

## NEW CRA GUIDANCE ON RELIEF OF POVERTY AND CHARITABLE REGISTRATION

*By Ryan M. Prendergast\**

### A. INTRODUCTION

CHARITIES WITH a focus on relieving poverty have a new guidance document from the Canada Revenue Agency (CRA). The CRA published [CG-029: Relief of poverty and charitable registration](#) (“CG-029”) on November 27, 2020.<sup>1</sup> CG-029 considerably expands on the brief description previously published in summary policy CSP-P03: *Poverty*, and provides an outline of charity law issues to help charities and applicants for charitable registration comply with the requirements of Canadian common law and the *Income Tax Act* (ITA).<sup>2</sup> In its summary, the document states the two requirements for a registered charity under the relief of poverty category or “head of charity”: the charity’s beneficiaries are experiencing poverty, and the charity’s activities provide a charitable benefit that relieves the poverty of its beneficiaries.

Although it states that there is “no complete definition of poverty in charity law”, CG-029 defines people experiencing poverty for its purposes as “those who do not have the ability to acquire the basic necessities of life or simple amenities that are seen as necessary for a modest but adequate standard of living.”<sup>3</sup> To ensure they meet these purposes, charities may need to establish criteria that evaluate whether their

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<sup>1</sup> Canada Revenue Agency, Guidance CG-029, “Relief of poverty and charitable registration” (27 November 2020), online: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/charitable-registration-relief-poverty.html> [CG-029].

<sup>2</sup> RSC, 1985, c 1 (5th Supp) [ITA].

<sup>3</sup> All quotes and references, unless otherwise footnoted, are from CG-029, *supra* note 1.

beneficiaries are in need of poverty relief. With regard to **prevention** of poverty, CG-029 states that while it may be a beneficial effect of other charitable purposes, such as advancement of education or religion, preventing poverty does not in itself qualify as **relief** of poverty for a registered charity. This *Charity & NFP Law Bulletin* provides an overview of the contents of CG-029.

## B. HOW CAN CHARITIES RELIEVE POVERTY?

AFTER SOME commentary on the CRA's definition of poverty as a charitable purpose, CG-029 provides information on what it means to relieve poverty. For a charity to show that it is in fact relieving poverty, it needs to "establish that its activities provide beneficiaries with a charitable benefit" and "that its beneficiaries are experiencing poverty." Examples of how a charity can relieve poverty are listed, such as by providing basic necessities: food, shelter and clothing; or health care and access to water and sanitation. Charities can also relieve poverty by providing "simple amenities, necessary for a modest but adequate standard of living, and by having activities that promote social inclusion", such as internet access, public transportation passes, clothing for employment, or legal services, among others. An example is offered explaining how development in technology has made providing internet access a means of relieving poverty.

If a charity provides beneficiaries with a benefit "that is more than what is needed to relieve their poverty" then they "may be delivering an unacceptable private benefit." CG-029 refers to Policy statement [CPS-024, Guidelines for registering a charity: Meeting the public benefit test](#) for more information. Examples of such unacceptable activities are paying membership costs of a private country club, home renovations that exceed basic needs and buying a vehicle for personal transportation in a city where there is reliable and widely used public transportation.

As for engaging in public policy dialogue and development activities in furtherance of a charity's stated charitable purposes, CG-029 notes that such activities are charitable "as long as charities do not directly or indirectly, support or oppose, a political party or candidate for public office." A link to [Guidance CG-027, Public policy dialogue and development activities](#) is included.

### C. PREVENTION OF POVERTY

CG-029 CITES THE judgement of Webb J.A. in the Federal Court of Appeal decision in *Credit Counselling Services of Atlantic Canada Inc v. MNR* to support the reasoning that prevention of poverty is not relief of poverty:

In the United Kingdom, Parliament adopted the *Charities Act 2011*, 2011, c. 25 and in so doing included the prevention of poverty (in addition to the relief of poverty) as a charitable purpose. In effect, the Appellant is asking this Court to do that which required an act of the UK Parliament to do. In my view, just as in the United Kingdom, it will require an act of Parliament to add the prevention of poverty as a charitable purpose.

As a result, in my view, the prevention of poverty is not a charitable purpose and hence the Appellant cannot succeed on this ground.<sup>4</sup>

Because preventing poverty is a broad aim that also benefits those who are not experiencing poverty, CG-029 notes, it is not sufficient for the purpose of relieving poverty, as the courts have stated that “beneficiaries under the relief of poverty category must be poor.” Charities can undertake activities that prevent poverty as an effect of a charitable purpose in another charitable category, however, and need not be restricted to beneficiaries who are experiencing poverty. An example of the beneficial effect of higher education or healthcare demonstrates the point.

### D. BENEFICIARIES

CG-029 PROVIDES guidance on how a charity with the purpose of relieving poverty can define and select eligible beneficiaries (also described as “recipients”). When drafting its charitable purposes, a charity “should use a term that clearly describes its beneficiaries as those in need of poverty relief.” These terms may include people who are experiencing poverty, or are needy, or refugees, or are of limited means. Further examples offer guidance on usage of the terms “orphan” or “immigrant” as beneficiaries.

Eligible beneficiaries “must represent the public or a sufficient section of the public and must not be unreasonably restricted.” Any restrictions must be “relevant to achieving the charitable purpose and not contrary to public policy.” One such restriction cited in CG-029 is the “poor relations” exception, that allows “beneficiaries to be restricted to people experiencing poverty that are connected by family, employment (current or former), or association membership.” This exception must be for a “class of

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<sup>4</sup> 2016 FCA 193 at paras 18 and 19 [*Credit Counselling*].

people”, however, and may not be restricted to a particular individual. Indicators of a class, as opposed to particular individuals, include the fact that the members are “not immediately known” and that the benefit is ongoing and not limited only to people when it takes effect. Examples are offered to clarify the issue with a reference to [Guidance CG-019: \*How to draft purposes for charitable registration.\*](#)

Further information for relief of poverty activities for more specific groups, such as “the youth and the aged” is referenced to [Guidance CG-020, \*Charitable purposes and activities that benefit youth\*](#) and [Guidance CG-026, \*Relieving conditions attributable to being aged and charitable registration.\*](#)

Documentation for selection criteria and how relief is provided “will be essential to maintaining adequate books and records.” Because there is no “uniformly accepted measure of either poverty or an adequate standard of living,” CG-029 states, charities have flexibility for establishing the criteria for beneficiaries under the purpose of relief of poverty.

Criteria and processes must be “well-reasoned” for choosing beneficiaries. Factors such as the value of the benefit being provided, the frequency of the benefit being provided, and the location of the organization’s programs “help assess the potential for the benefit to be accessed or abused by those not in need of poverty relief.” It may not be necessary to screen beneficiaries, however, if a charity has determined that the potential and impact of abuse is “negligible.” Examples for when screening may or may not be necessary are described.

Charities may determine eligible beneficiaries through the use of models used by other government agencies, such as the examples provided at paragraph 26 of CG-029, including Low-Income Cut-Off, the Low Income Measure, the Market Basket Measure, and the Core Need Income Threshold. They may also develop their own criteria by collecting information, such as applicants’ employment income, dependents, value of assets, medical or child care expenses, or other useful information.

CG-029 states that charitable activities may be made available to non-eligible recipients, who are not experiencing poverty, if the benefits are “necessary, reasonable and proportionate to the effect of having those recipients being included has on the participation of eligible beneficiaries.” The inclusion of non-eligible recipients should be an “effective way of furthering” the charity’s purposes. An example of a school breakfast or lunch program is provided.

## E. OTHER CONSIDERATIONS

CG-029 CONCLUDES with a list of other issues that charities relieving poverty may face: tax implications, benevolent funds, partnering with other organizations in Canada, carrying out activities outside Canada, and community economic development. Charities operating a benevolent fund, which includes many religious organizations, may need to provide a T5007, *Statement of Benefits* slip to their beneficiaries (more information is referenced to [Guide T5007, Return of Benefits](#)). As well, decisions about the use of donations within a benevolent fund program “must rest with the charity,” CG-029 states, and charities “should be aware that donors can only gift funds with a general direction that the funds be used in a particular program.” If a charity needs to hire or enter into agreements with other organizations to help deliver their charitable programs involving relief of poverty, [Guidance CG-004, Using an intermediary to carry out a charity’s activities within Canada](#) offers further information. Likewise, if a Canadian charity carries on activities outside the country with the intention of relief of poverty, they are advised to read [Guidance CG-002, Canadian registered charities carrying on activities outside Canada](#). [Charity & NFP Law Bulletin No. 484](#) discusses recently published updates to these two guidance documents as well. Lastly, CG-029 refers charities that undertake relief of poverty activities “in areas of social and economic deprivation” to [Guidance CG-014, Community economic development activities and charitable registration](#).

## F. CONCLUSION

CG-029 IS A SIGNIFICANT improvement over Summary Policy CSP-P03, *Poverty* issued on October 25, 2002. We welcome and appreciate the efforts of the Charities Directorate to educate and provide guidance to the charitable sector. It is hoped that the momentum continues with similar updates to other guidance documents in the coming months.