

# Unnamed Persons

## CRA gets all names on a donor list

### TAX COURT

BY JAMIE GOLOMBEK



The Canada Revenue Agency announced last summer that it was in the process of auditing “all tax shelter gifting arrangements,” but now it will be much easier to find those donors thanks to a recent decision by the Supreme Court of Canada (SCC).

Late last month, the highest court handed down its decision in a long-awaited case (*Redeemer Foundation v. Canada (National Revenue)*, 2008 SCC 46, (July 31, 2008)) involving a charity that may have been involved with inappropriate receipting practices.

Redeemer Foundation is a registered charity which operates a fund called the Forgivable Loan Program (FLP) which was used “exclusively for the advancement of learning based on the Christian teachings of the Redeemer University College.” One aspect of FLP involved donors, who were often parents of the college’s students, making donations to the foundation.

The foundation was audited by the CRA. During the course of the audit, the CRA became concerned that the donations made by parents of children who attended the college ought not to be considered true charitable gifts since they were actually made by the parents to finance their own kids’ education.

The CRA then demanded that the foundation turn over a list of each and every donor of the foundation along with the names of the students that received credits for each donation. The CRA advised the foundation that not only may its charitable status be in jeopardy but that the CRA may begin reassessing donors whose kids attended the college.

The foundation appealed to the Federal Court saying that the CRA’s request for donor information was inappropriate without prior “judicial authorization.”

Under the *Income Tax Act*, there is a section referred to as the “unnamed persons” rule, which basically states that the CRA cannot require a third party (such as the foundation) to provide information or any documents relating to “unnamed persons” (in this case, donors to the foundation) unless

the CRA first obtains permission from a judge. The section was meant to limit so-called “fishing expeditions” by the CRA.

Since CRA did not have judicial authorization to get the list, the judge, who first heard the case in 2005, concluded that the CRA’s request was inappropriate and that the donor information should be returned and the CRA precluded from reassessing the donors since their names were ille-

gally obtained. The CRA appealed this case to the Federal Court of Appeal which heard the case in 2006, reversed the decision and concluded that the CRA could keep the list of donors and reassess them as appropriate. The foundation appealed to the SCC which released its decision last month, dismissing the foundation’s appeal and upholding the Federal Court of Appeal’s decision.

In its judgment, the SCC found

that the CRA was indeed entitled to the foundation’s donor information without judicial authorization because of the other enforcement rules contained in the *Act*.

Specifically, the CRA has the ability under the act to “inspect, audit and examine taxpayers’ records and any information that is or should be in the taxpayers’ books.” Since the foundation was obligated to keep donor records under the recordkeeping obligations imposed on registered charities under the *Act*, the CRA could request this information to determine whether the foundation’s charitable status should

be revoked.

While the *Redeemer* decision didn’t involve a tax shelter, Ed Kroft, a senior tax litigator at McCarthy Tétrault in Vancouver, said that the “CRA will be using the decision to aggressively gather info in tax audits without obtaining a court order regarding unnamed persons. Whether they will be successful in all cases will depend on the circumstances of the case.”

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