



BLUMBERGS

Top 10 Compliance Issues for Canadian Registered Charities

**Presentation to the Charity Village
October 19, 2023**

Mark Blumberg | mark@blumbergs.ca
© Blumbergs Professional Corporation

BLUMBERGS

- Blumbergs Professional Corporation – Law firm based in Toronto with lawyers and others who work almost exclusively with non-profits, charities, philanthropists, and their advisors
- Mark Blumberg is a lawyer at Blumbergs who works on non-profit and charity law

www.CanadianCharityLaw.ca

www.Blumbergs.ca

www.CharityData.ca

www.SmartGiving.ca

- Sign up for our free [Canadian Charity Law Newsletter](#)
- (416) 361-1982 or 1 (866) 961-1982
- mark@blumbergs.ca
- twitter.com/canadiancharity

Introduction

- Legal information not legal advice
- Views expressed are my own
- Questions during and at end
- Logistics and timing

Charity Law Basics

- Registered charities are regulated by Charities Directorate of the Canada Revenue Agency (CRA)
- Registered charities fall under both federal and provincial jurisdiction
- Non-profits and charities are both tax exempt
- Income Tax Act – concept of “registered charity” can issue “official donation receipt” with income tax savings for donor
- Benefits and restrictions on registered charities

Variety of Charities

- Every charity is different:
 - Governing Documents and Objects
 - Areas of charitable work
 - Risk tolerance
 - Public profile
 - Donors and level of government support
 - Independent vs. affiliated
 - Resources
 - Values and knowledge
 - History (including regulatory issues)

Top Legal Compliance Concerns for Canadian Registered Charities

1. Failure to File T3010

- Canadian registered charities must file their T3010 Registered Charity Information Return every year
- Within six months of the end of the charity's fiscal period
- You can file T3010 online with MyBA system or download form from:

www.canada.ca/en/revenue-agency/services/forms-publications/forms/t3010.html

See www.charitydata.ca for T3010 information on charities, director search, filtering charities based on financial information, etc.

Why File T3010

- Legally required
- Only uniform way to compare Canadian charities
- Advertisement for charity
- Important for transparency of charity
- Only beginning of transparency (website, annual report, newsletters, e-mail lists, etc.)

Consequences for Failing to File

- Revocation of charitable status within months
- Cannot issue receipts
- Lose benefits of registered status
- Revocation tax if not re-registered within 1 year
- May not be able to re-register particularly for older organizations
- \$500 penalty

2. Mistakes with T3010

- T3010 must be the correct form, accurate and complete including schedules and financial statements otherwise may be returned or considered incomplete
- Lots of help on internet with T3010
- Filling online with MyBA, will reduce clerical errors, CRA has fillable T3010, also see past filings at www.CharityData.ca
- 2012 Federal Budget – CRA can suspend charity for incomplete T3010
- Even ‘minor typos’ on T3010 can result in CRA review and possibly audit and if audit issues and review will not be limited to T3010 only

Problems with T3010

- Using wrong form
- Not providing all information
- Not providing accurate information
- Not providing all schedules
- Not providing full financial statements
- Not providing date of birth of directors

Form T3010 Checklist

- A complete information return includes:
 - Form T3010, Registered Charity Information Return
 - if applicable—Schedule 1, Foundations
 - if applicable—Schedule 2, Activities outside Canada
 - if applicable—Schedule 3, Compensation
 - if applicable—Schedule 4, Confidential data
 - if applicable—Schedule 5, Non-cash gifts
 - if applicable—Schedule 6, Detailed financial information

Form T3010 Checklist (cont'd)

- a copy of the charity's own financial statements, including notes to the financial statements (if the charity has income over \$250,000, the Charities Directorate of the CRA recommends the financial statements be professionally audited; otherwise, the treasurer for the charity should sign them, but whether audit is necessary depends on corporate law and/or governing documents)
- Form T1235, Directors/Trustees and Like Officials Worksheet, with all the required information
- if applicable—Form T1236, Qualified donees worksheet / Amounts provided to other organizations
- if applicable—Form T2081, Excess Corporate Holdings Worksheet for Private Foundations

3. Incorrect Receipts

- Charities are not required to issue official donation receipts (“receipts”)
- But if they do issue receipts, the receipts must be correct
- Some receipts:
 - Lack required information
 - Include improper fair market value (FMV)
 - Are issued when there is not a gift under the *Income Tax Act* (Canada)

Why Receipt?

- Can offset federal and provincial income tax
 - Exact amount depends on which province, which marginal bracket a person is in that year and the type of property (*e.g. appreciated marketable securities*)
- Can carry forward for next five years
- Can donate up to 75% of your net income each year

Does a Charity Have to Issue Receipts?

- No
- But make donors aware of policies (minimum donations, when receipts will or will not be issued, gift acceptance policies, etc.)
- Individuals require “official donation receipt” to reduce personal income tax when they file their personal return each year so let them know if no receipt will be issued
- If in doubt, DON'T RECEIPT

Mandatory Elements of Receipts

- For gifts of cash: (Regulation 3501 of the *Income Tax Act*)
 - A statement that it is an official receipt for income tax purposes
 - The name and address of the charity as on file with the CRA
 - The charity's registration number
 - The serial number of the receipt
 - The place or locality where the receipt was issued
 - The day or year the donation was received

Mandatory Elements of Receipts (cont'd)

- The day on which the receipt was issued if it differs from the day of donation
- The full name and address of the donor
- The amount of the gift
- The value and description of any advantage received by the donor
- The signature of an individual authorized by the charity to acknowledge donations, and
- The name and Web site address of the Canadian Revenue Agency
www.canada.ca/en/revenue-agency/services/charities-giving/charities.html

Mandatory Elements for Gifts in Kind

- For non-cash gifts (gifts in kind), these additional elements:
 - The day on which the donation was received (if not already indicated)
 - A brief description of the property transferred to the charity
 - The name and address of the appraiser (if property was appraised), and
 - In place of the amount of the gift mentioned above, the deemed fair market value of the property


Sample Official Donation Receipts

- CRA has sample templates for official donation receipts
 - www.canada.ca/en/revenue-agency/services/charities-giving/charities/sample-official-donation-receipts.html

Sample 1 - Cash gift no advantage

A donor makes a cash gift of \$20. The donor, or any other person associated with the donor, has not and will not, receive an [advantage](#) for the gift. So, the [amount of the gift](#) and the [eligible amount of the gift](#) are both \$20.

Official donation receipt for income tax purposes Receipt # XXXXX

 **Charity or qualified donee name** Receipt issued _____ DD/MM/YYYY
Address Location issued _____ City, Prov.
Charitable registration #: 000000000 RR 0000*

Donated by _____
(First and last name, and initial)

Address _____

Donation received _____ **Amount of gift** _____
(Date or year)**

Eligible amount of gift

Authorized signature: _____

Canada Revenue Agency - canada.ca/charities-giving

4. Acting Outside Legal Objects

- Charities in Canada have legal objects in their founding documents (e.g. Articles, Letters Patent, Trust deed, Constitution, etc.)
- Charities must not act outside of these legal objects
 - Are objects up to date, relevant and broad enough?
 - Having narrow objects can impede the work of a charity
 - If your charity is acting outside its objects, then charity should either cease such activities or consider expanding objects
 - With the delays at CRA in reviewing object changes it makes sense to request permission about 6 months to 1 year before you will be making the object change

Check Your Articles/Letters Patent

4 - Statement of the purpose of the corporation

The purposes of the Corporation are:

- a) To relieve poverty in developing nations by providing food and other basic necessities of life to individuals or families in need;
- b) To promote health by providing affected populations with health care services or products that prevent and manage serious threats to health and survival; and
- c) To receive and maintain a fund or funds and to apply all or part of the principal and income therefrom, from time to time, to qualified donees as defined in subsection 149.1(1) of the Income Tax Act (Canada).

Changing your Objects

- Registered charities should ask CRA for pre-approval
 - can take CRA about 4-6 months and CRA will require both objects and detailed description of activities for CRA to review
 - be careful and precise with objects otherwise may be considered vague or broad and not charitable
 - any submission to CRA should be carefully considered
- How to Draft Purposes for Charitable Registration (Guidance CG-019)
 - www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-019-draft-purposes-charitable-registration.html

5. Corporate Law Changes

- What is your Non-Profit?
 - Ontario Not-for-Profit Corporations Act ("ONCA") formerly the Ontario Corporations Act (OCA)
 - Canada Not-for-profit Corporations Act (CNCA)
 - Other provincially incorporated Non-Profit
 - Trust
 - Unincorporated association
 - Other – e.g., foreign entity
- Certain new corporate law changes can result in the dissolution of your corporation and loss of charity status

The Not-for-profit Corporations Act, 2010 (Ontario) “ONCA”

- The Ontario Not-for-Profit Corporations Act, 2010 (ONCA) received Royal Assent on October 25, 2010, and was supposed to be in force January 1, 2013
- 2017 and 2020 changes to ONCA
- August 2021 – announced ONCA will be in force on October 19, 2021
- On October 19, 2021, ONCA came into force

The Not-for-profit Corporations Act, 2010 (Ontario) “ONCA”

- The Ontario Business Registry (OBR) which replaces the old ONBIS system also launched on October 19, 2021
www.ontario.ca/page/ontario-business-registry
- Often best to establish a Federal corporation, not an Ontario non-profit even if all activities in Ontario

Big Picture

- 1) Do we want the organization to continue or is now time to dissolve? There are a lot of dormant non-profits and charities or duplication, etc. Change in statutes provides a good time for reflection and culling of dormant corporations.
- 2) Is governance and membership working? i.e., Do you want technical “continuance” or governance transformation of organization?
- 3) Don’t let corporate statutes completely distract you from other important legal and ethical compliance issues

Big Picture (cont'd)

- 4) Major reorganization may only take place once every 50 years – for some organizations worthwhile to get professional advice –non-profit corporate law, charity law, governance, and non-profit standards.

- 5) Are your objects still appropriate?
 - Very important for charities
 - CRA approval can take 4-6 months or even longer
 - CRA Guidance - How to Draft Purposes for Charitable Registration (Guidance CG-019)

www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-019-draft-purposes-charitable-registration.html

Transition Options for ONCA Corporations

- 1) Change governing documents such as letters patent and supplementary letters patent and by-laws to conform with ONCA by applying for articles of amendment, passing new by-laws, and passing restated articles of incorporation
 - 2) Move from Ontario to CNCA – i.e., continue (transfer) to the Federal CNCA
- Doing nothing is not really an option

6. Non-Charitable Activities

- A registered charity must devote its resources (funds, personnel, and property) to **charitable activities** (the work that advances the charitable purposes)
- Certain non-charitable activities are allowed within limits like administration, fundraising, related business, and social

7. Grants to Non-qualified Donees

- World is divided into two when it comes to Income Tax Act charity regulation:
- **Qualified donees** – can issue official donation receipts for Income Tax Purposes
- **Non-Qualified donees** – cannot issue official donation receipts

List of Qualified Donees

- If in doubt check CRA's listings, call or write CRA, or treat organization as a non-qualified donee
- Qualified donees include:
 - a registered charity (including a registered national arts service organization);
https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyBscSrch?request_locale=en
 - a registered Canadian amateur athletic association;
www.canada.ca/en/revenue-agency/services/charities-giving/other-organizations-that-issue-donation-receipts-qualified-donees/canadian-amateur-athletic-associations.html
 - a registered journalism organization;
www.canada.ca/en/revenue-agency/services/charities-giving/other-organizations-that-issue-donation-receipts-qualified-donees/registered-journalism-organizations.html

List of Qualified Donees

- a listed housing corporation resident in Canada constituted exclusively to provide low-cost housing for the aged;

www.canada.ca/en/revenue-agency/services/charities-giving/other-organizations-that-issue-donation-receipts-qualified-donees/other-qualified-donees-listings/list-low-cost-housing-corporations-aged-registered-qualified-donees.html

- a listed Canadian municipality;

www.canada.ca/en/revenue-agency/services/charities-giving/other-organizations-that-issue-donation-receipts-qualified-donees/other-qualified-donees-listings.html

- a listed municipal or public body performing a function of government in Canada;

www.canada.ca/en/revenue-agency/services/charities-giving/other-organizations-that-issue-donation-receipts-qualified-donees/other-qualified-donees-listings/list-municipal-public-bodies-performing-a-function-government-canada-registered-qualified-donees.html

List of Qualified Donees

- a listed university outside Canada that is prescribed to be a university, the student body of which ordinarily includes students from Canada;
www.canada.ca/en/revenue-agency/services/charities-giving/other-organizations-that-issue-donation-receipts-qualified-donees/other-qualified-donees-listings/list-prescribed-universities-outside-canada.html
- a listed charitable organization outside Canada to which Her Majesty in right of Canada has made a gift;
www.canada.ca/en/revenue-agency/services/charities-giving/other-organizations-that-issue-donation-receipts-qualified-donees/other-qualified-donees-listings/list-foreign-charities-that-have-received-a-gift-majesty-right-canada.html
- Her Majesty in right of Canada or a province; and
- the United Nations and its agencies.

What is a Non-Qualified Donee?

- All organizations other than qualified donees
- They cannot issue official donation receipts
- Examples include:
 - Foreign charities
 - Canadian non-profits with no charitable status
 - Businesses
 - Celebrities

CRA's Guidance on Qualifying Disbursements

- [CG-023 - Registered charities making grants to non-qualified donees \(draft\)](#)
- Draft Guidance was released on November 30, 2022
- CRA accepted comments until January 31, 2023
- Need to remember that this Guidance is still in draft form and more changes may be forthcoming with this Guidance

Charitable Activities under the Old Rules

Canadian Registered Charity

Gift to
qualified
donee

Qualified Donee, e.g.
Canadian registered
charity, UN, registered foreign
university, Canadian
municipality, etc.

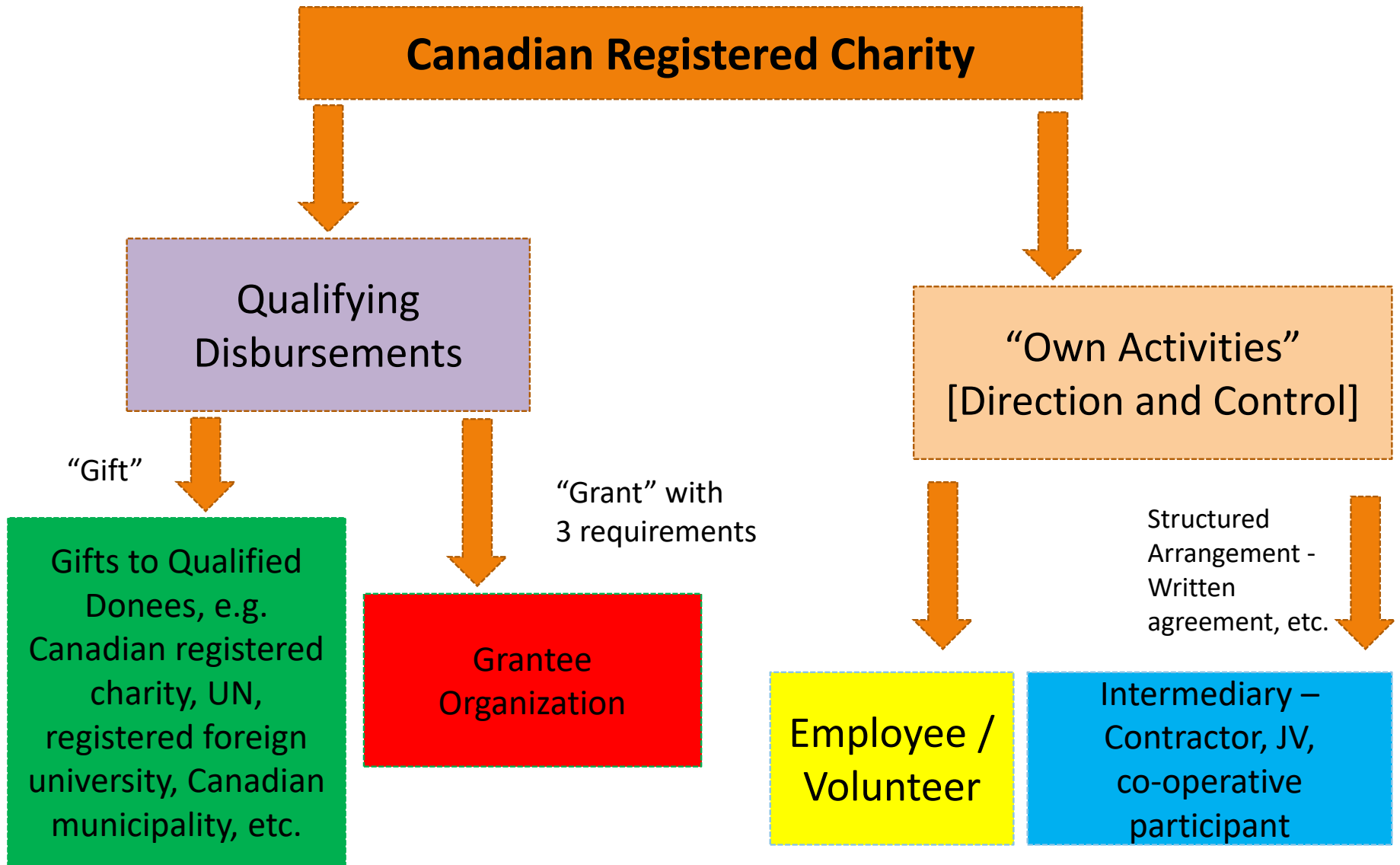
“Own Activities”
[Direction and Control]

Employee /
Volunteer

Intermediary –
Contractor, JV,
co-operative participant

Structured
Arrangement -
Written
agreement, etc.

Charitable Activities under the New Rules



CRA's Guidance on Direction and Control

- Guidance on Canadian Registered Charities Carrying Out Activities Outside Canada

www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html

- Using an Intermediary to Carry out a Charity's Activities within Canada

www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/using-intermediary-carry-a-charitys-activities-within-canada.html

“Own Activities” or “Direction And Control”

- When not working with qualified donee or own staff need to have:
 1. Due Diligence of Intermediary (investigate)
 2. Written Agreement
 3. Detailed Description of Activities
 4. Separate Activities and Funds
 5. Monitoring and Supervision
 6. Ongoing Instruction for Changes
 7. Periodic Transfers
 8. Books and Records in Canada showing above

“Direction And Control”

- We will discuss new rules on grants to grantees but for many Canadian registered charity until there is greater certainty about these rules it may be best to use the direction and control rules if you are transferring resources to a non-qualified donee.

What is a Grant to Grantee Organization?

- A registered charity may make a qualifying disbursement (which may be by cash or other charitable resources) to a non-qualified donee (“grantee organization”), provided that:
 1. the disbursement furthers a charitable purpose of the charity; and
 2. the charity ensures that the disbursement is exclusively applied by the grantee organization to charitable activities in furtherance of a charitable purpose of the charity; and
 3. the charity maintains documentation sufficient to demonstrate the above.

How does a charity “ensure” the grant is used for charitable activities for a charitable purpose?

- CRA’s guidance provides a risk assessment matrix to assess the overall risk of each grant, using the following risk factors:
 - Charity’s experience
 - Grantee’s experience
 - Grant activity location
 - Grant amount
 - Private benefit concerns
 - Nature of resources granted (e.g., cash vs. medical supplies)
 - Grant duration
- We note that CRA does not provide information on whether certain risk factors should be weighed more than others or how to fully balance the risk factors.

What is a Conduit? (Direction and Control)

- “a conduit is a registered charity that receives donations from Canadians, issues tax-deductible receipts, and funnels money without direction or control to an organization to which a Canadian taxpayer could not make a gift and acquire tax relief.”
- Violates *Income Tax Act*
- Can be penalties or revocation

Conditional Gifts to NQD (Anti-Avoidance Rule)

- Paragraph 168(1)(f) of the ITA says that a registered charity can be revoked when a registered charity “accepts a gift the granting of which was expressly or implicitly conditional on the charity, association or organization making a gift to another person, club, society, association or organization other than a qualified donee.”
- Violates *Income Tax Act*
- Can be revocation
- Receipt issued will not be valid

Conditional Gifts to NQD (Anti-Avoidance Rule)

- It is important to note that this new anti-avoidance provision not only applies to the new qualifying disbursement rules but also when a charity is conducting a “structured arrangement” with “direction and control”.
- This new directed donation rule will affect:
 - **Fundraising** – gift agreements, proposals, commitments made to donors
 - **Grantmaking** – what a foundation making a gift to a registered charity can put in the gift agreement. It may also require that for funding non-qualified donees the foundation may need to expand objects and use either direction and control or grants (qualifying disbursements)

Misunderstandings

- There has been a lot of changes and misunderstandings about this change
- It does not allow Canadian charities to make “gifts” to non-qualified donees (such as non-profits that are not charities, foreign charities or businesses)
- It does not replace the current options for program implementation including 1) gifts to qualified donees, 2) using staff to implement programs or 3) using non-qualified donees as part of a structured arrangement with direction and control

Additional Information

- CRA releases draft guidance for “Registered charities making grants to non-qualified donees” as part of Budget 2022 “qualifying disbursements”
- New Qualifying Disbursement Rules and Directed Donations Anti-Avoidance Provisions Complicate Charity Regulation
- CRA note on “Reporting grants to non-qualified donees” until the CRA has revised T3010 annual form

8. Fundraising Costs and Practice

- Fundraising is important for charities, but it is not a charitable activity
- Lots of media and donor concern about costs and practices
- CRA Guidance on Fundraising

www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/fundraising-registered-charities-guidance.html

Organization of Guidance

- Fundraising by Registered Charities
 - A. Introduction
 - B. Summary
 - C. Application and jurisdiction
 - D. What is fundraising?
 - E. Definitions
 - F. When is fundraising not acceptable?
 - G. Evaluating a charity's fundraising
 - H. Factors that may influence the CRA's evaluation of a charity's fundraising
- Appendix A – Examples of fundraising activities
- Appendix B – Allocating fundraising expenditures
- Appendix C – Best practices
- Appendix D – Questions and answers
- Footnotes

Summary - Unacceptable Fundraising

- Fundraising is acceptable provided that is not:
 - a purpose of the charity (a collateral, non-charitable purpose);
 - delivering a more than incidental private benefit (a benefit that is not necessary, reasonable, or proportionate in relation to the resulting public benefit);
 - illegal or contrary to public policy;
 - deceptive; or
 - an unrelated business.

Summary – Indicators and Factors

- “6. When evaluating a charity’s fundraising activities, the CRA will consider a range of indicators and factors, including the following:
 - Resources devoted to fundraising relative to resources devoted to charitable programs;
 - Fundraising without an identifiable use or need for the proceeds;
 - The charity’s fundraising expenses to fundraising revenue ratio;

Summary – Indicators and Factors (cont'd)

- Inappropriate purchasing or staffing practices, including:
 - purchases of fundraising merchandise or services that do not increase fundraising revenue;
 - paying more than fair market value for fundraising merchandise or services; and
 - sole source or not-at-arm's length contracts with suppliers or service providers.
- Activities where most of the gross revenues go to contracted non-charitable parties;
- Commission-based fundraiser remuneration or payment of fundraisers based on the amount or number of donations;

Summary – Indicators and Factors (cont'd)

- Misrepresentations in fundraising solicitations or in disclosure about fundraising costs, revenues or practices;
- Fundraising initiative or arrangements that are not well documented ;
- The size of the charity;
- Causes with limited appeal;
- Donor development programs;
- Involvement in gaming activities.

Fundraising Ratio

- **Ratio of costs to revenue over fiscal period – under 35%**
 - This ratio is unlikely to generate questions or concerns by the CRA.
- **Ratio of costs to revenue over fiscal period – 35% to 70%**
 - The CRA will examine the average ratio over recent years to determine if there is a trend of high fundraising costs. The higher the ratio, the more likely it is the CRA will be concerned the charity is engaged in fundraising that is not acceptable, requiring a more detailed assessment of expenditures.
- **Ratio of costs to revenue over fiscal period – above 70%**
 - This level will raise concerns with the CRA. The charity must be able to provide an explanation and rationale for this level of expenditure to show that it is not engaged in unacceptable fundraising.

9. Employment Issues

- Employee vs. Independent contractor - see CRA publication Employee or Self-employed?

www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc4110/employee-self-employed.html

- Withholding source deductions (CPP, EI, Income Tax)
- Remitting source deductions
- Proper employment agreements
- Excessive compensation / private benefit

10. Political Activities

- Lots of recent changes to the rules for Canadian charities and political activities
- Some people think of “political” activities by charities as a bad word, but it is not – some of the biggest achievements of charities have been related to political activities such as changing laws, getting governments to allocate resources to certain problems, etc.
- But there have also been completely inappropriate political activities by some charities

Political Activities - Three Different Sets of Rules

- **Income Tax Act** limitations on registered charities
 - applies only to registered charities
- **Elections Act** and Third-Party Advertising
 - applies to both NPOs and registered charities
- **Lobbying Act** (Federal, Provincial, Municipal)
 - applies to both NPOs and registered charities

Political Activities - Old Rules for Registered charities

- Under the Income Tax Act, a registered charity used to be restricted to the amount of resources it could use for non-partisan political activities and was and still is prohibited from involvement with partisan political activities. (now called activities which support or oppose a political party or candidate)
- Could only spend a maximum of 10% of resources (except for smaller charities between 10-20%) and could average over 3 years (some groups could spend 60% in one year if no previous political activities)
- Could always set up affiliated non-profit that could do unlimited political including partisan activities
- Could not do partisan political activities and political activities had to be connected to the charity's legal objects or purposes. (no change)

Political Activities - New Rules

- On December 13, 2018, the Trudeau government made several changes to the *Income Tax Act* (Canada) related to charities, especially with regards to political activities. The changes allow Canadian registered charities to conduct
 - unlimited public policy dialogue and development activities (PPDDA)
 - which are connected to the stated charitable purposes of the charity
 - as long as they are not directly or indirectly supporting or opposing a candidate or political party
- Although PPDDA is not defined in the Income Tax Act it will likely be viewed as what was historically referred to as allowable non-partisan political activities plus some charitable activities like private meetings with MPs.

Political Activities

- CRA Guidance CG-027 **Public policy dialogue and development activities by charities**

<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/public-policy-dialogue-development-activities.html>

- CRA releases Q&A on public policy dialogue and development activities by charities

https://www.canadiancharitylaw.ca/blog/cra_releases_qa_on_public_policy_dialogue_and_development_activities_by_cha

11. Unrelated Business Activities

- *Income Tax Act* prohibits “unrelated business activities” by all charities
- Charitable organizations and public foundations are permitted to engage in “related business activities” but private foundations may not engage in any business activity
- “Carrying on business” - activity is commercial in nature (derive revenue and provisions of goods and services, intention to earn profit) and continuous

Why Prevent Unrelated Business?

- Unfair competition with private businesses
- Why should charities be able to compete tax-free?
- Business is not a charitable object
- Will encourage regular business to set up as charities
- In some countries, unrelated business is permitted, but the charity will be taxed on unrelated business income like a private business but not in Canada

What is a Related Business?

- There are two kinds of related businesses that a registered charity can conduct:
 1. Businesses that are linked to a charity's purpose and subordinate to that purpose (for example, a hospital parking lot, church gift shop); or
 2. Businesses that are run substantially (90%) by volunteers (for example, coffee shop run by volunteers).

Business Activities

- For more guidance, see CRA's CPS-019 "What is a Related Business?"
 - www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/policy-statement-019-what-a-related-business.html
- Penalties for unrelated business: 5% (1st infraction) on gross unrelated business revenue
 - 2nd infraction: 100% penalty on that revenue and suspension* of tax-receiving privileges
- Earned in a taxation year

12. Gift Restrictions

- If a charity accepts a gift with a restriction on it the charity needs to comply with the restriction unless
 - The charity obtains a court order (cy pres); or
 - There is a provision for amendment by agreement or otherwise.
- Biggest myth is that if there is a restricted gift with no amendment clause that charity and donor can mutually agree to make changes after the gift is made

Challenges with Restricted Gifts

- Donors are well-intentioned, but do not know what is in the best interests of the organization
- What is in the best interest of the organization can change over time and donors' interests change over time
- Can undermine mission as funds may not be available for most important needs

Challenges with Restricted Gifts (cont'd)

- If large proportion of funds is restricted can make financial management and planning very difficult
- Restricted and long-term gifts can also undermine fundraising as the organization appears to have a large amount of funds, but they cannot necessarily be used for what is needed

Preventing Problems with Restrictions

- You can refuse the restrictions, but you may lose the gift
- You can suggest restrictions to donors that are broad and compatible with the areas of greatest need
- You can negotiate as broad a restriction as possible with the donor
- You can accept restrictions but can diminish real value of gift
- Ensure there is clear communication
- Include necessary caveats, provisions
- Try to maintain as much flexibility as possible

Conclusion

Biggest Mistakes

- Not aware of a compliance requirement or issue
- Not recognizing that every charity is different
- “We know what we are doing” (not everyone is good at compliance)
- Some charities very focused on compliance, but wrong issues
- Getting info from someone who is not very knowledgeable about charity law and compliance or has agenda
- Assuming that because a big charity does something that it is acceptable
- Thinking that a legal answer is the answer (remember ethics and reputation)

Conclusion

- Running a registered charity is a privilege and not a right
- Try to do your best – focus initially on highest visibility, highest risk problems that are easiest to fix
- Some charities need significant help - legal, accounting and financial management, investment, HR, etc.
- If revoked there are reputational issues but also the directors, officers and senior staff may become ineligible individuals – cannot be involved with running of charity including fundraising, finance and investing

Online Courses

www.CanadianCharityLaw.ca/courses/

Blumbergs' Online Courses

- [Being a Director of a Canadian Non-Profit or Registered Charity](#)
- [Blumbergs' Canadian Charity Law Boot Camp 2023 \(Online\)](#)
- [Blumbergs' Canadian Charity Law Institute 2022 \(Online\)](#)
- [Blumbergs' Canadian Charity Law Institute 2021 \(Online\)](#)
- [Blumbergs' Canadian Charity Law Institute 2020](#)
- [Canadian Charities Working with Non-Charities in Canada](#)
- [CharityData.ca – An in-depth look at this important registered charity transparency tool](#)

Blumbergs' Online Courses

- [Donor Advised Funds \(DAFs\) In Canada](#)
- [Foreign Activities and Canadian Charities](#)
- [Fundamentals of Running a Canadian Charitable Organization/Operating Charity](#)
- [Fundamentals of Running a Private or Public Foundation in Canada](#)
- [Fundraising from Canada – A course for groups outside of Canada](#)
- [Fundraising Regulation and Compliance in Canada for Registered Charities](#)
- [Membership of Non-Profits and Charities in Canada](#)

Blumbergs' Online Courses

- Mergers of Canadian Non-Profits and Charities and Dealing with Uncertain Times
- Multiple Corporate Structures for Canadian For-Profits, Non-Profits and Charities to Enhance Flexibility + Impact
- Objects/Purposes for Canadian Charities and Changes to Your Objects/Purposes
- Ontario not-for-profit corporations under the Ontario Corporations Act and dealing with ONCA
- Professional Advisors and Philanthropy: Helping Clients Give Effectively to Good Causes

Blumbergs' Online Courses

- Receipting for Canadian Registered Charities
- Restricted Gifts – Managing the Opportunities and Dangers of Restricted Charitable Gifts
- Running and Maintaining a Federal Non-Profit Corporation under the CNCA – An Introduction
- Separation and Independence by Canadian Charities from Entities that are not Canadian Charities
- Should Our Canadian Business Establish a Corporate Foundation?
- Should We Establish a Canadian Social Enterprise, Non-Profit or Charity & How to Do It?

Blumbergs' Online Courses

- Should you agree to be a director or board member of a Canadian non-profit or registered charity?
- So now you are a registered charity – What is next
- Social Enterprise, Earned Income and Business Activities for Canadian Registered Charities
- Top 20 Charity Law Issues for Canadian Registered Charities
- Transparency in the Canadian Charitable Sector and the T3010 Registered Charity Information Return

Questions?

Thank You!

Blumbergs Professional Corporation
Barristers & Solicitors

Tel. (416) 361-1982

Toll-Free (866) 961-1982

Fax (416) 981-7600

Email: mark@blumbergs.ca

LinkedIn: www.linkedin.com/in/markblumberg/?originalSubdomain=ca

Mastodon: <https://mas.to/@canadiancharity>

Twitter: www.twitter.com/canadiancharity

Facebook: www.facebook.com/canadiancharity/

Upcoming Events: www.CanadianCharityLaw.ca/events/

Online Courses: www.CanadianCharityLaw.ca/courses/

Charity Websites & Blogs: www.CanadianCharityLaw.ca

www.CharityData.ca

www.SmartGiving.ca