



SUPREME COURT OF CANADA

CITATION: A.Y.S.A. Amateur Youth Soccer Association
v. Canada (Revenue Agency), 2007 SCC 42

DATE: 20071005
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BETWEEN:

A.Y.S.A. Amateur Youth Soccer Association
Appellant
and
Canada Revenue Agency
Respondent
- and -
Canadian Centre for Philanthropy
Intervener

CORAM: McLachlin C.J. and Bastarache, Binnie, LeBel, Deschamps, Fish, Abella, Charron and Rothstein JJ.

REASONS FOR JUDGMENT: Rothstein J. (McLachlin C.J. and Bastarache, Binnie, LeBel,
(paras. 1 to 45) Deschamps, Fish and Charron JJ. concurring)

CONCURRING REASONS: Abella J.
(paras. 46 to 59)

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a.y.s.a. v. canada (revenue agency)

A.Y.S.A. Amateur Youth Soccer Association

Appellant

v.

Canada Revenue Agency

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and

Canadian Centre for Philanthropy

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**Indexed as: A.Y.S.A. Amateur Youth Soccer Association
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Neutral citation: 2007 SCC 42.

File No.: 31476.

2007: May 16; 2007: October 5.

Present: McLachlin C.J. and Bastarache, Binnie, LeBel, Deschamps, Fish, Abella,
Charron and Rothstein JJ.

on appeal from the federal court of appeal

Taxation — Income tax — Charities — Registered charity — Amateur youth soccer association operating exclusively at provincial level seeking registration as charity — Whether registered Canadian amateur athletic association provisions of Income Tax Act preclude amateur sports association from charitable status — Whether amateur youth soccer association a charity for purposes of Income Tax Act — Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), ss. 149.1(1) “charitable organization”, 248(1) “registered Canadian amateur athletic association”.

A.Y.S.A., an amateur soccer association which operates exclusively at the provincial level, applied to the Canada Revenue Agency to become a “registered charity” under s. 248(1) of the *Income Tax Act* (“ITA”). The Agency refused to register A.Y.S.A. as a charity finding that the courts had not held the promotion of sports to be a charitable purpose. The Federal Court of Appeal affirmed the decision, finding that the registered Canadian amateur athletic association (“RCAAA”) provisions in s. 248(1) of the *ITA* provide charity-like treatment for amateur athletic associations only with respect to those which operate on a nationwide basis.

Held: The appeal should be dismissed.

Per McLachlin C.J. and Bastarache, Binnie, LeBel, Deschamps, Fish, Charron and **Rothstein** JJ.: The fact that the A.Y.S.A. and other sport associations do not qualify as a RCAAA does not automatically preclude them from being found to be a charity. While the wording of the definition of RCAAA in s. 248(1) clearly indicates that Parliament intended the benefit of RCAAA status to be available only to nationwide associations, the RCAAA regime is not a complete code for amateur

sporting activities and its provisions are not to be read as an exhaustive statement on the charitable status of all sports organizations in all circumstances. Neither the text nor scheme of the *ITA*, nor the legislative purpose in establishing the RCAA regime suggest that the RCAA provisions preclude charitable status for non-nationwide sports organizations of all sorts or all descriptions. Rather, Parliament created a clear position for RCAAs and left the rest to be determined in accordance with the long-standing practice under the common law. [12] [17-18] [23]

In order to be registered as a charity under s. 149.1(1) of the *ITA*, an organization must devote all of its resources to “charitable activities carried on by the organization itself”. The definition of “charitable organization” in s. 149.1(1) focuses on “charitable activities”, but it is really the purpose in furtherance of which an activity is carried out, not the character of the activity itself, that determines whether or not it is “charitable”. As the *ITA* does not define “charitable activities”, Canadian courts have consistently applied the *Pemsel* approach to determine that question. Here, the A.Y.S.A. does not qualify for registration as a charity because its purposes and activities are not charitable. Under the fourth head of the *Pemsel* approach — the only head applicable in this case —, the purposes of the organization must be (a) of “public benefit” or “beneficial to the community” and (b) “in a way which the law regards as charitable”. Public benefit alone does not equal charity, and while it is accepted that participating in sport is generally beneficial, those benefits alone are not enough to qualify an organization as charitable. The case law supports the proposition that sport, if ancillary to another recognized charitable purpose, such as education, can be charitable, but not sport in itself. The Letters Patent of the A.Y.S.A. refer to promoting soccer and increasing participation in the sport of soccer. The fact that an

activity or purpose happens to have a beneficial by-product is not enough to make it charitable. If every organization that might have beneficial by-products, regardless of its purposes, were found to be charitable, the definition of charity would be much broader than what has heretofore been recognized in the common law. The organization must have as its main objective a purpose and activities that the common law will recognize as charitable. The A.Y.S.A. was unable to establish this to be the case. Furthermore, the scheme of the *ITA* does not support a wide expansion of the definition of charity, and it is imperative to preserve the distinction that the *ITA* makes between charitable and non-profit organizations. Lastly, the potential recognition of non-profit sport and recreation organizations as charities is closer to a wholesale reform than incremental change and while it may be desirable as a matter of policy to give sports associations the tax advantage of charitable status, it is a task better suited to Parliament than the courts. [24] [27] [37] [40-45]

Per Abella J.: Resort to the common law test for determining what is a charity is unnecessary in this case because the RCAA provisions of the *ITA* prevent A.Y.S.A. from being treated as a charity under the Act. The legislative history of the RCAA provisions confirms that Parliament specifically put its mind to drawing a distinction between amateur athletic associations operating on a national level and those that operate on a regional or provincial one, and decided to confer charity-like tax benefits only on national amateur athletic associations. This reflects a clear policy choice and Parliament's intention to exclude all other amateur athletic associations could hardly be clearer. Since A.Y.S.A. operates exclusively at the provincial level, the statute has denied it access to charitable status, a denial the common law is powerless to overcome. [47] [51-52] [54] [56] [58]

Cases Cited

By Rothstein J.

Distinguished: *Re Laidlaw Foundation* (1984), 13 D.L.R. (4th) 491;
referred to: *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*, [1999] 1 S.C.R. 10; *R. v. Salituro*, [1991] 3 S.C.R. 654; *Maccabi Canada v. M.N.R.*, 98 D.T.C. 6526; *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, [2006] 1 S.C.R. 715, 2006 SCC 20; *Canada Trustco Mortgage Co. v. Canada*, [2005] 2 S.C.R. 601, 2005 SCC 54; *Shell Canada Ltd. v. Canada*, [1999] 3 S.C.R. 622; *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531; *The King v. Assessors of the Town of Sunny Brae*, [1952] 2 S.C.R. 76; *Guaranty Trust Co. of Canada v. Minister of National Revenue*, [1967] S.C.R. 133; *D'Aguiar v. Guyana Commissioner of Inland Revenue*, [1970] T.R. 31; *Re Nottage*, [1895] 2 Ch. 649; *In re Mariette*, [1915] 2 Ch. 284; *Inland Revenue Commissioners v. McMullen*, [1981] A.C. 1; *Inland Revenue Commissioners v. City of Glasgow Police Athletic Association*, [1953] 1 All E.R. 747; *Laing v. Commissioner of Stamp Duties*, [1948] N.Z.L.R. 154.

By Abella J.

Referred to: *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531; *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*, [1999] 1 S.C.R. 10; *Maccabi Canada v. M.N.R.*, 98 D.T.C. 6526.

Statutes and Regulations Cited

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Canada. House of Commons. *House of Commons Debates*, vol. VI, 2nd Sess., 28th Parl., April 23, 1970, p. 6235.

Canada. House of Commons. *House of Commons Debates*, vol. VII, 3rd Sess., 28th Parl., June 18, 1971, p. 6895.

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APPEAL from a judgment of the Federal Court of Appeal (Létourneau, Noël and Evans JJ.A.) (2006), 267 D.L.R. (4th) 724, 348 N.R. 295, [2006] 3 C.T.C. 294, 2006 D.T.C. 6314, [2006] F.C.J. No. 542 (QL), 2006 FCA 136, affirming a decision of the Minister of National Revenue denying the appellant's application to be registered as a charity under the *Income Tax Act*. Appeal dismissed.

D. Geoffrey Cowper, Q.C., E. Blake Bromley and W. Stanley Martin, for the appellant.

Wendy Burnham and David Jacyk, for the respondent.

W. Laird Hunter, Q.C., David Stevens, Susan M. Manwaring and Kate Campbell, for the intervener.

The judgment of McLachlin C.J. and Bastarache, Binnie, LeBel, Deschamps, Fish, Charron and Rothstein JJ. was delivered by

ROTHSTEIN J. —

I. Introduction

1 This case concerns whether the A.Y.S.A. Amateur Youth Soccer Association is a charity for purposes of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (“*ITA*”), allowing it to issue tax receipts enabling its donors to obtain income tax deductions or credits. I find that it is not.

II. Factual Background

2 A.Y.S.A. is a corporation without share capital incorporated under Part II of the *Canada Corporations Act*, R.S.C. 1970, c. C-32. The Letters Patent of A.Y.S.A. set out its objects as follows:

(a) to fund and develop activities and programs to promote, organize and carry on the sport of amateur youth soccer;

(b) to fund, promote and develop local amateur youth soccer programs and coaching appropriate to different age groups and different levels of ability to increase participation in the sport of soccer;

(c) to raise funds for facilities and equipment necessary to achieve the foregoing objects in ways the law regards as charitable;

(d) to receive gifts, bequests, funds and property and to hold, invest, manage, administer and distribute funds and property for the objects of the Corporation; and

(e) to conduct activities and exercise such powers as are necessary for the achievement and furtherance of the objects of the Corporation.

As stipulated at Part IV of the Letters Patent, the operations of A.Y.S.A. may be carried out exclusively in the province of Ontario.

3 In February 2005, A.Y.S.A. applied to the Canada Revenue Agency (“CRA”) to become a “registered charity” under s. 248(1) of the *ITA*. In its application, A.Y.S.A. described the activities through which it intended to achieve the objects in its Letters Patent as follows:

The Association intends to administer and perform all the functions necessary to support local youth soccer in local communities in Ontario. Amateur soccer is defined for the Association’s purposes as soccer that is

played for the purpose of deriving the physical, mental and social benefits that organized sport has to offer other than present or future commercial gain.

...

... The Applicant's main objective is to offer youths in the community the opportunity to develop and hone soccer skills through practice and competition so they can develop pride in their abilities and soccer skills.

We will also encourage and promote good sportsmanship and fair play. Encouraging youth in the community to pursue physical activities in a team environment will enable each individual to develop a healthy attitude toward fitness and teamwork. Extra-curricular activities that are structured around the pursuit of physical fitness and belonging to a team require a significant commitment of time and attention. This personal commitment will undoubtedly result in healthy and socially beneficial attitudes and improved time management skills. It will also have the result of less time to 'hang out' around the corner store. The players, hopefully, will not have the time or interest to spend time in undesirable places with people of questionable character where they are more readily exposed to illegal activities including drugs, vandalism and anti-social behaviour such as bullying.

The Association will be managed and operated by volunteers.

III. Decisions Below

A. *Canada Revenue Agency*

4 In its letter to A.Y.S.A. of June 8, 2005, the CRA refused to register A.Y.S.A. as a charity. It stated that:

... the courts have not held the promotion of sport to be a charitable purpose . . . As the Association's formal objects state that its overall purpose is to promote the sport of soccer, it does not qualify for registration as a charity.

B. *Federal Court of Appeal (Noël J.A., Létourneau and Evans J.J.A. concurring)*
(2006), 267 D.L.R. (4th) 724, 2006 FCA 136

5 The Federal Court of Appeal dismissed A.Y.S.A.’s appeal of the CRA decision, brought pursuant to ss. 172(3) and 180(1) of the *ITA*. The court found that the registered Canadian amateur athletic association (RCAAA) provisions of the *ITA* precluded the possibility of an amateur sport association being treated as a charity under the *ITA*. Through the RCAAA provisions, Parliament opted to provide charity-like treatment for amateur athletic associations, but only with respect to those which (unlike A.Y.S.A.) operate on a nationwide basis. The court did not find it necessary to address the question of whether A.Y.S.A. was a charity at common law. According to the court, Parliament must be taken to have occupied the field respecting the tax treatment of amateur sports associations regardless of their status in the law of charity. To hold otherwise, it held (at para. 22), “would frustrate Parliament’s clearly expressed intent to limit the federal funding of amateur sports associations to those which operate nationally”.

IV. Analysis

A. *Do the RCAAA Provisions of the ITA Preclude Amateur Sports Associations from Charitable Status?*

6 An RCAAA, as defined by s. 248(1) of the *ITA*, is a non-profit organization which has as its “primary purpose and its primary function, the promotion of amateur athletics in Canada on a nation-wide basis”. Sections 110.1(1)(a)(ii), 118.1(1)(b) and s. 118.1(3), along with s. 149(1)(l) of the *ITA*, afford RCAAAs two benefits that are also given to charities under the *ITA*: (1) they pay no tax on their

income; and (2) they can issue tax receipts enabling their donors to obtain tax deductions (for corporations) or non-refundable tax credits (for individuals) for their donations. By contrast, other associations which qualify as non-profit organizations under the *ITA*, but *not* as registered charities or RCAAAs, receive the first benefit but not the second: they pay no tax on their income, but they cannot issue tax receipts to donors.

7 As RCAAAs must operate nationwide, an organization such as A.Y.S.A., which operates only in Ontario, cannot register as an RCAA. Nonetheless, A.Y.S.A. claims to be eligible for registration as a charity under s. 248(1) of the *ITA*.

8 To qualify as a “charitable organization” under the *ITA*, an organization must meet the criteria listed in s. 149.1(1)(a) to (d), one of which is that the organization must devote all of its resources to “charitable activities”. The *ITA* does not define “charitable activities”. Rather, it implicitly relies upon the common law definition of charity (*Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*, [1999] 1 S.C.R. 10, at paras. 143 and 150), which is subject to incremental change as the common law adapts to societal change (*Vancouver Society*, at para. 150, citing *R. v. Salituro*, [1991] 3 S.C.R. 654, at p. 670). Unless legislation provides otherwise, it will be for the courts, through the jurisprudence, to determine what is or is not a charity for legal purposes.

9 The government argues that the *ITA* has provided otherwise, and that for sports, the statute has supplanted whatever the common law says about sports as charity. Specifically, it argues that the RCAA provisions of the *ITA* occupy the field

for amateur sports associations so that any sports associations that fail to qualify as RCAAAs cannot qualify as registered charities either. I cannot agree and I will explain why in dealing with the arguments advanced by the government.

(a) Parliamentary Intent

10 The intervener, the Canadian Centre for Philanthropy, argues that the groundwork for the RCAA regime was a federal government task force set up in response to Canada's poor showing in the 1968 Olympic Games in Mexico City and the announcement that Montreal would host the 1976 Olympic Games. The CRA Policy Statement No. CPS-011 on "Registration of Canadian Amateur Athletic Associations", effective October 28, 1996, suggests that, at least from the CRA's viewpoint, the RCAA regime is geared to the training of "elite" or "high-performance" athletes, defined as "athletes whose performance is currently ranked in the top 16 in the world or have the potential to compete at that level". Both the intervener's argument and the Policy Statement suggest that the RCAA provisions were focussed on a specific objective involving high-performance athletes and do not support the government's argument that these provisions constitute a complete code for the income tax treatment of all sports associations.

11 The government cites various passages from *Hansard* to argue that in 1971, when Parliament amended the *ITA* creating the RCAA provisions, it intended to exclude sports associations other than RCAAAs from the tax benefits of charitable status (*House of Commons Debates*, vol. VI, 2nd Sess., 28th Parl., April 23, 1970, at p. 6235; vol. VII, 3rd Sess., 28th Parl., June 18, 1971, at p. 6895; vol. VII, 3rd Sess.,

28th Parl., October 25, 1971, at p. 9009). When faced with the issue of whether to provide tax relief for sport under the *ITA*, according to the government, Parliament chose to extend charity-like benefits to only a small number of sports associations and did so, not by expanding the definition of charity, but through the alternative mechanism of the RCAA. Therefore, the government argues, any interpretation of the charitable provisions of the *ITA* must be circumscribed by Parliament's express intention not to include the promotion of sport as charitable and not to extend the tax benefits given to national amateur sports associations to those at the regional or local level. The government also argues that although RCAAs must operate nationwide, the RCAA scheme still benefits regional and local associations because RCAAs are permitted to channel funds down through their member organizations to the provincial, regional and local levels.

12 It is clear from the wording of the definition of RCAA in s. 248(1), that Parliament intended the benefit of RCAA status to be available *only* to nationwide associations. However, I have difficulty accepting the government's "occupied field" argument based on excerpts from *Hansard*. While *Hansard* may offer relevant evidence in some cases, comments of MPs or even Ministers may or may not reflect the parliamentary intention to be deduced from the words used in the legislation. "It is clear that no single participant in the legislative process can purport to speak for the legislature as a whole" (R. Sullivan, *Sullivan and Driedger on the Construction of Statutes* (4th ed. 2002), at p. 489).

13 In any event, there is nothing in the passages cited by the government to indicate that the creation of the RCAA regime precluded the registration of other

sports associations as charities. Parliament can be taken to have put its mind to the question of which athletic associations would qualify as RCAAAs and to have chosen nationwide organizations only. It may also be that Parliament was operating under the assumption that athletic associations were not considered charitable at common law, which explains the special provisions ensuring charity-like status for RCAAAs (*House of Commons Debates*, vol. VII, 1st Sess., 28th Parl., April 2, 1969, at p. 7423). However, neither of these propositions evince a parliamentary intent to freeze the development of the common law on charitable status or to occupy the field for all amateur sports. Neither does the fact that RCAAAs can channel funds to their regional member organizations necessarily support the view that any other non-affiliated sports organizations were intended to be absolutely excluded from charitable status. The *ITA* continued to leave the definition of what is “charitable” to be determined by reference to the common law.

14 The government also cites *Maccabi Canada v. M.N.R.*, 98 D.T.C. 6526, where the Federal Court of Appeal suggested that the “nation-wide basis” requirement for RCAAAs was “consistent with the legislative intent to ensure that the issuing of receipts to donators would come from a single organization at the national level and that Revenue Canada would not have to interface with a myriad of provincial, regional and local organizations” (p. 6528). However, the Federal Court of Appeal offered no evidence for this legislative intent, and as that case involved a different question, namely whether “nation-wide basis” included a demographic as well as geographic requirement, I do not find it to be instructive to the case at bar.

15 The words used by Parliament in the *ITA* provisions concerning RCAAAs show no express intention that the RCAA regime occupies the field for sports associations; that is, there are no words in the *ITA* which state that the only way for sports organizations to achieve the same tax treatment as charities is to qualify as an RCAA. Therefore, to find an occupied field, it would be necessary to interpret the express creation of RCAA status for nationwide amateur athletic associations as implying the exclusion of all other sports organizations from charitable status. However, arguments based on implied meaning must be viewed with caution. As Professor Sullivan notes, at p. 266:

While reliance on implied exclusion for this purpose [determining if a provision is exhaustive] can be helpful, it can also be misleading. What the courts are looking for is evidence that a particular provision is meant to be an exhaustive statement of the law concerning a matter. To show that the provision expressly or specifically addresses the matter is not enough. [Footnote deleted.]

16 It is well known that the modern approach to interpretation applies to taxation statutes no less than it does to other statutes, that is, “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (*Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, [2006] 1 S.C.R. 715, 2006 SCC 20, at para. 21; E.A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87). However, because of the degree of precision and detailed characteristics of many tax provisions, an emphasis has often been placed on textual interpretation where taxation statutes are concerned: *Canada Trustco Mortgage Co. v. Canada*, [2005] 2 S.C.R. 601, 2005 SCC 54, at para. 11; *Placer Dome*, at para. 23.

As McLachlin J. (as she then was) stated for the Court in *Shell Canada Ltd. v. Canada*, [1999] 3 S.C.R. 622, at para. 43:

The Act [ITA] is a complex statute through which Parliament seeks to balance a myriad of principles. This Court has consistently held that courts must therefore be cautious before finding within the clear provisions of the Act an unexpressed legislative intention: *Canderel Ltd. v. Canada*, [1998] 1 S.C.R. 147, at para. 41, *per* Iacobucci J.; *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411, at para. 112, *per* Iacobucci J.; *Antosko, supra*, at p. 328, *per* Iacobucci J. Finding unexpressed legislative intentions under the guise of purposive interpretation runs the risk of upsetting the balance Parliament has attempted to strike in the Act.

17 Similar caution is necessary when assessing claims that imply unexpressed meanings into the RCAA provisions, i.e. that the RCAA provisions also preclude charitable status for non-nationwide sports organizations of all descriptions. The precise and unequivocal meaning of the RCAA provisions is to grant certain charity-like tax advantages to nationwide amateur athletic associations. I do not read the RCAA provisions to be an exhaustive statement on the charitable status of all sports organizations in all circumstances.

18 Neither the text nor scheme of the Act, nor the legislative purpose in establishing the RCAA regime suggest that the RCAA provisions preclude charitable status for non-nationwide sports organizations of all sorts or all descriptions. Rather, Parliament created a clear position for RCAAs, and left the rest to be determined in accordance with the long-standing practice under the common law.

(b) Redundancy and Incongruity

19 Looking at the scheme of the *ITA*, the government also argues that if the promotion of sport qualified as a charitable purpose, the RCAA provisions would be rendered both redundant and incongruous. They would be redundant because RCAAs would be charities so there would be no need for separate RCAA registration outside of the charity regime.

20 The redundancy argument is based upon the proposition that the common law would recognize a broad, all encompassing definition of amateur sports as qualifying for charitable status. The difficulty with this argument is that it is based on a hypothetical assumption of what the common law might recognize. If one hypothesizes that the common law recognition of sports activities was more limited, there is no assurance that RCAAs would be included. For this reason, I do not find the redundancy argument to be helpful.

21 The government further argues that a finding that the promotion of sport qualifies as charitable at common law would be incongruous with the RCAA provisions. This is because an association must be a non-profit organization to qualify as an RCAA (s. 248(1)) and non-profit organizations cannot, “in the opinion of the Minister”, be charities (s. 149(1)(l)). Thus, if RCAAs qualified as charities, they could not qualify as non-profit organizations and hence would be rendered ineligible as RCAAs. This argument suffers from the same impediment as the redundancy argument. It is based on an assumption about the scope of the amateur sporting activity that the common law would recognize as qualifying for charitable status. Again, I do not find that this argument advances the analysis.

22 Thus, while it is appropriate to look at the overall scheme of the *ITA*, I do not accept the respondent's arguments on redundancy and incongruity.

23 I therefore conclude that the RCAA regime of the *ITA* is not a complete code for amateur sporting activities. It is a provision targeted at a narrowly defined class of associations. There is no express indication of an intent to modify the meaning of charity or charitable activities under the *ITA*. Nor is such an intent necessarily implied. The fact that a sports association does not qualify as an RCAA, does not automatically preclude it from being found to be a charity.

B. The Determination of Whether an Organization Is "Charitable" for Purposes of the ITA

24 In order to be registered as a charity for income tax purposes, an organization must devote all its resources to "charitable activities carried on by the organization itself" (s. 149.1(1)). As the *ITA* does not define "charitable activities", its meaning is determined by reference to the common law. This Court considered the definition of charity under the *ITA* and at common law in *Vancouver Society*. Iacobucci J., for the majority, noted that the common law definition of charity developed in the context of trust law which focuses on "charitable purposes" rather than "charitable activities" (para. 144). However, he found, at para. 152, that it is really the *purpose* in furtherance of which an activity is carried out, and not the character of the activity itself, that determines whether or not it is "charitable":

Another [problem with the standard in s. 149.1(1)] is its focus on "charitable activities" rather than purposes. The difficulty is that the character of an activity is at best ambiguous; for example, writing a letter to solicit donations for a dance school might well be considered charitable,

but the very same activity might lose its charitable character if the donations were to go to a group disseminating hate literature. In other words, it is really the purpose in furtherance of which an activity is carried out, and not the character of the activity itself, that determines whether or not it is of a charitable nature. Accordingly, this Court held in *Guaranty Trust, supra*, that the inquiry must focus not only on the activities of an organization but also on its purposes.

25 The cases on charity often start by citing the preamble to the *Charitable Uses Act, 1601* (Eng.), 43 Eliz. 1, c. 4 (commonly referred to as the *Statute of Elizabeth* or the *Statute of Charitable Uses*) which listed various activities deemed to be charitable. A modern English rendition is as follows:

. . . relief of aged, impotent, and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities; the repair of bridges, ports, havens, causeways, churches, sea banks and highways; the education and preferment of orphans; the relief, stock, or maintenance of houses of correction; marriages of poor maids; supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed; the relief or redemption of prisoners or captives and the aid or ease of any poor inhabitants concerning payments of fifteens, setting out of soldiers, and other taxes.

(*Vancouver Society*, at para. 31)

Although neither exhaustive nor binding, this provides a list of examples of charitable purposes that courts might recognize.

26 The *Statute of Elizabeth's* list was refined into a categorical approach in *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531 (H.L.). *Pemsel* (at p. 583) set up a scheme of four classified heads under which recognized charitable purposes must fall: (1) the relief of poverty; (2) the advancement of education; (3) the advancement of religion and (4) certain other purposes beneficial to the community, not falling under any of the preceding heads. The *Pemsel* approach

has been adopted by this Court (*The King v. Assessors of the Town of Sunny Brae*, [1952] 2 S.C.R. 76; *Guaranty Trust Co. of Canada v. Minister of National Revenue*, [1967] S.C.R. 133; *Vancouver Society*, at para. 147).

27 As A.Y.S.A. does not claim to fall under any of the first three *Pemsel* heads, it is the fourth head that is relevant to the case at bar. In *Vancouver Society*, the majority held that under the fourth head, the purposes of the organization must be of (a) “public benefit” or “beneficial to the community” and (b) “in a way the law regards as charitable” (para. 176). Recognizing that this reasoning was circular and that the law was not clear, Iacobucci J., at para. 177, adopted the following test from *D’Aguiar v. Guyana Commissioner of Inland Revenue*, [1970] T.R. 31, at p. 33:

[The Court] must first consider the trend of those decisions which have established certain objects as charitable under this heading, and ask whether, by reasonable extension or analogy, the instant case may be considered to be in line with these. Secondly, it must examine certain accepted anomalies to see whether they fairly cover the objects under consideration. Thirdly – and this is really a cross-check upon the others – it must ask whether, consistently with the objects declared, the income and property in question can be applied for purposes clearly falling outside the scope of charity; if so, the argument for charity must fail.

Iacobucci J. then added to the test:

To this I would add the general requirement, outlined in *Verge v. Somerville*, *supra*, at p. 499, that the purpose must also be “for the benefit of the community or of an appreciably important class of the community” rather than for private advantage.

28 Iacobucci J. discussed two further points that are also of relevance to the present appeal. First, he noted that applying the *Pemsel* approach often proves a

daunting task and it is difficult to articulate how the law of charities is to keep moving in a manner consistent with the common law. He emphasized, however, at para. 150, that there are limits to the law reform that may be undertaken by the courts, citing *Salituro*, at p. 670:

Judges can and should adapt the common law to reflect the changing social, moral and economic fabric of the country. Judges should not be quick to perpetuate rules whose social foundation has long since disappeared. Nonetheless, there are significant constraints on the power of the judiciary to change the law. As McLachlin J. indicated in *Watkins*, *supra*, in a constitutional democracy such as ours it is the legislature and not the courts which has the major responsibility for law reform; and for any changes to the law which may have complex ramifications, however necessary or desirable such changes may be, they should be left to the legislature. The judiciary should confine itself to those incremental changes which are necessary to keep the common law in step with the dynamic and evolving fabric of our society. [Emphasis added.]

When courts consider expanding the definition of charity, therefore, they must consider whether what is being proposed is an incremental change, or one with more complex ramifications that is better left to the legislature.

29 Secondly, looking at the scheme of the *ITA*, Iacobucci J. noted the distinction between non-profit organizations and charitable organizations:

. . . given that the present appeal concerns the definition of a charitable organization for the purposes of the *ITA*, it is imperative to preserve the distinction that the *ITA* makes between charitable and non-profit organizations. Non-profit organizations, according to s. 149(1)(l), include

a club, society or association that, in the opinion of the Minister, was not a charity within the meaning assigned by subsection 149.1(1) and that was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor,

member or shareholder thereof unless the proprietor, member or shareholder was a club, society or association the primary purpose and function of which was the promotion of amateur athletics in Canada;

Therefore according to the *ITA*, it must be possible to have an organization that is “operated exclusively for social welfare” and is not constituted for private advantage, but which is not a charitable organization. The common law of charities must not be interpreted so as to undermine this distinction between non-profit organizations and charitable organizations. [Emphasis added; para. 151.]

30 In a case involving the meaning of charity for purposes of the *ITA*, we are not applying the common law in a vacuum. It will be necessary to consider not only the common law, but the common law in relation to the scheme of the *ITA*. While I have found that the scheme of the *ITA* does not support interpreting the RCAA provisions as precluding charitable registration of non-RCAA sports associations, this does not mean that the scheme of the *ITA* is irrelevant in considering the development of the common law meaning of charity as it applies under the *ITA*.

31 To summarize, in determining if an organization is charitable under the fourth head of *Pemsel* for purposes of registration under the *ITA*, it will be necessary to consider the trend of cases to decide if the purposes are for a public benefit which the law regards as charitable. It will also be necessary to consider the scheme of the *ITA*. Finally, it is necessary to determine whether what is sought is an incremental change or a reform best left to Parliament.

V. Application

32 In order to determine if A.Y.S.A. is a charity for purposes of the *ITA*, it is necessary to consider the common law test as it applies in the context of the *ITA*. As

stated in *Vancouver Society*, the key question is whether A.Y.S.A.'s purposes meet this test and are for a public benefit in a way which the law regards as charitable. In *Vancouver Society*, Iacobucci J. stated, at para. 176, that “[r]ather than laying claim to public benefit only in a loose or popular sense, it is incumbent upon the Society to explain just how its purposes are beneficial in a way the law regards as charitable”. The same applies to A.Y.S.A.

33 A.Y.S.A. claims its purposes are charitable under this fourth head entitled “certain other purposes beneficial to the community”. While it concedes that older English case law supports the contention that “mere sport” cannot be charitable, it argues that the time is ripe for Canadian courts to recognize that the promotion of amateur sports involving the pursuit of physical fitness fits under the final *Pemsel* category. It argues that sport in connection with other purposes has been recognized as charitable, but the time has come for sport to stand on its own.

34 First, it is necessary to look to the trend in the cases. Much argument was made at the oral hearing in this case about the meaning of a handful of cases that have considered the charitable status of sporting activities. The government relies on *Re Nottage*, [1895] 2 Ch. 649 (C.A.), and cases which followed it as determining that “mere sport” is not charitable. A.Y.S.A. argued at the hearing that *Re Nottage* should not be read as pronouncing a general common law rule hostile to amateur sport, or that if so, it is “an ancient decision on radically different facts”. Cases holding a sports activity to be charitable when connected to other recognized charitable heads such as education (*In re Mariette*, [1915] 2 Ch. 284; *Inland Revenue Commissioners v. McMullen*, [1981] A.C. 1 (H.L.)), and an Ontario case *Re Laidlaw Foundation* (1984),

13 D.L.R. (4th) 491 (Div. Ct.), which distinguished *Re Nottage* and found amateur sport allied to fitness to be charitable can also be cited.

35 *Re Nottage*, perhaps the seminal case, involved a trust for the purchase of a cup as a prize for yacht racing. In finding that it was not charitable, Lindley L.J. held:

It is a prize for a mere game. The testator himself tells us what was in his mind: "My object in giving this cup is to encourage the sport of yacht-racing." Now, I should say that every healthy sport is good for the nation – cricket, football, fencing, yachting, or any other healthy exercise and recreation; but if it had been the idea of lawyers that a gift for the encouragement of such exercises is therefore charitable, we should have heard of it before now. . . . I deal with the present case on the broad ground that I am not aware of any authority pointing to the conclusion that a gift for the encouragement of a mere sport can be supported as charitable. [pp. 655-56]

Similarly, Lopes L.J. held:

I am of opinion that a gift, the object of which is the encouragement of a mere sport or game primarily calculated to amuse individuals apart from the community at large, cannot upon the authorities be held to be charitable, though such sport or game is to some extent beneficial to the public. If we were to hold the gift before us to be charitable we should open a very wide door, for it would then be difficult to say that gifts for promoting bicycling, cricket, football, lawn-tennis, or any outdoor game, were not charitable, for they promote the health and bodily well-being of the community. [p. 656]

36 While in some cases athletic associations have been denied charitable status (e.g. *Inland Revenue Commissioners v. City of Glasgow Police Athletic Association*, [1953] 1 All E.R. 747 (H.L.); *Laing v. Commissioner of Stamp Duties*,

[1948] N.Z.L.R. 154 (S.C.)), commentators have described the suggestion that healthy sports generally are not charitable as *obiter* (*Tudor on Charities* (9th ed. 2003), at pp. 116-18; H. Picarda, *The Law and Practice Relating to Charities* (3rd ed. 1999), at p. 128). Other cases have distinguished *Re Nottage* and found sporting activities to be charitable when connected to a purpose falling under one of the first three *Pemsel* heads. For example, in *Mariette*, a gift for sporting facilities at a school was held to be charitable as being for educational purposes. Similarly in *McMullen*, a trust to provide facilities for pupils of schools and universities to play football and other sports was also held to be charitable as part of education.

37

In *Laidlaw*, a case involving the definition of charitable purpose under s. 6a(a) of the *Charities Accounting Act*, R.S.O. 1980, c. 65, the Ontario High Court of Justice, Divisional Court, distinguished *Re Nottage* and held that the promotion of amateur athletic sport which involves the pursuit of physical fitness may be classified as charitable (p. 523). The definition of charitable purpose in s. 6a(a) of the *Charities Accounting Act* statutorily adopted the *Pemsel* categories, and identified the fourth category of charity as “any purpose beneficial to the community, not falling under subclause (I), (ii) or (iii)” (p. 526). The section did not, however, include the limitation that this must be a purpose recognized by the common law as charitable. This appears to have led the court in *Laidlaw* to adopt a more liberal approach to the definition of charity (p. 528). While that may be appropriate given the statutory definition of charity in the *Charities Accounting Act*, this Court made clear in *Vancouver Society* that, at common law and under the *ITA*, the approach is to analogize from prior cases (at paras. 176-79) and that “[p]ublic benefit alone . . . does not equal charity” (para. 183).

38 Thus, *Laidlaw* appears to be an anomalous case, based on a statutory provision which adopts only part of the common law test, and inconsistent with this Court's holding in *Vancouver Society* that public benefit alone is not enough. The authors of *Waters' Law of Trusts in Canada* (3rd ed. 2005), at p. 735, express doubt about whether *Laidlaw* applies beyond the scope of the particular Ontario statute in issue. Furthermore, as they note, "[a]s unsatisfactory as the analogy approach may be, it at least provides some guidance, on the basis of existing cases, as to what falls within the fourth head of charity" (p. 735 (footnote deleted)). I therefore find that *Laidlaw* should be distinguished from the present appeal.

39 A.Y.S.A. further argues that s. 8.1 of the *Interpretation Act*, R.S.C. 1985, c. I-21, requires the application of provincial law to the determination of what is charitable under the *ITA* and that the relevant provincial law in this case can be found in the *Laidlaw* decision. However, specific statutory definitions of charity in provincial legislation and decisions dealing with that definition do not dictate the meaning of charity under the *ITA*.

40 While the analysis in *Re Nottage* is rather perfunctory and should not be considered an insurmountable barrier, a common thread in all the decisions (other than *Laidlaw*) is that they accept that participating in sport is generally beneficial, but hold nevertheless that those benefits alone are not enough to make an organization charitable. A.Y.S.A. argues that the common law must adapt because fitness is now recognized as important. But the recognition of the value of exercise and fitness was far from absent in the older cases. The trend of the cases supports the proposition that

sport, if ancillary to another recognized charitable purpose such as education, can be charitable, but not sport in itself.

41 Although I am sympathetic to the proposition that organizations promoting fitness should be considered charitable, there is no mention of these objects in the Letters Patent of A.Y.S.A. The Letters Patent only refer to promoting soccer and increasing participation in the sport of soccer. A.Y.S.A.'s application to the CRA describes its "main objective" as being "to offer youths in the community the opportunity to develop and hone soccer skills through practice and competition so they can develop pride in their abilities and soccer skills". The application also mentions "physical fitness" and diversion from exposure to "anti-social behaviour". But these are clearly by-products of its main objective, the promotion of soccer. The fact that an activity or purpose happens to have a beneficial by-product is not enough to make it charitable. If every organization that might have beneficial by-products, regardless of its purposes, were found to be charitable, the definition of charity would be much broader than what has heretofore been recognized in the common law.

42 In referring to A.Y.S.A.'s Letters Patent and application to the CRA, I do not wish to leave the impression that the assessment to be carried out is formalistic in nature. That was the only evidence in the record in this case. But the government is entitled and indeed obliged to look at the substance of the purposes and activities of an applicant for registered charity status. Rewriting the objects in the Letters Patent or filing a carefully worded application will not be sufficient. The organization, in substance, must have as its main objective a purpose and activities that the common law will recognize as charitable. Examples of sporting activity that the government

acknowledges would be charitable include therapeutic horseback riding for children with disabilities, or sports camps for children living in poverty. In these examples, the objectives are ones well established as charitable.

43 In *Vancouver Society*, Iacobucci J. for the majority found that it is imperative to preserve the distinction that the *ITA* makes between charitable and non-profit organizations. Although it might be tempting to consider any non-profit activity for social welfare to be charitable, the *ITA* clearly anticipates that not all non-profit social welfare activities will be charitable. This signals that the scheme of the *ITA* does not support a wide expansion of the definition of charity. The concern expressed in *Vancouver Society* to maintain the distinction between non-profit and charitable organizations, also informs the present appeal.

44 Finally, it is necessary to consider whether what is proposed is an incremental change. A.Y.S.A. argues that as some sporting organizations are already charities, it would be incremental to broaden charitable status to youth amateur fitness sports. The government submits that 21 percent of all non-profit organizations in the country are sports and recreation organizations, and that the potential recognition of these organizations as charities could have a significant impact on the income tax system. I agree with the government that this would seem to be closer to wholesale reform than incremental change, and is best left to Parliament. While it may be desirable as a matter of policy to give sports associations the tax advantages of charitable status, it is a task better suited to Parliament than the courts. In this regard, I note that in the United Kingdom, the charitable status of “the advancement of amateur sport” was brought about through statute (*Charities Act 2006 (U.K.)*, 2006,

c. 50, s. 2(2)(g)). As stated by the majority in *Vancouver Society*, substantial change in the definition of charity must come from the legislature rather than the courts.

VI. Conclusion

45 I find that A.Y.S.A. does not qualify for registration as a charity under s. 248(1) of the *ITA* because its purposes and activities are not charitable. Therefore, I would dismiss the appeal with costs.

46 ABELLA J. — The issue in this appeal is whether A.Y.S.A. Amateur Youth Soccer Association, which operates exclusively at the provincial level, can qualify as a “registered charity” under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). If it can, it is entitled to receive both income tax exemption under s. 149(1)(f) of the Act and the ability to issue tax receipts for donations under ss. 110.1(1), 118.1(1) and 118.1(3). If it does not qualify, it can only claim the tax exemption to which it is entitled as a “non-profit organization” pursuant to s. 149(1)(l).

47 My colleague Justice Rothstein concludes that A.Y.S.A. cannot qualify as a “registered charity”, through an application of the common law test developed by the House of Lords in *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531. In my view, with great respect, resort to the common law test for determining what is a charity is unnecessary. I agree with the Federal Court of Appeal that the Registered Canadian Amateur Athletic Associations (“RCAAA”) provisions of the *Income Tax Act* prevent A.Y.S.A. from being treated as a charity under the *Income Tax Act*.

48 Under s. 248(1) of the *Income Tax Act*, a “registered charity” is defined to include “a charitable organization, private foundation or public foundation, within the meanings assigned by subsection 149.1(1)”. Section 149.1(1) defines a “charitable organization” as an organization “all the resources of which are devoted to charitable activities carried on by the organization itself”. “Charitable activities” itself is not defined. As a result, as this Court held in *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*, [1999] 1 S.C.R. 10, the *Income Tax Act* “implicitly relies upon the common law for guidance” (para. 143).

49 However, reliance on the common law is not necessary in this case. In 1972, when the RCAA provisions were enacted, the common law was clear. The promotion of amateur sport was not a charitable purpose. Against this backdrop, Parliament introduced the RCAA scheme into the *Income Tax Act* to confer charity-like tax benefits only on certain amateur athletic associations, namely, those whose primary focus is national. RCAAs receive income tax exemption under s. 149(1)(l) and the ability to issue tax receipts for donations under ss. 110.1(1), 118.1(1) and 118.1(3), the same tax benefits enjoyed by charities.

50 Under s. 248(1), a RCAA is defined as “an association that was created under any law in force in Canada, that is resident in Canada and that (a) is a person described in paragraph 149(1)(l), and (b) has, as its primary purpose and its primary function, the promotion of amateur athletics in Canada on a nation-wide basis” (emphasis added).

51 The second aspect of this definition is determinative in this case. Paragraph (b) of the definition provides that a RCAA must promote amateur athletics in Canada on a “nation-wide basis”. This reflects a clear policy choice on the part of Parliament to restrict the extension of charity-like tax benefits to national amateur athletic associations.

52 The legislative history of the RCAA provisions confirms that Parliament specifically put its mind to drawing a distinction between amateur athletic associations operating on a national level and those that operate on a regional or provincial one. In April 1970, during the budget debate, MP Judd Buchanan criticized the White Paper’s recommendation that charitable donations be restricted to national organizations:

I would urge that the charitable deductibility clauses not be as restrictive as is suggested in the white paper on tax reform, which proposes that national amateur athletic associations only be added to the list of eligible charitable organizations. I believe that many local organizations are deserving of the same treatment and support.

(House of Commons Debates, vol. VI, 2nd Sess., 28th Parl., April 23, 1970, at p. 6235)

53 The issue was raised again the following year during debates on Bill C-259, which enacted the RCAA scheme, when MP Marcel Lambert stated the following:

The organizations to which deductible donations may be made have been broadened in scope to include registered Canadian amateur athletic associations, though these must be of a national character. I think this will also bring us up against difficulties in interpretation; or, shall I say, some people will be terribly disappointed.

(*House of Commons Debates*, vol. IX, 3rd Sess., 28th Parl., October 25, 1971, at p. 9009)

54 Nonetheless, Parliament decided to confer charity-like tax benefits only on *national* amateur athletic associations. This appears to have been driven at least in part by administrative concerns. In *Maccabi Canada v. M.N.R.*, 98 D.T.C. 6526, the Federal Court of Appeal noted that Parliament’s intent was to “ensure that the issuing of receipts to donators would come from a single organization at the national level and that Revenue Canada would not have to interface with a myriad of provincial, regional and local organizations” (para. 8).

55 At the same time, however, Parliament amended the definition of “non-profit organizations” in s. 149(1)(l) to ensure that RCAAAs could support, through funding, their regional and local members.

56 The concept of “charity” may be a unique beast in the *Income Tax Act*, but it is nevertheless a caged one. The cage in this case is the RCAA statutory scheme. Those provisions explicitly confer charity-like benefits only on amateur athletic associations with a national focus. Parliament’s intention to exclude all other amateur athletic associations could hardly be clearer. In view of this explicit statutory directive, there is no need to seek clarification from the common law.

57 The conclusion that the RCAA provisions provide the exclusive framework for the conferral of charity-like tax benefits on amateur athletic associations, is not based on legislative silence. It is based on the wording of those provisions, and in particular the “nation-wide” requirement in the definition section, as well as on the legislative history and the common law as it existed when those

provisions were introduced, all of which argue for interpreting the RCAA provisions as occupying the field.

58 Whether the common law can be said to have evolved to include amateur athletic associations is, with respect, only of assistance in the face of a statutory vacuum. Any such vacuum for amateur athletic associations was filled by the enactment of the RCAA provisions. Because A.Y.S.A. operates exclusively at the provincial level, it has been denied access, by statute, to charitable status, a denial the common law is powerless to overcome.

59 I would dismiss the appeal.

APPENDIX

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)

110.1 (1) [Deduction for gifts] For the purpose of computing the taxable income of a corporation for a taxation year, there may be deducted such of the following amounts as the corporation claims:

(a) [Charitable gifts] the total of all amounts each of which is the fair market value of a gift (other than a gift described in paragraph (b), (c) or (d)) made by the corporation in the year or in any of the 5 preceding taxation years to

- (i) a registered charity,
- (ii) a registered Canadian amateur athletic association,

110.1 (1) [Dédutions pour dons applicables aux sociétés] Les montants suivants peuvent être déduits par une société dans le calcul de son revenu imposable pour une année d'imposition:

a) [Dons de bienfaisance] le total des montants représentant chacun la juste valeur marchande d'un don (sauf celui visé aux alinéas b), c) ou d)) que la société a fait au cours de l'année ou d'une des cinq années d'imposition précédentes à l'une des personnes suivantes:

- (i) un organisme de bienfaisance enregistré,
- (ii) une association canadienne enregistrée de sport amateur,
- (iii) une société résidant au Canada et

(iii) a corporation resident in Canada and described in paragraph 149(1)(i),

(iv) a municipality in Canada,

(v) the United Nations or an agency thereof,

(vi) a university outside Canada that is prescribed to be a university the student body of which ordinarily includes students from Canada,

(vii) a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift in the year or in the 12-month period preceding the year, or

(viii) Her Majesty in right of Canada or a province,

visée à l'alinéa 149(1)i),

(iv) une municipalité du Canada,

(v) l'Organisation des Nations Unies ou une institution qui y est reliée,

(vi) une université située à l'étranger, visée par règlement, qui compte d'ordinaire, parmi ses étudiants, des étudiants venus du Canada,

(vii) une oeuvre de bienfaisance située à l'étranger à laquelle Sa Majesté du chef du Canada a fait un don au cours de l'année ou des douze mois précédant cette année,

(viii) Sa Majesté du chef du Canada ou d'une province;

not exceeding the lesser of the corporation's income for the year and the amount determined by the formula

$$0.75A + 0.25 (B + C + D)$$

where

A is the corporation's income for the year computed without reference to subsection 137(2),

B is the total of all amounts each of which is a taxable capital gain of the corporation for the year from a disposition that is the making of a gift made by the corporation in the year and described in this paragraph,

C is the total of all amounts each of which is a taxable capital gain of the corporation for the year, because of subsection 40(1.01), from a disposition of a property in a preceding taxation year, and

D is the total of all amounts each of

ce total ne peut toutefois dépasser le revenu de la société pour l'année ou, s'il est inférieur, le résultat du calcul suivant:

$$0,75A + 0,25 (B + C + D)$$

où:

A représente le revenu de la société pour l'année, calculé compte non tenu du paragraphe 137(2),

B le total des montants représentant chacun un gain en capital imposable de la société pour l'année provenant d'une disposition qui consiste, pour elle, à faire au cours de l'année un don visé au présent alinéa,

C le total des montants représentant chacun un gain en capital imposable de la société pour l'année, par l'effet du paragraphe 40(1.01), tiré de la disposition d'un bien effectué au cours d'une année d'imposition antérieure,

D le total des montants représentant

which is determined in respect of the corporation's depreciable property of a prescribed class and equal to the lesser of

- (A) the amount included under subsection 13(1) in respect of the class in computing the corporation's income for the year, and
- (B) the total of all amounts each of which is determined in respect of a disposition that is the making of a gift of property of the class made by the corporation in the year that is described in this paragraph and equal to the lesser of

- (I) the proceeds of disposition of the property minus any outlays and expenses to the extent that they were made or incurred by the corporation for the purpose of making the disposition, and

- (II) the capital cost to the corporation of the property;

...

118.1 (1) [Definitions] In this section,

“total charitable gifts” [« *total des dons de bienfaisance* »] of an individual for a taxation year means the total of all amounts each of which is the fair market value of a gift (other than a gift the fair market value of which is included in the total Crown gifts, the total cultural gifts or the total

chacun le moins élevé des montants suivants, déterminé relativement aux biens amortissables d'une catégorie prescrite de la société:

- (A) le montant inclus selon le paragraphe 13(1), relativement à la catégorie, dans le calcul du revenu de la société pour l'année,
- (B) le total des montants représentant chacun le moins élevé des montants suivants, déterminé relativement à une disposition qui consiste, pour la société, à faire au cours de l'année un don, visé au présent alinéa, d'un bien de la catégorie:

- (I) le produit de disposition du bien diminué des dépenses engagées ou effectuées dans la mesure où la société les a engagées ou effectuées en vue d'effectuer la disposition,

- (II) le coût en capital du bien pour la société;

...

118.1 (1) [Définitions] Les définitions qui suivent s'appliquent au présent article.

...

« total des dons de bienfaisance » [“*total charitable gifts*”] Quant à un particulier pour une année d'imposition, le total des montants représentant chacun la juste valeur marchande d'un don (à l'exclusion de celui dont la juste valeur marchande est incluse dans le total des dons à

ecological gifts of the individual for the year) made by the individual in the year or in any of the 5 immediately preceding taxation years (other than in a year for which a deduction under subsection 110(2) was claimed in computing the individual's taxable income) to

- (a) a registered charity,
- (b) a registered Canadian amateur athletic association,
- (c) a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i),
- (d) a Canadian municipality,
- (e) the United Nations or an agency thereof,
- (f) a university outside Canada that is prescribed to be a university the student body of which ordinarily includes students from Canada,
- (g) a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift during the individual's taxation year or the 12 months immediately preceding that taxation year, or
- (g.1) Her Majesty in right of Canada or a province,

to the extent that those amounts were

- (h) not deducted in computing the individual's taxable income for a taxation year ending before 1988, and
- (i) not included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year;

l'État, le total des dons de biens culturels ou le total des dons de biens écosensibles du particulier pour l'année) qu'il a fait au cours de l'année ou d'une des cinq années d'imposition précédentes (mais non au cours d'une année pour laquelle il a demandé une déduction en application du paragraphe 110(2) dans le calcul de son revenu imposable) aux entités suivantes, dans la mesure où ces montants n'ont été ni déduits dans le calcul de son revenu imposable pour une année d'imposition se terminant avant 1988, ni inclus dans le calcul d'un montant déduit en application du présent article dans le calcul de son impôt payable en vertu de la présente partie pour une année d'imposition antérieure:

- a) organismes de bienfaisance enregistrés;
- b) associations canadiennes enregistrées de sport amateur;
- c) sociétés d'habitation résidant au Canada et exonérées, en application de l'alinéa 149(1)i), de l'impôt payable en vertu de la présente partie;
- d) municipalités du Canada;
- e) Organisation des Nations Unies ou institutions qui lui sont reliées;
- f) universités situées à l'étranger, visées par règlement et qui comptent d'ordinaire, parmi leurs étudiants, des étudiants venant du Canada;
- g) oeuvres de bienfaisance situées à l'étranger et auxquelles Sa Majesté du chef du Canada a fait un don au cours de l'année d'imposition du particulier ou au cours des douze mois précédant cette année;

...

g.1) Sa Majesté du chef du Canada ou d'une province.

...

(3) [Deduction by individuals for gifts] For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted such amount as the individual claims not exceeding the amount determined by the formula

(3) [Crédits d'impôt pour dons] Un particulier peut déduire dans le calcul de son impôt payable en vertu de la présente partie pour une année d'imposition un montant qui ne dépasse pas le montant calculé selon la formule suivante:

$$(A \times B) + [C \times (D - B)]$$

$$(A \times B) + [C \times (D - B)]$$

where

où:

- A is the appropriate percentage for the year;
- B is the lesser of \$200 and the individual's total gifts for the year;
- C is the highest percentage referred to in subsection 117(2) that applies in determining tax that might be payable under this Part for the year; and
- D is the individual's total gifts for the year.

- A représente le taux de base pour l'année;
- B le moins élevé de 200 \$ et du total des dons du particulier pour l'année;
- C le taux le plus élevé, mentionné au paragraphe 117(2), applicable au calcul de l'impôt qui pourrait être payable en vertu de la présente partie pour l'année;
- D le total des dons du particulier pour l'année

...

...

149. (1) [Miscellaneous exemptions] No tax is payable under this Part on the taxable income of a person for a period when that person was

149. (1) [Exemptions diverses] Aucun impôt n'est payable en vertu de la présente partie, sur le revenu imposable d'une personne, pour la période où cette personne était:

...

...

(f) [Registered charities] a registered charity;

f) [Organismes de bienfaisance enregistrés] un organisme de bienfaisance enregistré;

...

...

(l) [Non-profit organizations] a club, society or association that, in the opinion of the Minister, was not a charity within the meaning assigned by subsection 149.1(1) and that was

l) [Organisations à but non lucratif] un cercle ou une association qui, de l'avis du ministre, n'était pas un organisme de bienfaisance au sens du paragraphe 149.1(1) et qui est

organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder was a club, society or association the primary purpose and function of which was the promotion of amateur athletics in Canada;

149.1 (1) [Definitions] In this section,

...

“charitable organization” [« *oeuvre de bienfaisance* »] means an organization, whether or not incorporated,

(a) all the resources of which are devoted to charitable activities carried on by the organization itself,

(b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof,

(c) more than 50% of the directors, trustees, officers or like officials of which deal with each other and with each of the other directors, trustees, officers or officials at arm’s length, and

(d) where it has been designated as a private foundation or public foundation pursuant to subsection (6.3) of this section or subsection 110(8.1) or (8.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, or has applied after February 15, 1984 for registration under paragraph 110(8)(c) of that Act or under the

constitué et administré uniquement pour s’assurer du bien-être social, des améliorations locales, s’occuper des loisirs ou fournir des divertissements, ou exercer toute autre activité non lucrative, et dont aucun revenu n’était payable à un propriétaire, un membre ou un actionnaire, ou ne pouvait par ailleurs servir au profit personnel de ceux-ci, sauf si le propriétaire, le membre ou l’actionnaire était un cercle ou une association dont le but premier et la fonction étaient de promouvoir le sport amateur au Canada;

149.1 (1) [Définitions] Les définitions qui suivent s’appliquent au présent article.

...

« oeuvre de bienfaisance » [“*charitable organization*”] Oeuvre, constituée ou non en société:

a) dont la totalité des ressources est consacrée à des activités de bienfaisance qu’elle mène elle-même;

b) dont aucune partie du revenu n’est payable à l’un de ses propriétaires, membres, actionnaires, fiduciaires ou auteurs ni ne peut servir, de quelque façon, à leur profit personnel;

c) dont plus de 50 % des administrateurs, dirigeants, fiduciaires ou autres responsables traitent entre eux et avec chacun des autres administrateurs, dirigeants, fiduciaires ou responsables sans lien de dépendance;

d) dont, lorsqu’elle a demandé l’enregistrement après le 15 février 1984 en application de l’alinéa 110(8)c) de la *Loi de l’impôt sur le revenu*, chapitre 148 des Statuts révisés du Canada de 1952, ou de la définition d’ « organisme de bienfaisance enregistré », au

definition “registered charity” in subsection 248(1), not more than 50% of the capital of which has been contributed or otherwise paid into the organization by one person or members of a group of persons who do not deal with each other at arm’s length and, for the purpose of this paragraph, a reference to any person or to members of a group does not include a reference to Her Majesty in right of Canada or a province, a municipality, another registered charity that is not a private foundation, or any club, society or association described in paragraph 149(1)(l);

...

248 (1) [Definitions] In this Act,

...

“registered Canadian amateur athletic association” [« *association canadienne enregistrée de sport amateur* »] means an association that was created under any law in force in Canada, that is resident in Canada and that

(a) is a person described in paragraph 149(1)(l), and

(b) has, as its primary purpose and its primary function, the promotion of amateur athletics in Canada on a nation-wide basis,

that has applied to the Minister in prescribed form for registration, that has been registered and whose registration has not been revoked under subsection 168(2);

paragraphe 248(1), ou a été désignée comme fondation privée ou fondation publique, en application du paragraphe (6.3) du présent article ou des paragraphes 110(8.1) ou (8.2) de la même loi, au plus 50 % des capitaux qui lui ont été fournis ou versés, de quelque façon, l’ont été par une personne ou par les membres d’un groupe de personnes ayant entre elles un lien de dépendance; pour l’application du présent alinéa, ne sont pas assimilés à une personne ou aux membres d’un groupe Sa Majesté du chef du Canada ou d’une province, une municipalité, un autre organisme de bienfaisance enregistré qui n’est pas une fondation privée ou tout cercle ou toute association visés à l’alinéa 149(1)l).

...

248 (1) [Définitions] Les définitions qui suivent s’appliquent à la présente loi.

...

« association canadienne enregistrée de sport amateur » [“*registered Canadian amateur athletic association*”] Association, résidant au Canada, qui est constituée en vertu d’une loi en vigueur au Canada et qui présente les caractéristiques suivantes:

a) il s’agit d’une personne visée à l’alinéa 149(1)l);

b) son but premier et sa mission principale consistent à promouvoir le sport amateur au Canada à l’échelle nationale;

c) elle a présenté au ministre, sur formulaire prescrit, une demande d’enregistrement, elle a été enregistrée et son enregistrement n’a pas été annulé par application du paragraphe 168(2)

“registered charity” [« *organisme de bienfaisance enregistré* »] at any time means

(a) a charitable organization, private foundation or public foundation, within the meanings assigned by subsection 149.1(1), that is resident in Canada and was either created or established in Canada, or

(b) a branch, section, parish, congregation or other division of an organization or foundation described in paragraph (a), that is resident in Canada and was either created or established in Canada and that receives donations on its own behalf,

that has applied to the Minister in prescribed form for registration and that is at that time registered as a charitable organization, private foundation or public foundation;

...

« organisme de bienfaisance enregistré » [“*registered charity*”] L’organisme suivant, qui a présenté au ministre une demande d’enregistrement sur formulaire prescrit et qui est enregistré, au moment considéré, comme oeuvre de bienfaisance, comme fondation privée ou comme fondation publique:

a) oeuvre de bienfaisance, fondation privée ou fondation publique, au sens du paragraphe 149.1(1), qui réside au Canada et qui y a été constituée ou y est établie;

b) division - annexe, section, paroisse, congrégation ou autre - d’une oeuvre de bienfaisance, fondation privée ou fondation publique, au sens du paragraphe 149.1(1), qui réside au Canada, qui y a été constituée ou y est établie et qui reçoit des dons en son nom propre.

...

Interpretation Act, R.S.C. 1985, c. I-21

8.1 Both the common law and the civil law are equally authoritative and recognized sources of the law of property and civil rights in Canada and, unless otherwise provided by law, if in interpreting an enactment it is necessary to refer to a province’s rules, principles or concepts forming part of the law of property and civil rights, reference must be made to the rules, principles and concepts in force in the province at the time the enactment is being applied.

8.1 Le droit civil et la common law font pareillement autorité et sont tous deux sources de droit en matière de propriété et de droits civils au Canada et, s’il est nécessaire de recourir à des règles, principes ou notions appartenant au domaine de la propriété et des droits civils en vue d’assurer l’application d’un texte dans une province, il faut, sauf règle de droit s’y opposant, avoir recours aux règles, principes et notions en vigueur dans cette province au moment de l’application du texte.

Appeal dismissed with costs.

Solicitors for the appellant: Fasken Martineau DuMoulin, Vancouver.

Solicitor for the respondent: Attorney General of Canada, Ottawa.

*Solicitors for the intervener: Worton Hunter & Callaghan, Edmonton; Gowling,
Lafleur, Henderson, Toronto; Miller Thomson, Toronto.*