

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20240321**

**Docket: A-167-23**

**Citation: 2024 FCA 59**

**CORAM: LASKIN J.A.  
MACTAVISH J.A.  
MONAGHAN J.A.**

**BETWEEN:**

**SIGMA CHI CANADIAN FOUNDATION**

**Appellant**

**and**

**MINISTER OF NATIONAL REVENUE**

**Respondent**

Heard at Toronto, Ontario, on March 21, 2024 with the participation  
remotely of one member of the panel.

Judgment delivered from the Bench at Toronto, Ontario, on March 21, 2024.

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

**LASKIN J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Toronto, Ontario, on March 21, 2024).**

**LASKIN J.A.**

[1] The Sigma Chi Canadian Foundation appeals to this Court under paragraph 172(3)(a.1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) from a decision of the Minister of National Revenue. In that decision, the Minister confirmed her intention to revoke Sigma Chi's registration as a charity.

[2] Sigma Chi was registered as a charity with effect from 1992. It describes itself as an international fraternal organization with 244 active undergraduate chapters and 152 alumni chapters across Canada and the United States. When it was registered, one of its stated objectives was to “assist deserving undergraduate, graduate, and other students attending or enrolled at institutions and systems of higher education in Canada who are in financial need to continue and complete their education at such institutions and systems.”

[3] An organization must meet a number of statutory requirements to qualify and continue to qualify for charitable registration. In 2010 and 2011, the Canada Revenue Agency audited Sigma Chi’s operations. The audit identified a number of areas of non-compliance. These included Sigma Chi’s failure to devote all of its resources to charitable activities and the provision of personal benefits to members. The audit found that eligibility for the majority of Sigma Chi’s scholarships was restricted to its members.

[4] In March 2011, the Minister and Sigma Chi entered into a compliance agreement to address issues identified in the audit. In the agreement, Sigma Chi agreed, among other things, to “devote all of its resources to charitable activities,” and to not restrict its scholarships and financial assistance to Sigma Chi members.

[5] The CRA commenced a second audit in November 2017. The Minister informed Sigma Chi of findings from the audit that Sigma Chi was not complying with statutory requirements, including by failing to devote its resources to its own charitable activities, failing to maintain adequate books and records, and issuing non-compliant tax receipts. The audit also found that in

the 2015 and 2016 fiscal periods respectively, 61% and 74% of total resources spent on scholarships and awards were for “inhouse scholarships,” which are restricted to members and pledges, and that some scholarships were awarded based on the recipient’s role in Sigma Chi or how they represented its ideals. The audit determined that Sigma Chi’s activities were primarily for the benefit of its members, not for the benefit of the public (as the ITA requires of a registered charity).

[6] Sigma Chi provided written representations to the Minister in response to the audit. After considering these representations, the Minister determined that Sigma Chi did not meet the requirements for registration as a charity, and issued a notice of intention to revoke. Sigma Chi filed an objection in response. The Minister reviewed Sigma Chi’s submissions in support of its objection, but found that they failed to demonstrate that Sigma Chi met the requirements for maintaining its registration. However, she decided in light of the objection that she would not continue to rely on one of the grounds she had initially advanced—the failure to meet the requirements for books and records in subsection 230(2) of the ITA.

[7] The Minister now relies on three grounds for revocation: (1) that Sigma Chi has provided private benefits for members, and thus has not been operated exclusively for charitable purposes as required by paragraph 149.1(1)(a) of the ITA; (2) that it has provided funds to non-qualified donees, contrary to paragraph 149.1(1)(a.1); and (3) that it did not have direction and control over funds sent to an American organization, and thus failed to devote all of its resources to charitable activities it itself carried on, contrary to paragraph 149.1(1)(a.1): *Canadian Committee for the Tel Aviv Foundation v. Canada*, 2002 FCA 72 at para. 40.

[8] Sigma Chi contests all three of these findings. It is common ground that the standard of review in respect of these findings is the highly deferential standard of palpable and overriding error, and that to displace the Minister's decision based on them, Sigma Chi must demonstrate palpable and overriding error in respect of all three: *Colel Chabad Lubavitch Foundation of Israel v. Canada (National Revenue)*, 2022 FCA 108 at paras. 49, 51. Sigma Chi also submits that the Minister breached her duty of procedural fairness, and that her conduct raises a reasonable apprehension of bias. We do not agree that any of these grounds are made out.

[9] First, we see no palpable and overriding error in the finding that Sigma Chi has provided private benefits to its members through its inhouse scholarships. While Sigma Chi submits that these scholarships are open to all male university students eligible to apply for Sigma Chi membership, they are ultimately payable only to recipients who are accepted as members or pledges. Moreover, despite Sigma Chi's commitment in the compliance agreement to "devote all of its resources to charitable activities" and to not restrict the beneficiaries of the scholarships and educational assistance program, the record shows that it continued to grant inhouse scholarships in 2015, 2016, 2020, and 2021. In 2015 and 2016 respectively, 75% and 82% of Sigma Chi's scholarship funds were restricted to Sigma Chi members and pledges. In 2020 and 2021, Sigma Chi awarded \$216,760 in inhouse scholarships. The Minister also points out that, at the time of its registration, Sigma Chi's stated purpose of assisting students pursuing higher education made no mention of any restriction to members or pledges. But as recently as May 2023, Sigma Chi stated on its website that "[t]he Foundation exists as a vehicle for local Active Chapters, Alumni Chapters and/or House Corporations to raise tax-deductible funds for

educational purposes—primarily for the benefit of Active Chapters and Active brothers” (emphasis added). This is not a charitable purpose under the ITA.

[10] Second, we also see no reviewable error in the Minister’s finding that Sigma Chi has provided funds to non-qualified donees by making loans to Sigma Chi fraternity housing corporations, established to provide housing to members. In addition, it breached the compliance agreement by failing to obtain security for its loans to London Sigma Chi Properties and by making a further advance to London Sigma Chi Properties, despite its obligations under the compliance agreement. The loans and advance to London Sigma Chi Properties involved significant sums. According to the first audit, the loans totaled \$403,015. The further advance was of \$25,000.

[11] Third, we see no reviewable error in the Minister’s conclusion that Sigma Chi failed to maintain direction and control over the Horizon Scholarship program, a program partially funded by Sigma Chi and administered in the United States. As the Minister points out, Sigma Chi has only one of the eight seats on the governing board, and only two of 16 on the selection committee. There was ample support in the record for the Minister’s conclusion that Sigma Chi did not have direction and control over the use of its funds.

[12] Finally, in our view, Sigma Chi has failed to make out a reasonable apprehension of bias, and there was no deprivation of procedural fairness.

[13] The test for establishing a reasonable apprehension of bias is whether a reasonable and informed person, viewing the matter realistically and practically, and having thought the matter through, would think it is more likely than not that the decision maker, whether consciously or unconsciously, would not decide fairly: *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 at para. 20. There is a “high burden” on the party seeking to establish a reasonable apprehension of bias: *Yukon Francophone* at para. 26. Sigma Chi’s grounds for claiming a reasonable apprehension of bias fail to meet this high burden.

[14] Sigma Chi submits that the Minister’s conduct raises a reasonable apprehension of bias because she treated Sigma Chi in a manner dissimilar to other organizations that restrict their scholarships to a subset of the public. Sigma Chi mentions scholarships offered by the University of Toronto that are restricted to students enrolled at Trinity College. However, as this Court has held in the tax context, the fact that others benefitted from an exemption is “not relevant” to whether a particular taxpayer should benefit from that same exemption: *R. v. Sinclair*, 2003 FCA 348 at para. 7. Even if comparisons were relevant, the record before us falls well short of providing an evidentiary basis on which the Court could draw meaningful comparisons.

[15] Sigma Chi also submits that the Minister’s refusal to consider Sigma Chi’s offers to take corrective measures grounds a reasonable apprehension of bias. However, as the Minister notes, Sigma Chi was given three formal opportunities to respond to the issues identified by the Minister. The record before us shows that Sigma Chi’s submissions were taken seriously, and were thoroughly reviewed and considered. We agree with the Minister that Sigma Chi was not

entitled to continuously negotiate further corrective measures, especially given its failure to meet its obligations under the compliance agreement.

[16] For these reasons, we will dismiss the appeal, with costs fixed, in accordance with the parties' agreement, at \$5,000 all-inclusive.

“J.B. Laskin”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-167-23

**STYLE OF CAUSE:** SIGMA CHI CANADIAN  
FOUNDATION v. MINISTER OF  
NATIONAL REVENUE

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 21, 2024

**REASONS FOR JUDGMENT OF THE COURT  
BY:** LASKIN J.A.  
MACTAVISH J.A.  
MONAGHAN J.A.

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

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