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Maccabi Canada v. Canada (National Revenue)

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Date: 1998-06-30

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Date: 19980630

Docket: A-587-96

CORAM: DENAULT J.A.

DÉCARY J.A.

LÉTOURNEAU J.A.

BETWEEN:

MACCABI CANADA

Appellant

AND:

THE MINISTER OF NATIONAL REVENUE

Respondent

Heard at Ottawa, Ontario, Tuesday, June 30, 1998

Judgment delivered from the Bench at Ottawa, Ontario,

on Tuesday, June 30, 1998

REASONS FOR JUDGMENT OF THE COURT BY:

LÉTOURNEAU J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario

on Tuesday, June 30, 1998)

LÉTOURNEAU J.A.

[1] This is an appeal pursuant to subsections 172(3) and 180(1) of the *Income Tax Act* (Act) from a decision of the Minister of National Revenue made under paragraph 168(1)(b) of the Act and dated July 12, 1996 to revoke the Appellant's registration (Maccabi Canada) as a registered Canadian amateur athletic association.

[2] The core issue in this appeal is the interpretation to be given to the phrase "the promotion of amateur athletics in Canada on a nation-wide basis" found in the definition of registered Canadian amateur athletic association (RCAA) contained in paragraph 110(8)(b) of the Act as it was in 1975 when the Appellant's registration occurred. The definition now appears in subsection 248(1) of the Act and is to the same effect. Paragraph 110(8)(b) read:

"(b) 'Registered Canadian amateur athletic association' - '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

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

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applied to the Minister in prescribed form for registration, that has been registered and whose registration has not been revoked under subsection 168(2); and"

[3] The Respondent, in reviewing the registration of the Appellant, took the position that the words "nation-wide basis" in the definition of RCAA not only refer to a geographic dimension, but also include a demographic component, that is to say that the words in the context of an athletic activity incorporate a reference to all the people or residents of the Canadian nation and, thus, require widespread availability among the people of this country. In other words, according to the Respondent, the RCAA must not only carry on "activities across Canada" (this is the geographic element), but must also provide "a public benefit to Canadians in general" (this is the demographic aspect of the notion)^[1].

[4] On that basis, the Respondent proceeded to review the enunciated purpose in the Application for Registration submitted by the Appellant in 1975 as well as the purposes and objects described in the Letters Patent governing the Appellant. We reproduce these purposes and objects for a better understanding of the Respondent's position:

APPLICATION FOR REGISTRATION

Additional Particulars

Funds are raised for the purposes of selecting, preparing, training and equipping a Canadian team to participate in the Maccabiah Games which are held in Israel every four years. The next Maccabiah Games will be held in July, 1977.

LETTERS PATENT

- (a) to foster and encourage the participation of Jewish amateur athletes and sportsmen of Canada in Maccabiah Games competition held quadrennially in Israel;
- (b) to participate in the supervision, direction, preparation, administration and conduct of the Maccabiah Games;
- (c) to help insure the participation of Canadians in the Maccabiah Games;
- (d) to organize, prepare and select a team of athletes from Canada at all the Maccabiah Games and other activities and to develop the highest skills and ideals of sportsmanship in Canadian Jewish youth;

[5] A reading of these objectives convinced the Respondent that the Appellant excluded from its ranks all Canadians who were not Jewish or of Jewish faith and, therefore, did not meet the demographic requirement contained in the words "nation-wide basis". It concluded that the registration was erroneously granted to the Appellant in 1975 and decided to revoke it.

[6] Counsel for the Appellant has forcefully argued that the Minister could not use the revocation power under paragraph 168(1)(b) of the Act because the Appellant has never ceased to comply with the requirements of the Act for its registration. He submitted that the Minister did not have the power under section 168 to correct the previous error, if error there was in the application of the law to the specifics of the Appellant's case.

[7] It is true that the contents of subsection 168(1) dealing with the revocation of the registration of a RCAA is not free from ambiguity. It is not clear whether the Minister can revoke a registration on the ground that the organization has ceased to comply with the requirements of the Act when his contention is that the organization never complied with such requirements in the first place. On the other hand, it is also clear that the Appellant cannot claim a vested right to benefit eternally from an error that the Minister would have committed more than 20 years ago. In any event, in view of the conclusion we have come to on the interpretation of the words "nation-wide basis", there is no need to decide this issue.

[8] In our view, these words describe a geographic requirement only. It is sufficient that a Canadian amateur athletic association applying for registration under the Act carries on activities across Canada and not be provincially, regionally or locally limited. This interpretation is consistent with the legislative intent to ensure that the issuing of receipts to donators would come from a single organization at the national level and that Revenue Canada would not have to interface with a myriad of provincial, regional and local organizations.

[9] The Appellant has provided us with a substantial number of diversified references in English and French drawn on Internet in which the words "nation-wide" (in French, "à l'échelle nationale") are used. These words are all employed in a geographical context to mean across Canada or to differentiate between the international or the provincial level.^[2]

[10] These references are obviously not determinative of the issue before us, but they help to understand the common and usual meaning generally ascribed to these words. The Respondent has not been able to point to any reference in the Act which would justify giving them a different and more encompassing meaning like the one sought.

[11] Counsel for the Respondent argued at the hearing that RCAAA such as the Appellant should be inclusive of all Canadians without exclusions based notably on race, religion or ethnicity. The only exclusions that could be justified would be those imposed by the sport itself such as in the practice of hockey where age can be a valid factor of differentiation between Minor and Old Timers hockey.

[12] Counsel may be right in his contention that a Canadian amateur athletic association who advocates and applies exclusionary or discriminatory practices should not be granted a registration so as to enjoy tax benefits. However, such policy is not to be effected by us artificially including now in the words "nation-wide basis" a demographic requirement which was not originally contemplated and intended by Parliament.

[13] Furthermore, in introducing as he did the concept of public benefit in the definition of RCAAA, the Minister has introduced a legal requirement that is associated with the definition of "charity". Such a requirement is, of course, foreign to the definition of RCAAA which, as paragraph 149(1)(b) clearly says, presupposes that the association is not a charity. The "public benefit", if any is needed, is found in the promotion of amateur athletics in Canada, a condition that is not in issue in these proceedings.

[14] For these reasons, the appeal will be allowed and the Respondent's decision to revoke the Appellant's registration will be set aside. There shall be no costs as the appeal was introduced under the former Federal Court Rules.

"Gilles Létourneau"

J.A.

FEDERAL COURT OF APPEAL

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APPEARANCES:

Mr. Arthur B.C. Drache

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