

Date: 20090506

Docket: A-448-08

Citation: 2009 FCA 148

**CORAM: LINDEN J.A.
SEXTON J.A.
RYER J.A.**

BETWEEN:

THE HOUSE OF HOLY GOD

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on May 6, 2009.

Judgment delivered from the Bench at Toronto, Ontario, on May 6, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

Date: 20090506

Docket: A-448-08

Citation: 2009 FCA 148

**CORAM: LINDEN J.A.
SEXTON J.A.
RYER J.A.**

BETWEEN:

THE HOUSE OF HOLY GOD

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on May 6, 2009)

RYER J.A.

[1] This is an appeal by The House of Holy God (the “appellant”), pursuant to paragraph 172(3)(a.1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the “ITA”), from a notice (the “Notice of Intent to Revoke”) of intention to revoke the charitable registration of the appellant under the ITA that was given by the Minister of National Revenue (the “Minister”) to the appellant on July 3, 2007. Unless otherwise indicated, all references to statutory provisions in these reasons are to the corresponding provisions of the ITA.

[2] The Notice of Intent to Revoke arose out of an audit of the activities of the appellant that was undertaken by the Minister in 2006. In that notice, the Minister expressed the intention to revoke the appellant's charitable registration, pursuant to paragraphs 149.1(2)(a) and 168(1)(b), based upon three findings:

- (a) the appellant had not operated exclusively for, or devoted all of its resources to, charitable purposes, in particular the advancement of religion, as required by paragraph (a) of the definition of charitable organization in subsection 149.1(1), and thereby ceased to comply with the requirements for registration as a registered charity, as contemplated by paragraph 168(1)(b); instead, the appellant was solely engaged in the business of producing and selling maple syrup and maple syrup products (the "maple syrup business");
- (b) the maple syrup business is not a related business, within the meaning of subsection 149.1(1) (a "related business") because it is unrelated to the charitable objects of the appellant and because it is run by its directors who remunerated for their efforts, and not by volunteers; and
- (c) the directors of the appellant received remuneration from the appellant in respect of their employment in the maple syrup business.

[3] On September 24, 2007, the appellant filed a notice of objection to the Notice of Intent to Revoke, as permitted by subsection 168(4). By notice of confirmation, dated August 22, 2008, the Minister confirmed the Notice of Intent to Revoke on the basis of two of the three findings that were

stipulated in the Notice of Intent to Revoke. The matter of personal benefits being provided by the appellant to its directors was not mentioned in the notice of confirmation.

[4] The conclusions of the Minister that the appellant ceased to comply with the registration requirements under the ITA, as contemplated by paragraph 168(1)(b), and that the appellant carries on a business that is not a related business of the charity, as contemplated by paragraph 149.1(2)(a), are conclusions of mixed fact and law that are reviewable on a standard of reasonableness (see *Hostelling International Canada – Ontario East Region v. Canada (Minister of National Revenue – M.N.R.)*, 2008 FCA 396, [2009] 2 C.T.C. 89). To succeed in this appeal, the appellant must demonstrate that both of these conclusions are unreasonable, as each of them is a sufficient basis upon which the Notice of Intent to Revoke can be justified.

[5] The appellant argues that the maple syrup business is a related business because of a direct relationship between the activities of food production and the objects of the appellant, which require the appellant to carry on the teaching of the principles of Holy God. With respect, this assertion is unsupported by the record. While the objects of the appellant refer to the principles of Holy God, nowhere in the record is there any evidence of what those principles entail. In particular, the record does not contain any evidence that the carrying on of a maple syrup business is an element of religious doctrine. The references to the principles of Holy God that do exist in the record appear to be found only in representations or assertions made by counsel for the appellant in the period that preceded the notice of confirmation of the Notice of Intent to Revoke. Moreover, the record is similarly deficient with respect to evidence of any teaching activities that were undertaken by the

appellant. These bare assertions are not sufficient, in our view, to demonstrate that the Minister's finding that the maple syrup business was not a related business is unreasonable.

[6] In his factum, the appellant also argues that the maple syrup business should be regarded as a related business because the profit generated in that business is deposited in the so-called Rainbow Fund Raising Account for use by the appellant, at some future time, to construct a community centre. In our view, this argument cannot be accepted as it is contrary to the decision in this Court in *Earth Fund v. Canada (Minister of National Revenue – M.N.R.)*, 2002 FCA 498, 2003 D.T.C. 5016, wherein Sharlow J.A. stated, at paragraph 30:

I do not accept the argument of counsel for the appellant that the *Alberta Institute* case is authority for the proposition that any business is a “related business” of a charitable foundation if all of the profits of the business are dedicated to the foundation's charitable objects.

[7] In conclusion, the appellant has failed to persuade us that the finding of the Minister that the maple syrup business is not a related business is unreasonable. Accordingly, that finding must stand and it is sufficient to justify the decision of the Minister in the Notice of Intent to Revoke.

[8] It follows that the arguments of the appellant with respect to whether it operated exclusively for charitable purposes need not be considered.

[9] For the foregoing reasons, the appeal will be dismissed with costs.

“C. Michael Ryer”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-448-08

**(AN APPEAL FROM THE ORDER OF THE MINISTER OF NATIONAL REVENUE,
DATED AUGUST 20, 2008, FROM FILE NO. 0915330.)**

STYLE OF CAUSE: THE HOUSE OF HOLY GOD v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 6, 2009

REASONS FOR JUDGMENT OF THE COURT BY: (LINDEN, SEXTON & RYER JJ.A.)

DELIVERED FROM THE BENCH BY: RYER J.A.

APPEARANCES:

Mr. Brian Osler FOR THE APPELLANT
Mr. Glyn Hotz

Ms. Joanna Hill FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mr. Brian Osler FOR THE APPELLANT
Barrister, Solicitor & Notary Public
Richmond Hill, ON

Mr. Glyn Hotz
Barrister & Solicitor
Toronto, ON

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Ottawa, ON