



New 2008 T2050 Application to Register a Charity Under the Income Tax Act: A discussion of the changes

By Mark Blumberg (December 20, 2008)

The last time the T2050 Application to Register a Charity Under the Income Tax Act (“T2050”) and the guide T4063 Registering a Charity for Income Tax Purposes (the “Guide”) were revised was in 2001. Quite a few things have happened since then and the revised T2050 and guide is partly a reflection of that.

I was going to commend CRA for reducing the size of the Guide from 39 to 24 pages and the application from 15 to 12 pages. That seemed like an amazing accomplishment in this increasingly complicated world we live in where everything seems to be getting longer. Then I realized that the new guide was 14,142 words and the old one was 13,687 words!! It is amazing what one can do by changing layout, fonts size, etc. Consequently my five year old son, we will just refer to him as “Charity Lawyer Junior”, does not like the new T4063 Guide as it does not provide nearly as much white space to draw on.

In this brief article I will discuss some of the provisions of the new T2050 that are either new or substantially revised. The original CRA text is in *Italics* and my comments are in [brackets] and **bold**.

First a few comments about the Guide. In the Guide there is the following paragraph:

Are there existing charities with the same purpose and activities as yours?

There are approximately 83,000 registered charities in Canada. Some may already be doing the same kind of charitable work as your new charity, and in the same region. Before setting up a new charity, you should think about offering your services to, or combining with, an existing charity if there is a possibility of duplicating existing charitable work. For example, if your organization will be providing financial and/or material relief to the victims of natural disasters or sudden catastrophes, you may wish to consider offering money or services to an existing charity. Many charities find it difficult to get access to the limited funding that is available to the charitable sector, and this can be particularly problematic for new charities.

[In the Guide CRA is trying to dissuade organizations with good intentions but without sufficient resource and planning from jumping into being registered charities. The last sentence sums it up – don't think that because you are a registered charity it will be easy to fundraise in this highly competitive charitable environment. As we had previously discussed in Newsletter 31 the Director General asks some interesting questions about whether we have too many charities etc.]

The Guide discusses activities that are illegal or contrary to public policy in far greater detail:

*Activities that are illegal or contrary to public policy Organizations that undertake illegal activities (e.g., fraud, or money laundering) will not qualify for registration. The courts have held that an organization is not charitable under the law if its activities are contrary to Canadian public policy. A public policy is a definite and officially declared and implemented policy (i.e., found in an Act of Parliament, a regulation, or another publicly available government document of any kind). An organization that makes its resources available either directly or indirectly to further terrorism will not qualify for registration, in accordance with the Charities Registration (Security Information) Act. This law was enacted as part of the Anti-terrorism Act in 2001, and it provides a mechanism for refusing to register or revoking the registration of any charity when security information is used to establish that the organization is involved in supporting terrorism. For more information on this process and the Charities Registration (Security Information) Act, see the publication *Charities in the International Context*, available on the CRA Web site at www.cra.gc.ca/tx/chrts/international-eng.html. When the decision not to register the organization as a charity or to revoke the registration of a charity is made under the Charities Registration (Security Information) Act, then the information relied on will be based on security information that will not be disclosed to the organization. Under this Act, the Minister of Public Safety and the Minister of National Revenue may sign a special certificate when they have reasonable grounds to believe that an organization or charity is implicated in supporting terrorism. The organization or charity will be served with a copy of this certificate, and a notice informing it that the certificate will be referred to a Federal Court no sooner than seven days after the date of*

service. A court then reviews the evidence. If it confirms that it was reasonable to issue the certificate, the organization will either not be registered as a charity or will have its registration revoked.

[For those interested in understanding how to avoid involvement with terrorist activities and other illegal activities you might find the article “16 Steps for Canadian charities and non-profits to avoid involvement with Terrorism” at http://www.globalphilanthropy.ca/images/uploads/Terrorism_and_Canadian_charities_and_Non_Profit_organizations.pdf]

In the Guide CRA discusses:

You should also note that delays occur for a variety of reasons, most commonly as a result of missing or incomplete information. Examples include the following:

- *failure to provide a list of directing officials would not allow us to determine whether an applicant is a charitable organization or a foundation;*
- *failure to supply complete and appropriate governing documents (i.e., you provide no governing documents, only partial governing documents, or inappropriate documents), or a detailed list of activities would prevent us from making a determination regarding registration itself;*
- *failure to supply financial information;*
- *failure to provide enough details about the organization’s activities for us to determine whether the activities are charitable at law and/or the organization’s legal (official) purposes do not relate to its statement of activities; and*
- *failure to provide the details and/or any copy of an agreement regarding representatives who are directed to carry out the organization’s activities outside Canada on its behalf.*

For us to be able to consider an application, it is important to ensure that:

- *all the questions on the application are fully answered;*
- *all the required documents are provided; and*
- *detailed and specific information is given.*

Failure to provide all of the information and documentation requested on the application will usually result in the application being rejected as incomplete. In this case, we will return the application and send a letter outlining the information and documentation that is missing. During the review process, we may contact the organization to request documents and/or details necessary to proceed with the processing of the application. If the material requested is not provided, registration will be denied.

[I think in fairness to those considering applying for charitable status it should be noted that even if you have everything in order and a “simple” application your application will not even be assigned to an officer for review for 5-7 months. Therefore really the most common reason for delay is the tremendous backlog that CRA has. Secondly, reviewing

applications for charitable status is very important task. Unfortunately there is apparently very high turnover in that section and this cannot help the orderly and efficient processing of applications. Thirdly, CRA is at war with abusive charitable tax scams which are undermining the sector and the ability of the government to raise funds. When you are at war some of the less immediate needs, such as registering new charities, suffer.]

THE T2050 APPLICATION

If this application and the mandatory attachments are not included, we will return the application without reviewing it.

[This is a warning that reminds applicants that incomplete applications will be return and when they are resubmitted, they will go to the bottom of the very large pile of applications. Gone are the days of CRA calling you and requesting you fax in a missing document!]

The CRA may share the information collected on this form with other government departments or agencies to verify compliance with the Income Tax Act and other Acts of Parliament.

[Another explicit warning just reminding charities that the information in the application can be shared with other agencies and used for other purposes than just this application. Expect that every director listed on the application will be vetted and if they have previous run ins with the law, especially relating to another charity or terrorism, you will hear about it.]

Q. 10 Designation

...

Q10 .d.2) Will the major contributor(s), or anyone not at arm's length with the major contributor(s), have any ongoing involvement whatsoever with the organization? If yes, describe.

Q10 d.3) Identify any personal or business relationships that exist between the organization's officials (e.g., directors/trustees) and the major contributor(s) or any person not at arm's length with the major contributor(s).

[This reflects changes in the definition of “charitable organization” and “public foundation” that proposes to change the “contribution” test to a “control” test. Consequently the questions needed have changed.]

Q11. Governing Documents

a) This sheet should be used to describe the organization's purpose(s) as outlined in its governing documents, and its corresponding activities (both actual and proposed). The purposes should be entered exactly as they appear in the organization's governing documents. Enter where each activity will take place, what it will involve, and who will carry it out, following the example set out below. Attach an additional copy for each of the organization's purposes (Purpose 1, 2, 3, etc.). If the activities will be carried on outside Canada, also see Q11c. Record fundraising activities only at Q12.

Example:

Purpose – To relieve poverty by operating a soup kitchen.

Activities in support of Purpose – The organization will operate a soup kitchen at 555 Any Street, Any Place, Canada. We will offer breakfast, lunch, and dinner 365 days a year. The facility is staffed by 4 volunteers and also provides clothing and other basic necessities to those in need. The soup kitchen's services are advertised at local churches and community centres.

Purpose _____

Activities in support of Purpose _____

[The CRA is being more explicit about their requirement that every single object clause have a description of activity. I was a bit disappointed in this section. I does not give charities any understanding of the level of detail required now by CRA with respect to proposed activities. I think only soup kitchens and private foundations can get away with a 3 line description, every other charitable endeavour else is expected to give substantial detail and in the case of foreign activities the actual agreements that will be used.]

b) Is the organization currently carrying out any of the activities described in Q11a?

If no, when does the organization plan to begin operations?

[This question was not explicitly asked before. To the extent that a non-profit organization is applying for registered charity status the CRA will expect the non-profit to conduct itself (except for receipting etc) in a manner consistent with what they would expect of a registered charity. If a non-profit will be operating it needs to think through whether its operations are compliant with CRA requirements, they cannot wait to do this when they receive their Notification of Registration that they have charitable status.]

c) Activities outside of Canada

Are any of the organization's activities listed in Q11a taking place outside of Canada?

If yes, give the location and include a detailed description of how the organization will undertake these activities. If these activities will be conducted under an arrangement with another organization or individual, describe the arrangement, and attach copies of any current or proposed written arrangement. See "Q11c) Activities Outside of Canada" in section II of Guide T4063 for more information.

[In the Guide it provides: Activities outside of Canada

■ If the beneficiaries of an organization's activities are **outside** Canada, the following information

has to be provided:

- the countries, and the locations within the countries, where the activities will be carried out (include a photocopy of the area on a map, if necessary);
- whether the organization will carry out its activities outside Canada through its own volunteers or employees, through an agent, or through some other arrangement;
- if through an agent or through some other arrangement, the control measures that will be established to ensure that the organization's charitable activities are properly carried out; and
- if applicable, the name, address and a description of any foreign organization that will receive funds or goods from the Canadian organization and copies of any current or proposed written agreements.

For more information about activities outside Canada, refer to Guide RC4106, *Registered Charities: Operating Outside Canada*, which is available on the CRA Web site at <http://www.cra.gc.ca/E/pub/tg/rc4106/rc4106-e.html>.]

[This description is in line with the actual requirements of the CRA over the last few years requiring greater particulars of foreign activities.]

Q12 Fundraising activities

c) Does the organization intend to receive non-cash gifts on a regular basis?

If yes, describe the nature of the non-cash gifts (e.g., art work).

[There are real concerns about non-cash gifts, the valuation of such gifts and the abuse of tax receipting related to non-cash gifts. It is not just the abusive art work flip programs that have largely been shut down but also excessively valued pharmaceuticals etc. That are of concern.]

d) Is the organization currently involved with, or have any plans to become involved with, or is in any way associated with a tax shelter arrangement? See Q12d at "Fundraising Activities" in section II of Guide T4063 for a definition of a "tax shelter arrangement".

The Guide provides:

Q12 d) State whether the organization is involved in, or plans to be involved with, or is in any way associated with a tax shelter arrangement. A tax shelter arrangement, under the Income Tax Act, includes any property or gifting arrangement for which a promoter represents that an investor can claim deductions or credits which equal or exceed the cost of the property less certain benefits within a four year period.

[Interesting. I guess you can call this a sad sign of the times when CRA has to ask an applicant for charitable status about involvement in tax shelter arrangements. I understand that CRA is currently auditing dozens of charities, about a 175,000 taxpayers for almost \$5 billion dollars in questionable tax receipts. I am wondering when the organization does not declare this information on the application but is involved later with tax shelter arrangements what CRA will do? I am also wondering whether the wording “or is in any way associated with a tax shelter arrangement?” being so broad includes if the lawyer or accountant they are using for legal or accounting advice is involved with setting up these tax shelter arrangements? I think it is a good idea for CRA to ask this question on the application however I think increasingly tax shelter arrangements in light of the backlog of charitable applications have just been taking over small dormant organizations (or organizations with minimal operations) and using them rather than freshly applying for charitable status and declaring their intentions.]

Q 13. Revenue from the sale of goods, services, or use of assets

Does the organization plan to charge fees or receive regular income from the sale of goods or services, or from the use of the organization's assets?

Example: The organization is an art gallery that operates a coffee shop in the facility for visitors to use.

If yes:

a) Describe the activities in detail, and explain how these activities are linked to the organization's purpose(s).

b) For each of the activities described in Q13a, give the approximate percentage of the organization's total resources (human, financial, and physical) that it will devote to these activities.

c) What percentage of human resources involved are volunteers?

[In this question CRA seems to be more explicitly asking questions about revenue generation that could be considered carrying on a business.]

Q16. Ownership

a) Does the organization own more than 2% of the outstanding shares of any class of shares of a corporation? See section II of Guide T4063 at Q16 for an explanation of the terms used.

The Guide provides for Q.16 Ownership

a) State if the organization owns or expects to own more than 2% of the outstanding shares of any class of shares of a corporation. A share represents ownership in a corporation. Some corporations issue more than one class of share, where the holders of different types of shares are entitled to different treatment or all holders of the same class of shares are treated identically. For example, Class A may have voting rights, while Class B are non-voting shares.

[Q16 is asking about ownership of shares, which is related to ownership of businesses and also restrictions on private foundation ownership of shares.]

Q 17.

Fundraising activities (described in Q13)

Fundraising activities carried on by the organization itself (report gross revenue)

Fundraising carried on by fundraisers outside of the organization (report gross revenue)

Revenue from the sale of goods, services, or the use of assets (described in Q13)

[This question is aligned to the draft fundraising policy in that they want to know about gross revenue, not just net revenue. If you are spending \$100 to raise \$101 they want to know it.]

c) Revenue and expenditures outside of Canada

Revenue

Is any of the organization's estimated revenue included in Q17a received from donors outside of Canada?

YES ___ NO ___

If yes, list the source of revenue and total estimated amount.

Source of revenue Amount

Expenditures

Will any of the organization's estimated expenditures included in Q17b be incurred for activities outside of Canada?

If yes, list the country, corresponding activity (described in Q11a & Q11c) and the estimated amount.

Country (including region) Activity/Recipient Amount

[The second part dealing with expenditures outside of Canada is not new. The first part dealing with revenue from donors outside of Canada is new. I understand that in the new T3010B they will also be requiring disclosure of revenue from outside of Canada so this probably just aligns the application with the annual return. I am not sure exactly what the impetus for this question is – could it be concern about terrorism? Could it be wanting greater detail on understanding how foreign donors are supporting Canadian charities? Could it be concerns about whether Canadians will be actually directing and controlling the charity? Perhaps it is all of these points. It is interesting to note that lots of money actually comes to Canadian charities every year from the US – for example some of the largest Canadian environmental organizations receive huge amounts of funding from the US.]

c) Revenue and expenditures outside of Canada

If any of the revenue reported in section a) is received from a source outside Canada, name the source of the revenue and the corresponding amount. If any of the expenditures in section b) are incurred for activities outside of Canada, give the location (country, including region) where the expenditures will be made, the intended activity, and/or recipient, and the amount of money and/or value of the property involved. The Act does not allow a registered charity to carry out its purposes abroad simply by making its money or other resources available to a foreign organization (unless that organization is a qualified donee). For more information on the requirements that must be met if a charity has, or intends to have, any foreign disbursements, refer to Guide RC4106, *Registered Charities: Operating Outside Canada*, which is available on the CRA Web site at <http://www.cra.gc.ca/E/pub/tg/rc4106/rc4106-e.html>.

Part 5 – Information about the organization's officials Q18.

[This section is combining two old sections in one. The only new information requested is the Date of Birth which is being required on the T3010 as well. CRA presumably wants the date of birth upfront because they are scrutinizing every director/trustee and it makes it easier to search when you know date of birth. Also this section makes it more clear that with directors/trustees when CRA asks for “Position in Charity” they want to know whether they are President, Secretary, Vice-President, Treasurer, Chair, Executive Director and not that they are a “Director”.]

Part 7 – Final Steps and Certification

Checklist

Have you attached the following information to this application?

...
_ the \$500 late-filing penalty, if applicable (see Q7 and the related information in section I of Guide T4063); and
_ if applicable, all missing Registered Charity Information Returns (T3010) and required attachments (see Q7 and the related information in section I of Guide T4063).

[This checklist includes a couple of items related to organizations that lost their charitable status for not filing their T3010 within six (6) months of their fiscal year end. Not only will they have to attach a cheque for \$500 but it reminds them that they will have to provide all missing T3010s. I recently wrote an article “Canadian Charities: Please file your T3010A Registered Charity Information Return on time” that may be of interest to some at http://www.globalphilanthropy.ca/images/uploads/Canadian_Charities_-_File_your_T3010_on_time.pdf]

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