

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Human Concern International v. Canada, 2022FCA 41

Federal Court of Appeal, Canada, Stratas JA, Woods, JA, Locke JA, 2 March 2022

An appeal from an interlocutory application to postpone the CRA's suspension of a charity's authority to issue charitable receipts.

Key words: Taxation, Canada, Charity, Interlocutory Application, Irreparable Harm, Balance of Convenience, Just and Equitable, Jurisdiction.

1. Woods JA delivered the judgment of the Court.
2. Human Concern International (Human Concern) is registered as a charitable organization under the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.) (the Act). It is the oldest Muslim international relief charity in Canada.
3. The Canada Revenue Agency (CRA) audited Human Concern and then proposed to revoke the charity's registration because the charity was involved in making false charitable tax receipts. It invited the charity to make submissions about the proposed action and eventually decided not to revoke the registration, but to impose a penalty and suspended receipting privileges for one year.
4. Human Concern filed a notice of objection and also applied to the Tax Court for a postponement of the suspension. The Tax Court dismissed an application to postpone a suspension of Human Concern's authority to issue charitable receipts.
5. The Tax Court found that:
 - Human Concern failed to establish that irreparable harm would result if the application were not granted;
 - Human Concern did not establish that the balance of convenience favoured granting the application; and
 - Because of these findings, it was not just and equitable that the application be granted.
6. Human Concern appealed this decision to the Federal Court of Appeal on the basis that the Tax Court:
 - made a multitude of errors concerning its findings on irreparable harm and the balance of convenience;
 - and

- should have considered principles similar to the rules of natural justice and declined to enforce the suspension before a determination had been made as to whether the suspension should be upheld.

7. The Court of Appeal found that:

- there was no error of law that would warrant intervention by the Court of Appeal;
- it would not reweigh the evidence;
- the Tax Court was entitled to conclude that the balance of convenience favoured the Minister, which was acting as a public authority administering the registered charity provisions of the Act; and
- there was no merit in the natural justice argument.

8. The Court of Appeal was also of the opinion that Section 27 of the Federal Courts Act, R.S.C. 1985, c. F-7 did provide it with authority to hear appeals from certain types of interlocutory proceedings. In this situation, a right of appeal is provided only if the order of the Tax Court is a final judgment.

9. The appeal was dismissed.

IMPLICATIONS



The International Civil Liberties Monitoring Group in its report [Under Layered Suspicion – A Review of CRA Audits of Muslim-led Charities](#) (2021) claimed that from 2008 to 2015, 75 per cent of the organizations whose charitable status was revoked following division audits were Muslim charities, and that at least another four had had their status revoked since then. It recommended that CRA:

- Suspend the Review and Analysis Division (RAD) pending review of Canada’s Risk-Based Assessment model and its National Strategy to combat extremism and radicalization;
- Suspend discretionary use of its revocation power in audits of Muslim-led charities where anti-terrorism financing or counter-radicalization policies informed the audit;
- Enhance transparency between the Charities Directorate and charities audited under suspicion of terrorism financing and/or radicalization.

Refer further to Kareem Shaheen, [Does CRA’s Charities Directorate have an Islamophobia Problem?](#) *The Philanthropist Journal*, 21 September 2021.

VIEW THE CASE



This case may be viewed at <https://www.canlii.org/en/ca/fca/doc/2022/2022fca41/2022fca41.html>

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EVENTS