

# 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.



## Ebert v. The King, 2023 TCC 49

Tax Court of Canada, Sommerfeldt J, 18 April 2023

Taxpayers sought to strike out assumptions made by the Minister in reassessing the value of their charitable donations of wine.

**Key words:** Tax, Canada, Wine, Donation, Charity, Assumptions

1. Irving Ebert, Richard Herman and Philippe Desrosiers (the appellants) were Canadian taxpayers who were experienced wine collectors.
2. They donated bottles of wine to registered charities and received an official receipt in respect of each donation. Some of the wines were appraised for their value.
3. They then claimed a deduction of tax credits under the [Income Tax Act, RSC 1985](#), c. 1 (5th Supplement) (Income Tax Act).
4. The Minister of National Revenue (the Minister) reassessed the tax payable for several years, and took the position that the fair market value of the wines appraised was equal to only 20% of the amounts shown on the applicable official receipts.
5. Each of the taxpayers filed a notice of appeal and objected to a series of subparagraphs setting out the same ten assumptions of fact that were made by the Minister in determining the particular appellant's tax liability for the taxation years in issue.
6. They sought to strike out the assumptions as they were alleged to be imprecise or inaccurate, irrelevant, or related to the treatment of taxpayers other than the appellants.

### *Fair Market Value of Wines*

7. The Minister assessed the fair market value of the appraised wine at 20% of the value on the charitable tax receipt.
8. The appellants argued that the Minister's determination of the respective fair market values of the wines donated by the appellants was based on an analysis of wines sold at charitable auctions in years preceding the years in which the appellants donated their wines to the various charities.

9. The Court found that the assumption should not be struck out as the appellants could advance the issue in the trial.

*Wines Sold at Auction*

10. The Minister claimed that the charities disposed of the wines through their annual fine wine auctions.

11. The appellants claimed this statement lacked specificity and referred to wines that may or may not have been donated by them.

12. The Court declined to strike out the material as the context was that 'wines' referred to the wines donated by the particular appellants.

*Depressed Market Values*

13. The Minister claimed that charitable auctions brought a large number of fine wines to the local market which resulted in depressed market values.

14. The appellants submitted that the Depressed-Value Assumption referred to a group of facts that may or may not pertain to a particular appellant, and that it consequently lacked specificity.

15. The Court found that the Depressed-Value Assumption related to the applicable market conditions and was thus an acceptable assumption to plead.

*Wines Sold as Lots*

16. The Minister claimed that most of the wines were sold as lots at the charitable auctions.

17. Again the appellants claimed that the Sold-As-Lots Assumption referred to a group of facts that may or may not pertain to the particular appellants, and that the assumption lacks specificity.

18. The Court found that the Sold-As-Lots Assumption provided context for the Minister's determination of the fair market value of each appellant's wines, but at trial, the burden of proof might be with the Minister.

*Wines Sold As Is, Without Recourse*

19. The Minister claimed that the wines were sold "as is, without recourse" at the charitable auctions.

20. The appellants claimed the Sold-As-Is Assumption referred to a group of facts that may or may not pertain to a particular appellant and that the assumption lacked specificity.

21. The Court found that while there was some lack of clarity that could be dealt with at trial, the assumption provided context for the Minister's determination of the fair market value.

*Donors' Participation in Auctions*

22. The Minister claimed that many wine donors actively participated in the charitable auctions.

23. The appellants submitted that the Participation Assumption referred to a group of donors that may, or may not, include a particular appellant.

24. The Minister argued that the occurrences of some donors repurchasing the wines that they had donated (which presumably indicated that those donors actively participated in the auctions) showed artificiality in the appraisals and donation process.

25. The Court found that the assumption was too broad and should be struck out.

#### *Donors Repurchased Donated Wines*

26. The Minister claimed that in some cases, wine donors repurchased the wines they donated. Again the Court found that the assumption was too broad and should be struck out.

#### *Repurchase of Wines at a Profit*

27. In one of the appellant's replies, the Minister claimed that the appellant repurchased wines at a profit that he donated at charitable auctions in specific years.

28. The Court found a lack of clarity and linking of activities in specific years not subject to reassessment and struck out the assumption.

#### *Wines sold for 20% of Appraised Value*

29. The Minister claimed that some wine was sold at the charitable auctions, on average, for 20% of the appraised value.

30. The appellants argued that the 20% Assumption was based on an irrelevant statistical analysis from taxation years preceding the years that were the subject of the appeals, and was not specific.

31. The Court found that the assumption could stand, but arguments about valuation methodology could be advanced at the trial.

#### *Appraiser's Activities*

32. The Minister claimed that an appraiser solicited potential donors, provided the appraisals, collected the wine bottles, grouped them into lots, delivered them to the charities, and was involved as a bidder at the auctions.

33. The appellants claimed that the wine bottles were collected from some or all of the wine donors in general, and not specifically them.

34. The Court found that the assumption could stand and was a matter for trial.

#### *Payments to the Appraiser*

35. The Minister claimed that the charities paid the appraiser 10% of the hammer prices for which the wines were sold at auction. The appellants argued that the wines in question did not specifically refer to their wines.

36. The Court found that the assumption could stand and was a matter for trial.

37. The Court found that some of the assumptions, as noted above, were to be struck out.

## COMMENT



In Canada fair market value is normally the highest price, expressed in dollars, that property would bring in an open and unrestricted market between a willing buyer and a willing seller who are both knowledgeable, informed, and prudent, and who are acting independently of each other.

Generally, if the fair market value of the property is less than \$1,000, a member of the registered charity or another individual with sufficient knowledge of the property may determine its value. The person who determines the fair market value of the item should be competent and qualified to evaluate the particular property being donated. If the fair market value is expected to be more than \$1,000, CRA strongly recommends that the property be professionally appraised by a third party (that is, someone who is not associated with either the donor or the charity).

Refer [CRA Advice on Charitable Gifts](#) on their website and CRA's Policy Commentary [CPC-006](#).

[In Australia](#) if you give a gift of property to a deductible gift recipient (DGR), a taxpayer may claim a tax deduction if the ATO values it at more than \$5,000. This largely avoids the issue of over-valuation in tax deduction of charitable gifts, but may be regarded as a barrier to giving property.

## VIEW THE CASE



This case may be viewed at: <https://www.canlii.org/en/ca/tcc/doc/2023/2023tcc49/2023tcc49.html>

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**Date of creation:** May 2023

**Number of case:** 2023-64

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*ACPNS acknowledges the funding assistance of Our Community to produce the ACPNS Legal Case Notes Series.*