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**Recent Changes to the *Income Tax Act*
and Policies Relating to Charities and
Charitable Gifts
(CURRENT TO MARCH 1, 2004)**

By Terrance S. Carter, B.A., LL.B. and Theresa L.M. Man, B.Sc., M. Mus., LL.B. ©

Assisted by Suzanne E. White, B.A., LL.B.

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CARTER & ASSOCIATES
BARRISTERS, SOLICITORS & TRADE-MARK AGENT
Affiliated with Fasken Martineau DuMoulin LLP

211 Broadway, P.O. Box 440
Orangeville, Ontario L9W 1K4
Tel: (519) 942-0001
Fax: (519) 942-0300
Toll Free: 1-877-942-0001

www.carters.ca 
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RECENT CHANGES TO THE *INCOME TAX ACT* AND
POLICIES RELATING TO
CHARITIES AND CHARITABLE GIFTS

(current to March 1, 2004)

By *Terrance S. Carter**, B.A., LL.B. and *Theresa L.M. Man*, B.Sc., M. Mus., LL.B. ©

Carter & Associates

Assisted by Suzanne E. White, B.A., LL.B.

A. INTRODUCTION

The purpose of this paper is two-fold. Firstly, it is intended to provide an overview of new materials made available from Canada Revenue Agency (“CRA” formerly “Canada Customs and Revenue Agency”) from 2002 to 2004 affecting charities. Secondly, the paper provides an explanation and discussion of the legislative changes affecting charities under the *Income Tax Act*¹ (“ITA”) for the same period of time, as well as a summary and commentary of a number of new key policies released by CRA that impact the way in which charities become registered and maintain their charitable status.

The materials reviewed will be relevant to lawyers who either act on behalf of or assist charities as volunteers, as well as the charities themselves. A bibliography of resource materials and an appendix of documents currently listed on the CRA website² are included at the end of this paper in order to provide a practical reference tool in navigating the resource materials from CRA.

Due to the vastness of the materials that have become available from CRA over the past two years, this paper cannot begin to cover all of the relevant issues that need to be raised, nor can the topics that are included in this paper be discussed in a comprehensive or detailed manner. Instead, the matters that are addressed represent a selection of topics that lawyers who advise

* The authors would like to thank Suzanne E. White, B.A., LL.B., Student-at-Law for her assistance in researching and compiling this article, Gisèle White, B.Sc., M.Sc., for formatting and revising the final paper, and Linda A. Price for her assistance in preparing the power point presentation. Any errors are solely those of the authors. This paper was originally prepared for the Sixth Annual Estates and Trusts Forum by the Law Society of Upper Canada on November 19, 2003, and has been substantially updated since then to reflect proposed amendments to the *Income Tax Act* announced on December 5, 2003, and the implication of those amendments.

¹ R.S.C. 1985, c. 1 (5th Supp.) [hereinafter “ITA”].

² See <http://www.cca-adrc.gc.ca/tax/charities/menu-e.html> for all documents mentioned in this paper.

charities will need to be familiar with, even if it is only on a cursory basis. In this regard, it is hoped that this paper will serve as a practical introduction to the numerous and often complex recent changes reflected in the recent legislative and policy initiatives by the federal government involving charities and charitable gifts.

B. THE CONTEXT FOR CHANGE

There are numerous factors that have led to changes in legislation and policies affecting charities. One factor has been the work of the Voluntary Sector Initiative (“VSI”)³. The VSI is a joint venture between the Government of Canada and the Canadian voluntary sector, pursuing the long-term objective of “strengthen[ing] the voluntary sector's capacity to meet the challenges of the future, and ...enhance [ing] the relationship between the sector and the federal government and their ability to serve Canadians.”⁴

Another factor, and probably the most significant, has been simply the size, growth and importance of the charitable sector in Canada, from both the number of people involved, as well as from the amount of donations received.

In this regard, Statistics Canada conducted the second National Survey of Giving, Volunteering and Participating (“NSGVP”) in 2000. The NSGVP “provides the most comprehensive look at the contributions of Canadians to one another and their communities ever undertaken in Canada”⁵, as it represents an alliance between a number of federal government departments and voluntary sector organizations, including research powerhouse Canadian Centre for Philanthropy, Canadian Heritage, Health Canada, Human Resources Development Canada, Statistics, and Volunteer Canada. Newly renamed the Canada Survey of Giving, Volunteering and Participating (“CSGVP”), Statistics Canada has made the commitment to conduct this critical research study every three years, with the 2004 survey due to commence in the fall of

³ More information about VSI is available at <http://www.vsi-isbc.ca/eng/about.cfm> (accessed: November 13, 2003). VSI is further discussed under the heading “Joint Regulatory Table Report”.

⁴ *Ibid.*

⁵ *Highlights from the 2000 National Survey of Giving, Volunteering and Participating*, Statistics Canada, Catalogue No. 71-542-XIE, <http://www.givingandvolunteering.ca/pdf/n-2000-hr-ca.pdf> (accessed: October 23, 2003).

2004.⁶ The 2000 survey asked over 14,000 Canadians a number of questions regarding their charitable giving and volunteer activities.

A review of the “Charitable Giving in Canada” factsheet of the survey indicates that donations to a variety of registered charities are a regular and vibrant part of Canadian life. In Canada, 91% of Canadians made either financial or in-kind donations to charities and non-profit organizations in 2000, representing a 3% increase since 1997.⁷ A staggering \$4.94 billion was donated in direct financial donations in 2000, an 11% increase from 1997.⁸

Interestingly, more donations were made to religious organizations than to any other type of charity or organization. 49% of donations made by Canadians in 2000, or \$2.42 billion, was given to religious entities, followed by gifts to non-religious, health, social service, philanthropy and volunteerism, and education and research organizations.⁹

Given the increasing generosity of Canadians each year and the number of Canadians who are donating, there is a clear need and motivation for the federal government to focus on legislative reform and improved administration for Canadian registered charities. It is within this context, therefore, that the federal government in general, and CRA in particular, have undertaken a welcomed initiative to improve and clarify the regulatory environment for the charitable sector in Canada under the *ITA* .

C. SUMMARY OF ADDITIONS AND CHANGES TO THE CRA WEBSITE FROM 2002 TO 2004

Given the virtual avalanche of materials that has been released by CRA almost every few months¹⁰ over the last two years, it would be impossible within the confines of this paper to discuss in any detail or even mention all of the additions and changes to the CRA website which

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ “Charitable Giving in Canada - Table – Percentage of Donations and Percentage of the Value of Donations Received by the Type of Organization”, *Highlights from the 2000 National Survey of Giving, Volunteering and Participating*, Statistics Canada, Catalogue No. 71-542-XIE, <http://www.givingandvolunteering.ca/pdf/n-2000-hr-ca.pdf> (accessed: October 23, 2003).

¹⁰ In the period between September 1, 2003 and March 1, 2004, CCRA issued and posted two Policy Statements, over 100 Summary Policies, *Registered Charities Newsletter* No. 16, and over 100 Information Letters on the CCRA website. See <http://www.ccradrc.gc.ca/tax/charities/menu-e.html> for CCRA’s Charities Directorate website.

affect charities.¹¹ Instead, what is attached as Appendix A to this paper is a synopsis, current to March 1, 2004, of all publications that have been published by CRA with regards to charities from 2002 to 2004. The summary at Appendix A organizes the material from CRA in a practical fashion for the practitioner. The reader is advised, though, that the compendium of documents attached as Appendix A is *not* an official CRA publication, and as such the reader should refer to the actual documents on the CRA website for official identification and texts of the materials. What follows in this part of the paper is a brief commentary of the CRA material on its website as reflected in the detail contained in Appendix A.

Legislative amendments currently include the December 20, 2002 draft technical amendments (“December 2002 Amendments”),¹² the February 18, 2003 Federal Budget 2003 (“February 2003 Budget”)¹³, the December 5, 2003 draft amendments (the “December 2003 Amendments”)¹⁴, and the February 27, 2004 revised draft amendments (the “February 2004 Amendments”)¹⁵ issued by the Department of Finance. While these legislative amendments were initiated by the Department of Finance, they were created in consultation with CRA. The changes resulting from these pieces of legislation will have a fundamental impact on the regulation and operation of charities and therefore have been included by CRA on its website.

CRA has issued two Interpretation Bulletins (ITs)¹⁶ one dealing with Capital Properties to a Charity and the other dealing with Scholarships, as well as an Information Letter (CIL)¹⁷ dealing with the effective date of registration for a charity. One Information Circular (IC) has been issued outlining the limitations on a charity with regards to contributions to a political party or

¹¹ A part of this section was previously published in R. Johanna Blom and Terrance S. Carter, “CCRA AND CHARITIES: WHAT’S NEW? A Summary of Developments from June 2002 through March 2003”, *Charity Law Bulletin No. 20*, March 25, 2003 available at <http://www.charitylaw.ca>.

¹² The December 2002 Amendments issued by the Department of Finance have yet to come into effect as of March 2, 2004. The December 2002 Amendments were available for comment until March 23, 2003. In the meantime, both the Department of Finance and CCRA, have advised that charities ought to handle gifts and receipting “as if” the legislation was passed.

¹³ The February 2003 Budget was passed into law pursuant to *An Act to implement certain provisions of the budget tabled in Parliament on February 18, 2003*, Bill C-28, Assented to June 19, 2003.

¹⁴ The December 5 2003 Amendments to the *ITA* issued by the Department of Finance have yet to come into effect. The amendments largely restrict and limit the tax benefits previously enjoyed by donors under charitable donation tax shelter donation arrangements.

¹⁵ The February 27, 2004 Amendments to the *ITA* issued by the Department of Finance have yet to come into effect. The Amendments largely consolidate earlier tax legislation amendments, and also introduce and modify other provisions of the *ITA*.

¹⁶ IT-288R2 –Gifts by individuals of Capital Properties to a Charity and Others; Reference: Subsections 110.1(3) and 118.1(6) (also subsections 13(1), 20 (16), 110.1(1), 118.1(1), 118.1(4) and 118.1(7), paragraphs 69(1)(b) and 70(5)(a) of the Income Tax Act and sections 3501 and 3504 of the Income Tax Regulations), January 16, 2003; IT-75R4 –Scholarships, Fellowships, Bursaries, Prizes, Research Grants and Financial Assistance, June 18, 2003.

¹⁷ Information Letters are discussed later in the paper.

candidate.¹⁸ A number of CRA brochures and guides have been added, including *Tax Advantages of Donating to a Charity*.¹⁹ In addition, there are numerous new CRA forms which apply to charities, including tax and information returns.²⁰ In terms of information publications, CRA has added factsheets that are easy to read references on a particular topic. One important example is the FactSheet on Art-donation schemes²¹ discussed later in this paper.

The Charities Directorate, the division of CRA that administers registered charities, publishes *Registered Charities Newsletter*²² on a quarterly basis, of which *Newsletter No. 12* to *Newsletter No. 17* were published between 2002 and 2004. These newsletters provide registered charities with explanations, reminders and warnings, and as well as highlights of proposed changes accompanied with a solicitation for comments.

The CRA website also includes a number of additions to and classification of policy documents. These policy documents include Policy Statements (CPS) and Summary Policies (CSP). Policy Statements reflect carefully considered positions by CRA on the application of the *ITA* to major issues affecting charities, such as the involvement of charities in political activities. Summary Policies, on the other hand, are short synopses, usually only one or two paragraphs in length, concerning CRA's position on different matters related to charities or definitions of terms used by CRA in addressing these matters.

All of the policy documents are arranged according to three subject areas, specifically *Becoming a Registered Charity*, *Operating Day-to-Day*, and *Keeping your Registered Status*. The development of these Policy Statements is a welcome addition to CRA's service to charities and will be of invaluable assistance to charities and their legal counsel in understanding CRA's position on a particular matter. Policy Statements and Summary Policies are accessible by clicking "Policy" on the Charities menu anywhere in the CRA Charities Directorate website.

¹⁸ IC 75-2R6 – Subject: Contributions to a Registered Political Party or to a Candidate at a Federal Election, July 18, 2002.

¹⁹ CCRA, *Tax Advantages of Donating to Charity*, January 21, 2002.

²⁰ T2050 E (01) – *Application to Register a Charity under the Income Tax Act*, updated March 13, 2002; T2140 (96) – *Part V Tax Return – Tax on Non-Qualified Investments of a Registered Charity*, January 22, 2002; T3010 – *Registered Charity Information Return*, February 19, 2002; T3010A E – *Registered Charity Information Return*, February 28, 2003; *Form T3010A: Re-designed Annual Return for Charities*, updated November 28, 2002; T1240 E – *Registered Charity Adjustment Request*, October 21, 2002; T4033 – *Completing the Registered Charity Information Return*, February 19, 2002; T4033A – *Completing the Registered Charity Information Return*, February 28, 2003; T4603 – *Registering a Charity for Income Tax Purposes*, September 26, 2002.

²¹ Fact Sheet, "Art-donation Schemes or 'Art-Flipping'" dated November 2002.

²² See <http://www.cra-adrc.gc.ca/tax/charities/newsletters-e.html>.

In addition to Policy Statements and Policy Summaries, Information Letters (CILs) are included on the CRA website. They reflect CRA's responses to public inquiries with regard to different policy topics. These Information Letters were recently posted, en masse, to the CRA website together with the rest of the policy documents, and are grouped under the same headings as other policy documents. Information Letters provide both charities and lawyers with the advantage of knowing how CRA will address a certain situation in advance.

The CRA website also includes a number of Consultation Papers, which are pre-cursors to finalized policy statements. Consultations on Proposed Policy consist of draft policy statements which are made available for a limited period of time to the general public, and the voluntary sector in particular, for comments and criticisms. After the consultation period has closed, CRA finalizes the statements and publishes the official Policy Statement. The fact that the voluntary sector has had an opportunity to make its opinions and suggestions heard does not necessarily imply that their inputs will be incorporated into the final Policy Statement.

The CRA website also includes Future Directions reports, consultations and publications, which were published by CRA after 18 months of consultations with Canadians, intended to determine how CRA can improve service and strengthen compliance. The final report, entitled *Future Directions for the Canada Customs and Revenue Agency* ("*Future Directions*") was released in November of 2002. The report reviews CRA procedures and policies in an attempt to develop more effective means of service delivery on the part of CRA for charities.

Press Releases are also published from time to time on the CRA website to give notice of new events at CRA, for example, the provision of new online services for charities.²³ In addition, *Strengthening Canada's Charitable Sector – Regulatory Reform – Final Report*²⁴, better known as the Report of the Joint Regulatory Table, is a report produced jointly between the federal government and the voluntary sector. This report, which includes recommendations from the public, voluntary and government spheres, is the culmination of efforts to ameliorate the environment in which Canadian registered charities function.

²³ "Canada Customs and Revenue Agency Launches New Services for Charities", News Release (December 3, 2002.), available at <http://www.cra-adrc.gc.ca/newsroom/releases/2002/dec/charities-e.html> (accessed: September 15, 2003).

²⁴ Voluntary Sector Initiative/Joint Regulatory Table, *Strengthening Canada's Charitable Sector – Regulatory Reform – Final Report*, March 2003.

Finally, the CRA website includes Interim Memorandum, such as one entitled *Cross – Border Currency and Monetary Instruments Reporting*, which provide guidelines and procedures of a technical nature that may have an effect on a charity’s activities.

D. SELECTED DISCUSSION OF INCOME TAX AMENDMENTS AFFECTING CHARITIES

1. Introduction²⁵

On December 20, 2002, a package of draft technical amendments to the *ITA* was released by the Department of Finance, amending numerous provisions of the *ITA* (the “December 2002 Amendments”)²⁶, a number of which would affect charities. CRA indicated on its website on December 24, 2002²⁷ that the December 2002 Amendments would affect charities in the following ways:

- ◆ More transparency for registered Canadian amateur athletic associations;
- ◆ Clarification that a registered charity cannot disburse funds to an organization that is not a qualified donee, even after meeting its disbursement quota;
- ◆ Changes to the definitions of a charitable organization and a public foundation, in such a way that designation as a private foundation is now more limited; and
- ◆ Changes that allow both an advantage to the donor and a charitable tax receipt to be issued for an “eligible amount of a gift”, if the fair market value of the property transferred by the donor exceeds the amount of the advantage (“split-receiving”).

2. New Definition of Gift for Income Tax Purposes

The December 2002 Amendments introduced a new concept of “gift” for tax purposes which is different from the traditional concept of “gift” at common law as a result of the insertion of

²⁵ Part of this section was previously published in “Commentary on Draft Technical Amendments to the Income Tax Act Released on December 20, 2002 that affect Charities”, by Theresa L. M. Man and Terrance S. Carter, *Charity Law Bulletin* No. 21, April 30, 2003, available at <http://www.charitylaw.ca>.

²⁶ *Supra* note 12.

²⁷ In a letter to the Minister, the Joint Committee on Taxation of the Canadian Bar Association and the Canadian Institute of Chartered Accountants, expressed disappointment in the timing of the release of the draft legislation. Citing undue burdens on tax payers and their advisors, the letter requests that in the future, Finance Canada takes steps in avoiding the issuance of omnibus tax legislation so late in the year. See The Joint Committee on Taxation of The Canadian Bar Association and The Canadian Institute of Chartered Accountants, Letter to the Honourable John Manley, Minister of Finance, Re: Timing of Release of December 20, 2002 Draft Technical Amendments Legislation, dated May 6, 2003.

subsections 248(30), (31), (32) and (33) to the *ITA*, which will apply to gifts made after December 20, 2002, once the legislation is finally passed.²⁸

At common law, in order to have a valid gift, three elements are required: (1) the donor must have an intention to give, (2) there must be successful delivery of the gift from the donor to the donee, and (3) the gift must be accepted by the donee. The Explanatory Notes to the December 2002 Amendments state that, at common law, property must be transferred voluntarily, without any contractual obligation and with no advantage of a material nature returned to the donor and that, as such, a contract to dispose of a property to a charity at a price below fair market value would not generally be considered to include a gift. However, the new subsections 248(30) to (33) of the *ITA* will create a new concept of “gift” for tax purposes, which will permit a donor to have a tax benefit under the *ITA* even though the donor (or a person not dealing at arm's length with the donor) received a benefit, provided that the value of the property exceeds the benefit received by the donor.

It would appear from the Explanatory Notes that the rationale for expanding the definition of “gift” compared to that of the long-established rules at common law is an attempt by CRA to offer a benefit to donors of gifts that are permitted under section 1806 of the *Civil Code of Québec*²⁹, whereby it is possible to sell property to a charity at a price below fair market value, resulting in a gift of the difference. This is based on the rule that a gift in Quebec is a contract by which ownership of property is transferred by gratuitous title. In order to achieve this result, CRA appears to have accepted a line of caselaw at common law³⁰ whereby the courts have accepted transfers of property to a charity where the transfer was made partly in consideration for services and partly as a gift.

The new subsection 248(30) of the *ITA* introduced by the December 2002 Amendments defines the “eligible amount of a gift” to be “the amount by which the fair market value of the property that is the subject of the gift exceeds the amount of the advantage, if any, in respect of the gift”. The December 2003 Amendments clarified that subsection 248(30) is

²⁸ *Supra* note 12.

²⁹ S.Q., 1991, c. 64.

³⁰ See *Gonthier v. The Queen*, Court File No. 2001-2389 (IT)I; *Pennington v. Wain*, [2002] 4 All. E.R. 215; *The Queen v. Freidberg*, 92 DTC 6031 (FCA); *Woolner v. Attorney General of Canada*, 99 DTC 522 (FCA), *The Queen v. Zandstra*, 74 DTC 6416 (FCA).

also applicable to monetary contributions made to registered parties and candidates by including additional references to “monetary contributions” in this subsection, as well as by cross referencing the term “eligible amount” in subsection 127(3) of the *ITA* which provides that monetary contributions to registered parties and candidates may be deducted from tax. This subsection applies to gifts made after December 20, 2002.

The “amount of the advantage” in respect of a gift or political contribution is defined in subsection 248(31). The wording of subsection 248(31) introduced by the December 2002 Amendments has been substantially amended by the December 2003 Amendments, which was further amended by the February 2004 Amendments and has now become subsection 248(31)(a) by the insertion of a new subsection 248(31)(b), which requires the reduction of the amount of a gift by the limited-recourse debt incurred by the donor as discussed later in this paper.

The original wording in paragraph 248 (31)(a), introduced by the December 2002 Amendments, defined the “amount of the advantage in respect of a gift or a contribution” to generally be the total of all amounts, “at the time the gift or contribution is made” of any “property, service, compensation or other benefit” that the donor or a person not dealing at arm's length with the donor “has received or obtained or is entitled, either immediately or in the future and either absolutely or contingently, to receive or to obtain as partial consideration for, or in gratitude for, the gift or contribution”.

As such, the advantage had the following characteristics:

- The value of the advantage is the total value of any “property, service, compensation or other benefit” in question;
- The timing for valuation of the amount of the advantage is at the time when the gift is made;
- The advantage could be received, obtained, or entitled to by either (a) the donor or (b) a person not dealing at arm's length with the donor;
- The advantage may be either (a) received immediately or to be received in the future, (2) to be received by the donor absolutely or contingently, or (3) to be received by the donor as partial consideration for or in gratitude for the gift received by the charity.

Subparagraph (a), as amended by the December 2003 Amendments, and the February 2004 Amendments, now provides that the amount of advantage includes the value, at the time when the gift is made, of “any property, service, compensation or other benefit” that the donor, “a person or a person who does not deal at arm’s length” with the donor, or “another person or partnership who does not deal at arm’s length with and holds, directly or indirectly, an interest in the taxpayer” [i.e. the donor], has “received, obtained or enjoyed, or is entitled, either immediately or in the future and either absolutely or contingently, to receive obtain or enjoy” that is (i) in consideration of the gift, (ii) in gratitude of the gift, or (iii) in “any other way related to the gift.” (For ease of reference, changes to the original wordings from the December 2003 Amendments have been underlined in the foregoing sentence.)

When compared to the original wordings, introduced by the December 2002 Amendments the following changes to subparagraph 248(a) have been proposed:

- (1) The advantage, in the form of “property, service, compensation or other benefit” has been expanded from an advantage benefiting the donor or a person who does not deal at arm’s length with the donor to also include an advantage that benefits a person who does not deal at arm’s length with the donor, and an advantage that benefits “another person or partnership who does not deal at arm’s length with and holds, directly or indirectly, an interest” in the donor.
- (2) The definition of advantage, in addition to being one the donor has “received or obtained or is entitled. . . to receive”, has been expanded to include an advantage that could be “enjoyed” by the donor.
- (3) The advantage, in addition to being in consideration for or in gratitude of the gift, has been expanded to include an advantage that is in “any other way related to the gift”.

Subsection 248(31)(a) applies to gifts made after December 20, 2002, save and except that the provision concerning the phrase “in any other way related to the gift” in subparagraph 248(31)(a)(iii) applies to gifts made on or after the 6 p.m. on December 5, 2003.

The expansion of the definition of “advantage” in subsection 248(31) of the *ITA* to include an advantage that is “in any other way related to the gift” has broad applications. Technically, the advantage can be received prior to, at the same time as, or subsequent to the making of the gift by the donor. As well, it is not necessary for a causal relationship to exist between the making of the gift and the receiving of the advantage if they are “in any other way” related to each other. Therefore, as pointed out by Robert Kepes in his article “Charitable Donation Tax Shelters: Legislative Tax Planning or Tax Porn”³¹, “it makes no difference if a donor makes a gift of cash in consideration of the charity employing his spouse in the future, or if the charity hires the spouse in gratitude of the gift being made in the future.” Under those situations, the charity will need to determine the value of the advantage “at the time the gift is made” and the eligible amount of the gift will need to be reduced by the value of the “advantage” received by the donor’s spouse in being employed by the charity.

Furthermore, subsection 248(31) continues to be silent on the issue from whom the advantage may be provided. Presumably, it would also include advantages provided by third parties, even unbeknownst to the charity issuing the charitable donation receipt. The difficulty is that the charity in question may not be aware of advantages provided to donors by third parties. As a result, charities will need to make inquiries of all donors whether they have “received, obtained or enjoyed, or [are] entitled . . .to receive” a benefit “either immediately or in the future and either absolutely or contingently” from anyone. This information is expected to be difficult for the charity to acquire.

The new subsection 248(33) of the *ITA* provides that the cost to the donor of property which is the subject of the gift is the fair market value of the property at the time of the making of the gift. The Explanatory Notes to the December 2002 Amendments state that “for the transfer of property to qualify as a gift, it is necessary that the transfer be voluntary and with the intention to make a gift”. At common law, where the donor of the property has received any form of consideration or benefit, it is generally presumed that such an intention is not present. The new subsection 248(32) of the *ITA* permits this presumption at common law to be “rebutted”. Paragraph 248(32)(a) provides that if the amount of the advantage does not

³¹ Robert Kepes, “Charitable Donation Tax Shelters: Legitimate Tax Planning or Tax Porn?” (January 2, 2004) 1660 Tax Topics 1, at 4.

exceed 80% of the fair market value of the transferred property, then the existence of an amount of an advantage to the donor will not necessarily disqualify the transfer from being a gift.

Where the amount of an advantage exceeds 80% of the fair market value of the transferred property, paragraph 248(32)(b) provides that it is still possible for the donor to establish to the satisfaction of the Minister of National Revenue that the transfer was made with the intention to make a gift. The Explanatory Notes give the example where a donor transfers land and a building with a fair market value of \$300,000 to a charity which assumes the liability of \$100,000 under the mortgage. In this example, the eligible amount of the gift that the donor is entitled to is \$200,000. If the outstanding mortgage liability is over 80% of \$300,000, i.e. over \$240,000, the donor could apply to CRA for a determination of whether the donor has an intention to make a gift.

Subsection 248(32) that was introduced by the December 2002 Amendments remains the same under the December 2003 Amendments, save and except the insertion of a clarification that the gifts in question are gifts made to “qualified donees”. This subsection applies to gifts made after December 20, 2002.

Subsection 248 (33) that was introduced by the December 2002 Amendments also remains the same under the December 2003 Amendments, save and except the insertion of a clarification that this subsection also applies to monetary contributions made to registered parties and candidates by including reference to “monetary contributions” in this subsection. This subsection also applies to gifts made after December 20, 2002.

As a result of the December 2002 Amendments, as further amended by the December 2003 Amendments and the February 2004 Amendments in relation to the concept of “gift” under the *ITA*, a number of related provisions of the *ITA* and the Regulations are also proposed to be amended, such as subsections 110.1(1) and 11.8(1) of the *ITA* concerning charitable donations deduction and charitable donations tax credit; subsections 35011(1), (1.1), and (6) and subsections 2000(1) and (6) of the Regulations concerning official donation receipts; as well as subsection 149.1(1) of the *ITA* concerning the definition of “disbursement quota”.

It is expected that this new concept of "gift" would encourage donations to charities. However, the precise impact of the application of this concept of "gift" remains to be seen. In addition, CRA has begun to change a number of its administrative policies as a result of the proposed amendments, including the following:

- CRA released Income Tax Technical News No. 26 on December 24, 2002, which proposes a new set of guidelines on split-receipting, and explains CRA's administrative policy in relation to various situations, including new rules concerning charitable gift annuities.
- The new concept of "gift" is relied upon in two policy commentaries released by CRA on February 26, 2003 to clarify CRA's policy regarding expenses incurred by volunteers on behalf of a registered charity, and CRA's policy regarding fundraising events for the benefits of a particular registered charity.

While the new definition of gift is beneficial in order to introduce the concept of split-receipting, it is problematic from the standpoint of ensuring that title has passed when a gift is made. Although a gift with an advantage back to the donor will be deemed to be a gift for income tax purposes following the civil law concept of a gift, it will not be a gift at common law. This is a serious problem, since it may mean that many goods deemed to be gifts passing with good title might be challenged by either a donor or a disgruntled family member at a later time. One possible solution would be to structure the gift as a contract with consideration flowing back to the donor. While this would ensure that title would pass when the gift is made, it would open up the question of whether there is the necessary rebuttable donative intent in order to presume a gift for tax purposes, since a contract that by its very nature requires consideration to the donor negates the required intent to donate in order for there to be a gift.

An alternative solution would be to structure the gift as a charitable trust, since a charitable trust evidences a donative intent but can also accommodate a benefit back to the donor as one of the terms of trust, as is the case with a charitable remainder trust.

3. New Split Receipting Rules³²

a) Introduction

On December 24, 2002, CRA released *Income Tax Technical News* No. 26 (“Technical News No. 26”) to supplement the December 2002 Amendments to the *ITA* concerning the definition of gift. Technical News No. 26 contains proposed new guidelines on split-receipting in order to explain CRA’s new administrative policy in relation to “determining whether there is a gift in situations other than where there is an outright transfer of property for no consideration”. Technical News No. 26, as well as *Registered Charities Newsletter* No. 17, released in January of 2004, also addresses a number of common gifting situations. Existing interpretation bulletins and publications of CRA will be revised in order to reflect these new administrative guidelines.

Prior to the amendments, the ability of a charity to issue a charitable receipt was subject to strict rules, which reflected an understanding of what a gift was at common law, i.e. that there could be no advantage received back by the donor. The only exception to this rule was in the scenario when a charity gave the donor a gift of “nominal” value – a term defined to mean the lesser of \$50 or 10 per cent of the gift. The new rules go much further, however, as they allow charities to issue charitable receipts for the difference between the donor’s benefit (now called the ‘advantage’) and the fair market value of the value of the gift as discussed further below.

b) Summary of the New Split-receipting Guidelines

i) Four Key Elements

Technical News No. 26 sets out four key elements to the new interpretative approach adopted by CRA concerning split-receipting. These four elements are summarized below as follows:

- (1) First, there must be a voluntary transfer of property with a clearly ascertainable value.

³² A part of this section was previously published in “New CCRA Guidelines on Split-Receipting”, by Theresa L. M. Man and Terrance S. Carter, *Charity Law Bulletin* No. 23, July 31, 2003 available at www.charitylaw.ca.

- (2) Second, any advantage received or obtained by the donor, as defined in the newly inserted subsection 248(31) of the *ITA*, must be clearly identified and its value ascertainable. In this regard, the donee charity will be required to identify the advantage provided to the donor by setting out the eligible amount of the gift in the charitable donation receipt issued by the donee charity in accordance with the newly proposed changes to section 3501 of the *Income Tax Regulations*. In relation to the issue of valuation of the advantage, the guidelines indicate that the donee charity should consider obtaining a qualified independent valuation of the amount of the advantage to the donor.
- (3) Third, there must be a clear donative intent by the donor to give property to the donee. In this regard, paragraph 248(32)(a) of the *ITA* provides that if the amount of the advantage does not exceed 80% of the fair market value of the transferred property, then the fact that the donor obtained an advantage from the donee charity will not necessarily disqualify the transfer from being qualified as a gift. Where the amount of an advantage exceeds 80% of the fair market value of the transferred property, paragraph 248(32) (b) of the *ITA* provides that the donor can establish to the satisfaction of the Minister of National Revenue that the transfer was made with the intention to make a gift, i.e. the onus is placed upon the donor instead of there being a presumption of a gift.
- (4) Fourth, the new subsection 248(30) of the *ITA* defines the “eligible amount of a gift” to be the amount by which the fair market value of the gift exceeds the amount of the advantage provided to the donor. In this regard, CRA is prepared to administratively provide for a *de minimis* threshold that will simplify matters for both donors and charity donees where advantages provided to the donors are of insignificant value. As indicated earlier, Interpretation Bulletin IT-110R3, “Gifts and Official Donation Receipts”, had previously provided that no benefit of any kind could be provided to a donor except where the benefit is of nominal value, i.e. where the fair market value of the benefit did not exceed the lesser of

\$50 or 10% of the amount of the gift. This *de minimis* threshold is being revised to provide that the amount of the advantage received by the donor that does not exceed the lesser of 10% of the value of the property transferred to the charity and \$75 will not be regarded as an advantage for purposes of determining the eligible amount of the gift set forth in the proposed definition. However, CRA indicated that the revised *de minimis* threshold would not apply to cash or near cash advantages, such as redeemable gift certificates, vouchers, coupons. In this regard, CRA's position on circumstances where official donation receipts for income tax purposes can be issued for gift certificates is set out in Policy Statement, CPS-018, *Donations of Gift Certificates*³³ that was issued on October 9, 2002.

ii) Various Fundraising Events and Activities

CRA has indicated that the manner in which the eligible amount of a gift, as well as the amount of the advantage, are to be determined with regard to the nature of the various situations and fundraising events or activities, especially in situations where there is not a readily available market value comparison of the advantage. The following situations are discussed in Technical News No. 26, as well as *Registered Charity Newsletter* No. 17: fundraising dinners, charity auctions, lotteries, concerts, shows and sporting events, golf tournaments, and membership fees.

In general, the following rules are to apply when determining the value of the advantage and the eligible amount in relation to fundraising events and activities:

- The eligible amount of a gift at a fundraising event is the amount of the ticket price paid by a participant, less the amount of the advantage received by the participant, provided that the amount of the advantage is not more than 80% of the ticket price and the value of any advantage received by the participant

³³ *Donations of Gift Certificates* Policy Statement, CPS-018, October 9, 2002 available at <http://www.cca-adrc.gc.ca/tax/charities/policy/cps/cps-018-e.html> (accessed: September 15, 2003).

can be reasonably quantified. In this regard, the position of CRA as set out in IT-110R3 that no part of the cost of a lottery ticket may be considered as a gift continues to be applicable because it is not possible to reasonably quantify the amount of the advantage.

- The attendance of celebrities at fundraising events will not be viewed as an advantage. However, any incremental amount paid for the right to participate in an activity (e.g. dinner, golf etc.) with a particular individual would not be viewed by CRA as a gift.
- When determining the value of the advantage received by the participants, there are two elements:
 - (a) The *de minimis* rule will not be applied towards the value of the activity that is the object of the fundraising event (e.g. the value of a meal at a fundraising dinner, the value of a comparable ticket for a concert, or the value of green fee, cart rental, and meal at a golf tournament etc.) For example, if a participant paid \$200 for a ticket to attend at a fundraising dinner at which the value of the meal is \$100, then the amount of \$100 will be included when calculating the value of advantage received by the participant.
 - (b) The value of complementary benefits provided to all participants for attending the events and the value of door and achievement prizes that all attendees are eligible for by simply attending the events will be included in calculating the value of the advantage, unless the aggregate value of these items allocated on a pro rata basis to all participants (i.e. per ticket sold) does not exceed the *de minimis* threshold, i.e. does not exceed the lesser of 10% of the ticket price and \$75. In other words, if such value of the benefits is below the *de minimis* threshold, then such value will not be included when calculating the value of the advantage received by the participants.

For example, assume in the above scenario of a fundraising dinner, each participant receives a logo pen and key chain with an aggregate

value of \$10 and each participant is eligible for door prizes of a trip having a value of \$3,000 and jewellery having a retail value of \$500. If there were 500 participants, then the average value of the door prizes per participant is \$7. As a result, the aggregate value of the complementary benefits and door prizes is \$17 per participant. When applying the *de minimis* rule to the \$17 benefit, since the aggregate value is below the threshold value of \$20 (i.e. the lesser of \$75 or 10% of \$200), the amount of \$17 will not be included when calculating the value of the advantage. As a result, in the above example, the amount of advantage would only be the value of \$100 for the meal with the eligible amount of the gift being \$100, i.e. \$200 ticket price less the \$100 advantage. However, if the total value of the pen and the key chain is increased to \$20, then the aggregate value of the complementary benefits and door prizes would similarly be increased from \$17 to \$27, which would exceed the *de minimis* threshold of \$20. As such, the value of the advantage increases to \$127 instead and the eligible amount of the gift is reduced to \$73, being the \$200 ticket price less the \$127 advantage.

The application of these key elements in conjunction with the above general principles varies with the specific situations of fundraising dinners, charity auctions, lotteries, concerts, shows and sporting events, golf tournaments, and membership fees. Reference should be made to Technical News No. 26 for details concerning the application of these rules.

- In relation to issuing receipts at auctions since the bid value at an auction is considered to be the fair market value, normally no charitable receipt can be issued for an auctioned item. However, when the value of an item can be clearly determined and disclosed to all bidders in advance, the eligible amount for receipting would be the difference between the amount bid and the posted value. Where donative intent is established, i.e. in instances where the posted

value of the item is not more than 80% of the accepted bid), a receipt may be issued for the eligible amount.

- At an auction where a purchased service has an established fair market value that has been identified to all bidders at the auction before the opening bid, a receipt can be issued to the purchaser for the “eligible amount” where donative intent exists. The eligible amount is the difference between the amount paid and the amount of advantage (value of the service).

iii) Charitable Annuities

As a result of the amendment to the definition of gift for income tax purposes, CRA has withdrawn its administrative position with regard to charitable annuities set out in Interpretation Bulletin IT-111R2, “Annuities Purchased from Charitable Organizations”, issued on September 22, 1995 and revised on February 10, 1997, which have now been archived. Pursuant to *Technical News* No. 27 that was released on April 17, 2003, archived Interpretation Bulletins include those that are either no longer relevant due to changes in the law or changes in CRA’s interpretation of the law, as well as those that are seldom used, either because of the subject matter is covered in other CRA publications or because the information presented is no longer of interest.

CRA indicated in *Technical News* No. 26 that the previous administrative position with regard to charitable annuities has no basis in law and cannot be continued as a consequence of the amendment to subsection 248(33) of the *ITA*. Rather, a new administrative policy has been proposed which can most easily be explained by the following example:

- Facts:
- A donor makes a \$100,000 contribution to a charitable organization
 - The donor's life expectancy is 8 years (and the donor lives 8 years)
 - The donor is to be provided annuity payments of \$10,000 per year (total of \$80,000)
 - The cost of the annuity to provide the \$80,000 payment over 8 years is \$50,000

Former tax treatment under IT-111R2

- The donor receives a tax receipt of \$20,000 for the year of donation, being the amount of \$100,000 in excess of the annuity payments of \$80,000
- All of the \$80,000 annuity payments are tax-free

Proposed tax treatment under Technical News No. 26

- The donor receives a tax receipt of \$50,000 for the year of donation, being the amount of \$100,000 in excess of the \$50,000 cost to provide the annuity
- \$30,000 of the \$80,000 annuity payments will be included as income of the donor over 8 years, with the balance of the \$50,000 to be tax free

However, CRA indicated that the administrative policy set out in IT-111R2 will continue to apply to annuities that were issued prior to December 21, 2002. The expectation of CRA that, notwithstanding the withdrawal of this administrative policy, "charitable annuities are likely to continue as a means of fund raising, and may well be more advantageous to the donor" remains to be seen.

iv) Mortgaged Properties

When property that is subject to a mortgage is transferred to a charity, it will now be necessary to determine the fair market value of the property. In this regard, all relevant factors, including all encumbrances, will need to be considered. When determining the eligible amount of the gift, the terms and conditions of the mortgage will need to be considered in determining the amount of the advantage received by the donor, which advantage will take the form of the donor being relieved of the indebtedness of the mortgage. This means that the implications of a "favourable" or "unfavourable" mortgage must also be reflected in the amount of advantage received by the donor.

The meaning of a “favourable” or ‘unfavourable’ mortgage is best illustrated by an example provided by CRA. If the value of the building, without reference to the mortgage, is \$1,000,000, and the value of the mortgage to be assumed by the charity receiving the building is \$400,000, and if the terms of the mortgage (e.g. interest rate and term) are representative of the current market conditions, then the eligible amount of the gift is \$600,000. However, if the terms of the mortgage are unfavourable (e.g. a high interest rate) such that the mortgagor would have to pay a third party \$450,000 in order to permit the mortgage to be assumed by the charity, and then the eligible amount would be reduced to \$550,000.

c) Summary

The definition of “gift” for purposes of the *ITA* has now undergone a fundamental change and the resulting technical implication of the new definition in the context of split receipting in practice is no less fundamental. In light of the proposed new guidelines that will apply to split-receipting as set out in Technical News No. 26 as well as *Registered Charities Newsletter* No. 17, charities will need to give consideration to a number of factors prior to accepting and/or issuing an official donation receipt under the *Regulations* concerning the value of the property transferred, the value of the advantage received, and the value of the eligible amount of the gift. Where necessary, valuation by a qualified valuator may be necessary. The new rules are a welcome relief but need to be carefully followed to ensure that the charitable status of the donee charity is not lost due to improper issuance of charitable donation receipts. Hopefully, the technical amendments to the *ITA* upon which the split-receipting rules are based will soon be passed into law.

4. New Definition of Charitable Organizations and Public Foundations³⁴

a) Introduction

Under the December 2002 Amendments, as well as the February 2004 Amendments, the definitions of charitable organizations and public foundations are amended by replacing the previous “contribution” test with a new “control” test. According to the Explanatory Notes released by the Department of Finance that accompanied the December 2002 Amendments, the rationale for amending the definitions is to permit charitable organizations and public foundations to receive large gifts from donors without concern that they may be deemed to be a private foundation.

b) Requirements under the *ITA*

Under the original provisions of the *ITA*, two of the criteria that both charitable organizations and public foundations are required to comply with include the following: (1) more than 50% of its directors, trustees, officers or like officials must deal with each other and with each of the other directors, trustees, officers or officials at arm’s length, and (2) not more than 50% of the capital contributed or otherwise paid to the charity can be contributed by one person or members of a group of such persons who do not deal with each other at arm’s length. The second requirement is usually referred to as a “contribution” test. Contributions received from some sources are excepted, including the federal government, a provincial government, a municipality, another registered charity that is not a private foundation, and a club, society, or association that is a non-profit organization under paragraph 149(1)(l) of the *ITA*. The purpose of the exception is to permit charitable organizations and public foundations to receive large gifts from these excepted entities.

c) Replacing the “Contribution” Test with the “Control” Test

However, under the current definition, charitable organizations and public foundations are not permitted to receive large gifts from a donor in excess of 50% of the capital

³⁴ A part of this section was previously published in “Commentary on Draft Technical Amendments to the Income Tax Act Released on December 20, 2002 that affect Charities”, by Theresa L. M. Man and Terrance S. Carter, *Charity Law Bulletin No. 21*, April 30, 2003 available at <http://www.charitylaw.ca>.

contributed or otherwise paid to a charity. As a result of inquiries from the public, the Department of Finance decided to amend the definition of both charitable organizations and public foundations to “ensure that in certain circumstances large donations are not prohibited”. This is achieved by replacing the “contribution” test with a “control” test. The Explanatory Notes to the December 2002 Amendments indicate that as a result of the amendments to the definitions of charitable organizations and public foundations in subsection 149.1(1) of the *ITA*, charitable organizations or public foundations will not be disqualified “solely because a person, or a group of persons not dealing with each other at arm’s length, has contributed more than 50% of the charity’s capital.” However, “such a person or group is not permitted to control the charity in any way, nor may the person or the members of the group represent more than 50% of the directors, trustees, officers and similar officials of the charity.”

Specifically, the requirement that more than 50% of the directors, trustees, officers or like officials of the organization or foundation must deal at arm’s length with each other and with each of the other directors, trustees, officers or officials of the charity is retained in the December 2002 Amendments and the February 2004 Amendments. A new requirement is inserted by the December 2002 Amendment, which states that more than 50% of the directors, trustees, officers or like officials of the charity are also required to deal at arm’s length with (i) “each person”, and (ii) “each member of a group of persons who do not deal with each other at arm’s length”, who has contributed more than 50% of the capital of the charity, “other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, association described in paragraph 149(1)(l)” of the *ITA*.

In addition, the December 2002 Amendments replaced the “contribution” test requiring not more than 50% of the capital of the charity be contributed by one person or members of a group of such persons who do not deal with each other at arm’s length with a “control test” in paragraph 149.1(1)(d) of the *ITA*. This new control test requires that the charity “is not, and would not be if the organization [or foundation] were a corporation, controlled directly or indirectly in any manner whatever (i) by a person that has contributed or otherwise paid into the organization [or foundation] more than 50% of the

capital of the organization, (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, association described in paragraph 149(1)(l)), or (ii) by a person or a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in subparagraph (i).”

d) Application for Change in Designation

In general, this new definition is retroactively applicable to January 1, 2000. Those registered charities that wish to apply under subsection 149.1(6.3) to change their designation as a result of the amendments described above are required to apply within 90 days after the February 2004 Amendments having received Royal Assent and these registered charities will then be deemed to be registered as charitable organizations, public foundations, or private foundations, as the case may be, in the taxation year that the Minister of National Revenue specifies.

e) Implementation of New Definition

As a result of the introduction of a “control” test, the convoluted rules under the *ITA* in relation to “control” will become applicable, specifically due to the inclusion of the phrase “controlled directly or indirectly in any manner whatever” contained in the new definitions. In this regard, subsection 256(5.1) of the *ITA* states as follows:

For the purposes of this Act, where the expression ‘controlled, directly or indirectly in any manner whatever,’ is used, a corporation shall be considered to be so controlled by another corporation, person or group of persons (in this subsection referred to as the ‘controller’) at any time where, at that time, the controller has any direct or indirect influence that, if exercised, would result in control in fact of the corporation, except that, where the corporation and the controller are dealing with each other at arm's length and the influence is derived from a franchise, license, lease, distribution, supply for management agreement or other similar agreement or arrangement, the main purpose of which is to govern the relationship between the corporation and the controller regarding the manner in which a business carried on by the corporation is to be conducted, directly or indirectly in any manner whatever, by the controller by reason only of that agreement or management. [Emphasis added]

This concept of “de facto control” is explained in more detail in Interpretation Bulletin IT-64R.

However, the application of the rules concerning “control” in the charitable context is unclear, since these rules are premised upon application to commercial arrangements in the business context rather than for charitable corporations. As such, for charity law practitioners, these rules will need to be carefully reviewed when establishing charitable organizations and public foundations involving a major donee who constitutes more than 50% of the capital for a charity, especially in the case of establishing a multiple corporate structure, in order to ensure that the charities in question will not inadvertently be caught by these rules that might otherwise lead to the unintended results of a charity being deemed a private foundation. As well, the current relationship of multiple corporate structures should also be reviewed in order to assess whether this new control test may have an unwanted effect.

5. Tax Shelter Donation Programmes

a) Extended Definition of Tax Shelter in February 2003 Budget

Among measures announced in the February 2003 Budget was an amendment to broaden the definition of “tax shelter” in the *ITA*. A “tax shelter” is defined under subsection 237.1(1) of the *ITA* as any property for which a promoter represents that an investor can claim deductions or receive benefits which equal or exceed the amount invested within four years of its purchase. The definition of tax shelter has now been amended to include gifting arrangements, tax credits, refunds and deductions, since previously only deductions from income or taxable income were accounted for when determining whether or not an arrangement was a tax shelter. The newly amended section was introduced into the House of Commons via Bill-C28: *An Act to Implement Certain Provisions of the Budget Tabled in Parliament on February 18, 2003*, which was passed into law on June 19, 2003.

b) Description of Tax Shelter Donation Programs of Property

Tax shelter donation programmes involving gifts of property have been the subject of considerable scrutiny by CRA, even prior to the announcement of the December 2003 amendments. The position of CRA with regards to art-flips and other similar programs was set out in a CRA FactSheet entitled “Art-donation Schemes or ‘Art-Flipping’” dated November 2002. The mechanism commonly utilized in these schemes is explained in the FactSheet as follows:

Step 1: A promoter gives a person the opportunity to purchase one or more works of art or another item of speculative value at a relatively low price. The proposal is that the promoter will work with the person to make arrangements for donating the works of art or other items to a Canadian registered charity or other specified institution.

Step 2: The person donates the art or other item and receives a tax receipt from the charity or other specified institution that is based on an appraisal arranged by the promoter. The appraised value of the art is substantially higher than the cost paid by the person.

Step 3: When the person claims the receipt on his or her next tax return, it generates a tax saving that is higher than the amount paid for the art in the first place.

Although the FactSheet deals with the donation of works of art, the donation of “another item of speculative value” was also contemplated in the publication by CRA. These tax shelter donation schemes were based on the fact that the item in question was purchased at a substantially lower price than its much higher fair market value, and that a donation receipt will also be issued by a registered charity for the fair market value when the item is donated to it.³⁵

c) CRA’s Warnings with Respect to Tax Shelter Donation Programs

CRA’s warning on tax shelter donation programs, as set out in CRA’s FactSheet dated November 2000 entitled “Canada Customs and Revenue Agency Reminds Investors of Risks Associated with Tax Shelters”, stated that registration as a tax shelter “does not indicate that the CRA guarantees an investment or authorizes any resulting tax benefits”

³⁵ “Art-donation Schemes or ‘Art-Flipping’” Factsheet, (November 2002), available at <http://www.ccradrc.gc.ca/newsroom/factsheets/2002/nov/art-e.html> (accessed: October 14, 2003).

and that “[the] CRA uses this identification number later to identify unacceptable tax avoidance arrangements”.

In 1997, CRA was requested to provide an advance tax ruling on the donation of wildlife art to a registered charity at a value in excess of the amount paid to purchase the artwork. CRA indicated, on November 13, 1997, that it declined to provide any comment in so far as the concerns involved the determination of fair market value because it is CRA’s position that “tax savings depends on a sudden increase in FMV at [the] time of making [the] gift as compared to the actual costs a short time earlier” and “it is also a determination of fact as to whether the disposition is an adventure in the nature of trade or a capital disposition.” Instead, CRA only provided general comments in relation to the donation of capital property to a registered charity.

CRA’s FactSheet dated November 2002 concerning art-donation or art-flipping schemes indicates that third party penalties can include charities that receive the donation if “it knows – or if it can reasonably be expected to have known – that the appraised values were incorrect.” This position was confirmed in CRA’s *Registered Charities Newsletter* No. 16 issued on October 9, 2003.

In this regard, Information Circular IC 01-1 specifically states the following:

If the charity knew, or would have reasonably been expected to know but for circumstances amounting to culpable conduct, that the valuations were incorrect, it would be liable for the penalties for issuing false receipts.

Registered Charities Newsletter No. 14 issued in the winter of 2003 indicates that “a series of test cases confirmed CRA’s ability to disallow the inflated claims on donation receipts, and charities involved in these activities have been deregistered.” The *Newsletter* then indicated that the cases of 5 taxpayers were selected to go before the Tax Court of Canada as a test. At issue in these cases was “whether these individuals had made true donations, whether the value attributed to the works for donation purposes was their fair market value, and whether a penalty for gross negligence was appropriate”. In addition to finding that these individuals were only entitled to claim tax credits for the fair market value of the art works donated at 25% of the value claimed, the registered

charities involved in those cases were deregistered. The art dealer involved also received a jail sentence when his case was brought before the Superior Court of Quebec.

The donation of items of “speculative value” was again brought up in *Registered Charities Newsletter* No. 16 issued on October 9, 2003, by explaining that such situations could involve “trading cards, comic books, and used cars, where a promoter facilitates the donations to the charity.” In *Registered Charities Newsletter* No. 16, CRA also warns that the donation of such items could result in the charity not being able to meet its disbursement quota:

A charity should not lose sight of the fact that it is the amount for which the receipt is issued that is included in its disbursement quota requirement for the following year, even though the charity may in turn sell the property for an amount far below the amount for which the receipt was issued. Failure to meet the disbursement quota is grounds for us to revoke a charity’s registered status. In some cases, the charity gambles that the property will be worth at least the receipted amount at some future time.

In an article by Paul Waldie that appeared in *The Globe and Mail* on October 17, 2003 entitled, “Art dealer alleges tax harassment”, public attention was drawn to this problem as follows

By law, charities must hand out 80 per cent of the donations they receive. If a charity received a donated piece of art appraised at \$1,000, the charity would have to disperse \$800 if the piece was sold within 10 years. However, the source [at a major charity] said in many cases organizations get far less than the appraised value for the art and they are forced to meet their disbursement quota through other funds.

In *Registered Charity Newsletter* No. 16, CRA pointed out that charities are not obligated to either receive or receipt a gift if they choose not to:

Charities are reminded that they are not obliged under the *Income Tax Act* to issue official donation receipts for gifts; nor are they required to accept gifts. Before accepting gifts-in-kind, charities should ask themselves how the gift would allow them to further their charitable purposes.

In a speech given by Carl Juneau, a representative of CRA, on November 12, 2003 at the *Church & the Law*TM Seminar hosted by Carter & Associates, he noted that tax shelter

donation schemes can mean a significant fiscal loss to the Canadian government. Juneau advised that "...the bottom line is that these schemes are contrary to the spirit of giving and to charity. Charities should be in the spirit of, [the] business of generosity, not in the business of making money for others...If you have been approached by some of these promoters, be very careful. The Tax Avoidance Section is keeping close tabs on these promotions, and there will be legislative amendments to shut down this kind of practice".

On November 25, 2003, CRA released a factsheet entitled "Tax Shelter Donation Arrangements", which provides numerous additional warnings and guidelines with respect to tax shelter donation schemes. CRA defined these donation arrangements as involving:

...items sold, often in bulk, through a promoter who donates them to a registered charity which then issues a tax receipt for a considerably higher amount than was paid for the donated items. This type of donation scheme results in an income tax credit for the donor greater than the price paid, and may be disallowed by the Canada Customs and Revenue Agency (CCRA) at a later date.

An example of this – A tax shelter promoter presents an arrangement to you where you can buy – without taking possession of – a quantity of supplies at a bargain basement price. The promoter then arranges for this to be appraised and donated to a registered charity, which will then provide you with a tax receipt based on the appraised value. The tax receipt will be high enough to produce a tax credit greater than the cost of the property plus any capital gains taxes resulting from the arrangement.

Considerable emphasis was given in the factsheet to the possibility of third-party civil penalties. As well, CRA advises that the transactions described below may be challenged by CRA:

- the advertised arrangements promise to sell items (such as art, software, or pharmaceuticals) to taxpayers to be donated immediately to selected charities for tax receipts that are much higher than what the person paid;
- the appraiser is not acting independently of the promoters or sellers of the arrangement or the charities involved;
- the fair market value seems too high;
- where the arrangement involves a loan where it's unlikely the person has to repay the loan because the lender's recourse to collect is

limited, or the provision to settle the loan is by way of something other than cash payment from the taxpayer.

This factsheet can be accessed at <http://www.cca-adrc.gc.ca/newsroom/factsheets/2003/nov/1125taxshelter-e.html>.

As well, on November 26, 2003, CRA issued a summary policy entitled “Tax Shelters”³⁶, which states that:

Under the *Income Tax Act*, a tax shelter includes any property or gifting arrangement for which a promoter represents that an investor can claim deductions or credits which equal or exceed the cost of the property less certain benefits within a four year period.

The Canadian Association of Gift Planners (“CAGP”), which represents approximately 1,200 gift planners in Canada, applauded CRA’s position on tax shelter donation programs. Malcolm Burrows, chair of government relations for the CAGP, was quoted in a December 1, 2003, *Globe and Mail* article by Paul Waldie entitled “Tax Shelters Being Abused, Charities say”, as saying:

These so- called gifts do not make children healthier, save wildlife habitat, or put food in the mouths of the homeless...These arrangements are tax and profit motivated. A charitable gift by contrast has a cost to the donor. The promoters of these arrangements have no interest in helping charities achieve their charitable mission.

d) December 2003 Amendments Curtailing Tax Shelter Donation Programmes

On December 5, 2003, at 6 p.m., the December 2003 Amendments were announced by the then Deputy Prime Minister and Minister of Finance, having the effect of limiting tax benefits from charitable donations made under tax shelter donation arrangements. The Department of Finance was taking steps to curtail the scope of tax shelter donation arrangements after receiving public complaints and concerns with respect to donation promoters selling the “buy-low, donate-high” schemes that often provide the donor

³⁶ “Tax Shelters” Summary Policy, November 26, 2003, available at <http://www.cca-adrc.gc.ca/tax/charities/policy/csp/csp-t08-e.html> .(accessed: December 10, 2003).

exceptionally high tax-benefits. The Department of Finance, like CRA, was concerned that the government was losing substantial amounts of tax dollars when the taxpayer/donor was able to claim higher tax deductions than he/she was otherwise entitled to.

i) Limiting Tax Shelter Donation Schemes Involving Donation of Property

The December 2003 Amendments propose to insert a new subsection 248(35) in the *ITA*, of which subparagraph (a) provides that if the taxpayer acquires the property through a “gifting arrangement” as defined in section 237.1 of the *ITA* described above, then the fair market value of the property donated, for purposes of the charitable donation receipt issued by the receiving charities, shall be “deemed” to be the lesser of (i) the “fair market value of the property otherwise determined” and (ii) the cost (or the adjusted cost base in the case of capital property) of the property “to the taxpayer immediately before the gift is made” (the “Deeming Provision”). As such, it is irrelevant when the property was acquired by the donor through the gifting arrangement. Subsection 248 (36) states that the Deeming Provision does not apply to inventory, real property situated in Canada, certified cultural property, publicly traded shares or ecological gifts. Paragraph 248 (35)(a) applies to gifts made on or after 6 p.m. on December 5, 2003. The wording of paragraph 248(35)(a) that was introduced by the December 2003 Amendments were brought forward and included in the February 2004 Amendments.

ii) Other Applications of the Deeming Provision

In introducing the Deeming Provision for donation of property acquired through gifting arrangements, the Department went further than simply curtailing the tax shelter donation schemes addressed by paragraph 248(35)(a). The Department further introduced paragraph 248(35)(b) to provide that the Deeming Provision also applies to donation of property under two other situations, namely, (1) pursuant to subparagraph 248(35)(b)(i), if the property was acquired by the donor less than three years before the day that the gift is made, and (2) pursuant to

subparagraph 248(35)(b)(ii), if it is “reasonable to conclude that, at the time the taxpayer acquired the property, the taxpayer expected to make a gift of the property.” Under the former scenario, if a donor acquires property and donates the property within three years from the date of acquisition, then the fair market value of the property shall be deemed to be the donor’s cost or adjusted cost base. Under the latter scenario, regardless of when the donor acquired the property (even outside of the three-year limitation period), as long as it is “reasonable to conclude” that the donor had an expectation to make a gift at the time when the property was acquired, then the Deeming Provision would apply. Practically, the burden is on the donor to prove that he or she did not have an expectation to make a gift when the property was acquired.

Pursuant to subsection 248(36), paragraph 248(35)(b) does not apply to inventory, real property situated in Canada, certified cultural property, publicly traded shares, or ecological gifts. As well, the opening wording of paragraph 248(35)(b) provides that the Deeming Provision does not apply to situations where the gift is made as a consequence of the donor’s death. Paragraph 248(35)(b) applies to gifts made on or after 6 p.m. on December 5, 2003.

iii) Restricting the Use of Tax Shelter Donations Involving Limited Recourse Debt

In addition to the donation of property to charities under the gifting arrangements of tax shelter donation schemes, another type of gifting arrangement which the Department felt the need to restrict involves limited-recourse debts incurred by donors (also known as “leveraged loans” or “leveraged donation shelters”). This usually involves a donor borrowing monies from a lender, followed by the donor donating the borrowed fund together with some of his or her own funds to a charity in return for a charitable donation receipt for the cumulative amount donated. At the same time, the donor pays a fee or other charges to the promoter, which fee or charges would be used to purchase property or to be invested for a return that would, over the term of the loan, be sufficient to pay off the loan borrowed.

The February 2003 Budget, in expanding the definition of “tax shelter” in section 237.1(1) of the *ITA* to include property acquired under a gifting arrangement, also expanded the definition of “tax shelter” to include a gifting arrangement under which it may reasonably be expected, having regard to representations made, that if a taxpayer makes a gift or contribution under the arrangement, a person (whether or not it is the taxpayer himself or herself) will incur an indebtedness in respect of which recourse is limited. , now also contained in the February 2004 Amendments.

The December 2003 Amendments propose to curtail the use of these arrangements by introducing a series of amendments to the *ITA*, including the insertion of new subsection 143.2(6.1) to the *ITA*, the amendment of the wording of subsection 143.2(13) before paragraph (a), the insertion of new paragraph (b) to subsection 248(31) that was introduced by the December 2002 Amendments³⁷, as well as the insertion of new subsection 248(34) to the *ITA*. These amendments only apply to donations made after February 18, 2003. A summary of the amendments follows.

The proposed paragraph 248(31)(b) of the *ITA* provides that the amount of gift made by the donor would be reduced by the amount of the limited-recourse debt incurred as determined pursuant to the newly proposed subsection 143.2(6.1). Subsection 143.2(6.1) of the *ITA* introduces a new definition of “limited-recourse debt” which has two aspects. Firstly, pursuant to paragraphs 143.2(6.1)(a) and (b), a “limited-recourse debt” is a limited-recourse amount, which is defined under section 143.2(1) to mean “the unpaid balance of any indebtedness for which recourse is limited, either immediately or in the future and either absolutely or contingently,” that can “reasonably be considered to relate to the gift.” In situations where recourse is not limited, the debt may be “deemed” to be a limited-recourse debt under the current subsection 143.2(7) of the *ITA* unless there are bona fide arrangements in writing to repay the debt within 10 years, and interest is paid annually, within 60 days after the debtor’s taxation year, at not less

³⁷ See *Charity Law Bulletin* No. 21 dated April 30, 2003 available at www.charitylaw.ca , referred to above..

than CRA's prescribed rate. Secondly, pursuant to paragraph 143.2(6.1)(c), a "limited-recourse debt" means any indebtedness, whether or not recourse is limited, that can "reasonably be considered to relate to the gift", for which there is a "guarantee, security or similar indemnity or covenant" in respect to that debt or any other debts.

The cumulative effect of the paragraph 248(31)(b) and subsection 143.2(6.1) is to reduce the amount of the gift made by the donor by the amount of the loan borrowed if the indebtedness is of limited recourse to the lender or if there is a "guarantee, security or similar indemnity or covenant" in respect to that debt or any other debts. The December 2003 Amendments also proposed the addition of subsection 248(34) to the *ITA* that would deem repayments of the limited-recourse debt as gifts in the year it is repaid. Lastly, subsection 143.1(13) is amended so that it is applicable to gifts and monetary contributions by including references to "gift or monetary contribution" in this subsection.

iv) Substantive Gifts

The February 2004 Amendments proposed the insertion of a new subsection 248(38) that applies to gifts made on or after February 27, 2004. The Explanatory Notes to the February 2004 Amendments indicate that subsection 248(38) is intended to prevent a donor from avoiding the application of the Deeming Provision set out in subsection 248(35) by disposing the property to a qualified donee and then donating the proceeds of disposition, rather than the donor donating the property directly to the qualified donee. The property disposed of by the donor is referred to as "substantive gift" in this subsection. The opening wordings of this subsection makes it clear that this subsection only applies to capital property and eligible capital property. This subsection also applies to political contributions. However, this subsection does not apply to the property already exempted under subsection 248(36), e.g. publicly-traded shares, real estate situated in Canada, etc, as described above.

As such, when a person disposes of capital property or eligible capital property to a qualified donee and donates the proceeds of disposition to either that qualified donee or to another qualified donee that does not deal at arm's length with the qualified donee that purchased the property from the donor, then the capital property or eligible capital property will now be referred to as a "substantive gift". Under those situations, the Deeming Provision set out in subsection 248(35) would apply and the fair market value of the gift for purposes of subsection 248(30) is "deemed" under paragraph 248(38)(a) to be "the lesser of the fair market value of the substantive gift and the cost, or if the substantive gift is capital property of the taxpayer, the adjusted cost base, of the substantive gift to the taxpayer immediately before the disposition" of the substantive gift to the qualified donee. Pursuant to paragraphs 248(38)(b) and (c), the proceeds of sale are deemed to be the lesser of the fair market value and the cost, in the case of eligible capital property, or the adjusted cost base, in the case of capital property, immediately before the sale.

v) Anti-Avoidance Rule

The December 2003 Amendments also introduced an anti-avoidance rule in the new subsection 248(37) of the *ITA* which states that if "one of the reasons for a series of transactions" that includes a disposition or acquisition of property of a donor is to increase the amount that would be deemed to be the fair market value of the gift under subsection 248(35), then the cost of the property for the purpose of subsection 248(35) shall be deemed to be the lowest cost to the donor to acquire the property in question or "an identical property at any time." This subsection applies to gifts made on or after 6 p.m. on December 5, 2003

vi) Practical Implication of Recent Amendments

The application of the proposed Deeming Provision to gifts made outside of tax shelter donation arrangements under paragraph 248(35)(b)(i) of the *ITA*, if the February 2004 Amendments, which incorporated changes introduced by the

December 2003 Amendments, are passed will have serious practical implications on how charities will need to operate in terms of acceptance of gifts and the issuance of charitable donation receipts.

Firstly, charities will be required to inquire of donors of gifts-in-kind when the property donated was acquired by the donors. Where possible, a written confirmation will need to be obtained from the donors in this regard to evidence the date of acquisition. Where property was acquired by the donors less than three years before the date of donation, the charitable donation receipt will need to reflect the deemed fair market value of the property, being the lesser of the appraised fair market value and the cost of acquisition by the donor. Where property was acquired by the donors more than three years before the date of the donation, then the charitable donation receipt will need to reflect the appraised fair market value of the property.

Secondly, where the Deeming Provision applies, then the charity will need to inquire of the donor to determine the amount of the adjusted cost base of the gifted property, where applicable. From a practical standpoint, this would be a difficult if not impossible task for many charities to undertake, particularly smaller charities.

Thirdly, although practically, the burden will be on the donors to prove the lack of expectation to make a gift when the property was acquired, it raises a concern whether charities will be required to inquire of donors of gifts-in-kind to determine whether the donor had an expectation to make a gift at the time when the donor acquired the property, regardless of when the property was acquired. On the one hand, without charities making the necessary inquiries, it is presently unclear what value should be reflected in the charitable donation receipt that the charities are required to issue to the donor. On the other hand, since charities are obviously grateful to receive donations, it will be difficult for charities to make such inquiries of its donors regarding whether they had any expectation to make a gift when the property was acquired.

Fourthly, there is the possibility that the Deeming Provision could lead to unintended negative results, such as catching the donation of privately held shares where the donor exchanged the original shares for shares of another class for the purpose of donating them to a charity. As such, hopefully the wording of the Deeming Provision will be amended before being passed into law to address the unintended results.

e) Issues for Charities that have been Involved in Tax Shelter Donation Programmes

Where a charity has been involved in a tax shelter donation scheme prior to the announcement of proposed changes to the *ITA* provisions on December 5, 2003, the following are some of the issues that the charity will need to be considered:

- ◆ A tax shelter registration does not in itself give the donation program any protection;
- ◆ There may be difficulties in establishing the fair market value of the goods being donated³⁸;
- ◆ The onus is on the charity to arrange a qualified appraisal of the donation, not on the promoter or the donor;
- ◆ There may be an issue of establishing donative intent by the donor;
- ◆ It is important to determine whether the donations are gifts of capital or inventory, determined preferably by means of an independent tax opinion;
- ◆ Possible third party penalties may be levied against a charity's for improper valuation of the fair market value of items donated;
- ◆ Potential assessment challenges of donors by CRA with possible claims against the charity;
- ◆ Potential problems in complying with a charity's disbursement quota;
- ◆ Due diligence requirements on the part of the charity in receiving, monitoring and disbursing products that are donated;
- ◆ Did the charity to obtain independent legal advice;
- ◆ Where a legal defence fund has been promised, questions of sufficiency need to be considered and whether it is available for the benefit of the charity as opposed to donors;
- ◆ Possible loss of charitable status by the charity; and
- ◆ Possible exposure of directors for personal liability to donors who are reassessed.

³⁸ Klotz v. Canada, [2004] T.C.J. No. 52 (T.C.C.).

Given the numerous warnings by CRA leading up to the announcement of proposed legislation by the Department of Finance on December 5, 2003, charities that did become involved in tax shelter donation schemes may have cause for concern if CRA decides to initiate an assessment of a charity that was involved in one of these schemes. In the future, charities and their boards of directors will want to be extremely cautious before becoming involved in any donation program that promises results to the donor or the charity that seem too good to be true, because they probably are.

6. Revocation of Registration of Charities

Subsection 149.1(2), (3), and (4) of the *ITA* provide for circumstances under which the charitable status of a charity may be revoked. Pursuant to the February 2004 Amendments, which incorporated the changes introduced by the December 2002 Amendments, subsections 149.1(2), (3), and (4) will be amended to permit the revocation of the charitable status of charitable organizations, public foundations, and private foundations if such entities “make a disbursement by way of a gift” which is not a gift made “in the course of charitable activities carried on by it” or not a gift “to a donee that is a qualified donee” at the time of the gift. As such, all gifts made by a charity must be made in the course of furthering its charitable activities or to qualified donees.

Any gifts made by a charity to a non-qualified donee is now cause for revocation of the charitable status of the charity. This would apply even though the charity has met the applicable disbursement quota. After Royal Assent of the February 2004 Amendments, these amendments would apply to gifts made by charities after December 20, 2002.

As a result of the possible loss of charitable status in making a disbursement to a non-qualified donee, charities will need to be more cautious than ever when making disbursements by ensuring that all disbursements are either made in the course of carrying out their charitable activities or to qualified donees and that no disbursements are made to non-qualified donees unless there is an agency, joint venture or partnership agreement in place in accordance with the requirement of CRA.

7. Additional Qualified Donee

The February 2004 Amendments also propose to amend sections 110.1 and 118.1 of the *ITA* to expand the list of entities listed under these sections that qualify as “qualified donees” as defined in section 149.1(1) to include municipal or public bodies performing a function of government of Canada. The Explanatory Notes to the February 2004 Amendments indicate that the Tax Court of Canada, in the case *Otineka Development Corporation Limited and 72902 Manitoba Limited v. The Queen*³⁹, held that an entity could be considered a municipality for the purpose of paragraph 149(1)(d.5) on the basis of the functions it exercised. However, the Quebec Court of Appeal in *Tawich Development Corporation v. Deputy Minister of Revenue of Quebec*,⁴⁰ in affirming the lower court’s decision, held that an entity could not attain the status of a municipality by exercising municipal functions but only by statute, letters patent or order. As a result, the February 2004 Amendments expand the definition of qualified donee in response to the Quebec Court of Appeal decision in *Tawich* in order to ensure that municipal or public bodies performing a function of a government in -- Canada are included as qualified donees.

E. SELECTED DISCUSSION OF NEW POLICIES FROM CRA AFFECTING CHARITIES

1. New Policy on Political Activities⁴¹

a) Background to the Political Activities Policy Statement

The Policy Statement on Political Activities (“Policy”) is the result of over two years work by the Government of Canada and the voluntary sector. The cooperative approach was undertaken in order to strengthen the relationship between both CRA and the voluntary sector under a joint initiative called the Voluntary Sector Initiative. Part of the initiative to enter into a dialogue was the development of a document entitled *Accord*

³⁹ 94 D.T.C. 1234, [1994] 1 C.T.C. 2424 (T.C.C.).

⁴⁰ 2001 D.T.C. 5144 (Que. C.A.) [hereinafter *Tawich*].

⁴¹ A part of this section was previously published in “New CCRA Policy Statement on Political Activities” by Terrance S. Carter and Suzanne E. White, October 31, 2003 [this is correct date], *Charity Law Bulletin No. 25*, available at <http://www.charitylaw.ca>.

Between the Government of Canada and the Voluntary Sector, signed in December 2001 between the Government of Canada and the voluntary sector.

The Policy represents an expansion concerning what CRA has traditionally considered political activities, and “recognizes that Canadian society has been enriched by the invaluable contribution charities have made in developing social capital and social cohesion”⁴².

In January of 2002, CRA published an Information Circular entitled *2002 Concept Draft – Registered Charities – Political Activities* (“*2002 Concept Draft*”), which invited contributions from charities on the guidelines concerning political activities and allowable limits for charities under the *ITA*. The *2002 Concept Draft*⁴³ can still be accessed at the CRA website. The predecessor to the new Policy was Information Circular (“IC”) 87-1, entitled “Registered Charities - Ancillary and Incidental Political Activities”.⁴⁴ This document, released by CRA in 1987, explained the provisions in the *ITA* which allowed registered charities to pursue ancillary and incidental political activities of a non-partisan nature.

The Policy is based upon subsections 149.1 (6.1) and 149.1 (6.2) of the *ITA*, which apply to both charitable foundations and charitable organizations, and which for ease of reference have been summarized below as follows:

For the purposes of the definition “charitable foundation” [or “charitable organization”] in subsection 149.1(1), where a corporation or trust devotes substantially all of its resources to charitable purposes [or “charitable activities”] and

- a) it devotes part of its resources to political activities,
- b) those political activities are ancillary and incidental to its charitable purposes [or “charitable activities”], and
- c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office, the corporation or trust [or “organization”] shall be considered to be constituted and operated for charitable purposes to the extent of that part

⁴² *Political Activities Policy Statement*, CPS-022, September 2, 2003, available at <http://www.ccradrc.gc.ca/tax/charities/policy/cps/cps-022-e.html> [hereinafter “Policy” in this section, at page 3]

⁴³ See http://www.ccradrc.gc.ca/tax/charities/consultations/political_activities-e.html.

⁴⁴ IC-87-1 Registered Charities – Ancillary and Incidental Political Activities, available at <http://www.ccradrc.gc.ca/E/pub/tp/ic87-1/ic87-1-e.html>.

of its resources so devoted [or “to charitable activities carried on by it”].
[Emphasis added.]

b) Distinction between Political and Charitable Purposes and Activities

Registered charities are required to have exclusively charitable purposes. However, the *ITA* does not define either “charitable” or “purposes” and, as such, the courts have been called upon to determine the definition through caselaw. In this regard, the courts have held that an organization that has been established for a political purpose cannot be a registered charity. Political purposes have been defined by the courts as purposes seeking to:

- further the interests of a particular political party; or support a political party or candidate for public office; or
- retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country.

Generally, a charity is not allowed to carry out any of the above activities, as they are considered to be furthering political purposes. However, CRA, in certain limited situations, will allow charities to become involved in some political activities, either as part of its charitable activities in order to advance its charitable purpose(s), or alternatively because they fall within the limits of what CRA has identified as permitted political activities.

c) Categorization of Activities

Under the Policy, a charity’s activities with regard to political activities are categorized by CRA under three headings:

- ♦ charitable activities;
- ♦ prohibited activities; and
- ♦ permitted political activities.

i) Charitable Activities

Activities that directly further the charitable purpose of a charity but have a political nature will be permitted, such as participation in a public awareness

campaign, provided that the political nature of the activity in a public awareness campaign:

- is connected and subordinate to the charity's purpose;
- does not contain a call to political action;
- is based on a well-reasoned position rather than information the charity knows or ought to have known is false, inaccurate, or misleading; and
- is not primarily of an emotive nature.

CRA has created general rules to assist charities in knowing whether or not their activity in question is charitable or not: These helpful guidelines deal with:

- public awareness campaigns;
- providing contact information during public awareness campaigns;
- communicating with an elected representative or public official; and
- releasing the text of a representation.

The Policy outlines a number of situations that will now be considered to be charitable notwithstanding that they have some political aspects to them, as long as the limits described above are adhered to. Examples in this regard are as follows:

- distributing the charity's research on a particular topic relevant to its charitable purpose;
- releasing and distributing a research report to election candidates;
- publishing a research report online;
- presenting a research report to a Parliamentary Committee;
- giving an interview about the research report;
- distributing a research report to all Members of Parliament;
- participating in an international policy development working group; and
- joining a government advisory panel to discuss policy changes.

ii) Prohibited Activities

Prohibited activities are defined in the Policy as an illegal activity or a partisan political activity, which in turn is defined as an activity "that involves direct or indirect support of, or opposition to, any political party or candidate for public

office”⁴⁵. A charity, though, may make the public aware of its stance on a particular issue, provided that:

- it does not explicitly connect its views to any political party or candidate for public office;
- the issue is connected to its purposes;
- its views are based on a well-reasoned position; and
- public awareness campaigns do not become the charity’s primary activity.

The following activities would be considered prohibited activities by CRA:

- supporting an election candidate in the charity’s newsletter,
- distributing pamphlets that underline the government’s lack of contribution to the charity’s goals;
- preparing dinner for campaign organizers of a political party,
- inviting competing election candidates to speak at separate events.

iii) Permitted Political Activities

The Policy states that “a charity that devotes substantially all of its resources to charitable activities may carry on political activities within the allowable limits”⁴⁶. Under the *ITA*, a charity must devote substantially all of its resources to charitable activities. “Substantially all” is defined by the CRA as 90% or more, meaning that a charity may not devote more than 10% of its total resources per year to political activities. According to the Policy, a charity that refrains from engaging in prohibited political activities can devote up to 10% of its resources to permitted political activities (which in the case of smaller charities has been somewhat extended). It is important to note that a charity can give its resources to another organization, including a registered charity, to conduct political activities on its behalf. Permitted political activities (as opposed to prohibited political activities listed above) would include the following, provided that they do not exceed the expenditure limit as stated above:

- explicitly communicates a call to political action (i.e., encourages the public to contact an elected representative or

⁴⁵ Policy, para. 6.1.

⁴⁶ Policy, para. 14.3.

- public official and urges them to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country);
- explicitly communicates to the public that the law, policy, or decision of any level of government in Canada or a foreign country should be retained (if the retention of the law, policy or decision is being reconsidered by a government), opposed, or changed; or
 - explicitly indicates in its materials (whether internal or external) that the intention of the activity is to incite, or organize to put pressure on, an elected representative or public official to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country.

As such, the following examples, as long as they fall within the charity's limit on political activities, would be allowable:

- buying a newspaper advertisement to pressure the government;
- organizing a march to Parliament Hill;
- organizing a conference to support the charity's opinion. In this scenario, the Policy notes that "a charity that organizes a conference or workshop that explicitly promotes its point of view on an existing or proposed law, policy, or decision or any level of government, in Canada or a foreign country, that relates to the way it achieves its purposes is engaged in a political activity"⁴⁷;
- hiring a communications specialist to arrange a media campaign;
- using a mail campaign to urge supporters to contact the government. The Policy indicates that "whatever level of government the charity is urging its supporters and members of the public to contact, on whatever issue, such a communication is a call to political action and therefore a political activity"⁴⁸;
- organizing a rally on Parliament Hill. The Policy clearly states that "...explicitly communicating to the public that the law should be changed in this way is a political activity"⁴⁹;
- organizing a rally with the explicit purpose of pressuring any level of government in Canada, or a foreign country, to change the law."

d) *ITA* Limitations on Charitable Expenditures and Resources on Political Activities

As indicated above, a charity may only devote 10% of its resources to permitted political activities. The term "resources" is explained in the Policy to include "the total of a

⁴⁷ Policy, para. 14.3.3.

⁴⁸ Policy, para. 14.3.5.

⁴⁹ Policy, para. 14.3.6.

charity's financial assets, as well as everything the charity can use to further its purposes, such as its staff, volunteers, directors, and its premises and equipment”⁵⁰.

To make this rule somewhat more equitable for smaller charities, CRA’s administrative discretion has been expanded in certain situations by the Policy as outlined below:

- Registered charities with less than \$50,000 annual income in the previous year can devote up to 20% of their resources to political activities in the current year.
- Registered charities whose annual income in the previous year was between \$50,000 and \$100,000 can devote up to 15% of their resources to political activities in the current year.
- Registered charities whose annual income in the previous year was between \$100,000 and \$200,000 can devote up to 12% of their resources to political activities in the current year.

To maintain their registration under the *ITA*, charities are required to spend a certain minimum amount of receipted donations each year (i.e. the disbursement quota) directly on their charitable activities or on gifts to qualified donees, usually other registered charities. It is also important to note that resources used towards permitted political activities are not applied to a charity’s disbursement quota for its receipted donations.

e) Important Definitions

The Policy provides definitions for a number of terms relating to charities and political activities, a few of which are set out as follows:

“advocacy” means demonstrated support for a cause or particular point of view. Advocacy is not necessarily a political activity, but it sometimes can be;

“call to political action” means an appeal to the members of the charity or the general public, or to segments of the general public, to contact an elected representative or public official to urge them to retain, oppose or change the law, policy or decision of any level of government;

“connected activity” means an activity that relates to and supports a charity’s purpose(s) and represents a reasonable way to achieve them;

⁵⁰ Policy, para. 9.

“disbursement quota” means the minimum amount a registered charity has to spend on charitable activities to keep its registered status, including gifts to qualified donees. The purpose of the disbursement quota is to ensure that registered charities actively use their tax-assisted donations to help others according to their charitable purposes;

“political purpose” means to support a political party or candidate for public office; or to seek to retain, oppose, or change the law or policy or decisions of any level of government in Canada or a foreign country:

“qualified donee” means an organization that can, under the *ITA*, issue official tax receipts for gifts that individuals or corporations make to them, including, among others, registered charities;

“subordinate activities” means activities that are subservient to a charity’s dominant charitable purpose or are a minor focus of the charity;

“well-reasoned position” means a position based on factual information that is methodically, objectively, fully and fairly analyzed. In addition, a well-reasoned position should present/address serious arguments and relevant facts to the contrary.

Readers are encouraged to refer to Appendix I of the Policy in order to review a complete list of terms and their definitions.

f) New Advisory Clarifying the Policy

On September 30, 2003, the CRA published an Advisory⁵¹ on *Political Activities Guidance and Prohibited Partisan Political Activities* in response to inquiries from registered charities concerning what constitutes partisan political activities. Many registered charities have been seeking clarification concerning whether the activities of certain organizations are partisan or allowable political activity. The Advisory states that “What constitutes partisan political activity has not changed in any way in the new guidance, as the limitation on this type of activity is contained in the *ITA* at subsections 149.1(6.1) and (6.2)”. This means that

[P]artisan political activity involves the direct or indirect support of, or opposition to, any political party or candidate for public office and is clearly prohibited. Registered charities may jeopardize their charitable status if they engage in partisan political activity...Section 6.1 of the

⁵¹ Important Advisory on *Political Activities Guidance and Prohibited Partisan Political Activities*, (September 27, 2003), available at http://www.cra-adrc.gc.ca/tax/charities/policy/political_activities-e.html (accessed: September 27, 2003).

guidance provides a general outline of the prohibition on partisan political activities.

g) Implications for Charities

As a result of the comments contained in the Policy, charities will now need to ensure that their activities that may be of a political nature are either inherently charitable or fall within what is considered by CRA to be permitted political activities, as well as to ensure that the latter fall within the *ITA*'s expenditure limits. Exceeding the maximum allowable expenditure limit will put a charity at risk of revocation.

CRA has now expanded the allowable charitable activities that a charity can undertake. As such, charities will want to engage the bulk of their activities in permissible charitable activities, where possible, and thereby avoid the restriction associated with the safety net of permissible political activities. Charities must also keep careful records of all expenditures with respect to permitted political activities, particularly when filing the *Registered Charity Information Return* (Form T3010A).⁵²

In this regard, the recent decision in *Action des chrétiens pour l'abolition de la torture* (ACAT) v. *Canada*⁵³, is a clear indicator that charities that go beyond what CRA considers to be either charitable or a permitted political activity may be deregistered. In the *ACAT* case, the Federal Court of Appeal found that the focus of the charity on the abolition of torture throughout the world, in conjunction with ACAT's political activities, including letter-writing and post-card campaigns to foreign governments, were incompatible with its status as a charitable organization and resulted in its deregistration.

h) Comments from Canadian Charities

A number of prominent Canadian charities have expressed the view that the Policy presents an improvement over the previous guidelines applicable to charities, but that more work needs to be done in order to give charities greater input into the political process in Canada. The Canadian Centre for Philanthropy, for example, which

⁵² T3010A E – *Registered Charity Information Return*, February 28, 2003, available at <http://www.cra-adrc.gc.ca/E/pbg/tf/t3010a/t3010a-03e.pdf> [hereinafter "Form T3010A"].

⁵³ 2003 D.T.C. 5030 [hereinafter *ACAT*.]

participated in the drafting of the Policy, states on page 1 of its *Issue Alert*⁵⁴ dated September 19, 2003, that:

...public awareness campaigns are more precisely defined in the new document and more generous rules for smaller charities in calculating their political activity are included....[but] the Centre's view continues to be that a legislative amendment is required to free charities to speak out on issues about which they are knowledgeable.

Similarly, the Institute for Media, Policy and Civil Society (IMPACS) outlined its position on the new Policy in a letter to the Minister of National Revenue, Elinor Caplan by writing to state the following:

The draft represents an incremental improvement over the present administrative guidelines published by the CCRA. However, it is fundamentally flawed because it must comply with the poorly drafted and unworkable language in sections 149.1(6.1) and 149.1(6.2) of the Income Tax Act. In our view, amendment of these troublesome provisions is essential in order to resolve the current problems faced by Canadian charities in this field.⁵⁵

i) Summary

CRA's new Policy represents an important and welcome expansion of what CRA will consider to be acceptable political activities that a charity may engage in. The expansion in permitted political activities will provide charities with more ability to express their views and educate their members and the public on particular issues. At the same time, the voluntary sector continues to seek greater latitude in the way in which charities can conduct their affairs reflective of the fundamentals of democracy that govern Canada.

Notwithstanding the limitations of the Policy, charities can take satisfaction in knowing that the administrative treatment of political activities by charities has now been broadened. The next step in order to provide charities with more meaningful participation in public policy discussions, will need to be at the legislative level, as there

⁵⁴Canadian Centre for Philanthropy, "Issue Alert", available at http://www.ccp.ca/issue_alerts/09-19-03_New_CCRA_policies.pdf (accessed: September 21, 2003).

⁵⁵IMPACS, Letter to Elinor Caplan re 2002 Concept Draft – Registered Charities – Political Activities, February 5, 2003, available at <http://www.impacs.org/files/caplan.pdf> (accessed: September 21, 2003).

is not likely much more that CRA can do in relation to broadening the role of charities in the political process under the *ITA* as currently worded.

2. New Policy on Business Activities

a) Definition of related and unrelated business

CRA's Policy Statement CPS-019, *What is a Related Business?*⁵⁶ states that there are two kinds of related businesses, specifically businesses that are linked to a charity's purpose and subordinate to that purpose, and businesses that are run substantially by volunteers.

According to this new Policy, "business" in the context of a charity, means an activity that is commercial in nature, from which the charity derives revenue from providing goods or services, and which are undertaken with the intention to earn profit. It indicates that "a charity can engage in some business-like transactions, provided they are not operated regularly or continuously." Other than businesses run by volunteers, as provided under subsection 149.1(1) of the *ITA* that are deemed to be related businesses, CRA takes the position that permitted related businesses are only those that are "linked to a charity's purpose" and are "subordinate to that purpose".

Accordingly, the two kinds of related businesses are as follows:

- ◆ businesses that are linked to a charity's purpose and subordinate to that purpose, such as:
 - a hospital's parking lots, cafeterias, and gift shops for the use of patients, visitors, and staff;
 - gift shops and food outlets in art galleries or museums for the use of visitors;
 - book stores, student residences, and dining halls at universities for the use of students and faculty; and
- ◆ businesses that are run substantially by volunteers, which is a deemed related business under the *ITA*. If 90% of the people involved in operating the business are unpaid volunteers, e.g. a hospital auxiliary's gift store, the business activity will be deemed a related business. This type of related business does not have to be linked to the charity's charitable purposes.

⁵⁶ *What is a Related Business?*, CPS-019, March 31, 2003, available at <http://www.cra-adrc.gc.ca/tax/charities/policy/cps/cps-019-e.html> (accessed: October 14, 2003).

An unrelated business is a business activity that is neither related nor deemed related, e.g. a youth centre running an operation to buy and sell used computers for profit, or running a catering business with paid employees. Charities cannot participate in unrelated businesses, as they risk losing charitable registration. The *ITA* provides that the Minister of National Revenue may revoke the registration of a charitable organization if it “carries on a business that is not a related business of that charity”.⁵⁷ However, the *ITA* provides that a charitable organization shall be considered to be “devoting its resources to charitable activities carried on by it to the extent that it carries on a related business” as defined under the *ITA*.⁵⁸

b) CRA Criteria in Determining a Business

As indicated above, a business is generally defined as a commercial activity undertaken with the intention to earn profit. The Policy indicated that the following criteria have been established by the courts to determine on a case-by-case factual analysis to determine whether or not an activity is a business:

- The intended course of action - If the rationale for operating a given activity is to generate a profit, then the activity is likely a business.
- The potential to show a profit - Even if an activity does not yield a profit, it may nonetheless be capable of earning a profit. In determining whether a particular activity is a business, it is the intention and capacity to make a profit at some point that are relevant. On the other hand, if the activity is structured so that it is incapable of returning a profit, then it is not a business.
- The existence of profits in past years - When the activity has been carried on for some time, a history of it returning a profit would generally imply that a business exists.
- The expertise and experience of the person or organization that undertakes the activity - If the person or organization that is undertaking the activity has been selected for the position because of his/her/its commercial knowledge, skill, or experience, it may indicate that the activity is commercial in nature and so may be a business.

⁵⁷ Subsection 149.1(2).

⁵⁸ Subsection 149.1(6).

c) CRA Criteria in Determining a Related Business

CRA will determine that a business that is “linked” to a charity’s purpose if one of the following criteria is satisfied:

- “A usual and necessary concomitant of charitable programs” - These are business activities that supplement a charity’s charitable programs, either because they are “necessary for the effective operation of the programs”, or they “improve the quality of the service delivered in these programs”. For example, a hospital’s parking lots, cafeterias, and gift shops for the use of its patients, visitors and staff, as well as university book stores or student residences;
- “An off-shoot of a charitable program” – In the ordinary operation of a charity’s charitable program, a charity may create an asset that it can exploit in a business, i.e. “the asset is simply a by-product of the charity’s programs.” For example, a church sells recordings of its special Christmas services hosted by its famous choir at as high a price as it can obtain;
- “A use of excess capacity” – This type of business involves “using a charity’s assets and staff, which are currently needed to conduct a charitable program, to gain income during periods when they are not being used to their full capacity within the charitable programs”. For example, a university renting out its residence facilities in the summer months when they are not required for use by the students or a church renting out used parking spaces during the week when it is not being used by the church;
- “The sale of items that promote the charity or its objects” – This type of business activity involves “sales that are intended to advertise, promote, or symbolize the charity or its objects”. Examples would include the sale of pens, credit cards, and cookies that clearly display the charity’s name or logo, and T-shirts or posters depicting the work of the charity.

When determining whether a business is “subordinate” to a charity’s purpose, it is important that the business “remains subservient to a dominant charitable purpose, as opposed to becoming non-charitable purpose in its own right.” There are four factors that are considered by CRA in this regard:

- Relative to the charity’s operations as a whole, the business activity receives a minor portion of the charity’s attention and resources.

- The business is integrated into the charity's operations, rather than acting as a self-contained unit.
- The organization's charitable goals continue to dominate its decision-making.
- The organization continues to operate for an exclusively charitable purpose by, among other things, permitting no element of private benefit to enter in its operations.

In determining whether the related business activity is subordinate to the charitable purposes, the CRA Policy states that the charity must review whether the activity is a minor portion of the charitable purposes, whether the charitable purposes are the main focus of its activities and whether there is any private benefit from the related business activity. The related business is subordinate to the charity's purposes if it receives a minor portion of the charity's attention; it is integrated into the charity's operations; its charitable goals continue to dominate decision-making affecting it; and private benefit does not become one of its elements.⁵⁹

d) Implications from *Earth Fund* decision

In addition to the Policy Statement on Related Business, charities considering the operation of a related business should be aware of the *Earth Fund v. Canada (Minister of National Revenue – M.N.R.)*⁶⁰ decision, which is currently the leading Canadian decision with respect to charities and related business. In *Registered Charities Newsletter* No. 15, issued April 9, 2003, CRA drew attention to the decision by reporting as follows:

On December 16, 2002, the Federal Court of Appeal unanimously dismissed the appeal of Earth Fund/Fond Pour la Terre ("Earth Fund") from our decision to refuse to register it as a charity.

In *Earth Fund*, the applicant Earth Fund applied for charitable registration with the intent to “promote the preservation and enhancement of the environment for human life and well-being on Earth; promote, encourage, and support programs and activities for the creation of greater public awareness of environmental issues and to mobilize the resources of private citizens and organizations to contribution to the resolution of such

⁵⁹ Richard Furness, “CCRA grapples with rules governing charities’ business, political activity”, *The Lawyers Weekly*, Vol. 22, No. 36, January 31, 2003, online:QL (LWKN), at page 2.

⁶⁰, [2002] D.T.C. 5016 (F.C.A.) (hereinafter *Earth Fund*).

issues”,⁶¹ among other corporate objects. Earth Fund planned to fund its charitable activities via an on-going or other lottery that would directly or indirectly fund its projects, which included the following:

Projects relating to the objects of the Corporation and the global environment, ecology and humanitarian activities relating to health, habitat, migration of refuges or other population groups, natural or non-natural catastrophes, health and welfare of children and environmentally sustainable development, on its own behalf or through its charitable agents.⁶²

CRA refused to register Earth Fund as a charitable foundation based on that fact that the Minister held that Earth Fund was not created for exclusively charitable purposes. The Minister also refused to register Earth Fund on the grounds that Earth Fund was not entitled to carry on a lottery business while registered as a charitable foundation. On appeal to the Federal Court of Appeal, Justice Sharlow agreed with CRA, and upheld the refusal to register Earth Fund.

Firstly, Justice Sharlow noted that Earth Fund took the position that since the proposed lottery related to only some of its corporate objects, the other objects could be dismissed. However, Justice Sharlow rejected this argument by stating that

[The] appellant's argument rests on an invalid premise. As a matter of law, the appellant is not entitled to registration as a charity unless all of the appellant's corporate objects and activities are exclusively charitable. That is clear from the definition of 'charitable foundation' from subsection 149.1(1), quoted above, which requires a charitable foundation to be 'constituted and operated exclusively for charitable purposes.'⁶³

Secondly, Justice Sharlow found that Earth Fund had argued that since the *ITA* did not limit charitable foundations in their fundraising efforts, proceeds from the lottery could go to qualified donees. Earth Fund relied on the *Alberta Institute on Mental Retardation v. Canada*⁶⁴ case in this position, as the Alberta Institute raised funds in conjunction with

⁶¹ *Ibid* at 3.

⁶² *Ibid* at 3.

⁶³ *Ibid* at 20.

⁶⁴ [1987] 3 F.C. 286, (1987) 76 N.R. 366, [1987] 2 C.T.C. 70, (1987) 87 DTC 5306 (F.C.A.), leave to appeal dismissed, [1988] S.C.C.A. No. 32 [hereinafter *Alberta Institute*].

Value Village, and was in the end, registered by CRA. Justice Sharlow also rejected this argument by stating that:

I do not accept the argument of counsel for the appellant that the *Alberta Institute* case is authority for the proposition that any business is a 'related business' of a charitable foundation if all of the profits of the business are dedicated to the foundation's charitable objects. The Minister in that case was arguing that Alberta Institute was 'a wholesaler of goods', but in fact Alberta Institute was simply soliciting donations of goods which it converted to money.⁶⁵

... [The] appellant proposes to do nothing except market and sell lottery tickets in a manifestly commercial arrangement that will, if all goes as planned, result in a profit that will be donated, I assume, to qualified donees. The appellant is in exactly the same position as any commercial enterprise that commits itself to apply its profits to charitable causes. Such a commitment, by itself, does not derogate from the commercial nature of the activity that generates the profit. Given the particular facts of this case, the Minister was justified in concluding that the appellant's proposed lottery operation would be a business of the appellant that is not a 'related business', and thus would not qualify as a charitable activity.⁶⁶

The *Earth Fund* decision provides a clear statement that the *Alberta Institute* case is not authority for the "destination test", i.e. the argument that as long as the intended beneficiary is a charitable purpose, then any business carried on by the charity would be deemed to be a related business.

3. Policy on Ten Year Gifts

A ten-year gift is a donation that is made subject to a donor's written trust or direction that that gift be held by a registered charity for ten years or more. A ten year gift is excluded from a charity's disbursement quota. However, when a ten-year gift is eventually spent, it must be included when calculating a charity's disbursement quota. In the future, CRA will need to clarify its position on what happens to inclusion in the disbursement quota when the ten year gift or a part of it is disbursed during the ten years.

⁶⁵ *Supra* note 59 at 30.

⁶⁶ *Ibid* at 31.

4. New Policy on Charities that Promote Racial Equality⁶⁷

a) Introduction

The Policy Statement entitled *Registering Charities that Promote Racial Equality Policy Statement*,⁶⁸ (“Policy”) was issued by the CRA on September 2, 2003. The Policy will be of interest to organizations that address racial discrimination, those established to foster positive race relations within Canada, as well as immigrant, refugee, ethno-cultural, and other organizations seeking to include racial equality objects in their governing documents.

b) Background to the Racial Equality Policy Statement

In early 2003, CRA solicited comments from charities and anyone else interested in the charitable sector for its *Consultation on Proposed Policy – Registering Charities that Focus on Eliminating Racial Discrimination* (“Proposed Policy”). A comparison of the Proposed Policy with the current Policy reveals a change in the title’s terminology from “Charities that Focus on Eliminating Racial Discrimination” to a more positive “Charities that Promote Racial Equality”. The current Policy also includes more in-depth definitions of racism and racial discrimination, as well as including a new term and definition for “promoting racial equality” compared to the Proposed Policy. These definitions now include the following key terms:

“Promoting Racial Equality” means working to ensure the full and equitable participation of racial and ethno-cultural groups in Canada, consistent with the equality rights guaranteed by the Canadian Charter of Rights and Freedoms, existing legislation, and public policy. It includes efforts such as eliminating racial (including ethnic) discrimination, and encouraging positive race relations, which encompasses efforts to improve relations between any racial and/or ethnic groups in Canada;

⁶⁷ Part of this section was previously published in “New CCRA Policy Statement on Registering Charities that Promote Racial Equality”, by Terrance S. Carter and Suzanne E. White, Charity Law Bulletin No. 26, November 11, 2003, available at <http://www.charitylaw.ca>.

⁶⁸ *Registering Charities that Promote Racial Equality Policy Statement*, CPS-021, September 2, 2003, available at <http://www.ccra-adrc.gc.ca/tax/charities/policy/cps/cps-021-e.html> (accessed: September 15, 2003).

“Racial or Cultural Group” is a group defined by its race, colour, national or ethnic origin. To the extent that religion is inextricably linked to the group’s racial or cultural identity, it can also become a defining characteristic;

“Racism” includes “racist ideologies, prejudiced attitudes, discriminatory behaviour, structural arrangements, and institutionalized practices” resulting in racial or ethnic inequality. It can be characterized as “a set of implicated or explicit beliefs, assumptions and actions based upon an ideology that one racial or ethnic group is superior to another”;

“Racial Discrimination” means any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The rationale for the Policy, which is discussed below, has also been expanded. The new Policy does not have a section devoted to political activities, whereas the Proposed Policy did, since political activities is now contained in its own Policy Statement released on the same day as the *Racial Equality Policy Statement*, September 2, 2003. The list of racial equality activities and programs that CRA will now find acceptable under the new Policy compared to the Proposed Policy has increased from seven to ten types of activities, creating more ways in which promotion of racial equality can be advanced.

c) Rationale Behind the Racial Equality Policy Statement

The Policy consists of a series of guidelines by CRA describing how charities that promote racial equality can be registered under the *ITA*, either under the charitable categories of “advancement of education” or “other purposes beneficial to the community”. CRA has acknowledged that racial discrimination is an identified social problem, which has been prohibited in Canada both via provincial and federal legislation, and as ratified by Canada for many years in a number of international human rights conventions that are listed in Appendix B to the Policy. In the past, CRA has relied upon the British decision of *Re Strakosch*⁶⁹ in holding that the promotion of racial equality was a political purpose, rather than a charitable purpose. However, in the last 50 years, both

⁶⁹ [1949] 1 Ch. 529 (C.A.) [hereinafter *Re Strakosch*].

legislation and public policy in Canada has recognized and supported the promotion of racial equality and positive ethno-cultural relations.

In keeping with this recognition, CRA has determined that the promotion of racial equality should be legally recognized as a charitable purpose, instead of as a political purpose. This is a welcomed development by CRA and is evidence that CRA can in some circumstances use its administrative discretion to expand the definition of what is charitable beyond the restrictions of what the courts have decided in the past that may be out of sync with current laws and public policy in Canada. This is particularly important to do in relation to promoting racial equality, since the Supreme Court of Canada in *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*⁷⁰ declined to comment on “whether the elimination of prejudice and discrimination may be recognized as a charitable purpose at common law”.⁷¹

The Policy explains that any organization wishing to become registered as a charity for the purpose of promoting racial equality must have exclusively charitable objects and must fall within one of the two recognized categories of charities, namely “the advancement of education”, and “other purposes that benefit the community”. All objects must be precise and refrain from efforts to retain, oppose, or change the law or policy at any government level both within Canada and abroad. All charitable organizations are also limited in the amount of political activities they may sponsor directly and/or indirectly.

d) Racial Equality Under CRA Charitable Categories

An organization seeking to obtain charitable status in order to promote racial equality must consider both the charitable activities that it proposes to carry out and its charitable objects that it intends to achieve, which are set out in its governing documents. CRA has identified both acceptable and unacceptable activities and objects which fall under either or both of two categories of charitable objects: “advancement of education” and/or “other purposes beneficial to the community.” However, objects cannot include efforts “to

⁷⁰ (1999), 99 DTC 5034.

⁷¹ *Ibid* at 187.

retain, oppose, or change the law or policy or decisions of any level of government in Canada or a foreign country, as this is considered a political purpose, and, therefore, not charitable”. What follows are lists of both acceptable and unacceptable activities in relation to the promotion of racial equality as set out in the Policy.

e) Advancement of Education

CRA recognizes that groups that educate about racial equality or about methods of promoting it can be recognized as charitable under the “advancement of education” category.

i) Acceptable Activities

Under the Policy, charities registered under the “advancement of education” category can undertake the following examples of programs both in Canada and abroad, summarized below as follows:

- programs that educate about individual or systemic racism;
- development of curriculum materials for anti-racism or diversity training and leadership programs;
- research groups focused on a range of topics, the results of which are available to the public;
- Web sites offering a range of interactive resources such as self-study materials or online courses that educate about race relations or anti-racism;
- scholarships and bursaries to further knowledge in the area of race relations, equity, and methods of promoting racial equality;
- educational programs focused on specific areas of concern, such as law enforcement, schools, employment, or housing;
- educating about a specific manifestation of racism (e.g., hate group activity);
- programs organized by members of a community experiencing documented patterns of racial discrimination designed to educate the public about the discrimination faced by that particular community.

ii) Unacceptable Activities

The following are examples of activities that CRA would not find acceptable in relation to racial equality under the “advancement of education” category:

- programs that have as a purpose legislative change or change in government policy, as this would be considered a political, not a charitable purpose; and
- materials that the group knows or ought to know are inaccurate, false, misleading, inflammatory, biased, or disparaging would not be considered to be educational.

iii) Acceptable Charitable Objects

The following charitable objects are examples which CRA would consider acceptable in relation to racial equality under the “advancement of education” category:

- to educate about racial prejudice and discrimination through programs, seminars or workshops intended for the general public;
- to organize and implement conferences, workshops or other programs about institutional and individual forms of racism, discrimination, and stereotyping;
- to conduct research, compile data, and disseminate results about racism or ethno-racial disparities to increase understanding and awareness about existing rights of racial minorities.

iv) Unacceptable Charitable Objects

The following objects are examples of what CRA would likely find unacceptable in relation to racial equality:

- “to support programs for the public” - as there is insufficient information given and therefore vague;
- “to carry on activities that are charitable at law” - also because there is insufficient information given, and therefore vague; and
- “to promote international friendship or understanding between states” - because the sphere of international relations is the sole purview of the state and therefore not charitable.

f) Other Purposes Beneficial To The Community

CRA has also determined that promoting racial equality through positive race relations efforts and eliminating racial discrimination will now be considered to be a charitable purpose under the category of “other purposes beneficial to the community”. Normally, the public benefit component of a charitable purpose would require that the program and services would be available to everyone. Where the charity proposes to restrict these services and programs to a particular group, the restriction must be clearly linked to the benefit. CRA gives as an example in this regard where a particular community has experienced sustained discrimination in Canada, then the need to mitigate their long-standing discrimination may well justify the group restricting or focussing on the common needs of that community.

i) Acceptable Activities

CRA has determined that the following types of programs and activities would be acceptable under the head of other purposes beneficial to the community.

- raising public awareness by disseminating factual, well-reasoned information as part of the group’s outreach, such as using brochures and Web sites;
- establishing and maintaining peer support groups among [name of intended group] as well as members of the public;
- community resource centres to further inter-cultural co-operation and diversity;
- public discussion groups that raise awareness of racism and alternatives to stereotyping and prejudice;
- cross-cultural exchange programs to promote positive race relations and diversity;
- providing anti-racism awareness activities in conjunction with other programs;
- encouraging compliance with existing anti-discriminatory legislation by using fair and balanced approaches to monitor racial bias and discriminatory practices in a particular fields;

- participating in a network or coalition made up of organizations supporting anti-racist or positive race relations aims in order to share resources;
- establishing awards for exemplary anti-racist or race relations programs; or
- memorials to inform the public about the experiences of communities that have faced discrimination.

ii) Unacceptable Activities

CRA gives as an example of an activity that would be considered unacceptable under the “other purposes beneficial to the community” category as “opposing or lobbying for changes in, or the retention of, the law or policy, or decisions of any level of government, since this type of activity is considered political”.

iii) Acceptable Charitable Objects

The following charitable objects to promote racial equality would be considered by CRA to be acceptable under the “other purposes beneficial to the community” category:

- to promote good race relations by encouraging equality of opportunity between persons of different racial groups through certain programs;
- building peaceful and co-operative networks to promote positive race relations between groups experiencing conflict from their countries of origin;
- to ensure existing democratic and human rights are upheld for the ethnic and racial minorities by providing certain programs;
- to establish and maintain information and counselling programs for individuals, groups, and organizations that have experienced discrimination by providing information, counselling, legal services, and follow up support;
- to develop programs that remove barriers to equal participation for racial and ethnic minorities; or
- to change racist institutional practices through programs that inform employers about the advantage of hiring qualified racial minority workers.

iv) Unacceptable Charitable Objects

The following racial equality charitable objects would be considered unacceptable by CRA under the “other purposes beneficial to the community” category:

- fostering good relations between countries, as this is a matter of foreign policy;
- to eliminate racism, as there is insufficient detail given;
- to work toward positive race relations, as there is also insufficient detail given;
- to assist ethno-racial communities in overcoming discriminatory barriers, as there is also insufficient detail given;
- to adopt special programs to address disadvantaged individuals or groups, as there is also insufficient detail given.

g) Other Resource Materials

Charities and practitioners can also consult related publications found on the CRA website to procure other resource materials on the topic of promoting racial equality or related matters.

- ◆ *Ethnic Summary Policy:*
<http://www.cra-adrc.gc.ca/tax/charities/policy/csp/csp-e04-e.html>
- ◆ *Guidance on Public Benefit (Draft):*
<http://www.cra-adrc.gc.ca/tax/charities/policy/cps/cps-021-note-e.html>
- ◆ *Multiculturalism Summary Policy:*
<http://www.cra-adrc.gc.ca/tax/charities/policy/csp/csp-m01-e.html>
- ◆ *Purposes Beneficial to the Community Summary Policy:*
<http://www.cra-adrc.gc.ca/tax/charities/policy/csp/csp-c10-e.html>
- ◆ *Racial Equality Summary Policy:*
<http://www.cra-adrc.gc.ca/tax/charities/policy/csp/csp-r23-e.html>
- ◆ *Registering a Charity for Income Tax Purposes (T4063):*
<http://www.cra-adrc.gc.ca/E/pub/tg/t4063/t4063eq.html>

It is also important to consult CRA's *Political Activities Policy Statement*, which is referred to a number of times in the *Racial Equality Policy Statement* in relation to the nature of objects and activities under a racial equality mandate.

h) Summary

The Policy represents an important expansion of the inherent administrative discretion of CRA from that of interpretation of the common law to an expansion of the common law definition concerning what is charitable. In order to keep pace with legislative changes that have occurred in public policy, both in Canada and internationally, CRA has recognized that charities that either educate about or promote racial equality in Canada will be considered charitable rather than pursuing political activities and will therefore be granted registered charitable status.

The Policy will now be a mandatory reference for charities and practitioners as they draft charitable objects in their governing documents and statements of activities to accompany applications for charitable status. Other organizations that either now or intend in the future to address other forms of discrimination as prohibited under the *Charter of Rights and Freedoms* and other human rights legislation will also find the Policy helpful, since CRA has advised that the guidelines in the Policy will likely be mirrored in future policy statements dealing with the registration of charities that intend to combat discrimination in other forms. The initiative by CRA in adopting the Policy is a positive development for the charitable sector and for Canada as a whole.

5. New Policy on Charities Providing Rental Housing for Low-Income Tenants

a) Introduction

The Policy Statement entitled *Applicants that are Established to Relieve Poverty by Providing Rental Housing for Low-Income Tenants*⁷² was released by CRA on April 1, 2003 ("Policy"). The Policy applies only to those organizations applying for registered charity status that are established to relieve poverty by providing low-income tenants

⁷²*Applicants that are Established to Relieve Poverty by Providing Rental Housing for Low-Income Tenants* Policy Statement, CPS-020 (April 1, 2003) available at <http://www.cra-adrc.gc.ca/tax/charities/policy/cps/cps-020-e.html> (accessed: October 23, 2003).

with housing, as well as non-profit organizations with activities that have not been considered charitable in the past, but as a result of the Policy, will now be considered to be charitable.⁷³ Other charities that supply accommodation may also be charitable under other categories, such as the relief of distress and suffering caused by a mental and physical disability, a symptom of aging, or violence against the person.

b) Beneficiaries of Rental Housing for Low-Income Tenants

Under the Policy, the definition of the class of beneficiaries is integral to understanding the document as a whole. Beneficiary class is defined as “[a] class of poor, needy, necessitous, underprivileged, low-income, in financial need, of small/limited means, or an acceptable synonym”. The term “beneficiary” has been widely rather than narrowly construed, as CRA appears to be giving greater latitude to applicants for charitable registration that are organized to provide rental housing for low-income tenants. It therefore should be easier to characterize the intended beneficiary class of an applicant to be charitable in order to meet CRA requirements, since “acceptable synonym” referred to in the above definition can be relied upon when describing people of limited means.

c) Acceptable Objects for Charities providing Rental Housing for Low-Income Tenants

The Policy provides a number of rules with respect to drafting objects for applicants who fall under its scope. They include the following:

- ◆ The applicant’s objects must clearly identify its beneficiaries and be supported by the actual criteria that will be used to select beneficiaries, and how services will be provided to these persons; and

⁷³ *Ibid* at p. 4. The Policy warns organizations that have not been charitable in the past to seek charitable status or lose current non-profit status under the *ITA*:

A more difficult problem may be non-profit corporations that previously could not qualify for registered charity status, but which would now qualify under the broader criteria. Technically, such organizations would have to register as charities or lose their exemption from tax under the *Income Tax Act*.

- ◆ Where the beneficiary class is only identified by a group, e.g. Aboriginals or refugees, the members of which contain a high proportion of poor individuals, the charity may qualify for registration if:
 - it amends its objects to refer, for example, to "low-income Aboriginals" or "needy refugees," and;
 - it provides documentary evidence (for example, the provisions in its operating agreement with a government housing agency that specify tenant selection criteria) that it serves an appropriate beneficiary class.

CRA also provides two examples of acceptable main objects, namely:

- To provide and operate low-rental residential accommodation and incidental facilities exclusively for persons of low income; [senior citizens primarily of low or modest income; and disabled persons primarily of low or modest income].
- To meet the needs of low-income persons by providing them with housing and any associated amenities upon terms appropriate to their means.

These two objects are relatively broad in comparison to CRA's normal requirement for specificity in drafting an organization's charitable objects. The inherent breadth of these sample objects will be of assistance to charities that provide low-income rental housing, since terms including "incidental facilities" and "associated amenities" suggest a degree of breadth in the method and resources that an organization can utilize in providing accommodation to their designated beneficiary class.

d) Stipulated Method of Operations

Notwithstanding the breadth in the objects referred to above, the Policy establishes a number of criteria concerning the way in which rental housing is to be allocated to beneficiaries. There are very clear-cut, concise, methodological guidelines in relation to who is eligible for social housing, specifically:

- that beneficiaries must pass screening tests to determine their eligibility;
- that the organization must administer the screening mechanism at least once a year, and establish policies to handle cases where the tenants' income rises to a point that disqualifies them as beneficiaries;

- that tenants who are not eligible beneficiaries must pay market rents;
- that all housing charities may have up to 10% of their housing units occupied by tenants paying market rent, an allowance that will be deemed an incidental and ancillary activity by CCRA; and
- that the organization itself must relieve poverty.

The Policy also stipulates four situations by which the proposed low-income rental housing can be used by market-rent tenants at an enhanced limit of up to 33% of the total housing units available. These situations include:

- the rental activity is part of a larger regeneration scheme for a depressed neighborhood, in which keeping existing residents in place or attracting new residents is necessary to achieve the charitable purpose; or
- the project contains over 100 units, and market tenants are needed to prevent social isolation from the rest of the community; or
- if,
 - the project results from a partnership between a municipality and the organization;
 - the project has received substantial financial support from the municipality because the municipality has determined the project will reduce its welfare costs, and
 - the proportion of market units has been calculated so as to cover the carrying costs of the project, then the project may be considered charitable under the additional charitable purpose of relieving the burden of welfare costs on the municipal taxation base; or
- there is strong evidence of the organization's overriding focus on poverty-relief; it shows, for example, characteristics such as the following:
 - at least 50% of tenants fall into a very low-income category, such as that represented by the concept of "deep need" or "deep-core need";
 - the project is directed towards beneficiaries from a specific group that is considered to have a high percentage of individuals at risk of homelessness, such as Aboriginals, single-parent families, those facing physical or mental challenges, and those with a history of addictions;
 - selection criteria are weighted in favour of the neediest or those considered hard-to-house, or the organization has agreed to take all its beneficiaries from a housing list maintained by a government agency;
 - the project is located in a neighborhood where a high proportion of residents are in core housing need;
 - to be accepted, tenants do not need to provide references, to have a minimum income level, or to give deposits;

- the project includes free or affordable counselling and other services directed to helping tenants overcome the limitations contributing to their poverty;
- the project is sponsored by an existing charity working to relieve poverty; or
- a provision that the proportion of market tenants may be reduced if their presence is no longer required in order to carry out the charitable purpose.

e) The Application Process

Charities that wish to provide rental housing for low-income tenants are reminded that when applying for charitable registration, they must include the following information:

- ◆ the particular clientèle they intend to serve;
- ◆ how they select their beneficiaries;
- ◆ the proportion of tenants who are not eligible beneficiaries, and whether such tenants pay market rent for their units;
- ◆ if any space is leased to commercial tenants, the rationale for doing so and the proportion of commercial space in relation to the total floor-space in the project; and
- ◆ if more than 10% of units are rented to non-eligible beneficiaries, how they would qualify under the listed exceptions.

f) Implications for Charities

The Policy represents another widening of CRA's ambit with respect to the type of activities in which charities can participate. The Policy is beneficial to charities seeking to register in order to provide rental housing in two ways: firstly, because it provides charities with a wide scope within which to craft their charitable objects in order to capture their true motivations and intentions with respect to assisting low income tenants. Secondly, the Policy carefully lays all of the requirements expected by CRA in determining whether or not a charity will qualify under the relief of poverty charitable head. For the charity law practitioner, the Policy is relatively easy to understand and therefore is a welcomed improvement on the resources available from CRA.

g) Implications for Non-Profit Organizations

CRA has also pointed out that the Policy Statement may apply to non-profit organizations that are involved or plan to become involved in offering rental housing to low-income tenants. Non-profit organizations offering rental housing that had in the past not qualified as a registered charity may now qualify. However, there is a potential problem that non-profit organizations that do not become registered charities may lose their registered tax exempt status:

[b]ecause the proposed criteria for qualifying for registered charity status are being broadened, [and] charities that are and continue to be registered should not be affected, assuming that their manner of operation remains largely the same as when they originally applied for registration. However, this clause is included to ensure that the proposed changes do not adversely affect existing registered charities. A more difficult problem may be non-profit corporations that previously could not qualify for registered charity status, but which would now qualify under the broader criteria. Technically, such organizations would have to register as charities or lose their exemption from tax under the *Income Tax Act*. [Emphasis added.]

As such, non-profit organizations that previously could not qualify for registered charity status should consider proceeding with the application to become a registered charity in order to not lose their current tax exempt status as a non-profit.

6. New Policy Statement on Donation of Gift Certificates

a) Introduction

On October 9, 2002, CRA released a new policy statement on *Donations of Gift Certificates* (“Policy”).⁷⁴ This statement allows registered charities to issue official donation receipts for charitable donations in the form of gift certificates. The Policy provides a number of scenarios in which gift certificate donations can be receipted.

⁷⁴ *Donations of Gift Certificates* Policy Statement, CPS-018, October 9, 2002, available at <http://www.cra-adrc.gc.ca/tax/charities/policy/cps/cps-018-e.html> (accessed: October 20, 2003).

b) Application

The Policy is applicable to registered charities that issue official donation receipt for gift certificates. Registered charities cannot issue official donation receipts for gift certificates received directly from the issuer, except as set out later in this section of the paper. However, an official donation receipt can be issued to a donor who:

- ◆ is not the issuer of the gift certificate; and
- ◆ has obtained the gift certificate for valuable consideration, either from the issuer or other third party.

c) Terminology

The Policy defines two terms in relation to donations of gift certificates:

- ◆ “gift certificate” means a certificated having a stated monetary value that entitles the recipient to purchase goods and/or services in the establishment of the issuer; (i.e. a gift certificate can be considered to be a promise from a merchant to supply goods and/or services in an amount specified on the face of the certificate); and
- ◆ “issuer” means the person (individual, retailer, business) that creates a gift certificate redeemable for goods and/or services from that person.

d) Gift Certificates as Consideration for Official Donation Receipts

CRA has outlined a number of situations under which a gift certificate, received by a charity from a purchaser/donor, may or may not constitute consideration for which an official donation receipt can be issued. These include the following:

- When a person purchases, or otherwise obtains for consideration, a gift certificate, the terms of which permit its assignment from an issuer and donates it to charity, an official donation receipt for the fair market value of the gift certificate can be issued to the purchaser/donor.
- When the issuer donates a gift certificate directly to a charity, the issuer is not entitled to an official donation receipt at the time the donation is made.
- When the issuer donates a gift certificate directly to a charity, the issuer may be eligible for an official donation receipt when the charity redeems the certificate for property. To be eligible for a receipt, the charity must redeem the certificate for some form of property, other than for a continuation of services by the issuer.

- Where the issuer donates a gift certificate directly to a charity, and the charity transfers the certificate to a third party (e.g. at an auction or a raffle), the redemption of the gift certificate by the third party does not entitle the issuer to a receipt.

The Policy also includes CRA's position with regard to the basic legal definition of a charitable donation:

A charitable donation must involve a transfer of property of any kind, real or personal, corporeal or incorporeal, which includes rights. A right is a legally enforceable claim by one person against another. Whether the donation of a gift certificate constitutes a transfer of property, and more particularly a transfer of a right, depends on the particular circumstances.

The Policy also stipulates that not only is a gift certificate considered a transfer of property, but it is also a right to enforce a promise:

A gift certificate can be considered to be a promise from a merchant to supply goods and/or services in an amount specified on the face of the certificate. The Canada Customs and Revenue Agency (CCRA) has determined that a gift certificate constitutes property and a right, but only if the promise is enforceable, that is, only when the certificate was acquired for consideration.

e) Valuation of Gift Certificates

CRA takes the position that in some situations, the face value of a gift certificate may not necessarily be its face value. The official donation receipt issued by a charity must state the fair market value of the gift certificate in question. CRA may consider a number of factors in determining the fair market value of a gift certificate, including the flexibility of the certificate and the usefulness of the certificate, factors which may reduce the fair market value of a gift certificate.

7. New Policy on Holding of Property for Charities

Based on British case authority⁷⁵, CRA has recognized in its new *Holding of Property for Charities Policy Statement* (“Policy”),⁷⁶ that certain organizations that hold title for registered charities can be registered as charities themselves, depending on their charitable purpose.

Charities may want to use charitable title-holding organizations in order to protect their assets from liability associated with their operations. CRA defines the landlord, tenant and property involved in charitable title-holding transactions as follows:

- ◆ “landlord entity” means the body holding title to the property
- ◆ “tenant charity” means the charity occupying and using the property
- ◆ “leasehold interest” means conferring on a tenant a right of exclusive possession to the property for a fixed period subject to the terms of its agreement with the landlord entity

The Policy sets out a number of basic premises with respect to how holding property, such as land for a charity, is charitable in nature. Firstly, CRA points out that it is charitable to hold title to real property for a charity, as it can be likened to the gifting of funds or assets to the charity. Secondly, the conferral of a leasehold interest from a landlord to a charity is not deemed to be carrying on a business, according to the *ITA*.⁷⁷ Thirdly, simply holding property for a charity is not charitable in and of itself; rather, it is the fact that charity or charities will be able to use the property to further their charitable objects and activities that make these arrangements charitable.

CRA has identified the following factors that will be considered when a landlord entity seeks to become a registered charity:

- ◆ the landlord entity intends ultimately to convey the property to the tenant charity;
- ◆ the landlord entity provides other goods and services to the tenant charity;
- ◆ the landlord entity holds the property for the use of several charities, either successively, for example, a campground used by a succession of youth groups, or concurrently, for example, a former school building and surrounding playgrounds,

⁷⁵ *Commissioners of Inland Revenue v. The Helen Slater Charitable Trust Ltd.* ([1979] T.R. 489; [1981] 3 W.L.R. 377 (C.A.)).

⁷⁶ *Holding Property for Charities Policy Statement*, CPS-009, March 12, 1996 (Revised January 14, 2003) available at <http://www.cca-adrc.gc.ca/tax/charities/policy/cps/cps-009-e.html> (accessed: November 5, 2003).

⁷⁷ Paragraphs 149.1(3)(a) and 149.1(4)(a).

converted to house a daycare, a children's aid society, a group helping immigrant mothers;

- ◆ the tenant charity benefits from a facility that would not otherwise be available to it;
- ◆ the building is of a specialized nature associated with charitable work, for example, a theatre or nursing home; or
- ◆ the tenant charity transfers the property to a landlord entity in order to protect itself from liability claims or to reduce its insurance costs.

As no rent can be charged to the charities in order for the landlord to further its charitable purpose, landlord entities may offer charities free net leases, as an arrangement in which the charity takes financial responsibility for the costs of occupying the property but does not pay the landlord rent.

Holding property for a charity's use is subject to the condition precedent that the leasehold interest in question has some usefulness in order to meet some need within the charitable sector. Under the *ITA*, a landlord entity that holds property for a charity will be characterized as a public foundation, unless its source and/or the structure of its board dictates otherwise, in which case, the landlord entity will be registered as a private foundation. All tenant entities must be registered charities, barring which "the landlord entity would be conferring a benefit on a non-qualified donee."

8. New Policy on Charities Managing Investment Portfolios

On August 1, 2002, the CRA issued a short policy commentary entitled *Management of Investment Portfolio*,⁷⁸ to clarify whether or not a private foundation's management of an investment portfolio constitutes a business activity.⁷⁹ In a clear concise statement, the CRA reminds charities that under the *ITA*, private foundations are prohibited from involvement in any business activity.⁸⁰ At the same time, the CRA acknowledges that there are many private foundations and charities that justifiably manage sometimes substantial investment portfolios in-house rather than using a professional broker. Managing one's own investment portfolio is not automatically considered a business activity, but a case-by-case analysis must be done

⁷⁸ *Management of Investment Portfolio Policy Commentary*, CPC-023, August 1, 2002, available at <http://www.cra-adrc.gc.ca/tax/charities/policy/cpc/cpc-023-e.html> (accessed: October 23, 2003).

⁷⁹ The CCRA's policy on charities and related businesses is discussed above under the heading "New Policy on Business Activities".

⁸⁰ Paragraph 149.1(4) (a).

each time to determine whether the *ITA* has been infringed. It is CRA's position that, from an income tax perspective, allowable arrangements would include registered charities managing the investment portfolios for other registered charities at below market rates, which would be considered "promoting the efficiency of other charities". (Editor's note: However, this position by CRA does not address the problem of delegation and sub-delegation that has to be considered with respect to investment of charitable funds in accordance with the common law and provincial legislation concerning investment of funds by trustees.) It is also the position of CRA that it is not a charitable purpose for a charity to manage the portfolios of non-charities at below market rates, or in ways that unduly benefit these persons.

9. New Policy on Third Party Fundraisers

A charity can use a third party organization or fundraiser as an agent to organize a fundraising event, but the charity must retain control over all monies earned and all receipts issued in relation to the event. CRA's *Policy Commentary* entitled, *Third Party Fundraising*,⁸¹ issued on February 26, 2003, set out the parameters under which registered charities can use fundraising events as a means of furthering their charitable purposes. Key to charitable fundraising is the issue of control, in that charities may use agents for their fundraising efforts, but must ultimately direct all fundraising activities. If control is not maintained, a charity puts itself at risk of losing its charitable registration.

Where a charity is not directly involved in the management of a fundraising event, it is advised to do the following:

- ◆ create a written agreement stipulating all facets of the fundraising arrangement;
- ◆ ensure that official donation receipts are only issued to donors for the eligible amount of the donation as defined above,
- ◆ ensure that an authorized official duly signs all receipts in accordance with
- ◆ the *Income Tax Regulations*⁸²;
- ◆ be prepared to show CRA a full accounting of all donated fundraising monies and issued receipts; and

⁸¹ *Third Party Fundraising Policy Commentary*, CPC-026, February 26, 2003, available at <http://www.ccradrc.gc.ca/tax/charities/policy/cpc/cpc-026-e.html>. (accessed: November 5, 2003).

⁸² Paragraphs 3501(1)(i), 3501(2), 3501(3).

- ◆ be able to report the amount of advantage received by the fundraising event's participants to CRA.

10. Expected Additional Policy Statements

CRA has announced plans to introduce new policy statements on the following:

- ◆ ethno-cultural charities,
- ◆ sports, and
- ◆ public benefit.

At the time of writing, i.e. November 13, 2003, CRA has provided some limited comments with regards to the proposed policies for registering ethno-cultural charities. Allowing charities to include anti-discrimination work in their mandates can only benefit the greater Canadian society, both within and outside of the voluntary sector. Since Canada has long held to the "mosaic" perspective in terms of the value of ethnicity, charities that fall into this new charitable purpose category will be working in conjunction and not against the Government of Canada's commitment to better race relations. The policy on ethno-cultural organizations is currently being finalized by CRA with hopes to be made available to the public by the end of 2003.

With respect to the new CRA policy on public benefit, the Charities Directorate is making available a draft guidance dealing with public benefit, although as of November 13, 2003, the draft guidance was not available for public comment. In *Registered Charity Newsletter* No. 16, CRA defines public benefit as a concept that is central to the understanding of charity. The CRA intends to answer the following questions, in the upcoming Policy Statement on public benefit:

- ◆ What groups can constitute a segment of the public?
- ◆ What kinds of benefits are we talking about?
- ◆ Can they be measured?
- ◆ Must they be the direct result of the organization's efforts?

11. New Summary Policies

Summary Policies are CRA's concise statements affecting Canadian charities, not to be confused with Policy Statements, which are generally longer, more in-depth treatments of a particular topic. As of February 12, 2004, there were 218 summary policies on the CRA website. A selection of sample excerpts of these policies can be found in Appendix B to this paper, which give an indication of the types of information available to charities and their lawyers in this succinct format. Appendix B consists of roughly only 25% of all summary policies currently available online.

Although brief, the CRA's summary policies are useful tools for the lawyer, as they give the charity law practitioner clear and concise portals to CRA materials, in order to assist in determining whether or not an organization will qualify for charitable registration. Written in simple language, the summary policies can also be readily understood by directors of charitable organizations in helping them to both gain and maintain their charitable status.

F. OTHER NEW DEVELOPMENTS

1. New Form T3010A

CRA has re-designed the *Registered Charity Information Return* (Form T3010) to make it shorter (four pages) and simpler to complete. The new T3010A⁸³ and the Registered Charity Basic Information sheet was made available on CRA's website on February 28, 2003 and is to be used by any charity with a year-end on or after January 1, 2003.⁸⁴ Assistance in completing the T3010A is available in brochure T4033A, *Completing the Registered Charity Information Return*.⁸⁵ Changes to the T3010A and the *Registered Charity Basic Information* sheet can be made using Form T1240, *Registered Charity Adjustment Request*.⁸⁶

⁸³ *Supra* note 53.

⁸⁴ Form T3010A: Re-designed annual return for charities (November 28, 2002), available at http://www.cra-adrc.gc.ca/tax/charities/about_t3010-e.html (accessed: March 20, 2003).

⁸⁵ T4033A: Completing the Registered Charity Information Return (March 4, 2003), available at <http://www.cra-adrc.gc.ca/E/pub/tg/t4033a/README.html> (accessed: March 20, 2003).

⁸⁶ T1240 E - *Registered Charity Adjustment Request*, (October 21, 2002), available at <http://www.cra-adrc.gc.ca/E/pbg/tf/t1240/t1240-02e.pdf> (accessed: March 20, 2003)

Form T3010A records the information upon which a charity's disbursement calculation will be tracked. As such, charities must be very careful in properly documenting its information on the form. A charity's Board of Directors should be reviewing and approving Form T3010A before its fiscal each year, as incorrect information could result in an audit and/or deregistration of a charity. This is part of good fiscal due diligence on the part of the Board of Directors of a charity.

2. New Online Services⁸⁷

a) Documents of Public Record

As part of CRA's commitment to increased transparency and accessibility, the Agency has made various documents of public record available on its internet site. Information returns submitted by charities are now available on-line, save and except for any portions of the return designated as confidential.⁸⁸ Charities would be well advised to ensure the accuracy of their reporting when completing their returns and to verify their records on-line to ensure that the information available to the public is correct. However, the overall effect of this service will be a positive development, as it will enable the public to better access information about charities and evaluate their work and effectiveness when deciding what charities to support. The annual returns are available by accessing the charity through a searchable list of Canadian charities available on the CRA website.⁸⁹ A list of newly registered charities and recently revoked charities (covering the last 12 months) is also available at the same web page.

b) Electronic Mailing Lists

CRA now offers a number of subscription electronic mailing lists covering a wide variety of topics which are e-mailed directly to the subscriber. This is a good way in which to remain current with CRA changes. The relevant lists include:

⁸⁷ Part of this section was previously published in, "CCRA AND CHARITIES: WHAT'S NEW? A Summary of Developments from June 2002 through March 2003", by R. Johanna Blom and Terrance S. Carter, *Charity Law Bulletin No. 20*, March 25, 2003 available at <http://www.charitylaw.ca>.

⁸⁸ See sections B and I of the return.

⁸⁹ "Lists of Canadian Charities", (July 23, 2003), available at <http://www.cra-adrc.gc.ca/charitylists/>, (accessed: March 20, 2003).

- ◆ “Charities – What’s New”, which sends automatic updates when a new document is posted to the CRA’s Charities Directorate website;
- ◆ Customs e-newsletter for small and medium-sized enterprises;
- ◆ GST/HST News;
- ◆ GST/HST Technical Publications;
- ◆ Income Tax Technical Publications;
- ◆ Magnetic Media;
- ◆ Media room; and
- ◆ Payroll deductions.

c) Electronic Services

- ◆ Electronic payments to CRA through banking institutions;
- ◆ T4 Internet filing service;
- ◆ Cancellations and amendments in electronic format for information slips;
- ◆ GST/HST NETFILE;
- ◆ GST/HST TELEFILE;
- ◆ TeleReply for nil payroll deductions; and
- ◆ Corporate EFILE;
- ◆ Corporation Internet Filing Service (*availability subject to certain criteria);
- ◆ Online requests for Business clients to have financial and non-financial actions processed on their account;
- ◆ Interactive Information Service for general tax information;
- ◆ EFILE for T1 electronic filing services [for tax preparers].

3. Advance Passenger Information/Passenger Name Record Program

A recent development that may be of interest to some charities is the Advance Passenger Information/Passenger Name Record (API/PNR) programs.⁹⁰ The API program, implemented by CRA in October 2002, is a database of basic information about passengers collected during the check-in process for air travel. The PNR program which began its implementation in stages during the summer of 2003 involves information concerning the individual traveler’s reservation and itinerary as recorded by the carrier’s reservation system. These programs were designed, as stated on CRA’s website, “to protect Canadians by helping to

⁹⁰ *Supra* note 86.

identify high risk travelers before they reach Canada's borders and airports."⁹¹ This program was introduced in the context of increased concern for public safety and security as a part of the federal government's anti-terrorism initiative but may have a much broader application.

The API/PNR program involves CRA maintaining a database of specific information gathered from airlines about all airline passengers entering Canada that may be shared, under certain circumstances, with other agencies or departments for non-customs purposes. This information gathered under the API/PNR program will be kept for six years and the data collected subject to ongoing analysis and examination. These programs, currently limited to air travel, will ultimately be expanded to all modes of transportation. The API/PNR initiative should be of particular note to directors, office employees and volunteers of charities who travel internationally, especially to regions that may be considered conflict zones. It is pertinent to understand that under the API/PNR program, an individual's travel patterns and destinations may subject them to investigation as a potential 'security threat'.

More information about the database is available from CRA in the form of a factsheet⁹², press release⁹³ and commentary available from the federal Privacy Commissioner's website.⁹⁴

4. Joint Regulatory Table

In November 2000, the Joint Regulatory Table ("JRT"), comprised of members from the government and the voluntary sector, convened under the Voluntary Sector Initiative ("VSI") in an attempt to both analyze and make recommendations as to ways of improving the legislative and regulatory framework governing Canada's voluntary sector. After more than two years of research, the JRT produced its final report in March 2003, entitled *Strengthening Canada's Charitable Sector – Regulatory Reform*, which was submitted to the, Minister of Finance, the Minister of National Revenue, and the Minister of Canadian Heritage and Minister Responsible for the Voluntary Sector. This 173 page document was the end-product of an investigation into four policy areas, including:

⁹¹ *Ibid.*

⁹² "Advance Passenger Name Record" Factsheet, July 2003, available at http://www.ccradc.gc.ca/newsroom/factsheets/2003/july/july_api_pnr-e.html (accessed: November 11, 2003).

⁹³ "The CCRA: Protecting Canadians", Press Release, (September 27, 2002), available at <http://www.ccradc.gc.ca/newsroom/releases/2002/sep/api-e.html> (accessed: November 11, 2003).

⁹⁴ Privacy Commissioner of Canada, Key Issues, available at http://www.privcom.gc.ca/media/ki-qc/mc-ki-api_e.asp (accessed: November 11, 2003).

- ◆ accessibility and transparency of the federal regulator, including making information it holds about charities available to the public;
- ◆ better access to appeals for organizations that disagree with decisions made by the regulator;
- ◆ compliance reforms, such as the possibility of introducing new sanctions to ensure charities meet their legal obligations; and
- ◆ institutional models.

The VSI is a joint federal government and voluntary sector project designed to examine how the federal government could better assist the voluntary sector's work in the public interest. The VSI is divided into tables (working groups) by subject area. For charity law practitioners, the Joint Regulatory Table will be of most interest.

The JRT Final Report evidences the great importance to society of the approximately 80 000 charities currently registered in Canada. In the introduction to the Report, the Joint Regulatory Table states that:

...We also recognize that the regulation of charity is not a matter involving only government and the sector. The public has an important “stake” in how charities are regulated. Charities, as part of the broader voluntary sector, help to cultivate a strong civil society and a federal government connected to citizens. They act as a vehicle for social cohesion and provide opportunities for individual Canadians to volunteer or work on issues of importance to themselves and their communities. Because donors to charities receive tax credits, all Canadians have a financial stake in who is allowed to issue charitable-donation receipts, since it is not simply the donor who is giving money – it is also the taxpayer.⁹⁵

While it is impossible to review the JRT report within the confines of this paper, one area which should be noted are the JRT’s comments on deregistration of charities, set out in Chapter 6: “Intermediate Sanctions Within the Compliance Regime”. The JRT recommends that de-registration of a charity should be the last option chosen after all other avenues to acquire a charity’s compliance have failed. Once deregistration has occurred, the JRT is opposed to the revocation tax levied against charities that lose their registration status for one reason or another.

⁹⁵ Voluntary Sector Initiative/Joint Regulatory Table, *Strengthening Canada’s Charitable Sector – Regulatory Reform – Final Report*, March 2003 at page 1 available at http://www.vsi-isbc.ca/eng/joint_tables/regulatory/reports.cfm.

In this regard the JRT report makes the following statement concerning the revocation tax:

It is unjust because of its disproportionate impact on some charities depending on their funding sources and the type of assets they hold. Further, as an attempt to protect tax-subsidized donations from being diverted to non-charitable uses, the revocation tax is only loosely connected to this objective.⁹⁶

Currently under the *ITA*, the following chart, taken from the JRT Report, outlines the reasons for deregistration of charities, including:

The following summarizes the specific reasons for deregistration listed in the Act.

Provision Applies to Reasons for deregistration

149.1(2)(a) Charitable organizations Carrying on an unrelated business

149.1(2)(b) Charitable organizations Not meeting disbursement quota

149.1(3)(a) Public foundations Carrying on an unrelated business

149.1(3)(b) Public foundations Not meeting disbursement quota

149.1(3)(c) Public foundations Acquiring control of a corporation

149.1(3)(d) Public foundations Incurring impermissible debts

149.1(4)(a) Private foundations Carrying on any business

149.1(4)(b) Private foundations Not meeting disbursement quota

149.1(4)(c) Private foundations Acquiring control of a corporation

149.1(4)(d) Private foundations Incurring impermissible debts

149.1(4.1) All charities Inter-charity gifting to avoid failing to meet disbursement quota

168(1)(b) All charities General provision: not meeting requirements for registration

168(1)(c) All charities Not filing annual return

168(1)(d) All charities Issuing improper donation receipts

168(1)(e) All charities Not keeping proper books and records

This does not mean that ignoring any particular requirement would lead to automatic deregistration, but rather that the regulatory authority could decide as a last resort to deregister for non-compliance with any of the listed requirements.⁹⁷

The JRT suggests that de-registration of a charity should be considered automatically only in more extreme cases. The JRT would support, for example, a charity losing its charitable status in the event:

that the registration was obtained on the basis of false or misleading information supplied by the organization in its application for registration. This measure would encourage everyone to take the

⁹⁶ *Ibid* at p. 107.

⁹⁷ *Ibid* at p. 113.

application process seriously, but it is intended specifically to deal with organizations that use little or none of the funds they collect from the public for charitable work, and whose application for registration misleads both the public and the regulatory authority. Under the proposal, the regulatory authority would not need to establish the existence of non-compliance with the conditions for registration, only that the registration was obtained on the basis of false information. The organization concerned would have the usual means of recourse.⁹⁸

The JRT went on to comment about deceptive fundraising:

No opposition was voiced to our first proposed mechanism to tackle deceptive fundraisers – that obtaining registration on the basis of false or misleading information become a new reason for deregistration. A couple of commentators pointed out that an equivalent mechanism is already found in other parts of the Income Tax Act.⁹⁹

In the end, the JRT Report represents the views of the government, the voluntary sector, and the public, in one document, with respect to the many issues which registered charities as they gain registration status, and operate on a daily basis. There is clearly support within all participating spheres for a clear delineation of the reasons for, and the methods by which the de-registration process is initiated and completed.¹⁰⁰

5. Future Directions ¹⁰¹

In September 2002, CRA released a report entitled *Future Directions for the Canada Customs and Revenue Agency* (“*Future Directions*”), which is the culmination of 18 months of consultations with Canadians intended to determine how CRA can improve service and strengthen compliance. The key to strengthening CRA and its relationship with its clients as identified by the *Future Directions* report is to develop a client-centred approach by targeting CRA’s services and verification activities to the needs and character of its different constituencies.

⁹⁸ *Ibid* at p. 108.

⁹⁹ *Ibid* at p. 109.

¹⁰⁰ Robert Hayhoe, “Federal report recommends changes to charity regulation”, *The Bottom Line*, Vol. 19, No. 8, July 2003, TAX PRACTICE, online: QL (LWKD) at page 1.

¹⁰¹ Part of this section was previously published in “CCRA AND CHARITIES: WHAT’S NEW? A Summary of Developments from June 2002 through March 2003”, by R. Johanna Blom and Terrance S. Carter, *Charity Law Bulletin No. 20*, March 25, 2003 available at www.charitylaw.ca.

The needs of charities differ from those of CRA's other constituencies, namely small and medium enterprise, large business, and individuals. In *Future Directions*, CRA promises to build a stronger relationship with charities through streamlining its procedures and "making dealings with the CRA simpler, timelier, and easier to understand." CRA will focus on enhancing electronic services, transparency, compliance, and cooperation with the voluntary sector. To this end, CRA has started by updating its website and making numerous documents and forms available on-line. CRA is doing a remarkable job in this regard.

The full *Future Directions* report¹⁰² is available on the CRA website, as well as a summary of the report.¹⁰³ A brochure explaining how this report is relevant specifically to charities is also available.¹⁰⁴

G. CONCLUSION

It is hoped that this paper will serve not only as a review of recent initiatives by CRA and the Department of Finance affecting charities, but also as a reference tool for future study of the resource materials that CRA has now made available on its website. Charities and charity law practitioners alike have for years asked CRA for more accessible ways in which to determine CRA's position with regards to how registered charities are registered and how they are required to operate. CRA has responded with a wealth of resource material that can now be accessed online anywhere and at any time. It is expected that increased transparency and accessibility on the part of CRA will give existing and future charities a clearer understanding of what responsibilities and benefits will apply to them in obtaining and maintaining their status as registered charities in Canada. Lawyers who are involved in the area of charity law will want to ensure that they become familiar with the quantity and scope of changes in legislation and policy that now affect charities.

¹⁰² *Future Directions for the Canada Customs and Revenue Agency - Charities*, (November 15, 2002), available at http://www.cra-adrc.gc.ca/agency/directions/report_sept-e.pdf (accessed: September 15, 2003).

¹⁰³ *Future Directions – What is Future Directions?* (updated October 30, 2002), available at <http://www.cra-adrc.gc.ca/agency/directions/menu-e.html> (accessed: September 15, 2003).

¹⁰⁴ *Charities – RC4313*, (updated December 12, 2002), available at <http://www.cra-adrc.gc.ca/E/pub/xi/rc4313/rc4313-e.pdf> (accessed: September 15, 2003).

APPENDIX A: SUMMARY OF ADDITIONS AND CHANGES TO THE CRA WEBSITE FROM 2002 TO 2004

The reader is advised that this compendium of documents is *not* an official CRA publication. Some of the documents listed below are introduced in the paper under Heading C “Summary of Additions and Changes to the CRA Website from 2002 to 2004”, discussed under Heading D “Selected Discussion of Income Tax Amendments Affecting Charities”, and Heading E “Selected Discussion of New Policies from CRA Affecting Charities.” All documents referred to can be accessed from <http://www.cca-adrc.gc.ca/tax/charities/menu-e.html> .

1. Legislative Amendments

- *Department of Finance Releases Legislative Proposals Relating to Income Tax Affecting Registered Charities* – December 20, 2002, -updated December 24, 2002
- *Federal Government Releases Draft Technical Income Tax Amendments*, updated December 20, 2002
- *Legislative Proposals and Explanatory Notes Relating to Income Tax* – December 2002:1, updated December 20, 2002
- *Legislative Proposals and Explanatory Notes Relating to Income Tax* – December 2002:2, updated December 20, 2002
- *Legislative Proposals and Explanatory Notes Relating to Income Tax* – December 2002:3, updated December 20, 2002
- *Legislative Proposals and Explanatory Notes Relating to Income Tax* – December 2002:4, updated December 20, 2002
- December 5, 2003 - Draft Amendments to the *Income Tax Act*
- February 27, 2004 - Revised Draft Technical Amendments to the *Income Tax Act*

2. Charities – Interpretation Bulletins

- IT-288R2 – Subject: INCOME TAX ACT, Gifts by individuals of Capital Properties to a Charity and Others; Reference: Subsections 110.1(3) and 118.1(6) (also subsections 13(1), 20 (16), 110.1(1), 118.1(1), 118.1(4) and 118.1(7), paragraphs 69(1)(b) and 70(5)(a) of the Income Tax Act and sections 3501 and 3504 of the Income Tax Regulations), -dated January 16, 2003
- IT-75R4 – Subject: INCOME TAX ACT, Scholarships, Fellowships, Bursaries, Prizes, Research Grants and Financial Assistance, dated June 18, 2003

3. Information Circulars

- IC 75-2R6 – Subject: Contributions to a Registered Political Party or to a Candidate at a Federal Election, -dated July 18, 2002

4. Brochures and Guides

- CCRA – *Tax Advantages of Donating to Charity*, -printed January 21, 2002

5. Income Tax Technical News

- Newsletter No. 26, - dated December 24, 2002

6. Policy Statements

Becoming a Registered Charity:

- *Applicants that are Established to Relieve Poverty by Providing Rental Housing for Low-Income Tenants*, CPS-020, April 1, 2003
- *Group Insurance Rates for Registered Charities*, CPC-022, March 5, 2002
- *Holding of Property for Charities*, CPS-009, March 12, 1996 (Revised January 14, 2003)
- *What is a Related Business?*, CPS-019, March 31, 2003
- *Registering Charities that Promote Racial Equality*, CPS-021, September 2, 2003

Operating Day-to-Day:

- *Donations of Gift Certificates*, CPS-018, October 9, 2002
- *Management of Investment Portfolio*, CPC-023, August 1, 2002
- *Political Activities*, CPS-022, September 2, 2003
- *Third Party Fundraisers*, CPC-026, February 26, 2003

7. Summary Policies

- | | |
|------------------------------------|-------------------|
| 1. <i>Aboriginal</i> , CSP-A01 | October 25, 2002 |
| 2. <i>Abortion</i> , CSP-A11 | June 9, 2003 |
| 3. <i>Accountability</i> , CSP-A02 | October 25, 2002 |
| 4. <i>Accumulation</i> , CSP-A03 | October 25, 2002 |
| 5. <i>Administration</i> , CSP-A16 | September 3, 2003 |
| 6. <i>Adoption</i> , CSP-A17 | September 3, 2003 |
| 7. <i>Advocacy</i> , CSP-A04 | October 25, 2002 |
| 8. <i>Aged (senior)</i> , CSP-A05 | October 25, 2002 |
| 9. <i>Agency</i> , CSP-A12 | June 9, 2003 |
| 10. <i>Agriculture</i> , CSP-A18 | September 3, 2003 |
| 11. <i>Alcohol</i> , CSP-A19 | September 3, 2003 |

12. <i>Allowances</i> , CSP-A20	September 3, 2003
13. <i>Amalgamation (consolidation, merger)</i> , CSP-A21	September 3, 2003
14. <i>Ancillary Activities</i> , CSP-A13	June 9, 2003
15. <i>Animal</i> , CSP-A22	September 3, 2003
16. <i>Annuities</i> , CSP-A06	October 25, 2002
17. <i>Annulment</i> , CSP-A23	September 3, 2003
18. <i>Appeal</i> , CSP-A14	June 9, 2003
19. <i>Arm's Length</i> , CSP-A07	October 25, 2002
20. <i>Artist</i> , CSP-A24	September 3, 2003
21. <i>Arts</i> , CSP-A08	October 25, 2002
22. <i>Asset</i> , CSP-A26	September 3, 2003
23. <i>Associated Charity</i> , CSP-A09	October 25, 2002
24. <i>Auction</i> , CSP-A15	June 9, 2003
25. <i>Audit</i> , CSP-A10	October 25, 2002
26. <i>Bequest</i> , CSP-B04	September 3, 2003
27. <i>Books and Records</i> , CSP-B01	October 25, 2002
28. <i>Broad and vague Objects</i> , CSP-O02	June 9, 2003
29. <i>Broadcasting</i> , CSP-B05	September 3, 2003
30. <i>Business</i> , CSP-B02	October 25, 2002
31. <i>Business Number</i> , CSP-B03	June 9, 2003
32. <i>Canada-U.S. Income Tax Convention (1980)</i> , CSP-C14	September 3, 2003
33. <i>Capital Fund</i> , CSP-C15	September 3, 2003
34. <i>Caselaw</i> , CSP-C08	June 9, 2003
35. <i>Cemeteries</i> , CSP-R17	September 3, 2003
36. <i>Certification</i> , CSP-C16	September 3, 2003
37. <i>Charitable Activities</i> , CSP-C09	June 9, 2003
38. <i>Charitable Purposes</i> , CSP-C01	October 25, 2002
39. <i>Charitable Remainder Trust</i> , CSP-C02	October 25, 2002
40. <i>Club</i> , CSP-C17	September 3, 2003
41. <i>Community Economic Development</i> , CSP-C03	October 25, 2002
42. <i>Community Foundation</i> , CSP-C04	October 25, 2002
43. <i>Confidentiality</i> , CSP-C12	June 9, 2003
44. <i>Consideration</i> , CSP-C13	June 9, 2003
45. <i>Contribution</i> , CSP-C05	October 25, 2002
46. <i>Co-operative</i> , CSP-C18	September 3, 2003
47. <i>Corporation</i> , CSP-C19	September 3, 2003
48. <i>Crisis Centre</i> , CSP-C20	September 3, 2003
49. <i>Crown (agent, corporation)</i> , CSP-C21	September 3, 2003
50. <i>Crown (federal, provincial)</i> , CSP-C22	September 3, 2003
51. <i>Cultural Property</i> , CSP-C06	October 25, 2002
52. <i>Culture</i> , CSP-C07	October 25, 2002
53. <i>Cy-près (gift by will)</i> , CSP-C23	September 3, 2003

54. <i>Daycare</i> , CSP-D01	October 25, 2002
55. <i>Debt</i> , CSP-D06	September 3, 2003
56. <i>Deemed Disposition</i> , CSP-D07	September 3, 2003
57. <i>Deemed Expenditure</i> , CSP-D08	September 3, 2003
58. <i>Designation</i> , CSP-D02	October 25, 2002
59. <i>Designation- Re-designation</i> , CSP-D05	October 25, 2002
60. <i>Direct Designation</i> , CSP-D09	September 3, 2003
61. <i>Director/Trustee</i> , CSP-D10	September 3, 2003
62. <i>Disabled</i> , CSP-D11	September 3, 2003
63. <i>Disarmament</i> , CSP-D12	September 3, 2003
64. <i>Disaster Fund</i> , CSP-D13	September 3, 2003
65. <i>Disbursement Quota</i> , CSP-D14	September 3, 2003
66. <i>Disbursement Quota Reduction</i> , CSP-D03	October 25, 2002
67. <i>Disbursements</i> , CSP-D04	October 25, 2002
68. <i>Disposition of Property</i> , CSP-P19	September 3, 2003
69. <i>Dissolution Clause</i> , CSP-D15	September 3, 2003
70. <i>Doctrine</i> , CSP-D16	September 3, 2003
71. <i>Donor</i> , CSP-D17	September 3, 2003
72. <i>Ecological</i> , CSP-D17	September 3, 2003
73. <i>Education</i> , CSP-E01	October 25, 2002
74. <i>Efficiency</i> , CSP-E06	September 3, 2003
75. <i>Employee Charity Trust</i> , CSP-E07	September 3, 2003
76. <i>Employment</i> , CSP-E02	October 25, 2002
77. <i>Environment</i> , CSP-E08	September 3, 2003
78. <i>Ethnic</i> , CSP-E04	June 9, 2003
79. <i>Expenses</i> , CSP-E03	October 25, 2002
80. <i>Facilitator</i> , CSP-F01	October 25, 2002
81. <i>Fair Market Value</i> , CSP-F02	October 25, 2002
82. <i>Fair Market Value (appraisal)</i> , CSP-F07	September 3, 2003
83. <i>Family Values</i> , CSP-F08	September 3, 2003
84. <i>Festival</i> , CSP-F03	October 25, 2002
85. <i>Financial Statements</i> , CSP-F09	September 3, 2003
86. <i>Fiscal (period, year end)</i> , CSP-F04	October 25, 2002
87. <i>Food Bank</i> , CSP-F10	September 3, 2003
88. <i>Foreign Activities</i> , CSP-F05	October 25, 2002
89. <i>Foreign Conduit</i> , CSP-C11	June 9, 2003
90. <i>Foreign Organization</i> , CSP-F11	September 3, 2003
91. <i>Fraud</i> , CSP-F12	September 3, 2003
92. <i>Fringe Religion</i> , CSP-F13	September 3, 2003
93. <i>Fundraiser</i> , CSP-F14	September 3, 2003
94. <i>Fundraising</i> , CSP-F06	October 25, 2002
95. <i>Gaming</i> , CSP-G02	September 3, 2003
96. <i>Gift (anonymous)</i> , CSP-G03	September 3, 2003
97. <i>Gift (conditional)</i> , CSP-G04	September 3, 2003

98. <i>Gift (designated, directed)</i> , CSP-G05	September 3, 2003
99. <i>Gift (donation)</i> , CSP-G01	October 25, 2002
100. <i>Governing Document</i> , CSP-G06	September 3, 2003
101. <i>Health Clinic</i> , CSP-H03	June 9, 2003
102. <i>Hedge Fund</i> , CSP-H03	September 3, 2003
103. <i>Heritage</i> , CSP-H05	September 3, 2003
104. <i>Her Majesty</i> , CSP-H06	September 3, 2003
105. <i>Historical</i> , CSP-H07	September 3, 2003
106. <i>Holistic Medicine</i> , CSP-M04	September 3, 2003
107. <i>Housing</i> , CSP-H01	October 25, 2002
108. <i>Human Rights</i> , CSP-H08	September 3, 2003
109. <i>Immigrants</i> , CSP-I05	June 9, 2003
110. <i>Improvement District</i> , CSP-I07	September 3, 2003
111. <i>Income Tax Act</i> , CSP-I01	October 25, 2002
112. <i>Incorporation</i> , CSP-I08	September 3, 2003
113. <i>Indian Band</i> , CSP-I09	September 3, 2003
114. <i>Industry</i> , CSP-I10	September 3, 2003
115. <i>Information (security)</i> , CSP-I11	September 3, 2003
116. <i>Initiative (government, sector)</i> , CSP-I02	October 25, 2002
117. <i>Insurance</i> , CSP-I03	October 25, 2002
118. <i>Interest</i> , CSP-I12	September 3, 2003
119. <i>Interest Free Loan</i> , CSP-I13	September 3, 2003
120. <i>Internal Division</i> , CSP-I14	September 3, 2003
121. <i>Inventory</i> , CSP-I04	October 25, 2002
122. <i>Investments</i> , CSP-I15	September 3, 2003
123. <i>Joint Venture (joint ministry)</i> , CSP-J01	September 3, 2003
124. <i>Jurisdiction</i> , CSP-J02	September 3, 2003
125. <i>Lease</i> , CSP-L05	September 3, 2003
126. <i>Legal Aid</i> , CSP-L03	June 9, 2003
127. <i>Liability</i> , CSP-L01	October 25, 2002
128. <i>Life Insurance Policy</i> , CSP-L02	October 25, 2002
129. <i>Loan</i> , CSP-L06	September 3, 2003
130. <i>Loanback</i> , CSP-L07	September 3, 2003
131. <i>Lottery</i> , CSP-L04	June 9, 2003
132. <i>Mediation</i> , CSP-M03	September 3, 2003
133. <i>Membership Fees</i> , CSP-M05	September 3, 2003
134. <i>Mental and Moral Improvement</i> , CSP-M06	September 3, 2003
135. <i>Multiculturalism</i> , CSP-M01	June 9, 2003
136. <i>Municipality</i> , CSP-M07	September 3, 2003
137. <i>Mutual Understanding</i> , CSP-M02	June 9, 2003
138. <i>Non-Profit Housing</i> , CSP-N02	September 3, 2003
139. <i>Non-Profit Organization</i> , CSP-N03	September 3, 2003
140. <i>Non-Qualified Donee</i> , CSP-N01	September 3, 2003
141. <i>Non-Qualified Investment</i> , CSP-N04	September 3, 2003

142. <i>Non-Qualifying Security</i> , CSP-N05	September 3, 2003
143. <i>Objects (charitable)</i> , CSP-O01	October 25, 2002
144. <i>Objects (standard)</i> , CSP-O03	September 3, 2003
145. <i>Patriotism</i> , CSP-P07	June 9, 2003
146. <i>Planned Giving</i> , CSP-P01	October 25, 2002
147. <i>Pledges</i> , CSP-P14	September 3, 2003
148. <i>Political Activities</i> , CSP-P02	October 25, 2002
149. <i>Pornography</i> , CSP-P08	June 9, 2003
150. <i>Poverty</i> , CSP-P03	October 25, 2002
151. <i>Prescribed Donee</i> , CSP-P15	September 3, 2003
152. <i>Prescribed Stock Exchange</i> , CSP-P17	September 3, 2003
153. <i>Prescribed University</i> , CSP-P16	September 3, 2003
154. <i>Private Benevolence</i> , CSP-P09	June 9, 2003
155. <i>Private Foundation</i> , CSP-P04	October 25, 2002
156. <i>Procedural Fairness</i> , CSP-P10	June 9, 2003
157. <i>Profit Motive</i> , CSP-P12	June 9, 2003
158. <i>Pro-life/Pro-choice</i> , CSP-P11	June 9, 2003
159. <i>Promotion of Health</i> , CSP-H02	June 9, 2003
160. <i>Property</i> , CSP-P05	October 25, 2002
161. <i>Provision of Information</i> , CSP-I06	June 9, 2003
162. <i>Public Amenities</i> , CSP-P20	September 3, 2003
163. <i>Public Benefit</i> , CSP-P06	October 25, 2002
164. <i>Public Policy</i> , CSP-P13	June 9, 2003
165. <i>Purposes Beneficial to Community</i> , CSP-C10	June 9, 2003
166. <i>Qualified Donee</i> , CSP-Q01	October 25, 2002
167. <i>Racial Equality</i> , CSP-R23	September 2, 2003
168. <i>Registered Canadian Amateur Athletic Association</i> , CSP-R01	October 25, 2002
169. <i>Registered National Arts Service Organization</i> , CSP-R14	September 3, 2003
170. <i>Registered Pension Plan</i> , CSP-R15	September 3, 2003
171. <i>Receipt</i> , CSP-R02	October 25, 2002
172. <i>Registration – Registered Canadian Amateur Athletic Association</i> , CSP-R04	October 25, 2002
173. <i>Registration – Registered Charity</i> , CSP-R03	October 25, 2002
174. <i>Rehabilitation</i> , CSP-R16	September 3, 2003
175. <i>Related Business</i> , CSP-R05	October 25, 2002
176. <i>Religion</i> , CSP-R06	October 25, 2002
177. <i>Religious Charities</i> , CSP-R07	October 25, 2002
178. <i>Remission Order</i> , CSP-O04	September 3, 2003
179. <i>Repairs</i> , CSP-R18	September 3, 2003
180. <i>Re-registration</i> , CSP-R19	September 3, 2003
181. <i>Research</i> , CSP-R20	September 3, 2003

182. <i>Residency</i> , CSP-R21	September 3, 2003
183. <i>Resources</i> , CSP-R13	June 9, 2003
184. <i>Restricted Funds</i> , CSP-R22	September 3, 2003
185. <i>Return – Political</i> , CSP-R08	October 25, 2002
186. <i>Return – Registered Canadian Amateur Athletic Association</i> , CSP-R09	October 25, 2002
187. <i>Return – Registered Charity Information Return</i> , CSP-R10	October 25, 2002
188. <i>Return – Revocation</i> , CSP-R11	October 25, 2002
189. <i>Revocation</i> , CSP-R12	October 25, 2002
190. <i>Schemes</i> , CSP-S07	September 3, 2003
191. <i>Scholarship</i> , CSP-S08	September 3, 2003
192. <i>School Associations</i> , CSP-S09	September 3, 2003
193. <i>School Council</i> , CSP-S01	October 25, 2002
194. <i>Science</i> , CSP-S10	September 3, 2003
195. <i>Self-Help</i> , CSP-S02	October 25, 2002
196. <i>Services</i> , CSP-S03	October 25, 2002
197. <i>Share</i> , CSP-S04	October 25, 2002
198. <i>Social Activities</i> , CSP-S05	June 9, 2003
199. <i>Social Justice</i> , CSP-S06	June 9, 2003
200. <i>Social Organization</i> , CSP-S11	September 3, 2003
201. <i>Specified Gift</i> , CSP-S12	September 3, 2003
202. <i>Sponsorship</i> , CSP-S13	September 3, 2003
203. <i>Sport</i> , CSP-S14	September 3, 2003
204. <i>Stock Exchange</i> , CSP-S15	September 3, 2003
205. <i>Substantially All</i> , CSP-S16	September 3, 2003
206. <i>Tax</i> , CSP-T01	October 25, 2002
207. <i>Tax Shelter</i> , CSP-T08	November 26, 2003
208. <i>Tenants Associations</i> , CSP-T04	June 9, 2003
209. <i>Ten-Year Gift</i> , CSP-T06	September 3, 2003
210. <i>Titleholding</i> , CSP-T07	September 3, 2003
211. <i>Tourism</i> , CSP-T02	October 25, 2002
212. <i>Tuition Fees</i> , CSP-T03	October 25, 2002
213. <i>United Nations</i> , CSP-U01	September 3, 2003
214. <i>Voluntary Transfer</i> , CSP-V01	October 25, 2002
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APPENDIX B: NEW SUMMARY POLICIES

- *Abortion*, CSP-A11: “The courts have recognized as charitable organizations established to operate medical clinics that provide abortions by physicians under the following category of charitable purposes: other purposes beneficial to the community in a way the law regards as charitable.”
- *Agency*, CSP-A12: “Under the *Income Tax Act*, a registered charity can carry on its charitable activities, both inside and outside Canada, in only two ways: it can make gifts to other organizations that are qualified donees or it can carry on its own charitable activities through intermediaries (*e.g.*, employees, missionaries, agent or contractor).

When carrying on its charitable activities outside Canada, a registered charity must put in place a formal agreement with the intermediary and must be able to demonstrate that it retains direction and control over the use of its resources.

The above requirements also apply to registered charities that carry on their charitable activities through intermediaries inside Canada.”

- *Ancillary Activities*, CSP-A13: “Under the *Income Tax Act*, a registered charity can devote some of its resources to ancillary and incidental political activities of a non-partisan nature provided the charity devotes substantially all (*i.e.*, 90%) of its resources to charitable activities.”
- *Arm’s Length*, CSP-A07: “At arm’s length is a tax concept describing a relationship in which the parties are acting independently of each other. The opposite, not at arm’s length, covers people acting in concert without separate interest, including individuals who are related to each other by blood, marriage, adoption, common-law relationships, or close business ties.”
- *Associated Charity*, CSP-A09: “Registered charities whose charitable aim or activity is substantially the same can apply to be designated as associated charities. Associated charities can pass funds among themselves without being affected by the usual limitation placed on gift-making by charitable organizations.”
- *Auction*, CSP-A15: “A registered charity can issue an official donation receipt to the donor for the fair market value of property donated for a charity auction.

Generally, a registered charity cannot issue an official donation receipt to the persons who buy items at a charity auction. However, where the value of an item can be determined and is made known to all bidders in advance and where the amount paid for the item exceeds the posted value, a registered charity can issue an official donation receipt for the eligible amount of the gift (*i.e.*, where the posted value of the item does not exceed 80% of the accepted bid.)”

- *Audit*, CSP-A10: “Registered charities must comply with the *Income Tax Act*. The primary means of ensuring compliance are through the audit of selected files, the education of clients when possible and the revocation of registration as a charity where necessary.”
- *Broad and Vague Objects*, CSP-O02: “To qualify for registration as a charity, an organization's governing documents must demonstrate that its objects are restricted to the realm of charity as recognized by law. The objects must be expressed in precise rather than broad and vague terms (*i.e.*, the objects must be clearly worded and must define the scope of the activities engaged in by the organization.)”
- *Business Number*, CSP-B03: “A business number (BN) is a single number that an organization can use in all its dealings with the federal government. The business number assigned to a registered charity is also known as the charity's registration number.”
- *Canada-U.S. Income Tax Convention (1980)*, CSP-C14: “The *Canada-United States Income Tax Convention (1980)* is an agreement that allows residents of the two countries to avoid double taxation on income and on capital. Paragraphs 5 and 6 of Article XXI provide donors with tax relief for their gifts to recognized charities.”
- *Caselaw*, CSP - C08: “The Charities Directorate of the Canada Customs and Revenue Agency is bound by the courts' decisions in determining whether an organization qualifies or continues to qualify for registration as a charity or as a Canadian amateur athletic association under the *Income Tax Act*.”
- *Charitable activities*, CSP - C09: “In order for an activity to be considered charitable at law, it must be undertaken to achieve a charitable purpose.”
- *Confidentiality*, CSP - C12: “The confidentiality provisions of the *Income Tax Act* prevent the Canada Customs and Revenue Agency (the "CCRA") from discussing the affairs of a particular organization without the consent of an authorized representative.

Under the *Act*, the information contained in the public portion of a registered charity's information return is available to the public. The CCRA can also provide to any person the following information relating to a charity that at any time was a registered charity:

- a copy of the charity's governing documents;
- any information provided in prescribed form to the Minister by a charity in its application for registration as a charity under the *Income Tax Act*;
- the names of the persons who at any time were the charity's directors/trustees and the periods during which they were its directors/trustees;
- a copy of the notification of the charity's registration; and

- where the registration of a charity has been revoked, a copy of the letter sent by or on behalf of the Minister to the charity setting out the grounds for revocation.

A list of currently registered charities, a list of newly registered charities and a list of recently revoked charities are available to the public on the CCRA Charities Directorate Web site.”

- *Consideration*, CSP-C01: “To qualify as a gift for purposes of the *Income Tax Act*, there must be a voluntary transfer of property, with a clearly ascertainable value, to a qualified donee. Any advantage (*i.e.*, consideration) received or obtained by the donor in respect of the transfer must be clearly identified and its value ascertainable, and there must be a clear intent to enrich the qualified donee.”
- *Corporation*, CSP-C19: “A registered charity incorporated as a federal non-profit corporation can operate under its registered corporate name within any Canadian province or territory, subject to any provincial or territorial requirements.

A registered charity incorporated as a provincial or territorial non-profit corporation can operate under its registered corporate name within a province or territory.

Some of the advantages to incorporating a charity include:

- the liability of the members is limited (e.g., members are not personally liable for debts of the corporation);
 - continuity of the charity is assured while the membership changes;
 - the ability to own property in its name;
 - the ability to borrow money.”
- *Director/Trustee*, CSP-D10: “Directors / trustees and like officials are persons who govern a registered charity. These persons hold positions that are usually identified in an organization's governing document (e.g., president, treasurer and secretary).

Provincial law determines the circumstances under which a registered charity's directors / trustees can receive compensation. In general, a registered charity cannot pay its directors / trustees simply for occupying their positions. However, some provinces permit a charity to have governing documents allowing for reasonable compensation for services that directors / trustees provide to the charity (*e.g.*, the director is an employee).”

- *Ethnic*, CSP-E04: an organization can limit access to its programs or services to a specific group. Under the charitable purpose category of “other purposes beneficial to the community, an organization can restrict access only if the reasons for the restriction are justified by the purpose.
- *Family Values*, CSP-F08: “An organization established to promote family values (*e.g.*, family-planning advice) can qualify for registration as a charity under the following category

of charitable purposes: other purposes beneficial to the community in a way the law regards as charitable.”

- *Foreign Conduit*, CSP-C11: “A registered charity cannot hand over money or resources to another organization that is not a qualified donee. If using an intermediary, the charity must retain direction and control over its resources.”
- *Fraud*, CSP-F12: “Registered charities and registered Canadian amateur athletic associations can have their registration revoked for providing fraudulent information to the CCRA.”
- *Fringe Religion*, CSP-F13: “A fringe religious group does not advance religion in the charitable sense and therefore cannot be registered as a charity. To advance religion, there must be an element of theistic worship, which means the worship of a deity or deities in the spiritual sense.”
- *Fundraiser*, CSP-F14: “A registered charity can retain the services of a professional fundraiser to manage its fundraising activities. The professional fundraiser can be internal or external to the registered charity (i.e., the fundraiser can be an employee of the charity or the fundraiser can be a person or company hired by the charity).

Registered charities should keep in mind the potential impact on meeting their disbursement quota before undertaking fundraising arrangements.”

- *Gift (conditional)*, CSP-G04: “There are two types of conditions that can be attached to a gift: a condition precedent, and a condition subsequent.

A condition precedent is one that must be met before the gift takes effect (*e.g.*, a gift of \$100,000 provided that the registered charity is able to raise an equal amount of money within a stated period of time). Since a condition precedent is not a gift at law until after the condition is fulfilled, a charity should only issue an official donation receipt after the condition has been met.

A condition subsequent is one that operates to defeat a gift that has already been made (*e.g.*, a gift made to a registered charity on the condition that the funds be used to operate a particular shelter for the homeless). If a condition subsequent fails and the gift reverts back to the donor, the charity should advise the CCRA that the original gift is being returned to the donor. A condition subsequent may result in a subsequent tax liability.”

- *Gift (designated, directed)*, CSP-G05: “A registered charity cannot issue an official donation receipt if a donor has directed the charity to give the funds to a specified person or family. In reality, such a gift is made to the person or family and not to the charity. However, donations

subject to a general direction from a donor that the gift be used in a particular program operated by a charity are acceptable, provided that no benefit accrues to the donor, the

directed gift does not benefit any person not dealing at arms' length with the donor, and decisions regarding utilization of the donation within a program rest with the charity.”

- *Governing Document*, CSP-G06: “To qualify for registration as a charity, an organization must be legally established by a governing document (*e.g.*, letters patent, articles of incorporation, trust document or constitution). The governing document identifies the charity, states its purposes as well as provides information on the organization's structure and internal procedures.”
- *Health Clinic*, CSP-H03: “The courts have recognized as charitable organizations established to operate health clinics (*e.g.*, abortion clinics, medical clinics) under the following category of charitable purposes: other purposes beneficial to the community in a way the law regards as charitable.”
- *Hedge Fund*, CSP-H04: “Hedge funds are a specialized kind of investment that are usually addressed to a certain type of investors and privately offered. A registered charity can issue an official donation receipt for the fair market value of a hedge fund. However, before accepting a gift of an interest in a hedge fund, a charity should consider provincial laws, its own governing documents and potential liabilities.”
- *Human Rights*, CSP-H08: “An organization established to advance civil rights by the promotion of legislation is pursuing a political cause (*e.g.*, established for political purposes) and therefore does not qualify for registration as a charity.

However, an organization established to conduct research into the maintenance and observance of human rights, the results of which are disseminated to the public can qualify for registration as a charity under the following category of charitable purposes: advancement of education.”

- *Immigrants*, CSP-I05: “Immigrants *per se* are not objects of charity. However, the courts have determined that an organization established to assist immigrants can qualify for registration under the following categories of charitable purposes: advancement of education or other purposes beneficial to the community in the way the law regards as charitable. For example, an organization established to provide training to immigrant women in order that they may find employment and an organization established to provide health services to immigrants have been held charitable at law.”
- *Incorporation*, CSP-I08: “An organization does not have to be incorporated to become a registered charity. However, a large proportion of registered charities are incorporated. Information on legislation dealing with incorporation (*e.g.*, federal, provincial and territorial statutes and regulations) can be accessed through the following link: <http://www.legis.ca/en/index.html>.”

- *Internal Division*, CSP-I14: “An internal division is a branch, section or division of a registered charity. An internal division does not have its own governing documents but rather operates under the governing document of a parent body.”
- *Joint Venture (joint ministry)*, CSP-J01: “A registered charity and other entities that may not be qualified donees can decide to pool their resources to establish and operate a charitable program. The charity will be considered to be carrying on its own activities provided it is an active partner exercising a proportionate degree of control in the venture and that it can clearly establish that its share of responsibility is at least proportional to the level of funding it contributes to the program.”
- *Legal Aid*, CSP-L03: “A legal aid clinic can qualify for registration as a charity under the following category of charitable purposes: other purposes beneficial to the community in a way the law regards as charitable.”
- *Lottery*, CSP-L04: “A registered charity can conduct a lottery as a means of raising funds for its charitable purposes. However, where the operation of a lottery ceases to be a means of raising funds but becomes an end in itself (*i.e.*, a business), the organization cannot be registered as a charity.”
- *Multiculturalism*, CSP-M01: “The courts have not pronounced themselves on the issues of whether, in Canada, the advancement of multiculturalism generally or of the cultural interest of an individual ethnic component of the national mosaic are to be considered charitable purposes.”
- *Mutual understanding*, CSP-M02: “The courts have determined that an organization established to promote mutual understanding between two countries is pursuing a political cause (*i.e.*, established for political purposes) and therefore cannot be registered as a charity.”
- *Non-Profit Organization*, CSP-N03: “Under the *Income Tax Act*, a non-profit organization is an association organized and operated exclusively for social welfare, civic improvement, pleasure, recreation, or any other purpose except profit (*e.g.*, a club, society, or association). The organization will generally be exempt from tax if no part of its income is payable to, or available for, the personal benefit of a proprietor, member, or shareholder unless the proprietor, member, or shareholder is a club, society, or association whose primary purpose and function is to promote amateur athletics in Canada.

A non-profit organization cannot issue official donation receipts.”

- *Patriotism*, CSP-P07: The courts have recognized as charitable organizations established to promote patriotism (*e.g.*, a gift for the construction and maintenance of a monument) under the following category of charitable purposes: other purposes beneficial to the community in a way the law regards as charitable.

However, the courts have held that an organization established to promote unity within a country or between countries is political in nature (*i.e.*, established for political purposes) and therefore not charitable at law.

- *Pledges*, CSP-P14: “A pledge or promise to make a gift is not in itself a gift. Therefore, a registered charity cannot issue an official donation receipt for a pledge. However, when a donor honours a pledge, a receipt can be issued.”
- *Private Benevolence*, CSP-P09: “To qualify for registration as a charity, an organization's purposes and activities must provide a tangible benefit to the community or a section of the community.

The courts have held that an organization established to benefit a named individual or a private group (*e.g.*, a professional association) is established for private benevolence and therefore not charitable at law.”

- *Procedural Fairness*, CSP-P10: “An organization must be provided with the right to present a defence against the decision affecting its status (*i.e.*, the organization must receive prior notice of the grounds on which the decision will be based) before a final decision is made with regard to its application for registration or its registered status.”
- *Profit Motive*, CSP-P12: “To qualify for registration as a charity, an organization's governing document must include a non-profit clause that forbids the distribution of profits to its proprietors, members, shareholders, trustees or settlers, both during its lifetime and on its dissolution.

A registered charity can charge a fee for its services. Any profits derived from its services must be devoted to its charitable purposes.”

- *Pro-life/ Pro-choice*, CSP-P11: “An organization established for political purposes cannot be registered as a charity. For example, activities that are designed to sway public opinion on a controversial social issue (*e.g.*, abortion, pornography) are not charitable but are political. The courts have held that they do not have the means of judging whether a proposed change in law will or will not be for the public benefit in that they and the CCRA would effectively be encroaching on the power of Parliament to decide whether a law is desirable or not.”
- *Promotion of Health*, CSP-H02: “The courts have held that the provision of health care is *prima facie* charitable under the following category of charitable purposes: other purposes beneficial to the community in a way the law regards as charitable.”

- *Provision of Information*, CSP-I06: “The courts have held that an organization established to provide information to the public of selected items of information and opinion is not advancing education in the charitable sense.”
- *Racial Equality*, CSP-R23: “Organizations whose purpose is to educate about, or to promote racial equality can qualify for registration as a charity. Promoting racial equality includes efforts to eliminate racial or ethnic discrimination. It also includes promoting positive race relations by, for example, working to improve relations between any racial and/or ethnic groups in Canada.”
- *Religion*, CSP-R06: “To advance religion in the charitable sense means to promote the spiritual teachings of a religious body and to maintain doctrines and spiritual observances on which those teachings are based. There must be an element of theistic worship, which means the worship of a deity or deities in the spiritual sense.”
- *Religious Charities*, CSP-R07: “Certain religious orders meet the criteria for exemption from completing some questions on the *Registered Charity Information Return* (form T3010). To qualify for the exemption, a religious order must have existed on December 31, 1977, have never issued any receipts for tax purposes and never, directly or indirectly, received gifts from another registered charity which issues official donation receipts.”
- *Re-registration*, CSP-R19: “If a charity's registration is revoked, it can apply for re-registration by submitting a completed Form T2050, *Application to Register a Charity Under the Income Tax Act*, together with all the documents and information requested on the form. Re-registration will only be granted where the organization meets all of the current registration requirements.”
- *Restricted Funds*, CSP-R22: “Restricted funds are funds tied to a specific use and not available for the general purposes of a registered charity. Donors create them when they stipulate that the charity must maintain the principal amount and only use the interest earned on it (e.g., endowment to establish a scholarship fund).”
- *Social Activities*, CSP-S05: “Social activities, in and of themselves, are not charitable at law. An organization that is established for exclusively charitable purposes can devote some of its resources to social activities provided these activities are ancillary and incidental to its charitable purposes.”
- *Social Justice*, CSP-S06: “The courts have held that an organization established to encourage awareness and understanding of social justice conditions does not advance education in the charitable sense (e.g., to promote racial harmony through social actions).”

- *Sponsorship*, CSP-S13: “Sponsorship fees are amounts paid to a registered charity that are not gifts because the sponsor receives something in exchange. They are usually paid to support a charity event in return for advertising or some other consideration.”
- *Tax Shelter*, CSP-T08: “Under the *Income Tax Act*, a tax shelter includes any property or gifting arrangement for which a promoter represents that an investor can claim deductions or credits which equal or exceed the cost of the property less certain benefits within a four year period.”
- *Ten-Year Gift*, CSP-T06: “A ten-year gift is a donation that is made subject to a donor's written trust or direction that the gift be held by a registered charity for 10 years or more. These gifts are excluded from the disbursement quota. However, when 10-year gifts are spent, they must be included in calculating the disbursement quota.”
- *Will*, CSP-W02: “A gift by will is made when an individual makes a bequest under a last will and testament. Under the *Income Tax Act*, an individual that makes a gift by will to a qualified donee is deemed to have made a gift immediately before the individual died.”

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