Federal Court of Appeal | Cour d'appel fédérale

Date: 20250331

Docket: A-245-24

Citation: 2025 FCA 75

Present: **LEBLANC J.A.**

BETWEEN:

JEWISH NATIONAL FUND OF CANADA INC.
FONDS NATIONAL JUIF DU CANADA INC.

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on March 31, 2025.

REASONS FOR ORDER BY: LEBLANC J.A.

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REASONS FOR ORDER

LEBLANC J.A.

[1] The appellant has commenced an appeal pursuant to subsection 172(3) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act). The appeal is from the confirmation by the Minister of National Revenue (the Minister) of the notice of intention to revoke the appellant's registration as a "charitable organization" as defined in the Act.

[2] The Minister's confirmation is set out in a letter dated June 26, 2024, and is based on the Minister's view that the appellant ceased to comply with the requirements of the Act by:

a) failing to be constituted for exclusively charitable purposes;

b) being engaged in activities that are not in furtherance of charitable purposes;

c) not having direction and control over the activities undertaken in Israel and thus not devoting its resources to its own charitable activities;

d) providing funds to non-qualified donees; and

e) having insufficient documentation to substantiate the activities undertaken in Israel and by failing to keep information in such form that would enable the Minister to determine whether there are grounds for the revocation of its registration.

[3] Before the Court is a motion by the appellant, dated January 24, 2025, for orders pursuant to Rules 8, 75 and 343(3) of the *Federal Courts Rules*, SOR/98-106 (the Rules): (i) allowing it to amend its Notice of Appeal; and (ii) extending the time to bring a motion requesting the Court to determine the content of the appeal book.

[4] The Minister is prepared to accept some of the amendments the appellant seeks to bring to its Notice of Appeal but not all of them. With respect to the request for an extension of time, the Minister opposes it, claiming that the appellant should first be directed to provide him with a

draft agreement on the content of the Appeal Book. Then, only if the parties cannot agree on the content of the Appeal Book should the appellant be permitted to bring a motion requesting the Court to determine that content.

[5] In the alternative, the Minister requests that the appellant's motion record be removed from the Court file pursuant to Rule 74 on the ground that it is frivolous, an abuse of process and was not filed in accordance with the Rules.

I. The request for leave to amend the Notice of Appeal

[6] Motions for leave to amend are governed by Rule 75. The governing principle is that an amendment should be permitted at any stage of a proceeding "if it assists in determining the real questions in controversy between the parties, provided it would not result in an injustice not compensable in costs and that it would serve the interests of justice" (*Canada v. Pomeroy Acquireco Ltd*., 2021 FCA 187 at para. 4; *McCain Foods Limited v. J.R. Simplot Company*, 2021 FCA 4 at para. 20 (*McCain Foods)*; *Teva Canada Limited v. Gilead Sciences Inc.*, 2016 FCA 176 at para. 26 (*Teva Canada*)).

[7] One additional criterion is that when a proposed amendment raises new grounds supporting the relief sought, it cannot be allowed if it is plain and obvious that those new grounds, assuming the facts pleaded to be true, have no reasonable prospect of success (*McCain Foods* at para. 20; *Teva Canada* at paras. 28-31). When that occurs, determining whether the new grounds are doomed to fail requires that they be examined "in the context of the law and the

litigation process" and that "a realistic view […] be taken" (*McCain Foods* at para. 21). Put differently, they must be capable of withstanding the test applicable to motions to strike (*McCain Foods* at para. 22).

[8] These principles provide for a "liberal approach to amendments" (*Sanofi-Aventis Canada Inc. v. Teva Canada Limited*, 2014 FCA 65 at para. 13). As this Court stated in *Canderel Ltd. v. Canada*, [1994] 1 F.C. 3 (C.A.), allowing an amendment or not "[u]ltimately [...] boils down to a consideration of simple fairness, common sense and the interests that the courts have that justice be done".

[9] These principles apply to amendments to a Notice of Appeal but "with minor modification" (*McKesson Canada Corporation v. Canada*, 2014 FCA 290 at para. 7 (*McKesson*)). One modification is that in considering whether a proposed "new ground of appeal" has a reasonable prospect of success, a motion judge "should keep front of mind the demarcation of tasks between a motions judge and an appeal panel". As a result, if "reasonable minds could differ on the merits of the new ground", then the proposed new ground must be allowed to enter the appeal, "leaving its ultimate resolution to the panel hearing the appeal" (*McKesson* at para. 9).

[10] With this framework in mind, I now proceed to consider the appellant's request for leave to amend its Notice of Appeal. In its current version, the Notice of Appeal challenges the Minister's decision to confirm his intention to revoke the appellant's registration as a charitable organization on three grounds:

a) There is a reasonable apprehension that the Minister was biased in rendering his decision because of the public pressure he was facing to revoke the appellant's status as a charitable organization;

b) The Minister "did not correctly apply the law in its determination of fact", leading to him to err in law in determining that the appellant: (i) failed to be constituted for exclusively charitable purposes; (ii) lacked direction and control over the use of resources and provided resourcing to non-qualified donees; (iii) conducted non-charitable activities; and (iv) failed to maintain adequate books and records; and

c) The Minister failed to afford greater procedural protection to the appellant given the great severity of the Minister's decision on its reputation, assets and ability to issue receipted income, and the fact that said decision is based on untested factual record.

[11] The current Notice of Appeal is a 6-page document. The proposed amended Notice of Appeal is a 14-page document.

[12] The appellant claims that the amended Notice of Appeal provides further details and context on its charitable activities, the public pressure faced by the Minister, the audit and appeals history in respect of its charitable status, and the three grounds of appeal listed in the current Notice of Appeal.

[13] The Minister does not oppose the amendments at paragraphs 1 to 6, 10 to 22 and 67 to 86 of the proposed amended Notice of Appeal, being satisfied that these amendments help clarify the real questions in controversy between the parties, do not result in an injustice to him and serve the interest of justice.

[14] However, the Minister opposes all the other proposed amendments, that is, those found in paragraphs 7 to 9 and 23 to 66 of the proposed amended Notice of Appeal. More particularly, he contends that these proposed amendments should not be allowed because:

a) Those relating to the bias ground of appeal (paragraphs 8 and 23 to 30) and to procedural fairness (paragraphs 31 to 42) have no reasonable prospect of success; and

b) Those at paragraphs 7, 9 and 43 to 66 contain immaterial facts and do not help clarify the real questions in controversy between the parties.

II. The proposed amendments related to the bias ground of appeal

[15] The Minister contends that both the current and proposed amended Notices of Appeal fall short of the requirement of Rule 337(d), which provides that a notice of appeal sets out "a complete and concise statement of the grounds intended to be argued". In particular, he submits that, contrary to that Rule, the current Notice of Appeal only contains bald assertions of bias whereas paragraphs 8 and 23 to 30 of the proposed amended Notice of Appeal simply "allude to general allegations of public pressure and undue influence actively considered by multiple,

unnamed decision-makers". Further, he contends that to the extent the bias allegations are not directed at a specific individual, as they should, this ground of appeal cannot possibly succeed.

[16] In reply, the appellant argues that these proposed amendments were made in response to the Minister's concern over the lack of particulars in the current Notice of Appeal. It further contends that the bias ground of appeal is directed at two specific individuals: the decision-maker in respect of the notice of intention to revoke the appellant's registration as a "charitable organization" and the decision-maker who confirmed the Minister's intention to revoke that registration.

[17] The proposed amendments' main thrust on bias is that those decision-makers had before them "more than 30 years of materials related to the public pressure to revoke the Appellant's charitable status", which resulted "in an undue influence" over the decisions they made.

[18] While these allegations are light in details and may prove difficult to establish, they could be relevant at least insofar as they relate to the decision-maker that confirmed the notice of intention (*McCain Foods* at para. 32). I am therefore inclined to allow the underlying proposed amendments.

[19] The Minister's arguments rest solely on the lack of reasonable prospect of success of this ground of appeal. However, this is not, as appears from the current Notice of Appeal, a new ground of appeal which, relying on *McKesson*, would require the question of reasonable prospect of success to be considered. But assuming it is, I am of the view that this is a case where

reasonable minds could differ on the merits of that ground of appeal and that, therefore, its ultimate resolution should be left to the panel that will hear the appeal, which will benefit of a full record.

[20] At this stage of the appeal, there is yet to be an agreement on the content of the Appeal Book. The parties have not even been able to agree on the content of the certified tribunal record, which, to me, is key in determining the content of the Appeal Book. I will come back to this later, when dealing with the appellant's request for an extension of time to bring a motion seeking that the content of the Appeal Book be determined by the Court.

III. The proposed amendments related to procedural fairness

[21] Again, these proposed amendments (at paragraphs 31 to 42 of the proposed amended Notice of Appeal), are related to an existing ground of appeal. They provide further particulars. Their main thrust is that the Minister's application of the provisions of the Act relating to the filing of an objection to a notice of intention to revoke the registration of an organization as a charity "systematically denies […] the right to procedural fairness in the Minister's decision to revoke charitable status, namely a fair review of the facts".

[22] The Minister contends that these proposed amendments only set out a list of grievances the appellant has with the statutory appeal process and fails to see how this Court could quash the impugned decision on such a basis.

[23] The appellant, relying on decisions from this Court (*Renaissance International v. Canada (National Revenue)*, [1983] 1 F.C. 860 (C.A.) (*Renaissance International*) and *Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada*, 2004 FCA 397), replies that the applicable statutory regime contemplates a two-step process – the notice of intention to revoke and the final decision to confirm, vacate or vary the intention to revoke – and that the Minister, in applying that process, has a duty to give charities "a reasonable opportunity to answer allegations made against them" and to "follow a procedure enabling him to constitute a record reflecting not only his point of view but also that of the organization concerned" (Appellant's Reply at para. 34, quoting from *Renaissance International*).

[24] There is, therefore, "no doubt", in the appellant's view, and I agree, that the Court is empowered to quash the impugned decision on the basis that it was not afforded the required level of procedural fairness (see also: *Humane Society of Canada for the Protection of Animals and the Environment v. Canada (National Revenue)*, 2015 FCA 178 at para. 51 (*Humane Society 2015*)).

[25] As I understand it, this ground of appeal has to do with the way the Minister is applying the statutory regime that may lead to the revocation of a charitable status registration in any given case. It is either compliant with the Act or it is not. Again, assuming these proposed amendments must pass the "reasonable prospect of success" test, I believe that this is an issue where reasonable minds can differ, and that its ultimate resolution, based on a complete record, should be left to the panel that will hear the merits of this appeal.

[26] I note that in *Humane Society of Canada for the Protection of Animals and the Environment v. Minister of National Revenue*, 2014 FCA 53, at paragraph 15, this Court allowed a somewhat similar type of amendment to the Notice of Appeal, namely that paragraph 172(3)(*a.1*) of the Act, the applicable appeal provision in cases like the present one, violated paragraph 2(*e*) of the *Canadian Bill of Rights*, because it failed to require the Minister to provide the appellant with the record that was before the Minister when the decision concerning the revocation of the appellant's registered charity status was made. That ground of appeal, which was an entirely new ground of appeal, was eventually abandoned by that appellant.

[27] In concluding on this point, it is worth reminding that, when it comes to the test for striking out pleadings, the approach must be generous and err on the side of permitting arguable claims, even those that the law has yet recognized, to proceed on the merits (*R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 21).

[28] In addition to opposing the proposed amendments on bias and procedural fairness, the Minister also asks in his submissions that these two grounds of appeal be struck from the current Notice of Appeal. To do that, a motion under Rule 221 would have been required. There is none. Furthermore, this request is not even part of the reliefs sought by the Minister in the motion record he filed in response to the present motion. Finally, this request is perplexing given that the Minister seemed prepared, from the outset, to assist the appellant in amending its Notice of Appeal.

IV. The remaining proposed amendments

[29] As indicated above, the Minister contends that the amendments at paragraphs 7, 9 and 43 to 66 of the proposed amended Notice of Appeal contain immaterial facts and do not help clarify the real questions in controversy between the parties. In particular, the Minister claims that the proposed amendments at paragraphs 7 and 63 to 66 concern an issue – the appellant's alleged support for a foreign military – that did form a basis for the impugned/confirmation decision. As for paragraphs 43 to 58, the Minister submits that they are irrelevant as they relate to the issuance of the notice of intention to revoke the appellant's charitable status, not the decision at issue in this appeal, which is the one confirming that intention.

[30] The appellant claims that these proposed amendments are relevant to the extent that the applicable statutory regime provides for a two-step process leading to the decision to confirm, vacate or vary the notice of intention to revoke. Therefore, it says, facts related to issuance of the notice of intention to revoke are material to this appeal.

[31] First, I agree that the proposed amendments related to the appellant's alleged support for a foreign military are immaterial and do not help clarify the real questions in controversy between the parties in this appeal. This is because there are no indications in the impugned confirmation decision that the Minister relied on it in making that decision. Therefore, the amendments at paragraphs 7 and 63 to 66 of the proposed amended Notice of Appeal are not permitted.

[32] Moreover, I do not see any issue of the sort raised by the Minister with respect to the amendments proposed at paragraphs 43 to 51 and 53 to 56. These do not raise new issues on appeal and although they do not add much to the current Notice of Appeal, they may assist in clarifying the real questions in controversy between the parties.

[33] As to the amendments at paragraphs 59 to 62 of the proposed amended Notice of Appeal, the Minister has provided no specific submissions as to why they should not be allowed. These proposed amendments concern one of the grounds invoked by the Minister to confirm the notice of intention to revoke the appellant's charitable organization registration, namely the appellant's failure to maintain adequate books and records regarding its activities in Israel. These proposed amendments provide further particulars on a ground of appeal set out in the current Notice of Appeal. I see no basis to refuse them as they should assist in clarifying the questions of controversy between the parties on this point.

[34] However, the same cannot be said of the amendments at paragraphs 52, 57 and 58, which concern errors allegedly committed in rendering the decision to issue the notice of intention to revoke the appellant's charity registration. The combined effect of subsections 165(3), 168(4) and paragraph 172(3)(*a*) makes it clear that the only decision for which a right of appeal exists in such cases is the decision to confirm, vacate or vary the intention to revoke (see also: *Humane Society 2015* at para. 62).

[35] Hence, although the issuance of the intention to revoke is part of the process that may lead to the revocation of the registration, the decision which is the focus of the appeal is the

confirmation decision. The amendments at paragraphs 52, 57 and 58 of the proposed amended Notice of Appeal will therefore not be permitted as they do not assist in clarifying the questions of controversy between the parties as regards the decision under appeal.

V. The request for an extension of time

[36] The appellant seeks an extension of time to bring a motion to determine the content of the Appeal Book. As mentioned previously, the Minister claims that this motion is premature as the appellant should first be directed to provide a draft of said content within 10 days of the date of the Order disposing of the present motion.

[37] I agree that this request is premature, especially so given the appellant's letter, dated February 14, 2025, seeking directions under Rules 318(2) and 350, as to the procedure for making submissions regarding the content of the certified tribunal record, something on which the parties are still not able to agree despite this appeal having been commenced 8 months ago and despite an Order of this Court, dated October 3, 2024, setting out a timetable for the completion of the remaining steps in the appeal, including, as the first of these remaining steps, the transmission of that record.

[38] There is no point, in my view, in proceeding at this stage with determining the content of the Appeal Book, if the issue of the content of the certified tribunal record is still unresolved. Proceeding otherwise would potentially cause further delays in the appeal if the content of the Appeal Book needs to be amended once the issue of the content of the certified tribunal record is

settled. For a file that was described in a direction issued by this Court on February 12, 2025, as a “confusing mess” and which has been procedurally stalled for some time, this must be avoided.

[39] The dismissal of the request for an extension of time is however without prejudice to either party bringing within the prescribed time set out in the Order to be issued simultaneously to these Reasons (the Companion Order), a motion seeking an order determining the content of the Appeal Book should they fail to agree on such content once the issue of the content of the certified tribunal record is settled.

VI. The Rule 74 argument

[40] Pursuant to Rule 74, the Court may, at any time, order that a document be removed from the Court file if the document, *inter alia*, is scandalous, frivolous, vexation or clearly unfunded, or is otherwise an abuse of the process of the Court.

[41] Given the conclusions I reached above, there is simply no basis for removing the appellant’s motion record from the Court file. The Minister focuses on the sparseness of that record. If the appellant had not filed a reply, the Minister may have had a point, but it did. The appellant’s reply was accepted for filing and there was no objection on the part of the Minister that it did not meet the requirements of the Rules. The appellant’s reply cures much of the defects that the Minister claim affected the actual motion record. It is part of the motion’s materials that are before the Court in this instance and it cannot be ignored.

[42] That said, I do not want to be seen as condoning the fact that the appellant did not put its best foot forward when it filed its motion record. Its reply “saved the day”, so to speak, which, normally, is not what a reply is intended to do. This has to have costs implications.

VII. Conclusion

[43] For all these reasons, the request for leave to amend is allowed in part and the request to extend the time to bring a motion to determine the content of the Appeal Book is dismissed without prejudice. This will be reflected in the Companion Order. Given the divided success on the present motion, and despite most of the request for leave to amend being granted, I will award no costs.

[44] At the same time that these Reasons and the Companion Order are released, the Court will issue a direction setting out the procedure for making submissions regarding the issue related to the content of the certified tribunal record.

"René LeBlanc"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-245-24
STYLE OF CAUSE:	JEWISH NATIONAL FUND OF CANADA INC., FONDS NATIONAL JUIF DU CANADA INC. v. MINISTER OF NATIONAL REVENUE

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	LEBLANC J.A.
DATED:	MARCH 31, 2025

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