



February 15, 2012

Via email: [consultation-policy-politique@cra-arc.gc.ca](mailto:consultation-policy-politique@cra-arc.gc.ca)

Ms. Cathy Hawara  
Director General  
Charities Directorate  
Canada Revenue Agency  
320 Queen Street  
Ottawa, ON K1A 0L5

Dear Ms. Hawara:

**Re: Proposed Guidance on Arts Organizations and Charitable Registration**

The arts sector is an important contributor to the quality of life enjoyed by Canadians. The National Charities and Not-For-Profit Law Section of the Canadian Bar Association (the CBA Section) welcomes the Canada Revenue Agency's invitation to comment on its proposed Guidance in relation to this sector.

The Canadian Bar Association is a national association representing 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. The CBA's primary objectives include improvement in the law and in the administration of justice. This submission was prepared by the CBA Section, which represents lawyers from across Canada who advise or serve on the boards of charitable and not-for-profit organizations.

**Focus on Recognition and Quality**

We appreciate that the proposed Guidance is directed toward the charitable registration of arts organizations. However, the focus on public *recognition* of artistic merit means, for all practical purposes, that an examination of an application will involve the *adjudication* of merit and thus a *de facto* regulation of a sizeable segment of the arts sector. Most artistic endeavors relate to individual expression – that is the purpose of art. The requirement for widespread public “acceptance” is inherently subjective and fundamentally conflicts with the purpose of artistic expression.

To focus on public recognition would exclude artists in the nascent stages of their careers whose pursuits are no less “artistic” in purpose and intent. This would mean that public acclaim must occur before an application for registration can be made. Applying this standard is akin to applying Olympic qualifying standards to athletes at the commencement of their careers.

This is problematic in many ways. Taste in artistic pursuits evolves over time. By focusing on recognition and perceived public merit rather than the purpose or intention of the artistic pursuit could unduly restrict applications for artists in emerging areas. In developing areas of art, there is unlikely to be peer review or any meaningful means to establish public acceptance. The nature of many art forms or disciplines is to challenge generally accepted norms and to experiment with both form and content. This is particularly so in emerging visual and digital art forms. We recommend that the *purpose or intention* of the artistic pursuit be the primary criteria upon which an examination of an application should be based.

### **Focus on Artistic Styles**

Listing acceptable artistic styles and requiring that the style have a “common or widespread acceptance” is also problematic. The examples in paragraph 50 of the proposed Guidance do not take into account emerging artists in emerging media. For example, hip hop is, by any commonly accepted public standard, considered to be a form of dance but it is not included. At the turn of the last century, impressionist painting was considered unworthy of public appreciation. Listing presumed “acceptable” artistic styles in Appendix C may lead to a general unwillingness to accept new artistic styles.

The evidentiary burden the proposed Guidance places on emergent art forms is unrealistic. In the sphere of education, the development of a young student by way of a scholarship or bursary is acceptable even though such individual’s thoughts need not be “acceptable” nor scholarly ability be proven. Registration of an organization involved in the development of emerging artists in new media would, in our view, be constrained to the point of impossibility. The extensive evidence that is suggested be provided would be prohibitive for small start-up arts organizations.

Appendix C should state more explicitly that the list is not exhaustive. Applicants should be guided to consider characteristics a non-listed art form shares with commonly accepted forms and styles and draw an analogy to the accepted forms and styles in its application.

### **Craft Not Recognized**

The proposed Guidance does not reference craft. By “craft”, we mean the creation of objects of practical use of high quality. Needlework, pottery, cabinetry, glass-blowing and ironwork would all be examples of craft. While not generally considered to be “art” except in their rarified forms, such endeavours are artistic and advance education in the sense described in *Vancouver Society of Immigrant and Visible Minority Women v. MNR*.<sup>1</sup> A reference to craft should be included in the Guidance.

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<sup>1</sup> [1999] 1 S.C.R. 10; 99 DTC 5034 (SCC)

## **Private Benefit**

The determination of when a private benefit is incidental is very challenging. It would be helpful for the proposed Guidance to provide specific factual examples of permissible incidental private benefit. It would also be helpful to set out a test or series of questions that could assist applicants in determining whether or not a private benefit exists.

Paragraph 67 of the proposed Guidance states that an unacceptable private benefit would exist if an organization offered “support services and advice to artists, significantly promoting the interests of individuals engaged in the industry”. This appears to limit the ability of an organization to “incubate” emerging artists or to operate in the very common cooperative model which in our view advances education by providing training to artists.

## **Use of Intermediaries**

Paragraph 72 could be simplified by providing that funding to artists or organizations for workshops requires a written contract.

## **Ethno-Cultural**

Paragraphs 74 and 73 should be reversed, so a non-technical reader would understand that in some circumstances an ethno-cultural organization could be registered as a charity.

## **Museums and Art Galleries**

The examples in paragraph 81 regarding private benefit under “questionable” appear to catch the vast majority of museums and art galleries in Canada. Donor and special events build relationships that support attendance and potential donations in support of the museum or gallery. Virtually all museums charge an admission fee. This portion of the paragraph should be reconsidered and clarified.

Again, thank you for the opportunity to comment on this proposed Guidance. Should you have any questions or wish to discuss further these recommendations or other matters related to the Guidance, please do not hesitate to contact us.

Yours truly,

*(original signed by Rebecca Bromwich for Peter Broder)*

Peter Broder  
Chair, National Charities and Not-for-Profit Law Section