

Canadian Charities and Foreign Activities – A Very Simplified View of the Process

By Mark Blumberg (September 29, 2018)

In this brief note we try to suggest 10 steps for a simplified contractor arrangement between a Canadian charity and a foreign charity (the “Foreign Contractor” or “intermediary”) implementing a project for the Canadian charity. When a Canadian charity spends funds or sends resources outside of Canada it needs to maintain “direction and control” over the activity as outlined by CRA in their guidance [Canadian registered charities carrying out activities outside Canada](#).

1) **Due Diligence.** You pick the right contractor or partner to be your Foreign Contractor. Do they have the “reputation, expertise, capacity, or experience” to carry out the task? Does the group have problematic affiliations with political parties or foreign militaries or militias? Due diligence on the foreign contractor is a very important step and if the Foreign Contractor is not the appropriate partner none of the next steps is going to be enough.

2) **Written Agreement.** A written agreement is put in place between the Canadian Charity and the Foreign Contractor that outlines how the Canadian charity will maintain “direction and control”, and supervision over the application of its own funds and resources. It is necessary for the written agreement to comply with the Canada Revenue Agency (“CRA”) requirements. But the Contractor

Agreement is not the only permissible model. Canadian charities can also conduct foreign activities using their own employees and volunteers, as well as agents, joint ventures or 'cooperative participants'.

3) **Description of Activity.** The project must be properly described, including a description of activities, budget, where the activities will take place, when, who will be doing them, etc. This description needs to be appropriate for the size and complexity of the activity. It must be a 'clear, complete and detailed' description of the project. It must be clearly understood to both parties before funds are sent from Canada as to how those funds will be spent.

4) **Separate Activity.** The Foreign Contractor implements the project as approved by the Canadian charity and identifies the project as being separate and part of Canadian charity's charitable activities. If an observer on the scene or a CRA auditor in Canada cannot tell that this project is distinct from the other activities of the Foreign Contractor then it may be that you are just funding the project of the foreign charity which is not permissible.

5) **Governance.** While either party suggests projects that may be suitable, it is the Canadian charity's board of directors meets and reviews the suggested projects to decide which projects will be funded and outline any changes to the project description. A Canadian charity funding a project outside of Canada must meet the CRA's test for "direction and control". Furthermore, the board of directors of a charity have a fiduciary responsibility under trust law to manage the property of the charity and the board needs to be aware and approving of the use of the charity's funds.

6) **Periodic Transfer.** Funds for approved projects are transferred to the foreign contractor. If the value of the project is small, the funds may be transferred

all at once. Bigger projects require periodic transfers, each portion only to be transferred after appropriate reporting on key milestones.

7) **Real, Ongoing, Active Relationship.** The Canadian charity maintains direction and control through a real, ongoing, active relationship with the contractor. The Canadian charity does not have to be a bossy micromanager, but a charity cannot just send large amounts of funds and get reporting at the end of the project without being aware of how the project is proceeding. With e-mail, Skype, scanners etc it is much easier for a Canadian charity to be aware and engaged with what is going on. Although a Foreign Contractor may have substantial discretion in certain respects with a project the Canadian charity should be aware of and approving any substantial changes to the project.

8) **Monitoring and Reporting.** The Canadian charity monitors the project through various means as appropriate. The Canadian Charity receives interim reports where the size of the project warrants it. On completion, the Foreign Contractor provides a final report. The Foreign Contractor reports back to Canadian charity with enough information to allow the Canadian charity to know that its funds were appropriately spent. Depending on the size and type of project it could include the Foreign Contractor providing copies of source documents such as accounts, agreements, receipts, invoices, correspondence, vouchers, sub-contracts, cancelled cheques, staff contracts, payroll records, shipping and customs documents as well as spreadsheets and photos, etc..

9) **Books and Records.** The Canadian charity keeps the required books and records about the project to verify that project was appropriately completed and that funds were well spent. Obviously the contractor has their records but the Canadian charity has to have its books and records and the Income Tax Act

requires that they be in Canada. Not every post-it note needs to be in Canada, but enough records to satisfy CRA i.e.. Adequate books and records.

10) Capital Projects. If the project is a capital project or capital equipment is bought as part of the project, the Canadian charity retains ownership except in the case as outlined in “Appendix B – What if a charity wants to transfer capital property to a non-qualified donee in a foreign country?” With capital property it is a good idea to either discuss with CRA or obtain legal advice.

This is a very simplified view of the relationship between a Canadian charity and a foreign contractor. Here is some further information in our [directory on foreign activities](#).

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