

Fundraising and Grantmaking from Canada

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Overview of Charitable Sector in Canada

- ❑ 161,000 Canadian non-profit corporations in Canada in 2003 (federal and provincial)
- ❑ 82,000 Canadian Registered Charities
- ❑ \$112 Billion in revenue, 2 million employees
- ❑ Revenue - 49% from Government, earn 35%, 13% donations
- ❑ 2/3 have revenue under 100G

Source: Statistics Canada – National Survey of Non-Profits
and Voluntary Organizations



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Variety of Charities

- ❑ 82,000 Registered Charities in Canada
- ❑ 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 / local vs. international activities
- ❑ 12,000 carried on 'programs' outside of Canada - humanitarian assistance, development, education, religious

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Canadian charities' foreign expenditures

- ❑ 2002 - \$1.4 Billion
- ❑ 2004 - \$1.8 Billion
- ❑ 2005 - \$2.1 Billion
- ❑ 2006 - \$2.3 Billion

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Good Work Outside Charity Realm

Carrying on Good Works Abroad outside of the CRA charity regulation

- ❑ personal donations of cash or in kind items to foreign charities, no tax receipt
- ❑ business – donation, sponsorship, advertising, doing business in developing countries, CSR, etc.
- ❑ For profit “non-profit” - Google.org, micro-loans
- ❑ non-profit without charitable status – if no need to issue tax receipts.

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Carrying on Good Works Abroad outside of the CRA charity regulation

- ❑ volunteering – at home and abroad
- ❑ gifts to family, friends, former employees abroad – remittances

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Fundraising in Canada

Canada is similar to, but different, from the US

- ❑ Canada is not homogeneous
- ❑ higher taxes in general during lifetime – greater tax benefit for gifts during lifetime
- ❑ no estate/death tax in Canada
- ❑ more services and safety net - good thing
- ❑ less developed understanding of philanthropy

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Canada-US Tax Treaty

US-Canada Tax Treaty – allows benefits for certain donations to US charities

- gifts by resident of Canada to US tax exempt org that if it were resident in Canada could qualify as Canadian registered charity up to 75% of US source income (Article XXI (6))
- commuters - Canadian residents employed in the US who commute to work in the US (no US source income limitation)
- alumni and family – gift to college or university at which donor or family member is or was enrolled (no US source income limitation)

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Who are Canadian donors and funders?

- Canadian individuals
- corporations
- foundations
- government

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Individuals – tax benefit when donating to qualified donee

- 46 cents of every dollar in Ontario up to 75% of income when highest marginal tax rate.
- can carry forward for up to 5 years
- greater benefit on gift of appreciated marketable securities
- on death up to 100% of income in final year and preceding year
- tax benefit for donation to qualified donee

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What is a registered Canadian charity?

- Canadian charity must be created or established in Canada
- Canadian charity must be resident in Canada
- 4 heads of charity (relief of poverty, education, religion, other purposes beneficial to the community that the law considers charitable)
- US resident charities cannot become registered charities in Canada

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Qualified Donees

Donations to Qualified Donees – Tax Credit for Charitable activities abroad

- ❑ Canadian registered charities, Canadian amateur athletic associations, tax exempt housing corporations, Canadian municipalities, public bodies performing a function of government in Canada (First nations etc.)
- ❑ United Nation and its agencies
- ❑ certain Universities outside Canada that student body of which ordinarily include students from Canada (Reg 3503) (“Schedule VIII Universities” or “prescribed universities”)

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Eligibility for Tax Credit (continued)

- ❑ a charitable organization outside of Canada to which Her Majesty in right of Canada (federal government or its agents) has made a gift in the corporation's taxation year or the preceding 12 months. (see CRA Circular 84-3R5 and Attachment to IC 84-3R5, Gifts to Certain Charitable Organizations Outside Canada)

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Canadian corporations

- ❑ Canadian corporations can claim deduction up to 75% of income for charitable donations to qualified donees
- ❑ can carry forward donation for 5 years
- ❑ corporations can also enter into sponsorship arrangements, advertising etc. and these arrangements do not have to be with qualified donees

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Canadian Foundations

- ❑ can, subject to objects, grant to qualified donees – often limited to registered charities

To receive and maintain a fund or funds and to apply all or part of the principal and income therefrom, from time to time, to charitable organizations that are also registered charities under the Income Tax Act (Canada).

if broader object clause, subject to donor restrictions, may carry on direct charitable activities or grant to qualified donees

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Canadian, Provincial and Municipal Governments

- ❑ grants and contributions
- ❑ about \$50 billion per year
- ❑ in some cases must be Canadian charity etc. but often not
- ❑ concern re bureaucracy, accountability, efficiency, effectiveness

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CRA Fundraising Policy

CRA Consultation on proposed policy on fundraising by Registered Charities

- ❑ put out in April 2008 and open till August 2008
- ❑ criticized for length, complexity, grid, etc.
- ❑ CRA needed to do something

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CRA Consultation on fundraising (cont)

Prohibited conduct

- illegal activities/contrary to public policy
- fundraising is main, prevailing or independent purpose of charity
- excessive or disproportionate private gain
- harm outweighs public benefit

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CRA Consultation on fundraising (cont)

Apportionment of Expenses

- all expenses allocated for charitable when “substantially all of the resources devoted to the activity advance an objective other than fundraising”. Substantially all = 90%+
- otherwise can be allocation between fundraising and non-fundraising
- in some cases all expenses allocated to fundraising

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Evaluation Grid – Ratio of fundraising cost/fundraising revenue in fiscal period

Rarely acceptable:

more than 70% (charity nets less than 30%)

Generally not acceptable:

50% to 70% (charity nets 30% to 50%)

Potentially not acceptable:

35% to 50% (charity nets 50% to 65%)

Generally acceptable:

20% to 35% (charity nets 65% to 80%)

Acceptable:

less than 20% (charity nets more than 80%)

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Conduct considered as decreasing risk of unacceptable fundraising

- Prudent planning processes
- Appropriate procurement processes
- Good staffing processes
- Ongoing management and supervision of fundraising practice
- Adequate evaluation processes
- Use made of volunteer time and volunteered services or resources
- Disclosure of fundraising costs, revenues and practice

Conduct increasing risk of unacceptable fundraising

- Sole-sourced fundraising contracts without proof of fair market value
- Non-arm's length fundraising contracts without proof of fair market value
- Fundraising initiatives or arrangements that are not well-documented
- Needless purchase, non-arm's length purchase or purchase not at fair market value, of fundraising merchandise
- Activities where most of the gross revenues go to contracted non-charitable parties

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Conduct increasing risk of unacceptable fundraising

- Commission-based fundraiser remuneration or payment of fundraisers based on amount or number of donations
- Fundraisers receiving disproportionate compensation relative to non-fundraisers
- Total resources devoted to fundraising exceeding total resources devoted to program activities
- Misrepresentations in fundraising solicitations or disclosures about fundraising or financial performance
- Combined fundraising and charitable program activity, where contracted to a party that is not a registered charity or that is compensated based on fundraising performance

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Other Circumstances CRA may consider

- a) Small charities or charities with limited appeal
- b) Charities that are investing resources in donor acquisition or other types of fundraising in which the return will not be realized in the same year in which the investment is made
- c) Charities whose main or major purpose is to make gifts to qualified donees, or to one or more registered charities and as a result have a different cost structure than charities that carry on their own activities

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Other Circumstances CRA may consider (cont)

- d) Charities whose activities include lotteries or charitable gaming that is regulated provincially
- e) Charities engaging in cause-related marketing initiatives
- f) Charities with extraordinary spending, relative to their size, on infrastructure to ensure compliance with this fundraising policy

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Overview of Planned Giving Vehicles

Planned giving vehicles

- bequests – gifts under will
- gifts of marketable securities
- life insurance
- certified cultural property
- gifts of real estate
- gifts of private company shares

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Overview of Planned Giving Vehicles (cont)

- 'Charitable Remainder Trust' (CRT)
- gifts of residual interest
- interest free loan
- private foundation
- RRSP/RRIF
- charitable gift annuities
(self insured or reinsured)

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Grantmaking from Canada

Grantmaking Inside of Canada by Canadian charities and foundations

- ❑ Canadian charities and foundations can transfer resource to qualified donees relatively easily
- ❑ Canadian charity cannot gift funds to non-profit in Canada that is not a qualified donee – the Canadian rules for structured arrangements between Canadian charity and Canadian non-profit in Canada are similar to rules for foreign grantmaking by Canadian charity

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Grantmaking Outside of Canada by Canadian charities

- ❑ There are CRA rules for Canadian charities operating abroad – they are especially important for Canadian charities transferring funds or resources outside of Canada
- ❑ The rules are not too onerous and understanding their rationale will assist in compliance
- ❑ The rules focus on written agreements, direction + control, monitoring and records

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General Considerations for Canadian charities

- ❑ no partisan political activities
- ❑ limited non-partisan political activities
- ❑ only undertake charitable activities (relieve poverty, advance education, advance religion, benefit community as a whole)
- ❑ cannot violate Canadian public policy

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Operating Abroad – Corporate, Trust law, Specific CRA issues

- ❑ Letters Patent/Articles of Incorporation – objects and restrictions – avoiding ultra vires activities
- ❑ By-laws and resolutions
- ❑ Trusts agreement – scope
- ❑ Donor restricted gifts
- ❑ Restrictions in Notification of Registration or in compliance agreement

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CRA – Considerations that apply to Canadian charities operating abroad * * *

- ❑ The Canadian Income Tax Act allows charities to conduct their charitable purposes by
 - 1) giving monies to another "qualified donee" (usually a Canadian charity but also includes the United Nations and a small number of foreign entities);
 - or
 - 2) their own activities (at home or abroad)
- ❑ No third option - A Canadian charity cannot just transfer money to a foreign charity.

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How does Canada compare to US?

- we do not have equivalency determinations
- Canadian "own activities" is similar to US expenditure responsibility
- IRS and CRA both have rules
- but what about fiduciary responsibilities?

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CRA Views on Canadian charities operating outside of Canada

- RC4106 "Registered Charities Operating Outside Canada"
- Registered Charities Newsletters
- Information Letters
- Policy Statements
- Consultation on Proposed Policy

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OWN ACTIVITIES

RC 4106 – “Own activities”

- ❑ assurances that other organization is able to deliver services (due diligence)
- ❑ expenses must further objects of Canadian charity and constitute charitable activities
- ❑ adequate written agreement
- ❑ periodic, specific instructions
- ❑ regularly monitors project and evidence
- ❑ periodic payments, right to discontinue, in certain circumstances

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“Own activities” – other ideas

- ❑ providing clear and complete description of activity
- ❑ being aware of issues, problems, challenges etc. relating to your activities
- ❑ having Canadian on board of intermediary or intermediary rep on Canadian board not at all adequate
- ❑ direction, control, monitoring and evidence
- ❑ structured arrangement, not “conduit”

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Written Agreements – Part 1

- 1) names and addresses of all parties
- 2) duration of agreement/project
- 3) description of specific activities
- 4) written progress reports and right to inspect
- 5) payments by instalment based on reasonable progress

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Written Agreements – Part 2

- 6) withdrawing or withholding funds at charities' discretion
- 7) adequate records in Canada
- 8) agent – adequate records and funds segregated for Canadian charity's funds
- 9) signature of all parties
- 10) date

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Ways for Canadian Registered Charity to Carry on "Own Activities" ***

1. employee in foreign country
2. agency agreement
3. contractor agreement
4. joint venture agreement/joint ministry agreement
5. cooperative partnership agreement

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1) Employees or Volunteers

- can be Canadian employees or volunteers or locals
- best model? eg. MSF, missionaries
- skills, beliefs, control, reporting, language, returning workers
- concerns: local knowledge, costs, sustainability, danger,

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2) Agency Agreement

- Canadian charity appoints agent abroad to conduct Canadian charity's activities with Canadian charity providing funding and control
- most common
- need written agency agreement
- concern – charity liability for agents actions, agents ignore agreement, hierarchy

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3) Contractor Agreement

- Canadian charity hires foreign contractor to conduct certain work
- eg. drill well
- need written agreement
- not agent – business agreement, limited liability

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4) Joint Venture/Joint Ministry Agreement

- Canadian charity can work with a foreign organization jointly pursuant to a joint venture/ministry agreement (JVA/JMA)
- pool resources to carry out certain works
- need written JVA or JMA
- control by Canadian charity at least in proportion to Canadian charity's contribution

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5) Cooperative Partnership Agreement

- ❑ Canadian charity works with foreign organization and each contributes different resources and undertakes a different part of the project.
- ❑ need Cooperative Partnership Agreement.
- ❑ disbursement quota concern if Canadian charity does all admin services for project

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Exceptions?

Transfer of Property in Foreign Country

- ❑ Canadian charity should maintain ownership and control over assets
- ❑ can sell assets at FMV or transfer to qualified donee
- ❑ exception
 - 1) can transfer assets if charitable ('charitable goods policy') –eg. food to hungry, prayer books
 - 2) prohibition on foreign ownership of real estate
 - 3) development work – can turn over to local control – need assurances of continued community benefit

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“Charitable Goods Policy”

Equally acceptable are transfers of goods and services that are directed to a particular use by the very nature of the goods and services so transferred.

Examples of such transfers include:

- transfers, by a research organization, of books and scientific reports to anyone interested (including foreign governments, libraries, schools, etc.),
- transfers of books - on a subject of particular interest to an educational charity - to public libraries in major cities all over the world,
- transfers of medical supplies to a refugee camp,
- transfers of food, blankets, etc. to a charity coping with a natural disaster,
- transfers of drugs, medical equipment, etc. to poorly equipped hospitals,
- transfers of personnel to schools or hospitals (on loan).

1985 CRA Staff memo cited in CMDA Case

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Charitable Goods Policy – Beware

- Transfers of goods or services can more easily be viewed as charitable activities per se. The transfer of a piece of equipment that is meant to be used **only** for charitable purposes to an organization that will **clearly** use it for such purposes is **likely** to be a charitable activity. (MDA Case) [emphasis added]
- CRA will look at nature of goods, which organization receives goods and controls placed

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Repayment of bona fide Debt/Loan

- repay loan to creditor regardless of whether in Canada or outside
- must be a real debt
- if foreign charity advances funds to Canadian charity consider whether foreign charity should gift or loan amount
- disbursement quota issues

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Tithes, Royalties, Membership or Similar Fees

- ❑ international associations/alliances
- ❑ goods and services, training courses, literature, membership, intellectual property
- ❑ amount paid must be proportional to benefit received unless small amount (ie. lesser of 5% of expenditures or \$5000)
- ❑ need to be able to document and if excessive then CRA considers it gift to non-qualified donee and can result in revocation

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Canadian Cases

Canadian Cases on Registered Charities Operating Abroad

- Tel-Aviv Foundation Case
- Canadian Magen David Adom Case
- Bayit Lepletot Case
- Travel Just Case

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Top CRA Compliance Concerns

Top CRA Compliance Concerns

- incorrect issuance of receipts (lack information, mistakes, FMV)
- failure to file T3010 Information Return
- T3010 omissions
- non-charitable activities
- gifts to non-qualified donees

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Top Compliance Concerns (cont)

- failure to maintain direction and control
- fundraising costs (reasonable and proportionate)
- political activities
- unrelated business activities
- religious school tuition receipts

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Top Compliance Concerns (cont)

- tax shelters
- fraudulent tax receipts
- transactions with directors
- other CRA rules (payroll, GST etc)

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More Information

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