



CRA letter on Ineligible Individual and Impact on Charity Application

By Mark Blumberg (April 24, 2018)

We have written about the topic of ineligible individuals before including [2011 Budget and new “ineligible individual” category: How this can affect your Canadian registered, CRA releases ineligible individual guidance](#) and [CRA revokes Jesus of Bethlehem Worship Centre as a charity - cites ineligible individuals.](#)

We requested from CRA under the Access to Information and Privacy system copies of standard letters and scripts that the CRA uses in the Charities Directorate. One of the documents provided was a letter issued by CRA informing an organization that its application for charitable status does not meet the requirements for registration because CRA has identified a potential ineligible individual is involved in the organization. The letter explains what constitutes an ineligible individual and how this impacts the application for charitable registration.

Interestingly, once CRA has identified an ineligible individual, they will not assess whether the applicant is otherwise eligible for charitable registration until the issue of the ineligible individual has been resolved.

Once CRA has identified an ineligible individual, the applicant has three options: 1) it can demonstrate that the individual is not an ineligible individual; 2) it can attempt to provide satisfactory reasons why registration should be granted despite the involvement of the ineligible individual; or 3) it can remove the ineligible individual from the applicant's Board of Directors and demonstrate that the individual does not exercise control over or manage the applicant.

The full CRA document is reproduced on the next page.

Mark Blumberg is a lawyer at Blumberg Segal LLP in Toronto, Ontario. He can be contacted at mark@blumbergs.ca or at 416-361-1982. To find out more about legal services that Blumbergs provides to Canadian charities and non-profits please visit www.canadiancharitylaw.ca, www.globalphilanthropy.ca, www.smartgiving.ca, or www.charitydata.ca

This article is for information purposes only. It is not intended to be legal advice. You should not act or abstain from acting based upon such information without first consulting a legal professional.

[Recipient's address]

[Their file number]

[Our file number]

[Click here and type date]

Subject: [Bold - Name of organization]
Application to Register a Charity Under the *Income Tax Act*

Dear [Click here and type salutation]:

This letter is in response to the Form T2050, *Application to Register a Charity Under the Income Tax Act* submitted on behalf of insert name of applicant (the Applicant). We have now completed our review of the application and must advise that, based on the information provided, the Applicant has not demonstrated that it meets the requirements for charitable registration under the *Income Tax Act*. Our reasoning is set out in this letter.

1. General principles

Organizations can become registered charities with the Canada Revenue Agency (CRA) if they meet the requirements of the Act and common law. Our determination concerning eligibility for registration is based on an applicant's purposes, as contained in its governing documents, its activities, and whether the applicant meets **all** of the current legislative and administrative requirements for registration as a charity.

A preliminary review of the application has shown that the Applicant would not meet all the requirements for charitable registration under the Act. Specifically, we have identified a potential **ineligible individual** who has either:

- made the application for registration on the Applicant's behalf;
- is a director, trustee, officer or like official of the Applicant; or
- controls or manages the Applicant directly or indirectly.

As a result, we will **not** assess whether the Applicant meets all other legislative and administrative requirements for registration, including whether its purposes and activities

would qualify for charitable registration, until this issue has been resolved. Our concerns are discussed in detail below.

2. Legislative framework

Subsection 149.1 (25) of the Act states that the Minister may refuse to register a charity or Canadian amateur athletic association that has applied for registration as a registered charity or registered Canadian amateur athletic association if:

- (a) the application for registration is made on its behalf by an ineligible individual; or
- (b) an ineligible individual is a director, trustee, officer or like official of the charity or association, or controls or manages the charity or association, directly or indirectly, in any manner whatever.

3. Ineligible individual

Subsection 149.1 (1) of the Act defines an “ineligible individual,” in part, as an individual who, at any time, has been:

- (a) convicted of a relevant criminal offence unless it is a conviction for which
 - (i) a pardon has been granted and the pardon has not been revoked or ceased to have effect, or
 - (ii) a record suspension has been ordered under the *Criminal Records Act* and the record suspension has not been revoked or ceased to have effect.

The Act also defines the terms within the definition of “ineligible individual,” notably:

“Relevant criminal offence” means a criminal offence under the laws of Canada, and an offence that would be a criminal offence if it were committed in Canada, that:

- a. relates to financial dishonesty, including tax evasion, theft and fraud, or
- b. in respect of a charity or Canadian amateur athletic association, is relevant to the operation of the charity or association.

In this regard, we have identified **insert name of ineligible individual, director/authorized representative of the Applicant**, as an ineligible individual pursuant to paragraph 149.1(1) of the definition of that term in the Act. Based on the date of birth and the residential address provided in the Form T2050, **insert name of ineligible individual** is the same individual that was convicted under the *Criminal Code of Canada* of offences related to **name relevant criminal offence** (i.e. fraud, assault) for which, based on the information available to us, no pardons have been granted, nor any record suspensions been ordered.¹

¹ Insert detailed explanation of conviction. For example, **May 16, 2008** 3 counts – Fraud under \$5000, False pretenses, and impersonation with intent (90 days, and 3 years of probation).

For this reason, we consider **insert ineligible individual here** to be an ineligible individual pursuant to the definition found at subsection 149.1 (1) of the Act.

4. Exercising discretion

[Option 1] To be used in cases where the individual is ineligible due to financial dishonesty

The provisions of the Act relating to ineligible individuals grant CRA a discretionary power. In exercising this statutory discretion, we consider whether there is probable risk to charitable assets and/or beneficiaries and/or to the public trust in the integrity of the registration system for charities. In the case of a conviction of a relevant criminal offence that does not relate to financial dishonesty, the CRA must demonstrate that the offence is relevant to the operation of the charity. There is however, no such onus when the offence relates to financial dishonesty.²

In this regard, because **insert ineligible individual here** convictions of fraud are specifically included within the definition of “relevant criminal offence,” they *prima facie* meet the definitional requirement.

[Option 2] To be used in cases where the individual is ineligible due to a criminal offence that is not related to financial dishonesty

The provisions of the Act relating to ineligible individuals grant CRA a discretionary power. In exercising this statutory discretion, we consider whether there is probable risk to charitable assets, beneficiaries and/or to the public trust in the integrity of the registration system for charities.³

While the offence[s] of **insert criminal offence here** are not related to financial dishonesty, it is our view that due to the nature of the criminal offence, and the population with which the Applicant intends to work (i.e. **insert beneficiary population**), the crime is relevant to the operation of the organization. Specifically, **insert ineligible individual** was found guilty of **insert criminal offence**. As such, it is reasonable to conclude that registering the Applicant, would pose a risk overall, but in particular to the Applicant’s beneficiaries, who **insert logic here**.

5. Conclusion

We advise that based on our analysis of the application, it is our intention to exercise CRA’s discretion to refuse the registration pursuant to subsection 149.1 (25) (a) or (b).

If the Applicant chooses to respond to this letter, it must do one of the following:

² For more information, please see our Guidance CG-014, *Ineligible Individuals*, on our website at cra.gc.ca/chrts-gvng/chrts/plcy/cgd/cg-024-eng.html.

³ For more information, please see our Guidance CG-014, *Ineligible Individuals*, on our website at cra.gc.ca/chrts-gvng/chrts/plcy/cgd/cg-024-eng.html.

- demonstrate that the individual is not an ineligible individual;
- provide satisfactory reasons as to why registration should be granted notwithstanding that an ineligible individual made the application for registration on its behalf, and/or is a director, trustee, officer, or like official, or controls or manages the Applicant; or
- remove the ineligible individual from the Applicant's Board of Directors and demonstrate that the individual does not exercise control over, or manage the operations of, the Applicant.

If the Applicant does not respond within **30 days** of the date of this letter, we will consider the application to be abandoned and the file will be closed. Alternatively, the Applicant may choose to withdraw this application. The option of re-applying at a later date is available.

We trust the above information explains our position regarding your application.

Yours sincerely,

[Click here and type signature]
[Senior - if applicable] Charities Analyst
Charities Directorate
Canada Revenue Agency
Ottawa ON K1A 0L5
613-[Click here and type phone number]

Attachments [Withdrawal form]

000052