



Informal Risk Reviews are Excellent Value for Money for Registered Charities

By Mark Blumberg (November 18, 2018)

I wrote an article many years ago encouraging informal legal reviews by non-profits and charities. It was called "[Canadian nonprofit and charity legal audits: Forget about it!](#)". Over the past 11 years the world has changed a bit – more CRA resources for audits and compliance – the revenue of the sector has doubled and the media is increasingly taking an interest in the work of charities or their misuse. For some large charities not much has changed – their systems are similar, their objects have not changed in 25 years and with increasing staff and volunteer turnover, new staff and volunteers are often unaware of the compliance obligations of the charity.

Charities often only get legal help when a disaster is upon them or on the other extreme when they don't know the answer to some typically trivial legal point.

There a number of problems with either approach to obtaining legal support. First, if your legal affairs are not in order, you are more likely to have significant liability and also be flagged by CRA for an audit. Second, when you are flagged by CRA for audit or the Toronto Star publishes an article about your practices, the damage to the charity can be substantial and the cost of fixing these issues are many times greater. They say that ignorance of the law is no excuse and many directors of charities are very unaware of the legal duties. As well, the staff of charities are often overwhelmed with fundraising, program implementation and compliance with specific funders requirements, but they often miss some of the basic compliance requirements for a registered charity. My favourite parts of a legal review are when the 'low hanging fruit' are discovered, namely high visibility, serious non-compliance that can be rectified very easily.

Larger organizations are typically more complicated and therefore more in need of regular review, but CRA is also prioritizing audits based on risk and large registered charities with complicated operations are high priorities for CRA audit.

It is interesting to note the difference between how charities treat accounting audits and legal reviews. Many registered charities have accountants conduct an audit every single year. Accountants are typically looking at financial management and financial controls and often not focused on legal compliance or ITA registered charity specific requirements that are of concern to CRA.

Charities are spending many thousands to tens of thousands of dollars every year on the accounting audit and not looking at legal issues in nearly as consistent fashion. We suggest a formal risk review for a charity every five years. Many charities could probably do it more frequently.

One of the most frequent refrains we hear from registered charities is they cannot believe that we are discovering problems for example with their receipting, foreign activities or corporate filings as they thought the accountants or auditors were reviewing these issues as well. They almost always are not.

CRA is taking compliance much more seriously and handing out for more compliance agreements, as well as now increasing the intermediate sanctions such as penalties or suspension of the ability to issue receipts. For larger Charities you cannot take the view that you won't deal with any issues until CRA audits, and worse comes to worst you will end up with the compliance agreement. This is extremely dangerous as in many cases CRA will be following up on the compliance agreement 2 to 4 years later, and unless the charity has been conducting itself perfectly with respect to the issues raised in the compliance agreement, the charity has a high likelihood of revocation, suspension or sanctions.

Groups that have compliance agreements should be especially concerned and conducting risk reviews on a regular basis. In my experience with high turnover of staff and volunteers many groups are not even aware that they have a compliance agreement with CRA! It is CRA's view that regardless of turnover, it is the charity that is subject to a compliance agreement, and turnover of staff or ignorance is not an excuse for the non-compliance when a compliance agreement is entered into.

We are increasingly conducting risk reviews for registered charities. Our risk reviews involve review of documents but also a lot of discussion and education. Most compliance issues occur

when volunteers and staff are not aware of the obligation and it is not because of deliberate malfeasance.

Risk reviews typically involve a high-level review of the corporate documents and objects. In some cases it involves a general overview of activities and issues but often is focused on one or two key areas such as certain charitable activities, fundraising, receipting, business activities or foreign activities where there may be greater concern.

Obtaining advice before you undertake a major project or having a risk review prior to being audited by the CRA can far more easily fix problems and the charity can save a huge amount of resources both in terms of staff time and legal costs as well as anxiety.

For smaller and simpler organization a basic risk review typically costs \$2000 to \$4000 and for larger and more complicated organization they typically can be from between \$5000 and \$20,000.

The process generally starts with obtaining certain basic documents from the registered charity and then reviewing those documents and having an informal meeting with the client to ask questions and discuss high priority concerns.

Some risk reviews are quite informal with verbal suggestions about improvements that the charity can undertake. Others are more formal with a detailed report to the organization or the board on the issues discovered. Some risk reviews just result in some technical improvements while others can have a strategic impact on the charity who may have thought they cannot do something and in fact they can.

We are a small firm with nine lawyers of which seven focus almost exclusively on nonprofit and charity matters. We turn away a lot of charities because we cannot assist them. For example, they may be far along in their dealings with CRA and those dealings are not going well and having us intervene just before revocation is futile. We like to help charities improve, not just delay the inevitable revocation. Some charities are quite aware they are breaking the rules, but they have little desire to take corrective actions, and therefore we are not interested in helping them.

[Gary Huenemoeder](#) has just joined our firm after 35 years with CRA and 15 years of those involved with auditing of registered charities. Gary is helping with risk reviews. If you wish to have your charity take a risk review, please let Gary or myself know. If your charity wishes to operate within the rules and you would like to retain our law firm then please [contact us](#).

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