

Federal Court of Appeal



Cour d'appel fédérale

Date: 20231212

Docket: A-169-22

Citation: 2023 FCA 242

**CORAM: BOIVIN J.A.
LASKIN J.A.
ROUSSEL J.A.**

BETWEEN:

**SHELDON M. CHUMIR FOUNDATION
FOR ETHICS IN LEADERSHIP**

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

Heard at Toronto, Ontario, on December 12, 2023.
Judgment delivered from the Bench at Toronto, Ontario, on December 12, 2023.

REASONS FOR JUDGMENT OF THE COURT BY:

ROUSSEL J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on December 12, 2023).

ROUSSEL J.A.

[1] The Sheldon M. Chumir Foundation for Ethics in Leadership is a registered charity under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (ITA). The Minister of National Revenue has notified the Foundation under subsection 168(1) of the ITA of her intention to revoke the

Foundation's registration as a registered charity. The revocation is to take effect when a copy of the notice is published in the *Canada Gazette*.

[2] In this application, the Foundation seeks an order prohibiting the Minister from publishing the notice in the *Canada Gazette* until the Foundation's rights of objection under the ITA have been fully exercised.

[3] To succeed in this application, the Foundation must satisfy the Court that it meets the requirements of the conjunctive tripartite test for granting a stay or interlocutory injunction set out by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 and *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34 (*Ahlul-Bayt Centre, Ottawa v. Canada (National Revenue)*, 2018 FCA 61 at para. 8; *Universal Aide Society v. Canada (National Revenue)*, 2009 FCA 107 at para. 13).

[4] The Foundation must demonstrate that there is a serious issue to be determined in its objection to the revocation, that the publication of the notice will cause it irreparable harm, and that the balance of convenience lies in its favour. The assessment of these elements is context specific and requires that the Court determine whether granting the stay is just and equitable in all the circumstances.

[5] Regarding the first element of the test, the Foundation submits that it has raised several grounds in opposition to the Minister's decision to revoke its charitable status. It also claims that the Minister breached her duty of procedural fairness and the principles of natural justice in

issuing the notice of intent to revoke prior to soliciting additional representations on the extended audit period. While she disputes the Foundation's allegations, the Minister concedes that there is a serious issue to be determined. We will therefore assume, without deciding, that there is a serious issue.

[6] With respect to the second element of the test, the Foundation submits that it will suffer irreparable harm to its reputation, to its capacity to fund and maintain its programming, and to its relationship with third parties.

[7] In *Ahlul-Bayt Centre, Ottawa*, this Court stated that “irreparable harm cannot be inferred, but must be established by clear and compelling evidence...General assertions cannot establish irreparable harm. Nor can ‘[a]ssumptions, speculations, hypotheticals and arguable assertions, unsupported by evidence’; they carry no weight. Instead, ‘there must be evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless [a stay of the notice’s publication] is granted’” (*Ahlul-Bayt Centre, Ottawa* at para. 15; *Gateway City Church v. Canada (National Revenue)*, 2013 FCA 126 at paras. 14-16; *Cheder Chabad v. Canada (National Revenue)*, 2013 FCA 196 at para. 26; *Glooscap Heritage Society v. Canada (National Revenue)*, 2012 FCA 255 at para. 31).

[8] Despite counsel's able submissions, the Foundation has failed to persuade us, on a balance of probabilities, that it will suffer irreparable harm. In our view, the evidence put forward by the Foundation is insufficient to establish that it will suffer irreparable harm if the Minister proceeds with the publication of the notice of intent to revoke. The evidence consists of

general and speculative assertions that the Foundation's relationships with third parties will not survive the revocation of its charitable registration, and that this loss will in turn lead to a drop in donations and the end of its programming. Similar general and speculative assertions have previously been rejected by this Court (*Ahlul-Bayt Centre, Ottawa* at paras. 18-19; *Universal Aide Society* at paras. 17-18; *Fortius Foundation v. Canada (National Revenue)*, 2022 FCA 176 at paras. 29, 31-33, leave to appeal refused, 40515 (May 11, 2023); *Gateway City Church* at paras. 13-14, 17; *Glooscap Heritage Society* at paras. 27, 31, 35-38; *Holy Alpha and Omega Church of Toronto v. Canada (Attorney General)*, 2009 FCA 265 at paras. 18-23).

[9] Given our conclusion with respect to irreparable harm, we need not consider the balance of convenience element of the test.

[10] As one of the requisite elements of the tripartite test has not been satisfied, the application for the requested order shall be dismissed with costs in the amount of \$5000 all-inclusive.

“Sylvie E. Roussel”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-169-22

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FOUNDATION FOR ETHICS IN
LEADERSHIP v. MINISTER OF
NATIONAL REVENUE

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**REASONS FOR JUDGMENT OF THE COURT
BY:** BOIVIN J.A.
LASKIN J.A.
ROUSSEL J.A.

DELIVERED FROM THE BENCH BY: ROUSSEL J.A.

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