

PUBLICATION OF MAGAZINES FOR THE ADVANCEMENT OF EDUCATION

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A. INTRODUCTION

On February 3, 2006, the Canada Revenue Agency (“CRA”) issued Policy Commentary CPC – 027 entitled “Charitable purposes - Whether publishing a magazine can be considered a charitable activity under the advancement of education” (the “Policy”) to clarify their position on granting charitable status to organizations that publish magazines in furtherance of educational purposes. This bulletin summarizes the Policy and reviews the implications of its application.

The Policy was adopted by the CRA as a result of their granting charitable status to The Walrus Foundation, established to publish the Walrus Magazine. On the Walrus Magazine’s website, they indicate that it is a general-interest magazine to publish “the best work by the best writers from Canada and elsewhere on a wide range of topics.” The Toronto Star reported in November 2005 that two similar magazines, Montréal-based *Maisonneuve* and Vancouver-based *Geist*, were emboldened by the Walrus having been granted charitable status and they would likely apply for charitable status again, in spite of their application having previously been denied.

B. SUMMARY OF THE POLICY

The Policy indicates that the “courts, through various decisions, have defined the advancement of education in the charitable sense” to mean “the training of the mind; advancing the knowledge or abilities of the

recipient; raising the artistic taste of the community; or improving a useful branch of human knowledge through research.”

The Policy indicates that the Supreme Court of Canada in *Vancouver Society of Immigrant and Visible Minority Women* case (“*Vancouver Society*”)¹ set out the following criteria when determining “whether a purpose or activity is charitable” in advancing education:

- ◆ There must be “structure and a genuinely educational purpose;”
- ◆ There must be “a teaching or learning component;” and
- ◆ There must be “a legitimate, targeted attempt to educate others (simply providing an opportunity for people to educate themselves, such as by making available materials with which this might be accomplished but need not be, is not enough).”

The Policy indicates that although the decision of the Supreme Court of Canada in *Vancouver Society* “extended the definition of education beyond traditional academic subjects, to include teaching practical topics and skills such as necessary life skills or providing information to a specific practical end,” it also stipulates that the “knowledge being conveyed must be useful knowledge.” The Policy explains that “useful knowledge” means that “its acquisition by the individual provides a benefit to the community.” In this regard, the Policy indicates that “[w]hile knowledge gained must be useful[,] this is not meant to limit learning only to ‘traditional’ subject areas,” and may include other forms of knowledge, i.e. “theoretical or practical, speculative or technical, scientific or moral,” as noted by the Supreme Court of Canada in *Vancouver Society*.

According to the Policy, registered charities can achieve the recognized charitable purpose of advancing education “through the use, creation, publication and distribution of magazines,” provided that the “contents of that publication must be predominantly educational in the sense understood by charity law.” It goes on to indicate that although such magazines may contain non-educational contents, e.g. “games, entertainment, opinion, advertising,” such contents must be “highly limited and always remains ancillary and incidental to the main educational purpose.”

¹ *Vancouver Society of Immigrant and Visible Minority Women v. MNR*, [1999] 1 S.C.R. 10 (“*Vancouver Society*”).

C. CASE LAW

The issue of whether the publication of literature could be recognized as charitable at law under the head of advancement of education has been considered by a number of cases. Before *Vancouver Society*, in order for a charity to be recognized under the charitable head of advancement of education required that it be limited to the “formal training of the mind” or the “improvement of a useful branch of human knowledge.”² This test was followed in a number of cases before the decision of *Vancouver Society* in 1999, including *Interfaith Development Education Association, Burlington v. MNR.*³, *Action des femmes handicapées (Montréal) v. The Queen*,⁴ and *Human Life International in Canada Inc. v. MNR.*⁵

In 1999, the decision of the Supreme Court of Canada in *Vancouver Society* represented a major shift in the law regarding what would be recognized as charitable at law under the head of advancement of education. It has been noted that this was the first decision of the Supreme Court of Canada on the definition of charity in over 25 years.⁶ In that case, the organization (the “Society”) was established to assist immigrant and visible minority women to seek employment opportunities and to integrate into Canadian life. The issue was whether the Society's purposes and activities were exclusively charitable. The court held that to “limit the notion of ‘training of the mind’ to structured, systematic instruction or traditional academic subjects reflects an outmoded and underinclusive understanding of education which is of little use in modern Canadian society.”⁷ Instead, the court adopted the following more inclusive definition of education:

- ♦ Advancement of education includes “informal training initiatives, aimed at teaching necessary life skills or providing information toward a practical end, so long as these are truly geared at the training of the mind and not just the promotion of a particular point of view.”⁸
- ♦ In the case of education, the good advanced by the charity in question is knowledge or training. So long as information or training is provided in a structured manner and for a genuinely educational purpose to advance the knowledge or abilities of the recipients and not solely to promote a particular point of view or political orientation, it may properly be viewed as falling within the advancement of education.

² *Briarpatch Incorporated. v. The Queen*, 96 D.T.C. 6294 at 6294; [1996] 2 C.T.C. 94 at 7 (F.C.A.)

³ *Interfaith Development Education Association, Burlington v. MNR*, 97 D.T.C. 5424; [1997] 3 C.T.C. 271 (FCA).

⁴ *Action des femmes handicapées (Montréal) v. The Queen*, 98 D.T.C. 6528; [1998] 4 C.T.C. 1 (FCA).

⁵ *Human Life International in Canada Inc. v. MNR*, 98 D.T.C. 6196 (F.C.A.).

⁶ David P. Stevens, “Update on Charity Taxation,” *Report of Proceedings of Fifty-Third Tax Conference*, 2001 Tax Conference (Toronto: Canadian Tax Foundation, 2002), 28:1-41, at 28:4.

⁷ *Supra* note 1, at para. 169.

⁸ *Supra* note 1, at para. 168.

- ♦ Education also does not include educating people about a particular point of view in a manner that might more aptly be described as persuasion or indoctrination.
- ♦ Knowledge can take many forms, including theoretical or practical, speculative or technical, scientific or moral. Both “non-traditional activities such as workshops, seminars, self-study, and the like” as well as “traditional, classroom-type instruction” are within the “modern definition of ‘education.’”⁹
- ♦ Education requires activities that provide an “actual teaching or learning component.” In this regard, the “threshold criterion for an educational activity must be some legitimate, targeted attempt at educating others, whether through formal or informal instruction, training, plans of self-study, or otherwise.” “Simply providing an opportunity for people to educate themselves, such as by making available materials with which this might be accomplished but need not be, is not enough.”¹⁰
- ♦ Formal or traditional classroom instruction is not a prerequisite, and that “an informal workshop or seminar on a certain practical topic or skill can be just as informative and educational as a course of classroom instruction in a traditional academic subject.”¹¹
- ♦ Education can be “directed toward a practical end and not just the ‘formal training of the mind’ or the ‘improvement of a useful branch of human knowledge.’” “Education is unique in that it can be characterized both as an activity in furtherance of some specific end and as an activity that provides transferable skills and knowledge that enable one to continue to learn new things throughout one’s life.”¹²
- ♦ Even if the purpose is charitable under advancement of education, “it must still satisfy the requirement that it benefit ‘the community or ... an appreciably important class of the community,’ i.e. “the class must be substantial, or at least not so small that there is no benefit to the community as a whole, and the benefits cannot be provided exclusively to a particular class of private individuals, defined only by their personal relationships to the organization or their creed.”¹³

Subsequent to the *Vancouver Society* case, a number of cases were decided on the basis that even though the objects of the organization were within the definition of “education”, such activities constituted political activities which were not ancillary or incidental to the organizations’ charitable activities.¹⁴

⁹ *Supra* note 1, at para. 170.

¹⁰ *Supra* note 1, at para. 171.

¹¹ *Supra* note 1, at para. 171.

¹² *Supra* note 1, at para. 172.

¹³ *Supra* note 1, at para. 173.

¹⁴ For example *Alliance for Life v. MNR*, 99 D.T.C. 5228; [1999] 3 C.T.C. 1 (FCA), *The Challenge Team v. Revenue Canada*, 2000 D.T.C. 6242; [2000] 2 C.T.C. 352 (FCA), and *Action by Christians for the Abolition of Torture v. The Queen*, 2003 D.T.C. 5394 (FCA).

D. APPLICATION OF THE POLICY

The Policy is helpful in understanding the CRA's position in registering applicants that are established to advance education through publishing magazines. However, a number of issues remain that have not been addressed.

For example, the Policy does not clarify how the publication of a general interest magazine would satisfy the requirement set out in the *Vancouver Society* case that "simply providing an opportunity for people to educate themselves, such as by making available materials ..., is not enough." It is also not clear from the Policy how a magazine could qualify as an activity that is "truly geared at the training of the mind." Although it is conceivable that certain types of publications (e.g. journals for particular disciplines such as a medical journal) would have contents that are "predominantly educational," the Policy does not clarify how the publication of a "magazine" would be "predominantly educational."

Further, although the Policy clarified that the publication of magazines can be considered a charitable activity under the advancement of education, it remained silent on whether the Policy would apply to other types of publication, for example, pamphlets, newsletters, newspapers, etc.

In some situations, it would also appear possible that the publication of magazines might be considered a charitable activity under heads of charitable purpose other than advance of education. For example, an organization established to publish a religious magazine intended to advance a particular religious faith would presumably be charitable under the third head of charitable purpose of advancement of religion. Furthermore, in *Vancouver Society*, after having determined that one of the purposes of the Society of providing "educational forums, classes, workshops and seminars to immigrant women in order that they may be able to find or obtain employment or self employment," was charitable under advancement of education, the court continued to determine whether the same purpose was *also* charitable under the fourth head of charitable purpose, namely, purposes beneficial to the community.

As a whole, although the Policy is helpful in clarifying the position of CRA regarding whether an organization established to publish a magazine can be charitable under the advancement of education, its application is very restrictive. Many aspects of how this Policy would apply in relation to the legal requirements set out in the *Vancouver Society* case remain unclear. Furthermore, it would be helpful if the Policy were to be expanded to

have a broader application to other situations involving the publication of various types of printed materials, including magazines, newspapers, journals, and explain how such publications could qualify for charitable status under the different heads of charitable purpose.



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