Canada Revenue Agency
Agence du revenu du Canada

JUL 1 2 2013

REGISTERED MAIL

Brunswick House
1000 – 44 Chipman Hill
P.O. Box 7289, Station A
Saint John NB E2L 4S6

BN: 894113976RR0001

Attention: J. Paul Harquail

File #:0969964

Subject: **Notice of Annulment of Registration of**
Credit Counselling Services of Atlantic Canada Inc.

Dear Mr. Harquail:

I am writing further to our letter dated July 6, 2012 (copy enclosed), in which you were invited to submit representations as to why the registration of Credit Counselling Services of Atlantic Canada Inc. (the Organization) should not be annulled in accordance with subsection 149.1(23) of the *Income Tax Act*.

The audit conducted by the Canada Revenue Agency (CRA) raised concerns about the purposes and activities of the Organization, which, in our view, are not exclusively charitable, thus failing to satisfy the registration requirements under the *Income Tax Act*. After a thorough review of the Organization's most recent submission as well as all available information and correspondence, it remains our opinion that the Organization was registered in error and, as a result, its registration under the Act should be annulled. Our position is fully described in Appendix "A" attached.

Consequently, for each of the reasons mentioned in our letter dated July 6, 2012, and in accordance with subsection 149.1(23) of the Act, the registration of the Credit Counselling Services of Atlantic Canada Inc. is annulled effective the date of this letter.

The balance of this letter describes the consequences of annulment.

Consequences of Annulment

As of the date of this letter:

a) the Organization **will no longer be permitted to issue official donation receipts.** This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions for corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively. Subsection 149.1(24) of the Act allows receipts issued by the Organization before the annulment, to be valid;

b) the Organization will no longer be exempt from Part I Tax under the Act as a registered charity, but may otherwise qualify for such exemption. The Organization should consult with its local tax services office in this regard;

c) the Organization will not be required to pay tax on its assets as described in subsection 188(1.1) of the Act as its registration has been annulled and not revoked. For your reference, a copy of the relevant provisions of the Act that apply to the annulment of a registered charity as well as objections to an annulment, can be found in Appendix "B", attached;

d) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act*. As a result, the Organization may be subject to obligations and entitlements under the *Excise Tax Act* that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

Objection procedure

Should you wish to object to this Notice of Annulment in accordance with subsection 168(4) of the Act, a written Notice of Objection, which includes the reasons for objection and all relevant facts, must be filed **within 90 days** from the day this letter was mailed. The Notice of Objection should be sent to:

Tax and Charities Appeals Directorate
Appeals Branch
Canada Revenue Agency
250 Albert Street
Ottawa ON K1A 0L5

Finally, I wish to advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year)

file a *Return of Income* with the Minister in the prescribed form, containing prescribed information, for each taxation year. The *Return of Income* must be filed without notice or demand.

I trust the foregoing fully explains our position.

Yours sincerely,

Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letter dated July 6, 2012
- Appendix A, Identified areas of non-compliance
- Appendix B, Relevant provisions of the Act

c.c.: Mr. John Eisner
President
[redacted]

CANADA REVENUE AGENCY
AGENCE DU REVENU DU CANADA

REGISTERED MAIL

J. Paul Harquail
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P.O. Box 7289, Station A
Saint John NB E2L 4S6

BN: 894113976RR0001

File #:0969964

July 6, 2012

Subject: **Audit of Credit Counselling Services of Atlantic Canada, Inc.**

Dear Mr. Harquail:

We acknowledge receipt of your letter dated May 31, 2011, in response to our letter of May 2, 2011, (copy attached) in which you were informed that in our opinion, Credit Counselling Services of Atlantic Canada, Inc. (the Organization) was registered in error and its registration under the Act should be annulled. We have now examined the information submitted and must advise that the concerns previously expressed have not been alleviated. Our reasons for this decision follow.

The Organization's Purposes

In our letter, we explained that in order for an organization to be recognized as a federally registered charity, it must be constituted and operated for exclusively charitable purposes and devote its resources to charitable activities in furtherance thereof. As the term "charitable" is not defined in the Act, whether or not an organization qualifies as such is determined by reference to the common law; that is, court decisions.

The courts have recognized four general categories of charitable purposes: (1) the *relief of poverty*; (2) the *advancement of religion*; (3) the *advancement of education*; and (4) *other purposes beneficial to the community as a whole* (or a sufficient section

thereof) in a way that the law regards as charitable. The four categories, commonly known as the four heads of charity, were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531 (P.C.) (*Pemsel*). An organization's purposes *must* fall within one or more of these categories for it to be considered for registration as a charity

In our letter, we pointed out that the Organization's first and primary purpose (the prevention of poverty) was not analogous to any purpose that has been found charitable at law. We explained that while the *relief* of poverty is recognized as one of the categories of charity, the *prevention* of poverty is not. We explained further that because the Organization's primary purpose is not charitable, it meant that the Organization's purposes were not exclusively charitable.

In its response, the Organization takes the position that:

1 - the CRA has erred in its understanding of what constitutes a charitable purpose at common law; and,

2 - the CRA has taken an unreasonably restrictive approach in determining what constitutes a valid charitable purpose.

The Organization argues that prevention of poverty is a valid charitable purpose, pointing out the following in support of its position:

- that Canadian courts have taken an expansive approach in construing the meaning of the words "poor" and "poverty" in the context of charity law (several references to specific cases are provided);
- that the Organization assists individuals who are already deeply indebted/insolvent to reorganize their financial affairs in order to avoid bankruptcy and financial ruin;
- that in many cases, the individuals being assisted would become destitute without the Organization's contribution; and,
- that "the CRA's position that it is only charitable to assist these individuals after they become financially ruined defies both logic and public policy...".

The Organization summarizes its position by stating that "its expressed purpose of preventing poverty is a valid charitable purpose at common law given the obvious analogy between it and the traditional "relief of poverty" category...".

We respectfully disagree with the Organization's assertion that the CRA has erred in its understanding of what constitutes a charitable purpose at common law, and that the CRA has taken an unreasonably restrictive approach in determining what constitutes a charitable purpose.

We would first emphasize that it is our view that preventing poverty is *not* analogous to relieving poverty, as the prevention of poverty has not been recognized as a charitable purpose at common law.

Further, while the *courts* may expand the law by reasonable extension or analogy to purposes judicially established to be charitable, the CRA applies the law *as determined by the courts.* As stated by the Supreme Court of Canada in *Vancouver Society*[1], it is "judges" that "can and should adapt the common law to reflect the changing social, moral and economic fabric of the country..." In *A.Y.S.A. Amateur Youth Soccer Association v. CRA et al* at paragraph 44:

> "*Finally, it is necessary to consider whether what is proposed is an incremental change.* A.Y.S.A. argues that as some sporting organizations are already charities, it would be incremental to broaden charitable status to youth amateur fitness sports. The government submits that 21 percent of all non-profit organizations in the country are sports and recreation organizations, and that the potential recognition of these organizations as charities could have a significant impact on the income tax system. I agree with the government that *this would seem to be closer to wholesale reform than incremental change, and is best left to Parliament.* While it may be desirable as a matter of policy to give sports associations the tax advantages of charitable status, *it is a task better suited to Parliament than the courts.* In this regard, I note that in the United Kingdom, the charitable status of "the advancement of amateur sport" was brought about through statute (Charities Act 2006 (U.K.), 2006, c. 50, s. 2(2)(g)). As stated by the majority in Vancouver Society, *substantial change in the definition of charity must come from the legislature rather than the courts.*"

The Organization is suggesting that the CRA accept the notion that prevention of poverty is analogous to the charitable purpose of relief of poverty. In our view, this would equate to a more-than-incidental change in the definition of charity and, as mentioned above, the CRA applies the law *as determined by the courts.* In this regard, we have not found any caselaw that supports the position of the Organization that the prevention of poverty is a judicially recognized charitable purpose.

Credit Counselling Beneficiaries

We would first point out that nowhere in our letter did we state that it is only charitable to "assist individuals after they become financially ruined", as stated in the Organization's response. As we explained in our letter, in order to meet the legal requirements of the *relief* of poverty category, an organization must demonstrate that; (1) the intended target group of beneficiaries is individuals who are "poor" and; (2) it provides for essential needs/amenities, for those persons who do not have the means to

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[1] *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10 at paragraph 150, quoting *R. v. Salituro*, [1991] 3 S.C.R. 654 (S.C.C.) at p. 670

procure even the basic necessities of life for themselves. The use of the term "poor" in this context does not limit an organization's potential beneficiaries only to those who are completely destitute - it is used as a broad guideline. There must, however, be evidence of some form of criteria in place that is used to identify a target group of eligible beneficiaries and demonstrates that those beneficiaries are in need of relief.

We agree that in some cases, the provision of credit counselling may contribute to the charitable purpose of *relieving* poverty. However, the Organization has not shown that it uses any specific method or criteria to select eligible beneficiaries - it appears that anyone can avail themselves of the Organization's services, regardless of their financial status.

Further, the Organization argues that the analogy between prevention of poverty and relief of poverty is obvious, however it does not limit its programs to individuals who are living in poverty. Poverty cannot be assumed simply because someone is having money-management issues. Nor have the courts accepted the risk of poverty as equivalent to actually being poor.[2] In our view, the provision of credit counselling and assistance in creating DMPs goes well beyond what would be considered necessities of life.

Fairshare/DMP

In our letter, we stated that in our view, the Organization's main purpose at the time of registration, and currently, was the prevention of poverty. We stated further that in our view, the main activity undertaken by the Organization in furtherance of this purpose was the facilitation and administration of the DMP/Fairshare program.

In its response, the Organization relies upon the Supreme Court of Canada's 1999 decision in *Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue* when it argues "that charities may validly carry on activities which, although not seemingly charitable in and of themselves, are the means of fulfillment of a valid charitable purpose: the means to an end. Assuming the prevention of poverty to be a valid charitable purpose....".

The Organization goes on to state that the Fairshare/DMP program "is a wholly ancillary activity to the pursuit of the Organization's charitable purpose of prevention of poverty", and "that assisting customers in repaying their debts is a collateral activity that is perfectly consistent with the Organization's purpose of preventing poverty".

While we concur that some non-charitable activities may be acceptable if they are ancillary and incidental to the pursuit of an organization's exclusively charitable purpose(s), as outlined above, the prevention of poverty is not a valid charitable purpose. Iacobucci J, in *Vancouver Society*, stated that "a charitable activity is one that

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[2] *Re Gillespie* [1965] VR. 402 (S. Ct. of Victoria)

directly furthers a charitable purpose". As such, activities undertaken in furtherance of the prevention of poverty are not charitable. Additionally, assisting consumers in repaying their debts is an activity that also supports the Organization's purpose for the "prevention of poverty" which, as outlined above, is not charitable.

Finally, Iacobucci J, for the majority at paras. 154, 187 and 195 (*Vancouver Society*), states further that "A charity may engage in limited non-charitable activities provided they are conducted within legal parameters, which include, but are not limited to, the requirements that they remain supportive of charitable activities and *ancillary and incidental to charitable purposes,* and do not deliver a non-incidental private benefit".

As such, the argument that the Fairshare/DMP program is an ancillary activity meant to further the charitable purpose of prevention of poverty fails, because the prevention of poverty has not been recognized by the courts as a valid charitable purpose. In addition, we would comment that we have difficulty seeing how "assisting customers in repaying their debts..." fulfills a charitable endeavour or otherwise relieves poverty.

In response to our assertion that the Fairshare/DMP program is its primary activity, the Organization takes the position that:

"the CRA takes a fundamentally misleading view of the relevant facts".

The Organization argues that although the Fairshare/DMP program is the largest source of the Organization's revenue, it only indicates that the Organization derives the majority of its revenue from those activities to fund its overall goals.

In support of this argument, the Organization states that it "maintains and operates the trust fund as one of the means by which it secures voluntary participation by creditors in the debt relief deals it negotiates on behalf of its clients; it is the mechanism through which the creditors recover funds owing to them. Clearly, the maintenance of the trust fund is a wholly ancillary activity to the pursuit of the Organization's charitable purpose of preventing poverty."

After reviewing its response, as well as the available financial information, we remain of the opinion that the Fairshare/DMP program is a major focus of the Organization. In our view, the Organization's response downplays the significance of the Fairshare/DMP program to its daily operations. As the Organization's annual revenue is derived almost entirely from Fairshare/DMP fees (in addition to monthly "client fees" for administering DMPs), this program clearly has more significance than indicated by the Organization's response.

Where an activity is, or becomes, a substantial focus of an organization, it may no longer further a stated purpose. Rather, the activity may further a separate or collateral unstated purpose – or may form a separate or collateral purpose in and of

itself. In our observation there is sufficient emphasis placed upon, and resources derived from, the Fairshare/DMP program to indicate it to be a purpose for which the Foundation has an unstated, collateral purpose; namely, the Organization acts in the capacity of a "collection agent" for the creditors in return for what are, essentially, commissions. From this perspective, it is logical to assume, as well, that considerable incentive exists to attempt to maximize the Organization's annual revenue by placing emphasis on this activity.

Additionally, it is our view that the activities being undertaken to achieve the above-mentioned unstated, collateral purpose permit the delivery of a more than incidental private benefit to non-charitable recipients. Private benefit can occur where activities to be undertaken to further an organization's purpose(s) permit, *or even require*, the delivery of a benefit to a non-charitable recipient. In our view, the Fairshare/DMP program *requires* the delivery of a more than incidental benefit to non-charitable recipients; namely, the creditors that the Organization arranges DMPs with on behalf of its clients.

Finally, in our view the following statement, taken from the Organization's original application for charitable registration, and mentioned in our previous letter, clearly supports our view that there exists a more than incidental private benefit to non-charitable recipients:

> "The Corporation will maintain a trust account for client monies deposited with it *for the benefit of the client's creditor's*".

Turning to another matter, based on our understanding of the facts related to the Fairshare/DMP program, it is our view that this activity is a business. In general terms, a business involves commercial activity - deriving revenues from providing goods or services - undertaken with the intention to earn profit.

In the circumstances of your case, for the business to be acceptable, it would have to be a "related business", i.e. linked to the charity's purpose and subordinate to a dominant charitable purpose.

It is our position that the Fairshare/DMP program does not meet the criteria to be considered an acceptable "related business".

For more on the subject of related business, refer to the attached Policy Statement CPS-019, *What is a Related Business?*.

Education

We note that the Organization has frequently referred to the "educational" element of its programs, as evidenced by the following quotes taken from the Organization's most recent letter:

"the Organization assists, educates and counsels individuals who are already deeply indebted..."

"while the Organization offers educational programs to prevent the public from encountering financial difficulties..."

"...and 100% of this subset of the Organization's clients go into a long-term program of education and counselling regarding credit issues".

We would advise that to advance education in the charitable sense, the courts have required that it involve training of the mind, advancement of the knowledge or abilities of the recipient, improvement of a useful branch of human knowledge through research, or the raising of the artistic taste of the community. It must be evident, both by the wording of an organization's purposes *and* by the activities undertaken in furtherance thereof, that an organization is involved in a targeted, structured attempt to educate others, whether through formal or informal instruction, training, plans of self-study, or otherwise[3]. It is not sufficient to simply inform people about a subject.

In *News to You Canada vs. The Queen (F.C.A.)* at para. 17, J.A. Mainville stated, "Applying these principles to the purposes of the appellant, I cannot conclude that they meet the expanded notion of the advancement of education as set out in *Vancouver Society*. Though I agree that the production and dissemination of in-depth news and public affairs programs may improve the sum of communicable knowledge about current affairs, such activities are not sufficiently structured for educational purposes. *The appellant's audience is merely being offered news and public affairs content. This may provide an opportunity for that audience to improve its knowledge of current affairs, but this offering is, at best, nothing more than the provision of an opportunity for individuals to educate themselves through the availability of materials with which this might be accomplished, but need not be.* In *Vancouver Society* such an opportunity was found not to meet the requisite threshold for acceptance as a charitable purpose related to the advancement of education" (emphasis added).

While we acknowledge that the Organization does offer educational presentations, a significant amount of its literature is simply made available to individuals, either online, or through monthly mailings, or by having flyers and bulletins available at their various office locations. As stated above, the provision of information lacks the necessary element of structured, targeted instruction that characterizes education in the charitable framework and has not been found charitable by the courts.

You will note that we have elaborated above on some issues which were briefly touched on in our initial letter, but were not relied upon as grounds for proposing

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[3] See, for example, *Vancouver Society of Immigrant and Visible Minority Women*, supra, footnote 1

annulment of the Organization's registration, i.e., credit counselling beneficiaries; advancement of education; private benefit; related business.

It is the position of the CRA that annulment is the appropriate course of action in the circumstances. However, notwithstanding a substantive reply from the Organization on the foregoing issues, it is the CRA's opinion that the potential for revocation of the Organization's registered status is an alternative.

Consequences of Annulment

a) Subsection 149.1(24) of the Act deems receipts issued by the Organization before annulment of its registration to be valid as long as the receipt would have been otherwise valid under the Act. However, any gifts made to the Organization after receipt of the Notice of Annulment of Registration, will not be allowable as a tax credit to individual donors under paragraph 118.1(3) of the Act or as a deduction to corporate donors under paragraph 110.1(3).

b) The Organization will not be required to pay tax on its assets as described in subsection 188(1.1) of the Act as its registration has been annulled and not revoked. Furthermore, the Organization will no longer be required to file an annual *Registered Charity Information Return* (Form T-3010) and financial statements.

c) For purposes of the *Excise Tax Act* (the ETA), the Organization will not be recognized as a charity as defined in subsection 123(1) effective on the date of the Notice of Annulment of Registration. It will be recognized as a charity from the date it became a registered charity within the meaning of the Act until the effective date of the Notice of Annulment of Registration, but not beyond that date. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

A Notice of Annulment of Registration, if issued, may be appealed to the Appeals Branch of the CRA.

The Organization's Options:

a) No Response

You may choose not to respond. In that case, we will begin procedures to annul the Organization's status as a registered charity **after 30 days** of the date of this letter, and the Organization will receive a Notice of Annulment of Registration by registered mail informing the Organization of the official date of annulment.

b) Response

Should you choose to respond, you must do so by writing to us **within 30 days** of the date of this letter. Your response must address ***each*** of the concerns raised above and clearly explain why the Organization's registration should not be annulled. After considering the representations submitted by the Organization, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include the issuance of a Notice of Annulment of Registration in the manner described in subsection 149.1 (23) of the Act.

For your reference, we have attached in Appendix "A", a copy of the relevant provisions of the Act concerning annulment of registration as well as objections to an annulment.

If you appoint a third party to represent you in this matter, please send us a written authorization naming the individual and explicitly authorizing that individual to discuss your file with us.

If you have any questions or require further information or clarification, please do not hesitate to contact the undersigned at the numbers indicated below.

Yours sincerely,

Paul E. Fournier
Office Audit Officer
Compliance Division
Charities Directorate
Canada Revenue Agency
Place de Ville, Tower A
320 Queen Street, 7th floor
Ottawa ON K1A 0L5
(613) 946-7536
1-800-267-2384

Attachments

APPENDIX A

CREDIT COUNSELLING SERVICES OF ATLANTIC CANADA INC.

Identified areas of non-compliance and comments on representations of August 31, 2012

Charitable purposes and activities

As we have explained in our previous correspondence, in order for an organization to be recognized as a federally registered charity, it must be constituted and operated for exclusively charitable purposes and devote its resources to charitable activities in furtherance thereof. As the term "charitable" is not defined in the Act, whether or not an organization qualifies as such is determined by reference to the common law; that is, court decisions. The courts have recognized four general categories of charitable purposes: (1) *the relief of poverty*; (2) *the advancement of religion*; (3) *the advancement of education*; and (4) *other purposes beneficial to the community as a whole* (or a sufficient section thereof) in a way that the law regards as charitable. This latter category identifies an additional group of specific purposes that have been held to be charitable at law rather than qualifying as charitable any and all purposes that provide a public benefit.

An organization with a mixture of charitable and non-charitable purposes and/or activities will not qualify for registration.

The Organization's purposes and activities

In its most recent submission, the Organization reiterated the argument made in its previous submission - that the CRA has erred in its understanding of what constitutes a charitable purpose at common law by taking an unreasonably restrictive approach to its interpretation of the phrase "relief of poverty", and that "prevention of poverty" is an acceptable charitable purpose.

In support of its position, the Organization refers back to the cases cited in its previous correspondence, as well as *Family Service Assn. of Metropolitan Toronto v. Ontario (Regional Assessment Commissioner Region No. 9), [1995].* The quotes taken from that case focus on the notion that there is a need for a contemporary interpretation of the meaning of "relief of the poor", and that activities undertaken for the "relief of poverty" must extend beyond the provision of basic necessities of life.

It is our position that this case does not provide support for the "prevention of poverty" being a valid charitable purpose, for two reasons:

- the case was heard before the Ontario Regional Assessment Commissioner and consequently is not binding on The Federal Court; and

- the case deals with property tax exemption under the Assessment Act (Ontario) and, in our view, did not take into account existing case law which supports the relief of poverty and not the prevention of poverty, as a recognized charitable purpose.

As stated in our letter of July 6, 2012, while the CRA agrees that it is necessary to an expansive approach to "relief of poverty", to say that "prevention of poverty" is analogous to the charitable purpose of relief of poverty equates to a more-than-incidental change in the definition of charity. While the courts may expand the law by reasonable extension or analogy to purposes judicially established to be charitable, the CRA applies the law as determined by the courts. As stated by the Supreme Court of Canada in *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue, [1999], at paragraph 150*, it is "judges" that "can and should adapt the common law to reflect the changing social, moral and economic fabric of the country..." In this regard, we have not found any judicial recognition in Canada for the argument that the prevention of poverty is charitable.

Taking that point a step further, in *A.Y.S.A. Amateur Youth Soccer Association v. CRA et al at paragraph 44,* the Court states:

> "Finally, it is necessary to consider whether what is proposed is an incremental change. A.Y.S.A. argues that as some sporting organizations are already charities, it would be incremental to broaden charitable status to youth amateur fitness sports. The government submits that 21 percent of all non-profit organizations in the country are sports and recreation organizations, and that the potential recognition of these organizations as charities could have a significant impact on the income tax system. I agree with the government that this would seem to be closer to wholesale reform than incremental change, and is best left to Parliament. While it may be desirable as a matter of policy to give sports associations the tax advantages of charitable status, it is a task better suited to Parliament than the courts. In this regard, I note that in the United Kingdom, the charitable status of "the advancement of amateur sport" was brought about through statute (*Charities Act 2006* (U.K.), 2006, c. 50, s. 2(2)(g)). As stated by the majority in *Vancouver Society*, substantial change in the definition of charity must come from the legislature rather than the courts."

We would also refer you to paragraph 55 from the Family Service case, submitted by the Organization in its argument, in which the court states that "the legislation has changed little in fifty years". This statement acknowledges the fact that ***significant*** change in the definition of charity must come about through legislation [emphasis added].

In its response, the Organization also refers to the Charity Commission for England and Wales' published guidance entitled, *The Prevention of Poverty for the Public Benefit*. This publication refers to amendments that were made to the UK

Charities Act 2006 - one of which was to accept the prevention of poverty as a charitable purpose.

In this regard, we would highlight the fact that, as per our earlier comments, a change in legislation was necessary for prevention of poverty to be recognized as a charitable purpose in the UK. Additionally, we would point out that while the prevention of poverty has specifically been legislated as a charitable purpose in the UK under the *Charities Act 2006*, it has not been legislated as a charitable purpose in Canada. As the CRA is not bound by UK legislation, the change to the UK *Charities Act 2006* does not influence the CRA's position.

In summary, no legislative authority exists in Canada recognizing the prevention of poverty as a charitable purpose nor is there any relevant case law that supports the prevention of poverty as a charitable purpose.

Beneficiaries

In our letter of July 6, 2012, we advised that the Organization had not shown that it employed any specific method or criteria to select eligible beneficiaries. We explained that in order to meet the legal requirements of the relief of poverty category, an organization must demonstrate that; (1) the intended target group of beneficiaries is individuals who are "poor"; and (2) it provides for essential needs/amenities, for those persons who do not have the means to procure even the basic necessities of life for themselves. We explained further that the use of the term "poor" in this context did not limit an organization's potential beneficiaries only to those who are completely destitute - it was used as a broad guideline. We pointed out, however, that there must be evidence of some form of criteria in place that is used to identify a target group of eligible beneficiaries and demonstrates that those beneficiaries are in need of relief.

In response, the Organization acknowledged the fact that it did not employ any selection criteria, arguing that "it is exceedingly unlikely that anyone not experiencing serious financial difficulty would seek the Organization's assistance...". The Organization argued further that "the nature of the services offered by the Organization are such that those who present themselves as clients are presumptively in need of relief; presumably a soup kitchen does not conduct financial background checks on those who walk through the door, as their need can be assumed from their presence."

With respect, we find the Organization's comparison of credit counselling to the operation of a soup kitchen too remote to have any merit. We would reiterate the position stated in our letter of July 6, 2012 - that poverty cannot be assumed simply because someone is having money-management issues. Nor have the courts accepted the risk of poverty as equivalent to actually being poor. While we do not disagree with the notion that individuals who avail themselves of the services of a soup kitchen can be assumed to be in need of the service and therefore poor, we have difficulty applying this same logic to credit counselling services.

Finally, the Organization has referred to *Her Majesty's Attorney General Referrer v. The Charity Commission for England and Wales* (THE UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)) - DETERMINATION OF A REFERENCE PURSUANT TO PARAGRAPH 2(1)(A) OF SCHEDULE 1D TO THE CHARITIES ACT 1993 (AS AMENDED BY THE CHARITIES ACT 2006), in its argument for recognition of the prevention of poverty as a charitable purpose. While we have explained that the CRA is not bound by UK legislation or court decisions, we would draw your attention to the following statement from the court, taken from the above-mentioned decision, at paragraph 7 of the summary:

> "But that is not to say that all trusts for the prevention of poverty are automatically charitable, any more than it can be said that all trusts for the relief of poverty are necessarily charitable. Further, not all trusts for the prevention of poverty can be seen as corresponding in a relevant way to a trust for the relief of poverty. It is not difficult to see that a step taken to prevent a person facing imminent destitution ought to be treated, for the purposes of the law of charity, as a step taken to relieve the poverty which would ensue if that step were not taken. It is something entirely different that a financial advice programme might help some people receiving the benefit of that programme in avoiding financial difficulties, including poverty and perhaps bankruptcy. But such a programme could not, as we see it, correspond to any trust for the relief of poverty." (Para. 80)

This statement clearly supports our position - that the provision of credit counselling and assistance in creating debt management plans goes well beyond what would be considered the necessities of life, and due to the fact that the Organization does not employ any specific selection criteria, thereby making its services available to anyone regardless of financial status, it cannot be viewed as relieving poverty.

Fairshare/DMP/Private Benefit

In our letter of July 6, 2012, we stated that in our view the Fairshare/DMP program was a major focus of the Organization. We stated further that in our view there was sufficient emphasis placed upon the program and resources derived from it to demonstrate that it was a purpose for which the Organization had an unstated, collateral, non-charitable purpose; namely, acting in the capacity of a "collection agent" for the creditors in return for what are, essentially, commissions.

In its response, the Organization simply states that the proportion of its resources devoted to running the Fairshare/DMP program is relatively minor. In our view, the Organization has again downplayed the importance of the Fairshare/DMP program to its daily operations. As up to 95% of the Organization's annual revenue is derived from Fairshare/DMP fees paid by creditors (and monthly "client fees" for administering the DMPs), our opinion remains that this program is clearly more vital to the Organization than indicated by its response.

In our letter, we also stated that in our opinion the activities being undertaken to achieve the above-mentioned unstated, collateral, non-charitable purpose permitted the delivery of a more than incidental private benefit to non-charitable recipients. We explained that private benefit can occur where activities to be undertaken to further an organization's purpose(s) permit, or even require, the delivery of a benefit to a non-charitable recipient. We went on to state that in our view, the Fairshare/DMP program required the delivery of a more than incidental private benefit to non-charitable recipients.

We closed our argument by including the following statement, taken from the Organization's original application for charitable registration, which clearly supported our view that there exists a more than incidental private benefit to non-charitable recipients:

> "The Corporation will maintain a trust account for client monies deposited with it for the benefit of the client's creditors".

In its response, the Organization states that our position "does not acknowledge these creditors voluntarily agree to accept less than is otherwise owing to them in order to assist the individuals being aided by the Organization to put their financial affairs in order. Any "benefit" obtained by such creditors is wholly ancillary and incidental to the Organization's efforts to assist individuals struggling with debt; the fact that achieving a positive result for the Organization's clients results in a minor indirect benefit for third parties does not change the charitable nature of the assistance given to clients."

We respectfully disagree with the Organization's position. In our view, it appears much more likely that creditors agree to the implementation of debt management plans as a more attractive alternative to the prospect of not recovering any of the monies owing to them if a client declares bankruptcy, as opposed to achieving a positive result for individuals assisted by the Organization.

As to the suggestion that the benefit obtained by such creditors is incidental, minor and indirect, we would point out that in the fiscal period under audit, the Organization's revenue from Fairshare and client fees exceeded $2,500,000. Based on the information supplied by the Organization, we note that Fairshare and client fees routinely generate annual revenues well in excess of $1,000,000 for the Organization. Taking into account the fact that this represents a small percentage (approximately 15%, based on our research) of the amounts recovered by creditors through the Fairshare program, it becomes clear that the benefit to the creditors is anything but incidental, minor or indirect.

We included the following quote from Iacobucci J, for the majority at paras. 154, 187 and 195 (Vancouver Society): "A charity may engage in limited non-charitable activities provided they are conducted within legal parameters, which include, but are not limited to, the requirements that they remain supportive of charitable activities and ancillary and incidental to charitable purposes, and do not deliver a non-incidental private benefit".

As such, it remains our position that the Organization's Fairshare/DMP program is not charitable, is not ancillary and incidental to a charitable purpose, and delivers a more than incidental private benefit to non-charitable recipients.

Business activity

In our letter, we pointed out that based on our understanding of the facts related to the Fairshare/DMP program, it was our view that this activity is a business. We explained that in general terms, a business involves commercial activity - deriving revenues from providing goods or services - undertaken with the intention to earn profit. We explained further that in the circumstances of your case, for the business to be acceptable, it would have to be a "related business", i.e. linked to the Organization's purpose and subordinate to a dominant charitable purpose.

We closed by stating our position that the Fairshare/DMP program did not meet the criteria to be considered an acceptable "related business" and referred the Organization to our Policy Statement CPS-019, *What is a Related Business?*, which we provided as an attachment.

In its response, the Organization failed to address this concern. As such, it remains our position that the Fairshare/DMP program constitutes a business that is not a "related business".

Education

In our letter, we advised that to advance education in the charitable sense, the courts have required that it involve training of the mind, advancement of the knowledge or abilities of the recipient, improvement of a useful branch of human knowledge through research, or the raising of the artistic taste of the community. We explained that it must be evident, both by the wording of an organization's purposes and by the activities undertaken in furtherance thereof, that an organization is involved in a targeted, structured attempt to educate others, whether through formal or informal instruction, training, plans of self-study, or otherwise. We pointed out that it is not sufficient to simply inform people about a subject, and cited a number of relevant Canadian court cases to support our position.

While we acknowledged the fact that the Organization does offer educational presentations, we pointed out that a significant amount of its literature is simply made available to individuals, either online, or through monthly mailings, or by having flyers and bulletins available at their various office locations. We then reiterated that the provision of information lacks the necessary element of structured, targeted instruction that characterizes education in the charitable framework and has not been found charitable by the courts.

The Organization addressed this issue in its response by referring to the summary of its educational presentations. It did not provide any additional information to

illustrate the percentage of its resources expended on conducting presentations. While we again acknowledge that the Organization does offer educational presentations, without any additional information, we remain of the view that a significant amount of the Organization's literature appears to be simply made available to the public and therefore lacks the necessary element of structured, targeted instruction that characterizes education in the charitable framework.

Conclusion

The audit conducted by the CRA, revealed that the Organization has not been established or operated for exclusively charitable purposes, and fails to devote all its resources to charitable activities.

As such, it is the CRA's position that the Organization's registration was granted in error as it did not at the time of its registration, and has not since that time, operated in an exclusively charitable manner. Where charitable registration has been granted in error, the appropriate course of action is annulment of the registration of the Organization.

While the CRA has selected annulment as opposed to revocation as the appropriate course of action, it continues to be the CRA's view that were annulment not the most appropriate course of action, the grounds contained herein would warrant the revocation of the Organization's registration.

In support of grounds for revocation, it is the CRA's view that:

1. The Organization's Fairshare/DMP program is a major focus of the Organization;

2. There is sufficient emphasis placed upon, and resources derived from the Fairshare/DMP program to demonstrate that it is a purpose for which the Organization has an unstated, collateral, non-charitable purpose; namely, acting in the capacity of a "collection agent" for the creditors in return for what are, essentially, commissions;

3. The activities being undertaken to achieve the above-mentioned unstated, collateral, non-charitable purpose permit the delivery of a more than incidental private benefit to non-charitable recipients;

4. The Fairshare/DMP program is a business that is not a "related business";

5. The Organization does not employ any specific selection criteria to define eligible beneficiaries for its programs.

149.1 (23) Annulment of registration

The Minister may, by registered mail, give notice to a person that the registration of the person as a registered charity is annulled and deemed not to have been so registered, if the person was so registered by the Minister in error or the person has, solely as a result of a change in law, ceased to be a charity.

149.1 (24) Receipts issued before annulment

An official receipt referred to in Part XXXV of the *Income Tax Regulations* issued, by a person whose registration has been annulled under subsection (23), before that annulment is, if the receipt would have been valid were the person a registered charity at the time the receipt was issued, deemed to be a valid receipt under that Part.

168 (4) Objection to proposal or designation

A person may, on or before the day that is 90 days after the day on which the notice was mailed, serve on the Minister a written notice of objection in the manner authorized by the Minister, setting out the reasons for the objection and all the relevant facts, and the provisions of subsections 165(1), (1.1) and (3) to (7) and sections 166, 166.1 and 166.2 apply, with any modifications that the circumstances require, as if the notice were a notice of assessment made under section 152, if

(a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);

(b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or

(c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).