Federal Court of Appeal | Cour d'appel fédérale

Date: 20191129

Docket: A-85-19

Citation: 2019 FCA 296

CORAM: **NADON J.A.**
RENNIE J.A.
RIVOALEN J.A.

BETWEEN:

CHURCH OF ATHEISM OF CENTRAL CANADA

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Heard at Ottawa, Ontario, on November 12, 2019.

Judgment delivered at Ottawa, Ontario, on November 29, 2019.

REASONS FOR JUDGMENT BY: RIVOALEN J.A.

CONCURRED IN BY: NADON J.A.
RENNIE J.A.

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REASONS FOR JUDGMENT

RIVOALEN J.A.

I. Introduction

[1] The appellant, the Church of Atheism of Central Canada, is a corporation incorporated under the *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23, for the following purpose:

> The purpose of the Corporation is to preach Atheism through charitable activities, in the City of Ottawa, the provinces of Ontario and Quebec, and whichever province shall from time to time be designated as part of Central Canada by the By-Laws.
>
> (Certificate of Incorporation, AB Tab 13(d) p. 115).

[2] The appellant applied to be a charity under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act) but the Minister of National Revenue (the Minister) denied its application. The appellant appeals that decision to this Court pursuant to sections 172(3) and 180 of the Act.

[3] The appellant grounds its appeal largely as a Charter argument. It submits that the common law test which governs the advancement of religion as a head of charity is invalid as it is contrary to sections 2, 15, and 27 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.. 11 (the Charter).

[4] The Minister's decision that the appellant does not meet the Act's requirement for registration as a charity is a question of mixed fact and law reviewable on the standard of reasonableness (*Prescient Foundation v. Canada (National Revenue)*, 2013 FCA 120, 358 D.L.R. (4th) 541, at paragraph 12).

II. The issues

[5] This Court must determine whether the Minister's decision to refuse to register the appellant as a charity under the Act:

A. violated the rights and freedoms guaranteed by sections 2(*a*), 15 and 27 of the Charter; and

B. was reasonable.

A. *Did the Minister's refusal to register the appellant as a charity violate its Charter rights?*

[6] Before addressing the Charter arguments, it is important to review what is required of an organization for it to obtain charitable recognition under the Act.

[7] Subsection 248(1) of the Act defines charity to include charitable organizations. Charitable organization is defined in subsection 149.1(1) in part as follows:

> (a) constituted and operated exclusively for charitable purposes,
>
> (a.1) all the resources of which are devoted to charitable activities carried on by the organization itself,
>
> [My emphasis].

[8] Because the Act does not define "charitable activities", we must turn to the common law to answer this question. At common law, there are four recognized charitable purposes, the two relevant to this appeal being "the advancement of religion" and "certain other purposes beneficial to the community" (*A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)*, 2007 SCC 42, [2007] 3 S.C.R. 217, at paragraph 26 [*A.Y.S.A*]).

[9] The common law has established specific requirements for both the "advancement" and the "religion" portions of that head of charity. "Advancement" requires active promotion; it is not enough that an organization create space for independent worship (*Fuaran Foundation v.*

Canada (Customs and Revenue Agency), 2004 FCA 181, 324 N.R. 78, at paragraph 14). The present appeal is concerned more with the definition of the word "religion".

[10] For something to be a "religion" in the charitable sense under the Act, either the Courts must have recognized it as such in the past, or it must have the same fundamental characteristics as those recognized religions. These fundamental characteristics are not set out in a clear "test". A review of the jurisprudence shows that fundamental characteristics of religion include that the followers have a faith in a higher power such as God, entity, or Supreme Being; that followers worship this higher power; and that the religion consists of a particular and comprehensive system of faith and worship (*Syndicat Northcrest v. Amseleum*, 2004 SCC 47, [2004] 2 S.C.R. 551, at paragraph 39).

[11] In the absence of legislative reform, Canadian courts must contend with the difficulty of articulating how the law of charities is to keep "moving" in a manner that is consistent with the nature of the common law (*Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10, at paragraph 150). In the absence of previous jurisprudence resolving this question, this Court must determine on the record before it whether the appellant is a charitable organization that operates exclusively for charitable purposes, the resources of which are devoted entirely to charitable activities.

[12] It is with this legal context that I now turn to the appellant's Charter arguments.

[13] At the outset, with respect to section 15 of the Charter, the Courts have recognized that not-for-profit corporations are not individuals for its purposes (*Humanics Institute v. Canada (National Revenue)*, 2014 FCA 265 leave to appeal to SCC refused, 36253 (April 23, 2015), at paragraph 12; *National Anti-Poverty Organization v. Canada (Attorney General)*, [1989] 3 FC 684 (FCA), leave to appeal to SCC refused, (November 23, 1989), 1989 CarswellNat 1290, at paragraph 22). The equality rights found in section 15 therefore do not apply to the appellant.

[14] Next, the appellant argues that the common law test for advancement of religion is contrary to section 27 of the Charter, which requires that the Court interpret the government's duty of neutrality with a view to promoting and enhancing diversity. The appellant submits that a test that requires belief in a deity does not only fail to enhance but actively discourages diversity.

[15] Section 27 of the Charter is not a substantive provision that can be violated and is "relevant only as an aid to interpretation" (*Roach v. Canada (Minister of State for Multiculturalism and Citizenship)*, [1994] 2 F.C. 406 (FCA), 113 D.L.R. (4th) 67, at paragraph 71). The respondent, however, concedes that the state's duty of religious neutrality under section 2(*a*) of the Charter relates to section 27, in part "with a view to promoting and enhancing diversity" (*Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, [2015] 2 S.C.R. 3, at paragraph 74 [*Saguenay*]).

[16] Turning therefore to section 2(*a*) of the Charter, the appellant is correct to point out that the courts have found that this section does protect the rights of atheists. Indeed, section 2 of the Charter protects the rights of the appellant's members to practise their beliefs in Atheism and the

Minister cannot interfere with the practice of these beliefs (*Saguenay*, at paragraph 70). However, I find in this case that the Minister's refusal to register the appellant as a charitable organization does not interfere in a manner that is more than trivial or insubstantial with the appellant's members ability to practise their atheistic beliefs. The appellant can continue to carry out its purpose and its activities without charitable registration (*Alberta v. Hutterian Bethren of Wilson Colony*, 2009 SCC 37, [2009] 2 S.C.R. 567, at paragraph 32 [*Hutterian*]).

[17] In conclusion, I find that the Minister's denial of the appellant's registration as a charity does not violate its rights under the Charter.

B. *Was the Minister's decision to deny the appellant registration as a charity reasonable?*

[18] As discussed earlier, the appellant argues that the advancement of Atheism ought to fit into the established charitable head "advancement of religion".

[19] As the courts have not previously recognized such a religious belief, the Minister must then look for three fundamental characteristics common to previously recognized religions fulfilling charitable purposes.

[20] The Minister found that Atheism did not meet any of the three elements established by the Courts to be fundamental to religion. He found that the worship of energy does not meet the first element that the adherents to a religious belief system have faith in a higher unseen power such as a God, Supreme Being, or entity. The Minister found that the second element of reverence of said Supreme Being could not exist without a belief in a Supreme Being.

[21] I agree with the appellant that the requirement that the belief system have faith in a higher Supreme Being or entity and reverence of said Supreme Being is not always required when considering the meaning of "religion". The appellant rightfully pointed to Buddhism as being a recognized religion that does not believe in a Supreme Being or any entity at all (*South Place Ethical Society, Barralet and Others v. A.G.*, [1980] 1 W.L.R. 1565, at page 1573).

[22] It is with respect to the third element that the appellant's submissions must fail. It did not demonstrate that its belief system is based on a particular and comprehensive system of doctrine and observances.

[23] The Minister rejected the appellant's claim that its doctrine of mainstream science fulfills the third element. Mainstream science is neither particularly specific nor precise. He found that the statement of the appellant that "[w]e believe…that our Ten Commandments of Energy are sacred texts because they were created by a wise human being who consists of pure, invisible Energy and has acknowledged Energy's existence" provides no detailed information as to the particular and comprehensive system of faith and worship. He found that the appellant's contention that there should not be a requirement that a religion have an authoritative book similar to the Bible was a further indication that the appellant does not have a comprehensive and particular system of faith and worship (Respondent's Report on Objection, November 5, 2018, AB, Tab 7).

[24] While I leave open to another day whether the existence of an authoritative text such as the Bible is a necessary requirement, given the scope and vagueness of what was asserted here, it

was reasonable for the Minister to deny the appellant under the heading of "advancement of religion".

[25] Finally, I turn to the appellant's argument that it fits within "certain other purposes beneficial to the community" as a religious self-help group. I find that the Minister's refusal to register the appellant as a religious self-help group is also reasonable. The activities provided by the appellant are for their members only and are not rehabilitative or therapeutic.

[26] One further word on the registration of an organization as a charity under the Act. There is no dispute that such registration is a privilege, not a right (*Many Mansions Spiritual Center, Inc. v. Canada (National Revenue)*, 2019 FCA 189, at paragraph 6). The privilege of registration as a charity functions as an indirect tax subsidy to encourage the work of registered charities. The Supreme Court of Canada has found that, in reviewing applications, the Minister is obliged to look at the substance of the purpose and activities of the applicant to ensure they comply with the requirements in the Act (*Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue)*, 2002 FCA 323, 293 N.R. 144, at paragraphs 2-3; *A.Y.S.A.* at paragraph 42). That is precisely what the Minister had done in this case.

[27] In conclusion, based on the record before him, it was reasonable for the Minister to decide that the appellant could not be registered as a charitable organization because it lacked a charitable purpose, as defined by the common law, and did not carry out charitable activities in furtherance of that charitable purpose, as is required by the common law.

III. Conclusion

[28] I find no reviewable error in the Minister's decision. The record does not support the appellant's request of this Court to recognise the Church of Atheism as a religion in the charitable sense. The Minister's decision to refuse to register the appellant is reasonable and does not violate sections 2(*a*), 15 and 27 of the Charter.

[29] For these reasons, I would dismiss the appeal, with costs.

"Marianne Rivoalen"
J.A.

"I agree.
M. Nadon J.A."

"I agree.
Donald J. Rennie J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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