach of the requirement of procedural fairness. I will deal with that argument below.

Fairness of the process

[78] The appellant argues that the Minister's decision to issue the July 10, 2001 notification letter should be quashed because it was reached on the basis of evidence of which the appellant had no notice and upon which it had no opportunity to comment. The undisclosed material falls into two categories, the audit reports and the internal memoranda prepared in the two year period between the appellant's last submission in July of 1999 and the date of the notification letter, July 10, 2001.

[79] There is nothing of substance in any of the audit reports that was not disclosed to the appellant well in advance of the notification letter. Therefore, the Minister did not act unfairly in failing to disclose the audit reports.

[80] Material in the internal memoranda indicates that the Minister may have taken into account three factual allegations upon which the appellant claims it should have had an opportunity to comment.

[81] One factual allegation was that the MDA operates or may operate in the Occupied Territories. That information was apparently based on news stories and material the Minister found on the internet. Generally, it would be an error for the Minister to base the revocation of a charity on information from news reports and from the internet without giving the appellant an opportunity to refute the information or at least comment on it. However, in this case the error is of no consequence. The Minister believed that the location of MDA's activities was relevant because of the supposed Canadian public policy relating to MDA's activities in the Occupied Territories. For the reasons stated above, that ground of revocation is ill founded. However, it is not the only ground for the revocation notice, and the other grounds are not based in any way upon the location of MDA's activities. In these circumstances, the Minister's failure to elicit better facts about the location of MDA's operations was not an error that should vitiate the decision to issue the notification letter.

[82] The second factual allegation was that MDA shares its ambulance communication system with the Israeli Defence Force. In one of the internal memoranda, this was cited as support for the conclusion that the charitable goods policy does not or should not apply to the appellant's provision of ambulances and related equipment to MDA. In the July 10, 2001 notification letter, it was cited as an indication that MDA's activities may not be exclusively charitable. In my view,

the appellant cannot complain that it was unaware that the Minister had this information, because the information is found in a document it had previously provided to the Minister (refer to the document quoted above entitled "11 Good Reasons Why You Should Support Magen David Adom").

[83] The third factual allegation was that in 1996 the appellant had given an ambulance to MDA which MDA gave to the Israeli Defence Force on June 14, 1999. That allegation was based on material provided by the appellant itself in its July 6, 1999 letter to the Minister. The Minister's interpretation of that information was reasonable. In my view, the Minister was under no obligation to ask the appellant to provide further particulars.

[84] The record is clear that the proposal to revoke the appellant's registration was based fundamentally on the absence of evidence demonstrating that the appellant maintained control over the use of ambulances and related equipment it provided to MDA, despite being advised many times since 1997 that it was required to do so. The appellant did not satisfy the Minister on this point because it could not do so. The fact is that the appellant exercised no control over MDA's activities. Therefore, even if the factual allegations referred to above had been disclosed in advance to the appellant and refuted, the revocation of the appellant's registration would still be justified.

[85] The appellant also argues that the provisions of the *Income Tax Act* relating to the process for revoking the registration of charities contravenes subsection 2(e) of the *Canadian Bill of Rights*, R.S.C. 1985, Appendix III. That argument must be rejected for the same reasons as it was rejected in *The Canadian Committee for the Tel Aviv Foundation* v. *Her Majesty the Queen*, 2002 FCA 72, 2002 D.T.C. 6843.

Conclusion

[86] For the foregoing reasons, this appeal should be dismissed with costs.

"K. Sharlow"

J.A.

"I agree

Gilles Létourneau J.A."

ROTHSTEIN J.A. (Dissenting)

INTRODUCTION

[87] I have read the reasons of Sharlow J.A. in this appeal but I am respectfully not in agreement with her conclusion to dismiss the appeal. In my opinion, the Minister's decision is flawed for two reasons. One is that it was based on irrelevant considerations. It is not for the Court to speculate as to what decision the Minister would have come to, had he taken account only of relevant considerations. In these circumstances, the appropriate remedy is to quash the Minister's decision and remit the matter for redetermination based solely on relevant considerations.

[88] The second reason for considering the Minister's decision flawed is that the proceedings taken have been tainted by breaches of procedural fairness. Where a result is inevitable, breaches of procedural fairness may not require that a decision be quashed. See *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202 at paragraph 52. However, in all other circumstances, where there is a failure of procedural fairness, quashing the decision is the necessary result. See *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 at 660-661. The decision under appeal in this case is discretionary. It is not inevitable that the Minister would exercise his discretion to revoke the appellant's registration had breaches of procedural fairness not occurred. The appropriate result is to quash the Minister's decision and remit the matter for redetermination in accordance with the requirements of procedural fairness.

IRRELEVANT CONSIDERATIONS

[89] The provision in the *Income Tax Act* under which the Minister acted to give notice of revocation of the appellant's charitable registration was paragraph 168(1)(b).

168. (1) Where a registered charity [...]	168. (1) Le ministre peut, par lettre recommandée, aviser un organisme de bienfaisance enregistré [...]de son intention
(b) ceases to comply with the	

requirements of this Act for its registration as such,	de révoquer l'enregistrement lorsque l'organisme de bienfaisance enregistré
[...]	[...]
the Minister may, by registered mail, give notice to the registered charity [...] that the Minister proposes to revoke its registration.	b) cesse de se conformer aux exigences de la présente loi relatives à son enregistrement comme telle;
	[...]

[90] There is no doubt that the provision confers a discretionary power on the Minister and that the Minister has exercised that discretion in the past, not to order revocation of a charity's registration, even though the Minister had been of the opinion that there had been failure by the charity to comply with the requirements of the Act.

[91] Where a discretionary decision, made pursuant to a statutory authority, is based upon irrelevant considerations, intervention by the Court will be justified. See *Maple Lodge Farms Ltd. v. Canada*, [1982] 2 S.C.R. 2 at 7-8 per McIntyre J.

[92] In his letter of July 10, 2001, to the appellant, the Minister gave three reasons for his proposal to revoke the appellant's charitable registration:

1. the gifting of resources by the appellant, Canadian Magen David Adom for Israel (CAMDI), to Magen David Adom (MDA);

2. CAMDI's activities in contravention of Canadian public policy - namely, operations in the Occupied Territories; and

3. improper receipting practices.

[93] I agree with Sharlow J.A. that the improper receipting practices must be ignored. At the hearing of this appeal, counsel for the Minister, in an effort to expedite proceedings, interrupted the argument of counsel for the appellant to state that the receipting issue would not have resulted in revocation. As a result, counsel for the appellant was instructed by the Court that no further argument was required on the point. Therefore, the receipting practices issue is necessarily ignored for purposes of this appeal.

[94] I also agree with Sharlow J.A.'s finding that there is no Canadian public policy expressed in any Act of Parliament, Regulation or in any publicly available government document that a Canadian charitable organization cannot operate in the Occupied Territories. This public policy issue, raised in the July 10, 2001 revocation letter, is without legal foundation and should not have been considered as a basis for giving notice of revocation of the appellant's charitable registration.

[95] That, then, leaves only the issue of the gifting of resources to MDA. For purposes of this discussion, I will ignore the January 11, 1999 agency agreement between the appellant and MDA which might be a complete answer to the gifting issue, and the charitable goods policy which, apparently, was the basis, in earlier years, for the Minister not requiring an agency agreement because ambulances were considered obviously charitable whether received by a qualified donee or not. I will proceed on the basis that the gifting of resources by CAMDI to MDA, as a non-qualified donee, is a valid basis to revoke CAMDI's registration. Even accepting this position, it is by no means obvious that the Minister would have exercised his discretion to revoke, had the gifting issue been the only basis for revocation. Rather, it was the cumulative effect of all three issues, improper receipting which must be ignored, Canadian public policy which is without legal foundation, and gifting which is a valid basis, that led to the Minister's decision.

[96] The July 10, 2001 letter, after elaborating on each of these three concerns of the Minister, states:

Consequently, I wish to advise that for the reasons outlined above and pursuant to the authority granted to the Minister in subsection 168(1)(b) of the Act and delegated me by the Minister, I propose to revoke the registration of CAMDI.

[97] The words "[...] for the reasons outlined above[...]" preclude me from distinguishing any one of the reasons as an independent ground for the Minister exercising his discretion to revoke. These words indicate that it is the cumulative effect of the three concerns mentioned that caused the Minister to reach his decision. In such circumstances, it is not for the Court to speculate as to whether the Minister would have decided to revoke, had he considered only the single relevant ground of the three to which he referred.

[98] As Sharlow J.A. has pointed out, the gifting issue was the subject of correspondence between the Minister and the appellant as far back as 1986. For in excess of a decade, it appears it was not of sufficient concern to the Minister to cause him to take revocation steps. If the gifting issue alone was sufficient to cause the Minister, on July 10, 2001, to exercise his discretion to revoke, it raises the obvious question as to why such revocation did not occur at an earlier date.

There may be explanations. However, the long delay is evidence that the Minister did not consider the gifting issue, of itself, to be so serious as to warrant revocation.

[99] In addition, the Minister himself appears to have treated the gifting issue as inextricably linked with the public policy issue. This is evidenced by the December 14, 1998, letter from the Minister to the appellant, which put revocation in issue and which linked the gifting issue (or the appellant, as a Canadian charity, not having an agency agreement with the Israeli charity, MDA) with operations of a Canadian charity in the Occupied Territories, contrary to alleged Canadian public policy:

Based on the above, a Canadian charity may operate in Israel, other than in the Occupied Territories under an agency agreement, the requirements for which are explained hereunder: [...]

[100] In summary, the record indicates that the Minister did not consider the gifting issue as an independent ground for revocation because:

1. the revocation letter treats all three reasons cited cumulatively to justify revocation; and

2. the gifting issue itself was linked by the Minister to the invalid and, therefore, irrelevant public policy issue.

[101] For these reasons, I am unable to agree with Sharlow J.A. that the appeal should be dismissed on the basis that the gifting issue alone was sufficient to justify revocation. Under that approach, the Court effectively substitutes its discretion for that of the Minister. It is not for the Court to exercise that discretion. In this respect, I would reiterate that the gifting issue was outstanding for some 15 years, suggesting that this single issue, in itself, was not of pressing importance to the Minister.

[102] I think Morden J.A. (as he then was) explained the appropriate approach in a case such as this in *DiNardo v. Ontario (Liquor Licence Board)* (1974), 5 O.R. (2d) 124 at 132-133:

In the result, with respect to the November 30, 1973 decision, I have found that one of the reasons was based on an extraneous consideration, one either reflects an extraneous consideration or alternatively lacks any evidence in support of it and the third is relevant and there is some evidence on which it could be found. Can

the decision stand? In my view it cannot. In coming to the decision that it did, the Board appears to rely upon the cumulative effect of the three findings. It has not based its decision on each of these findings considered alternatively. In the face of this, it is not for me to speculate on what the Board would have done if it had considered whether or not to base its decision on the one finding which I have held cannot be successfully challenged. In these circumstances, the decision itself must be set aside. In support of this reasoning I would refer to *Sadler v. Sheffield Corporation*, [1924] 1 Ch. 483 at pp. 504-5.

I would adopt these reasons as my own. Accordingly, I would quash the July 10, 2001, notice of revocation.

BREACH OF PROCEDURAL FAIRNESS

[103] In any event, the Minister's decision should be quashed on the grounds that the Minister denied the appellant procedural fairness. In particular, in my view, the Minister relied on "evidence" without giving the appellant the opportunity to be heard in relation to that evidence. An internal memorandum in the Minister's Department, dated March 28, 2002, the last document on the record before the July 10, 2001 notice of revocation, refers to evidence gleaned from CBC news reports and other unnamed sources. This evidence related to the use of ambulances in the Occupied Territories and the use of ambulances in the transportation of armed personnel, ammunition and other Armed Forces activities. In my view, both of these "facts" are prejudicial to the appellant and the appellant should have been granted an opportunity to address them. See, for example, *Renaissance International v. Minister of National Revenue*, [1983] 1 F.C. 860 at 868-871 per Heald J.A. (C.A.).

[104] Indeed, Sharlow J.A. accepts that it would be an error for the Minister to act on information from news reports without giving the appellant an opportunity to comment. However, she says the error here is of no consequence because the gifting issue, which she says is a valid basis for revocation, was not based upon activities in the Occupied Territories. For the reasons I have given, I believe the gifting issue and the operation in the Occupied Territories issue were linked by the Minister. Therefore, it cannot be said that not giving the appellant the opportunity to comment on the matter of operations in the Occupied Territories had no consequences. This was a breach of procedural fairness that must result in the quashing of the decision to revoke.

CONCLUSION

[105] It is important to be clear that this appeal is about the exercise of discretionary power by the Minister of National Revenue to revoke charitable status because a charity allegedly ceases to comply with technical requirements of the *Income Tax Act*. There is no suggestion here of any other type of impropriety by the appellant.

[106] The focus in an appeal from a discretionary decision is on the actions of the decision-maker. In my opinion, the Minister exercised his discretion to revoke, taking into account irrelevant considerations and, in the course of reaching his decision, denied the appellant procedural fairness. For these reasons, I would allow the appeal, quash the decision to give notice of revocation as set out in the letter of July 10, 2001 from the Minister to the appellant, and remit the matter to the Minister for redetermination based solely on relevant grounds and in accordance with the requirements of procedural fairness.

"Marshall Rothstein"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-433-01

STYLE OF CAUSE: CANADIAN MAGEN DAVID ADOM FOR ISRAEL/

MAGEN DAVID ADOM CANADIEN POUR ISRAEL

v.

MINISTER OF NATIONAL REVENUE

PLACE OF HEARING: OTTAWA

DATE OF HEARING: JUNE 18, 2002

REASONS FOR JUDGMENT : SHARLOW, J.A.

CONCURRED IN BY: LÉTOURNEAU, J.A.

DISSENTING REASONS BY: ROTHSTEIN, J.A.

DATED: SEPTEMBER 13, 2002

APPEARANCES:

Mr. Arthur B.C. Drache	FOR THE APPELLANT
Mr. Paul Lepsoe	
Mr. Roger Leclaire	FOR THE RESPONDENT
Mr. Pascal Tétrault	

SOLICITORS OF RECORD:

Drache, Burke-Robertson & Buchmayer LLP	FOR THE APPELLANT
Morris A. Rosenberg	FOR THE RESPONDENT
Deputy Attorney General of Canada	

BAYIT LEPLETOT and MINISTER OF NATIONAL REVENUE

http://decisions.fca-caf.gc.ca/en/2006/2006fca128/2006fca128.html

Date: 20060328

Docket: A-158-05

Citation: 2006 FCA 128

CORAM: NOËL J.A.

SHARLOW J.A.

PELLETIER J.A.

BETWEEN:

BAYIT LEPLETOT

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Heard at Ottawa, Ontario, on March 28, 2006.

Judgment delivered from the Bench at Ottawa, Ontario, on March 28, 2006.

REASONS FOR JUDGMENT OF THE COURT BY:
PELLETIER J.A.

Date: 20060328

Docket: A-158-05

Citation: 2006 FCA 128

CORAM: NOËL J.A.

SHARLOW J.A.

PELLETIER J.A.

BETWEEN:

BAYIT LEPLETOT

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on March 28, 2006)

PELLETIER J.A.

[1] The issue in this appeal is whether the appellant is carrying on its own charitable works. The charitable works which the appellant claims to be carrying on are the operation of three institutions for orphans in Israel.

[2] It is worth noting that the three institutions are being operated by an Israeli organization of the same name which has done so since 1947. The appellant was incorporated in 1980.

[3] The appellant has no staff in Israel. It says that it is carrying on the charitable works through its agent Rabbi Stern. The record shows that Rabbi Stern requests funds from the appellant after having satisfied himself that the request is "valid and within the guidelines and framework" of the appellant. Once the funds are approved, they are forwarded to Rabbi Stern who disburses them.

[4] Rabbi Stern is part of the "Directorate in residence" of the Israeli organization. Presumably, he exercises same control over the operations of the

Israeli organization, but there is no evidence to what extent. More importantly, there is no evidence to show that Rabbi Stern exercised any control over the charitable works in his capacity as the appellant's agent.

[5] It is open for the appellant to carry on its charitable works through an agent but it must be shown that the agent is actually carrying on the charitable works. It is not sufficient to show that the agent is part of another charitable organization which carries on a charitable program. The question which remains in such a case, as it does here, is who is carrying on the charitable works. It was incumbent upon the appellant to show that they were being carried on its behalf. On the record before us it was open to the Minister to conclude that it had failed to do so.

[6] The appellant argues that the Minister is wrong in law to require proof that the activities of the agent are subject to the appellant's control. The Minister's concern with respect to control of the agent's activities is not directed to proof of the agency relationship but rather to the issue of whether the charitable works are the appellant's charitable works or someone else's.

[7] Finally, the appellant also argued in the alternative that Rabbi Stern had sub-delegated his agency functions to the Israeli organization. We cannot accept that argument as it lacks a factual basis.

[8] For those reasons, we would dismiss the appeal with costs.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-158-05

(APPEAL FROM A JUDGMENT OR ORDER OF THE (See comment in left margin) DATED (DATE), DOCKET NO. (DOCKET NUMBER)) if applicable

STYLE OF CAUSE: Bayit Lepletot and

Minister of National Revenue

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: March 28, 2006

REASONS FOR JUDGMENT OF THE COURT BY: NOËL, SHARLOW, PELLETIER JJ.A.

DELIVERED FROM THE BENCH BY: PELLETIER J.A.

APPEARANCES:

Arthur B.C. Drache, C.M., Q.C.	FOR THE APPELLANT
Paul K. Lepsoe Roger Leclaire	FOR THE RESPONDENT
Jade Boucher	

SOLICITORS OF RECORD:

Drache LLP	FOR THE APPELLANT
Ottawa, Ontario	FOR THE APPELLANT
McFarlane Lepsoe	
Ottawa, Ontario John H. Sims, Q.C.	
Deputy Attorney General of Canada	
Ottawa, Ontario	

Date: 20061024

Docket: A-271-05

Citation: 2006 FCA 343

CORAM: **NOËL J.A.**

EVANS J.A.

MALONE J.A.

BETWEEN:

TRAVEL JUST

Appellant

and

CANADA REVENUE AGENCY

Respondent

Heard at Vancouver, British Columbia, on October 23, 2006.

Judgment delivered at Vancouver, British Columbia, on October 24, 2006.

REASONS FOR JUDGMENT BY:
EVANS J.A.

CONCURRED IN BY:
NOËL J.A.

MALONE J.A.

Travel Just v. Canada Revenue Agency

http://decisions.fca-caf.gc.ca/en/2006/2006fca343/2006fca343.html

Date: 20061024

Docket: A-271-05

Citation: 2006 FCA 343

CORAM: **NOËL J.A.**

EVANS J.A.

MALONE J.A.

BETWEEN:

TRAVEL JUST

Appellant

and

CANADA REVENUE AGENCY

Respondent

REASONS FOR JUDGMENT

EVANS J.A.

[1] On March 29, 2004, Travel Just, a corporation incorporated under the *Canada Corporations Act*, R.S.C. 1970, c. C-32, applied to the Minister of National Revenue to be registered as a charitable organization under subsection 248(1) of the *Income Tax Act*, R.S.C. 1985, 1985, c.1 (5th Supp.) ("*ITA*"). Since the Minister did not dispose of the application within 180 days, the Minister is deemed to have refused the application. Travel Just appeals to this Court under subsection 172(4) of the *ITA* against the Minister's deemed refusal.

[2] While Travel Just submitted to the Minister a description of activities that it proposes to undertake, this appeal turns on whether Travel Just's corporate objects, which are set out in its Letters Patent, are exclusively charitable for the purpose of the *ITA*. As Iacobucci J. said in *Vancouver Society of Immigrant and Visible Minority Women v. Canada (Minister of National Revenue)*, [1999] 1 S.C.R. 10 at para. 152, ("*Vancouver Society*"), it is the purpose, in furtherance of which an activity is carried out, that determines if the activity is charitable.

[3] If, as a matter of construction, Travel Just's corporate objects permit it to spend its funds on activities that are not legally charitable, it may not be registered as a charity: *Earth Fund/Fond pour la Terre v. Canada (Minister of National Revenue*), 2002 FCA 498 at para. 20. This principle is subject to the limited statutory exception for ancillary political purposes (*ITA*, subsection 149.1(6.1)), and (6.2)), and the common law's incidental purposes doctrine: *Vancouver Society* at paras. 156-58. If, on the other hand, the objects confine it to charitable activities, Travel Just will be entitled to be registered. As a registered charity, it could issue charitable receipts to donors, who may use their donations to reduce their income tax liability.

[4] Travel Just's principal objects are as follows:

a. to work with key governmental authorities and grassroots communities of various tourism destination markets to create and develop model tourism development projects that contribute to the realization of international human rights and environmental norms and that achieve social and conservation aims that are in harmony with economic development aims for the particular region;

b. to develop, fund, administer, operate and carry on activities, programs and facilities to produce and disseminate materials on a regular basis that will provide travelers and tourists with information on socially and environmentally responsible tourism in order to establish normative discourse around traveling with a social conscience.

[5] Counsel argues that Travel Just is eligible to be registered a charity because its objects fall within the fourth, and residual, "other purposes beneficial to the community", head of the test in *Pemsel v. Special Commissioners of Income Tax*, [1891] A.C. 531 (Eng. H.L.), as elaborated in subsequent jurisprudence.

[6] He says that object (a) of Travel Just's objects authorizes it, in effect, to promote "ethical tourism" in developing countries and, as such, is within the line of cases holding that the general promotion of an industry or trade constitutes a public benefit for the purpose of the *Pemsel* test: see *Commissioners of Inland Revenue v. Yorkshire Agricultural Society* [1927] 1 K.B. 611 (Eng. C.A.).

[7] I do not agree. Even if the promotion of tourism is a charitable purpose, Travel Just's object is not to promote tourism in general, but only those tourist projects which meet the undefined goals of contributing to the "realization of international human rights and environmental norms" and "achieve social and conservation aims that are in harmony with economic development aims for the particular region".

[8] This object, which is limited to a particular, but vague and subjective, view of what kinds of tourism are beneficial to the community, is not, in my opinion, sufficiently analogous to a purpose already recognized as charitable to qualify under the fourth *Pemsel* head of charity.

[9] In addition, the creation and development of "model tourism development projects" with the characteristics described above could include the financing and operation of luxury holiday resorts in developing countries. Promoting commercial activity of this kind, with a strong flavour of private benefit, is not a purpose beneficial to the public which would make Travel Just eligible for a subvention from Canadian taxpayers as a charity.

[10] In a word, laudable as the objects listed in (a) may be, they are too broad and vague. It cannot be said that they restrict Travel Just's expenditures to purposes that are in law charitable.

[11] In view of this conclusion, it is not necessary to go further. However, I doubt whether the dissemination of information described in object (b) would qualify as either the publication of research, or an educational purpose: see *Vancouver Society* at para. 169.

[12] Finally, and in the alternative, Travel Just says that, since it is incorporated under a federal statute and its Letters Patent authorize it to operate throughout Canada, the law of Québec must be examined to see if it recognizes a wider concept of charity than the

common law. Counsel submitted that it does, and that, accordingly, Travel Just should be registered as a charitable organization to the extent that it operates in Québec.

[13] I disagree. Travel Just currently conducts no activities anywhere. The applicants for the incorporation of Travel Just, who were also its first directors, had addresses in British Columbia. In its application for registration as a charity, Travel Just gave a Vancouver address as its mailing address. Of the home addresses given for the four directors at that time, two were in British Columbia, one was in Alaska, and one was in California. Travel Just's legal counsel, Mr Bromley, is in Vancouver.

[14] In contrast, there is no indication in the material before us that Travel Just has any connection with Québec or has plans to operate there. The applicability of the law of Québec to Travel Just's activities is thus hypothetical and speculative. In these circumstances, resort to the law of Québec is not necessary and, accordingly, section 8.1 of the *Interpretation Act*, R.S.C. 1985, c. I-21, is not triggered: compare *Canada 3000 Inc., Re; Inter-Canadian (1991) Inc. (Trustee of)*, 2006 SCC 24 at para. 78-81.

[15] In addition, like the *ITA*, the *Taxation Act*, R.S.Q. c. I-3, defines charity as a charitable organization or foundation, without defining the term "charitable": see sections 1, 985.1 and 985.1.2. The *Taxation Act* contains no reference to the "social trust" described in Article 1270 of the *Civil Code of Québec*, S.Q. 1991, c. 64. That the private law of Québec may permit the creation of trusts for social purposes which would not qualify as valid purpose trusts at common law because they are not charitable does not, in my opinion, materially advance Travel Just's claim to the tax advantages of a charity if it were to operate in Québec.

[16] There is considerable force in the submission of the Minister that whether an organization is charitable for the purpose of the *ITA* is a question of public law, and not one of property and civil rights to which the private law of Québec is relevant. In this context, it is significant that Revenu Québec registers an organization as a charity only after confirmation of its registration by the Canada Revenue Agency: Revenu Québec, General Information at www.revenu.gouv.qc/enterprise/impot/organismes/info.asp.

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

“John M. Evans”

J.A.

“I agree.

Marc Noël, J.A”

“I agree.

J. Brian D. Malone, J.A.”