
RELIGIOUS SCHOOL WINS RARE DELAY OF REVOCATION

*By Ryan M. Prendergast**

A. INTRODUCTION

On August 23, 2013, the Federal Court of Appeal released its decision in *Cheder Chabad v. Minister of National Revenue*.¹ Cheder Chabad is a registered charity operating a religious school in the Toronto area, teaching secular and religious studies. The charity was audited by Canada Revenue Agency (“CRA”) for the fiscal periods of July 2007 to June 2009. As a result of the audit, CRA issued a notice of intention to revoke the charitable status of Cheder Chabad on July 5, 2013. In this regard, the charity sought an order prohibiting CRA from publishing a copy of the notice of intention to revoke in the *Canada Gazette*, which would make the revocation of charitable status effective.

Generally, charities have been unsuccessful at the Federal Court of Appeal in obtaining a stay or delay of revocation of their charitable status. This is because charities have thus far been unable to convince the court that they would suffer “irreparable harm” as a result of the revocation. In this decision, however, Cheder Chabad was able to obtain a delay in the publication of the notice of intention to revoke due to the Federal Court of Appeal’s consideration of the impact that the revocation would have on a third party, i.e., the students of the school.

This *Charity Law Bulletin* will review the decision and provide comments concerning the potential impact that the decision may have for the charitable sector.

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¹ 2013 FCA 196

B. BACKGROUND FACTS

CRA alleged that Cheder Chabad was unable to substantiate the existence of various gifts-in-kind amounting to over \$10 million for which the charity issued receipts. On July 31, 2013, the charity filed an objection to the notice of intention to revoke under subsection 168(4) of the *Income Tax Act* (Canada). While CRA will generally delay the publication of the notice of intention to revoke when a charity files an appeal, in circumstances involving allegations of serious non-compliance with the Act CRA moves forward with publication of the notice at its earliest opportunity. In this case, CRA indicated that it was not willing to allow the charity to exhaust its right to an appeal before proceeding with publication of the notice of intention to revoke in the *Canada Gazette*.

Consequently, Cheder Chabad brought an application on August 15, 2013 for judicial review of the refusal by CRA to delay the publication, together with a motion seeking the same relief.

C. DISCUSSION

1. Application of RJR-MacDonald Test

As discussed in previous *Charity Law Bulletins*,² the test applied by the Federal Court of Appeal when charities are seeking a stay of their revocation is the test set out in *RJR-Macdonald Inc. v. Canada (Attorney General)*, that is: that (1) there is a serious issue to be tried; (2) it will suffer irreparable harm if the order is not granted; and (3) the balance of convenience favours granting the order.

a) Serious Issue

Both sides in this case agreed that there was a serious issue to be tried.

b) Irreparable Harm

Cheder Chabad argued that the revocation would result in the cancellation of the school year for all of the students and the dismissal of the teaching staff. In addition, since 80% of the students receive subsidized tuition, loss of charitable status would also mean the costs of tuition will prevent some students from attending the school since the charity would no longer be able to provide tax receipts for that portion of the tuition fees that qualifies for a charitable receipt.

² See for example *Trinity Global Support Foundation v. Minister of National Revenue* (2013 FCA 109) in the May, 2013 *Charity Law Update*, or *Glooscap Heritage Society v. The Minister of National Revenue* (2012 FCA 255) in the February, 2013, *Charity Law Update*

CRA argued that the 2012 T3010 information for the charity established that it had over \$10 million in assets, i.e., that it should have more than enough resources to continue operating the school for another year. As well, counsel for CRA argued that the charity could use these assets to compensate the parents through additional subsidies for student tuition.

However, Cheder Chabad sought an extension of 6 months to delay publication of the revocation in order to liquidate these assets, as none of them were readily available for the charity to convert into funds in order to continue operating the school.

The Federal Court of Appeal considered the matter analogous to applications brought under the *Canada Charter of Rights and Freedoms*, where damages are not generally available as a remedy. The court also noted that the “peculiarities of the charitable activities sector and of charitable organizations, generally, which are not based on profit or gain, must also be taken into account.”

Taking these factors into account, the court concluded that Cheder Chabad had demonstrated the revocation of its status would cause it to suffer irreparable harm, since the revocation would prevent the school from carrying on the next school year given the short-fall in funds the school would face without being able to liquidate assets, and since the impact that revocation would have on the parents who would not be able to send their children to the school but for the subsidies provided to students through tax-receiptable gifts.

c) Balance of Convenience

The Federal Court of Appeal was tasked with balancing the public interest in seeing the charitable sector regulated by CRA and the interests of the students who would not be able to attend school in fall. It is worth noting that when the decision was heard, the beginning of the school year was mere days away.

The court stated that “had the only harm inflicted on the applicant been that identified in the above discussion concerning the irreparable harm component of the test, I would not have found that the balance of convenience favoured the applicant.”

The court ultimately concluded that the balance of convenience weighed in favour of the interests of the 180 students, since their parents would not likely be able to place them in another school within such a short timeframe, and the specific nature of religious instruction available at the school which would not generally be available elsewhere in the area.

2. Conclusion of the Court

Ultimately, the court ordered that the publication of the notice of intention to revoke be delayed until December 31, 2013. The delay permitted Cheder Chabad time to liquidate its assets so that they could be used for operating funds, together with time to plan how the charity would operate the school after the revocation became effective. The court also ordered that the charity was responsible for notifying the parents that it would lose its charitable status as of December 31, 2013 in order to permit them to secure alternate schooling arrangements for their children should they wish to do so.

D. CONCLUSION

The decision has now provided a helpful standard for the charitable sector, as the Federal Court of Appeal took into consideration the impact that the revocation would have on third parties, i.e., the beneficiaries of the charity. While the recently reported decision in *Gateway City Church v. Minister of National Revenue*³ clarified that while assertions of harm that could be caused by the loss of receipting privileges will not persuade the court, where the revocation will have a material impact upon other parties, particularly vulnerable beneficiaries like children, there appears to now be a precedent for a delay in revocation, albeit of a short duration in this case. As such, the decision may impact CRA's decisions in the future to proceed with giving notice of intention to revoke in the *Canada Gazette* before the charity has exhausted all avenues of appeal where the decision to proceed with revocation may impact third parties particularly vulnerable beneficiaries.

³ 2013 FCA 126.