
NEW CRA POLICY ON APPLICANTS ASSISTING ETHNOCULTURAL COMMUNITIES

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A. INTRODUCTION

In June 2005, Canada Revenue Agency (“CRA”) released a policy statement entitled “*Applicants Assisting Ethnocultural Communities*” (the “Policy”). The Policy sets out detailed guidelines on attaining charitable status for community organizations that assist ethnocultural communities in Canada. This policy will be of significance to both current registered charities and potential applicants, as it outlines CRA’s requirements for attaining registered charitable status under the *Income Tax Act* (the “ITA”), and indicates which activities it will accept as charitable for that purpose. This *Charity Law Bulletin* (“Bulletin”) summarizes the content of the Policy and comments on some its more important aspects. The Policy is available on CRA’s website at <http://www.cra-arc.gc.ca/tax/charities/policy/ethno-e.html>.

B. BACKGROUND TO THE POLICY

The Policy was released on June 30, 2005, after CRA solicited comments from the draft guidelines released in September 2004. The Policy acknowledges that ethnocultural groups are an important segment of the Canadian demographic and recognizes the importance of organizations that assist these groups in facing their challenges and disadvantages. The purpose of the Policy is to inform such organizations of the framework within which they can attain charitable status for the purpose of the ITA. The Policy provides the following definitions:

An ethnocultural community or group is defined by the shared characteristics unique to, and recognized by, that group. This includes characteristics such as cultural traditions, ancestry, language, national identity, country of origin and/or physical traits. To the extent that religion is inextricably linked to the group's racial or cultural identity, it can also be recognized as a defining characteristic. In some cases, a group may view its common origin as pan-national, or it may be based on geographic region of origin. These characteristics are the basis on which, generally speaking, one group culturally distinguishes itself from another.

Disadvantage - This is reflected in the barriers some groups face to full and equal participation in Canadian society. They may be disadvantaged socially, politically, educationally, as well as economically. Not all ethnocultural communities in Canada will face disadvantage, nor will ethnocultural communities experience exclusion in the same way.

Ethnocultural work - This term describes the range of activities undertaken by an ethnocultural community, as well as by organizations helping an ethnocultural community or group of communities. It includes helping individuals, as well as addressing systemic issues.

C. REGISTRATION GUIDELINES FOR ORGANIZATIONS ASSISTING DISADVANTAGED ETHNOCULTURAL COMMUNITIES

The fact that an organization assists a disadvantaged ethnocultural group does not automatically render it charitable for the purposes of the ITA. The Policy does not create special status for such organizations, nor does it establish a separate charitable category for ethnocultural work. Rather, organizations engaged in ethnocultural work, along with all other applicants, must show that their purposes and activities fall within one, or a combination, of the four recognized categories of charity: “relief of poverty,” “advancement of education,” “advancement of religion,” and “other purposes beneficial to the community.” These must be the exclusive purposes of the organization and should be clearly set out in its governing documents.

Applicants will also be required to show that they confer a tangible benefit to the public at large, either directly or indirectly (referred to as the “Public Benefit Test”). At first glance, this requirement appears problematic for organizations engaged in ethnocultural work, as the scope of their services is naturally restricted to a specific group of people. However, the Policy recognizes this and allows for organizations to focus their services on one ethnospecific group’s needs, so long as there is a logical connection between the focus and the benefit provided, the benefit is explained in the application for charitable status, and they do not

exclude some individuals or parts of the community with the identified need. In some (but few) circumstances, CRA will allow an absolute restriction of services, but the organization will need to show that such a restriction is directly linked to the charitable purpose and provide research that supports the existence of the unique need.

Note that the public benefit test, the source of much confusion amongst charitable organizations and legal scholars alike, was extensively addressed by CRA in its proposed policy: *Guidelines for Registering a Charity: Meeting the Public Benefit Test*.¹ For the purposes of this Bulletin, it is important to note that the extent and nature of the requirements for the public benefit test may vary according to an organization's charitable purpose as it falls within one of the four recognized categories, as discussed in the following sections.

1. Relief of Poverty

The “relief of poverty” category covers programs or services that have the purpose of alleviating poverty, and it is assumed that such services benefit the public. Under this category, CRA allows the restriction of beneficiaries “according to almost any criteria” so long as the service provides the necessities of life (such as clothing, food, and shelter) or even amenities, which most people take for granted (such as summer camps) to individuals who are economically disadvantaged. Providing services beyond this (i.e. assistance not considered a necessity, amenities not available to most people) or to individuals who are not considered “poor” are examples of unacceptable programs under this category. Organizations, such as community services (e.g. food banks and shelters), ethnocultural organizations and settlement organizations, all of which focus on alleviating the poverty of particular ethnocultural groups, would fall within this category.

a) Acceptable Activities

CRA has provided the following examples as acceptable programs and activities under the category of “relief of poverty”:

¹ Available online at <http://www.cra-arc.gc.ca/tax/charities/consultations/publicbenefit-e.html>.

- easing or alleviating poverty through the provision of the necessities of life, limited to ethnocultural communities who are poor;
- providing access to the amenities of life that most people take for granted, for those facing exclusion because of poverty;
- providing employment assistance or undertaking community economic development initiatives where most of the members of the community are living below the poverty line;
- helping refugees (considered poor by definition);
- helping immigrants who are poor, and;
- helping those considered hard to employ, specifically refugees, or where the members of the group to be served are living below the poverty line.

b) Unacceptable Activities

Examples of activities that would be considered unacceptable under the “relief of poverty” category include:

- providing any assistance that is not considered a necessity, or providing access to amenities beyond those which most people take for granted, would not be considered the relief of poverty; and
- providing services to beneficiaries who are not poor.

c) Acceptable Charitable Objects

CRA provides the following example of an acceptable “relief of poverty” object:

To relieve poverty by providing food and other basic supplies to persons of low income, by establishing, operating, and maintaining shelters for the homeless, and by providing counselling and other similar programs to relieve poverty.

2. Advancement of Education

In order for a purpose or activity to qualify as charitable under the “advancing education” category, there needs to be a proper educational forum and the content must be delivered in a structured manner. According to the Policy, groups that may fall into this category include community services providing educational activities to assist disadvantaged ethnocultural groups, or settlement organizations that train and/or educate refugees and immigrants to help foster their integration into Canadian society. Ethnocultural organizations that educate about intercultural relations, or educate the public about a particular culture can also be recognized as charitable under this category. However, CRA draws an

important distinction between *raising awareness about* a particular culture (which is an acceptable charitable activity) and *promoting* a culture (which is not considered charitable). According to the Policy, inward-focussing activities that are exclusively provided to an ethnospecific group (i.e. for the purpose of preserving language or cultural practices, or those structured as social events/celebrations) lack the requisite “public character” element of a charity and are thus unacceptable programs under this category.

The distinction between “increasing the public’s appreciation” and “promotion” of a culture seems to be a blurry, if not arbitrary one, but CRA asserts that it can be determined by looking at the purpose or general orientation of the organization, the activities, and who will benefit from the program. Thus, the Policy suggests that applicants clearly demonstrate how their activities would enhance knowledge or further education for the benefit of the public as a whole.

a) Acceptable Activities

CRA has provided the following examples as acceptable programs and activities under the category of “advancing education”:

- public education and research;
- literacy education;
- employment education/job readiness training;
- cross-cultural education;
- structured life skills training to increase or better realize the capacities or abilities of members of a disadvantaged community;
- increasing the public’s knowledge and appreciation of the art, history, language, culture, and traditions of a particular ethnocultural group (or groups), which can include such things as heritage language training and performing groups that are structured as educational;
- cultural centres and festivals, structured to educate (or raise the artistic tastes of) the public about an ethnospecific group or multiple cultures;
- summer camps where the purpose is to teach children about the heritage and ancestral culture of a particular ethnocultural group;
- courses in English or French as a second language;
- citizenship courses;
- other training related to assisting new immigrants or refugees to settle; and
- educating about racial and/or ethnic discrimination or about positive relations.

b) Unacceptable Activities

Examples of activities that would be considered unacceptable under the “advancing education” category include:

- furthering the interests of a particular culture or community (unless this is an incidental part of fulfilling a group’s broader charitable purposes); and
- an ethnocultural festival, cultural centre or summer camp not structured as educational (i.e. those structured as social events or celebrations).

3. Advancement of Religion

An earlier draft of the Policy held that, under this category, if an organization’s “undertaking promote[d] the spiritual teachings of the religion concerned, public benefit is usually assumed.” However, that assumption could be challenged if the organization’s purposes were “more secular than theological,” so that opposing abortion and promoting or opposing same sex marriage were listed as examples of non-charitable purposes.

Several groups expressed concern that these sections of the proposed policy statement could be interpreted to mean that activities undertaken for the purpose of advancing religion, but which could also be viewed by some as having a secular purpose, would be characterized by CRA as not fitting within the category of activities that advance religion. Additionally, the earlier draft did not explain the extent to which secular purposes could be pursued, how to distinguish between a secular purpose and a theological purpose, and what the implications would be if a purpose was identified as being both secular and theological in nature. The proposed policy could possibly have had the effect of narrowing the scope within which religion could be advanced and, therefore, might have resulted in a narrowing of the activities and ventures that current religious charities could undertake. It could also have provided an obstacle for new religious charities attempting to qualify for charitable status under the ITA. In response to these concerns, CRA removed these passages and replaced them with the following description of the Advancing Religion head of charity:

42. This category refers to promoting the spiritual teachings of a religious body, and maintaining the doctrines and spiritual observances on which those teachings are based. A religious body is considered charitable when its activities serve religious purposes for

the public good. An example of accepted wording for this category would be “to advance and teach the religious tenets, doctrines, observances and culture associated with the (specify faith or religion) faith.”

43. Religious worship focused on a specific linguistic community would be acceptable.

These revisions, which represent a more balanced view of the Advancing Religion category of charity, are welcome and will presumably be followed by CRA when it drafts its policy statement on advancement of religion. A more extensive discussion on Advancing Religion as a head of charity can be found in *Charity Law Bulletin* No. 58, entitled “Advancing Religion as a Charity: Is it Losing Ground?”, as well as the paper “Advancing Religion as a Head of Charity: What are the Boundaries?”².

4. Other purposes beneficial to the community

This category covers a broad range of programs, and as a result will cover the work of many organizations providing services to ethnocultural communities. Such organizations may include: community services or ethnocultural organizations engaged in community capacity-building efforts, and settlement organizations which facilitate the integration of refugees and immigrants into Canadian society. The policy also mentions that both types of umbrella organizations would fall into this category: those that work to improve the effectiveness of other charities, and those established to further a particular charitable purpose. However, CRA notes that activities and services under this heading are generally expected to be open to the public at large.

a) Acceptable Activities

CRA has provided the following examples as acceptable programs and activities under the category of “other purposes beneficial to the community”:

- support activities to strengthen disadvantaged communities, i.e. by building their capacity to identify and eliminate barriers to full participation in society;
- social, health, legal, and other community services and outreach to help disadvantaged communities;
- self-help groups;

² Terrance S. Carter and Jacqueline M. Connor. “Advancing Religion as a Charity: Is it Losing Ground?” *Church Law Bulletin* No. 6 (November 2004) available at <http://www.carters.ca/pub/bulletin/church/2004/chchl06.pdf>. Terrance S. Carter, assisted by Anne Marie Langan, “Advancing Religion as a Head of Charity: What are the Boundaries?” (Paper presented to the Ontario Bar Association and the Continuing Legal Committee of the Canadian Bar Association, May 2005) [unpublished]. The paper is available online at <http://www.carters.ca/pub/article/charity/2005/tsc0506.pdf>.

- advocacy work, such as helping disadvantaged individuals to gain access to entitled services and activities;
- resource libraries;
- senior's residences and services for a specific ethnocultural group, when such a need exists;
- employment preparation, including services designed to help specific groups in need of these services, i.e. foreign-trained immigrants facing barriers to employment in the occupations;
- relieving and preventing unemployment; and
- eliminating racial (including ethnic) discrimination or promoting positive relations in such communities;

b) Unacceptable Activities

Examples of activities that would be considered unacceptable under the "other purposes beneficial to the community" category include:

- promoting multiculturalism, which is considered too broad a concept, and therefore, not accepted as a charitable purpose (although aspects of furthering the purposes of multiculturalism are acceptable);
- social events as a purpose; and
- providing assistance to those not facing disadvantage (i.e. employment assistance to immigrants not in need of such services).

c) Acceptable Charitable Objects

The following charitable object would be considered to be acceptable by CRA under the "other purposes beneficial to the community" category:

To "provide education, counselling and other support services for immigrants and refugees in need, including language instruction, employment training, job search activities, translation services and information programs on Canadian culture and life."

D. PROMOTING MULTICULTURALISM AS A CHARITABLE PURPOSE?

The Policy makes an important clarification regarding the promotion of multiculturalism. It affirms that promoting multiculturalism is not a charitable purpose. The notion of promoting multiculturalism is a vague and expansive one, and may encompass a wide range of purposes, programs, and activities that could not be considered charitable. The Policy provides the example of an organization seeking to promote a particular culture. Certainly, such an object would fall within the definition of promoting multiculturalism. However, it

would lack the necessary element of altruism for it to qualify as a charitable purpose. Thus, the Policy warns that applicants who include the “promotion of multiculturalism” as their purpose will not be eligible for registration. However, it does recognize that many potentially charitable purposes will have the effect of furthering multiculturalism, and this will not disqualify an organization from attaining registered status. Examples include those that increase the public’s knowledge and appreciation of a particular group’s art, culture, language, and traditions. These examples are outlined in more detail in CRA’s Policy Statement: *Registering Charities that Promote Racial Equality*,³ and readers are encouraged to consult *Charity Law Bulletin* No 26, entitled “New CCRA Policy Statement on Registering Charities that Promote Racial Equality” for more information.⁴

E. ADVOCACY

The Policy also provides guidance for organizations engaged in advocacy work. It asserts that some forms of advocacy are acceptable, so long as the advocacy is connected to the charity’s purposes and the work for the issue is only a minor focus of the organization. Charities have the freedom to speak out on issues related to their purposes, but the Policy cautions them to consider whether such activities are charitable, political, or prohibited. For example, where the subject matter is connected to the charity’s purposes and based on a well-reasoned position, the charity may engage in a wide range of activities which will still be considered charitable, such as joining a government advisory panel, or distributing research results to the media or Parliament. Even some political activities, such as encouraging the public to contact officials and urging them to change or oppose a law, may be allowable so long as the above requirements are fulfilled and only a limited percentage of the charity’s resources are devoted to them. These issues are further dealt with in another CRA policy: *Political Activities*,⁵ which is the subject of *Charity Law Bulletin* No. 26, entitled “New CCRA Policy Statement on Political Activities.”⁶

³ Available at <http://www.cra-arc.gc.ca/tax/charities/policy/cps/cps-021-e.html>

⁴ Terrance S. Carter and Suzanne White. “New CCRA Policy Statement on Political Activities.” *Charity Law Bulletin* No. 26 (November 2003). <http://www.carters.ca/pub/bulletin/charity/2003/chylb26.htm>.

⁵ Available online at <http://www.cra-arc.gc.ca/tax/charities/policy/csp/csp-p02-e.html>.

⁶ *Supra*, note 4.

F. CONCLUSION

The Policy represents an important clarification of what is considered charitable by specifically extending charitable status to organizations assisting ethnocultural communities in Canada. The Policy will affect the way in which the organization's Letters Patent is drafted or amended, and the way in which its application for charitable status is completed. The Policy is welcome, in that it helps to distinguish between charitable ethnocultural work and the promotion of multiculturalism. This distinction alerts ethnospecific organizations to the fact that, contrary to what may be believed, the promotion of multiculturalism is not in and of itself, charitable. In addition, the Policy provides confirmation that programs and facilities operated for the benefit of persons of a particular ethnic group will also be seen as charitable without necessarily contravening the relevant human rights legislation. Although the Policy is purely administrative, and not binding on the Courts, it will still serve as a valuable guide for both new organizations seeking charitable status, and existing organizations that do or wish to carry out ethnocultural work but may be unsure of whether or not such activities will be considered by CRA to be charitable.



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