



Budget 2011 and new “ineligible individual” category: How this can affect your Canadian registered charity

By Mark Blumberg (December 26, 2011)

The 2011 Federal Budget released on June 6, 2011 contained a number of provisions on charities and qualified donees¹ which were almost identical to the same provisions suggested in the March 2011 budget, which was not passed.² Most of these provisions will have little to no impact on the average charity, however I wanted to comment on one section of the budget that has received some attention:

Safeguard Charitable Assets through Good Governance

The CRA is responsible for auditing registered charities and registered Canadian amateur athletic associations and reviewing applications for their registration. In some cases, applications may be submitted by individuals who have been involved with other charities or associations that have had their registered status revoked for serious non-

¹ Certain organizations that can issue official donation receipts for income tax purposes. For a list see:

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/qlfdns-eng.html>

² http://www.globalphilanthropy.ca/images/uploads/2011_Canadian_Federal_Budget_-_pieces_of_the_budget_that_affect_the_Canadian_charitable_sector.pdf

compliance, for example, for issuing fraudulent donation receipts. Concerns may also arise if an individual, with significant influence with respect to an organization, has a criminal record involving a breach of public trust, such as fraud or misappropriation. The *Income Tax Act* does not currently allow consideration of the criminal history or other past misconduct by such individuals as grounds for refusal to register the organization or to revoke its registration. As a result, the CRA may be unable to refuse or revoke the registration of an organization, even when there is a high risk of abuse.

Budget 2011 proposes to give the Minister of National Revenue the discretion to refuse or to revoke the registration of an organization, or to suspend its authority to issue official donation receipts, if a member of the board of directors, a trustee, officer or equivalent official, or any individual who otherwise controls or manages the operation of the organization:

- has been found guilty of a criminal offence in Canada or an offence outside of Canada that, if committed in Canada, would constitute a criminal offence under Canadian law, relating to financial dishonesty (including tax evasion, theft or fraud), or any other criminal offence that is relevant to the operation of the organization, for which he or she has not received a pardon;
- has been found guilty of an offence in Canada within the past five years, or an offence committed outside Canada within the past five years that, if committed in Canada, would constitute an offence under Canadian law, relating to financial dishonesty (including offences under charitable fundraising legislation, convictions for misrepresentation under consumer protection legislation or convictions under securities legislation) or any other offence that is relevant to the operation of the organization;
- was a member of the board of directors, a trustee, officer or equivalent official, or an individual who otherwise controlled or managed the operation of a charity or Canadian amateur athletic association during a period in which the organization engaged in serious non-compliance for which its registration has been revoked within the past five years; or [my emphasis]
- was at any time a promoter of a gifting arrangement or other tax shelter in which a charity or Canadian amateur athletic association participated and the registration of the charity or association has been revoked within the past five years for reasons that included or were related to its participation.

The CRA will consider the particular circumstances of a charity or Canadian amateur athletic association in applying the proposed measures. For example, notwithstanding the involvement of a particular individual in the activities of a charity or association, the CRA will take into account whether appropriate safeguards have been instituted to address any potential concerns.

The proposed measures will not require a charity or Canadian amateur athletic association to obtain background checks. However, after a charity or association has been made aware of concerns on the part of the CRA in respect of an individual, failure to take adequate remedial action could result in the denial of the application for registration, suspension of receipting privileges or revocation of registered status, as the case may be.

The CRA will consult with stakeholders in developing administrative guidance regarding the application of the proposed measures. These measures will apply on and after the later of January 1, 2012 and Royal Assent to the enacting legislation.

What is the purpose of this provision?

A relevant question regarding this provision is what is the issue that Finance is seeking to regulate? There appears to be a relatively small group of people who continually abuse charities. In some cases, these people may control several charities, or continue to apply and obtain charitable status regardless of CRA's lengthy efforts to deregister them.

Unfortunately, this problem encompasses more than just promoters of "abusive charity gifting tax schemes" which have issued about \$6 billion dollars worth of inappropriate receipts over the last 8 years or so. There are also people running "receipting mills", which issue tax receipts without any sophisticated scheme, typically for a payment of 10% on the dollar for the receipt. These kinds of schemes allow a person to pay \$500 and receive a charitable receipt for \$5000—although you may get more than just the receipt when CRA reviews your tax return. There are also other schemes to issue inappropriate charitable receipts.

However, it is important to point out that the misuse of charities occurs in more areas than just receipting privileges. Charities deal with some of the most vulnerable people in our country, including children. For example, how would CRA handle a charitable application from a person that has been convicted of pedophilia and has applied to open up a summer camp for children in need? It seems obvious that CRA could not just ignore the criminal conviction and proceed with a normal evaluation of the charitable application. Many charities are at risk for exploitation and vulnerable beneficiaries are just one example of many.

Prior to this new provision, many people, including professional advisors, were shocked to learn that the Charities Directorate was uncertain that they could not deny registration to an applicant who has been involved in either prior financial crimes or a pattern of abusing charities or their beneficiaries and advise the applicant of such circumstances. After the Federal Budget and the implementation of the new provisions, these issues should be addressed and improvements in the sector will hopefully be an end result.

International Comparisons

New Zealand

The New Zealand Charities Commission has a much stricter approach when placing restrictions on who can be a director or trustee of a charity. The Charities Commission requires that every charitable application is supplemented with a separate officer certification for every trustee or director of a charity.³ The NZ guidance states “To be registered, organizations must certify that each of their officers is qualified as an officer under the Charities Act 2005. When you apply to register your organisation and after it is registered, you must send us an Officer Certification Form for each officer to certify that the officer is qualified in terms of the Act.”

The New Zealand disqualifications include:

To qualify, an officer must not be:

- an undischarged bankrupt
- younger than 16
- convicted of a crime of dishonesty and sentenced within the last 7 years
- disqualified from being an officer under the rules of their organisation
- disqualified by the Commission under section 31(4) of the Charities Act
- subject to a property order under the Protection of Personal and Property Rights Act 1988, or have their property managed by a trustee corporation under section 32 of that Act (this relates to people who are not fully able to manage their affairs)

³ <http://www.charities.govt.nz/Portals/0/docs/OfficerCert.pdf>

- prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Securities Act 1978, the Securities Markets Act 1988, or the Takeovers Act 1993
- a body corporate that is being wound up, in liquidation or receivership or subject to statutory management under the Corporations (Investigation and Management) Act 1989.

It is a fair assumption that charitable registrations may have been impeded in New Zealand as a result of these provisions of the *Charities Act 2005*. New Zealand is not a large country and it would make sense if this legislation hampered the charitable sector. However, this assumption couldn't be more wrong. Since 2005, the Commission has registered over 25,000 charities— not bad for a country with a population of 4.3 million.

United Kingdom

Some consider the UK the “gold standard” when it comes to charity regulation. It appears that they take a much tougher stance on this issue than the proposed legislation in Canada. For a director/trustee of a charitable organization, the UK requires various background searches, a declaration from each prospective director/trustee, and in fact “If a disqualified person is appointed as a charity trustee, the appointment will be invalid. The person will not, in fact, be a trustee, and may have committed a criminal offence. If existing trustees had not made proper checks before the appointment, they may have acted improperly.” I have reproduced the UK's lengthy guidance on trustees below.

UK Guidance “Finding new trustees - What charities need to know”

E. Vetting trustees prior to appointment

The appointment of a new trustee to a charity is an important matter. Before appointing a new trustee the trustee board must make sure it is acting within the law, in accordance with the charity's governing document, and that the prospective trustee is not disqualified from being a trustee. Disclosures should be obtained for trustees of charities which work with children or vulnerable adults. Charities should also ensure that a prospective trustee

understands the responsibilities they are taking on and can be relied on to carry them out responsibly.

E1 Can anyone be appointed as a trustee?

L The short answer:

No. There are legal restrictions on who may be a charity trustee. Additional restrictions may be contained in the charity's governing document. Before appointing a new trustee, the trustee board must make sure that the appointment meets the requirements of the charity's governing document and the law.

In more detail:

When preparing to appoint a new trustee, the trustee board must ensure that the person is qualified to act as a trustee. No-one under the age of 18 can be a trustee of a charitable trust or unincorporated association. However a person under 18 can be a director, and so a trustee, of a charitable company. Further information on [young people as trustees](#) can be found on the Publications and Guidance page on our website.

Some people are disqualified by law from acting as trustees, including anyone described in section 72(1) of the Charities Act 1993. This includes:

- anyone who has an unspent conviction for an offence involving deception or dishonesty;
- anyone who is an undischarged bankrupt;
- anyone who has been removed from trusteeship of a charity by the Court or the Commissioners for misconduct or mismanagement; and
- anyone under a disqualification order under the Company Directors Disqualification Act 1986.

It is normally an offence to act as a trustee while disqualified unless we have given a waiver under section 72(4) of the Charities Act 1993, (as amended by the Charities Act 2006) (there are some special provisions applying to the administration of charitable companies). Further information about disqualifications and waivers of disqualification can be found in our staff guidance [OG41](#) and [OG42](#) which can be accessed via the Publications and Guidance page on our website.

In addition to the disqualifications detailed in section 72(1) of the 1993 Act, which apply to all types of charities, the Criminal Justice and Court Services Act 2000 disqualifies certain individuals from holding a range of positions in children's charities, which includes charity trusteeship. We do not have the authority to give a waiver for this type of disqualification.

The appointment of a trustee must be in accordance with the charity's governing document, which will set out procedures for appointing new trustees, including any restrictions, such as a maximum number of trustees or an age limit. It is important that trustees follow these procedures. If they don't, this could result in the appointment being invalid. If the governing document contains provisions which prevent certain people from acting as charity trustees, we cannot grant a waiver under section 72(4) of the 1993 Act, (as amended by the Charities Act 2006) as we cannot override the provisions within a governing document.

E2 How should charities check on prospective trustees?

The short answer:

Before appointing a trustee, the trustee board should obtain a declaration from the prospective trustee that they are not disqualified. It should also consult official registers of disqualified persons. We strongly recommend that charities working with vulnerable people, with positions which are eligible to obtain Disclosures from the Criminal Records Bureau (CRB), should do so.

In more detail:

As a minimum, the trustee board should ask new trustees to sign a declaration to confirm that they are not disqualified from acting as a charity trustee.

Trustees can also make use of official registers which record the names of people who are disqualified from acting as charity trustees. These include:

(1) The Individual Insolvency Register maintained by the Insolvency Service, which contains details of:

- bankruptcies that are either current or have ended in the last three months;
- current individual voluntary arrangements and fast track voluntary arrangements;
- and
- current bankruptcy restriction orders and undertakings.

Searches of the Register can be made on the Insolvency Service website <http://www.insolvency.gov.uk/>, by visiting your local Official Receiver's office, or by post or fax. You can find contact details for the Insolvency Service in [section H](#).

(2) The register of disqualified directors maintained by Companies House. Searches of the register can be made on the Companies House website, <http://www.companieshouse.gov.uk/>.

(3) The register which we maintain of all persons who have been removed as a charity trustee either by us, by Orders made under either the Charities Act 1960 or the Charities

Act 1993, or by an Order of the High Court since 1 January 1993. A copy of the register is kept in each of the Commission's offices.

Trustees of charities working with children or vulnerable adults should also make additional, more detailed checks, by obtaining a Disclosure from the CRB. We strongly recommend that trustees of charities that can obtain CRB checks take advantage of this option, to ensure both that the person they wish to appoint as a trustee is eligible and to ensure the safety of the charity's beneficiaries. There are some charities that must carry out these checks. You can find more information in [section F6](#).

Further information:

A [model declaration form](#) for prospective trustees is available on our website on the About Charities page. Sample declaration of eligibility forms for trustees are also produced by a number of other organisations, including the National Council for Voluntary Organisations (NCVO) <http://www.askncvo.org.uk/>. You can find more information about the CRB and CRB Disclosures in [section F](#).

E3 What if prospective trustees have not been checked?

The short answer:

We are likely to find out as we use several ways to monitor whether or not charities are checking the eligibility of their trustees.

In more detail:

There are a number of ways in which we monitor whether or not charities are checking the eligibility of their trustees:

- When an organisation applies to register as a charity, we ask all the trustees to complete a declaration confirming that they are not disqualified from acting as a charity trustee.
- From 1 October 2007 when an organisation applies to register as a charity that works with either children or vulnerable adults, we will ask them to confirm whether Disclosures have been obtained for any trustees who are either legally required to or who are allowed to obtain a Disclosure before we register the organisation. You can find further information about [registering charities](#) on our website.
- We carry out annual checks on a random sample of trustees to establish that trustee eligibility checks have been carried out.
- We monitor registered charities through the reporting of serious incidents on the Annual Return form.

E4 What happens if a disqualified person becomes a trustee?

L The short answer:

If a disqualified person is appointed as a charity trustee, the appointment will be invalid. The person will not, in fact, be a trustee, and may have committed a criminal offence. If existing trustees had not made proper checks before the appointment, they may have acted improperly.

In more detail:

If a person who is disqualified from being a trustee, either according to the general law as it applies to charity trustees, or according to the charity's governing document, becomes a trustee, the appointment is invalid. In addition, if problems arise with a trustee, and it emerges that existing trustees failed to follow this guidance, this would be an important factor in our consideration of whether the trustees had acted improperly.

Under the provisions of the Criminal Justice and Court Services Act 2000, any individual who is disqualified from working with children will be committing an offence if he or she knowingly applies for, offers to do, or accepts work with children, which is either paid or unpaid. It is also an offence to knowingly procure work for, or offer either paid or unpaid work with children to, someone who is disqualified from working with children or to allow them to continue doing such work.

Under the provisions of the Care Standards Act 2000, it is a criminal offence for an individual confirmed on the POVA (Protection of Vulnerable Adults) list to knowingly apply for, offer to do, accept or do any work in a care position, as defined in the Care Standards Act 2000. A provider of care, as defined in the Care Standards Act 2000, must not employ anyone in a care position who is either provisionally listed or confirmed on the POVA list.

Further information:

You can find more information on POVA on the Department for Health website at www.dh.gov.uk.

Another development in the UK was its introduction of the “fit and proper persons test” in 2010 for people involved with the management of charities that apply for Gift Aid. In *Detailed guidance on the fit and proper persons test*⁴ the UK government notes:

⁴ <http://www.hmrc.gov.uk/charities/guidance-notes/chapter2/fp-persons-test.htm>

Why introduce the fit and proper persons test?

The fit and proper persons test makes it harder for sham charities and fraudsters working within a charity, or targeting a charity from outside, to abuse charity tax reliefs. It is not intended as something to deny tax reliefs to charities who make a genuine mistake. Many of the charity tax reliefs work by clawing back tax where the charity has not applied donations or other income or gains for charitable purposes – a 'look back' system where tax reliefs and exemptions are given in advance. Where a genuine charity makes a mistake it is usually easy for HMRC to recover the tax due. However where fraudsters have hijacked a charity or are operating within a charity it may be impossible to recover the tax due.

The fit and proper persons test provides for HMRC to exercise its discretion to allow relief even where the fit and proper persons test has been breached, where a charity can show it made a genuine mistake and there has been no misuse of charity tax reliefs. This guidance is therefore intended to help charities understand how the test works and what they need to do to ensure they do not lose their tax reliefs.

...

Factors that may lead to HMRC deciding that a manager is not a fit and proper person include, but are not limited to, individuals: with a history of tax fraud; with a history of other fraudulent behaviour including misrepresentation and/or identity theft; for whom HMRC has knowledge of involvement in attacks against or abuse of tax repayment systems; barred from acting as a charity trustee by a charity regulator or Court, or being disqualified from acting as a company director.

The Canadian Discussion

These Canadian budget provisions on “ineligible individuals” have been the subject of several criticisms, some of which are set out below and I will respond to each concern:

- It is uncertain what this provision entails –what is serious non-compliance? What is adequate remedial action?
- It will add new requirements to charities to do background checks.
- It impinges on the right of a person to be a director of a registered charity.
- It unconstitutionally infringes on the power of the provinces to regulate charities.
- It is questionable whether many charities have the requisite corporate authority to necessarily remove a director.
- Finance is just paranoid.

Uncertainty about provision

The budget provides that “The CRA will consult with stakeholders in developing administrative guidance regarding the application of the proposed measures. These measures will apply on and after the later of January 1, 2012 and Royal Assent to the enacting legislation.” For those in the charitable sector that feel there is some ambiguity with respect to this provision, a submission can be made to CRA for clarification. These measures will not come into effect until the later of January 1, 2012 or when Royal Assent has been provided to the enacting legislation.

So what is serious non-compliance? CRA notes in “**Guidelines for applying the new sanctions**” that:⁵

Serious cases of non-compliance include those where:

- the non-compliance reaches certain thresholds (either in absolute terms, such as the dollar value of expenditures on non-charitable activities, or relatively, such as the percentage of expenditures devoted to non-charitable activities);
- the non-compliance involves breaches of the *Criminal Code* (such as fraud or hate crime) or other quasi-criminal statutes;
- the non-compliance involves breaches of the core requirements of the *Income Tax Act* (such as the requirement that an organization be established for exclusively charitable purposes, as compared to a less central provision, such as that requiring charities designated as charitable organizations to concentrate on operating their own programs, rather than funding other charities); or
- the organization is not abiding by the terms of a compliance agreement.

In the “**Guidelines for applying the new sanctions**” CRA also discusses the issue of aggravated non-compliance:

In cases of **aggravated** non-compliance, we will likely move directly to revoking the charity's registration. These include cases where one or more of the following factors are present:

⁵ <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/nwsnctns-eng.html>

- the organization has a previous record of serious non-compliance, and the current form of non-compliance is both serious and intentional;
- the non-compliance has resulted in a substantial adverse impact on others (beneficiaries, donors, or funders), particularly where the organization cannot or will not remedy the harm done; and
- the organization cannot or will not bring itself into compliance.

For the most part, the CRA takes an “education first” approach to compliance. This approach involves informing a charity of a problem and giving them an opportunity to take remedial action.

It is also interesting to note that CRA provides in “**Guidelines for applying the new sanctions**”:

... we know that exceptional circumstances arise, and we intend to allow for them. For example, we would be more likely to use a compliance agreement than a sanction for a case of serious non-compliance resulting from the unauthorized actions of a single employee, where the charity is ready to take steps to rectify the situation and prevent a recurrence.

What is “adequate” remedial action?

From the 2011 Budget, it is clear that it is not saying you need to fire the director, tar and feather them etc. That may be appropriate (probably except for the tar and feathering) but will not be a required action in all cases. “Adequate” is hardly a high standard. For example, if an individual is involved in a minor fraud and is on a large board of an organization, but this individual has no other involvement in the organization (such as receipting, signing cheques, etc), then this may not be a problem from a legal point of view. However, I am sure there are many Canadians that would feel uncomfortable at the thought of having a person on their board that has been involved in any sort of fraud. We will have to wait and see what the Charities Directorate suggests as their approach.

Background Checks

One law firm noted on its website “We expect, notwithstanding the Federal Government’s suggestion to the contrary in the Budget materials, that this will cause charities to begin background checks against directors and senior staff.”

The following statement from Finance does not appear to be a “suggestion”: “The proposed measures will not require a charity or Canadian amateur athletic association to obtain background checks. However, after a charity or association has been made aware of concerns on the part of the CRA in respect of an individual, failure to take adequate remedial action could result in the denial of the application for registration, suspension of receipting privileges or revocation of registered status, as the case may be.”

Also I would wonder about the statement “this will cause charities to begin background checks against directors and senior staff” which seems to presume that charities are not now conducting background checks. I would think that many diligent charities who have access to Google or other search engines will have probably done some background checks on board members already or have asked board members for references or in some case to fill in a questionnaire. Any board members who have access to vulnerable beneficiaries, such as children, would probably have completed a criminal background check.

Aside from the CRA regulatory issues, a charity’s reputation is also at risk if board members are involved with nefarious activities. In my view, the reputational concern was always an issue long before the budget and the budget cannot change that.

There are some concerns in the sector that it may be difficult or impossible for a charity to know whether an individual is involved in certain criminal or other unacceptable conduct. The Budget states that, “However, after a charity or association has been made aware of concerns on the part of the CRA in respect of an individual, failure to take adequate remedial action could result in the denial of the application for registration, suspension of receipting privileges or revocation of registered status, as the case may be.”

This statement should provide some reassurance to concerned charities that in fact it is very unlikely that a charity, through its own due diligence, is going to discover that a person committed fraud or was involved in criminal activity or has abused a charity. It is evident from the budget that this provision only applies in the following circumstances:

- 1) After a charity or association has been notified by CRA regarding their concerns in respect of an individual, and
- 2) The charity fails to take adequate remedial action.

In these circumstances, the CRA Charities Directorate would have the discretion to deny the application for registration, suspend receipting privileges, or revoke registered charity status. This seems to illustrate that CRA cannot use this provision to deny registration etc. unless they have notified the charity of the concern, and the charity fails to take adequate remedial action.

A charity can ask board members to fill in a brief form which asks various questions about being an ineligible individual but as mentioned previously, the budget has created no additional legal requirement to carry out background checks and there is no requirement to use a form such as this, but from a practical standpoint, it may be a good idea for a charity to spend a few minutes conducting a Google search to check the background of a member, and to ask each individual to sign a declaration. By signing a declaration form, the burden and obligation to be up front with the organization is put on the shoulders of the potential member who will be taking on an important role within the organization.

Right to be Director

Does a person have a right to be a director of a registered charity?

In order to be a director, there are already many restrictions in place. For example, corporate legislation may prohibit a person from being a director if they are under 18, bankrupt, or cannot manage their own property. Is it unfair to also prohibit a person from being a director of a registered charity because they have committed fraud, abused vulnerable beneficiaries or abused registered charities? I don't think so. This question may be answered differently if registered charities did not have important financial responsibilities such as receipting privileges and handling large assets as well as dealing with so many vulnerable people.

If the involvement of a director could potentially cause tremendous damage to a charity, then it would probably be the duty of the director to resign. There may be instances where the charity is not aware of the unacceptable conduct or criminal involvement until they are informed by CRA, but there may also be instances where others are aware of what is going on. The New Zealand and UK examples discussed above provide a good example of what some other Commonwealth countries consider appropriate in terms of limiting directors based on past actions.

Unconstitutional infringement

Tax litigators are often quick to dispute CRA's involvement with registered charities as an unconstitutional infringement of the rights of the provinces under the *Constitution Act*. However, something is not unconstitutional because a lawyer thinks it is unconstitutional – a court would have to confirm this reasoning. It appears that the issue of the constitutionality of CRA's ability to refuse or revoke registration was settled in the *International Pentecostal Ministry Fellowship of Toronto v. The Queen (FCA)* decision, located at <http://decisions.fca-caf.gc.ca/en/2010/2010fca51/2010fca51.html>. In quite a strongly worded statement, the decision states, "We have not been persuaded that there is any merit to the Appellant's argument that the provisions of the ITA dealing with the registration and deregistration of charities are an unconstitutional infringement on provincial legislative authority. In our view, these provisions relate, in their pith and substance, to federal taxation, and accordingly they are intra vires the Parliament of Canada under subsection 91 (3) of the Constitution Act, 1867. Both the advantages of registration and the drawbacks of revocation relate solely to the tax treatment of charities and their donors. They do not impermissibly affect the affairs of charities in any other way, nor do they impede provinces from otherwise regulating charities." It is evident from this statement that the Charities Directorate, which has a role to play under the *Income Tax Act*, is not unconstitutionally infringing on the provincial legislative authority.

Charities may not have the requisite corporate (or other) authority to remove a director or trustee

This is an interesting argument. As discussed above, “adequate remedial action” does not necessarily mean removal of a director or trustee – it will depend on the circumstances.

Most charities have a mechanism to change directors or trustees, other than in circumstances where there is a resignation. For example, at an annual members’ meeting, new directors can be elected, and in most cases, this requires a simple majority. This kind of situation does not involve the removal of a director; it is simply a way of proposing a new set of directors without including or reelecting the director that has been chosen to be removed. Charities that are incorporated can otherwise hold a special members meeting to discuss the removal of a director. Practically speaking, in most situations, once CRA has advised a person on the board that they have concerns of this nature, I expect there will be a quick resignation of that person from the board long before anyone has had an opportunity to even glance at the by-laws.

Is Finance Paranoid?

According to Wikipedia, paranoia is “...a thought process believed to be heavily influenced by anxiety or fear, often to the point of irrationality and delusion. Paranoid thinking typically includes persecutory beliefs concerning a perceived threat towards oneself. Historically, this characterization was used to describe any delusional state.”

Henry Kissinger once said, “Even a paranoid can have enemies.” I don’t think that Finance is paranoid – I think they are legitimately concerned with the abuse of charities, and are trying to address these concerns in a way that will least impact those charities that are actually in compliance with the regulations. Finance is not concerned with itself – it is concerned with among other things protecting the tax base and the fairness of the tax system which is vital for

funding important government programs and which has been under attack by some through abusive charity gifting tax schemes and charity scams.

Are members of the public who don't agree with the provision also paranoid? I don't think so. For a few they may be worried that past clients or present colleagues might fit within the scope of this provision, this is a natural and logical reason to feel anxiety and it is not paranoia!

CONCLUSION

It may be considered ironic that the Federal Government heading for the section is called “**Safeguard Charitable Assets through Good Governance**”. I can think of countless things that the Federal government could require of registered charities when one discusses good governance (some onerous or problematic, and some not). This is probably one of the most minor and simple tasks for the average charity to carry out, since for a vast majority of charities, it will not even affect them and they will not have to do anything.

As well, the confidentiality provisions of the *Income Tax Act* make it very difficult or impossible for CRA, without such a provision, to disclose such matters to a charity. The important question that all directors must ask themselves is whether they want to know of such convictions etc. against a senior person in their charity. Most responsible people would want to be informed of this matter, taking into consideration the fiduciary duties to the charity as a director and the responsibility to also protect its reputation.

Practically, this provision is less about taking away or denying charitable status and more about the ability of CRA to be able to disclose to a charity that one of those who are involved with its leadership has been involved with serious non-compliance, without contravening the confidentiality provisions of the *Income Tax Act*.

If a charity is unhappy with a CRA decision, for any reason, to deny its registration or revoke the registration they can appeal to the Federal Court of Appeal.

One of the best messages that this proposal sends to directors is that those who want to abuse charities may be required to not be involved at certain levels with other registered charities in the future.

More detailed budgetary provisions:

Safeguard Charitable Assets through Good Governance

(30) That, on or after the later of January 1, 2012 and the date of Royal Assent to the enacting legislation,

(a) subsection 149.1(1) of the Act be amended by adding the following definitions in alphabetical order:

“ineligible individual”, in relation to a charity or Canadian amateur athletic association, means an individual who, at a particular time, has been

(a) found guilty of a relevant criminal offence for which a pardon has not been granted,

(b) found guilty of a relevant offence within five years preceding the particular time,

(c) a director, trustee, officer or like official of a registered charity or registered Canadian amateur athletic association during a period in which the charity or association engaged in conduct that may reasonably be considered to have constituted a serious breach of the requirements for

registration under this Act and for which its registration was revoked within five years preceding the particular time,

(d) an individual who controlled or managed, directly or indirectly in any manner whatever, a registered charity or registered Canadian amateur athletic association during a period in which the charity or association engaged in conduct that may reasonably be considered to have constituted a serious breach of the requirements for registration under this Act and for which its registration was revoked within five years preceding the particular time, or

(e) a promoter in respect of a tax shelter that involved a gift to a registered charity or registered Canadian amateur athletic association the registration of which was revoked within five years preceding the particular time for reasons that included or were related to participation in the tax shelter;

“**promoter**” has the meaning assigned by section 237.1;

“**relevant criminal offence**” means a criminal offence under the laws of Canada, and an offence that would be a criminal offence if committed in Canada, that

(a) relates to financial dishonesty, including tax evasion, theft and fraud, or

(b) in respect of a particular charity or Canadian amateur athletic association, is relevant to the operation of the charity or association;

“**relevant offence**” means an offence, other than a relevant criminal offence, under the laws of Canada or a province, and an offence that would be such an offence if committed in Canada, that

(a) relates to financial dishonesty, including an offence under charitable fundraising legislation, consumer protection legislation and securities legislation, or

(b) in respect of a particular charity or Canadian amateur athletic association, is relevant to the operation of the charity or association;

(b) subsection 149.1(4.1) of the Act be amended to provide the Minister of National Revenue with the authority to revoke the registration of a registered charity if an ineligible individual controls or manages the charity, directly or indirectly in any manner whatever, or is a director, trustee, officer or like official of the charity;

(c) section 149.1 of the Act be amended to provide the Minister of National Revenue with the authority, in the manner described in subsection 149.1(22) of the Act, to refuse to register an entity that has applied for registration as a registered charity if

i. the application for registration is made by an ineligible individual, or

ii. an ineligible individual controls or manages the entity, directly or indirectly in any manner whatever, or is a director, trustee, officer or like official of the entity;

(d) subsection 188.2(2) of the Act be amended to provide the Minister of National Revenue with the authority to notify a charity, in the manner described in that subsection, that the charity's authority to issue an official receipt is suspended if an ineligible individual controls or manages the charity, directly or indirectly in any manner whatever, or is a director, trustee, officer or like official of the charity; and

(e) the Act be amended to include provisions, similar to those in subparagraphs (b) to (d), that will apply, with such modifications as the circumstances require, to Canadian amateur athletic associations.

Mark Blumberg is a lawyer at Blumberg Segal LLP in Toronto, Ontario. He can be contacted at mark@blumbergs.ca or at 416-361-1982 x. 237. To find out more about legal services that Blumbergs provides to Canadian charities and non-profits please www.canadiancharitylaw.ca or www.globalphilanthropy.ca

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