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SC 178 Ronald McDonald House TM Society v. AA09

[See Stated Case #178 \(BCCA\)](#)

THE RONALD MCDONALD HOUSE TM SOCIETY OF BRITISH COLUMBIA

v.

ASSESSOR OF AREA 9 - VANCOUVER

Supreme Court of British Columbia (A832345) Vancouver Registry

Before MR. JUSTICE G.L. MURRAY (in chambers)

Vancouver, August 31, 1983

Brian J. Wallace for the Appellant
John E.D. Savage for the Respondent

Exemptions - Actually Occupied - Charitable Institution

The Assessment Appeal Board held that the property owned by an incorporated charitable institution was not exempt because it was not yet occupied as required by Section 396 (c) (i) of the Vancouver Charter. As of December 31 in the assessment year in question, renovations had not commenced, nor was the property being used for charitable purposes. The Appellant appealed, arguing that actual use was not necessary to fall within the terms of the exemption.

HELD: Appeal Dismissed.

The Assessment Appeal Board did not err since the premises were not being used at all.

Roman Catholic Bishop of Kamloops v. Assessor of Area 23, Stated Case 164 followed; Glasgow City Corporation v. Johnstone (1965) 1 All E.R. 730 distinguished.

Reasons for Judgment (Oral)

August 31, 1983

THE COURT: This is a case stated by the Assessment Appeal Board of British Columbia pursuant to Section 74 of the *Assessment Act* which is Chapter 21 of the Revised Statutes of British Columbia, 1979. The stated case reads as follows:

"1. The material facts are set out in paragraphs 1 through 8 of the decision of the Assessment Appeal Board, dated June 23, 1983, a copy of which is attached hereto as Appendix 'A'.

The question on which the opinion of the Supreme Court is sought is:

1. Did the Assessment Appeal Board err in law in failing to find that the subject property is exempt from taxation pursuant to Section 396 (c) (i) of the *Vancouver Charter*, as real property owned and actually occupied by an incorporated charitable institution, and wholly in use for charitable purposes?"

Appendix "A" is annexed to the stated case and the body of Appendix "A" reads as follows:

"The facts, not in dispute, are as follows:

1. the Appellant Society was granted a Certificate of Incorporation under the *Societies Act* 17th April, 1980;

2. the Constitution and Bylaws of the subject Society dated 18th March, 1980 set their purposes as being in part,

'2 (1) To purchase, design, construct, renovate, furnish and operate a home for child patients suffering from life threatening diseases and their families during periods of treatment at the Children's Hospital.';

3. the subject Society was ' . . . granted tax-exempt status as a registered charity by Revenue Canada 29th August, 1980;

4. the subject property was registered in the Society's name in the Vancouver Land Titles Office on 28th October, 1982;

5. possession of the subject property occurred 15th December, 1982;

6. members of the Society met and detailed architectural work for renovations that were undertaken at the property prior to 31st December, 1982;

7. renovations to the structure commenced January 1983 with completion and occupation scheduled for September 1983;

8. as at the date of the hearing the interior of the structure is basically a shell with electrical and plumbing work in process. The only activity taking place at the property are the renovations being undertaken.

The Board was referred to Section 396 and 396 (c) (i) of the *Vancouver Charter* which states as follows:

'396 All real property in the city is liable to taxation pursuant to a rating by-law subject to the following exemptions:-

(c) Real Property

(i) of which an incorporated charitable institution is the registered owner or owner under agreement, either directly or through trustees therefore, and which is in actual occupation by such institution and is wholly in use for charitable purposes;'

Section 201 (2) of the *School Act* was also referenced as follows:

'(2) Subject to this act, property in a municipal area of a school district exempt from land taxation under the *Municipal Act* or the *Vancouver Charter*, as the case may be, is also exempt from taxation under this Act.'

The Board agrees with Mr. Mulberry, counsel for the City of Vancouver, that in order to qualify for an exemption under this section of the *Vancouver Charter* five tests must be met.

- (1) Is the applicant a charitable institution?
- (2) Does the charitable institution own the property?
- (3) Does the charitable institution occupy the property?
- (4) Is the property wholly in use for charitable purposes?
- (5) When do each of the above occur?

The Board finds the Appellant meets the first three tests as set out above. The Board is also aware that in order for an Appellant to qualify for an exemption benefit they must meet all the requirements of the exemption in converse to requirements of taxation itself.

The Board was referred in argument to *Roman Catholic Bishop of Kamloops v. Assessor of Area 23-Kamloops*, Case 164, and *Newcastle City Council v. Royal Newcastle Hospital*, Australia Case 1, both contained in the Manual of Stated Cases produced by the Assessment Authority.

The Board finds that the property in question is *wholly* held for charitable purposes but with great reluctance on our part must find that the property is not *wholly in use* for charitable purposes. We feel that the exemption will only come into effect when the property is in use for the charitable purpose, which would appear to be about September 1983, and as such the exemption would no doubt be reflected in the 1984 Roll.

In the circumstances the Board has no alternative but to dismiss the appeal without costs."

I have come to the conclusion that the Board arrived at the correct decision in this matter. As did the Board, I have arrived at that conclusion reluctantly, but nevertheless I am of the view that no other conclusion is possible. The main case relied upon by counsel for the appellant in support of his argument was the decision of the House of Lords in *Glasgow City Corporation v. Johnstone* (1965) 1 All E.R. 730. That authority is plainly distinguishable on the ground that in that case the premises were actually being used and the question was whether or not they were being used for charitable purposes. In the case at Bar, in my view the premises were not being used at all, although they would be used for charitable purposes at a later date. I consider the decision of Chief Justice McEachern in the case of *Roman Catholic Bishop of Kamloops v. Assessor of Area 23* referred to in the judgment of the Board, is decisive of the present case. The appeal is accordingly dismissed, but in the exercise of my discretion under sub-section 4 of Section 74 of the *Assessment Act*, I order that the dismissal be without costs.

SC 178cont Ronald McDonald House TM Society v. AA09

THE RONALD MCDONALD HOUSE TM SOCIETY OF BRITISH COLUMBIA

v.

ASSESSOR OF AREA 9 - VANCOUVER

B.C. Court to Appeal (CA001235) Vancouver Registry

Before: MR. JUSTICE J.D. LAMBERT, MR. JUSTICE R.P. ANDERSON, and MR. JUSTICE A.B. MACFARLANE

March 20, 1984

K.R. Boyle for the Appellant, The Ronald McDonald House TM Society of British Columbia
R.S. Gill for the Respondent, Assessor Area 9 - Vancouver

Vancouver Charter-"Wholly in use for charitable purposes"

The issue was whether the phrase "wholly in use for charitable purposes" within the meaning of section 396 (c) (i) of the Vancouver Charter applied to the subject property which was acquired for a charitable purpose. The Court held that the phrase includes the actual design and construction activity leading to renovations to the property which are a necessary part off fulfilling the whole of the charitable intent and which directly facilitate the charitable objectives.

Reasons for Judgment of Mr. Justice Macfarlane (Oral)

March 20, 1984

Coram

LAMBERT, J.A.: I will ask Mr. Justice Macfarlane to give the first judgment.

MACFARLANE, J.A.: The appellant applies for leave to appeal from the judgment of a Supreme Court Judge who dismissed an appeal taken by way of stated case from a decision of the Assessment Appeal Board.

The question on which the opinion of the Supreme Court was sought is:

"Did the Assessment Appeal Board err in law in failing to find that the subject property is exempt from taxation pursuant to section 396 (c) (i) of the *Vancouver Charter*, as real property owned and actually occupied by an incorporated charitable institution, and wholly in use for charitable purposes?"

The facts are not in dispute and are set forth in the judgment appealed from as follows:

"1. The Appellant Society was granted a Certificate of Incorporation under the *Societies Act* 17th April, 1980;

The Constitution and bylaws of the subject Society dated 18th March, 1980 set their purposes as being in part,

2. '(1) To purchase, design, construct, renovate, furnish and operate a home for child patients suffering from life-threatening diseases and their families during periods of treatment at the Children's Hospital.';

3. The subject Society was '. . . granted tax-exempt status as a registered charity . . .' by Revenue Canada 29th August, 1980;

4. The subject property was registered in the Society's name in the Vancouver Land Titles Office on 28th October, 1982;

5. Possession of the subject property occurred 15th December, 1982;

6. Members of the Society met and detailed architectural work for renovations that were undertaken at the property prior to 31st December, 1982;

7. Renovations to the structure commenced January, 1983, with completion and occupation scheduled for September, 1983;

8. As at the date of the hearing the interior of the structure is basically a shell with electrical and plumbing work in process. The only activity taking place at the property are the renovations being undertaken."

Section 396 (c) (i) of the *Vancouver Charter* reads as follows:

"396 All real property in the City is liable to taxation pursuant to a rating bylaw subject to the following exemptions:-

(c) Real property

(i) of which an incorporated charitable institution is the registered owner or owner under agreement, either directly or through trustees therefor, and which is in actual occupation by such institution and is wholly in use for charitable purposes."

The Assessment Appeal Board had held that the appellant's property is not exempt from taxation and that decision was upheld by the Supreme Court Judge.

It is clear that the appellant is a charitable institution which owns and occupies the property in question. To that extent the requirements of the Statutory Exemption Clause are met.

The question raised on this appeal is whether the property was in 1983, the taxation year in question, wholly in use for charitable purposes. In order to have been so it must have been used for charitable purposes on or before December 31st, 1982, when the tax roll is struck.

The Constitution of the Appellant Society provides, in part:

"The purposes of the Society are:

(1) To purchase, design, construct, renovate, furnish and operate a home for child patients suffering from life-threatening diseases and their families during periods of treatment at The Children's Hospital."

The Board and the Supreme Court held that the property was wholly held for charitable purposes but was not wholly in use for charitable purposes during the relevant period. Both the Board and The Court felt constrained to apply the decision of the Chief Justice of the Supreme Court in *Roman Catholic Bishop of Kamloops vs. Assessor of Area 23-Kamloops* (unreported, March 24th, 1982) but I think that case can be distinguished. There it was held that the appellant was not entitled to an exemption when the Church in question was still under construction. The case turned on the particular wording of section 398 (h) of the *Municipal Act* which allowed an exemption for "a building set apart and in use for the public worship of God."

The critical phrase "public worship of God" allows for only a very narrow construction which implies a religious service of some kind. "Charitable purposes", on the other hand, is an expression of broader import which may include things necessarily ancillary to the charitable purpose.

Chief Justice McEachern felt bound by the wording of the facts set out in the Stated Case and, in particular, this fact:

"As of December 31, 1980, the Church Hall was not completed and had not been used for the public worship of God."

Of course, in the instant case there is no fact of that kind which is determinative of the matter. Here the property was wholly in use for one of several charitable purposes stated in the Constitution of the Appellant, which is a charitable institution; namely, for the design and renovation as a home for patients and their families. The property here was not in use for other than one of the stated charitable purposes; for instance, for a business purpose.

I do not think that on the facts of this case a valid distinction can be made between property wholly held for charitable purposes and one wholly used for charitable purposes. The property here was not only being held for charitable purposes but the purposes were being actively pursued.

The property had been registered in the Society's name on October 28th, 1982, and the charitable institution took possession of the property, and was occupying it, about December 15th, 1982. Members of the Society were on the property and detailed architectural work for renovations was being undertaken on the property prior to December 31st, 1982 and renovations to the structure followed immediately thereafter. So, in this case, from the date that the Society became the registered owner of the property through to the year end of 1982 and into 1983, the charitable objects were being actively undertaken.

The exemption, I should say, does not depend upon occupation by the patients, even though the principal purpose of the charity is to provide a place to be occupied by patients and their families. The occupation which is a basis for the exemption is occupation by the charitable institution. It is conceded that the property was occupied by the charitable institution prior to December 31st, 1982.

Actual use of the home for patients is not the basis of the exemption, as was the case in so many of the authorities cited to us. It is exclusive use for charitable purposes that attracts the exemption in this case.

"Wholly in use for charitable purposes" in that context, in my opinion, includes actual design and construction activity leading to renovations to the property which are a necessary part of fulfilling the whole of the charitable intent and which directly facilitate the charitable objectives. Here that activity, that use of the property which was specified in the Constitution as a charitable purpose, was under way in the year in question.

The cases cited by the Respondent have not been overlooked. We listened carefully to the able submission of counsel for the respondent, but each of the cases referred to did rest upon the interpretation of the wording of a particular exemption, each one of which was cast in different language from the one before us. The facts of each of those cases were also different from the facts in this case. None of those cases was decisive of the question before us.

In the result I would grant leave to appeal, allow the appeal and answer the question in the affirmative.

LAMBERT, J.A.: I agree.

ANDERSON, J.A.: I agree.

LAMBERT, J.A.: Leave to appeal is granted. The appeal is allowed. The question in the Stated Case should be answered "Yes". The matter is remitted to the Assessment Appeal Board to be dealt with in accordance with this judgment.