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FCA HOLDS THAT PREVENTION OF POVERTY IS *NOT* A CHARITABLE PURPOSE

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A. INTRODUCTION

On June 24, 2016, the Federal Court of Appeal ("FCA") released its decision in the *Credit Counselling Services of Atlantic Canada Inc. v Minister of National Revenue*[1] ("*Credit Counselling*") case, which was heard on April 28, 2016. The issue being reviewed in this decision was whether the activities carried on by Credit Counselling Services of Atlantic Canada Inc. (the "Appellant") "related to the 'prevention of poverty'" could be classified as "charitable activities for the purposes of the *Income Tax Act*"[2] ("ITA").[3] Ultimately, the FCA found that the prevention of poverty object and related activities carried on by the Appellant were not charitable at law and dismissed its appeal, upholding the decision of the Minister of National Revenue ("the Minister") to confirm the annulment of the Appellant's charitable registration. This case is also important because it provides some indication concerning how courts will assess an annulment of charitable registration, as opposed to a revocation, and on what standard of review they will base their decision. Here the FCA confirmed that the Notice of Annulment of Registration (the "Notice of Annulment") issued to the Appellant by the Minister will be assessed by the same standards of review as a revocation of charitable registration.

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[1] *Credit Counselling Services of Atlantic Canada Inc. v. Canada (National Revenue)*, 2016 FCA 193 [*Credit Counselling*].

[2] *Income Tax Act*, RSC, 1985, c 1 (5th Supp).

[3] *Supra* note 1 at 1.

B. BACKGROUND

On April 21, 2015, the Minister confirmed the issuance of the Notice of Annulment, which was originally issued in July 2013. This Notice of Annulment resulted from Canada Revenue Agency's ("CRA") finding that the purposes and activities being carried on by the Appellant were not wholly charitable because "prevention of poverty was not a recognized charitable purpose".[4] Prior to receiving the Notice of Annulment, the Appellant had been carrying on business and providing services as a registered charity since their original establishment as a not-for-profit corporation in 1993 under the *Canada Corporations Act*,[5] and subsequent registration as a charity in October 1993 under the ITA. Their stated objects were as follows:

a) The prevention of poverty;

b) To provide professional financial and debt counselling to the community;

c) To develop and promote educational programs for the public on family money management, budgeting and use of credit;

d) To conduct and fund research on credit-related concerns; and

e) To collect and disseminate data and information on consumer credit issues to the public.[6]

In confirming the issuance of the Notice of Annulment to the Appellant, the Minister largely focused on one of its objects, namely the one related to the prevention of poverty. The Minister stated that although the Appellant may "contribute to the charitable purpose of relieving poverty … the services were not limited to individuals who were poor … and were more properly classified as relating to the prevention of poverty rather than the relief of poverty".[7]

[4] *Supra* note 1 at 3.
[5] *Canada Corporations Act*, RSC 1970, c- 32.
[6] *Supra* note 1 at 5.
[7] *Supra* note 1 at 10.

C. ANNULMENT VS. REVOCATION – STANDARD OF REVIEW

In the written reasons of Webb J.A., with Scott J.A. and De Montigny J.A concurring, the FCA first turned its attention to the issue of the appropriate standard of review to be applied in a case dealing with an annulment, as opposed to a revocation of charitable registration. In this regard, the FCA followed the standard of review articulated in *Prescient Foundation v Minister of National Revenue*,[8] i.e. that "extricable questions of law … are to be determined on a standard of correctness" and "questions of fact or of mixed fact and law … are to be determined on a standard of reasonableness."[9] In particular, the FCA found "no reason why different standards of review would be applicable to a decision of the Minister to annul a registration" and further noted that the determination of "[w]hether activities related to the prevention of poverty are charitable activities for the purposes of the *Act* is a question of law" subject to review on the standard of correctness.[10]

D. CONSEQUENCES OF ANNULMENT VS. REVOCATION

A revocation of charitable registration involves the withdrawal of a registered charity's status, together with all of the privileges which accompany such status, whether it be a voluntary revocation by the charity itself or occurs as a result of a decision by CRA.

Upon revocation of charitable status, a deregistered charity must either use its remaining assets for charitable activities or transfer them to an eligible donee (as defined under the ITA) during the winding-up period or risk being levied a revocation tax equivalent to 100% of its charitable assets. By contrast, an annulment of charitable registration takes place where CRA cancels the registration of a charity because it takes the position that the charity's original registration was granted in error by CRA or there has been a change in the law since the time the charity was first registered.

Generally the consequences that a registered charity faces upon annulment of charitable registration are much the same as when a charity faces revocation. For instance, a registered charity that has had their status revoked is no longer able to issue official donation receipts, no longer qualifies for exemption from income tax, will no longer be a charity for GST/HST purposes, and will have their name and reasons for

[8] *Supra* note 1 citing, *Prescient Foundation v Minister of National Revenue*, 2013 FCA 120, (leave to appeal to SCC refused on 28 November, 2013 See Docket No. 35456).
[9] *Supra* note 1 at 11.
[10] *Ibid* at 12.

revocation/annulment published in the *Canada Gazette* and/or Charities Listings, etc. Although a registered charity may voluntarily choose to have their registered status revoked, such is not the case when it comes to an annulment, as the decision to issue a Notice of Annulment is a decision made entirely by the CRA.[11] However, as a result of an annulment of charitable registration, the CRA confirms that "an annulled charity is not subject to revocation tax,"[12] which means that it will be able to retain its assets following annulment.

E. RELIEF OF POVERTY VS. PREVENTION OF POVERTY

In terms of the analysis by the FCA with respect to relief of poverty vs. prevention of poverty, the Court began by outlining the definition of a charitable organization and stating that "at any particular time … all the resources … are (to be) devoted to charitable activities carried on by the organization itself".[13] In deciding what a charitable purpose is, the FCA outlined the following standard heads of charity:[14]

1. The relief of poverty;

2. The advancement of education;

3. The advancement of religion; and

4. Certain other purposes beneficial to the community.

In its reasons the FCA indicated that the Appellant provided services to "consumers who are in serious financial difficulties but who are employed and have assets."[15] They went on to say that, in order to "satisfy the requirement that a purpose is for the relief of poverty, the person receiving the assistance must be a person who is then in poverty," although the FCA noted that the term poverty is a "relative term."[16] Therefore, it would seem possible for charities to provide services to individuals who are in serious

[11] Canada Revenue Agency, "Revoking registered status", (Ottawa: CRA, 28 July 2016), online: http://www.cra-arc.gc.ca/chrts-gvng/chrts/rvkng/menu-eng.html.
[12] Canada Revenue Agency, "Annulment of charitable registration", (21 July 2016), online: http://www.cra-arc.gc.ca/chrts-gvng/chrts/rvkng/nnlmnt-eng.html.
[13] *Supra* note 1 at 13.
[14] *Ibid* at 15.
[15] *Ibid* at 8.
[16] *Ibid* at 16.

financial trouble but not insolvent and, in so doing, relieve poverty. However, because the Appellant in this case was providing services to individuals who were employed and had assets, the FCA found that the consumers were not in poverty at the time of receiving the assistance and, therefore, the services provided by the Appellant could not be classified as relief of poverty. Rather, according to the FCA, the services were better described as being related to the prevention of poverty.

The Appellant raised the fact that the United Kingdom's Parliament adopted the *Charities Act 2011*, 2011, c.25, which includes, among other things, the prevention of poverty as a charitable purpose, in addition to the relief of poverty. The Appellant in this case was attempting to persuade the FCA to follow suit.

While the FCA did make reference to the fact that the prevention of poverty is a recognized charitable purpose in the United Kingdom, it confirmed that, absent "an act of Parliament to add prevention of poverty as a charitable purpose",[17] it was not possible for the FCA to take such a step on its own. Accordingly, the FCA held that "the prevention of poverty is not a charitable purpose"[18] and the Appellant's appeal could not succeed.

In the alternative, the Appellant also argued that the services they provided to their consumers could also fall under the fourth head of charity, namely – purposes beneficial to the community. With reference to *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue*,[19] the FCA indicated that, in order for a charitable purpose to fall under this fourth heading, "more is required than simple public benefit," and that the purposes need to be beneficial "in a way the law regards as charitable."[20]

Further guidance from case law suggests that courts may consider, amongst other things, trends in objects known to be charitable and certain accepted anomalies. The FCA also added that it "must also be for the benefit of the community or of an appreciably important class of the community, rather than for private advantage".[21] As such, the FCA stated that the Appellant "had not established that its services … would

[17] *Ibid* at 18.
[18] *Ibid* at 19.
[19] *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue*, [1999] 1 SCR. 10 at para 185.
[20] *Supra* note 1 at 21.
[21] *Ibid.*

benefit the community in a way that is considered charitable."[22] In their view, this was a private benefit to individuals who secured the appellant's services, as opposed to a public benefit that the law regards as charitable.

F. CONCLUDING COMMENTS

Although the decision of the FCA in this case is not surprising, it does underscore the fact that if there is going to be substantive progress made in expanding the parameters of what is considered to be charitable, it will have to be at the initiative of Parliament in amending the ITA. Change is not likely to occur at the judicial level given repeated statements by both the FCA, as evident in this decision, and the Supreme Court of Canada[23] concerning the limits of what the courts are prepared to do in expanding the scope of what is charitable at law.

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[22] *Ibid* at 22.
[23] *A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)*, 2007 SCC 42 (CanLII).