



GARDINER ROBERTS

PUBLIC TELEVISION ASSOCIATION OF QUÉBEC v. MINISTER OF NATIONAL REVENUE

Re: Revocation of Charitable Registration for Failure to Comply with Agency Agreement

The Federal Court of Appeal recently upheld the decision of the Minister to revoke the charitable registration of the Public Television Association of Québec ("PTAQ").¹ This case serves as a guideline for those charities that enter into agency agreements with other organizations to carry on charitable activities on their behalf — a common arrangement, particularly for Canadian charities that wish to do charitable works abroad but do not have the resources themselves to do so directly.

When PTAQ received its charitable registration status the objects stated in its Letters Patent included advancing "education through the production, distribution and promotion of non-commercial television programs and films that are educational in nature..." and "to solicit, collect, accept...gifts, legacies, bequests...and to use, apply... or donate the income or principal thereof and generally to devote the same to any purpose of the corporation".

Shortly thereafter, PTAQ entered into a Fund-Raising Agreement and a Broadcasting Agreement with Vermont ETV Incorporated ("VPT"), a public television station located in Vermont, U.S.A., near the Canadian border, and a registered charity in the U.S.A. Under the Fund-Raising Agreement, PTAQ as principal appointed ETV as its agent "to promote the Principal and, in particular, the non-commercial television programs and films made available by the Principal and to inform prospective donors of its relationship with the Principal". In addition, the Agent was obligated to prepare budgets for the Principal to review and to maintain proper records of donations received from Canadian residents for the benefit of the Principal. Under the Broadcasting Agreement, PTAQ as principal appointed ETV as its agent to "produce or procure and to broadcast the non-commercial television programs and films identified by the Principal".

Having regard for the requirement in the Income Tax Act (Canada) (the "ITA") that a charitable organization like PTAQ must devote all of its resources to charitable activities carried on by the organization itself,² the court determined that the Principal in an agency agreement (such as the Fund-Raising Agreement or the Broadcasting Agreement) must maintain **direction and control** of the funds expended by the Agent on behalf of the Principal and of the activities undertaken by the Agent on behalf of the Principal.

In this case, the court held that VPT was conducting its own fundraising activities and merely assigning charitable donations to PTAQ. There was no evidence that the fundraising events conducted by VPT were approved or directed by PTAQ.

In addition, the court held that the minutes of meetings of the Board of Directors of PTAQ indicate no form of control over the choice of programs offered to PTAQ by its Agent. Rather, they reveal that VPT presented pre-determined packages to PTAQ every year. Moreover, there was no evidence to show that PTAQ exercised any control over the cost of VPT 's broadcasting activities on its behalf. Even though the Broadcasting Agreement required monthly financial monitoring and control of expenditures, the parties did not abide by the Agreement.

¹ 2015 FCA 170

² Subsection 149.1(1) of the ITA

In conclusion, the court found that PTAQ failed to maintain direction and control over its resources as it did not devote all of its resources to its own charitable activities. The provisions of the Fund-Raising and Broadcasting agreements were not followed or respected.

For those active in the charitable sector in Canada, this case sends a strong signal that if a charitable organization appoints an agent to carry out its activities, it must make sure that the parties respect and follow the provisions of the agreement, and keep records to show that the charitable organization maintained direction and control over its resources, or the CRA may show little tolerance for the loose procedures. The charitable organization will not only forfeit its charitable status but also the funds it has received in good faith from donors who had high expectations of its full compliance with the law.

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