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

**By Mark Blumberg (December 17, 2009)**

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Many Canadian charities make important and valuable contributions to international development and other efforts around the world. Charities, by virtue of their reputation and access to resources, in some cases make a tempting target for terrorists who are trying to acquire funds and/or legitimacy. Canadian charities need to be diligent in ensuring that their resources are used appropriately and not diverted to non-charitable uses, including terrorism. A Canadian charity can intentionally support terrorism, but more likely resources of a charity can be diverted without the knowledge of the charity. Supporting terrorism can take the form of providing money to terrorists, helping them move from country to country, providing propaganda for terrorist causes, allowing terrorists to use facilities or equipment, and laundering money.

The CRA has just published a very helpful guide entitled “Checklist for Charities on Avoiding Terrorist Abuse.”<sup>1</sup> It is attached to the end of this article, and I encourage all charities to review it.

Below I set out some ideas on how to prevent your Canadian charity or non-profit from either knowingly or unwittingly becoming involved with terrorism. Many of the things that I am suggesting here are also useful for preventing the misappropriation of resources for fraud, money laundering, tax evasion and other more common forms of abuse. Some of the suggestions can help in preventing legitimate mistakes by employees or intermediaries. People are human and

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<sup>1</sup> <http://www.cra-arc.gc.ca/tx/chrts/chcklsts/vtb-eng.html>

make mistakes all the time – if mistakes can be quickly caught it can prevent embarrassment and worse.

### **1) Governance and Checks and balances**

It is very rare that a Canadian registered charity is set up to support terrorism and that all of its directors and members are involved in the scheme. A greater, though admittedly also rare, concern is that a legitimate Canadian charity will be duped in some way into supporting terrorism. Many of the elements of good governance – such as real oversight by an arms-length and diverse board, regular board meetings, transparency, audits, and management of employees and intermediary organizations – are helpful in preventing an organization and its assets from being diverted to terrorists or otherwise misused. If the board of directors is not on top of the activities of the charity then who will be?

### **2) Due Diligence: Know your Partners**

Charities often work with agents, partners, contractors and employees in foreign countries. There is no substitute for knowing your partners well and satisfying yourself that they do not support terrorism. Be careful to conduct your due diligence to ensure that apparently legitimate entities are not involved with terrorism.

If you have not previously worked with a particular partner, get references from a trusted source. Verify whether the foreign charity has a long history of conducting charitable activities. And try to limit the number of partners you have as a way of managing risk. If you have a million dollars and have a choice of working with 100 partners or 10 partners you are probably better off working with ten partners and vetting them properly and monitoring their activities. Due diligence cannot ensure that a charity will avoid problems but it can substantially reduce the risk.

Alternatively if you are a new, inexperienced, or small charity or foundation with limited resources, and wish to work in a particular foreign country then I would suggest you consider funding a well-established qualified donee (like Doctors Without Borders Canada, Save the

Children Canada, Care Canada) that has employees and/or trusted partners on the ground. You can also enter into a joint venture or cooperative partnership with another party, such as a Canadian or US charity that has the experience necessary to manage, monitor, or oversee the project.

### **3) “Direction and Control” and Written Agreements**

Canadian charities are required under the *Income Tax Act*, by case law and by the CRA to have direction and control over their resources. See the CRA “Consultation on the Proposed Guidance on Activities Outside of Canada for Canadian Registered Charities”<sup>2</sup> which sets out CRA’s views of the relationship between Canadian charities and non-qualified donees (including foreign charities).

CRA describes the “measures of control” including written agreements, clear and complete description of activities; monitoring and supervision; ongoing instruction; periodic transfers; and separate activities and funds. A proper written agreement sets out exactly how funds will be used, what monitoring and reporting will take place, the schedule of progress payments, and any termination provisions including provisions for termination when terrorism is suspected. This level of detail will reduce the likelihood of the funds being misused.

The CRA has stated on numerous occasions that having a written agreement is very important, but that it is not enough by itself. In a recent draft document they noted that “...Simply entering into an agreement is not enough to prove that a charity meets the own activities test. The charity must also be able to demonstrate to the CRA it has a real, ongoing, active relationship with its intermediary, whereby it actually directs and controls the use of its resources by that intermediary.”

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<sup>2</sup> <http://www.cra-arc.gc.ca/tx/chrts/plcy/cnslttns/ccrc-eng.html>

#### 4) Read Guidance and Best Practices from other Governments

The CRA suggests several sources of information and ideas in its publication, *Charities in the International Context*. The Department of the Treasury “Protecting Charitable Organizations” has numerous interesting articles on charities and terrorism at <http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml>. The CRA suggests that Canadian charities review the Department’s *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* in particular <http://www.ustreas.gov/press/releases/reports/0929%20finalrevised.pdf>

The Best Practices cover issues such as Governance, Disclosure, Accountability and Financing Procedures. Key suggestions include that:

- the charity know the name of the organization in English and the jurisdiction in which it operates;
- searches be conducted on the foreign charity (public filings, public databases and anti-terrorism lists);
- no cash ever be provided;
- the names and dates of birth of key employees of the foreign charity be recorded;
- the foreign charity provide certifications with respect to terrorism,
- bank references of the foreign charity be obtained and checked;
- periodic reporting by the foreign charity be provided; and
- on-site audits be conducted where appropriate.

The CRA also recommends the UK *Operational Guidance: Charities and Terrorism* (OG96) <http://www.charity-commission.gov.uk/supportingcharities/ogs/g096.asp>. Ideas there include reporting any concerns to the proper authorities; being aware of and verifying large donations from unknown individuals; avoiding donations that are conditional on certain organizations in

the field being used as an agent or contractor; expressing concern about informal money transfer such 'hawala' and ensuring that there is a paper trail.

These resources provide useful ideas to thwart terrorist attempts to take advantage of charities.

## **5) Books and Records**

A registered Canadian charity must keep adequate books and records in either English or French at a Canadian office. The retention schedule for such records is different depending on the type of record at issue. One thing is clear: without adequate books and records it is impossible to know whether the charity's funds and resources are being effectively used or being misappropriated, squandered, or used to support terrorism.

## **6) Check Counter-Terrorism Watch Lists**

It is prudent to check various terrorist watch lists from time to time.

Many jurisdictions keep lists, some of which are searchable, of organizations and/or individuals suspected of being involved in, facilitating, or supporting terrorist activities. While the process for how such lists are compiled may be controversial, it is nevertheless a good idea to check them, particularly when considering new partners. Here is a summary of the listed entities (groups) <http://www.ps-sp.gc.ca/prg/ns/le/cle-eng.aspx> and here is a detailed list (in text and excel format) of entities as well as individuals at [http://www.osfi-bsif.gc.ca/osfi/index\\_e.aspx?DetailID=525](http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailID=525)

The US Office of Foreign Assets Control list is at <http://www.ustreas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>.

The European Union list is at [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l\\_144/l\\_14420060531en00250029.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_144/l_14420060531en00250029.pdf)

The UK Treasury list is at [http://www.hm-treasury.gov.uk/documents/financial\\_services/sanctions/fin\\_sanctions\\_index.cfm](http://www.hm-treasury.gov.uk/documents/financial_services/sanctions/fin_sanctions_index.cfm)

## **7) Site Visits and Monitoring**

Conducting a site visit, or having a trusted local representative do so, can help you understand your partner, ensure that funds are being appropriately spent, etc. Did that orphanage that your charity is supporting actually use the funds for the purposes you intended? Does that orphanage actually exist?

Though travel costs to send staff on site visits may be prohibitive, there are professionals who, for nominal cost, will visit sites and assess the operation in a half or full day. These professionals are knowledgeable local people. They can often be far more observant and aware of what is going on than visiting Canadians.

## **8) Google and Other Search Engines**

I would also suggest that you also occasionally conduct a Google search on your partners and their key employees. Sometimes spending 20 minutes on Google can yield more than a \$2000 site visit. It is amazing what one finds – and in some cases the leadership of the partner organization is not even aware that someone in their organization is involved with certain activities.

Charities must remember that depending on the type of relationship they have with their foreign counterpart, they may be held accountable for their partner's actions. Even the use of funds for purposes that may be completely legal in the foreign jurisdiction– such as partisan political activities or support for a foreign military – can put the Canadian charity in trouble in the context of Canadian rules.

## **9) Anti-Terrorism Policy**

Some entities, such as certain foundations, may require that a charity have an anti-terrorism policy. Such a policy sets out some of the steps that a Canadian charity will typically take to avoid involvement with terrorism.

Of course, there is little value in having an internal anti-terrorism policy if it is only going to collect dust or be ignored. And if the policy is ignored or not followed properly and the charity has become unwittingly involved with terrorism, then the charity may be worse off as a result of having an anti-terrorism policy. With a larger organization an Anti-Terrorism policy may clarify for employees the steps that they should take to when vetting partners, etc.

## **10) Contractual Terms and Certification**

In agreements with partners I recommend placing a provision like the one that follows.

Throughout the terms of this Agreement, the parties hereto shall exercise due diligence to ensure that the resources of the parties shall not be used to support or facilitate terrorist activity. All programs and activities shall be reviewed regularly to ensure such programs do not support or facilitate terrorism. If any concerns are raised that programs or activities have supported or facilitated terrorism they shall be immediately and thoroughly investigated and fully reported on to all parties. In the event any party hereto determines that the programs and/or activities of the other party have directly or indirectly, knowingly or unwittingly, been used to support or facilitate terrorist activity the other party shall be entitled to give notice to immediately terminate the Agreement.

Although this is not a panacea it is always good to set out your expectations in writing.

Some organizations require that the intermediary organization certify that they and those they deal with are not involved with terrorism. If a donor requires certification you may decide that it is a small price to pay for the funds you are receiving. And the process of certification may encourage your partners to conduct due diligence on their staff and partners.

On the other hand, some criticize certification as being of little use as terrorists are not above lying. In addition, the process of certification may result in intrusive searches and accumulations of personal information about partners and employees. Getting someone to sign a certificate or affidavit is going to be of little or no help if in fact the funds are used for terrorist activities. So the certification may do little more than give you a false sense of security.

If you decide to go ahead with certification, you may wish to look at a sample certification statement. See the U.S. Agency for International Development (USAID) Certification Regarding Terrorist Financing: Implementing E.O. 13224 (Revision 2) available online on pages 6 and 7 at [http://www.usaid.gov/business/business\\_opportunities/cib/pdf/aapd04\\_14.pdf](http://www.usaid.gov/business/business_opportunities/cib/pdf/aapd04_14.pdf).

## **11) Illegal Activities and Money Laundering Schemes**

It is obvious that charities should not be involved with crime. But sometimes crime is not as easy to spot as one might hope.

Terrorists traditionally use many mechanisms to raise funds including robbing banks, trafficking in narcotics, petty crime, extortion, prostitution, and human trafficking. Many of these activities are quite lucrative. Terrorists and others will often try to launder money earned via these illegitimate means by using charities because they want to hide the source, appear legitimate, avoid seizure, and avoid being caught or prosecuted.

Charities should be aware of schemes by individuals or entities to deceive them into laundering funds. An example is when a foreign "donor" provides an interest-free loan to a Canadian charity in foreign funds for a set period of say 6 months or a year. The monies are converted into Canadian dollars and ostensibly the waiver of interest is a donation. However, the foreign "donor" is actually interested in using the good offices of the charities to launder the money and to evade attempts by certain governments to freeze assets.

Another example is when a person makes a donation to a Canadian charity with the stipulation that the funds must be used with a particular intermediary organization. In this case the charity is unaware that that the intermediary is involved with terrorism, although the donor knows it.

Recently the Organization for Economic Cooperation and Development OECD published a *Report on Abuse of Charities for Money Laundering and Tax Evasion*.<sup>3</sup> The report looked at 19 countries and it appears that Canada probably has more charity tax evasion than any other

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<sup>3</sup> <http://www.oecd.org/dataoecd/30/20/42232037.pdf>



country. So Canadian charities need to be particularly diligent and look for the kind of red flags outlined above.

### **12) Do Not Allow Terrorists to Use Your Facilities and Equipment**

Maintain proper controls over facilities and equipment to ensure they are used only for charitable purposes. If you rent out your facilities it should only be to those who have legitimate purposes. Be diligent but not excessive: you don't need to review every bit of the curriculum of a Sunday school junior kindergarten class (although many adults can learn a lot from that!) – but you cannot be oblivious to who uses your facilities.

### **13) Avoid Cash**

Transfer funds by cheque or wire transfer using normal banking mechanisms rather than informal networks that may be prone to diversion and lack proper safeguards and records.

### **14) Basic Financial Controls like two Signing Officers**

Have two signing officers for all cheques and wire transfers. It reduces the likelihood that funds will be misused. There are many other basic controls that are prudent for charities to use. You may find *Building Capacity Through Financial Management: A Practical Guide* by John Cammack, published by Oxfam<sup>4</sup>, helpful in this regard. And we must not forget MANGO<sup>5</sup> (Management Accounting for non-governmental organizations) and their valuable resources.

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<sup>4</sup> [http://www.oxfam.org.uk/resources/downloads/buildfincap\\_book.pdf](http://www.oxfam.org.uk/resources/downloads/buildfincap_book.pdf)

<sup>5</sup> <http://www.mango.org.uk>

## **15) Avoid Places with Endemic Terrorism and Conflict**

I would suggest that new, inexperienced or small charities or foundations with limited resources avoid doing direct humanitarian, development or other work in places with ongoing conflict and violence such Northern Pakistan, Colombia, or Chechnya.

If you want to minimize your risk of involvement with terrorism while delivering a foreign project yourself, you may wish to focus on countries where terrorism is not an issue and where language, culture, stability, and the lack of violence and conflict combine to create an environment that is easier for you to work in.

## **16) Investigate Allegations of Terrorism**

Immediately investigate any allegations of terrorism and report your concerns or findings to the authorities. If the allegations are substantiated, disassociate immediately from the involved groups or individuals.

Suspected links to terrorism should be reported to the RCMP's National Security Information Line at 1-800-420-5805 or the [National Security Information Network](#) on the web.

## **17) Be Aware of Sanctions and How They can Affect your Organization**

Keep in mind that in addition to the prohibition against dealing with terrorists, Canada also maintains various types of sanctions against different countries including Côte d'Ivoire (Ivory Coast), Democratic People's Republic of Korea (North Korea), Democratic Republic of the Congo (DRC), Iran, Iraq, Lebanon, Liberia, Rwanda, Sierra Leone, Sudan, Burma (also known as Myanmar) and Belarus. For further information you may wish to visit <http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp>.

Make sure you understand the nature of the sanctions before proceeding to work in any of these countries.

The US also maintains sanctions that affect countries and areas such as the Balkans, Belarus, Burma, Cote d'Ivoire (Ivory Coast), Cuba, Democratic Republic of the Congo, Iran, Iraq, Former Liberian Regime of Charles Taylor, North Korea, Sudan, Syria and Zimbabwe. You can visit the Department of the Treasury, Office of Foreign Assets Control at <http://www.ustreas.gov/offices/enforcement/ofac/programs>.

The US also maintains a list of sanction programs related to Anti-Terrorism, Diamond Trading, Counter Narcotics, Non-proliferation, and Persons Undermining The Sovereignty of Lebanon or Its Democratic Processes and Institutions.

See [http://www.ustreas.gov/offices/enforcement/ofac/policy/charity\\_risk\\_matrix.pdf](http://www.ustreas.gov/offices/enforcement/ofac/policy/charity_risk_matrix.pdf).

## **Conclusion**

In this article I have tried to set out some simple and cost-effective methods that Canadian charities can follow to reduce the likelihood of being involved with terrorism. Of course, there is tremendous diversity in the charitable sector, and not every measure will be appropriate or necessary for every charity. Fundamentally, I encourage charities to take a risk-management approach when it comes to terrorism. The resources and reputations of charities must be kept intact by avoiding any involvement with terrorism or other forms of charity abuse. At the same time, we can neither afford to be obsessed with terrorism in a way that drains resources nor avoid involvement with foreign activities simply because of this problem

Following the suggestions in this article will assist you in avoiding involvement with terrorism and demonstrate reasonable efforts to avoid illegal diversion of funds or resources, helping you defend your organization, its reputation, its employees and its directors.

Here is the text of the Canada Revenue Agency “Checklist for Charities on Avoiding Terrorist Abuse” which is available at: <http://www.cra-arc.gc.ca/tx/chrts/chcklsts/vtb-eng.html>

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

This checklist is intended to help Canadian charities identify vulnerabilities to terrorist abuse, as part of good management practices.

Charities play a vital role in achieving goals that Canadians value highly, both at home and abroad. Recognizing this, and to encourage Canadians to support charitable activity, the *Income Tax Act* gives special and significant tax privileges to charities and donors. To maintain public confidence in these tax incentives, the Government of Canada and charities need to protect the charitable sector from abuse, including the exploitation of charitable resources to support terrorism and other non-charitable purposes and activities. Fortunately, the experience in Canada and elsewhere suggests that terrorist abuse within the charitable sector is rare, but it does happen and there are vulnerabilities.

The factors that promote Canadians’ high respect for charities can also make them vulnerable to exploitation by terrorist supporters. Charities bring people together for a common purpose and collective action. Some charities have a global presence, often in conflict zones or in places with little infrastructure, and frequently move money, people, and goods to and from these areas. Where there are no banks, charities may have to deal in cash or use alternative remittance systems. All this may unintentionally provide a network, and a cloak of legitimacy, for activities that support terrorism.

Canada works with its international partners to develop solutions to global issues such as terrorist abuse of charities. The Government of Canada is committed to continue playing its part in the international drive to tackle this threat, which will help to protect the reputation of the Canadian charitable sector and to ensure that legitimate charitable activity is not restricted.

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.

The following checklist is based on international and domestic concerns, experience, and guidance. It is not meant to be a comprehensive guide, but it will help Canadian registered charities to focus on areas that might expose them to the risk of being abused by terrorists or other criminals. Do not assume that it could not happen to you!

### *Checklist*

- Do you know about the [individuals](#) and [entities](#) associated with terrorism, which are listed in Canada under the *United Nations Act* and the *Criminal Code*? Are you aware of the [Criminal Code](#) and the [Charities Registration \(Security Information\) Act](#) provisions on financing and supporting terrorism—and the consequences of breaching the provisions?
- Do you have a good understanding of the background and affiliations of your board members, employees, fundraisers, and volunteers?
- Have you read the CRA guidance about [keeping adequate books](#) and [records, activities, engaging in allowable activities, operating outside Canada, and charities in the international context](#)? Do you follow this guidance?
- Do you have appropriate, sound, internal financial and other oversight and verification controls—for example, appropriate delegations and separations of authority over the collection, handling, and depositing of cash and the issuing of receipts?
- Do you transfer money using normal banking mechanisms, wherever possible? When it is not, do you use reputable alternative systems, and have strong additional controls and audit trails to protect your charity's funds and show how and when they were used?
- Do you know who uses your facilities and for what purpose—for example, your office or meeting space, name, bank account, credit cards, Web site, computer system, telephone or fax—what they are saying, and what materials they are distributing or leaving behind?
- Do you try to find out who else might be supporting a person or cause that you are endorsing in public statements, and who uses your name as a supporter?
- 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, and what the money and resources are used for, including after the particular project is finished?
- Do you know your partners in delivering the work you are doing, and their affiliations to other organizations?
- Do you have clear written agreements with agents/contractors/other partners, in Canada and abroad, covering what activities will be undertaken and how they will be monitored and accounted for? Do you check that the agreements are being followed?

The use or threat of violence to achieve a political aim—regardless of the cause—cannot be reconciled with the legal concept of charity. Although these issues have come to prominence since 9/11 and the more recent terrorist attacks in Madrid, London, and elsewhere, any links between registered charities and terrorist activity have never been acceptable. The intentional provision of support to terrorists is a crime. Anyone who suspects links to terrorism should report them to the RCMP's National Security Information Line, 1-800-420-5805,

or visit [National Security Information Network](#) on the Web. Anyone who wants to make a complaint about a registered charity should visit [Complaints about registered charities](#).

### **Other sources of information**

- [Other Canadian sources of assistance and support](#)
- [Canadian economic sanctions against foreign states and non-state actors](#)
- Canada is a leading member of the Financial Action Task Force, which has developed [guidance material on terrorist financing methods](#), including the abuse of charities and non-profit organizations.
- The information at the following links has no legal force in Canada. However, you may find it helpful to read about best practices in good governance and protection from abuse by terrorists recommended in other countries:

Charity Commission for England and Wales

[Themes and lessons from the Charity Commission's compliance work, 2007–08](#)  
[Operational Guidance – Charities and Terrorism](#)

U.S. Department of the Treasury

[Anti-Terrorist Financing Guidelines – Voluntary Best Practices for U.S.-Based Charities](#)

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*Mark Blumberg is a lawyer at Blumberg Segal LLP in Toronto, Ontario and lead trainer for Capacity Builders' Charity Law Information Program (CLIP). He can be contacted at [mark@blumbergs.ca](mailto:mark@blumbergs.ca) or at 416-361-1982. 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)*

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