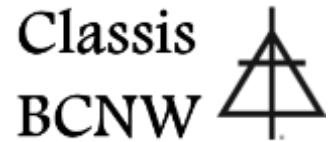


MEMORANDUM



To: The Church Councils of Classis BCNW
From: CMIC of Classis BCNW
Date: February 28, 2018
Subject: Arm's Length and Not at Arm's Length, and how they pertain to church councils

In 2017 one of our congregations faced the situation where four of their eight council members were not at arm's length with each other. The council approached the classis treasurer, David Pel, for clarification on this issue. David reached out to Ken Volkenant (lawyer) and the Canadian Council of Christian Charities and received the following information.

At Arm's Length and Not at Arm's Length

Not at arm's length is generally understood to mean not-related by blood or by marriage but actually goes beyond that to not-related by close business ties.

Definition of At Arm's Length from the CRA Charities Website:

The term "at arm's length" describes a relationship where persons act independently of each other or who are not related.

The term "not at arm's length" means persons acting in concert without separate interests or who are related.

Related persons are individuals who are related to each other by blood, marriage or common law partnership, or adoption. Examples of blood relatives include grandparents, parents, brothers, sisters, children, and grandchildren. Examples of persons related by spousal relationship include the grandparents of a spouse, the parents of a spouse, the brothers and sisters of a spouse, the children of a spouse, the spouse of a brother or a sister, the spouse of a child, and the spouse of a grandchild. Generally, in determining arm's length relationships, common law partners are treated in the same way as legally married spouses. Adopted children are treated in the same way as blood-related children.

Related persons also include individuals or groups and the corporations in which they have a controlling interest. Persons related to these individuals or groups are also considered related to those corporations.

For more information on arm's length and related persons, see Income Tax Folio S1—F5-C1, Related Persons and Dealing at Arm's Length.

Calculation

In doing the calculation for a Charity Board you have to put all persons who are related to another in column A (related) and the others in column B (non-related). A person only has to be related to one

person on the Board to go into column A. So if there are a husband and wife from one family and two sisters from another family on the Board all four go into Column A even if the husband and wife are not at all related to the two sisters.

Loss of Charitable Status

A church that is not ensuring that the members of its council are at arm's length could lose its charitable status and be re-designated as private foundation. There are two circumstances where a registered charity can be re-designated by CRA as a Private Foundation:

1. Where 50% or more of its directors, trustees, or like officials do not deal with each other at arm's length; and/or
2. Where more than 50% of its funding comes from a person or group of persons that control the charity in any way or make up more than 50% of the directors, trustees, or like officials of the charity.

Churches generally want to avoid being designated as Private Foundations because of the more restrictive borrowing, self-dealing, and related business restrictions.

Conclusion

It is important that church councils, particularly in smaller congregations, ensure the majority of their council members are at arm's length with each other. The Canadian Council of Christian Charities recommends that councils have a minimum of five members (not including the pastor), which would allow for three of the five to be at arm's length and two out of the five to be not at arm's length (as long as this minimum number complies with your own bylaws). Other people could be invited in as resource people to aid councils in decision making.