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ERIC MOONEY
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Subject: Application to register a charity for Cider House Inc.

Eric Mooney,

This letter is in response to the application for registration sent in for Cider House Inc. (the applicant). We finished reviewing the application and must inform you that, based on the information we received, the applicant did not show that it qualifies to become a registered charity under the Income Tax Act (the Act).

Qualifying for registration as a charity under the Income Tax Act

To be registered, an applicant has to show that it is charitable at law and that it meets all the requirements of the Act relating to charitable registration. Essentially, an applicant has to meet a two-part test, as explained by the Supreme Court of Canada:¹

- it must be established exclusively for charitable purposes
- it must devote all of its resources to activities carried on to further its charitable purposes²

The information an applicant provides, as well as any additional information available to us, has to go through this two-part test. As confirmed by the Federal Court of Appeal,³ the applicant is responsible for clearly showing that it meets the requirements of the Act and common law. An organization that is established with a mix of charitable and non-charitable purposes or whose activities do not further a charitable purpose will not qualify for registration.

We applied the two-part test in reviewing the applicant's purposes and activities. We outline our concerns in the following paragraphs.

¹ Vancouver Society of Immigrant and Visible Minority Women v MNR, [1999] 1 SCR 10 at paras 154-159.

² According to the Act, the definition of "charitable foundation" includes the requirement that it "is constituted and operated exclusively for charitable purposes," and "charitable organization" means an organization "all the resources of which are devoted to charitable activities carried on by the organization itself."

³ STV Stop the Violence...Face the Music Society v The Queen, 97 D.T.C. 5026

Applying the two-part test

a) Is the applicant established exclusively for charitable purposes?

To be registered as a charity under the Act, all of the applicant's purposes must be exclusively charitable.⁴ This means each purpose in an applicant's governing document must meet the following three requirements:

1. Fit within one of the four categories of charity:⁵
 - the relief of poverty
 - the advancement of education
 - the advancement of religion
 - certain other purposes beneficial to the community that the courts have identified as charitable⁶
2. Provide a charitable benefit to the public and not an unacceptable private benefit.⁷
3. Define the scope of the activities that will be carried out. This is because, as a general rule, all resources must be used for activities that further exclusively charitable purposes.⁸

We reviewed the applicant's purpose set out in its Articles of Incorporation, filed under the Non-profit Corporations Act, 1995 of Saskatchewan on January 3, 2020.

It is our opinion that the applicant is not established for purposes that are charitable at law. Specifically, the applicant's purposes do not fall within one of the four categories of charity and do not provide a charitable public benefit and do not define the scope of the activities.

We recommend that the applicant **not** formally change its purpose at this time. Resolving this issue alone would not be enough for it to qualify for registration as a charity. If the applicant chooses to respond to our letter, its response must include suggested revisions to its purpose that demonstrate that it will be established exclusively for charitable purposes.

⁴ The Act does not define what is charitable. See subsection 248(1) "registered charity"; subsection 149.1(1) "charitable foundation", "charitable organization", "private foundation", and "public foundation." These definitions use the term charitable, but do not define it (i.e., charitable foundations are to be "constituted and operated exclusively for charitable purposes" and charitable organizations' resources must be "devoted to charitable activities"). The only exception is subsection 149.1(1) which defines charitable purposes as including "the disbursement of funds to qualified donees".

⁵ When making a decision, the CRA must rely on the common law definition of charitable, which sets out four broad categories of charity. The four broad charitable purpose categories were outlined in *Commissioners for Special Purposes of Income Tax v Pemsell*, [1891] AC 531 (HL). The classification approach was first explicitly approved of by the Supreme Court of Canada in *Guaranty Trust Co. of Canada v MNR*, [1967] SCR 133, and confirmed in *Vancouver Society*, supra note 1.

⁶ This does not mean that any purpose that is beneficial to the community is charitable. The CRA relies on previous court decisions that have accepted a similar purpose as charitable. See *A.Y.S.A. Amateur Youth Soccer Association v Canada (Revenue Agency)*, 2007 SCC 42 at para 8: "Unless legislation provides otherwise, it would be for the courts, through the jurisprudence, to determine what is or is not a charity for legal purposes." See also *Vancouver Society*, supra note 1 at para 150.

⁷ No purpose will be charitable unless it delivers, or is capable of delivering, a public benefit. See *McGovern v AG*, [1982] 3 All ER 439. See also *Vancouver Society*, supra note 1 at para 147.

⁸ *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at paras 154-159.

b) Are the applicant's resources devoted to activities that further a charitable purpose?

When examining an applicant's statement of activities, we look for a detailed description of its programs as they relate to **each** of its purposes.⁹ An applicant cannot simply express its goals. It must give detailed and real¹⁰ plans for its current and proposed activities and show that they further its charitable purposes. Failing to provide enough information, or failing to show that it devotes **all of** its resources to activities that further its charitable purposes are grounds to deny registration.¹¹

Based on the information provided by the applicant, as well as the information available to us and the information available to the public, it is our opinion that the applicant is not eligible for charitable registration at this time because it carries on activities that further a collateral, unstated, non-charitable purpose, which is fundraising.

Fundraising– Collateral purpose

Although common law¹² requires that a registered charity has exclusively charitable purposes and the Act¹³ requires that a registered charity devote all its resources to charitable purposes and activities, a charity can use some of its resources for fundraising. However, when the total amount of resources devoted to fundraising exceeds the total amount of resources devoted to charitable activities, this is a strong indication that fundraising is a collateral purpose of the charity. The courts¹⁴ have determined that fundraising itself (whether done as a purpose or an activity) is not charitable. Consequently, fundraising activities are not normally treated as advancing the charitable purposes of a charity. When fundraising becomes an organization's primary emphasis, the organization would not likely qualify for registration. However, a charity can have reasons for incurring higher fundraising costs for a particular event or in a particular year. We consider many factors during our review to determine whether fundraising costs are excessive.

For more information, go to **canada.ca/charities-giving**, select "Registering for charitable or other qualified donee status" then, "Policies and guidance" and see Guidance "Fundraising by registered charities, CG-013."

Taking the above into consideration, we note that the applicant listed in the Purposes and activities section of its Application for Registration (AR) that its only activity is to "solicit donations to raise money to advance our aims." Further, the applicant has not allocated any funds towards any charitable activities and it indicated in the Financial information section of its AR that its sole expenditure is towards soliciting donations. Therefore, we conclude that the applicant's fundraising activity is not subordinate to the applicant's charitable purposes and fundraising appears to have become a collateral purpose of the applicant, which would preclude it from charitable registration.

⁹ For more information on describing the applicant's activities, go to **canada.ca/charities-giving** and click on "Registering for charitable or other qualified donee status" followed by "Apply to become a registered charity" then "Apply for registration" and "Describing your activities."

¹⁰ Please note that as stated in paragraph 149.1(4.1)(c) of the Act, the Minister may revoke the registration of a registered charity if the charity intentionally made a false or misleading statement to become registered.

¹¹ In *STV Stop the Violence...Face the Music Society v The Queen*, 97 D.T.C. 5026, the Federal Court of Appeal stated "Since the benefits attaching to charitable status are significant, the onus is on those seeking this status to clearly demonstrate that their activities are clearly focused on charitable objects in the legal sense." Further, in *Action des Femmes Handicapées (Montréal) v MNR*, [1998] F.C.J. No. 917, the court held that "The appellant bears the burden of proving that it qualifies for the charitable status under s.149.1(1) of the Income Tax Act." In addition, in *Sagkeeng Memorial Arena Inc. v MNR et al*, [2012] FCA 171, the Federal Court of Appeal held that "Before granting registration, the Minister [of Revenue] is entitled to require detailed and credible information."

¹² *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at paras 154-159.

¹³ Subsection 149.1(1) of the Act.

¹⁴ *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, at paras 152 and 154.

Promotion of health / Medical assistance in dying

The courts¹⁵ have held that the promotion of health can be charitable. The promotion of health in the charitable sense means directly preventing or relieving mental or physical health conditions.

To qualify under the promotion of health, an organization can carry on activities that involve, for example, diagnosing and treating identified health conditions;¹⁶ assisting with rehabilitation;¹⁷ or providing health-related supportive services or products.¹⁸ In addition, all health care services and products provided by a registered charity must meet the applicable requirements relating to **effectiveness** and **quality and safety**.

The **effectiveness** requirement refers to the positive and desirable outcomes normally resulting from a health care service or product. In most cases, this means eliminating or reducing the symptoms related to an identified health condition. To demonstrate effectiveness, an organization must show that the service or product has been clearly recognized by Canadian provincial, territorial, or federal health authorities or by the Canadian Medical Association. Or, the health care service or product must be recognized by at least three licensed physicians who are certified in a related area of medicine and who are not connected to the organization.

The **quality and safety** requirement refers to the quality and safety standards a health care provider in Canada is normally expected to meet and the quality and safety standards normally applied to health products.

Complementary or alternative health care services and products are generally charitable if they are eligible for coverage under the Canada Health Act or under a provincial or a territorial medical insurance service plan in Canada. If not, the organization must show that the service or product directly prevents or relieves a physical or a mental health condition and how it meets the effectiveness and quality and safety requirements.

Providing supportive health care services can promote health and will be considered to meet the requirements related to effectiveness where they have been recognized by the common law to provide a charitable benefit. Supportive health care services can include providing health-related support to individuals with health conditions such as extra comfort items to cope with hospitalization or a health condition, services that facilitate the delivery of health care services, and/or access to health counselling, information or group support programs, as well as health-related support for families or caregivers of individuals with health conditions.

For more information, go to canada.ca/charities-giving, select "Registering for charitable or other qualified donee status" then, "Policies and guidance" and see Guidance "Promotion of Health and Charitable Registration, CG-021."

Relating the above to the applicant, we note that it indicated in the Purposes and activities section of its AR that it intends to establish a "permanent, dedicated, inpatient facility in which end-of-life patients [have] access to Medical assistance in Dying (MAiD)" and that it will "support clients and their families as they make the transition to death in a caring, homelike environment." Additionally, the applicant indicated that its "staff will assist patients of all-and-no faith traditions in planning and implementing comfortable and compassionate medically-assisted deaths."

¹⁵ Everywoman's Health Centre Society (1988) v Minister of National Revenue, [1992] 2 F.C. 52.

¹⁶ This could include providing emergency medical services, providing treatments for certain medical conditions, or operating a clinic.

¹⁷ This could include providing psychological counselling, social services or peer support groups.

¹⁸ This could include providing extra comfort items to cope with hospitalization or a health condition.

Based on the information provided it appears the applicant's activities could qualify under the promoting of health, however, we have not been provided with sufficient information to determine whether all of the applicant's activities can be determined to be charitable at law, and its mode of operation in carrying them out. While the applicant has provided some information regarding the activities it intends to carry out and who its beneficiaries are, we require more detailed information such as:

- What does the admission/selection process entail to determine beneficiaries are deemed eligible through the established legal process (i.e. application form, documentation from medical professional);
- How will the applicant become aware of the individuals in need of the use of its Home;
- Who delivers its programs and operates its facility and their qualifications; and
- the scheduling process in place for individuals and/or professionals to use the Home (first come first served and/or based on severity of illness, or other established ranking).

We also ask that the applicant provide clarification on whether it will be providing any other services, such as counselling for the patients and/or family members. Furthermore, we note that the applicant indicated that it will begin operation in August 2020, however it is unclear if the applicant has found a location of where it intends to operate its activities, whether it has begun its operations, and any costs associated its activities related to the promotion of health. As a result, we cannot determine whether the applicant will be operating in a way that furthers a charitable purpose under the promotion of health. Should the applicant choose to respond it should clarify how it intends to provide its end-of-life medical and whether it will carry out any other activities, including counselling or other support services.

Public policy dialogue and development activities

The Act prohibits a charity from devoting any part of its resources to the direct or indirect support of, or opposition to, any political party or candidate for public office. Charitable activities include public policy dialogue and development activities (PPDDA) that further a charitable purpose and generally involve seeking to influence laws, policies, or decision of a government. However, any activity that supports or opposes a political party or candidate is not an allowable PPDDA, and a charity cannot carry on such an activity to any degree. Although a charity may publicly agree or disagree with a decision or position of a government, it must not support or oppose any political party or candidate for public office. As a general guideline, a charity's communications should focus on the policy issue under discussion, and not refer to any specific candidate or political party.

For more information, go to **canada.ca/charities-giving**, select "Registering for charitable or other qualified donee status" then, "Policies and guidance" and see Guidance "Public policy dialogue and development activities by charities guidelines, CG-027."

Furthermore, the courts¹⁹ have held that simply distributing or spreading information is not educational in the charitable sense. That is, it is not sufficient to simply inform people, raise awareness, exchange ideas or disseminate information on a particular subject. Such activities would lack the necessary structure and learning element in order to be considered as advancing education in the charitable sense.

¹⁹ *Alliance for Life v MNR*, [1999] 3 FC 504 (FCA) at paras 57-58 and 68. After stating that the materials were not provided in a structured manner Stone JA said at para 57: Neither is there evidence that such students would be in a position to weigh the viewpoints so advanced against opposing viewpoints in making up their minds . . . Viewed in this light, I am unable to see that the dissemination. . . genuinely advanced education in the sense explained in *Vancouver Society*. . .

Relating the above to the applicant, it indicated that it intends to "disseminate [its] opinion [of MAiD] based on the law and facts/research." However, it is unclear what these activities entail and whether they will be carried out in a manner charitable at law. Should the applicant choose to respond, it must provide a detailed description of the specific type of information it intends to distribute, a copy the research it intends to base its information on, as well as how it intends to distribute this information so that we can determine whether it is being carried out in a charitable manner.

If the applicant chooses to respond to this letter, it must address the above concerns, as well as provide any available supporting documents.

Other concerns

Financial information

The requirement for an organization to provide sufficient information about its activities also extends to providing detailed financial information. A charity is required to spend substantially all (usually 90%) of its income on charitable activities. Therefore, we require financial information that accurately reflects the applicant's anticipated and ongoing activities in order to ensure that sufficient resources are dedicated, or will be dedicated, to charitable purpose and activities.

Taking the above into consideration, the applicant indicated in the Financial information section of its AR that its total income is \$1,005,000 and its total expenses is \$100, which is a \$1,004,900 surplus. We note that the applicant explained that "the goal of providing MAiD care to people is a few years out [and] once [the applicant] actually meet[s] [the] stated financial goal (\$1,000,000) [it] will be able to move on to phase 2 of setting [a] facility up, and offering service." We ask that the applicant provide a detailed breakdown of its anticipated expenditures and income for operating a facility providing MAiD services.

Other organization with same name

We note that there is another organization with the same name as the applicant, Cider House Inc., and is incorporated under a different provincial legislation. We ask that the applicant clarify whether it has any existing relationship with another entity under the same name.

Conclusion

For each of the reasons set out above, we are unable to approve your application for registration as a charity under the Income Tax Act.

We are not judging the worth of the applicant's programs and services. These programs and services may be worthwhile. But the law requires that we grant registration to only those organizations that meet the requirements of the Act and of common law.

Any additional information we get will help us decide whether to grant charitable registration and will be part of the formal application. If the applicant becomes registered, this information could be made publicly available in line with the Act.²⁰ If it is determined the applicant is not eligible for registration as a charity, it may want to consider operating as a tax exempt non-profit organization. For more information on this topic, go to canada.ca/charities-giving, select "Registering for charitable or other qualified donee status" followed by "Apply to become a registered charity" then "Make an informed decision about becoming a registered charity."

We have attached an appendix detailing all the applicant's options.

²⁰ Subsection 241(3.2) of the Income Tax Act.

Yours sincerely,

Keisha Louis
Charities Analyst
Charities Directorate
Canada Revenue Agency
343-552-5410

Attachments

Appendix

The applicant's options

(a) Respond within 60 days

If the applicant chooses to respond, it must do so in writing within **60 days** of the date of this letter. Its response must address all the concerns raised in our letter.

You can send your response to this letter online using the "Submit documents" service in My Business Account. Simply enter the case number given on this letter, then select and send the relevant files. You can also mail your response to the Assessment, Determinations and Monitoring Division, Charities Directorate, Canada Revenue Agency, Ottawa ON K1A 0L5.

If the applicant feels that the information it has given us so far is enough, it must tell us so in writing within **60 days** of the date of this letter. We will make a final decision based on the materials we already have. If we deny registration, an applicant has the right to object if it believes we misinterpreted the facts or applied the law incorrectly. To find out how to file an objection, go to **canada.ca/charities-giving** and click on "Registering for charitable or other qualified donee status" followed by "Objections and appeals."

(b) Do not respond within 60 days

If we do not receive the applicant's response within **60 days** of the date of this letter, we will conclude that it is abandoning its application and we will close our file.

(c) Withdraw the application within 60 days

If the applicant chooses to withdraw its application, it should tell us within **60 days** of the date of this letter. To do so, the applicant can submit a document online using the "Submit documents" service in My Business Account. The applicant can also mail this document to the mailing address indicated above. The document must explain that the applicant intends to withdraw its application and be signed and dated by someone on the board of directors/trustees or an authorized representative.

There will be no negative consequences, and its application will remain confidential. If the applicant decides to re-apply in the future, it can find detailed information on the requirements for charitable registration at **canada.ca/charities-giving**.

(d) Request non-profit organization status

The applicant may apply for a tax exemption as a non-profit organization rather than pursue charitable registration. For more information on this topic, go to **canada.ca/charities-giving** and click on "Registering for charitable or other qualified donee status" followed by "Apply to become a registered charity" then "Make an informed decision about becoming a registered charity."