



Canadians want non-profit transparency and effective charities

**Submission to the House of Commons Standing
Committee on Finance**



August 4, 2014

Dear Members of the Standing Committee on Finance,

Blumberg Segal LLP is a law firm based in Toronto that provides legal services to Canadian non-profits, registered charities and donors. Blumberg Segal LLP maintains websites, <http://www.canadiancharitylaw.ca> and <http://www.globalphilanthropy.ca>, that provide extensive information and resources to Canadian charities to encourage them to understand their legal obligations and strive for higher ethical standards. We also encourage donors to be generous but careful in the way they practice charity and philanthropy. Our firm is concerned about the well-being of the non-profit and charitable sector.

Executive Summary

We are concerned that there are not adequate measures in place to provide transparency and prevent the misappropriation of charitable assets. We will provide two recommendations to improve transparency in the non-profit and charitable sector.

While all three political parties regularly talk about helping the charity sector, the debate around charities and political activities has not been helpful to the sector. In fact, it has been a huge distraction from the important work of charities and has distracted the Charities Directorate of the CRA from focusing on inappropriate receipting and other important compliance issues. There needs to be less rhetoric on the issue of political activities and charities and more broad based educational projects geared toward helping charities understand their compliance obligations, including but not limited to political activities.

Introduction

The voluntary sector in Canada plays a vital role in this country. It provides some of the most important services and helps the most vulnerable. Over 600,000 board members volunteer their time, effort, energy and skill to running registered charities and that does not include non-profits that are not registered charities. According to Statistics Canada, 13.3 million people, or 47% of the population, volunteered their time through a group or organization. These volunteers contributed nearly 2.1 billion hours in 2010 – a very valuable contribution to the work of the voluntary sector by Canadians, which is generally not reflected in financial statements. The charity sector in Canada has 24 million donors. Also over 3.5 million people work in the charity

sector.¹ Those involved with volunteering or working in the charity sector deserve more detailed and better information on their charities and the sector.

Transparency

We were very pleased that in the 2014 Federal Budget there were funds allocated for improving the T3010 Registered Charity Information Return and allowing for it to be filed electronically. This is an important and long overdue step forward and is consistent with our [2012 Budget submission](#) suggesting “Having a review of the T3010 to encourage greater disclosure of information to the public, as has been done in the US with their annual return or the UK with their reporting”.

The work that charities do is extremely important to our society, so it is vital that various stakeholders, such as the public, the media, the government, donors, employees, boards etc. have access to key information on what charities are doing and how they are doing it. Transparency will ultimately increase public trust and confidence in the sector by making the public more informed about the work of charities and making it more difficult for people to misuse charities.

Transparency can shine a light on certain charities, which will hopefully help to improve governance of non-profits and charities and reduce the amount of abuse that goes on. People are less likely to abuse charities if they know that they will be more easily discovered.

The inability of the Charities Directorate to discuss particular charities makes it harder for parliamentarians to understand the charitable sector and does not allow the CRA to identify which organizations they are auditing for political activities which opens up the CRA to criticisms as we have seen recently in the media.

The non-profit and registered charity sector is essentially divided into two. While non-profits and registered charities are both exempt from paying income tax, only registered charities and some other categories of qualified donees can issue official donation receipts for income tax purposes. Currently, the confidentiality provisions in Section 241 of the *Income Tax Act* (Canada) forbid the Canada Revenue Agency (“CRA”) from disclosing information about any non-profit or registered charity either through an informal request or a formal access-to-information request. The only way this information can be accessed is if it falls within certain narrow exceptions, such as the public part of the T3010, or if there has been consent for disclosure provided by the non-profit or registered charity.

We anticipate that there will be little or no fiscal cost for the adoption of the transparency recommendations set out below.

¹ See [Blumbergs’ Snapshot of the Canadian Charity Sector 2012](#).

Registered Charities and Transparency

Currently, without the consent of the registered charity, CRA can only provide the “entirety of or any part of any letter sent by or on behalf of the Minister to the charity relating to the grounds for the revocation or annulment”. However, this can only be provided after the charity’s registration has been revoked. This means that by the time the charity has actually lost its registered charity status, several years may have passed after CRA started having significant concerns about the charity. Therefore, CRA essentially has no ability to disclose to the public any information about charities that are involved with abusive gifting tax shelters (totaling approximately \$6.0 billion dollars over the last 10 years). CRA also does not have the power to disclose to the public any information surrounding charities that have had complaints of systemic child abuse, involvement with inappropriate third party transactions or other major concerns. This completely differs from what happens with the Charity Commission of England and Wales which [regularly distributes information to the public when they have concerns with particular registered charities](#). In the U.K., they do not wait until registration has been revoked. In Canada, the public, especially donors, should have the right to know of any serious non-compliance by charities prior to revocation and it will take amendments to the *Income Tax Act* to allow for such disclosure.

Recommendation: Section 241 of the *Income Tax Act* should be amended to allow the CRA to disclose serious non-compliance with legal requirements by a registered charity, Registered Canadian Amateur Athletic Associations or certain other qualified donees.

Non-Profit Organizations and Transparency

It is estimated that there are over 80,000 non-profits that are not registered charities or other types of qualified donees in Canada. We welcome the proposal in the [2014 Federal budget](#) to review the transparency requirements of non-profit organizations “to ensure that reporting requirements for legitimate NPOs provide the public and the Canada Revenue Agency with sufficient information to evaluate their activities”. These NPOs are exempt from almost all transparency requirements even though they are exempt from taxes and, in many cases, they receive government funding, support or public donations. While non-profits that are not charities must in some cases file the two page Form T1044, Non-Profit Organization (NPO) Information Return, such form is not made available to the public either electronically or by request. The T1044 is filed with the Canada Revenue Agency and the CRA inputs all the information in its database. There is no additional cost or “red tape” associated with this proposal as non-profits are already filing the form and the CRA inputting the information.

Recommendation: Section 241 of the *Income Tax Act* should be amended to allow the CRA to disclose to the public information contained on the T1044 Non-Profit Organization (NPO) Information Return.

We anticipate that there will be little or no fiscal cost for the adoption of the transparency recommendations set out above.

Political Activities by Canadian Charities

There has been substantial attention by the government and the media focused on political activities conducted by Canadian charities over the last two years. It is important to recognize that, while they are forbidden from being involved in partisan political activities, charities play an important role in policy and political discussions. Registered charities can engage in allowable political activities as long as they are non-partisan, related to their legal objects and limited resources are used (generally less than 10% of resources).

Charities bring knowledge, experience and resources to public policy issues. Some subjects, such as reducing impaired driving, are almost impossible to tackle without political changes. The conversations that take place in the political space are important and it is vital that charities have the ability to participate in those discussions. It would be ineffective and inefficient for charities to be working on improving society without being involved with the political process.

That being said, Canadian charities can certainly improve their reporting on political activities. We have written on T3010 disclosure of political activities and how such disclosure by charities can be improved.² There are a small number of charities that have arguably crossed the line into partisan activity, but a \$13 million budgetary allocation was not needed to deal with those few outliers. The money could have been better spent on stopping charities involved with receipting abuse, terrorism or abuse of vulnerable beneficiaries.

Many charities and parliamentarians are unaware or misinformed of these rules and requirements. Enhanced educational initiatives by the CRA will assist charities in understanding their legal obligations with respect to various issues, including political activities.

The law as it stands allows for registered charities to be involved with allowable political activities and we would suggest that there not be any further limits on such political activities.

Recommendation: Greater funds should be allocated to the Charities Directorate's educational programs relating to compliance issues, including political activities, and less to audits relating to political activities.

There would be no fiscal cost for the adoption of the above-noted recommendation as it is a reallocation of funds but ultimately we believe that education up front also would reduce the potential costs involved in audits for non-compliance down the line.

Other Suggestions

There are many ways in which the regulation of charities can be improved to result in greater public benefit that the Committee may wish to also consider:

² "How accurate are the T3010 charity returns when it comes to political activities?" by Mark Blumberg
http://www.globalphilanthropy.ca/index.php/blog/comments/how_accurate_are_the_t3010_registered_charity_information_returns/

- 1) Increase the disbursement quota payout from a measly 3.5% to something like 5% or 6%. This would result in hundreds of millions of dollars being able to be deployed for charitable programming that would have been otherwise an unauthorized encroachment on capital;
- 2) Require charities to demonstrate (as in the UK) that they actually have a “public benefit”, rather than this being assumed, which could help the sector tremendously, by increasing public confidence, and reducing the number of dormant charities;
- 3) Increase the capacity of the sector to understand financial management and their compliance obligations and help donors understand the importance of donations and carefully selecting charities and avoiding scams;
- 4) As there is a large amount of duplication within the charitable sector look at ways to reduce such duplication;
- 5) Consider whether Canada should move to a system as in Australia where the ability to issue tax receipts is not based on being a “charity” but rather certain categories of designated gift recipients; and
- 6) Establish a unit within the RCMP, or other police force, tasked with the responsibility for reviewing complicated abusive charity schemes that provide inappropriate official donation receipts.

If you require further information or wish to discuss this submission, please do not hesitate to contact us. If the Committee thought it would be helpful we would certainly be prepared and interested in presenting to the Committee.

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