

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210721

Docket: A-223-19

Citation: 2021 FCA 145

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

BETWEEN:

ATHLETES 4 ATHLETES FOUNDATION

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Heard by online video conference hosted by the registry on May 10 and 11, 2021.

Judgment delivered at Ottawa, Ontario, on July 21, 2021.

REASONS FOR JUDGMENT BY:

WEBB J.A.

CONCURRED IN BY:

**RENNIE J.A.
LEBLANC J.A.**

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REASONS FOR JUDGMENT

WEBB J.A.

[1] This appeal arises under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act) as a result of the decision of the Minister of National Revenue (Minister) denying the application of Athletes 4 Athletes Foundation (A4A) for registration as a registered Canadian amateur athletic association (RCAAA) under the Act.

[2] For the reasons that follow, I would allow this appeal.

[3] Although the appeals were not consolidated, the appeal of Tomorrow's Champions Foundation (2021 FCA 146) from the refusal of the Minister to register it as a RCAA was heard at the same time as this appeal. To the extent that the same issues were raised in both appeals, these reasons will be adopted and applied in that appeal.

I. Background

[4] A4A is a society incorporated under the former *Society Act*, RSBC 1996, c 433 (replaced by the *Societies Act*, SBC 2015, c 18).

[5] The purposes of A4A are set out in section 2 of its constitution:

2. The purposes of the Society are:

a) to develop, fund, promote and carry on activities, programs and facilities for the promotion of amateur athletics in Canada on a nation-wide basis as its exclusive purpose and exclusive function;

b) to solicit and receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property for the purposes of the Society;

c) to disburse funds and property to, and for the benefit of associations, clubs and societies the primary purpose and primary function of which is the promotion of amateur athletics in Canada and for and to such other purposes and activities as are authorized for registered Canadian amateur athletic associations under the *Income Tax Act*;

d) to perform other functions as are ancillary and incidental to the attainment of the purposes and the exercise of the powers of the Society.

[6] On June 24, 2014, A4A submitted an application to be registered as a RCAA. In the letter dated March 18, 2015 (the First Letter), the Canada Revenue Agency (CRA) set out the definition of a Canadian amateur athletic association (CAAA) in the Act. The CRA also referred to various purposes that permitted other associations to be registered as a RCAA. The CRA then noted that it was its position that A4A did not satisfy paragraph (d) of the statutory definition of a CAAA because A4A “has not demonstrated that it operates for the exclusive purpose and exclusive function of promoting amateur athletics in Canada, on a nation-wide basis”.

[7] The concern in the First Letter was focused on the programs and activities that were to be undertaken by A4A. In particular, the CRA focused on A4A’s statement that it “hopes to provide ‘bridging’ financial support for those athletes who cannot otherwise afford to train and pay for their daily living expenses”. The CRA also referenced other statements that A4A will be providing financial assistance to athletes.

[8] After referencing the statements, the CRA set out its concerns:

As such, based on the information provided and, more specifically, the statements referenced above, it appears that the Applicant will primarily, or even exclusively, provide assistance to athletes in the form of additional funding and financial assistance. While many RCAAs are established to assist amateur athletes to excel in their respective sports, such organizations typically provide support that goes beyond funding and are more directly involved in the athletic development of the athletes; as opposed to the Applicant, who appears to only [*sic*] providing the athletes with funding. Specifically, such organizations will usually carry on a number of the exclusive functions listed earlier, such as providing and operating structured training programs that bring promising athletes from the grassroots level to national or international levels.

However, we must advise the Applicant that, in our view, there is no provision in the current regulatory framework for RCAAs that would allow an organization

that restricts itself to providing financial assistance to athletes to qualify for registration. We are unable to draw an analogy between providing financial assistance to athletes and any of the exclusive functions of a qualifying RCAA.

[9] The CRA also expressed concerns that A4A had not sufficiently demonstrated that it would operate on a nationwide basis. A4A had a presence in Vancouver but based on its proposed operating budget, in the CRA's view, it did not have sufficient capacity to operate programs on a national level.

[10] A4A responded to the First Letter. The response did not alleviate the CRA's concerns and the Minister issued a Notice of Refusal of Registration (the Notice) dated February 5, 2016.

[11] Generally, the Minister reiterated the same concerns that were raised in the First Letter. The Minister was concerned that A4A's activities "are not analogous to the exclusive purposes and functions of a CAAA that can qualify for registered status".

[12] The Minister also acknowledged that "the Act does not use the word 'direct' as such" but stated that, in the Minister's view, "only those activities which directly promote amateur athletics in Canada on a nationwide basis can fulfill the requirement of exclusiveness of purpose and function, as provided by the Act". Providing funding to amateur athletes, as proposed by A4A, was not accepted as promoting amateur athletics.

[13] The Minister also noted that:

Generally, in order to satisfy the nationwide requirement, an association qualifying as a RCAA will already be active in each Canadian province and territory; or it will be active in a significant number of jurisdictions covering most of the Canadian population while having concrete plans to expand to a nationwide scale. We generally consider an organization to be operating on a nationwide basis when it already has a broad-based presence throughout a significant number of localities across Canada and those local organizations decide to federate themselves at a national level.

[14] Following the receipt of the Notice, A4A submitted a notice of objection under subsection 168(4) of the Act on May 5, 2016. On June 12, 2019, A4A filed an appeal to this Court under subsection 172(3) of the Act, as the Minister had not responded to the notice of objection.

II. Issues and standards of review

[15] A4A raised a number of issues in its memorandum of fact and law. The issues can be consolidated and summarized as whether the Minister erred in denying A4A's application on the basis that:

- (a) Because A4A is proposing to provide funding directly to athletes, it does not satisfy the requirement of promoting amateur athletics as its exclusive purpose and exclusive function; and
- (b) Because A4A does not have offices in every province and territory in Canada, it does not satisfy the requirement of promoting amateur athletics in Canada on a nationwide basis.

[16] Since this is an appeal under subsection 172(3) of the Act, the standards of review as provided in *Housen v. Nikolaisen*, 2002 SCC 33, are applicable (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 37). The standard of review is palpable and overriding error for any question of fact or any question of mixed fact and law for which there is no extricable question of law. In this particular case, there are extricable questions of law with respect to the proper interpretation of the definition of CAAA. Therefore, for the extricable questions of law, the standard of review is correctness.

III. Analysis

[17] A RCAA is defined in subsection 248(1) of the Act as a CAAA which satisfies the definition as set out in subsection 149.1(1) of the Act and which has applied for and is registered as a RCAA:

registered Canadian amateur athletic association means a Canadian amateur athletic association within the meaning assigned by subsection 149.1(1) that has applied to the Minister in prescribed form for registration, that has been registered and whose registration has not been revoked;

association canadienne enregistrée de sport amateur Association canadienne de sport amateur, au sens du paragraphe 149.1(1), qui a présenté au ministre une demande d'enregistrement sur le formulaire prescrit, qui a été enregistrée et dont l'enregistrement n'a pas été révoqué.

[18] The definition of CAAA is as follows:

Canadian amateur athletic association means an association that

association canadienne de sport amateur Association à l'égard de laquelle les faits ci-après se vérifient :

(a) was created under any law in force in Canada,

a) elle a été constituée sous le régime d'une loi en vigueur au Canada;

(b) is resident in Canada,

b) elle réside au Canada;

(c) has no part of its income payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder of the association unless the proprietor, member or shareholder was a club, society or association the primary purpose and primary function of which was the promotion of amateur athletics in Canada,

c) aucune partie de son revenu n'est payable à un propriétaire, à un membre ou à un actionnaire ou ne peut par ailleurs servir au profit personnel de ceux-ci, sauf si le propriétaire, le membre ou l'actionnaire était un cercle ou une association dont le but premier et la fonction première étaient de promouvoir le sport amateur au Canada;

(d) has the promotion of amateur athletics in Canada on a nationwide basis as its exclusive purpose and exclusive function, and

d) elle a pour but exclusif et fonction exclusive la promotion du sport amateur au Canada à l'échelle nationale;

(e) devotes all its resources to that purpose and function;

e) elle consacre l'ensemble de ses ressources à la poursuite de ces but et fonction.

[19] The dispute between A4A and the Minister is centered generally on two particular issues: A4A's stated intention of providing funding directly to amateur athletes and whether A4A satisfies the nationwide basis requirement.

A. *Providing funding directly to athletes*

(1) Reliance on guidance documents

[20] The Minister, in the Notice, stated:

In our letter of March 18, 2015, we explained that the Applicant's involvement in promoting amateur athletics appeared to be too indirect, in that it restricts itself to providing financial assistance to individual amateur athletes which, as indicated earlier, is not analogous to any of the exclusive purposes and functions of a qualifying CAAA. [...]

In our letter, we advised the Applicant that, in our view, there is no provision in the current regulatory or statutory framework for CAAAs that would allow an organization that solely restricts itself to providing financial assistance to amateur athletes to qualify for registration. We advised the Applicant that we were unable to draw an analogy between providing financial assistance to athletes and any of the exclusive purposes and functions of a CAAA that can qualify for registered status.

[21] Although the Minister referred to “the current regulatory or statutory framework for CAAAs”, there are no regulations that govern whether an organization qualifies as a CAAA. The only relevant provisions are those in the Act.

[22] It would appear that the exclusive purposes and functions of a CAAA that can qualify for registered status to which the Minister was referring, are those that are set out in a footnote in the Notice and in the body of the First Letter:

Qualifying applicants for RCAA status are generally established for the following exclusive purposes, which they then carry on as their exclusive functions. These functions must be carried out in Canada and on a nation-wide basis and the association must devote all of its resources to carrying on those functions. These exclusive purposes are:

- to regulate a sport and the way it is played;
- to promote the sport;
- to oversee a structure of local clubs, and regional and provincial bodies involved in the sport;

- to operate a training program that brings promising athletes from the grass-roots level to national and international levels through various qualifying competitive events;
- to operate a national team to participate at international competitions;
- to stage and sanction local, regional, provincial and national competitions;
- to act as a Canadian representative of an international federation controlling the sport;
- to provide a training and certification program for coaches and referees; and
- to carry out fund-raising activities and re-distribution of funds for local, regional and provincial member organizations.

[23] In addition to these listed purposes and functions, the First Letter included the following:

Alternatively, the following types of organizations may also qualify as a RCAA:

- organizations established to hold international or national multi-sport games in Canada;
- organizations established to hold international single-sport events in Canada;
- organizations that maintain and operate facilities for the training of elite athletes that are an extension of international multi-sport games; or
- organizations that provide multi-sport training centres for high-performance athletes that have been identified by their national sports organizations.

An organization that meets all of the requirements of the Act and that, by extension, is established to carry on all or most of the exclusive purposes identified above, can obtain registration as a RCAA with the Canada Revenue Agency. [...]

[24] Although no reference is provided for the source of these qualifying purposes, the list of purposes mirrors those as stated in the guidance that was published by the CRA (CPS-011) and that was applicable until December 31, 2011. While the stated purposes in the First Letter and

the Notice commence with the expression that “qualifying applicants for RCAA status are generally established for the following exclusive purposes [...]”, the guidance had stated that “[t]o qualify for registration as a Canadian amateur athletic association, an organization must operate mostly, if not entirely, for the following objects”.

[25] The exclusive purposes and functions which are referred to in the First Letter and in the Notice are not listed in the Act. The only source of such list is the guidance document that had previously been prepared by the CRA. The issue, however, is not whether A4A’s purposes and functions are included in the list prepared by the CRA or analogous to those that are included in this list, but rather whether such purposes and functions will satisfy the requirements of the definition of CAAA in the Act.

[26] The Crown, in paragraph 78 of its memorandum, submits that “the examples of exclusive purposes referred to in the guidance documents are entirely consistent with the definition of CAAA in the French version of para. 149.1(1)(d) of the Act [...]”. There are two points that arise from this statement. The first point is that the French version does not convey a different meaning than the English version. The second point is that the issue is not whether “the examples of exclusive purposes referred to in the guidance documents are entirely consistent with the definition of a CAAA” but rather whether the Minister relied exclusively on this list of examples and, therefore, treated it as binding list of acceptable purposes.

[27] In *Stemijon Investments Ltd. v. Canada (Attorney General)*, 2011 FCA 299, this Court noted:

[59] Policy statements play a useful and important role in administration: *Thamotharem v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 198, [2008] 1 F.C.R. 385. For example, by encouraging the application of consistent principle in decisions, policy statements allow those subject to administrative decision-making to understand how discretions are likely to be exercised. With that understanding, they can better plan their affairs.

[60] However, as explained in paragraphs 20-25 above, decision-makers who have a broad discretion under a law cannot fetter the exercise of their discretion by relying exclusively on an administrative policy: *Thamotharem*, *supra* at paragraph 59; *Maple Lodge Farms*, *supra* at page 6; *Dunsmuir*, *supra* (as explained in paragraph 24 above). An administrative policy is not law. It cannot cut down the discretion that the law gives to a decision-maker. It cannot amend the legislator's law. A policy can aid or guide the exercise of discretion under a law, but it cannot dictate in a binding way how that discretion is to be exercised.

[28] In *Stemijon Investments Ltd.*, the Minister had refused an application for the waiver of interest and penalties under subsection 220(3.1) of the Act. This subsection grants the Minister the discretion to waive or cancel interest and penalties: “[t]he Minister may [...] waive or cancel all or any portion of any penalty or interest [...]” [emphasis added].

[29] However, there is no similar broad discretion granted to the Minister to refuse the registration of a CAAA as a RCAA. The only discretion granted to the Minister to refuse a registration is set out in subsection 149.1(25) of the Act:

(25) The Minister may refuse to register a charity or Canadian amateur athletic association that has applied for registration as a registered charity or registered Canadian amateur athletic association if

(25) Le ministre peut refuser d’enregistrer tout organisme de bienfaisance ou association canadienne de sport amateur qui a présenté une demande d’enregistrement comme organisme de bienfaisance enregistré ou association canadienne enregistrée de sport amateur si, selon le cas :

(a) the application for registration is made on its behalf by an ineligible individual;

a) la demande d'enregistrement est présentée pour son compte par un particulier non admissible;

(b) an ineligible individual is a director, trustee, officer or like official of the charity or association, or controls or manages the charity or association, directly or indirectly, in any manner whatever; or

b) un particulier non admissible contrôle ou gère l'organisme ou l'association directement ou indirectement, de quelque manière que ce soit, ou en est un administrateur, fiduciaire, cadre ou représentant semblable;

(c) the charity or association has accepted a gift from a foreign state, as defined in section 2 of the State Immunity Act, that is set out on the list referred to in subsection 6.1(2) of that Act.

c) l'organisme ou l'association a accepté un don d'un État étranger, au sens de l'article 2 de la Loi sur l'immunité des États, qui est inscrit sur la liste mentionnée au paragraphe 6.1(2) de cette loi.

[30] There is no suggestion in this case that any of the conditions as set out in paragraphs 149.1(25)(a), (b) or (c) of the Act are applicable.

[31] While, in oral argument, the Crown also referred to the discretion granted to the Minister under subsection 149.1(22) of the Act, this is a discretion related to the giving of notice rather than the discretion to refuse to register:

(22) The Minister may, by registered mail, give notice to a person that the application of the person for registration as a registered charity, registered Canadian amateur athletic association, registered journalism organization or qualified donee referred to in subparagraph (a)(i) or (iii) of the definition qualified donee in subsection (1) is refused.

(22) Le ministre peut, par courrier recommandé, aviser toute personne que sa demande d'enregistrement comme organisme de bienfaisance enregistré, association canadienne enregistrée de sport amateur, organisation journalistique enregistrée ou donataire reconnu visé aux sous-alinéas a)(i) ou (iii) de la définition de donataire reconnu au paragraphe (1) est refusée.

[emphasis added]

[Non souligné dans l'original.]

[32] The word “may” in this subsection applies to the verb “give”. This subsection only provides discretion to the Minister to give notice of a refusal to register. This section must be read in conjunction with subsection 172(4) of the Act, which provides that the Minister is deemed to have refused to register an applicant for registration as a CAAA if the Minister does not notify the applicant of the disposition of the application within 180 days after the filing of the application. Subsection 149.1(22) does not support the argument of the Crown that the Minister has a broad discretion to refuse the registration of a CAAA as a RCAA.

[33] The Minister is empowered to grant RCAA status to organizations that comply with the requirements of the definition of a CAAA. In doing so, the Minister will have to determine that a particular organization satisfies these requirements, which will require the Minister to make certain findings of fact and mixed fact and law. However, this is not the same as having a broad discretion to refuse the registration of a particular organization. The Minister would have a broad discretion if the Act provided that the Minister may register (or may refuse to register) a CAAA as a RCAA, without limiting such discretion to only certain situations such as those as set out in paragraphs 149.1(25)(a), (b) and (c) of the Act.

[34] Since the comments in *Stemijon Investments Ltd.* that administrative guidance cannot change the law are applicable when the Minister has discretion, they are also applicable when the Minister does not have the broad discretion under the Act to refuse the registration of a CAAA as a RCAA, other than when the conditions in subsection 149.1(25) of the Act are satisfied. The role of the Minister in determining whether a particular organization qualifies as a CAAA and should be registered as a RCAA, is to determine whether, based on the application of that

organization, it satisfies Parliament's statutory requirements. The guidance as previously drafted by the CRA cannot bind the Minister nor can it alter the provisions of the statutory definition of a CAAA.

[35] Although the language has changed from a mandatory requirement that a CAAA must operate for the objects as listed (as stated in the guidance - CPS-011) to a statement that they will generally so operate (as stated in the First Letter and the Notice), it would appear that the Minister was still treating this as a mandatory list.

[36] In the Notice, the Minister stated:

While we acknowledge that it is not mandatory for a CAAA to undertake each of the aforementioned exclusive purposes and functions, it is our position that these purposes and functions generally illustrate the means by which an applicant for RCAA status can demonstrate that it will exclusively promote amateur athletics on a nationwide basis. It is the undertaking of activities ensuing from these purposes and functions that provides the concrete evidence that an applicant has the exclusive purpose and exclusive function of promoting amateur athletics on a nationwide basis. Additionally, while we also acknowledge that each listed purpose cannot be in-and-of itself a decisive factor and that these purposes are not self-limiting, it is our position that the sum of these purposes provides a convincing case for registration as a RCAA under the Act.

[...] While the exclusive purposes and functions of a qualifying CAAA are not set out in the Act as such, the CRA has used these purposes and functions as a means of determining eligibility for registration since the vast majority of RCAAs are established for and carry on all or most of these purposes and functions.

[37] Indicating "that it is not mandatory for a CAAA to undertake each of the aforementioned exclusive purposes and functions" [emphasis added], suggests that, in the Minister's view, an organization would have to undertake at least one of the listed exclusive purposes and functions in order to qualify for registration. This is also reflected in the other language used by the

Minister in the above paragraphs and by stating that A4A failed to satisfy the necessary requirements because the Minister was “unable to draw an analogy between providing financial assistance to athletes and any of the exclusive purposes and functions of a CAAA that can qualify for registered status”.

[38] The question for the Minister to determine was whether A4A satisfied the definition of a CAAA, not whether its purposes were the same as or analogous to the purposes of previously registered RCAAs.

(2) Must the activities directly support the promotion of amateur athletics?

[39] In interpreting the definition of CAAA, it appears that the Minister read into this definition a requirement that the activities of a CAAA must directly support the promotion of amateur athletics in order to qualify under paragraph (d) of this definition:

While we acknowledge that the Act does not use the word ‘direct’ as such, it is our view that only those activities which directly promote amateur athletics in Canada on a nationwide basis can fulfill the requirement of exclusiveness of purpose and function, as provided by the Act. In other words, since the Act requires that a qualifying CAAA’s purpose be exclusive, it is our position that, by implication, this purpose must be achieved directly, at the exclusion of anything else. We consider that if an activity only ‘indirectly’ promotes amateur athletics in Canada on a nationwide basis, it must be that, by implication, the aforementioned activity ‘directly’ does something else, which could fall outside of the scope of the legislative framework.

[40] Provisions of the Act are to be interpreted based on a textual, contextual and purposive analysis (*Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, at para. 10). The role of this Court is to determine the interpretation of these provisions that was intended by Parliament.

[41] The text of paragraph (*d*) of the definition of CAAA is as follows:

Canadian amateur athletic association means an association that

[...]

(*d*) has the promotion of amateur athletics in Canada on a nationwide basis as its exclusive purpose and exclusive function, and

[...]

[42] The definition of CAAA in the Act provides that the exclusive purpose and exclusive function of a CAAA must be the promotion of amateur athletics in Canada on a nationwide basis. Therefore, this can be its only purpose and only function. However, it does not limit the functions to only those functions that directly promote amateur athletics in Canada on a nationwide basis. So long as the only purpose and the only function of an organization is the promotion of amateur athletics in Canada on a nationwide basis, it should not matter whether a particular function directly or indirectly does so.

[43] There is nothing in the context or purpose that would support the position that only activities or functions that directly support amateur athletics in Canada on a nationwide basis are acceptable. The purpose of the provision is to grant certain tax advantages to an organization that promotes amateur athletics in Canada on a nationwide basis, provided that this is the organization's only purpose and function.

[44] The only element of paragraph (*d*) that provides any insight into what type of activity or function is permitted is the reference to the promotion of amateur athletics. The other

components of paragraph (d) are restrictions imposed on the organization regarding the scope of its purposes and functions (exclusively the promotion of amateur athletics) and where the organization must be promoting amateur athletics (in Canada on a nationwide basis). The promotion of amateur athletics is therefore a key component. Limiting the activities to only those that directly promote amateur athletics would lead to difficulties and uncertainty concerning whether a particular activity or function directly or indirectly promotes amateur athletics and, therefore, could discourage organizations from doing the promotion that the provision is intending to encourage.

[45] The uncertainty that would be created by imposing a directness requirement is illustrated by attempting to reconcile the Minister's stated interpretation that "only those activities which directly promote amateur athletics in Canada on a nationwide basis can fulfill the requirement of exclusiveness of purpose and function" with the list of acceptable purposes as stated in the First Letter and in the Notice. For example, the Minister has stated that an acceptable purpose will include the overseeing of "a structure of local clubs, and regional and provincial bodies involved in the sport". How would overseeing other bodies *directly* promote amateur athletics? Arguably, it would indirectly promote amateur athletics. Similarly, acceptable activities include acting as "a Canadian representative of an international federation controlling the sport" and providing "a training and certification program for coaches and referees". Again, it would appear that these activities could be viewed as indirectly promoting amateur athletics rather than directly promoting amateur athletics.

[46] Why directness cannot be a requirement is further illustrated by examining another one of the acceptable exclusive purposes: “to stage and sanction local, regional, provincial and national competitions”. In staging a competition, an organization will undertake various activities including, presumably, renting facilities, preparing signs and handouts, printing or engaging another person to print the signs and handouts, and various other activities that arguably do not directly promote amateur athletics but only indirectly do so by allowing or facilitating such a competition to occur.

[47] As a result, neither the definition of CAAA nor the acceptable purposes or functions identified by the CRA, support a finding that an organization’s purposes and functions must directly promote amateur athletics.

(3) The payment of funds directly to athletes and their use of these funds

[48] It would appear that the Minister’s concern with respect to A4A was how athletes would be using any funds that they receive. In the Notice, the Minister stated:

[...] Providing funding to amateur athletes may promote amateur athletics, but at the same time it may well promote a vast number of other propositions, such as, for example, assisting those individuals with pursuits that are not linked to amateur athletics, therefore failing to meet the test of exclusiveness of function. For instance, in its application, the Applicant stated that the funds it provides could be used to cover things such as the athletes’ “living expenses.” Therefore, we can easily imagine that an athlete receiving funds from the Applicant could use those funds for a variety of purposes other than the promotion of amateur athletics. Such funding could also advance other propositions, such as helping raise those athletes from the amateur to the professional level. This also raises the question as to whether providing funds to amateur athletes could disqualify them from their status as “amateur” athletes, and redefine them as “professional” athletes.

[49] Whether the payments, as contemplated by A4A, could change the status of an athlete from an amateur to a professional athlete, is speculation on the part of the Minister.

[50] It would appear that the Minister would accept that a payment made to an athlete would not, in and of itself, disqualify an organization from registration. In the Notice, the Minister acknowledged that “[p]roviding funding to amateur athletes may promote amateur athletics”.

[51] As a further indication that the Minister appears to accept that providing funding to athletes could be regarded as promoting amateur athletics, in addressing, in the Notice, the exclusiveness requirement the Minister stated:

[...] We pointed out that while many CAAAs are established to assist amateur athletes to excel in their respective sports, such organizations typically provide support that goes beyond funding and are more directly involved in the athletic development of the athletes. [...]

In our letter, we advised the Applicant that, in our view, there is no provision in the current regulatory or statutory framework for CAAAs that would allow an organization that solely restricts itself to providing financial assistance to amateur athletes to qualify for registration. [...]

[emphasis added]

[52] By referring to providing support that “goes beyond funding” and referring to organizations that are *solely* restricted to providing financial assistance, the Minister is implying that the support provided by acceptable CAAAs includes funding provided to athletes. Since the purposes and functions of an organization must exclusively be the promotion of amateur athletics, the function of providing funding to athletes must be considered to be an acceptable function. Otherwise, providing any funding would mean that the organization would have failed

to establish that its exclusive purpose and exclusive function is the promotion of amateur athletics.

[53] Therefore, providing funding to athletes, in and of itself, is not a valid basis to deny registration. It is not clear why an organization could not satisfy the exclusivity requirement for purpose and function by providing funding that would assist an amateur athlete to pursue their particular athletic endeavour. It is, however, important to view a particular payment in light of the objects of the organization.

[54] As noted by Iacobucci, J. in *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10, at para. 152, 169 D.L.R. (4th) 34:

[...] The difficulty is that the character of an activity is at best ambiguous; for example, writing a letter to solicit donations for a dance school might well be considered charitable, but the very same activity might lose its charitable character if the donations were to go to a group disseminating hate literature. In other words, it is really the purpose in furtherance of which an activity is carried out, and not the character of the activity itself, that determines whether or not it is of a charitable nature. Accordingly, this Court held in *Guaranty Trust, supra*, that the inquiry must focus not only on the activities of an organization but also on its purposes.

[55] The purpose of the particular payments to athletes is important. In its Statement of Activities, A4A included the following:

The Foundation needs to operate on a nation-wide basis in order to have the largest possible pool of amateur athletes to choose from. The Foundation will work across Canada to identify athletes having the greatest potential to compete successfully at the highest levels of their sport if they receive the financial assistance of the Foundation. The Foundation will then provide funding and programs to bring these athletes the training, coaching, competition, opportunities and other valuable support mechanisms they need in order to compete on both the

national and international stage. Athletes who receive funding from the Foundation will consist both of current nationally carded athletes (Sport Canada), and those athletes that have not yet achieved their national carding status. In the latter case, the Foundation hopes to provide “bridging” financial support for those athletes who cannot otherwise afford to train and pay for their daily living expenses.

[56] The particular concern in this case appears to be what expenses would be covered by the funding that would be provided to the athletes. In its Statement of Activities, A4A, for non-carded athletes, indicated that it “hopes to provide ‘bridging’ financial support for those athletes who cannot otherwise afford to train and pay for their daily living expenses”. It is not clear whether the “‘bridging’ financial support” would be for training or for the living expenses.

[57] Whether any particular payment made to an athlete will satisfy the requirement that it promotes amateur athletics in Canada can only be determined once the facts related to such payment are known. At this stage, A4A has applied to be registered as a RCAA. This is not an audit of A4A but rather a question of whether its proposed payments to athletes, when read in light of its stated objects, satisfies the requirement that its only purpose and function is the promotion of amateur athletics in Canada on a nationwide basis.

(4) Reference to paragraph (e) of the definition of a CAAA

[58] The Minister in this case has effectively treated the application process as an audit of A4A. This is illustrated by the Minister’s comments on paragraph (e) of the definition of a CAAA. Neither party to this appeal referred to this paragraph or to the Minister’s comments thereon.

[59] In the Notice, the Minister, as an additional reason for denying the registration of A4A as a RCAA, concluded that A4A had failed to satisfy the requirement of paragraph (e) of the definition of CAA that the organization “devotes all its resources to that purpose and function”.

The Minister noted:

Based on the information provided, the Applicant did not discharge itself of its obligation to prove this element as it has not demonstrated that it is involved in directing or otherwise verifying how its funds are spent by the athletes. As a result, we are left unable to conclude that the Applicant will devote all of its funds and resources towards the exclusive purpose of promoting amateur athletics in Canada on a nationwide basis.

[60] The verification of how funds are spent would be part of an audit. At this time, it is not clear whether A4A has any resources and, in any event, there is no indication that any payment has been made by A4A to any athlete. On its application for registration as a RCAA, the focus should not just be on the proposed payment of money to athletes but also on the purposes for which such payment will be made, as stated by A4A in its application.

B. *Nationwide basis*

[61] The CRA was also of the view that A4A had not satisfied the requirement of operating on a nationwide basis. In particular, the CRA referred to the decision of this Court in *Maccabi Canada v. Minister of National Revenue* (1998), 229 N.R. 227, 98 D.T.C. 6526 (F.C.A.D), as reinforcing its position that, in order to qualify for registration, a CAA must be active throughout Canada on a geographic basis. However, in that case, the issue was whether the nationwide requirement only referred to a geographic dimension or whether it also included a

demographic component (paragraph 3 of *Maccabi*). This Court concluded that the nationwide condition was restricted to a geographic requirement:

[8] In our view, these words describe a geographic requirement only. It is sufficient that a Canadian amateur athletic association applying for registration under the Act carries on activities across Canada and not be provincially, regionally or locally limited. This interpretation is consistent with the legislative intent to ensure that the issuing of receipts to donators would come from a single organization at the national level and that Revenue Canada would not have to interface with a myriad of provincial, regional and local organizations.

[62] For the purposes of paragraph (*d*) of the definition of a CAAA, it is only necessary that a CAAA carry on its activities across Canada, it is not necessary that such organization have a physical presence in each province and territory.

[63] In the Notice, the Minister stated:

We generally consider an organization to be operating on a nationwide basis when it already has a broad-based presence throughout a significant number of localities across Canada and those local organizations decide to federate themselves at a national level.

[64] It is not clear whether the Minister in referring to “broad-based presence” and “those local organizations decide to federate themselves at a national level” was intending to limit qualifying organizations to those that have a physical presence in several different locations. The issue raised by A4A in its memorandum is based on its interpretation of the Minister’s statements as requiring A4A to have an office in every province and territory in Canada. The Crown submitted that A4A has misstated the position of the Minister. However, the position of

the Minister is not entirely clear. Since A4A has raised this issue, the issue of whether a CAAA must have a physical location in every province and territory will be addressed.

[65] The text of paragraph (*d*) of the definition of CAAA only requires that the exclusive purposes and functions of an organization must be the “*promotion of amateur athletics in Canada on a nationwide basis*” [emphasis added]. There is no reason why an organization, with a physical presence in only one province, should not be able to promote amateur athletics in Canada on a nationwide basis, without necessarily having a physical presence in each province and territory.

[66] The context and purpose of the provision would also support a finding that a physical presence in each province and territory is not required. The focus of the organization is to be on the promotion of amateur athletics throughout Canada, not on maintaining offices throughout Canada. So long as the organization is promoting amateur athletics in Canada on a nationwide basis, even if it only has an office in one province, it would satisfy the requirement.

[67] If, following registration, an organization should fail to carry on its activities on a nationwide basis, such organization would not be able to maintain its status as a RCAA.

IV. Conclusion

[68] In my view, the Minister erred in:

- (a) treating its list of acceptable purposes and functions as being the only acceptable purposes and functions for an organization to qualify as a CAAA;
- (b) denying the registration of A4A as a RCAA on the basis that the Minister was unable to draw an analogy between providing financial assistance to athletes and any of the exclusive purposes and functions of an existing CAAA that has been registered as a RCAA; and
- (c) reading into the definition of CAAA a requirement that an eligible organization must directly promote amateur athletics.

[69] To the extent that the Minister may also have based the refusal to register A4A as a RCAA on the basis that A4A does not have a physical presence in each province or territory, the Minister erred in doing so.

[70] A4A has asked that the matter be referred back to the Minister. I agree that the matter should be referred back to the Minister. The role of the Minister is to determine whether a particular organization satisfies the requirements of a CAAA and therefore should be registered as a RCAA.

[71] In this case, the Minister will need to determine whether, in light of the above findings with respect to the definition of a CAAA, A4A has established that its stated functions will promote amateur athletics in Canada on a nationwide basis. In making this determination, the Minister will be making certain findings of fact and mixed fact and law.

[72] I would therefore allow the appeal, set aside the decision of the Minister and remit the matter back to the Minister for redetermination in accordance with these reasons. Subsequent to the hearing of the appeal, the parties submitted a letter stating that they had agreed on the costs to be awarded to the successful party. The amount agreed upon for A4A, rounded to the nearest dollar, was \$3,886. The Minister shall pay costs, fixed in the amount of \$3,886, to A4A.

“Wyman W. Webb”

J.A.

“I agree

Donald J. Rennie J.A.”

“I agree

René LeBlanc J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-223-19

STYLE OF CAUSE: ATHLETES 4 ATHLETES
FOUNDATION v. MINISTER OF
NATIONAL REVENUE

PLACE OF HEARING: HEARD BY ONLINE VIDEO
CONFERENCE HOSTED BY
THE REGISTRY

DATE OF HEARING: MAY 10 AND 11, 2021

REASONS FOR JUDGMENT BY: WEBB J.A.

CONCURRED IN BY: RENNIE J.A.
LEBLANC J.A.

DATED: JULY 21, 2021

APPEARANCES:

Gib van Ert FOR THE APPELLANT
Dahlia Shuhaibar

Lynn M. Burch FOR THE RESPONDENT
Selena Sit
Anna Walsh

SOLICITORS OF RECORD:

Gib van Ert Law Corporation FOR THE APPELLANT
Vancouver, British Columbia

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada