

Establishing A Canadian Non-Profit or Charity

While Avoiding Practical, Legal, and Ethical Problems

Canadian Association of Paralegals

November 7, 2008

Mark Blumberg



www.blumbergs.ca

mark@blumbergs.ca

Overview

- ❑ Doing Good Outside Charity Realm
- ❑ Structure of Organization
- ❑ Incorporating and organizing a Charity
- ❑ Applying for Charitable Registration
- ❑ Operational Issues



Disclaimer - presentation is information, not legal advice

www.blumbergs.ca

Voluntary Sector in Canada

- ❑ 161,000 non-profits in 2003 (federal and provincial and unincorporated)
- ❑ 83,500 Registered Charities (as of 2008)
- ❑ \$112 Billion in revenue, 2 million on payroll
- ❑ 49% from Gov, earn 35%, 13% donations
- ❑ 2/3 have revenue under \$100,000

Source: Statistics Canada – National Survey of Non-Profits and Voluntary Organizations



www.blumbergs.ca

Carrying on Good Works

Carrying on Good Works outside of the charity realm

- ❑ personal donations of cash or in kind items to foreign charities or Can. non-profit, no receipt
- ❑ doing business in areas requiring jobs, business and corporate social responsibility (CSR) – donation, sponsorship, advertising, etc
- ❑ For profit “non-profit” -Google.org, micro-loans – ‘triple bottom line’
- ❑ non-profit without charitable status – if no need to issue tax receipts.



Carrying on Good Works outside of the charity realm (cont)

- ❑ volunteering – at home and abroad
- ❑ remittances - gifts to family, friends, former employees abroad
- ❑ encourage Canadian government to live up to its commitments (eg 0.7%/GNI for foreign aid)
- ❑ pay taxes – revenues pay for local, national and international projects



Structure

Options for structuring organization

1. Unincorporated association
2. Trust
3. For-profit corporation (CBCA, OBCA)
4. Non-profit (CCA, OCA) without charity registration
5. Non-profit, registered charity



1) Unincorporated Association

- ❑ no limited liability – members liable personally for lawsuits, contracts etc.
- ❑ not permanent, can only be charitable organization, not foundation
- ❑ real estate held in names of people
- ❑ exempt from income tax
- ❑ more difficult to have legal certainty



2) Trust

- ❑ no limited liability, no separate existence
- ❑ constrained by trust document
- ❑ real estate held in names of people
- ❑ quick to set up, may be fine for some private foundations
- ❑ can have one corporate trustee



3) For-Profit Incorporation (CBCA, OBCA)

- ❑ social enterprise
- ❑ limited liability, easy to establish, easier to operate than NPO
- ❑ almost no restrictions on activities
- ❑ can pay dividends, can pay directors fees
- ❑ pay tax on income and cannot issue official donation receipt



4) Non-Profit Incorporation (Without Registered Charity Status)

- ❑ limited liability
- ❑ exempt from income tax, cannot issue official donation receipt
- ❑ almost no restrictions on activities - no dividends unlike for-profit
- ❑ no restrictions on business or political activities
- ❑ member vs. public benefit, on dissolution to either members or other organization



5) Non-Profit Incorporation (With Registered Charity Status)

- ❑ tax exempt, can also issue official donation receipts
- ❑ some foundations require status for funding
- ❑ some corporations only grant to registered charities
- ❑ benefits - GST rebate, property tax rebate
- ❑ more public disclosure and credibility, dissolution to qualified donees
- ❑ lots of restrictions on activities



Incorporation vs. trusts vs. unincorporated association

- ❑ 84% of registered charities are incorporated (NSNVO p. 15)
- ❑ corporation has more easily understandable rules, perpetual and less risk (limited liability)
- ❑ private foundation is sometimes exception when trust may be appropriate



Timelines

- ❑ For-Profit (OBCA) – 2 hours
- ❑ Federal Non-Profit (CCA) – 1 month
- ❑ Application for Charitable Status with CRA – 5-8 months if simple, 9-14 if complicated or not complete



Should We
Set Up A
Charity?

Tax benefit when Canadian Individual donates to Registered Charity

- ❑ 46 cents of every dollar in Ontario up to 75% of income when highest marginal tax rate.
- ❑ can carry forward for up to 5 years
- ❑ greater benefit on gift of appreciated marketable securities
- ❑ on death up to 100% of income in final year and preceding year
- ❑ tax benefit for donation to qualified donee



Requirements to be Registered Canadian Charity

- ❑ Canadian charity must be created or established in Canada
- ❑ Canadian charity must be resident in Canada
- ❑ 4 heads of charity (relief of poverty, education, religion, other purposes beneficial to the community that the law considers charitable) and public benefit
- ❑ limited political activities, no partisan political activities, no illegal activities or violating public policy



Should we set up Charity? NO

- ❑ why not work with one of the 83,500 existing charities?
- ❑ frequently change interests
- ❑ if cause not charitable (social, political, etc)
- ❑ need resources to run organization properly but don't need to issue official donation receipts
- ❑ charities are more complicated than non-profit or private business



Should we set up Charity? YES

- ❑ lasting impact in charitable area
- ❑ need funding from individuals
- ❑ need funding from foundations
- ❑ some corporations only donate to charities
- ❑ other benefits – GST, property taxes, etc



Incorporation

Preliminary issues

- ❑ federal vs. provincial
- ❑ documents and information required
- ❑ name
- ❑ objects
- ❑ directors



Federal vs. Provincial incorporation

- ❑ will you be operating only in one province vs. in more than one province, internationally
- ❑ *Ontario Corporation Act (1953)* – under review
- ❑ *Canada Corporations Act (1917)* – under review
- ❑ review of non-standard charitable objects or changes to objects by Public Guardian
- ❑ usually federal CCA incorporation is best



Documents Needed for Federal Incorporation

- Application for Letters Patent
- By-laws
- Affidavit of Bona Fides
- Director's Consents
- NUANS
- \$200



Basic Information Required for Federal Incorp.

- 3 Names of Directors – address, occupation
- Name of Charity
- Object of Charity
- Address of Corporation
- later more information – eg SIN #, tel #



Name – Federal non-share capital corporation

- ❑ distinctive, not confusing
- ❑ do not need legal element such as Inc.
- ❑ Industry Canada will review name
- ❑ NUANS search – federally biased
- ❑ Corporate Name Information Form



Objects

- ❑ for charity all objects must be charitable
- ❑ CRA and Ontario PGT model objects
- ❑ cannot act outside objects (*ultra vires*)
- ❑ not too narrow or too broad, see *Travel Just* case



Charitable Objects – eg. International Development

Relief of Poverty - To relieve poverty in developing nations by providing food and other basic supplies to persons in need.

Health - To develop or promote public health in developing nations by educating and instructing the public on prevention of, and curative measures for, health problems and by researching and documenting changes in the health of the community.

Drinking Water - To improve the quality of drinking water in developing nations by constructing wells and water treatment, irrigation and sewage treatment systems.

Agriculture - To improve skills in forestry, agriculture and horticulture and to assist in the preservation of the environment in developing nations.

Disaster Relief - To provide necessities of life to victims of disasters.



Source: Ontario Not-For Profit Incorporator's Handbook.

www.blumbergs.ca

Directors

- ❑ three directors minimum
- ❑ majority arms-length, unless private foundation
- ❑ qualifications – 18, sound mind, not bankrupt
- ❑ director cannot receive compensation in Ontario, also not good idea elsewhere
- ❑ no residency requirement but...
- ❑ mix of skills



Organization of the Charity

Organization of Corporation

- ❑ minute book and seal (eg. Teranet package)
- ❑ organizing resolutions – directors, officers, members, pass by-laws, accountants, banking, authorize application for charity status, fiscal year end.
- ❑ filing extra-provincial forms as required
- ❑ bank account



Registered Charity Status in Canada

Application for Canadian Charitable Status

- T2050 – 15 pages, 23 questions
- no fee
- schedules
- difficulty – terminology, budgets, local and foreign activities, fundraising, political activities, all documents
- lot harder than it looks, CRA more demanding



Why Charity Applications Fail according to the Charities Directorate

- 1) The organization has one or more purposes that are not charitable.
- 2) The application does not have enough information about the organization's activities.
- 3) The organization's activities do not support the organization's purpose.
- 4) The application does not include a clear statement that the organization's activities are open to everyone.



Why Charity Applications Fail (cont)

5) The organization does not seem to have the operational capacity (such things as people, structures, and materials) to carry out its activities in Canada or outside Canada.

6) The application lacks financial information, as well as details to support the organization's purpose and activities.

7) The organization's focus is on social or cultural activities.



Why Charity Applications Fail (cont)

8) The application does not include supporting documents such as Web addresses, brochures, booklets, newspaper articles, or information about the organization's current activities.

9) The organization seems to be devoting too many resources to political activities.

10) The application does not include any copy of an agreement with representatives who are supposed to help the organization to carry out its activities outside Canada



Restrictions on Charities

Restrictions on Canadian Registered Charities – the Application is the “easy part”

- ❑ no partisan political activities
- ❑ limited non partisan political activities
- ❑ only undertake charitable activities
- ❑ cannot violate Canadian public policy or conduct illegal activities
- ❑ direction and control over funds for foreign activities and transfers to non-qualified donees



Restrictions on Canadian Registered Charities – the Application is the “easy part”

- ❑ only reasonable fundraising costs
- ❑ only related business activities or volunteer
- ❑ disbursement quota (DQ)
- ❑ sports for sports' sake



CRA Compliance Concerns

Top Compliance Concerns Presentation from Terry de March, CRA

- ❑ incorrect issuance of receipts (lack information, mistakes, FMV)
- ❑ failure to file T3010
- ❑ T3010 omissions
- ❑ non-charitable activities
- ❑ gifts to non-qualified donees



Top CRA Compliance Concerns (cont)

- ❑ failure to maintain direction and control
- ❑ fundraising costs (reasonable and proportionate)
- ❑ political activities
- ❑ unrelated business activities
- ❑ religious school tuition receipts



Top CRA Compliance Concerns (cont)

- ❑ tax shelters
- ❑ fraudulent tax receipts
- ❑ transactions with directors
- ❑ other CRA rules (payroll, GST etc)



Operational Issues

Other Operational Issues

- ❑ employees vs. independent contractors
- ❑ written agreements when required
- ❑ corporate requirements
- ❑ CRA requirements - generally
- ❑ terrorism, fraud, and money laundering



Operational Issues (cont)

- ❑ bribery and corruption
- ❑ private benefits
- ❑ ethical issues
- ❑ donor, gift acceptance, fundraising issues
- ❑ IP issues (trademark, copyright, trade secrets, licences)



Legal Services

Should one use a charity lawyer?

- ❑ does lawyer have lots of time, interest, firm support for NPO and charity law?
- ❑ charities law is becoming more complicated (like pension or securities law without the resources!)
- ❑ experience and knowledge is very helpful
- ❑ beware of the 'simple' pro-bono matter
- ❑ doing it right reduces costs and eliminates embarrassment



Should one use a charities lawyer? (cont)

- ❑ technical expertise – the personal injury lawyer may be a good board member but ...
- ❑ if you are a director you cannot charge charity for your services in Ontario
- ❑ with incorporation, organization and charity application, the structure and content of documents are important
- ❑ consider outsourcing the work



T3010A – Registered Charity Information Return

- ❑ **DUE 6 MONTHS AFTER CHARITY'S FISCAL YEAR END**
- ❑ make sure address with CRA is correct
- ❑ T3010 must be complete, not just filed
- ❑ public document – everyone can see your mistakes.
- ❑ non-filing of T3010 will result in revocation



More Information

www.blumbergs.ca/non_profit.php

www.globalphilanthropy.ca

Mark Blumberg, Blumberg Segal LLP

390 Bay Street, Suite 1202, Toronto, ON M5H 2Y2

416-361-1982 x. 237

mark@blumbergs.ca



www.blumbergs.ca