

BARRISTERS
SOLICITORS
TRADEMARK AGENTS

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Key Takeaways from CRA's New Guidances

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OVERVIEW

- On Nov. 27, 2020, CRA released 2 new guidances, updated 2 guidances, and finalized 1 guidance
- Brief high-level overview today

New	<ul style="list-style-type: none">• Guidance CG-029 <i>Relief of Poverty and Charitable Registration</i>• Guidance CG-030 <i>Advancement of Education and Charitable Registration</i>
Updated	<ul style="list-style-type: none">• Guidance CG-002 <i>Canadian Registered Charities Carrying Out Activities Outside of Canada</i>• Guidance CG-004 <i>Using An Intermediary to Carry Out a Charity's Activities Within Canada</i>
Finalized	<ul style="list-style-type: none">• Guidance CG-027, <i>Public Policy Dialogue and Development Activities by Charities</i>

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A. New Guidance on Relief of Poverty

- New Guidance CG-029 *Relief of poverty and charitable registration* released on Nov. 27, 2020
<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/charitable-registration-relief-poverty.html>
- See Charity and NFP Law Bulletin No. 482
<https://www.carters.ca/pub/bulletin/charity/2021/chylb482.pdf>
- Relief of poverty is one of 4 heads of charity
- Charities under the relief of poverty category must show both the following:
 - their beneficiaries are experiencing poverty
 - their activities provide a charitable benefit that relieves the poverty of their beneficiaries

WHAT

What is poverty?

- **Relative** – Poverty is a relative term
- **Definition** - Poverty = people 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
- Prevention of poverty is not charitable

HOW

How to relieve poverty?

- **Provide benefits** - Provide beneficiaries with a charitable benefit and that the beneficiaries are experiencing poverty – examples:
 - Provide basic necessities of life
 - Provide simple amenities, necessary for a modest but adequate standard of living, and activities that promote social inclusion
- **Extent of benefits** - Benefits limited to the extent that they are shown to relieve poverty
- **No undue private benefit** - Cannot provide benefit that is more than what is needed to relieve their poverty because the charity may be delivering an unacceptable private benefit

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WHO

Who can be helped?

- **Criteria and process** - Establish “well-reasoned” criteria and process to evaluate beneficiaries to make sure that they need poverty relief
- **Indicators** - May use recognized poverty indicators or may establish other criteria
- **Purpose** - Charitable purposes should include a term that clearly describes its beneficiaries as those in need of poverty relief
- **Public** - Eligible beneficiaries must represent the public or a sufficient section of the public and not be unreasonably restricted

OTHERS

Additional issues

- **T5007** - May need to provide T5007 slips to beneficiaries if financial assistance is provided
- **Records** - Keep records of selection criteria and how relief is provided
- **Benevolent funds** - Donors give general direction that the funds be used in a particular program, but up to the charity to decide how funds are used and who may receive benefit

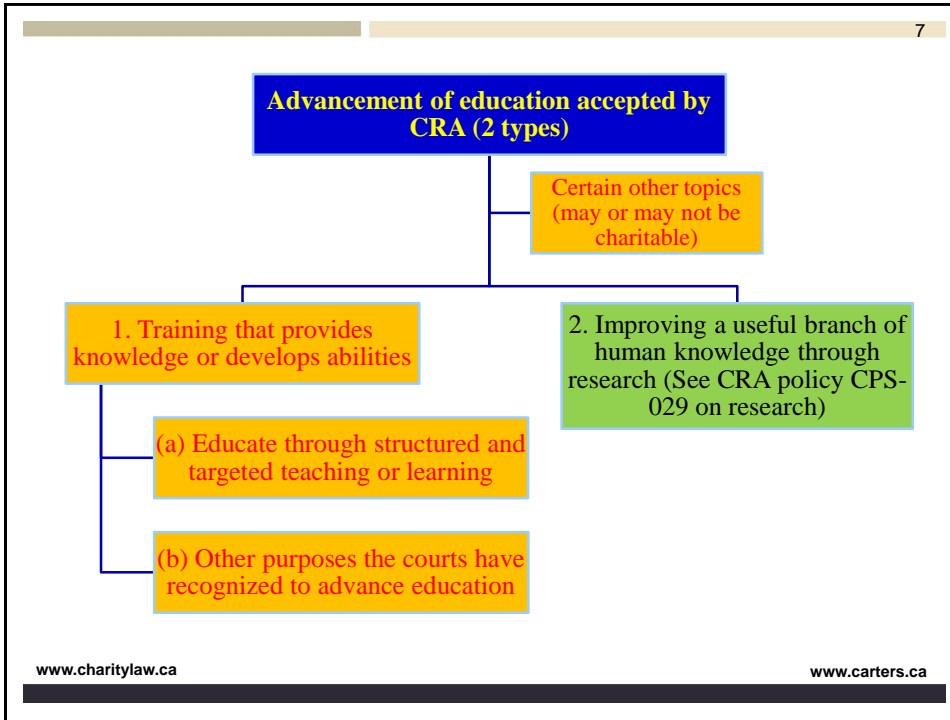
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B. New Guidance On Advancement Of Education

- New Guidance CG-030 *Advancement of education and charitable registration* released on Nov. 27, 2020
<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/whats-new.html>
- See Charity and NFP Law Bulletin No. 483
<https://www.carters.ca/pub/bulletin/charity/2021/chylb483.pdf>
- Advancement of education is one of 4 heads of charity
- Not all education is charitable
 - Although the concept of education is broad, and all experience may be said to educate, what qualifies as education under charity law is limited
 - For education to be charitable, it must provide knowledge or develop abilities by deliberate teaching or training

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1(a) - Purposes that educate through structured and targeted teaching or learning

What is this?	<ul style="list-style-type: none"> Includes education by formal or traditional classroom instruction, as well as less formal instruction (e.g., workshops, seminars, self-study)
Examples	<ul style="list-style-type: none"> Operate a private secondary school in X city Provide adult continuing education courses in business and accounting in Y community Provide seminars and workshops on finance and accounting, Indigenous art history, or car maintenance to the public
Content criteria (education)	<ul style="list-style-type: none"> Subject matter is useful and has educational value Subject matter is not focused on promoting a point of view
Process criteria (structured and targeted teaching or learning)	<ul style="list-style-type: none"> Structured format Legitimate, targeted attempt to educate Teaching or learning component

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1(b) Other purposes the courts have recognized to advance education

What is this?

- Most of these purposes are connected with and support formal or traditional classroom education

Examples

- Scholarships, bursaries, prizes, and financial assistance for students
- Schools and tuition fees
- Providing educational facilities, teachers, equipment, and supplies
- Sports and education
- Community groups and clubs
- Alumni associations / School councils
- Student unions
- Museums and libraries

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Special topics

What is this?

- Certain topics may or may not meet the CRA's requirements to be acceptable as a charitable purpose of advancing education, depending on whether they meet the mandatory content and process criteria

Examples

- Production and broadcasting / publishing books, magazines or other materials
- Conferences
- Vocational or professional education
- Providing information and education
- Experiential education
- Preschool and daycare programs
- Summer camps

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C. Updated Guidance on Charities Using Intermediaries

- Updated Guidance CG-002 *Canadian Registered Charities Carrying Out Activities Outside of Canada*
<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html>
- Updated Guidance CG-004 *Using An Intermediary to Carry Out a Charity’s Activities Within Canada*
<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/using-intermediary-carry-a-charitys-activities-within-canada.html>
- Welcomed minor updates, but overall requirements remain the same
- See Charity and NFP Law Bulletin No. 484
<https://www.carters.ca/pub/bulletin/charity/2021/chylb484.pdf>

1. Own Activities Test & Direction and Control

ITA allows charities to use their resources in 2 ways	Make gifts to qualified donees (“QDs”)	
	Conduct their own activities (“own activities test”) by 2 ways:	Charities’ own staff and volunteers Through third party intermediaries (non-QDs)
ITA “Own Activities” test	Activities must be directly under the charity’s direction, control and supervision and for which it can account for any funds expended	
CRA “Direction and Control” policy	When working through an intermediary, a charity must direct and control the use of its resources	
Proposed changes to the ITA	Bill S-222, <i>Effective and Accountable Charities Act</i> was tabled in the Senate on February 8, 2021, removing the own activities test, but allowing charities to share resources and work with non-QDs while ensuring “resource accountability” to achieve charitable purposes	

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Active involvement	Charities must be actively involved in programs to achieve its charitable purposes
	Can only make gifts to QDs
Ongoing involvement	Cannot carry out charitable purposes by simply giving monies or “resources” to non-QDs
	how the activity will be carried on
	the overall goals of the activity
	the area or region where the activity will be carried on
	who will benefit from the activity
Guidances regulate	what goods and services the charity's money will buy
	when the activity will begin and end
	How to conduct activities through intermediaries
	What to include in the written agreements with intermediaries
	How to maintain direction and control over intermediaries
	What books and records to obtain from intermediaries

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2. What’s New? – Examples of key differences

Previous Guidances	Revised Guidances
“resources” = physical, financial, material, IP, staff	“resources” = physical, financial, staff, volunteers
Rules on how to transfer “capital property” to non-QDs	Rules on how to transfer “real property (land and immovable property on land, such as buildings)” to non-QDs
4 common types of intermediaries - agency, contractor, joint venture participant, and co-operative participant	3 common types of intermediaries - consultant or contractor, joint venture participant, co-operative participants AND possible to have other types
One-time activity involving \$1,000 or less does not need a written agreement, when other forms of communication might be used to show direction and control	One-time activity involving \$5,000 or less does not need a written agreement, when other documents might be enough to show ongoing direction and control, e.g., written instructions, email records, meeting minutes, and regular reporting

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Previous Guidances	Revised Guidances
Measures to maintain direction and control:	Measures to maintain direction and control:
<ol style="list-style-type: none"> 1. Create and implement written agreement 2. Communicate clear, complete, and detailed description of activity to intermediary 3. Provide clear, complete, and detailed instructions to intermediary on ongoing basis 4. Make periodic transfers of resources to intermediary, based on demonstrated performance 	<ol style="list-style-type: none"> 5. Monitor and supervise the activity, <i>including requiring regular reporting</i>
5. Monitor and supervise the activity	6. Intermediary to <i>either keep the charity's funds separate, or</i> account for them separately in its books and records
6. Intermediary <i>must keep the charity's funds separate from its own, and</i> to keep separate books and records	

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Previous Guidances	Revised Guidances
Charities can be Canadian representatives or offshoots of larger organizations outside Canada, <i>i.e., head bodies</i>	Charities can be Canadian representatives or affiliates of other (usually larger) organizations that are non-QD outside Canada
Charities must keep <i>adequate</i> books and records	Whether a charity's books and records are <i>adequate</i> , CRA looks at <i>the risk of non-compliance</i> for the particular activities – depending on the location, the activity, or the type of resources
Getting original source documents are recommended – but if it is not possible or practical, then the charity needs to <i>explain</i> why it cannot get them, and <i>make all reasonable efforts</i> to get copies and/or reports and records to support the expenditures, and <i>show that it has made such efforts</i>	Getting original source documents are recommended - but if it is not possible or practical, then CRA will <i>accept photocopied or electronic (scanned) documents</i> , as long as proper imaging practices are followed, and charity <i>should still make all reasonable efforts</i> to get source documents and/or reports and records to support its expenditures

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