

NEW CCRA POLICY STATEMENT ON REGISTERING CHARITIES THAT PROMOTE RACIAL EQUALITY

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A. INTRODUCTION

This *Charity Law Bulletin* (“Bulletin”) provides a brief overview of the *Registering Charities that Promote Racial Equality Policy Statement*, issued by the Canadian Customs and Revenue Agency (“CCRA”) on September 2, 2003 (“Policy Statement”). The *Bulletin* also comments on a few of the more important aspects of the new *Policy Statement*. The Policy Statement is available on the CCRA website at <http://www.cca-adrc.gc.ca/tax/charities/policy/cps/cps-021-e.html>.

The *Policy Statement* will have application to organizations focusing on addressing racial discrimination, those established to foster positive race relations within Canada, as well as immigrant, refugee, ethno-cultural, and other organizations seeking to include racial equality objects in their incorporation documents. The *Bulletin* provides some background in the developments leading up to the creation of the *Policy Statement*, then outlines the purpose and the rationale behind the *Policy Statement*, as well as explains the types of activities and charitable purposes concerning racial equality that are considered either acceptable or unacceptable to CCRA, and finally provides some comments concerning the implications of the *Policy Statement* for charities seeking to promote racial equality.

B. BACKGROUND TO THE RACIAL EQUALITY POLICY STATEMENT

In early 2003, CCRA solicited commentaries until March 31st, 2003 from charities and anyone else interested in the charitable sector for its *Consultation on Proposed Policy – Registering Charities that Focus on Eliminating Racial Discrimination* (“Proposed Policy”). A cursory comparison of the *Proposed Policy* with the current *Policy Statement* reveals a change in the title’s terminology from “Charities that Focus on Eliminating Racial Discrimination” to a more positive “Charities that Promote Racial Equality.” The current *Policy Statement* also includes more in-depth definitions of racism and racial discrimination, as well as including a new term and definition for “promoting racial equality” compared to the *Proposed Policy*. These definitions now include the following key terms:

- a) “Promoting Racial Equality” means working to ensure the full and equitable participation of racial and ethnocultural groups in Canada, consistent with the equality rights guaranteed by the Canadian Charter of Rights and Freedoms, existing legislation, and public policy. It includes efforts such as eliminating racial (including ethnic) discrimination, and encouraging positive race relations, which encompasses efforts to improve relations between any racial and/or ethnic groups in Canada;
- b) “Racial or Cultural Group” is a group defined by its race, colour, national or ethnic origin. To the extent that religion is inextricably linked to the group’s racial or cultural identity, it can also become a defining characteristic;
- c) “Racism” includes “racist ideologies, prejudiced attitudes, discriminatory behaviour, structural arrangements, and institutionalized practices” resulting in racial or ethnic inequality. It can be characterized as “a set of implicated or explicit beliefs, assumptions and actions based upon an ideology that one racial or ethnic group is superior to another”;
- d) “Racial Discrimination” means any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The rationale for the *Policy Statement*, which is discussed below, has also been expanded. The new *Policy Statement* does not have a section devoted to political activities, whereas the *Proposed Policy* did, since political activities is now contained in its own *Policy Statement* released on the same day as the *Racial Equality Policy Statement*, September 2, 2003. The list of racial equality activities and programs that CCRA will now find acceptable under the new *Policy Statement* compared to the *Proposed Policy* has increased

from seven to ten types of activities, creating more ways in which the promotion of racial equality can be advanced.

C. RATIONALE BEHIND THE RACIAL EQUALITY POLICY STATEMENT

The *Policy Statement* consists of a series of guidelines by CCRA describing how charities that promote racial equality can be registered under the *Income Tax Act* (“ITA”), either under the charitable category of “advancement of education” or “other purposes beneficial to the community.” CCRA has acknowledged that racial discrimination is an identified social problem, which has been prohibited in Canada both via provincial and federal legislation, and as ratified by Canada for many years in a number of international human rights conventions that are listed in Appendix B to the *Policy Statement*. In the past, CCRA has relied upon the British decision of *Re Strakosch*, [1949] 1 Ch. 529 (C.A.), in holding that the promotion of racial equality was a political purpose, rather than a charitable purpose. However, since the *Re Strakosch* decision, both legislation and public policy in Canada has recognized and supported the promotion of racial equality and positive ethno-cultural relations.

In keeping with this recognition, CCRA has determined that the promotion of racial equality should be legally recognized as charitable, instead of as a political purpose. This is a welcomed development by CCRA and is evidence that CCRA can in some circumstances use its administrative discretion to expand the definition of what is “charitable” beyond the restrictions of what the courts have decided in the past that may be out of sync with current laws and public policy in Canada. This is particularly important to do in relation to promoting racial equality, since the Supreme Court of Canada in *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.* (1999), 99 DTC 5034, declined to comment on “whether the elimination of prejudice and discrimination may be recognized as a charitable purpose at common law.”

The *Policy Statement* explains that any organization wishing to become registered as a charity must have exclusively charitable objects and must fall within one of the four categories articulated by the courts and recognized by CCRA, including the relief of poverty, the advancement of education, the advancement of religion, or other purposes that benefit the community. All objects must be precise and refrain from efforts to retain, oppose, or change the law or policy at any government level both within Canada and abroad. All

charitable organizations are also limited in the amount of political activities they may sponsor directly and/or indirectly (see CCRA's *Political Activities Policy Statement*, available at <http://www.cca-adrc.gc.ca/tax/charities/policy/cps/cps-022-e.html>).

D. RACIAL EQUALITY UNDER CCRA CHARITABLE CATEGORIES

An organization seeking to obtain charitable status in order to promote racial equality must consider both the charitable activities that it proposes to carry out and its charitable objects that it intends to achieve, which are set out in its Letters Patent and/or Supplementary Letters Patent. CCRA has identified both acceptable and unacceptable activities and objects which fall under either or both of two categories of charitable objects: "advancement of education" and/or "other purposes beneficial to the community." However, objects cannot include efforts "to retain, oppose, or change the law or policy or decisions of any level of government in Canada or a foreign country, as this is considered a political purpose, and, therefore, not charitable." What follows are lists of both acceptable and unacceptable activities in relation to the promotion of racial equality as set out in the *Policy Statement*.

1. Advancement of Education

CCRA recognizes that groups that educate about racial equality or about methods of promoting it can be recognized as charitable under the "advancement of education" category.

a) Acceptable Activities

Under the *Policy Statement*, charities registered under the "advancement of education" category can undertake the following examples of programs both in Canada and abroad, summarized below as follows:

- programs that educate about individual or systemic racism;
- development of curriculum materials for anti-racism or diversity training and leadership programs;
- research groups focused on a range of topics, the results of which are available to the public;
- Web sites offering a range of interactive resources such as self-study materials or online courses that educate about race relations or anti-racism;

- scholarships and bursaries to further knowledge in the area of race relations, equity, and methods or promoting racial equality;
- educational programs focused on specific areas of concern, such as law enforcement, schools, employment, or housing;
- educating about a specific manifestation of racism (e.g., hate group activity);
- programs organized by members of a community experiencing documented patterns of racial discrimination designed to educate the public about the discrimination faced by that particular community.

b) Unacceptable Activities

The following are examples of activities that CCRA would not find acceptable in relation to racial equality under the “advancement of education” category:

- programs that have as a purpose legislative change or change in government policy, as this would be considered a political, not a charitable purpose; and
- materials that the group knows or ought to know are inaccurate, false, misleading, inflammatory, biased, or disparaging would not be considered to be educational.

c) Acceptable Charitable Objects

The following charitable objects are examples which CCRA would consider acceptable in relation to racial equality under the “advancement of education” category:

- to educate about racial prejudice and discrimination through programs, seminars or workshops intended for the general public;
- to organize and implement conferences, workshops or other programs about institutional and individual forms of racism, discrimination, and stereotyping;
- to conduct research, compile data, and disseminate results about racism or ethno-racial disparities to increase understanding and awareness about existing rights of racial minorities.

d) Unacceptable Charitable Objects

The following objects are examples of what CCRA would likely find unacceptable in relation to racial equality:

- “to support programs for the public” - as there is insufficient information given and therefore vague;
- “to carry on activities that are charitable at law” - also because there is insufficient information given, and therefore vague; and
- “to promote international friendship or understanding between states” - because the sphere of international relations is the sole purview of the state and therefore not charitable.

2. Other Purposes Beneficial To The Community

CCRA has also determined that promoting racial equality through positive race relations efforts and eliminating racial discrimination will now be considered to be a charitable purpose under the category of “other purposes beneficial to the community.” Normally, the public benefit component of a charitable purpose would require that the program and services would be available to everyone. Where the charity proposes to restrict these services and programs to a particular group, the restriction must be clearly linked to the benefit. CCRA gives as an example in this regard where a particular community has experienced sustained discrimination in Canada, then the need to mitigate their long-standing discrimination may well justify the group restricting or focussing on the common needs of that community.

a) Acceptable Activities

CCRA has determined that the following types of programs and activities would be acceptable under the head of other purposes beneficial to the community.

- raising public awareness by disseminating factual, well-reasoned information as part of the group’s outreach, such as using brochures and Web sites;
- establishing and maintaining peer support groups among [name of intended group] as well as members of the public;
- community resource centres to further inter-cultural co-operation and diversity;
- public discussion groups that raise awareness of racism and alternatives to stereotyping and prejudice;
- cross-cultural exchange programs to promote positive race relations and diversity;
- providing anti-racism awareness activities in conjunction with other programs;

- encouraging compliance with existing anti-discriminatory legislation by using fair and balanced approaches to monitor racial bias and discriminatory practices in a particular fields;
- participating in a network or coalition made up of organizations supporting anti-racist or positive race relations aims in order to share resources;
- establishing awards for exemplary anti-racist or race relations programs; or
- memorials to inform the public about the experiences of communities that have faced discrimination.

b) Unacceptable Activities

CCRA gives as an example of an activity that would be considered unacceptable under the “other purposes beneficial to the community” category as “opposing or lobbying for changes in, or the retention of, the law or policy, or decisions of any level of government, since this type of activity is considered political”

c) Acceptable Charitable Objects

The following charitable objects to promote racial equality would be considered by CCRA to be acceptable under the “other purposes beneficial to the community” category:

- to promote good race relations by encouraging equality of opportunity between persons of different racial groups through certain programs;
- building peaceful and co-operative networks to promote positive race relations between groups experiencing conflict from their countries of origin;
- to ensure existing democratic and human rights are upheld for the ethnic and racial minorities by providing certain programs;
- to establish and maintain information and counselling programs for individuals, groups, and organizations that have experienced discrimination by providing information, counselling, legal services, and follow up support;
- to develop programs that remove barriers to equal participation for racial and ethnic minorities; or
- to change racist institutional practices through programs that inform employers about the advantage of hiring qualified racial minority workers.

d) Unacceptable Charitable Objects

The following racial equality charitable objects would be considered unacceptable by CCRA under the “other purposes beneficial to the community” category:

- fostering good relations between countries, as this is a matter of foreign policy;
- to eliminate racism, as there is insufficient detail given;
- to work toward positive race relations, as there is also insufficient detail given;
- to assist ethno-racial communities in overcoming discriminatory barriers, as there is also insufficient detail given;
- to adopt special programs to address disadvantaged individuals or groups, as there is also insufficient detail given.

E. OTHER RESOURCE MATERIALS

Charities and their legal advisors can also consult related publications found on the CCRA website to procure other resource materials on the topic of promoting racial equality or related matters.

- ◆ *Ethnic Summary Policy:*
<http://www.ccra-adrc.gc.ca/tax/charities/policy/csp/csp-e04-e.html>
- ◆ *Guidance on Public Benefit (Draft):*
<http://www.ccra-adrc.gc.ca/tax/charities/policy/cps/cps-021-note-e.html>
- ◆ *Multiculturalism Summary Policy:*
<http://www.ccra-adrc.gc.ca/tax/charities/policy/csp/csp-m01-e.html>
- ◆ *Purposes Beneficial to the Community Summary Policy:*
<http://www.ccra-adrc.gc.ca/tax/charities/policy/csp/csp-c10-e.html>
- ◆ *Racial Equality Summary Policy:*
<http://www.ccra-adrc.gc.ca/tax/charities/policy/csp/csp-r23-e.html>
- ◆ *Registering a Charity for Income Tax Purposes (T4063):*
<http://www.ccra-adrc.gc.ca/E/pub/tg/t4063/t4063eq.html>

It is also important to consult CCRA’s *Political Activities Policy Statement*, which is referred to a number of times in the *Racial Equality Policy Statement* in relation to the nature of objects and activities under a racial equality mandate.

F. CONCLUDING COMMENTS

The *Policy Statement* represents an important expansion of the inherent administrative discretion of CCRA from that of interpretation of the common law to an expansion of the common law definition concerning what is charitable. In order to keep pace with legislative changes that have occurred in public policy, both in Canada and internationally, CCRA has recognized that charities that either educate about or promote racial equality in Canada will be considered charitable rather than pursuing political activities and will therefore be granted registered charitable status.

The *Policy Statement* will now be a mandatory reference for charities and lawyers as they draft charitable objects and statements of activities to accompany applications for Letters Patent/Supplementary Letters Patent. Other organizations that either now or intend in the future to address other forms of discrimination as prohibited under the *Charter of Rights and Freedoms* and other human rights legislation will also find the *Policy Statement* helpful, since CCRA has advised that the guidelines in the *Policy Statement* will likely be mirrored in future policy statements dealing with the registration of charities that intend to combat discrimination in other forms. CCRA initiative in this regard is a positive development for the charitable sector and for Canada as a whole, and for this CCRA is to be commended.