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Via email: Sophie.Amberg@cra-arc.gc.ca

Cathy Hawara
Director General
Canada Revenue Agency
Charities Directorate
Client Services Division
320 Queen Street, Tower A
Place de Ville 1st Floor, Suite 100
Ottawa, ON K1A 0L5

Dear Ms. Hawara:

I am writing on behalf of the Canadian Bar Association Charities and Not-for-Profit Law Section (CBA Section). CBA Section members have regular interactions with the Client Services Division of the Canada Revenue Agency Charities Directorate (the Directorate) and appreciate the assistance we have received over the years. However, we have recently encountered some problems and write to share our concerns in the hopes they can be easily remedied.

The CBA is a national association representing over 36,000 lawyers, notaries, law teachers and law students across Canada. Our primary objectives include improvements in the law and the administration of justice. The CBA is dedicated to the evolution of a fair and efficient system reflecting the principles of natural justice and Canadian interests. The CBA Section has members from 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.

CBA Section members provide services that range from initial advice on how to apply for charitable registration, to assisting with audits and other CRA inquiries, through to guidance and representation when charities and non-profit organizations need to formally amend or change charitable purposes. In recent years, we have found that the service standards on the CRA website are not always met, leading to exceptional delays for some clients. We provide some examples and summarize our concerns below:

1. When a charity needs to change its charitable purposes before making legal amendments to its incorporating documents, lawyers routinely advise the charity to alert the Directorate to this pending change. We frequently send letters indicating that we will not make the formal legal change until the Directorate approves the potential amendment. Our experience is that these

cases can take longer than an initial charitable registration, and the applicable process at the Directorate is unclear. In one case, a change to a religious organization's charitable purposes to add a micro-finance purpose to an already-established missionary program has taken over two years. The file has been passed from analyst to analyst and is now at the supervisor level, but no resolution appears to be in sight.

2. When a charitable application is sent to the Directorate, it is often initially reviewed by an officer. Sometimes the officer lacks authority to make a decision of the application, and it is directed to a supervisor. At that stage, the lawyer is sometimes unable to discern who the supervisor handling the matter is, and sometimes months pass without apparent progress on the file.
3. Our members are unclear on the supervisory structure of the Directorate, and it is difficult to advise our clients without that clarity. After a call to the Directorate, we are sometimes only able to report that a client's matter is being considered. The Directorate website does not provide an up-to-date telephone and email directory with names and titles of staff. It would reflect well on both the Directorate and on legal advisors to be better equipped to respond in a timely way to inquiries from clients.
4. For charities that amalgamate or change their corporate form (a trust to a corporation, or an unincorporated association to a corporation, for example), the procedure at the Directorate is again unclear, and there are often delays of many months. In the meantime, the charity needs to continue issuing tax receipts but the lawyer cannot give clear guidance on any change that might be made to the business number of the corporation or the trust. Given stringent requirements for a proper name and charitable number on tax receipts, this can cause serious problems.
5. The standard form of administrative fairness letter (AFL) sent in response to an incomplete or problematic application to register is another area of concern. While we understand the Directorate's duty to fully explain their response to an applicant, the current form of these letters can be difficult to comprehend, even for experienced practitioners. Each separate issue is accompanied by a lengthy exposition of the law and the Directorate's policy or administrative position. We suggest being as concise as possible, and clearly addressing each distinct problem, such as a form of AFL that simply sets out any deficiencies. Explanatory material on each issue could be provided as a link to appropriate guidance on the Directorate's website. Alternatively, the applicant or representative might be given the option for an AFL to be in a simplified format.
6. Many AFLs seem to automatically conclude with the following paragraph:

In light of the above, it is unlikely that the applicant can become a registered charity. At this time, it has not shown that it is established exclusively for charitable purposes and that it is carrying on charitable activities.

In our experience, this statement is frequently inaccurate. A simple explanation of an unclear statement, additional information where the application is incomplete or a change to the proposed purposes to satisfy the requirement that they be exclusively charitable is often possible. Sometimes, any problems can be rectified by a simple

telephone conversation with the examiner. In our view, this statement is unhelpful and unnecessary, and often causes great concern for clients.

We suggest that transparent, simple and well understood processes for charities that want to comply with the law should be the desired goal. The CBA Section welcomes an opportunity to work with the Directorate to resolve these issues and learn more about its processes and procedures so that we may better advise, represent and inform our clients. We would be pleased to meet to discuss these issues further, or to answer any questions that you may have about our concerns.

Thank you for your attention to the views of the CBA Section.

Yours truly,

(original letter signed by Gaylene Schellenberg for C. Yvonne Chenier)

C. Yvonne Chenier Q.C.
Chair, CBA Charities and Not-for-Profit Law Section