

Registered Charities and Ineligible Individuals

Registered charities have certain obligations under the *Income Tax Act*. On August 27, 2014, the Canada Revenue Agency (CRA), which monitors the operations of registered charities, released Guidance (CG-024) on the ineligible individual provisions contained in the *Income Tax Act (ITA)*. The provisions came into force January 1, 2012.

What is meant by the term “ineligible individual”?

The *Income Tax Act* describes an ineligible individual as someone who:

- has been convicted of an offence:
 - related to financial dishonesty; or
 - relevant to the operation of the organization; or
- was connected to an organization whose registration was revoked for a serious breach of the requirements for registration. The connection was as
 - a director, trustee, officer, or like official;
 - an individual in a position of management or control; or
 - a promoter of a tax shelter, and participating in that tax shelter, caused the revocation of an organization’s registration.

Exceptions to the rule

CRA recognizes that in some cases it may be useful to a charity to be involved with an ineligible individual, particularly if that individual has similar life experiences and may “provide important programming insights into the welfare, needs, and issues of certain beneficiary communities”.

NOTE Remember: the onus is on the charity to explain the role and contribution the ineligible individual makes to the charity if it wishes to avoid CRA sanctions.

What can CRA do?

The Act defines “ineligible individual”, however, it does not prohibit such an individual from being a director or employee. It allows CRA to consider whether or not to take action in relation to a registered organization or an applicant in such circumstances. “When CRA intends to take action because of an ineligible individual, it will explain how the person is an ineligible individual, the ineligible individual’s position in the organization, and why an ineligible-individual provision is being invoked” (CRA Guidance on Ineligible Individuals – CG-24)

If an ineligible individual	CRA can
made the application for the organization	refuse to register
is a director, trustee, officer, or like official of the organization	refuse to register / suspend receipting privileges for one year / revoke registration
controls or manages the organization	refuse to register / suspend receipting privileges for one year / revoke registration

The Guidance emphasizes that it is CRA’s intent to enforce the provisions in a balanced way and that the sanctions are discretionary.

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What can a charity do to prepare?

The Guidance includes a self-assessment questionnaire (Appendix D – Checklist for registered organizations regarding ineligible individuals). It also includes helpful tools such as FAQs, checklists, examples and definitions.

It is important to note that the Guidance does not call for a charity to be proactive, through criminal or other checks, to determine whether an ineligible individual is involved in the charity. However, the Guidance does note that in some instances such checks, if carried out by the charity, would constitute good governance, particularly where a charity works with vulnerable communities.

What can a charity do if it receives a letter from CRA regarding an ineligible individual?

The Guidance provides information on how a charity can respond to a CRA letter about an ineligible individual.

A charity must provide “adequate documentary evidence,” such as copies of ledgers, cheques or financial reports indicating who has access to the charity’s assets, if it hopes to avoid sanctions or revocation. Simply stating that someone is not an ineligible individual is insufficient for CRA purposes.

For more information see CRA Policy and Guidance on Ineligible Individuals (CG-24) at:

www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/cg-024-eng.html

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