

**Charitable Status for Sport Organizations:
Policy Implications of the A.Y.S.A case and Further Considerations**

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Charitable Status for Sport Organizations

Introduction

The purpose of this paper is the review some of the policy implications of the recent court case involving the *Amateur Youth Soccer Association (Ontario) versus the Canada Revenue Agency* [AYSA vs. CRA April 2006].

The paper is not intended as a review of the specifics of the AYSA case, but rather to consider the relevant policy issues.

Background

The Amateur Youth Soccer Association of Ontario (AYSA), which promotes youth soccer in Ontario, applied for charitable status under the federal *Income Tax Act* – not as a Registered Canadian Amateur Athletic Association (RCAAA) – but on the basis of the promotion of sport. The Canada Revenue Agency (CRA) denied the application. The AYSA appealed.

The Federal Court of Appeal upheld the CRA decision, but did so in a way that raised concern within the voluntary sector. The concern centers around a possible interpretation of the Appeal Court's ruling to mean that existing federal legislation precludes the possibility of community groups (in this case in sport) to obtain federal charitable status. If narrowly interpreted and applied by the CRA, community organizations in other sectors such as health or the environment could be adversely affected.

Related sport specific issues

The CRA has previously expressed its concern regarding the ways in which the RCAAA status may be improperly used by national sport organizations wishing to assist their member organizations. In the view of the CRA, the charitable status of national sport organizations (under the RCAAA category) is not meant to be used or extended to local sport clubs and community organizations.

Should a local sport or recreation organization wish to obtain federal charitable status, it can apply, as others have successfully done, based on activities that are deemed to be charitable by the CRA (such as education, promotion of public health and benefits to the community).

Discussion

We need not take a formal position on the AYSA case and the activities of that particular organization to conclude that the current system for determining federal charitable status is acceptable in so far as it operates the same way for all community organizations.

However, we cannot find any merit in a possible narrow interpretation of the AYSA ruling that would have existing federal legislation, such as the RCAA designation for national sport organizations, preclude the possibility of community sport organizations seeking charitable status through conventional means.

Moreover, we do not find acceptable an outdated view that sport – traditionally referred to as “mere sport” – should fall below the radar of institutions, such as the CRA, which are responsible for the management and promotion of a healthy, thriving charitable sector. Given that sport and recreation make up the largest sub-sector of voluntary organizations in Canada, it is difficult to imagine that community sport should somehow be excluded from what Canadians consider to be charitable activity conferring public benefits to society.

It is likely that we in the sector pay more attention to the benefits of sport, including volunteerism, public safety, public health, the integration of new Canadians, healthy communities and sport’s contribution to social development. These public benefits may not be as apparent to others outside the sport and recreation sector. Until they are, the notion of “mere sport” is likely to continue.

The CRA does recognize that a number of sport and recreation activities confer benefits to Canadian citizens. The recently introduced Children’s Fitness Tax Credit certainly recognises the benefits to children. Therefore, at a time when we are facing serious public health challenges, especially among inactive, obese and diabetic youth, the federal government in general and the CRA in particular should consider and communicate a clear position on the acceptable ways in which sport and recreation activities are charitable in nature.

While the sheer size and diversity of the sport and recreation section may pose an administrative (or fiscal) challenge for federal authorities, we should nevertheless operate on the basis of the well established and recognized public benefits that accrue from participation in sport and recreational activities.

A generally held view within the voluntary sector is that the current methods of determining charitable status at the federal level require some improvement. There is confusion and apparent inconsistencies which undermine the sense of fairness required to maintain confidence in the system.

Moreover, this same confusion and inconsistency can cause some community organizations to describe their activities in ways which are more likely to be deemed charitable, but may in practice be somewhat different. We clearly need a better way.

Part of the challenge for the sport sector is being able to clearly describe (and agree upon) what constitutes a sport related charitable activity. The current notion of sport encompasses everything from a fitness soccer program to professional sport. Even among voluntary and non-profit organizations there is a wide range of activities, some of which may confer direct benefits (for example, health) and some more indirect benefits (for example, social capital). The intentional use of sport for social development, crime reduction or the integration of new Canadians can all be found somewhere among the various missions and objectives of sport and recreation organizations.

What should be of main interest to our sector is the evolving perception and acknowledgement of what sport and recreation offer in the way of charitable activities as interpreted by governments, the CRA, our courts, charitable foundations and Canadians.

A future direction

The Sport Matters Group (SMG) has recently engaged in efforts with the CRA to better educate RCAA organizations on the obligations and responsibilities related to this type of charitable status. The SMG has also advocated for certain tax and charitable status reforms to help Canadians take advantage of the numerous benefits offered by sport and recreational activities. The Children's Fitness Tax Credit is one example of such tax reform.

While the SMG has been able to offer some modest leadership on these matters within the sport sector, it has only limited abilities to meaningfully contribute to the broader debate on charities law in Canada. Organizations such as Imagine Canada and the Muttart Foundation have been playing a lead role in that regard. It is not surprising then that both of these organizations, among others, have taken a particular interest in the AYSA case and its implications for the voluntary sector.

The AYSA case reminds the sport sector of the importance of charities law and what role we can play in promoting good public policy in that regard. The SMG can:

- Continue to collaborate with the CRA on efforts to educate sport organizations on the proper use and administration of the RCAA status
- Continue to advocate for tax and charities law reform in order to help Canadians take advantage of the benefits offered by sport and recreational activities.
- Reject the traditional notion of “mere sport” and help articulate how sport and recreational activities are charitable in nature.
- Offer assistance, where possible, to voluntary sector leaders who seek to improve the way in which we determine charitable status in Canada.
- Help governments and other authorities to better define what constitutes a sport related charitable activity, and what does not.

The new Children’s Fitness Tax Credit has also generated some new interaction with the CRA, which provides an opportunity to explore other related policy issues, such as the charitable status of sport organizations. This may therefore also be an area where the SMG can make a contribution to the overall issue of charitable law in Canada.

Sport leaders have an opportunity to consider the important questions and the policy implications for what should be available in the way of charitable status for community sport and recreation organisations.

A.Y.S.A. Amateur Youth Soccer Association v. Canada Revenue Agency

LEAVE TO APPEAL GRANTED

TAX: CHARITIES

The Applicant was established to promote amateur youth soccer in Ontario. Because its beneficiaries are limited to Ontario and the association is not national in scope, it does not fit within the definition of a "registered Canadian amateur athletic association" in s. 248(1) of the *Income Tax Act*. A registered Canadian amateur athletic association receives taxation benefits similar to those granted to a registered charity. The Applicant applied to the Minister of National Revenue to be registered as a charity. An organization must have a "charitable purpose" in order to be recognized as a charity for Income Tax purposes. Whether or not a purpose is charitable is determined by reference to the common law. The Minister dismissed the application on the basis that the promotion of a sport is not recognized as a charitable purpose. Issues include the following: do the conferral of tax benefits on certain classes of organizations operate to limit the registration of other organizations as charities; do the categories of charitable purposes in the common law include the promotion of amateur sports that involve the pursuit of physical fitness; and should the Federal Court of Appeal have applied s. 8.1 of the *Interpretation Act* or the law of charities in the Province of Ontario.

A.Y.S.A. Amateur Youth Soccer Association v. Canada Revenue Agency (Fed. C.A., April 6, 2006)(31476) "with costs to the Applicant in any event of the cause."

¹IMAGINE CANADA INTERVENES IN SUPREME COURT CASE

Imagine Canada will appear before the Supreme Court of Canada on May 16 to argue a case about what constitutes a charity.

In what is only the third Supreme Court case in the last 50 years to consider what is charitable, Imagine Canada has been granted leave to intervene in the case of *A.Y.S.A. Amateur Youth Soccer Association v. Canada Revenue Agency*.

A small team of top charity lawyers have agreed to donate their time and efforts to argue the case on behalf of Imagine Canada. The legal team includes:

- W. Laird Hunter, QC (Worton Hunter & Callaghan – Edmonton, Alberta) who acted on behalf of the Canadian Centre for Philanthropy in its 1998 intervention in the *Vancouver Society of Immigrant and Visible Minority Women* case (known as the *Vancouver Society* case, 1999);
- Susan Manwaring and Kate Campbell (Miller Thomson LLP–Toronto, Ontario) charities counsel for Imagine Canada;
- David Stevens (Gowlings, Lafleur, Henderson LLP – Toronto, Ontario) who worked on the Ontario Law Reform Commission’s Report of the Law of Charities in 1996; and;
- Jeffrey Beedell, (Lang Michener LLP – Ottawa, Ontario) who has acted as Ottawa agent for Imagine Canada’s counsel at the Supreme Court.

A.Y.S.A. sought registration as a charity in 2005. Its application was refused by the Canada Revenue Agency which held sports organizations, as such, are not charitable under Canadian law.

A.Y.S.A. appealed the refusal to the Federal Court of Appeal. In a 2006 decision, the Federal Court of Appeal said that amateur athletic associations could not qualify as charities. It based its decision on the fact that Parliament, in the early 1970s, gave preferential tax treatment to a group of organizations that promote elite-level athletes.

These organizations, called Registered Canadian Amateur Athletic Associations (RCAAs) are not charities, but have some of the same privileges as charities,

¹Extracted on September 12, 2007
http://www.imaginecanada.ca/files/en/publicaffairs/supreme_court_intervention_summary.doc

including the ability to provide donors with receipts that can be used to claim tax credits.

The Federal Court of Appeal said that because Parliament created RCAAAs, it had to be presumed that it did not want any other type of amateur athletic association to qualify as a charity.

Imagine Canada is involved in the case because it believes that the approach used by the Federal Court of Appeal, if upheld, could jeopardize the status of a host of registered charities operating in fields where there are other tax measures found in the *Income Tax Act* to promote similar activities.

In particular, such a ruling could cast doubt on whether arts organizations can be registered charities, given the *Income Tax Act* provisions providing for National Arts Service Organizations.

Imagine Canada is arguing that giving special tax treatment to a particular group of organizations does not change the rules related to charities. It argues that the only test to determine whether an organization is charitable is the type of examination it encouraged, and the Supreme Court approved, in the *Vancouver Society* case.

Imagine Canada's intervention in this case has been made possible by a grant from The Muttart Foundation, of Edmonton, acting on behalf of a consortium of private foundations.

Imagine Canada and its legal team do not anticipate making any further public statements about this case until after the Supreme Court has providing its ruling. A more detailed Factum outlining Imagine Canada's arguments has also been posted to http://www.imaginecanada.ca/Files/publicaffairs/Intervener_Factum.pdf