

This document is meant as a high level overview of the nature of the application and the issues it addressed, as well as the process of engagement with the CRA. Detailed materials have also been posted including: the legal opinion making the case for charitable status for the bank, the application for charitable status, materials on issues like private benefit, the constitution of a charitable trust. Responses from the CRA are also included; as well as the letter in which the CRA acknowledged they would grant charitable status to the bank pending approval from the Office of the Superintendent of Financial Institutions (OSFI).

Vartana's engagement with the CRA

Perhaps the most successful aspect of the Vartana initiative was the work with the Canada Revenue Agency ('CRA'). Vartana was seeking to break new ground in gaining charitable status for a bank – fraught with issues conceptually, and in terms of what its structuring would mean from a legal perspective. Some initial soundings with legal experts lent hope to the idea that there would be room to work with the CRA. This was buttressed both by the previous experience of the founders of Vartana with the CRA on another file – especially the positive and open minded working experience working to establish CanadaHelps, as well as the experience that a somewhat similar approval had been granted to the Charity Bank initiative in the UK. But it remained profoundly unclear how the CRA would respond, and significant time was spent thinking about how to properly engage with the CRA.

Charitable status: what, why and how?

The vision of the Vartana project was developing financial services and products to address needs that existed in the social sector – amongst charities and non-profits. The initial work in 2001 and 2002 looked at a variety of ways of addressing that need: looking at a variety of different models that had emerged in other countries. Eventually, this led to the vision of a bank that would be focused on addressing the needs of charities; and would be a charity as well. At that point it was unclear just how compelling the idea of a bank that would be a charity would be to so many people – the team, the sector as a whole, the government. And yet once that became part of our vision, we were surprised by the depth of commitment it inspired. For charities, it meant that they would be dealing with an organization that would be working with their best interests in mind, as well as completely focused on them, and be one of them – for the sector, by the sector, and of the sector. The most important perspective of course was the sector's perspective. And, even as we began to come to terms with the repercussions of charitable status, and the restrictions within which we would need to operate, the importance of charitable status became more clear. Our research showed that it made a fundamental difference for sector organizations in their interest in working with a new financial institution (see quantitative and qualitative research). Without it, their interest was unremarkable.

With it, they were keen to see the initiative come into being. It had become a defining characteristic of the initiative. Yet there were a series of repercussions to the choice. These are explored below.

Benefits and Problems with Charitable Status

- Positive
- Negative

Issue	Context
Seen to be part of the sector - 'Of the sector, for the sector, by the sector'	<ul style="list-style-type: none"> • Placed the initiative fundamentally within the social sector – made it something that was easier for charities and non profits to get excited about. • Also made it easier to get support from other stakeholders as well
Access to donation credit	<ul style="list-style-type: none"> • The bank would be able to raise money on an ongoing basis – for build and for operations – through seeking donations, and be able to give out tax receipts in return. • This also held the opportunity to consider some innovative products in the future. For instance, it might provide ways to tie deposits for instance from individuals to low interest or no interest accounts in return for a tax receipt.
Support from other qualified donees	<ul style="list-style-type: none"> • Vartana/the Bank would have no trouble raising funds from other qualified donees such as charities in the form of donations, or via equity or loan investments
Income tax exemption & other exemptions	<ul style="list-style-type: none"> • As a charity the bank would be exempted from paying taxes which meant that it would be able to keep more of its resources to invest in the sector. Specifically the Bank would have been exempted from income tax, partially exempted from GST, and eligible for rebates on municipal property tax.
Issues around share structure	<ul style="list-style-type: none"> • Banks are organized with share structures. While the CRA had approved other organizations that had been organized as CBCA corporations (e.g. CanadaHelps) with restrictions, those were done so on an exceptional basis.
Issues around capital structure	<ul style="list-style-type: none"> • Being a charity meant that the bank would not be able to pay dividends (or accrue private benefits) to for profit entities or individuals. Vartana hoped that it might be able to gain some leeway by getting the CRA to accept that

	dividends paid to charities were payments that were for public benefit as opposed to private benefit. This argument had been successfully made in the UK. However, this fundamentally limited the pool of possible investors in the Bank.
Issues around audience being served	<ul style="list-style-type: none"> • By virtue of being a charity, and having our case being made under the charity head of the interests of the sector, this meant that we would have to mainly serve charities. This would have fundamentally circumscribed our ability to address needs within the broader voluntary sector. We also needed to find out if we would be able to take deposits from individuals at low rates to help subsidize our loans to charities. • Critically the Bank wanted to serve either charities, or those projects that were charitable in nature but being undertaken by entities that were not charitable.
Related business issues	<ul style="list-style-type: none"> • Rules circumscribing the kinds of business activities that charities could undertake, and the structure thereof.

Engaging with the CRA on charitable status

As Vartana developed its submission to the CRA it was seeking to make a case for the following:

- That the bank was charitable
- That the bank could have a share structure and that the shares could pay dividends though those might only be paid to charities
- That the bank's business activities were fundamentally charitable, and not a business, since that activity would be in furtherance of its central charitable purpose
- And finally that a purpose that was charitable might result in incidental benefits to non-qualified donees; and that the Bank might serve entities pursuing charitable projects while not themselves being charitable.

These were absolutely key to the business plan that had been developed until this point in time. The CRA was willing to accept these. Again, we were helped by the example of the UK as well as by the charity regulators openness to exploring addressing the needs of the sector. However, the CRA required that these be enshrined by the organization in different ways, and so a number of different mechanisms were created in response to CRA concerns.

Issue	Response
Ensuring the bank was and remained charitable	<ul style="list-style-type: none"> • The CRA required that the Bank enshrine its objects in its letters patent. This was typically not done with a bank, but there was no impediment to actually doing so, and the Office of the Superintendent of Financial Institutions (OSFI) indicated that they would not have an issue with doing so. • The CRA also required that any and all voting shares of the bank were held solely by institutions that were charitable.
Share structure & proceeds from the bank	<ul style="list-style-type: none"> • The CRA was comfortable with the idea of a share structure, however as expected they limited equity investors to qualified donees and charities. • Another issue of concern was what would happen in the event of a wind up of the Bank. A possible solution was proposed where a charitable trust would receive the proceeds of the wind-up and then dispose those amongst charitable organizations – likely those that had contributed to the creation of the bank.
Ensuring that the bank principally focused on charities	<ul style="list-style-type: none"> • The CRA required that a charity review committee was created to ensure that organizations applying for a loan either were undertaking a project that was charitable, or were charitable in their own right. The idea being that this committee could also seek the CRA's guidance if necessary.

These were duly agreed to by Vartana.

The Process

Registration of Vartana – the organization seeking to establish the Bank

At the outset, because of the lack of clarity around whether the Bank would qualify for charitable status, Vartana looked to pursue its initial work – research into the viability of a bank focused on charities, the development of a business plan, as well as work with stakeholders – under the auspices of another charitable organization. This became especially pressing after the Muttart Foundation asked for a charity to act as agent for the project, in order to proceed with a grant. Vartana worked on a series of arrangements with the Voluntary Sector Forum and the Canadian Council on Social Development; but ultimately was not able to find an arrangement that made sense for either Muttart or Vartana. Key to Vartana's considerations were concerns about issues like intellectual property and governance – and being thoughtful about the role of the initiative's steering committee and core team. This might be questioned from the perspective of whether some of Vartana's entrepreneurial bent was sacrificed, and whether too much concern was paid to these agreements. Eventually Vartana realized that it simply made sense to pursue its own organization and charitable status for the project of developing the bank. An application for letters patent and for charitable status was submitted in October 2003. A couple of weeks later the letters patent and the charitable status had been granted for an organization to do research into various aspects of the financial, human resources, information technology needs of the charitable sector, how they had been addressed in other places, and to do work to prepare initiatives of that ilk

in Canada. The letters patent themselves were handled through the standard process. For the charitable status of Vartana a simple application was handed in, with a basic explanation of what we were considering working on, and an expedited process was sought. It was granted. Vartana was now its own organization, and the stage had been set for the next step with the CRA. Nonetheless concerns remained about the next steps with the CRA.

Seeking a legal opinion

Two lawyers were retained by Vartana: David Stevens and on an advisory basis Laird Hunter. David Stevens had started working with Vartana as its lead counsel when Vartana was seeking hosting arrangement with another charity, and then had taken care of the legal aspects of Vartana's filing for letters patent and for its application for charitable status. He now began the process of developing an opinion on the registrability of the bank. A member of the core team, Alec Zimmerman, played a key role in this work; Alec is considered one of Canada's leading banking lawyers. At the same time Vartana began going through the 2004 Budget process. And after receiving a big push within the bureaucracy began to reach out to the CRA; because of the previous work with David Stevens, with members of the core team, because of the unusual nature of the file, as well as the push the file was receiving internally the CRA indicated that they thought a different approach might make sense in pursuing this application: namely a more collaborative approach. They would work with us on developing the application so that when it was finally submitted it would be something that they would be likely to approve. They indicated that the British precedent was helpful. In taking this step the CRA demonstrated an incredible and exemplary commitment to both the sector as well as to being engaged in a direct, collaborative method. At the end of the 2004 Budget process the government made a commitment to supporting Vartana's regulatory process in the Budget. This cemented the collaborative approach that had been undertaken.

The work on the legal opinion proceeded somewhat slowly over the next few months. At the same time the work was also being informed by different perspectives than would usually be brought to bear on a typical charitable application: there were banking and business considerations that needed to be contemplated, and factored into the application. Finally a submission was made to the CRA in the middle of 2004, and a meeting set up to review the application with them.

Towards Registration

A meeting was held with most of the senior members of the Charities Division of the CRA; and an outstanding lead person given responsibility for the file. A few key issues were brought up and we were made aware of their sensitivity around them. And as the process continued they sought a legal opinion from within the government as to whether the bank would meet the requirements for charitable

status. In the meantime work proceeded to develop materials to support the structure that emerged out of the meetings with the CRA. After a further series of meetings, and the CRA finally receiving an opinion from the Justice department, a final meeting was held with the CRA during the Budget process of 2005. And at this point they indicated that with a few small changes to some of the materials, they would be prepared to indicate they would register the bank as a charity. Those changes were duly made, and the CRA sent a letter to Vartana indicating that given the proposed structure they would in fact be willing to register the bank as a charity.

Conclusion

The idea was that this charitable status would become effective as soon as the bank was approved by OSFI. Given that the application was finally retracted, it never came into effect. However, the decision itself was made. And in a number of places the CRA had broken new ground in the thinking of what and how to constitute a charitable organization and its relationship with its stakeholders.