



Canadian Charities and Foreign Activities: Conduit versus Structured Arrangement

By Mark Blumberg (January 26, 2018)

Canadian charities are allowed to conduct foreign activities. In this article, we will differentiate between appropriate and inappropriate foreign activities.

The *Income Tax Act* (Canada) allows charities to conduct their charitable purposes by:

- 1) making gifts of resources to a “qualified donee” (as defined below);
- 2) using staff or volunteers to conduct their “own activities” (at home or abroad)
- 3) using intermediaries with appropriate “direction and control” as part of a structured arrangement (at home or abroad).

1) Gifts to Another Qualified Donee

Qualified donees are organizations that can, under the *Income Tax Act* (Canada), issue official donation receipts for gifts that individuals or corporations make to them. While most are registered charities, there are a number of other categories of qualified donees.

Qualified donees are:

- [a registered charity](#) (including a registered national arts service organization);
- [a registered Canadian amateur athletic association](#);
- [a listed housing corporation resident in Canada constituted exclusively to provide low-cost housing for the aged](#);
- [a listed Canadian municipality](#);
- [a listed municipal or public body performing a function of government in Canada](#);
- [a listed university outside Canada that is prescribed to be a university, the student body of which ordinarily includes students from Canada](#);
- [a listed charitable organization outside Canada to which Her Majesty in right of Canada has made a gift](#);
- the Government of Canada, a province, or a territory; and
- the United Nations and its agencies.

A Canadian charity is not allowed to make a “gift” to a foreign charity, except for the small number that are qualified donees. In general, the same notion applies to operations within Canada¹. A Canadian charity cannot just give funds to another Canadian organization that is not a qualified donee.

There is one category of qualified donees outside of Canada that is quite important. This category comprises foreign universities that are a “listed university outside Canada that is prescribed to be a university, the student body of which ordinarily includes students from Canada”². This category includes at the moment 499 U.S. universities, 47 universities from the UK and Ireland, and 68 from all other countries. For foreign universities that ordinarily have Canadian students, obtaining qualified donee status can facilitate fundraising as a Canadian individual or Canadian charity may be able to simply make a gift to the prescribed foreign university.

2) Using Staff and Volunteers to Carry out Foreign Activities

Some Canadian charities send their own employees or volunteers abroad in order to conduct the Canadian charity’s activities. For example, a medical relief organization in

¹ See CRA’s [Guidance CG-004, Using an Intermediary to Carry out a Charity’s Activities within Canada](#).

² See Blumberg’s article on foreign universities that are [prescribed foreign universities](#) and can issue official donation receipts.

Canada may send a Canadian doctor to a developing country to provide medical help to those who cannot afford it or to assist with a natural disaster. A Canadian church may send a missionary abroad to conduct religious activities. There are many advantages of sending your own employees abroad, including using the skill and knowledge of Canadians, using your employees' or volunteers' understanding of your organization and its belief/philosophy, having control over the employee or volunteer, and having the ability to harness the experience of the employee or volunteer on their return to Canada.

Although CRA does not require a written employment or volunteer agreements, charities should always have an employment or volunteer agreements with employees or volunteers, respectively, whether or not they are working in Canada.

3) Using Foreign Intermediaries to Carry out Foreign Activities

Many Canadian charities operating abroad find that it is not always possible or effective to send Canadian employees or volunteers abroad. Sometimes, because of logistical reasons, costs, language, culture, security, or other reasons, Canadian charities prefer to contract with reputable foreign intermediaries to conduct the activities.

The purpose of this article is to provide some understanding of how a Canadian charity can have a legally sound and sustainable relationship with a non-qualified donee, such as a foreign charity.

The CRA has specific requirements for Canadian charities when they are using an intermediary (that is a non-qualified donee) to conduct their activities, which are outlined in their Guidance [CG-002: Canadian Registered Charities Carrying Out Activities Outside Canada](#) and [CG-004: Using an Intermediary to Carry out a Charity's Activities within Canada](#). The primary concern of CRA for these types of arrangements is that a Canadian charity uses a structured arrangement with direction and control over their resources.

I have noticed that there is quite a bit of confusion and uncertainty regarding how a charity can demonstrate the required direction and control, and the distinction between an acceptable structured arrangement versus an organization that is acting inappropriately as a conduit for funds raised in Canada.

The distinction between a structured arrangement and a conduit is vital for Canadian charities to understand when conducting activities using an intermediary. With few exceptions, Canadian taxpayers who donate to foreign charities directly do not receive

any tax benefit for the donation. Consequently, a number of Canadians try to get around this restriction by setting up a Canadian affiliate of the foreign charity for Canadian donors to gift to. The Canadian affiliate subsequently has the ability to issue tax receipts to Canadian donors and then provides its funds to (or dumps them on) the foreign charity instead of using the funds properly on its own activities. This type of arrangement is not permissible as Canadian registered charities are not allowed to simply “gift” funds or resources to foreign charities and others who are not considered a qualified donee, CRA takes the view that a Canadian registered charity may not act merely as a ‘conduit’. While this has always been CRA’s position, in case law of the Federal Court of Appeal, CRA confirms this position and indicates that, *“Under the scheme of the Act, it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations overseas.”*³

The main decisions of the Federal Court of Appeal that discuss a structured arrangement versus a conduit include:

- 1) [The Canadian Committee for the Tel Aviv Foundation v. Canada](#) (2002 FCA 72), 2002-03-01
- 2) [Canadian Magen David Adom for Israel v. Canada](#) (Minister of National Revenue) (2002 FCA 323), 2002-09-13
- 3) [Bayit Lepletot v. Canada](#) (Minister of National Revenue) (2006 FCA 128), 2006-03-28
- 4) [Public Television Association of Quebec v. Canada](#) (Minister of National Revenue), 2015 FCA 170, 2015-07-22

Each of these decisions confirms the CRA requirements that a charity must at all times exercise direction and control of its funds and resources when working with an intermediary to conduct activities on behalf of the charity.

Therefore, the rules are quite clear that a charity may not simply hand over its money or resources to another organization that is not a qualified donee. A registered charity that does so could have its registration revoked and could be subject to significant financial penalties. Also, an organization applying for charitable status that intends to operate in this way will not be accepted by CRA as a registered charity.

Below I have included a comparison of two fictional charities in a fictional scenario to outline some of the key differences between a Canadian charity that could be

³ The Canadian Committee for the Tel Aviv Foundation v. Canada (2002 FCA 72), 2002-03-01

considered to be operating inappropriately as a 'conduit' and a Canadian charity that is operating in accordance with the rules in a 'structured arrangement'. Keep in mind that all of the factors being provided would need to be examined together rather than just one factor being determinative of these types of arrangements. The 'conduit' example is red (i.e. avoid) and the 'structured arrangement' is green (i.e. permissible).

Subject	Conduit	Structured arrangement
Fictional Example	Canadian Friends of AGPC works with American Global Poor Charity which is a US 501(c)(3) charity and not a Canadian Qualified Donee.	Canada Really Cares Foundation works with American Global Poor Charity which is a US 501(c)(3) charity and not a Canadian Qualified Donee.
What is the purpose of your Canadian charity?	We are the fundraising arm of American Global Poor Charity. We raise funds for American Global Poor Charity.	We are a charity that works to eradicate global poverty.
Why do you fundraise?	We fundraise for American Global Poor Charity by issuing Canadian taxpayers tax receipts for donations made by Canadians so they can obtain a tax benefit that they would not be entitled to if they donated the funds directly to American Global Poor Charity. So remember Canadians need to make their cheque out to AGPC Canada otherwise we cannot give you a tax receipt.	We raise funds to eradicate global poverty and the board of Canada Really Cares Foundation decides how best to utilize those funds which may or may not involve using American Global Poor Charity as a contractor, agent, joint venturer, or in a co-operative participant relationship.
What is your board composition?	All board members of AGPC Canada are US citizens and are also on the board of American Global Poor Charity. A lawyer told us if AGPC wants to control us then they should stack the board.	While the board has Canadian and non-Canadian members, the vast majority are Canadian and almost no board cross-over between Canada Really Cares Foundation and American Global Poor Charity. It makes little sense to us to have a large number of Americans on our board as they don't understand the Canadian legal requirements, they are not based in Canada to assist with

		fundraising and they are largely preoccupied with their obligations to the US charity.
Do you have a written agreement in place?	Yes, we have a written agreement because our lawyer told us to have it – we don't remember where the agreement is and we have not looked at it in years. American Global Poor Charity thought it was a silly exercise to have an agreement, and they really did not think that it was necessary. Our lawyer also told us that these rules are silly and he really wants to go to the Supreme Court to fight them and he would love for us to be a test case.	Yes, we have an agreement and it is an important legally binding contract that we occasionally review. We work hard to make sure we comply with the agreement that both parties have entered into. We cannot imagine transferring millions of dollars worth of funds or equipment without a written agreement. Do you think we are idiots? How would we know if our funds are being properly spent if we do not even have an agreement setting out how the funds should be spent? We have donors and funders and we have to be transparent and accountable to them. Also we have our fiduciary duties as directors of a Canadian charity and we want to comply with them. When we had problems with the agreement we changed it to make sure it actually reflected our relationship.
Who selects projects?	American Global Poor Charity – because they are on the ground and they know more than us. They usually tell us after the funds are spent which projects they were spent on.	We discuss with American Global Poor Charity all projects. We solicit advice from American Global Poor Charity because they have a lot of experience in this area and we have a close relationship with them. They send us proposals on how the funds could be spent but the decision about how project money is spent is made by the board of Canada Really Cares Foundation.
Is your project distinct?	I don't understand the question. We are providing \$100,000 this	Yes. We realize that American Global

	<p>year to American Global Poor Charity. Their budget is over \$5 million. Our contribution is small and so we want it to be used on the large American Global Poor Charity projects.</p>	<p>Poor Charity works on many wonderful projects, but these are our funds and we need to ensure that they are spent on our projects that are part of our objects, that are considered charitable under Canadian law, and that reflect our priorities. As well, in some cases we have received restricted funds that can only be used on certain activities and we do not want to have a breach of trust and spend those monies on a different charitable program than what the donor had intended. We make sure that it is clear when an observer is on the ground that they can tell that it is a project of the Canadian charity implemented by American Global Poor Charity.</p>
<p>Do you have a detailed description of the activities to be funded?</p>	<p>It takes time to come up with descriptions of activities. We have trust and faith in American Global Poor Charity. Why burden them with a project description especially when the world is changing so quickly and we don't want to come across as being too big for our boots. We typically let American Global Poor Charity decide what they will use our funds for without any description of activities required. They know best where the money should be spent and we do not need to be involved in that decision-making.</p>	<p>American Global Poor Charity understands that funders, donors and the public increasingly want to know what a charity is doing with its money. Secrecy and lack of information breeds mistrust. When we send the funds to American Global Poor Charity we want to have a detailed description of the activities that will take place. Then the board knows how the funds will be spent and the Canada Really Cares Foundation's board must approve the project or have a committee of the Canada Really Cares Foundation approve the project. Otherwise, it is possible that there could be confusion between the two parties as to how the funds were going to be spent. Also American Global Poor Charity does not know all of the legal and other requirements that we as a</p>

		Canadian charity face.
Do you know the content of your written agreement?	What agreement?	We know the basic parameters of the agreement and occasionally look at the agreement to remind ourselves of certain details. We are very familiar with the descriptions of activities because we worked on them with American Global Poor Charity, we provide them to donors and we use the description as the basis of monitoring whether American Global Poor Charity is doing the project as agreed.
When does your charity send funds?	We raise money and as soon as it is deposited in our account we send it to American Global Poor Charity. After all, why would we want to keep any of it in our account where it is only earning interest and not achieving impact? If we keep any money in our account American Global Poor Charity gets really mad at us.	We raise money for our charity, and we keep the money in our bank account. We only send money to American Global Poor Charity or for that matter any other intermediary if the projects are: <ol style="list-style-type: none"> 1) our project, 2) charitable under Canadian law, 3) within our legal objects as set out in our articles of incorporation 4) an effective use of our resources, and 5) properly described (with a detailed budget) and approved by the board of Canada Really Cares Foundation and 6) American Global Poor Charity has complied with its obligations and reporting on previous funds sent.
What books and records do you keep in Canada with respect to foreign activities	Wire transfer slips. Copy of brochure for American Global Poor Charity. American Global Poor Charity	We keep extensive books and records of our foreign activities here in Canada. Without having current reports and historical information we would not be able

<p>for AGPC Canada?</p>	<p>keeps all other records – we have no need for them and they would just take up space. We don't have an office and we don't have place to keep records. After all, it is better to have all the records in one place if they are ever needed and that is the American Global Poor Charity office in the US.</p>	<p>to determine whether funds are appropriately spent. We work hard to raise funds and we want to make sure that we can account to our donors here in Canada. As well, in addition to it being a legal requirement for Canadian charities to have adequate books and records in Canada, by having adequate books and records, we will be able to properly complete the T3010 annual return and show the CRA, in the event of an audit, that we have direction and control over our activities and that the funds were spent on charitable activities. Furthermore, we deal with a number of different intermediaries and if there is ever a breakdown in the relationship we may not be able to obtain the necessary information from the intermediary.</p>
<p>Do you have progress or periodic payments?</p>	<p>We raise money, we send money. We do not need progress payments. If we raise \$750,000 at a fundraising dinner it is a waste of time sending funds in increments – quicker and cheaper just to send it in one batch and let American Global Poor Charity decide what to spend it on and when to spend it.</p>	<p>With medium to large projects, we provide periodic payments and only continue sending funds upon verification that progress has been achieved with the project, which is outlined in semi-annual or quarterly reports received from American Global Poor Charity. This forces us every few months to focus on reviewing reports we receive to monitor how funds are being spent based on our pre-approved budgets and to determine if we are satisfied or if we require more information on the activities/budget to ascertain that our funds are being well spent. We work hard with American Global Poor Charity to refine and approve the description of activities and the budget. We also work hard to raise the money</p>

		<p>that we want to make sure it is well spent and although we hope that we never have to freeze payments if there was a breakdown in our relationship, we would do so. Depending on the financial requirements of the project we may have more frequent reporting to be able to provide more frequent payments to American Global Poor Charity. In some cases, if we want to have one payment, like for smaller projects, we will wait for American Global Poor Charity to have completed our whole project before sending funds.</p>
<p>Do you have monitoring of your foreign activity projects?</p>	<p>We don't need to monitor, we trust American Global Poor Charity 100%. If you trust someone why waste time monitoring?</p>	<p>We trust American Global Poor Charity, but we insist on consistently monitoring the program, not because CRA says we have to, but because we take our job as board members and our fiduciary responsibilities seriously. We want to ensure that the funds that we worked so hard to raise are well spent. Also, we like to see what our money is doing and require American Global Poor Charity to provide us with frequent reporting and updates on the project with follow up questions to monitor how funds are being spent and if they are being spent in accordance with our pre-approved budget/activities. Occasionally we also send reports to donors so they know the funds they donated are being put to good use. Although some donors are satisfied to not get a report on their work, others would not provide us with any further funds if they thought their money was not</p>

		<p>well spent and if we did not show them how it was well spent. Sometimes donors who tell us they don't need reporting then change their mind and we always want to meet our fiduciary duties and are always prepared to report on how our funds are spent.</p>
<p>How do you settle disputes?</p>	<p>There are no disputes - American Global Poor Charity is wonderful – we listen to what they tell us and we do what they want so how can we have a dispute?</p> <p>All of our Canadian board members are from American Global Poor Charity so it is hard to see how there could be a dispute.</p>	<p>We occasionally have disputes – we try to resolve them quickly by respectful discussion and having each party understand the others viewpoint, practical issues and needs. We reserve the right to stop funding projects if American Global Poor Charity is not compliant with the agreements that they have signed and are not using the funds for the projects that they have committed to complete. As a Canadian registered charity, we have obligations and restrictions that we have to comply with. In our contractor agreement we have a dispute resolution clause that provides for mediation and arbitration if necessary.</p>
<p>How many intermediaries conduct your foreign activities?</p>	<p>I don't understand your question. We are a fundraising branch of American Global Poor Charity. Why would we want to send money to anyone else?</p>	<p>We have used different intermediaries in the past to conduct our activities. There have been times that we only used American Global Poor Charity to conduct our activities. We may go back to that one day as it was easier for us to work with one organization, and they are particularly well situated to implement the activities that we wish to conduct. At the moment, as we wanted to conduct activities in Cuba, and there was reluctance by American Global Poor Charity to have operations in Cuba, we developed a partnership with</p>

		another organization there. If we feel that there was an intermediary that can do a better job than American Global Poor Charity for a particular project then our board would consider having an agreement with them and having them conduct that activity.
Do you have “direction and control” over your foreign activities?	Why would we want to do that? We do not want to micromanage the project. We don’t want to be controlling. My former girlfriend was controlling – I did not like that.	We are legally required to maintain direction and control over our funds. Direction and control does not mean micro-managing and being a pig. The ways we maintain direction and control include holding board meetings in which decisions are made on the selection and approval of any proposed projects of our partners, ensuring that our partners have the capacity to do the particular job, and having detailed project descriptions and a detailed budget breakdown so both parties are on the same page as to what needs to be done with the funds or resources. We are involved by phone or by e-mail with American Global Poor Charity on a regular basis in order to understand how a project is coming along and whether there are issues or concerns with which we need to deal. If minor changes are required to the project, but it is still within the budget we set out then our executive director can approve such changes and if the changes are substantial our board discusses them and decides.
Do you have your own telephone	No. We save lots of money by just using the American Global Poor Charity US telephone number. We also save a lot of	Yes we have our own telephone number. We also have our own domain for our website, our own fax number and social media

number?	time by having them answer all the calls.	accounts. It is important that the public is aware that we are a separate charity.
Do you have an accountant or auditor?	We don't have an accountant or auditor. All financial statements and filings are prepared by the CFO of American Global Poor Charity. Do you know how much money we are saving by not wasting it on accounting/administration costs?	We have a Canadian bookkeeper and accountant/auditor. We are set up under the CNCA and are a soliciting corporation and it requires audited financial statements if our revenue is over \$250,000. As we have been doing really well over the last few years we have an audit every year.
What marketing does your charity do about its activities?	American Global Poor Charity provides information on their website about the projects they undertake using the money we send to them without any mention of our charity. We do not have any involvement in how the money is spent and these are projects of American Global Poor Charity so why do we need to be recognized? It might just confuse people on the ground if they mentioned another organization.	In our marketing through website/social media, as well as American Global Poor Charity's marketing, it is clear that the Canadian charity is separate from American Global Poor Charity and that any project is a distinct and separate Canadian project being conducted by American Global Poor Charity on our behalf.

For a detailed discussion of legal and practical issues for Canadian charities operating outside of Canada, see www.globalphilanthropy.ca

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