
TAX COURT OF CANADA CONSIDERS SOLICITED DONATIONS

*By Karen J. Cooper**

On February 24, 2010, the Tax Court of Canada released its decision in *Coleman v. The Queen*, 2010 TCC 109. The Appellants in the case had all made donations to the National Foundation for Christian Leadership (“NFCL”), a registered charity that provided scholarships and bursaries to students attending certain Christian universities.

NFCL operated a program called the Christian Higher Education Assistance Fund (“CHEAF”). To qualify for a bursary or scholarship under the CHEAF program, students were required to solicit donations for NFCL. Qualified students were then eligible to receive a bursary for 80% of the lesser of the amount of donations raised by that student and the student’s Maximum Eligible Amount (the total of the student’s tuition, fees, book costs and allowable housing costs, less any scholarships, bursaries or grants received from other sources). Students who met additional qualifications were also eligible to receive a scholarship for 10-20% of the lesser of the amount of donations raised by that student and the student’s Maximum Eligible Amount. To be eligible for a scholarship, students must have raised a minimum of \$1,000 in donations from at least 5 different donors.

All donations made to NFCL were required to be undesignated, meaning the donor could not designate their donation to any particular student. However, each donation solicited by a student as part of the CHEAF

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program was accompanied by a donor form containing the student's name, school and school I.D. number. Each semester, NFCL informed the students by letter, also copied to the student's parents, of how much funding the student would need to cover the tuition and living costs of each semester. The letter also noted how much money the student would need to raise in donations to NFCL to qualify to receive the maximum bursary and scholarship.

The Appellants each made donations to NFCL, solicited by their children or grandchildren as part of the CHEAF program. The Appellants' children then received bursaries and scholarships from NFCL for nearly the same amount as their parents' donation. Several of the Appellants also made smaller donations to other students as part of a cross-over arrangement to ensure that each student obtained the required number of donors to qualify for a scholarship. CRA subsequently disallowed the charitable deductions claimed by the appellants in respect of the donations made to NFCL. Notably, some Appellants also made a general donation (not solicited by a particular student) to NFCL, which was not disallowed. At issue in the appeal was whether payments by the Appellants to NFCL in 2002 qualified as charitable gifts in accordance with section 118.1 of the *Income Tax Act*.

Under the common law definition of gift there can be no benefit or consideration flowing to the donor. The Court conducted a two-stage inquiry to determine whether the payments to NFCL met this element of the definition: (1) was there a benefit to the donor; and (2) was there a sufficiently strong like between that benefit and the donation.

The Court determined that the Appellants and their children clearly benefited from the donation because they significantly reduced the responsibility of the Appellants for paying tuition and other University expenses directly to their children or to the University.

With respect to the second step, the Court considered the following factors: (1) Is there a relationship between the donor and the ultimate beneficiary; (2) Is there any correlation between the amount of the donation and the amount received by the beneficiary; (3) What are the circumstances surrounding the donation; and (4) Did the donor have any control over the charity's use of the money. Given the close relationship between the donors and the student beneficiaries, the fact that the Appellants knew their children would receive funding from NFCL as a result of the donation, that the amount of the donations was determined by how much each student needed to raise as part of the CHEAF program and that each

Appellant felt a moral obligation to provide a Christian education for their children, the Court concluded that on balance the factors created a sufficiently strong link between the donation and the benefit. Therefore, the payments to NFCL did not meet the common law definition of gift and the appeals were dismissed.

The payments at issue were made prior to proposed amendments to the *Income Tax Act*, which do allow the donor to receive some benefit in return for a donation. However, the payments at issue may still not qualify as gifts under the proposed amendments since the amount of the advantage or benefit received likely represented more than 80% of the payments made.

The full text of the decision is available at:

<http://www.canlii.org/en/ca/tcc/doc/2010/2010tcc109/2010tcc109.html>.