



August 2, 2016

Via email: consultation-policy-politique@cra-arc.gc.ca

Tony Manconi
Director General
Charities Directorate
Canada Revenue Agency
320 Queen Street
Ottawa, ON K1A 0L5

Dear Mr. Manconi:

Re: CRA Guidance – Housing and Charitable Registration

In keeping with the Canada Revenue Agency's policy of welcoming comments or suggestions on its policies and guidance products from the charities and not-for-profit sector, the Canadian Bar Association Charities and Not-for-Profit Law Section (CBA Section) is writing to provide input on the Guidance CG-022, *Housing and Charitable Registration*, issued on February 7, 2014.¹

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.

Replacing Policy Statement CPS-020, *Applicants that are Established to Relieve Poverty by Providing Rental Housing for Low-Income Tenants* with CG-022 is a welcome change. The previous policy was unduly prescriptive and restrictive in many respects. It is also helpful that CG-022 cross references other CRA policies and guidances. That said, the following comments point to several aspects of CG-022 that the CBA Section believes could be clarified or improved.

CG-022 indicates that housing provided by a charity should be "comfortable" and "modest". It would be helpful to provide the meaning of these terms, especially what is meant by "modest."

¹ CG-022 replaced Policy Statement CPS-020, *Applicants that are Established to Relieve Poverty by Providing Rental Housing for Low-Income Tenants*, dated April 1, 2003. Summary Policy CSP-H01, *Housing (Rental)*, dated October 25, 2002, is also no longer available, presumably superseded by CG-022.

CG-022 indicates that a charity must ensure that assistance given to individuals is no more than that required to relieve their need. Readers are referred to CRA's *Guidelines for Registering a Charity: Meeting the Public Benefit Test*.² This is an important element of the requirements, and it would be helpful for it to be in the body of CG-022, rather in the footnote.

On the provision of housing to relieve conditions associated with the aged, CG-022 contains no explanation of what "aged" and "conditions associated with the aged" mean. We suggest that the guidance should explain what these terms mean, or at least set out applicable cross references to other CRA guidances or policies that provide that explanation.

CG-022 does not refer to another important CRA Policy Commentary, CPC-004, *Housing for Seniors (Life-Tenancy Agreement)*, dated April 10, 1992. This is relevant to determining whether providing housing to the aged under a life-tenancy agreement is charitable.³ After referring to the *Rowntree* case⁴, CPC-004 clarifies that:

Life-tenancy agreements are not unique to the aged nor do they in themselves resolve problems associated with old age. They are merely a particular form of *quid pro quo* and do not imply any charitable relief. Therefore, an organization established simply to provide housing to the aged under a life-tenancy agreement cannot be registered as a charity.

However, CPC-004 implies, but does not explicitly state, that providing housing to seniors to relieve conditions associated with old age through a life-tenancy arrangement can be charitable. Given the global trend of aging populations, the demand for programs and services including housing to seniors is on the rise. Many organizations find it attractive to provide seniors' housing projects through a life-tenancy arrangement. The CBA Section suggests clarifying the type of programs that qualify for charitable registration with life-tenancy arrangements. It would also be helpful for the guidance to either cross reference CPC-004 to clarify this issue or consolidate the requirements into CG-022 to provide greater clarity and simplicity.

We suggest as well that CG-022 (perhaps in the footnotes) include a more complete review of the legal principles from *Rowntree*, specifically on whether providing housing to seniors under different arrangements is considered charitable.

The guidance indicates that CRA is developing a more comprehensive guidance that will "address additional issues related to the provision of housing by registered charities." It also says that "providing housing, shelter, or accommodation can further other charitable purposes not discussed in this guidance." Clarifying the meaning of "additional issues" and "providing housing, shelter, or accommodation can further other charitable purposes" would be helpful. For example, it would help to specifically confirm that providing housing to retired ministers or providing a residential retirement environment for seniors of similar faith can be recognized as advancement of religion (see footnote 62 of CRA Guidance CG-021, "Promotion of Health and Charitable Registration").

² Canada Revenue Agency, Policy Statement CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test*, March 10, 2006 (online: www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-024-eng.html).

³ Canada Revenue Agency, Policy Commentary CPC-004, *Housing for Seniors (Life-Tenancy Agreement)*, April 10, 1992 (online: www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cpc/cpc-004-eng.html).

⁴ *Joseph Rowntree Memorial Trust Housing Association Ltd. and others v. Attorney-General*, [1983] 1 All E. R. 288 (Ch.D).

Issues around the provision of housing may arise in different scenarios and it is challenging to have an all-encompassing guidance for every scenario. At a minimum, it would be helpful for CG-022 to cross reference other relevant guidances and policies. This would help the sector understand which issues need to be considered in both establishing and maintaining a charity that provides housing to those in need.

Many regions in Canada are experiencing a serious shortage of affordable rental housing. This is particularly acute in the Lower Mainland of British Columbia, for example. Charities are engaging with regional housing authorities and non-profit housing providers to develop “mixed use” housing projects that combine a “charitable” housing component (and other charitable uses) with below-market rental housing, and occasionally a commercial or market housing component to be sold or leased to provide the necessary financial means to develop the charitable and below market rental housing. At present, the structuring to ensure that both the registered charity and the non-profit organization can maintain tax-exempt status to undertake the development is complex, particularly when the registered charity owns the land proposed for redevelopment, which is often the case. Consideration should be given in CG-022 to clarifying a registered charity’s role in these developments. We also suggest consideration be given to permitting registered charities to conduct these developments within the charity provided that title to the portions of the development not to be operated by the charity, or which do not have a charitable use, be transferred post-construction to an appropriate entity.

Conclusion

We hope our comments will be useful in improving and clarifying Guidance CG-022. The CBA Section welcomes the opportunity to comment on this and other guidances and policies. We appreciate 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 on our suggestions.

Yours truly,

(original letter signed by Gaylene Schellenberg for C. Yvonne Chenier)

C. Yvonne Chenier
Chair, CBA Charities and Not-for-Profit Law Section