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**GOVERNING COUNCIL OF SALVATION ARMY, CANADA WEST**

**v.**

**ASSESSOR OF AREA 09 - VANCOUVER**

British Columbia Court of Appeal (CA008239) Vancouver Registry

Before

THE HONOURABLE MR. JUSTICE CARROTHERS,  
THE HONOURABLE MR. JUSTICE ANDERSON  
THE HONOURABLE MADAME JUSTICE SOUTHIN

Vancouver, September 29, 1988

B. A. Mason appearing for the Appellant  
C. A. Kinahan appearing for the Respondent

**Reasons for Judgment (Oral)**

September 29, 1988

CARROTHERS, J. A.: This is an appeal from the judgment of Hinds, J. on a case stated by the Provincial Assessment Appeal Board. The issue simply stated is whether a certain piece of real property of the appellant is exempt from taxation pursuant to a rating bylaw of the City of Vancouver.

The appellant is a charitable organization and the respondent is the Provincial Assessor responsible, amongst other things, for property assessments providing the base for municipal tax purposes in the City of Vancouver.

The appellant is the registered owner of real property in the City of Vancouver known as Southview Lodge, which at all material times after completion of construction has been wholly in use for charitable purposes.

Fifteen years ago, on April 17, 1973, by Order in Council, the Province made a construction grant to the Salvation Army in the amount of \$498,519.70 pursuant to the *Elderly Citizens' Housing Aid Act*, being a grant in aid of construction of a special care home. This was the genesis of the appellant's Southview Lodge.

The building was completed in January, 1975. The Salvation Army required more funds than were originally granted because of cost overruns in order to complete the building, thus an additional grant of \$76,457.18 was given by further Order in Council on June 17, 1975.

S. 396 (c) (v) of the *Vancouver Charter* states in part as follows:

"396. All real property in the City is liable to taxation pursuant to a rating bylaw, subject to the following exemptions: (c) Real property . . . (v) in respect of which a grant has been made after the 31st day of March, 1974, under the *Elderly Citizens' Housing Aid Act* but, notwithstanding paragraph (i), the real property is only exempt if it is provided by bylaw."

On January 31, 1975, the Salvation Army applied to the Assessor for an exemption from taxation on the land and property. The Salvation Army was advised that despite the fact that construction had commenced prior to March 31, 1974, since payment of funds by the Government was received after March 31, 1974, the project must be deemed to have received funds after that date, and exemption from taxation would not be allowed.

On December 16, 1986, the Assessment Appeal Board found that the operative grant was made on April 17, 1973 and that the additional grant was merely in addition to that grant. The Board ordered the Assessor to exempt from taxation the subject land and building.

The respondent Assessor sought an opinion from the British Columbia Court by way of a case stated by the Assessment Appeal Board. The matter came on before Hinds, J., who found that the July 17, 1975 grant was a separate grant and that the authorizing Order in Council clearly stipulates that it is a separate grant. Having concluded that, Hinds, J. held that the additional grant was a separate grant and that the effect of s. 396 (c) (v) of the Vancouver Charter disentitled the Salvation Army from its charitable tax exemption.

Hinds, J. highlighted the crucial issue as being whether the grants I have mentioned were made before or after March 31, 1974, as follows:

"By Section 396 subsection (c) subsection (i) and (v) of the *Vancouver Charter* it is provided in effect that a charitable institution in occupation of real property which is used for charitable purposes is exempt from taxation; however, the exemption is not permitted for real property in respect of which a grant has been made after the 31st day of March 1974 under *Elderly Citizens' Housing Aid Act*.

Later he said: "In my respectful opinion the second grant was clearly a grant within the words 'a grant' in Section 396 subsection (c) subsection (v) of the *Vancouver Charter*, and the Order in Council authorizing that grant clearly stipulates that it is a separate grant under the provisions of the *Elderly Citizens' Housing Aid Act*.

There is nothing in the enabling legislation or in the Order in Council itself which indicates the intention of the Legislature to enable a grant to be made on a retrospective basis.

Section 4 subsection 1 of the *Interpretation Act* which appears to have been relied upon by the Assessment Appeal Board does not in my view permit the characterization of the second grant to have been made retroactively and prior to the cut-off date of March 31st, 1974."

It is the submission of counsel that in effect this was a single grant and that the second grant was simply to cover cost overruns on the construction of Southview Lodge. However, the second grant was made on separate application, by a separate Order in Council and without any specific wording effectively making it part and parcel of the first grant. On the wording of s. 396 (c) (v) I consider Hinds, J. was correct in law in his interpretation that the second grant was a grant made after March 31, 1974 under a specified statute. I would dismiss the appeal.

ANDERSON, J. A.: I Agree.

SOUTHIN, J. A.: In my view this appeal must be dismissed for the reasons given by my lord presiding. I do not understand them to differ in substance from the reasons of the learned judge below, with which I agree.

CARROTHERS, J. A.: The appeal is dismissed.