



Canadian Non Profit and Charity Legal Audits: Forget about It!

Some Canadian charity boards and senior staff when dealing with legal, accounting, governance problems seem to operate under the premise “Forget about It”. Hey it even seems to sometimes works.

In many cases however, there is a time of reckoning. The charitable sector has become highly competitive. Donors, regulators, the media, and others have increasingly high standards for charities and their operations. In this brief article I will discuss the value of an informal legal audit for non-profits and charities and how lawyers can be effectively and efficiently used to provide real tangible value to Canadian charities and non-profits.

A Canadian charity is not a small club or for that matter a crime family. In this current competitive environment there are a large number of potential individuals or groups who have a vested interest in your charity, or group within a charity, not succeeding. It could be competitor charities, it could be another person who wants your job, and it could be disgruntled donors or volunteers. It could be a crusader who wants to make a point or clean up the charitable sector. It could be a well meaning investigative journalist or a reporter with a deadline looking for a sensational story. If we want to be kind and generous to these people whose intentions are not always so ‘charitable’ we could just say that they offer “checks and balances”!

For many reasons it is important for charities to comply with their legal obligations. If you are waiting for CRA to audit you and tell you what concerns they have with your charity – you may have to wait a while. Quite a few people might beat them to the challenge.

I increasingly assist charities of all sizes with informal legal audits to identify for the charity and their board of directors potential legal and governance concerns. I understand that legal issues are only one of many matters that a charity, its executive director, and board have to deal with. I then work with the charity to prioritize action items and deal with the concerns in a way that provides the least disruption to the operation of the charity and its mission. In this way, a non-profit

or charity can proactively resolve issues so that donor, regulator, and media attention will remain focused on the good work of the charity and not become distracted by issues that should never have existed or have been resolved a long time ago.

On the most superficial level I would do some searches on the charity, review some basic governing documents such as the letters patent and by-laws and sit down with the executive director and chairperson over a couple of hours and go through about 170 questions about the operation of the non-profit or charity. Then we would discuss some issues of concerns. The process may take 5-10 hours and cost \$1500 to \$3000.

For many mid-sized non-profits and charities the review would be more in depth and the time involved and cost would be greater – usually in the range of \$4,000-\$8000. However, the larger and more complicated the charity – the greater the importance of discovering and fixing issues before they become problems. In all cases I discuss with charities how best to proceed to achieve the greatest value for a charity.

If you conduct an informal legal audit the lawyer that conducted the audit, if you choose to keep them on retainer, will have a far better appreciation of your organization and can offer better advice as a result.

Will your organization benefit? As a charity and estate planning lawyer I am involved with conducting a large amount of very basic due diligence on charities and non-profits for bequests. As a public service minded lawyer, over the last five years I have sent to a large number of the major and most high profile charities based in Toronto a friendly e-mail just alerting them to a small detail that they may not have been aware of such as they are listed as being dissolved, or Industry Canada has sent them a notice of dissolution; default notices have been sent and annual summaries have not been filed for a number of years; their charitable status has been revoked (usually for non-filing of T3010); or the information on the corporate profile report or CRA filings has an old address going back many years which can lead to problems or they are using the incorrect name of the charity on their planned giving information etc.

In most cases the charity is completely unaware of the points I am raising. In some cases they are aware and are trying to fix the issue. In a few other cases they are aware say that they are not particularly concerned. In all three situations I think that the charities can benefit from an informal legal audit.

Typically I am retained when one or more members of the board of directors is concerned about the legality of certain matters relating to their non-profit or

charity. First and foremost they are concerned about the charity being governed appropriately but in some cases there may be concerns of personal liability or public embarrassment.

Another situation is when the executive director is concerned with legal issues affecting the non-profit or charity. Sometimes the board does not share the ED's concerns, however, the ED knows in the back of their mind that if there is a problem she or he will be blamed for it. In most cases EDs are inundated with different tasks and they do not profess to be expert in all legal issues. Having an outside party assist can be very useful, either to validate the EDs concerns or to fix the problems. Many issues that a charity has to deal with that are of a legal nature can in fact be quite easily resolved. Instead of spending months rehashing the same issue at the board level, wasting the board of directors and ED's time, and causing considerable stress for those involved, it is sometimes better to just deal with the issue professionally.

When your charity is in crisis or is facing a major legal problem it is rarely the best time to evaluate who is the best lawyer with skills and values that are complementary to your organization. It is best to retain and work with a lawyer for either a small project such as answering some questions or conducting an informal legal audit rather than retaining a lawyer or law firm to deal with a major problem and to then realize that this is not the person or firm that you would have hired had you had more time to get to know your legal counsel. It is very difficult at that point to change.

Most of the organizations that request and are prepared to pay for an informal audit are very well run organizations that just want to check that they are doing the right things and if there are deficiencies to incrementally make improvements.

Poorly run organizations generally don't have the foresight to consider a legal audit and in many cases a lawyer with considerable experience in dealing with non-profits and charities can make many obvious suggestions in a matter of minutes. In other words one does not have to dig deep to come up with serious problems.

Some organizations that request an audit are larger entities that have used their law firm for many years. In some cases the law firm is very knowledgeable about certain aspects of the operations such as labour law or health law but lacking in the non-profit and charity area. In many cases the law firms are knowledgeable but there is a sneaking suspicion by the charity that asking your current lawyers to conduct a legal audit is like asking a fox to guard the chickens. The incumbent lawyers may not dig to deep to point out the inadequacies in the advice and documentation they have prepared. They also may be worried that to the extent a

large number of suggestions are made that the charity will retort with ‘why did you not tell us this a few years ago’.

In summary informal legal audits can be a cost effective and minimally disruptive way to attain legal compliance for Canadian non-profits and charities.

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