



Top Canadian charity law compliance issues for Canadian registered charities

By Mark Blumberg and Maddy Sawyer (April 29, 2019)

A great deal has been written about legal compliance surrounding charities in Canada. Much of that material however, is highly specialized, hard to understand, and sometimes esoteric. As a result, it can be difficult for charities, employees and volunteers to focus in on the compliance issues that are generally most important for Canadian registered charities.

1) CORRECT FILING OF THE T3010 REGISTERED CHARITY INFORMATION RETURN FORM

The T3010 is due six months after the charity's year-end. Failure to file the T3010 within a few months of that date will result in a charity being deregistered and losing its charitable status, and consequently also losing its receipting privileges. It is important that Directors record the date on which their returns are due and ensure that the address the CRA has on file is current. Otherwise, CRA reminder notices may never arrive and a charity may be deregistered without any notification.

Charities must also make sure that they file the correct form and all necessary schedules and financial statements must be also be filed. For further information on the T3010 see [CRA's website](#) or our directory on [transparency](#). The 2012 Federal Budget gave CRA the power to suspend a charity's ability to issue receipts if the charity files an incomplete or inaccurate T3010 form.

In June 2019, charities will be able to submit their T3010 filings online through CRA's new [CHAMP](#) system. Charities will need to sign up for a CRA MyBA business account before they can use this system. Charities will still be able to

submit a paper T3010. You can also search and filter the T3010s in over 25 ways using our website Charitydata.ca.

2) COMPLIANCE WITH THE FUNDRAISING GUIDANCE

Fundraising is very important for some registered charities. Canadian charities must be careful to abide by their legal and ethical obligations when they conduct any fundraising activities. In 2012, CRA released a revised [Guidance on Fundraising by Registered Charities](#).

Some of the limits on fundraising activities include any activities that are considered illegal, deceptive, or provide too much private benefit. The CRA will look at many factors including but not limited to resources devoted to fundraising relative to charitable programs; fundraising without an identifiable use or need; the charity's fundraising expenses to fundraising revenue ratio; inappropriate purchasing or staffing practices; activities where most of the gross revenues go to contracted non-charitable parties; commission-based fundraiser remuneration; misrepresentations in fundraising solicitations or in disclosure of fundraising costs, revenues or practices; and fundraising initiatives or arrangements that are not well documented. CRA understands that all charities are different and when reviewing the fundraising activities of a charity, they will consider the size of the charity, causes with limited appeal, long-term donor development programs and whether a charity is involved with gaming activities. It is important that a charity's fundraising program and its costs are transparent, accountable and properly disclosed to CRA and the public.

If fundraising is conducted by third parties, charities should not fall into the trap of entering what are claimed to be 'standard form' or 'boilerplate' fundraising agreements. CRA's Fundraising Guidance sets out the necessary requirements for an appropriate written agreement and these guidelines should be followed.

3) PROPER ISSUANCE OF OFFICIAL DONATION RECEIPTS

Registered charities are not required to issue receipts. However, if charities decide to issue charitable receipts then they will need to ensure that every receipt issued is accurate and compliant with the requirements of the CRA. According to the CRA, when CRA audits registered charities it is finding that approximately 89% of registered charities are currently issuing receipts improperly. Many charities do not have all of the required elements on their receipts, or they are issuing receipts for services donated to a charity, which is inappropriate since 'services' are not considered property. Some charities make the mistake of "lending their registration" to other organizations, which is also prohibited. Even small mistakes

in the form and content of a charitable tax receipt issued by a charity will be taken very seriously by the CRA. There are substantial penalties for inappropriate receipting. Here is information from CRA on "[what is a gift" and receipting issues](#). Also, here are some CRA [sample receipts](#). I have a section at my website on [receipting](#) which includes a [Receipting Kit](#).

4) AVOIDANCE OF ABUSIVE TAX SHELTER SCHEMES, FRAUDULENT RECEIPTING AND CHARITY SCAMS

According to the CRA, over the last 10-15 years there have been over \$7 billion dollars in donation receipts issued as part of "abusive charity gifting tax schemes". Approximately 1% of this amount was spent by these few registered charities on charitable activities and over 200,000 tax returns have also been filed as part of these schemes. Many of these gifting schemes involve a taxpayer receiving a higher tax receipt than the actual amount of their donation. For example, the 'donor' 'invests' \$1000, but receives a \$5000 donation receipt. Over 100,000 Canadians have also filed tax returns with what CRA refers to as 'fraudulent receipting'. In addition, there have been several other elaborate schemes used to abuse receipting privileges.

There are numerous types of inappropriate schemes that charities must avoid involvement with. They not only may be illegal, but also unethical, they undermine the confidence of the public in the charitable sector as a whole.

5) NON-QUALIFIED DONEES

In 2010, CRA released its Guidance [Canadian Registered Charities Carrying out Activities Outside Canada](#) and in 2011, released its guidance on [Using an Intermediary to Carry out a Charity's Activities within Canada](#). If a Canadian charity is transferring resources (money, equipment, etc.) to a group that is a non-qualified donee (i.e. it cannot issue official donation receipts) such as a foreign charity, or a Canadian non-for-profit in Canada that is not a registered charity, then the registered charity must be able to show that it has direction and control over the use of its resources.

Failure to maintain direction and control can result in a 105% penalty of the amount transferred and/or revocation of charitable status. More information about foreign activities is available at www.globalphilanthropy.ca. For charities conducting foreign activities or working with intermediaries in Canada, such charities should review the sufficiency of their direction and control. Here is an article [Canadian Charities and Foreign Activities: Conduit versus Structured Arrangement](#) and our

[Canadian Charity Foreign Activity Legal Checklist - Working with Foreign Charities or Intermediaries](#)

6) NO COMPENSATION FOR DIRECTORS OF A CHARITIES

In Ontario, board members of charities generally are not entitled to compensation as either board members or when doing work for the charity. Directors of charities that operate in Ontario generally cannot receive salaries, stipends, grants, honorariums, or consulting fees from that charity, without a court order. In most cases, directors are only entitled to reimbursement of reasonable out-of-pocket expenses incurred to further the activities of the charity.

In April 2018, the Ontario government amended the *Charities Accounting Act* to allow for compensation of a director without court approval in very limited circumstances. A director of a registered charity in Ontario still cannot be paid for their service as director, but a director may be compensated for services provided to the charity, not in that individual's capacity as director, but in another capacity (such as in his/her capacity as a professional accountant or lawyer). However, for a director to be eligible for compensation for services outside of his/her services as director, there are a number requirements that the charity needs to meet before the director can be paid. Despite the legal change there are numerous downsides of ever paying a director.

7) MAINTENANCE OF ADEQUATE BOOKS AND RECORDS

Canadian registered charities must keep adequate books and records at a Canadian office. The charity must also keep source documents that support the information in the books and records. The purpose of these requirements is so that the CRA can review the charity's revenue and expenditures and verify any official donation receipts that it may have issued.

In terms of records retention, charities are required to keep duplicates of receipts for at least two years from the end of the calendar year in which the donations were made. Most other documents need to be kept for 6 years from the end of the fiscal year. Some other records must be retained in perpetuity or until two years after the charity has been dissolved. This includes such things as "ten-year gifts," minutes of meetings and all governing documents such as articles of incorporation or letters patent. If in doubt, keep it!!

8) AVOIDANCE OF UNRELATED BUSINESSES

Under the Canadian *Income Tax Act*, charitable organizations and public foundations can carry on "related business" that promotes their charitable objects. For example, a hospital cafeteria that provides food to patients and visitors could be considered a related business.

Charitable organizations and public foundations can also carry on other business activities if "substantially all" (the CRA says at least 90%) of the people involved in these activities are volunteers.

Private foundations cannot carry on any business activities whatsoever. The CRA has a Guidance "[What is a Related Business?](#)" and also [Community Economic Development Activities](#). Failure to follow these rules can result in penalties and deregistration.

9) AVOIDANCE OF PARTISAN POLITICAL ACTIVITIES

Under the *Income Tax Act*, a registered charity can now be involved in unlimited non-partisan political activities, which CRA is now calling public policy dialogue and development activities ("PPDDAs"), as long as those activities further the charity's stated charitable purposes. It is not clear how much impact this Income Tax Act change will have on provincial definitions of charity.

However, a registered charity cannot be involved in any partisan political activities. A political activity is considered partisan if it involves direct or indirect support of, or opposition to, a political party or candidate for public office. See the CRA guidance [Public policy dialogue and development activities by charities \(CG-027\)](#) and our [blog postings on political activities](#).

Don't forget that registration of lobbyists (federally, provincially or otherwise) is a separate issue. You may wish to review the federal or provincial lobbyist registration laws to check whether you and your organization are compliant. As well at the Federal level and in many provinces there are special rules around election spending.

10) NO INVOLVEMENT IN TERRORIST ACTIVITIES

A charity cannot support terrorism either directly or indirectly. For more information, see my article [Canadian Charities and Terrorism: Protecting the Resources of Your Favourite Charity](#) as well as the CRA's [Checklist for Charities on Avoiding Terrorist Abuse](#).

Canadian charity law encompasses far more than the ten points discussed above. But there is little sense in focusing on obscure provincial statutes or interesting court cases at the expense of missing some of these important compliance issues.

Mark Blumberg and Maddy Sawyer are lawyers at Blumberg Segal LLP in Toronto, Ontario. To find out more about legal services that Blumbergs provides to Canadian charities and non-profits please visit www.canadiancharitylaw.ca, www.globalphilanthropy.ca, www.smartgiving.ca, or www.charitydata.ca

This article is for information purposes only. It is not intended to be legal advice. You should not act or abstain from acting based upon such information without first consulting a legal professional.