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

Tony Manconi
Director General, Charities Directorate
Policy, Planning, and Legislation Division
Canada Revenue Agency
Ottawa ON K1A 0L5

Dear Mr. Manconi:

Re: Public policy dialogue and development activities by charities

I am writing on behalf of the Charities and Not-for-Profit Law Section of the Canadian Bar Association (CBA Section) to offer feedback on draft administrative guidance CG-027 – *Public policy dialogue and development activities by charities* (Draft Guidance), issued by the Canada Revenue Agency (CRA) on January 21, 2019.

The CBA is a national association representing over 36,000 jurists, including lawyers, notaries, law teachers and law students across Canada. The CBA's mandate includes seeking improvements in the law and the administration of justice. The CBA Section has members across Canada practising in all areas of charities and not-for-profit law and in every size of practice, from large national firms to small and solo practitioners. We are dedicated to the evolution of a fair and efficient system reflecting principles of natural justice and Canadian interests.

The Draft Guidance is helpful in explaining public policy dialogue and development activities (PPDDAs), and which activities of charities qualify as PPDDAs and which do not. We offer some comments about the Draft Guidance for consideration.

Furthering a Stated Charitable Purpose

Under the heading "Furthering a stated charitable purpose", the Draft Guidance states that there is no limit under the *Income Tax Act* (the Act) on a charity engaging in PPDDAs that further a stated charitable purpose of a charity, provided the charity does not engage in non-partisan activities (i.e., it does not "directly or indirectly support or oppose a political party or candidate for public office"). The Draft Guidance includes the following definition of "stated charitable purpose":

A stated charitable purpose is a purpose that meets the following three criteria:

- the purpose appears in the charity’s governing documents
- the purpose falls within one of the four categories of charity (see Annex A)
- the purpose provides a benefit to the public (see Policy statement CPS-024, *Guidelines for registering a charity: Meeting the public benefit test*)
 - this includes a requirement that any private benefit conferred is necessary, reasonable, and proportionate (see also Guidance CG-013, *Fundraising by registered charities*)

This definition appears to require charities to assess whether the purposes in their governing documents continue to meet the CRA’s requirements for charitable purposes (despite having been previously approved by the CRA) in order for them to carry on PPDDAs. The same requirement is not imposed on charities when they engage in charitable activities in other ways, such as when they do so through an intermediary. Further, defining “stated charitable purpose” to include more than the purposes *stated* in a charity’s governing documents could be confusing to charities.

Charitable Activities

According to Guidance CG-019 – *How to draft purposes for charitable registration*, the CRA requires that charitable purposes contain three elements, one of which is “the means of providing the charitable benefit”. Given that the CRA requires a charity’s stated charitable purposes to include activities, it may be difficult for charities to see how PPDDAs can further the activities included in their stated charitable purposes. To illustrate, the Draft Guidance includes the example of “advancing religion by offering religious instruction to elementary school students.” Charities may find it difficult to see how a PPDDA (for example, advocating for government funding for religious education) could fall within “offering religious instruction”. Also, although the Draft Guidance allows a charity to spend 100% of its resources on PPDDAs that further its stated charitable purposes, it is unclear how 100% of a charity’s activities can be PPDDAs and not the activities set out in its charitable purposes. (See further comments under “Other Legal Requirements” below.) We recommend that the CRA not require charitable purposes to include “charitable activities”.

Records

The sentence above the heading “Public policy dialogue and development activities” requires a charity to keep records about its considerations in carrying out PPDDAs. It would help for charities to understand what “records” is intended to encompass. We recommend including some examples, such as minutes of meetings or copies of memoranda or reports.

Charity’s Activities other than PPDDAs

Under the heading “A charity’s activities other than PPDDAs”, it states that the “rules in the [Act] regarding PPDDAs, and the flexibility they provide, do not typically apply to other types of charities’ activities, such as fundraising.” It is unclear whether the intent is to explain that PPDDAs that are illegal or provide a private benefit are not permitted, or that activities, such as fundraising or an unrelated business, have their own rules that need to be followed even if they are otherwise a PPDDA. We recommend that the intent be clarified.

Other Legal Requirements

Under the heading “Other legal requirements”, the Draft Guidance states that provincial law may be different than the requirements pertaining to PPDDAs under the Act, with a footnote that links the

reader to the website for the Ontario Public Guardian and Trustee (PGT). This statement may create unintended confusion as it implies that the concept of a PPDDA is somehow offside in Ontario, which is not true, or perhaps offside in another province, which we also question. Rather, we understand that the issue from the PGT's perspective is whether a PPDDA undertaken by a charity subject to the laws of Ontario falls within a charity's purposes. If, for example, a charity's purpose is advancing religion by offering religious instruction to elementary school students, our understanding of the PGT's position is that the charity may be able to spend some of its resources on advocating for government funding for religious education to help it fulfil its charitable purpose but not 100% of its resources to do so, because then it would not be offering religious instruction.

The Draft Guidance does a good job of showing that PPDDAs complement rather than contradict the common law. However, a charity cannot have a political purpose under the common law or under the Act, so there should be no difference between the provincial or federal level in this regard.

Confusing Language

The Draft Guidance includes the phrase "(public policy dialogue and development activities)" after most references to PPDDAs, making it cumbersome and difficult to follow at times. Since the term PPDDAs is defined in the first paragraph of the Draft Guidance, spelling it out is extraneous. We suggest that subsequent references not include "(public policy dialogue and development activities)". If desirable, the Draft Guidance could insert a link to the definition whenever the defined term is used.

T2050 and T3010

We also have comments about the changes recently announced to the reporting requirements for PPDDAs in the T3010 Registered Charity Information Return (T3010) and the T2050 Application to Register a Charity Under the Income Tax Act. It is helpful to include an explanation about PPDDAs in Guide T4063 *Registering a Charity for Income Tax Purposes*, along with a link to the Draft Guidance. However, requiring a charity to identify in its T3010 the PPDDAs with which the charity is involved and how those activities relate to its charitable purposes unnecessarily singles out one particular type of activity that a charity may pursue in achieving its charitable purposes. Since PPDDAs are considered charitable activities under the Act, they should be treated no differently than a charity's other charitable activities, such as offering food to the homeless or providing academic scholarships. Singling out PPDDAs for special reporting may cause charities to refrain from being involved in PPDDAs due to potential heightened scrutiny of such activities.

Conclusion

We hope our comments will help the CRA in considering changes to the Draft Guidance and some of its other policies. The CBA Section would be happy to give further clarification as needed.

Yours truly,

(original letter signed by Gaylene Schellenberg for Susan Manwaring)

Susan Manwaring
Chair, Charities and Not-for-Profit Law Section