

Global Philanthropy:

Canadian Charities and Foreign Activities

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Overview of presentation

- ❑ international philanthropy is important, exciting and growing, misunderstood
- ❑ good work outside charitable realm
- ❑ there are rules (corporate, CRA, common law, ethical) for charities operating abroad or funding projects carried out by intermediaries
- ❑ don't ignore stakeholders



Good Work
Outside Charity
Realm

Carrying on Good Works Abroad outside the charity sphere

- ❑ personal donations of cash or in kind items to foreign charities, no tax receipt
- ❑ doing business in developing countries,
- ❑ corporate social responsibility (CSR), donations, sponsorship, advertising, etc
- ❑ for-profit “non-profit” -Google.org, micro-loans
- ❑ non-profit without charitable status – if no need to issue tax receipts.
- ❑ avoiding abusive transactions and paying fair share of taxes



Carrying on Good Works Abroad outside the charity sphere (cont)

- ❑ volunteering –at home and abroad
- ❑ remittances - gifts to family, friends, former employees abroad
- ❑ encourage Canadian government to fulfill commitment of 0.7% of GNI
- ❑ encourage Canadian companies operating outside of Canada to do so legally and ethically
- ❑ our own actions – the goods we consume, environmental footprint, what we buy.



Charitable Sector in Canada

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

Source: Statistics Canada – National Survey of Non-Profits
and Voluntary Organizations



Variety of Charities

- ❑ 12,000 carried on 'programs' outside of Canada - humanitarian assistance, development, education, religious, arts etc.
- ❑ every charity is different – objects / areas of charitable work / philosophy/ risk tolerance / public profile / donors / level of government support / independent vs. international affiliations /resources / knowledge / local vs. international activities



Stakeholders

- members
- board
- employees of charity
- government (CRA, CIDA etc.)
- media
- partners
- donors
- public
- beneficiaries



Importance of Global Philanthropy

Importance for our planet

- ❑ Great Challenge - 1.2 billion people live on less than a \$1 per day, 11 million children under 5 die each year, 1 billion people lack access to clean water, neglected diseases, HIV/AIDS etc
- ❑ World is getting smaller – SARs, Tsunami
- ❑ Effect – \$1 in Canada achieves \$40 in India



Importance for an organization

- ❑ fulfill objects of charity
- ❑ win/win (Canadian charity and foreign charity)
- ❑ staff morale and retention
- ❑ donor and stakeholder interest
- ❑ excellence



Canadian charities by \$ spent directly outside of Canada (2006)

1. WORLD VISION CANADA	\$287,877,830.00
2. CARE CANADA	\$187,223,833.00
3. INT. DEVELOPMENT RESEARCH CENTRE	\$97,565,681.00
4. HAMILTON HEALTH SCIENCES CORP.	\$92,855,349.00
5. PLAN INTERNATIONAL CANADA INC.	\$54,146,626.00
6. THE CANADIAN RED CROSS SOCIETY	\$48,245,075.00
7. UNITED ISRAEL APPEAL OF CANADA INC	\$40,726,294.00
8. THE SAMARITAN'S PURSE - CANADA	\$35,955,229.00
9. CHRISTIAN CHILDREN'S FUND OF CANADA	\$33,644,359.00
10. MENNONITE CENTRAL COMMITTEE CANADA	\$32,159,078.00



Importance – Canadian charities foreign expenditures

2002 - \$1.4 Billion

2004 - \$1.8 Billion

2005 - \$2.1 Billion

2006 - \$2.3 Billion

2007 - ?

2008 - ??



Philanthropy, Official Development Assistance, Remittances per annum – circa 2006

Philanthropy	\$2.3 billion
Philanthropy (development)	\$1.1 billion (Hudson)
Philanthropy (development)	\$0.7 billion (CCIC)
ODA (“foreign aid”)	\$3.68 billion
Remittances	\$6.8 billion



Private Aid to Developing Countries



Some exciting recent international philanthropy developments

1. **One Drop Foundation** – a \$100 million foundation set up by *Cirque du Soleil* founder, *Guy Laliberté*. The foundation is focused on providing clean water and sanitation in developing countries. (www.onedrop.org)

2. **Li Ka Shing Foundation** and Li Ka Shing (Canada) Foundation – education, disaster relief, improving medical care and enhancing culture – in China and elsewhere. This foundation is what Li Ka Shing calls his third son and he plans to donate 1/3 of his wealth to the foundation. (www.lksf.org)



Some exciting recent international philanthropy developments (cont)

3. **HealthyKids International** – a major project of Toronto’s SickKids Foundation to train child health specialists from developing countries at SickKids and, when those specialists return home, to support them through telemedicine, funding for programs, research and other initiatives.

(www.healthykidsinternational.com)

4. **The Walter & Duncan Gordon Foundation** has created a Global Youth Fellowship. \$20,000 will be provided to each fellow to support initiatives that educate young Canadians about key international aid, security and development

challenges. (www.gordonfn.org)

The logo for Blumbergs, featuring the word "BLUMBERGS" in white capital letters on a dark blue rectangular background.

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Some exciting recent international philanthropy developments (cont)

5. **Frank Giustra** of Vancouver has recently committed \$100 million, as well as one half of all of his future earnings from his work in the natural resources sector, to the Clinton Giustra Sustainable Growth Initiative (CGSGI) which will work to alleviate poverty in Latin America.

6. **The Humanitarian Coalition** – CARE Canada, Oxfam Canada, Oxfam-Québec and Save the Children Canada, formed The Humanitarian Coalition, to combine fundraising initiatives in times of crisis and provides a unified Canadian voice during emergency response and appeals.

(www.thehumanitariancoalition.ca)



Canada-US Tax Treaty Benefits

US-Canada Tax Treaty – allows benefits for certain donations to US charities

- ❑ gifts by resident of Canada to US tax exempt org that if it were resident in Canada could qualify as Canadian registered charity up to 75% of US source income (Article XXI (6))
- ❑ commuters - Canadian residents employed in the US who commute to work in the US (no US source income limitation)
- ❑ alumni and family – gift to college or university at which donor or family member is or was enrolled (no US source income limitation)



Corporate, Trust,
Donor Issues
with Foreign
Activities

Operating Abroad – Corporate and Trust law issues

- ❑ Letters Patent/Articles of Incorporation – legal objects (purposes) and restrictions – avoiding ultra vires activities
- ❑ Internal Restrictions - By-laws and resolutions
- ❑ Trusts agreement –scope
- ❑ Donor restricted gifts



Charitable Objects – eg. International Development

Relief of Poverty -To relieve poverty in developing nations by providing food and other basic supplies to persons in need.

Health - 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.

Drinking Water -To improve the quality of drinking water in developing nations by constructing wells and water treatment, irrigation and sewage treatment systems.

Agriculture - To improve skills in forestry, agriculture and horticulture and to assist in the preservation of the environment in developing nations.

Disaster Relief - To provide necessities of life to victims of disasters.



Source: Ontario Not-For Profit Incorporator's Handbook.

[globalphilanthropy.ca](http://www.globalphilanthropy.ca)

<http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/nfpinc/appendixg.asp>

Objects that may require modifications or additions

To establish and maintain a hospital.

To establish and maintain a hospital in Mississauga, Ontario.

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 charitable organizations that are also registered charities under the Income Tax Act (Canada).



CRA

Considerations

CRA – Considerations that apply to all charities as well as those operating abroad

- ❑ objects exclusively charitable
- ❑ activities within objects
- ❑ only undertake charitable activities (relieve poverty, advance education, advance religion, other purposes beneficial to the community that the law considers charitable)
- ❑ cannot violate Canadian public policy or be illegal under Canadian law



CRA – Considerations that apply to all charities as well as those operating abroad (cont.)

- ❑ sufficient books and records in Canada
- ❑ disbursement quota (80/20) – generally receipted income this year, 80% spent on charitable activities next year, not fundraising, administration or political, in 2009 add 3.5% for endowments
- ❑ no partisan political activities, limited non-partisan political activities
- ❑ no unrelated business activities



CRA Views on Canadian Charities operating outside of Canada

- ❑ RC4106 “Registered Charities Operating Outside Canada”
- ❑ Registered Charities Newsletters
- ❑ Information Letters
- ❑ Policy Statements
- ❑ Consultation on Proposed Policy



CRA – Considerations that apply to Canadian charities operating abroad * * *

and funding projects in Canada with non-qualified donees

- ❑ The Canadian Income Tax Act allows charities to conduct their charitable purposes by
 - 1) giving monies to another "qualified donee" (usually a Canadian charity but also includes the United Nations and a small number of foreign entities) or
 - or
 - 2) expenditures on their own activities (at home or abroad)
- ❑ No third option - A Canadian charity cannot just transfer money or gift/grant funds to a non-qualified donee (including a foreign charity)



Qualified Donees

Donations to Qualified Donees – Tax Credit for Charitable activities abroad

- ❑ Canadian registered charities, Canadian amateur athletic associations, tax exempt housing corporations, Canadian municipalities, public bodies performing a function of government in Canada (First nations etc.)
- ❑ United Nation and its agencies
- ❑ certain Universities outside Canada that student body of which ordinarily include students from Canada (Reg 3503) (“Schedule VIII Universities” or “prescribed universities”)



Qualified donee (continued)

- ❑ a charitable organization outside of Canada to which Her Majesty in right of Canada (federal government or its agents) has made a gift in the corporation's taxation year or the preceding 12 months. (see CRA Circular 84-3R5 and Attachment to IC 84-3R5, Gifts to Certain Charitable Organizations Outside Canada)



Own Activities and Direction & Control

RC4106 – Direction and Control

The *Income Tax Act* does not allow a registered charity to carry out its purposes by handing over its money or other resources to another organization (that is not a qualified donee). Yet it may not be practical for the charity to meet its “own activities” test by operating abroad using its own employees or volunteers directly funded by that charity. However, it can work with or through other organizations providing it employs certain structured arrangements that allow it to retain direction and control over the use of its resources.



Conduit – you don't want to be a conduit!

- conduit gifts resources to non-qualified donee
- simply forwards money
- no direction and control, or insufficient
- no instructions
- no monitoring
- no description of activities



RC 4106 – “Own activities”

- assurances that foreign intermediary is able to deliver services (due diligence)
- expenses must further objects of Canadian Charity and constitute charitable activities
- adequate written agreement
- periodic, specific instructions
- regularly monitors project and evidence
- periodic payments, right to discontinue, in certain circumstances



“Own activities” – other ideas

- ❑ providing clear and complete description of activity**
- ❑ being aware of issues, problems, challenges etc. relating to your activities
- ❑ having Canadian on board of intermediary or intermediary rep on Canadian board not at all adequate
- ❑ structured arrangement, not “conduit”



Ways for Canadian Registered Charity to Carry on “Own Activities” * * *

1. employee in foreign country
2. agency agreement
3. contractor
4. joint venture agreement/joint ministry agreement
5. cooperative partnership agreement



1) Employees or Volunteers

- ❑ Can be Canadian employees or volunteers or locals.
- ❑ best model? eg. MSF, missionaries
- ❑ skills, beliefs, control, reporting, language, returning workers
- ❑ concerns – local knowledge, costs, sustainability, danger,



2) Agency Agreement

- ❑ Canadian charity appoints agent abroad to conduct Canadian charity's activities with Canadian charity providing funding and control
- ❑ most common
- ❑ need written agency agreement
- ❑ concern – charity liability for agents actions, agents ignore agreement, hierarchy



3) Contractor Agreement

- ❑ Canadian charity hires foreign contractor to conduct certain work.
- ❑ eg. drill well, deliver services or goods
- ❑ need written contractor agreement
- ❑ not agent – business agreement, limited liability



4) Joint Venture/Joint Ministry Agreement

- ❑ Canadian charity can work with a foreign organization jointly pursuant to a joint venture/ministry agreement (JVA/JMA)
- ❑ pool resources to carry out certain works
- ❑ need written JVA or JMA
- ❑ control by CC at least in proportion to CC contribution



5) Cooperative Partnership Agreement

- ❑ CC works with foreign organization and each contributes different resources and undertakes a different part of the project.
- ❑ need Cooperative Partnership Agreement.
- ❑ disbursement quota concern if CC does all admin services for project



Exceptions?

Transfer of Property in Foreign Country

- ❑ Canadian charity should maintain ownership and control over assets
- ❑ can sell assets at FMV or transfer to qualified donee
- ❑ exception
 - 1) can transfer assets if charitable ('charitable goods policy')—eg. food to hungry, prayer books
 - 2) prohibition on foreign ownership of real estate
 - 3) development work –can turn over to local control – need assurances of continued community benefit



“Charitable Goods Policy” – CRA Charity Newsletter #20

Q. Are there any circumstances under which a Canadian registered charity can transfer property directly to a non-qualified donee?

A. As above, a charity cannot simply transfer funds to an organization that is not a qualified donee, since this does not qualify as carrying on its own activities.

However, the Charities Directorate will consider a transfer of property reasonable where the nature of the property means that it can only be used for a charitable purpose. ...

In some cases, where the property could be used for something other than charitable purposes, it may none-the-less be unreasonable to expect the charity to maintain control of assets. The Charities

Directorate will consider such situations on a case-by-case basis when requests are received in writing.



“Charitable Goods Policy” - Examples

- transfers, by a research organization, of books and scientific reports to anyone interested (including foreign governments, libraries, schools, etc.),
- transfers of books - on a subject of particular interest to an educational charity - to public libraries in major cities all over the world,
- transfers of medical supplies to a refugee camp,
- transfers of food, blankets, etc. to a charity coping with a natural disaster,
- transfers of drugs, medical equipment, etc. to poorly equipped hospitals,



Charitable Goods Policy – Beware.

- ❑ is it a policy? Yes, CRA Newsletter # 20
- ❑ CRA will look at nature of goods, quantity, which foreign intermediary receives goods and controls placed
- ❑ when to use – small amounts, emergency, very reputable, non-political, non-sectarian, organization acting as representative.



Repayment of bona fide Debt/Loan

- ❑ repay loan to creditor regardless of whether in Canada or outside
- ❑ must be a real debt
- ❑ if foreign charity advances funds to Canadian charity consider whether foreign charity should gift or loan amount
- ❑ disbursement quota issues



Tithes, Royalties, Membership or Similar Fees

- ❑ international associations/alliances
- ❑ goods and services, training courses, literature, membership, intellectual property
- ❑ amount paid must be proportional to benefit received unless small amount (ie. lesser of 5% of expenditures or \$5000)
- ❑ need to be able to document and if excessive then CRA considers it gift to non-qualified donee and can result in revocation



Public/Private Foundations and Foreign Activities

Canadian Foundations – yes they can conduct foreign activities !!

- ❑ Support Qualified donees conducting international operations (12,000)
- ❑ Support Qualified donees dealing with international issues in Canada
- ❑ Work with Intermediaries pursuant to structured arrangements
- ❑ Do direct charitable activities outside of Canada with employees etc.



Private Foundations and intermediaries or direct charitable activities

- ❑ need appropriate objects
- ❑ need will - mindset – in 2006 about 1% of grantmaking from private foundations was to “international” (no will = no way)
- ❑ need knowledge and capacity

see article “Canadian Private and Public Foundations and International Activities” at globalphilanthropy.ca



Canadian Cases

Canadian Cases on Registered Charities Operating Abroad

- ❑ Tel-Aviv Foundation Case
- ❑ Canadian Magen David Adom Case
- ❑ Bayit Lepletot Case
- ❑ Travel Just Case



Canadian Committee for the Tel Aviv Foundation v. Canada (2002 FCA 72)

- ❑ promotion of education and relief of poverty in Tel-Aviv by agency agreement
- ❑ foreign management not aware of agency agreement
- ❑ 1996 undertaking and 1997 audit
- ❑ 1997 audit –little control over funds disbursed (conduit), no reporting, no segregation of funds, grant to Air Force Museum in Beersheva (outside of objects - ultra vires) – 2002 revocation



Tel Aviv Foundation v. Canada (cont) – Lessons learned

- ❑ stay within your objects
- ❑ have agreement but also follow it –control projects and have reporting
- ❑ undertakings must be strictly complied with
- ❑ avoid military in foreign country?
- ❑ changes to agreements should be in writing



Canadian Magen David Adom for Israel and MNR (2002 FCA 323)

- ❑ object – To donate emergency medical supplies and ambulances directly to the people of Israel ('Israeli Red Cross')
- ❑ CMDA appointed Canadian representative in Israel to implement –no written agreement
- ❑ 1986 audit – concerns – funds to US MDA for purchasing ambulances, not directly to General Motors, and also no agency agr. with MDA in Israel and no control over ambulances



Canadian Magen David Adom (cont)

- ❑ audit of 1993 and 1995, 1996 years
- ❑ concerns – no agency agreement, persistent DQ problems, non-charitable expenditures like bullet proof vests (too indirect/can be used by anyone), not “emergency medical supplies” –objects.
- ❑ transfer of capital assets (ambulance) to MDA in Israel and one to Israel Defence Force. Ambulances and telecom equipment can be used for non-charitable purposes



Canadian Magen David Adom (cont)

- ❑ 2001 notice of revocation and FCA dismisses appeal and CMDA loses charitable status
- ❑ Federal Court of Appeal concerned over:
 - 1) agent “not effectively authorized, controlled and monitored by the charity”
 - 2) equipment not only used for charitable purposes and concerns of involvement by agent with Israeli military operations



Canadian Magen David Adom (cont) – Lessons Learned

- ❑ CRA will go after powerful and good charities
- ❑ need for written agreement
- ❑ disbursement quota
- ❑ no donations of equipment to foreign military
- ❑ who wants a 16 year audit?



Bayit Lepletot, 2006 FCA 128 (March 28, 2006)

- ❑ Canadian Charity deals with Rabbi in Israel who “presumably” exercises some control over Israeli charity with similar name to the Canadian Charity. But no evidence of his control over charitable works
- ❑ Agent can carry on charitable work but it must be shown that the agent is actually carrying on the work. Not sufficient for agent to be part of another organization that does work. No factual basis for arguing delegation. Status revoked.



Travel Just, 2006 FCA 343 (October 24, 2006)

- ❑ application for charitable status – ethical tourism –deemed refusal and appeal
- ❑ OBJECTS a. ...to create and develop model tourism development projects that contribute to the realization of international human rights and environmental norms and that achieve social and conservation aims that are in harmony with economic development aims for the particular region; ..
- ❑ concerns – vague/subjective objects and concern with private benefit



CRA General Compliance Concerns

Top Compliance Concerns Presentation from Terry de March, CRA

- ❑ incorrect issuance of receipts (lack information, mistakes, FMV)
- ❑ failure to file T3010
- ❑ T3010 omissions
- ❑ non-charitable activities
- ❑ gifts to non-qualified donees



Top CRA Compliance Concerns (cont)

- ❑ failure to maintain direction and control
- ❑ fundraising costs (reasonable and proportionate)
- ❑ political activities
- ❑ unrelated business activities
- ❑ religious school tuition receipts



Top CRA Compliance Concerns(cont)

- ❑ tax shelters
- ❑ fraudulent tax receipts
- ❑ transactions with directors
- ❑ other CRA rules (payroll, GST etc)



Other Operational Issues

- ❑ employees vs. independent contractors
- ❑ written agreements when required
- ❑ corporate requirements
- ❑ CRA requirements - generally
- ❑ terrorism, fraud, and money laundering
- ❑ sanctions and embargoes



Other Operational Issues (cont)

- ❑ bribery and corruption
- ❑ private benefits
- ❑ logistics/security of staff abroad
- ❑ ethical issues
- ❑ IP issues (trademark, copyright, trade secrets, licences)
- ❑ Legal constraints outside of Canada (eg. Russia, foreign currency restrictions, land)



ETHICAL ISSUES

Some ethical issues in foreign activities

- ❑ equal partnerships, promote sustainability not dependency
- ❑ gift acceptance issues – type of gift, restrictions on use of gift
- ❑ governance and finances
- ❑ transparency and accountability
- ❑ fundraising images



Some ethical issues in foreign activities (cont)

- ❑ do no harm – be careful who you support
- ❑ role of religion
- ❑ cultural, religious, gender issues.
- ❑ use of resources, sustainability, coordination
- ❑ advocacy



Some ethical issues in foreign activities (cont)

- ❑ sexual exploitation
- ❑ child sponsorship
- ❑ foreign governments programs
- ❑ pharmaceuticals and medical supplies
- ❑ international affiliations



Other Notes

Tides Canada Foundation and Charities Aid Foundation

- ❑ Tides – Canadian public foundation – “Facilitate International Giving for your donors” transfers from US to Canada and Canada to US
- ❑ CAF – “international grant making solutions and services for individuals, corporations, and foundations”
- ❑ good for one time grants or small “cross-border” donations, no organization and bureaucracy established, pay percentage of donation



T3010A – Registered Charity Information Return

- C4 -Did the charity carry on programs, directly or indirectly, **outside** Canada? If *yes*, were any carried out: by employees or volunteers of the charity? - under agency agreement, contract, joint-venture, or similar arrangements? - through gifts to qualified donees? - by other means?

- C5 For programs the charity managed directly, outside of Canada, list the countries or regions where programs were carried on. Do **not** include countries or regions where programs were managed by a qualified donee.

- F1F1 What were the total expenditures on programs **outside** Canada during the fiscal period, excluding gifts to qualified donees?

- T1030 DUE 6 MONTHS AFTER CHARITY'S FISCAL YEAR END**



What can professional advisors do for charities?

- ❑ learn about philanthropy, planned giving
- ❑ give good advice - legal, accounting, insurance, banking or refer to knowledgeable advisors
- ❑ avoid abusive charity donation schemes
- ❑ remind foundation clients that Canadian foundations can conduct foreign activities
- ❑ encourage clients to consider supporting charity



More Information

www.globalphilanthropy.ca

www.blumbergs.ca/non_profit.php

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