

---

## CHARITY LAW BULLETIN

Editor: Terrance S. Carter

---

### **CCRA AND CHARITIES: WHAT'S NEW?**

#### **A Summary of Developments from June 2002 through March 2003**

By R. Johanna Blom and Terrance S. Carter

#### **A. INTRODUCTION**

This *Charity Law Bulletin* is provided as a brief summary of resource materials made available from and initiatives taken by the Charities Directorate of Canada Customs and Revenue Agency (CCRA) between June 2002 and March 2003. It is not intended to constitute either a thorough review or an analysis of any of the documents and resources available. Instead, the Bulletin is meant to point out some of the more important developments that charities should be aware of on the CCRA website and to direct charities to resources from CCRA that could be of assistance in navigating their on-going relationship with CCRA. Most of the matters discussed in this Bulletin are available on the website of CCRA.

#### **B. WHAT'S NEW**

##### **1. Future Directions**

In September 2002, CCRA released a report entitled *Future Directions for the Canada Customs and Revenue Agency* (“*Future Directions*”), which is the culmination of 18 months of consultations with Canadians intended to determine how CCRA can improve service and strengthen compliance. The key to strengthening CCRA and its relationship with its clients as identified by the *Future Directions* report is to develop a client-centred approach by targeting CCRA’s services and verification activities to the needs and character of its different constituencies.

The needs of charities differ from those of CCRA's other constituencies, namely small and medium enterprise, large business, and individuals. In *Future Directions*, CCRA promises to build a stronger relationship with charities through streamlining its procedures and "making dealings with the CCRA simpler, more timely, and easier to understand." CCRA will focus on enhancing electronic services, transparency, compliance, and cooperation with the voluntary sector. To this end, CCRA has started by updating its website and making various documents and forms available on-line. A number of these are discussed later in this issue of the *Charity Law Bulletin*.

The full *Future Directions* report is available at: [http://www.ccra-adrc.gc.ca/agency/directions/report\\_sept-e.pdf](http://www.ccra-adrc.gc.ca/agency/directions/report_sept-e.pdf) and a summary is available at <http://www.ccra-adrc.gc.ca/E/pub/xi/rc4313/rc4313-e.pdf>. A brochure explaining how this report is relevant specifically to charities is available at: <http://www.ccra-adrc.gc.ca/E/pub/xi/rc4313/rc4313-e.pdf>.

## 2. Voluntary Sector Initiative – Joint Regulatory Table

The Joint Regulatory Table is an advisory body created under the Voluntary Sector Initiative, a joint undertaking by the Government of Canada and the voluntary sector to examine ways to improve the relationship between the voluntary sector and the government, enhance the capacity of the sector to serve Canadians, and improve the legislative and regulatory environment in which the voluntary sector operates. The Joint Regulatory Table released its interim report, *Improving the Regulatory Environment for the Charitable Sector*, on August 7, 2003. The recommendations included in the report focus on four areas: accessibility and transparency of the regulatory regime for charities, refining the sanctions regime for non-compliance by charities, improving the process for appeals from decisions by CCRA, and institutional reform of the regulatory regime. The Joint Regulatory Table held consultations on its recommendations through September and October, 2002. Its final recommendations are expected at the end of March, 2003.

The interim report is available on the Voluntary Sector Initiative's website at: [http://www.vsi-isbc.ca/eng/joint\\_tables/regulatory/reports.cfm](http://www.vsi-isbc.ca/eng/joint_tables/regulatory/reports.cfm).

## 3. Related Business Consultation

CCRA is currently examining the results of a consultation on policy guidelines for registered

charities regarding related businesses. The purpose of the consultation is to clarify how CCRA interprets the law with regard to charities engaging in related businesses. The consultation document points out that while the *Income Tax Act* (Canada) contains a broad definition of “business”, it does not adequately define what is considered a related or unrelated business in the context of charities.

CCRA is proposing to define “business” in the charitable context as “commercial activities, or more precisely, the seeking of revenue by providing goods and services to people in exchange for a fee”. According to CCRA, this would serve to keep charitable programs out of the broad definition of business used in the rest of the *Income Tax Act* and also make it easier for charities to determine how to interpret their disbursement quota and income from investments. According to the policy document, the related business provisions would only involve a part of charities’ activities, because “the ITA only covers situations involving the ‘carrying on’ of a business, a term that has a particular and established meaning in tax legislation”. The policy proposal also attempts to further clarify some activities that are engaged in by charities that are not considered “carrying on a business”. A *Charity Law Bulletin* commenting upon this policy in greater detail will be forthcoming.

The consultation document, *Guidelines for Registered Charities on Related Business*, is available at: [http://www.cca-adrc.gc.ca/tax/charities/consultations/related\\_business-e.html](http://www.cca-adrc.gc.ca/tax/charities/consultations/related_business-e.html). A revised proposal on related business may be released by CCRA in the near future.

#### 4. 2002 Concept Draft – Registered Charities – Political Activities

A concept draft for an Information Circular regarding charities and political activities is open for comment and the consultation period has been extended to April 30, 2003. Raising public awareness is often a necessary and important part of charitable activities, but there is a fine line between raising public awareness and engaging in political activities, which is not charitable. The concept draft seeks feedback from the charitable sector in order to develop an Information Circular to give direction to charities regarding how to reconcile their public awareness activities with the requirement not to engage in political activities. Aside from the technical application of CCRA’s interpretation of political activities and the *Income Tax Act*, the draft examines issues such as the nature of political activity and communication activity, and the difference between education as a charitable purpose on the one hand and public

awareness campaigns on the other. As well, the draft provides a number of hypothetical scenarios intended to illustrate the distinctions between charitable activities, and prohibited and permitted political activities.

The draft is available at: [http://www.ccra-adrc.gc.ca/tax/charities/consultations/political\\_activities-e.html](http://www.ccra-adrc.gc.ca/tax/charities/consultations/political_activities-e.html).

5. Consultation on Proposed Policy: Registering Charities that Focus on Eliminating Racial Discrimination

Open for comment until March 31, 2003 is a consultation paper on CCRA's policy with regard to registering charities that focus on eliminating racial discrimination, including organizations whose goals are anti-racism, as well as those devoted to promoting positive race relations in Canada. The consultation paper examines the rationale behind the acceptance of eliminating racial discrimination as a charitable ground and examines how this would fit under the heads of advancement of education and other purposes beneficial to the community. It also provides examples of acceptable wording of charitable objects. Appendices compare the Canadian approach to the U.S. and U.K. approaches and examine the policy, legislative, and judicial contexts related to racial equality.

The consultation paper, *Registering Charities that Focus on Eliminating Racial Discrimination*, is available at: [http://www.ccra-adrc.gc.ca/tax/charities/consultations/eliminating\\_discrimination-e.html](http://www.ccra-adrc.gc.ca/tax/charities/consultations/eliminating_discrimination-e.html).

6. Draft Technical Amendments

On December 21, 2002, the Department of Finance released legislative proposals relating to changes to the *Income Tax Act* that will affect registered charities. According to CCRA's website, these technical amendments will provide more transparency for registered Canadian amateur athletic associations, clarification about the fact that charities cannot disburse funds to non-qualified donees, changes to the definitions that will make the "private foundation" designation more limited, and changes to implement the proposals regarding split-receipting as discussed in the next section. A *Charity Law Bulletin* commenting upon these technical amendments will be forthcoming.

More information about the changes can be found at the Department of Finance website at: <http://www.fin.gc.ca/news02/02-107e.html>.

7. Proposed Guidelines on Split-Receipting

The *Income Tax Technical News* Issue 26 sets out CCRA's *Proposed Guidelines on Split-Receipting*, which form the basis of the draft technical amendments to the *Income Tax Act* released on December 21, 2002 (referred to section 6, above). The split-receipting guidelines are intended to clarify CCRA's treatment of donations where the donor receives some form of advantage in return for a donation. The guidelines focus on the "donative intent" of the donor. In order to determine donative intent, there must be a voluntary transfer to the donee of property with an ascertainable value, the value of any advantage received by the donor must be ascertainable, and there must be a "clear donative intent to enrich the donee". The amount of a gift that is eligible for a charitable receipt would be the amount of the gift that exceeds the value of the advantage, while an advantage below a certain threshold would be disregarded.

Issue 26 of the *Income Tax Technical News* is available at: <http://www.ccra-adrc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf>.

8. Memorandum: Donations of Gift Certificates

Another issue that CCRA has sought to give direction on is whether or not charities can issue charitable tax receipts for donations of gift certificates. A memorandum from the Director General of the Charities Directorate dated October 9, 2002 discusses possible scenarios in which a charity might receive a gift certificate as a donation and how the different events should be treated. Each individual case would have to be examined on its own facts. Determinative factors would include the circumstances under which the charity received the gift certificate and how it dealt with the donation. Questions that would be asked include who donated the gift certificate and how did the charity deal with the certificate; in other words, did the charity redeem the certificate itself or pass it on to someone else (for example as a prize in a raffle).

The memorandum is available at: [http://www.ccra-adrc.gc.ca/tax/charities/policy/gift\\_certificates-e.html](http://www.ccra-adrc.gc.ca/tax/charities/policy/gift_certificates-e.html).

9. Fact Sheet: Art Donation Schemes

Art donations are a popular and legitimate way for donors to donate property to charities. However, a fact sheet released by CCRA in November 2002 warns individuals and charities against certain art donation schemes, otherwise known as art flipping. A donor purchases a work of art by a promoter, donates the artwork to a charity and receives a receipt for an appraised value much higher than the original purchase price. Donors making a claim for an inflated donation receipt could be subject to penalties and the recipient charity or institution can be subject to penalties or de-registration if it knew, or should have known, that the appraisal was inflated.

The fact sheet is available at: <http://www.ccra-adrc.gc.ca/newsroom/factsheets/2002/nov/art-e.html>.

10. New On-line Services

One of the new services available on CCRA's redesigned website that will be of interest to charities and their legal advisors is the availability of some of CCRA's policy documents on-line. These documents include summary policies and technical documents. The summary policies are short synopses, usually only one or two paragraphs, of CCRA's position on different issues related to charities or definitions of terms as used by CCRA. The technical documents are longer documents that examine CCRA's position in greater detail with regard to the implementation of the *Income Tax Act* in its dealings with charities. The documents address various topics arranged according to three subject areas, specifically *Becoming a Registered Charity*, *Operating Day-to-Day*, and *Keeping your Registered Status*. The availability of these documents is a welcome improvement to the CCRA's service to charities and will be of assistance to charities and their legal advisors in understanding CCRA's position and their rights and obligations. The policy documents are accessible by clicking on "Policy" on the Charities menu anywhere in the Charities website or by going directly to: <http://www.ccra-adrc.gc.ca/tax/charities/policy/policy-e.html>.

As part of CCRA's commitment to increased transparency and accessibility, the Agency has made various documents of public record available on its internet site. Information returns submitted by charities are now available on-line, save and except for any portions of the return designated as confidential (cf. sections B and I of the return). Charities would be well advised to ensure the accuracy of their reporting when completing their returns and to verify their records on-line to ensure that the information available to

the public is correct. However, the overall effect of this service will be a positive development, as it will enable the public to better access information about charities and evaluate their work and effectiveness when deciding what charities to support. The annual returns are available by accessing the charity through a searchable list of Canadian charities available at <http://www.ccr-aadrc.gc.ca/charitylists/>. A list of newly registered charities and recently revoked charities (covering the last 12 months) is also available at the same web page.

#### 11. Shortened T3010 Information Return

CCRA has re-designed the *Registered Charity Information Return* (Form T3010) to make it shorter (four pages) and simpler to complete. The new T3010A was made available on CCRA's website on February 28, 2003 and is to be used by any charity with a year-end on or after January 1, 2003. The new T3010A and the *Registered Charity Basic Information* sheet are available at: [http://www.ccr-aadrc.gc.ca/tax/charities/about\\_t3010-e.html](http://www.ccr-aadrc.gc.ca/tax/charities/about_t3010-e.html). Assistance in completing the T3010A is available in brochure T4033A, *Completing the Registered Charity Information Return*, at: <http://www.ccr-aadrc.gc.ca/E/pub/tg/t4033a/README.html>. Changes to the T3010 and the *Registered Charity Basic Information* sheet can be made using Form T1240, *Registered Charity Adjustment Request*, available at: <http://www.ccr-aadrc.gc.ca/E/pbg/tf/t1240/t1240-02e.pdf>.

#### 12. Advance Passenger Information

One item that may be of concern to some charities is the Advance Passenger Information/Passenger Name Record (API/PNR) program, which was scheduled to be implemented by CCRA in October 2002. This program has been introduced in the context of increased concern for public safety and security as a part of the federal government's anti-terrorism initiative. However, the program may have much broader application. The API/PNR program involves CCRA maintaining a database of specific information gathered from airlines about all airline passengers entering Canada. According to CCRA's website, this information will be kept for six years and "allow Customs to identify known criminals, track terrorists, and prevent other threats to Canadians when it is run through law enforcement databases". The information will be analyzed in order to track and arrest known criminals and terrorists and to identify potential criminals and terrorists by examining travel patterns.

More information about the database is available from CCRA at: <http://www.ccra-adrc.gc.ca/newsroom/releases/2002/sep/api-e.html> and commentary is available from the federal Privacy Commissioner's website at: [http://www.privcom.gc.ca/media/mc-ki-api\\_e.asp](http://www.privcom.gc.ca/media/mc-ki-api_e.asp).

### C. CONCLUSION

Many substantive and useful resources are now available on CCRA's website with which charities will need to become familiar. As a result of CCRA's continuing commitment to improve its services to the charitable and voluntary sector, charities and their legal advisors will now need to be diligent in keeping current with the many CCRA initiatives in this regard.

#### **Charity Law Bulletin**

Editor: Terrance S. Carter

This *Charity Law Bulletin* is a summary of current legal issues provided as an information service by Carter & Associates. It is current only as of the date of the Bulletin and does not reflect subsequent changes in the law. The *Charity Law Bulletin* is distributed with the understanding that it does not constitute legal advice or establish the solicitor/client relationship by way of any information contained herein. The contents are intended for general information purposes only and under no circumstances can be relied upon for legal decision-making. Readers are advised to consult with a qualified lawyer and obtain a written opinion concerning the specifics of their particular situation. © 2003 Carter & Associates