

COULD YOUR ASSOCIATION QUALIFY AS A CHARITY FOR TAX PURPOSES?



Most people are aware that our tax laws provide certain benefits to organizations that are registered as charities, as well as to persons who donate to these registered charities. In this column my colleague Alicia Hussey mentioned that in order to be registered as a charity, the Income Tax Commissioner must be satisfied, upon a review of the association's Articles, that the organization is set up exclusively for charitable purposes. We now examine in more detail what is meant by "charitable purposes".

The Income Tax Act provides an exemption from tax in respect of the income of any association that the Commissioner, in his discretion, determines is organized and operated exclusively

for "religious, charitable, scientific, or educational purposes, no part of the net income of which enures to the benefit of any private stockholder or individual."

Normally, when we think of charitable organizations, we only think of institutions aimed at helping the poor, the disabled, or otherwise the less fortunate. Over the years, the words "charitable purposes" have been considered and defined in a number of cases and a much broader definition than what one might expect has been ascribed to the term.

In Commonwealth countries, it is now accepted that the legal concept of charity has four divisions: (1) the relief of poverty, (2) the advancement of education, (3), the advancement of religion and (4) for purposes beneficial to the community not falling under any of the other heads. It is the fourth division – benefit to the community, that is of particular interest.

Benefit to the Community

What constitutes benefit to the community is clearly a subjective matter and cannot easily be defined. The case law indicates that there are two main considerations. Firstly, the purposes should be of public utility. Public utility will be assumed in certain cases, such as those involving public health, but in all other cases, the organization applying for charitable status should be prepared to prove that the public does, or is likely to benefit from the organization's work.

Secondly, the purposes should be directly beneficial to the community as a whole, or an appreciably important class of the community, as opposed to a small class of the society or the members of the association itself. To illustrate, a Foundation established to give scholarships to children of police officers killed in the line of duty is likely to qualify as a charity but if the scholarships were to be given to children of the donors to the

Foundation, there wouldn't be sufficient public benefit for the Foundation to qualify for charitable status.

Professional Associations

In general, it is difficult for professional bodies or associations to qualify for charitable status since their objects usually provide for the advancement of the profession and its members as opposed to the public. The situation is different for professions that themselves advance religious, scientific, or educational purposes. Thus, an association of engineers established primarily to advance mechanical science ought to qualify for charitable status on the basis of the scientific purpose, provided the objective of providing benefits to its members is subsidiary or incidental to the primary scientific purpose. The Court has found that a nursing college whose objective was to "promote the advancement of nursing as a profession" was properly a charity since the college's activities were geared towards raising the standard of nursing (which would benefit the wider community), as opposed to promoting the interests of nurses as an end in itself. This case also illustrated the need for careful thought and guidance when drafting the objects for an association. The Court commented that had the words "as a profession" not been included in the Articles, there would have been no doubt that the objects were exclusively charitable.

Other examples of what has been held to be charitable purposes include the publication and dissemination of law reports, the promotion of agriculture, and the reduction of unemployment.

There are probably many local organizations that would qualify for charitable status under the Income Tax Act if they were aware of the breadth of the legal interpretation of "charitable purposes". Others organizations would be advised to restructure their operations so that the charitable objectives are exclusively handled by a not-for-profit entity and the non-charitable objectives are passed to an affiliated entity.

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