

Recent Tax Developments

M.L. DICKSON, Q.C.
Member, The Ontario Bar

Two recent cases concerning charities are *Rumack v. M.N.R.* 84 DTC 1339 and *Trustees of British Museum v. H.M. Attorney General* 1984 1 W.L.R. 418.

Rumack v. M.N.R.

In *Rumack v. M.N.R.*, the taxpayer had won \$1,000 a month for life in the Cash for Life lottery sponsored by the Ontario Association for the Mentally Retarded. To provide the prize, the Association purchased an annuity from Sun Life Assurance Company of Canada. The Minister of National Revenue then held that the interest portion of the annuity payments must be included in the taxpayer's income. The taxpayer appealed this ruling to the Tax Court of Canada which held that the taxpayer had been assessed correctly. The appeal was, therefore, dismissed. In reaching this decision, the court found that the annuity payments should be taxed in the ordinary manner, i.e., the interest portion of each payment was properly included in the taxpayer's income pursuant to the provisions of paragraph 56(1)(d) and subsection 60(a) of the *Income Tax Act*. It was not relevant that other lottery prizes paid in a different way did not attract tax.

In his judgment, Christie, C.J.T.C. did not accept the argument advanced by counsel for the taxpayer that if the taxpayer had won the capital sum in a lottery she would not have been taxed and that she should not, therefore, be penalized because the payment in this case was by way of annuity when the end result was the same and there was no difference in substance. In support of this decision he referred to the case of *Henriksen v. Grafton Hotel Ltd.* (1942) 2 K.B. 194, where Lord Green M.R. stated that:

It frequently happens in income tax cases that the same results, in a business sense, can be secured by two different legal transactions, one of which may attract tax and the other not. There is no justification for saying that a taxpayer who has adopted the method which attracts tax is to be treated as though he has chosen the method which does not, or vice versa.

Mr. Christie pointed out that the insuperable difficulty facing the appellant was that the wrong road was chosen, namely, the one which brought her within the application of paragraph 56(1)(d) of the *Act* which expressly deals with annuity payments and requires that they be included when income is computed.

Trustees of British Museum v. H.M. Attorney General

In *Trustees of British Museum v. H.M. Attorney General*, the court was asked to approve an arrangement which would give the trustees of the British Museum the right to invest funds which were restricted to being invested in "trustee" investments, in a wider range of investments which could be expected to keep pace with, or outdistance, inflation. The court approved the arrangement and held that, in view of the changes in conditions during the past 20 years the court should

be ready to grant suitable applications for the extension of trustees' powers of investment, considering each application on its merits. The court found that in determining what extended powers of investment should be conferred, the matters which should be considered included the width and efficacy of any provisions for advice and control, the existence of a scheme for fractional division of the investments of the fund, the size of the fund and the object of the trust. In reaching its decision, the court rejected prior decisions as to "special circumstances" being necessary for the court to enlarge on a statutory powers of investment. We shall have to wait and see whether courts in Canada will apply this principle. In the past, "special circumstances" have been necessary.