



April 22, 2016

Delivered by email

Kingston Tennis Club
P.O Box 621
Kingston, ON, K7L 4X1
Attn: Paula Loh, President

Dear Ms. Loh,

This memorandum is to assist you in evaluating whether or not registering as a charity is right for your organization. While we do look at the criteria for registering as a charity and apply these criteria to your organization, the ultimate decision rests with the Canada Revenue Agency and so nothing in this letter should be taken as definitive.

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(1) Kingston Tennis Club's Eligibility for Charitable Status

What is a Charity?

Registered charities are charitable organizations, public foundations, or private foundations that are established in Canada and are resident in Canada. A charity is established as a corporation, trust, or under constitution that has exclusively charitable purposes and primarily carries on its own charitable activities.¹ It must be established and reside in Canada, operate for charitable purposes, and devote its resources to charitable activities. It is important to note with respect to a charity, more than 50% of its governing officials must be at arm's length with each other.

What are the Requirements for Charitable Registration?

To qualify as charitable, an organization must be established for purposes that are exclusively charitable. A charitable purpose can fall into one of the following categories:

- 1) The relief of poverty;
- 2) Advancement of education;
- 3) Advancement of religion; or
- 4) Certain other purposes that benefit the community in the way the Court has decided is charitable.²

We believe that the Kingston Tennis Club's purpose(s) may fall within the fourth category.

The Public Benefit Test

The public benefit test is a two part test the CRA uses to determine if the organization is eligible for charitable status.

- The first part asks whether a tangible benefit is conferred; and
- The second asks the question if the benefit conferred has a "public character" (i.e. it cannot be a benefit conferred to a small group of people only).

The amount of proof required to establish that there is a public benefit is dependent of the purpose of the organization. If the charitable purpose falls within the first three categories listed previously then a presumption of public benefit exists. If the purpose does not fall into one of those categories then the proof required to meet the public benefit test increases.

There is a clear benefit to offering physical activity to the physical health of the individual participants and the social health of the community. The next section will evaluate how sporting activities are treated by the CRA for charitable registration.

¹ Canada Revenue Agency defines a registered charity in the *Income Tax Act* s. 248(1) to mean (a) a charitable organization, private foundation or public foundation, within the meanings assigned by subsection 149.1(1),

² How to Draft Purposes for Charitable Organizations, Published by the Canadian Revenue Agency, Reference number CG-019, found at: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/drftprpss-eng.html>

Do Sport Activities Qualify as a Charitable Activity?

The CRA has released a policy statement on this question, “Sports and Charitable Registration” CPS-027.³ In this policy the CRA states that sporting activities themselves are not charitable. In order for an organization with sports activities as their primary activity to be registered, they must show that the sporting activities relates to a recognized charitable purpose.⁴

While sporting activities could be incidental to many charitable purposes, two specified by the Canada Revenue Agency stand out as potentially being applicable to the Kingston Tennis Club. These are:

1. Providing public recreation grounds and community facilities; and
2. Promoting health.

The provision of recreational grounds and community facilities may be considered charitable when the grounds are open to the general public and not specific groups, teams or organizations. The Kingston Tennis Club’s registration form should state that they are providing public grounds for those who wish to participate and enjoy the sport of tennis.

Sporting activities can be seen as promoting physical activity and, by extension, promoting health. It should be noted that these organizations should be promoting the health of the public at large, not just a specific group. The Kingston Tennis Club’s application should state that they provide facilities and recreational opportunities that directly promote and preserve health by providing programs that develop fitness, stamina, agility... etc. They should also highlight any programs that they have for the elderly, youth at risk, or individuals with disabilities, which may also qualify as charitable purposes. If the activity entails a risk of injury then the organization must state how they minimize this risk for patrons.

Conclusions on Kingston Tennis Club’s Eligibility for Charitable Registration

In their application the Kingston Tennis Club would have to demonstrate that they have a charitable purpose and that this purpose confers a benefit to the public at large. With our knowledge of the structure of the organization, we have identified some additional issues that would have to be addressed by the Kingston Tennis Club prior to registration. They are:

1. the restriction of the activity to a single sport; and
2. membership fees

The same CRA policy statement mentioned above states that if the organization’s activities are restricted to a particular sport, in the absence of evidence to the contrary, it will be inferred to have been set up for the promotion of that specific sport, which would not be considered charitable. In order to rebut this inference, the organization would have to show that:

- the restriction to one sport is reasonable given the organization’s recognized charitable purpose;

³ Canada Revenue Policy Statement “Sports and Charitable Registration”, CPS-027
<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-027-eng.html>

⁴ Ibid

- it will not deter or exclude a substantial portion of those that could be served by the charity; and/or
- it is the most practical use of the charity’s resources, at least as a starting point, for reasons such as expertise, effectiveness, and financial considerations.

While it is permissible for charitable organizations to charge a membership fee (note: the charity cannot issue a tax receipt to the donor if they receive a benefit in excess of their payment - see the policy statement on membership fees⁵), the CRA states that organizations that provide access to programs to only those who can afford them will need to show that they also confer a benefit to the public as a whole. Public benefit is often more apparent when organization provide broad access to their programs, including subsidies and equipment-lending plans, and more difficult to substantiate when services are likely to exclude those with limited incomes. The registration fee of \$368 charged by the Kingston Tennis Club for an adult membership may be prohibitive to people with limited income. Therefore it is very important that the Kingston Tennis Club highlights any programs that help those with limited financial means to participate in their application.

An examination of charity listings on the Canada Revenue website reveals a small number of tennis organizations that have been registered as charitable. One in particular resembles the Kingston Tennis Club; however, they do offer programming dedicated towards “relieving conditions associated with aging and disability”⁶.

In order to be considered for charitable status, the Kingston Tennis Club will have to demonstrate that their activities are open to everybody and that there is a public benefit to the organization. They will also have to show that all their resources go towards their charitable purpose.

The Canada Revenue Agency will look over your draft documents and provide you with an opinion about whether or not your organization qualifies for charitable status. If the answer is a negative then they will provide reasons why you do not qualify. Our recommendation is that before the Kingston Tennis Club moves forward with any formal application that they submit the documents to the CRA for review and then proceed accordingly.

(2) The Positives and Negatives of Charitable Registration

Benefits of Charitable Registration

The main advantages of being a registered charity are the following:

- Registration allows a charity to issue official donation receipts for gifts it receives. These receipts can be used to reduce the income tax payable of an individual donor or the taxable income of a corporate donor. This could serve as a potential enticement for the Kingston Tennis Club to solicit donations for their new club house.

⁵ Membership Fee, Canada Revenue Agency, Reference number CSP-M05, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/csp/csp-m05-eng.html>

⁶ See the Canada Revenue Charity Listing “Cromarty Community Indoor Tennis Centre” <http://www.cra-arc.gc.ca/ebsi/haip/srch/advancedsearch-eng.action>

- Once registered, a charity is exempt from paying income tax under Part I of the Income Tax Act.
- Registered charities are eligible to receive gifts from other registered charities, such as foundations.
- Registration provides increased credibility in the community, since registered charities must follow certain rules and guidelines in order to maintain their registration.
- Many goods and services provided by registered charities are exempt from goods and services tax/harmonized sales tax (GST/HST). Also, in many situations, registered charities can claim a partial rebate for the GST/HST they pay.

Obligations of Charity Registration

The main obligations of a registered charity are to:

- Devote its resources (funds, personnel, and property) to its charitable purposes and activities.
- File its annual form T3010, Registered Charity Information Return, within six months of its fiscal period-end.
- Meet its annual spending requirement.
- Keep adequate books and records in Canada, and make them available for review by the Canada Revenue Agency on request.
- Make sure that official donation receipts are complete and accurate when issued.
- Control and direct the use of all its resources (funds, personnel, and property).
- Maintain its status as a legal entity.

Failure to Meet Obligations

Failure to meet any of these obligations could result in sanctions or loss of charitable status.

Sanctions involve monetary penalties and/or suspension of tax-receipting privileges. CRA may impose intermediate sanctions (e.g. financial penalties or suspension) or may also proceed to revocation if there is serious non-compliance or for repeat/multiple infractions.

Revocation is the cancellation of a charity's registration and the privileges that go with it. When a charity's registration is revoked, it will have its name and the reason for its revocation posted in the Canada Gazette, it can no longer issue official donation receipts for gifts it receives, no longer will qualify for exemption from income tax as a registered charity, and must transfer all remaining property to an eligible donee or be subject to a revocation tax equal to the property's full value.

Other Considerations

One major consideration that requires your attention is the CRA's policy on social activities. The Kingston Tennis Club, in addition to their main sporting activities, hosts socials for members. Social activities are not themselves charitable in nature. A charity can devote small portion of its resources to social activities providing that they are secondary and incidental to their charitable purposes. Therefore, registering as a charity would necessarily limit the social activities that the Kingston Tennis Club can host.

Also, you should be aware that the consequences for voluntarily terminating your charitable status are the same as those when the CRA revokes your registration for non-compliance.⁷

Finally, given the restrictions imposed on registered charities, Kingston Tennis Club should consider how much flexibility the organization needs to fulfill their long-term objectives.

Conclusions and Recommendations

In conclusion, the charitable registration of the Kingston Tennis Club would allow them to issue tax receipts for donations made to the organization. As indicated, the Kingston Tennis Club is interested in using the issuance of tax receipts as an enticement for soliciting donations. The revenue of the club would also be tax-free and they would be eligible to receive gifts from other registered charities.

There are additional considerations that should be taken into account when making the decision about whether or not to register as a charity. The reporting obligations are more extensive than that of a not-for profit, which is the Kingston Tennis Club's current status. Failure to comply with these requirements could result in the revocation of the organization's charitable status and publication of the reasons for the revocation. Also, there are limitations on what the organization can spend their money on as it must relate to their charitable purpose. This may limit the various social activities that the Kingston Tennis Club currently hosts.

While it is possible that the Kingston Tennis Club may be able to successfully apply for charitable status, there are issues that need to be addressed. The first obstacle is that the membership fee charged by the Kingston Tennis Club may be prohibitively expensive thereby making it difficult to establish that the organization provides a public benefit. Any programs available to make Kingston Tennis Club's facility accessible to those with financial restraints should be highlighted in an application for charitable status.

Another significant issue is the rebuttal of the inference that organizations whose activities are limited to one particular sport are not charitable. This inference may be rebutted by demonstrating that: (i) the restriction to one sport is reasonable given the organization's recognized charitable purpose, (ii) it will not deter or exclude a substantial portion of those that could be served by the charity, (iii) and/or it is the most practical use of the charity's resources.

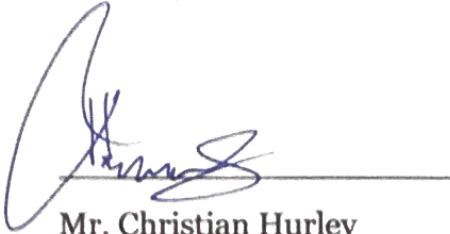
The Canada Revenue Agency is in charge of determining an organization's charitable status. Any organization considering applying for charitable status can send in a draft of their application and have it reviewed by an agent before formally submitting the application. This would allow the applicant to get a sense of what the likelihood that their application will be successful and/or how you may strengthen your application before formally submitting it. It is our recommendation that the Kingston Tennis Club should take advantage of this service

⁷ See Canada Revenue Agency's website "Consequences of terminating registration (voluntarily)" <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/rgstrtn/ctr-eng.html>

before submitting their application.

If you have any questions or concerns regarding the content of this letter please feel free to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read "Christian Hurley", is written over a horizontal line. The signature is stylized and cursive.

Mr. Christian Hurley
Review Counsel