

**Date: 20081022**

**Docket: A-374-08**

**Citation: 2008 FCA 319**

**Present: PELLETIER J.A.**

**BETWEEN:**

**LIBERTY ASSEMBLY OF GOD INC.**

**Applicant**

**and**

**MINISTER OF NATIONAL REVENUE**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on October 22, 2008.

**REASONS FOR ORDER BY:**

**PELLETIER J.A.**

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**REASONS FOR ORDER**

**PELLETIER J.A.**

[1] On June 30, 2008, the Minister of National Revenue advised Liberty Assembly of God Inc. (the Assembly) that she proposed to publish in the Canada Gazette notice of the revocation of its charitable registration, as provided in subsection 168(1) of the *Income Tax Act* R.S.C. 1985 (5<sup>th</sup> Supp) c. 1. The Minister's letter went on to provide that the notice of revocation would be published "unless the Canada Revenue Agency ("CRA") receives an order issued under subsection 168(2) of the Act from the Court of Appeal extending that period within the next 30 days". In addition, the letter advised the Assembly that it could appeal from the Minister's decision by filing a Notice of Objection within 90 days of the date of the mailing of the letter giving notice of the Minister's intention.

[2] In an attempt to protect its rights, the Assembly filed a Notice of Appeal from the decision of the Minister to publish notice of the revocation of its charitable registration and, at the same time, it asked the Court to stay the revocation of its registration.

[3] Counsel was then retained to pursue the matter on behalf of the Assembly. According to the affidavit of Reverend Joseph Osei-Amoah, counsel advised that the Notice of Appeal which the Assembly had filed should have been a Notice of Application. As a result, the Assembly brings a motion seeking to amend its Notice of Appeal to make it a Notice of Application. In the same motion, the Assembly asks for an extension of time within which it "is required to commence an application ... for an Order staying the intended revocation of the charitable status of the Applicant." Counsel for the Minister has indicated her consent to the granting of the relief sought.

[4] The Assembly and its counsel appear to have misread both the Minister's letter and the terms of the Act. In order to challenge the Minister's decision to revoke its charitable registration by publishing a notice of revocation, the Assembly must file a Notice of Objection within 90 days of the mailing of the Minister's letter of June 30 2008. The right to appeal to the Court of Appeal arises only once the Minister has disposed of the Notice of Objection by confirming his decision. See subsection 172(3) of the *Income Tax Act*. The Notice of Appeal filed by the Assembly is premature.

[5] As for the request for an extension of time for bringing a stay, no extension of time is required, since subsection 168(2) deals with the time within which the Minister may file a notice of

his intention to revoke the Assembly's registration. As long as the Assembly applies for a stay prior to the publication of the notice of revocation, the Court may consider it. Consequently, in the case of the application for a stay, as in the case of the filing of a Notice of Objection, time is truly of the essence.

[6] For these reasons, the notice of motion is dismissed though without costs.

"J.D. Denis Pelletier"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-374-08

**STYLE OF CAUSE:** *LIBERTY ASSEMBLY OF GOD INC.*  
*v. MINISTER OF NATIONAL*  
*REVENUE*

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** PELLETIER J.A.

**DATED:** October 22, 2008

**WRITTEN REPRESENTATIONS BY:**

Edmund M.A. Kwaw

FOR THE APPLICANT

Pascal Tétrault

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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FOR THE RESPONDENT