



How does a Canadian non-profit or charity obtain cost effective and useful legal services from a lawyer?

By Mark Blumberg (November 5, 2008)

Notwithstanding lawyer jokes, legal services are a necessary and important part of maintaining a well run non-profit or charity. They can be delivered well or poorly, cost effectively or expensively. With increasing competition between charities, there is often a real threat that negative publicity or legal or ethical problems can undermine the goodwill of an organization and deflect the focus from its mission. Non-profits and charities, in most cases, watch their pennies very carefully and legal services can be expensive. Instead of running away from having a formal relationship with a lawyer and trying to have all legal issues dealt with by free advice at cocktail parties, it may be better to try to strategically manage legal services to get what you need at a price that is affordable.

Next to money raised by charities, one of the most important and scarcest resources of charities in Canada is the time of the senior management. By having a lawyer advise on legal issues and provide legal services you improve the quality of life and effectiveness of senior management. It is amazing how many CEOs will not hesitate to spend hours (especially in the evening) researching a particular point. They may or may not find the right answer, but they will be exhausted the next morning. They will not have focused on what is for most organizations the priority – generating revenue and delivering very good programs. Indecision on legal issues can suck resources and mistakes about legal issues can also cost charities dearly.

Here are some ideas for managing a relationship between a charity and a lawyer in an effective and efficient manner.

Expertise

1) The most important way to obtain reasonably priced legal information is to use a lawyer who is knowledgeable about NPO and charity law. Otherwise you are paying for the lawyer's education and that can be an expensive proposition. Having a real estate lawyer or a corporate/commercial lawyer advise on non-profit and charity law issues for a charity is probably not going to be a good experience for either the charity or the stressed out lawyer. While some issues are complicated and involve substantial analysis and discussion, the vast majority of the questions I deal with are actually quite simple and can be answered quickly. Sometimes there is a CRA bulletin or other publication on point to which I can refer someone. Often the wrong question is being asked. Having a knowledgeable lawyer as a resource can assist a charity in carrying out its mission. Expertise is often the difference between an enthusiastic volunteer lawyer providing pro-bono services and an experienced charity lawyer. If you are a small charity and the issue is not important then using a volunteer lawyer may be a feasible option. Often in the interest of time, efficiency and accuracy, the legal needs of charities are best met by a lawyer experienced in the area of NPO and charity law.

Time

2) Lawyers generally charge based on time. They refer to it as billable hours. You are charged an hourly rate for each billable hour. In general, the more of the lawyer's time you use the more you will pay. Consequently, if you are careful and considerate of assisting the lawyer in minimizing the use of their time, then the lawyer will spend less time on the file and charge the charity less for the services.

- If you are providing documents to a lawyer, always keep copies for yourself and your own records. It will save the lawyer having to copy the documents for you and for you having to call every time you need to know what is in a certain document.
- Come prepared to meetings with the lawyer – if in doubt ask. If you want to cover a number of issues, it may be helpful to have a list so that you cover what is important to you. Bring documents that you think are relevant to the meeting.

- Bring a pen and paper or laptop and take notes at meetings especially of points that you need to follow up with so that the lawyer does not have to remind you two weeks later.
- Try to be decisive and if you cannot decide about a course of action then just say so, instead of deciding and changing one's mind every week. Vacillation wastes a lot of time.

Face to face meeting

3) If you have three or four executive members or staff people who are interested in an issue consider having them all meet with the lawyer at once. On countless occasions, I have dealt with different people from the same organization and had to rehash the same conversations. If you have three people listening, you are more likely to get the whole picture than having one person attend and that person relaying the information, and it is cheaper to have one meeting for one hour than three one hour meetings. Furthermore, the story is likely to be more complete when you have a number of people at the meeting who can add details if necessary.

Effective communication

4) Lawyers spend more time communicating with clients than they often do creating documents or attending at court.

- Be easily contactable – make sure that the lawyer has all your contact information and the best way to reach you.
- Phone or e-mail will save a lot of time versus a person who does not use e-mail and is not easily contactable by phone or worse does not have voice mail.
- Return calls or e-mails.

Delays

5) Avoid needless delays. If possible try to provide documents and information to the lawyer as quickly as possible. It is a waste of time to have a matter drag on endlessly because obtaining information or getting decisions takes forever.

Get the most bang for your buck

6) If you are retaining a lawyer for general legal advice and assistance don't be afraid to ask the lawyer how he or she thinks their time would be best utilized in dealing with the

various priorities facing the organization. Let the lawyer know if you have a budget or an idea of what you want to spend.

Values

7) Hire a lawyer who has values and a style that are consistent with your organization and its resources. Pick a lawyer who you are comfortable with and who you think is straightforward. Some tax litigators make their living off fighting the CRA in the courts and want to use you as the perfect test case in order to “advance” the charity law area or are more focused on personal clients or corporations and how to help them avoid paying taxes. Other lawyers in my mind are charity lawyers and they predominantly advise charities about legal issues and are concerned with how charities conduct themselves. Obtaining a legal opinion that a course of action could be legal does not make it “legal”. Furthermore, it certainly does not make it ethical. If you are looking for “how do I get away with doing what is least legally required?” then you may wish to contact different lawyers than perhaps one who is concerned about the conduct of a charity from a legal and ethical point of view. In my opinion being practical and having common sense is also important.

Good-bye

8) If you have a lawyer and it is not working out either because he or she costs too much, does not provide good service, has a difficult personality, etc – it probably is not going to get better with time. Considering switching and do it before you really need legal advice or services.

Technology

9) Most lawyers use technology – it can save them a lot of time, which then can save you a lot of money. If a lawyer is not comfortable with using technology then unfortunately you will directly or indirectly be paying for his or her discomfort.

Billings

10) Insist that Billing should be detailed and specific – not block billing or “for services rendered” over a period of time.

Understanding

11) If your lawyer is talking and you are not understanding what they are saying or it does not make sense – ask for a clarification – if it still does not make sense perhaps find a lawyer who you can understand. Much of my time is spent in discussions with clients

and educating clients, not the actual production of documents. It is really important that clients understand the issues and the options. Without understanding the law, and often the rationale behind it, it is more difficult to comply with the law.

Client meetings

12) I like meeting clients at their office to see their operations and to get a better understanding of the charity and its people. However, if you are looking for cost-effectiveness it may be best to try and meet the lawyer at his or her office. Also, meeting a lawyer at their office has the advantage sometimes of greater privacy and fewer disruptions. It is important to have at least one physical meeting if you can with a lawyer. However, afterwards often a telephone call is easier to arrange and more time efficient than face to face meetings.

Budget

13) Budget for legal services. You can save money by not obtaining legal advice, just like you can save money by not purchasing any insurance, however, sometimes a small amount saved costs a lot later. If you are not interested in spending any funds on legal services, think about tracking the time spent by staff and volunteers directly or indirectly related to legal issues and consider the cost for your organization.

There are some things to **AVOID**:

1) Just compare rates – they are cheaper therefore better value or they are more expensive and therefore must know more! The hourly rates of lawyers are usually more related to the age of the lawyer and the overheads of the law firm rather than any particular expertise that a lawyer has in any particular area.

2) Picking a law firm based on brand rather than a lawyer based on ability. Because they work at a big brand name Canadian law firm with beautiful art does not mean they are going to be a good choice for your charity. Good is a relative concept – they may be good at putting in billable hours and paying for the overhead of the firm rather than necessarily providing useful advice or cost-effective legal solutions. Or they may be good at delivering papers at conferences, but lets face it they may not be interested in doing the work required to properly service a particular charity.

Lawyers have an important role to play in assisting non-profits and charities to ensure they operate and comply with the law. I am reminded of one of the commentaries from the Law Society of Upper Canada's Rules of Professional Conduct:

These rules recognize that lawyers as the legal advisers to organizations are in a central position to encourage organizations to comply with the law and to advise that it is in the organizations' and the public's interest that organizations do not violate the law. Lawyers acting for organizations are often in a position to advise the executive officers of the organization not only about the technicalities of the law but about the public relations and public policy concerns that motivated the government or regulator to enact the law. Moreover, lawyers for organizations, particularly in-house counsel, may guide organizations to act in ways that are legal, ethical, reputable, and consistent with the organization's responsibilities to its constituents and to the public.

If this article has been helpful let me know. If you have suggestions for other points also let me know.

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