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CRA JURISDICTION TO REVOKE CHARITABLE STATUS CONFIRMED BY COURT OF APPEAL

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A. INTRODUCTION

On February 18, 2010, the Federal Court of Appeal delivered its decision in *International Pentecostal Minsitry Fellowship of Toronto v. M.N.R.*, 2010 FCA 51.[1] The appeal was a challenge to the federal government's constitutional jurisdiction over the regulation of charities and its process when revoking charitable registration. The Court dismissed the appeal, finding that the Canada Revenue Agency ("CRA") acted within its jurisdiction when it revoked the Appellant's charitable status. The decision is very short but considers two issues of general importance for charities and their advisors.

B. BACKGROUND

The International Pentecostal Ministry Fellowship of Toronto (the "Appellant") was a registered charity under the *Income Tax Act* ("*ITA*"). In November 2005, the CRA undertook an audit of the Appellant for the 2002 and 2003 fiscal periods. The audit revealed a number of violations of the *Income Tax Act*, including a failure to maintain adequate books and records, improper receipting, and a failure to accurately report all tax receipted gifts and retain documents establishing its activities and expenditures outside Canada. As a result of the audit, CRA sent the Appellant a notice of its intent to revoke the Appellant's charitable status.[2] The Appellant subsequently filed a Notice of Objection. On February 8, 2008, CRA informed the Appellant of its

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[1] *International Pentecostal Minsitry Fellowship of Toronto v. Canada (National Revenue)*, 2010 FCA 51, para. 1.

[2] *Ibid.*, para 1.

intent to confirm the notice of intent to revoke, and allowed the Appellant until March 10, 2008 to make any further submissions. After reviewing the Appellant's submissions, CRA confirmed the proposal to revoke the Appellant's charitable registration on April 9, 2008. The Appellant appealed CRA's decision to revoke its charitable status to the Federal Court of Appeal.[3]

C. ISSUES

The Appellant made two arguments in support of their appeal. Firstly, the decision to revoke the Appellant's charitable registration exceeded CRA's constitutional jurisdiction and was void from the outset because exclusive legislative authority with respect to the regulation of charities lies with the provinces. Secondly, CRA failed to observe its own guidelines by deciding to revoke the Appellant's charitable status without first attempting to address the non-compliance through education, a compliance agreement, and a sanction.[4]

D. DECISION

1. Constitutional jurisdiction over charities

The Appellant attempted to argue that CRA's decision to revoke its charitable registration was void from the outset because the regulation of charities is outside the federal government's constitutional jurisdiction. Sections 91 and 92 of the *Constitution Act, 1867*[5] enumerate the exclusive legislative powers of the federal and provincial governments respectively. Subsection 92(7) gives the provinces the exclusive authority over "The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province…" However, under subsection 91(3) of the *Constitution Act, 1867*, the Parliament of Canada has the authority to make laws for "the raising of Money by any Mode or System or Taxation."

The decision turned on whether the registration and deregistration of charities under the *ITA* relates to the regulation of charities under subsection 92(7) or to taxation under subsection 91(3).[6] The Court found that the provisions of the *ITA* dealing with the registration and deregistration of charities are not an unconstitutional infringement of provincial legislative authority. In the Court's view, "these provisions relate, in their pith and substance, to federal taxation, and accordingly they are *intra vires* the Parliament of

[3] *Ibid.*, paras. 2-4.
[4] *Ibid.*, para. 5. Detailed information about CRA's compliance approach and procedures can be found in "Guidelines for Applying the New Sanctions", available at http://www.cra-arc.gc.ca/tax/charities/policy/newsanctions-e.html.
[5] *Constitution Act, 1867*, U.K. 30 &31 Victoria c. 3.
[6] 2010 FCA 51, para. 7.

Canada under subsection 91(3) of the *Constitution Act, 1867*. Both the advantages of registration and the drawbacks of revocation relate solely to the tax treatment of charities and their donors. They do not impermissibly affect the affairs of charities in any other way, nor do they impede provinces from otherwise regulating charities."[7] Therefore, it was within CRA's constitutional jurisdiction to revoke the Appellant's charitable status.

2. CRA's guidelines

The Court concluded that it was reasonably open to the Minister of National Revenue to find that the Appellant's breaches of the *Income Tax Act* were sufficiently serious to warrant revocation. CRA provided specific reasons as to why the Appellant's practices failed to comply with the *ITA* and ample time was given to the Appellant to bring its practices into compliance. The Court stated that the Appellant had failed to adequately respond to CRA's concerns.[8]

[7] *Ibid.*, para. 8.
[8] *Ibid.*, paras. 11-12.

E. CONCLUSION

In *International Pentecostal Ministry Fellowship of Toronto*, the Federal Court of Appeal confirmed that the federal government has jurisdiction over the registration of charities for taxation purposes. However, the decision is brief and does not address the broader question of constitutional jurisdiction over the regulation of charities, particularly with respect to some of the restrictions currently being imposed by CRA under various policies and "guidance." While it is likely that in the future the CRA will argue that the decision supports its jurisdiction to regulate all aspects of a charity's operations, including fundraising practices, these issues do not appear to have been fully argued before the Court and the decision should be confined to its facts.

The full text of the decision is available at:
http://www.canlii.org/en/ca/fca/doc/2010/2010fca51/2010fca51.html.

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