

CRA DRAFT POLICY ON SPORTS AND CHARITABLE REGISTRATION

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A. INTRODUCTION

Following the Supreme Court of Canada's decision in *A.Y.S.A. Amateur Youth Soccer Association v. Canada*¹ ("A.Y.S.A.") in the fall of 2007, the Canada Revenue Agency's Charities Directorate ("CRA") released on May 15, 2008 a draft policy *Consultation on Proposed Guidelines for Sport and Charitable Registration under the Income Tax Act*² ("Draft Policy"). The Draft Policy is intended to consolidate and clarify CRA's actual practices and interpretations concerning sport activities carried out by registered charities and organizations applying for charitable status.

Generally, organizations applying for charitable registration must pursue purposes that are both charitable at law and for the benefit of the public. Charitable purposes fall into one or more of the following enumerated categories: the relief of poverty; advancement of education; advancement of religion; and other purposes beneficial to the community that are considered charitable at law. The promotion of sports is not currently recognized as an independent charitable purpose in Canada. The nineteenth-century case of *Re Nottage*³ was the first to decide that there was no common law authority for the proposition that a gift that encourages a sport is charitable, and the courts have since maintained the position, most recently re-affirmed by the Supreme Court of Canada in *A.Y.S.A.* As a result of the *A.Y.S.A.* decision, CRA has released the Draft Policy with the intention of setting clear guidelines on the issue of sport and charitable registration. This *Charity*

¹ *A.Y.S.A. Amateur Youth Soccer Association v. Canada Revenue Agency* (2006), 267 D.L.R. (4th) 724 (F.C.A.)

² Available online at: <http://www.cra-arc.gc.ca/tx/chrts/cnslttns/sprt-eng.html>

³ *Re Nottage*, [1895] 2 Ch. 649

Law Bulletin summarizes the content of the Draft Policy and its significance for charitable and applicant organizations in Canada.

B. THE A.Y.S.A. DECISION

In the A.Y.S.A. decision, the Supreme Court of Canada unanimously upheld the Federal Court of Appeal's decision that an Ontario amateur youth soccer association did not qualify as a registered charity within the meaning of subsection 248(1) of the *Income Tax Act* ("ITA"). Writing for the majority, Justice Marshall Rothstein concluded that although some sports organizations, other than registered Canadian amateur athletic associations ("RCAAs"), might be found to be charities under the common law, the appellant did not qualify for charitable registration because its purposes and activities were not charitable. The Court stated that no matter how desirable it is to promote sport, that purpose is not recognized by the Canadian common law as charitable and therefore organizations pursuing one or more sports for their own sake cannot be registered as a charity. The majority judgment confirms the existing common law with respect to the determination of what is charitable in the context of sports organizations, indicating that recognition of an organization, such as the appellant, would result in a significant change to the common law beyond the incremental changes mandated by the jurisprudence and would be best left to Parliament. The Court further stated that although this is the general rule, there was however some instances where an organization undertaking a sporting activity could qualify for registration. For example if the sporting activity undertaken was ancillary to one of the four recognized charitable purposes at law. A detailed commentary on the A.Y.S.A. decision is available in the *Charity Law Bulletin* No 126.⁴

C. DETERMINING ELIGIBILITY FOR CHARITABLE REGISTRATION

Following on the A.Y.S.A. decision, the Draft Policy identifies two potential ways, from CRA's perspective, in which organizations involved in sport activities may be registered as a charity. They are:

- 1) If the sports activities pursued relate to and support the organization's general charitable purpose(s) and the sports activities are a reasonable means to achieve those purposes; and
- 2) If the sports activities pursued are incidental in nature, meaning that only a small portion of the organization's total resources' are devoted to the sport activity in question.

⁴ Available online at: <http://www.carters.ca/pub/bulletin/charity/2007/chylb126.htm>

An applicant organization whose activities include sports will be required to clarify how sports may be viewed as a means of achieving an exclusively charitable purpose. If the purposes or activities of the organization are only to promote sports or where it is not demonstrated how the sports activities clearly further one or more of the organization's identified charitable purposes, it is unlikely that the organization would qualify for registration.

The organization must also show how the proposed activity is a reasonable way of achieving its stated purpose. The organization will be required to establish a coherent connection between the sports activity in question and the recognized charitable purpose in order to demonstrate that the charity's resources are being devoted to exclusively charitable purposes.

The above requirements are usually considered by CRA when reviewing the activities of an organization. However, CRA indicates that the determination of whether or not a particular sports activity will be acceptable will depend on the facts of each application and the charitable purpose the activity is intended to further.

D. SPORT AND THE FOUR CATEGORIES OF CHARITY

The Draft Policy provides detailed examples of sport activities that could potentially qualify as furthering the four recognized charitable purposes. Below are some examples provided by CRA:

1. Relief of Poverty

Activities that provide the basic amenities of life to those who are poor or activities that assist individuals living in poverty by alleviating financial or other barriers to participation in physical activity could potentially qualify as relief of poverty. An example could be providing subsidies for children of low-income families in order for them to participate in sports activities in their communities.

2. Advancement of Education

Programs that include sport and clearly further an educational purpose can qualify under the advancement of education. For example, groups for youth, such as Guides and Scouts, where sport is one component of an overall educational program can be considered charitable.

3. Advancement of Religion

It may be possible for sport to further or be ancillary to a religious purpose. For example summer camps run by an organization advancing religion that offers outdoor/sport activities, in addition to religious instruction.

4. Other Purposes Beneficial to the Community

This category includes various purposes that do not fall within the purview of the other three categories but that the courts consider charitable. Purposes that are charitable under this section include: addressing specific problems faced by youth at risk; relieving conditions associated with aging or disability; social rehabilitation; increasing the expertise, physical fitness and morale of the armed forces or police; promoting health; and providing and operating public recreation grounds and community centres. An example of relieving the conditions associated with ageing is operating an activity centre that provides access to sports or programs such as weight training to help build bone density in the elderly.

E. DIFFERENCES BETWEEN THE PROMOTION OF HEALTH AND PROMOTION OF SPORTS

CRA indicates that the courts have always recognized the inherent health benefits in the pursuit of sports, but that whereas the promotion of health is a recognized charitable purpose, the promotion of sports by itself is not. The Draft Policy stresses the distinction between activities that promote health and activities that promote sports.

CRA considers the promotion of physical activity in a general sense to fall within the promotion of health and that the focus of the organization is usually an indicator of whether the activities undertaken are to promote health or to promote sports. If the focus of the organization is one of the following, CRA will consider the activities to be charitable:

- to inform the public about ways to improve their health and fitness level through physical activity;
- to encourage public participation in healthy physical activity; or
- to provide fitness opportunities that directly promote or preserve health.

However, if the focus of the organization is clearly the promotion of a particular sporting activity, and the by-products of engaging in that activity happen to be beneficial for the health of participants, the by-products will not be enough to make the activity charitable.

CRA states that the following are indicators that the activities pursued by an organization will be considered charitable:

- the health benefits of the activities are evident or can be demonstrated;
- the activities are open to anyone regardless of age, or skill level;
- fees and equipment costs are nominal or subsidized for low income;
- the emphasis is on participation, increasing activity levels, and improving overall fitness;
- a token or non-monetary reward is given for participation; or
- there are costs to spectators (occasional fundraising through admission fees would be acceptable).

According to CRA, the following are indicators that the activities pursued by an organization are not charitable:

- the health benefits are secondary or not a consideration;
- access is limited in some manner (for example, by exclusive membership criteria, skill requirements, prohibitive costs, etc.);
- the emphasis is on assisting individuals to succeed in competition, advance in standings, or the promotion of excellence or priority is given to gifted or promising participants;
- the participants may receive monetary benefits; or
- the spectators are charged an entrance fee.

A particular sport or physical activity may qualify if a beneficial effect on the health of those participating in the activities can be empirically demonstrated. If the activity also entails a risk of injury (for example, in a contact sport), then that must be taken into account when assessing any beneficial impact to health by participating in that sport. An organization may need to include information in its application on the steps it takes to reduce the risk of injury. Where the risk associated with the activity will be so great that it will outweigh any positive benefit that might result, the applicant organization will not qualify.

According to CRA, public participation, regardless of ability or skill, should be the focus of the sport or physical activity. If training is provided, it should be available to any interested participant. While competition may be a component of the activity, opportunities to participate should not be structured in a manner that excludes less skilled teams or individuals from participating equally. The opportunity to play all positions in a team sport would also be an indicator that public participation is the focus.

In order to be accessible to the community in general, CRA is of the view that participation in the sport or physical activity should also be affordable. This means that fees and equipment should be at a reasonable cost, or subsidies and equipment-lending programs should be in place so as not to exclude low-income participants. In the absence of evidence to the contrary, an inference can be drawn that an organization whose sports activities are restricted to a particular sport is, in reality, set up to promote that sport and is consequently not charitable.

F. CONCLUDING COMMENTS

The Draft Policy provides charitable organizations with a significant degree of clarification with respect to CRA's practices and policies regarding sports and charitable registration. The common law and the Supreme Court of Canada's direction in this regard is vague and the Draft Policy fills an important void for organizations involved in sports. Charitable organizations that currently engage in sporting activities should view the final version of the policy to ensure that their activities will be considered charitable by CRA, and organizations seeking charitable registration should ensure that the required rationalization and evidence is provided to support any sporting activities.