

Application for Registration: A Revenue Canada Taxation Perspective

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... Some for reliefe of aged impotent and poore people, some for maintenance of sicke and maymed souldiers and marriners, schooles of learninge, free schooles and schollers in univities, some for repaire of bridges portes havens causwaies churches seabankes and highewaies, some for educacon and pfermente of orphans, some for or towards reliefe stocke or maintenance for howses of correcon, some for mariages of poore maides, some for supportacon ayde and helpe of younge tradesmen, handiecraftesmen, and psons decayed, and others for reliefe or redemption of prisoners or captives, and for aide or ease of any poore inhabitantes concninge paymente of fifteenes, settinge out of souldiers and other taxes . . .¹

While today's charitable funds may be directed more towards drug-addiction research than the "mariages of poore maides," this 385-year-old preamble to the Statute of Elizabeth still forms the basis of the law relating to charity in a number of Commonwealth countries, including Canada. However, in the interval we have developed "luxuriant case law and sparse statutory provisions"² on the topic.

Today, Canadian charities must succeed in meeting what appear to be the imposing statutory requirements of the *Income Tax Act* in order to qualify for tax exemptions, not only for themselves, but for the corporate and individual donors whose contributions, after all, keep the wheels of charity in motion.

The *Act* is quite brief on the subject of qualification for registration: Section 149.1 details the administrative requirements for maintaining registration, and paragraph 149(1)(f) affirms tax exemption for registered charities. The *Act*, however, does not provide a legal working definition of a registered charity³ except to say that it is a charitable organization or a charitable foundation that is resident in Canada and was either created or established in Canada, and that applied for, and was granted, registration as a charity by the Minister. This definition extends to a branch, section, parish, congregation or other division of such a charity that receives donations on its own behalf.⁴

The *Act* further provides definitions of a charitable organization and a charitable foundation. Briefly, the former is an organization, all the resources of which are devoted to charitable activities carried on by the organization itself. The latter is a corporation or trust, constituted and operated exclusively for charitable purposes. It is essentially a funding vehicle.⁵

It is, however, the absence of definitions of charitable purposes and charitable activities in the *Act* that often leads to discussion between Revenue Canada

Taxation and applicants for registered charitable status. With no other statutory definitions of these terms, which are among the most critical in charity law and its administration, the Department's charities examiners rely on the meanings established at common law. After many years of judicial reference to the Preamble to the Statute of Elizabeth as a matter of convenience, the practice of referring to it evolved so that only those purposes enumerated in the Preamble, or analogous thereto, could be held by the courts to be charitable. This accounts for the dependence in the 20th century on common law which is drawn from 17th century legislation which, it is said, was based on the 14th century poem *The Vision of Piers Plowman*.⁶

Granting or refusing registration in no way implies acceptance or rejection of the value or worthiness of activities undertaken by the applicant organization. Registration is granted to organizations whose purposes, activities and proposed activities are considered to be charitable within the common-law sense of the term, and which have shown that they intend to fulfil the requirements of the *Income Tax Act*.⁷

In determining whether an applicant organization is constituted and operated for charitable purposes as required both by statutory and common law, charities examiners refer to the four classes of charity as categorized by Lord Macnaghten in *Income Tax Special Purposes Commissioners v. Pemsel*.⁸ It is necessary, though not sufficient in itself, that a charity's purposes should fall within at least one of these classes.⁹ An element of public benefit must, to some extent, exist, demonstrated by conferring tangible benefit upon a class of persons wide enough to constitute the public or a segment thereof. Furthermore, the purposes must not contain an overt element of self help, involve profit distribution, or be political in nature.¹⁰

The purposes of the organization must also be "exclusively" charitable. Purposes should not be written in such a vague or broad manner that they permit non-charitable purposes or activities. "Benevolent"¹¹ and "philanthropic"¹² are among the terms that describe purposes which may be worthwhile and admirable but not necessarily charitable at law. The words must be clear and certain; if they are not, the purposes can be assumed to include purposes which may not be charitable, and the organization may fail the "exclusively" charitable test, regardless of every other qualification it may present.

These are the main points of common law to which charities examiners refer when dealing with applications for registered charitable status. The other, more administrative, requirements for purposes of the *Income Tax Act* are listed on Form T2050 "Canadian Charities and Canadian Amateur Athletic Association Application for Registration." The local and toll-free telephone numbers for charities examiners in Revenue Canada Taxation's head office in Ottawa are listed near the top of the form.

Revenue Canada Taxation's Requirements

Form T2050 is a covering form to be used by a corporation, trust, organization

or association when applying for registration as a charity or as a Canadian amateur athletic association under the *Income Tax Act*. Individuals cannot be registered as charities.

Form T2050 lists the basic documentation required by the charities examiners of Revenue Canada Taxation to determine the eligibility of applicants under these two categories. Other administrative information is to be submitted on T2050 itself.

The name of the applicant on Form T2050 must be identical to its name as it appears in its incorporating documents or, in the case of an unincorporated group, its internal governing documents. The T2050 will usually be amended to agree with such documents, and the applicant advised. The mailing address of the applicant is required since it is to this address that annual information returns will be mailed if the application is approved. The address at which books and records are physically kept must be provided for audit purposes. If this address is a rural one, the legal address is required. Post office box numbers are not acceptable.

Where the applicant has a religious affiliation, the denomination should be indicated in the appropriate space on the form.

Applicants must indicate the fiscal period end for the organization. This must be consistent with the fiscal period end which appears in the organization's by-laws or other internal governing documents. If there is a discrepancy between the two, the applicant will be asked to clarify. An annual information tax return will be issued to a registered charity soon after the anniversary of this date.

Part I of the Particulars section of the form relates both to applicants for registered charitable status and to applicants for status as a registered Canadian amateur athletic association. It asks for documentation supporting the establishment of the organization. Part II, which relates only to applicants for registered charitable status, asks for information which will help determine operational guidelines for the organization if it is registered.

Governing Documents

Particular 1 asks for certified copies of the documents under which the organization was established. Organizations incorporated under statute must supply a certified copy of the letters patent or certificate of incorporation bearing the seal, signature, or stamp of the representative of the incorporating authority. Additionally, a copy of the application for incorporation must accompany Form T2050. This copy must bear evidence, such as a stamp, that it was received by the incorporating authority in support of the organization's application for incorporation. Such evidence varies from authority to authority and statute to statute. Submissions are verified by the charities examiners by studying the various statutes to ensure that no relevant documentation has been overlooked by the applicant.

Few, if any, incorporating authorities require applicants to be established and operated exclusively for charitable purposes. The standard objects set out by the incorporating authority in their applications for incorporation may allow the applicant to be established, for example, for beneficial or philanthropic purposes, which we have seen, are not exclusively charitable at law, or to carry on activities which are not exclusively charitable. Where its ultimate aim is to be registered as a charity under the *Income Tax Act*, an applicant for incorporation under a statute permitting non-charitable purposes and activities must amend the statute's standard objects so that it is incorporated only under those purposes which are exclusively charitable at law.

Statement of Activities

Particular 2 asks for a statement revealing the full details of activities or programs to be undertaken by the applicant in furtherance of its objects. In other words, the applicant must indicate by this statement of activities how it proposes to achieve each of its stated objects.

This statement is, in some ways, the most revealing document in the application for registration, since it reflects the applicant's own interpretation of its goals and provides more details about its intentions. Any decision will be held in abeyance until such a statement is submitted by the applicant and reviewed thoroughly by the examiners. Clear and concisely articulated charitable purposes must be shown to be achieved by equally charitable activities for the application to be successful. The privileges of exemption from income tax depend, not only on what an applicant says it does, but on what it actually does or intends to do.¹³

Although the *Income Tax Act* does not define charitable activities, some indication is given as to what the term "charitable activities" includes. The *Act* itself is concerned with charitable activities to the extent that a charity's resources are devoted to charitable activities carried on by the charity itself or gifted to qualified donees as listed at paragraphs 110(1)(a) and (b) of the *Act*.

Examiners also accept as charitable those mundane, day-to-day activities which can be expected to be carried on during the normal operation of any organization formed to achieve a charitable goal, provided they occur in reasonable proportion to the charitable programs.

Financial Statements

An applicant's activities are reflected in its financial statements, requested at Particular 3. Because a charity must devote its resources only to its own activities or to gifts to qualified donees, examiners will review actual or proposed expenditures to ensure that this requirement of the *Act* is met. If an amount is paid to an individual, for example, the reason for the payment should be indicated. If that individual represents another qualified donee, the full name of the donee and its registration number, if it is a registered charity,

should be specified. Applicants that have not been in operation for an entire year should submit, as indicated on T2050, a summary of anticipated sources and amounts of revenue and an estimate of expenditures for the first fiscal year.

The information found in financial statements will assist in determining or confirming the successful applicant's designation under the *Act*. The percentage of receipted income devoted to an organization's own charitable activities will figure in the determination of whether the successful applicant qualifies as a charitable organization or as a charitable foundation. The sources of income provide some indication of whether a foundation's designation should be as "public" or "private".

Particular 4 asks for a list of the directing officers.

Incorporation

Applicants owning, or intending to own, real property (information requested in Particular 5) should incorporate. The alternative is to have the property held by a Canadian municipality, a parent body that is a registered charity, or held in trust for the applicant under the provisions of a provincial statute. Incorporated applicants must submit the documentation mentioned in the discussion of Particular 1.

Organization or Foundation?

Part II of the Particulars is required only of an applicant for registration as a charity, and aims to determine the successful applicant's designation as a charitable organization or a charitable foundation.

Generally speaking, a charitable organization carries on its own activities in furtherance of its own purposes. It is responsible for administering a charitable program and arranges for the conduct of its affairs through its own employees, agents, or other representatives. The *Act* permits these activities to include: carrying on a related business, donation of up to half of the organization's income to qualified donees, and devotion of part of its resources to non-partisan political activities which are ancillary and incidental to the charity's charitable purposes and activities. In any taxation year, a charitable organization must devote, to these activities, at least 80 per cent of its preceding year's income for which receipts were issued.

A charitable foundation, on the other hand, usually acts in a funding capacity, collecting and raising money, more than 50 per cent of which it donates to other registered charities or qualified donees. Public foundations are those charitable foundations whose directing officers deal with each other at arm's length, and which are funded by varied and independent sources.

Private foundations are characterized by the degree to which they are privately controlled or funded.

Form T2050 asks the applicant to make the designation, but provides for those who are unsure of the terms. Charities examiners will verify the applicant's choice and will advise successful applicants where a change in designation is appropriate.

The certification at the bottom of the form is to be completed by a directing officer of the applicant organization, not by the organization's legal or financial representative.

Consistency Required

Before submitting the T2050, the applicant's representatives should check for consistency in the documentation. For example, do all references to the fiscal year-end match? Are the governing documents and the certification of the application dated within a reasonable period of time? Does the name of the organization on the T2050 match the name in the governing documents? Are the constitution, by-laws and statement of objectives of the internal governing documents consistent with those in the incorporating documents? Discrepancies in any of these areas may cause a delay in the examination and processing of an application.

An applicant's governing documents must also include a non-profit clause. A dissolution clause and a provision for reimbursement of out-of-pocket expenses, including a statement to the effect that no remuneration will be paid to directors for acting in that capacity should also be present in the governing documents.

Having met the Department's requirements, the approved applicant will receive its registration number. Thus empowered, a registered charity can issue receipts for donations made in support of its causes and enjoy tax exemption on its income. Both privileges remain in effect until the registered charity requests revocation of registration, or steps outside the operational requirements of maintaining registered charitable status. These requirements are outlined in Revenue Canada Taxation's *Information Circular 80-10R*. Other circulars and interpretation bulletins on the various aspects of operating a registered charity are available from the Charities Division, Registration Directorate, Revenue Canada Taxation, Ottawa, Ontario, K1A 0L8, or from a district taxation office.

FOOTNOTES

1. In the Preamble to 43 Eliz. I, c.4, cited in D.G. Cracknell, *Law Relating to Charities*, second edition (London: Oyez Longman Publishing Limited, 1983), p. 239.
2. Michael Chesterman, *Charities, Trusts and Social Welfare* (London: Weidenfeld and Nicolson, 1979), p. 135.
3. *Ibid.*, p.9 "... no satisfactory and precise definition of charity in its legal sense has ever been found. The dictum of Viscount Simonds in *I.R. Comrs. v. Baddeley* is still

true: 'no comprehensive definition of legal charity has been given either by the legislature or in judicial utterance.'”

4. *Income Tax Act*, paragraph 110(8)(c).
5. *Income Tax Act*, paragraphs 149.1(1)(b), and (a).
6. William Langland, *The Vision of William concerning Piers the Plowman*, the Crowley Text (London: Oxford University Press, 1964), p. 112.

Ac vnder his secret seel treuthe sent hem a lettre,
That pey shulde bugge boldely pat hem best liked,
And sithenes selle it agein and saue pe wynny [n]ge,
And wikked wayes wigtllich hem amende;
And do bote to brugges pat to-broke were,
Marien maydenes or maken hem nonnes;
Pore peple and prisounes fynden hem here fode,
And sette scoleres to scole or to somme other craftes;
Releue Religioun and renten hem bettere;

7. *Registering Your Charity*, Revenue Canada Taxation, 1985, p.1.
8. [1891] A.C. 531.
9. Chesterman, *supra*, footnote 2, p. 136.
10. *Ibid.*, p. 135.
11. *Morice v. Bishop of Durham* (1805), [1944] A.C. 361, *ibid.*, p. 189.
12. *Re Tetley* [1941] Ch.308, *ibid.*
13. *Ibid.*, p. 324.