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A.Y.S.A. Amateur Youth Soccer Association v. Canada (Canada Revenue Agency)

Federal Court of Appeal Decisions

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Docket: A-275-05

Citation: 2006 FCA 136

CORAM: LÉTOURNEAU J.A.

NOËL J.A.

EVANS J.A.

BETWEEN:

A.Y.S.A. AMATEUR YOUTH SOCCER ASSOCIATION

Appellant

and

CANADA REVENUE AGENCY

Respondent

Heard at Vancouver, British Columbia, on April 4, 2006.

Judgment delivered at Vancouver, British Columbia on April 5, 2006.

REASONS FOR JUDGMENT BY:

NOËL J.A.

CONCURRED IN BY:

LÉTOURNEAU J.A.

EVANS J.A.

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REASONS FOR JUDGMENT**NOËL J.A.**

[1] This is an appeal pursuant to subsections 172(3) and 180(1) of the *Income Tax Act*, R.S.C. 1985, c.1 (5th supp.), as amended (the "Act") from a decision by the Minister of National Revenue (the "Minister") denying the appellant's application to be registered as a charity under the Act.

The facts

[2] The facts are not in issue. Suffice it to say that the appellant was established to promote the sport of soccer, especially amateur youth soccer. Its main objective is to offer youths the opportunity to develop pride in their abilities and soccer skills.

[3] The appellant believes that its activities will promote healthy attitudes towards fitness and teamwork and improved time management skills, and encourage youth to spend their time pursuing physical fitness and team goals rather than illegal activities and antisocial behaviour.

[4] The operations of the appellant may be carried out exclusively in the Province of Ontario, and its application for registration as a charity was submitted on the basis that the activities would be carried out solely in Ontario.

[5] It is common ground that the appellant's purpose and object, the promotion of soccer, is an end in itself. It is not incidental to any other purpose.

[6] The Act provides a limited definition of the term "charitable organization", as well as the circumstances in which such an organization may be registered as a charity under the Act:

Definitions

149.1.(1) In this section,

...

"charitable organization"

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

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

(b) no part of the income of which is payable to, or is otherwise for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof,

...

Définitions

149.1.(1) Les définitions qui suivent s'appliquent au présent article.

[...]

« oeuvre de bienfaisance »

« oeuvre de bienfaisance »
Oeuvre, constituée ou non en société:

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

b) dont aucune partie du revenu n'est payable à l'un de ses propriétaires, membres, actionnaires, fiduciaires ou auteurs ni ne peut servir, de quelque façon, à leur profit personnel;

[...]

Definitions

248.(1) In this Act,

"registered charity" at any time means

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

(b) a branch, section, parish, congregation or other division of an organization or foundation described in paragraph 248(1)

"registered charity" (a), that is resident in Canada and was either

created or established in Canada, paroisse, congrégation ou autre

Définitions

248.(1) Dans cette Loi,

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

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

b) division -- annexe, section,

created or established in Canada paroisse, congrégation ou autre --
 and that receives donations on its d'une oeuvre de bienfaisance,
 own behalf, fondation privée ou fondation
 publique, au sens du paragraphe
 that has applied to the Minister in 149.1(1), qui réside au Canada,
 prescribed form for registration qui y a été constituée ou y est
 and that is at that time registered établie et qui reçoit des dons en
 as a charitable organization, son nom propre.
 private foundation or public
 foundation;

[7] As the Act does not define what is charitable, recourse must be had to the common law to determine whether the purpose of an organization is charitable and, hence, whether it qualifies as a charity.

Decision in issue

[8] The various exchanges between the appellant and the Minister culminated in a final refusal letter dated June 8, 2005. In it, the Minister sums up the reasons for the refusal as follows:

In our previous correspondence we advised that the courts have not held the promotion of sport to be a charitable purpose...As [the appellant's] formal objects state that its overall purpose is to promote the sport of soccer, it does not qualify for registration as a charity.

The Association's activities, as described in its application, are focused on fulfilling its formal objects through such means as skills development camps, coach camps and scheduling of games and tournaments. Since its activities are centered on fulfilling a purpose which is not charitable at law, the promotion of sport, [the appellant's] activities are not charitable.

While the promotion of health may include activities aimed at increasing the physical fitness of youth through sporting activities, we are of the view that [the appellant] is focused upon the promotion of the sport of soccer and as such, it does not qualify for registration.

Position of the appellant on appeal

[9] The appellant concedes that the overwhelming weight of the common law authorities is consistent with the Minister's view that the promotion of sport *per se* is not regarded as a charitable purpose.

[10] However, the appellant relies on an apparent departure from this line of authority by the Ontario High Court of Justice, Divisional Court in *Re Laidlaw Foundation* (1984), 13 D.L.R. (4th) 491 at 506 and 523-24, confirming an earlier decision of the Surrogate Court ((1983), 18 E.T.R. 77), which had held that the promotion of amateur sport involving the pursuit of physical fitness is a charitable purpose.

[11] The appellant submits that in Ontario at least, *Re Laidlaw Foundation* is authority for the proposition that the promotion of athletic sport is a charitable purpose. As it intends to carry out its activities in Ontario, it submits that the common law of Ontario should apply in determining whether it qualifies as a charity for purposes of the Act.

[12] In support of this submission, the appellant relies on section 8.1 of the *Interpretation Act*, R.S.C. 1985, c. I-21 which provides:

Duality of legal traditions and application of provincial law Tradition bijuridique et application du droit provincial

8.1 ~~both the common law and~~
 the civil law are equally authoritative and recognized sources of the law of property and civil rights in Canada and, unless otherwise provided by law, if in interpreting an enactment it is necessary to refer to a province's rules, principles or concepts forming part of the law of property and civil rights, reference must be made to the rules, principles and concepts in force in the province at the time the enactment is being applied.

8.1 ~~Le droit civil et la common law font pareillement autorité et sont tous deux sources de droit en matière de propriété et de droits civils au Canada et, s'il est nécessaire de recourir à des règles, principes ou notions appartenant au domaine de la propriété et des droits civils en vue d'assurer l'application d'un texte dans une province, il faut, sauf règle de droit s'y opposant, avoir recours aux règles, principes et notions en vigueur dans cette province au moment de l'application du texte.~~

[Emphasis added.]

Analysis and decision

[13] In my respectful view, it is not necessary in this case to have recourse to the common law of Ontario because, even if the law of Ontario is as the appellant suggests, the Act already provides for the tax status of the appellant in a manner which precludes the possibility of its being registered as a charitable organization. This is apparent from the legislative scheme and its history.

[14] Subsections 110.1(1) and 118.1(1) of the Act allow corporations and individuals to claim deductions for gifts made to registered charities, as well as registered Canadian amateur athletic associations. The term "registered Canadian amateur athletic association" is defined in paragraph 248(1) as:

Definitions

248.(1) In this Act,

...

"registered Canadian amateur athletic association" « association canadienne enregistrée de sport amateur »

"registered Canadian amateur athletic association" means an association that was created under any law in force in Canada, that is resident in Canada and that

(a) is a person described in paragraph 149(1)(l), and

(b) ~~has as its primary purpose~~

Définitions

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

[...]

« association canadienne enregistrée de sport amateur »
 "registered Canadian amateur athletic association"

« association canadienne enregistrée de sport amateur »
 Association, résidant au Canada, qui est constituée en vertu d'une loi en vigueur au Canada et qui présente les caractéristiques suivantes:

a) il s'agit d'une personne visée à

~~l'alinéa 149(1)(b).~~

~~(b) has, as its primary purpose and its primary function, the promotion of amateur athletics in Canada on a nation-wide basis,~~

that has applied to the Minister in prescribed form for registration, that has been registered and whose registration has not been revoked under subsection 168(2);

- b) son but premier et sa mission principale consistent à promouvoir le sport amateur au Canada à l'échelle nationale;**
- c) elle a présenté au ministre, sur formulaire prescrit, une demande d'enregistrement, elle a été enregistrée et son enregistrement n'a pas été annulé par application du paragraphe 168(2).**

[Emphasis added.]

[15] Paragraph 149(1)(l) to which reference is made in the above provision provides for a class of organizations which, by reason of the fact that they operate for a purpose other than profit, are exempt from Part I tax (non-profit organizations). Included within this class are non-profit organizations whose primary purpose and function is the promotion of amateur athletics in Canada:

Miscellaneous exemptions

149. (1) No tax is payable under this Part on the taxable income of a person for a period when that person was

...

Non-profit organizations

(l) a club, society or association that, in the opinion of the Minister, was not a charity within the meaning assigned by subsection 149.1(1) and that was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder was a club, society or association the primary purpose and function of which was the promotion of amateur athletics in Canada;

Exemptions diverses

149. (1) Aucun impôt n'est payable en vertu de la présente partie, sur le revenu imposable d'une personne, pour la période où cette personne était:

[...]

Organisations à but non lucratif

l) un cercle ou une association qui, de l'avis du ministre, n'était pas un organisme de bienfaisance au sens du paragraphe 149.1(1) et qui est constitué et administré uniquement pour s'assurer du bien-être social, des améliorations locales, s'occuper des loisirs ou fournir des divertissements, ou exercer toute autre activité non lucrative, et dont aucun revenu n'était payable à un propriétaire, un membre ou un actionnaire, ou ne pouvait par ailleurs servir au profit personnel de ceux-ci, sauf si le propriétaire, le membre ou l'actionnaire était un cercle ou une association dont le but premier et la fonction étaient de promouvoir le sport amateur au Canada;

[16] Where an organization qualifies under paragraph 149(1)(l), subsection 227(14) provides that it is also exempt from tax under Parts IV, IV.1, VI and VI.1; and subsection 181.1(3) provides that no tax is payable under Part I.3.

[17] It follows that a registered Canadian amateur athletic association is tax exempt, and that its benefactors can obtain tax deductions or credits. Like a registered charity, it pays no taxes and can issue tax receipts.

[18] This charity-like status which the *Act* grants to registered Canadian amateur athletic associations goes back to the 1969 White Paper for Tax Reform, where it was proposed that national amateur athletic associations be treated as charities for income tax purposes (*Proposals for Tax Reform*, The Hon. E.J. Benson, (1969) at 17). At the time, there was no possible ambiguity as to the state of the common law; courts had consistently held throughout the common law world that the pursuit of sports was not a charitable purpose unless it was incidental to some other charitable purpose (*Re Nottage*, [1895] 2 Ch. 649; *Re Patten*, [1929] 2 Ch. 276 (Eng.Ch. Div.); *Laing v. Commissioner of Stamp Duties*, [1948] N.Z.L.R. 154; *Williams' Trustees v. IRC*, [1947] A.C. 447; *IRC v. City of Glasgow Police Athletic Association*, [1925] A.C. 380; *Re Grey*, [1925] Ch. 362 (Eng. Ch. Div)).

[19] Effective for the 1972 and subsequent taxation years, the *Act* was amended (1974-75-76, c. 26 s. 103(3)) so as to allow non-profit organizations which have as their primary function the promotion of amateur athletics in Canada to register under the *Act* and issue tax receipts provided that they operate on a nation-wide basis. On the same occasion, paragraph 149(1)(l) was amended to specifically allow these organizations to distribute income to member associations which share the same purpose, without losing their tax-exempt status (see the closing part of paragraph 149(1)(l)). This last amendment appears to have been intended to allow registered Canadian amateur athletic associations to fulfill their nation-wide mandate.

[20] In formulating this status in 1972, Parliament must be taken to have been aware that no association which has, as its main purpose, the pursuit of amateur sport could qualify as a charity under the common law, and hence, under the *Act*. That is the background against which Parliament opted to provide a charity-like treatment for amateur athletic associations, but only with respect to those which met the requirements specified in paragraph 248(1).

[21] This brief legislative history shows that Parliament has put its mind to the tax treatment of amateur sports associations and that it was willing to forgo federal tax dollars to promote amateur sport in Canada, but only if the funds were to be expended on a country-wide basis. Parliament did not want to assist in the funding of these associations if the beneficiaries were to be limited to a province or region.

[22] In my view, this scheme precludes the possibility that an amateur sport association be treated as a charity under the *Act*. Parliament gave these associations a special status under the *Act* subject to specific terms and conditions. It follows that Parliament must be taken to have occupied the field respecting the tax treatment of amateur sports associations, regardless of their status in the law of charity. Indeed, as this case illustrates, to hold otherwise would frustrate Parliament's clearly expressed intent to limit the federal funding of amateur sports associations to those which operate nationally.

[23] I, therefore, conclude that regardless of the state of common law, the *Act* forecloses the possibility that an association such as the appellant, whose primary purpose is the pursuit of amateur sport, can be registered as a charity under the *Act*. As such, section 8.1 of the *Interpretation Act* is of no assistance to the appellant.

[24] I would dismiss the appeal with costs.

"Marc Noël"

J.A.

"I agree"

"Gilles Létourneau"

J.A.

"I agree"

"John M. Evans"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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