

Charitable organizations and related business

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A recent decision with respect to charitable organizations has confirmed a narrow interpretation of what constitutes a ‘related business’ under subsection 149.1(1) of the Income Tax Act (the “Act”). The term ‘related business’ is defined by subsection 149.1(1) of the Act to include a business unrelated to the objects of the charity if substantially all the employees in the business are unpaid. It now appears, however, that the statutory term does not encompass much more than that.

Alberta Institute on Mental Retardation v. The Queen,¹ was the first case to consider the meaning of “related business”. CRA had refused to register the Alberta Institute (the “Institute”) as a charity on the grounds that it was carrying on an ‘unrelated business.’ The Institute had entered into a used household items collection and resale contract with Value Village Stores, a profit-making organization. Under the contract, used household items were solicited and collected by paid employees of the Institute. The Institute entered into a simultaneous agreement with a charitable association under which all of the funds it received from Value Village were forwarded to the association for use in charitable projects. The majority delivered a strong judgment in favour of the Institute, holding that the Institute’s commercial operation was a “related business” since all of the monies were allocated to its charitable purposes. However, the dissent applied a strict reading of the statute, holding that a “related business” could only be found where “there exists between the commercial activity in question, considered in itself, and the charitable objects of the charity such a relationship that it can be said that by engaging in the commercial activity in question the charity is, in effect, contributing to the realization of its charitable objects.”

Earth Fund v. Canada,² the second case that dealt with ‘related business’ arose when CRA refused to grant charitable registration to an organization that raised funds for environmental charities through online lotteries. Earth Fund argued that such activity was a ‘related business’ under *Alberta Institute*, while CRA argued that *Alberta Institute* should be limited to situations involving the collection and resale of used goods. Ultimately, the court held that the refusal to register was proper on two narrow grounds. First, the appellant’s corporate objects could include non charitable activity and were thus too broad. Second, it found the lottery operation was a business that was its only activity. Unfortunately this holding did not truly clarify the law due to its reliance on such narrow grounds.³ However, in explicitly rejecting the appellant’s argument that *Alberta Institute* was broad enough to apply in the appellant’s favour, Sharlow J.A. stated:

“I do not accept the argument of counsel for the appellant that the Alberta Institute case is authority for the proposition that any business is a ‘related business’ of a charitable foundation if all of the profits of the business are dedicated to the foundation's charitable objects.”⁴

The newest case on the topic of related business, *House of Holy God v. Canada*,⁵ confirms the *Earth*

¹ [1987] 2 C.T.C. 70, (F.C.A.); leave to appeal dismissed, [1988] S.C.C.A. No. 32.

² [2003] 2 C.T.C. 10 (F.C.A.).

³ Arthur B.C. Drache, *Canadian Taxation of Charities & Donations* (Toronto: Thomson, 2003).

⁴ *Earth Fund*, *supra* note 2 at para. 30.

⁵ [2009] F.C.J. No. 570.

Fund view of the scope of a related business. In this case, the House of Holy God (the “appellant”) appealed a notice of intention to revoke its charitable registration. The appellant operated a maple syrup enterprise with paid employees. While the maple syrup enterprise was unrelated to the appellant’s charitable objects, the appellant argued that the maple syrup enterprise was a related business because the profit was being “deposited [in an account] for use by the appellant, at some future time, to construct a community centre.”⁶ The court held, however, that such an argument was contrary to the above-quoted passage in *Earth Fund*.

It could be argued that, as with *Earth Fund*, the decision in *House of Holy God* is based on narrow grounds that reflect a somewhat peculiar set of facts. The evidentiary record in *Holy God*, for example, contained no evidence of what the principles of Holy God entailed,⁷ and little or no evidence of any teaching activities that were undertaken by the appellant, suggesting that the syrup enterprise was the organization’s sole activity. Nevertheless, *House of Holy God* does appear to confirm that the courts will not apply a broad interpretation of ‘related business’ which allows for nearly any activity to be considered a ‘related business’ so long as the funds are used for charitable activities within the objects of the organization. Rather, the current test to determine whether a business is a ‘related business’ appears to focus solely on two elements: first, whether the business is closely linked to the objects of the charitable organization, and second, whether the employees of the business are substantially all unpaid.

⁶ *Ibid.*, at para. 6.

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