

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240913

Docket: A-245-24

Citation: 2024 FCA 145

Present: HECKMAN J.A.

BETWEEN:

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

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on September 13, 2024.

REASONS FOR ORDER BY:

HECKMAN J.A.



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REASONS FOR ORDER

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[1] Independent Jewish Voices Canada Inc., David Mivasair and Ismail Zayid (the Proposed Respondents) move to be added as respondents to this appeal under paragraph 338(1)(a) of the *Federal Courts Rules*, S.O.R./98-106 (Rules), which requires the appellant in an appeal to include as a respondent “every party in the first instance who is adverse in interest to the appellant in the appeal.” The Proposed Respondents submit that, because they were entitled to be

named as respondents under Rule 338(1)(a), this Court should exercise its authority under paragraph 104(1)(b) of the Rules to “order that a person who ought to have been joined as a party... be added as a party” and add them as respondents to this appeal.

[2] For the reasons that follow, I am of the view that this motion should be dismissed.

[3] On August 20, 2019, the Respondent Minister of National Revenue (the Minister) issued a notice of intention to revoke the charitable registration of the Appellant Jewish National Fund of Canada Inc. / Fonds National Juif du Canada Inc. pursuant to subsection 168(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (ITA). The Minister confirmed the notice on June 26, 2024 and the Appellant filed a notice of appeal from the revocation pursuant to paragraph 172(3)(a.1) of the ITA.

[4] Between October 2017 and February 2019, the Proposed Respondents had communicated with the Minister, the Canada Revenue Agency (CRA) and the Parliamentary Secretary to the Minister, with the goal of persuading the Minister and her delegates to audit the Appellant and revoke its charitable registration on various grounds.

[5] The Proposed Respondents claim that, through these communications, they “commenced the chain of events that led to the revocation” of the Appellant’s charitable registration and that, as a result, “they were adverse in interest to the Appellant in the first instance proceedings before the CRA” and ought to have been named as respondents pursuant to paragraph 338(1)(a) of the Rules. They argue that in a bulletin published on its website, the Appellant acknowledged that

the Proposed Respondents were “engaged in the revocation proceedings”, that public pressure on the CRA and the Minister was “an important consideration” in the decision-making process, and that Independent Jewish Voices Canada was one of its “opponents”.

[6] Under the heading “Persons to be included as respondents”, Rule 338(1)(a) states:

338 (1) Unless the Court orders otherwise, an appellant shall include as a respondent in an appeal

(a) every party in the first instance who is adverse in interest to the appellant in the appeal;

338 (1) Sauf ordonnance contraire de la Cour, l'appelant désigne les personnes suivantes à titre d'intimés dans l'appel :

a) toute personne qui était une partie dans la première instance et qui a dans l'appel des intérêts opposés aux siens;

[7] The Proposed Respondents rely on *North Brewing Company Ltd v. Canada (Registrar of Trademarks)*, 2022 CanLII 94943 (FC) [North Brewing]. In that decision, a company initiated summary proceedings to cancel the registration of the “North Brewing” trademark from the trademarks register by requesting, pursuant to section 45(1) of the *Trademarks Act*, R.S.C. 1985, c. T-13, that the Registrar of Trademarks request from the owner of the trademark evidence of its use. When the trademark owner appealed the Registrar’s decision cancelling the registration, the Federal Court recognized, at page 5 of its reasons, that by making its request under section 45(1), the company had “commenced the chain of events that led to the decision under appeal” and could therefore be considered, under Rule 338(1)(a), as “a ‘party adverse in interest’ to the Appellant for the purposes of the underlying decision made by the Registrar and on this appeal.”

[8] *North Brewing* does not assist the Proposed Respondents because the statutory context in that decision was very different from that before the Court on this motion. Unlike the provisions of the ITA that govern the revocation of a charitable designation, section 45 of the *Trademarks Act* expressly provides for the full participation in summary expungement proceedings before the Registrar of Trademarks of the person (the “requesting party”) who initiates these proceedings.

[9] Subsection 45(1) of the *Trademarks Act* requires the Registrar, absent a good reason to the contrary, to act on the written request of the requesting party, subject to statutory requirements, including payment of a prescribed fee.

[10] Under the *Trademarks Act*, the requesting party:

- a) is entitled to be served any evidence that the registered owner submits to the Registrar (subsection 45(2.1));
- b) is entitled, like the registered owner, to make representations to the Registrar (subsection 45(2));
- c) is required to serve these representations on the registered owner and entitled to receive any submissions made by the registered owner (subsection 45(2.1));
- d) is entitled to notice of the Registrar’s decision on whether or not to expunge or amend the registration (subsection 45(4)); and
- e) is entitled to appeal the decision of the Registrar (section 56).

[11] The *Trademarks Act* affords the requesting party full participatory rights in the first instance expungement proceedings before the Registrar. By contrast, the relevant provisions of

the ITA do not entitle persons like the Proposed Respondents to participate in the proceedings undertaken by the Minister and her designates to revoke the registration of a charitable organization.

[12] Where the Minister gives notice of intention to revoke a person's charitable registration under section 168(1) of the ITA, the person who is registered as a registered charity may serve on the Minister a written notice of objection (section 168(4)). Upon receipt of this notice of objection, the Minister reconsiders the proposed revocation and notifies that person in writing of the Minister's action (section 165(3)).

[13] Where the Minister confirms her decision to revoke the person's charitable registration (or fails to confirm or vacate that decision within 90 days of the service by the person of a notice of objection), the person that was registered as a registered charity may appeal from the Minister's decision under section 172(3)(a.1) of the ITA.

[14] The Proposed Respondents' claim that their communications with the Minister and her delegates "commenced the chain of events" that led to the Minister's decision to revoke the Appellant's charitable registration is speculative and seems implausible, since the audit of the Appellant as a registered charity under the ITA was initiated in 2014, well before the Proposed Respondents began their communications with the Minister and her delegates in 2017.

[15] Regardless, even if such communications had prompted the Minister and her delegates to initiate an audit or had informed their decision-making process, this did not confer on the

Proposed Respondents any legal entitlement to participate in the revocation proceedings. The Proposed Respondents remain strangers to these proceedings which, under the relevant provisions of the ITA, involve the person who is or was registered as a charity and the Minister and her delegates.

[16] Whether the Proposed Respondents were adverse in interest to the Appellant or not, they have not established that they were “parties in the first instance” and have thus failed to bring themselves within the terms of Rule 338(1)(a).

[17] The motion is dismissed with costs, payable forthwith under subsection 401(2) of the Rules.

“Gerald Heckman”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-245-24

STYLE OF CAUSE: JEWISH NATIONAL FUND OF CANADA INC. / FONDS NATIONAL JUIF DU CANADA INC. v. MINISTER OF NATIONAL REVENUE

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: HECKMAN J.A.

DATED: SEPTEMBER 13, 2024

WRITTEN REPRESENTATIONS BY:

Adam Aptowitzer FOR THE APPELLANT

David Stevens FOR THE APPELLANT
Neil McCormick

Linsey Rains FOR THE RESPONDENT
Alex Nguyen
Mengjiao Liu

Nicholas Pope FOR THE PROPOSED
RESPONDENTS, INDEPENDENT
JEWISH VOICES CANADA INC.,
DAVID MIVASAIR AND
ISMAIL ZAYID

SOLICITORS OF RECORD:

KPMG Law LLP
Ottawa, Ontario

FOR THE APPELLANT

Gowling WLG (Canada) LLP
Toronto, Ontario

FOR THE APPELLANT

Shalene Curtis-Micallef
Deputy Attorney General of Canada

FOR THE RESPONDENT

Hameed Law
Ottawa, Ontario

FOR THE PROPOSED
RESPONDENTS, INDEPENDENT
JEWISH VOICES CANADA INC.,
DAVID MIVASAIR AND
ISMAIL ZAYID