



## **Some thoughts on Professional Athletes and Philanthropy in Canada: Part 1**

**By Kate Robertson and Mark Blumberg (January 16, 2017)**

Professional athletes have tremendous opportunities to make a difference within their communities. They not only have substantial opportunities to amass significant amounts of wealth in a short period of time, but the nature of many athletes' careers (in the NBA, NHL, MLB, etc.) provides them with extensive media coverage and public attention. With this enhanced exposure, professional athletes can bring attention to issues or causes that they are passionate about. They also have the advantage of being able to use their 'brand' to spread awareness about a cause, which can easily garner interest from fans, followers, and the general public alike. Involvement with the charitable sector can bring tremendous personal fulfillment and also help to build a positive public image or brand for the athlete.

Many of the most successful professional athletes within Canada and the United States are involved in charitable activities in one way or another. Some professional athletes generously donate their time, energy, money, gifts, etc. to existing charities. Others decide to set up their own charity. There are countless examples of these types of charities within Canada and we have acted for a number of professional athletes who are interested in setting up their own foundations.

While we encourage professional athletes to become involved in charitable initiatives we also see how detrimental poorly-planned charitable initiatives can be for an athlete (for example, legal and reputational damage for the athlete). Professional athletes may have a seemingly perfect recipe for a successful charity with significant start-up funds, public exposure, reputation, and support. Unfortunately, this does not always lead to a successful charity. Even with the best intentions, a level of celebrity 'status', and a significant amount of resources, professional athletes may (unbeknownst to them) end up in a troublesome situation when working in the charitable realm without the proper structure and guidance. While there have been many success stories amongst professional athletes, there have also been a significant amount of high-profile professional athlete foundations and professional sports league foundations which have received negative media attention as a result of a multitude of issues. The reality is that a foundation established by a professional athlete, regardless of its impressive websites, high profile board of directors and expensive advertising, does not guarantee that it is a properly-run charity.

It is important that an athlete receive impartial and expert advice in the initial stages otherwise significant resources and time being invested could be wasted. It is important to have a strategy that recognizes the unique interests, assets and temperament of the professional athlete while also acknowledging limitations or restrictions such as limited time as an athlete, the possibility of being traded to another city or country, etc. What may be a brilliant idea for one athlete may be completely inappropriate for another athlete.

In order for professional athletes in Canada to be able to give back to their communities and also use their financial resources and reputation in the most productive way, it is vital that they have proper guidance and support. An important component of that support is education so that they have an understanding of the legal, ethical, and financial aspects of navigating the philanthropic landscape in Canada. Part 1 of this article series will outline some of the fundamental issues that professional athletes (as well as their trusted advisors) should consider before getting involved in the charitable sector in Canada.

### **Charitable options for Professional Athletes**

For those athletes who are interested in getting involved in philanthropy in Canada, there are many different options/routes available. A Canadian registered charity is typically the mechanism that most athletes/advisors are familiar with. Canadian registered charities have the ability to issue tax receipts to Canadian donors. To become a Canadian registered charity, you must have a legal entity and apply to the Canada Revenue Agency ('CRA') to receive approval. Some of the basic requirements for a Canadian registered charity are it must be established for exclusively charitable purposes, have at least three directors, and be resident in Canada (although activities can take place both inside and outside of Canada). The process to establish a Canadian registered charity can be onerous (six to eight-month wait time with CRA) and expensive (with legal counsel involved, which is generally recommended). Also, once the charity is set up, it must comply and operate in accordance with the specific requirements of the *Income Tax Act* (Canada) and the Canada Revenue Agency. The charity has obligations to the recipients of its charitable activities, to its volunteers, to its donors, and to the general public. *Part 2 of this article series will provide suggestions and tips for professional athletes on operating a successful Canadian registered charity.*

Establishing an operating charity may not always be the most beneficial or useful vehicle for a professional athlete. Something that is not always considered is the reality that many athletes are often relocated during their career, sometimes more than once (as a result of a trade), which can make it more difficult for the athlete to establish roots in the city/country in which they are playing. Also, in some professional leagues, a pro athlete may have their sports career cut short as a result of recurring injuries, or better players entering the league. Another consideration is the reality of retirement for all athletes and whether or not an established charity will be able to continue running after the athlete has retired. Also, athletes from the United States or other countries who already have a charity established in their home country will need to understand and be aware of the significant differences between the charitable system in Canada in terms of the application process and ongoing compliance requirements before pursuing a charity in Canada.

Other structural options that professional athletes may want to consider for charitable philanthropy in Canada are set out below:

- **Non-profit corporation:** A non-profit corporation can be established provincially or federally and is exempt from income tax however it does not have the ability to issue tax receipts to donors. Non-profit organizations include associations, clubs or societies that are not charities (and have not applied to the Canada Revenue Agency for charitable status) and are organized and operated exclusively for social welfare, civic improvement, pleasure, recreation, other any other purpose except profit. A non-profit does not have the same restrictions/regulations as a Canadian registered charity and is generally free to do any type of activity as long as it is not seeking to conduct “business” activities that are profitable. A non-profit can also conduct activities both inside and outside of Canada. A non-profit corporation can be established relatively quickly depending on the jurisdiction and legal fees are generally much less than setting up a registered charity. For a professional athlete (depending on their strategy), a non-profit may be sufficient to achieve the charitable objectives but for some it may be more advantageous to have both a non-profit and registered charity that can work together and provide maximum flexibility.
- **Donor Advised Fund:** A person can establish a “donor advised fund” at a community foundation, bank, charitable foundation, or other donor advised fund charity. Under this structure, funds are contributed by one or many donors, and a charitable receipt can be issued to any of the donors. The person who established the donor advised fund typically retains advisory privileges with respect to the granting of funds from this donor advised fund to other registered charities of their choice. Any funds provided from a donor advised fund must be provided to a Canadian registered charity or other organization listed as a ‘qualified donee’ under the *Income Tax Act* (Canada). The downside of this structure is there are annual fees for ongoing maintenance and administration of the fund and the donor has limited control over the funds (can only advise). Also, with a donor advised fund, there is much less flexibility than running your own organization. However, all of the administration, legal and accounting work is done by the donor advised fund and there are no start-up costs or long waits involved.
- **Working with an existing charity:** There are over 86,000 existing registered charities in Canada. It is very likely that a professional athlete (depending on their interests/philanthropic goals) may be able to find an existing charity that is involved in activities the athlete is interested in supporting. In these situations an athlete has the flexibility of working to raise awareness and funds for an existing charity typically with the help of that charity’s fundraising and other resources while avoiding the burdensome legal and regulatory obligations of running their own charity. The downside to working for/with an existing charity is the athlete has less control over how their money is spent by the charity and will not be able to completely control and own the initiative which is really being managed by the existing charity. If a professional athlete is interested in working with another charity, they can find Information on existing registered charities through the

Canada Revenue Agency's website at <http://www.cra-arc.gc.ca/chrts-gvng/lstngs/menu-eng.html> or on a new website started by Blumbergs', <http://www.charitydata.ca/>, where annual information return (T3010) information on all Canadian registered charities has been compiled.

Considering and thinking through all of the different charitable routes is the most important part of the process to ensure the best fit for the athlete before they embark on any type of charitable endeavour and invest significant time and resources.

### **Professional Advice**

Every athlete takes a different approach to charitable giving and philanthropy, and this is why it is so important to manage expectations early on about the different options and the ongoing work that is involved. Initial discussions with a knowledgeable and experienced professional advisor (regardless of whether that advisor is a friend, trusted advisor, or independent legal counsel) are crucial to learn about the athlete's background and history and to understand his or her goals in order to develop the best strategy for future charitable endeavours. As we noted above, setting up a charity in Canada is not necessarily a simple or easy process – it can be time-consuming, confusing, and complicated and there may be simpler and more appropriate options.

Our firm offers informative training and educational seminars for professional athletes who are interested in establishing a charity in Canada. With the proper guidance, support and advice, a professional athlete will have a better chance of having a long-lasting and successful experience being involved in philanthropy in Canada. *Stay tuned for Part 2 of this series which will provide suggestions and tips for professional athletes on operating a successful Canadian registered charity.*

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