

CANADIAN Not-For-Profit News

THE INSIDER'S EDGE ON CURRENT DEVELOPMENTS IN CANADIAN NON-PROFIT ORGANIZATIONS

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Editor: Arthur B.C. Drache, C.M., Q.C.

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To Each According to His Need

CRA Recognizes Promotion of Volunteerism

The CRA has issued a new policy statement¹ which states that promoting volunteerism in the community at large can be considered a charitable purpose. This was particularly interesting to us as we almost fought a case in the Federal Court of Appeal on this issue seven or eight years ago. Just weeks before the case was to be heard, CRA backed down and registered our client whose sole purpose was the matching of volunteers with organizations that needed people.

The reference to "the community at large" is of specific interest because it seems to obliquely deal with one of the CRA's problems back then, namely that the volunteers in question might end up with non-profit (as opposed to charitable) organizations or even commercial organizations,² though the document seems to hedge on this issue.

The key part of the document in our view is the guidance given.

"7. An applicant constituted for the purpose of promoting volunteerism in the community-at-large through broad-based activities (as described below), may

be eligible for registration. To be registered under this policy, the applicant has to satisfy the following criteria:

a. Its formal purposes must clearly state that it is promoting volunteerism generally for the benefit of the community-at-large (for example, the applicant is created to benefit the community by providing and strengthening volunteerism in the community-at-large). Acceptable wording might be:

- to encourage Canadians to volunteer;
- to improve the capacity of organizations to involve volunteers;
- to increase the public's awareness and support for voluntarism and the voluntary sector;
- to promote public participation with volunteer and community organizations with an aim to foster good citizenship and encourage healthy communities; or
- to provide courses, seminars, workshops, and other educational programs of use to volunteers.

b. It must accomplish its purpose through broad-based activities, which may or may not be set out in the objects. Broad-based activities means a range of activities of interest generally to volunteers and the community-

¹ CPS-025.

² Think of volunteers working for the Eaton's Christmas parade.



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at-large, and should not be limited merely to funding. Types of activities include:

- increasing public awareness and support for volunteerism through, for example, news releases and community newsletters;
- encouraging residents to volunteer in the social development and social services of their community;
- providing a means and method for recruiting and referring volunteers; and
- providing a community information resource on volunteering.

The applicant may also provide training, but the training should be of general interest to volunteers-at-large, such as a board member development program that helps potential volunteers understand the duties and responsibilities of serving on a board, as opposed to training that is more specific like sport coaching. It is expected that successful applicants will have a number of activities and will not, for example, only provide a referral service. Further, the simple recruitment and/or involvement of

volunteers in the implementation of an organization's own charitable programs, although generally an acceptable activity, is not considered promoting volunteerism.

c. The applicant has to clearly promote volunteerism to the community-at-large through broad-based activities. It cannot support only one organization or one particular type of organization that reflects a single interest, unless the beneficiaries are registered charities or otherwise qualified donees. For example, an organization that promotes volunteer support for public hospitals is not promoting volunteerism generally, but it could otherwise qualify for registration. On the other hand, an organization that promotes volunteerism primarily in community sports programs, such as minor hockey or soccer, could not be registered under this policy because promoting sports is not charitable at law.

d. The applicant can provide services only to qualified donees and non-prof-

it organizations as described in paragraph 149(1)(l) of the Income Tax Act. The applicant's objects do not have to state this restriction – but if they do not, the CRA will make sure that the applicant understands the limitation, and the registration letter will specifically outline the restriction. While it is not absolutely necessary for CRA officers to establish that the beneficiaries are in fact non-profit organizations, the CRA officer will review the list of beneficiaries or potential beneficiaries to determine whether these include for profit groups. For example, the officer can expect to see amateur sports groups, youth organizations, theatre or choral societies but not local businesses or business associations. The applicant must have a mechanism in place that demonstrates it is exercising due diligence in ascertaining that beneficiaries are non-profit organizations. If the organization provides services to political parties or their affiliates, they cannot be provided in a partisan manner and must be equally available to all political parties.

e. If the applicant funds any organizations, these must be qualified donees.”

The document will be helpful, no doubt, but in fact the CRA has been registering similar organizations for many, many years. This may be an attempt to set guidelines for their own staff, who sometimes seem woefully unaware of what the law is . . . or don't give a hoot.

Rain Men

CRA Refines Policy on Umbrella Organizations

On May 1, the CRA issued a document entitled Guidelines for the [Registration of Umbrella Organizations and Title Holding Organizations](#).¹ If that subject sounds familiar, it may be because the subject has been dealt with before. The Directorate's Policy Statement CPS-008

¹ CPS 026.

Organizations Established to Assist Other Charities, dated January 12, 1996, is withdrawn and replaced by this policy. The Directorate's Policy Statement CPS-009 *Holding of Property for Charities* is withdrawn and replaced by this policy.

The revised policy statement outlines the Charities Directorate's policy on registering organizations that support the charitable sector by promoting the efficiency and/or effectiveness of registered charities, or that advance a charitable purpose by working with and through member groups. In this document, these organizations are described under the general term: Umbrella Organizations. Registered charities that hold title to property on behalf of other registered charities are also outlined in this policy, given their similarities as "enabling" organizations.

"It is the Directorate's position that an organization does not have to work directly with individual charitable beneficiaries in order to be considered to be advancing a charitable purpose. Within the boundaries described by this policy, the Directorate accepts that Umbrella Organizations can advance a charitable purpose by directing their activities at improving and enhancing the charitable activities of other generally community-level organizations. In fact, the establishment of a coordinating body is often necessary and integral to the success of a program on a larger scale. The work of such organizations is charitable in so far as it contributes to an improvement in the quality of service to the public, as well as increasing the level of service available to the public.

However, while this policy contemplates arrangements under which a registered charity may work with and through non-charitable entities, the existing restrictions, as defined by the Act and common law, still apply. Registered charities are prohibited from:

- gifting their resources to organizations that are not qualified donees; and
- operating for, or using their resources for, the private benefit of any person or organization (other than a qualified donee).

As a result, nothing in this policy should be construed as to allow registered charities to provide funding for, or to otherwise more than incidentally confer benefits on, organizations that are not qualified donees" (CRA emphasis in the original).

The document is lengthy and fairly detailed. Like so many such documents from the CRA, it can be best understood when read in the context of some familiar fact situation. Anybody who feels that an organization he or she is involved with or advises falls under the general rubric of an umbrella organization should read the detailed document which can be found on the Charities Directorate website.

Some Ground Gained

CRA Consultation Paper on Sports

The Charities Directorate has been gestating a consultation paper on whether they will register organizations promoting amateur sport for many, many years. The most recent reason for the delay in publishing its position was the fact that the AYSA case was wending its way through the courts, ultimately having been decided by the Supreme Court of Canada last year.¹

In a nutshell, the Supreme Court came to a predictable decision, holding that the promotion of amateur sport per se was not charitable, but noting that if sport was part of a larger clearly charitable purpose, then it would be acceptable. For decades, for example, the fact that a school has a sports programme and spends money on it does not put the charitable status of the school in jeopardy. This has pretty much always been the position in both the U.K. and in Canada.

¹ [A.Y.S.A Amateur Youth Soccer Association v. Canada \(Revenue Agency\)](#): "The trend of the cases supports the proposition that sport, if ancillary to another recognized charitable purpose such as education, can be charitable, but not sport in itself." Justice Rothstein, for the majority decision, at paragraph 40.

The CRA has now come out with a consultation paper which, in 48 paragraphs, sets out this position. Essentially the paper consists of examples of what will or will not be acceptable.

We were, however, happily surprised with one particular position, which seems broader than the administrative position taken up to this time.

"37. Organizations that provide facilities to the community-at-large for physical recreation can be registered as charities. An organization established to provide or promote access to sports/recreational facilities or equipment may qualify for registration provided that such facilities are open to the general public and not limited to specific individuals, organizations, or teams. Examples include community centres with facilities such as gyms, squash courts, and swimming pools, or recreation areas with space allocated for sports such as baseball, soccer, hiking, or cross-country skiing.

38. Where the primary purpose is to provide a facility, it would be acceptable for the facility to also organize sports as an incidental activity. Further details will be available in a separate policy on community centres, currently under development."

The CRA has regularly taken a much more restrictive view of such facilities and often fundraising was done through municipalities to get around the problem of using a separate registered charity.

The paper is workmanlike and reasonable, though as we have said in the context of other consultation papers, it is best to look at the proposals against specific fact situations to see whether there may be gaps or problems.

Comments are to be received by June 30. Send all replies in writing to the address or fax below, or by email to consultation-policy-politique@cra-arc.gc.ca

The mailing address is:

*Charities Directorate, CRA
Ottawa ON K1A 0L5
Fax: 613-948-1320*

Life and Times

Arthur Kroeger

A long-time fixture in the federal bureaucracy has died at the age of 76. Arthur Kroeger, whose career spanned six prime ministers, joined the department of Foreign Affairs in 1958 when John Diefenbaker was prime minister and became a deputy minister of the department of Indian and Northern Affairs in 1975. He retired in 1992.

Kroeger went on to become Chancellor of Ottawa's Carleton University in 1993 and held that position for the next decade.

Prime Minister Stephen Harper issued a statement calling Kroeger a "legendary public servant" whose career was "marked by strong leadership, wise management and a sterling dedication to the country."

He was one of the last great Canadian mandarins, a public servant extraordinaire whose "high ethical compass" and professionalism was a symbol of the plain-speaking, independent and non-partisan public servant.

While there have been many words written about Kroeger, who was a truly great civil servant, we could not help but note that there was nothing about the fact that he was a key player on the Panel on Accountability in the Voluntary Sector. . .the group of high-profile Canadians who authored the seminal work, "Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector." If the title doesn't conjure up anything, the document is better known under the name of its Chair, "The Broadbent Report."

I remember clearly meeting with the panel to discuss my views in 1998 and was happy that some of those thoughts were encompassed in the Report's recommendations. I clearly recall Kroeger's role in the questioning, the senior and experienced bureaucrat amongst former politicians and private sector people.

That Report triggered a huge amount of activity in terms of sectoral study and it generated promises of change. Unfortunately, a review of the report nine years later shows that actions fell considerably short of the recommendations.

Kroeger played a significant role in Canadian life and his frank and outspoken views will be missed, as will the man himself.

Donations may be made to the Arthur Kroeger Scholarship Fund at Carleton. This can be done by internet by accessing www.carleton.ca under "Giving to Carleton" and stipulating the use of the donation.

See the World

Prescribed Universities and Information for Educational Institutions Outside Canada

by Amanda Stacey*

The Canada Revenue Agency ("CRA") recently released two new publications. In RC191(E) "Donations to Prescribed Universities Outside Canada", the CRA outlines its policy regarding eligibility for a foreign educational institution to become a qualified donee as a result of being listed as a prescribed university listed on Schedule VIII of the *Income Tax Act* Regulations and how a foreign educational institution can obtain prescribed status. In a second publication, RC190(E) "Information for Educational Institutions Outside Canada", the CRA sets out information for administrators and staff members of a university, college or other accredited post-secondary educational institution outside Canada who are responsible for certifying tax credit forms for Canadian students with respect to qualifying education and tuition costs.

Donations to Prescribed Universities outside Canada

The information provided in this publication is in line with CRA's current policy on obtaining prescribed status. To be considered for prescribed status, a foreign educational institution must meet all of the following conditions:

- it maintains an academic entrance requirement of at least secondary school matriculation standing;
- it is organized for teaching, study and research in the higher branches of learning;
- it is empowered, in its own right, to confer degrees of at least the baccalaureate level (Bachelor or equivalent), according to academic standards and statutory definitions prevailing in the country in which the university is situated; and
- it ordinarily includes Canadian students in the institution's student body.

To obtain prescribed status, an official or authorized representative of the institution must send a written request to the CRA that includes the following:

- a printed copy of the educational institution's latest calendar, syllabus and/or catalogue that contains course curricula;
- a photocopy of documents issued by the appropriate educational authority in the country of residence that confirms that the institution is one of higher learning empowered to confer degrees, in its own right, of at least the baccalaureate level; and
- the number of Canadian students that have attended the institution over a minimum ten-year period and a sampling of information such as their names, address, date of birth, Canadian social insurance number (if available), years attended and the type of degree programs.

The CRA recommends educational institutions for prescribed status each year. When Schedule VIII is amended, a notice is posted in the *Canada Gazette*. When a foreign university is added to Schedule VIII, it is granted prescribed sta-

tus retroactive to January 1 of the year in which the application was received.

As an educational institution outside Canada that has been recommended by the CRA for prescribed status is recognized by the CRA as a "university outside Canada", students of that institution may be eligible to claim Canadian tuition, education and textbook tax credits if they meet the other general conditions.

Information for Educational Institutions Outside Canada

This publication outlines information for foreign educational institutions that are required to complete the following forms for Canadian students attending their institution:

- TL11A - Tuition, Education and Textbook Amounts Certificate - University Outside Canada);
- TL11C - Tuition, Education and Textbook Amounts Certificate - Commuter to the United States; and
- TL11D (Tuition Fees Certificate - Educational Institution's Outside Canada for a Deemed Resident of Canada).

It should be noted that these forms are used to report information for a calendar year period from January 1 to December 31 and not for an academic year. Institutions are asked to issue these forms by the last day of February of the following year to give students time to file their Canadian tax return by April 30th.

With respect to Form TL11A, the CRA will recognize an educational institution as a "university outside Canada" if it meets the first three conditions described above with respect to obtained Schedule VIII prescribed status. It should be noted that recent caselaw has held that students studying at foreign universities via correspondence may be considered to be in full-time attendance at the university and thus entitled to claim tuition tax credits.

Foreign educational institutions use these forms to certify eligible tuition fees paid in respect of qualifying courses taken in the calendar year and the number

of eligible months the student was enrolled in courses that qualify for the full-time or part-time education amount. A student calculates the education amount and textbook amount on a Canadian income tax return based on the number of months that a foreign institution certifies that the student qualifies for the full-time or part-time educational amount. Although the textbook amount is designed to help offset the cost of textbooks, it is not based on the actual cost of textbooks and under no circumstances should the cost of textbooks be added or shown as eligible tuition fees paid to an educational institution outside Canada. This publication also contains an Appendix that contains helpful tables showing the differences between the forms

**Amanda Stacey is an Associate with Miller Thomson LLP in its Toronto office. She can be reached by phone at 416.595.8169 or by e-mail at astacey@millerthomson.com. This article first appeared in the April issue of Miller Thomson's Charity and Non-Profit Newsletter.*

Editor's Note: After this article was written, a CRA ruling which touches on a related matter was published which we think readers will find of interest.

Q. "The definition of a "qualified donee" in subsection 149.1(1) includes the donee described in subparagraph 110.1(1)(a)(vi) and paragraph (f) of the definition "total charitable gifts" in subsection 118.1(1), which is "a university outside Canada that is prescribed to be a university the student body of which ordinarily includes students from Canada." Section 3503 of the Regulations provides that the universities outside Canada named in Schedule VIII are prescribed for this purpose.

In determining whether an institution should be recommended for prescribed status and, accordingly, whether the above requirement that the student body ordinarily include students from Canada is met, does the CRA:

- i) include Canadians who enrol in distance learning programs and remain in Canada; and

- ii) consider a student's citizenship, ordinary residence for immigration law purposes, residence under the Income Tax Act or some other criteria?

A. As the Income Tax Act does not define the term "student body", we must look to the ordinary usage of these words. Accordingly, we would accept what is normally a university's description of who is included in its student body, which includes students that enrol in distance learning programs.

With regard to the determination of whether a student is "from Canada", in our view, a student must be resident in Canada for purposes of the Income Tax Act to qualify for this inclusion."

One Plus One

Canada Will Double Burma Aid Donations within Limits

Canadians who donate money to humanitarian agencies providing relief from natural disasters in Burma and China will have their dollars matched by the federal government, International Co-operation Minister Bev Oda announced in mid-May.

There will be a cap on individual donations and the matching will be limited for a certain period. "We will match the private contributions to organizations that are able to do work in Burma," Oda told reporters. Oda had earlier promised \$2 million in aid to Burma, also known as Myanmar, devastated by the cyclone that the UN and Red Cross estimates could leave as many as 100,000 people dead.

Unlike the situation at the time of the South Asian tsunami, where donations could be made to a number of Canadian organizations who worked in the area, this time around it appears that only donations to the Red Cross will qualify. . . presumably because no other Cana-

dian organizations have much access to Burma.

Canadians wishing to make a financial donation may give online at www.redcross.ca, call 1-800-418-1111 or contact their local Canadian Red Cross office. The 24-hour toll-free line accepts Visa, MasterCard and American Express. Cheques should be made payable to the Canadian Red Cross, earmarked either "Myanmar Cyclone" or "China Earthquake" and mailed to 5700 Cancross Court, Mississauga, Ont., L5R 3E9.

Funding agencies in Burma will help Ottawa circumvent resistance from the ruling junta, which has not been co-operating with foreign relief efforts.

"Our government will be there when the need is there, but most importantly (we will) make sure that whatever aid that we provide is going to actually get to the victims and their families," Oda said.

It may be that donations to other Canadian organizations could qualify, but at the time we hit our publication deadline, only the Red Cross has been officially designated.

Lend Me Your Ear

Imagine Canada Signs on Volunteer Lobbyists

We tend not to think of charities and non-profits as having lobbyists. Not only do some organizations use lobbyists to get their points across to the federal government, but the organizations must, under certain circumstances, register under the federal *Lobbyist Registration Act*.¹

When it comes to political activity, charities can be subject to at least three sets of rules. Most are aware of the political activities rules under the *Income Tax Act*. But when a federal election is called, charities and non-profits must comply

with the "third party" advertising rules. And then, for some, there may be a requirement to register under the lobbying rules.

What brought this to mind recently was a release we received from Imagine Canada, the umbrella group which represents many charities in Canada. It has recruited some high-profile volunteers to lobby the Prime Minister's Office on its campaign for a national charities strategy.

High-profile Conservative lobbyists Geoff Norquay, of Earncliffe Strategy Group, and Ken Boessenkool, of Hill and Knowlton, are volunteering for Imagine Canada as it targets political parties for help for the charitable and non-profit sector. Because they are volunteers, we believe that the *Lobbyist Registration Act* does not apply though, as we say, the matter is hardly a secret given the press release.

Mr. Norquay, who it is said meets frequently with Prime Minister Stephen Harper, is going to go to bat for Imagine Canada on its platform, and with Mr. Boessenkool, intends to meet with Mr. Harper to discuss the issue.

"Ken and Geoff are committed to meeting with Mr. Harper and the Prime Minister's Office to try and promote the ideas into the Conservative platform," said Teri Kirk, vice-president of government relations and public policy at Imagine Canada and CEO of the lobbying firm CentreBlock Government Relations and Public Affairs.

Both Mr. Boessenkool and Mr. Norquay have played top roles in Mr. Harper's national election campaigns and remain close to the PMO. Indeed, we had some close dealing with Norquay going back to the days when the Tories were in opposition and Pierre Trudeau was Prime Minister.

The Imagine Canada's policy document, circulated to the organization's board members this month, will be distributed to political parties and MPs next month in advance of the next federal election campaign (it says "federal election

2008/09" at the top). The document calls for a national charities strategy, including tax incentives, streamlining grants and contributions agreements, and facilitating new public and private financing arrangements for charities and non-profits.

The document also recommends that Ottawa's "new emphasis on accountability does not unduly mute" non-profits, saying that the government has put in place regulatory and funding constraints that have created a "chill" on "public policy dialogue" with the government (i.e. lobbying); that the government has cut funding for non-profit advocacy; and that national organizations are "constrained" by new rules around government consultations and lobbying.

Ms. Kirk said that Imagine Canada has also recruited Catherine McKenney, formerly a staffer in NDP MP Paul Dewar's office, as a volunteer who will lobby the NDP. Ms. Kirk will help lead the lobbying effort on the Liberals, targeting the office of Liberal Leader Stéphane Dion, as well as high-profile party members such as Deputy Leader Michael Ignatieff, Martha Hall Findlay and former Liberal leadership candidate Gerard Kennedy.

It is a good thing these are volunteers, given the fact that Imagine Canada has continuing financing problems. It had just received a grant for operations from the Muttart Foundation of \$200,000. As we noted a couple of issues back, Imagine Canada is searching for a new CEO and Muttart also hopes to work with other funders to ensure a solid financial base as a new CEO takes office.

A lot of the details can be found at the Imagine Canada website at http://www.imaginecanada.ca/files/en/publicaffairs/the_national_sector_task_force_on_election_readiness_20080331.pdf

Other charities which are involved or may be involved in lobbying should familiarize themselves with the *Lobbyist Registration Act* provisions. A couple of the Q and A from the site of the registrar of lobbyists should be of interest.

¹ Several provinces have analogous registration requirements.

“1. Do all employees of the organization who have contacts with the federal government have to be named in the registration form?”

The officer responsible for filing returns must list in the registration the names of those employees who perform lobbying activities. The registration should not be used to list the names of employees who do not lobby as defined under the Act.

2. The activities on which my organization lobbies remain the same from year to year. Do I have to file a new registration form every six months?

No, not a new registration but a renewal of the registration. The Act requires the officer responsible for filing returns to file a registration disclosing all lobbying activities for the previous six months and the planned activities for the next six months.

3. My organization does not lobby the federal government on a continuing basis but it does occasionally lobby the federal government on short-term projects. Does the officer responsible for filing returns on behalf of my organization have to register for this?

If the lobbying activity involves work that would be considered a significant part of the duties of one employee (20% or more over a 6-month period or if it reaches this threshold during any month in that period), the officer responsible for filing returns on behalf of the organization must file an in-house organization lobbyists registration within two months of the beginning of the lobbying project. Once the project is completed and the organization's employees stop or modify their lobbying activities, the officer responsible for filing returns must file an amendment within 30 days advising the Registrar of the fact that employees have modified or ceased their lobbying activities.

4. On my own time, I am an active member of an organization that occasionally lobbies the federal government. I am not an employee of the organization but sometimes I get involved in the lobbying activities. Do I have to register?

No. As long as you lobby on a volunteer basis - i.e. not paid - you do not have to register. If the organization begins to pay you for your services, other than a standard reimbursement of expenses, the organization's officer responsible for filing returns would be responsible for including your name in the organization's registration.

7. My organization is a coalition of special interest groups. Do I have to name the coalition members? Yes. Coalitions are usually temporary alliances formed for lobbying on particular issues, and the interests or

beneficiaries of such groups may not be known. Therefore, you should list the groups that make up the coalition's membership under the section in the registration where you are required to describe the organization's membership.

8. My organization contracts with individuals to perform lobbying activities on our behalf. We do not have an employer-employee relationship with these individuals who do this work for us. Do we list their names on the registration form as employees who lobby?

No. If these individuals are not employees of your organization but perform lobbying work for your organization on a contract basis, they would be considered consultant lobbyists. Each of these consultant lobbyists would need to file a

Excess Holdings Form Available

The CRA has now made available a new form which is to be used by private foundations to report on excess corporate holdings. Given that the concept was only unveiled in March 2007 and fine-tuned in the February 2008 Budget, this may be some sort of record.

The form (which technically is a worksheet and which would be filed with the annual T-3010 form) applies to the first tax year of a private foundation starting after March 18, 2007. Thus, for those foundations which have a December 31 year-end, the first year which requires reporting is 2008.

If a private foundation holds less than 2% of any class of a corporation, the worksheet need not be filled in or filed. If the foundation does hold more than 2% of any class of shares (and of course this means any corporation including private companies) the form must be filed. If it holds more than 2% of more than one class of share or more than one company, separate forms must be filed for each holding.

The form also requires information about share transactions by “relevant persons” which means those who are not at arm's length with people who are themselves not at arm's length with the foundation.

The form in question is [T2081](#). There is also a guide [T2082](#) available on the CRA website.¹

¹ We don't know why the form is T2081 and the guide is T2082. This may be a misprint in the material we have or some subtle way to ensure that those who have to fill out the form cannot find the needed information.

consultant lobbyists registration and identify your organization as the client.”

The Q and A in full can be found at http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/h_nx00162e.html#E

Other key sites to consult include the following, which set out the legislation and regulations:

Canadian Lobbyist Registration Act

<http://laws.justice.gc.ca/en/L-12.4/248568.html>

Lobbyist Registration Regulations

<http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/nx00047e.html>

Regulations Amending the Lobbyist Registration Regulations

<http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/nx00047e.html>

Winner Take All

Hnatyshyn Prize Tax Free

In the arts community, one major form of recognition is the receipt of a prize, normally based on peer group assessment and funded by either a charity, government body or a commercial corporation. Whether in the visual arts or for writing, those interested in the arts are always aware of such awards.

In many cases, the award comes with a significant cash prize. The question therefore arises as to whether the prize is taxable.

Generally speaking, [paragraph 56\(1\)\(n\)](#) of the *Income Tax Act* provides that all amounts received by a taxpayer as or on account of a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour ordinarily carried on by the taxpayer are included in income to the extent that the total of these amounts received in the year exceeds the taxpayer's scholarship exemption. Thus, for example, a prize given in an architectural competition is usually taxable to the winning architects.

But this provision does not apply to “prescribed prizes” which are defined in [section 7700](#) of the *Income Tax Regulations*. Such a prize is one that is recognized by the general public and that is awarded for meritorious achievement in the arts but does not include any amount that can reasonably be regarded as having been received as compensation for services rendered or to be rendered.

The question posed to the CRA was whether the Hnatyshyn prize for visual arts given by the Hnatyshyn Foundation is taxable. We attended the award ceremony, so the ruling letter was of even more than passing interest.

“In our opinion, in this particular case, it is reasonable to conclude that the Award is a “prize” pursuant to paragraph 56(1)(n) of the Act because it is bestowed by a Canada-wide program whose stated purpose is to recognize a mid-career artist's outstanding body of work and in anticipation of the artist's future contribution to Canadian visual art. This supports the conclusion that visual art is the field of endeavour ordinarily carried on by the Award winner.”

That having been said, the CRA letter went onto the issue of a “prescribed prize.” It determined that the Hnatyshyn award fits into this category because:

The Award is recognized by the general public because:

- the initial creation of the Award and the first Award winner were announced in a national press release, published on the Hnatyshyn Foundation's website and copies of the announcements were sent to all public art galleries in Canada;
- nominations for the Award are made by professionals in the Canadian arts community, which suggests widespread knowledge of the Award; and
- an expert jury of six regional curators shortlists the candidates (based on nominations made by the jury) and chooses the Award winner; Further,
- The Award is received by the winner for meritorious achievement in the arts; and
- The Award can reasonably be regarded as not having been received as compensation for services

While this ruling letter applies only to the Hnatyshyn award, the same criteria are applicable to almost every other prize for visual arts and writing, except for situations where the prize is part of a competition which an artist or writer enters where part of the prize is exhibition, sale or publication.

Generally speaking, over the years, the CRA has applied common sense to the determination of what prize fit into the “prescribed” category, and the tax-free cash award is icing on the cake for artists who get such awards.