
NEW CRA GUIDANCE ON CHARITIES THAT ASSIST THE AGED

*By Theresa L.M. Man**

A. INTRODUCTION

On December 8, 2016, Canada Revenue Agency (“CRA”) released a new guidance entitled: *Relieving Conditions Attributable to Being Aged and Charitable Registration* (CG-026) dealing with charities that assist the aged (“Guidance”).¹ It replaces CRA’s Policy Statement CPS-002, *Relief of the Aged* that was released on July 6, 1990 (“Previous Policy”). This *Bulletin* provides an overview of the new Guidance.

The new Guidance provides a much needed and helpful update on the Previous Policy, clarifying what CRA considers charitable for Canadian charities serving the aged. For example, almost half of the Previous Policy (paragraphs 9 to 15) are in relation to the provision of housing for the aged, which are now superseded by CRA’s guidance entitled: *Housing and Charitable Registration* (CG-022) dealing with charities that provide housing to their beneficiaries.²

B. AGE IS NOT RELEVANT

The Guidance clarifies that simply having attained a certain age is not a condition that is eligible for charitable relief. For example, simply providing services for persons who are 80 years old would not be charitable at law. Instead, the eligible beneficiary group to be served must be those affected by one or

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¹ Canada Revenue Agency, Guidance CG-026, *Relieving Conditions Attributable to Being Aged and Charitable Registration*, December 8, 2016 (online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/cg-026-eng.html>).

² Canada Revenue Agency, Guidance CG-022, *Housing and Charitable Registration*, February 7, 2014 (online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/hsng-eng.html>). For a discussion of this guidance, see *Charity Law Bulletin* No. 332, CRA Guidance on Charities that Provide Housing, February 26, 2014 (online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/hsng-eng.html>).

more conditions attributable to being aged. This CRA position is consistent with the common law. Although the Previous Policy also states that CRA is of this view, the explanation in the Guidance is much clearer.

C. CONDITIONS ATTRIBUTABLE TO BEING AGED

Since the age of the persons served is not relevant, it is necessary for charities to identify the conditions attributable to being aged for which relief is provided in order to be charitable. In this regard, CRA provides a list of conditions attributable to being aged that are “generally” recognized by CRA:

- frailty
- social isolation: lack of personal contact (often associated with being retired, living alone, lacking the capacity to participate in, or lacking access to, community activities or transportation); and loneliness: feelings of sadness arising from lack of companionship (often associated with loss of family and friends)
- decline in motor skills, flexibility, strength, speed of execution, or hand-eye co-ordination (resulting in, for example, difficulty manipulating controls and small objects, or loss of a driver’s licence)
- physical or mental health conditions attributable to being aged (for example, arthritis, high blood pressure, osteoporosis, or dementia)
- difficulty functioning in, or adapting to, current technology (for example, lack of computer skills preventing access to information or other social benefits offered by the Internet)
- vulnerability to elder abuse (including physical, mental, or economic abuse by family members, caregivers, or others)

While the Guidance indicates that the above list is not exhaustive, if an organization is established to relieve a condition not listed above, the organization would have to demonstrate that such a condition is eligible for relief by providing “objective, reliable, and relevant evidence.” Such evidence could include the following:

- materials from impartial sources, such as articles in established academic and professional journals or publications confirming the benefit of the proposed activities to the identified beneficiaries
- submissions from persons independent of the organization that are qualified by relevant professional bodies or work experience to speak authoritatively on the subject or issue

The Guidance further states that the sufficiency of the evidence will be assessed by CRA based on the facts of each case, upon considering the “nature of the condition and all relevant information.” As well, CRA may conduct its own research before making a decision.

It is possible that CRA's list of acceptable needs associated with aging is not completely realistic or sufficiently broad. For example, the list does not include activities that address financial needs of seniors (such as credit and financial counselling) in light of the fact that debt of seniors has been on the rise in recent years. It is also of concern that the requirements on charities to provide extensive "objective, reliable, and relevant evidence" may prevent the sector from having sufficient flexibility in order to operate activities to relieve the ever-changing needs associated with the aged in Canada.

D. REQUIRED CHARITABLE PURPOSES

To be eligible for charitable registration, CRA requires that charities that relieve conditions attributable to being aged identify in their charitable purpose the following elements: a "purpose descriptor" (such as "to relieve conditions attributable to being aged"); the scope of the activities that will be conducted to relieve the identified conditions; the eligible beneficiary group; and the conditions attributable to being aged that will be relieved.

The Guidance lists the following examples of how acceptable purposes would need to be drafted:

- to relieve conditions attributable to being aged by providing specially adapted residential accommodation, incidental facilities, and support to aged persons with limited mobility
- to relieve conditions attributable to being aged by providing personal care, housekeeping, meals, nursing, shopping assistance, and transportation to medical appointments to aged persons who are frail
- to relieve conditions attributable to being aged by providing trained personnel and specialized services to aged persons who have difficulty performing everyday tasks
- to relieve conditions attributable to being aged by providing in-home companionship or accompaniment to social outings to aged persons who are experiencing social isolation and loneliness
- to relieve conditions attributable to being aged by providing counselling, workshops, and support services to victims of elder abuse

It is helpful that the Guidance provides examples since there were no examples in the Previous Policy. However, it is noted that these purposes are drafted in a very specific and focused manner. Many organizations that provide services to seniors are multi-faceted rather than addressing only one or two of their needs. For example, a housing charity that provides accommodation for seniors may also provide support services to address all, if not more, of the needs listed in the five examples given by CRA.

E. ACCEPTABLE ACTIVITIES

The Guidance states that the activities conducted to relieve conditions attributable to being aged must be “effectively relieving the condition, either directly or indirectly.” In this regard, “relieving the condition” means “eliminating the presence of, or reducing the negative effects of, the condition.” In other words, there must be a connection between the conditions that need to be relieved and how activities are conducted to relieve the identified conditions. Therefore, the activities will vary depending on what conditions are intended to be relieved. The Guidance lists the following examples of acceptable activities:

- conducting physical activity classes led by qualified instructors to prevent loss of strength, balance, or flexibility
- providing social or recreational activities to relieve social isolation and loneliness
- providing daily living assistance services and meals to alleviate physical or mental incapacity
- providing comfortable, modest housing that includes specially adapted facilities, services, or other amenities to relieve mobility issues

The Guidance also states that any private benefit conferred as part of the delivery of the activity must be “incidental to achieving the charitable purpose (meaning the private benefit is necessary, reasonable, and proportionate to the resulting public benefit).” This is consistent with the requirement to meet CRA’s policy on the public benefit.³

³ Canada Revenue Agency, Policy Statement CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test*, March 10, 2006 (online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-024-eng.html>).

F. SPECIAL TOPICS

It is helpful for the Guidance to make specific reference to a number of special issues that come up with charities serving the aged in the community.

For example, it is helpful for the Guidance to make reference to CRA's guidance on housing (referred to above). It is also helpful for the Guidance to clarify that residents at these facilities are not required to be assessed using an income threshold or other financial criteria, and the housing does not have to be provided at less than fair market value. It is also very helpful for the Guidance to specifically clarify that "An organization can conduct its activities according to specific cultural traditions, in the language of its choice, or according to particular religious beliefs, as long as its benefits are made available to anyone in the eligible beneficiary group described in its purpose." This is good news in recognizing the needs of the multicultural nature of the population in Canada and thereby the needs of activities that are sensitive to their cultural background, language, and even their religious belief.

Of note, the Guidance acknowledges that some activities that relieve conditions attributable to being aged could also further other charitable purposes. It gives the example that providing mobility aids to the aged who have a physical condition could also promote health and therefore must also meet the requirements in CRA's Guidance CG-021, *Promotion of Health and Charitable Registration*. As well, an organization that provides health care products and services must meet the applicable requirements relating to effectiveness and quality and safety set out in that guidance. This requirement is problematic. CRA's requirement means that if an activity could fall within two heads or subcategories of charity, then the charity would need to meet both sets of CRA criteria. In essence, CRA is requiring that the charity has two thresholds to meet. If it is charitable for a charity to provide health care related services (such as mobility aids, healthy living counselling, etc.) to the aged to relieve a condition associated with aging, that, in and of itself, is already charitable. It is unnecessary to also require the charity to meet the separate requirements in the health care guidance.

G. CONCLUSION

In light of the global trend of aging populations, it is anticipated that charities serving the aging sector will grow at a fast pace. As such, the replacement of the Previous Policy with an updated and expanded Guidance is a welcome change. Cross referencing to other CRA policies is also helpful, such as how to draft purposes, and what it means to confer public benefit. That having been said, this Bulletin also points out a number of areas where the Guidance could be improved to empower charities to provide much needed programs to serve the seniors in our community.



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