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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

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.