



Should We Establish another Canadian Charity?

By Mark Blumberg (December 11, 2008)

In this article we will discuss the thought process in deciding whether to establish a Canadian charity. As well if it is decided to create a charity then what is needed to incorporate, organize and apply for charitable registration.

So, are there enough charities in Canada?

According to the CRA website there are currently 83,500 registered charities in Canada. There are probably something in the range of 160,000 non-profit organizations but as many of them are not even registered it is difficult to know exactly how many there are. I often hear the refrain that there are so many registered charities and we don't need any more registered charities.

In Registered Charities Newsletter 31 the Director General of the Charities Directorate of the Canada Revenue Agency Terry De March noted in response to the large number of registrations and deregistrations:

*The fact that so many charities cease to operate each year raises some important questions. Why do so many registered charities, set up with the best of intentions, request to have their status revoked, or fail to meet their obligations? Were they set up for short-term objectives that have now been completed? Did they not have the capacity to operate effectively? Did they fail to anticipate the competition for donations and volunteers? Were they duplicating programs and services that already exist? And ultimately, **should all of these organizations be applying for registered status?***

WHY WE MAY HAVE TOO MANY CHARITIES

Some would argue that it is too easy to register as a charity and too many have done so.

Having lots of charities means at times duplication of services, duplication of governance structures and administration not to mention confusion in the public mind as to who is dealing with an issue.

Having 83,500 charities makes it very difficult for the regulator to monitor whether charities are doing a good job. After all CRA only has enough resources to audit 700 - 1000 of the 83,500 charities every year. When there are bad charities and they hide amongst the many good ones - it compromises the whole charitable sector.

The world we live in is increasingly complicated. Charities are increasingly being forced to deal with that complexity. It is not just about handing out cans of food. To be effective many charities need people, resources, capital, structure, governance, standards etc. They often need employees and payroll. They need audited financial statements. They need to communicate to stakeholders. Many smaller charities don't have these and many of the other resources one needs for certain charities to be effective. They cannot raise the funds to carry on the activities they wanted to do. Some of them do a rather shoddy job of the charitable activities. Although paradoxically some of the small charities that are performing poorly may seem more efficient in the delivery of the services or goods, but they are perhaps delivering the wrong goods to the wrong people or not actually understanding the root cause of the problem and tackling it. Many charities often give up in frustration not realizing that running a small charity can be a lot more complicated than running a small business.

Some are concerned that with the plethora of charities, many dealing with the same issue, that instead of creating healthy competition it is creating unhealthy competition. Admittedly having intense competition between charities causes more and more resources and funds to be expended on raising funds and more and more time is spent from a marketing perspective differentiate yourself from the other charities. More and more effort may increasingly need to be spent justifying that you are doing a fantastic job rather than actually doing a fantastic job.

One thing many people can agree on is that we have too many "copycat" charities. Their name sounds similar to a major charity. This can create confusion and distrust amongst donors when they end up giving to a different charity than the one they thought they were giving to.

WHY WE CAN USE MORE GOOD CHARITIES IN CANADA

In many countries it is difficult to obtain charitable status and in some countries there are only 100 or 200 public institutions that receive tax recognition. Is it necessary to have 400 cancer charities? Perhaps not, but how about having only one cancer charity? Having many charities encourages innovation and competition.

Does anyone ever ask the question "do we have too many businesses?" Well, why would one ask that question, business is good for our society, creates job and wealth. Perhaps, but some businesses do bad things like pollute, evade taxes, sell

dangerous items etc. There has always been a movement calling for some business to lose their charters like tobacco, but it almost never happens unless a business stops filing its tax returns. Charities, at least in theory, provide public goods and benefits. I think in general the more the better, as most people would say more business, more jobs and more economy is better.

Perhaps instead of having 2069 Anglican parishes issuing receipts it would be better to have 1 Anglican Church issuing receipts. There may even be some people in the Anglican church who would like that. If we went with this idea, we could have one Roman Catholic church, not 4432 different groups. From a regulators point of view it may make things simpler, perhaps it would be reduced by 30,000 or 40,000 the number of charities which would make it seem like we have less charities in Canada. I think however, it would also result in a concentration of power which may be unhealthy. It also results in less transparency about operations. When every parish that is separately registered files its T3010 then you get to see what that parish spent, how much it took in etc. Also Canada is a big country geographically and the cost of running one large national organization may be greater, and that one organization may achieve far less, than ten regional organizations.

YIMBY - yes in my backyard. I thought I was smart and invented this word. But someone else who is a lot smarter and quicker than me coined this term many years ago. (<http://en.wikipedia.org/wiki/YIMBY>) YIMBY is the opposite of NIMBY. Basically everyone and their cat and dog wants a vibrant plethora of charities and services in their community. If you ask an atheist - do we need any religious groups registered as charity the answer may be no. If you ask a RC whether you need any Pentecostal churches, you may not get a wildly enthusiastic yes. Why do we need a group in Scarborough that helps women who are in abusive relationships. I think many people in Saskatchewan may not even know where Scarborough is. But for women, perhaps not their abusive partners, who require help in Scarborough I think they know the answer. If you care about animals the 687 charities dealing with "Protection of Animals" is not enough in this big country. So if you care about a particular issue relating to a particular geographic area you may see a big number and say - well that is fine, but there is no organization in my community dealing with this important issue and I want to create one. Also you may only notice the inadequacy of what established charities provide when you, a friend, or loved one, actually needs help.

If you ask a major charity in a particular sectoral area, like cancer, whether there are too many charities in that area you will almost invariably here a resounding yes. After all if you worked at that charity you are not looking forward to competition from other charities. You are also not necessarily looking forward to other charities being more innovative and doing a better job than your charity. However, if you live in Thunder Bay you may want support in your local community and an organization based in Toronto may, or may not, be able or interested in providing the service.

If you are a person who is a highly motivated volunteer and you want to change the way a particular charitable concern is dealt with in Canada sometimes there is not an easy

and hospitable place in some of the bigger charities. Some newspapers have written about how 20 or 30 year olds are often turned away from large Canadian charities, which is a shame as volunteers can offer a huge amount to charities. Now admittedly some of these young guys want to volunteer but they want to be parachuted onto the board of directors and perhaps be the chairperson 2 weeks into their volunteering stint! They may have egos and be enthusiastic without fully realizing the complexity of the issues and stakeholders. On the other hand, I have seen some well established charities that could probably benefit from that youthful enthusiasm. And let's face it - not every major charity is so well run. Furthermore, not every employee of a charity, is such a find. Big charities and big business often have one thing in common - they are good at hiding people who don't perform at all. In a big organization if you are nice to the right people even if you are incompetent you may do just fine. In a small organization or charity if you don't have the skills it usually shows a lot more quickly. Many of the charities I help set up are established by people who want to make a real difference, they are very bright and capable and in many cases they have tried to volunteer with established charities and they have found it be genuinely difficult.

If we have would have 5000 less of certain charities it would be no great loss but if we would have 5000 more good public interest, good, legitimate, effective charities then this would make a huge difference. If we do not allow more charities to be registered, or we make it exceedingly difficult, then we are relying on the current registered charities to reinvent themselves. If they do not then the charitable sector may become increasingly stodgy, out of touch, bureaucratic, "professionalized" (ie. high paid staff and no volunteers) etc.

In the end whether a charity should be set up or not is very much dependent on the people involved and the facts of the situation. Below I will discuss some of the considerations in deciding whether to set up a Canadian registered charity and the basic steps in doing so.

Should we set up a charity?

Here are some of the factors to discuss with clients in order to understand whether establishing a Canadian charity is the right course of action:

1) **Can you join another charity?** What is your client trying to accomplish and is there a charity currently in existence whose objects and activities are similar to your client's interests? If so, your client may wish to consider joining such a charity and providing financial support or volunteering or partnering with such charity instead of establishing a new charity. There are approximately 83,500 charities in Canada registered with the Charities Directorate of the Canada Revenue Agency (CRA).

2) **Is it Charitable?** Is the matter your client is interested in charitable? Setting up a golf club or trade group may be fun and interesting, but it is not charitable.

The 1891 Pemsel case identified four heads of charity, namely: relief of poverty; advancement of education; advancement of religion; and other purposes beneficial to the community. The *Income Tax Act*, Court decisions and the positions of the CRA have over time expanded the definition of what is charitable. For an organization to be a charity, its objects need to be exclusively charitable, not predominantly charitable, but only charitable. Also, it cannot undertake any partisan political activities, and it is restricted in terms of resources allocated to non-partisan political activity. If the organization's objects and activities are not charitable it still may be useful to set up a non-profit or for-profit limited liability corporation to conduct the activities.

3) Running a Charity is hard work. A small charity is a lot more complicated in terms of legal regulation and governance compared to most small private businesses. Some people do not realize that unlike a small business corporation which can be setup in a few hours at minimal cost, a non-profit corporation typically takes about 25 days to setup and obtaining charitable status can take between 6 to 12 months, depending on a number of factors. The time, energy and cost required can be significant. The legal fees are significant but luckily the legal fees are only steep in the first year, and most clients spend little on legal fees in the second year. Accounting fees on the other hand can be \$1000 to \$5,000 when the client completes its first audit and thereafter every single year. Another item that some people are surprised about is that you should have three arms-length directors to incorporate a non-profit unless it will be a Canadian private foundation in which case they do not have to be arms-length. If your client cannot find another two people interested in working with them then this is a good indication that they should abandon the attempt quite quickly!

4) Short Term vs. Long Term. Is your client seeking a short term activity or a long term solution? As a result of the time and expense of setting up a charity, it is usually not worthwhile unless your client is planning on having the organization last for a substantial period of time. Will your client's interest in this matter wane in a few months? If your client is attempting to establish a long term presence and will take on long term responsibilities such as employees, leases etc. then establishing a non-profit and applying for charitable status may make sense.

5) Risk. The higher the risk associated with the charitable activities, the more important it is to have limited liability that can be obtained by incorporation of a non-profit.

6) Sources of Revenue. The next issue that one needs to contemplate is funding. If your client anticipates only receiving government funding you may not need to be a charity. If your client is only interested in obtaining Canadian corporate sponsors (as opposed to individuals) you may not need registered

charity status because some businesses can write off certain reasonable business expenses for promotion, sponsorship etc. and they will not require an official donation receipt. Perhaps being a non-profit corporation will be sufficient from the government funder or business' perspective.

7) Official Donation Receipts. If your client has some substantial individual donors and they want to create a charitable organization in Canada, it may be beneficial to incorporate a non-profit corporation AND also to obtain charitable status. Non-profits in Canada are a useful tool to carry on community work but they cannot issue tax receipts which individuals typically require in order to receive a tax credit in Canada. Also, many companies, foundations and government agencies restrict funding to registered charities. Having charitable status can significantly increase the likelihood of certain types of funding.

How to Create a Canadian charity

If a client has decided to incorporate a non-profit corporation and apply for charitable status then below we discuss some of the steps to take.

One does not require a lawyer to assist with the formation of the non-profit and the charitable registration, although in hindsight many find that it would have been a good idea to use the services of a charity lawyer. The amount of time required to understand the incorporation and application process is substantial and mistakes can be costly, time consuming and frustrating. Poorly thought out decisions at the beginning can hamper the charity later.

I find that most of my time dealing with establishing charities is spent discussing with the client what activities they want to undertake and how to effectively structure those activities. Therefore, most of the time is not spent typically on preparation of documents – it is spent on understanding the client's goals and objectives, educating the client about rules and restrictions, ethical and practical issues and obtaining the appropriate information from the client.

Some of the matters that result in difficulty for some people are decisions about whether to incorporate federally or provincially, choice of name, properly setting out the objects and ensuring they are charitable, organizing the corporation, understanding technical terms such as non-arms length, dealing with the statement of activities in the application for charitable status, deciding on structure and whether such choices result in a charitable organization, public foundation or private foundation, deciding on appropriate fundraising

mechanisms, dealing with charitable activities outside of Canada and other operational issues.

For Ontario non-profits, the [Not For Profit Incorporators Handbook from the Attorney General](#) is helpful. For federal incorporations, Industry Canada has a wealth of information on their website. Below I will discuss basic information for setting up a federal non-profit corporation under the *Canada Corporations Act*.

1) **Name.** Decide on a name and order a federally-biased NUANS search.

2) **Collect Information.** Gather the names, addresses, occupations and telephone numbers of at least three directors. Are they arms-length or related? Who will be the officers and members? What is the address for head office/registered office and mailing address? Who will be the auditor and what fiscal year will be used? What charitable, fundraising, and political, if any, activities will the charity carry out? What budget?

3) **Objects.** The objects of a charity are vitally important and set out the confines by which the charity can operate. One can look to the Not For Profit Incorporators Handbook for sample objects or to the CRA's recently published list of model objects. These lists are not always applicable and usually original drafting is required with objects.

4) **Application for Letters Patent.** One needs to prepare Application for Letters Patent. Whether the Non-profit will apply for charitable status will affect the content of the application for letters patent.

5) **By-laws.** There are no standard Ontario by-laws. There are federal "model" by-laws. Some stationers such as Teranet, formerly Dye & Durham, Search & Registration and Corporate Supplies Division, have minute book packages which includes standard by-laws.

6) **Minute book and seal.** Once you receive the letters patent back you should create a minute book for the organization.

7) **Organizing Resolutions.** Resolutions to organize the non-profit include: adopting by-laws, appointing officers and directors, admitting members, appointing an auditor, authorizing charity application, etc.

8) **Extra Provincial Filings.** Arrange extra-provincial filings if necessary. For example a Federal corporation that will have its head office in Toronto will need to file a registration in Ontario.

9) **Prepare T2050: Application to Register a Charity Under the Income Tax Act.** The T2050 is 14 pages long and has 23 questions. You need to complete the form and obviously the answers to the questions can affect whether you receive registration. You will need to provide a detailed description of activities and a budget. When operating outside of Canada, you need to carefully consider the relationship between the Canadian and foreign charity, the degree of direction and control of the foreign charity, and the appropriate structured arrangement with any intermediaries. If your charity will operate outside of Canada, you may want to review my article *Canadian Charities and Foreign Activities* at <http://www.globalphilanthropy.ca/>

10) **File T2050.** The T2050 must be filed with all necessary attachments such as letters patent, detailed statement of activities, by-laws, structured arrangement for foreign activities, etc. If you forget an attachment, CRA may send the application back to you in a few months and you are at the bottom of the pile again.

Some clients ask us for further resources on charity law and the CRA's perspective on charities. You might find the following links helpful:

CRA Main Charities Page:

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

RC4108 Registered Charities and the Income Tax Act

<http://www.cra-arc.gc.ca/E/pub/tg/rc4108/README.html>

T4063 Registering a Charity for Income Tax Purposes

<http://www.cra-arc.gc.ca/E/pub/tg/t4063/>

T4033A Completing the Registered Charity Information Return

<http://www.cra-arc.gc.ca/E/pub/tg/t4033a/>

T2050 Application to Register a Charity Under the Income Tax Act

<http://www.cra-arc.gc.ca/E/pbg/tf/t2050/>

IC78-10R4 Books and Records Retention/Destruction

<http://www.cra-arc.gc.ca/E/pub/tp/ic78-10r4/>

IT110R3 Gifts and Official Donation Receipts

<http://www.cra-arc.gc.ca/E/pub/tp/it110r3/>

CRA Fundraising Proposed Guidelines

http://www.globalphilanthropy.ca/CRA_fundraising_policy

Top Ten Canadian Charity Law Issues

<http://www.globalphilanthropy.ca/>

There is no question that charity and philanthropy are the “in thing” right now and very cool and hip. If you do not care about charity, well your 16-year-old kid probably does! Just as a person usually does not drive a Prius just because of fuel economy – driving a Prius says something about your values – being involved with charity and philanthropy says something about what is important to you. Now, I could be wrong about this point – my 7 year old thinks I am embarrassing, but my 5 year old wants desperately to be a charity lawyer and started crying when I told him that he cannot miss school and come with me to Save the Children’s AGM! All because it is popular and interesting does not mean that establishing a charity is for everyone. One should seriously consider the issues raised in this article before proceeding with setting up your own charity, just as driving a Prius or a bicycle may not be right answer for your transportation needs.

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