

FEDERAL COURT

B E T W E E N:

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

Applicant

– and –

MINISTER OF NATIONAL REVENUE

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the Applicant is self-represented, on the Applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date:

Issued by: _____
(Registry Officer)

Address of local office: 180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

TO: MINISTER OF NATIONAL REVENUE
Minister of National Revenue
7th Floor
555 Mackenzie Avenue
Ottawa ON K1A 0L5

AND TO: ATTORNEY GENERAL OF CANADA
Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West
Suite #400
Toronto, Ontario
M5H 1T1

APPLICATION

This is an application for judicial review in respect of the decision of the Minister of National Revenue (the “**Minister**”), to publish a copy of the August 20, 2019 Notice of Intention to Revoke the registration of the Applicant as a charity (the “**NITR**”) in the Canada Gazette, upon which publication the Applicant’s registration as a charity was revoked (the “**Revocation**”) as first communicated on August 10, 2024 (the “**Decision**”).

THE APPLICANT MAKES APPLICATION FOR:

1. an Order:
 - a. compelling the Minister to publish a retraction of the Revocation;
 - b. or, in the alternative, an order canceling the finalizing of the revocation and remitting the matter back to the Minister for consideration by a different delegate in accordance with this Court’s directions;
 - c. and, in addition to grounds (a) or (b), prohibiting the Minister from taking any further action to publish a copy of the Notice in the Canada Gazette until the Applicant’s appeal to the Federal Court of Appeal (the “**Appeal**”)¹ on the merits of the revocation has been finally determined;
2. costs of the application, on a solicitor and client basis; and
3. such further and other relief as counsel may advise and this Honorable Court may permit.

THE GROUNDS FOR THE APPLICATION ARE:

Background

4. The Applicant has been registered as a charity since the charity registration system began on January 1, 1967.
5. The Applicant maintains that its purposes and activities have always been exclusively charitable.

¹ Court File No. A-245-24.

6. The Charities Directorate of the Canada Revenue Agency (the “**CRA**”) initiated an audit of the Applicant beginning in 2014 (the “**Audit**”).
7. As a result of the Audit, the CRA made the decision that there were grounds to revoke the charitable status of the Applicant.
8. The CRA gave notice of its intention to revoke the Applicant’s charitable status on August 20, 2019, (i.e., the above defined NITR) notifying the Appellant of the Minister’s intention to revoke the registration of the Applicant as a charity under ss. 168(1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (the “**Act**”).
9. Relevant to this Application, the NITR stated the following:

“A copy of the revocation notice, described above, will be published in the Canada Gazette after the expiration of 90 days from the date this letter was mailed. As such, the Organization registration will be revoked on the date of publication, unless the CRA receives an objection to this notice of intention to revoke within this timeframe”
10. The Applicant objected to the NITR on November 18, 2019.
11. The Applicant provided submissions to the Minister in support of its objection pursuant to subsection 168(4) of the Act.
12. The Minister confirmed the NITR by way of Notice of Confirmation dated June 26, 2024 (the “**Confirmation**”).
13. The Confirmation does not refer to publication of the NITR but does state:

“[i]f you disagree with this decision, you may file an appeal with the Federal Court of Appeal within 30 days from the date of mailing of this letter”.
14. On July 24, 2024, the Applicant appealed the Confirmation to the Federal Court of Appeal pursuant to paragraph 172(3)(a.1) of the Act (i.e. the above defined Appeal).
15. The Department of Justice filed a Notice of Appearance on behalf of the Minister in the Appeal on July 26, 2024.

16. On July 12, 2024, counsel for the Applicant, Mr. David Stevens, wrote to the CRA in an attempt to avert the Appeal by asking the CRA to consider annulling the Applicant's status rather than revoking it, Mr. Stevens ended his letter with the following comment:

For the reasons above, we respectfully submit that the CRA consider annulling rather than revoking JNF Canada's registration and that the CRA stay the revocation until it has had an opportunity to carefully consider this submission.

17. This request was extra-procedural.
18. The CRA responded to Mr. Stevens with a letter dated July 24, 2024, denying the Applicant's request and stating the following:

With respect to your request to stay the revocation pending the consideration of your annulment request, we are prepared to delay the publication of the revocation until the period to appeal the Notice of Confirmation has expired.

19. Clearly, with the filing of a Notice of Appeal the period to appeal the Confirmation has not expired and is still ongoing.
20. The CRA did not notify the Applicant of its intention to publish in the Canada Gazette.
21. The NITR was published in the Canada Gazette on August 10, 2024 (i.e., the above defined Revocation).
22. As a consequence of the Revocation, the Applicant became liable to a tax equal to 100% of the value of all remaining assets after it has paid all of its debts pursuant to subsection 188(1.1) of the Act.
23. Paragraph 168(2)(b) of the Income Tax Acts states that "...the Minister **may**, after the expiration of 30 days from the day of mailing of the notice, ...publish a copy of the notice in the *Canada Gazette*, and on that publication of a copy of the notice, the registration is revoked. [*emphasis added*]

24. The Act provides the Minister with the discretion to decide when to publish notice. The Minister has developed specific policies for the exercise of this discretion. The Minister deviated from these policies in a significant and unique way as it relates to the treatment of the Applicant. The Applicant was entitled to rely on the published statements and previous practice of the CRA.

Published Policy

25. The Charities Directorate of the CRA (the “**Directorate**”) has established a clear process by which it decides when to publish a notice of intention to revoke a registered charity’s status. This policy was confirmed in the CRA *Charities Program Update – 2015*.²
26. Further, in the CRA’s Guidelines for Applying Sanctions³ it states that where the Directorate finds ‘aggravated non-compliance’ it will publish the notice 30 days after the date of the notice of intent to revoke. Where the CRA takes the position that there is ‘serious non-compliance’ the CRA notes the charity has 90 days to file an appeal to the Charities Redress Section and then the Tax Court of Canada, but makes no mention of publishing the notice, implying that the notice will not be published until the avenues of appeal are exhausted.
27. In this very case, prior to delivery of the NITR the Minister’s delegates and CRA specifically considered whether the Applicant should be revoked soon after the legislated 30 days or to exercise its discretion and follow its policy of allowing the Applicant to exercise its appeal rights.
28. In preparation of speaking points on the then impending release of the NITR the Minister’s delegates explicitly reiterated the Directorate’s policy:

“In the case of 90-day revocations, the **CRA will allow a charity to exhaust its objection and appeal rights before revoking registration**, and as such, section 241 of the Act prevents the CRA from disclosing any information publicly”.

[emphasis added]

² CRA, Charities Program Update—2015 (Director General’s Message), April 9, 2015.

³ CRA, Registered Charities Selected Releases, “Guidelines for Applying the New Sanctions”, April 5, 2007.

Established Practice

29. Consistent with published practice, in each case where the Federal Court of Appeal rendered judgment in an appeal of a notice of confirmation the notice of intent to revoke shows the Minister's practice is to refrain from publishing a notice of intention to revoke where the charity was given 90 days to appeal.
30. A similar review of cases in which the relevant charity sought a prohibitive injunction to prevent the Minister from publishing, demonstrates that the Minister only published the revocation before the avenues of appeal were exhausted where the Minister gave explicit notice that it would do so as soon as possible after the expiry of 30 days from the issuance of the notice of intent to revoke (pending only judicial review of the decision to publish at that point).

The Doctrine of Legitimate Expectation

31. The Applicant had a legitimate expectation that the Minister would delay publishing the Revocation until such time as the Applicant's right to appeal from the Confirmation was fully exhausted.
32. This expectation was informed by the CRA's published guidance, the CRA's established practice, the CRA's own decision to refrain from publishing the NITR in the Applicant's case, and the CRA's own statement in letters to the Applicant that it would delay publication until the period of appeal had expired.
33. Further, there is no policy nor action to indicate that the Minister would finalize revocation essentially in the middle of the appeal process.
34. The Applicant reasonably relied on the July 24, 2024, letter as indicating that the Minister would delay the revocation until the period of appealing the Notice of Confirmation was 'expired'.

The Minister's Decision Ought to Be Quashed and the Minister Ordered to Retract the Revocation

35. Given the Minister's previous decision to delay the Revocation, the decision to hasten it is a new decision made contrary to the rules of procedural fairness in that it treats the Applicant exceptionally by changing the CRA published and normal ways of practice. Further, at the very least, the Applicant is entitled to clear notice of the Minister's decision in this regard – especially where it contradicts the Applicant's legitimate expectations. Such clear notice would have allowed the Applicant to exercise its rights such as making submissions on the point that have been denied it.
36. The Minister has discretion to choose, and in fact often does choose, not to publish a notice of intention to revoke pursuant to paragraph 168(2)(b) of the Act until the relevant charity has exhausted its appeal rights.
37. The Minister knew that the Applicant had filed the Appeal well before publishing the Revocation.
38. The Minister has taken the action to publish the Revocation before the Applicant has had a chance to have the lack of procedural fairness, reasonableness, and correctness of the NITR and Confirmation determined by way of the Appeal.
39. The Minister provided no clear notice to the Applicant with reasons for the decision.
40. The Decision lacks justification, transparency, and intelligibility.
41. The Decision is incorrect and unreasonable.
42. The Applicant had a legitimate expectation that the Minister would delay publishing the Revocation in keeping with the CRA and Directorate's long held policy guidelines, prior decisions in this case, and prior representations to the Applicant.
43. There is a reasonable apprehension of bias underlying the Decision as the Minister was under great public pressure to revoke the Applicants' registered charity status.

44. The Minister published the Revocation in bad faith.
45. The Applicant has been denied procedural fairness in its dealings with the Minister in respect of the Notice, Confirmation, and the Decision.
46. The Minister is not at risk of suffering any prejudice from retracting the Revocation.

The Mandatory Injunction is Necessary

47. The Applicant has a strong prima facie case in the Appeal.
48. The Applicant will suffer irreparable harm if an injunction is not granted.
49. The balance of convenience favours granting an injunction.

Statutory references

50. The Applicant relies on:
 - a. Part I, and in particular, sections 168 and 173 of the *Income Tax Act*, RSC 1985, c1 (5th Supp);
 - b. Sections 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7; and
 - c. Part 5, and in particular, sections 300, 301, 317 and 318 of the *Federal Courts Rules*, SOR/98-106.
51. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

52. The Applicant's supporting affidavit(s) and documentary exhibits.
53. Such further and other materials as counsel may advise and this Honourable Court may deem just.

REQUEST FOR INFORMATION PURSUANT TO RULE 317:

54. The Applicant requests, pursuant to Rule 317 of the *Federal Courts Rules*, SOR/98-106, that the Minister transmit to the Applicants and to the Registry a certified copy of the material relevant to the Application that is not in the possession of the Applicant but is in the possession of the Minister, including, but not limited to:

- a. all information, documents, notes, correspondence, analysis and records in respect of the Minister, CRA, Directorate and the Decision;
- b. any analysis undertaken in respect of the Minister, CRA, Directorate and the Decision;
- c. any directives or position papers considered in respect of the Minister, CRA, Directorate and the Decision; and
- d. all records of communications between the Minister and the Department of Justice in respect of the CRA, Directorate and the Decision.

Dated August 20, 2024



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