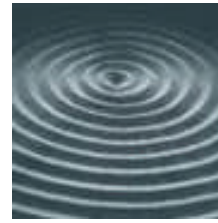
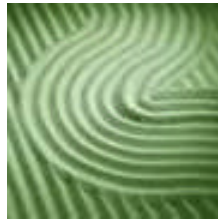


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New CCRA social housing
policy is more flexible
Robert B. Hayhoe
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WILLS, ESTATES, TRUSTS AND CHARITIES

New CCRA social housing policy is more flexible

By Robert Hayhoe

Earlier this year, the Canada Customs and Revenue Agency Charities Directorate issued a new Policy Statement (CPS - 020), *Applicants that are Established to Relieve Poverty by Providing Rental Housing to Low Income Tenants* (www.ccr-a-adrc.gc.ca/tax/charities/policy/cps/cps-020-e.html) which outlines the CCRA's new policy on charitable registration of social housing organizations.

Previous to this policy, the CCRA accepted that providing housing to the poor was charitable under the relief of poverty head in *Pemsel's* case. However, the CCRA required that at least 90 per cent of the tenants of any low-income housing project be poor in order for the landlord organization to be eligible for registered charity status. On the theory that poverty could best be relieved by integrating poor and less needy people together, the CCRA's previous policy was criticized for requiring that the poor be segregated into ghettos as a condition of charitable registration.

The new Policy Statement applies a similar analysis to that previously applied by the CCRA. It confirms that the organization must either have purposes limited to assisting people of low income or purposes limited to assisting low- and moderate-income people with actual services limited to low-income

people. The organization must also demonstrate that it applies (on at least an annual basis) an income-screening mechanism to its tenants.

Given that an individual



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tenant may move out of the low-income category at some point, the Policy Statement still recognizes that up to 10 per cent of tenants may always be other than low-income tenants (and therefore paying market rents). All other tenants must pay rent that is less than market (otherwise the charity is not relieving poverty, as required by charity law).

However, the new Policy Statement is considerably more flexible because it provides that under certain circumstances, a low-income housing charity can have as much as 33 per cent of

its tenants pay market rent or not be poor.

Some of the circumstances under which the new Policy Statement permits this increased portion of non-poor tenants include when the charity is seeking to regenerate a depressed neighbourhood or when the project has over 100 units and market tenants are necessary to prevent the social isolation of poor tenants.

The CCRA is also willing to accept 33 per cent market tenants if the project is driven by a local municipality and the market tenants cover the project carrying costs, thereby reducing the burden of local taxation in support of welfare costs.

Finally, if there is strong extrinsic evidence of the organization's poverty-relief purpose, such as a majority of tenants being deeply needy or a focus on some group, such as aboriginals or single parents, which the CCRA views as being at some particular risk of being homeless, the organization will again be permitted to have up to 33 per cent market tenants.

In general, the Policy Statement takes the position that low-income housing charities may not have any commercial tenants. However, the Policy Statement accepts that in some circumstances, up to 10 per cent of the space in a project can be leased to commercial tenants if the space is uninhabitable or if the commercial tenants provide

a necessary service to low-income tenants who lack transportation. This is another helpful change.

The Policy Statement also confirms that in counting the percentages referred to above, a charity may aggregate across each housing project site. For example a housing project with two similar buildings, one with 50 per cent market tenants and one with no market tenants has a project-wide 25 per cent market tenants.

Troubling aspect

The only troubling aspect of the new Policy Statement flows from its potential impact on existing non-profit housing organizations. There are a significant number of existing low-income housing organizations that are not registered charities and that would not have been eligible to be registered until the new Policy Statement was issued. These have assumed (or have been told by the CCRA) that they are tax-exempt non-profit organizations.

However, the *Income Tax Act* definition of non-profit organization (found in paragraph 149(1)(1)) provides that one requirement to be a non-profit organization is that it not be a charity in the opinion of the CCRA (i.e., that it not be eligible for registration).

As the new Policy Statement acknowledges, the CCRA's increased flexibility may result

in some organizations which were agreed to be non-profit organizations suddenly ceasing to be non-profit organizations because they are eligible to be registered as charities. The unfortunate result of this change is that these organizations thereby become taxable.

The *Income Tax Act* has the perverse result of making registered charities and non-profit organizations exempt from income tax while leaving organizations that are charitable but have not been registered, fully taxable.

The new Policy Statement identifies this potential problem but does not suggest any solution beyond applying for registration (which is a fine solution as far as it goes but does nothing to address issues such as income earned between the issuance of the new Policy Statement and the point of registration).

We must hope that the CCRA will deal sensitively with social housing organizations that now fall into the unregistered charity category.

Lawyers who act for social housing organizations need to be aware of the new Policy Statement, both as it applies to new organizations, and as it applies to organizations that assume incorrectly that they are not charitable.

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