
DRAFT CRA GUIDANCE ON PROMOTION OF ANIMAL WELFARE AND CHARITABLE REGISTRATION

*By Terrance S. Carter and Jacqueline M. Demczur**

A. INTRODUCTION

The Canada Revenue Agency (“CRA”) has released a draft consultation paper entitled “*Consultation on Proposed Guidance for The Promotion of Animal Welfare and Charitable Registration* (the “Proposed Guidance”).¹ CRA is accepting comments from charities, individuals involved in charitable work, government departments and agencies, and the general public on the Proposed Guidance until March 31, 2011. This *Charity Law Bulletin* summarizes the Proposed Guidance.

B. SUMMARY OF GUIDANCE

The Proposed Guidance is intended to assist registered charities and applicants for charitable registration who wish to promote the welfare of animals and to ensure compliance with the requirements of the *Income Tax Act* (“Act”). As such, the Proposed Guidance is highly relevant to organizations involved in the promotion of animal welfare that are considering charitable registration. The summary that follows generally reflects the sequencing of those issues as set out in the Proposed Guidance.

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¹ Canada Revenue Agency, *Consultation on Proposed Guidance for The Promotion of Animal Welfare and Charitable Registration* (February 4, 2011), online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cnslttns/pwcr-eng.html>

1. Charitable Purposes and Activities

In order to qualify for registration as a charity under the Act, an applicant must have purposes and activities that are exclusively 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 not falling under the first three categories.² These categories are commonly known as the four heads of charity, and at common law, a charitable purpose that falls under one of the first three categories is presumed to be for the public benefit, while the fourth category must be demonstrated to be for public benefit.³ The Proposed Guidance recognizes that the promotion of welfare of animals may fall under the second head of charity, the advancement of education, or the fourth head, other purposes beneficial to the community. Under the fourth head, the promotion of the welfare of animals can be considered charitable if it is composed of the following purposes that the court has found charitable: promoting the moral or ethical development of the community, relieving the suffering of animals, upholding the administration and enforcement of the law, protecting the environment, and promoting agriculture.⁴ Each of these will be discussed in more detail later.

2. Public Benefit v. Private Benefit

a) Public Benefit

In order to be considered charitable, an organization must operate for the benefit of the public. However, providing a benefit for animals does not fulfill the criteria for charitable registration. In order for activities and purposes to be considered for a public benefit, it must provide a benefit for humans. The Proposed Guidance recognizes that for many purposes that promote the welfare of animals, particularly those that relieve suffering, such as by rescuing injured, stray, or mistreated animals, the courts have stated that the benefit to humans is "the advancement of morals and education among [people]."⁵ The courts have held that relieving suffering for animals is charitable "on the ground that it tends to promote public morality by checking [humanity's] innate tendency to cruelty."⁶ In the Proposed Guidance, CRA provides an example of rescuing and treating injured

² *Special Commissioners of Income Tax v. Pemsel*, [1891] A.C. 531 (H.L.).

³ *National Anti-Vivisection Society v. I.R.C.*, [1948] A.C. 31.

⁴ *Supra* note 1 at para 21.

⁵ *Re Foveaux; Cross v. London Anti-Vivisection Society* [1895] 2 Ch 501.

⁶ *Supra* note 1 at para 24.

wild birds as a charitable purpose in contrast to putting a bird feeder in an ordinary suburban backyard. The Proposed Guidance explains that the former promotes feelings of humanity and morality and is considered charitable, while the latter does not typically relieve birds from suffering, injury or distress so it can not be considered charitable.

b) Private Benefit

According to the Proposed Guidance, an organization must avoid providing private benefits resulting from the promotion of animal welfare unless they are a minor or incidental by-product.⁷ For example, a charity that operates a breeding program for a rare or endangered breed of animal might accumulate animals with a high value, so the directors and employees of the charity must avoid any personal benefits from the sale or use of these animals.⁸ A charity must also avoid carrying on an unrelated business when they are in situations that provide them with the opportunity to create revenue, such as showing animals at a public event. The Proposed Guidance also explains that a charity that allows a private business or individual to use its animals for commercial activity must charge fair market value for the use of the animals, regardless of whether the business or individual has any affiliation with the charity.⁹

3. Balancing the Potential Harm to Humans

The Proposed Guidance states that any benefit or potential benefit to the welfare of animals must be balanced against any harm or potential harm to humans when deciding whether an organization or activity that promotes the welfare of animals is charitable.¹⁰ This is because there are some activities that promote animal welfare but have the potential to cause physical or economic harm to humans. The Proposed Guidance states that the public benefit that results from promoting the welfare of animals must always outweigh the harm or potential harm to humans. According to CRA, “the life and happiness of human beings must be preferred to that of animals.”¹¹ The Proposed Guidance illustrates this through an example of a case where a charity was seeking to abolish vivisection. The charity was

⁷ *Supra* note 1 at para 33.

⁸ *Supra* note 1 at para 34.

⁹ *Supra* note 1 at para 35.

¹⁰ *Supra* note 1 at para 29.

¹¹ *National Anti-Vivisection Society v. Inland Revenue Commissioners* [1947] 2 All ER 217 at 224.

not found charitable because of the imbalance between the welfare of animals and potential harm to humans.¹²

4. Restriction of Programs

According to the Proposed Guidance, a charity that promotes the welfare of animals may, if it chooses, restrict the subject of its activities to a particular breed or species of animal. This is a different approach than normal, since most charities who want to restrict the beneficiaries of their programs have to demonstrate how the benefit they are providing is linked to the nature of the restriction. The reason for this difference in the case of charities that are promoting animal welfare is because it is the benefit to the public that makes the programs charitable, not the benefit to animals.¹³ However, this does not apply for charities that want to restrict their services to animals belonging to a specific group of people, unless this kind of restriction is seen as reasonable and necessary to achieve its purpose.

5. Acceptable Ways of Promoting the Welfare of Animals

a) Advancement of Education

The Proposed Guidance states that in order to advance education in the charitable sense:

- i) The charity must have a clear teaching or learning component that is available to students or the general public; and
- ii) There must be a structured attempt at education.¹⁴

According to CRA's Proposed Guidance, for charities advancing education related to animals, the purposes do not have to directly promote animal welfare.¹⁵ Some examples of acceptable activities are provided in the Proposed Guidance and they include: providing courses in animal welfare law, conducting research on predator-prey rations in given areas, researching wild animal populations, their health, or migration habits, and offering training in the safe coexistence of humans and dangerous or predatory animals. However, in carrying out these educational activities, a charity must not promote only one particular viewpoint. By attempting to influence public opinion or

¹² *Supra* note 1 at para 30, *National Anti-Vivisection Society v. Inland Revenue Commissioners* [1947] 2 All ER 217 at 223.

¹³ *Supra* note 1 at para 36.

¹⁴ *Supra* note 1 at para 40.

¹⁵ *Ibid.*

actions on a controversial issue, a charity is not considered to be advancing education in the charitable sense.¹⁶

b) Other Purposes Beneficial to the Community

The Proposed Guidance states that in order to be found charitable under the fourth head, the charity must have one or more of the following recognized fourth head purposes.

i) Promoting the Moral and Ethical Development of the Community

The Proposed Guidance states that organizations that promote animal welfare do not necessarily have to have purposes that expressly refer to the promotion of the moral and ethical development of the community. There is a presumption in the case law that through the work of an animal welfare charity, they are in fact promoting this kind of an objective.¹⁷

The Proposed Guidance lists several examples of charitable purposes that fall under this category which include:

- ◆ Operating a non-profit animal hospital;
- ◆ Rescuing and rehabilitating wild animals, and returning them to the wild;
- ◆ Spaying or neutering domestic pets, feral, or stray animals;
- ◆ Rescuing and holding for adoption stray, abandoned, or surrendered animals;
- ◆ Offering temporary shelter for the pets of individuals fleeing domestic abuse; and
- ◆ Providing a sanctuary for aging or dangerous animals that cannot be adopted or returned to the wild.¹⁸

ii) Relief of Suffering

While the Proposed Guidance defines ‘the relief of the suffering of animals’ as eliminating or minimizing pain, injury or distress, or helping an animal recover from pain, injury or distress, this does not necessarily mean that the charity must relieve or prevent all forms of harm caused to animals. The Proposed Guidance points out that a charity that relieves this kind of suffering may also still cause, or allow to be caused, certain types of harm that are commonly considered to be necessary or justifiable.¹⁹ When determining what harm is ‘necessary or

¹⁶ *Supra* note 1 at para 42.

¹⁷ *Supra* note 1 at para 46.

¹⁸ *Supra* note 1 at para 47.

¹⁹ *Supra* note 1 at para 49.

justifiable', CRA's Proposed Guidance recommends the guidance of federal and provincial legislation, as well as municipal by-laws in order to determine the minimum standards of care for animals.

Several examples were provided in the Proposed Guidance to demonstrate these issues. For instance, in promoting the humane slaughter of animals for food (which is charitable), the organization is focused on preventing the pain and suffering that animals feel in the process of being processed for food, as opposed to actually preventing the animals from being slaughtered.²⁰ Also, a charity may cause certain forms of harm to an animal in the course of relieving suffering. For example, in a rescue centre where animals are being euthanized when they are critically ill or injured. As long as the harm to the animals is legal, carried out in a reasonable manner and is only for the purpose of relieving suffering or minimizing pain, then the purposes can be held charitable. Charities should review the relevant municipal, provincial and federal legislation to ensure that their purposes and activities are in compliance with the law.

iii) Animal Rescue Charities

Charities that carry out animal rescue objectives are defined in the Proposed Guidance as those that take in stray, abandoned, injured, or surrendered animals 'needing care and attention' and 'human assistance' and can be considered charitable.²¹ However, when pets or wild animals are kept for personal interest, this will not be considered charitable. The Proposed Guidance explains that once an animal is taken in to help them recover from injury, suffering, or any other form of harm, and the day comes that the animal no longer is in need of help and can return to its habitat, it would not be considered charitable to continue devoting resources to that animal's care and the animal should be released.²² For those animals that cannot be released back into their natural habitat or adopted into a home, this will not apply, and a charity can still carry out its charitable purposes without releasing the animal. An example of this kind of animal is provided in the Proposed Guidance and includes those animals with behavioural problems, medical conditions or permanent injuries.

²⁰ *Supra* note 1 at para 51.

²¹ *Supra* note 1 at para 56.

²² *Supra* note 1 at para 59.

While breed and kennel clubs which advance the interests of a particular breed or breeds of pet have not been held charitable by the courts, breeding societies that preserve stressed, endangered species or livestock may be considered charitable under ‘protection of the environment’ or ‘promotion of agriculture’.²³

iv) Upholding the Administration and Enforcement of the Law

Upholding the enforcement and administration of the law for the welfare of animals has also been considered charitable and the Proposed Guidance recognizes that this purpose provides a public benefit. A charity with these purposes should specify in its application which laws it intends to uphold.²⁴ The Proposed Guidance provides examples of animal welfare purposes upholding the administration and enforcement of the law, and these include: monitoring the practices of zoos and the welfare of zoo animals to ensure compliance with relevant laws, and monitoring communities for violations of existing federal, provincial, or territorial laws, or municipal by-laws.

v) Protecting the Environment

The Proposed Guidance refers to “Ecosystem-Related Charitable Purposes” in the draft guidance *Charitable Purposes and Activities for Protecting the Environment* for more information on promoting the welfare of animals by protecting the environment.²⁵

vi) Promoting Agriculture

The court has recognized the promotion of agriculture as a charitable purpose, for increasing the health, quality and breeding of a particular breed or breeds of cattle, sheep, poultry or other livestock.²⁶ The Proposed Guidance emphasizes that the charity must be established to promote agriculture generally and for a public benefit, avoiding any sort of private benefit. Examples of acceptable purposes and activities for the promotion of agriculture are provided at paragraph 71 of the Proposed Guidance.

²³ *Supra* note 1 at para 64.

²⁴ *Supra* note 1 at para 66.

²⁵ This guidance is still under development by Canada Revenue Agency and has not been published.

²⁶ *Supra* note 1 at para 69.

6. Non-Charitable Purposes and Activities

a) Political Purposes and Activities

Examples in the Proposed Guidance of restricted political activities that promote animal welfare include:

- Pressuring the federal, provincial, or territorial governments to ban or restrict a particular hunting practice or consumer product
- Promoting legislation to abolish the use of animals for scientific research or to ban euthanasia of animals
- Strengthening the laws protecting wildlife.²⁷

b) Rescuing Animals from Scientific Research

Although Canadian animal welfare laws generally allow for the use of animals in scientific research, rescuing these animals from scientific research has not been recognized as charitable by the courts. The Proposed Guidance explains that if these animals were being used for research in a way that was an offence under Canadian animal welfare law, it may be charitable for the proper legal authorities to rescue these animals.²⁸

c) Zoos

Zoos are considered charitable but they fall in the same category as museums and libraries in keeping and exhibiting animals to the public, instead of the promotion of animal welfare.

d) Activities That Are Not In Compliance With Canadian Laws and Public Policy

A charity must comply with all Canadian laws and public policy when rescuing animals in distress, and notify the appropriate authorities. A charity that proposes to keep animals may only do so if in full compliance with municipal by-laws.

²⁷ *Supra* note 1 at para 73.

²⁸ *Supra* note 1 at Question 2, Answer 2.

C. CONCLUSION

The Proposed Guidance provides applicant and existing organizations with clarification of the relevant issues and considerations in protecting the welfare of animals. Potential and existing registered charities with an interest in protecting animal welfare are encouraged to examine the Proposed Guidance to ensure that their purposes and activities are considered to be charitable from the perspective of CRA.