

We realize the potential of not-for-profit organizations



Top 10 Canada Revenue Agency Compliance Issues for Charities

December 10, 2009

Mark Blumberg (mark@blumbergs.ca)

Production of this workshop and materials was made possible by a financial contribution from the Canada Revenue Agency













Who We Are - Capacity Builders

- Capacity Builders is a division of the Ontario Community Support Association (OCSA) and it runs the Charity Law Information Program (CLIP)
- CLIP provides training, workshops, and webinars to Canadian charities to enhance their understanding of their legal, ethical, and governance obligations
- http://www.capacitybuilders.ca/clip
- CLIP Communiqué sign up for free
- (416) 256 3010 x 232 or 1-877-484-3030
- clip@capacitybuilders.ca
- The Charities Directorate of CRA has provided funding for CLIP





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-profit and charity law
- Assists charities from across Canada with Canadian and international operations and foreign charities fundraising here
- <u>www.canadiancharitylaw.ca</u> and <u>www.globalphilanthropy.ca</u>
- Free Canadian Charity Law Newsletter. Sign up at: http://www.canadiancharitylaw.ca/index/php/pages/subscribe
- (416) 361 1982 or 1-866-961-1982
- mark@blumbergs.ca





Charities Directorate of CRA

- Regulates registered charities
- Based in Ottawa and other offices throughout Canada
- Website: www.cra.gc.ca/charities
- E-mail list: <u>www.cra-arc.gc.ca/esrvc-srvce/mllist/sbscrbchrts-eng.html</u>
- Webinars: <u>www.cra-arc.gc.ca/tx/cmmnctn/sssns/wbnrs-eng.html</u>
- Telephone: 1-800-267-2384 (English)
 - 1-888-892-5667 (Bilingual)
- Through CPOP supporting 19 charities conducting educational work on legal and *Income Tax Act* compliance.





Introduction

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





Voluntary Sector in Canada

- 161,000 non-profits in 2003 (federal and provincial and unincorporated)
- 83,500 Registered Charities (as of 2008)
- \$112 Billion in revenue, 2 million on payroll
- 49% from Gov, earn 35%, 13% 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





What is a Charity?





What is a Charity?

- 1) Purposes must be exclusively and legally <u>charitable</u> (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





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/prtng/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 <u>www.capacitybuilders.ca/clip</u> for a list including our Annotated T3010B
- CRA has fillable T3010B





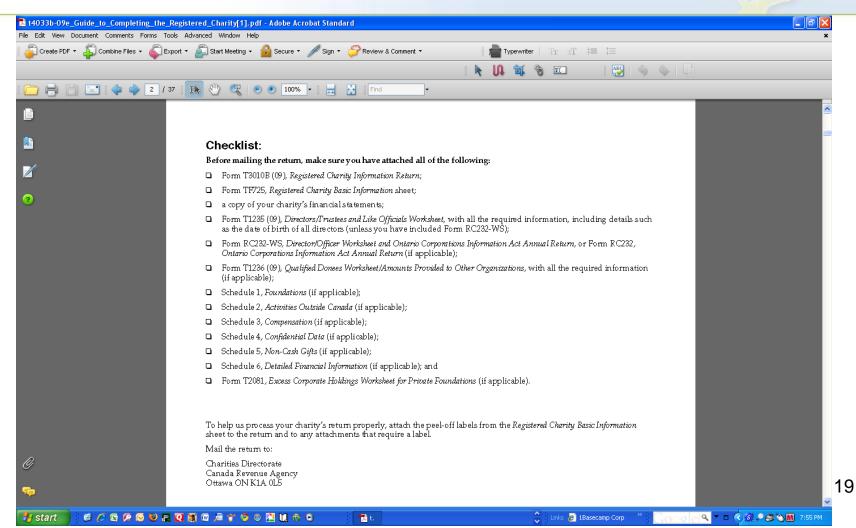
Problems with T3010B

- Using wrong form T3010A for 2008
 - T3010B 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







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...

- You cannot determine the value of the donation or the benefit
- Donation of services to charity
- Donation is intended for another organization that is not a registered charity
- Cannot determine the name of the true donor
- Payment for event (concert)
- Payment for program (daycare)
- Tuition (except IC 75-23 private religious schools)
- Business advertising expenses





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 <u>deemed fair market value</u> of the property (under proposed legislation).





Sample Official Donation Receipts







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-26e.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?





4. Acting Outside Legal Objects

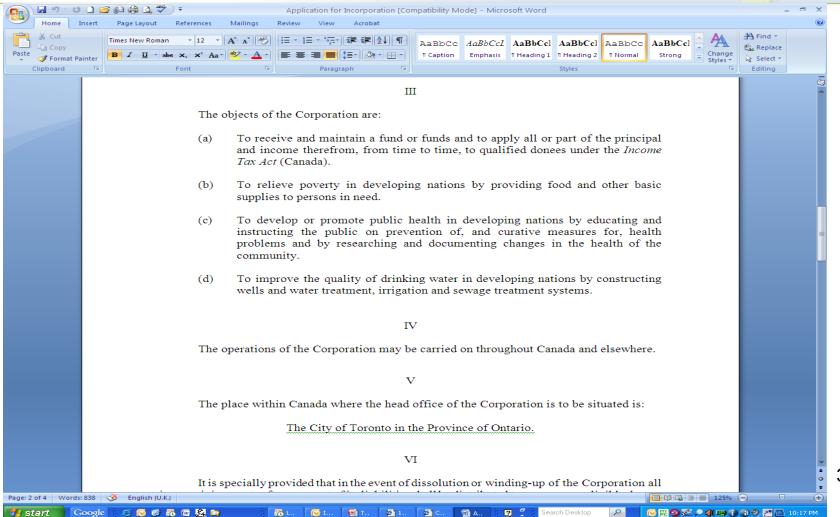
Charities in Canada have legal objects in their founding documents (eg. Letters Patent, Trust deed etc)

Charities must not act outside of these legal objects.





Check Your Letters Patent/Articles of Incorporation







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 administration, 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 noncharitable 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

in diagraphy in the second sec

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

"Own Activities"
[Direction and Control]

Structured
Arrangement - Written
agreement

Employee Volunteer

Intermediary – agency, JV, partner, contractor





"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 C

- 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.





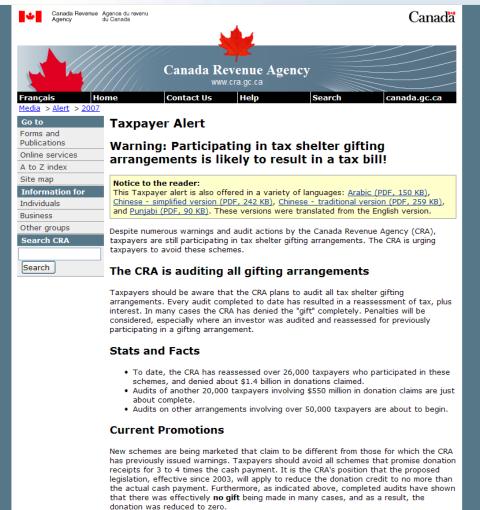
Avoiding Abusive Charity Gifting Tax Shelters

- 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







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





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-employee?*: 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.capacitybuilders.ca/clip,
 www.capacitybuilders.ca/clip,
- 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





Save the Dates!

February 22 & 23, 2010

Being Good at Doing Good: Safeguarding Yourself and Your Charity in a Complex World

Plan to join us in February for this groundbreaking conference that will explore good governance and accountability, financial controls, and how you can prevent your resources from being misused.

For more information, visit http://www.capacitybuilders.ca/clip

Location: Toronto Board of Trade





Evaluation

- Your feedback is important to the Charity Law Information Program
- Please send feedback to <u>clip@capacitybuilders.ca</u>
- Thank you for your participation today!