



## TOP TEN CANADIAN CHARITY LAW COMPLIANCE ISSUES

By Mark Blumberg (May 15, 2012)

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 extremely difficult for charities, employees and volunteers to focus in on the compliance issues that are generally most important for charities.

A brief summary of the ten most important items charities and their boards of directors need to know about charity law in Canada are provided below:

### 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: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rtrn/menu-eng.html> Also, at <http://www.charityfocus.ca/EN/Pages/Home.aspx> you can use the QuickPrep tool that will help in completing the T3010. The 2012 Budget gave CRA the power to suspend charity receipting for filing incomplete T3010 forms.

## **2) COMPLIANCE WITH THE FUNDRAISING GUIDANCE**

Canadian charities must be careful to abide by their legal and ethical obligations when they conduct any fundraising activities. In 2012, CRA released its new Guidance on Fundraising by Registered Charities at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/fndrsng-eng.html>

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 audits are conducted, it has been discovered 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: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtnq/rcpts/menu-eng.html> Also, here are some CRA sample receipts: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pbs/rcpts-eng.html> 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 eight years there have been approximately \$5.7 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 175,000 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, investing only \$1000, but receiving 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 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](http://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.

## **6) NO COMPENSATION FOR MEMBERS OF THE BOARD**

In Ontario, board members of charities generally are not entitled to compensation. In fact, directors of charities that operate in Ontario are very much constrained in terms of their dealings with that charity. If there is an accountant serving on a board, the accountant and their firm are prohibited from conducting an audit or charging the charity for accounting services. Similarly, law firms cannot charge for legal services provided to a charity if one of their partners is on the Board of Directors.

Directors are only entitled to reimbursement of reasonable out-of-pocket expenses incurred to further the activities of 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.

## **7) MAINTAINENCE 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 record 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 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 would be considered a related business.

Charitable organizations and public foundations can also carry on other unrelated business activities, presumably to raise funds for the charity, 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 Policy Statement on "[What is a Related Business?](#)" CPS-019 and [Registered Charities: Community Economic Development Programs](#). 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 be involved in non-partisan political activities, as long as it devotes substantially all of its resources (90%+) to charitable activities. Any political activities must be related to the charity's purposes and must involve generally less than 10% of resources.

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 policy statement on Political Activities \(CPS - 022\)](#) 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.

## **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 – Preventing Abuse of your favourite charity](#)" as well as the CRA's recent "[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 is a lawyer at Blumberg Segal LLP in Toronto, Ontario. He can be contacted at [mark@blumbergs.ca](mailto:mark@blumbergs.ca) or at 416-361-1982 x. 237. To find out more*

*about legal services that Blumbergs provides to Canadian charities and non-profits please visit [www.canadiancharitylaw.ca](http://www.canadiancharitylaw.ca) or [www.globalphilanthropy.ca](http://www.globalphilanthropy.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.***