

# Canadian Charities and Foreign Activities

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January 14, 2008



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# Overview

- Theme – There are rules for Canadian charities operating abroad, they are not too onerous, focus on control, monitoring and records.
- 82,000 Charities –every charity is different – objects, areas of charitable work, philosophy, risk tolerance, public profile, donors and level of government support, independent versus international affiliations.
- CRA as “silent” partner, protecting taxpayers.



# Introduction

- Importance
- Good works outside Charitable realm
- Framework for Charities operating Abroad – Corporate, CRA views and documents, Ways to Carry on Own Activities, Cases
- Concerns and Traps

Disclaimer - presentation is information, not legal advice



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# Importance

- Great Challenge - 1.2 billion people live on less than a \$1 per day, 11 million children under 5 die each year, 1 billion people lack access to clean water, neglected diseases, HIV/AIDS etc
- World is getting smaller – SARs, Tsunami
- Effect – \$1 in Canada achieves \$40 in India



# Importance (Cont)

- fulfill objects of charity
- win/win (Canadian charity and foreign charity)
- staff morale and retention
- donor and stakeholder interest
- excellence



# Importance (Cont) – Canadian charities foreign expenditures

- 2002 - 1.4 B
- 2004 - 1.8B
- 2005 - 2.1B



# CRA Charities Partnership and Outreach Program Funding Priorities

- 1. Conducting foreign activities in compliance with a charity's obligations under the *Income Tax Act*.

Increasingly, registered charities are conducting some of their charitable activities internationally. As charitable activities are conducted beyond Canadian borders, a number of control or compliance issues may arise that could result in a charity being non-compliant with respect to its obligations under the *Income Tax Act*.

- 2. Fundraising, receipting, and maintaining books and records in compliance with a charity's obligations under the *Income Tax Act*.

See CRA website.



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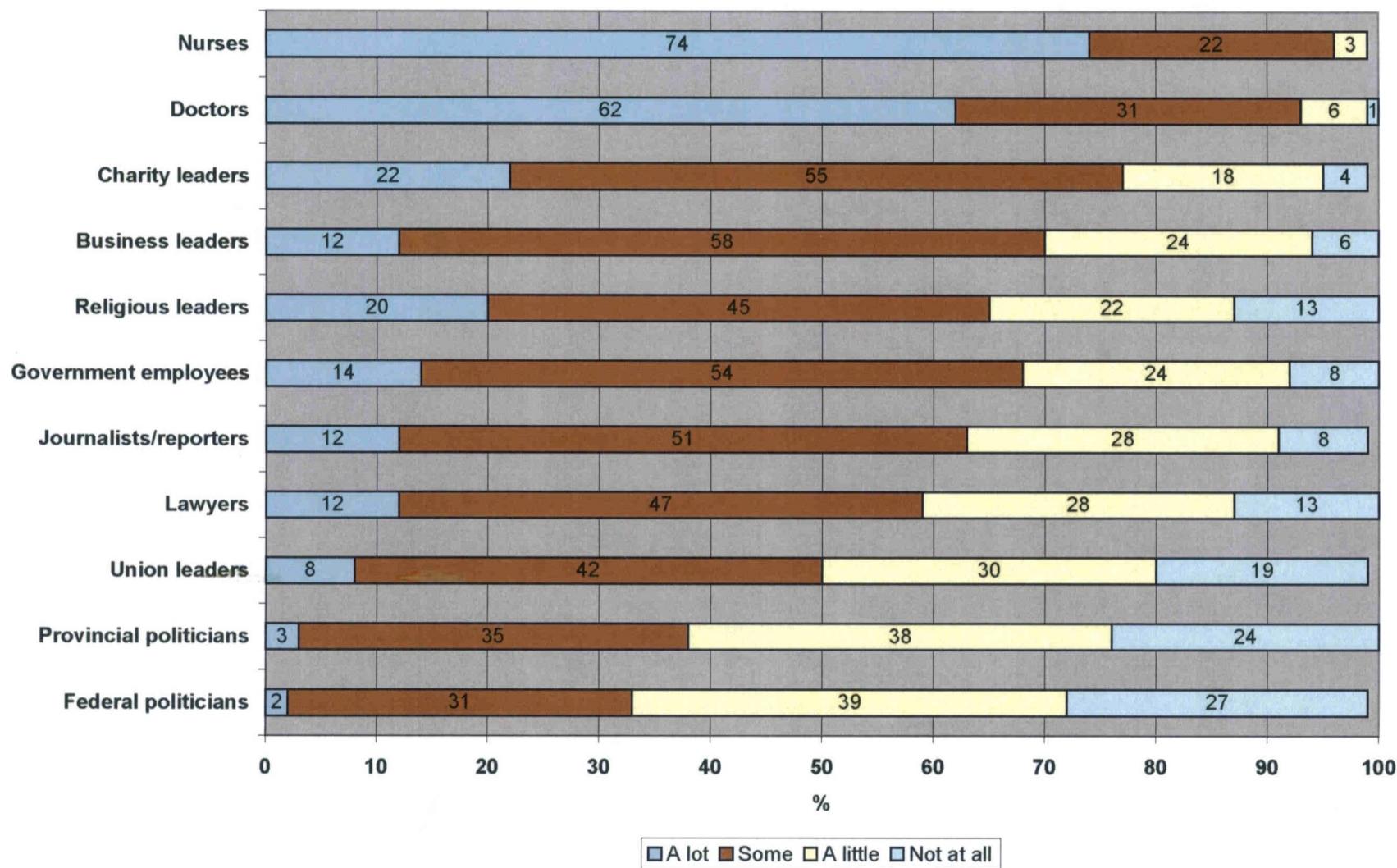
# Integrity

Of the ten types of charities in Canada according to a recent survey Canadians are most likely to trust hospitals a lot or some (89%), trust charities that focus on children/children's activities (85%), trust health prevention/health research (84%), trust charities that focus on education (77%) and least likely to trust international development charities (57%).

**Talking About Charities 2006: Tracking Canadian's Opinions About Charities and The Issues Affecting Them by Ipsos Reid for The Muttart Foundation, September 2006**



### How much trust do you have in ... (Canada)



# Carrying on Good Works Abroad outside of the CRA charity regulation

- personal donations of cash or in kind items to foreign charities, no tax receipt
- business – donation, sponsorship, advertising, doing business in developing countries, CSR, etc
- For profit “non-profit” -Google.org, micro-loans
- non-profit without charitable status – if no need to issue tax receipts.



# Carrying on Good Works Abroad outside of the CRA Charity regulation

- volunteering –at home and abroad
- gifts to family, friends, former employees  
abroad –remittances



# Operating Abroad – Corporate and Trust law issues

- Letters Patent/Articles of Incorporation – objects and restrictions –avoiding ultra vires activities
- By-laws and resolutions
- Trusts agreement –scope
- Donor restricted gifts



# 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.

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# **Objects that may require modifications or additions**

To establish and maintain a hospital.

To establish and maintain a hospital in Mississauga, Ontario.

To receive and maintain a fund or funds and to apply all or part of the principal and income therefrom, from time to time, to charitable organizations that are also registered charities under the Income Tax Act (Canada).



# **CRA – Considerations that apply to all charities and those operating abroad**

- no partisan political activities
- limited non partisan political activities
- only undertake charitable activities  
(relieve poverty, advance education, advance religion, benefit community as a whole)
- cannot violate Canadian public policy



# CRA Views on Canadian Charities operating outside of Canada

- RC4106 “Registered Charities Operating Outside Canada”
- Registered Charities Newsletters
- Information Letters
- Policy Statements
- Consultation on Proposed Policy



# CRA – Considerations that apply to Canadian charities operating abroad

- The Canadian Income Tax Act allows charities to conduct their charitable purposes by
  - 1) giving monies to another "qualified donee" (usually a Canadian charity but also includes the United Nations and a small number of foreign entities) or
    - or
  - 2) their own activities (at home or abroad)
- No third option - A Canadian charity cannot just transfer money to a foreign charity.



# Gifts to qualified donees – Option 1

- registered charities, registered Canadian amateur athletic assoc., tax exempt housing corporations, Canadian municipalities
- United Nation and its agencies
- certain Universities outside Canada that student body of which ordinarily include students from Canada(Reg 3503) ("Schedule VIII Universities" or "prescribed universities")



# Gifts to qualified donees(Continued)

- a charitable organization outside of Canada to which Her Majesty in right of Canada (federal government or its agents) has made a gift in the corporation's taxation year or the preceding 12 months. (see CRA Circular 84-3R5 and Attachment to IC 84-3R5, Gifts to Certain Charitable Organizations Outside Canada)



# Gifts to qualified donees(Continued)

## □ Examples of Her Majesty in right of Canada gifts:

Aga Khan Foundation, Aga Khan University Foundation, Buddhist Compassion Relief Tzu Chi Foundation R.O.C., Canadian International School of Hong Kong Limited, Cayman Islands National Recovery Fund, Center for Strategic and International Studies (United States), Council for Canadian American Relations, Inc., International Peace Garden Inc., Stedelijk Museum (Holland), The Centre for our Common Future, The Foundation for Canadian Studies in the United Kingdom, The State Hermitage Museum Russia, Woodrow Wilson International Centre for Scholars United States, Village Focus International, The American Assembly United States



# Gifts to qualified donees(Continued)

- Article XXI(6) Canada-US Income Tax Convention
- Canadian donor receives tax credit, limited to Canadian donor's US source income to US recognized charity. ie. Would US charity, if Canadian organization, have been charitable?



# **“Own Activities” – OPTION 2 – alternative to gifts to qualified donees**

1. not passive
2. not conduit
3. control (amount depends on circumstance)
4. direction (amount depends on circumstance)
5. employee or volunteer – otherwise written  
agreement (agency, contractor, JV, cooperative  
partnership)



# RC 4106 – “Own activities”

- assurances that other organization is able to deliver services (due diligence)
- expenses must further objects of Canadian Charity and constitute charitable activities
- adequate written agreement
- periodic, specific instructions
- regularly monitors project and evidence
- periodic payments, right to discontinue, in certain circumstances



# **Ways for Canadian Registered Charity to Carry on “Own Activities”**

1. employee in foreign country
2. agency agreement
3. contractor
4. joint venture agreement/joint ministry agreement
5. cooperative partnership agreement



# 1) Employees or Volunteers

- Can be Canadian employees or volunteers or locals.
- best model? eg. MSF, missionaries
- skills, beliefs, control, reporting, language, returning workers
- concerns – local knowledge, costs, sustainability, danger,



## 2) Agency Agreement

- Canadian charity appoints agent abroad to conduct Canadian charity's activities with Canadian charity providing funding and control
- most common
- need written agency agreement
- concern – charity liability for agents actions, agents ignore agreement, hierarchy



### 3) Contractor Agreement

- Canadian charity hires foreign contractor to conduct certain work.
- eg. drill well
- need written agreement
- not agent – business agreement, limited liability



## 4) Joint Venture/Joint Ministry Agreement

- Canadian charity can work with a foreign organization jointly pursuant to a joint venture/ministry agreement (JVA/JMA)
- pool resources to carry out certain works
- need written JVA or JMA
- control by CC at least in proportion to CC contribution



## 5) Cooperative Partnership Agreement

- CC works with foreign organization and each contributes different resources and undertakes a different part of the project.
- need Cooperative Partnership Agreement.
- disbursement quota concern if CC does all admin services for project



# Written Agreements –Part 1

- 1) names and addresses of all parties
- 2) duration of agreement/project
- 3) description of specific activities
- 4) written progress reports and right to inspect
- 5) payments by instalment based on reasonable progress



# Written Agreements –Part 2

- 6) withdrawing or withholding funds at charities discretion
- 7) adequate records in Canada
- 8) agent – adequate records and funds segregated for Canadian Charity's funds
- 9) signature of all parties
- 10) date



# Transfer of Property in Foreign Country

- Canadian charity should maintain ownership and control over assets
- can sell assets at FMV or transfer to qualified donee
- exception
  - 1) can transfer assets if charitable ('charitable goods policy')—eg. food to hungry, prayer books
  - 2) prohibition on foreign ownership of real estate
  - 3) development work –can turn over to local control – need assurances of continued community benefit



# “Charitable Goods Policy”

Equally acceptable are transfers of goods and services that are directed to a particular use by the very nature of the goods and services so transferred.

Examples of such transfers include:

- transfers, by a research organization, of books and scientific reports to anyone interested (including foreign governments, libraries, schools, etc.),
- transfers of books - on a subject of particular interest to an educational charity - to public libraries in major cities all over the world,
- transfers of medical supplies to a refugee camp,
- transfers of food, blankets, etc. to a charity coping with a natural disaster,
- transfers of drugs, medical equipment, etc. to poorly equipped hospitals,
- transfers of personnel to schools or hospitals (on loan).

1985 CRA Staff memo cited in CMDA Case



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# Charitable Goods Policy – Beware.

- Transfers of goods or services can more easily be viewed as charitable activities per se. The transfer of a piece of equipment that is meant to be used **only** for charitable purposes to an organization that will **clearly** use it for such purposes is **likely** to be a charitable activity. (MDA Case) [emphasis added]
- CRA will look at nature of goods, which organization receives goods and controls placed



# Charitable Goods Policy – Beware.

- ❑ is it a policy?
- ❑ suspicious transfers, sham transactions.
- ❑ when to use – small amounts, emergency, very reputable, non-political, non-sectarian, organization acting as representative.



# Canadian Cases on Registered Charities Operating Abroad

- Tel-Aviv Foundation Case
- Magen David Adom Case
- Bayit Lepletot Case
- Travel Just



# **Canadian Committee for the Tel Aviv Foundation v. Canada (2002 FCA 72)**

- promotion of education and relief of poverty in Tel-Aviv by agency agreement
- 1990 audit (lack documents of overseas expenditures etc)
- 1993 audit –new Israeli management not aware of Agency Agreement



# Tel Aviv Foundation v. Canada (cont.)

- Foundation made undertaking in 1996 to “conform strictly to the requirements of Revenue Canada, including the specific provisions of the Agency Agreement”.
- 1997 audit – CRA says violated agency agreement in little control over funds disbursed to agent(just conduit and not controlling), cannot show reporting, funds of Foundation not kept separate from agent, receipt



# Tel Aviv Foundation v. Canada (cont.)

and T3010 and T4 irregularities, Foundation did not authorize projects, grant to Air Force Museum in Beersheva (outside of objects - ultra vires), no evidence of alleged oral arrangements that superceded agency agreement.

- FCA in 2002 finds against Foundation



# Tel Aviv Foundation –Lessons Learned

- stay within your objects
- have agreement but also follow it –control projects and have reporting
- undertakings must be strictly complied with
- avoid military in foreign country?
- changes to agreements should be in writing



# **Canadian Magen David Adom for Israel and MNR (2002 FCA 323)**

- object – To donate emergency medical supplies and ambulances directly to the people of Israel
- CMDA appointed Canadian representative in Israel to implement
- 1986 audit – concerns – funds to US MDA for purchasing ambulances, not directly to General Motors, and also no agency agr. with MDA in Israel and no control over ambulances



# Canadian Magen David Adom (cont)

- CMDA acknowledges need for agency agreement, but does not enter into one, MDA in Israel is not interested
- charitable goods policy but sometimes expenditures considered remote
- T3010 - magnetic punch card system – should be admin, not charity, CRA disapproves of expense



# Canadian Magen David Adom (cont)

- DQ shortfall –\$169,000
- audit of 1993 and 1995, 1996 years
- concerns – no agency agreement, persistent DQ problems, non-charitable expenditures like bullet proof vests (too indirect/can be used by anyone), not “emergency medical supplies” –objects.
- CMDA says no need for agency agreement, no DQ problem, defends bullet proof vests



# Canadian Magen David Adom (cont)

- public policy concern – supporting permanence of settlements in West Bank –no interpretation bulletin on this –must be “definite and somehow officially declared and implemented policy”
- transfer of capital assets (ambulance) to MDA in Israel and one to IDF after agency agreement. Ambulances and telecom equipment can be used for non-charitable purposes



# Canadian Magen David Adom (cont)

- 2001 notice of revocation and FCA dismisses appeal and CMDA loses status
- finds that no public policy issue here, but concern over:
  - 1) agent “not effectively authorized, controlled and monitored by the charity”
  - 2) equipment not only used for charitable purposes and including concerns of involvement by agent with Israeli military operations



# Magen David Adom –Lessons Learned

- ❑ CRA will go after powerful and good charities
- ❑ need for written agreement
- ❑ disbursement quota
- ❑ no donations of equipment to foreign military
- ❑ who wants a 16 year audit?



# Bayit Lepletot, 2006 FCA 128 (March 28, 2006)

- Canadian Charity deals with Rabbi in Israel who “presumably” exercises some control over Israeli charity with similar name to the Canadian Charity. But no evidence of his control over charitable works
- Agent can carry on charitable work but it must be shown that the agent is actually carrying on the work. Not sufficient for agent to be part of another organization that does work. No factual basis for arguing delegation. Status revoked.



# Travel Just, 2006 FCA 343 (October 24, 2006)

- application for charitable status – ethical tourism –deemed refusal and appeal
- OBJECTS a. ...to create and develop model tourism development projects that contribute to the realization of international human rights and environmental norms and that achieve social and conservation aims that are in harmony with economic development aims for the particular region; ...
- concerns – vague/subjective objects and concern with private benefit



# **“Frequency of Various Type of Non-Compliance by Registered Charities”**

- 1995-2001 – 58 revocations of charities by CRA (except non filing of T3010s)
- revocation usually numerous problems
- Lack of control over foreign activities (37 instances) – educational letter (16%), Undertaking letter (62%), Revocation (21%)

Source: Background paper by Diana Laing, John Skelton and Judy Torrance, for the Voluntary Sector Initiative.



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# Concerns and Traps

1. terrorism
2. bribery and corruption
3. fraud and illegal charity tax shelters
4. money laundering
5. private benefits



# Concerns and Traps (continued)

6. logistics/security of staff abroad
7. ethical issues
8. cultural, religious, gender issues.
9. IP issues (trademark, copyright, trade secrets, licences)
10. Legal constraints outside of Canada (eg. Russia, foreign currency restrictions, land)



# Concerns and Traps (continued)

11. donor and CIDA constraints
12. books and records (in Canada, official language, frequency, types)



# 1) Terrorism

- Charities Registration (Security Information) Act (Canada) – disqualifies organizations
- Charities in the International Context (CRA)
- U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities.
- UK –Operational Guidance – Charities and Terrorism (OG96)



# Terrorism –U.S. Treasury Best Practices

- Governance, Disclosure, Accountability
- Financing Procedures
- name of organization in English, jurisdiction in which operates, searches (public filings, public databases and anti-terrorism lists), no cash, name and DOB of key employees, certifications by organization, bank references, periodic reporting, on-sight audits if appropriate



# Terrorism - UK –Operational Guidance

- ❑ rare but possible
- ❑ no links to terrorist organizations
- ❑ report to proper authorities any allegations
- ❑ trustees are accountable.
- ❑ terrorists – raising money, smuggle people, schools for recruitment/ training, propaganda, money laundering



# Terrorism - UK (continued)

- ❑ beware of large donation from unknown individuals, verify
- ❑ donations conditional on certain organization in field being used
- ❑ offers of cash for certain period of time, no interest, but principal to be returned. Or principal to be returned in different currency
- ❑ concern about 'hawala' system of money transfer – need paper trail



## 2. Bribery and Corruption

- Corruption of Foreign Public Officials Act (Canada)
- definition of official and bribe are broad
- CIDA also has “Protocol for Dealing with Allegations of Corruption” – requires disclosure of previous offences etc.



### 3. Fraud and Tax Shelters

- fraudulent solicitations –advance fee fraud
- internal fraud
- fraud by agent, contractor
- scam fundraising and trusts
  - Gifting trust arrangements
  - Buy low, donate high
  - Leveraged cash donations



## 4. Money Laundering

- ❑ Criminals/terrorists conceal illegal funds and convert to seemingly legitimate funds.
- ❑ currency exchange/electronic fund transfer
- ❑ interest free loans
- ❑ co-mingling with legitimate funds
- ❑ suspicious cash transactions



## 5. Private versus Public Benefits

- ❑ A private benefit occurs when one of the reasons for the organization's existence is to confer individual benefits to a limited group of persons on the basis of criteria that are not relevant to the charitable purpose at hand. Are private benefits incidental, reasonable?
- ❑ benefit should be tangible, public-at-large or sufficient segment of the public, not restrict delivery of the benefits to a certain group or class of persons without adequate justification, organization cannot charge fees for its services where the effect of the charge would be to unduly exclude members of the public. CPS-024



## 6. Logistics/Security of Staff Abroad

- Assessment and Risk Management
- Basic personal and team security training
- Civil and military coordination
- Security policy and Crisis management
- see RedR.org



## 7. Ethical Issues

- cooperation versus control between CC and agent/JV
- choosing countries - security versus long term commitment/sustainability, funders
- sexual coercion by aid workers
- confusion between military/humanitarian
- truthfulness of fundraising solicitations

See CCIC.org website



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## **8. Cultural, Religious, Gender, Race issues**

- cultural sensitivity vs. uncritical acceptance
- different elements within society
- empowerment
- dialogue before project.

**See CIDA's Questions About Culture, Gender Equality and Development Cooperation**

at <http://www.acdi-cida.gc.ca/>



[www.blumbergs.ca](http://www.blumbergs.ca)

## 9. Intellectual Property

- trade marks, copyright, patent, trade secrets, industrial design
- goodwill
- licencing agreement
- often protection national in scope
- easy to proactively deal with



## 10. Foreign Legal constraints

- restrictions on foreign charities –operation and registration
- restrictions on occupations and professions (eg. doctor, nurse, pharmacist, engineer)
- restriction on activities – eg. microfinance (lending, financial services)
- restrictions on ownership of land/buildings
- obtain local legal assistance



# 11. CIDA Funding of Project

- \$3.7 billion allocated in 2004/2005
- Countries and Territories Eligible for CDA Development Partner Countries
- matching funds
- because CIDA provides funds does not necessarily mean activity is charitable under Canadian law.



## 12. Books and Records

- English or French, kept in Canada
- substantiate qualification of charity to registration, permit verification of donations, be supported by source documents.
- “record” includes
  - an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether written or in any other form.



# Books and Records (Cont)

- contracting out to third party does not relieve charity of obligations
- traditional or electronic, backups
- failure to keep adequate books and records grounds for revocation



# Books and Records (Cont)

- RC4106 “reasonable reports on the progress of its projects and programs”
- These reports should be supported with documentary evidence such as: copies of written agreements; deeds; financial statements; invoices; photos; minutes of meetings; and any other materials that reflect the charity's ongoing participation and that show how the charity's funds are used.
- Suggestions for Agents, Contractors, Joint Ventures, Cooperative Partnerships, CIDA projects.



# **CRA Designations and carrying out charitable activities outside of Canada**

- charitable organization -yes
- public foundation –gives more than 50% of its annual income to qualified donees, can carry on charitable activities of its own
- private foundation –can give to other qualified donees or carry on charitable activities



# NEW

## Consultation on Proposed Guidelines for the Registration of Umbrella Organizations

- Subsection 5.2 of the proposed guidelines outlines the CRA's requirements for registering an Umbrella Organization that works with and through constituent groups that may or may not be Canadian registered charities to achieve a recognized Canadian charitable purpose.



# T3010A – Registered Charity Information Return

- C4 -Did the charity carry on programs, directly or indirectly, **outside** Canada? If yes, were any carried out: by employees or volunteers of the charity? - under agency agreement, contract, joint-venture, or similar arrangements?  
- through gifts to qualified donees? - by other means?
- C5 For programs the charity managed directly, outside of Canada, list the countries or regions where programs were carried on. Do **not** include countries or regions where programs were managed by a qualified donee.
- F1 What were the total expenditures on programs **outside** Canada during the fiscal period, excluding gifts to qualified donees?
- T3010 DUE 6 MONTHS AFTER CHARITY'S YEAR END**



# Tax benefits - individuals

- ❑ 46c of each \$ 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 marketable securities
- ❑ on death up to 100% of income in final year and preceding year



# Tides Canada Foundation and Charities Aid Foundation

- Tides Canada Foundation – Canadian public foundation – “Facilitate International Giving for your donors” - transfers from US to Canada and Canada to US
- CAF – “international grant making solutions and services for individuals, corporations, and foundations”
- good for one time grants, no organization and bureaucracy established, pay small percentage of donation.



# More Information

- ❑ [www.blumbergs.ca/non\\_profit.php](http://www.blumbergs.ca/non_profit.php)
- ❑ [www.globalphilanthropy.ca](http://www.globalphilanthropy.ca)

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