



August, 2020

Dear Canadian Christian Reformed Church Members,

I am writing to you on behalf of the directors of the CRCNA Canada Corporation, We are the board on the Canadian side of the Christian Reformed Church. The directors are comprised of one member elected from every classis plus three at-large directors.

It has come to our attention over the past several months that there is ongoing confusion within Canadian churches around the decisions made by the directors as we take steps towards becoming fully compliant with all legal and income tax requirements.

To help address the confusion and answer any lingering questions you may have, we have asked Carters Professional Corporation (one of Canada's leading charitable law experts with whom we have been working) to answer the questions we have been receiving. Following is the "Legal Question & Answer" they have prepared. We hope it will clarify things for you:

Also find included affirmations from Mr. David van der Woerd (the denomination's Canadian lawyer) as well as the Canadian Council of Christian Charities (an oversight body serving Christian charities).

We trust that the following information will help you better understand the necessity of the directors' actions and can help demonstrate that we have been acting in the best interests of the church we all love.

As always, if you have additional questions, please do not hesitate to contact Darren Roorda (droorda@crcna.org), myself, or your Classical CRCNA Canada Corporation director. We are eager to address any misunderstandings that may exist and then work together to pursue Christ's mission for the Christian Reformed Church in North America (Matthew 28: 18-20), known as *The Great Commission*.

For His sake and glory,



Andy DeRuyter, Chair, CRCNA Canada Corporation
Christian Reformed Church in North America - Canada Corporation
(CRCNA Canada)

Legal Question & Answer from Carters Professional Corporation Dated July 23, 2020

1. *What is the Canada Corp? Is it a decision-making body or should the dual-nation shared Council of Delegates make all organizational decisions? Or Synod? Or someone/something else?*

CARTERS RESPONSE: CRCNA Canada is a registered charity under the *Income Tax Act* (Canada) with an effective date of charitable status of December 9, 1980 and has been designated by Canada Revenue Agency (CRA) as a charitable organization. CRCNA Canada is also a federal not-for-profit corporation incorporated by certificate and articles of amalgamation dated July 4, 2018 and is governed by the *Canada Not-for-profit Corporations Act*. CRCNA Canada is a party to a Joint Ministry Agreement with the Christian Reformed Church in North America – Michigan Corporation (“CRCNA US”) dated September 26, 2013. We understand that CRCNA-Canada and CRCNA-US, together with other corporate entities, make up the Christian Reformed Church in North America (the “CRCNA”). It is our understanding that the “Council of Delegates” is composed of the individuals who make up the board of directors of CRCNA Canada and CRCNA US. We also understand that there are 15 Canadian directors and 38 US directors. These individuals are stated as functioning as the “Joint Ministry Committee” required under the Joint Ministry Agreement.

As a federal not-for-profit corporation, CRCNA Canada has a board of directors that is statutorily responsible to manage or supervise the management of the activities and affairs of the corporation. Under the *Income Tax Act* (Canada), the Canadian board of directors is responsible for ensuring that CRCNA Canada is constituted and operated exclusively for charitable purposes and that all resources of which are devoted to charitable activities carried on by the organization itself. As a consequence of this requirement under the *Income Tax Act* (Canada), CRA requires that a registered charity must have direction and control over its “own activities”, i.e., where a Canadian registered charity works on a cross-border basis with other charities or other organisations outside of Canada, there must be sufficient autonomy in place between both entities so that the Canadian registered charity can demonstrate, in addition to being a separate Canadian legal entity, that it carries out its own activities independent of the charity or organisation in the other country that is not a Canadian registered charity.

2. *Where did the impetus for a review of CRCNA Canada’s compliance with Canadian laws and regulations come from? Why has the alleged non-compliance only been brought up now if compliance regulations are not new?*

CARTERS RESPONSE: The impetus for these changes came from letters and conversations that CRCNA Canada had received from local churches concerning whether or not CRCNA Canada, as currently structured, was in compliance with the *Income Tax Act* (Canada). As a result of hearing from concerns raised at the local church level around the appropriateness of existing arrangements between CRCNA Canada CRCNA US, the CRCNA Canada board of directors sought an external legal opinion in addition to speaking with the historical legal counsel for CRCNA Canada, as well as the Canadian Council of Christian Charities.

The impetus also came from the current job description of the Canadian Ministries Director of CRCNA Canada to “remind the CRCNA Canada Corporation what is involved to be in compliance with all corporate, legal, and income tax requirements and equip, advise, and ensure that the directors of the CRCNA Canada Corporation fulfill fiduciary responsibilities as corporate directors, officers and trustees”.

3. *How old are these regulations in Canada?*

CARTERS RESPONSE: The current wording of the *Income Tax Act* (Canada) concerning a requirement that resources be used for activities carried on by the charitable organization itself date back to 1950. CRA’s current interpretation of these provisions are set out in Guidance CG-002, *Canadian Registered Charities Carrying Out Activities Outside Canada* dated July 8, 2010 and CG-004, *Using an Intermediary to Carry out a Charity’s Activities within Canada* dated June 20, 2011. The issue of direction and control mechanism was reviewed by

the Federal Court of Appeal in cases from the early 2000s, with a more recent case upholding those earlier decisions in 2015. These cases involved charities conducting activities outside of Canada through agents as intermediaries and not binational religious denominations or similar cross-border arrangements. For more information about CRA's requirement concerning "direction and control" and the relevant case law, reference can be made to a paper that Terrance S. Carter recently co-authored on the topic of "Direction and Control: Current Regime and Alternatives" available at:

<http://www.carters.ca/pub/article/charity/2020/Direction-and-Control-Current-Regime-and-Alternatives.pdf>.

4. *Is non-compliance with CRA and the ITA real? Have there been denominations in Canada who have suffered any consequences for not complying with Canadian regulations?*

CARTERS RESPONSE: In our experience, registered charities in Canada that operate on an international basis have had these issues raised by the Charities Directorate of CRA in the course of CRA charity audits and these charities have had to make structural changes in order to comply with the *Income Tax Act (Canada)* as a result of having to enter into a compliance agreement with the Charities Directorate. It is also widely known that numerous charities have had their charitable status revoked for non-compliance, many of them Christian. The CRA publishes a list of these decisions on a regular basis.

5. *Why did the Canada Corp have to act so quickly when non-compliance came to the forefront? Why did it seem that it was done "secretly"?*

CARTERS RESPONSE: Acting on legal advice, the board is implementing changes in order to address the risk concerning non-compliance with the *Income Tax Act (Canada)* based upon a legal opinion prepared by Carters Professional Corporation. These changes to date, and additional changes to come concerning the governing documents of CRCNA Canada, address issues concerning how CRCNA Canada is able to evidence direction and control over its charitable property that is shared with CRCNA US and that CRCNA Canada is able to direct and control its own activities. There is no basis that we are aware of to support the suggestion that changes may have been done secretly, as these changes have been a matter of ongoing discussion between CRCNA Canada and CRCNA US boards. The legal opinion has not been shared because if it was made available publicly the existing solicitor/client privilege attached to it would be waived and the comments contained in the legal opinion would be available to be produced in litigation against CRCNA Canada and/or its directors and officers or by CRA in the course of a CRA audit.

6. *What proof is there that CRCNA Canada was off-side when CRA did not even approach us to indicate such? What behaviours were exhibited by the CRCNA that demanded this level of response?*

CARTERS RESPONSE: In general, it is not a good idea to set out specific examples of non-compliance identified in the legal opinion in a public document that could then be referred to by CRA. At present, there is no evidence that CRA is aware of or has presented a concern to CRCNA Canada that it is not in compliance with the *Income Tax Act (Canada)*. However, the legal opinion indicated that, based upon a number of indicia that CRA generally looks at when auditing a charity that operates on a cross border basis, a reasonable conclusion could be made that there is a distinct possibility that CRA might conclude that there is insufficient separation between CRCNA Canada and CRCNA US with a resulting lack of direction and control over the operations of CRCNA Canada.

7. *What dangers are there to the institutional denomination of the CRCNA if this situation isn't remedied?*

CARTERS RESPONSE: There are no changes to the faith component of the CRCNA denomination that are required, including the continued pre-eminence of Synod in matters of faith, doctrine and practice. The legal opinion provided is only with respect to matters of compliance for the CRCNA Canada corporation from a corporate and tax law standpoint in Canada. Canadian regulators have no jurisdiction over the CRCNA denominational matters that relate to CRCNA US.

However, from the perspective of CRCNA Canada, where CRA is of the view that there is insufficient separation between a Canadian registered charity and a charity or organisation in another country, and as a consequence the board of directors of the Canadian charity cannot be said to have direction and control over its own activities, CRA could decide to give notice of its intention to revoke the registered charitable status of the Canadian charity pursuant to paragraph 168(1)(b) of the ITA for ceasing to comply with the requirements of the ITA for registration and/or impose a penalty under subsection 188.1(4) of the ITA for CRCNA-Canada making its resources, including staff, available to a non-qualified donee (e.g. non-Canadian registered charity), which penalty is 105% for a first infraction and 110% for a repeat infraction.

The more realistic outcome, though, from our experience in working with many charities involving CRA charity audits is that CRA would take an “education first” approach and require the charity to enter into a compliance agreement to ensure that the charity will come into compliance with the requirements of the *Income Tax Act* (Canada) within a stated period of time. If the charity failed to do so, then the charity would likely be facing revocation of its charitable status with the corresponding loss of its ability to issue charitable donation tax receipts, receive gifts from other registered charities, as well as the possibility of a revocation tax applying.

8. *Are there other church traditions/denominations that have worked through becoming CRA compliant as a dual-nation church?*

CARTERS RESPONSE: Yes, in an effort to be compliant with Canadian law, many registered charities that operate in conjunction with an international charity or on a cross-border basis with a charity in the US or other countries have been able to work through complying with CRA and its interpretation of the *Income Tax Act* (Canada). In our experience it is better to do so before these issues are raised by CRA rather than during the course of a CRA charity audit.

9. *Practically speaking, will this lead to a split between the two national sides of the church?*

CARTERS RESPONSE: No. There is no reason why CRCNA Canada and CRCNA US cannot continue to operate on a cross-border basis in coordinating their resources and operating on a joint basis. The legal opinion provided by Carters Professional Corporation did not opine on questions related to the ecclesiastical relationship between CRCNA Canada and CRCNA US or whether there should be a “split” of the CRCNA.

10. *Can CRA compliance still include some form of unity of the CRCNA across borders?*

CARTERS RESPONSE: Yes, since CRCNA Canada and the CRCNA US share a common faith, there is no reason not to continue the sharing and co-ordination of faith matters through a common Synod or an on-going coordinating committee, such as the Council of Delegates. To the extent that CRCNA Canada and the CRCNA US undertake religious or other charitable programs and activities involving charitable resources on a joint basis, they could do so through a joint ministry arrangement by means of the utilization of a joint ministry committee or other arrangements reflecting the requirements of CRA for direction and control.

11. *What danger was the local church in, if any, when it came to the fact that the CRCNA Canada was not in complete compliance with CRA regulations? Will upcoming changes impact them in any way?*

CARTERS RESPONSE: Based upon our understanding, local churches would not be directly impacted by the issues faced by CRCNA Canada because each local church maintains its own separate registered charity status. As such, even in a worst-case scenario and CRCNA was to lose its charitable status or become subject to a penalty because of non-compliance, the charitable status of each local church would not be impacted. However, local churches would of course lose the benefit of all of the ministry services that are currently available through CRCNA Canada

12. *Is the CRC Synod going to be involved in the process too? Will CRCNA Church Order need to change?*

CARTERS RESPONSE: Yes, there is no reason why CRCNA Canada cannot continue to coordinate this process with Synod or through other internal governance practices of the larger denomination, provided that CRCNA Canada is able to evidence compliance with the CRA requirements for direction and control. We understand that CRCNA Canada is of that view that in keeping with Synodical procedure on ecclesiastical matters, certain parts of the Church Order documentation may need to change to reflect this compliance. A review of bylaws and other documentation, such as the Church Order, is being implemented in the course of this fiscal calendar of the CRCNA (ending June 30, 2021)

13. *Why is the church being told what to do by a lawyer? In other words, doesn't the church decide what it should do and how it should behave before we get told what to do by a lawyer? Isn't the ecclesiastical process more important?*

CARTERS RESPONSE: The larger church or denomination is not being told what to do by a lawyer, nor should it be. The legal advice given pertains only to compliance for CRCNA Canada as a federal not-for-profit corporation and as a registered charity under the *Income Tax Act* (Canada). There is no reason why CRCNA Canada cannot continue to be a fully functioning part of Synod as a cross border ecclesiastical body.

14. *How does the distinction between “temporal” and “ecclesiastical” matter when it relates to meeting Canadian regulations?*

CARTERS RESPONSE: The issue is not primarily one of ‘ecclesiastical’ versus ‘temporal’. Rather, the issue is one of CRCNA Canada being able to exercise sufficient direction and control in carrying over its “own activities” (inclusive of all temporal matters). The key point is that CRCNA Canada must always remain in control of its own programs and activities. The only exception to this rule is with regards to matters of religious doctrine, teaching and practice that can be determined by a religious body other than the Canadian registered charity, such as Synod. This latter description of religious doctrine, teaching and practice is also referenced in this legal Q&A as ‘ecclesiastical.’



Ross & McBride LLP

David A. van der Woerd
 Direct line:(905) 572-5803
 E-mail :dvanderwoerd1@rossmcbride .com

August 24, 2020

VIA E-MAIL—droorda@crcna.org

ORIGINAL BY REGULAR MAIL

The Christian Reformed Church In North America-Canada Corporation
 P.O. Box 570, Stn LCD I,
 3475 Mainway
 Burlington, Ontario
 L7T 3Y8

Attention: Andy DeRuyter, Chair

Dear Sir:

RE: The Christian Reformed Church In North America-Canada Corporation
 ("CRCNA-Canada ")
 Charitable Status Review
 Our File No. 10932-023

It has been a legal requirement of the CRCNA-Canada ever since it was established (and a requirement of every Canadian registered charity) that it must maintain "direction and control" over all of its resources. Because the CRC operates in Canada, in the United States and worldwide, it has always been a challenge to balance this legal obligation with its global mission vision. As CRCNA-Canada's legal relationship with CRCNA-US has evolved through the years, questions have been raised about its current structures and practices. The board of directors of CRCNA-Canada decided to have its current practices reviewed by an independent charity law expert to ensure that it remained compliant with Canadian tax law and policy.

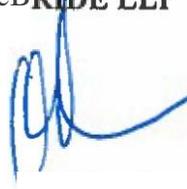
As the Canadian denominational lawyer, I participated in CRCNA-Canada retaining Carters Professional Corporation as expert legal counsel. When Carters made its report along with recommendations for adjustments to be made, I reviewed it. I agree with the report and the recommendations and have encouraged the volunteer board as it now takes steps to make adjustments suggested in the report, so that CRCNA-Canada can remain compliant with the law.

Carters also prepared a helpful Legal Q and A document for CRCNA-Canada to use to explain in abbreviated terms some of the questions that CRC supporters may have about the report and the changes that are being made because of it. I recommend the Legal Q and A for distribution to interested CRC supporters who wish to know more.

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I am writing this letter in support of the CRCNA-Canada's volunteer board as it tries to fulfill its fiduciary responsibility by engaging in this difficult task. I encourage CRC members to support the board as it administratively guides the CRC in Canada while fostering its ecclesiastical fellowship with other CRC ministries in the US and beyond.

Sincere yours,
ROSS & McBRIDE LLP
Per:

A handwritten signature in blue ink, appearing to be 'DA van der Woerd', written over the printed name of the signatory.

David A. van derWoerd



CANADIAN COUNCIL of CHRISTIAN CHARITIES
ADVANCING MINISTRY TOGETHER

July 28, 2020

Greetings Darren,

I have enjoyed our past extensive correspondence regarding the matters addressed in the Carters Professional Corporation (CPC) Legal Q&A document you have shared. It is good to see that the CRCNA followed CCCC's suggestion to seek a formal legal opinion on these complex cross border issues. That was a prudent step. I can confirm that the information provided in this document is consistent with what we discussed and with CCCC's positions on these matters. The CRCNA has been given very good guidance by the CPC on how to comply with the *Income Tax Act* and meet the Canada Revenue Agency's administrative expectations.

Please also pass on our thanks to the board of the CRCNA for its support of CCCC via your on-going membership with us. It is much appreciated.

Sincerely,

Gilbert Langerak BCS

Manager, Member Support