

BETWEEN:

GUARANTY TRUST COMPANY OF
CANADA in the capacity of Execu-
tor of the Will of DOROTHY ELGIN
TOWLE, deceased

APPELLANT;

1964
Jan. 30, 31
Feb. 4-6
1965
Feb 18

AND

THE MINISTER OF NATIONAL
REVENUE

RESPONDENT.

Revenue—Estate Tax—Exemption from estate tax—Testamentary gift to medical alumni association—Absolute and indefeasible gift—Charitable gift and charitable trust—Requirement that donee’s property be used exclusively for charitable purposes—Purposes and objects of donee—Effect of object of donee being other than charitable—Association for advancement of education—Estate Tax Act, S. of C. 1958, c. 29, s. 7(1)(d).

Dorothy Elgin Towle died testate on July 11, 1961. Article III(g) of her will required the Trustee to pay the residue of the estate “to the Medical Alumnae Association of the University of Toronto to establish a student loan fund to be known as the ‘Robert Elgin Towle Loan Fund’ to be supervised and managed by the said Medical Alumnae

1965

GUARANTY
TRUST CO. OF
CANADA
(TOWLE
ESTATE)
v.

MINISTER OF ON
NATIONAL
REVENUE

Association for the purpose of loaning funds to women medical students of the University of Toronto who are in need of financial assistance during their course in medicine . . .". The question to be determined is whether or not the gift of the residue of the estate was exempt from estate tax by virtue of s 7(1)(d) of the *Estate Tax Act*, as being an absolute gift to a charitable organization.

On the appeal from the assessment of the respondent in which he included the amount of the gift in the taxable value of the estate it was common ground that the appellant had the burden of showing (a) that the gift was absolute; (b) that the Medical Alumni Association was, at the time of the deceased's death, a charitable organization; (c) that, at the time of the deceased's death the Medical Alumni Association was an organization all or substantially all of the resources of which were devoted to charitable activities; and (d) that no part of the resources of the Medical Alumni Association was payable to or otherwise available for the benefit of any member.

The evidence established that by far the greatest part of the Association's effort, during recent years at least, was the operation of scholarship, bursary and loan funds for medical students at the University of Toronto, making of gifts to be spent by the Dean of Medicine and the President of the University and other activities designed to supplement the work of the Faculty of Medicine. However, it was also established that the Association engaged in activities designed to encourage and cultivate good-fellowship among the members of the Association.

Held: That since the parties have agreed that the monies in question are received by the Medical Alumni Association in trust for charitable purposes, there was no "absolute" gift to the Association, and certainly therefore no "absolute" gift to the Association within the meaning of s. 7(1)(d) of the *Estate Tax Act*.

- 2 That the purpose of s 7(1)(d) of the *Estate Tax Act* is to provide a means whereby gifts for charitable purposes can be made so as not to attract estate tax but Parliament has not seen fit, in the *Estate Tax Act*, to provide an exemption for charitable trusts.
- 3 That the first requirement is that the organization to which the gift is made be so constituted that its property must be used "exclusively" for charitable purposes and the second requirement is that the gift must be made to that organization absolutely and indefeasibly so that the subject matter of the gift will become its property.
- 4 That it is clear from the purposes and objects as set out in its Letters Patent that the Medical Alumni Association was not "constituted" exclusively for charitable purposes.
- 5 That one of the principal objects of the Medical Alumni Association is "to encourage and cultivate good-fellowship among the members of the Association" and this is a "distinct object" and not merely a reference to an "extraneous activity" that is only a means to some other end. This object is clearly not a charitable object and the organization is not, therefore, an organization "constituted" exclusively for charitable purposes.
6. That it is questionable whether an association carrying on activities that support and promote the well-being of an educational institution can itself be said to be an association for the advancement of education.
7. That the appellant has failed to show that all or substantially all of the resources of the Medical Alumni Association were devoted to charitable

activities carried on by it or to the making of gifts to other organizations constituted for charitable purposes and this follows almost automatically from the finding that the Association's purposes are not exclusively charitable.

8 That the appeal is dismissed.

APPEAL under the *Estate Tax Act*.

The appeal was heard by the Honourable Mr. Justice Cattanach at Toronto.

J. T. DesBrisay and *W. P. Butler* for appellant.

G. W. Ainslie and *D. G. H. Bowman* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

CATTANACH J. now (February 18, 1965) delivered the following judgment:

This is an appeal under the *Estate Tax Act* from the assessment in respect of the estate of Dorothy Elgin Towle who died testate on July 11, 1961.

The only question to be determined is whether or not a gift made by the deceased's will was, in effect, exempt from estate tax by virtue of paragraph (d) of subsection (1) of section 7 of the *Estate Tax Act*, chapter 29 of the Statutes of 1958 as amended by chapter 29 of the Statutes of 1960.

The gift in question was provided for by paragraph (g) of article III of the deceased's will which required the Trustee under the deceased's will to pay the residue of the estate "to the Medical Alumnae Association of the University of Toronto to establish a student loan fund to be known as the 'Robert Elgin Towle Loan Fund' to be supervised and managed by the said Medical Alumnae Association for the purpose of loaning funds to women medical students of the University of Toronto who are in need of financial assistance during their course in medicine. . .". The parties are in agreement that the reference in the will to the "Medical Alumnae Association" should be read as a reference to the "Medical Alumni Association".

The question is whether this gift is such that the value thereof is deductible in computing "the aggregate taxable value of the property passing on the death" of the deceased by virtue of subsection (1) of section 7 of the *Estate Tax Act*, the relevant part of which, as amended by chapter 29 of the Statutes of 1960, reads as follows:

1965
 GUARANTY
 TRUST CO. OF
 CANADA
 (TOWLE
 ESTATE)
 v.
 MINISTER OF
 NATIONAL
 REVENUE

1965
 GUARANTY
 TRUST CO. OF
 CANADA
 (TOWLE
 ESTATE)
 v.
 MINISTER OF
 NATIONAL
 REVENUE
 Cattanach J.

7. (1) For the purpose of computing the aggregate taxable value of the property passing on the death of a person, there may be deducted from the aggregate net value of that property computed in accordance with Division B such of the following amounts as are applicable:

* * *

(d) the value of any gift made by the deceased whether during his lifetime or by his will, where such gift can be established to have been absolute and indefeasible, to

(i) any organization in Canada that, at the time of the making of the gift and of the death of the deceased, was an organization constituted exclusively for charitable purposes, all or substantially all of the resources of which, if any, were devoted to charitable activities carried on or to be carried on by it or to the making of gifts to other such organizations in Canada all or substantially all of the resources of which were so devoted, and no part of the resources of which was payable to or otherwise available for the benefit of any proprietor, member or shareholder thereof, or

* * *

According to an allegation in the respondent's Reply to the Notice of Appeal, which was not questioned by the appellant, the respondent, in assessing the amount of the tax payable, made the following assumptions:

- (a) that the gift of the balance of the residue of the Estate of Dorothy Elgin Towle to the Medical Alumni Association of the University of Toronto, was not an absolute gift but was a gift to that organization subject to certain trusts declared in paragraph (g) of the Third Clause of the Last Will and Testament of Dorothy Elgin Towle;
- (b) that at the time of the making of the gift and at the time of the death of Dorothy Elgin Towle, the Medical Alumni Association of the University of Toronto was not an organization constituted exclusively for charitable purposes;
- (c) that at the time of the making of the gift and at the time of the death of Dorothy Elgin Towle, all of the resources of the Medical Alumni Association of the University of Toronto were not devoted to charitable activities carried on or to be carried on by it, or to the making of gifts to such other organizations in Canada, all or substantially all of the resources of which were so devoted or to any donee described in subparagraph (ii) of paragraph (d) of subsection (1) of Section 7 of the Estate Tax Act, and;
- (d) that the Medical Alumni Association of the University of Toronto, at the time of the death of Dorothy Elgin Towle, had not passed any by-law pursuant to subsection (1) of Section 115 of The Corporations Act, R.S.O. 1950, c. 71, and that the resources of the Medical Alumni Association of the University of Toronto were otherwise available for the benefit of the Members of that Association.

It was common ground on the argument of the appeal that the appellant had the burden of showing

- (a) that the gift in question was an absolute gift to the Medical Alumni Association within the meaning of paragraph (d) of subsection (1) of section 7;

- (b) that the Medical Alumni Association, at the time of the deceased's death, was an organization constituted exclusively for charitable purposes within the meaning of sub-paragraph (i) of the said paragraph (d);
- (c) that, at the time of the deceased's death, the Medical Alumni Association was an organization all or substantially all of the resources of which were devoted to charitable activities within the meaning of sub-paragraph (i) of the said paragraph (d); and
- (d) that no part of the resources of the Medical Alumni Association was payable to or otherwise available for the benefit of any member.

1965
 GUARANTY
 TRUST CO. OF
 CANADA
 (TOWLE
 ESTATE)
 v.
 MINISTER OF
 NATIONAL
 REVENUE
 Cattanach J.

If the appellant is unsuccessful in respect of any one of these four requirements, the appeal necessarily fails.

The Medical Alumni Association was incorporated pursuant to the laws of the Province of Ontario by Letters Patent dated April 28, 1947 for the following purposes and objects:

- (a) TO maintain and promote the interest of the graduates in medicine of the University of Toronto in their Alma Mater;
- (b) TO encourage and cultivate good-fellowship among the members of the Association;
- (c) TO promote and enlarge the usefulness and influence of the Provincial University;
- (d) TO consider and make recommendations on matters pertaining to the welfare of the Faculty of Medicine of the University of Toronto;
- (e) Generally to promote the science and art of medicine;
- (f) TO administer and invest funds received from life members of the Association and any other funds and bequests of which the Association may from time to time have custody and to apply and disburse the moneys so administered in accordance with the provisions and conditions relating to the same; and
- (g) TO do all such other things as are incidental or conducive to the attainment of the above objects;"

The by-laws of the Association provide that

Membership of the Association shall consist of all graduates in the Faculty of Medicine of the University of Toronto—including graduates admitted by reason of graduation from Trinity University, Victoria University and the Toronto School of Medicine.

A great deal of evidence was adduced at the trial concerning the actual operation of the Medical Alumni Association during recent years.

It is sufficient to summarize such evidence in general terms. The Association had a small salaried staff which

1965
 GUARANTY
 TRUST CO. OF
 CANADA
 (TOWLE
 ESTATE)
 v.
 MINISTER OF
 NATIONAL
 REVENUE
 Cattanach J.

worked in premises put at the disposal of the Association by the University of Toronto without charge. The Association held its annual meeting in conjunction with an annual dinner. The staff published a magazine for the members and supplied services to the members of the various graduating years to encourage them to have reunion meetings. The staff carried on the usual activities designed to induce members to pay their annual fees and to subscribe to the funds administered by the Association. It was manifest, however, that by far the greatest part of the Association's effort, during recent years in any event, was the operation of scholarship, bursary and loan funds for medical students at the University of Toronto, making of gifts to be spent by the Dean of the Faculty of Medicine and the President of the University to be expended in their official capacities and other activities designed to supplement the work of the Faculty of Medicine at the University of Toronto. However, there is no evidence upon which I can make a finding that the carrying on of activities such as those referred to in the immediately preceding sentence constitutes the exclusive object of the Association and that the other activities of the Association are merely subsidiary and incidental thereto. While such activities may have tended to overshadow, at times, in the minds of the officers of the Association, the activities that were designed, for example, "to encourage and cultivate good-fellowship among the members of the Association", these latter activities, and probably others, in my view, never ceased to have their place as principal reasons for the existence of the Association.

I have come to the conclusion that the appeal must be rejected because the appellant has failed to satisfy the burden imposed upon it in respect of at least three of the four headings referred to above.

Dealing first with the question whether the direction in the testatrix's will to pay the residue of her estate to the Medical Alumni Association to establish a student loan fund for the purpose of loaning funds to women medical students, created an absolute gift to the Association within the introductory portion of paragraph (d) of subsection (1) of section 7 of the *Estate Tax Act*, I am relieved of the necessity of deciding the character of the monies in the hands of the Association by agreement between the parties.

in effect, that the monies are received by the Association in trust for charitable purposes. That being so, I am of the opinion that there was no "gift" to the Association, and certainly therefore no "absolute" gift to the Association within the meaning of paragraph (d). The purpose of the said paragraph (d) is to provide a means whereby gifts for charitable purposes can be made so as not to attract estate tax but Parliament has not seen fit, in the *Estate Tax Act*, to provide an exemption for charitable trusts. (Compare *Minister of National Revenue v. Trusts and Guarantee Company, Limited*¹ at page 149 and 150). What Parliament has done by paragraph (d) of subsection (1) of section 7 is to provide an exemption for an absolute and indefeasible gift made to an organization constituted exclusively for charitable purposes. The first requirement is, therefore, that the organization to which the gift is made be so constituted that its property must be used "exclusively" for charitable purposes and the second requirement is that the gift must be made to that organization absolutely and indefeasibly so that the subject matter of the gift will become its property. In this context, it appears clear to me that Parliament must have intended to exclude gifts made to such an organization in trust for some other person or class of persons. If the exemption extends to charitable trusts, it extends to trusts for private purposes. Parliament could not have possibly intended that a gift for private purposes such, for example, as a gift to an educational institution to be held in trust for the education of its president's children would fall within the exempting provisions. (Compare *Oppenheim v. Tobacco Securities Trust Co. Ltd.*² per Lord Simonds at page 306).

In the second place, I am of the opinion that the Medical Alumni Association was not, at the relevant time, "an organization constituted exclusively for charitable purposes" within the meaning of those words in paragraph (d) of subsection (1) of section 7 of the *Estate Tax Act*. I am of the opinion that this question must be determined by reference to the constating instruments of the Association which in this case, is primarily its Letters Patent. (Compare *Tennant Plays, Ltd. v. Inland Revenue Commissioners*³; *Institution of Mechanical Engineers v. Cane*⁴

¹ [1940] A.C. 138.

² [1951] A.C. 297.

³ [1948] 1 All E.R. 506.

⁴ [1960] 3 All E.R. 715.

1965
 GUARANTY
 TRUST CO. OF
 CANADA
 (TOWLE
 ESTATE)
 v.
 MINISTER OF
 NATIONAL
 REVENUE
 Cattanach J.

per Viscount Simonds at page 718, Lord Radcliffe at page 725 and Lord Tucker at page 727). In my view it is clear from the purposes and objects as set out in its Letters Patent that this Association was not "constituted" exclusively for charitable purposes. For example, one of the principal objects of this Alumni Association, in my view, is "to encourage and cultivate good-fellowship among the members of the Association". This is a "distinct object" and is not merely a reference to an "extraneous activity" that is only a means to some other end. (Compare *Metropolitan Borough of Battersea v. The British Iron and Steel Research Association*¹ per Jenkins J., at page 453). This object is clearly not a charitable object. The organization is not, therefore, an organization "constituted" exclusively for charitable purposes.

Alternatively, I reach the same conclusion if I determine the purposes of the organization by considering the Letters Patent in the light of the evidence concerning the manner in which the activities of the organization have actually been carried on. Notwithstanding, the great emphasis that is placed by the Alumni Association on activities which are designed to support and promote the well-being of the University of Toronto and particularly its Faculty of Medicine, I cannot conclude that this Alumni Association is constituted for such purposes to the exclusion of encouraging and cultivating good-fellowship among its members and probably other non-charitable purposes. I cannot, therefore, conclude that the Association is constituted exclusively for charitable purposes. In any event, there is a question in my mind as to whether an association carrying on activities that, in its view, support and promote the well-being of an educational institution, can itself be said to be an association for the advancement of education. (Compare *Inland Revenue Commissioners v. City of Glasgow Police Athletic Association*².) However this is a question concerning which I do not think there is any need for me to form an opinion.

The third ground upon which I find that the appellant has failed to establish its right to the exemption under paragraph (d) of subsection (1) of section 7 is that it has failed to show that all or substantially all of resources of the association were devoted to charitable activities carried on by it or to the making of gifts to other organizations consti-

¹ [1949] 1 K.B. 434.

² [1953] A.C. 380.

tuted for charitable purposes. This finding follows almost automatically from the finding that the Association's purposes are not exclusively charitable. A substantial part of the Association's revenues are devoted to paying its employees, operating its offices and publishing its magazine. In my view, a substantial part of the functions of the employees and of the magazine are in relation to purposes that are not charitable.

1965
 GUARANTY
 TRUST Co. OF
 CANADA
 (TOWLE
 ESTATE)
 v.
 MINISTER OF
 NATIONAL
 REVENUE
 Cattanach J.

I make no finding with reference to the fourth ground urged against the exemption claimed by the appellant.

The appeal is dismissed with costs.