



April 23, 2015

Via email: 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Re: CRA draft guidance - Relieving Conditions of the Aged and Charitable Registration

The Canadian Bar Association Charities and Not-for-Profit Law (CBA Section) appreciates the opportunity to provide input on Canada Revenue Agency's draft guidance CG-02X, *Relieving Conditions of the Aged and Charitable Registration*.¹

The CBA is a national association representing 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice. The CBA Section represents lawyers from across Canada who advise or serve on the boards of charitable and other not-for-profit organizations.

We offer several general comments on the draft guidance followed by specific suggested revisions.

General Comments

First, the draft guidance reflects Charities Directorate's recent practice of clarifying which purposes and activities qualify for charitable status. Some parts of the guidance list certain activities as examples, whereas elsewhere (for instance, in paragraphs 11 and 13) examples are not provided, possibly leaving the impression that certain routine activities can qualify an organization for charitable status. The charitable character of activities must be determined in reference to the purpose(s) they advance.² Activities may disqualify an entity from qualifying as charitable where:

¹ To replace Policy Statement CPS-002, *Relief of the Aged*, www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-002-eng.html, and Policy Commentary CPC-004, *Housing for Seniors (Life-Tenancy Agreement)*, www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cpc/cpc-004-eng.html

² *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*, [1999] 1 S.C.R. 10 at para 152

- they do not advance one or more of the entity’s charitable purposes or are too remote from those purposes to be said to further them;
- they constitute, because of their quality or quantity, a collateral non-charitable purpose of the entity;
- they are illegal (including being in breach of the *Income Tax Act* provisions that govern the conduct of registered charities) or are contrary to public policy; or
- they entail impermissible private benefit or distribution of the entity’s assets or resources.

Second, given the overlap between registered charities that undertake work with the aged and s. 149(1)(l) organizations³, the guidance should offer clarification of the distinguishing characteristics of the various classifications. The current Policy Statement CPS-002, *Relief of the Aged*, provides information on “Disqualifying Circumstances”. Given the potential tax consequences of falling under the wrong classification, clearer information should be provided in the guidance.

Finally, for the convenience of readers, cross-references in the guidance should include pinpoint citations where possible and repetition (for instance, in paragraphs 26 and 31) should be eliminated.

Specific Comments

Paragraph 1: Specify an acronym for Canada Revenue Agency’s Charities Directorate, as “CRA” is used elsewhere in the guidance.

Paragraph 8: Provide a link to the “How to Draft Purposes for Charitable Registration” document on the CRA website: www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/drftprpss-eng.html.

Paragraph 10: Replace the comma after the word “category” in the first sentence with a dash or colon.

Footnote 2: Close the parenthesis in the next to last paragraph.

Footnote 4: Explain, or provide examples of, “acceptable legal parameters”.

Paragraphs 11-13: Better explain the connection between the content of these paragraphs and the material in footnotes 7 and 8. Also, the use of “Ideally” at the beginning of footnote 8 is at odds with the mandatory language in the referenced paragraphs.

Paragraph 12: Provide more information about the public benefit test, perhaps including some concrete examples of meeting the public benefit test in the context of relief of the aged.

Paragraphs 19-22: Edit this section to eliminate jargon and awkward phrasing and to make these paragraphs more accessible to lay readers. The first part of the example used in paragraph 19 is very generic. An example with more factual context might be more instructive.

Paragraph 19: Add “it” to the last sentence, between “that” and “is”.

³ *Income Tax Act* (R.S.C., 1985, c. 1 (5th Supp.)), s. 149(1)

Paragraph 25: Consider narrowing the general language used to describe the decision-making process; this paragraph appears to grant the CRA very broad discretion without providing insight into the parameters or criteria for exercising that discretion.

Paragraph 26: substitute “furthers” for “will further”.

Conclusion

We hope our comments will be useful in improving and clarifying the draft guidance. The CBA Section welcomes the opportunity to comment on this and other guidance and appreciates the CRA’s efforts to provide clearer information to the public on the considerations for determining charitable status and the expectations of charities once registered.

Please contact us if you require elaboration or more information regarding our suggestions.

Yours truly,

(original letter signed by Sarah MacKenzie for Margaret H. Mason)

Margaret H. Mason
Chair, Charities and Not-for-Profit Law Section