

BLUMBERGS

globalphilanthropy.ca

Some Structures for Social Enterprise

Presentation to the Schulich School of Business
(York University)

October 29, 2013

Mark Blumberg (mark@blumbergs.ca)

Blumberg Segal LLP

Blumberg Segal LLP

- Blumberg Segal LLP is a law firm based in Toronto, Ontario
- Mark Blumberg is a partner at Blumbergs who focuses on non-profit and charity law
- Assists charities from across Canada with Canadian and international operations and foreign charities fundraising here
- www.canadiancharitylaw.ca and www.globalphilanthropy.ca
- Free Canadian Charity Law Newsletter. Sign up at: <http://www.canadiancharitylaw.ca/index/php/pages/subscribe>
- (416) 361-1982 or 1-866-961-1982
- mark@blumbergs.ca
- www.twitter.com/canadiancharity

Introduction

- Legal information not legal advice
- Views expressed are my own
- Questions during and at end
- Logistics and timing

Voluntary Sector in Canada

- About 200,000 non-profits (federal and provincial and unincorporated)
- 86,291 Registered Charities (as of 2013)
- 3.4 million employees (1.8 m fulltime, 1.6 million part-time)

See Blumbergs Charity Sector Snapshot

Voluntary Sector in Canada

- \$212 billion in revenue
- 68% from Gov, the rest is earned income, donations
- Most charities have revenue under \$100,000

See Blumbergs Charity Sector Snapshot

http://www.canadiancharitylaw.ca/index.php/blog/comments/blumbergs_canadian_charity_sector_snapshot_2011_-_understanding_the_charity/

Road Map and Theory of Change

- What change are you looking for? Where do you want to get to? What are your long term goals?
- What interventions are needed? (single action, simple project, community change)
- How would you know when you have achieved success? (measurable indicators)
- Will others (stakeholders) think this makes sense, do you have or can get resources needed, can you measure, is it meaningful? (See theoryofchange.org)

Should we set up new group,
organization, entity?

If so, should it be a
Canadian registered charity?

Carrying on Good Work

Carrying on Good Work Outside of the Charity Realm

- personal donations of cash or in kind items to foreign charities or Can. non-profit, no receipt
- doing business in areas requiring jobs, business and corporate social responsibility (CSR) - donation, sponsorship, advertising, etc.
- for profit “non-profit” - Google.org, micro-loans – ‘triple bottom line’
- non-profit without charitable status – if no need to issue tax receipts.

Carrying on Good Work Outside of the Charity Realm (cont'd)

- volunteering - at home and abroad
- remittances - gifts to family, friends, former employees abroad
- encourage Canadian government to live up to its commitments (eg 0.7%/GNI for foreign aid)
- pay taxes – revenues pay for local, national and international projects

Some Preliminary Factors

- Objects
- Areas of charitable work
- Risk tolerance
- Temperment
- Public profile
- Donors and level of government support
- Independent vs. affiliated
- Resources
- Values and knowledge
- Local vs. international activities
- Control vs. ownership, comfortable vs. wealthy

Variety of Organizations

FOR PROFIT

- **Golf clubs**
- **Social clubs**
- **Amateur athletics**
- **Political parties**
- **Industry associations**

Non Profits

Registered Charities

- relief of poverty
- advancement of education
- advancing religion
- other purposes beneficial to the community the law regards as charitable

Options for Structuring an Organization

0. Individual

1. Join an existing group or Charity

2. Unincorporated association

3. Trust

4. For-profit corporation (CBCA, OBCA)

5. Non-profit (CNCA, OCA) without charity registration

6. Non-profit, registered charity

7. Hybrid entities

0) Individual

- Good – you already exist
- Bad – it becomes about you, personal liability, it may get lonely
- “free agent”

1) Join existing charity

- Good – costs, timing, resources, sustainability, efficiency (scale), infrastructure in place and less confusion
- Bad – no independence, cannot be CEO immediately, philosophical differences, can be shutdown by charity.
- 86,500 registered charities – cost and duplication (see charityfocus.ca)
- Can be a committee of a charity

But Join Which Charity?

- Platform
 - Has system in place, charge fees, clear definition of expectations
 - Will be limited commitment to “your” initiative, not independent, financial sustainability
- Charity in the geographic area
- Sectoral charity

2) Unincorporated Association

- Group of 2 or more people come together to work on an object under a constitution
- no limited liability - members liable personally for lawsuits, contracts etc.
- not permanent, can only be charitable organization, not foundation
- real estate held in names of people
- exempt from income tax
- more difficult to have legal certainty

3) Trust

- no limited liability, no separate existence
- constrained by trust document
- real estate held in names of people
- quick to set up, may be fine for some private foundations
- can have one corporate trustee and in Ontario may be different rules for compensation of trustee of trust when one person contributes all the capital and agrees to compensation arrangement

4) For-Profit Incorporation (CBCA, OBCA)

- “social enterprise”
- limited liability, easy to establish, easier to operate than NPO
- almost no restrictions on activities
- can pay dividends, can pay director’s fees
- pay tax on income and cannot issue official donation receipt

5) Non-Profit Incorporation (Without Registered Charity Status)

- limited liability, perpetual, easier to understand ground rules
- exempt from income tax, but cannot issue official donation receipt
- almost no restrictions on activities - no dividends unlike for-profit – but cannot have “profit” purpose
- no restrictions on political activities, foreign activities etc.
- member vs. public benefit, on dissolution to either members or other organization

6) Non-Profit Incorporation (With Registered Charity Status)

- tax exempt, can also issue official donation receipts
- some foundations require status for funding
- some corporations only grant to registered charities
- benefits - GST/HST rebate, property tax rebate
- more public disclosure and credibility, dissolution to eligible donees

What is a Registered Charity?

- 1) Purposes must be exclusively and legally charitable
(4 heads of charity – relief of poverty, advancement of education; advancement of religion; and other purposes beneficial to the community in a way the law regards as charitable) (**Charitable**)
- 2) Must be established for the benefit of the public or a sufficient segment of the public (**Public Benefit**)
- 3) Apply to Charities Directorate of CRA for registered charity status and be accepted. (**Registered**)

Charities Making Money

- Fundraising
- Earned Income – business activities – “social enterprise”
- Government Funders
- Foundation Funders
- Investments
- [A buck saved is a buck earned]

Tax Benefits when Canadian Individual Donates to a Registered Charity

- 48 cents of every dollar in Ontario up to 75% of income when highest marginal tax rate and surtaxes
- 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

Requirements to be 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) and public benefit
- limited political activities, no partisan political activities, no illegal activities or violating public policy

Requirements to be Registered Canadian Charity

- only undertake charitable activities
- direction and control over funds for foreign activities and transfers to non-qualified donees
- only reasonable fundraising costs
- only related business activities or volunteer
- disbursement quota (DQ)
- no sports for sports "sake "

Should we set up Charity? NO

- why not work with one of the 86,000 existing charities?
- frequently change interests
- if cause not charitable (social, political, etc.)
- need resources to run organization properly but don't need to issue official donation receipts
- charities are more complicated than non-profit or private business

Should we set up Charity? YES

- lasting impact in charitable area
- need funding from individuals
- need funding from Canadian foundations
- some corporations only donate to registered charities
- other tax benefits - GST, property taxes, etc.
- reputational benefits

7) Hybrid Entity

UK

- Community Interest Companies (“CICs”)

US

- Low-Profit Limited Liability Corporations (“L3Cs”)
- Flexible Purpose Corporations (“FPCs”)
- Beneficial Corporations certification (“B Corps”)
 - Not a legal entity but a certification program administered by B Lab

Hybrid Entity (cont)

British Columbia

- Community Contribution Companies (“CCC”)

Nova Scotia

- Community Interest Companies (“CIC”)

Ontario

- Social Enterprise Strategy – exploring introducing new legislation for hybrid entities

Hybrid Entity (cont)

- Social enterprise legislation in British Columbia and Nova Scotia are modeled after UK CICs legislation
 - British Columbia: Royal Assent on May 15, 2012, Regulations approved February 27, 2013
 - Nova Scotia: Royal Assent on December 6, 2012, regulations are pending
- Key features include:
 - Community interest/purpose statement
 - Asset-lock provisions
 - Annual reporting to the public

Hybrid Entity (cont)

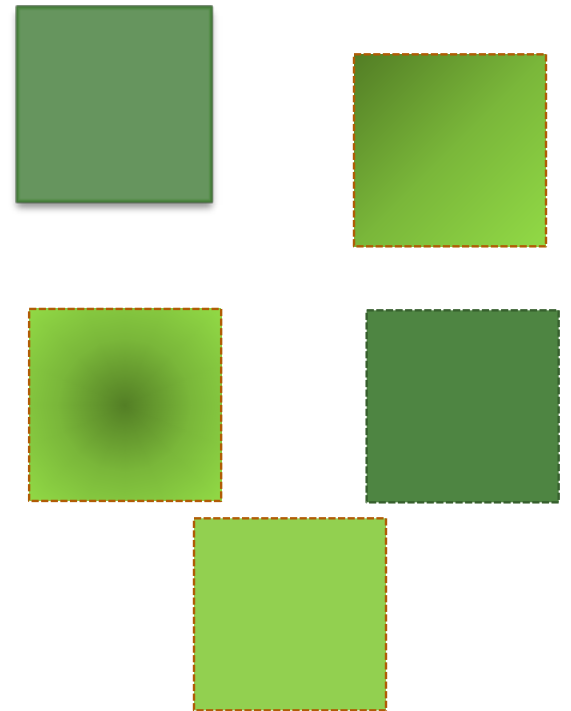
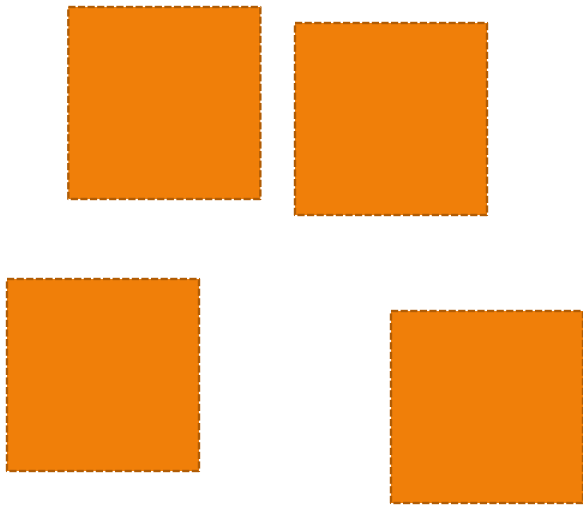
- Pros - entrenches social/community purposes into articles, protection of directors by expressly permitting directors to consider other stakeholders, legitimizes social enterprises, flexible capital structures, marketing buzz and brand awareness
- Con – limited tax benefits, no qualified donee status and no ability to issue official donation receipts, limits on investor returns, new/unfamiliar, does not have external oversight
 - Do you want BC or NS company?

Reality for Complicated Operations

- For Profits

NPO

Charities (international)



NPO Incorporation

- Federal vs. provincial
- Documents and information required
- Name
- Objects
- Directors

Documents Needed for Federal Incorporation under Canada Not-for-Profit Corporations Act

- Form 4001 - Articles of Incorporation
- Form 4002 - Initial Registered Office Address and First Board of Directors
- Directors' Consent to Serve
- By-laws
- Organizing resolutions of the Board of Directors
- Organizing resolutions of the Members; and
- NUANS
- \$250 (or \$200 if electronic)

[See Blumbergs “CNCA Suitcase” or Industry Canada website]

Directors

- three directors minimum for soliciting corporation
- majority arms-length, unless private foundation
- qualifications - 18, sound mind, not bankrupt
- director cannot receive compensation in Ontario, also generally not good idea elsewhere
- no residency requirement but...
- mix of skills - diversity

Organization of Corporation

- minute book and seal
- organizing resolutions - directors, officers, members*, pass by-laws, auditors, banking, authorize application for charity status, fiscal year end
- filing extra-provincial forms as required
- bank account

Timelines and Our Fees

- For-Profit (CBCA) - 4 hours (\$700-\$1000)
- Federal Non-Profit (CNCA) - 2 weeks (\$1500 -\$3,000)
- Application for Charitable Status with CRA and non-profit incorporation/organization - 3-6 months (\$5,000-\$10,000+)

Blumberg Segal LLP

- Blumberg Segal LLP is a law firm based in Toronto, Ontario
- Mark Blumberg is a partner at Blumbergs who focuses on non-profit and charity law
- Assists charities from across Canada with Canadian and international operations and foreign charities fundraising here
- www.canadiancharitylaw.ca and www.globalphilanthropy.ca
- Free Canadian Charity Law Newsletter. Sign up at: <http://www.canadiancharitylaw.ca/index/php/pages/subscribe>
- (416) 361 – 1982 or 1-866-961-1982
- mark@blumbergs.ca
- www.twitter.com/canadiancharity