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May 21, 2020

Via email: tony.manconi@cra-arc.gc.ca; stephane.poitras@cra-arc.gc.ca

Tony Manconi, Director General
Stephane Poitras, Director, Assessment,
Determination and Monitoring Division Charities Directorate
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Dear Messrs. Manconi and Poitras:

Re: Online Filing of Application for Registered Status

I am writing on behalf of the Canadian Bar Association's Charities and Not-for-Profit Law Section (CBA Section) concerning issues our members are experiencing with the Canada Revenue Agency Charities Directorate's recent move to online filing of applications for registered status further to our letter of August 8, 2019 and your response of October 4, 2019.

The CBA is a national association representing over 36,000 jurists, including lawyers, notaries, law teachers and law students across Canada. The CBA's mandate includes seeking improvements in the law and the administration of justice. The CBA Section has members across Canada practising in all areas of charities and not-for-profit law and in every size of practice, from large national firms to small and solo practitioners.

At the outset, we commend the CRA for moving to the CHAMP online portal which allows fast and efficient filing of applications for registered charities and other CRA services such as filing bylaws and voluntary revocation requests. The online application for charitable status, however, involves more than uploading or filing a document with the CRA since it is a detailed form which must be filled in correctly along with supporting uploaded documents.

The CBA Section has raised questions and concerns about the online application in our August 2019 letter. We have also reviewed the CRA's October 2019 response (both are attached for ease of reference). We commend the improvements to the online application form but continue to experience issues that remained unanswered. We would like to comment on the application process and work with the CRA to better improve the online application for charitable status. Options include a CRA webinar for CBA Section members to outline the online application process and address the questions and concerns set out below.

Need for Clarity

We believe our specific concerns arise in the absence of clear instructions on the CRA's website. We appreciate that the CRA's online portal has been a public access gateway to its digital services for several years but the mechanism is new to the charitable sector and the legal profession representing charities. Lawyers are not as accustomed to filing clients' personal tax returns as the accounting profession is. Even with the assistance of accountants to access CHAMP, unanswered questions remain. It would be helpful for CRA to give clear step-by-step instructions to the legal sector representing charities. We wish to provide efficient assistance to our clients through the CHAMP portal system.

Specific Questions and Concerns

Several questions and concerns have been raised by CBA Section members for your consideration.

Commencing Online Applications

1. To apply for charitable status online, an applicant must have a CRA "RR" number as opposed to an "RC" number. As previously raised, a charity typically receives an RR number after registration, to issue charitable donation receipts and to identify the charity to the CRA and the public. Issuing a temporary RR number risks that organizations apply and use this number to issue charitable tax receipts before the Charities Directorate reviews and approves the application. This approach creates an unnecessary risk for abuse of the system and is not prudent.
2. A newly established organization, operating as an unincorporated entity governed by a constitution, would not have an RC number when applying online for charitable status. A person must become the "owner" of the new organization by entering their SIN to obtain a temporary RR number and access the online application. Clear instructions on the CRA webpage in this regard would be useful.
3. An applicant *contemplating* setting up a registered charity would benefit from reviewing the application form to determine whether it can fulfill the CRA requirements and answer all questions before deciding to incorporate an entity. However, online applications are restricted to incorporated or existing unincorporated entities. It would be helpful if CRA made the online application available for public use without restricting access to entities with an RC number. Once the application is completed and ready to be submitted, the CRA could then require an RC number be in place and give a temporary RR number to proceed with the submission.

Disclosure of Solicitor's Personal Information

4. To represent clients in the CHAMP system, a lawyer must obtain a "Rep ID" connected to their personal information or that of the law firm staff. Privacy issues arise as lawyer's personal information could be tied to their clients. We would appreciate the CRA explaining how it is or will address this privacy concern in the system.
5. Access to client's online applications is difficult. For example, one CBA Section member waited over two weeks to gain access to the online application. Clear instructions on the CRA webpage would be helpful.

Obtaining Client Authorization

6. To obtain client authorization, Authorization form AUT-01, *Authorize a Representative for Access by Phone and Mail*, must be signed by a person acceptable to the CRA. CRA generally refers to reported directors in the last filed T3010. However, charities directors change frequently and their corporate filing under incorporating legislation may not be up to date when changes occur. Further, public filing is not required for unincorporated charities in those circumstances.

Clarification on how CRA determines who qualifies to sign the form to grant authorization would help.

7. We suggest allowing authorized representatives to set up the unique IDs the clients require for *My Business Account*. Currently, a representative may set up one of these accounts by effectively impersonating the business owner and entering information on their behalf. We suggest adding a tick box at the beginning of the registration process to allow users to declare that they are a representative rather than the individual.

Charitable Application – directors and like officials

8. When directors change, the applicant is required to “upload the documentary evidence of a change in directors and/or trustees (*i.e.* meeting minutes or documentation from the province) prior to submitting this application for registration. Internal divisions need to upload a list of all directors and/or trustees prior to submitting this application for registration.” This requirement is burdensome, unnecessary and was not required in the T2050. The rationale behind asking for this information is not obvious, particularly when Corporations Canada does not require documentary evidence to file a change of directors. Since the applicant must certify the accuracy of application information, it is not necessary to require supporting meeting minutes to show directors have changed. It is not clear what “documentation from the province” means.
9. After completing directors’ information, the applicant must complete information on “Like officials”, being “anyone else with authority or governing responsibilities in your organization who was not already listed as a board member, director or trustee (such as a chief executive officer, executive director, or spiritual leader).” It is contradictory to require the same information on those persons as for directors, for example, “Date first elected to the board”, whether the persons are “Still active on the board” and “Date of birth of this board member” because “Like officials” are not board members/directors. Provincial common law generally bars remunerated individuals such as an executive director from being on the board of directors.
10. The applicant must include employer information of all directors, trustees and other like officials in the application. The necessity of this information is not clear since the T2050 only required the occupation of the directors. This information could be private or sensitive in some cases and should not be disclosed.

Charitable Application – designation

11. Examples or explanations to questions can be so specific that they can be interpreted to limit the question’s scope in a way that prevents an applicant from giving an accurate answer. For example, the applicant must describe “any non-arm’s length relationships that exist between our organization’s directors, trustees, or like officials and the major contributor, or any person who is not at arm’s length with the major contributor(s)”. One example includes where “the major contributor’s company has an employee that also has close business ties to the organization” (the “Employee Example”).

Depending on the fact scenario, the Employee Example could lead an applicant to give an answer that results in being improperly designated as a private foundation:

- A food bank in a small community could anticipate the local grocery store being a “major contributor” in its first year of operations. A cashier employed at the grocery store may also own and run a catering business. The organization may plan to engage and compensate the catering business to provide prepared foods at a fundraising event of the organization. In this case, the applicant could answer the non-arm’s length question in general terms (without explaining in detail the type of relationship between the major contributor, the cashier and the organization), which could result in the organization

being improperly designated as a private foundation. This issue is more likely to arise where applicants submit an application without the assistance of legal counsel.

The Employee Example and other misleading examples should be removed from the application. The examples that determine charitable designation should be as clear as possible in relation to *Income Tax Act* requirements (e.g., situations where a major contributor would control the organization, etc.).

Charitable Application – income generating activities

12. Information is required about funds or income generated from the “Sale of goods and/or services”, “Use of assets (such as rental property, investment income)”, “Organized events (such as galas, dinners, auctions, concerts)”, and “Sporting tournaments/races.” If the applicant indicates having these sources of revenue, a list of questions is generated to indicate the amount of “Anticipated income generated from *fundraising activities*” which is inappropriate because the income may be generated by charitable programs or related business activities, not fundraising. Though these questions may lead to the calculation of a fundraising ratio, this characterization can distort and contradict other information in the application.

Charitable Application – activities

13. The applicant must check “yes” or “no” to indicate if it is currently carrying on each charitable activity listed in the application. If “no”, the applicant must indicate the “anticipated start date of the activity” in an answer box only allowing a month and year format. Often, applicants commence operations only once they are registered as charities for various reasons, such as limited access to funds before that. As a result, asking an applicant to list the specific date (month and year) each activity will start is often not possible as it may not know when or if it will be registered. Although question 11 b) of the T2050 used to ask applicants to indicate if they were currently carrying out any charitable activities, if an applicant selected “no”, there was a text box where the applicant could describe generally when it planned to start operating. It would be helpful to either (i) replace the month and year format box with a text box for applicants to describe generally when they will start to carry out the activity, or (ii) retain the month and year format box but include an additional text box allowing the applicant to provide an additional explanation.
14. In the application, a detailed activities description for each purpose is required, with a maximum of 3000 characters. It is not possible to provide the detail level normally required by the CRA when assessing applications. To meet the CRA’s detailed requirements, the applicant must upload a separate statement of activities. While this may not be an issue for lawyers assisting their clients, organizations completing the applications themselves may not be aware of this option.
15. When describing a charitable activity, the applicant is prompted for information about where the activity will take place. If “Canada” is selected, the applicant is prompted to enter a general geographical location in a textbox. If “Outside Canada” is selected, the applicant must provide an address. The necessity of this information is not clear for activities abroad. Depending on the fact scenario, an applicant may not possess their activities’ precise address abroad and should be able to give a general geographic location.

Charitable Application – financial information

16. The financial information section is based solely on input entered in previous sections. If the applicant needs to fix something in that section, they need to navigate back to the applicable previous sections to make the changes. Including a note in the earlier sections that amounts entered there would also be included in the section on financial information would be useful.

17. The financial information section indicates that the “proposed operating budget (including income and expenditures) for the next fiscal year based on the numbers entered in previous sections of this application (covering a 12 month period).” The budget figures are automatically populated when the applicant enters figures in the income and activities sections though there is no indication in those earlier sections that the anticipated income and expenses are based on which fiscal period. Clarity in the income and activities sections in this regard would be useful.

Charitable Application – General navigation, printing and section numbering

18. After completing a “section” of the application online, it is cumbersome to later revise the completed section. Specifically, to revise a specific question in a section, the applicant must click “Review” from the “Overview” page, which would then require the applicant to go through and answer/confirm *all* questions in that section, instead of going directly to adjust the response to a specific question in that section. The following example illustrates:

An applicant completes the section “Gifts and other income generating activities”, and then needs to change one question in the “Use of assets (such as rental property, investment income)” subsection. To do this, the applicant must:

- Click the “Review” button on the “Overview” page and click on the “Gifts and other income generating activities” section.
- The applicant will be offered the following list (emphasis added):
 - Gifts from individuals
 - Gifts from corporations and businesses
 - Gifts from qualified donees
 - Canadian or foreign government contracts, contributions, or grants
 - Sale of goods or services
 - *Use of assets (such as rental property, investment income)*
 - Lotteries and/or games of chance (such as bingo, Nevada tickets)
 - Organized events (such as galas, dinners, auctions, concerts)
 - Sporting tournaments/races
 - Direct solicitation (such as telephone, door-to-door, letter campaign)
 - Non-cash gifts (such as used goods, artwork, securities)
 - Other (such as membership fees, selling advertising, crowdfunding)
- The applicant clicks “Change this” beside “Use of assets (such as rental property, investment income)” and makes the desired change.
- The applicant clicks “Next”, which takes the applicant to next subheading (“Lotteries and/or games of chance”) even though no further changes are required. The applicant must click “Next” for each subsequent subheading through to the end of the list.
- Finally, the applicant would be able to click “Done with this section.”

If instead of all these steps, the applicant clicks on the “Return to overview page”, the section on “Gifts and other income generating activities” section would appear as “incomplete”. The only option to get to “Complete” status is by clicking “Next” through all the subsections.

We suggest that the form be changed to allow the applicant to return to the “Overview” page after making changes to any subsection, without having to go through all subsequent subsections.

19. Sharing the draft application with a client is difficult. CHAMP permits different people to log in to make changes at different times. It is not possible, however, for lawyers to allow clients to log into CHAMP and revise a draft application prepared by the law firm because it provides no

mechanism to track changes made by the clients, and the lawyer must document and track different versions of the draft applications for file and professional liability purposes. Lawyers must ensure they properly fulfill clients' instructions and review completed applications with them before submitting the form to the CRA. As such, lawyers track and save different versions of the draft application, noting changes they and their clients made for practice and record purposes. At present, there is no easy way to save a draft version of the application. The lawyer cannot print the entire application with one "print" button. To save and track a copy of a draft, the lawyer must print each completed section by manually printing and scanning each section or by saving a PDF version of each section by section, and then combining the PDFs into one document. We suggest including a print button to print the entire application (not section by section) and including a mechanism to save and track draft/final versions of the application.

20. The application does not have section numbers, making review with clients very difficult. It would be helpful to include some numeration in the application form.
21. The T2050 included a section for the applicant to certify that the information in the application is correct. Here, the online application's default mechanism designates the person making the last change to the application as the person certifying the information's correctness. The application automatically adds the name of the person on whose computer the last change was made, whether the lawyer for the applicant or staff. While lawyers could create their own file certification form, the person certifying the information's accuracy on file should be the applicant, not their legal counsel or their assistant. The online application should provide a certification section by the applicant. This can be achieved by uploading a document that contains the signature of the applicant, or by incorporating a section indicating that the application has been signed by the applicant.
22. The platform has a 120 second time out warning which we find unnecessarily brief. We suggest that the page timeout warning give a five-minute notice instead. As well, users should be able to save the application without completing an entire page or have the application auto-save. The limited ability to save combined with the brief time-out notices increases the likelihood of having to redo a section. For example, a user working through a series of questions on a page who switches to another tab to search for information, cannot save the work in the application and may miss the narrow 120 second timeout warning.
23. The Attachments, certification, and submit section of the application indicates that the application must be "certified and submitted by one director, trustee or like official of the organization who has authority to sign on behalf of the organization" and that "it is a serious offence under the Income Tax Act to provide false or deceptive information. The consequences of providing false or deceptive information may include revocation." However, legal counsel may not fall under any of these categories or be willing to submit the application.
24. The Attachments, certification, and submit section of the application states that if the applicant leaves the page on the online form before submitting the application, all entered attachments and information on the page are not saved. This is often an issue for legal counsel to send correct documents to the client and relying on the latter to upload them into the portal for the client to certify the application and submit the application. After submission of the application, one cannot verify actual upload of correct documents in support of the application by the client as the printable summary document only shows the name of the uploaded document. It would be preferable if legal counsel could upload required supporting documents such as certificate of incorporation and bylaws and store them in the draft pending the submission by the client.

Charitable Application – CRA processing

25. If an applicant makes an inaccurate statement in the application, we query how this might affect the CRA's processing of the application. Will the clock be restarted? We would like to know more about the CRA's process and how the CRA treats an inaccurate application.

Conclusion

In conclusion, we commend the CHAMP system for allowing charities to have fast and efficient access to online filing and other services by the CRA. We look forward to working with the CRA to better improve the online application for charitable status and to better equip the legal profession to assist organizations in their application for charitable status.

We look forward to hearing back from you once you have an opportunity to consider these suggestions.

Yours truly,

(original letter signed by Julie Terrien for Theresa Man)

Theresa Man
Chair, CBA Charities and Not-for-Profit Law Section



THE CANADIAN
BAR ASSOCIATION
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August 8, 2019

Via email: tony.manconi@cra-arc.gc.ca; stephane.poitras@cra-arc.gc.ca

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Dear Mr. Manconi and Mr Poitras:

Re: Online Filing of Application for Registered Status T2050

I am writing on behalf of the Canadian Bar Association's Charities and Not-for-Profit Law Section (CBA Section) concerning issues our members are experiencing with the Canada Revenue Agency Charities Directorate's recent move to online filing of applications for registered status.

The CBA is a national association representing over 36,000 jurists, including lawyers, notaries, law teachers and law students across Canada. The CBA's mandate includes seeking improvements in the law and the administration of justice. The CBA Section has members across Canada practising in all areas of charities and not-for-profit law and in every size of practice, from large national firms to small and solo practitioners.

We would like to begin by commending the Charities Directorate for moving to an online format for both Form T2050, Application to Register a Charity Under the Income Tax Act, and Form T3010, Registered Charity Information Return. Unfortunately, members of the CBA Section have experienced significant difficulties using the online system and the new T2050. We also appreciate the efforts of the Charities Directorate to assist with these difficulties and its decision to continue to permit filing the old T2050 in paper format while issues with the online system and the new T2050 are being resolved.

At present, we believe that the new online filing system is overly complicated and creates significant risks for both charities and the Charities Directorate. The CBA Section recommends that you consider placing a temporary hold on use of the new T2050 and its online filing until a formal testing group can be established to work with the Charities Directorate on use of the new T2050

and the process by which it is filed online. We offer three examples to illustrate why we suggest that the new system be placed on hold until the bugs can be worked out.

1. An applicant must have an RR number from the CRA, rather than an RC number, to apply for charitable status online. However, a charity typically receives an RR number after it is registered. The number is used to issue charitable donation receipts and to identify the charity to the CRA and the public. Issuing a temporary RR number to permit organizations to apply creates a risk that organizations could use that number to issue charitable tax receipts before the Charities Directorate reviews and approves the organizations' applications for charitable registration. This is an unnecessary risk arising from the online application process and could lead to problems for the charitable sector if individuals who would abuse the system learn of a process for getting an RR number before an organization is registered. We suggest this is not a prudent approach, but it appears the only way an application can be filed is if a temporary RR number is issued.
2. Related to the application itself, section H on the new T2050 asks for information about charges for goods and services. Of course, charities may charge for services in several scenarios, for example, for charitable services. They may also charge for goods or services they sell through a related business or as part of their fundraising activities. When Section H is completed, it generates a series of questions that relate to fundraising. These questions are inappropriate for organizations selling goods or services either as a charitable service or a related business. We understand that these questions lead to the calculation of a fundraising ratio. Again, this calculation could distort and contradict other information given to CRA in the context of the application.
3. The new T2050 does not appear to allow representatives to print the application as filled out online to review and confirm with their clients that the information is accurate. As lawyers, we have a professional duty to provide diligent service to our clients. To meet this duty, we should ensure that we are properly fulfilling clients' instructions and would commonly review completed T2050s with them before submitting the form to the CRA. As well, lawyers need to be able to track and save different versions of the draft application noting changes made by the lawyers and their clients for practice and record purposes.

Before an online system is introduced to the public, appropriate testing of the online T2050 and other forms must take place. Members of the CBA Section Executive would gladly participate in a pilot process to test the new T2050 online and provide input to CRA to resolve any inconsistencies or difficulties before CRA requires the new T2050 and online system to be used.

We look forward to hearing back from you once you have had an opportunity to consider this suggestion.

Yours truly,

(original letter signed by Nadia Sayed for Susan Manwaring)

Susan Manwaring
Chair, CBA Charities and Not-for-Profit Law Section



Canada Revenue
Agency

Agence du revenu
du Canada

Ms. Susan Manwaring
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The Canadian Bar Association
66 Slater Street
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October 4, 2019

Subject: Online Application to be a Registered Charity Under the Income Tax Act

Dear Ms. Manwaring,

Thank you for your letter on behalf of the Canadian Bar Association's National Charities and Not-for-Profit Law Section, in which you provided us with valuable feedback regarding the Canada Revenue Agency's (CRA) digital services and the online application for charitable registration.

As you may know, the CRA has been using secure portals as a gateway to accessing its digital services for several years. These portals ensure that taxpayer information remains protected while also offering an increasing number of services to clients. For that reason, the new digital services that are now available to charities make use of the CRA "My Business Account" (My BA) and "Represent a Client" portals.

We are very pleased to have recently launched our new digital services for charities, and to allow charities the ability to file returns online. Organizations across the country can now use the CRA's digital services to apply for charitable registration, update their account, and to file their Registered Charity Information Return (T3010).

We acknowledge that, as set out in your letter, your client experience has been less than optimal. We are reviewing our web pages and other communications products to ensure that our clients have the tools and the information they need to facilitate the use of these services successfully. We remain committed to working with the CBA and other intermediaries across Canada, both to clarify the processes for our digital services and to improve them in a timely manner.

I would like to thank you for your letter. The CRA is committed to continuous improvement of its services to Canadians. In this spirit, I have passed along your comments to the teams responsible for the design and maintenance of the CRA's digital services for charities.

Yours sincerely,



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