



Charity Law  
Information  
Program

We realize the potential of  
not-for-profit organizations

# Charity Law Information Program (CLIP)

## CRA's Foreign Activity Guidance

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# Who We Are – Capacity Builders

- Capacity Builders is a division of the Ontario Community Support Association (OCSA) and it runs the **Charity Law Information Program (CLIP)**
- **CLIP provides training, workshops, and webinars to Canadian charities to enhance their understanding of their legal, ethical, and governance obligations**
- <http://www.capacitybuilders.ca/clip>
- CLIP Communiqué – sign up for free
- (416) 256 – 3010 x 232 or 1-877-484-3030
- [clip@capacitybuilders.ca](mailto:clip@capacitybuilders.ca)
- The Charities Directorate of CRA has provided funding for CLIP

# Who We Are – Blumbergs

- Blumberg Segal LLP is a law firm based in Toronto, Ontario
- Mark Blumberg is a partner at Blumbergs who focuses on non-profit and charity law
- Assists charities from across Canada with Canadian and international operations and foreign charities fundraising here
- [www.canadiancharitylaw.ca](http://www.canadiancharitylaw.ca) and [www.globalphilanthropy.ca](http://www.globalphilanthropy.ca)
- Free Canadian Charity Law Newsletter. Sign up at: <http://www.canadiancharitylaw.ca/index/php/pages/subscribe>
- (416) 361 – 1982 or 1-866-961-1982
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# Charities Directorate of CRA

- Regulates registered charities
- Based in Ottawa
- Website: [www.cra.gc.ca/charities](http://www.cra.gc.ca/charities)
- E-mail list: <http://www.cra-arc.gc.ca/esrvc-srvce/mlst/sbscrbchrts-eng.html>
- Webinars: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/wbnrs/menu-eng.html>
- Telephone:           1-800-267-2384 (English)  
                              1-888-892-5667 (Bilingual)
- Through Charities Partnership and Outreach Program (CPOP) supporting charities conducting educational work on legal and *Income Tax Act* compliance.



# Introduction

- Legal information not legal advice
- Views expressed are my own
- Questions during and at end
- Logistics and timing

## Good Works Abroad Outside the Charity Sphere

- Personal donations of cash or in kind items to foreign charities, no tax receipt
- Doing business in developing countries
- Corporate social responsibility (CSR), donations, sponsorship, advertising, etc...
- For-Profit “non-profit” – google.org, micro-loans
- Non-profit without charitable status – if no need to issue tax receipts
- Avoiding abusive transactions and paying fair share of taxes

## Good Works Abroad Outside the Charity Sphere

- Volunteering – at home and abroad
- Remittances – gifts to family, friends, former employees abroad
- Encourage Canadian government to fulfill commitment of 0.7% of GNI
- Encourage Canadian companies operating outside of Canada to do so legally and ethically
- Our own actions – the goods we consume, environmental footprint, what we buy

# Charity Law Basics

- Registered charities are regulated by Charities Directorate of the Canada Revenue Agency (CRA)
- Registered charities fall under both federal and provincial jurisdiction
- Non-profits and charities are both tax exempt
- *Income Tax Act* – concept of “registered charity” can issue “official donation receipt” with income tax savings for donor
- Benefits and restrictions on registered charities



# Maintaining Charitable Status

- Conduct allowable charitable activities and avoid prohibited activities
- Keep adequate books and records
- Properly issue official donation receipts
- Meet annual spending requirement (disbursement quota)
- File T3010 Registered Charity Information Return
- Maintain status as a legal entity
- Inform CRA of certain changes

# Some General Considerations

- Objects of charity exclusively charitable
- Activities within objects
- Only undertake charitable activities (relieve poverty, advance education, advance religion, other purposes beneficial to the community that the law considers charitable)
- Cannot violate Canadian public policy or be illegal under Canadian law

## General Considerations (cont)

- No partisan political activities, only limited allowable non-partisan political activities (10% rule)
- No unrelated business activities

# Variety of Charities

- 12,000 carried on 'programs' outside of Canada – humanitarian assistance, development, education, religious, arts, etc... 4000 spent funds directly outside Canada (8000 though qualified donees)
- Every charity is different – objects / areas of charitable work / philosophy / risk tolerance / public profile / donors / level of government support / independent vs. international affiliations / resources / knowledge / activities in Canada or outside

# Organizational Value of Foreign Activities

- Fulfills objects of charity
- Win/win (Canadian charity and foreign charity)
- Staff morale and retention
- Donor and stakeholder interests
- Excellence

# Some statistics

International Philanthropy	\$2.3 billion
Philanthropy (development)	\$1.1 billion (Hudson)
Philanthropy (development)	\$0.7 billion (CCIC)
ODA (“foreign aid”)	\$5 billion
Remittances	\$8.9 billion
Canadian investment	\$ ?

## Canadian Charity World Divided in Two

- **Qualified donees** – can issue official donation receipts for Income Tax Purposes
- **Non-Qualified donees** – cannot issue official donation receipts

# List of Qualified Donees

- registered charities;
- registered Canadian amateur athletic associations;
- registered national arts service organizations;
- housing corporations in Canada set up exclusively to provide low-cost housing for the aged;



# List of Qualified Donees

- a municipality;
- a municipal or public body performing a function of government in Canada;
- the United Nations and its agencies;
- universities outside Canada with a student body that ordinarily includes students from Canada (these universities are listed in Schedule VIII of the Income Tax Regulations);

# List of Qualified Donees (cont)

- charitable organizations outside Canada to which the Government of Canada has made a gift during the donor's taxation year, or in the 12 months immediately before that period [IC 84-3R5]; and
- the Government of Canada, a province, or a territory.

## How do I know if it is a Qualified donee?

If in doubt check CRA's listing of charities, call CRA, or treat organization as a non-qualified donee.

- 85,000 **registered charities** listed at CRA site:  
<http://www.cra-arc.gc.ca/chrts-gvng/chrts/menu-eng.html>
- **Prescribed foreign universities** at Schedule VIII of the Canadian Income Tax Regulations, as provided in section 3503  
<http://laws.justice.gc.ca/en/showdoc/cr/C.R.C.-c.945/sc:8/20090629/en?noCookie#anchorsc:8>
- **A few Charitable organizations** outside Canada to which the Government of Canada has made a gift in last 2 years [IC84-3R5];  
<http://www.cra-arc.gc.ca/E/pub/tp/ic84-3r5/>

# What is a non-qualified donee?

- All organizations other than qualified donees
- They cannot issue official donation receipts

Examples include:

- Foreign charities
- Canadian non-profits with no charitable status
- Businesses
- Bono, Obama, Angelina Jolie

# Why deal with a non-qualified donee?

## Foreign Activities

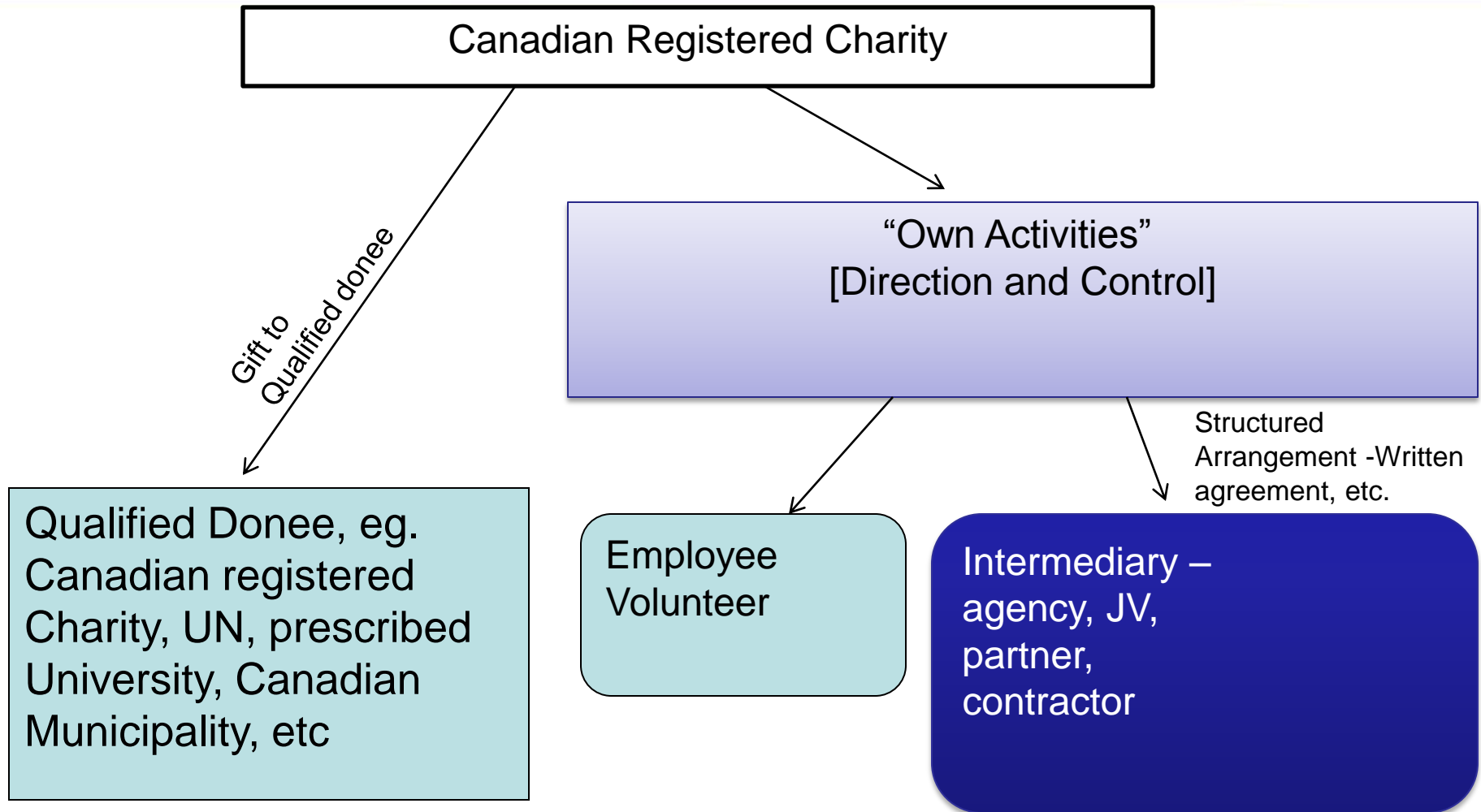
- You don't have people in Malawi
- You don't have road building equipment in Haiti
- Local people or organizations sometimes can do it quicker, better and more cost effectively

## Canadian Activities

- The best organization to implement charitable project may be a non-profit (non-charity) or a business and not another registered charity



Guidance – how to deal with non-qualified donees without it being considered “gifting to a non-qualified donee”.



# CRA's Guidance on Foreign Activities

- **Guidance on Canadian Registered Charities Carrying Out Activities Outside Canada**
- <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html>
- **Bigger Font Version:**
- [http://www.globalphilanthropy.ca/images/uploads/Guidance for Canadian Registered Charities Carrying Out Activities Outside Canada - July 8, 2010.pdf](http://www.globalphilanthropy.ca/images/uploads/Guidance%20for%20Canadian%20Registered%20Charities%20Carrying%20Out%20Activities%20Outside%20Canada%20-%20July%208,%202010.pdf)



# Summary of Foreign Activity Guidance

- Consolidates guidance, statutes, case law, newsletters
- Updates
- Clarifies
- More flexibility
- Provides more guidance (50 pages vs 12)
- Minimum standards for charities
- Reminder to charities that there are rules for Canadian charities operation abroad

# “Own Activities” or “Direction And Control”

When not working with qualified donee or own staff need to have:

- Due Diligence of Intermediary (investigate)
- Written agreement
- Detailed description of activities
- Monitoring and Supervision
- Ongoing Instruction for changes
- Periodic Transfers
- Separate Activities and Funds
- Books and Records showing above

# 1. Summary

“According to the *Income Tax Act*, a registered charity can only use its resources (for example—funds, personnel, and property) in two ways, whether inside or outside Canada:

- on its own activities (those which are directly under the charity’s control and supervision, and for which it can account for any funds expended); and
- on gifts to qualified donees.”

## 1.1 “Own Activities”

A charity usually carries on its activities using its **staff** (including volunteers, directors, or employees), or through an **intermediary** (for example—an agent or contractor). However, when using an intermediary, it must still direct and control the use of its resources, although it may generally delegate authority to make day-to-day operating decisions. **A charity cannot merely be a conduit to funnel money to an organization that is not a qualified donee.**

# 1.1 “Intermediary”

“For this guidance, an intermediary is a person or non-qualified donee that is separate from the charity, but that the charity works with to carry out its own activities.”

## 1.2 Direction and Control

“all necessary measures to direct and control the use of its resources when carrying out activities through an intermediary.”

- Create a written agreement with the intermediary, and implement its terms.
- Communicate a clear, complete, and detailed description of the activity to the intermediary.
- Monitor and supervise the activity.
- Provide clear, complete, and detailed instructions to the intermediary on an ongoing basis.

## 1.2 Direction and Control

- For agency relationships, segregate funds, as well as maintain separate books and records.
- Make periodic transfers of resources, based on demonstrated performance.
- A charity must maintain a record of steps taken to direct and control the use of its resources, as part of its books and records, to allow the CRA to verify that all of the charity's resources have been used for its own activities.

## 2. Introduction

- updates and replaces Guide RC4106, *Registered Charities: Operating Outside Canada*.
- “This guidance does not have the force of law.”
- to help charities understand the CRA’s interpretation of, and expectations



# Charity and Applicant definition

- For this guidance, charity means a Canadian charity that is registered under the *Income Tax Act*.
- Applicant means an organization applying for registered charity status, which intends to carry on activities outside Canada.

# Activities IN Canada and OUTSIDE

“This guidance generally assumes that a charity working with an intermediary is doing so in order to carry on charitable activities outside Canada. The requirements in this guidance about working with intermediaries also apply to all charitable activities carried out within Canada. For more information on this topic, see our upcoming guidance called *Carrying Out a Charity’s Own Activities Within Canada Through an Intermediary*.”

## 3. Can charities conduct foreign activities?

**“Charities can carry on their activities both inside and outside Canada. Canadian registered charities make important and valuable contributions throughout the world.** However, carrying on activities outside Canada often presents significant challenges and requires substantial ongoing effort. Many charities have launched **well-intentioned** international activities only to learn that they cannot maintain the effort needed to meet their objectives and fulfil their obligations under the *Income Tax Act*.”

# Don't Reinvent the Wheel

“Before carrying on activities outside Canada, the CRA recommends that a charity or applicant for registration consider working with existing charities or other qualified donees that have the experience and capacity to carry on activities in a way that meets the requirements set out in this guidance.”

## 4.0 What is Charitable

“The *Income Tax Act* does not define what is charitable. Instead, the common law definition is applied. One part of that definition is that a tangible benefit be conferred, directly or indirectly, on the public—this is the **public benefit test**.”

# Canada vs. Abroad

- Most activities that are charitable in Canada are, as a matter of Canadian law, equally charitable abroad.
- However, the courts have stated that some activities may not be charitable when carried on in a different country. For example, increasing the effectiveness and efficiency of Canada's armed forces is charitable, but supporting the armed forces of another country is not. Each case is assessed on its own particular facts.

# Public Policy

“The courts have also established that a charity’s purposes and activities must not violate officially declared and implemented Canadian public policy.”

## 4.1 Following Local Laws

- “When a charity operates within Canada, it must comply with Canadian laws, including the *Income Tax Act* and common law.”
- “However, a charity that carries on activities outside Canada may operate in areas where the legal framework and laws are different.”
- “Although the *Income Tax Act* does not require that registered charities comply with laws in foreign jurisdictions, being registered in Canada does not exempt a charity from the laws in the jurisdiction where they operate.”



## Local Laws (Cont)

“The CRA strongly suggests that all charities make themselves aware of local laws, and how they are enforced, before carrying out their charitable programs abroad. Being aware of local laws and their application will help make sure that the public benefit provided by a charity’s activities is not offset by harm that may result to those carrying on the activities, to the charity’s beneficiaries, or to anyone else.”

## 4.2 Charities and Risk

- “If a charity or applicant’s activity exposes anyone to the risk of harm, it may affect its charitable status.”
- “If an organization’s activity is likely to result in harm to the charity’s staff, the beneficiaries of its programs, or any other person, this harm is taken into consideration when assessing whether the public benefit test is met.”

## 4.2 Charities and Risk

- To meet this test, a substantial net public benefit is required. If no substantial net public benefit is provided, the organization will fail the public benefit test. A charity could lose its registered status, and an applicant will not be registered as a charity.
- On a practical level, the CRA recognizes that many situations and activities involve some element of risk. Sometimes it is not possible to predict all outcomes and hazards of certain activities, particularly in quickly changing international environments.

## 4.2 Charities and Risk

“However, a charity or applicant should be able to show an awareness of the level of risk an activity poses versus the benefit that can be provided. If the charity intends to proceed with the activity, the charity should have an appropriate plan to mitigate significant risks to an acceptable level.”

## 4.2 Charities and Risk

“The facts of every situation are different, and it is not possible to provide a comprehensive guide of how to manage risk for all activities. However, the CRA will usually look at the following types of factors to establish whether a charity is doing enough to evaluate and manage the level of benefit to risk:

## 4.2 Charities and Risk

- the likelihood and nature of harm to anyone delivering the activity, receiving the benefit, or otherwise affected;
- the urgency of the need for charitable assistance (for example—an activity that helps desperate people in regions affected by a disaster, or in war zones);
- the experience of the charity or applicant operating in situations with significant risk; and
- the charity’s proposed measures to mitigate any significant risks.”

## 4.2 Charities and Risk

### Example

- Civil war - urgent need
- Organization has considerable experience with natural disasters not war
- Consults experts familiar with the security situation and with experience in the region.
- Arranges more training
- Arranges for guides and interpreters that the charity believes are trustworthy.
- Charity weighs risk vs relief to beneficiaries in need.
- Charity will likely meet the public benefit test.

# Safety of Charity Staff

- Goal is to implement humanitarian program
- Violence against aid workers increasing problem
- Kidnapping, extortion, unlawful detention, civil unrest, random criminal violence, workplace violence, travel
- Neutrality is no guarantee of safety
- NGO roles are vitally important
- Board, employee, funder concerns
- 'Hope' is not a security plan



# Violence Against Humanitarian Workers

- Have security plan
- Look at programs, threat and vulnerabilities
- Plan from proposal stage for security
- Training before project and briefings during
- Pick right people – maturity, expertise, medical fitness
- Physical security of office, home, lodging, facilities
- Be aware of local laws, customs and sensitivities
- Check what insurance will cover and not cover
- Careful who you hang out with and where

## 4.3 Terrorism

- “As with all individuals and organizations in Canada, charities are responsible for making sure that they do not operate in association with individuals or groups that are engaged in terrorist activities, or that support terrorist activities.”

# How Terrorists May Try to Use Charities

- Money raised by charities to fund terrorist organizations;
- Using charities to smuggle people into countries illegally;
- Using residential schools as military recruitment and training centres;
- Using charities set up for providing facilities for young people for organization and recruitment;
- Using charities as a base to spread propaganda; or
- Using charities for money laundering purposes.

<http://www.charitycommission.gov.uk/supportingcharities/ogs/g096.asp>

# CRA Checklist on Terrorism

- Released April 2009
- Succinct, balanced and helpful

## **Checklist for Charities on Avoiding Terrorist Abuse**

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/chcklsts/vtb-eng.html>

# CRA Checklist on Terrorism

“It makes good sense on many levels for charities to develop and implement sound internal governance and accountability procedures, financial controls, risk management systems, and transparent reporting, and to keep these things under regular review. These are among the best actions any charity can take to help protect itself against actual or alleged abuse of any kind, including allegations of fraud, money laundering, or support for terrorism.”

# CRA Checklist on Terrorism

- Know partners and their board, employees, fundraisers, etc. and check that they are not on a terrorist “list”
- Read and follow CRA guidance on books and records, foreign activities
- Internal financial and other oversight
- Use normal banking mechanisms to transfer money wherever possible
- Know users of your facilities
- Who else is supporting person or cause that you are endorsing in public statements, and who uses your name as a supporter?

# CRA Checklist on Terrorism (cont.)

- Do you know where your donations and other support really come from?
- Do you know who has ultimate control over the project that your charity's money and resources are benefiting?
- What about after a particular project is finished?
- Have clear written agreements with agents/contractors/other partners, in Canada and abroad with detailed description of activities
- Follow agreements

## 4.3 Terrorism

- Under the *Charities Registration (Security Information) Act* and the *Income Tax Act*, a charity's status may be revoked if it operates in such a way as to make its resources available, either directly or indirectly, to an entity that is a **listed entity** as defined in subsection 83.01(1) of the *Criminal Code*; or to any other entity that engages in terrorist activities or activities in support of them.



## 4.3 Terrorism

There are other prohibitions on funding or otherwise facilitating terrorism. For more information, see the *Criminal Code*, the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism*, and the *United Nations Al-Qaeda and Taliban Regulations*, as well as the Charities Directorate's Web page Charities in the International Context.

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/ntrntnl-eng.html>

# Avoiding Terrorism

## **CRA Checklist for Charities on Avoiding Terrorist Abuse**

<http://www.cra-arc.gc.ca/tx/chrts/chcklsts/vtb-eng.html>

## **Compliance toolkit chapter 1: Charities and terrorism (UK)**

[http://www.charitycommission.gov.uk/Our\\_regulatory\\_activity/Counter\\_terrorism\\_work/Compliance\\_toolkit\\_index.aspx](http://www.charitycommission.gov.uk/Our_regulatory_activity/Counter_terrorism_work/Compliance_toolkit_index.aspx)

## **U.S. Treasury Dept. Anti-Terrorist Financing Guidelines – Voluntary Best Practices for U.S.-Based Charities**

<http://www.ustreas.gov/offices/enforcement/key-issues/protecting/charities-intro.shtml>

## **Canadian Charities and Terrorism: Preventing Abuse of Your Favourite Canadian Charity**

[http://www.globalphilanthropy.ca/index.php/articles/canadian\\_charities\\_and\\_terrorism\\_preventing\\_abuse\\_of\\_your\\_favourite\\_canadia/](http://www.globalphilanthropy.ca/index.php/articles/canadian_charities_and_terrorism_preventing_abuse_of_your_favourite_canadia/)

## 5. Restriction on Charity Resources

The *Income Tax Act* allows a charity to operate, both inside and outside Canada, in only two ways:

- carrying out its **own charitable activities** through its staff or an intermediary
- making gifts to **qualified donees**

# What are charitable activities?

“Charitable activities are those that further a purpose recognized as charitable under common law, such as providing housing to the homeless, scholarships to students, or medical care to the sick. Apart from making gifts to qualified donees, the *Income Tax Act* requires a registered charity to devote **all its resources to charitable activities carried on by the organization itself.** This requirement is referred to as the **own activities** test. A charity’s resources include all physical, financial, and material resources (for example— buildings, money, or donated goods), intellectual property, and its staff.

## 5.2 “Own Charitable Activities”

- **How can a charity carry out its own charitable activities?**
  - use its own staff (including volunteers, directors, or employees) to carry out its activities.
  - A charity may use an intermediary to carry out its activities.  
For example:
    - hire a company;
    - agreement with a non-profit organization to have the organization deliver specific charitable programs for the charity; or
    - pool its resources with another organization to complete a project.

# Charitable Goods Policy

- In certain **limited** circumstances, the CRA will consider a charity to be carrying out its own activities by transferring certain resources to a non-qualified donee. Before a charity carries out its own activities by transferring its resources to a non-qualified donee, the CRA expects **all** of the following conditions to apply:

# Charitable Goods Policy

- The **nature of the property** being transferred is such that it can reasonably be used only for charitable purposes (for example—medical supplies like antibiotics and instruments, which will likely only be used to treat the sick, or school supplies like textbooks, which will likely only be used to advance education); please note that transfers of money are not acceptable, and always require ongoing direction and control.

# Charitable Goods Policy

- Both parties understand and **agree** the property is to be used only for the specified charitable activities.
- Based on an **investigation** into the status and activities of the non-qualified donee receiving the property (including the outcome of any previous transfers by the charity), it is reasonable for the charity to have a **strong expectation** that the organization will use the property only for the intended charitable activities.



# Charitable Goods Policy

- Investigating the status and activities of an intermediary would typically include examining details such as the intermediary's stated goals and purposes, any previous relationship with the charity and other charities, its history and general reputation, and relevant media reports.
- If any of the above three conditions do not apply, then a charity will only be able to meet the own activities test by directing and controlling the use of its resources as otherwise stated in this guidance.

# Charitable Goods Policy- Examples

- transfers, by a Canadian research charity, of books and scientific reports to a reputable foreign library or school;
- transfers of food and blankets to a foreign charity coping with a natural disaster, and that has a long history of successful operations; and
- transfers of drugs or medical equipment to a poorly equipped foreign hospital with an excellent record of serving its community.

# Charitable Goods Policy- Examples

- The transferring of ownership of real or capital property, such as land or buildings, is a complex matter. For more information, see Appendix B.
- A charity cannot transfer any kind of property if it knows, or ought to know, that the property will be used either for non-charitable purposes or to circumvent the provisions of the *Income Tax Act*.

# Transferring Property directly to beneficiaries

- A charity does not have to adopt measures to direct and control the use of its resources when transferring property directly to proper beneficiaries of its charitable activities. For example, a charity could give school supplies, such as books or writing instruments, to impoverished students without having to direct and control how the students use those resources.

## 5.3 Court decisions and intermediaries

Three Federal Court of Appeal decisions each confirmed that a charity working with an intermediary must exercise “direction and control”

- The Canadian Committee for the **Tel Aviv Foundation** v. Canada (2002 FCA 72), 2002-03-01
- **Canadian Magen David Adom for Israel** v. Canada (Minister of National Revenue) (2002 FCA 323), 2002-09-13
- **Bayit Lepletot** v. Canada (Minister of National Revenue) (2006 FCA 128), 2006-03-28

## 5.4 What is a gift to qualified donee?

- A gift to a qualified donee is a transfer of money or any other property to a qualified donee, without consideration.
- Under the *Income Tax Act*, qualified donees are organizations that can issue official donation receipts for gifts that individuals and corporations make to them.

## 5.5 What is a Conduit

- “a conduit is a registered charity that receives donations from Canadians, issues tax-deductible receipts, and funnels money without direction or control to an organization to which a Canadian taxpayer could not make a gift and acquire tax relief.”
- Violates *Income Tax Act*
- Can be penalties or revocation

# Requirements for intermediaries

- The intermediary usually has resources that a charity needs, such as a particular **skill, knowledge of a region, staff in the area, or specialized equipment.**
- Charity must **investigate** status and activities of intermediary

Ensure that:

- The intermediary has the **capacity** (for example— personnel, experience, equipment)
- **strong expectation** the intermediary will use the charity's resources as directed by the charity.



## 6. Types of Intermediaries

- Agent
- Joint Venture Participant
- Co-operative Participant
- Contractors

## 6.2 Agent

“Registered charities should consider how they structure agency arrangements, since the **existence of an agency relationship may expose them to significant liability for the acts of their agents**. Even if there is no formal agency agreement in place, a court can attach liability to a registered charity if the court decides from the circumstances that an implied agency relationship exists.”

# Is “agency” relationship enough?

- Q.4 Our charity has entered into an agency relationship with a foreign charity. The foreign charity is carrying out activities for our charity. Under common law of agency, the foreign charity’s actions taken within the framework of the agency relationship are considered to be those of our charity. Doesn’t the fact that an agency relationship exists mean that we automatically meet the own activities requirement, and we do not need to adopt any more measures of direction and control such as a written agreement, monitoring, or ongoing instruction?

# Is “agency” relationship enough?

A.4 **No.** As a general rule, an agent’s actions taken in the context of the agency relationship can be considered those of the principal. However, the CRA takes the position that the existence of an agency relationship does not necessarily mean a charity has also met the *Income Tax Act’s* requirement that a charity devote its resources to charitable activities carried on by itself. A charity must have direction and control over the use of its resources by any intermediary, as described in section 7.

## 6.3 Joint Venture Participant

- “A **joint venture participant** is an organization that a charity works with to carry out a charitable activity. The charity and one or more joint venture participants **pool their resources** in order to accomplish a commonly-agreed upon goal under the terms of a **joint venture agreement**.”
- “A charity must be able to establish that its share of authority and responsibility over a venture allows the charity to dictate, and account for, how its resources are used. If a charity does not have enough decision-making authority to make sure that its resources are used as it directs, it may have difficulty establishing that it is carrying on its own activities.”

## Appendix E – Guideline for JVs

The following are the type of factors the CRA looks for when determining whether a charity directs and controls the use of its resources in a joint venture:

- presence of members of the Canadian charity on the governing body of the joint venture;
- presence of the Canadian charity's personnel in the field;
- joint control by the Canadian charity over the hiring and firing of personnel involved in the venture;
- joint ownership by the Canadian charity of foreign assets and property;

## Appendix E – Guideline for JVs

- input by the Canadian charity into the venture's initiation and follow-through, including the charity's ability to direct or modify the venture and to establish deadlines or other performance benchmarks;
- signature of the Canadian charity on loans, contracts, and other agreements arising from the venture;
- review and approval of the venture's budget by the Canadian charity, availability of an independent audit of the venture, and the option to discontinue funding when appropriate;

## Appendix E – Guideline for JVs

- authorship by the Canadian charity of such things as procedures manuals, training guides, and standards of conduct; and
- on-site identification of the venture as being the work, at least in part, of the Canadian charity.
- For joint ventures, the charity should make sure that it regularly receives full and complete financial information for the whole venture. It should also have enough documentation to show how its contribution fits into the overall undertaking, and how its resources have been devoted to activities that further its charitable purposes.



## 6.4 Co-Operative Participant

- A **co-operative participant** is an organization that works side-by-side with a registered charity to complete a charitable activity. Rather than pooling their resources and sharing responsibility for the project as a whole, as in a joint venture, the charity and other organization(s) instead each take on responsibility only for parts of the project.

## 6.5 Contractors

- “A **contractor** is an organization or individual that a charity hires to provide goods and/or services. For example, a charity might hire a for-profit company to dig a well in a foreign country for people lacking clean drinking water.”
- “A contractor is an intermediary with whom direction and control is usually exercised through the terms of the contract between the charity and the person or business providing the goods or services.”

## 7.1 How much direction and control?

- Generally speaking, the nature and the number of measures a charity adopts to direct and control the use of its resources should correspond to the circumstances of the activity, such as:
  - the amount of resources involved
  - the complexity and location of the activity
  - the nature of the resources being transferred
  - any previous experience working with a particular intermediary
  - the capacity and experience of the intermediary

# Measures of Direction and Control

- Create a written agreement, and implement its terms and provisions.
- Communicate a clear, complete, and detailed description of the activity to the intermediary.
- Monitor and supervise the activity.
- Provide clear, complete, and detailed instructions to the intermediary on an ongoing basis.
- For agency relationships, segregate funds, as well as books and records.
- Make periodic transfers of resources, based on demonstrated performance.

# Books and Records

- “A charity must record all steps taken to exercise direction and control as part of its books and records, to allow the CRA to verify that the charity’s funds have been spent on its activities.”

# eBay – records on foreign server

- **Q.3 Regarding the recent Federal Court of Appeal decision *eBay Canada Ltd. v. Minister of National Revenue*, can a charity not keep its books and records in electronic form on a foreign server?**
- **A.3 No. It is still the CRA's position that charities must keep their books and records at an address in Canada.**

# Keeping records in Canada

- Legally required
- If records on foreign server and you have access to them then easy to periodically download records relating to Canadian charity to hard drive in Canada.
- Keeping records in Canada is great “backup” if foreign server fails, lost, stolen, earthquake etc.
- Relationship with foreign intermediary may end and they may not be cooperative
- Foreign intermediary may not keep all records as long as required by ITA or funder etc.
- Not being able to access your “adequate books and records” is not adequate and can result in revocation

## 7.2 What is a written agreement?

- helps establish the relationship between a charity and its intermediary.
- provides the **authority** and **means** for the charity to meet the own activities test



# Written agreement not enough

“However, signing an agreement is not enough to prove that a charity meets the own activities test. The charity must also be able to show the CRA that the charity has a **real, ongoing, active relationship with its intermediary.**”

# One Time Activities Under \$1000

“Entering into a written agreement and implementing the terms of that agreement is usually an effective way to meet the own activities test. However, the CRA acknowledges that in situations where the amount of resources involved is minor, and is a one-time activity, the complications of developing a full, formal, written agreement may outweigh the benefits. **In situations where the money spent on a one-time activity is \$1,000 or less, other forms of communication might be used to show direction and control over the use of resources by intermediaries.**”

# Template Written Agreement

- no established template for written agreements, acceptable agreements would normally contain the elements listed in Appendix F.
- See sample contractor agreement at:
  - [www.globalphilanthropy.ca](http://www.globalphilanthropy.ca)

## Appendix F – Contents of Written Agreement

- Below is a list to help charities create a written agreement. However, charities should be mindful that their relationship with their intermediaries is not only judged on how well their agreements are written, but more importantly on their ability to show that they direct and control the use of their resources through active, ongoing, sustained relationships.
- Even when a charity and intermediary create an agreement that contains the elements contained in the checklist, either the charity or the CRA can refer to and rely on other relevant evidence to establish the nature of the relationship between the parties to the arrangement.<sup>92</sup>

## Appendix F – Contents of Written Agreement

### **Basic elements of a written agreement**

- exact legal names and physical addresses of all parties;
- a clear, complete, and detailed description of the activities to be carried out by the intermediary, and an explanation of how the activities further the charity's purposes;
- the location(s) where the activity will be carried on (for example—physical address, town or city);
- all time frames and deadlines;

## Appendix F – Contents of Written Agreement

- any provision for regular written financial and progress reports to prove the receipt and disbursement of funds, as well as the progress of the activity;
- a statement of the right to inspect the activity, and the related books and records, on reasonably short notice;
- provision for funding in instalments based on satisfactory performance, and for the withdrawing or withholding of funds or other resources if required (funding includes the transfers of all resources);
- provision for issuing ongoing instructions as required;

## Appendix F – Contents of Written Agreement

- for agency agreements, provision for the charity's funds to be segregated from those of the intermediary, as well as for the intermediary to keep separate books and records;

## Appendix F – Contents of Written Agreement

- If any of the charity's funds or property are to be used in the acquisition, construction, or improvement of **immovable property**, the title of the property will vest in the name of the charity. If not, there will be:
  - provision indicating how legal title to that property shall be held (in the name of a local charity, government agency, municipality, or non-profit organization established to provide benefits to the community at large);
  - provision for the intermediary to get reasonable assurances from the property holder, owner, or landlord, as the case may be, that the property will continue to be used for charitable purposes for the benefit of the public;



## Appendix F – Contents of Written Agreement

- for joint ventures, provisions that enable the charity to be an active partner, with a proportionate degree of direction and control in the venture as a whole, as well as assurances of the following:
  - the charity’s resources are devoted to activities that further its purposes; and
  - the charity maintains and receives financial statements and records for the entire project on a regular basis;
- effective date and termination provisions; and
- signature of all parties, and the date.

# General and Specific Agreements

- **Q.2 Can a charity have one general agency agreement that covers most terms of a relationship with its intermediary, and then a second, specific one for each particular activity?**
- **A.2 Yes.** Neither the *Income Tax Act* nor the courts have specified the form that written agreements must take. Charities can, if they want, create two or more separate documents, each serving a different purpose. As long as the charity can provide evidence it has met the own activities requirement, the form that evidence takes is less important.

## 7.3 Description of Activities \*\*\*

- Before starting an activity
- agree on a clear, complete, and detailed description of the activity.
- Depending on the type, complexity, duration, and expense of an activity, the charity should be able to provide documentary evidence that shows:

# What's In a Description of Activities

- exactly what the activity involves, its purpose, and the charitable benefit it provides;
- who benefits from the activity;
- the precise location(s) where the activity is carried on;
- a comprehensive budget for the activity, including payment schedules;
- the expected start-up and completion dates for the activity, as well as other pertinent timelines;
- a description of the deliverables, milestones, and performance benchmarks that are measured and reported;

# What's In a Description of Activities

- the specific details concerning how the charity monitors the activity, the use of its resources, and the intermediary carrying on the activity;
- the mechanisms that enable the charity to modify the nature or scope of the activity, including discontinuance of the activity if the situation requires (for example—the intermediary begins misusing funds);
- the nature, amount, sources, and destination of income that the activity generates, if any (for example—tuition fees from operating a school, or sales from goods produced by poor artisans in third-world countries; and
- any contributions that other organizations or bodies are expected to make to the activity.

## 7.4 Monitoring and Supervision

“Monitoring and supervision is the process of receiving **timely and accurate reports**, which allows a charity to make sure that its resources are being used for its own activities.”

## 7.4 Monitoring and Supervision

Depending on factors such as the size, nature, and complexity of an activity, the reporting methods (as stated in any written agreement) can take many forms, including the following:

- progress reports
- receipts for expenses and financial statements
- informal communication via telephone or email
- photographs
- audit reports
- on-site inspections by the charity's staff members

## 7.5 What is Ongoing Instruction

- “Ongoing instruction is the process of providing any **necessary additional instructions or directions to an intermediary.**”
- Records of any ongoing instructions help to show that the charity is carrying out its own charitable activities in accordance with the provisions of the *Income Tax Act*. **Minutes of meetings** or other written records of decisions are one way to show that a charity has given instructions. The CRA recommends using **written instructions** (for example—letters, emails, or faxes) to communicate with an intermediary whenever possible.



## Ongoing Instructions and Working for Both Org.

- Charities and organizations acting as intermediaries occasionally arrange to have a director/trustee, volunteer, or employee work for both bodies. Although this type of arrangement may make it easier to pass along reports and ongoing instructions, **it is not likely to be enough to show that the charity maintains direction and control over the use of its resources by the intermediary.**
- For example, if a staff member from the charity serves on the board of an intermediary, his or her control over the charity's resources may be limited to one vote among many. The intermediary's board could potentially decide to use the charity's money for activities other than those of the charity's own, despite the staff member's objections.

## 7.6 What are Periodic Transfers

- “Making periodic transfers is the process of sending a charity’s resources to an intermediary in **instalments, based on demonstrated performance**, rather than in one transfer.”
- **“When appropriate, a charity should keep the right to discontinue the transfer of money and have unused funds returned if it is not satisfied with the reporting, progress, or outcome of an activity.** This will allow the charity to stop funding an activity if the charity’s resources are being misused or for any other valid reason.”

## 7.7 What are separate activities/funds

- When carrying on an activity through an intermediary, a charity has to make sure that it can distinguish its activities from those of the intermediary.
- A charity cannot simply pay the expenses an intermediary incurs to carry on the intermediary's own programs and activities. Doing so draws into question whether the activity is truly that of the charity.

## 7.7 What are separate activities/funds

“For certain types of arrangements (for example—an agency agreement) the charity’s money for the activity should be kept in a separate bank account, and taken out only after appropriate authorizations are made by the charity or performance benchmarks are met by the intermediary. Segregated funds should also be reported in books and records separately from those of the intermediary.”

## 7.7 What are separate activities/funds

“Some regions have rudimentary banking systems or none at all, or a charity’s staff or an intermediary may not be able to access a banking system. If funds cannot be kept separate, then a charity should be able to provide other evidence to distinguish its own resources and activities, and of direction and control over them.”

## 8. Keeping Books and Records in Canada

- Under the *Income Tax Act*, a charity must keep adequate books and records in Canada. The CRA recommends that books and records be kept in either French or English.
- Books and records must enable the CRA to check the following:
  - whether a charity's funds are being spent on its own activities or on gifts to qualified donees
  - whether the charity is directing and controlling the use of its resources
  - whether there are grounds to revoke the charity's status

# Do you need original source documents?

- The *Income Tax Act* does not require a charity to provide **original source documents**, such as receipts for purchases, to show that it is in compliance.
- The CRA recommends that a charity get original source documents whenever possible, but acknowledges that war, natural disaster, lack of access to telephones or the Internet, low literacy rates, legal restrictions, or other conditions may make it impossible to do so.

# Do you need original source documents?

- Getting original source documents may not be possible or practical. If so, a charity should be able to explain why it cannot get them, and make all reasonable efforts to get copies and/or reports and records from staff and intermediaries to support its expenditures, and show that it has made such efforts. The charity will also have to show when, how, and in what amounts funds were transferred.



# Why Obtain Receipts

- Yes receipts do not guarantee that funds actually spent or that project was effective and efficient
- Not all receipts are created equal
- But requiring receipts is a good idea because:
  - Makes fraud less likely;
  - Provide proof of expenses/backup;
  - May be helpful for warranties/returns or exchanges or proof of ownership;
  - Helps with budgeting and planning for next project;
  - Helps with finding errors;
  - May be required by CRA for direction and control, compliance and books and records;
  - May be required by funder (Foundation, CIDA) for reimbursement;
  - Reduces use of underground or black market economy which may be tax evasion or be criminal activity
  - Provides local employment for scanning or copying.

## 9. CIDA and other government funding

- The Canadian International Development Agency (CIDA) and other government organizations fund many activities inside and outside Canada. However, not all projects funded by government are charitable under common law. A charity has to make sure that any activities it carries on under the terms of a funding agreement further its charitable purposes.
- If a charity has concerns about whether a CIDA-funded project would be a charitable activity, it should [contact the Charities Directorate](#) for advice.

# CIDA

The Canadian International Development Agency (CIDA) works in co-operation with a number of voluntary sector organizations. Although registered charities may find it useful to support these organizations, not all of them are qualified donees. Since charities can only make gifts of money or other resources to qualified donees, charities must take care in deciding which organization to support and how to provide that support.

# CIDA Reporting

- **Q.5 Can a charity use its CIDA reporting to satisfy the requirement for evidence of direction and control?**
- A.5 If a CIDA report contains enough evidence that the charity is carrying out its own activities, the charity can provide this report to the CRA in the course of an audit or other investigation.

## 10. Are foreign activities part of DQ?

- **Yes.**
- All the amounts a charity spends on directly carrying out its charitable activities will go towards meeting its disbursement quota, whether the activities were carried out in Canada or in a foreign country.
- When reporting expenditures on [Form T3010B, Registered Charity Information Return](#) , all amounts spent on a charity's activities outside Canada are to be reported in the same way that expenses in Canada are reported. A charity should report all amounts spent by its intermediaries as if they had been spent by the charity itself.

# 11. Feedback on Guidance

- Let CRA know if you have suggestions for improvement to guidance:

[consultation-policy-politique@cra-arc.gc.ca](mailto:consultation-policy-politique@cra-arc.gc.ca).

- You can also send comments by mail to the following address:

Charities Directorate  
Canada Revenue Agency  
Ottawa ON K1A 0L5

The Charities Directorate's fax number is 613-954-8037.

# Appendix A – Disaster Relief

- When natural disaster - priority is typically assigned to these files.
- However, disaster relief organizations must still meet the same legal requirements as all other applicants
- Applicants must show how they will make sure that they are carrying on their **own activities** as required by the *Income Tax Act*, and also that they will **direct and control** the use of their resources.

# Appendix A – Disaster Relief

- In immediate aftermath of a disaster, the affected area can be quite volatile and dangerous.
- Local authorities may limit access to an affected area to well-established, experienced, relief organizations.
- Usually faster and more effective for applicants to raise funds and support existing qualified donees that have the experience, resources, and infrastructure already in place to respond to disasters.



# Canadian Affiliate Organizations

- Application to register a charity that intends to support a foreign organization that is not a qualified donee. Often these organizations will use the non-qualified donee's name as part of its own name to indicate the connection.
- It is not possible to register an organization solely to support a non-qualified donee's activities.
- If however the non-qualified donee's activities are charitable in whole or in part, an applicant could apply to carry out that portion of the work of the non-qualified donee, and then have that non-qualified donee act as an intermediary in carrying out the applicant's activity.
- Must show real and ongoing direction and control

## Appendix B – Capital Property

- “A charity may want to buy or build, or help buy or build, real or capital property in a foreign country, such as land or buildings. However, the charity may find that owning real or capital property is not practical or possible. For example, some countries do not permit foreign ownership of real property, or it could be extremely difficult to operate and maintain a building in another country.”

## Appendix B – Capital Property

- In these cases, a charity may seek to transfer ownership of real or capital property to a foreign non-qualified donee. These types of transfers can be problematic because land and buildings tend to have a relatively high value, and can also be used for a wide variety of purposes. For example, a charity might help an impoverished community build a bridge that allows people to cross a river and take their goods to a local market more quickly. Then a powerful member of that community may seize control of the bridge and start charging a toll for personal profit.

## Appendix B – Capital Property

- Transferring ownership of capital property to a local organization or government body might be acceptable to the CRA, as long as documentation with any non-qualified donee states that the property will be used only for charitable purposes. The charity should get reasonable assurances, and document and retain these assurances, that the property will, at least for its expected useful life, be used for the benefit of the community as a whole.

## Appendix B – Capital Property

- The charity should also, to the best of its ability, assess the risk that its property is likely to be used inappropriately. If the risk of inappropriate use outweighs the benefit that is likely to be provided, the charity should not start, or should stop, the project.

# Tithes, Royalties to Foreign Org.

- Some charities are registered as the Canadian representatives or offshoots of a larger organization, often located outside Canada. These head bodies sometimes require payments from their Canadian charities, in the form of tithes, royalties, memberships, or similar transfers.
- The same requirements for the direction and control of resources apply to charities that are offshoots of head bodies outside Canada. In other words, a charity may not simply send gifts of money to a non-qualified donee, even if that non-qualified donee is the charity's head body.

# Tithes, Royalties to Foreign Org.

- However, having the head body act as an intermediary for a charity is also often not practical, since the nature of the relationship may prevent the charity from instructing its head body in how to use the money. In these cases, the charities must be sure they are receiving goods and services equivalent in value to the amounts they are sending.

# Tithes, Royalties to Foreign Org.

- For example, a head body might provide a Canadian charity with any of the following:
  - training
  - accounting services
  - literature for distribution
  - use of a name, trademark, or copyright material



# Tithes, Royalties to Foreign Org.

- The CRA will generally accept that a charity with a head body outside Canada usually benefits from access to useful resources from that head body such as policies, communications, and training material. If a charity transfers small amounts to a head body, and the charity has access to internationally produced material, we will not require additional evidence of benefits to the charity.
- For these purposes, we will probably consider a small amount to be whichever amount is less—5% of the charity's total expenditures in the year or \$5,000.

## Appendix D – Capacity Building

- “Charities that engage in capacity building will typically build a long-term, reciprocal relationship with another group or community, rather than simply transfer resources to a recipient.”
- “A charity can carry out capacity-building activities, as long as it continues to meet all requirements of the *Income Tax Act*. For example, a charity must, among other requirements, make sure that its activities only further its own charitable purposes, keep direction and control over the use of its resources, meet the public benefit test, and not confer undue private benefit.”

## Appendix D – Capacity Building

- “For the purposes of this guidance, capacity building is working in partnership with an organization, community, or other group of people to develop the skills, tools, and resources necessary to address their own problems. Capacity-building activities may be charitable if they relieve poverty or advance education, or further another recognized charitable purpose.”

## Appendix D – Capacity Building

- “One of the principles behind capacity building is that simply transferring money to a group or community, without providing ongoing support, rarely leads to long-term solutions. Instead, a long-term relationship can ultimately lead to ownership of the program by the charity’s partner, such that the charity may be able to withdraw its resources from the project entirely, and leave its successful operation in the hands of its former partner.”

## Appendix D – Capacity Building

- “In these cases, the line between intermediary and beneficiary may become harder to distinguish. Although this guidance typically assumes intermediaries are a medium or means for a charity to carry out its own activities, in some cases they may also be a beneficiary of the charity’s activities, such as by receiving training or operational resources.”

# Disasters and Conduits

- **Q.6 One of my neighbors told my charity about an urgent need for assistance in a particular country. He says if we raise the funds, he can get the money to the right place. Can my charity hold a fundraiser and give him the money to pass on?**
- **A.6 No.** If a charity were to hand over its money to be passed on to a third party without any direction, control, or even knowledge of what happened to the money, it would be in violation of the *Income Tax Act*. Even if a person or organization is trustworthy or reputable, a charity must be able to show it directs and controls the use of those funds, or it will be subject to sanctions under the *Income Tax Act*—up to, and including, revocation of its charitable status.

# Can intermediary use sub-contractor?

- **Q.7 Can a charity use subagency or subcontractor agreements to carry out its activities?**
- **A.7** Neither the *Income Tax Act* nor common law restricts a charity from using subagency or subcontractor agreements. However, in these situations, a charity must still be able to direct and control the use of its resources through its relationship and agreements with the agent or contractor.

# Can CRA “relax” direction and control?

- **Q.8 The CRA’s requirement for direction and control makes it difficult for our charity to work in partnership with foreign charities. Can the CRA relax this requirement?**
- A.8 No. The CRA has to apply the provisions of the *Income Tax Act*, including the own activities requirement. The CRA takes the position, as supported by the courts, that the law obliges a charity to direct and control the use of its resources whenever working with an intermediary. Nevertheless, maintaining direction and control does not mean a charity cannot co-operate or collaborate with a non-qualified donee.



# Can CRA “relax” direction and control?

- For example, a charity can assign day-to-day operational decision making to its intermediary, since the intermediary typically has the local knowledge and experience that allows it to make the best decisions on how to carry out a charity’s activity. A charity can also consult with an intermediary when designing an activity, as long as it keeps the final decision-making authority for the use of its resources.

# Applicants for charitable status

- On occasion, applicants for charitable status intend to carry on activities through an intermediary. In these situations, a copy of a written agreement included with the application is often a good way to show the CRA that the relationship the applicant will enter into with its intermediary will enable the applicant to meet all requirements for registration.



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# Local Ownership and Direction and Control

## Can intermediaries be local/representative?

“local ownership is high when

- i. intended beneficiaries substantially influence the conception, design, implementation, and review of development strategies;
- ii. implementing agencies are rooted in the recipient country and represent the interests of ordinary citizens;
- iii. there is transparency and accountability among the various stakeholders.”

In *Local ownership and development co-operation – the role of Northern civil society: An Issues Paper* by John Saxby, written for the CCIC in March 2003, he notes:

[http://www.ccic.ca/e/docs/002\\_aid\\_the\\_role\\_of\\_northern\\_civil\\_society.pdf](http://www.ccic.ca/e/docs/002_aid_the_role_of_northern_civil_society.pdf)

## Can beneficiaries influence strategies?

- Nothing in Consultation that prevents “intended beneficiaries substantially influence the conception, design, implementation, and review of development strategies;”
- Intermediary can prepare, and often will prepare, the initial description of activity as they are aware of details. However, Canadian charity must consider whether proposal meets with Canadian charity’s mission/objects, restrictions on funding that Canadian charity received from donor or funder, and complies with the priorities, legal obligations and ethical constraints of Canadian charity. Charity cannot send funds to intermediary without knowing how it will be spent or maintaining direction and control.

# Can intermediary be rooted in country?

- In the past model was Canadian humanitarian worker or missionary went to South. The whole notion of structured arrangement, direction and control and intermediaries is really focused on the idea of using contractor, agent, partner who is typically located in the Southern country.
- It is the choice of the Canadian charity whether they wish to use intermediaries that “are rooted in the recipient country and represent the interests of ordinary citizens”.
- This is consistent with due diligence requirement and public benefit requirement

# Can relationship be transparent?

- There are many special interests for various reasons do not want transparent relationships
- Transparency – not helpful for:
  - illegal activities
  - unethical activities
  - activities where there is a huge private benefit
  - activities where there is no public benefit
  - very ineffectual or ineffective activities

# Can relationship be accountable?

- Nothing in CRA rules that prevents multiple accountabilities, but CRA is concerned with accountability for charity's resources.
- “Accountability is a concept in ethics and governance with several meanings. It is often used synonymously with such concepts as responsibility, answerability, blameworthiness, liability, and other terms associated with the expectation of account-giving.” Wikipedia
- Well run organizations should be accountable to stakeholders which includes intermediaries/partners and also beneficiaries



## Some Ethical Issues in Foreign Activities

- Equal partnerships, promote sustainability not dependency
- Gift acceptance issues – type of gift, restrictions on use of gift
- Governance and finances
- Transparency and accountability
- Effectiveness
- Fundraising images
- Do no harm – be careful who you support
- Cultural, Religious and Gender issues

## Some Ethical Issues in Foreign Activities

- Use of resources, sustainability, coordination
- Advocacy
- Sexual exploitation
- Child Sponsorship
- NGO-Military ties
- Pharmaceuticals and gifts in kind
- International affiliations
- Employee/Independent contractors
- Compliance with Foreign Laws, payment of taxes

# Questions for Follow-Up

- 1) Do you know what a qualified donee is?
- 2) Is your charity providing resources to organizations or individuals that are not qualified donees such as foreign charities?
- 3) Does your charity have objects which allow for such activities? If not have you changed objects?
- 4) Have you reviewed CRA's guidance on activities outside of Canada?
- 5) Does your charity have an appropriate written agreement with all necessary elements?

## Questions for Follow-Up

- 6) Do you maintain “direction and control” over your resources? Do you have:
- written agreement and comply with terms.
  - clear, complete, and detailed description of the activity.
  - monitor and supervise the activity.
  - instructions to the intermediary on an ongoing basis.
  - for agency relationships, segregate funds, as well as maintain separate books and records.
  - periodic transfers of resources
  - books and records that show use of resources and direction and control

## Questions for Follow-Up

- 7) Are you complying with foreign laws?
- 8) Are you undertaking appropriate risk management?
- 9) Are you complying with CRA's checklist on avoiding involvement with terrorism?
- 10) Are you properly categorizing foreign activities on T3010?
- 11) Are you obtaining appropriate professional advice?



# Further information

[www.globalphilanthropy.ca](http://www.globalphilanthropy.ca)

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html>

<http://www.interaction.org/document/interactions-pvo-standards>

[www.capacitybuilders.ca/clip](http://www.capacitybuilders.ca/clip)

# Evaluation

- Your feedback is important to the Charity Law Information Program
- Please complete the Evaluation Form and add any comments that will help improve our program
- If you have any additional feedback contact [clip@capacitybuilders.ca](mailto:clip@capacitybuilders.ca)
- Thank you for your participation today!