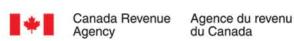




# Canada Revenue Agency: Charities Directorate Update

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Location BC  
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# Today's Topics

- Charities Directorate overview
- Review of 2007-2008:
  - Regulatory changes
  - Court activity
  - Initiatives
  - Policy developments
  - Compliance activities, statistics & issues
  - Assessment, Determinations and Monitoring activities and statistics
  - Client Service activities
  - Public Education and External Relations activities
- Looking ahead to 2008-2009

# Charities Directorate Overview

## ▪ Role of Charities Directorate:

- Ensures that all registered charities are compliant with the Income Tax Act
- Registers and monitors charities, Canadian amateur athletic associations, and national arts service organizations

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- The CRA is responsible for ensuring that all registered charities are in compliance with the *Income Tax Act*.
- The Charities Directorate registers and monitors charities, Canadian amateur athletic associations and national arts service organizations.
- We do it through a program of education, quality service, and responsible enforcement. If we do our job well, we help to build public confidence in the charitable regime and integrity in the charitable sector.
- We have approximately 250 staff in total, centralized in Ottawa. In addition, there are approximately 40 field auditors dedicated to the Charities Program across the country.

# Review: Regulatory Changes

## ▪ Budget 2007

- Capital gains on securities donated to private foundations exempt from tax
- Changes to excess corporate holdings for private foundations

## ▪ Budget 2008

- Exemption of certain unlisted shares held on March 18, 2007, from private foundation divestiture requirements
- Clarification of rules concerning divestment when private foundations hold entrusted shares

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## **Budget 2007**

### Capital Gains

- The Budget proposed that, effective March 19, 2007, where a taxpayer donates publicly-listed securities to a private foundation, the associated capital gains will be reduced to zero.
- These changes bring the treatment of donations of publicly-listed securities to private foundations in line with the treatment already afforded to such donations to charitable organizations and public foundations.

### Excess Corporate Holdings for private foundations

- Budget 2007 also introduced a compliance regime to limit shareholdings by private foundations
- A Private foundation may be required to report whenever it holds more than 2% of any share class and will be required to divest itself of shareholdings where the foundation:

- Holds more than 2% of any share class, and
- The combined holdings of the foundation and non-arm's length parties exceed 20%

Existing shareholdings of foundations are subject to a transitional period.

- As of April 30, 2008, T3010 Return packages sent out to private foundations have included a form to report excess holdings.

## **Budget 2008**

### Exemption of unlisted shares

The 2008 budget allows certain unlisted shares (those not listed on a designated exchange) to be exempt from the divestiture requirements outlined for private foundation in the 2007 budget.

Under the new regulations, unlisted shares held on March 18, 2007, may be considered exempt unless certain conditions apply.

## Regulatory Changes

- **New Form T3010B, *Registered Charity Information Return***

- Balance reducing administrative burden with compliance and public transparency needs
- Now a simple core form with topic related schedules that provide greater detail
- Eliminates detailed financial requirements for smaller charities not engaged in higher risk activities
- New thresholds means more charities only need complete core form
- For use in fiscal years ending on or after January 1, 2009

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- Higher risk activities – those which have been focus of abuse and compliance issues affecting credibility of sector and threatening the tax base
- Threshold – revenue \$100,000 or less, amounts of assets not used in charitable programs is \$25,000 or less, no current permission to accumulate funds
- Schedules:
  - Foundations
  - Activities outside Canada
  - Compensation
  - Confidential Data
  - Non-cash gifts
  - Detailed financial information

## Regulatory Changes

### ▪ Disbursement Quota

- An information campaign is underway to remind charitable organizations registered before March 23 2004 that additional requirement to disburse 3.5% of assets not used in charitable activities or administration applies as of January 2009

### ▪ Proposed Legislative Amendments

- “Split-receipting” legislation, changes to determining factors for designations
- Tax shelter rules regarding deemed FMV and repayment of limited recourse debts
- CRA is applying “split-receipting” rules, and designation changes including the “control test”

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#### **Disbursement Quota**

• 3.5% - applies to fiscal periods that begin in 2009. For example, if fiscal year end is September 30<sup>th</sup>, the 3.5% DQ requirement applies to fiscal period beginning October 1, 2009.

#### **Proposed amendments**

As of November 17, 2008, we do not yet know how or when the various proposed legislation which died on the order table will be reintroduced. The Bill contained a variety of pending technical amendments to the ITA

- “Split-receipting” legislation (Effective for gifts made after December 20, 2002)
- Tax shelter rules regarding deemed FMV and repayment of limited recourse debts (Effective December 5, 2003 and February 19, 2003)
- Replacement of the “contribution test” for foundations with the “control test” (applicable to fiscal years after 1999)
- Expansion of arm’s length test when determining a charity’s designation

# Review: Court Activity

## ▪ Supreme Court

- A.Y.S.A. Amateur Youth Soccer Association - Court upheld that promotion of sport is not a charitable purpose in its own right
- Redeemer Foundation – concerning audit powers, Court determined that donor lists are part of a charity's books and records which the CRA can obtain without judicial authorization

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### Supreme Court

• AYSA is the Amateur Youth Soccer Association which operates exclusively at the provincial level.

• It applied to the Canada Revenue Agency to become a "registered charity". The CRA refused to register A.Y.S.A. as a charity, finding that the courts had not held the promotion of sports to be a charitable purpose.

• The Federal Court of Appeal affirmed the decision, finding that the registered Canadian amateur athletic association provisions in s. 248(1) of the *ITA* provide charity-like treatment for amateur athletic associations only with respect to those which operate on a nationwide basis.

• AYSA appealed to the Supreme Court, which dismissed its appeal on October 5, 2007. Essentially, the decision said: "The organization must have as its main objective a purpose and activities that the common law will recognize as charitable. The A.Y.S.A. was unable to establish this to be the case."

Impact:

• The decision confirms that sport is not a charitable purpose in and of itself.

• In addition, for the second time in eight years (the other case was Vancouver Society), the Supreme Court expressed its reluctance to expand common law charitable purposes where such an expansion would not be incremental. It stated that this is a decision that should be left to Parliament.

• We are posting a draft policy on sports and charities, providing insight into how CRA will interpret and apply the SCC decision, for public comment this month.

Redeemer: Redeemer is a registered charity affiliated with a college. It operates a program under which charitable donations finance students' tuition and related costs.

• The CRA determined that the charity was issuing receipts for donations that were intended to cover tuition costs for the donors' own children. During an audit in 2003, the CRA requested a list of all donors and all recipients of loans, which Redeemer provided.

• In June 2004, the CRA requested donor lists for the 2002 and 2003 taxation years. Redeemer refused to provide another list without a court order. The CRA issued notices of reassessment to donors.

• Redeemer applied for judicial review of the CRA's request for third party donor information and

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## Court Activity

### ▪ Federal Court of Appeal

- Two significant decisions that support the CRA expediting revocation of charities involved in abusive tax shelter arrangements
- April 2008, International Charity Association Network (ICAN), and in October 2008, Choson Kallah Fund of Toronto
- In both cases, the Court dismissed the charities' applications to delay revocation until their objections against the intention to revoke were decided

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- The strategy is to aggressively address tax shelter abuse by registered organizations.
- There is a spectrum of compliance activities, from providing information, to compliance agreements, to financial penalties to revocation.
- Generally, the first step in addressing non-compliance is to educate.
- In egregious cases of wilful abuse and public harm, the CRA will move directly to revocation and now does so in the most expeditious manner possible.
- In these cases, the Directorate will revoke a charity's registration within 30 days of issuing a notice of intent to do so, unless the charity obtains a stay order from the Federal Court of Appeal.

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• International Charity Association Network (ICAN): On April 2, 2008 the Federal Court of Appeal refused ICAN's application to delay its revocation

• Choson Kallah Fund of Toronto – On October 17, 2008 the Federal Court of Appeal refused Choson Kallah's application to delay its revocation

## Court Activity

### ▪ Tax Court

- January 2008, the Court upheld the CRA's first suspension of a charity's authority to issue donation receipts
- International Charity Association Network (ICAN) was suspended for failure to maintain adequate books and records

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### Tax Court

- The CRA issued its first suspension of a charity on November 29, 2007, for failure to maintain books and records relating to its involvement with tax shelter arrangements. This is the first time the CRA has used this power.
- It is our position that the Charity failed to maintain sufficient documentation to support payments and expenditures including \$26,372,685 in fundraising payments and \$244,323,422 in charitable program expenditures. Further, we acted because in our view the Charity has failed to provide required documentation to the CRA. It is the CRA's position, that these are serious contraventions of the *Income Tax Act* and warrant the immediate suspension of the Charity.
- On November 23, 2007, ICAN filed an appeal against the suspension which was heard in the Tax Court on December 10, 2007. The judgment went in favour of the CRA: "To postpone the suspension in the circumstances would handcuff the CRA's capacity to administer the charities' provisions of the *Act*, to ensure compliance and protect public interest."

### Impact:

- In making its decision, the Tax Court of Canada determined in accordance with the test set up by subsection 188.2(5) of the *Income Tax Act* that it was not "just and equitable" to grant ICAN's application for postponement of the suspension to issue official tax receipts, finding that "ICAN [had] not met the burden of proof incumbent on it to demonstrate irreparable harm on its side."

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## Initiative – Small and Rural Charities Initiative

- Goal was to improve and enhance services and reduce the administrative burden for small and rural charities
- A report and Joint Action Plan, developed collaboratively by charity representatives and the CRA, will be released this year
- The Charities Directorate has started to address the Joint Action Plan by making improvements to its Web site and developing new educational tools for charities

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### Small and Rural Charities Initiative:

- The Initiative was launched to better understand the unique service needs and compliance challenges of small and rural charitable organizations.
- A series of consultations with small and rural charities were held across Canada during the October 2007.
- Following the consultations, a panel of nine representatives from small and rural charities was formed.
- In collaboration with the CRA, the Panel developed a series of action items that will improve and enhance services and reduce the administrative burden for small and rural charities.
- The Panel and the CRA are currently finalising the Report outlining the Initiative and the Joint Action Plan

The Charities Directorate has already started to address some of the items identified in the Joint Action Plan. For instance:

- The Charities and Giving Web site has been improved to make it easier for users to quickly find the information they are looking for and new content, such as a section on operating a charity, has been added to the site.
- Checklists have been developed to help charities identify their key administrative and legislative requirements.

We are also planning a number of activities in the current fiscal year to address items in the Joint Action Plan:

- We will increase efforts to ensure documents are clearly written and easy to understand and will ensure the language and quality are consistent in both French and English.
- Compliance letters, such as intentions to revoke, sanctions and penalties will be sent to a member of the Board of Directors as well as the charity's authorised representative.
- Training will be developed for agents who provide information through the 1-800 line to help them ask questions that will allow them to better understand the caller's needs

# Review: Policy Developments

- Policy activities in 2007-2008:
  - Guidelines for Research as a Charitable Activity
  - Charitable Work and Ethnocultural Groups - Information on registering as a charity
  - Volunteerism
  - Umbrella organizations
- Policies in development 2008-2009:
  - Sport
  - Fundraising
  - Religion
  - Protection of the Environment
- Model Objects:
  - List of objects, acceptable for registration, will be posted on the Web site this summer.

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**We have recently completed, or are in the final stages of, a number of policy development projects:**

**Research as a charitable activity**

- The document sets out the proposed policy of the CRA's Charities Directorate concerning the legal and administrative requirements a registered charity is expected to fulfil to conduct or **fund** research as a charitable activity. Consultation on the Research as a Charitable Activity policy closed on February 28, 2008. Now, we are just waiting for comments from the CBA before finalizing the document.

**Ethnocultural Groups:**

- Activities that seek to eliminate disadvantages experienced by members of ethnocultural groups and to end discrimination may be charitable.
- We may register an ethnocultural organization as a charity when all the work the organization does has a public benefit and the work fits into one of the four charitable categories recognized by the courts and the ITA.

**Volunteerism:**

- We are in the final stages of publishing our policy that sets out when an organization that promotes volunteerism may qualify for registered charity status.

**Umbrella Organizations**

- The policy on umbrella organizations outlines what is required of umbrella organizations if they wish to apply for registered charity status.

## IN DEVELOPMENT

**Sport**

- The CRA will soon be posting a revised policy on sport as a charitable activity to reflect the Supreme Court Decision in the AYSA case that I discussed earlier.

**Fundraising Policy:**

- The CRA has been developing a fundraising policy since last year.
- The goal of the CRA's Fundraising Policy is to ensure the highest degree of compliance to protect the integrity of the tax system and maintain trust in the charitable sector. The new policy will apply to all registered charities and applies to both receipted and non-receipted fundraising.

## Review: Compliance Activities

- Registered Charities and Tax Shelters - CRA's Approach:
  - Re-assessment of participants
  - Audit of all participating charities
- Statistics
  - 65 registered charities and RCAAAs identified as being involved
  - Approximately 20 audits still in progress
  - Audits completed/closed to date have resulted in:
    - 20 revocations for cause (plus 3 proposed revocations proceeding through the courts)
    - 5 closed – minimal involvement
    - 2 compliance agreements
    - 2 education letters

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### BACKGROUND

Since 2003, despite the introduction of legislation to combat such arrangements, tax shelter schemes have continued to draw in investors. It is estimated that there are approximately:

- 147,530 donors and
- \$4.7 billion in donations.

In 2007 alone the numbers are approximately :

- 30,000 donors
- \$827 million in donations claimed

Tax Shelter Arrangements make many grand claims as to the good they are achieving. The reality, based on CRA experience to date:

- Most of the money/property involved in these arrangements simply doesn't exist or is grossly overvalued
- Proportionately little money is actually retained by the Charity

### CRA APPROACH

- Aggressive Tax Planning Division is currently proceeding with the re-assessment of tens of thousands of participants for hundreds of millions of dollars
- At a minimum donations are being re-assessed and in some cases the gift is being reduced to zero.
- Third-party penalties will be considered against promoters of these arrangements and other third-parties.

## Compliance Activities cont'd

### Fraudulent Receipting

- In 2004 CRA received information from an informant - Sale of donation receipts 10% face value
- Since that time more than 120 files screened for audit
- 86 audits completed – 43 revoked
- Many based in southern Ontario
- Tax preparers involved – maximizing refunds
- Numerous cases referred to Enforcement
- Some prosecutions already completed
- Potential re-assessments of donors 100,000-135,000

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Aside from the obvious message which is to not get involved in fraudulent receipting, I'm telling you about this issue because as a result of this issue the CRA is aggressively pursuing and verifying donation amounts. You should be aware that the CRA may request proof that a donation was made so more than the receipt could be required before the CRA allows the donation claim.

## Review: Compliance Statistics

- 790 charity audits conducted in 2007-2008

Audit Results:

Compliant	134	17%
Education	419	53%
Compliance Agreement	147	18.5%
Revocation for Cause	52	6.5%
All Other	38	5%

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### COMPLIANCE STATISTICS

- Between April 1, 2007 and March 31, 2008, 790 charities audits were completed. The table provides a breakdown of the outcomes.
- “All Other” includes: voluntary revocations, annulments, pre-registration audits, Part V tax audits.

## Review: Compliance Issues

- Five major compliance issues (2007-2008)

Donation receipts Incomplete / inaccurate / false	89%
T-3010 returns Incomplete / inaccurate information	72%
Books and records Insufficient or non-existent	71%
Gifting to non-qualified donees	16%
Non charitable objects/activities	13%

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### COMPLIANCE ISSUES:

This slide highlights the 5 major compliance issues identified during audits in 2007-2008 fiscal year.

- Incomplete, inaccurate or false donation receipts were by far the most common compliance issue. 89% of the audits conducted found this item to be a problem.
- Problems with official receipts is very common because charities do not always include everything that regulation 3500 of the ITA requires to be on the receipts.

The audit findings also reveal other challenges facing registered charities, including:

- excessive amounts of resources being devoted to non-charitable activities (fundraising, political, or social activities);
- non-charitable activities being carried out;
- undue benefits to members of the charity being allowed; and
- difficulty meeting its disbursement quota;

## Review: Compliance Statistics

- Filing Compliance for 2006 T3010 Returns (82,690 charities)

Timeliness of Filing (from FYE)	Total	Cumulative Total
2 months	2,306	2,306 (3%)
4 months	12,353	14,659 (18%)
6 months	51,501	66,160 (80%)
7 months	3,165	69,325 (84%)
8 months	2,109	71,434 (86%)
9 months	1,157	72,591 (88%)
10 months	915	73,506 (89%)
Filed after 10 months	1,759	75,262 (91%)

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### FILING COMPLIANCE

- The table on this slide shows a breakdown of the filing time lines for 2006 T3010 Returns.
- As you can see, 80% of charities filed their T3010s on time, within 6 months of their fiscal year end.
- The number of charities in the "Filed after 10 months" category will change as returns come in over subsequent months.
- During the 2007-2008 fiscal year, 717 charities were revoked for failure to file, this is down from 1,693 in 2006-2007.
- We are hoping to begin to see a downward trend in revocations for failure to file the T3010 due to intensified efforts to keep well-intentioned charities in the system. Before we initiate revocation for failure to file the T3010, a reminder notice is sent out, followed by a proposed revocation notice and then every charity gets a telephone call, and if none of those efforts are successful, we'll proceed with revocation. While this process has been in place for some time, we are making extra effort to actually speak to a representative from the charity rather than simply leaving a message on an answering machine.
- In support of this:
  - 61,466 Reminder to File Notices (TX11D) were sent 5 months after fiscal period end to 74% of charities reminding them to file; and
  - 11,652 Late Filing Notices (T2051A) were sent to 14% of charities reminding them to file, if their returns were not received within 7 months of fiscal period end.

## Review: Assessment, Determinations and Monitoring

- 2007-2008:
  - 4,261 applications for registration were received; 3,655 new applications and 606 re-registrations
  - 3,367 applications were reviewed
  - 2,006 charities were registered
  - 357 organizations were denied registration

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### REVIEW: DETERMINATIONS

- Now, let's take a look at the applications for registration that the Charities Directorate has received over the last year.
- Approximately 86% (3,655) of the applications for registration received during the 2007-2008 fiscal year were new and 14% (606) were applications for re-registration.

The Charities Directorate reviewed 3,367 applications for registration during this time resulting in:

- 2,006 organizations granted registered status;
- 357 organizations were denied registration

## Review: Client Service Activities

- New and updated products charities:
  - Redesign of the Charities and Giving Web site
  - Checklist for charities
  - Fillable forms are now available on the Charities and Giving Web site
  - Two types of Charity Information Sessions – General and Special

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### **Redesign of the Charities and Giving Web site:**

The new format uses a new question and answer structure that is arranged in the following manner:

- First - by areas of interest (for example, Applying for registration, Operating a registered charity, Information for donors);
- Next – it is divided by subject matter (for example, Issuing receipts, Annual information return, Audits and sanctions);
- And then subdivided to answer the specific questions you might have (for example, What information is required on a receipt? How do we change our fiscal period end? What is the disbursement quota?).

New content has been added to the web site including:

- Links to publications, policy statements, and definitions
- Information on how to operate a registered charity
- frequently asked questions, a glossary of commonly used terms
- In addition, all documents on the Web site are available in both PDF and HTML; the HTML version is easier for dial-up Internet users to access.
- Links to and contact information for provincial and territorial requirements.

### **Checklist:**

- As previously mentioned the CRA has developed and has mailed two copies of a checklist to all charities; one for the Board of Directors and one for the Treasurer.
- The checklist contains basic information on maintaining charitable registration. More detailed checklists are available on the Charities and Giving Web site.

### **Fillable forms**

New fillable forms, such as the T3010 Return, are now available on the Charities and Giving Web site.

## Review: Public Education & External Relations

- Public education activities in 2007-2008:
  - Direct mail campaign to 400,000 households
  - Public notices in 80 newspapers across the country
  - 19 trade shows and conferences nationally
  - Education leaflets online in 14 languages
  - Collaboration with four provinces on joint educational products (calendars and leaflets)
- Thinking about Charities: 2008 public opinion research
- Harmonization of Corporation Income Tax Return (T2) data with the province of Ontario

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### Thinking about Charities – 2007 Public Opinion Survey:

- The Charities Directorate's second public opinion survey, titled *Thinking About Charities*, was completed in 2008.
- The survey was a follow up to the Directorate's first public opinion survey that was conducted in 2005 to assess Canadians' knowledge of charity regulation in Canada.
- The findings of the survey were used to develop a number of public education products.
- The 2008 survey was conducted to measure the impact of the products on Canadians knowledge of charity regulation.

### Findings from the 2008 survey

- The 2008 survey has shown that the number of people who believe that an organization is responsible for monitoring charities in Canada has increased significantly from 29% in 2005 to 42 % this year.
- Almost 40% of respondents associated the term "registered" with some form of government. The percentage of respondents who could name the CRA has the regulator of charity increased from 2% in 2005 to 4% in 2008.

### Some of the other findings of the survey:

- 36% have seen advertising or information on how to donate wisely (33% in 2005)

## Looking Ahead: 2008-2009

- Directing efforts to reducing inventories and delays in resolving applications
- Aggressively addressing all tax shelter and false receipting abuse by registered organizations which threatens the integrity of tax system

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- During the current fiscal year, we will be giving priority to addressing the applications backlog.
- We will work on moving applications through in a more timely manner and would like to ask you, as professionals working with charities, for help in ensuring organizations are preparing complete applications. The time invested in a well-prepared application package can make the process much smoother for all concerned.

We have developed some tips to help you help avoid delay in the application process:

### **1. Be aware of the Act under which you are incorporating**

- Incorporation under various federal, provincial or territorial statutes such as the Business Corporations Acts (Saskatchewan), Companies Acts (Alberta), Co-operatives Acts (N.B., N.S.) and many Business Corporations and Companies Acts might raise issues
- Unalterable clauses, particularly under the B.C. Society Act may force dissolution and re-incorporation. As well, the BC Society Act does not allow a charitable purpose to be abandoned.
- The Ontario Public Guardian and Trustee requires that upon dissolution, all remaining property be distributed or disposed of to charities registered under the Income Tax Act, as opposed to a "qualified donee". This also applies to objects of foundations incorporated in Ontario. While the Ontario Public Guardian and Trustee may recognize the organization as a charity, we might not. Further, being recognized as a charity by the province of Ontario does not give the organization the right to issue charitable receipts.

### **2. Ensure objects clearly reflect the organization's purpose.**

- The Directorate's model objects will be available this summer.
- Each object must be supported with a clear description of activities, so select only those objects that are applicable to the applicant and ensure they reflect what the organization is currently doing or will be doing in the near future as opposed to what the organization may or may not be doing in the distant future.

## Looking Ahead: 2008-2009

- Build on technology to improve service to charities and minimize administrative demands
  - My BA (Business Account) - The Charities Directorate is planning to release a basic suite of services for registered charities in October 2009
  - 2D bar coding of annual return - Two Dimensional bar coding will be introduced with the T3010B (09) allowing information to be scanned and directly recorded in CRA database

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The following MyBA services are available to registered charities now through existing CRA programs:

- Authorize or manage representatives
- Manage my profile on BN
- View all addresses (physical location, mailing and books and records)
- Access to BN account functionality (GST, Payroll and Corporation, if applicable)

The following MyBA services will be available to registered charities in planned future releases:

- View and modify operating name
- Add BN account
- View/Update Business Activity
- View owner
- View/Delete Contacts
- Change address (mailing, physical, address where the records are located) Note that this feature is contingent on the acquisition and development of the enterprise CASE tool

## **Looking Ahead: 2009 and Beyond**

- Continue implementing Joint Action Plan from Small and Rural Charities Report
- Actively consult with external stakeholders when developing new policies and identifying technical issues
- Ongoing enhancements to Web site

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- We will continue to follow through and plan for the implementation of the Joint Action Plan from the Small and Rural Charities Report.
- We will continue to actively consult external stakeholders as new policies are being developed
- We are also revising our Charities section on our Web site to provide information on penalties and suspensions will include charity name, business number, reasons and amount if a penalty, effective date.

**Thank you.**

**Please visit our Web site at:  
[www.cra.gc.ca/charities](http://www.cra.gc.ca/charities)**



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