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Charities



Charities in the International Context

Introduction and Overview

Introduction

Canadian charities that operate abroad face a complex set of circumstances and a sometimes dangerous working environment. It can be difficult to be certain exactly what rules apply, which guidelines to follow, or if there are best practices that could inform how charitable activities should be carried out. Work is currently underway within the CRA (Charities Directorate), across the federal government, and internationally that is relevant to working in this challenging international environment. The following points to the relevant CRA rules and guidelines that apply. It also summarizes other federal initiatives and international work. It gives a short description of the relevant work, as well as citations to access source material.

Canada's *Income Tax Act* rules apply no matter where a Canadian registered charity operates. The rules allow it either to make gifts to **qualified donees**, or to carry on its own activities. Few foreign organizations are qualified donees. As a result, most Canadian charities operating outside Canada must do so in the form of actively delivering their own programs.

Today, charities may be operating under great difficulty in parts of the world where terrorism and other forms of violence prevail. The leaders of Canadian charities are called on to weigh such troublesome questions as how to meet desperate cases of need without providing support to one or another political faction or without prolonging the violence. In carrying out its mandate, the Directorate seeks to recognize the realities that charities face when operating under such difficult conditions. It welcomes helpful information and advice on this matter from the charities sector.

Terrorism can also become an issue in a different way -- when a Canadian charity is used to support terrorism. This was the issue Parliament addressed when it enacted the *Charities Registration (Security Information) Act* in December 2001, as an important element in Canada's response to terrorism. The law deals only with the rare situation where classified intelligence information about terrorist activities is needed to exclude an organization from registration as a charity. In most situations, open-source information and normal procedures should be sufficient to establish if an organization does not meet the requirements for registration.

Other countries and international bodies have also examined how terrorist financing has flowed from and through charities in their countries. Canada took part in these discussions. Through this work, an international consensus has emerged on basic standards or "best practices" that could be used to reduce the risk of abuse anywhere in

the world. The sponsors of this work are interested in feedback from Canadian charities. In addition, while most Canadian charities operating internationally follow such practices, consideration of this work can help ensure vigilance in maintaining the current high standards.

Registered charities are therefore encouraged to review the best practices that international agencies and foreign governments have put forward for consideration. (**International Best Practices; Policies in other Countries.**) The discussion on best practices covers subjects such as internal governance, fundraising, financial accountability, and maintaining control over the charity's resources, along with suggested warning signs that should attract the attention of directors.

CRA Guidelines

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For subjects falling within the Directorate's mandate, such as maintaining direction and control over international charitable programs, charities can refer to the guidelines that the Directorate has previously published in [Registered Charities: Operating Outside Canada](#).

Charities Registration (Security Information) Act

Within the CRA, the Charities Directorate has a regulatory responsibility to identify problems and to take measures that protect and maintain public confidence in the charitable sector. In deciding whether organizations should be registered as charities, we need to ensure that the tax benefits reserved for Canada's charities are not used to provide support to terrorism in the guise of charity.

Canada and the international community recognized, well before September 11, 2001, that terrorist groups can use non-profit organizations for cover, legitimacy, and resources. In July 1996, at the Paris Ministerial Meeting on Terrorism, the G7/G8 nations agreed to adopt domestic measures to prevent terrorist financing through front organizations that have, or claim to have, charitable goals.

Canada further committed itself to introducing measures to prevent the financing and support of terrorism when it signed the United Nations *International Convention on the Suppression of Financing of Terrorism* on February 10, 2000. The *Convention* emphasized the need to cut off financial support for terrorists and specifically referred to the important role played by charities in the international support network of some terrorist groups.

In December 2001, the enactment of the *Charities Registration (Security Information) Act*, under Part 6 of *The Anti-terrorism Act*, re-defined the role and importance of protecting the integrity of Canada's registration system for charities in terms of Canada's anti-terrorism objectives. The Act's purposes are:

- "to demonstrate Canada's commitment to participating in concerted international efforts to deny support to those who engage in terrorist activities,
- to protect the integrity of the registration system for charities under the *Income Tax Act* and

- to maintain the confidence of Canadian taxpayers that the benefits of charitable registration are made available only to organizations that operate exclusively for charitable purposes."

Countering terrorism is a complex issue. The Government recognized that criminal measures alone are not enough and that a broad range of tools, including new civil law remedies, are required. The *Charities Registration (Security Information) Act* introduces a special administrative measure that will help the Charities Directorate meet its regulatory responsibilities without affecting the vast majority of Canadian charities.

The legislation has been specifically designed to protect the use of very sensitive information that may reveal an organization's ties to terrorist groups. This allows the Charities Directorate to make proper use of all information relevant to deciding whether an organization should be registered as a charity under the *Income Tax Act*.

The legislation establishes a test: are there reasonable grounds to believe, based on criminal and security intelligence reports, that an organization makes its resources available, either directly or indirectly:

- to a terrorist group that is a **listed entity** under the *Criminal Code*, or
- to any other organization engaged in terrorist activities or in activities that support terrorist activities?

The Minister of National Revenue and the Minister of Public Safety each review the evidence and sign a certificate if they believe the test has been met. The certificate is then referred automatically to a judge of the Federal Court to determine the reasonableness of the ministers' decision.

The judge prepares a summary of the security and criminal intelligence reports, which he gives to the affected organization. The organization can then appear before the judge to argue against the certificate.

If the judge upholds the ministers' decision, the organization is barred from obtaining registration as a charity, or if already registered, it loses its registration. The bar to registration lasts for seven years. However, an organization can ask ministers to reconsider its case at an earlier point if there has been a material change in circumstances.

You can find:

- the complete provisions of the Anti-terrorism Act, including Part 6, the Charities Registration (Security Information) Act, on the Web site of the Department of Justice. See <http://laws.justice.gc.ca/en/A-11.7/index.html>.
- information in general regarding Canada's anti-terrorism initiatives on the Web site of Public Safety and Emergency Preparedness Canada through the following hypertext link: http://www.safecanada.ca/link_e.asp?category=6&topic=45.

Listed Entities

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The following Web site of the Department of Public Safety and Emergency Preparedness Canada carries the names of listed entities: <http://www.psepc.gc.ca/prg/ns/le/index-en.asp>.

International Best Practices

Canada's commitment to combating terrorism is reflected in its participation in the Financial Action Task Force (FATF). The FATF is an inter-governmental body that has been responsible for developing and promoting policies, both nationally and internationally, to combat money laundering. Its membership includes 33 countries, territories, and organizations. [\[Footnote 1\]](#)

At an extraordinary Plenary on the Financing of Terrorism held in Washington, D.C., on October 29 and 30, 2001, the FATF expanded its mission beyond money laundering to focus its energy and expertise on disrupting and preventing terrorist financing. In this regard, the FATF issued eight Special Recommendations to combat terrorist financing and called on all countries (not just member states) to adopt and implement them.

Special Recommendation VIII requires countries "to review the adequacy of laws and regulations" to prevent non-profit organizations from being used to finance terrorism. In particular, countries were to ensure that non-profit organizations "cannot be misused:

- by terrorist organizations posing as legitimate entities;
- to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
- to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organizations."

The full text of the FATF Special Recommendations can be found at http://www.fatf-gafi.org/document/9/0,2340,en_32250379_32236920_34032073_1_1_1_1,00.html.

In October 2002, the FATF held discussions in Madrid aimed at establishing practical guidelines to implement Special Recommendation VIII. Canadian officials played a prominent role in these discussions and made a significant contribution to the drafting of a "best practices" paper for non-profit organizations. The paper was released on October 11, 2002, and is called *Combating the Abuse of Non-Profit Organizations: International Best Practices*. It offers some preliminary practical guidelines, and establishes a basis for best practices, on how to prevent charities and non-profit organizations from being misused to finance terrorism.

Most Canadian charities are well aware of how they can best manage their programs to ensure the proper, charitable application of their resources. Nevertheless, the FATF publication on "international best practices" offers some useful guidance, especially on internal governance practices. The publication can be found at <http://www.fatf-gafi.org/dataoecd/39/19/34033761.pdf> (PDF).

In the wake of the FATF's Cape Town Plenary, on February 21, 2006 the FATF issued an

Interpretive Note to Special Recommendation VIII (Non-Profit Organizations). The note explains the objectives of the recommendation and offers specific measures that countries should put into place to ensure that their non-profit sectors are not misused for terrorist financing purposes. The link to the interpretive note is: <http://www.fatf-gafi.org/dataoecd/16/6/36174688.pdf> (PDF).

The Charities Directorate invites your comments on the the FATF best practices paper and the interpretive note. Please send them to: consultation-policy-politique@cra-arc.gc.ca.

Policies in Other Countries

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The U.S. Department of the Treasury has issued a revised version of its publication entitled **U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities**. This publication can be accessed through the following hypertext link: <http://www.ustreas.gov/press/releases/po3607.htm>.

In 2002, the Charity Commission for England and Wales issued a policy statement on charities and terrorism (See <http://www.charity-commission.gov.uk/tcc/terrorism.asp>). In January 2003, the Commission published **Operational Guidance: Charities and Terrorism**. This document explains the principles underlying the Commission's handling of alleged links to terrorism among some U.K.-based charities. It also discusses how terrorist and other criminal groups can use charities for their own ends and outlines the duties and responsibilities of a charity's trustees to ensure that the organization's assets are not used to further the aims of any terrorist or terrorist group. The complete text of this publication may be found at <http://www.charity-commission.gov.uk/supportingcharities/ogs/g096.asp>.

Footnote

[Footnote 1]

The members of the FATF are: Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, the European Commission, Finland, France, Germany, Greece, the Gulf Co-operation Council, Hong Kong (China), Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.



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