

Canadian Charities Working with Other Canadian or International Organizations that are not Registered Canadian Charities: Maintaining Direction and Control and Avoiding Being a Conduit

Generally, it is easy to transfer funds or resources from one Canadian charity to another Canadian charity. The *Income Tax Act* has a category called “qualified donees” which are organizations that can issue “official donation receipts” for Canadian Income Tax purposes and transferring funds between qualified donees can be as simple as writing out a cheque and gifting the funds.

The following is a list of organizations that can issue official donation receipts and are therefore considered to be qualified donees:

- Registered charities;
- Registered Canadian amateur athletic associations;
- Registered national arts service organizations;
- Housing corporations in Canada set up exclusively to provide low-cost housing for the aged;
- A municipality;
- A municipal or public body performing a function of government in Canada;
- The United Nations and its agencies;
- Universities outside Canada with a student body that ordinarily includes students from Canada (these universities are listed in Schedule VIII of the Income Tax Regulations);
- Charitable organizations outside Canada to which the Government of Canada has made a gift during the donor’s taxation year, or in the 12 months immediately before that period; and
- The Government of Canada, a province, or a territory.

As mentioned, transferring funds from a registered charity to another qualified donee is relatively simple and if all organizations in this world were qualified donees it would make transfers or gifts easier, although the Canadian government would not be collecting much taxes and would not have any money to pay for any services such as healthcare, defence, etc.!

But all organizations are not qualified donees and Canadian charities often do not want to be restricted to only dealing with qualified donees. For example, many great non-profits in Canada are not qualified donees. Almost all international development organizations outside of Canada are not qualified donees. This article is to help those understand how a Canadian charity can have a legally sound and sustainable relationship with a non-qualified donee.

The Canada Revenue Agency (“CRA”) has placed a consultation document on its website entitled “Consultation on the Proposed Guidance on Activities Outside of Canada for Canadian Registered Charities”. It reflects CRA’s current views on the relationship between qualified

donees (such as Canadian charities) and organizations that are not qualified donees and it is well worth reading. The consultation is located at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html>.

CRA requires that Canadian charities working with non-qualified donees maintain “direction and control” over their resources. I frequently see that people are confused by the distinction between a structured arrangement (such as an agency agreement, contractor agreement, joint venture agreement or cooperative partnership agreement) that provides for “direction and control” of the use of funds or resources versus an organization that acts as merely a conduit for funds raised in Canada. In Registered Charities Newsletter 20, CRA defined “acting as a conduit” as “forwarding money to organizations that are not qualified donees.” CRA elaborated as follows:

Q. Can a charity be set up to support an organization in another country?

A. A registered charity cannot be a conduit. That is, it cannot hand over its money or other resources to another organization that is not a qualified donee. It may not issue official receipts for income tax purposes for gifts it receives, and then simply forward those monies to an organization that is not a "qualified donee". A charity that acts in this way may be de-registered, and an applicant that proposes to operate in this way will not be registered. This is the case whether or not the proposed beneficiary resides in Canada.

This distinction is important because, with few exceptions, Canadian taxpayers who donate to foreign charities directly do not receive any tax benefit for the donation. Consequently, some Canadians try to get around this by setting up a Canadian affiliate which issues the tax receipts and then gifts over the funds to the foreign charity instead of using the funds on its own activities. Canadian registered charities are not allowed to “gift” funds or resources to foreign charities and others who are not qualified donees.

CRA takes the view that a Canadian registered charity may not act merely as a conduit. While this has always been CRA’s position, *Canadian Committee for the Tel Aviv Foundation v. The Queen* 2002 FCA 72 at paragraph 30 has a specific reference to this issue: “Under the scheme of the Act, it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations overseas.” In that particular case the discussion was about agency agreements, but CRA recognizes that Canadian charities can conduct their “own activities” outside of Canada directly (by giving food to the hungry, or scholarships to needy students or by using their own employees) or indirectly by using different types of structured arrangements (such as an agency agreement, joint venture agreement, contractor agreement or cooperative partnership agreement). That said, a charity may not simply hand over its money or other resources to another organization that is not a qualified donee. A registered charity that does so can have its registration revoked. An applicant that intends to operate in this way will not be registered by CRA as a registered charity.

Below I will discuss two fictional charities to outline some of the differences between a conduit and a structured arrangement. Keep in mind that no one factor is determinative.

	Conduit	Structured arrangement
Fictional example	AGPC Canada works with American Global Poor Charity which is a US 501(c)(3) charity and not a Canadian Qualified Donee.	Canada Really Cares Foundation works with American Global Poor Charity which is a US 501(c)(3) charity and not a Canadian Qualified Donee.
Purpose	We raise funds for American Global Poor Charity.	We work to eradicate global poverty.
Fundraising method	We fundraise for American Global Poor Charity by issuing Canadian taxpayers tax receipts for donations made by Canadians so they can obtain a tax benefit that they would not be entitled to if they donated the funds directly to American Global Poor Charity. So remember Canadians need to make their cheque out to AGPC Canada otherwise we cannot give you a tax receipt.	We raise funds to eradicate global poverty and the board of Canada Really Cares Foundation decides how best to utilize those funds which may or may not involve using American Global Poor Charity as an agent, partner, joint venturer, contractor etc.
Board composition	All board members of AGPC Canada are US citizens and are also on the board of American Global Poor Charity.	While the board has Canadian and non-Canadian members, the vast majority are Canadian and almost no board cross-over between Canada Really Cares Foundation and American Global Poor Charity.
Dispute resolution	There are no disputes - American Global Poor Charity is wonderful – we listen to what they tell us and we do what they want so how can we have a dispute?	We occasionally have disputes – we try to resolve them quickly by respectful discussion and having each party understand the other’s viewpoint, practical issues and needs. We reserve the right to stop funding projects if American Global Poor Charity is not compliant with the agreements that it has signed and is not using the funds for the projects that it has committed to complete. As a Canadian registered charity we have obligations and restrictions that we have to comply with.
Written agreement in place	Yes, we have a written agreement because our lawyer told us to have it – we don’t remember where the agreement is and we have not looked at it in years. American Global Poor Charity thought it was a silly	Yes, we have an agreement and it is an important, legally binding contract that we occasionally review. We work hard to make sure we comply with the agreement that both parties have entered into. We cannot

	exercise to have an agreement, and they really did not think that it was necessary.	imagine transferring millions of dollars worth of funds or equipment without a written agreement. We were not born yesterday you know! How would we know if our funds are being properly spent if we do not even have an agreement setting out how the funds will be spent? When we had problems with the agreement we changed it, by mutual agreement in writing, to make sure it actually reflected our relationship.
Knowledge of the agreement	What agreement?	We know the basic parameters of the agreement and occasionally look at the agreement to remind ourselves of certain details. We are very familiar with the descriptions of activities because we worked on them with American Global Poor Charity, we provide them to donors and we use the description as the basis of monitoring whether American Global Poor Charity is doing the project as agreed.
Sending funds	We raise money and as soon as it is deposited in our account we send it to American Global Poor Charity. After all, why would we want to keep any of it in our account where it is only earning interest? If we keep any money in our account American Global Poor Charity gets really mad at us.	We raise money for our charity, and we keep the money in our bank account. We only send money to American Global Poor Charity or for that matter any other intermediary if the projects are: 1) charitable under Canadian law, 2) within our objects, 3) an effective use of our resources, and 4) properly described and approved by the board of Canada Really Cares Foundation and 5) American Global Poor Charity has complied with its obligations and reporting on previous funds sent.
What books and records are kept in Canada with respect to foreign activities?	Wire transfer slips. Copy of brochure for American Global Poor Charity. American Global Poor Charity keeps all other records – we have no need for them and they would just take up space. We don't have an office and we don't have	We keep extensive books and records of our foreign activities at our office in Canada in either English or French. Without having current reports and historical information we would not be able to determine whether funds are appropriately spent. We work

	<p>place to keep records. After all, it is better to have all the records in one place if they are ever needed and that is the American Global Poor Charity office.</p>	<p>hard to raise funds and we want to make sure that we can account to our donors here in Canada. As well, by having adequate books and records, we will be able to show the CRA, in the event of an audit, that we have direction and control over our activities and that the funds were spent on charitable activities. Furthermore, we deal with a number of different intermediaries and if there is ever a breakdown in the relationship we may not be able to obtain the necessary information from the intermediary.</p>
Progress payments	<p>We raise money, we send money. We do not need progress payments. If we raise \$750,000 at a fundraising dinner it is a waste of time sending funds in increments – quicker and cheaper just to send it in one batch and let American Global Poor Charity decide what to spend it on and when to spend it.</p>	<p>With medium to large projects, we divide payment into two or more parts and only continue sending upon verification that progress has been achieved with the project. This forces us every few months to focus on reviewing reports to determine if we are satisfied or if we require more information on the activities to ascertain that our funds are being well spent. We work hard with American Global Poor Charity to refine and approve the description of activities. We also work hard to raise the money and we want to make sure it is well spent and although we hope that we never have to freeze payments if there was a breakdown in our relationship, we would do so.</p>
Monitoring	<p>We don't need to monitor, we trust American Global Poor Charity.</p>	<p>We trust American Global Poor Charity, but we insist on monitoring the program, not because CRA says we have to, but because we take our job as board members and our fiduciary responsibilities seriously. We want to ensure that the funds that we worked so hard to raise are well spent. Also, we like to see what our money is doing and occasionally we send reports to donors so they know</p>

		<p>the funds they donated are being put to good use. Although some donors are satisfied to not get a report, others would not provide us with any further funds if they thought their money was not well spent and if we did not show them how it was well spent.</p>
<p>Who selects projects?</p>	<p>American Global Poor Charity – because they are on the ground and they know more than us. They usually tell us after the funds have been spent which projects they were spent on.</p>	<p>We discuss with American Global Poor Charity all projects. We solicit advice from American Global Poor Charity because they have a lot of experience in this area and we have a close relationship with them. They send us proposals on how the funds could be spent but the decision about how project money is spent is made by the board of Canada Really Cares Foundation. We realize that American Global Poor Charity works on many wonderful projects, but these are our funds and we need to ensure that they are spent on projects that are part of our objects, that are considered charitable under Canadian law, and that reflect our priorities. As well, in some cases we have received restricted funds that can only be used on certain activities and we do not want to have a breach of trust and spend those monies on a different charitable program than what the donor had intended.</p>
<p>How many intermediaries conduct your foreign activities?</p>	<p>I don't understand your question. We are a fundraising branch of American Global Poor Charity. Why would we want to send money to anyone else?</p>	<p>We have used different intermediaries in the past to conduct our activities. There have been times that we only used American Global Poor Charity to conduct our activities. We may go back to that one day as it was easier for us to work with one organization, and they are particularly well situated to implement the activities that we wish to conduct. At the moment, as we wanted to conduct activities in Cuba, and there was reluctance by</p>

		<p>American Global Poor Charity to have operations in Cuba, we developed a partnership with another organization there. If we feel that there is an intermediary that can do a better job than American Global Poor Charity for a particular project then our board would consider having an agreement with them and having them conduct that activity.</p>
<p>Direction and control</p>	<p>Why would we want to do that? We do not want to micromanage the project. We don't want to be controlling. My former girlfriend was controlling – I did not like that.</p>	<p>We are legally required to maintain direction and control over our funds. Direction and control does not mean micro-managing and being obnoxious although we have seen examples of that by some who use “direction and control” to justify their poor ways. The way we maintain direction and control include ensuring that our partners have the capacity to do the particular job (due diligence), having detailed project descriptions so both parties are on the same page as to what needs to be done with the funds or resources, monitoring the activities, reviewing reports from the field, and with larger projects periodic transfer of funds. We are involved by phone or by e-mail with American Global Poor Charity on a regular basis in order to understand how a project is coming along and whether there are issues or concerns with which we need to deal. With Skype, small scanners and other technologies it is increasingly easy to be aware of what is going on half way around the world with different intermediaries. Our active involvement with our partners means that we are more knowledgeable about the work being conducted overseas and we can do a better job of explaining to our stakeholders including donors what we are doing.</p>

		<p>Also although our partners often have superior knowledge to us on certain matters we occasionally, in addition to providing funds, can provide useful advice and contacts on areas that we are familiar with. If minor changes are required to the project, but it is still within the budget we set out, then our executive director can approve such changes. If the changes are substantial, our board discusses them and decides.</p>
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As such, one can see that there is a large difference between a conduit and a structured arrangement.

For those interested in the US experience you may wish to review http://www.usig.org/legal/friends_of_organizations.asp. As you can see, the US IRS has many of the same concerns as the Charities Directorate of the CRA in Canada.

For a detailed discussion of legal and practical issues for Canadian charities operating outside of Canada, visit <http://www.globalphilanthropy.ca>.

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