



**Written Submission for the Pre-
Budget Consultations in Advance
of the Upcoming Federal Budget
on Transparency and
Accountability in the Non-profit
and Charity Sector**

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

February 25, 2022

List of Recommendations

Primary Recommendations

- **Recommendation 1:** That the Federal government amend Section 241 of the *Income Tax Act* in order 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.
- **Recommendation 2:** That the Federal government amend Section 241 of the *Income Tax Act* in order to allow the CRA to disclose to the public information contained on the T1044 Non-Profit Organization (NPO) Information Return.

Secondary Recommendations

- **Recommendation 3:** That the Federal government increase the disbursement quota payout from the current 3.5% to 10% in line with other groups requesting this improvement.
- **Recommendation 4:** That the Federal government ensure that each donor advised fund is required to disburse a certain percentage per year per fund.
- **Recommendation 5:** That the Federal government roll out additional educational programs to assist Canadian charities and non-profits understand their compliance obligations.
- **Recommendation 6:** That the Federal government reinstate the Charities Partnership Outreach Program, or create a similar program, which provides funds to Canadian charities to fund educational initiatives within the sector to increase compliance.
- **Recommendation 7:** That the Federal government require charities to demonstrate annually in their reporting that they actually have a “public benefit”, rather than this being assumed.
- **Recommendation 8:** That the Federal government consider a system where the ability to issue tax receipts is not based on being a “registered charity” but rather a narrower category of deductible gift recipients as is currently in Australia.
- **Recommendation 9:** That the Federal government establish a unit within the RCMP, or other police force, tasked with the responsibility of reviewing complicated abusive charity schemes that provide inappropriate official donation receipts or inappropriate private benefits.
- **Recommendation 10:** That the Federal government providing funding to CRA to improve the transparency of the T3010 Registered Charity Information Return.
- **Recommendation 11:** That the oversight of funding by charities of non-qualified donees is enhanced and the attempts to remove the requirement for structured arrangements be opposed.

February 25, 2022

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 the websites, <http://www.CanadianCharityLaw.ca> and www.Smartgiving.ca that provide extensive information and resources to Canadian charities to encourage them to understand their legal obligations and strive for higher ethical standards and to donors to understand how to vet charities. Blumbergs has also launched a free transparency tool for the public at the website www.CharityData.ca with up to seventeen years of information on every Canadian registered charity. We 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 and that there is appropriate regulation for this very important sector.

Executive Summary

We are concerned that there are not adequate measures in place to ensure the efficient use of charitable assets and to prevent the misappropriation of charitable assets. We will provide two recommendations to improve the productivity and competitiveness of the non-profit and charitable sector through greater transparency and other recommendations.

Introduction

The voluntary sector in Canada plays a vital role in this country. The charity sector has revenue of over \$321 billion.¹ Unfortunately over the last decade public trust in the charity sector has [plummeted](#) and audits on Canadian charities by CRA have [declined by 75%](#). Those involved with volunteering or working in the charity sector deserve more detailed and better information on their charities and the sector. Improvements in the voluntary sector by the Federal government will help not only non-profits and charities but also the many groups that they serve such as the unemployed, Indigenous peoples, patients, those with a disability, seniors, and students. The services provided by non-profits and charities affect people in all parts of the country including major urban, small towns and rural and remote communities.

¹ See [Blumbergs' Canadian Charity Sector Snapshot 2019](#)

Transparency

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, volunteers, 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 that non-profits and charities undertake.

Transparency can shine a light on certain charities, which will also hopefully help to improve the 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. Less abuse of charities' assets will also result in greater productivity and public benefit.

The recent occupation in Ottawa by protesters, supported in part by foreign money and donors, for a non-profit in Canada, illustrates the dangers of having limited transparency.

Registered Charities and Transparency

Currently, the confidentiality provisions in Section 241 of the *Income Tax Act* (Canada) forbid the CRA from disclosing information about any non-profit or registered charity either through an informal request or a formal access-to-information request except if it falls within certain narrow exceptions, such as the public portion of the T3010, or if there has been consent for disclosure provided by the non-profit or registered charity.

Without the consent of the charity, CRA can only provide information on the charity's non-compliance after the charity's registration has been revoked, which may be 10-20 years 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, for example, abusive gifting tax shelters (totalling approximately \$7 billion dollars over the last 15 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 or other major concerns such as terrorism. CRA also cannot disclose this information to MPs and Senators. This completely differs from the methods of the Charity Commission of England and Wales, which [regularly distributes information to the public when it has concerns with particular registered charities](#). In Canada, the public, especially donors, should have the right to know of any serious non-compliance by charities prior to revocation. It will take amendments to the *Income Tax Act* to allow for such disclosure. We anticipate that there will be little or no fiscal cost for the adoption of the transparency recommendation above.

Recommendation 1: Section 241 of the *Income Tax Act* should be amended to allow the CRA to disclose at any time 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”. However, no further action has happened from either of the last two Federal governments. 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 CRA which then 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 is already inputting the information.

Recommendation 2: 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.

Other Recommendations:

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:

- 3) Private foundations are sitting on about \$95 billion in assets. We have since 2012 suggested an increase in the disbursement quota payout. In the past we had suggested a payout of 5-6% but as many years have gone by and many foundations have grown considerably, it probably makes more sense to have a disbursement quota of 10% per year. This would increase funding to charitable organizations by billions of dollars and in light of the devastation caused by COVID-19 and climate change, it cannot come quick enough. Some foundations have had a 10%+ annual return on their investments in the past but have been giving out only 3.5% or in some cases far less. The largest private foundation in 2019 (which is the last full year available for data) gave out 1%;
- 4) With donor advised funds, donors get an immediate tax receipt while in some cases none of the money will be distributed to charities for years. Ensure that each donor advised fund is required to disburse a certain percentage per year per fund. In the US there have been proposals that the amount be between 15% to 20% per year;
- 5) Canadian charities generally want to be legally compliant. Those that are deliberately abusing the system are a very small minority. It would be helpful if CRA would conduct more educational programs to assist charities, especially small and rural charities in understanding how to comply with the requirements of a registered charity;

- 6) Reinstate the Charities Partnership Outreach Program, or create a similar program, which provides funds to Canadian charities to carry out educational initiatives within the sector to increase charity compliance. It is especially important to increase the capacity of the sector to understand financial management, internal controls and reporting;
- 7) Require charities to demonstrate annually in their reporting (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;
- 8) Consider whether Canada should move to a system similar to Australia’s where the ability to issue tax receipts is not based on being a “registered charity” but rather a narrower category of deductible gift recipients;
- 9) Establish a unit within the RCMP, or other police force, tasked with the responsibility of reviewing complicated abusive charity schemes that provide inappropriate official donation receipts and other inappropriate private benefits;
- 10) The CRA should improve the T3010 to ask more questions and provide greater transparency in the charity sector. The T3010 lags behind many other countries and their requirements even though those countries do not have as generous tax benefits. A better T3010 can lead to a better charity sector. For example, the T3010 does not ask about volunteers, related entities or material diversion of assets not reported to regulators; and
- 11) The Senate has recently passed Bill S-216 to modify the Income Tax Act to eliminate the “direction and control” requirements when a Canadian charity provides funds to non-charities or non-qualified donees. This could open up large possible abuse of the charity sector including \$40-80 billion leaving Canada with little oversight and therefore the possibility that funds will not ultimately be spent on charitable activities. We have written about our concerns in an article Grantmaking in Canada can be improved immensely but eliminating structured arrangements is dangerous and a red herring to the real problems with our sector.

If you require further information or wish to discuss this submission, please do not hesitate to contact us. We would certainly be interested in presenting to the Committee if it would be helpful and the opportunity should arise.

Submitted by:

Mark Blumberg
Blumberg Segal LLP
Tel: 416-361-1982
mark@blumbergs.ca
<http://www.CanadianCharityLaw.ca>
<http://www.SmartGiving.ca>
<http://www.CharityData.ca>