

CRA GUIDANCE ON HOW TO DRAFT PURPOSES FOR CHARITABLE REGISTRATION

*By Jennifer M. Leddy and Terrance S. Carter**

A. INTRODUCTION

On July 25, 2013, Canada Revenue Agency (CRA) released the very helpful and practical Guidance on *How to Draft Purposes for Charitable Registration* (the Guidance).¹ It updates and replaces various policy statements² with one comprehensive document. The Guidance outlines CRA's recommended approach to drafting charitable purposes, and will benefit organizations that are applying for registration as charities, as well as registered charities wishing to change their existing charitable purposes. It is a companion piece to the Model Purposes released by CRA at the same time, but will be particularly helpful to those organizations with charitable purposes that don't fit neatly within the Model Purposes.³

The Guidance confirms that CRA uses a "two-part test" to assess an applicant's eligibility for charitable status: 1) are its purposes exclusively charitable and do they define the scope of its activities and 2) subject to limited exceptions, does it devote its resources to charitable activities that further these purposes? The Guidance also reiterates that the applicant's stated purposes must 1) be exclusively charitable in that they

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¹ Canada Revenue Agency, Guidance CG-094, *How to Draft Purposes for Charitable Registration*, online: <<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/drftprpss-eng.html>>. Paragraph numbers cited in this Bulletin refer to paragraph numbers in the Guidance

² CPS-004, *Applicants with Broad Object Clauses*, Summary Policy CSP-C01, *Charitable Purposes*, Summary Policy CSP-O01, *Objects (charitable)*, Summary Policy CSP-O02, *Objects (broad and vague)*, and Summary Policy CSP-O03, *Objects (standard)* – All these policies are available on the CRA website

³ Canada Revenue Agency, Model Purposes, online: <<http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/mdl/mdl-bjcts-eng.html?rss>>.

must come within one or more of the four categories of charitable purposes established by common law i.e. relief of poverty, advancement of education, advancement of religion, or other purposes that are beneficial to the community in a way that the law regards as charitable and provide a benefit to the public or a sufficient segment of the public, and 2) “define the scope” of the organization’s activities. The Guidance offers specific recommendations on how charitable purposes should be drafted to meet these general requirements. This Charity Law Bulletin focuses on the key elements of a charitable purpose, and the Guidance’s examples of how to include these elements in drafting charitable purposes.

B. THE THREE KEY ELEMENTS OF A CHARITABLE PURPOSE

The Guidance, in paragraph 9, identifies the following three key elements that should be included in a charitable purpose:

1. *the charitable purpose category*—to establish that the purpose falls within one of the four broad categories of charity (for example, “to relieve poverty,” “to advance education,” “to advance religion,” or “to promote health”)
2. *the means of providing the charitable benefit*—to define the scope of the activities that can be conducted to directly further the purpose and ensure the provision of a charitable benefit (for example, “by providing housing,” “by operating a school,” “by conducting prayer services that advance the teachings of Islam,” or “by operating a hospital”); and
3. *the eligible beneficiary group*—to ensure the charitable benefit is provided to the public or a sufficient section of the public (for example, “for the poor” or “for the general public”)

1. First Element - The charitable purpose category

If the purpose pertains to the first three categories of charity, (relief of poverty, advancement of religion and advancement of religion) this element can be easily met by using the wording of the particular category e.g. “advancing education”, provided that it falls within the category as defined below. For the fourth category, it would not be sufficient to simply say for a purpose that is beneficial to the community in a way that the law regards as charitable. Instead, it would be necessary to specify the particular purpose within that broad category e.g. promotion of health, protection of the environment etc.

The Guidance provides helpful succinct definitions of the first three categories of charitable purposes which synthesize a complicated body of case law in each category. This appears to be the first time that

a CRA Guidance has done this with respect to the charitable category of advancing religion and is a welcome development.

- a) *Relieving poverty* in the charitable sense means providing relief to the poor. The poor are not only the destitute, but anyone lacking essential amenities available to the general public. Para.29
- b) *Advancing education* in the charitable sense means formally training the mind, advancing the knowledge or abilities of the recipient, or improving a useful branch of human knowledge. Para. 32
- c) *Advancing religion* in the charitable sense means manifesting, promoting, sustaining, or increasing belief in a religion's three key attributes, which are: faith in a higher unseen power such as a God, Supreme Being, or Entity; worship or reverence; and a particular and comprehensive system of doctrines and observances. Para.34

2. Second Element – The means of providing the charitable benefit

It is not sufficient to just recite the specific charitable purpose category. It is also necessary to set out the means to achieve the charitable purpose, which in turn defines the scope of the charitable activities that can be undertaken to further the charitable purpose. The organization is limited to pursuing these activities with the exception of a few incidental activities (e.g. political activities, administration, fundraising). The Guidance provides an example where the *charitable category* is promoting health by *means* of operating a hospital, which would include *activities* such as maintaining a facility and training medical personnel.

The Guidance recognizes that the means of furthering a purpose in one category can be similar to that of furthering a purpose in another category. For example, operating a nursing home could be a means of furthering the charitable purposes of relieving poverty, advancing religion or the fourth category of relieving conditions associated with the aged. However, the beneficiaries may differ from one category to the other.

The Guidance introduces for the first time the term “charitable benefit” and the phrase “charitable benefit to the public” and uses them interchangeably with the term “public benefit” which is established in the case law. The addition of the new term of “charitable benefit” in this area of the law, particularly without explanation of why it is being used, is potentially confusing in that applicants may wonder if something more is required than meeting the public benefit test as defined in the common

law. In explaining what is meant by “charitable benefit”, the Guidance, emphasizes that it must be socially useful, and recognizable either because it can be objectively proven or because it can be demonstrated that it is approved by people who are informed about the particular subject. The benefit must be connected to the organization’s purposes and reasonably achievable as a result of the organization’s activities. Indirect benefits are acceptable provided that they are not too remote. Paras. 17-18. It is rather curious that the Guidance does not mention the long standing rebuttable presumption of benefit with respect to the first three categories of charitable purposes. There is a presumption of benefit because, as recognized in CRA’s Policy Statement on Public Benefit, they “have historically been recognized as beneficial to the public.”⁴ CRA’s omission of the presumption may be an oversight in the interests of producing a concise guidance but it is an important component of the public benefit test nonetheless.

3. Third Element – the eligible beneficiary group

It is important to define the eligible beneficiary group to ensure that the purpose benefits the public or a sufficient section of the public. This definition can differ from one charitable category to another. For example, the beneficiaries of a purpose for the relief of poverty must be restricted to those who are poor. While a public hospital must be open to the public, a health clinic focused on treating and preventing a particular disease can be restricted to patients with that disease. More information about public benefit can be found in the CRA Policy on Public Benefit noted above.

4. Elements may be inferred

The Guidance notes that an element of a purpose may be inferred from the context and gives the example of a stated purpose “to operate a soup kitchen for the poor.” While the example doesn’t expressly state the charitable category of “relieving poverty”, it can be inferred from the context. The Guidance does, however, encourage applicants to be more, rather than less, precise in drafting purposes to avoid uncertainty.

⁴ Policy Statement CPS-024, Guidelines for Registering a Charity: Meeting the Public Benefit Test, 2006 para 3.1.1

C. EXAMPLES OF PURPOSES FOR THE FOUR CATEGORIES OF CHARITY

The Guidance provides examples of purposes for the four categories of charities in paragraphs 29-37. These examples are reproduced below in their entirety because they are so helpful. The examples, though, are merely illustrative and not exhaustive and readers could think of many more examples in each charitable category. In this regard, the examples given for the advancement of religion are narrower than one would expect given the definition of this category set out above.

1. Examples of purposes that relieve poverty include:

- ◆ relieving poverty of persons of low income by providing food and basic healthcare;
- ◆ relieving poverty of persons who are poor by operating a micro lending program for start-up businesses; or
- ◆ relieving poverty of persons who are in need by providing tuition subsidies directly to learning institutions.

2. Examples of purposes that advance education include:

- ◆ advancing education by operating a public secondary school in the geographic location of (specify location);
- ◆ advancing education by conducting research into (specify topic) and making the results publicly available; or
- ◆ advancing education by providing scholarships based on academic merit to allow high school graduates to attend first-year university.

3. Examples of purposes that advance religion include:

- ◆ advancing religion to adherents of the faith or the public by preaching and advancing the teachings of the (specify faith or religion) faith;
- ◆ advancing religion to adherents of the faith or the public by establishing, maintaining, and supporting a house of worship with services held in accordance with the tenets and doctrines of the (specify faith or religion) faith; or
- ◆ advancing religion to adherents of the faith or the public by supporting and maintaining missions and missionaries to propagate the (specify faith or religion) faith.

4. Examples of purposes that are beneficial to the community in a way the law regards as charitable include:

- ◆ Promoting health by providing the public with:
 - medical diagnostic services, or
 - in-patient or out-patient medical care and nursing services;
- ◆ Relieving conditions associated with aging to individuals affected by these conditions by providing:

- personal care,
- shopping assistance, and
- transportation to medical appointments; or
- ◆ Advancing the public's appreciation of the arts by providing the public with:
 - high-quality performances of classical choral works, or
 - free, high-quality theatrical performances.

D. OTHER ISSUES

1. Broad or vague purposes

A charitable purpose should be clear and not too broad or vague so that CRA can assess whether it is exclusively charitable and the purpose is not open to interpretation. The Guidance provides a series of very helpful examples of purposes that would be too vague for registration and those that would be eligible for registration. See paras 26-28.

2. Unstated purposes

In determining eligibility for registration or for maintaining registration, CRA examines both the stated purposes and their related activities. The type and amount of activities in a particular area may indicate that the organization is pursuing an unstated purpose. If the purpose is charitable, the organization's governing document may be amended to include it as a stated purpose. If the unstated purpose is not charitable, the organization would not be eligible for charitable registration or maintaining charitable registration if subject to an audit. With respect to a charitable unstated purpose, the Guidance provides the example of a hospital, which has the stated purpose of relieving poverty, but provides health care to the public. Its governing documents could be amended to provide for the charitable purpose of promoting health. By contrast, an organization that has a stated purpose of relieving poverty but which spends most of its resources on political activities would not be eligible for charitable registration and its charitable registration could be revoked.

3. Review of proposed purposes and activities by CRA

The Guidance sets out three occasions when CRA may review an organization's proposed purposes and activities.

- a) The Guidance reiterates CRA's long standing offer to review on a one-time basis proposed purposes in draft governing documents when submitted with a complete application for registration and a detailed statement of activities. CRA will usually identify issues and suggest possible revisions. The final decision, however, depends on the organization's final governing documents.
- b) If a registered charity wishes to adopt new purposes, the proposed amendments to its governing document and a detailed statement of activities may be provided to CRA for approval before the governing document is formally amended.
- c) CRA recommends that new activities that were not described in the application for registration be reviewed by CRA before being undertaken. CRA would review the governing document to ensure that the new activity furthers one or more of its stated charitable purposes. A detailed description of the new activities would be expected. If the charitable purpose correctly defines the scope of the activities, it is not completely clear why CRA would be better placed than the organization to assess whether the activity furthers the charitable purpose. In any event, there is not legal requirement that a charity must have a new activity reviewed by CRA and no negative inference should therefore be drawn by CRA if a charity chooses not to do so.

E. CONCLUSION

The Guidance cautions that using the model purposes or the recommended approach to drafting charitable purposes will not guarantee charitable registration and also acknowledges that other approaches may be used and satisfy the requirements for charitable registration. However, CRA has provided a very clear, readable and helpful Guidance on how to draft charitable purposes that, with its many concrete examples, will be an excellent reference tool for applicants and practitioners and facilitate the process of obtaining and maintaining charitable registration.