

Bulletin

Monday, 7 July 2008

advocate • n. /'advəkət/ 1 a person who publicly supports or recommends a particular cause or policy 2

Charities as “political activists”

Federal Court decision sheds light on definition of “political purposes” for charitable institutions (this may impact on whether an organisation qualifies for tax concession charity status)

In the recent matter of *Victorian Women Lawyers' Association Inc v Commissioner of Taxation* [2008] FCA 983 (27 June 2008), the Federal Court has expanded the scope of the definition of a “charitable institution”, with the potential to significantly widen organisations which might qualify for endorsement as a tax concession charity.

The Victorian Women Lawyers' Association Inc (**Association**) (an incorporated not-for-profit association), commenced proceedings against the Commissioner of Taxation (**Commissioner**) for income tax assessments issued to it by the Commissioner. The Association objected on the basis that it was exempt from any obligation to pay income tax on the basis that it is a charitable institution established for community service purposes.

The Income Tax Assessment Act 1997 (ITAA) and the Association's Constitution

Division 50 of the ITAA provides that the total ordinary income and statutory income of community service

entities are exempt from income tax. Section 50.10 of the ITAA defines a community service entity as a “Society, association or club established for community service purposes (except political or lobbying purposes)”.

The objects of the Association were set out in its Constitution, and included encouraging and providing for “the entry of women into the legal profession and their advancement within the legal profession”. It also contained an incidental political role of working “towards the reform of the law”, excluding it from income tax exemption status under the ITAA.

The Association's submissions

The Association submitted that it fell within the category of charitable institution as having been established for a purpose “beneficial to the community”. It identified the relevant community as the public as a whole; alternatively, the Victorian legal profession; alternatively, Victorian women in the law.

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The Association argued that its dominant and principal purposes were accurately expressed in its Constitution, being the elimination of discrimination (direct, indirect or systemic) and consequent disadvantage on the ground of gender in the legal profession in Victoria and in society through the promotion and securing of legal rights and human rights.

The Association submitted that, to the extent to which any of its purposes could be regarded as political, they were incidental to its principal objects.

The Commissioner's submissions

The Commissioner submitted that the Association was not a charitable institution. The requirement of benefit to the public was said to commonly exclude from the status of charitable institutions organisations such as professional bodies established to help those persons who furnish the organisation's funds.

If the main objects of an institution were the protection and advancement of persons practising in a particular profession, the institution would not be regarded as charitable because the element of direct public benefit was lacking.

The Commissioner also contended that since its purpose was to secure a change in the existing law, the Association's object "*to work towards the reform of the law*" was not charitable. This object was said not to be merely incidental or ancillary to charitable objects. It

was another and separate object of substance in its own right.

Is the advancement of women and women practitioners a public benefit?

Justice French found that it was a relevant consideration under the ITAA, to discuss whether the objects of the Association were "*beneficial*" or of "*service*" to the community.

Fortunately, His Honour found that encouraging and advancing women's rights in the legal profession was a service to the community. Reliance was placed on the *Sex Discrimination Act 1984* as a clear statutory indication of the community's recognition of gender based discrimination and the need to take positive steps to overcome it.

Political purposes limitation

Under section 50.10 of the ITAA, charitable purposes do not include political purposes or lobbying purposes.

His Honour found, however, that the political purposes limitation is not well defined and is more difficult of application today having regard to the change in social conditions since the early 20th Century. He also found that the "*law reform*" object in the Association's constitution is not a significant element of the Association's purposes such as to affect its characterisation.

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The findings of the Court

Justice French found that the Association's principal purpose was to remove barriers and increase opportunities for participation by, and advancement of, women in the legal profession in Victoria.

The Association was established to overcome a well-known social deficit, namely the substantial under-representation of women in the legal profession, in its upper reaches and in the judiciary.

His Honour found that there was certainly a relentless push by the Association for changes to attitudes and practices affecting women within the profession. There were representations and public positions taken from time to time on matters affecting the position of women generally. However, none of these things translated into a political purpose that would disqualify the organisation from being characterised as a charitable institution.

It was therefore found that the Association fell within the description of a charitable institution within the meaning of the ITAA 1997. This judgment now has wide ranging implications for all organisations which further a specific group of people and which have an incidental political role.