

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20160210**

**Docket: A-201-14**

**Citation: 2016 FCA 49**

**CORAM: RYER J.A.  
WEBB J.A.  
RENNIE J.A.**

**BETWEEN:**

**JAAMIAH AL ULOOM AL ISLAMIYYAH  
ONTARIO**

**Appellant**

**and**

**MINISTER OF NATIONAL REVENUE  
(CANADA REVENUE AGENCY)**

**Respondent**

Heard at Toronto, Ontario, on February 10, 2016.  
Judgment delivered from the Bench at Toronto, Ontario, on February 10, 2016.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**RYER J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Toronto, Ontario, on February 10, 2016).

**RYER J.A.**

[1] This is an appeal by Jaamiah Al Uloom Al Islamiyyah Ontario (the “Charity”), pursuant to subsection 172(3) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the “Act”), from a decision of the Minister of National Revenue (the “Minister”) acting through the Canada Revenue Agency Appeals Division (the “Appeals Division”), dated March 11, 2014 (the

“Confirmation Decision”), confirming a decision of the Minister, acting through the Canada Revenue Agency Charities Directorate (the “Charities Directorate”), dated August 2, 2012, in which the Charity was advised of the Minister’s decision to issue a Notice of Intention to Revoke the registration of the Charity (the “NIR”) under the Act. In these reasons, unless otherwise indicated, all statutory references are to the corresponding provisions of the Act.

[2] The NIR arose out of an audit of the Charity for its 2007 and 2008 taxation years. After considering a number of submissions from the Charity, the Minister issued the NIR on the basis that the Charity had failed to comply with the requirements that were necessary to maintain its registration under the Act, and in particular, that it failed to maintain adequate books and records, issued receipts for gifts otherwise than in accordance with the Act and the *Income Tax Regulations*, C.R.C., c. 945 (the “Regulations”) and failed to file information returns as and when required under the Act and the Regulations. The NIR contained detailed explanations of the Minister’s concerns in these areas.

[3] The Charity objected to the NIR and made further submissions to the Appeals Division in support of its objection. The Appeals Division was unpersuaded and confirmed the NIR. In the Confirmation Decision, the Appeals Division concluded that the Charity:

- failed to file an information return as and when required under the Act or a regulation by not preparing and issuing proper statements of remuneration (T4 or T4A) to individuals who received payments that were claimed as salaries, subcontractor or commission expenditures [**paragraph 168(1)(c)**];
- issued donation receipts not in accordance with the Act and the Regulations 3501 or that contain false information by lending its receipting privileges to a non-charitable entity and by not including all the required elements to its donation receipt [**paragraph 168(1)(d)**]; and

- failed to comply with subsection 230(2) of the Act because of its failure to keep information in such form in order to determine whether there are any grounds for the revocation of its registration. The Organization was unable to provide proper books and records in relation to its revenue, expenditures and liabilities and did not provide proper source documents to support its revenue, expenditures, liabilities, donation receipts, allocated donation amount for school fees and reimbursement claims [paragraph 168(1)(e)].

[4] The Charity appeals this decision.

[5] The standard of review in an appeal from a confirmation of a NIR, pursuant to subsection 172(3), has been determined by this Court in *Prescient Foundation v. Canada (National Revenue)*, 2013 FCA 120 at paragraph 12. Questions of law are reviewed on the standard of correctness while questions of fact, mixed fact and law in respect of which there are no extricable questions of law and the exercise of discretion by the Minister, based upon the facts and law as correctly interpreted, are reviewed on the standard of reasonableness.

[6] In essence, the Charity does not deny the failures on its part that are specified in the Confirmation Decision. Moreover, these failures were brought to the Charity's attention by written correspondence dated January 6, 2011. Nonetheless, the Charity now asserts that:

- a) It has never failed to file an annual information return as required by the Act or the Regulations, even though it has been late in making the required filings, and that it intends to make timely filings in future;
- b) It has, at times, failed to prepare and issue T-4s and T-4As in respect of payments made to certain of its employees and contractors, but that such failures will not occur again;

- c) To the extent that its engagement with Fiysabiylillah could be construed as an improper rental of its charitable donation receipt issuing function, that was a one-time occurrence that will not occur again;
- d) The shortcomings in relation to the preparation of charitable donation receipts have now been understood and will not recur; and
- e) The shortcomings in its books and records in relation to the recordation of its revenue, expenditures and liabilities and the need to produce source documents to support those items, donation receipts and allocations of donation amounts for school fees and reimbursement claims, have now been understood and will not recur.

[7] The Charity thus contends that the sanction of revocation of its registration is too extreme and fails to address the remedial steps that it has undertaken, in particular, the retention of experienced and qualified accountants.

[8] Subsection 180(3) directs the Court to hear and determine this appeal in a summary way. In keeping with this admonishment, the outcome of this appeal will depend upon the reasonableness of not only the Minister's findings of non-compliance on the part of the Charity, but also the Minister's choice of revocation as the sanction that results from such non-compliance.

[9] In the circumstances, the Charity basically accepts the Minister's non-compliance findings but asserts that the Minister has failed to establish the reasonableness of the revocation

sanction. The argument is not that the Minister cannot resort to revocations when lesser sanctions are available. Rather, the argument is that the Minister must offer a reasonable explanation for the decision to choose this extreme sanction.

[10] The Crown refers to this Court's decision in *International Pentecostal Ministry Fellowship of Toronto v. MNR*, 2010 FCA 51, in which the Court concluded that the Minister may choose revocation where the record establishes "serious" non-compliance on the part of the charity in question. Thus, the question is whether the record before us establishes that the virtually uncontested acts of non-compliance on the part of the Charity can be regarded as "serious" or "aggravated", as this Court stated in *World Job and Food Bank Inc. v. Canada*, 2013 FCA 65.

[11] These authorities lead me to conclude that the seriousness of the non-compliance must be apparent from the record upon which a Ministerial decision to revoke is based. In this regard, we agree with the Crown's assertion that this Court should not intervene and overturn the Confirmation Decision where serious or aggravated non-compliance is evident in the record. However, it is equally clear that a mere Ministerial assertion of serious or aggravated non-compliance will not be sufficient.

[12] Before addressing whether the threshold of serious non-compliance on the part of the Charity has been met, it should be noted that the Minister's revocation decision will stand if that threshold is demonstrably met with respect to any of the grounds contained in the Confirmation Decision.

[13] Registered charities have the privilege of issuing charitable donation receipts which entitle taxpayers to reduce their income tax payable under the Act on the basis of such receipts. This privilege carries with it important responsibilities.

[14] One of the key responsibilities of the Charity is to maintain proper books and records that will enable that Minister to verify the accuracy and appropriateness of the income tax deductions and credits that the Charity makes available to those who receive charitable donation receipts from it. In the circumstances of this appeal, the Charity failed to provide the Minister with books and records that would allow the Minister to determine if the appropriate amount of income tax relief was being provided by the Charity to its donors at the expense of the fisc.

[15] In our view, this basic requirement is foundational in the sense that the absence of proper books and records places the Minister in the position of being unable to meet her basic obligation to verify the accuracy and validity of the charitable donation receipts that the Charity has issued. Thus, it is apparent that this non-compliance on the part of the Charity is serious and justifies the Minister's conclusion that the extreme sanction of revocation is warranted.

[16] Given this conclusion, and in light of the requirement in subsection 180(3) to hear and determine this appeal in a summary way, there is no need to consider whether any of the other grounds for the Confirmation Decision is also serious enough to justify the revocation of the registration of the Charity.

[17] For these reasons, the appeal will be dismissed with costs.

"C. Michael Ryer"

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J.A.



**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-201-14

**(APPEAL FROM AN ORDER OF THE CANADA REVENUE AGENCY DATED MARCH 11, 2014).**

**STYLE OF CAUSE:** JAAMIAH AL ULOOM AL  
ISLAMIYYAH ONTARIO v.  
MINISTER OF NATIONAL  
REVENUE (CANADA REVENUE  
AGENCY)

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 10, 2016

**REASONS FOR JUDGMENT OF THE COURT BY:** RYER J.A.  
WEBB J.A.  
RENNIE J.A.

**DELIVERED FROM THE BENCH BY:** RYER J.A.

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