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## REGISTRATION OF ETHNOCULTURAL CHARITIES

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ORGANIZATIONS THAT PROVIDE SETTLEMENT SERVICES FOR IMMIGRANTS AND ongoing support for immigrant communities play a vital role in Canadian society. These organizations provide benefits – including assistance with housing, language training, employment preparation, and social services for new immigrants, as well as ongoing programs designed to support disadvantaged communities and eliminate discrimination – that are now recognized as accruing not only to individual immigrants or immigrant communities but also to the public as a whole. Although the common law of charity has not always recognized these activities as charitable, the Canada Revenue Agency (CRA) has taken a more favourable view of them over the past ten years and has provided helpful guidance to organizations seeking registration on this basis.

### REGISTRATION PROCESS

The registration process for organizations seeking to become registered charities under the Income Tax Act (Canada) is thorough. Organizations are required to provide CRA with detailed information regarding their charitable purposes, activities, and operating budget, as well as information about their officials. The CRA Charities Directorate reviews each application for charitable registration to satisfy itself that each applicant meets the legal test for a charity, which requires that the organization have exclusively charitable purposes and conduct exclusively charitable activities. Because the registration stage is often the most extensive involvement CRA has with a charity (outside of an audit), the registration process is designed to be thorough.

Historically, the registration process moved quite slowly, with applications routinely taking between six months and a year to be reviewed, and further time required for follow-up discussions and negotiations with the Charities Directorate. Over the past two years, however, CRA has taken steps to improve the speed with which it processes applications by hiring additional personnel and setting more aggressive service targets. In its 2010 Report to the House of Commons, the Auditor General of Canada noted that CRA had improved and was continuing to improve with regard to its processing of applications.

Thus, organizations seeking registration can now expect their applications to be reviewed more quickly and efficiently. While registration for all but the most straightforward applicants (usually foundations proposing to limit themselves to making grants to qualified donees) still generally requires several months before a decision is reached, the process is appreciably quicker than in the past. In seeking registration, organizations

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should carefully review relevant CRA policies to ensure that their proposed purposes and activities will meet CRA's requirements. This is true of ethnocultural organizations, which have historically faced difficulties in fitting their activities into the legal definition of charity.

#### LEGAL ISSUES FOR ETHNOCULTURAL ORGANIZATIONS

The common law of charity has not always been favourable to the work of ethnocultural organizations. Indeed, early views expressed by courts in the common-law world reflected a decidedly guarded view of the extent to which the support of immigrants would be viewed as a charitable purpose. An Australian court in 1908, for example, considered the charitable status of a bequest and concluded that although the support of immigrants might be charitable, the language of the bequest would "have to be much more guarded than the present one is in point of both mental and physical qualification of the immigrants."

As recently as 1999, in one of the most significant Canadian decisions in the law of charity, a majority of the Supreme Court of Canada could not conclude that the law recognized the provision of employment support services to immigrants as a charitable purpose. While numerous courts had referenced the laudable nature of organizations that provide immigrant support services, *Iacobucci J.* was not satisfied that the limits of "immigrant support" had been adequately well drawn to justify its inclusion as a charitable purpose in its own right.

In a similar vein, the promotion of racial equality and good relations between cultural communities within a country has not always been recognized as a charitable purpose. The common law formerly took the position that such a purpose was political in nature and, therefore, not permitted for a registered charity. Courts took the position that because the promotion of good relations between various communities could be accomplished by a range of methods – including political methods – the promotion of good race relations was viewed as a political purpose rather than a charitable one. Even in *Vancouver Society*, *Iacobucci J.* declined to comment on whether the elimination of prejudice and discrimination may be recognized as a charitable purpose at common law.

Finally, organizations seeking to provide ongoing support services to particular cultural communities faced difficulties in establishing that these services benefited a sufficient segment of the population to qualify as charitable. At the heart of the concept of charity at common law is the notion of public rather than private benefit. Some courts have taken the view that the restriction of services to a particular cultural group lacked the necessary public character to qualify as charitable.

#### CRA'S POLICIES ON ETHNOCULTURAL ORGANIZATIONS

Over the past ten years, CRA has released several documents relevant to (and in many cases aimed at) organizations seeking to provide support for immigrants and immigrant communities in Canada. In policies released in 2005 and 2008, CRA confirms the crucial role that such organizations play in Canadian society and proceeds to outline the bases upon which such organizations can be registered as charities. These policies

clarify CRA's positions on some of the issues above and confirm its interpretation of the requirements for the registration of an ethnocultural organization.

CRA confirms that it will accept a broad range of ethnocultural activities as charitable, including the provision of settlement services (housing, interpretation, language training, employment preparation, etc.) and referral services for ethnocultural communities, helping people from disadvantaged communities overcome social exclusion and isolation, and public education about the language and cultural traditions of an ethnocultural community. CRA has also confirmed that activities intended to eliminate discrimination and/or improve relations between communities is charitable, although it notes that the promotion of multiculturalism as such is not a charitable purpose. CPS-023, CRA's published policy on applicants assisting ethnocultural communities, contains a detailed list of acceptable vs. unacceptable activities. Organizations considering registration should consult this policy to ensure their proposed activities are charitable.

Ethnocultural organizations seeking registration as charities should bear certain issues in mind in the course of applying for registration, as certain types of activities or purposes may raise concerns with CRA when reviewing the application.

First, organizations that propose to limit their services to members of a particular ethnocultural group must bear in the mind the requirement that all charities meet the "public benefit" test. This means that the organization's activities must provide tangible benefits to the public at large or to a sufficient segment of the community. While CRA will accept as charitable organizations those that wish to focus their services on a specific community, it states that there must be a logical connection between the focus and the benefit provided, and that connection needs to be explained in the application for charitable status. Excluding some individuals or parts of the community with the identified need would not be acceptable. Thus, for example, setting up job preparation assistance focusing on ethno-specific communities with similar training needs and barriers to employment would be charitable, as there is a clear link between the organization's focus and the benefit provided. By contrast, providing services to members of one ethno-specific community based on personal affinity alone would not be charitable. In some cases, depending on the extent to which the organization wishes to restrict its services, it may be necessary to provide supporting documentation with the application that substantiates the need to focus services to a specific community (e.g., needs assessment, demographic information about intended beneficiaries, their needs, and the barriers to accessing appropriate services).

Ethnocultural organizations also need to be mindful of the restrictions on political activities. Charities may advocate on behalf of disadvantaged individuals to help them gain access to entitled services and can also speak out on issues related to their charitable purposes. However, charities must ensure that they do not engage in any partisan political activities (i.e., supporting or criticizing specific politicians or political parties). Furthermore, to the extent that a charity encourages the public to take action, such as contacting elected officials, it must limit such activities to no more than 10% of its total resources. The application for registration should not suggest that an organization will exceed these limits.

## CONCLUSION

The legal environment within which ethnocultural organizations may be registered as charities is much improved from earlier times, both in terms of the speed of registration process and the willingness of CRA to accept as charitable activities that assist immigrants and ethnocultural communities. Ethnocultural organizations should consider whether registration is appropriate for them.

## NOTES

- 1 This thoroughness of the registration process was noted recently by the Auditor-General of Canada in the 2010 Fall Report of the Auditor General of Canada to the House of Commons, at chapter 7.16-20.
- 2 *Re Wallace*, [1908] V.L.R. 636 (S.C.) at 640.
- 3 *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*, [1999] 1 S.C.R. 10 at para. 189.
- 4 To be sure, Gonthier J. wrote a strong dissent in which he stated that, in his view, the law recognized that an organization that assists immigrants through the difficult transition into life in a new country is directed towards a charitable purpose. The benefits of such services are not limited to the individual immigrants who receive them directly but are serve the broader public as a whole.
- 5 *In re Strakosch*, [1949] Ch. 529 (C.A.)
- 6 *Vancouver Society*, *supra* para. 187.
- 7 Canada Revenue Agency, CPS-023 *Applicants Assisting Ethnocultural Communities* (June 30, 2005).
- 8 Canada Revenue Agency, CG-003 *Charitable Work and Ethnocultural Groups – Information on registering as a charity* (January 25, 2008).
- 9 In CPS-023, CRA defines an ethnocultural community or group as one “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”.
- 10 Canada Revenue Agency, CPS-021 *Registering Charities that Promote Racial Equality* (September 2, 2003).