

Federal Court of Appeal



Cour d'appel fédérale

Date: 20180322

Docket: A-258-17

Citation: 2018 FCA 61

**CORAM: RENNIE J.A.
WOODS J.A.
LASKIN J.A.**

BETWEEN:

AHLUL-BAYT CENTRE, OTTAWA

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

Heard at Toronto, Ontario, on March 22, 2018.
Judgment delivered from the Bench at Toronto, Ontario, on March 22, 2018.

REASONS FOR JUDGMENT OF THE COURT BY:

LASKIN J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on March 22, 2018).

LASKIN J.A.

[1] In September 2017, the Minister of National Revenue advised the Ahlul-Bayt Centre, Ottawa that she would revoke the Centre's registration as a charity under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) after 30 days by publishing a copy of a notice of intention to revoke in the *Canada Gazette*. The Centre promptly commenced this application in this Court under paragraph 168(2)(b) of the Act and rule 300(b) of the *Federal Courts Rules*, SOR/98-106. In its

notice of application, it seeks an order prohibiting publication of a copy of the notice of intention to revoke – and thus prohibiting the revocation itself – until the later of 30 days after the Minister has disposed of the Centre’s objection to the notice, or June 30, 2018. In October 2017, Justice Gleason of this Court granted an interim stay of proceedings prohibiting the Minister from publishing a copy of the notice until this application is determined.

[2] In oral argument, the Centre advised the Court that it is now seeking an order prohibiting the Minister from publishing the notice of intention until the latest of three dates – the two set out in its notice of application, and 30 days from the Minister’s disposition of the Centre’s request to transfer its school to another charity.

[3] The Centre operates an Islamic school that offers classes from junior kindergarten to grade eight. The school has 160 students and 16 full-time teachers. It follows the Shia philosophy. It has been ranked by the Fraser Institute as the top elementary school in Ottawa, and one of the best in the province. The Centre also offers community programs for children and young people.

[4] The registration of the Centre as a charity provides it, like other registered charities, with a significant advantage: it can offer a tax incentive to donors. Individuals receive a tax credit and corporations, a tax deduction for their donations to the Centre.

[5] The Act and the Regulations set out requirements with which registered charities must comply to maintain the fairness and integrity of the registration system. When a registered

charity fails to comply, the Minister may give notice that she proposes to revoke its registration. Where notice is given, the Minister may, after 30 days from the mailing of the notice, or after any longer period this Court or a judge of this Court may allow, publish a copy of the notice in the *Canada Gazette*. On publication, the registration is revoked. If the Minister subsequently confirms her decision, having considered the charity's objections, the charity nonetheless remains entitled to appeal the revocation to this Court. If the appeal succeeds, charitable status may be reinstated.

[6] The Charities Directorate of the Canada Revenue Agency is responsible for ensuring that registered charities comply with their statutory obligations. The Directorate conducted an audit of the Centre's books and records for 2009 and 2010. It concluded that the Centre was in serious non-compliance with statutory requirements. Among other things, it concluded, the Centre

- failed to demonstrate that it was constituted for exclusively charitable purposes;
- failed to demonstrate that it devoted its resources to charitable activities by purchasing and holding title to a property in Montreal for the primary use of another, unregistered organization, and conferring inappropriate benefits;
- failed to maintain and provide proper books and records; and
- contravened the receipting requirements of the Act by providing blank receipts to the unregistered organization to help it collect funds, issuing official receipts for tuition payments in excess of the eligible portion of these payments, and issuing donation receipts not in accordance with the Act and the Regulations.

[7] The Centre was given an opportunity to respond to these concerns, and submitted two letters in response. After reviewing these submissions, the Directorate concluded that the Centre's registered status should be revoked. It issued a notice of intention to revoke dated September 7, 2017, advising that registration would be revoked after 30 days. A senior official in the Directorate has deposed that the decision to revoke immediately after 30 days, rather than await the outcome of the objection and appeal process, was based on the seriousness of the Centre's contraventions of its statutory obligations and the resulting harm to the public.

[8] The decisions of this Court establish, and the parties agree, that the test to be applied in considering the Centre's application to extend the period for publication of the notice of intention to revoke is the test for granting a stay or injunction set out by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311, 1994 CanLII 117 (SCC) at 314, adapted to this context; see, for example, *Cheder Chabad v. Canada (National Revenue)*, 2013 FCA 196, 456 N.R. 158 at paras. 12-13. The test has three parts. All three must be satisfied for the extension to be granted.

[9] First, a preliminary assessment must be made of the merits of the charity's objection to the Minister's proposed revocation, to ensure that there is a serious issue to be determined. The threshold here is a low one.

[10] Second, it must be determined whether the charity seeking the extension will suffer irreparable harm if it is refused and it ultimately succeeds on the merits. Irreparable harm is harm that cannot be quantified in monetary terms or cannot otherwise be cured. The interests of those

who are dependent on the charity may also be considered on this branch of the test: *Glooscap Heritage Society v. Canada (National Revenue)*, 2012 FCA 255, 440 N.R. 232 at para. 34.

[11] Third, an assessment must be made as to the balance of convenience or inconvenience – as to who as between the charity and the Minister would suffer greater harm from the granting or refusal of the extension. Any harm that the granting of the extension would cause to the public interest is also a consideration relevant to this element of the test. The public has a legitimate interest in the enforcement of the requirements applicable to registered charities: *Glooscap Heritage Society*, above at paras. 51-54.

[12] All three parts of the test must, of course, be considered based upon the evidentiary record before the Court. Each case turns on its own facts as they appear from that record: *Cheder Chabad*, above at para. 27.

[13] We have carefully reviewed the evidentiary record in this case against each of the three parts of the test, and listened closely to the submissions of counsel. We accept that the first part of the test is made out, though we note that the Centre adduced no evidence and made no submissions in its memorandum on the substance of its objections to the Directorate's findings.

[14] However, in our view, the evidence falls well short of establishing irreparable harm. The application therefore fails on the second part of the test.

[15] It is a long-established principle that irreparable harm cannot be inferred, but must be established by clear and compelling evidence: *Cheder Chabad*, above at para. 26. General assertions cannot establish irreparable harm. Nor can “[a]ssumptions, speculations, hypotheticals and arguable assertions, unsupported by evidence”; they carry no weight. Instead, “there must be evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless [an extension] is granted”: *Gateway City Church v. Canada (National Revenue)*, 2013 FCA 126, 445 N.R. 360 at paras. 15-16.

[16] In paragraph 52 of its memorandum, the Centre puts its case on irreparable harm as follows:

The irreparable harm to ABCO will be that the School will be forced to close within one or two months if Publication is not delayed. Publication will crystallize the revocation of ABCO’s charitable tax status and ABCO will be prohibited from issuing charitable tax receipts. Parents who cannot afford the School’s tuition without the charitable tax receipts will have to withdraw their children from the School. Publication will negatively affect ABCO’s reputation in the community, which will likely cause more students to withdraw from the School. These withdrawals will reduce the School’s tuition revenue and donor base, which in turn will reduce the funds available to subsidize lower income families’ tuition. The result will be that even more parents will not be able to afford tuition and will have to withdraw their children. The loss of tuition revenue and the reduction of the donor base for School related fundraising will make ABCO financially incapable of operating the School, leading to its closure.

[17] In oral argument, the Centre advised the Court that it was no longer relying on the impact of revocation on the Centre’s reputation in the community as an element of its case on irreparable harm, though it remained a factor that the Court should take into account in determining the balance of convenience. I would nonetheless point out that it would be open to the Centre to try to allay any concerns that its community might have about the reasons for the

Minister's position by informing its community of the nature of the Minister's concerns and its attempts to address them.

[18] In our view, the evidence that the Centre puts forward to support the chain of events leading to irreparable harm does not meet the required standard. Among other things, the evidence as to the Centre's financial position is unclear or incomplete. The evidence that significant numbers of parents would withdraw their children from the school within one or two months is also neither clear nor compelling.

[19] I will provide some examples.

- The Centre has provided no supporting documentation that would disclose and clarify its current financial position. Its current budget is not before us. There are also no current cash flow statements, reports on donations, or statements of future funding requirements.
- The affidavits on which the Centre relies in asserting that so many students will leave the school that it will have to close within one or two months were sworn in September and October 2017. At the time they were sworn there were still some eight months remaining in the school year. It is now March 2018, and only some three months remain. According to the evidence, students who leave the school before the end of the school year must give two months' written notice and pay tuition fees for the two month period. There is nothing in the evidence that addresses the impact of the current timing on parents' decision-making. It appears far from probable that

significant numbers of parents would withdraw their children when doing so would oblige them to pay two months' tuition in any event, and to find new schools for their children for the short period remaining in the school year. The timing relative to the end of the school year distinguishes this case from *Cheder Chabad*, above, on which the Centre heavily relies.

- There is evidence from only one parent as to the withdrawal of students from the school if the Centre is no longer able to issue tax receipts. He has three children at the school. He testifies only that without a tax receipt, he “would likely need to withdraw one or more of [his] children,” and goes on to say that he “[does] not know if [his] family would qualify for a subsidy.” His evidence also provides no particulars of his financial situation, and does not address the fact that the end of the school year is approaching.
- There is also evidence from only one parent concerning the impact of losing subsidies. He testifies only that if the subsidy ended, he “[does] not think [he] could keep his children at the School.” He too provides no details of his financial position.
- It appears from the evidence that 23 families have applied for subsidies, and that subsidies amount to \$140 per student per month. The provision of subsidies for the remainder of the school year, even assuming all of the applicants for subsidies received them, would entail only a relatively modest expenditure.
- While the Centre asserts that “[t]he loss of tuition revenue and the reduction of the donor base for School related fundraising will make ABCO financially incapable of

operating the School, leading to its closure,” it has not, as noted above, provided its current budget or other supporting financial information. Nor has it addressed the findings of the Directorate that it operated at a net surplus in every year from 2009 to 2015. Its financial statements for 2016 also show an excess of revenues over expenditures of \$307,242. There is no evidence satisfactorily explaining how this surplus position squares with the affidavit evidence submitted by the Centre that the school is operating at a deficit.

- The evidence indicates that the Centre has unencumbered real property assets valued at approximately \$2.9 million. While there is evidence that it would be difficult and time-consuming to sell any of these assets or to use them as a source of financing, there is no evidence to demonstrate any efforts that the Centre has made, particularly since the Minister’s September 2017 notice, to do so.

[20] Further examples could be cited. Taken as a whole, the evidence is in our view insufficient to establish irreparable harm. Given this conclusion there is no need to consider the third, balance of convenience part of the test.

[21] For these reasons, the application is dismissed with costs.

"John B. Laskin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-258-17

Judicial Review of a decision of: Application for an Order prohibiting the Minister of National Revenue from publishing in the Canada Gazette a copy of the Minister's Notice of Intention to revoke the registration of Ahlul-Bayt Centre "ABCO" as a charity pursuant to the *Income Tax Act*.

STYLE OF CAUSE: AHLUL-BAYT CENTRE,
OTTAWA v. MINISTER OF
NATIONAL REVENUE

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: MARCH 22, 2018

REASONS FOR JUDGMENT OF THE COURT BY: RENNIE J.A.
WOODS J.A.
LASKIN J.A.

DELIVERED FROM THE BENCH BY: LASKIN J.A.

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