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B.C. COURT UPHOLDS CRA GUIDELINES ON SPLIT-RECEIPTING

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A. INTRODUCTION

The *Richert* v. *Stewards' Charitable Foundation* decision[1] (*"Richert")* represents a novel civil action brought by a donor against a registered charity concerning the reduced amount reflected on a donation receipt. The *Richert* case is of importance, as it appears that it is the first time that a civil court has upheld Canada Revenue Agency's ("CRA") Technical News No. 26[2] concerning proposed new rules for split-receipting although the underlying legislation authorizing these rules is not yet law in Canada. This *Charity Law Bulletin* discusses the findings of the *Richert* case and the resulting implications in relation to a registered charity's right to issue "split-receipts."[3]

B. FACTS OF THE CASE

The Stewards' Charitable Foundation (the "Foundation") held a luncheon on September 11, 2003, which featured speaking presentations by two medical anthropologists who were professors at Ugandan and Canadian universities, with research interests focussed on the AIDS/HIV pandemic in Africa. The

1 [2005] B.C.C.J. No. 279 (B.C.S.C.) [hereinafter "*Richert"*].
2 Canada Revenue Agency, *Technical News No. 26*, December 24, 2002, was premised upon proposed draft technical amendments to the *Income Tax Act* released on December 20, 2002, by the Department of Finance.
3 For more information regarding split-receipting, please see *Charity Law Bulletin* No. 21, dated April 30, 2003, entitled "A Commentary on Draft Technical Amendments to the *Income Tax Act* Released on December 20, 2002 That Affect Charities;" and *Charity Law Bulletin* No. 23, dated July 22, 2003, entitled "New CCRA Guidelines on Split-Receipting.", both by Theresa L.M. Man and Terrance S. Carter, available at www.charitylaw.ca as background for this *Charity Law Bulletin*.

Foundation indicated in its invitation to the luncheon that in return for a $1,000 gift, donors would receive admission to the luncheon, as well as a "beautiful coffee table book of Africa to keep the memory of Africa and its suffering people in their minds long after this memorable luncheon presentation by these leading academics and researchers." Mr. Richert, a retired businessman in British Columbia forwarded the $1,000 gift to the Foundation on September 7, 2003 and had his accountant attend the luncheon on his behalf. The accountant received a voucher that was redeemable for the coffee table book. On February 15, 2004, the Foundation issued a receipt to Mr. Richert indicating that it had received $1,000 from Mr. Richert on September 9, 2003. However, the eligible amount for income tax deduction purposes was $855. In compliance with CRA's guidelines on split-receipting outlined in Technical News No. 26, the Foundation had calculated $855 as the eligible amount of the gift made by Mr. Richert to the Foundation by subtracting $145 as the amount of the advantage that Mr. Richert received from the Foundation, which included the luncheon meal ($45) and the coffee table book ($100).

In opposition to this characterization of the funds he had donated to the Foundation, Mr. Richert applied to the British Columbia Supreme Court for a declaration that the $1,000 forwarded to the Foundation was held by the Foundation pursuant to a resulting trust, not a gift to the Foundation, and, as such, should be returned to him in full. Various excerpts of Mr. Richert's affidavit filed with the court indicate that there was a misunderstanding on the part of Mr. Richert of his rights as a donor, and the obligations that the Foundation believed that it must adhere to:

> 17. It is common for people attending these sorts of talks to be fed. It is almost a given. I have attended the Vancouver Club several times in the past, and I do enjoy the food there. I appreciate it when a charitable organization creates a pleasant environment and provides a meal, and the thought of being served a nice meal may have been part of my motivation for deciding to make the donation and attend.
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> 18. I found out after the event that those who attended were provided with a book about Africa. I can imagine that receiving back a nice coffee table book might be an inducement to some people in some cases. In this instance, I was indifferent about receiving or not receiving the book or not.
> . . .
>
> 30. I made a cheque out to Stewards' intending the entire amount of $1000.00 to be a gift to a charity. Stewards' led me to believe that I had been invited to do just that. In my estimation, I was dealing solely with a charity.

> 31. But then, later, I found out through Mr. Loewen that Stewards' had accepted a gift of only $855 and had regard the balance of my contribution as a business transaction. This is not the gift I intended. That was not my agreement with Stewards'.

C. FINDINGS OF THE COURT

The issue that the court was asked to decide was how to the properly characterize the payment by Mr. Richert to the Foundation, i.e. as a payment pursuant to a contract between Mr. Richert and the Foundation or as a gift made by Mr. Richert to the Foundation. If it was the former, then Mr. Richer would be entitled to a return of his monies. If it was the latter, then the Foundation would be entitled to retain the $1,000 and issue a receipt to Mr. Richert for $855.

The court decided that the relationship between Mr. Richert and the Foundation was not one of contract. The allegation by Mr. Richert of mistake of fact was of no assistance to his argument because it was "a mistake on the part of Mr. Richert respecting the application of the *Income Tax Act* to his situation, not a mistake as to the transaction itself." Mr. Richert "believed" that he would get a tax receipt for the full $1,000, but this belief was not induced by any representation by the Foundation, because the Foundation only undertook to provide a receipt that was "in compliance with the *Income Tax Act*."

Instead, the court held that Mr. Richert had made a gift to the Foundation of $1,000, which was perfected, and that the Foundation had made a gift back to Mr. Richert in appreciation. The court agreed that a gift is "a voluntary transfer of personal property without consideration" and the court accepted that Mr. Richert intended to make a gift, and not a *quid pro quo.* The court rejected Mr. Richert's argument that the Foundation's gesture of appreciation operated as consideration that would make the gift "voidable" because "it confuses the treatment of his gift for tax purposes with the essence of the transaction themselves." The issuance of the receipt by the Foundation in the amount of $855 in accordance with CRA's Technical News No. 26 was accepted to be reasonable under the circumstances. In the end, Justice McEwan refused to award Mr. Richert the return of his $1,000 donation, as there "may be reason for the plaintiff to enquire as to the value of such tokens in the future, but it does not change the fact that the plaintiff made a complete gift to the defendant effective upon presentation of the money, and that the gift cannot now be undone".

D. IMPLICATIONS OF THIS CASE

Although Technical News No. 26 was premised upon proposed changes to the *Income Tax Act* released on December 20, 2002, which are still not passed as law in Canada, it is significant that a court of law up-held the compliance with Technical News No. 26, as required by CRA. In this regard, CRA's *Registered Charities Newsletter* No. 17 specifically indicates that the proposed guideline in Technical News No. 26 "can be relied on now, despite the fact that the proposed legislation is not yet law." If these rules are not complied with, charities run the risk of CRA revoking their charitable status under the *Income Tax Act*.

Although Mr. Richert was ultimately unsuccessful in advancing his claim for a declaration that the sum he forwarded to the Foundation was a resulting trust, the fact that this misunderstanding had to be settled in court was an unfortunate expense of the Foundation's charitable resources and time. In order to avoid similar types of disputes with donors, charities may wish to consider adopting the following courses of action:

- Charities should clarify in advance that the amount of the donation given by the donor will be offset by any advantage that the donor receives in accordance with CRA's guidelines on split-receipting. This will minimize possible donor misunderstandings concerning donation receipts not reflecting the full amount of their gift. Although the Foundation indicated in the invitation that "official charitable donation receipts in compliance with the *Income Tax Act* will be issued by Stewards' Charitable Foundation," it obviously was not clear to Mr. Richert that he would not receive a donation receipt for the full amount of $1,000.

- Where possible, a charity may want to provide two options to its donors when receiving gifts for a fundraising event, one which includes meals and/or gifts that form part of the requested gift, and one that does not. If donors so choose, they may be allowed to forego the meal and/or the gift and donate the entire requested amount to the charity, which would then issue a donation receipt for the full amount.

- If a charity fails to advise the donor that the eligible amount may be less than the full value of the donation received, the charity may want to direct unhappy donors to CRA's website[4] for further information

[4] http://www.cra-arc.gc.ca/tax/charities/menu-e.html.

regarding the split-receipting guidelines that charities are required to comply with. The donor can then conduct his or her own review with regard to the validity of the eligible amount as stated on the donation receipt.

- Donors should be informed that the relationship between a donor and a recipient charity cannot be exempted from the rules under the *Income Tax Act* governing the issuance of donation receipts. CRA requires that split-receipting rules be followed, and as a result, a receipt for the full amount of fundraising dinner tickets, for example, cannot be issued, but instead must be completed in accordance with CRA's guidelines.

E. CONCLUSION

Although registered charities are not legally required to advise donors prior to their making gifts that the amount of any advantage to the donor will be deducted from the gift in issuing the donation receipt, it may be prudent for charities to do so. However, public education with regard to the obligation of registered charities to comply with CRA's guidelines on split-receipting would alleviate future confusion. In order to avoid future misunderstandings, charities should be proactive in advising potential donors in advance when split-receipts will be issued.

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