



Registering and Maintaining Charitable Status



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- What is a charity?
- Charity vs. Non-Profit Organization
- Defining Scope of Charity Purposes
- Jurisdictional Issues
- Registration of Charity
- Obligations of Charities
- Sanctions and Penalties

What is a charity or non-profit organization?

- An organization that exists to create a benefit to a wide segment of the public
 - Provide beneficial services or programs
 - > Healthcare, hospital, university, school, research
 - Improve or eradicate a negative situation
 - > Poverty, drug use, homelessness, unemployment, mental illness, child abuse, spousal violence etc.
 - Improve the world
 - > Conservation, environmental protection, civic improvement
 - Help individuals to be better people
 - > Religion, ethics, volunteerism

- Charity must benefit the public
 - world
 - country
 - community
 - large group of people
- Cannot benefit small group of known individuals
- Benefit can occur completely outside Canada

How does Canadian government support charity?

- Tax exemption for charitable entities
- Tax incentives for people and businesses that donate property to charitable entities
 - Donation tax receipt
- Charities are private bodies, not part of government.
 - Control is through statutory regulation, not direct access to property

Charity vs. Non-Profit

- Two kinds of organization that are organized for public benefit and receive tax benefits
- Registered charity
 - Tax exempt
 - Able to issue tax receipts for donations
 - Historically restricted purposes and activities
- Non-Profit Organization
 - Tax exempt
 - Can receive donations but cannot issue tax receipts
 - Much broader permitted purposes and activities

- More than 86,000 registered charities in Canada
- More than 80,000 non-profit organizations
- Employ more than 2 million people
- Over 12 million volunteers
- Represent \$106 billion = 7.8% of GDP

Rights of Charities

- Charities are able to choose their mode of organization (and even their jurisdiction)
- Most choose a corporate structure, which gives the organization the rights of a natural, legal person
 - Can own property
 - Can enter contracts
 - Can commence court action
- Limited liability for members (and directors)

Non-profit Purposes

- Very broad
 - > Sport, recreation, politics, health, education, social services, community assistance, environmental, religious, professional...
- Cannot operate to generate profit for members.
- Revenues must go to programs which provide some group benefit
- Purpose must be to help community or provide benefit

Charitable Purposes much more restricted

- 4 categories, derived from English law beginning in 1601
 - Relief of poverty
 - Advance religion
 - Advance education
 - Other purposes (art, health, environment, civics, etc.
- Interpreted by courts to expand into comparable new sub-areas
- No new legislated categories (including promotion of amateur sport)

Charitable purposes

- May have more than one charitable purpose
- Must have only charitable purposes
 - No mixed purposes
- No political purpose
- No purpose to generate private wealth
- Not operated to benefit private individuals

- National laws and provincial laws
 - Some issues governed by national laws
 - > Tax
 - > Registration
 - > Purposes
 - Some by provincial laws
 - > Structure (corporation, trust, association)
 - > Governance
 - > Operations and activities

Legislation and Case Law

- Governments pass laws to govern charities
- Not every possible situation can be clearly provided for in legislation
- Courts interpret and administer laws, over time developing the law in ways not anticipated by legislators
- Courts reluctant to make dramatic change, deferring to legislators to make
 - Example – sport as charity and A.Y.S.A. decision

Amateur Youth Soccer Association vs. Canada Revenue Agency (2007 *Supreme Court of Canada*)

- Youth soccer organization applied for charitable registration to acquire tax benefits
- Submitted that benefits of physical activity are healthy, beneficial to youth and adults, benefit community and court should expand categories of charity
- Court refused. Only legislators can expand categories. Court can only make small changes to interpret law in current context.

- Charities must register with regulator to receive the tax benefits
- Lengthy application
 - Proof of structure
 - Charitable purposes listed
 - Detailed statement of activities
 - Relationship of director/managers
 - Anticipated source of funds
 - Proposed budget for activities
 - Financial statements

Public vs. Private Management

- If directors are related, potentially increases risk of private benefit or self-dealing
- Charities with majority of related directors are designated as private – more restrictions
- Charities with majority unrelated directors are designated public – less restrictions

Charity Designations

		Are majority of resources devoted primarily (+50%) to making grants to other “qualified donees”?	
		YES	NO
(1) Are the majority of directors at arm’s-length from all other directors? (2) Will funding come from sources at arm’s-length with the directors?	YES	Public Foundation	Charitable Organization
	NO	Private Foundation	Private Foundation

Sheldon Inwentash and Lynn Factor Charitable Foundation v. Canada

- Charity had a single director
- Wanted public designation
- Argued that being the only director meant that he was not related to other directors
- Court says: a person is related to himself
- Charity designated as private.

Obligations of Charities

- Conduct only allowed activities
 - Most resources go to charitable program
 - Some administrative activities/expenses
 - Some fundraising expenses/expenses
 - Incidental political activities/expenses
- Spend at least the required amount on charitable activities
 - Direct activities or transfers to other charities

Transfers to other organizations

- Generally only allowed to transfer funds for no consideration to other Canadian registered charities, or government.
- Some question whether a transfer to a foreign charity is legal
- Relatively recent court decision

Prescient Foundation v. MNR, 2013 FCA 120

- Prescient Foundation transferred funds to an American charity.
- Regulator relied on administrative policy to revoke status. Foundation appealed revocation.
- Court held that there was no legislation to prohibit transfers to foreign charities.
- Very quickly – government passed new law to prohibit

- Money donated to charity must be used in charity sector
- Charity can only transfer funds to other charity
- Cannot transfer to private company or person
- Can only pay fair value for services and products

Obligations of Charities

- File annual information return to regulator
 - Report on activities
 - Financial information
 - > Revenues by category
 - > Donation, earned income
 - > Expenses by category
 - > Direct charitable activity, administration, fundraising, transfers to other charities
 - Director/manager information
- Failure to file will result in revocation of status

- Issue accurate tax receipts
 - Fair market value of donated property
 - Subtract any advantage to the donor or related party
 - Independent, objective assessment of property of high value
 - Onus on charity to issue receipt
- No tax receipt for donation of time or services, only property and cash.

- Keep adequate records of all activity and financial information
 - Copies of receipts
 - Bank records
 - Financial statements
 - Evidence of how funds are used
 - Minutes of meetings
 - Reports
 - Contracts

- Fundraising cannot be a purpose
- Can spend money on fundraising
- Expenses on fundraising should not exceed 35% of revenues in a year
- Must be honest with the public about use of funds
- Must be honest about how much is going to the charitable activity/administration
- Must not pay fundraising too much

- Regulatory agency may audit any charity
 - Random audit
 - High risk charity
 - Complaints from public
- Charity required to cooperate
 - provide documents
 - allow access to premises

- Education letter
- Compliance agreement
- Monetary Fine
- Suspension of receipt privileges
- Revocation of charity status
 - Revocation tax = 100% of assets

- Charity funds must stay in charity sector.
- A revoked charity cannot keep its assets.
- When a charity is revoked, it must pay a tax = 100% of value of assets.
- Payment of tax within 1 year of revocation
- Charity can reduce tax owed by:
 - Paying legitimate debts
 - Conducting charitable program
 - Transferring assets to unrelated charity

Sanctions and Appeal

- Regulatory agency imposes sanctions
- Internal objection process
 - very inefficient and time consuming
- External appeal to court
 - 18 to 36 months before appeal is heard
 - Court tends to agree with CRA

Questions



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