

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120504

Docket: A-235-11

Citation: 2012 FCA 136

**CORAM: DAWSON J.A.
TRUDEL J.A.
STRATAS J.A.**

BETWEEN:

**THE SHELDON INWENTASH AND
LYNN FACTOR CHARITABLE FOUNDATION**

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on February 29, 2012.

Judgment delivered at Ottawa, Ontario, on May 4, 2012.

REASONS FOR JUDGMENT BY:

DAWSON J.A.

CONCURRED IN BY:

TRUDEL J.A.
STRATAS J.A.

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REASONS FOR JUDGMENT

DAWSON J.A.

[1] The *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (Act) divides registered charities into two categories: charitable organizations and charitable foundations. A charitable organization is one that devotes all of its resources to charitable activities that it carries on itself (subsection 149.1(1)). A charitable foundation is a trust or corporation that operates exclusively for charitable purposes (subsection 149.1(1)). Charitable purposes include the disbursement of funds to qualified donees (subsection 149.1(1)). Charitable foundations are divided into two categories: public foundations

and private foundations. As explained below, private foundations are subject to more detailed and restrictive rules than public foundations.

[2] The issue raised on this appeal is whether the Minister of National Revenue (Minister) erred when he confirmed the appellant's designation as a private foundation.

Factual Background

[3] The appellant, The Sheldon Inwentash and Lynn Factor Charitable Foundation, is an *inter vivos* trust that was settled by Mr. Sheldon Inwentash for the purpose of making gifts to Canadian registered charities. It is a charitable foundation as defined in subsection 149.1(1) of the Act, and a registered charity as defined in subsection 248(1). These provisions of the Act, together with other provisions of the Act referred to in these reasons, are set out in the appendix to these reasons.

[4] The appellant has a single trustee, Cidel Trust Company Ltd. (Trustee). The Trustee is registered under the *Alberta Loan and Trust Corporations Act*, R.S.A. 2000, c. L-20. All, or substantially all, of the capital contributed to the appellant trust was contributed by Mr. Sheldon Inwentash, his wife Ms. Lynn Factor, and/or entities controlled by them.

Legislative Framework

[5] Paragraph 149(1)(f) of the Act provides that no tax is payable under Part I of the Act on the taxable income of an entity when that entity was a registered charity. The term "registered charity" is defined to include "a charitable organization, private foundation or public foundation [...] that is

resident in Canada and was either created or established in Canada” and has applied for and received registration as a charity (subsection 248(1)).

[6] “Private foundation” is defined in section 149.1 of the Act to mean “a charitable foundation that is not a public foundation.”

[7] “Public foundation” is defined in section 149.1 of the Act. In relevant part, for the purpose of this appeal, the definition is:

“public foundation” means a charitable foundation of which,

(a) where the foundation has been registered after February 15, 1984 or designated as a charitable organization or private foundation pursuant to subsection 149.1(6.3) or to subsection 110(8.1) or (8.2) of the *Income Tax Act*, chapter 148 of the *Revised Statutes of Canada, 1952*,

(i) more than 50% of the directors, trustees, officers or like officials deal with each other and with each of the other directors, trustees, officers or officials at arm’s length, and

(ii) not more than 50% of the capital contributed or otherwise paid in to the foundation has been so contributed or otherwise paid in by one person or members of a group of such persons who do not deal with each other at arm’s length, [emphasis added]

« fondation publique » Fondation de bienfaisance :

a) dont, lorsqu’elle a été enregistrée après le 15 février 1984 ou désignée comme fondation privée ou oeuvre de bienfaisance conformément au paragraphe (6.3) ou aux paragraphes 110(8.1) ou (8.2) de la *Loi de l’impôt sur le revenu*, chapitre 148 des *Statuts revissés du Canada de 1952*:

(i) plus de 50 % des administrateurs, dirigeants, fiduciaires ou autres responsables traitent entre eux et avec chacun des autres administrateurs, dirigeants, fiduciaires ou responsables sans lien de dépendance,

(ii) au plus 50 % des capitaux qui lui ont été fournis ou qui lui ont été versés, de quelque façon, l’ont été par une personne ou par les membres d’un groupe de personnes ayant entre elles un lien de dépendance; [Non souligné dans l’original.]

[8] Bill C-33 “*Income Tax Amendments Act, 2006*” introduced legislative proposals to change the second requirement found in the definition of a public foundation. The proposed amended definition of “public foundation” (proposed definition) was:

“public foundation”, at a particular time, means a charitable foundation

(a) more than 50% of the directors, trustees, officers or like officials of which deal at arm’s length with each other and with

(i) each of the other directors, trustees, officers and like officials of the foundation,

(ii) each person described by subparagraph (b)(i) or (ii), and

(iii) each member of a group of persons (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)) who do not deal with each other at arm’s length, if the group would, if it were a person, be a person described by subparagraph (b)(i), and

(b) that is not, at the particular time, and would not at the particular time be, if the foundation were a corporation, controlled directly or indirectly in any manner whatever

(i) by a person (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 49(1)(l)),

« fondation publique » Est une fondation publique à un moment donné la fondation de bienfaisance :

a) dont plus de 50% des administrateurs, dirigeants, fiduciaires et autres responsables n’ont de lien de dépendance ni entre eux ni avec les personnes suivantes :

(i) chacun des autres administrateurs, dirigeants, fiduciaires ou autres responsables de la fondation,

(ii) chaque personne visée aux sous-alinéas b)(i) ou (ii),

(iii) chaque membre d’un groupe de personnes ayant entre elles un lien de dépendance (à l’exception de Sa Majesté du chef du Canada ou d’une province, d’une municipalité, d’un autre organisme de bienfaisance enregistré qui n’est pas une fondation privée et de tout cercle ou de toute association visés à l’alinéa 149(1)l)), dans le cas où le groupe, s’il était une personne, serait visé au sous-alinéa b)(i);

b) qui, au moment donné, n’est ni ne serait, si elle était une société, contrôlée directement ou indirectement, de quelque manière que ce soit :

(i) ni par une personne (à l’exception de Sa Majesté du chef du Canada ou d’une province, d’une municipalité, d’un autre organisme de bienfaisance enregistré qui n’est pas une fondation privée et de tout cercle ou de toute association visés à l’alinéa 149(1)l)) qui, à la fois :

(A) who immediately after the particular time, has contributed to the foundation amounts that are, in total, greater than 50% of the capital of the foundation immediately after the particular time, and

(B) who immediately after the person's last contribution at or before the particular time, had contributed to the foundation amounts that were, in total, greater than 50% of the capital of the foundation immediately after the making of that last contribution, or
(ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in subparagraph (i).

(A) immédiatement après le moment donné, a fourni à la fondation des sommes qui représentent, au total, plus de 50% des capitaux de la fondation immédiatement après le moment donné,

(B) immédiatement après sa dernière contribution effectuée au plus tard au moment donné, avait fourni à la fondation des sommes qui, au total, représentent plus de 50% des capitaux de la fondation immédiatement après cette dernière contribution,
(ii) ni par une personne, ou par un groupe de personnes ayant entre elles un lien de dépendance, dans le cas où la personne ou un membre du groupe a un tel lien avec une personne visée au sous-alinéa (i).

[9] The proposed definition was not enacted. Notwithstanding, on July 11, 2007 the Canada Revenue Agency (CRA) issued a news release announcing that it was going to give effect to the proposed change to the definition of public foundation contained in Bill C-33 and administer charitable foundations on the basis of the proposed definition.

[10] To date, the proposed definition has not been enacted, but the CRA continues to apply the control test set out in the proposed definition in its review of applications for registration and redesignation of charitable foundations.

Procedural History

[11] By letter dated July 29, 2008, the Minister notified the appellant that it qualified for tax-exempt status as a registered charity and was designated as a private foundation. The appellant objected to its designation as a private foundation and filed submissions in support of that objection.

[12] By letter dated March 10, 2011, the CRA advised the appellant that, for the reasons given in the letter, it intended to confirm the decision to designate the appellant as a private foundation. The CRA afforded the appellant a further opportunity to make further representations. The reasons given by the CRA were:

1. The appellant has only one trustee. Therefore it could not meet the first requirement in the definition of public foundation that “more than 50% of the directors, trustees officers and like officials must deal at arm’s length with each other and with each of the other directors, trustees, officers and like officials.”
2. The appellant could not meet the second requirement in the current definition because more than 50% of its capital was contributed by persons who do not deal with each other at arm’s length.
3. The appellant could not meet the second requirement in the proposed definition because Mr. Inwentash and Ms. Factor have *de facto* control of the appellant by virtue of the powers given to them by Article 8.1 of the trust deed, which allows them to change the trustee at any time.

[13] The appellant filed further written submissions in response to the March 10, 2011 letter from the CRA. Thereafter, the appellant's designation as a private foundation was confirmed by a letter dated May 24, 2011. The text of this letter, in material part, was as follows:

As required under subsection 165(3) of the *Income Tax Act* ("ITA"), we have reviewed the objection filed by The Sheldon Inwentash and Lynn Factor Charitable Foundation (the Foundation) regarding the Notice of Designation issued under subsection 149.1(6.3) of the ITA on April 6, 2009.

We have reviewed and considered your representative's submission dated May 3, 2011, and must advise that our position remains unchanged. A charitable foundation with a single trustee does not qualify as a public foundation because it does not meet the requirement that "more than 50% of the directors, trustees, officers or like officials deal with each other and with each of the other directors, trustees, officers and like officials at arm's length". In our view, the proposed amendments to the definition will not change this requirement.

As a result, we confirm the Minister's designation of the Foundation as a Private Foundation under subsection 149.1(1) of the ITA.

[14] This is the decision of the Minister now under appeal to this Court. The appeal comes directly to this Court pursuant to paragraph 172(3)(a.1) of the Act.

The Issues

[15] The appellant frames the issue to be whether the Minister erred by concluding that the appellant cannot qualify as a public foundation because the Trustee cannot satisfy the arm's length trustee requirement in subparagraph (a)(i) of both the current and proposed definitions.

[16] This requires consideration of the following questions:

1. What is the correct standard of review to be applied to the Minister's decision?

2. Can a charitable foundation with a single trustee be designated as a public foundation?

[17] The appellant also notes that the CRA concluded in its letter of March 10, 2011, that the appellant could not meet the second requirement of the proposed definition because the power to remove the Trustee gave *de facto* control of the appellant to Mr. Inwentash and Ms. Factor. The appellant asks us to find that this conclusion is incorrect, and to declare the appellant to be a public foundation within the meaning of the proposed definition.

Consideration of the Issues

- i. Standard of review

[18] The Minister argues that her decision to designate the appellant as a private foundation is a conclusion of mixed fact and law which is subject to review on the standard of reasonableness. The Minister rejects the position that her interpretation of the definition of “public foundation” is an extricable question of law to be reviewed on the standard of correctness.

[19] For the following reasons, I respectfully disagree with the Minister’s submission. I conclude that the Minister’s interpretation of the definition is an extricable question of law, to be reviewed on the standard of correctness.

[20] To begin, the central inquiry when determining the standard of review is to ascertain the legislative intent of the statute which confers jurisdiction upon the decision-maker. This appeal is

brought pursuant to paragraph 172(3)(a.i) of the Act, which permits an appeal to be brought directly to this Court from a decision of the Minister confirming the designation of a charitable foundation as a private foundation. Nowhere in the Act has Parliament enacted any privative provision to protect decisions of the Minister from review by this Court. The absence of a privative provision is a signal that no deference is owed to the Minister's interpretation of the Act. Indeed, questions of law which arise under the Act and which are appealed to the Tax Court of Canada and to this Court are always reviewed on the standard of correctness. I can see no principled basis for distinguishing the standard of review applied in those cases from the standard to be applied in this case.

[21] Second, the proper interpretation of the definition of public foundation is a question of law, and the Minister does not possess any greater expertise than the Court where the question at issue is one of statutory interpretation.

[22] Third, as counsel for the Minister acknowledged in oral argument, the Minister acts in an administrative, not adjudicative, capacity when confirming the designation of a charitable foundation. This is a further signal that the Court is to adjudicate on the correctness standard the proper interpretation of the Act by the Minister.

[23] Finally, this Court has previously applied the standard of correctness to the review of extricable questions of law decided by the Minister (see for example, *Action by Christians for the Abolition of Torture v. Canada*, 2002 FCA 499, 302 N.R. 109 at paragraphs 23 to 24). This conclusion is also consistent with the recent decision of this Court in *Georgia Strait Alliance v.*

Canada (Minister of Fisheries and Oceans), 2012 FCA 40, [2012] F.C.J. No. 157 at paragraphs 6 and 65 and following. In *Georgia Strait* this Court held that the reasonableness standard of review does not apply to the interpretation of a statute by a minister responsible for its implementation unless Parliament has provided otherwise.

ii. Can a charitable foundation with a single trustee be designated as a public foundation?

[24] Before commencing the required exercise of statutory interpretation I would observe that the scheme established in the Act with respect to public and private foundations is detailed and complex. It is surprising that in this detailed scheme there is no express provision which deals with the relatively common situation where a foundation has only one trustee.

[25] It is the result of the failure to expressly address this scenario that the issue arises whether Parliament intended that public foundations may not have a single trustee. This issue must, therefore, be resolved by application of the well-established principles of statutory interpretation.

[26] The parties agree that there is no material distinction between the arm's-length requirement as set out in part (a)(i) of both the existing and proposed definition of "public foundation." I agree. It is therefore sufficient to confine my analysis to the current definition of "public foundation."

[27] The principles to be applied to the interpretation of the definition are well-established:

It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with

the scheme of the Act, the object of the Act, and the intention of Parliament”: see 65302 *British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

The words, if clear, will dominate; if not, they yield to an interpretation that best meets the overriding purpose of the statute.

See: *Celgene Corp. v. Canada (Attorney General)*, 2011 SCC 1, [2011] 1 S.C.R. 3 at paragraph 21.

[28] I therefore turn first to the text of the definition and begin by noting that the definition commences with the phrase “‘public foundation’ means”. By these words Parliament has shown its intention that the definition is exhaustive of the meaning of the term “public foundation”.

[29] The definition continues with the requirements that “more than 50% of the [...] trustees [...] deal with each other and with each of the other [...] trustees [...] at arm’s length”. Through this language Parliament has, in my view, signaled its intention that there must be more than one trustee (director, officer or like official) of a public foundation.

[30] The first signal of Parliament's intention is the reference to "more than 50% of the [...] trustees". Implicit in the reference to more than 50% of the trustees is that there be more than one trustee.

[31] The second signal is the reference to the trustees dealing with "each other". There must be more than one trustee for a trustee to be able to deal with another trustee.

[32] The third signal is the requirement that the trustees deal with each other "at arm's length." Again, there must be more than one trustee for it to be able to have an arm's length (or any) relationship with another trustee. Moreover, a single trustee is not at arm's length from itself.

[33] In my view, by the use of this language Parliament has precisely and unequivocally evidenced its intent that public foundations must have more than one trustee (or director, officer or like official). This means that the ordinary meaning of the words used should play the dominant role in the interpretation of the definition. For completeness, however, I will review the statutory context and purpose of the definition.

[34] As stated above, a registered charity receives an important tax benefit under the Act in that it is not taxed on its income. Further, a registered charity is able to provide tax relief to its donors by issuing a charitable receipt which an individual donor may use to obtain a tax credit (section 118.1 of the Act) and a corporate donor may use to obtain a tax deduction (section 110.1 of the Act). This regime creates a potential for abuse if the registered charity and the donor are not at arm's length.

[35] The potential for abuse was recognized in the *Discussion Paper: The Tax Treatment of Charities* (Ottawa: Department of Finance, 1975). The Discussion Paper outlined the then current structure of charitable trusts and corporations and the perceived abuses that arose through self-dealing. The most common abuse was explained to be arranging investments and expenses to ensure that the charity had little income and paid out relatively small sums annually in comparison to its capital. This could be done in a number of ways, for example by investing in low-yield debt or equity of the donor's business, by renting premises from the donor at high rent, or by lending money to family members at low rates of interest.

[36] The Discussion Paper proposed the creation of both public and private foundations. The following specific proposals were made:

26. To retain its status as a registered charity, a private foundation would be required to distribute to other charities or to expend in direct charitable endeavours the *greater* of 90 per cent of its annual income or 5 per cent of its capital, calculated at fair market value on December 31 of each year. Capital would be defined to ensure that fixed assets used in the normal operations of the charity, such as buildings and furnishings, are excluded.

[...]

28. A percentage payout of capital is proposed for two reasons. It ensures that the abuses referred to above would be minimized because all capital would have to be employed to produce at least a 5 per cent return on the investment. Secondly, it means that in return for the very substantial tax concessions conferred on private foundations, society as a whole would receive at least a fixed minimum return annually.

29. As mentioned in paragraph 15 a private foundation would not be able to carry on business activities of any type. This is already a rule which applies to all charities in one province of Canada. The definition of carrying on business would ensure that the mere holding of equity in a corporation would not be treated as carrying on business.

[37] At the same time, the Discussion Paper proposed that charitable organizations and public foundations be allowed to carry on a business related to the primary charitable activity.

[38] These recommendations substantially came into force with the implementation of the May 25, 1976 Budget.

[39] By creating public and private foundations Parliament attempted to promote philanthropy, while at the same time trying to limit the potential for avoidance schemes.

[40] Public foundations were not subject to the same restrictive rules as private foundations because Parliament made a policy decision that public foundations (i.e. foundations which receive donations from a wide variety of persons) would be less likely to enter into avoidance transactions with their donors.

[41] Parliament has continued to place more restrictive rules on private foundations. For example:

- i. Prior to the 2007 Federal Budget, capital gains tax was eliminated on gifts of publicly listed securities to charitable organizations and public foundations, but not to private foundations.
- ii. While the 2007 Federal Budget extended the elimination of capital gains tax on gifts of publicly listed securities to private foundations, this was accompanied by the introduction of the excess business holding rules. These

rules were intended to address the concern that persons connected with a private foundation might be able to exercise undue influence over the foundation for their own benefit. The rules limit the number of shares which a private foundation may hold (section 149.1, subsections 149.1(1) definitions, 149.1(4), 149.1(12), 149.1(15), 188.1(3.1) and 188.1(3.2)).

- iii. Donors who wish to donate shares in a private company may make such gifts only to charitable organizations or public foundations in order to benefit from the excepted gift provision which applies to non-qualifying securities (subsections 118.1(18) and 118.1(19)).

[42] This review of the legislative context and purpose supports the interpretation that a public foundation must have more than one trustee. By increasing the number of arm's length trustees the risk of a public foundation self-dealing with its donors is reduced. Put another way, the requirement that there be more than one arm's length trustee provides greater assurance that a public foundation will not be used for tax avoidance purposes.

[43] Before concluding, the appellant advanced two submissions in support of its interpretation of the Act that should be dealt with. The appellant relies upon subsection 33(2) of the *Interpretation Act*, R.S.C. 1985, c. I-21, which states that for the purpose of interpreting federal legislation words used in the plural include the singular. The appellant therefore argues that the use of the plural in subparagraph (a)(i) of the definition should be read in the singular. In my view, this submission must fail for the following two reasons.

[44] First, subsection 33(2) of the *Interpretation Act* is subject to subsection 3(1) of that act which states that “[e]very provision of this Act applies, unless a contrary intention appears, to every enactment”. In my view, the use of the terms “more than 50%”, “deal with each other” and “at arm’s length” all evidence a contrary intention to the application of subsection 33(2) of the *Interpretation Act* to the definition under review.

[45] Second, in oral argument counsel for the appellant submitted that certain parts of the definition should be read out or not apply where a public foundation has a single trustee. This submission is, however, contrary to the principle of statutory interpretation that every word found in a statute is supposed to have a meaning. Courts are to avoid adopting interpretations that render any portion of the statute meaningless or mere surplusage (*Winters v. Legal Services Society*, [1999] 3 S.C.R. 160 at paragraph 48).

[46] The appellant also relies upon the fact that the CRA has taken contradictory administrative positions on whether a public foundation requires two or three trustees. It is correct that in a news release dated March 19, 2009 the CRA confirmed its position that a public foundation requires at least three trustees, while in internal documents it seems to accept that two trustees would be sufficient. However, the CRA’s administrative policy is not determinative of the meaning of a provision of the Act.

[47] It follows from the above reasons that the Minister correctly designated the appellant to be a private foundation. So long as it has a single trustee, the appellant cannot be a public foundation.

[48] This conclusion makes it unnecessary to consider whether the appellant meets the second requirement of the proposed definition. I decline to consider this issue because the proposed definition may never come into force and the Minister did not rely on this ground when confirming the appellant's designation.

[49] In the result, I would dismiss this appeal with costs.

“Eleanor R. Dawson”

J.A.

“I agree.

Johanne Trudel J.A.”

“I agree.

David Stratas J.A.”

APPENDIX

Paragraph 149(1)(f), subsection 149.1(1) definitions, subsection 172(3)(a.1) and subsection 248(1) of the *Income Tax Act* read as follows:

149. (1) No tax is payable under this Part on the taxable income of a person for a period when that person was	149. (1) Aucun impôt n'est payable en vertu de la présente partie, sur le revenu imposable d'une personne, pour la période où cette personne était :
--	--

[...]

...

(f) a registered charity;

f) un organisme de bienfaisance enregistré;

[...]

...

149.1 (1)

149.1 (1)

[...]

...

“charitable foundation” means a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof, and that is not a charitable organization;

« fondation de bienfaisance » Société ou fiducie constituée et administrée exclusivement à des fins de bienfaisance, dont aucun revenu n'est payable à un propriétaire, membre, actionnaire, fiduciaire ou auteur de la fiducie ou de la société ou ne peut par ailleurs être disponible pour servir au profit personnel de ceux-ci, et qui n'est pas une oeuvre de bienfaisance.

[...]

...

“charitable organization” means an organization, whether or not incorporated,

« oeuvre de bienfaisance » Oeuvre, constituée ou non en société :

(a) all the resources of which are devoted to charitable activities carried on by the organization itself,

a) dont la totalité des ressources est consacrée à des activités de bienfaisance qu'elle mène elle-même;

(b) no part of the income of which is payable to, or is otherwise available for,

b) dont aucune partie du revenu n'est payable à l'un de ses propriétaires,

the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof,

(c) more than 50% of the directors, trustees, officers or like officials of which deal with each other and with each of the other directors, trustees, officers or officials at arm's length, and

(d) where it has been designated as a private foundation or public foundation pursuant to subsection (6.3) of this section or subsection 110(8.1) or (8.2) of the *Income Tax Act*, chapter 148 of the *Revised Statutes of Canada, 1952*, or has applied after February 15, 1984 for registration under paragraph 110(8)(c) of that Act or under the definition "registered charity" in subsection 248(1), not more than 50% of the capital of which has been contributed or otherwise paid into the organization by one person or members of a group of persons who do not deal with each other at arm's length and, for the purpose of this paragraph, a reference to any person or to members of a group does not include a reference to Her Majesty in right of Canada or a province, a municipality, another registered charity that is not a private foundation, or any club, society or association described in paragraph 149(1)(l);

"charitable purposes" includes the disbursement of funds to qualified donees;

membres, actionnaires, fiduciaires ou auteurs ni ne peut servir, de quelque façon, à leur profit personnel;

c) dont plus de 50 % des administrateurs, dirigeants, fiduciaires ou autres responsables traitent entre eux et avec chacun des autres administrateurs, dirigeants, fiduciaires ou responsables sans lien de dépendance;

d) dont, lorsqu'elle a demandé l'enregistrement après le 15 février 1984 en application de l'alinéa 110(8)c) de la *Loi de l'impôt sur le revenu*, chapitre 148 des *Statuts révisés du Canada de 1952*, ou de la définition d'« organisme de bienfaisance enregistré », au paragraphe 248(1), ou a été désignée comme fondation privée ou fondation publique, en application du paragraphe (6.3) du présent article ou des paragraphes 110(8.1) ou (8.2) de la même loi, au plus 50 % des capitaux qui lui ont été fournis ou versés, de quelque façon, l'ont été par une personne ou par les membres d'un groupe de personnes ayant entre elles un lien de dépendance; pour l'application du présent alinéa, ne sont pas assimilés à une personne ou aux membres d'un groupe Sa Majesté du chef du Canada ou d'une province, une municipalité, un autre organisme de bienfaisance enregistré qui n'est pas une fondation privée ou tout cercle ou toute association visés à l'alinéa 149(1)l).

...

« fins de bienfaisance » Sont compris parmi les versements à des fins de bienfaisance les versements de fonds à des donataires reconnus.

[...]

“private foundation” means a charitable foundation that is not a public foundation;

“public foundation” means a charitable foundation of which,

(a) where the foundation has been registered after February 15, 1984 or designated as a charitable organization or private foundation pursuant to subsection 149.1(6.3) or to subsection 110(8.1) or (8.2) of the *Income Tax Act*, chapter 148 of the *Revised Statutes of Canada, 1952*,

(i) more than 50% of the directors, trustees, officers or like officials deal with each other and with each of the other directors, trustees, officers or officials at arm’s length, and

(ii) not more than 50% of the capital contributed or otherwise paid in to the foundation has been so contributed or otherwise paid in by one person or members of a group of such persons who do not deal with each other at arm’s length, or

(b) in any other case,

(i) more than 50% of the directors or trustees deal with each other and with each of the other directors or trustees at arm’s length, and

(ii) not more than 75% of the capital contributed or otherwise paid in to the foundation has been so contributed or otherwise paid in by one person or by a group of persons who do not deal with each other at arm’s length

and for the purpose of subparagraph (ii), a reference to any person or to members of a group does

...

« fondation privée » Fondation de bienfaisance qui n’est pas une fondation publique.

« fondation publique » Fondation de bienfaisance :

a) dont, lorsqu’elle a été enregistrée après le 15 février 1984 ou désignée comme fondation privée ou oeuvre de bienfaisance conformément au paragraphe (6.3) ou aux paragraphes 110(8.1) ou (8.2) de la *Loi de l’impôt sur le revenu*, chapitre 148 des *Statuts révisés du Canada de 1952*:

(i) plus de 50 % des administrateurs, dirigeants, fiduciaires ou autres responsables traitent entre eux et avec chacun des autres administrateurs, dirigeants, fiduciaires ou responsables sans lien de dépendance,

(ii) au plus 50 % des capitaux qui lui ont été fournis ou qui lui ont été versés, de quelque façon, l’ont été par une personne ou par les membres d’un groupe de personnes ayant entre elles un lien de dépendance;

b) dont, dans les autres cas :

(i) plus de 50 % des administrateurs ou fiduciaires traitent entre eux et avec chacun des autres administrateurs ou fiduciaires sans lien de dépendance,

(ii) au plus 75 % des capitaux qui lui ont été fournis ou qui lui ont été versés, de quelque façon, l’ont été par une personne ou par un groupe de personnes ayant entre elles un lien de dépendance.

Pour l’application du sous-alinéa a)(ii), ne sont pas assimilés à une personne ou à un membre d’un groupe Sa Majesté

not include a reference to Her Majesty in right of Canada or a province, a municipality, another registered charity that is not a private foundation, or any club, society or association described in paragraph 149(1)(l);

[...]

172. (3) Where the Minister

[...]

(a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,

[...]

the person in a case described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), may

du chef du Canada ou d'une province, une municipalité, un autre organisme de bienfaisance enregistré qui n'est pas une fondation privée ou tout organisme visé à l'alinéa 149(1)l).

...

172. (3) Lorsque le ministre :

...

a.1) soit confirme toute intention, décision ou désignation à l'égard de laquelle le ministre a délivré, en vertu de l'un des paragraphes 149.1(2) à (4.1), (6.3), (22) et (23) et 168(1), un avis à une personne qui est ou était enregistrée à titre d'organisme de bienfaisance enregistré ou qui a demandé l'enregistrement à ce titre, soit omet de confirmer ou d'annuler cette intention, décision ou désignation dans les 90 jours suivant la signification, par la personne en vertu du paragraphe 168(4), d'un avis d'opposition concernant cette intention, décision ou désignation;

...

la personne, dans le cas visé aux alinéas a), a.1) ou a.2), le demandeur, dans le cas visé aux alinéas b), e) ou g), le fiduciaire du régime ou l'employeur dont les employés sont bénéficiaires du régime, dans le cas visé à l'alinéa c), le promoteur, dans le cas visé à l'alinéa e.1), ou l'administrateur du régime ou l'employeur qui participe au régime, dans le cas visé aux alinéas f) ou f.1), peuvent interjeter appel à la Cour d'appel fédérale de cette décision

appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

[...]

248. (1) In this Act,

[...]

“registered charity” at any time means
 (a) a charitable organization, private foundation or public foundation, within the meanings assigned by subsection 149.1(1), that is resident in Canada and was either created or established in Canada, or
 (b) a branch, section, parish, congregation or other division of an organization or foundation described in paragraph (a), that is resident in Canada and was either created or established in Canada and that receives donations on its own behalf,
 that has applied to the Minister in prescribed form for registration and that is at that time registered as a charitable organization, private foundation or public foundation;

ou de la signification de cet avis.

...

248. (1) Les définitions qui suivent s'appliquent à la présente loi.

...

« organisme de bienfaisance enregistré » L'organisme suivant, qui a présenté au ministre une demande d'enregistrement sur formulaire prescrit et qui est enregistré, au moment considéré, comme oeuvre de bienfaisance, comme fondation privée ou comme fondation publique :
 a) oeuvre de bienfaisance, fondation privée ou fondation publique, au sens du paragraphe 149.1(1), qui réside au Canada et qui y a été constituée ou y est établie;
 b) division — annexe, section, paroisse, congrégation ou autre — d'une oeuvre de bienfaisance, fondation privée ou fondation publique, au sens du paragraphe 149.1(1), qui réside au Canada, qui y a été constituée ou y est établie et qui reçoit des dons en son nom propre.

Subsection 3(1) and 33(2) of the *Interpretation Act* read as follows:

3. (1) Every provision of this Act applies, unless a contrary intention appears, to every enactment, whether enacted before or after the commencement of this Act.

[...]

3. (1) Sauf indication contraire, la présente loi s'applique à tous les textes, indépendamment de leur date d'édiction.

...

33. (2) Words in the singular include the plural, and words in the plural include the singular.

33. (2) Le pluriel ou le singulier s'appliquent, le cas échéant, à l'unité et à la pluralité.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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Stratas J.A.

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