

Charities Registration (Security Information) Act

2001, c. 41, s. 113

[Enacted by section 113 of chapter 41 of the Statutes of Canada, 2001, in force December 24, 2001, see SI/2002-16.]

An Act respecting the registration of charities having regard to security and criminal intelligence information

SHORT TITLE

Short title 1. This Act may be cited as the *Charities Registration (Security Information) Act*.

PURPOSE AND PRINCIPLES

Purpose 2. (1) The purpose of this Act is to demonstrate Canada's commitment to participating in concerted international efforts to deny support to those who engage in terrorist activities, to protect the integrity of the registration system for charities under the *Income Tax Act* and to maintain the confidence of Canadian taxpayers that the benefits of charitable registration are made available only to organizations that operate exclusively for charitable purposes.

Principles (2) This Act shall be carried out in recognition of, and in accordance with, the following principles:

(a) maintaining the confidence of taxpayers may require reliance on information that, if disclosed, would injure national security or endanger the safety of persons; and

(b) the process for relying on the information referred to in paragraph (a) in determining eligibility to become or remain a registered charity must be as fair and transparent as possible having regard to national security and the safety of persons.

INTERPRETATION

Definitions 3. The following definitions apply in this Act.

"applicant"
« *demandeur* » "applicant" means a corporation, an organization or a trust that applies to the Minister of National Revenue to become a registered charity.

"information"
« *renseignements* » "information" means security or criminal intelligence information and information that is obtained in confidence from a source in Canada, from the government of a foreign state, from an international organization of states or from an institution of such a government or organization.

"judge"
« *juge* » "judge" means the Chief Justice of the Federal Court or a judge of that Court designated by the Chief Justice.

"Minister"
« *ministre* » "Minister" means the Minister of Public Safety and Emergency Preparedness.

"registered charity"
« *organisme de bienfaisance enregistré* » "registered charity" means a registered charity as defined in subsection 248(1) of the *Income Tax Act*.
2001, c. 41, ss. 113 "3", 125, 142; 2005, c. 10, s. 34.

CERTIFICATE BASED ON INTELLIGENCE

- Signature by Ministers
- 4.** (1) The Minister and the Minister of National Revenue may sign a certificate stating that it is their opinion, based on information, that there are reasonable grounds to believe
- (a) that an applicant or registered charity has made, makes or will make available any resources, directly or indirectly, to an entity that is a listed entity as defined in subsection 83.01(1) of the *Criminal Code*;
 - (b) that an applicant or registered charity made available any resources, directly or indirectly, to an entity as defined in subsection 83.01(1) of the *Criminal Code* and the entity was at that time, and continues to be, engaged in terrorist activities as defined in that subsection or activities in support of them; or
 - (c) that an applicant or registered charity makes or will make available any resources, directly or indirectly, to an entity as defined in subsection 83.01(1) of the *Criminal Code* and the entity engages or will engage in terrorist activities as defined in that subsection or activities in support of them.
- Statutory Instruments Act
- (2) A certificate is not a statutory instrument for the purposes of the *Statutory Instruments Act*.
2001, c. 41, ss. 113 "4", 125.

JUDICIAL CONSIDERATION OF CERTIFICATE

- Notice
- 5.** (1) As soon as the Minister and the Minister of National Revenue have signed a certificate, the Minister, or a person authorized by the Minister, shall cause the applicant or registered charity to be served, personally or by registered letter sent to its last known address, with a copy of the certificate and a notice informing it that the certificate will be referred to the Federal Court not earlier than seven days after service and that, if the certificate is determined to be reasonable, the applicant will be ineligible to become a registered charity or the registration of the registered charity will be revoked, as the case may be.
- Restriction
- (2) The certificate and any matters arising out of it are not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with, except in accordance with this Act.
- Non-publication or confidentiality order
- (3) Notwithstanding subsection (2), the applicant or registered charity may apply to a judge for an order
- (a) directing that the identity of the applicant or registered charity not be published or broadcast in any way except in accordance with this Act; or
 - (b) that any documents to be filed with the Federal Court in connection with the reference be treated as confidential.
- No appeal
- (4) An order on an application referred to in subsection (3) is not subject to appeal or review by any court at the instance of a party to the application.
- Filing in Federal Court
- (5) Seven days after service under subsection (1), or as soon afterwards as is practicable, the Minister or a person authorized by the Minister shall
- (a) file a copy of the certificate in the Federal Court for it to make a determination under section 7; and
 - (b) cause the applicant or registered charity to be served, personally or by registered letter sent to its last known address, with a notice informing it of the filing of the certificate.
- 2001, c. 41, ss. 113 "5", 125.
- Judicial consideration
- 6.** The following provisions govern the determination:
- (a) the judge shall hear the matter;
 - (b) the judge shall ensure the confidentiality of the information on which the certificate is based and of any other evidence that may be provided to the judge if, in the opinion of the judge, its disclosure would be injurious to national security or endanger the safety of any person;
 - (c) the judge shall deal with all matters as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit;
 - (d) the judge shall, without delay after the matter is referred to the Federal Court, examine the information and any other evidence in private;
 - (e) on each request of the Minister or the Minister of National Revenue, the judge shall hear all or part of the information or evidence in the absence of the applicant or registered charity named in the certificate and their counsel if, in the opinion of the judge, its disclosure would be injurious to national

security or endanger the safety of any person;

(f) the information or evidence described in paragraph (e) shall be returned to the Ministers and shall not be considered by the judge in determining whether the certificate is reasonable if either

(i) the judge determines that the information or evidence is not relevant or, if it is relevant, that it should be part of the summary, or

(ii) the matter is withdrawn;

(g) the information or evidence described in paragraph (e) shall not be included in the summary but may be considered by the judge in determining whether the certificate is reasonable if the judge determines that the information or evidence is relevant but that its disclosure would be injurious to national security or endanger the safety of any person;

(h) the judge shall provide the applicant or registered charity with a summary of the information or evidence that enables it to be reasonably informed of the circumstances giving rise to the certificate, but that does not include anything that in the opinion of the judge would be injurious to national security or endanger the safety of any person if disclosed;

(i) the judge shall provide the applicant or registered charity with an opportunity to be heard; and

(j) the judge may receive into evidence anything that, in the opinion of the judge, is reliable and appropriate, even if it is inadmissible in a court of law, and may base the decision on that evidence.

2001, c. 41, ss. 113 "6", 125.

Determination
whether certificate
is reasonable

7. (1) The judge shall determine whether the certificate is reasonable on the basis of the information and evidence available.

Certificate quashed

(2) The judge shall quash a certificate if the judge is of the opinion that it is not reasonable.

2001, c. 41, ss. 113 "7", 125.

Effect of
determination

8. (1) A certificate that is determined to be reasonable under subsection 7(1) is conclusive proof that, in the case of an applicant, it is ineligible to become a registered charity or, in the case of a registered charity, that it does not comply with the requirements to continue to be a registered charity.

No appeal or
review

(2) The determination of the judge is final and is not subject to appeal or judicial review.

Publication

(3) The Minister shall, without delay after a certificate is determined to be reasonable, cause the certificate to be published in the *Canada Gazette*.

2001, c. 41, ss. 113 "8", 125.

9. [Repealed, 2001, c. 41, s. 125]

REVIEW OF CERTIFICATE

Ministerial review

10. (1) An applicant or former registered charity in relation to which a certificate was determined to be reasonable under subsection 7(1) and that believes that there has been a material change in circumstances since the determination made under that subsection may apply in writing to the Minister for a review of the certificate by the Minister and the Minister of National Revenue.

Notice to Minister
of National
Revenue

(2) The Minister shall, without delay, notify the Minister of National Revenue of an application for review.

Material to be
considered

(3) For the purpose of a review, the Ministers may consider any submission made by the applicant or former registered charity that applied for the review and any information that is made available to the Ministers.

Time for decision

(4) The Ministers shall make their decision on an application for review within 120 days after receipt of the application by the Minister.

Decision on review

(5) The Ministers may decide that, since the time the certificate was determined to be reasonable,

(a) there has not been a material change in circumstances, in which case the Ministers shall deny the

application; or

(b) there has been a material change in circumstances, in which case the Ministers shall determine whether there are reasonable grounds as provided in subsection 4(1) and, accordingly,

- (i) continue the certificate in effect, or
- (ii) cancel the certificate as of the date of the decision.

Automatic
cancellation

(6) If no decision is made within a period of 120 days after receipt of the application, the certificate is cancelled on the expiration of that period.

Notice to applicant
or charity

(7) As soon as a decision is made or the certificate is cancelled under subsection (6), the Minister or a person authorized by the Minister shall cause the applicant or former registered charity that applied for the review to be served, personally or by registered letter sent to its last known address, with notice of the decision or cancellation.

2001, c. 41, ss. 113 "10", 125.

Application for
review

11. (1) An applicant or former registered charity that applied for a review under subsection 10(1) may, after giving written notice to the Minister who in turn shall notify the Minister of National Revenue, apply to the Federal Court for a review of a decision made under paragraph 10(5)(a) or subparagraph 10(5)(b)(i).

Review by Court

(2) The Court shall carry out the review in accordance with section 6, with any adaptations that may be required.

Referral to
Ministers

(3) If the Court quashes a decision of the Ministers made under paragraph 10(5)(a), it shall refer the application to the Ministers for a decision under paragraph 10(5)(b).

Cancellation of
certificate

(4) If the Court quashes a decision of the Ministers made under subparagraph 10(5)(b)(i), the certificate is cancelled as of the date the decision is quashed.

No appeal

(5) The determination of the Court is not subject to appeal or judicial review.

Publication of spent
certificate

12. The Minister shall, in a manner that mentions the original publication of the certificate, cause to be published in the *Canada Gazette* notice of the cancellation of a certificate by reason of

- (a) a decision made under subparagraph 10(5)(b)(ii);
- (b) the operation of subsection 10(6); or
- (c) a determination of the Federal Court referred to in subsection 11(4).

Term of a
certificate

13. Unless it is cancelled earlier, a certificate is effective for a period of seven years beginning on the day it is first determined to be reasonable under subsection 7(1).

2001, c. 41, ss. 113 "13", 125.

Regulations

14. The Governor in Council may make any regulations that the Governor in Council considers necessary for carrying out the purposes and provisions of this Act.