



March 4, 2014

Via email: mcu@justice.gc.ca

The Honourable Peter Gordon MacKay, P.C., Q.C., M.P.
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, ON K1A 0H8

Dear Minister MacKay:

Re: Proposed Changes to Jurisdiction in the *Federal Courts Act*

On behalf of the Charities and Not-for-Profit Law Section of the Canadian Bar Association (the CBA Section), I write to recommend changes to the *Federal Courts Act* to alter the jurisdiction of the Federal Court of Appeal for matters concerning registered charities in Canada.

The CBA is a national association representing 37,500 jurists including lawyers, notaries, law teachers and students across Canada. The CBA's primary objectives include improvement in the law and in the administration of justice. The CBA Section represents lawyers from across Canada who advise registered charities and other not-for-profit organizations. We emphasize that these recommendations are made on behalf of the CBA Section only, not on behalf of the whole CBA.

Currently certain tax disputes are under the Tax Court of Canada's exclusive jurisdiction and others are under the Federal Court's exclusive jurisdiction, resulting in a multiplicity of venues, procedures and deadlines for challenging actions undertaken and decisions made by the Canada Revenue Agency (CRA). In August 2012, the CBA Council adopted a resolution calling on the government to address the jurisdiction of tax-related disputes and make the changes necessary to ensure access to justice for all (www.cba.org/CBA/resolutions/pdf/12-01-A-ct.pdf).¹ In the view of the CBA Section, the exclusive jurisdiction of the FCA in appeals about the granting and revocation of charitable registration has a significant negative impact on access to justice.

The vast majority of registered charities are small and operated by volunteers. Most applications to the Canada Revenue Agency (CRA) for charitable registration are prepared without legal representation by individuals unfamiliar with the requirements of the *Income Tax Act* and without the financial means to engage counsel.

¹ See also the comments of the Hon. John M. Evans of the Federal Court of Appeal on the benefits of putting into one court all proceedings connected with the administration of federal taxation (<http://cas-ncr-nter03.cas-satj.gc.ca/fca-caf/pdf/speech-jun10-2011.pdf>, bottom of p. 9-10).

An appeal of the CRA's refusal to grant charitable registration can be very complex and the evidence available is limited to the printed record (essentially the contents of the CRA's file) with no opportunity to provide *viva voce* or affidavit evidence tested by cross-examination and without the benefit of findings of fact by a trial court. This significantly limits the ability of the appellant to present a complete record on which all relevant factual and legal issues may be raised (even if they have legal representation capable of doing so). In many cases legal issues in the appellant's favour that could have been raised with the CRA but were not due to the appellant's lack of sophistication or lack of representation cannot be raised on appeal before the FCA. These evidentiary rules are often misunderstood by the unrepresented appellant until the hearing date, presenting an unfair disadvantage to the appellant on its first court appearance. Similar issues arise with the revocation of charitable status by the CRA, as again the appeal record from the CRA's decision to the FCA is limited to the contents of the CRA's file.

An appellant's access to justice is further impeded by the high cost of pursuing an appeal before the FCA. The FCA holds hearings only in limited locations in Canada and, notwithstanding the inability to introduce evidence in its first court appearance on the matter, the requirement to prepare a detailed and lengthy factum and to make all submissions in writing makes an appeal to the FCA cost prohibitive to most.

The CBA Section believes that the appropriate court to hear appeals from the refusal to grant charitable registration and the revocation of charitable registration is the Tax Court of Canada. There, the appellant would be entitled to introduce further evidence to support its appeal. Further, the Court sits in more places, giving better access to justice for this type of litigant.

The CBA Section would be pleased to work with the government on this proposed amendment to the *Federal Courts Act* and the consequential amendment to the *Tax Court of Canada Act*, or to answer any questions that you may have on these issues.

Yours truly,

(original signed by Sarah Mackenzie for Margaret H. Mason)

Margaret H. Mason
Chair, National Charities and Not-for-Profit Law Section