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Top 20 Legal and Ethical Issues for Canadian Registered Charities

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Branch, Culture and Community Spirit, Government of Alberta
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Blumberg Segal LLP

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Charities Directorate of CRA

- Regulates registered charities
- Based in Ottawa
- Website: www.cra.gc.ca/charities
- E-mail list: <http://www.cra-arc.gc.ca/esrvc-srvce/mlst/sbscrbchrts-eng.html>
- Webinars: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/wbnrs/menu-eng.html>
- Telephone: 1-800-267-2384 (English)
1-888-892-5667 (Bilingual)
- Charities Partnership and Outreach Program (CPOP)

Introduction

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

Variety of Charities

Every charity is different:

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

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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**)

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Definitions

Legal – binding minimum rules and regulations

Ethical – higher standard than legal – ‘applied ethics’ – trying to achieve moral and ethical outcomes in real-life situations consistent with our values and standards.

Risk management - identification, assessment, and prioritization of risk (loss or adverse event) followed by coordinated and economical application of resources to minimize, monitor, and control the probability and/or impact of unfortunate events. (Wikipedia)

Maintaining Charitable Status

- Conduct allowable charitable activities and avoid prohibited activities
- Keep adequate books and records
- Properly issue official donation receipts
- Meet annual spending requirement (disbursement quota)
- File T3010 Registered Charity Information Return
- Maintain status as a legal entity
- Inform CRA of certain changes

Top Legal Compliance Concerns for Canadian Registered Charities

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1. Failure to File T3010

- Canadian Registered Charities must file their T3010 Registered Charity Information Return every year
- Within six months of the end of the charity's fiscal period
- For 2009 fiscal years on file T3010B
- For December 2010 on file T3010-1
- Form is mailed with labels to charity – also can download form from:

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rtrn/flngb-eng.html>

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Why File T3010?

- Legally required
- Only uniform way to compare Canadian charities
- Advertisement for charity
- Important for transparency of charity
- Only beginning of transparency (website, annual report, newsletters, e-mail lists, etc.)

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Consequences for Failing to File

- Revocation of charitable status within months
- Cannot issue receipts
- Lose benefits of registered status
- Revocation tax if not re-registered within 1 year
- May not be able to reregister
- \$500 penalty

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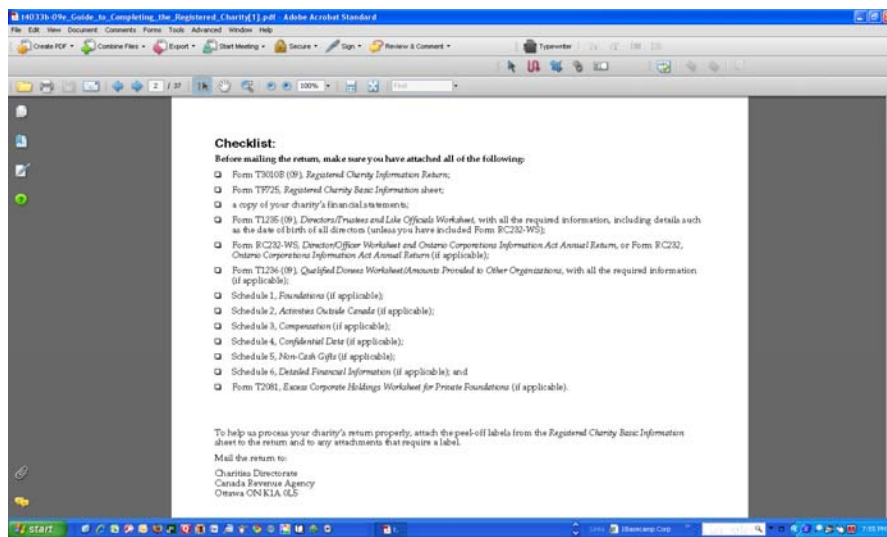
2. Mistakes with T3010B

- T3010 must be the correct form, accurate and complete including schedules and financial statements otherwise may be returned or considered incomplete
- Lots of help on internet with T3010 – go to www.capacitybuilders.ca/clip for a list including our Annotated T3010
- CRA has fillable T3010

Problems with T3010

- Using wrong form
- Not providing all information
- Not providing accurate information
- Not providing all schedules
- Not providing financial statements
- Not providing date of birth of directors

Form T3010



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3. Incorrect Receipts

- Charities are required to issue correct receipts
- Some receipts:
 - Lack required information
 - Have mistakes
 - Include improper fair market value (FMV)

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Why Receipt?

- Can offset federal and provincial income tax
Exact amount depends on which province, which marginal bracket a person is in that year and the type of property (e.g. appreciated marketable securities)
- Can carry forward for next five years
- Can donate up to 75% of your net income each year.

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Does a Charity Have to Issue Receipts?

- No
- But make donors aware of policies (minimum donations, when receipts will or will not be issued, gift acceptance policies, etc.)
- Individuals require “official donation receipt” to reduce personal income tax when they file their personal return each year so let them know if no receipt will be issued
- If in doubt, DON'T RECEIPT

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How Much is a Donation Receipt for?

- What is the “eligible amount of a gift” for official donation receipting purposes
- If the donor has received an “advantage” in return for his or her donation then the “value” of the “advantage” must be subtracted from the value of the “gift”.

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What is a “Gift”?

Charities can only issue receipts for a “gift”.

A “gift” is a:

1. **Voluntary** – given of free will (not compelled, not court ordered, etc)
2. **Transfer** – from donor to charity/qualified donee (complete transfer)
3. **Property** – cash or gifts in kinds (not services)
4. **Financial Sacrifice** on the part of the donor (donative intent – advantage must be less than 80% of amount unless Minister agrees)

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Mandatory Elements of Receipts

For gifts of cash: (Regulation 3501 of the *Income Tax Act*)

- A statement that it is an official receipt for income tax purposes
- The name and address of the charity as on file with the CRA
- The charity's registration number
- The serial number of the receipt
- The place or locality where the receipt was issued
- The day or year the donation was received

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Mandatory Elements of Receipts (cont.)

- The day on which the receipt was issued if it differs from the day of donation
- The full name and address of the donor
- The amount of the gift
- The value and description of any advantage received by the donor (under proposed legislation)
- The signature of an individual authorized by the charity to acknowledge donations, and
- The name and Web site address of the Canadian Revenue Agency (<http://www.cra.gc.ca/charities>)

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Mandatory Elements for Gifts in Kind

For non-cash gifts (gifts in kind), these additional elements:

- The day on which the donation was received (if not already indicated)
- A brief description of the property transferred to the charity
- The name and address of the appraiser (if property was appraised), and
- In place of the amount of the gift mentioned above, the deemed fair market value of the property (under proposed legislation)

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Sample Official Donation Receipts

The screenshot shows a web browser displaying a sample official donation receipt from the Canada Revenue Agency. The page title is "Sample official donation receipts" and the URL is "http://www.cra.gc.ca/charites/anglais/10144.aspx". The receipt is for a cash gift with no advantage, receipt number 0001. It includes fields for charity name, address, and registration number, as well as fields for the donor's name, address, and the date and location of the receipt. The receipt also includes a section for the authorized signature and a link to the Canada Revenue Agency website for more information on registered charities.

Charities and Giving: Sample official donation receipts - Windows Internet Explorer
 http://www.cra.gc.ca/charites/anglais/10144.aspx
 Sample official donation receipts CRA

Canada Revenue Agency
 www.cra.gc.ca

Sample official donation receipts
 Sample # 1 - Cash gift (no advantage)

Official Donation Receipt For Income Tax Purposes
 Receipt # 0001

Charity name: _____ Canadian charity address: _____ Charity BN/Registration #: _____
 Date donation received: _____ Donated by: _____
 (First name, initial, last name)
 Address: _____

Eligible amount of gift for tax purposes: _____

Date receipt issued: _____
 Location issued: _____
 Authorized signature: _____

For information on all registered charities in Canada under the Income Tax Act please visit:
 Canada Revenue Agency www.cra.gc.ca/charites

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Don't Issue a Receipt When...

- You cannot determine the value of the donation or the benefit
- Donation of services (donated time, labour, skills) to charity or loans of property, use of a timeshare or lease of premises
- Donation is intended for another organization that is not a registered charity or qualified donee (“lending registration”)

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Don't Issue a Receipt When...

- Tuition (except IC 75-23 - private religious schools)
- Business advertising expenses/sponsorship
- Gifts of promises (for example, gift certificates donated by the issuer, hotel accommodation) or pledges
- Payment of basic fee for event (e.g. concert)
- Payment for program (e.g. daycare)

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Don't Issue a Receipt When...

- Membership fees that convey the right to attend events, receive literature, receive services, or be eligible for entitlements of any material value that exceeds 80% of the value of the payment
- Lottery tickets
- Purchase of goods or services from charity
- Donation for which the fair market value of the advantage or consideration provided to the donor exceeds 80% of the value of the donation

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Don't Issue a Receipt When...

- Funds or gift in kind from another qualified donee (for example Canadian private foundation gifts or transfers funds to registered Canadian charitable organization)
- Cannot determine the name of the true donor
- Gift directed to specific person or family unless charity has already decided that person or family is recipient of its charitable program and charity has full discretion to reallocate and person or family is arms-length from donor

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Split Receipting

- New legislative idea – from 2002
- Pre-2002 – if donor received any advantage, then no receipt
- Now donors can receive some advantage eg. concerts, golf tournament, gala dinners, etc.
- Charity must determine the eligible amount of that gift for receipting purposes in order to issue an official donation receipt
- Eligible amount is gift minus advantage
- <http://www.cra-arc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf>

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Advantage is Broad

Possible advantages include:

- Property (for example, cash, non-cash gifts)
- The use of or enjoyment of property
- The provision of services
- Other benefits (for example, assumption of debt by donee, sponsorship)

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Determining FMV of Advantage

- Advantage = what donor *may* receive in return for his or her donation (for example, food at gala dinner)
- Must be deducted when determining the eligible amount of a gift for receipting purposes
- Similar but different to determining fair market value of a gift in kind (non-cash gift)
- While only donations of *property* can be receipted as gifts in kind, the fair market value of any type of advantage (for example services, accommodation, meals) must be used to reduce the eligible amount of a gift for receipting purposes

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Is There Donative Intent?

If advantage is

- 80% or less of the fair market value of the donation, then a receipt may be issued for the difference
- Greater than 80% of the value of the donation, no gift is deemed to have been made (no donative intent), and a receipt cannot be issued

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If “Nominal” Value of Advantage

If advantage is the lesser of \$75 and 10% of the value of the donation, it is considered nominal (“de minimis”) and it need not be deducted from the eligible amount of the gift for receipting purposes

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If Value of Advantage Cannot be Determined

If the FMV of the advantage cannot be determined, a receipt cannot be issued

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Working Out the Receipt

- Is advantage 80% or less of the fair market value of the donation?
- Is advantage nominal in which case do not need to deduct from amount of receipt?

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Meals at Events

- Fair market value of a meal at fundraising dinner is cost of a comparable meal provided by a comparable facility
- If meal at restaurant, then price regular customer would pay
- If meal at banquet facility then use group or banquet rates
- If meal donated to charity, it is still advantage and does not change amount of advantage

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/fndrsng-eng.htm>

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Receipting of Membership Fees

“Whether or not there is an eligible amount associated with the payment of membership fees or other amount to a registered charity of which an individual is a member will be determined on the basis of whether the membership fee or other amount exceeds the amount of the advantage. If the amount of the advantage is 80% or less of the payment to the charity, a tax receipt may be issued for the eligible amount.”

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Receipting of Membership Fees

Generally not advantage:

- Recognition as a donor in the charity's newsletter;
- A subscription to the charity's quarterly newsletter (otherwise available free of charge)
- The right to attend annual meetings
- A monthly calendar of performances (otherwise available free of charge)
- An advance invitation to certain performances
- An invitation to dress rehearsals (open to the general public)

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Receipting of Membership Fees

Must deduct as advantage from membership fees paid for various items including but not limited to:

- Complimentary items of value provided to member
- A discount on products or services offered by charity
- Parking vouchers
- Burial plot discounts

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Why is FMV Important?

- For valuing gift in kind (non-cash) gift (“eligible amount of a gift”)
- For valuing any advantages received
- If you cannot determine fair market value of either gift or advantage then cannot issue receipt
- Onus on charity to determine – major consequences for mistakes.

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What is Fair Market Value?

“The highest price, expressed in dollars, that property would bring in an open and unrestricted market, between a willing buyer and a willing seller who are both knowledgeable, informed, and prudent, and who are acting independently of each other.”

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What is Fair Market Value?

- What is “open and unrestricted market”?
- What is “knowledgeable”?
- What is “informed”?
- What is “prudent”?
- What is “acting independently of each other”?

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FMV and Taxes

- The fair market value of an item does not include taxes paid on purchasing the item
- If you pay \$100 plus \$13 HST then the FMV is \$100 for purposes of the receipt
- Why? Person who owns item and sells it does not get to keep the taxes – just passes it on the government

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cpc/cpc-006-eng.html>

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What is “Deemed” FMV?

In certain circumstances receipt for a gift in kind (non-cash gift) must be issued for the lesser of

- The gift's fair market value and
- Its cost to the donor (or in the case of capital property, its adjusted cost base) immediately before the gift is made

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When is “Deemed” FMV Used?

For gifts after December 5, 2003 use deemed FMV if any applies:

- 1) The gift received by the charity was initially acquired by the donor as part of a **tax shelter arrangement**, or
- 2) The gift was **acquired less than three years** before the time of donation **for any reason**, or
- 3) The gift was acquired less than **ten years before** the time of donation, **with one of the main purposes** being to **gift the property to a qualified donee** (for example, a registered charity)

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Exemption from Deemed FMV

- Gifts made as a consequence of a taxpayer's death
- Gifts of inventory
- Gifts of real property situated in Canada
- Gifts of certified cultural property (special valuation procedures apply)
- Gifts of certain publicly-traded securities

If exempt, then just use regular FMV

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/dmdfmv-eng.html>

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Deemed Fair Market Value

If a donor attempts to avoid the limitations described under the "Deemed fair market value", with the acquisition or disposition of a property before gifting it, the eligible amount of the gift is deemed to be nil. This rule applies to gifts made after July 17, 2005.

Gifts and Income Tax P113(E) Rev. 09

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Example of Deemed Fair Market Value

- Person buys piece of art for \$50
- Six months later piece of art is valued at \$1000
- As gift within 3 years so only issue tax receipt for \$50
- If donor does not advise charity of deemed FMV issue then receipt should be for zero

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/dmdfmv-eng.html>

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Gifts In Kind

- Why accept gifts in kind?
- Can your charity 1) use it or 2) easily sell it?
- Gifts in kind can create significant legal and ethical issues
- In many cases best to decline offer of gifts in kind

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Gifts In Kind

- Is gift-in-kind donation for mission?
- Is product appropriate?
- Do you have policies on gift-in-kind donations?
- What “fees” are being charged for gifts-in-kind?
- What disclosure of valuation, source, and use is made in your financial statements?

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Appraisal and Gifts In Kind

- If under only one gift under \$1000 then someone affiliated from charity with sufficient knowledge may determine value
- If over \$1000 then CRA recommends that professional appraisal by third party who is knowledgeable about specific marketplace and not associated with either charity or donor
- If appraisal include name and address of appraiser on the official donation receipt

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Appraisal and Gifts In Kind

- May need more than one appraisal
- Responsibility of charity to determine FMV
- Many cases of courts not accepting exaggerated appraisals
- Gifts under \$1000 without valuation – still keep supporting documents.

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When Should a Receipt be Issued?

- No requirement to issue receipt and no requirement as to when
- If charity will issue receipt CRA recommends it be done by end of February for previous year so that donor has time to prepare tax return
- With gifts in kind (non-cash) need separate receipt for each donation
- For cash gifts, e.g. monthly donors, can issue cumulative gift for year

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Correcting or Replacing Receipts

- To replace a **lost** receipt, a registered charity can issue a replacement, which must contain all the required information plus the serial number of the lost receipt. The replacement receipt should also state that it “cancels and replaces the lost receipt.” The charity's copy of the lost receipt should be kept and marked “cancelled”
- For a **spoiled** receipt, a registered charity can issue a new receipt but must keep the original copies (both the donor's and charity's) marked "cancelled”

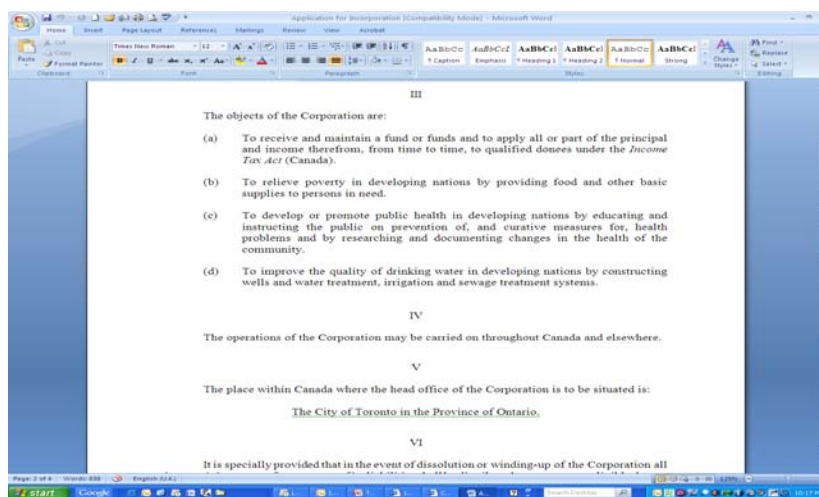
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4. Acting Outside Legal Objects

Charities in Canada have legal objects in their founding documents (eg. Letters Patent, Trust deed etc)

Charities must not act outside of these legal objects.

Check Your Letters Patent/Articles of Incorporation



5. Non-Charitable Activities

A registered charity must devote its resources (funds, personnel, and property) to **charitable activities** (the work that advances the charitable purposes).

Certain non-charitable activities are allowed within limits like administration, fundraising, related business, social and political.

6. Gifts to Non-Qualified Donees

Charities need “direction and control” over funds and resources.

Charities conduct activities in two ways:

1. By gifting to “qualified donees”; or
2. By carrying on its own charitable activities.
 - *employees and volunteers
 - *using intermediaries who are not qualified donees (in Canada or abroad).

Canadian Registered Charities Carrying Out Activities Outside Canada

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html>

Gifts to Non-Qualified Donees

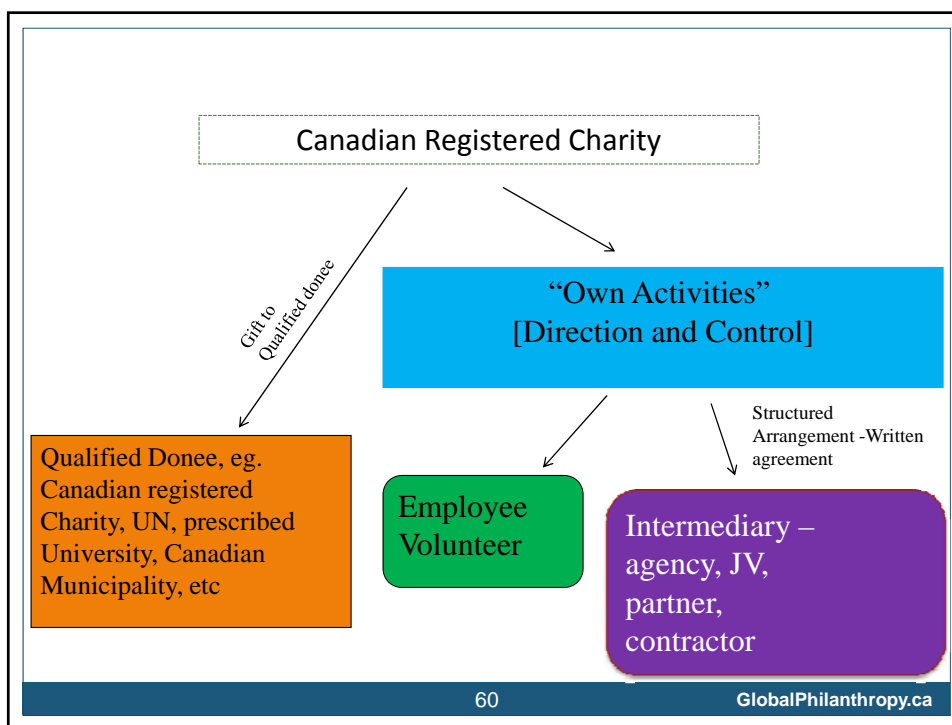
Charities cannot gift to a non-qualified donee (such as Canadian non-profit or foreign charity)

Charities cannot be “conduit”

(Gifts to non-qualified donees = 105% penalty on the amount of the gift and second infraction 110% penalty and greater chance of revocation)

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“Own Activities” or “Direction And Control”

When not working with qualified donee or own staff need to have:

- Due Diligence of Intermediary (investigate)
- Written agreement
- Detailed description of activities
- Monitoring and Supervision
- Ongoing Instruction for changes
- Periodic Transfers
- Separate Activities and Funds
- Books and Records showing above

7. Fundraising Costs and Practice

- Fundraising is important for charities but it is not a charitable activity
- Lots of media and donor concern about costs and practices
- CRA Guidance on Fundraising recently released
- Must read for anyone very involved with fundraising:
<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-028-eng.html>

Ideas for Understanding the Guidance

Focus on the simple parts. Then tackle allocation etc.

Read the bigger font version:

http://www.globalphilanthropy.ca/images/uploads/Guidance_on_Fundraising_from_CRA.pdf

Also consolidated bigger font version of the Guidance from CLIP with Guidance and additional information spliced together in one continuous document

http://www.capacitybuilders.ca/files/resources/CRA_Fundraising_Guidance_1259599283.pdf

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CRA Fundraising Guidance

- Consultation draft in 2008
- Published guidance on June 11, 2009 (“Guidance”)
- Is fundraising and charitable sector simple?
- If not, can we expect that thoughtful regulation will be simple?
- Most of the Guidance is very straightforward, a couple of issues are complicated like allocation of expenses and amount of disclosure

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CRA Guidance for Fundraising

- Prohibited fundraising conduct (illegal, main purpose, too much private benefit, misleading or deceptive)
- Apportioning expenses between fundraising and charitable
- Evaluation – Ratios, Best practices, Indicators of concern
- Disclosure and transparency

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Fundraising Guidance – Sword and Shield

- “While recognizing the necessity of fundraising, the CRA expects charities to be transparent and to not devote excessive amounts of time and/or resources to fundraising as opposed to fulfilling their charitable purposes.”
- “It also confirms to the public that fundraising expenditures are appropriate and in fact necessary for the sustainability of the sector.”

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Fundraising and Charitable Purposes

- Fundraising (whether undertaken as a purpose or activity) is not in-and-of-itself charitable.
- Direct costs of fundraising cannot usually be reported as charitable expenditures on a charity's annual Form T3010.
- Can allocate between fundraising, charitable and other non-fundraising expenses for purposes of the T3010 reporting.

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What is Fundraising?

As a general rule, fundraising is any activity that:

- includes a **solicitation of support** for cash or in-kind donations (including sales of goods or services to raise funds);
- is part of the research and **planning** for future solicitations of support; or
- is related to a solicitation of support (efforts to **raise the profile of a charity, donor stewardship, donor recognition**, etc.).

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Why Does Definition Matter?

If it is “fundraising”:

- Guidance applies to it
- Include in ratios
- May affect types of revenue diversification considered

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Fundraising Includes ...

Fundraising includes:

- Activities carried out by the registered charity, or someone acting on its behalf.
- Activities in which receipt issued and activities in which no receipt issued

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Is Donor Stewardship a Solicitation of Support?

Donor stewardship occurs when a charity invests resources in relationships with past donors to prompt additional gifts. This could include providing donors with access to information, services, or privileges not available to others. These activities are considered solicitations of support.

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Donor Recognition is Fundraising

- Donor recognition is fundraising and must be reported as such unless de minimus (per-donor cost of \$75 or 10% of the donation (whichever is less)).
- When nominal and not reported as fundraising then report as administrative expenses.

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Includes In-Kind and Sale of Goods

“A solicitation of support includes requests by the registered charity, or someone acting on its behalf, for financial or in-kind donations. It also includes the marketing and sale of goods or services not within the charity’s own charitable programs, but sold specifically to fundraise. This applies even where no donation receipt is issued for the transaction.”

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Excluded from “Fundraising”

- Fundraising does not include requests for funding from government or from other registered charities, or the operation of a related business as defined in the *Income Tax Act*.
- Recruitment of volunteers is not considered a solicitation of support.

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Indicators of Concern

- Sole-source fundraising contracts
- Non-arm's length fundraising contracts
- Fundraising initiatives that are not well-documented
- Fundraising merchandise purchases that are not at arm's length, not at fair market value, or not purchased to increase fundraising revenue.
- Most of the gross revenues for non-charitable parties.
- Commission-based fundraiser remuneration
- Misrepresentations in fundraising solicitations or in disclosures about fundraising or financial performance.

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CRA Guidance on Fundraising

Best Practices

- a. Prudent planning processes
- b. Appropriate procurement processes
- c. Good staffing processes
- d. Ongoing management and supervision of fundraising practice
- e. Adequate evaluation processes
- f. Use made of volunteer time and volunteered services or resources
- g. Disclosure of fundraising costs, revenues, and practice (including cause-related or social marketing arrangements)

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Fundraising Ratio of Costs to Revenues

Ratio of Costs to Revenues over Fiscal Period

CRA Approach (Cost to Revenue)

- | | |
|---|---|
| <ul style="list-style-type: none"> • Under 35% | <ul style="list-style-type: none"> • <i>Unlikely</i> to generate questions or concerns. |
| <ul style="list-style-type: none"> • 35% and Above | <ul style="list-style-type: none"> • The CRA will examine the <i>average ratio</i> over recent years to determine if there is a <i>trend</i> of high fundraising costs. The <i>higher the ratio</i>, the more likely it is that there will be concerns and a need for a more <i>detailed assessment of expenditures</i>. |
| <ul style="list-style-type: none"> • Above 70% | <ul style="list-style-type: none"> • This level <i>will raise concerns</i> with the CRA. The charity must be able to provide an <i>explanation and rationale</i> for this level of expenditure to show that it is in compliance; <i>otherwise, it will not be acceptable</i>. |

8. Charity Gifting Tax Shelters

- People can donate to registered charities in Canada and get an official donation receipt which is very valuable and can cost the tax system a lot. Promoters and “charities” cannot, through various games and tricks, abuse the tax system to issue an inflated receipt.
- Usually “investor” or “donor” is told that the tax benefits and deductions arising from the scheme will equal or exceed the costs of entering into the arrangement or the property.

Avoiding Abusive Charity Gifting Tax Shelters

- Over \$6 billion in gifting tax shelters over last 8 years
- Over 175,000 Canadians being audited
- If it sounds too good to be true, it probably is
- Be careful of advice from people who have a financial benefit in the transaction

CRA Taxpayer Alerts on Tax Shelter Gifting

The screenshot shows the CRA website with a prominent "Taxpayer Alert" section. The alert is titled "Warning: Participating in tax shelter gifting arrangements is likely to result in a tax bill!". Below the title, there is a "Notice to the reader" section with links to the alert in various languages: Arabic, Chinese, and Punjabi. The main body of the alert states that the CRA is auditing all gifting arrangements and that taxpayers should be aware of the CRA's plan to audit all tax shelter gifting arrangements. It also includes a "Stats and Facts" section with bullet points indicating that the CRA has reassessed over 26,000 taxpayers in these schemes and denied about \$1.4 billion in donations claimed. Finally, there is a "Current Promotions" section mentioning that new schemes are being marketed that claim to be different from those for which the CRA has previously issued warnings.

Canada Revenue Agency
www.cra.gc.ca

Taxpayer Alert
Warning: Participating in tax shelter gifting arrangements is likely to result in a tax bill!

Notice to the reader:
This Taxpayer alert is also offered in a variety of languages: [Arabic \(PDF, 110 KB\)](#), [Chinese - simplified version \(PDF, 232 KB\)](#), [Chinese - traditional version \(PDF, 232 KB\)](#), and [Punjabi \(PDF, 30 KB\)](#). These versions were translated from the English version.

Despite numerous warnings and audit actions by the Canada Revenue Agency (CRA), taxpayers are still participating in tax shelter gifting arrangements. The CRA is urging taxpayers to avoid these schemes.

The CRA is auditing all gifting arrangements

Taxpayers should be aware that the CRA plans to audit all tax shelter gifting arrangements. Every audit completed to date has resulted in a reassessment of tax, plus interest. In many cases the CRA has denied the "gift" completely. Penalties will be considered, especially where an investor was audited and reassessed for previously participating in a gifting arrangement.

Stats and Facts

- To date, the CRA has reassessed over 26,000 taxpayers who participated in these schemes, and denied about \$1.4 billion in donations claimed.
- Audits of another 20,000 taxpayers involving \$550 million in donation claims are just about complete.
- Audits on other arrangements involving over 50,000 taxpayers are about to begin.

Current Promotions

New schemes are being marketed that claim to be different from those for which the CRA has previously issued warnings. Taxpayers should avoid all schemes that promise donation receipts for 3 to 4 times the cash payment. It is the CRA's position that the proposed legislation, effective since 2007, will apply to reduce the donation credit to no more than the actual cash payment. Furthermore, as indicated above, completed audits have shown that there was effectively no gift being made in many cases, and as a result, the donation was reduced to zero.

Tax Shelter Gifting – Charity Concerns

1. Undermine public confidence in charities
2. Depletes tax revenues needed for basic services, many of which are delivered by charities
3. They are often illegal or fraudulent, usually unethical
4. Donors/Investors will be audited (175,000 donors are currently being audited)
5. Determining the correct amount for the donation receipt

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Tax Shelter Gifting – Charity Concerns (cont.)

6. Disbursement quota problems
7. Fundraising by using commissions may violate codes of ethics
8. Tax Shelter Identification Numbers
9. You don't want to be considered a Promoter
10. Lawsuits

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Tax Shelter Gifting – Charity Concerns (cont.)

11. Questionable legal opinions
12. Civil penalties
13. Professional advisors
14. Advanced tax rulings
15. 1% ends up going to charitable activities according to CRA

Charity Gifting Tax Shelters

- There are consequences
- Almost all schemes market themselves as being “different” from other schemes that CRA has warned about and promising that they are safe
- The CRA audits all charity gifting arrangements

Is this an Abusive Tax Scheme?

1. Person donates \$100 to charity, receives no benefit and charity issues \$100 tax receipt.
2. Person donates \$100 to charity and receives \$10,000 tax receipt.
3. Person buys pharmaceuticals in India as part of a scheme for \$100, pharmaceuticals donated to charity and valued for purposes of tax receipt, at \$10,000, and tax receipt issued for \$10,000.

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9. Employment Issues

- Employee vs. Independent contractor - see CRA publication *Employee or Self-employed?*: <http://www.cra-arc.gc.ca/E/pub/tg/rc4110/>
- Withholding source deductions (CPP, EI, Income Tax)
- Remitting source deductions
- Proper employment agreements
- Excessive compensation / private benefit

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10. Failing to Keep Adequate Books and Records

A Canadian registered charity **must** keep *adequate* books and records, **preferably** in either English or French.

CRA must be able to:

- Verify revenues, including all charitable donations received;
- Verify that resources are spent on charitable programs; and
- Verify that the charity's purposes and activities continue to be charitable.

Why We Need Adequate Books and Records

- Help with charity audits and can result in suspension of receipting privileges, or the loss of its registered status
- Knowing where expenses go and revenues come from
- Needed for issuing official donation receipts
- Help with decision making
- Makes it easier for you to complete filings
- Information on current and past financial position of charity
- Stakeholders may require

Questions for Follow-Up

- 1) Do you have **governing documents** (incorporating documents, constitution, trust document), bylaws, **financial statements, copies of official donation receipts**, copies of T3010, written **agreements**, board and staff meeting **minutes, annual reports, ledgers, bank statements, expense accounts, inventories, payroll records, promotional materials**, and **fundraising materials**.
- 2) Do you have **source documents**? e.g.. **invoices**, vouchers, work orders, delivery slips, purchase orders, and **bank deposit slips**.

11. Failure to Meet Disbursement Quota

- The Disbursement Quota (DQ) is the amount that a registered charity must spend each year on its charitable activities or as gifts to qualified donees.
- Used to be 80% of receipted donations plus 3.5% of assets not used in charitable activities. -2010 Budget removed 80% expenditure requirement.

Disbursement Quota

- Each year, registered charities must spend on charitable activities 3.5% of the average value of any assets the registered charity owned over the previous 24 months that were not used directly in charitable activities or in the administration of the registered charity
- Eg. 3.5% of endowments, investments, reserve fund, building owned by charity not used by charity at the moment for charitable activities

12. Political Activities

“A registered charity may pursue political activities to retain, oppose, or change the law, policy, or decision of any level of government inside or outside Canada provided the activities are non-partisan, related to its charitable purposes, and limited in extent.” (see T3010B)

Political Activities

- Cannot have political purpose (object); only political activities
- No illegal or partisan political activities
- Political activities must be “connected and subordinate” to purpose (legal objects)
- Comply with “10% rule” and disbursement quota restrictions (political work on not charitable and only if DQ room)
- Informative, accurate, and well-reasoned (not false, inaccurate, or misleading)
- **Read CRA Policy Statement on Political Activities (CPS-022)**
<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>

An Activity can be...

- Prohibited activities (illegal and/or partisan political)
- Allowable political activities
- Charitable activities:
 - Public awareness campaigns
 - Communicating with an elected representative or public official
 - Education

13. Unrelated Business Activities

Income Tax Act prohibits “unrelated business activities” by all charities

Charitable organizations and public foundations are permitted to engage in “related business activities” but private foundations may not engage in any business activity

“Carrying on business” - activity is commercial in nature (derive revenue and provisions of goods and services, intention to earn profit) and continuous

Why Prevent Unrelated Business?

- Unfair competition with private businesses
- Why should charities be able to compete tax-free?
- Business is not a charitable object
- Will encourage regular business to set up as charities
- In some countries, unrelated business is permitted, but the charity will be taxed on unrelated business income like a private business but not in Canada

What is a Related Business?

There are two kinds of related businesses that a registered charity can conduct:

1. Businesses that are linked to a charity's purpose and subordinate to that purpose (for example, a hospital parking lot, church gift shop); and
2. Businesses that are run substantially (90%) by volunteers (for example, coffee shop run by volunteers).

Business Activities

For more guidance, see CRA's CPS-019 "What is a Related Business?"

- Penalties for unrelated business: 5% (1st infraction) on gross unrelated business revenue
- Earned in a taxation year
- 2nd infraction: 100% penalty on that revenue and suspension* of tax-receipting privileges

CRA Website “What is a Related Business?”

The screenshot shows the Canada Revenue Agency website. The main heading is "Policy Statement" with the sub-heading "What is a Related Business?". The page includes a sidebar with navigation links for "Charities and Giving", "Policies and Technical Information", and a "Français" link. The main content area contains the following information:

- Reference Number:** CPS - 019
- Effective Date:** March 31, 2003
- Purpose:** The policy statement outlines the Director's policy for determining whether an applicant organization or an existing registered charity is carrying on an acceptable business (a "related" one) or an unacceptable business (an "unrelated" one).
- Statement:** There are two kinds of related businesses:
 - businesses that are run substantially by volunteers; and
 - businesses that are linked to a charity's purpose and subordinate to that purpose.
- Implementation:**
 - This policy applies to applicant organizations and registered charities that carry on a business.
 - The Income Tax Act says that charities can lose their registration if they carry on an unrelated business. By implication, the law allows them to carry on a related business. Charities designated as private foundations are an exception—they can lose their registration if they carry on any kind of business, whether related or unrelated.
 - Charity law, reinforced by provisions in the Income Tax Act, requires that charities have exclusively charitable purposes. Running a business cannot become a purpose in its own right—it must remain subordinated to the organization's charitable purposes.
- A. What is a "business"?**
 - In general terms, a business involves commercial activity—deriving revenues from providing goods or services—undertaken with the intention to earn profit.

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14. Religious School Tuition Receipts

- If religious schools (either exclusively religious or dual (secular or religious)) are issuing tax receipts, they must ensure that they are only issuing receipts for religious portion of tuition, which, in the case of dual capacity schools, is based on the calculation set out in IC 75-23.
- Concern regarding inflated receipts

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15. Fraudulent Tax Receipts

- Tax receipts are sold for a small percentage of their face value
- No donation, or small donation, to charity
- No complicated scheme
- Keep tight control over receipts

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16. Transactions with Directors

In Ontario, the Public Guardian and Trustee takes the position that directors of charities can only be reimbursed for reasonable out of pocket expenses – directors cannot be consultants or employees of charity.

In other provinces, more scrutiny of salaries, loans to directors, investments in companies of directors, transactions with businesses owned by directors, etc...

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17. Mishandling of Audit

- CRA has an obligation to audit registered charities to spot whether they are complying with the *Income Tax Act*
- Charities must assist with audit

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Tips for Handling Audit Properly

1. Respond quickly
2. Be cooperative and polite
3. Use your time wisely before the audit
4. Choose carefully which charity officer or employee represents the charity with CRA
5. The lawyer is generally best kept in the background
6. Have your records up-to-date

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Tips for Handling Audit Properly (cont.)

7. Answer questions at the audit truthfully and only if you know the answer
8. Providing documents – don't dump documents on CRA, remember solicitor-client privilege
9. Copying of documents – provide copies, keep originals, know what you have provided to CRA
10. Preliminary discussions and findings – take notes

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18. Changes/Approvals

For how to advise CRA of changes to the name, address, contact person, legal status, purpose, activities, and bylaws of a registered charity. See

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

For requests that require approval such as how to request a fiscal period end change, re-designation, associated status, permission to accumulate funds, or disbursement quota reduction. See

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

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19. Other Non-ITA Legal Concerns

- Breaching contractual relationships (funding agreements, leases, etc.)
- Abuse of children and beneficiaries
- Criminal gangs, money laundering and terrorism
- Fraud against charities, misuse of charitable assets
- Failure to respect donor restrictions (breach of trust)

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Other Legal Concerns for Charities (cont)

- Safety of staff and volunteers
- Undue Private benefits and conflicts of interest

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Thank you!

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