



Should We Establish a Canadian Charity and If So Then How?

By Mark Blumberg (September 29, 2008)

This brief article discusses some of the considerations in deciding whether to set up a Canadian registered charity and the basic steps in doing so.

Should we set up a charity?

Here are some of the factors to discuss with clients in order to understand whether establishing a Canadian charity is the right course of action:

1) **Can you join another charity?** What is your client trying to accomplish and is there a charity currently in existence whose objects and activities are similar to your client's interests? If so, your client may wish to consider joining such a charity and providing financial support or volunteering or partnering with such charity instead of establishing a new charity. There are approximately 83,000 charities in Canada registered with the Charities Directorate of the Canada Revenue Agency (CRA).

2) **Is it Charitable?** Is the matter your client is interested in charitable? Setting up a golf club or trade group may be fun and interesting, but it is not charitable. The 1891 Pemsel case identified four heads of charity, namely: relief of poverty; advancement of education; advancement of religion; and other purposes beneficial to the community. The *Income Tax Act*, Court decisions and the positions of the CRA have over time expanded the definition of what is charitable. For an organization to be a charity, its objects need to be exclusively charitable, not predominantly charitable, but only charitable. Also, it cannot undertake any partisan political activities, and it is restricted in terms of resources allocated to non-partisan political activity. If the organization's objects and activities are not

charitable it still may be useful to set up a non-profit or for-profit limited liability corporation to conduct the activities.

3) Running a Charity is hard work. A small charity is a lot more complicated in terms of legal regulation and governance compared to most small private businesses. Some people do not realize that unlike a small business corporation which can be setup in a few hours at minimal cost, a non-profit corporation typically takes about 25 days to setup and obtaining charitable status can take between 6 to 8 months, depending on a number of factors. The time, energy and cost required can be significant. The legal fees are significant but luckily the legal fees are only steep in the first year, and most clients spend little on legal fees in the second year. Accounting fees on the other hand can be \$1000 to \$5,000 when the client completes its first audit and thereafter every single year. Another item that some people are surprised about is that you should have three arms-length directors to incorporate a non-profit unless it will be a Canadian private foundation in which case they do not have to be arms-length. If your client cannot find another two people interested in working with them then this is a good indication that they should abandon the attempt quite quickly!

4) Short Term vs. Long Term. Is your client seeking a short term activity or a long term solution? As a result of the time and expense of setting up a charity, it is usually not worthwhile unless your client is planning on having the organization last for a substantial period of time. Will your client's interest in this matter wane in a few months? If your client is attempting to establish a long term presence and will take on long term responsibilities such as employees, leases etc. then establishing a non-profit and applying for charitable status may make sense.

5) Risk. The higher the risk associated with the charitable activities, the more important it is to have limited liability that can be obtained by incorporation of a non-profit.

6) Sources of Revenue. The next issue that one needs to contemplate is funding. If your client is only interested in obtaining Canadian corporate sponsors (as opposed to individuals) you may not need a corporate entity (non-profit) and a charitable registration because some businesses can write off certain reasonable business expenses for promotion, sponsorship etc. and they will not require an official donation receipt. If your client anticipates only receiving government funding you may not need to be a charity. Perhaps being a non-profit corporation will be sufficient from the government funder's perspective.

7) Official Donation Receipts. If your client has some substantial individual donors and they want to create a charitable organization in Canada, it may be beneficial to incorporate a non-profit corporation AND also to obtain charitable

status. Non-profits in Canada are a useful tool to carry on community work but they cannot issue tax receipts which individuals typically require in order to receive a tax credit in Canada. Also, many companies, foundations and government agencies restrict funding to registered charities. Having charitable status can significantly increase the likelihood of certain types of funding.

How to Create a Canadian charity

If a client has decided to incorporate a non-profit corporation and apply for charitable status then read below where we discuss some of the steps to take.

One does not require a lawyer to assist with the formation of the non-profit and the charitable registration, although in hindsight many find that it would have been a good idea to use the services of a charity lawyer. The amount of time required to understand the incorporation and application process is substantial and mistakes can be costly, time consuming and frustrating. Poorly thought out decisions at the beginning can hamper the charity later.

I find that most of my time dealing with establishing charities is spent discussing with the client what activities they want to undertake and how to effectively structure those activities. Therefore, most of the time is not spent typically on preparation of documents – it is spent on understanding the client's goals and objectives, educating the client about rules and restrictions, ethical and practical issues and obtaining the appropriate information from the client.

Some of the matters that result in difficulty for some people are decisions about whether to incorporate federally or provincially, choice of name, properly setting out the objects and ensuring they are charitable, organizing the corporation, understanding technical terms such as non-arms length, dealing with the statement of activities in the application for charitable status, deciding on structure and whether such choices result in a charitable organization, public foundation or private foundation, deciding on appropriate fundraising mechanisms, dealing with charitable activities outside of Canada and other operational issues.

For Ontario non-profits, the [Not For Profit Incorporators Handbook from the Attorney General](#) is helpful. For federal incorporations, Industry Canada has a wealth of information on their website.

1) **Name.** Decide on a name and order a NUANS search.

2) **Collect Information.** Gather the names, addresses, occupations and telephone numbers of at least three directors. Who will be the officers and members? What is the address for head office/registered office and mailing address? Who will be the auditor and what fiscal year will be used? What charitable, fundraising, and political, if any, activities will the charity carry out? What budget?

3) **Objects.** The objects of a charity are vitally important and set out the confines by which the charity can operate. One can look to the Not For Profit Incorporators Handbook for sample objects or to the CRA's recently published list of model objects. These lists are not always applicable and usually original drafting is required with objects.

4) **Application for Letters Patent.** One needs to prepare Application for Letters Patent. Whether the Non-profit will apply for charitable status will affect the content of the application for letters patent.

5) **By-laws.** There are no standard Ontario by-laws. There are federal "model" by-laws. The process of incorporation of a non-profit can be daunting and many non-profits do not have the funds to hire a lawyer so our law firm, Blumberg Segal LLP, has been working with Teranet, formerly Dye & Durham, Search & Registration and Corporate Supplies Division, to assist non-profits by providing a minute book package which includes standard by-laws for Ontario and Federal non-share capital corporations. This package was recently launched and some may find this helpful in organizing a small non-profit.

6) **Minute book and seal.** Once you receive the letters patent back you should create a minute book for the organization.

7) **Organizing Resolutions.** Resolutions to organize the non-profit include: adopting by-laws, appointing officers and directors, admitting members, appointing an auditor, authorizing charity application, etc.

8) **Extra Provincial Filings.** Arrange extra-provincial filings if necessary. For example a Federal corporation that will have its head office in Toronto will need to file a registration in Ontario.

9) **Prepare T2050: Application to Register a Charity Under the Income Tax Act.** The T2050 is 14 pages long and has 23 questions. You need to complete the form and obviously the answers to the questions can affect whether you receive registration. You will need to provide a detailed description of activities and a budget. When operating outside of Canada, you need to carefully consider the relationship between the Canadian and foreign charity, the degree of

direction and control of the foreign charity, and the appropriate structured arrangement with any intermediaries. If your charity will operate outside of Canada, you may want to review my article *Canadian Charities and Foreign Activities* at <http://www.globalphilanthropy.ca/>

10) **File T2050.** The T2050 must be filed with all necessary attachments such as letters patent, detailed statement of activities, by-laws, structured arrangement for foreign activities, etc. If you forget an attachment, CRA will send the application back to you a few months later and you are at the bottom of the pile again.

Some clients ask us for further resources on charity law and the CRA's perspective on charities. You might find the following links helpful:

CRA Main Charities Page:

<http://www.cra-arc.gc.ca/tx/chrts/menu-eng.html>

RC4108 Registered Charities and the Income Tax Act

<http://www.cra-arc.gc.ca/E/pub/tg/rc4108/README.html>

T4063 Registering a Charity for Income Tax Purposes

<http://www.cra-arc.gc.ca/E/pub/tg/t4063/>

T4033A Completing the Registered Charity Information Return

<http://www.cra-arc.gc.ca/E/pub/tg/t4033a/>

T2050 Application to Register a Charity Under the Income Tax Act

<http://www.cra-arc.gc.ca/E/pbg/tf/t2050/>

IC78-10R4 Books and Records Retention/Destruction

<http://www.cra-arc.gc.ca/E/pub/tp/ic78-10r4/>

IT110R3 Gifts and Official Donation Receipts

<http://www.cra-arc.gc.ca/E/pub/tp/it110r3/>

CRA Fundraising Proposed Guidelines

http://www.globalphilanthropy.ca/CRA_fundraising_policy

Top Ten Canadian Charity Law Issues

<http://www.globalphilanthropy.ca/>

There is no question that charity and philanthropy are the “in thing” right now and very cool and hip. If you do not care about charity, well your 16 year old kid probably does! Just as a person usually does not drive a Prius just because of fuel economy – driving a Prius says something about your values – being involved with charity and philanthropy says something about what is important to you. Now, I could be wrong about this point – my 7 year old thinks I am embarrassing, but my 4 year old wants desperately to be a charity lawyer and started crying when I told him that he cannot miss school and come with me to a charity annual meeting! All because it is popular and interesting does not mean that establishing a charity is for everyone. One should seriously consider the issues raised in this article before proceeding with setting up your own charity, just as driving a Prius or a bicycle may not be right answer for your transportation needs.

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