



## **Some thoughts on Professional Athletes and Philanthropy in Canada: Part 2**

**By Kate Robertson and Mark Blumberg (March 30, 2017)**

Part 1 of this article series outlined some of the fundamental issues that professional athletes (as well as their trusted advisors) should consider before participating in the charitable sector in Canada. Part 2 of this article series will assist professional athletes that have decided to establish their own Canadian registered charity by providing suggestions and guidelines for success.

### **Selection of board of directors**

Many athletes will not have any previous experience with philanthropy when embarking on the process to establish their own foundation/charity. Without any philanthropic background or experience, the athlete could face difficulties when selecting a competent board of directors for the charity. Choosing a board that is composed of the athlete's family or friends may have some advantages (depending on their experience), but there can also be significant drawbacks to this approach. While the athlete may know some great people who can bring useful experience and knowledge to the board, it may be more beneficial to select an independent board in order to avoid potential personal conflicts down the road. The independent board (of at least three directors) would ideally have experience in the charitable sector and bring a diverse background of knowledge. The directors play an important role in running the charity – they need to provide oversight to ensure tax filings are completed on time, receipts are issued properly, regular meetings are held, resources are being distributed appropriately and they set the overall strategic direction of the charity. Directors also need to understand their roles and responsibilities and their potential liabilities in serving on the board. While selecting family and friends may seem like the most cautious approach for the board, an athlete may be better off combining a mix of family/friends and others with specific expertise in order to ensure a thorough, efficient and effective board of directors.

### **Who has control – Members vs. Directors**

Determining who will have control of a charity is arguably one of the most important factors when establishing a charity for a professional athlete. This structural decision is sometimes overlooked and can lead to disastrous consequences down the road if an athlete later discovers that individuals with a different vision and mindset from the athlete have taken control of the charity. Many professional athletes may not understand the

importance of controlling membership as there is often a misconception in the charitable sector that serving as a director provides sufficient control over an organization. While directors do have the power to make certain decisions and play a key role in operations and setting the strategic direction of the charity, in Canada it is the member(s) who have the ultimate control of the charity (similarly to the concept of shareholders in a for-profit entity). The members not only elect the directors but they also can make significant amendments to the articles and by-laws of the charity. Ultimately, if an athlete wants control, he or she will want to be a member and perhaps even the sole member of their charity. This issue should be dealt with in the earliest stages of establishing the charity in order to protect the charity's future and the vision of the athlete.

### **Purposes/Activities of the Charity**

In order to be eligible for charitable status, the organization will need to have charitable purposes and conduct charitable activities that further those purposes. A charitable purpose is one that fits into one or more of the following categories:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; and/or
- other purposes that benefit the community.

Social, recreational, or hobby groups (e.g. golf clubs), certain amateur sports organizations (e.g. hockey associations) and certain festival organizations (e.g. parades) as well as organizations established to promote business and trade may fall outside of the necessary charitable purpose categories and therefore cannot be registered as a charity. It is important to be strategic and ensure compliance in this area by addressing potential objectives with the athlete before undertaking the charity application process. The purposes of the organization will need to be crafted broadly enough to achieve the athlete's goals but also acceptable for CRA approval.

Another consideration for the athlete is selecting the optimal charitable vehicle, to ensure that the goals and objectives of the proposed charitable activities can be achieved. A registered charity can be designated as either a 'charitable organization', 'public foundation' or a 'private foundation', depending on a number of factors such as the source of funding, relationships amongst the directors and how the charitable resources will be distributed. Many athletes may choose the 'foundation' option in the initial stages, which essentially means a majority of the funds will be used to support other qualified donees, such as Canadian registered charities. Establishing a foundation is a more straightforward charitable application process and is typically shorter (up to 3-4 month wait time with CRA) and less expensive, but the foundation may be more limited in the scope of its activities. The athlete should be aware of the different options and limitations as this could significantly change the approach taken in terms of the activities of the charity. Regardless of the initial designation that a charity is given by CRA, changes can always be made in the future if the athlete decides to take a different approach. The athlete will have options if they want to scale back on activities or take steps to expand their scope, provided that the charity obtains pre-approval from CRA to make these changes.

## **Transparency**

Every Canadian registered charity is required to submit an annual T3010 tax filing with the CRA and this form discloses relevant information about the charity, including the current list of directors/officers, financial reports and information on its charitable activities. It is important for an athlete to understand the importance of the T3010 filing as the information is published on the Canada Revenue Agency's website and available to the public. Canadian registered charities are expected to be open, honest and transparent and are held to a very high standard. With this increased transparency, a Canadian registered charity is often under a microscope in the public eye – especially those associated with high-profile individuals such as professional athletes. Ultimately, if a Canadian charity is not being operated appropriately, it will not take long for the information to become public or to appear in the media. This is why it is crucial for the professional athlete, as well as the individuals involved in the charity to understand the CRA regulations. Legal compliance is extremely important to ensure the charity can be mutually beneficial for the athlete and the community, but also provides a guarantee that the charity is operating ethically. Professional athletes are not only representing themselves and their teammates, but also their entire professional league. A few bad decisions and mishandling of resources could potentially stain the reputation of a professional athlete.

## **Investment of time**

The amount of time, attention and resources an athlete will need to invest in establishing their own charity and maintaining the day-to-day operations should not be overlooked. Professional athletes have busy careers –they are often on the road several times a week, they spend a large amount of time in the gym practicing and maintaining their fitness, they have promotional obligations and interviews, a personal brand to maintain, and family obligations. Establishing their own charity can be overwhelming and add another level of stress to an already very busy schedule. Also, with significant government backlogs, it can take anywhere from six to twelve months for a successful charity registration with CRA, if the charity will be running its own programs. It is important for the professional athlete to understand the expectations involved and set guidelines and timelines for completing their responsibilities. They also need to understand the time commitment required and determine what level of involvement they will have. Fortunately, professional athletes often have a large support network that can assist them with administration, finances, and understanding the rules and obligations. But if the athlete is not fully committed to the objectives of the organization, it might be difficult to maintain the charity in the long term.

## **Charity does not have to do it all**

While a Canadian registered charity alone may be a sufficient vehicle for a professional athlete to make a difference in their community, it is not the only option. Athletes should understand that not everything has to be done through a registered charity and often it is more beneficial to have more than one vehicle through which they can fulfill their charitable objectives. Canadian charities are restricted in many ways in terms of the types of activities that they can participate in and how their resources can be

used (i.e. political activities, unrelated business, promotion of sport, etc.). A non-profit that is not a registered charity has much more flexibility in this regard and some activities of interest to the athlete might be better suited to a non-profit. The professional athlete needs to understand these additional options and how they can work together to benefit the athlete's charitable giving goals.

Our firm offers informative training and educational seminars for professional athletes who are interested in establishing a charity in Canada. With the proper guidance, support and advice, a professional athlete will have a better chance of having a long-lasting and successful experience being involved in philanthropy in Canada.

**Kate Robertson** is a former Division-One NCAA scholarship athlete in the United States (Binghamton University Volleyball). **Mark Blumberg** played rugby in South Africa but moved to Canada at the age of 11 and has been a couch potato ever since. Kate Robertson and Mark Blumberg are lawyers at Blumberg Segal LLP in Toronto, Ontario. 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)

***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.***