




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**Item No. 10.2.2**  
**Halifax Regional Council**  
**November 30, 2010**

**TO:** Mayor Kelly and Members of Halifax Regional Council

Original signed

**SUBMITTED BY:**

 Councillor Russell Walker, Chair, HRM Grants Committee

**DATE:** November 17, 2010

**SUBJECT:** **Grants and Contributions: Proposed Policy Regarding Non-Profit Registration**

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**ORIGIN**

HRM Grants Committee meeting of November 15, 2010.

**RECOMMENDATION**

It is recommended that Halifax Regional Council:

1. Uphold the formal registration requirement for applicants to the *HRM Community Grants Program, Tax Exemption for Non-Profit Organizations Program*, and less than market value property sales and leases; and
2. Approve the exceptions as set out in the Draft Interpretation Bulletin #5 included as Attachment 1 of the October 7, 2010 staff report.

**BACKGROUND**

As per the attached October 7, 2010 staff report.

**DISCUSSION**

As per the attached October 7, 2010 staff report.

**BUDGET IMPLICATIONS**

As per the attached October 7, 2010 staff report.

**FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN**

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

**COMMUNITY ENGAGEMENT**

As per the attached October 7, 2010 staff report.

**ATTACHMENTS**

A. Staff Report dated October 7, 2010

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A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Krista Tidgwell, Legislative Assistant, Municipal Clerks Office. 490-6519


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PO Box 1749  
Halifax, Nova Scotia  
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HRM Grants Committee  
November 15, 2010

TO: Chair and Members of HRM Grants Committee

SUBMITTED BY:  Original signed  
Paul Dunphy, Director Community Development

DATE: October 7, 2010

SUBJECT: **Grants and Contributions: Proposed Policy Regarding Non-Profit  
Registration**

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**ORIGIN**

This report originates with staff of Community Relations & Cultural Affairs, Community Development.

**RECOMMENDATION**

It is recommended that the Grants Committee:

1. Uphold the formal registration requirement for applicants to the *HRM Community Grants Program, Tax Exemption for Non-Profit Organizations Program*, and less than market value property sales and leases; and
2. Approve the exceptions as set out in the Draft Interpretation Bulletin #5 included as Attachment 1 of this report.

## BACKGROUND

For the purpose of this report the non-profit sector is understood to include:

- a Canadian charity as defined and registered under the federal Income Tax Act;
- a non-profit Society as defined and registered under the Nova Scotia Societies Act;
- a non-profit organization constituted under an Act of the Nova Scotia Legislature or Parliament of Canada;
- a non-profit cooperative as defined and registered under the Nova Scotia Cooperatives Act.

Presently, the *Community Grants Program*, *Tax Exemption for Non-Profit Organizations Program*, and less than market value property sales and leases do not recognize groups who are not registered as non-profit entities. In part, the exclusion of informal volunteer groups is to manage risk. This criteria is applied with consistency across several municipal assistance programs including tax exemption, less than market value sales and leases. The one exception are donations provided under the Councillors' District Activity Fund but the value of such awards are comparatively small and thereby represent nominal risk<sup>1</sup>. The Fund also fills a gap with respect to assistance to local un-registered groups.

This report is intended to provide clarity as to under what, if any, circumstances would an un-registered community group qualify as eligible for consideration for a grant, tax exemption, or discounted property sale or lease. The proposed criteria also address a potential conflict of interest on the part of some groups (both registered and un-registered) whose Board of Directors includes persons in receipt of payment.

The following are examples of applications and inquiries. The rationale for funding (or not) is provided to illustrate the manner in which such requests are currently reviewed.

- a. A newly formed theatre group seeking funding towards production costs intends to use the charitable registration number of a provincial theatre association. The rationale for why independent registration has not been secured is not self-evident.

*HRM refused to accept the use of a federal charitable number not issued to the applicant. Charitable status is difficult to obtain and maintain as compared to other forms of non-profit incorporation, in part because the charity has the ability to provide tax receipts and donors derive a personal financial benefit (ie. a personal income tax deduction). Charitable status denotes an altruistic aim and arguably would exclude personal financial gain ie. members of the society are not in receipt of any payment and as such would preclude paid performers, technicians etc who are also members of the society. More importantly, Revenue Canada does not permit use of a charitable number by a third party.*

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<sup>1</sup> Presently, the Councillors' District Activity Fund allocates \$3,000 per district. As such, the majority of donations tend to be in the \$20-\$250 range.

b. A long-standing volunteer club applies for a grant towards a neighbourhood beautification project. The club is not a registered society but proposes to apply jointly with the provincial garden clubs association that is a registered society.

*The application was accepted based upon the altruistic aim of the umbrella organization formed solely for the purpose of promoting and supporting the individual clubs who comprise its' membership. Further, any award would be made to the registered party and as such its' Board accepts all liability. Default on the part of the member club would result in the suspension of eligibility for the registered organization. The registered non-profit must be an active party to the proposal and execution of the project and not simply a flow-through. The registered party must have been registered 12 months prior to the date of application and both partners would provide their respective financial statements.*

c. A small, informal group of residents respond to an HRM Request For Proposals regarding the potential sale of a former school located in their neighbourhood. Albeit the RFP states that submissions are encouraged from registered non-profit groups it fails to specify that such entities must be registered at the time of submission or for a pre-determined period. The proponent argued that they were only prepared to incorporate if their request for property donation was accepted. Staff had no financial, programming or organizational history to assist in the assessment of the proponent's on-going viability.

*Staff recommended against a property donation and proposed an open market sale process. Both the HRM Grants Committee and Regional Council supported a less than market value sale but with additional terms and conditions to manage risk that were to be met within a specified timeframe.*

d. The *Community Grants Program* received grant applications from two local Boy Scouts troops both of whom are using the same society registration number (Boys Scouts of Canada Nova Scotia Provincial Council Property Society). None of the troops have a separate constitution and by-laws or independent incorporation. Policy states that an organization can submit only one application.

*The Provincial Council was contacted by HRM staff and advised that either both applications would be declined based on policy or one application should withdraw. An application was accepted from one Scout troop. Albeit the individual "troops" were not independently registered their application was accepted because they are formally recognized members of the Provincial Council, and subordinate to and directly linked to the altruistic aims of the Council. For consistency, the grant should be issued to the Provincial Council (ie. the registered party).*

e. A long-standing seniors social club applied for to the *Community Grants Program* for funding to purchase equipment.

*The Grants Committee adjudicated the club's appeal and accepted the application because the group had made application to the Nova Scotia Registry of Joint Stocks, was well established with a demonstrated program of activities, held a separate bank account, and issued financial reports to its membership. In effect, the club conducted itself in a manner consistent with a registered a society and had provided services to its membership for 20 years.*

f. A church hall applied to the *Community Grants Program* for a capital grant towards building repairs. The congregation did not have separate registered non-profit status and applied using the charitable registration of the parish.

*The application was accepted based upon membership of the church as integral to the parish. However, the application should have been made jointly with the parish (the charity) and payment made to the registered party - who is also the owner of the asset. Default on the part of the church hall would result in the suspension of eligibility for the registered organization (the parish). Further, financial statements should have been submitted for both the church hall and the parish. For consistency, the grant should be issued to the parish (ie. the registered party).*

The rationale for registration is well founded and is, in part, intended to protect the integrity of the applicable program from groups formed solely or primarily for the purpose of obtaining public assistance. The financial information and formal records that are required as a condition of registration are crucial in determining the exact nature of a group's activities. Nevertheless, HRM does not want to encourage registration motivated primarily by the prospect of short-term gain<sup>2</sup>. Therefore, under what (if any) circumstances would HRM accept an application from a community group that is not a registered non-profit?

## DISCUSSION

The program application for both the *Community Grants Program* and the *Tax Exemption for Non-Profit Organizations Program* clearly state that applicants must be registered as a non-profit organization. Staff recommend no substantive change to this policy. However, clarity is needed in the case of an application made by a non-profit organization on behalf of or in collaboration with a group who constitute the membership of the registered organization. In all probability, most of these cases will be "umbrella" organizations. However, if joint applications are to be considered that include an un-registered party the review process needs to determine why independent incorporation has not been pursued/granted. Proposed draft criteria are included in **Attachment 1** of this report.

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<sup>2</sup> Notwithstanding there are many legitimate reasons why a group elects not to formally register including, but not limited to, privacy, limited scope and financial liabilities, nominal (if any) assets, short-term project, one-time event etc.

## BUDGET IMPLICATIONS

None. This is a policy recommendation only with no budget impact. If the Grants Committee agrees to uphold the proposed policy clarification, the Community Grants Program Guidebook will be amended for 2011-2012 and an Interpretation Bulletin posted on the web site.

The proposed re-design of the *Tax Exemption for Non-Profit Organizations Program* (By-law T-200), and guidelines for less than market value sales and leases, are in progress. The proposed policy clarification would be incorporated for consistency.

## FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

## COMMUNITY ENGAGEMENT

Public access to information is widely available through the HRM web site and the Community Grants Program Guidebook.

## ALTERNATIVES

The Grants Committee could overturn or amend staff's recommendation.

## ATTACHMENTS

1. Draft Interpretation Bulletin #5: Non-Profit Registration Eligibility Requirements.

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Peta-Jane Temple, Team Lead, Grants & Contributions, Community Development 490-5469

Report Approved by: Original signed  
Andrew Whittemore, Manager, Community Relations & Cultural Affairs, 490-1585

## Attachment 1 - Draft Interpretation Bulletin #5

**POLICY STATEMENT  
NON-PROFIT REGISTRATION ELIGIBILITY REQUIREMENTS****PURPOSE**

The following guidelines provide clarity and direction to HRM staff and groups seeking HRM financial assistance or in-kind donations. Specifically, requests for grants, tax exemption, and discounted property sales and leasing. Any assistance provided to eligible applicants is discretionary and certain types of organization or program remain ineligible. All applications are reviewed on their own merit, relative to other applicants in the applicable program, and the program's annual budget capacity.

How the linkage and subordinate status of one group to another is established is discussed in greater detail in Interpretation Bulletin #2. Non-Profit and Related Businesses.

**INTRODUCTION**

Given that a variety of concessions may be awarded to an organization on the basis of "non-profit status" it is important to evaluate the exact nature of their operations. Some groups may have the appearance of a non-profit (eg. annual registration) but do not conduct themselves as such. The term non-profit does not denote a lack of revenue or an inability to generate revenue; it means that all net proceeds are re-invested back into the organization to further its' primary altruistic aims. Typically, operations are directed predominantly or exclusively by volunteers. In accordance with a focus on supporting community volunteerism, staff may be employed by a non-profit organization to assist the Board of Directors in program and service delivery but the organization is not formed for the purpose of providing employment or income for its' elected officers or membership.

An exception recognized by HRM are "vocational agencies", also called "social enterprises", created for the purpose of creating employment opportunities for persons with special needs who face barriers to employment in the open market. In some cases an organization might view these employees as clients (recipients of a service) rather than members per se. In most cases vocational agency employees are paid a stipend or government subsidized wage. Therefore, the "business" does not depend solely upon earned revenue or profits and does not compete with private business to attract labour.

**ELIGIBLE NON-PROFIT ORGANIZATIONS**

Presently, the following forms of non-profit incorporation are recognized for the purpose of grants, tax exemption, and less than market value property sales and leases:

- A society incorporated under the Societies Act;
- A charity incorporated under the Income Tax Act;
- A non-profit cooperative incorporated under the Cooperatives Association Act;



- A non-profit created under an Act of the Nova Scotia Legislature or an Act of the Parliament of Canada<sup>3</sup>.

Essentially, a non-profit is distinguished from private interests or for-profit groups by the fact that any revenues are retained by the society and are not distributed among the membership, Board of Directors, or any form of shareholder. Likewise, the monetary and material assets of the organization are owned by the group. In the event of dissolution the net assets are donated to another non-profit entity with similar altruistic aims. The Board of Directors are not employees and are not paid, except for the reimbursement of expenses incurred in the performance of their duties when acting in a formal capacity on behalf of the society.

### USE OF A CHARITABLE NUMBER

HRM will not accept an application using the charitable registration number of a third party (another organization). Revenue Canada does not permit this practise.

### MULTIPLE APPLICATIONS USING THE SAME REGISTRATION NUMBER

HRM will not accept multiple applications using the same registration number. The applicants will be notified and given the option of a withdrawal (to align one application per registered organization/registration number) or both shall be deemed ineligible.

### GRANT APPLICATIONS MADE BY A REGISTERED NON-PROFIT ON BEHALF OF AN UN-REGISTERED GROUP

HRM will only consider applications from organizations who are themselves registered non-profit organizations. Exceptions will only be made under the following circumstances:

- Application is made jointly by the registered non-profit organization and un-registered group(s). Both parties (or multiple partners) must be clearly identified. **Any grant or contribution awarded by HRM shall be made payable in the name of the registered non-profit organization who shall be held liable for all related expenditures and reporting.** Both parties shall maintain separate banks accounts and financial records.
- Any payment made for goods and services purchased, leased or secured by the un-registered party using municipal funding shall be made either (a) directly by the registered non-profit organization in receipt of the grant or contribution, (b) in the form of reimbursement by the registered organization upon receipt of the applicable invoice/proof of payment provided by the un-registered group, or (c) in circumstances where cash flow precludes payment by the un-registered group, in progress payments with successive installments issued upon receipt of invoices.
- The un-registered group is formally linked to the registered group in that its activities are directly aligned towards achieving the same altruistic aims. In effect, if the registered non-profit organization ceased to exist, so would the un-registered group(s).

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<sup>3</sup> Often these groups were formed prior to the development of the Societies Act.

- The membership of the registered non-profit organization is organized into separate groups based on the size of the membership and/or geographic representation. For example, Boy Scout or Girl Guide "troops", a parish formed into separate congregations, or local chapters of a provincial or national organization.
- The registered non-profit organization was created exclusively or primarily to serve the interests of the groups that comprise its membership and each share a common, non-competitive purpose. In effect, the registered non-profit organization is not a stand alone entity; its' purpose is in direct relation to the groups that constitute its' membership and does not function in its own right (ie. autonomously) because the member groups comprise, or are represented by, an elected Board of Directors.
- The registered non-profit does not function solely or primarily in a fundraising capacity for its' member groups and does not serve as simply a flow-through for grants or contributions.
- Under no circumstances are grants issued by HRM to an individual.

### **CONFLICT OF INTEREST**

No portion of a municipal grant shall be paid to members or officers of an organization's Board of Directors (ie. salary, wage, stipend, honorarium, gift, or commission).

The review process shall consider any *perceived* conflict of interest. For example, in cases where members and/or members of the Board of Directors are paid (eg. as performers, technicians, consultants, facilitators, instructors, property managers, project managers or service providers). The review may also consider the composition of the Board of Directors and any perceived conflict of interest arising from personal relationships, close business or personal associations.

The review process shall establish if the provision of goods and services has been secured through an open, competitive bidding process. Multiple quotes or estimates are expected to substantiate the selection of the provider of goods and services and/or pricing.

### **ADJUDICATION OF ELIGIBILITY**

In some complex cases it may be necessary to request the HRM Grants Committee confirm the eligibility of a specific request. The committee may, at its discretion, permit an application from an un-registered group in circumstances where the absence or delay of a program is to the detriment of the general public, a sector, or the community of interest. Typically, such a circumstance might include but is not limited to public safety, partnership development, or leveraging funding from non-municipal sources.

Notwithstanding, the discretionary authority to accept un-registered groups, appeals shall be expected to demonstrate a strong case for exemption from registered status and shall meet one or more of the following criteria:

- proof of application to the provincial or federal government to incorporate as a non-profit entity;
- independent verification of a risk to public safety resulting from exclusion from a municipal assistance program (for example, code compliance, sewer system failure);

- independent verification of a risk of financial loss or insolvency resulting from exclusion from a municipal assistance program (for example, an opportunity to leverage government, corporate or private funding for a particular initiative or current programming).