
THE OTTAWA REGION CHARITY & NOT-FOR-PROFIT LAW SEMINAR

Ottawa – February 12, 2015

CRA Policy Guidance Update

By Cathy Hawara, LL.B.

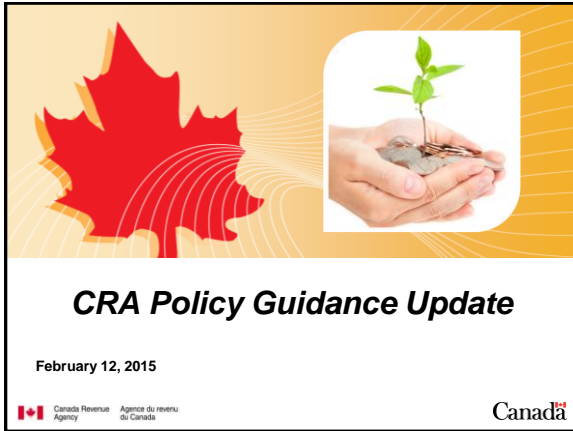
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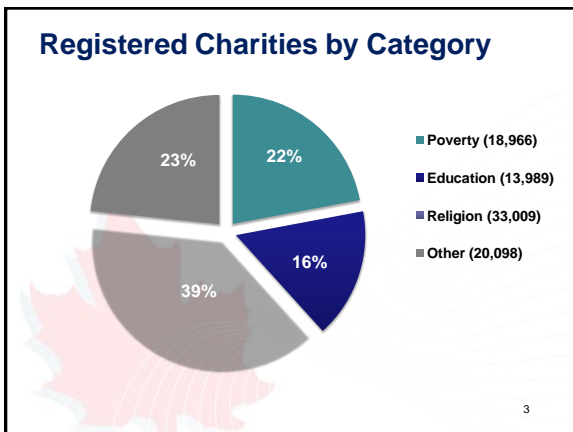
The slide features a red maple leaf on the left and a photograph of hands holding a small green plant in a pot on the right. The background is a light orange color with a subtle pattern of white lines.

Outline of Today's Presentation

- General requirements related to charities that advance religion
- New guidance on Ineligible Individuals
- Charities and political activities
- IT Modernization

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The slide has a light pink background with a faint maple leaf graphic in the bottom left corner.



General Requirements to Operate a Religious Charity

- The CRA makes decisions relating to eligibility for registration as a charity based on the requirements of the Income Tax Act and relevant court decisions (common law).
- If an organization wishes to register a charity to advance religion, it should clearly indicate:
 - The particular religion it is advancing
 - The means through which it will advance that religion
 - The intended beneficiaries

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Key Attributes of Religion

In order to be considered a religion at common law, an organization must typically demonstrate three key attributes:

- Faith in a higher unseen power
- Worship/reverence
- Comprehensive system of doctrines/observances



Advancement of Religion

- Involves manifesting, promoting, sustaining and increasing belief in the **three** key attributes
- Charities that advance religion can carry on a wide variety of activities
- There must be a clear connection between a charity's activities and the religion's key attributes

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Activities that advance religion could include:

- Establishing and operating a place of worship
- Religious education
- Preparing and distributing worship resources
- Various forms of ministry
- Religious cemeteries
- Religious communications, broadcasting
- Religious arts (for example, theatre, music, art)
- Organizing and leading pilgrimages to holy sites and sacred places of remembrance
- Religious camps
- Performing marriage and funeral rites

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“Secular” Activities

- Feeding the poor
- Caring for the sick
- Providing aid to the homeless
- Other humanitarian work or outreach activities

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Connecting Religious and “Secular” Activities

- In order to demonstrate that an activity is being undertaken in order to advance religion, a charity should show:
 - how the activity is connected to the doctrines of its religion;
 - that carrying out the activity is a reasonable means of advancing that doctrine;
 - that the activity is being undertaken as a component of the advancement of the religion as a whole; and
 - how the public is able to make the link between the activity and the religion being advanced.

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Ineligible Individuals

- The ineligible individual provisions in the *Income Tax Act* came into force on January 1, 2012.
- Previously when organizations were revoked for serious breaches of the Act, those who were in charge when the breaches occurred could apply for re-registration and establish new entities, and the CRA could not refer to this history as part of its decision-making process.

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Enforcement Approach

- The CRA will consider each case on its own merits.
- When the CRA has concerns about an ineligible individual, it will give the organization an opportunity to respond before any action is taken.

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Ineligible Individuals

Generally, an individual is ineligible if he or she:

- has been convicted of a relevant criminal offence or a relevant offence;
- was connected to an organization that had its registered status revoked for a serious breach; or
- was a promoter of a tax shelter, and participating in that tax shelter caused the revocation of an organization's registered status

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Relevant Criminal Offence or a Relevant Offence

- Relevant means the offence relates to financial dishonesty or is relevant to the operation of the organization.
- A person convicted of a relevant criminal offence remains an ineligible individual unless a pardon has been granted or a record suspension ordered, and the pardon or record suspension has not been revoked or ceased to have effect.

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Connected to a Revoked Charity

- Connected to a registered organization that had its registration revoked for a serious breach of the *Income Tax Act* is an ineligible individual.
- The CRA considers any revocation resulting from an audit to be a serious breach. Some examples include revocation for issuing fraudulent receipts, misappropriating assets, or participating in abusive gifting tax shelters.

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Promoter of a Tax Shelter

- The promoter of a tax shelter, the participation in which led to revocation of a charity's registration, is an ineligible for five years from the date of revocation.

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Who is a promoter ?

A promoter includes a person who:

- sells or issues participating shares in the tax shelter;
- promotes the sale, issuance, or acquisition of participating shares in the tax shelter;
- acts as an agent or adviser for the sale or issuance of participating shares in the tax shelter;
- acts as an agent or adviser to promote, sell, or acquire a participating interest in the tax shelter; or
- accepts consideration for his or her role in the tax shelter.

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What is a tax shelter?

- A tax shelter includes either a gifting arrangement or the acquisition of property, where it is represented to the buyer or donor that the tax benefits and deductions arising from the arrangement or acquisition will equal or exceed the net costs of entering into the arrangement or acquiring the property.
- It is also a gifting arrangement where the donor incurs a limited recourse debt related to the gift will be a tax shelter.
- Generally a limited recourse debt is one where the borrower is not at risk for the repayment.

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What can the CRA do?

- Refuse registration - ss.149.1(25)
- Suspend receiving privileges - ss.188.2(2)(d)
- Revoke registration of a charity - ss.149.1(4.1)(e)
- Revoke registration of RCAA - ss.149.1(4.2)(c)

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What does the CRA consider when making a decision?

The CRA may take the following into consideration in deciding the most appropriate course of action:

- What made the person an ineligible individual?
- What roles and responsibilities does the ineligible individual have in the organization and what opportunity does this create for risk to the charity, its assets or its beneficiaries?
- How has the organization lessened whatever risk the ineligible individual may pose?

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How to respond to CRA's concerns

- There will be an opportunity to respond to CRA's expressed concerns.
- If refuting the CRA's findings, the response must clearly show that the CRA's concerns were based on incorrect information or that we misinterpreted the facts.
- If wanting to mitigate the risks, the response must fully describe what steps or actions are taken.
- Responses should be supported by adequate documentary evidence.
- If the organization does not respond, or its response is not sufficient to allay concerns, the CRA may proceed to take proposed action.

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Political Activities

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Budget 2012

- Budget 2012 provided the Charities Directorate with additional funds to:
 - improve transparency with new reporting requirements for charities;
 - increase our education activities; and
 - enhance our compliance activities.

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Transparency

- Changes to Form T3010 return and Guide T4033, *Completing the Registered Charity Information Return*.
- These changes affect all registered charities with fiscal periods ending on or after January 1, 2013.
- The Directorate will collect and analyze the information submitted in Form T3010 returns over the coming years.

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Education and information

- Web-based resources:
 - Webinar
 - Self-assessment tool
 - Informational videos
 - Questions and Answers

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Compliance

- The activities of our compliance team are guided by two fundamental principles:
 - Charities from across the entire spectrum of charitable activity are included in review and audit activities.
 - Our "educate first" approach will continue to be reflected in the way we respond to political activities compliance concerns, when appropriate.

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Screening Process

- At the screening stage, we conduct research and analysis using information from our own files, as well as from any other publicly available documents that may be relevant.
- After screening, we may:
 - Decide no further action is required
 - Transfer to regular audit program
 - Send letter to correct T3010 reporting error
 - Send reminder letter
 - Undertake restricted audit
 - Initiate full audit

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Audit Plan - Selection

- File selection is undertaken by the compliance team and approved by the Director General
- Charities are selected for audit if possible non-compliance has been identified
 - Audits allow CRA to confirm compliance with rules
- Audit selection will then aim to ensure balance and representativeness of sector
- Two main criteria:
 - From all four broad types of charity, and
 - From across Canada.

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Audit Plan – Numbers

- The plan is to conduct 60 audits over four years - all 60 files are now in various stages of the audit process
 - All four types of charities included
- While the files are selected for review of political activities, in the case of full audits, all activities of charities are reviewed for compliance
- Over a four year timeframe, 60 of the estimated 3,600 charity audits that CRA will conduct will be focused on political activities (less than 2%)

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Audit Findings

- A range of non-compliance, from minor and non-intentional to serious and wide-ranging
 - Inadequate reporting and tracking of political activities
 - Partisan political activities
 - Some excessive political activities
- A number of other serious non-compliance issues not related to political activities
 - Conducting non-charitable activities
 - Lack of direction and control
 - Gifting to non-qualified donees
 - Receipting issues
 - Inadequate books and records

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Next Steps

- Review results and our work
 - Is there a need for more educational products or refinements of existing ones?
- Continued reporting to the public and sector
 - *Charities Program Updates*

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IT Modernization Update

- The 2014 Federal Budget announced funding to address the administrative burden on charities.
- The funding will allow the CRA to modernize its information technology (IT) systems in order to enable online applications for registration and electronic filing of the registered charity annual information return.

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Current State

- Three principal systems supporting the charities program
 - a mainframe database launched in 1999 containing basic information that must be manually entered – including data from annual information return (except for 7% using 2D barcode)
 - a system to take public information from the mainframe and display it on CRA website
 - a work tracking system

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Charities IT Modernization Project

- The project will modernize our systems so we are no longer 100% paper based.
- It has 5 major deliverables:
 1. Replace mainframe system
 2. Replace internet display system
 3. Provide ability for organizations to apply for registered status electronically
 4. Provide ability for registered charities to file their annual return electronically
 5. Improve business intelligence and reporting (internally and to the public)

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Benefits - Immediate

- Once implemented, there will be immediate benefits
 - Fewer incomplete applications for charitable status
 - Fewer T3010s filed late
 - More accurate T3010s due to built-in help, onscreen validations
 - Fewer support calls to the 1-800 line for help completing the T3010
 - Reduced keying costs and more information captured
 - Better reporting will improve the quality of information for the public and allow for better risk-based compliance activities

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Benefits - Future

- Future benefits:
 - Opportunity to offer other electronic services such as e-correspondence and other portal-based options

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Thank You

Client Services – general inquiries
1-800-267-2384

Charities Information on the Web
www.cra.gc.ca/charities

Charities Electronic Mailing List:
To connect, go to our Website main page, bottom right, and click on “Email list sign-up”

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