



Should we set up a Canadian Charity?

By Mark Blumberg (October 1, 2008)

Every day or two someone calls my office in Toronto to discuss whether they should set up a Canadian non-profit and obtain charitable status.

Below we will discuss some of the many factors that may be relevant to such a decision.

1) What are you trying to accomplish and is there a charity that is already doing exactly what you want to do? There are approximately 83,000 charities in Canada registered with the Canada Revenue Agency (CRA). The CRA is the Canadian equivalent of the US Internal Revenue Service (IRS). Is there a charity currently in existence whose objects and activities are similar to your interests? If so, you may wish to consider joining such a charity and providing financial support or volunteering or partnering with such charity instead of establishing a new charity.

2) Is the matter you are trying to deal with charitable? Setting up a golf club or trade group may be fun and interesting, but it is not charitable. In the 1891 Pemsel case there were identified four heads of charity namely: relief of poverty; advancement of education; advancement of religion; and other purposes beneficial to the community. The *Income Tax Act*, Court decisions and positions of the Canada Revenue Agency have over time expanded the definition of what is charitable. For an organization to be a charity, its objects need to be exclusively charitable. Not predominantly charitable, but only charitable. Also it cannot undertake any partisan political activities and it is restricted in terms of resources allocated to non-partisan political activity. If the organization's objects

and activities are not charitable it still may be useful to set up a non-profit or for profit limited liability corporation to conduct the activities.

3) A charity is not as simple as a small private business. Some people don't realize that unlike a business corporation which can be setup in a few hours and the costs are minimal, a non-profit corporation typically takes about 25 days to setup and obtaining charitable status can take between 6-8 months, depending on a number of factors. The time, energy and cost required can be significant. Legal fees are typically \$4-6,000 over the course of the first year. It is less expensive to do it without legal advice and assistance but many people find the documents, decisions and process confusing. Luckily the legal fees are only steep in the first year, most clients spend little in the second year. Accounting fees on the other hand can be 1-5,000 when you complete your first audit and thereafter every year. Another item that some people are surprised about is that you should have 3 arms length directors to incorporate a non-profit unless it will be a Canadian private foundation. If you cannot find another two people interested in working with you then this is a good indication that you should abandon the attempt quite quickly!

4) As well are you looking for a short term solution or a long term solution? As a result of the time and expense of setting up a charity it is usually not worthwhile unless you are planning on having the organization last for a substantial period of time. Do you think your interest in this matter is going to wane in a few months? If you are attempting to establish a long term presence in Canada and will take on long term responsibilities such as employees, leases etc then establishing a non-profit and applying for charitable status may make sense.

5) The next issue that one needs to contemplate is funding. If you are only interested in obtaining Canadian corporate sponsors (as opposed to individuals) you may not need a corporate entity (non-profit) and a charitable registration because some businesses can write off certain reasonable business expenses for promotion, sponsorship etc. and they will not require a donation receipt. If you anticipate only receiving government funding you may not need to be a charity, perhaps being a non-profit corporation will be sufficient from the government funder's perspective.

6) If you have some substantial individual donors and you want to create a charitable organization in Canada, it may be beneficial to incorporate a non-profit corporation AND also to obtain charitable status. Non-profits in Canada are a useful tool to carry on community work but they cannot issue tax receipts which individuals typically require in order to receive a tax credit in Canada. Also many companies, foundations and government agencies restrict funding to registered

charities. Having charitable status can significantly increase the likelihood of certain types of funding.

7) Another matter to consider is the risk associated with an activity. The higher the risk, the more important it is to have limited liability that can be obtained by incorporation of a non-profit.

8) Costs. One of the big questions that clients are concerned with is the costs of setting up a non-profit or charity. The answer is of course that "it depends". First, one does not require a lawyer to assist with the formation of the non-profit and the charitable registration. One can find large amounts of useful information at the Industry Canada website (as well the provincial equivalents such as in Ontario the Ministry of Government Services) and the Canada Revenue Agency website (see below). If you do it yourself the out of pocket costs should be in the range of \$500 dollars. The amount of time required to understand the incorporation and application process is substantial and mistakes can be costly, time consuming and frustrating. Poorly thought out decisions at the beginning can hamper the charity later.

Many people find that it is time consuming and confusing to set up a charity and legal help provided by a lawyer who is knowledgeable about non-profits and charities reduces the stress associated with the process, shortens the time required and increases the chances of success.

The typical fee to set up a Canadian non-profit and to obtain charitable status is between \$4000 - \$6000 Canadian. The disbursements are approximately \$500.

A simple rule of thumb is that if you have lots of time, lots of interest in the nuances of corporate and charity law, no money and the consequence of failure is minimal, then you may wish to try doing it yourself. If you are busy, your time is valuable, you want to avoid making mistakes and you want the process to move along more expeditiously and have fewer issues when you are running the charity then consider obtaining legal help.

Some of the matters that result in difficulty for some people are decisions about whether to incorporate federally or provincially, choice of name, properly setting out the objects and ensuring they are charitable, organizing the corporation, understanding technical terms such as non-arms length, dealing with the statement of activities in the application for charitable status, deciding on structure and whether such choices result in a charitable organization, public foundation or private foundation, deciding on appropriate fundraising mechanisms, dealing with charitable activities outside of Canada and other operational issues.

For a typical non-profit the disbursements are approximately \$500 (NUANS search, government fees, minute book, seal etc) and time required by a lawyer with experience is about 5-10 hours and it takes approximately 1-2 months. With respect to applying for charitable status, it obviously depends on the nature of the charity but it usually takes 4-8 months to obtain charitable status, there are no disbursement costs and it takes a trained lawyer approximately 5-10 hours of work. Most of the time is spent discussing with the client what activities they want to undertake and how to effectively structure those activities. As well there are invariably operational issues that need to be considered and these can also take a few hours of work. Most of the time is not spent typically on preparation of documents - it is spent on understanding the client's goals and objectives, discussing issues with clients and obtaining information from clients.

Another matter to keep in mind is that the ranges above for a typical incorporation vary because of the complexity of the situation but also the degree of organization and responsiveness of the client. A well organized and highly motivated client who provides the lawyer with the information required can substantially reduce the amount of time required for a lawyer to incorporate the non-profit and prepare the application for charitable status.

A special note for charities outside of Canada thinking about having supporters in Canada set up a Canadian charity. In addition to the aforementioned concerns are issues such as right to use a name or trade mark, the relationship between the Canadian and foreign charity, the degree of control of the foreign charity and how funds from the Canadian charity can be used outside of Canada, whether to set up a Canadian charity or to partner with an existing charity. Recent Canadian cases such as the Tel-Aviv Foundation case and the Magen David Adom case illustrate the importance of having proper written agreements and following through with them when carrying on activities outside of Canada. If your charity will operate outside of Canada you may want to review my article *Canadian Charities and Foreign Activities* at <http://www.globalphilanthropy.ca/>

Some clients ask us for further resources on charity law and the CRA's perspective on charities. You might find the following links helpful:

CRA Main Charities Page:

<http://www.cra-arc.gc.ca/tx/chrts/menu-eng.html>

RC4108 Registered Charities and the Income Tax Act

<http://www.cra-arc.gc.ca/E/pub/tg/rc4108/README.html>

T4063 Registering a Charity for Income Tax Purposes

<http://www.cra-arc.gc.ca/E/pub/tg/t4063/>

T4033A Completing the Registered Charity Information Return
<http://www.cra-arc.gc.ca/E/pub/tg/t4033a/>

T2050 Application to Register a Charity Under the Income Tax Act
<http://www.cra-arc.gc.ca/E/pbg/tf/t2050/>

IC78-10R4 Books and Records Retention/Destruction
<http://www.cra-arc.gc.ca/E/pub/tp/ic78-10r4/>

IT110R3 Gifts and Official Donation Receipts
<http://www.cra-arc.gc.ca/E/pub/tp/it110r3/>

CRA Fundraising Consultation
[http://www.globalphilanthropy.ca/CRA fundraising policy](http://www.globalphilanthropy.ca/CRA_fundraising_policy)

Top Ten Canadian Charity Law Issues
<http://www.globalphilanthropy.ca/>

Others, instead of researching for 6 months, would rather sit down with a charity lawyer for a short meeting and discuss the various issues and save months of aggravation and indecision.

For further information on legal resources for Canadian Non-Profits and Charities please visit www.blumbergs.ca/non_profit.php or www.globalphilanthropy.ca

To subscribe to Blumbergs' non-profit and charities law e-mail newsletter please register at <http://www.blumbergs.ca/newsletter.php>

If you require legal advice with respect to Canadian or Ontario non-profits or charities please contact Mark Blumberg at mark@blumbergs.ca or at 416-361-1982 x. 237

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