

## Top 10 Canadian Charity Law Issues

So much is written about legal issues relating to charities in Canada. Often the information is highly specialized and difficult to understand. Reading all that material can become a full time job but most distressingly with all the information overload many charities and their employees and volunteers miss what I think are some of the most important issues. I thought I would try and note the ten most important things you need to know about charity law in Canada.

### 1. File the T3010 Registered Charity Information Return on time<sup>1</sup>

The T3010 is due 6 months after the charity's year-end. Failure to file the T3010 within 1-2 months of that date will result in your charity being deregistered, losing its charitable status and consequently its receipting privileges. Heads of charities should diarize the date their returns are due and should always make sure that the address CRA has on file is current – otherwise CRA's reminder notices may never arrive. Unfortunately, many charities are deregistered and they are not even aware of it.

### 2. Do not support terrorism

That means the charity cannot support terrorism either directly or indirectly or let your charity be a dupe for terrorist organizations. If you want more details you may wish to review my article [Canadian Charities and Terrorism: 16 Steps to Avoid Involvement](#) as well as CRA's recent "Checklist for Charities on Avoiding Terrorist Abuse" and it can be found at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/chcklsts/vtb-eng.html>.

### 3. Do not run a scam

If you run a charity and your relative runs a fundraising company charging a fee equal to 80% of the funds raised that is a scam. If you tell people that they should provide you with a cheque for \$100 and somehow they will end up with a tax receipt for \$1000 that is a scam. It does not matter if the scam comes with a thirty page opinion letter from a prominent law firm - it is still a scam or as some lawyers refer to it 'a potentially abusive tax scheme'. Scams should be avoided at all costs because in addition to often being illegal, they are unethical and also undermine the whole charitable sector.

### 4. Disbursement Quota (DQ)

The disbursement quota is the Income Tax Act's increasingly complicated way of saying you must limit your fundraising costs, administration costs and the amount that you keep

---

<sup>1</sup> See CRA's website at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/chcklsts/t3010b-eng.html>. Also you may find my article on the consequences of non-filing helpful at [http://www.globalphilanthropy.ca/images/uploads/Canadian\\_Charitys\\_-\\_File\\_your\\_T3010\\_on\\_time.pdf](http://www.globalphilanthropy.ca/images/uploads/Canadian_Charitys_-_File_your_T3010_on_time.pdf). There are also some interesting resources at <http://www.thecharitiesfile.ca/>.

in reserve in relation to your receipted donations. In its simplest form, if you, as a registered Canadian charitable organization issue a receipt for a donation, the following year you need to spend 80% of that donation on charitable programs, and no more than 20% on fundraising and administration. If you receive money from government or business and do not issue a tax receipt then these funds are not included in the disbursement quota and you are not limited to only spending 20% on admin and fundraising. I have never heard of a charity losing its charitable status because it only spent 78% on charitable activities. The charities who lose their charitable status are typically spending 20% on charity work and 80% on fundraising/admin or over a number of years, they continuously have major shortfalls in their charitable spending. Most of my clients don't worry much about disbursement quota either because they receive a lot of funds that do not need to be receipted (from corporations or government) or they keep a tight reign on their costs. Other charities prefer to fudge their numbers and get expensive legal and accounting advice on how far to push the envelope - sometimes there is a day of reckoning – whether by CRA audit or a newspaper report causing public embarrassment. CRA has some interesting information on disbursement quota at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/spndng/menu-eng.html>.

#### 5. Foreign activities

If you are one of the almost 12,000 Canadian registered charities that conduct activities outside of Canada or spend money outside of Canada, you need to read the CRA booklet RC4106 Registered Charities: Operating Outside Canada. Canadian charities cannot grant funds to foreign charities, except in a very small number of cases. You must comply with these rules. It is a major area of emphasis for CRA audits. For those who are interested in foreign activities such as international development and humanitarian assistance you may wish to look at <http://www.globalphilanthropy.ca>.

#### 6. Director compensation

Members of a board of directors of a charity should not be compensated for their work. In Ontario, Directors are not entitled to compensation for serving on the board of a charity. In fact, by being a director of a charity that operates in Ontario you are very much constrained in terms of any dealings you have with the charity. Accountants serving on a board cannot do an audit of the charity, nor can their firm and they cannot charge the charity for accounting services. Law firms cannot charge for legal services provided to a charity if one of their partners, etc. is on the board of the charity. Directors are only entitled to reimbursement of reasonable expenses incurred to further the activities of the charity. Directors of charities that operate in Ontario cannot receive salaries, stipends, grants, honorariums, or consulting fees from a charity. There is a very simple solution - if you wish to receive compensation from a charity, do not serve on the board of directors.

#### 7. Books and records and receipts

A Canadian registered charity must keep adequate books and records at a Canadian office. This is so that the CRA can review the charity's revenue and expenditures as

well as verify any official donation receipts that the charity may have issued. The charity must also keep source documents that support the information in the books and records. A charity needs to ensure that every receipt it issues is accurate and in compliance with the requirements of the CRA. Even minor mistakes in the tax receipts as to either form or content are taken very seriously by CRA.<sup>2</sup>

In terms of records retention, charities are required to keep duplicates of receipts for at least two years from the end of the calendar year in which the donations were made. Most other documents need to be kept for 6 years from the end of a fiscal year. Some other records must be retained in perpetuity or until two years after the charity is no longer a charity such as "ten year gifts", minutes of meetings and all governing documents such as letters patent. If in doubt, keep it!! What's a few more boxes! Also if you keep it you will not need it, but if you get rid of it - you will need it. I think that is a law of nature.

## 8. Business

Under the Canadian *Income Tax Act*, charitable organizations and public foundations can carry on "related business" that promotes their charitable objects. An example would be a hospital cafeteria - providing food to patients and visitors. They can also carry on other unrelated business activities, presumably to raise funds for the charity, if "substantially all" (CRA says at least 90%) of the people involved in these activities are volunteers. Private foundations cannot carry on any business activities whatsoever. Failure to follow these rules can result in penalties and deregistration. CRA has tackled this subject in CRA Policy Statement "What is a Related Business?" CPS-019 at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-019-eng.html> and Registered Charities: Community Economic Development Programs at <http://www.cra-arc.gc.ca/E/pub/tg/rc4143/rc4143-e.pdf>.

## 9. Political Activities

Under the *Income Tax Act*, a registered charity can be involved in non-partisan political activities as long as it devotes substantially all of its resources to charitable activities. Any political activities have to help accomplish the charity's purposes and remain incidental in scope.

A registered charity cannot be involved in partisan political activities. A political activity is considered partisan if it involves direct or indirect support of, or opposition to, a political party or candidate for public office. See the CRA policy statement on Political Activities (CPS - 022) located at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>.

---

<sup>2</sup> There is some interesting material from CharityCentral at <http://www.charitycentral.ca/site/?q=node/435> on Books and Records and also on Receipting at <http://www.charitycentral.ca/site/?q=node/5>.

Don't forget that registration of lobbyists (federally, provincially or otherwise) is a separate issue to CRA constraints. You may wish to review the federal or provincial lobbyist registration acts to check whether you and your organization are compliant.

## 10. Fundraising requirements

Canadian charities must be careful to abide by their obligations when fundraising including not conducting illegal activities or activities contrary to public policy. Charities should monitor their revenue and expenses, be aware of the ratio expectations that CRA and donors may have and try to keep expenses as low as possible. Charities should be careful when entering into agreements with third party fundraisers to ensure that there is no undue private benefit. Allocation of expenses between fundraising and charitable activities must be in accordance with the CRA guidance. Charities should try to avoid "Conduct considered as increasing the risk of unacceptable fundraising". A charity's fundraising program and its costs should be transparent, accountable and properly disclosed. Charities should try to use volunteers when possible to reduce the cost of fundraising.

Obviously there is more to Canadian charity law than these ten points. But there is little sense focusing on obscure provincial statutes or court cases and missing some of these important charity law issues.

---

Source: Mark Blumberg is a lawyer at Blumberg Segal LLP in Toronto, Ontario and lead trainer for Capacity Builders' Charity Law Information Program (CLIP). He can be contacted at [mark@blumbergs.ca](mailto:mark@blumbergs.ca) or at 416-361-1982. To find out more about legal services that Blumbergs provides to Canadian charities and non-profits please visit [www.canadiancharitylaw.ca](http://www.canadiancharitylaw.ca) or [www.globalphilanthropy.ca](http://www.globalphilanthropy.ca).

Last Updated: August 2011.

*This article is for information purposes only. It is not intended to be legal advice. You should not act or abstain from acting based upon such information without first consulting a legal professional. The views expressed in this article are the sole responsibility of the author and do not necessarily reflect the views of the funders or sponsors.*

### Project Funding Provided By:

