



November 28, 2005

Charities Directorate, Canada Revenue Agency
Tower A
320 Queen Street
Ottawa ON K1A 0L5

Dear Sir/Madam:

Re: Proposed *Guidelines for the Registration of Umbrella Organizations*

The Charities and Not-for-Profit Law Section of the Canadian Bar Association, (the CBA Section) represents lawyers from across Canada who advise or serve on the boards of charitable organizations. We have had an opportunity to review the Canada Revenue Agency's (CRA) proposed *Guidelines for the Registration of Umbrella Organizations* (the Guidelines). We feel the Guidelines are unclear and it would be helpful to revise them to eliminate lack of clarity and potential uncertainty.

In particular, we wish to provide the following comments:

1. It is unclear why there is a distinction among umbrella organizations that: (a) are established to improve the effectiveness and efficiency of other registered charities (section 5.1 of the Guidelines); (b) advance a recognized charitable purpose, whose constituent groups may or may not all be registered charities (section 5.2 of the Guidelines); and (c) are established to hold bare legal title to property (section 5.3 of the Guidelines).

Umbrella organizations that are established to improve the effectiveness and efficiency of other registered charities have long been recognized as having a charitable purpose at law. However, under an earlier CRA policy, it was possible for title-holding organizations to be registered only as public foundations, rather than charitable organizations. This requirement of CRA has caused significant difficulties, because it meant that as foundations they were, *inter alia*, prohibited from incurring debt in the course of acquiring the properties in question. The ability to now be registered as charitable organizations is therefore welcome.

It would appear that the type of organization that is described in section 5.2 is simply another example of a type of umbrella organization. If we correctly understand the proposed policy, it is accepted that both types of umbrella organization are charitable and they simply differ in the nature of their charitable activity. We would therefore suggest, in order to avoid confusion, that sections 5.1 and 5.2 be combined as examples of types of umbrella organizations that may be registered as charitable organizations.

Section 5.3 of the Guidelines seems to differentiate between (a) a charity that is a landlord organization which leases, rents or allows the use of its facility by generally unrelated registered charities (a section 5.1 charity) and (b) a charity that acts as a holding company for property “beneficially owned” by another, related registered charity (a section 5.3 charity). At the same time, there is an acknowledgement that the guidelines for section 5.1 charities also apply to section 5.3 charities.

Thus, it appears that these title holding charities are also organizations that are established to improve the effectiveness and efficiency of other registered charities. Again, it is unclear why this separate category is needed.

2. There are also a number of areas of concern with respect to section 5.3. These include the following:
 - a) There is confusion in the characterization of a title-holding entity which, on the one hand, is described as holding property that is “beneficially owned” by another related registered charity and, on the other hand, is described as acting as the beneficial owner. Legal ownership and beneficial ownership are two distinct concepts. If the title-holding entity holds property “beneficially owned” by a tenant charity, it is only the legal owner of the property. The title-holding entity is then merely a bare trustee or nominee for the tenant charity (i.e. holding property in trust at the absolute disposal and for the absolute benefit of the tenant charity), and not itself the beneficial owner of the property in question.
 - b) By way of example, the Guidelines note that one reason why it is important that a tenant charity be a registered charity is to ensure that the property will continue to be exempt from municipal property taxation. What is not clear is whether the Guidelines are addressing that exemption vis a vis the tenant charity (technically the “owner” if one views the title-holding charity as a bare trustee) or vis a vis the title-holding charity, which in fact does not have beneficial ownership.
 - c) Another area of confusion arises from the requirement that the title holding entity must engage in certain activities in order to be registered as a charity, including many activities which are associated with being a landlord. In order for the entity to be a true landlord, one would assume that it must not only hold legal title as a bare trustee, but also beneficially own the land. However, this is at odds with the characterization of section 5.3 charities. In fact, the

greater the activities of the landlord charity other than holding the title to the land, the greater the similarity to the description of charities falling within the section 5.1 and 5.2 categories.

- d) The section entitled "Reporting Expenses" in section 5.3 is confusing. Here, it appears to be assumed that the landlord charity is the beneficial owner of the property. For example, there is discussion of how such a charity should receive the gift of the property for disbursement quota purposes and how it should treat services provided to the tenant charity. It notes in passing that permission to occupy the premises does not constitute an expenditure or a gift to the tenant charity. Again there appears to be confusion between beneficial ownership and holding legal title as a bare trustee. If the tenant charity and not the landlord charity is, in fact, the real "owner," then it is not clear how permission to occupy or the disbursement quota comes into the discussion.

3. We, therefore, make the following suggestions and recommendations:

- a) That the Guidelines be simplified, with a clear statement that the purposes and activities described in sections 5.1 and 5.2 are recognized as charitable and that charities with these purposes and/or carrying on such activities can be registered as charitable organizations.
- b) That the landlord charity concept be included as one type of charity that assists other charities and can be registered as a charitable organization.
- c) That issues relating to the disbursement quota, if any, be addressed specifically in relation to holding land and providing it to other charities.

We trust that CRA will find these comments helpful in reviewing and revising the Guidelines. If you have any questions or concerns, please do not hesitate to contact the undersigned.

Yours truly,

(Original signed by Kerri Froc on behalf of James Parks)

James M. Parks,
Chair
National Charities and Not-for-Profit Law Section