

## FOCUS ON CROSS-BORDER LAW

# CRA draft guidance clarifies the rules for human rights charities operating abroad

The Canada Revenue Agency (CRA) recently released its proposed guidance on the protection of human rights and charitable registration for determining whether a human rights organization can be registered as a charity under Canada's *Income Tax Act*.

The guidance explains what human rights organizations need to do to obtain and maintain their charitable status, and significantly broadens the spectrum of charitable work that human rights charities may engage in. In light of the numerous human rights charities that operate outside of Canada, the guidance addresses international issues that need to be considered.

In general terms, organizations that are seeking to become registered charities must have purposes that are considered, at law, to be charitable. At common law, it has been established that there are four categories under which a charitable purpose must fall: the relief of poverty, advancement of education, advancement of religion and other purposes beneficial to the community.

Previous direction from CRA on this matter was in the form of a brief 2003 Summary Policy (CSP-H08) that explained that charities could conduct and disseminate research on the maintenance and observance of human rights, which would fall solely under the advancement of education. The guidance would significantly broaden the scope of acceptable charitable purposes by providing guidelines and specific examples of how the protection of human rights may be properly characterized as advancing any of the four categories.

Generally, a registered charity must also operate to provide a tangible benefit to the public or sufficient segment of the public. Any private benefit must be reasonable, necessary and incidental. However, according to the guidance, the public benefit of protecting human rights may be intangible, but will still be considered to be for the benefit of the public because of the clear general consensus that it is a benefit, as evidenced by the vast array of domestic and international legal instruments that have the purpose of protecting human rights.

Moreover, CRA recognizes that the breadth of human rights issues means that a charity's focus on particular issues, geographic regions or vulnerable groups should be acceptable as long as the restriction of the public benefit is justifiable.



**TERRANCE CARTER**

“

**Human rights charities that seek to operate internationally are cautioned that the concept of “political purposes” is not universal.**

Therefore, organizations that focus on a particular country or region in the international context should generally be able to qualify as a registered charity, even though there is a restriction in the extent of the resulting public benefit. However, the guidance stresses that nothing diminishes charities' obligations under Canadian anti-terrorism legislation and provides a link to further resources for those operating internationally.

For the purposes of the guidance, “human rights” are those individual rights and freedoms acknowledged, within their prescribed limitations, in specific legal instruments, such as the *Canadian Charter of Rights and Freedoms*, various federal and provincial human rights legislation and human rights treaties that are binding on Canada.

Other instruments may also be included in this definition, provided that their relevant portions are “sufficiently similar” to the human rights instruments that are listed in the guidance, but no further explanation is provided regarding what might be considered to be sufficiently similar. The “protection of human rights” is defined in the guidance as “activities that seek to encourage, support, and uphold human rights that have been secured by law, internationally or domestically,” and expressly excludes advocacy for new legal rights at any level.

Under the *Income Tax Act* and at common law, organizations cannot be charitable if they are established for a political purpose. As such, the guidance

emphasizes the fact that human rights charities will often need to work outside of existing political and legal structures, and therefore must ensure that their charitable purposes are not political as well.

A political purpose might include lobbying governments to amend human rights law or to sign a particular treaty, but would not include the charity simply investigating and reporting violations of existing human rights. While political purposes are always impermissible, CRA recognizes that human rights charities may engage in some non-partisan political activities, provided that those activities use no more than 10 percent (or 20 percent for smaller charities) of the charity's resources, and the activities are connected and subordinate to the charity's purposes.

Human rights charities that seek to operate internationally are cautioned that the concept of “political purposes” is not universal. For example, the death penalty is not uniformly accepted or rejected as a human rights abuse in every country, and therefore, advocacy against the death penalty may be political in nature in some countries and non-political in others.

As such, what is permissible from the perspective of CRA is a highly contextual matter. Organizations that operate in a foreign country or jurisdiction cannot rely on human rights norms in Canada but instead need to determine what international or domestic laws are applicable.

The guidance therefore provides existing charities and applicant organizations with far greater clarification of the relevant issues and considerations in protecting human rights. Although there are obvious difficulties in distinguishing between permissible and impermissible political activities, the variety of examples provided in the guidance indicate that charities will have a practical framework to assess the suitability of their activities. This is obviously a good development for the charitable sector in Canada.

CRA has made the full text of the proposed guidance available on its website at [www.cra-arc.gc.ca/tx/chrts/cnsltns/ghrg-eng.html](http://www.cra-arc.gc.ca/tx/chrts/cnsltns/ghrg-eng.html). ■

*Terrance Carter is the managing partner with Carters Professional Corporation and is counsel to Fasken Martineau DuMoulin LLP on charitable matters.*

Lawddities



*A legal oddity in Cross-border Law*

## Something rotten in the state of Florida

There's a foul smell in thousands of homes in Florida – and homeowners believe the rotten-egg odour is coming from the imported Chinese drywall used to build their homes.

The homeowners, mainly from Florida as well as some other U.S. states, suffer from eye, skin and breathing irritations and nosebleeds, as well as having to replace copper pipes, electrical wiring and air conditioners due to corrosion. They blame the fumes emanating from the drywall. Testing shows that the drywall is emitting sulfur-compound gases, according to *The Wall Street Journal*.

A number of government agencies, as well as state health departments, are investigating the problem to determine whether a health hazard exists. Owners faced with the cost of replacing the drywall and electrical wiring hope to recover their losses through lawsuits, but may have difficulty suing the foreign-based manufacturers.

There's something rotten in the state of Florida – and homeowners intend to prove that it's their Chinese drywall. — *Natalie Fraser*

CARAMAN / DREAMSTIME.COM

# NEXT WEEK

# FOCUS

- Constitutional Law
- Real Property



## THE LAWYERS WEEKLY