



February 7, 2012

Mr. Neil Cochrane
Manager
Common Law Policy and Public Education Section
Charities Directorate
Canada Revenue Agency

Dear Mr. Cochrane,

RE : CCA Brief on CRA Proposed *Guidance on Arts organisations and charitable registration under the Income Tax Act*

Introduction

The Canadian Conference of the Arts (CCA) is pleased to submit its brief for Revenue Canada's consultation on the proposed *Guidance on arts organisations and charitable registration under the Income Tax Act*. We first want to thank the CRA for its flexibility on the deadline for the consultation and for accommodating the fact that the original deadline and the lack of awareness of the process amongst the arts and heritage communities made it almost impossible for proper submissions to be presented on time.

The CCA is Canada's oldest and most broadly based cultural umbrella organisation. The CCA is *the* national forum for the entire Canadian arts, culture and heritage communities, from all disciplines and regions. The CCA's mission is to provide research, analysis and consultations on all federal public policies or regulation affecting the arts and Canadian cultural institutions and industries. One of its key roles is to support the creation of broad-based consensus on issues of common interest to the cultural sector.

According to the figures we have found, there are over six thousand six hundred arts and heritage organisations with charitable status under the terms of the *Income Tax Act*. While the CCA itself is recognized as a charity under the provisions pertaining to national art service organisations (NASO) and we realize that these new guidelines will not apply to our organisation directly, the proposed Guidelines will have consequences for our members, which include many charitable organisations, and for the arts and heritage sector as a whole.

General Comments

This new guidance will be very helpful for new organisations in applying for charitable status as it provides a great deal of clarification of the process and conditions for new applicants, as well as of the obligations of arts organisations already recognized as charities. Overall, the document is well written and offers a clear explanation of the complex laws and regulations involved. We also welcome the flexibility shown for the circumstances of individual organisations as stated in the guidance.

We understand that the codification into one document does not alter the law and existing regulation or change jurisprudence. We recognize that there is a long history of case law and legal precedence being followed in this document and that in order to present the information coherently, a certain amount of interpretation of those laws must be done. It is our hope that these guidelines will continue to be applied and interpreted in a manner that reflects the evolving nature of art forms and organisations, so as to foster growth in the arts sector and emerging artistic practices and styles. We also understand that this guidance is meant to assist new organizations in applying for charitable status and not intended to target existing registered charities or strip them of their status. We expect the guidance will have a minimal impact on the latter since they have already been found to meet the legal requirements of charitable registration.

As stated in the guidelines, most arts and heritage organisations are eligible for charitable status under two of the four criteria established in the *Act*, namely education and public interest. While the application of the education criterion is relatively straightforward, the majority of arts organisations fall under the public interest one and as such, they face a complex set of requirements. Accordingly, there is some considerable apprehension from organisations and public funders regarding some of the language used, such as “artistic merit”.

The interpretation of the criterion of **artistic merit** is particularly tricky and courts have been leery of setting themselves up as judges of what artistic merit is. As art forms evolve under the impulse of new technologies, the application of this criterion may prove even more difficult. In order to facilitate the process of evaluation of the artistic merit criterion and of meeting the accepted canon of taste requirements, the CCA would like to propose the addition of an intermediary process for applications before having to go to the Federal Court of Appeal in the case of a rejection.

Our recommendations aim at alleviating some of the concerns of arts organisations over the artistic merit requirements and the burden of proof which may be more challenging for emerging artists and styles to meet. We submit that allowing for additional evidence to be provided establishing artistic merit would be greatly beneficial to both parties as this would save arts organisations from having to appeal a CRA decision to the Federal Court, a lengthy and costly process which few organisations can afford, let alone fledgling ones.

The CCA would be happy to work with the CRA on developing this proposed process. We submit that were you to accept our suggestion, it could allow more arts organisations to enhance arts forms and styles, strive for improvement and promote excellence in the arts.

Specific Comments

Article 50: With regards to form and style, we suggest expanding the list of examples of acceptable evidence. We recognize that the list is not exhaustive and that these are presented only as examples; however a more comprehensive list would help to provide guidance for new organisations applying for status. We recommend as possible types of evidence that could be submitted by an applicant:

- the addition of Canadian Heritage agencies (including FACTOR/MusicAction) rather than only the department itself;
- the addition of recognition by NASOs;
- the addition of municipal level arts bodies in the list with provincial and federal bodies, as municipal bodies have the benefit of being closer to smaller regional communities and may recognize new emerging styles and styles that are specific to their communities.

Article 55:

In order to ensure that undue evidence not be required of organisations that are exhibiting and presenting these works, the CCA supports the request made by CAPACOA regarding clarification of how works would be “shown to meet the artistic merit criterion in their own right.”

Appendix B, Article 39:

The CCA also supports CAPACOA’s request to amend the following example by replacing “and” with “and/or”, so as to differentiate between self-presenting and presenting organisations. That section of the guidelines would then read as follows:

*“Examples of activities that could further the advancement of the public’s appreciation of the arts include producing **and/or** presenting high-quality public dance performances...”*

Appendix C:

As in the case of Article 50, we recognize that this is not an exhaustive list and that organisations can still provide evidence if their form and style are not included in Appendix C. However, in order to reduce the reporting burden for organisations applying for charitable status, we would like to stress the importance of having a list that is as comprehensive as possible.

There are currently a number of forms of professional and community related activities missing from this list that are widely accepted within the Canadian arts community such as crafts, world music, digital art, performance art, and a diversity of performing arts.

We propose that the list should be amended to include these missing styles and that any styles that have been accepted for charitable status in the past should be included on the list. For example, there are numerous craft organisations that already have charitable status, such as the Craft Council of British Columbia and the Alberta Craft Council, yet crafts has not been included in the list. Including styles that have already been proven and updating the list regularly will greatly reduce the burden on new organisations that are applying for status.

Conclusion

We appreciate the efforts of the CRA and how beneficial specific guidelines will be for arts organisations in applying for charitable status in the future and we hope that our comments will help you in finalizing this document.

We would like to thank the CRA for considering our comments, and we are available to discuss any of these points further.

A handwritten signature in black ink, appearing to read 'Alain Pineau', with a stylized, cursive script.

Alain Pineau
National Director