



Objects of registered charities in Canada are sometimes not charitable

By Mark Blumberg (June 27, 2019)

CRA on their website talks about how Canadian charities must act within their legal objects and how those objects have to be legally and exclusively charitable. In this article we talk about objects – which is synonymous with purposes. Some people also call them legal objects or legal purposes.

People assume that if you are a registered charity then you have objects which are exclusively and legally charitable.

Now here is a not so well-hidden secret. Some registered charities have objects that are not charitable. How is that possible one might ask? There are a number of reasons for this.

- 1) The registration system for charities started in 1967 and many registered charities were established long before then and the rigour used by CRA in initially registering groups was not that great.
- 2) In fact, CRA only published their guidance “How to draft purposes for charitable registration” in 2013. Many registered charities have objects which may be broad and/or vague or purport to allow the charity to do things which are not acceptable under the ITA or common law. Whether the CRA approach to drafting of objects is correct or necessary it’s debatable but what is clear is that different points in time in the past objects of organization’s before 1967 and often after 1967 were not necessarily carefully scrutinized.
- 3) In certain circumstances, such as the continuance under the CNCA that occurred with federal non-profit corporations around 2011 to 2016, CRA grandfathered old

objects if they were word for word the same even if the objects were clearly broad and vague or problematic in some other way.

Therefore, a person may look at an organization that continued let's say in 2015 under the CNCA and those objects may have been provided to CRA and that person might be under the misapprehension therefore that obviously they have been carefully scrutinized and those must be "charitable" when that is not the case.

Therefore, it is possible that quite a significant number of Canadian charities do not have objects that are exclusively and legally charitable.

Why should we care? This issue comes up in a number of different ways.

First. sometimes when CRA is auditing a charity they will ask for the objects to be changed. Sometimes this is because the charity is carrying out activities that are now outside the objects but still charitable but often times it is that the objects are actually broad and vague and not exclusively charitable and the activities that are undertaken are problematic such as providing an undue benefit, a gift to a non-qualified donee etc.

Second, you might be providing documents to CRA that include your objects. For example, you might have changed the name of your organization or you might have as in one recent instance changed under CNCA the number of directors let's say from 3 to 10 to be 3 to 20. CRA reviews these documents and in some cases even if the objects have been previously approved they can and will ask for changes if necessary. Unless your objects have been changed and approved by CRA with in the last six years (and were not grandfathered) it is an open question whether CRA would view your objects as being legally and exclusively charitable.

Third, you obtain legal counsel on a particular issue or read CRA's guidance on a particular topic and realize that your objects purport to allow you to do things that are not allowed under the charity law or CRA guidance.

What can we do about this? Should we do anything about it?

If you have broad objects and CRA has approved them there are reasons to keep your objects and not make any changes. But be aware that those broad objects do not allow you to actually do the scope of your objects. Don't in an intermediary agreement for example say that an intermediary can use your funds or resources on a project as long

as it is within those objects and then reproduce old objects which might give the intermediary the false idea that anything within those objects is acceptable.

The problem with having broad objects are that your own staff and board may be confused and think that the organization can carry on any activity within those objects. Essentially there are two paths – the education path where one understands that your objects may be outside of the ambit of charitable and you don't change your objects. This can work well, however, it is a problem if you foresee in the near future a change – such as a merger or changing your articles in any way, such that you need to interact with CRA it may be better to proactively approach CRA and suggest objects that are appropriate.

You may see the writing on the wall that your objects will need to be change. It is then a matter of timing and to what extent do you want to be in control of that timing and the process. It might be that your objects are broad, but the activities you are now doing are outside of those broad objects. For example, your objects may say "to support organizations in Calgary which are carrying out charitable work to help the homeless". This objects might sound fine to some but CRA would be concerned that it is broad and may "allow" a charity to give gifts to non-qualified donees who may be doing a charitable program but that does not make them a registered charity or qualified donee. On the other hand it is narrow in that it only allows the work to be in Calgary and for homeless people and you may want to operate across Alberta and provide funds or services to vulnerable populations who may not be homeless. If you ignore the limitations of your objects you may increase the likelihood of CRA audit and any expenditures on charitable activities outside your objects may not have proper corporate authorization and may in some cases be a breach of trust.

Any charity can write to CRA and ask if they provide objects and activities or proposed activities for permission to be able to change one's objects. CRA will not review only objects – they want to see a detailed statement of activities for any new or revised objects.

Getting permission from CRA for example to add an object does not mean that you are legally required to do so and in fact once you have made the change you should provide CRA with a copy of the articles or letters patent etc.

If you're ever dealing with the CRA audit or a major governance change such as changes in membership or a merger it is often better that one doesn't have to deal with the issue of the objects. By going to CRA beforehand one can eliminate from the process a variable that requires time effort and energy and may take between six months to a year to obtain certainty on.

Using inappropriate objects in a merger can delay CRA approval by 6 months to a year to get that sorted out - that type of uncertainty can place a lot of pressure on a charity.

Objects are only one restriction on the charitable activities of a registered charity – there are corporate restrictions, Income Tax Act restrictions and trust law restrictions. Some of these are from federal statutes and some provincial and some common law cases. In addition to all of this there are donor or funder restrictions. There are many advantages of being a registered charity – but complete freedom to do whatever you want is not one of them. Keep in mind for some registered charities who wish to do certain activities that would be otherwise impermissible for that registered charity to do it may make sense to have an affiliated non-profit or for-profit, neither of which are registered charities and not constrained by the same rules. Typically in those cases the registered charity would also not be able to fund the activities.

Approaching CRA and changing your registered charity's objects should not be done lightly. Any interaction of this type with a regulator should be carefully thought through and it is often a good idea to get legal advice from lawyers who are very knowledgeable about charity law. Providing inappropriate objects and activities to CRA can potentially result in scrutiny, including an audit. In some cases, you don't want to approach CRA unless you have done some preliminary review of your operations (a risk review) to eliminate the most obvious compliance issues that CRA may see even if they only do a cursory review of your file.

The world is changing and for many charities inevitably it will mean changes to their corporate documents which will need to be provided to CRA and thinking ahead can save a lot of grief, anxiety and delay. If you require assistance in changing your objects or need a [risk review](#) done please do contact us.

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