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We realize the potential of
not-for-profit organizations

Charity Law Information Program (CLIP) Charity Compliance: A Primer for Boards

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Canada





Introduction

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



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Who We Are – Capacity Builders

- **The Charity Law Information Program (CLIP) provides training, workshops, webinars to charitable organizations to enhance their understanding of their obligations under the *Income Tax Act* as well as improve governance and ethics**
- Capacity Builders is a division of the Ontario Community Support Association (OCSA) and it runs CLIP
- <http://www.capacitybuilders.ca/clip>
- CLIP Communiqué –email update on charity law issues
- 416-256-3010 x 232 or 1-877-484-3030
- clip@capacitybuilders.ca



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Who We Are - Blumbergs

- Blumberg Segal LLP is a law firm based in Toronto, Ontario
- Mark Blumberg is a partner at Blumbergs who focuses on non-profits and charities
- Assists charities from across Canada with Canadian and international operations and foreign charities fundraising here
- www.canadiancharitylaw.ca and www.globalphilanthropy.ca
- Free Canadian Charity Law Newsletter:
<http://www.canadiancharitylaw.ca/index/php/pages/subscribe/>
- 416-361-1982 / toll free 1-866-961-1982 / mark@blumbergs.ca

BLUMBERGS



Charities Directorate Of CRA

- Regulates registered charities
- Based in Ottawa and other offices throughout Canada
- Website: www.cra.gc.ca/charities
- E-mail list: www.cra-arc.gc.ca/esrvc-srvce/mlst/sbscrbchrts-eng.html
- Webinars: www.cra-arc.gc.ca/tx/chrts/cmmnctn/sssns/wbnrs-eng.html
- Telephone: 1-800-267-2384 (English)
 1-888-892-5667 (Bilingual)
- Provided funding for the Capacity Builders' Charity Law Information Project (CLIP) and also fund 18 other charities across Canada doing charity compliance educational activities



Overview

- The Charitable Sector
- Top Legal Compliance Issues
- Ethics and Standards
- Risk Management
- Director and Officer Liability
- Governance and achieving those standards
- Prevent abuse (eg. fraud) of charity by using internal controls



Voluntary Sector in Canada

- 161,000 non-profits in 2003 (federal and provincial and unincorporated)
- 83,500 Registered Charities (as of 2008), 2 million on payroll
- \$112 Billion in revenue, with 49% from government, earned income of 35%, and 13% from donations.
- 2/3 have revenue under \$100,000



Variety of Charities

Every charity is different:

- Objects
- Areas of charitable work
- Risk tolerance
- Public profile
- Donors and level of government support
- Independent vs. affiliated
- Resources
- Values and knowledge
- Local vs. international activities



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What is a Charity?



What is a Charity?

- 1) Purposes must be exclusively and legally **charitable**
(4 heads of charity – relief of poverty, advancement of education; advancement of religion; and other purposes beneficial to the community in a way the law regards as charitable)
- 2) Must be established for the benefit of the public or a sufficient segment of the public (**Public Benefit**)



Definitions

Legal – binding minimum rules and regulations

Ethical – higher standard than legal – ‘applied ethics’ – trying to achieve moral and ethical outcomes in real-life situations consistent with our values and standards.

Risk management - identification, assessment, and prioritization of risk (loss or adverse event) followed by coordinated and economical application of resources to minimize, monitor, and control the probability and/or impact of unfortunate events. (Wikipedia)



Maintaining Charitable Status

- Conduct allowable charitable activities and avoid prohibited activities
- Keep adequate books and records
- Properly issue official donation receipts
- Meet annual spending requirement (disbursement quota)
- File T3010 Registered Charity Information Return
- Maintain status as a legal entity
- Inform CRA of certain changes



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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
- For 2009 fiscal years file T3010B
- Form is mailed with labels to charity – also can download form from:

<http://www.cra-arc.gc.ca/tx/chrts/prtnng/rtrn/flngb-eng.html>



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 reregister
- \$500 penalty



Questions for Follow-Up

- Have you checked on the CRA website that you are a charity?
- When is your fiscal year end?
- When is 6 months from your fiscal year end?
- Have you diarized the date immediately above?
- Who is responsible for filing the T3010?
- Are you aware how the T3010A and T3010B are different?
- Have you filed your T3010 on time?
- Is your address with CRA up to date?



2. Mistakes with T3010B

- 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 T3010B – go to www.capacitybuilders.ca/clip for a list including our Annotated T3010B
- CRA has fillable T3010B



Problems with T3010B

- Using wrong form – T3010A is for 2008
– T3010B is for 2009 and later
- Not providing all information
- Not providing accurate information
- Not providing all schedules
- Not providing financial statements
- Not providing date of birth of directors



Form T3010B

t4033b-09e_Guide_to_Completing_the_Registered_Charity[1].pdf - Adobe Acrobat Standard

File Edit View Document Comments Forms Tools Advanced Window Help

Create PDF Combine Files Export Start Meeting Secure Sign Review & Comment Typewriter

2 / 37 100% Find

Checklist:

Before mailing the return, make sure you have attached all of the following:

- Form T3010B (09), *Registered Charity Information Return*;
- Form TF725, *Registered Charity Basic Information sheet*;
- a copy of your charity's financial statements;
- Form T1235 (09), *Directors/Trustees and Like Officials Worksheet*, with all the required information, including details such as the date of birth of all directors (unless you have included Form RC232-WS);
- Form RC232-WS, *Director/Officer Worksheet and Ontario Corporations Information Act Annual Return*, or Form RC232, *Ontario Corporations Information Act Annual Return* (if applicable);
- Form T1236 (09), *Qualified Donees Worksheet/Amounts Provided to Other Organizations*, with all the required information (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* (if applicable); and
- Form T2081, *Excess Corporate Holdings Worksheet for Private Foundations* (if applicable).

To help us process your charity's return properly, attach the peel-off labels from the *Registered Charity Basic Information sheet* to the return and to any attachments that require a label.

Mail the return to:

Charities Directorate
Canada Revenue Agency
Ottawa ON K1A 0L5

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Questions for Follow-Up

- Have you completed all required information?
- Have you checked CRA checklist for documents?
- Have you had lawyer/accountant/your board check T3010?
- For bigger organizations have you checked a few months after filing that CRA has inputted your T3010 information correctly?



3. Incorrect Receipts

- Charities are required to issue correct receipts
- Some receipts:
 - Lack required information
 - Have mistakes
 - Include improper fair market value (FMV)



What is a “Gift”

Charities can only issue receipts for a gift.

A gift must be:

1. **Voluntary** – given of free will (not compelled)
2. **Transferred** – from donor to charity/qualified donee
3. **Property** – cash or gifts in kinds (not services)
4. **Financial Sacrifice** on the part of the donor
(donative intent – advantage must be less than 80%
of amount unless Minister agrees)



Don't Issue a Receipt When...

- Tuition (except IC 75-23 - private religious schools)
- Business advertising expenses/sponsorship
- Gifts of promises (for example, gift certificates donated by the issuer, hotel accommodation) or pledges
- Payment of basic fee for event (eg. concert)
- Payment for program (eg. daycare)



Don't Issue a Receipt When...

- You cannot determine the value of the donation or the benefit
- Donation of services (donated time, labour) to charity or loans of property, use of a timeshare or lease of premises
- Donation is intended for another organization that is not a registered charity
- Cannot determine the name of the true donor



Don't Issue a Receipt When...

- Membership fees that convey the right to attend events, receive literature, receive services, or be eligible for entitlements of any material value that exceeds 80% of the value of the payment
- Lottery tickets
- Purchase of goods or services from charity
- Donation for which the fair market value of the advantage or consideration provided to the donor exceeds 80% of the value of the donation;



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.)

- 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 (under proposed legislation);
- 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.cra.gc.ca/charities)



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 (under proposed legislation).



Sample Official Donation Receipts

Charities and Giving - Sample official donation receipts - Windows Internet Explorer

http://www.cra-arc.gc.ca/tx/chrts/pbs/smpl-eng.html#sample1

sample official donation receipts CRA

File Edit View Favorites Tools Help

Google sample official donation receipts CRA Search

Charities and Giving - Sample official donation receipts

Home Feeds (J) Print Page Tools

Canada Revenue Agency
www.cra.gc.ca

Français Home Contact Us Help Search canada.gc.ca

Sample official donation receipts

Sample # 1 - Cash gift (no advantage)

Receipt # 0001

Charity name	Canadian charity address	Charity BN/Registration #
Date donation received: _____		Donated by: _____ (First name, initial, last name)
		Address: _____
Eligible amount of gift for tax purposes: _____		
	Date receipt issued: _____	
	Location issued: _____	
	Authorized signature: _____	

For information on all registered charities in Canada under the *Income Tax Act* please visit:

Canada Revenue Agency www.cra.gc.ca/charities

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Split Receipting

- New legislative idea – from 2002
- Pre-2002 – if donor received any advantage, then no receipt
- Now donors can receive some advantage eg. concerts, golf tournament, gala dinners, etc.
- Charity must determine the eligible amount of that gift for receipting purposes in order to issue an official donation receipt
- <http://www.cra-arc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf>



Consequences for Improper Receipts

- Incomplete or incorrect information: Penalty equal to 5% of the eligible amount stated on the receipt. Penalty increases to 10% for a repeat infraction within 5 years.
- If no gift or deliberately false information then charity is liable to a penalty equal to 125% of the eligible amount stated on the receipt where the total penalty does not exceed \$25,000
- When penalty over \$25,000 the charity gets penalty equal to 125% and the suspension of tax-receipting privileges.
- Can also have registration revoked.



Questions for Follow-Up

- Are you only providing receipts when appropriate?
- Are you only providing receipts for donations to your organization (not acting as a conduit or lending registration)?
- Have you checked that all mandatory fields are included on receipts?



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4. Acting Outside Legal Objects

Most incorporated charities in Canada have legal objects in their Letters Patent (Articles of Incorporation).

Charities must not act outside of these legal objects.



Check Your Letters Patent/Articles of Incorporation

Application for Incorporation [Compatibility Mode] - Microsoft Word

Home Insert Page Layout References Mailings Review View Acrobat

Clipboard Font Paragraph Styles Editing

III

The objects of the Corporation are:

- (a) 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 under the *Income Tax Act* (Canada).
- (b) To relieve poverty in developing nations by providing food and other basic supplies to persons in need.
- (c) To develop or promote public health in developing nations by educating and instructing the public on prevention of, and curative measures for, health problems and by researching and documenting changes in the health of the community.
- (d) To improve the quality of drinking water in developing nations by constructing wells and water treatment, irrigation and sewage treatment systems.

IV

The operations of the Corporation may be carried on throughout Canada and elsewhere.

V

The place within Canada where the head office of the Corporation is to be situated is:

The City of Toronto in the Province of Ontario.

VI

It is specially provided that in the event of dissolution or winding-up of the Corporation all

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Questions for Follow-Up

- Have you reviewed your legal objects in the Letters Patent?
- Are all the activities of your charity within your objects?
- If something is not within your objects, have you discontinued such activities or modified the objects to include such activities?



5. 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 core costs (administration/overhead), fundraising, related business, social and political.



What is a Charitable Purpose?

Four Heads of Charity:

1. Relief of **poverty**
2. Advancement of **education**
3. Advancement of **religion**
4. **Other purposes** *beneficial* to the *community* in a way the *law recognizes as charitable*



Charitable Purpose – The 4th Head

- Agricultural and horticultural societies
- Welfare of domestic animals
- Parks, botanical gardens, zoos, aquariums, etc.
- Community recreation facilities, trails, etc.
- Community halls, libraries, cemeteries
- Summer camps, daycare/after-school care
- Crime prevention, public safety, and order
- Ambulance, fire, rescue, other emergency services
- Human rights, mediation services, consumer protection
- Support and services for charitable sector



Questions for Follow-Up

- What activities does your charity undertake?
- Are they charitable, fundraising, admin, political, business, social and how much of each?
- Are you respecting the limits imposed by CRA on non-charitable activities?



6. Gifts to Non-Qualified Donees

Charities conduct activities in two ways:

1. By gifting to “qualified donees”; or
2. By carrying on its own charitable activities.

Charities cannot gift to a non-qualified donee or be a “conduit”. (Gifts to non-qualified donees = 105% penalty on the amount of the gift and second infraction 110% penalty and greater chance of revocation.)

Need “direction and control” over funds and resources.



Canadian Registered Charity

*Gift to
Qualified donee*

Qualified Donee, eg.
Canadian registered
Charity, UN, prescribed
University, Canadian
Municipality, etc

“Own Activities”
[Direction and Control]

Employee
Volunteer

Intermediary –
agency, JV,
partner,
contractor

Structured
Arrangement -Written
agreement



“Own Activities” or “Direction And Control”

When not working with qualified donee or own staff need to have:

- Due Diligence of Intermediary (investigate)
- Written agreement
- Detailed description of activities
- Monitoring and Supervision
- Ongoing Instruction for changes
- Periodic Transfers
- Separate Activities and Funds
- Books and Records showing above



Questions for Follow-Up

- 1) Do you know what a qualified donee is?
- 2) Is your charity providing resources to organizations or individuals that are not qualified donees such as foreign charities?
- 3) Does your charity have an appropriate written agreement with all necessary elements?
- 4) Do you maintain “direction and control” over your resources?
- 5) Are you properly categorizing foreign activities on T3010?



7. 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 recently released
- Must read for anyone very involved with fundraising:
<http://www.cra-arc.gc.ca/tx/chrts/plcy/cps/cps-028-eng.html>



CRA Guidance for Fundraising

- Prohibited fundraising conduct (illegal, main purpose, too much private benefit, misleading or deceptive)
- Disclosure and transparency
- Apportioning expenses between fundraising and charitable
- Best practices
- Indicators of concern



Indicators of Concern

- Sole-source fundraising contracts
- Non-arm's length fundraising contracts
- Fundraising initiatives that are not well-documented
- Fundraising merchandise purchases that are not at arm's length, not at fair market value, or not purchased to increase fundraising revenue.
- Most of the gross revenues for non-charitable parties.
- Commission-based fundraiser remuneration
- Misrepresentations in fundraising solicitations or in disclosures about fundraising or financial performance.



CRA Guidance on Fundraising

Best Practices

- a. Prudent planning processes
- b. Appropriate procurement processes
- c. Good staffing processes
- d. Ongoing management and supervision of fundraising practice
- e. Adequate evaluation processes
- f. Use made of volunteer time and volunteered services or resources
- g. Disclosure of fundraising costs, revenues, and practice (including cause-related or social marketing arrangements)



Fundraising Ratio of Costs to Revenues

Ratio of Costs to Revenues over

Fiscal Period

- Under 35%
- 35% and Above
- Above 70%

CRA Approach (Cost to Revenue)

- *Unlikely* to generate questions or concerns.
- 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 that there will be concerns and a need for a more *detailed assessment of expenditures*.
- 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 in compliance; *otherwise, it will not be acceptable.*



Questions for Follow-Up

- Have you read the CRA Guidance on Fundraising and do you understand it?
- Are any of your activities prohibited?
- Do any of the indicators of concern apply to your charity?
- What are your charity's ratios of cost to revenue?
- Are your charity's ratios in line with CRA expectations?
- What steps are you taking to reduce your fundraising costs?



8. Charity Gifting Tax Shelters

- People can donate to registered charities in Canada and get an official donation receipt which is very valuable and can cost the tax system a lot. Promoters and “charities” cannot, through various games and tricks, abuse the tax system to issue whatever receipt they wish.
- Usually “investor” or “donor” is told that the tax benefits and deductions arising from the scheme will equal or exceed the costs of entering into the arrangement or the property.



Avoiding Abusive Charity Gifting Tax Shelters

- Over \$5 billion in gifting tax shelters over last 5 years
- Over 175,000 Canadians being audited
- If it sounds too good to be true, it probably is
- Be careful of advice from people who have a financial benefit in the transaction



CRA Taxpayer Alerts on Tax Shelter Gifting

Canada Revenue Agency / Agence du revenu du Canada

Canada

Canada Revenue Agency
www.cra.gc.ca

Français Home Contact Us Help Search canada.gc.ca

Media > Alert > 2007

Go to
Forms and Publications
Online services
A to Z index
Site map

Information for
Individuals
Business
Other groups

Search CRA

Search

Taxpayer Alert

Warning: Participating in tax shelter gifting arrangements is likely to result in a tax bill!

Notice to the reader:
This Taxpayer alert is also offered in a variety of languages: [Arabic \(PDF, 150 KB\)](#), [Chinese - simplified version \(PDF, 242 KB\)](#), [Chinese - traditional version \(PDF, 259 KB\)](#), and [Punjabi \(PDF, 90 KB\)](#). These versions were translated from the English version.

Despite numerous warnings and audit actions by the Canada Revenue Agency (CRA), taxpayers are still participating in tax shelter gifting arrangements. The CRA is urging taxpayers to avoid these schemes.

The CRA is auditing all gifting arrangements

Taxpayers should be aware that the CRA plans to audit all tax shelter gifting arrangements. Every audit completed to date has resulted in a reassessment of tax, plus interest. In many cases the CRA has denied the "gift" completely. Penalties will be considered, especially where an investor was audited and reassessed for previously participating in a gifting arrangement.

Stats and Facts

- To date, the CRA has reassessed over 26,000 taxpayers who participated in these schemes, and denied about \$1.4 billion in donations claimed.
- Audits of another 20,000 taxpayers involving \$550 million in donation claims are just about complete.
- Audits on other arrangements involving over 50,000 taxpayers are about to begin.

Current Promotions

New schemes are being marketed that claim to be different from those for which the CRA has previously issued warnings. Taxpayers should avoid all schemes that promise donation receipts for 3 to 4 times the cash payment. It is the CRA's position that the proposed legislation, effective since 2003, will apply to reduce the donation credit to no more than the actual cash payment. Furthermore, as indicated above, completed audits have shown that there was effectively **no gift** being made in many cases, and as a result, the donation was reduced to zero.



Tax Shelter Gifting – Charity Concerns

1. Undermine public confidence in charities
2. Depletes tax revenues needed for basic services, many of which are delivered by charities
3. They are often illegal or fraudulent, usually unethical
4. Your donor will be audited (175,000 donors are currently being audited)
5. Determining the correct amount for the donation receipt



Tax Shelter Gifting – Charity Concerns (cont.)

6. Disbursement quota problems
7. Fundraising by using commissions may violate codes of ethics
8. Tax Shelter Identification Numbers
9. You don't want to be considered a Promoter
10. Lawsuits



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Tax Shelter Gifting – Charity Concerns (cont.)

11. Questionable legal opinions
12. Civil penalties
13. Professional advisors
14. Advanced tax rulings
15. CRA's fundraising guidelines



Tax Shelters

- “If it sounds too good to be true, it probably is.”
- There are consequences
- Almost all schemes market themselves as being “different” from other schemes that CRA has warned about and promising that they are safe
- The CRA audits all charity gifting arrangements



Is this an Abusive Tax Scheme?

1. Person donates \$100 to charity, receives no benefit and charity issues \$100 tax receipt.
2. Person donates \$100 to charity and receives \$10,000 tax receipt.
3. Person buys pharmaceuticals in India as part of a scheme for \$100, pharmaceuticals donated to charity and valued for purposes of tax receipt, at \$10,000, and tax receipt issued for \$10,000.



9. Employment Issues

- Employee vs. Independent contractor
- Withholding source deductions
- Remitting source deductions
- Proper employment agreements
- Excessive compensation / private benefit



Questions for Follow-Up

- 1) Are your “independent contractors” really independent contractors? See CRA publication *Employee or Self-employed?*: <http://www.cra-arc.gc.ca/E/pub/tg/rc4110/>
- 2) Is charity deducting appropriate amounts of CPP, EI, and income tax and remitting to CRA?
- 3) Do you have agreements with all employees and independent contractors?
- 4) Is compensation appropriate?



10. Failing to Keep Adequate Books and Records

A Canadian registered charity **must** keep *adequate* books and records, in either English or French. CRA must be able to:

- Verify revenues, including all charitable donations received;
- Verify that resources are spent on charitable programs; and
- Verify that the charity's purposes and activities continue to be charitable.



Why We Need Adequate Books and Records

- Help with charity audits and can result in suspension of receipting privileges, or the loss of its registered status
- Knowing where expenses go and revenues come from
- Needed for issuing official donation receipts
- Help with decision making
- Makes it easier for you to complete filings
- Information on current and past financial position of charity
- Stakeholders may require



Questions for Follow-Up

- 1) Do you have **governing documents** (incorporating documents, constitution, trust document), bylaws, **financial statements**, **copies of official donation receipts**, copies of T3010, written **agreements**, board and staff meeting **minutes**, **annual reports**, **ledgers**, **bank statements**, **expense accounts**, **inventories**, **payroll records**, **promotional materials**, and **fundraising materials**.
- 2) Do you have **source documents**? e.g.. **invoices**, **vouchers**, **work orders**, **delivery slips**, **purchase orders**, and **bank deposit slips**.



11. Other Legal Concerns for Charities

- Breaching contractual relationships (funding agreements, leases, etc.)
- Failure to respect donor restrictions (breach of trust)
- Abuse of children and beneficiaries
- Criminal gangs and terrorism
- Fraud against charities, misuse of charitable assets



Other Legal Concerns for Charities(cont)

- Transactions with directors
- Inappropriate political activities
- Unrelated business activities
- Disbursement quota
- Mishandling an audit



Charity Law Problem Solving

- Understand basic framework and definitions
- See CRA site for information
- See other sources of info (e.g. www.capacitybuilders.ca/clip, www.canadiancharitylaw.ca)
- Seminars and webinars
- Bolster board with diversity, skills, knowledge, passion, resources, active educational program
- Call CRA if you need
- Have charity lawyer on retainer or hire as needed



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Ethical Standards



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Discussion

- What is a “bad” charity?
- What is a “good” charity?



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Ethical Concepts

Integrity

Fairness

Trust

Transparency

Responsibility

Privacy

Honesty

Justice

Human Rights

Cooperation

Sustainability

Respect



Charity Stakeholders

- Members
- Board
- Employees of charity
- Volunteers
- Government (CRA, federal, provincial, and municipal)
- Partners
- Media
- Public
- Donors
- Beneficiaries, clients



What is a “Good” Charity

- Hallmark 1: Clear about its purposes and direction
- Hallmark 2: A strong board
- Hallmark 3: Fit for purpose (structure and policies allow it to deliver services efficiently)
- Hallmark 4: Learning and improving
- Hallmark 5: Financially sound and prudent
- Hallmark 6: Accountable and transparent

The UK Charity Commission Hallmarks of an Effective Charity: <http://www.charity-commission.gov.uk/publications/cc10.asp>



Some Ethical Considerations

- Conflict of interest – perceived and real
- Fundraising (commissions, ratios, truthfulness)
- Respecting and using employees and volunteers
- Effective and efficient use of charity's resources
- Transparency/openness of organization
- Accountability
- Avoiding wrongdoing and financial impropriety
- Compensation for staff (too high, too low)
- Compensation of board (prohibited in some jurisdictions like Ontario)



Ethical Decision-Making

- relevant facts
- core values
- applicable rules
- desired results
- need for reflection (judgment)
- dialogue (buy-in from colleagues)



Useful Questions or Imperfect Rules

- What is your gut feeling?
- Would it pass the sniff test?
- Would you mind if all your associates, family and friends were aware of it?
- Can you justify it to a committee of your peers?
- If our charity does this lots, what type of organization would we be?
- Using your imagination, is there another better alternative?



Weaknesses in Ethical Decision Making

- Do not recognize issues
- Do not have adequate facts
- Lack of education on issues
- Fairness to some stakeholders, not others
- Short term benefit – end justifies the means
- Focusing only on legal
- But we have always done it this way ...



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Risk Management



Types of Risk for Charities

- **Governance risks** - eg inappropriate organisational structure, difficulties recruiting trustees with relevant skills, conflict of interest;
- **Operational risks** - eg service quality and development, contract pricing, employment issues; health and safety issues; fraud and misappropriation;
- **Financial risks**- eg accuracy and timeliness of financial information, adequacy of reserves and cash flow, diversity of income sources, investment management;
- **External risks**- eg public perception and adverse publicity, demographic changes, government policy;
- **Compliance with law and regulation** - eg breach of trust law, employment law, and regulatory requirements of particular activities such as fund-raising or the running of care facilities.



What is Risk Management

Risk management includes:

- Assume risk
- Eliminate risk – get rid of program or risky part
- Reduce risk
- Transfer risk – outsource, insurance



10 Point Risk Management Plan

- **Risk Assessment:**
 - Develop/review your strategy
 - Highlight the potential risks
 - Research the evidence
- **Risk Analysis:**
 - Categorise the risk
 - Score and prioritise the risks
- **Risk Management:**
 - Devise a risk management strategy
 - Agree a plan of action
 - Communicate about risk
 - Monitor and evaluate
 - Review policies and procedures <http://www.ncvo-vol.org.uk/index.asp?id=2588>



Why Do Charities Get Sued?

- Wrongful dismissal
- Slip and fall
- Sexual abuse
- Car accidents
- Breach of contract/breach of trust
- Negligence – eg. hospital
- Etc



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Director and Officer Liability



Why Do Directors Get in Trouble?

- They completely ignore their duties
- They are involved with shenanigans or fraud
- They don't pay salaries that are owed
- They don't withhold and remit source deductions
- Improper authorizations or acting outside objects
- Agreeing to be guarantor or personally liable
- They knowingly allow or cover up abuse of vulnerable persons (children)
- Their charity is involved with environmental pollution such as an heating oil leak next to a lake.
- Etc.



Protecting Directors

- Incorporation
- Training and Education of directors/volunteer as to duties and other matters
- Having rules or policies and enforcing them
- Make sure board has diverse skills and abilities
- Even if you hate numbers take an interest in financial situation of organization (revenues and expenditures) and financial management
- Screening and supervising volunteers and employees



Protecting Directors (cont.)

- If you are concerned about something, then follow-up
- Take risk management seriously
- Obtain professional advice when required
- General Insurance, Auto insurance, etc.
- Indemnities from charity
- Directors and Officers Liability Insurance (be aware of scope and exclusions)



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Governance

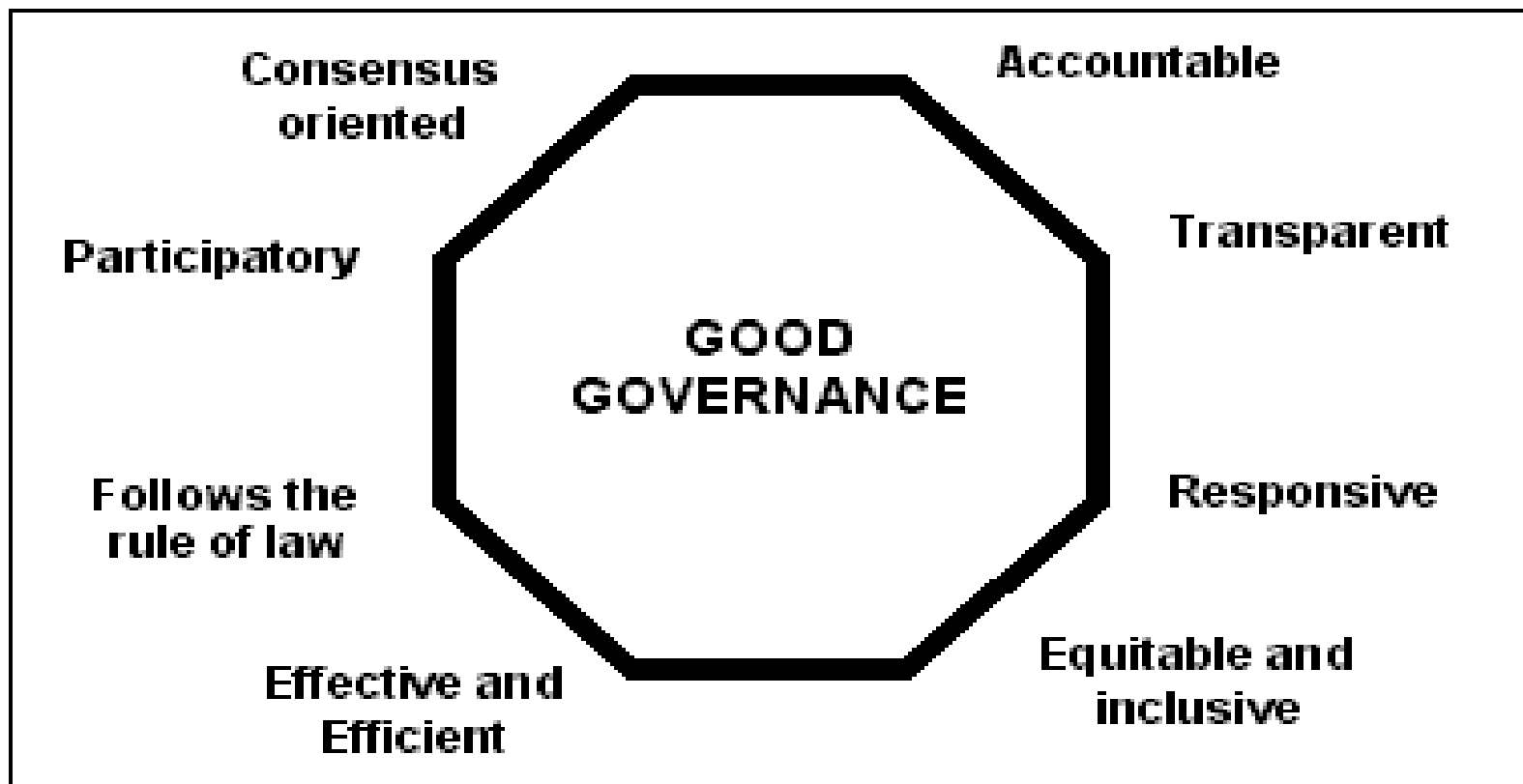


What is Governance?

- *Governance* comes from the Greek verb [*kubernáo*] which means *to steer*
- **The process of decision-making and the process by which decisions are implemented (or not implemented)**
- No one size fits all – e.g. small volunteer charity vs. large national charity

<http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp>

What is Good Governance?





Who is Responsible for Governance?

- Directors ultimately responsible for charity
- Directors have duty to protect charitable property
- Reputation of charity is vital with public at large, donors, funders, employees, beneficiaries and other stakeholders
- Directors should ensure appropriate risk management, ethical standards and governance of charity
- Adequate internal financial controls required for well run charity



Directors' 3 Basic Duties

- **Duty of Care** – e.g. pay attention, read material, attend meetings, exercise judgment and vote, act prudently
- **Duty of Loyalty** – e.g. avoid conflicts of interest, maintain confidentiality
- **Duty of Obedience** – e.g. obey laws, comply with letters patent, by-laws and resolutions



Board Responsibilities – 7 Key Tasks

- a) Setting the mission and strategic objectives, evaluating progress in achieving these objectives;
- b) Making sure the organization operates in a fiscally responsible manner and complies with all laws and regulations applying to it;
- c) Selecting and evaluating the performance of CEO;
- d) “Boundary Spanning”: (i) by bringing the concerns of the outside community and particular constituencies into the organization; and (ii) by representing the organization to the community and constituencies;

Board Responsibilities – 7 Key Tasks

- e) Ensuring necessary financial resources;
- f) Ensuring management operates organization as efficiently as possible and uses the best available systems, policies and administrative practices to do so;
- g) Ensuring that the board itself functions as effectively as possible (e.g., finds best people to serve, provides adequate training for members, manages its meetings and committees well).

“Improving Board Performance” by Vic Murray in The Philanthropist
(Volume13, No.4)

<http://journals.sfu.ca/philanthropist/index.php/phil/article/view/161/161> 91



a) Setting Mission and Evaluating Progress

- Objects/Mission/Vision
- What is purpose of organization?
- What services should it provide? Who should it serve?
- What standards and guidelines should be used?
- Evaluation



b) Fiscal and Legal Oversight

Finances:

- Investments
- Budgeting
- Protecting property

Legal:

- Compliance with laws (statute, regulations, cases)
- Laws vary depending on whether you are registered charity, your sector, jurisdiction of incorporation and activities



c) CEO/ED Selection and Evaluation

Selection:

- Find the best person for the position

Evaluation:

- Ensure that person fulfils duties



d) Concerns of Stakeholders and Representing

- Ensure that concerns of stakeholders are represented
- Represent the organization to stakeholders



e) Resource Development

Ensure organization obtains adequate funds

- Fundraising from public and foundations
- Funds from government
- Earned income (fees for services)



f) Ensuring Management Operates Efficiently

- Does the organization have right structures and policies?
- Does the organization appropriately use technology?
- Is the organization efficiently using employees and volunteers?



g) Ensuring Board Operates Effectively

- Who is on the board and how many people?
- Training board members
- Evaluating effectiveness of board meetings
- Succession plan – staggered terms
- Avoiding conflicts of interest



Governance Gremlins

- Lack of consensus about the mission and vision of the organization
- High Board/CEO turnover
- Lack of consensus on Board role
- Board members do not fully understand their duties and liabilities
- Board members have difficulty reading financial statements
- Unresolved conflicts on the Board or between the Board and the CEO



Governance Gremlins (Cont.)

- Lack of understanding on roles of Officers, or how one gets to become an Officer
- Current board practice or structure does not match by-laws
- Confusion over conflict of interest
- Too many committees
- Committees that are not engaged in important work
- CEO-run Board
- Rubber-stamping by the Board
- Board micro-management



Governance Gremlins (cont.)

- Decision paralysis
- Lack of strategic direction and clear priorities for the Board
- The Board runs well but focuses on the wrong issues
- Board members do not speak as a united front once they leave the Board room
- Poor attendance at Board or committee meetings
- Poorly chaired meetings



Governance Gremlins (cont.)

- The Board is not getting the right information in the right format
- Lack of clarity on role of Board vis-à-vis staff
- Poor relationships with stakeholders
- Members of the organization are not involved or consulted
- Volunteer fatigue or staff burnout

<http://www.ioq.ca/boardgovernance/html/prasig.html>



How to Go from Gremlins to Great

- Recruit diverse and talented board
- Put in place appropriate governance model
- Ensure board and staff/volunteers understand role
- Continuous learning and improvement for board and staff
- Focus on mission
- Invest in people
- Invest in organization



Recruiting Good Boards

- Identify skills, experience, knowledge, contacts required and weaknesses in current board, size
- Be upfront about expectations – time, money etc.
- Maybe have a job description for board members
- Advertise widely to get greater diversity and quality
- Check carefully (references, background, conflicts)
- Select carefully (trophy vs. committed) – interview
- Formally bring on to board
- Orient well – orientation, board binder, site visit



Keeping Good Boards

- Respect their time (at board meetings and outside)
- Communicate
- Use their skills appropriately
- Be honest with board
- Dealing with problems efficiently and quickly
- All board members need to be accountable
- Encourage respectful dialogue
- Evaluate performance at least annually.



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Misuse of Charity's Assets



What is Misuse of a Charity's Resources?

- Fraud
- Money laundering
- Terrorism
- Violence against aid workers and kidnapping
- Private benefits
- Misappropriation of resources
- Using charities for tax evasion



Fraud

- Common in commercial enterprises and non-profits
- 10% of fraud reported is in non-profit sector
- Charities with weak controls are vulnerable
- Madoff and other scandals
- Impossible or prohibitively expensive to absolutely prevent – can you discover and minimize
- Average fraud =\$190,000 but ¼ are over a million
- Estimate of 5% of revenue lost to fraud across all organizations
- Smaller and less financial controls suffer disproportionately more



Examples of Fraud

- Payroll fraud
- Assets misappropriated
- Intercepting or diverting resources coming to charity
- Skimming cash before recorded in accounting system
- Expense reimbursement fraud
- Fraudulent billing
- Using office to get unauthorized benefit (bribes, self dealing transactions, conflicts of interest)
- Falsification of organizations financial statements
- Steals confidential information to apply for credit card or loan
- Fraudulent use of official donation receipts



Preventing Fraud

- Good financial controls
- Internal spot audits
- External audit
- Encourage employees to come forward (whistleblower)
- Encourage suppliers and customers to report



Money Laundering

- Money laundering is the process used to disguise the source of money or assets derived from criminal activity.
- Turn “dirty” money into “clean” money
- Some examples:
 - Offers of donations in cash, for a certain period of time, the charity to receive the interest, but the principal to be returned to the donor at the end of the specified period.
 - Donations in foreign currencies, with the provision that the principal be returned to the donor in the form of a different currency.



How Terrorists May Try to Use Charities

- Money raised by charities to fund terrorist organizations;
- Using charities to smuggle people into countries illegally;
- Using residential schools as military recruitment and training centres;
- Using charities set up for providing facilities for young people for organization and recruitment;
- Using charities as a base to spread propaganda; or
- Using charities for money laundering purposes.

<http://www.charitycommission.gov.uk/supportingcharities/ogs/g096.asp>



Private Benefits

Charity should be about helping beneficiaries, not yourself

- Private benefit is acceptable only if it arises directly through pursuit of the charitable purpose, is incidental to the pursuit of that purpose, and is reasonable in the circumstances
- Questionable benefits: generous salaries, luxurious living expenses, travel, self promotion of founder/leader etc.
- CRA referring to governance issues in Guidance on Fundraising



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Internal Controls



Can We Operate On Trust Alone?

- In an ideal world, perhaps – we don't live in ideal world
- Most people are honest, but some are not
- Some are honest but will be tempted if there are no financial controls
- Some funders and donors will not support organizations without financial controls
- Good financial controls are a win-win for everyone
- Good financial controls can help prevent or limit personal liability in event of problems



The Elements of Internal Control

Six important elements of an internal control system are:

1. Control cues/culture of internal controls/good example
2. Policy communication ie. let people know rules and changes
3. Segregation of duties
4. Record keeping
5. Budgets
6. Reporting



Segregation of Duties

- Break up duties
- Avoid one person dominating
- Checks and balance
- Danger from within – only takes one person
- For very small organizations – complementary control



Two Person Segregation of Duties

Treasurer/Employee – First Person

- Post accounts receivable
- Mail checks
- Write checks
- Post general ledger
- Reconcile bank statements
- Post credits/debits
- Give credits and discounts
- Approve payroll
- Open mail/receive cash
- Disburse petty cash
- Authorize purchase order
- Authorize check requests
- Approve invoices for payment

McLaughlin, Thomas A., *Streetsmart Financial Basics for Nonprofit Managers*, 3rd ed., p 230.



Two Person Segregation of Duties (cont.)

CEO/ED/Chair/President/Volunteer – Second Person

- Sign checks
- Sign employee contracts
- Custody of securities
- Complete deposit slips
- Perform interfund transfers
- Distribute payroll
- Reconcile petty cash
- Record initial charges and pledges
- Approve employee time sheets
- Prepare invoices
- Complete check log

McLaughlin, Thomas A., *Streetsmart Financial Basics for Nonprofit Managers*, 3rd ed., p 230.



Record Keeping

- Keeps track of money and assets coming in and flowing out of the organization and summarizes in general ledger
- Most transactions are similar and straightforward
- Some are unusual or non-recurring



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Other Ideas for Internal Financial Controls

- Hiring and accessing qualified employees and advisors
- Use services such as payroll service
- Proportionality – it does not help spend \$5 to save a \$1.



Controls over Incoming Funds

Cheques and cash in mail

- Two people opening
- Record immediately
- Secure unopened mail

Public collections and fundraising events



Banking Procedures

- Use organizational, not personal, bank accounts
- Bank regularly
- In between banking keep cash or cheques in locked box
- Bank gross amounts, then pay expenses
- Have written policies or resolutions
- Routinely check bank statements to deposit slips



Expenditure Controls

- All expenditures should be properly authorized
- Must have proper supporting documentation
- One person prepares cheque etc., another authorizes expenditures
- Directors must understand procedures
- Check invoices against orders
- Have authorization levels for placing orders
- Payments only against original invoices



Expenditure Controls - Cheques

- Governing documents provide for people authorized to sign cheques
- Abide by governing documents or change them
- Should have two unrelated signatories on cheques
- Have adequate pool of signatories
- Best not to sign cheques to yourself
- Keep cheques in safe and secure place
- Do not sign blank cheques
- Have agreed bank limits
- Only sign cheques with corresponding invoice



Expenditure Controls - Cash

- Avoid or reduce need for cash payments
- Petty cash – replenish from bank account not incoming cash
- Keep cash in locked and secure place
- Supporting documentation for petty cash payments (preprinted and numbered receipts)
- Count cash regularly



Expenditure Control - Salaries

- For many charities this is their largest expense
- Significant charity and director liability for failure to withhold and remit source deductions and for payment of wages
- Proper employment agreement with each employee setting out salary and termination provisions etc.
- Are deductions for CPP, EI and income taxes being made?
- Are funds being remitted as required?
- Check that salaries are correct
- Spot check with larger organizations for “fictitious employees”



Safeguarding Assets

Fixed assets (e.g. building, land, vehicles)

- Have list of holdings and update
- Check that assets are in good repair
- Are assets properly insured?
- Does charity require the asset or should it sell?



Investments

- Directors have duty to invest funds that are not immediately required
- Many charities have limited powers of investment
- Look to letters patent and by-laws for power to invest or trust document if trust
- Wording of powers is important
- A trustee must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments
- Act prudently and reasonably



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Other Resources

- www.capacitybuilders.ca/clip
- www.canadiancharitylaw.ca
- www.cra-arc.gc.ca/tx/chrts/prtng/menu-eng.html
- www.boardsource.org
- www.fme-online.org
- www.oxfam.org.uk/resources/
- www.johncammack.net
- www.globalphilanthropy.ca
- www.mango.org.uk



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- Your feedback is important to the Charity Law Information Program
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- Thank you for your participation today!