Federal Court of Appeal

Cour d'appel fédérale

Date: 20141117

Docket: A-280-13

Citation: 2014 FCA 265

CORAM: **NOËL C.J.**
STRATAS J.A.
NEAR J.A.

BETWEEN:

HUMANICS INSTITUTE

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Heard at Ottawa, Ontario, on November 13, 2014.

Judgment delivered at Ottawa, Ontario, on November 17, 2014.

REASONS FOR JUDGMENT BY: NOËL C.J.

CONCURRED IN BY: STRATAS J.A.
NEAR J.A.

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REASONS FOR JUDGMENT

NOËL C.J.

[1] This is an appeal brought pursuant to subsection 172(3) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act) from a decision by the Minister of National Revenue (the Minister) confirming a decision by the Canada Revenue Agency (CRA) denying the appellant's application to be registered as a charity under the Act.

[2] The Minister denied the appellant's application on the basis it had not demonstrated, as required under subsection 149.1(1), that all its resources were devoted to charitable activities carried on by the organization itself. This conclusion was based on several premises. First, the appellant's purposes and objects were broad and vague. Second, the activities proposed in support of its stated purposes, particularly the plan to build and maintain a sanctuary and sculpture park, would not advance religion or education in the charitable sense. Third, the appellant's proposed funding of a foreign scholarship would constitute neither the organization's own activities nor the funding of a qualified donee.

[3] The appellant advances three grounds of appeal, arguing that the Minister's decision was unreasonable, procedurally unfair, and in violation of sections 2(*a*), 2(*b*), and 15 of the *Canadian Charter of Rights and Freedoms* (the *Charter*). For the following reasons, each of these arguments must be rejected.

[4] The appellant's central argument is that, in requiring faith in and worship of a supreme being and disqualifying the appellant's proposed sanctuary and sculpture park as an activity advancing religion in the charitable sense, the Minister applied an overly narrow conception of religion (appellant's memorandum at paras. 18 to 22 and 33).

[5] In my view, the Minister made no such error. Accepting that the Minister had to proceed on proper principle, the concept of "Oneness of Reality" advanced by the appellant is so broad and vague as to be practically unascertainable. The appellant has failed to show the existence of a "particular and comprehensive system of faith and worship" or a body of teachings and

doctrine that would bring the concept which it promotes within the legal acceptation of the word religion (*Syndicat Northcrest v. Amselem*, 2004 SCC 47, [2004] 2 S.C.R. 551 at para. 39).

[6] Even if the values promoted by the appellant do constitute a religion, however, the state of the law is such that, in order to advance a religion, there must be a targeted attempt to promote it (*Fuaran Foundation v. Canada (Customs and Revenue Agency)*, 2004 FCA 181, [2004] F.C.J. No. 825 at para. 15 [*Fuaran*]). It is not enough to "simply make available a place where religious thought may be pursued" (*ibidem*).

[7] In its communication with the appellant, the CRA cited this requirement, and took the view that the appellant was proposing to do precisely what this Court described in *Fuaran* when illustrating activities that would fall short of the advancement of religion in the charitable sense (appeal book, vol. 2, p. 603). While the appellant has attempted to distinguish *Fuaran* on the basis that other considerations were at play in that case, the proposition for which it stands is unaffected. The appellant has not shown that the conclusion reached by the Minister was unreasonable.

[8] Though the appellant claims that it will actively promote religion by "initiating and supporting multi-religious, educational programs and services and will organize lectures, workshops and seminars" (appellant's memorandum at para. 24), this Court has held that merely expressing aspirations does not entitle an applicant to charitable status (*Sagkeeng Memorial Arena Inc. v. Canada (National Revenue)*, 2012 FCA 171, [2012] F.C.J. No. 827 at para. 8). Rather, the Minister may require the applicant to provide detailed and credible plans for the

latter's proposed activities (*ibidem* at para. 9).The Minister did so in this case, and determined that the appellant had failed to meet this requirement. The appellant has not demonstrated that this determination was unreasonable.

[9] In alleging procedural unfairness, the appellant argues that the Minister demonstrated a "closed mind" to its application and also denied the appellant any opportunity to respond to certain information gathered in the course of the Minister's investigation. The first allegation rests entirely on general assertions that find no support on the record. The appellant has not shown, for instance, that the Minister ignored its submissions or took a dismissive attitude towards the appellant. The second allegation is of no relevance to this appeal, as the Minister's decision was reasonably justified without any reference to the material in question (*Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada*, 2004 FCA 397, [2004] F.C.J. No. 1984 at para. 18).

[10] The appellant's *Charter* arguments must also fail. Its claim under section 2(*a*) of the *Charter* is only partially argued, as its submissions go solely to the existence of a religious belief, or what the Supreme Court has termed the "subjective part" of the analysis (*S.L. v. Commission scolaire des Chênes*, 2012 SCC 7, [2012] 1 S.C.R. 235 at para. 24). The appellant has not shown how the Minister's decision objectively interferes with the appellant's freedom of religion.

[11] Its claim under section 2(*b*) of the *Charter* is asserted without any supporting argument, and provides no basis for this Court to interfere with the Minister's decision (appellant's memorandum at para. 25).

[12] Finally, its claim under section 15 of the *Charter* is framed on the basis that the distinction applied by the Minister in failing to recognize its non-secular spiritual belief system discriminates against the appellant itself (appellant's memorandum at para. 27). However, the appellant is a not-for-profit corporation and this Court has expressly held that such organizations are not individuals within the meaning of section 15 (*National Anti-Poverty Organization v. Canada*, [1989] 3 F.C. 684 (FCA), leave to appeal to SCC refused 1989 CarswellNat 1290 (SCC) at para. 22).

[13] Moreover, as the above discussion illustrates, the Minister's refusal was not based simply on a distinction between the beliefs promoted by the appellants and some other set of beliefs. Rather, the appellant failed to show how it would promote those beliefs, and therefore failed to meet the registration requirements under the Act.

[14] I would dismiss the appeal with costs.

"Marc Noël"

Chief Justice

"I agree
David Stratas J.A."

"I agree
D.G. Near J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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	NEAR J.A.
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