A Personal View of the *Vancouver Society*[1] Decision

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At a time when most Canadians have become familiar with many modes of education, ranging from the Internet and CD-ROMS to workshops and discussion groups, it was peculiar that, for the purposes of the *Pemsel*[2] test of charity, the phrase "advancement of education" has been considered by the Federal Court of Appeal, in a number of its decisions, to refer only to "formal training of the mind" or "the improvement of a useful branch of human knowledge". We can, therefore, be grateful that all seven members of the Supreme Court who heard the appeal of the Vancouver Society of Immigrant and Visible Minority Women were prepared to regard the provision of information and training in any structured manner and for a genuinely educational purpose as falling within this category. It is, of course, quite reasonable to exclude teaching which is solely to promote a particular point of view or political orientation, as the Court has done.

However, as an individual who was for many years active in the work of a society devoted to the reception of recent immigrants and their integration into Canadian life, I am deeply saddened by the views of the majority of the Court, as enunciated by Iacobucci J., that such activity, when carried on by the Vancouver Society, did not fall within the *Pemsel* category of "other purposes beneficial to the community". The majority appears to have paid lip service to the need to consider the trend of previous decisions which have established certain objects as charitable under this heading. However, notwithstanding the substantial number of decisions cited by the minority of the Court, the majority could not discern any trend in them recognizing that assisting immigrant women to integrate into society through helping them to obtain employment fitted into this category. Its approach was far less generous than that of the same Court in *Guaranty Trust*[3] which had upheld as charitable a bequest to the Medical Alumnae Association of the University of Toronto of a fund to provide financial aid to female medical students.

The opinion of the minority of the Court, delivered by Gonthier J., listed a considerable number of decisions which support the proposition that assisting the settlement of migrants, immigrants and refugees, and their integration into national life, is a charitable purpose which has already been recognized under the head of "other purposes beneficial to the community":

1. *In re Wallace*, [1908] VLR 636 (SC), upheld the validity of a trust to pay passage money to immigrants from an English town to Melbourne, Australia, under the "relief of poverty" head, but Hood J. suggested at p. 640 that "a bequest in aid of immigration might probably be for the direct benefit of this community".

2. *In re Stone* (1970), 91 WN (NSW) 704 (SC), held that a "trust to further the purposes of a body whose objects and activities are the encouragement and settlement of migrants generally in pursuance of a policy of the community and in co-operation with government instrumentalities would in this country [Australia] be given the stamp of legal charity".

3. *Verge* v *Somerville*, [1924] AC 496, which was relied on by the Court in *In re Stone,* upheld as charitable the resettlement of demobilized members of the armed forces returning from abroad.

4. *In re Cohen*, [1954] NZLR 1097 (SC), held that a bequest to a society to assist Jewish refugees to establish themselves in New Zealand came within both the "relief of poverty" and "other purposes beneficial to the community" heads of charity.

5. *Re Fitzgibbon* (1916), 27 OWR 207 (HC), an Ontario decision, upheld as charitable a bequest to an organization known as the "Women's Welcome Hostel", established for the assistance of immigrant girls, to create an annual prize to reward successfully employed graduates of the organization.

6. In the United States the Internal Revenue Service, in a published ruling, Rev. Rul 76-205, CB 1976-1 at p. 154, stated that a nonprofit organization whose objects are to assist immigrants to that country "in overcoming social, cultural and economic problems by either personal counseling or referral to appropriate public or private agencies" was charitable within s. 501 (c) (3) of the US *Internal Revenue Code.*

7. In 1995, the Charity Commissioners of England and Wales registered as a charity the Ethnic Minority Training and Employment Project whose objects were to assist refugees, asylum seekers, migrants and others from the Horn of Africa, who through their social and economic circumstances are in need and unable to further their education or gain employment, and who may be at risk of permanent exclusion from the labour market; to educate and train them by providing information, guidance, learning opportunities, and work experience which will enable them to acquire vocational skills and secure employment or further their education.

The minority of the Court was prepared to state that "The unifying theme to these cases ... is the recognition that immigrants are often in special need of

assistance in their efforts to integrate into their new home" and that "An organization, such as the Society, which assists immigrants through this difficult transition is directed ... towards a charitable purpose". On the other hand, the majority held that several of the activities detailed in the Society's submissions to Revenue Canada, such as maintaining a job skills directory as well as networking, providing liaison for accreditation of credentials, soliciting job opportunities and offering referral services, were not charitable, even though these seem to be simply some of the methods by which the overall charitable purposes of the Society can be achieved in today's world. The majority was prepared to distinguish, or not to follow, any of the decisions previously enumerated which had upheld fundamentally similar activities as charitable.

I regret that the majority chose in this case to accept a narrow definition of "other purposes beneficial to the community" which seems to be out of touch with both existing jurisprudence and the needs of today's Canada. Their decision reinforces a growing recognition that the *Income Tax Act* must be amended in order to add to the *Pemsel* list a long list of other activities for which our courts have in the past denied charitable status. A movement is on foot at the present time to achieve this reform. Once the *Income Tax Act* has been amended, the next step must be to approach the provincial and territorial government, to ask them to amend their definitions of charity accordingly.

FOOTNOTES

1. *Vancouver Society of Immigrant and Visible Minority Women* v. *Minister of National Revenue*, [1999] 1 S.C.R. 10.
2. *Pemsel* v. *Special Commission of Income Tax*, [1897] A.C. 531.
3. *Guaranteee Trust Company of Canada (Towle Estate)* v. *Minister of National Revenue*, [1967] S.C.R. 133.