



Supreme Court of Canada accepts Imagine Canada's arguments on behalf of charities in historic appeal

Ottawa, October 5, 2007

The Supreme Court of Canada released its decision today in *Amateur Youth Soccer Association v. Canada Revenue Agency*, an appeal from a decision by the Canada Revenue Agency (CRA) refusing registration of a sports group as a charity. The appeal, which was argued on May 16, 2007 before the full Court, was only the third time in the past 50 years that the Supreme Court of Canada has undertaken a review of the question of what constitutes a charity under Canadian law.

Imagine Canada intervened in the appeal with a view to ensuring that the Court, in considering this particular appeal, confirmed that the legislative regime governing charities was subject to interpretation and evolution under the common law. In particular, Imagine Canada sought to clarify that legislative provisions under the *Income Tax Act* granting charity-like benefits to certain national sports and arts organizations and groups providing housing for seniors did not restrict the ongoing development of the definition of charities under the common law. The Court made it clear that organizations that use sport as a means of achieving their charitable purposes are entitled to put forward applications for registration as charities and have them duly considered by CRA.

In the particular case before the Court, the Amateur Youth Soccer Association (AYSA) had filed for registration as a charity with the CRA in 2005. Its application was rejected on the basis that sports organizations, as such, are not charitable under Canadian law. AYSA appealed the CRA decision to the Federal Court of Appeal. In its decision, the Court of Appeal said that organizations such as the AYSA could not qualify as charities. It based its decision on the fact that Parliament, in the early 1970s, had identified a select category of organizations -- Registered Canadian Amateur Athletic Associations or "RCAAs" -- and provided preferential tax treatment for them under the *Income Tax Act*. The *Act* makes it clear that RCAAs are not charities but are entitled to similar tax benefits to charities, including the ability to provide donors with receipts that can be used to claim tax credits.

The Federal Court of Appeal concluded in its 2006 judgment that, because Parliament had chosen to create RCAAs, it could be presumed that Parliament intended that sports organizations that qualified as RCAAs could enjoy favourable tax treatment and those that did not qualify as RCAAs could not then qualify as charities.

Imagine Canada argued in its intervention before the Supreme Court of Canada that giving special tax treatment to a particular group of organizations such as RC-Triple-As does not change the rules related to charities. In particular, by conferring charitable-like benefits on one set of organizations it should not be presumed that Parliament intended to limit access to charitable status by other organizations, unless explicitly stated, which is not the case in respect of RC-Triple-As. Imagine Canada also argued that the test to determine whether an

organization is charitable was established by the Supreme Court of Canada in the *Vancouver Society* case and that the Court should apply that test to the AYSA.

In its 23-page judgement, the Court found that the purposes and activities of that particular organization were not charitable under the *Income Tax Act* or under common law. However, the Court made clear that organizations that use sport as a means of achieving their charitable purposes are entitled to continue to put forward applications for registration as charities and have them duly considered for possible registration. This finding confirms that organizations that use sport or the arts as a means of achieving their charitable purpose are not effectively precluded from seeking charitable status by the existence of the RCAA regime nor, by extension, the National Arts Service Organizations (NASO) regime.

Imagine Canada's intervention was made possible by a grant from The Muttart Foundation of Edmonton acting on behalf of a consortium of private foundations. Bob Wyatt, Executive Director of the Foundation, stated that this was a good example of Imagine Canada's role in looking out for Canada's charities. "The Court adopted, in whole, the arguments put forward by Imagine Canada in the intervention. The evolving nature of charities under the common law was preserved by the Court and these specialized legislative regimes will not restrict the role of the common law in ensuring the continued evolution of charities law in Canada."

A small team of top charity lawyers donated their time and efforts to successfully intervene on behalf of Imagine Canada, including Laird Hunter, QC of Richards, Hunter in Edmonton; Susan Manwaring and Kate Lazier of Miller Thomson LLP, Toronto; David Stevens of Gowling, Lafleur, Henderson LLP, Toronto; and Jeffrey Beedell of Lang Michener LLP, Ottawa. The team was assisted by Peter Broder, former Director of Regulatory Affairs, Imagine Canada.

A copy of the decision of the Supreme Court of Canada is now posted on the Imagine Canada website at www.imaginecanada.ca/files/en/misc/intervention_by_canadian_oct_2007.pdf.

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