



**Charity
Law
Information
Program**

Top Ten Canadian Charity Law Compliance Issues

By Mark Blumberg (October 10, 2011)

A great deal has been written about legal compliance surrounding charities in Canada. Much of that material however, is highly specialized, hard to understand and sometimes esoteric. As a result, it can be extremely difficult for charities, employees and volunteers to focus in on the issues that are generally most important for charities.

A brief summary of the ten most important items charities and their boards of directors need to know about charity law in Canada are provided below:

1) CORRECT FILING OF THE T3010 REGISTERED CHARITY INFORMATION RETURN FORM

The T3010 is due six months after the charity's year-end. Failure to file the T3010 within a few months of that date will result in a charity being deregistered and losing its charitable status, and consequently also losing its receipting privileges. Heads of charities should note the date on which their returns are due and make sure that the address the CRA has on file is current. Otherwise, CRA reminder notices may never arrive and a charity may be deregistered without any notification.

It is important that charities use the correct form, which will depend on the date of the registered charity's fiscal year end. All necessary schedules and financial statements must be also be filed. For further information on the T3010 see: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rtrn/menu-eng.html>

2) COMPLIANCE WITH THE FUNDRAISING GUIDANCE

Canadian charities must be careful to abide by their legal and ethical obligations when fundraising. In 2009, CRA released its Guidance on Fundraising by Registered Charities at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-028-eng.html>

Charities are prohibited from any involvement in illegal fundraising activities, activities in which there is a disproportionate private benefit, and fundraising that is misleading or deceptive. Charities should appropriately allocate their fundraising revenue and expenses according to the rules laid out in CRA's Fundraising Guidance. Charities must also evaluate their fundraising activities. Evaluation involves more than just reviewing CRA's expectations, but also includes using best practices and avoiding "indicators of concern". The indicators of concern include sole-source or non-arms length fundraising contracts without proof of fair market value, fundraising activities that involve commissions, or fundraising where most of the gross revenues go to contracted non-charitable parties. A charity's fundraising program and its costs should be transparent, accountable and properly disclosed.

If fundraising is conducted by third parties, charities should enter into appropriate written agreements that are compliant with CRA's Fundraising Guidance and not sign "standard form" or "boilerplate" fundraising agreements provided by third party for-profit fundraisers.

3) PROPER ISSUANCE OF OFFICIAL DONATION RECEIPTS

Registered charities are not required to issue receipts. However, if charities decide to issue receipts then they need to ensure that every receipt issued is accurate and in compliance with the requirements of the CRA. According to CRA, when they audit charities, approximately 89% of registered charities are not issuing receipts properly. Many charities do not have all of the required elements on every receipt. Some charities are issuing receipts for services donated to a charity, which is not considered property and not appropriate, while others may be "lending their registration" to other organizations, which is also prohibited. Even minor mistakes in form and content on a tax receipt will be taken very seriously by the CRA. There are substantial penalties for inappropriate receipting. Here is information from CRA on "what is a gift" and receipting issues: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtnng/rcpts/menu-eng.html>
Also, here are some CRA sample receipts: <http://www.cra-arc.gc.ca/chrts->

gvng/chrts/pbs/rcpts-eng.html At the CLIP website, we have a lot of material available which illustrates appropriate receipting.

4) AVOIDANCE OF ABUSIVE GIFTING TAX SCHEMES, FRAUDULENT RECEIPTING AND SCAMS

Over the last 8 years, approximately \$6 billion in receipts have been handed out by a small number of charities as part of abusive tax schemes alone. According to CRA, about 1% of those funds were used for charitable activities. It has taken about a decade for the first set of cases to get to court, and CRA has been successful in court in arguing that these are “investments” and not donations under the *Income Tax Act*. In the case of *Maréchaux* at the Federal Court of Appeal, the court found that leveraged schemes will not be considered gifts under the *Income Tax Act*. Mr. Marechaux’s leave to appeal to the Supreme Court of Canada was denied.

In Canada, we have also experienced a problem with some tax preparers or receipting mills issuing fraudulent receipts for a small payment. Some of those people have even been sent to jail.

There are countless types of scams that charities must avoid being involved in. Scams should be avoided at all costs because in addition to often being illegal, they are unethical and undermine the confidence of the public in the whole charitable sector. It does not matter if the scam (or “potentially abusive tax scheme”) comes with a thirty-page opinion letter from a prominent law firm - it is still a scam.

5) COMPLIANCE WITH DISBURSEMENT QUOTA AND ANTI-AVOIDANCE PROVISIONS

Recent changes in the 2010 Federal Budget to the disbursement quota removed the 80/20 expenditure requirement but maintained the capital accumulations rule. This means that it is now easier, from a legal perspective, for charities to accumulate reserves and comply with their disbursement quota requirements.

Under the capital accumulations rule, Canadian charities will now only be required to spend 3.5% of all assets not currently used for charitable activities or administration if these assets exceed a threshold of \$100,000 for charitable organizations or \$25,000 for public and private foundations. Most charities don’t even have \$100,000 in investments or reserves. For a charity with \$10 million in

investments it will probably have to spend about \$350,000 per year to satisfy this rule.

There will however be renewed public and regulatory concern about the amount of resources spent by charities on charitable activities as opposed to being accumulated in reserves or endowments or spent on fundraising, administration, political, and social activities. Also, charities that have large reserves but at the same time are publicly fundraising will have to be prepared to justify why they are asking for more funds from the public.

The 2010 Federal Budget has also strengthened the anti-avoidance rules and now CRA can go after any transaction where any purpose of that transaction was to unduly delay the expenditure of amounts on charitable activities.

5) IS YOUR CHARITY DEALING WITH NON-QUALIFIED DONEES? AND, IF SO, IS IT MAINTAINING DIRECTION AND CONTROL OVER ITS RESOURCES?

In 2010, CRA released its new Guidance "[Canadian Registered Charities Carrying out Activities Outside Canada](#)" and in 2011, released its guidance on "[Using an Intermediary to Carry out a Charity's Activities within Canada](#)". If a Canadian charity is transferring resources to a group that is a non-qualified donee (i.e. it cannot issue official donation receipts) such as a foreign charity, or Canadian non-profits in Canada that are not registered charities, such registered charity needs to be able to show that it has direction and control over the use of its resources.

Failure to maintain direction and control can result in a 105% penalty of the amount transferred and/or revocation of charitable status. More information about foreign activities is available at www.globalphilanthropy.ca. For charities conducting foreign activities or working with intermediaries in Canada, such charities should review the sufficiency of the direction and control of their clients.

6) NO COMPENSATION FOR MEMBERS OF THE BOARD

In Ontario, members of the Board of Directors of a charity are not entitled to compensation. In fact, directors of charities that operate in Ontario are very much constrained in terms of their dealings with that charity. Neither accountants serving on a Board nor their firms can conduct an audit or charge the charity for accounting services. Similarly, law firms cannot charge for legal services provided to a charity if one of their partners is on the Board.

Directors are only entitled to reimbursement of reasonable expenses incurred to further the activities of the charity. Directors of charities that operate in Ontario cannot receive salaries, stipends, grants, honorariums, or consulting fees from that charity.

7) MAINTAIN ADEQUATE BOOKS AND RECORDS

Canadian registered charities must keep adequate books and records at a Canadian office. The charity must also keep source documents that support the information in the books and records. This is so that the CRA can review the charity's revenue and expenditures and verify any official donation receipts it may have issued.

In terms of records retention, charities are required to keep duplicates of receipts for at least two years from the end of the calendar year in which the donations were made. Most other documents need to be kept for 6 years from the end of a fiscal year. Some other records must be retained in perpetuity or until two years after the charity is no longer a charity. This includes such things as "ten year gifts," minutes of meetings and all governing documents such as letters patent. If in doubt, keep it!!

8) AVOID UNRELATED BUSINESSES

Under the Canadian *Income Tax Act*, charitable organizations and public foundations can carry on "related business" that promotes their charitable objects. An example would be a hospital cafeteria that provides food to patients and visitors.

Charitable organizations and public foundations can also carry on other unrelated business activities, presumably to raise funds for the charity, if "substantially all" (the CRA says at least 90%) of the people involved in these activities are volunteers.

Private foundations cannot carry on any business activities whatsoever. The CRA has a Policy Statement on "[What is a Related Business?](#)" CPS-019 and [Registered Charities: Community Economic Development Programs](#). Failure to follow these rules can result in penalties and deregistration.

9) AVOIDANCE OF PARTISAN POLITICAL ACTIVITIES

Under the *Income Tax Act*, a registered charity can be involved in non-partisan political activities, as long as it devotes substantially all of its resources to charitable activities. Any political activities have to help the charity accomplish its purposes and must remain incidental in scope.

A registered charity cannot be involved in any partisan political activities. A political activity is considered partisan if it involves direct or indirect support of, or opposition to, a political party or candidate for public office. See the [CRA policy statement on Political Activities \(CPS - 022\)](#).

Don't forget that registration of lobbyists (federally, provincially or otherwise) is a separate issue. You may wish to review the federal or provincial lobbyist registration laws to check whether you and your organization are compliant.

10) DO NOT SUPPORT TERRORISM

A charity cannot support terrorism either directly or indirectly. For more information, see [Canadian charities and Terrorism - 16 steps to avoid involvement](#) as well as the CRA's recent "[Checklist for Charities on Avoiding Terrorist Abuse](#)".

Canadian charity law encompasses far more than the ten points discussed above. But there is little sense in focusing on obscure provincial statutes or interesting court cases at the expense of missing some of these important compliance issues.

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