

Canadian Charities Working with Non-Charities in Canada - A Very Simplified View of the Process

By Mark Blumberg (May 10, 2020)

In this brief note, we try to suggest ten steps for a simplified contractor arrangement between a Canadian charity and a group in Canada that is not a charity (the "Intermediary") implementing a project for the Canadian charity in Canada. Often it makes more sense for a Canadian charity to hire another group in Canada to implement a project that may not be a registered charity, rather than the charity making a gift to another registered charity or qualified donee or the charity using its own employees or volunteers to conduct the activity.

When a Canadian charity spends funds or sends valuable resources to an Intermediary, it needs to maintain "direction and control" over the activity as outlined in the Canada Revenue Agency's guidance [Using an intermediary to carry out a charity's activities within Canada](#). The Contractor Agreement is not the only permissible model. While Canadian charities can also work with Intermediaries as agents, joint ventures or 'cooperative participants', these have other requirements or risks to keep in mind, so this article will just focus on the most popular arrangements, which are contractor agreements.

1) **Due Diligence.** You pick the right contractor or partner to be your Intermediary. Do they have the "reputation, expertise, capacity, or experience" to

carry out the task? Does the group have problematic affiliations with political parties or violent gangs? Due diligence on the Intermediary is a very important step and if the Intermediary is not the appropriate partner, none of the next steps is going to be enough.

2) **Written Agreement.** A written agreement is entered into between the Canadian Charity and the Intermediary that outlines how the Canadian charity will maintain "direction and control" and supervision over the application of its own funds and resources. It is necessary for the written agreement to comply with the Canada Revenue Agency ("CRA") requirements.

3) **Description of Activity.** The project must be properly described, including a description of activities, budget, where the activities will take place, when, who will be doing them, etc. This description needs to be appropriate for the size and complexity of the activity. It must be a 'clear, complete and detailed' description of the project. It must be clearly understood to both parties before funds are sent from Canada as to how those funds will be spent.

4) **Separate Activity.** The Intermediary implements the project as approved by the Canadian charity and identifies the project as being separate and part of Canadian charity's charitable activities. If an observer on the scene or a CRA auditor in Canada cannot tell that this project is distinct from the other activities of the Intermediary, then it may be that you are just funding the project of the foreign charity, which is not permissible.

5) **Governance.** While either party suggests projects that may be suitable, it is the Canadian charity's board of directors meets and reviews the suggested projects to decide which projects will be funded and outline any changes to the project description. A Canadian charity funding a project done by an Intermediary

must meet the CRA's test for "direction and control". Furthermore, the board of directors of a charity have a fiduciary responsibility under trust law to manage the property of the charity and the board needs to be aware and approving of the use of the charity's funds.

6) **Periodic Transfer.** Funds for approved projects are transferred to the Intermediary. If the value of the project is small, the funds may be transferred all at once. Bigger projects require periodic transfers, each portion only to be transferred after appropriate reporting on key milestones.

7) **Real, Ongoing, Active Relationship.** The Canadian charity maintains direction and control through a real, ongoing, active relationship with the contractor. The Canadian charity does not have to be a bossy micromanager, but a charity cannot just send large amounts of funds and get reporting at the end of the project without being aware of how the project is proceeding. With e-mail, Skype, FaceTime, Zoom, scanners etc. it is much easier for a Canadian charity to be aware and engaged with what is going on. Although an Intermediary may have substantial discretion in certain respects with a project, the Canadian charity should be aware of and approve any substantial changes to the project.

8) **Monitoring and Reporting.** The Canadian charity monitors the project through various means as appropriate. The Canadian Charity receives interim reports where the size of the project warrants it. On completion, the Intermediary provides a final report. The Intermediary will report back to the Canadian charity with enough information to allow the Canadian charity to know that its funds were appropriately spent. Depending on the size and type of project, it could include the Intermediary providing copies of source documents such as accounts, agreements, receipts, invoices, correspondence, vouchers, sub-contracts,

cancelled cheques, staff contracts, payroll records, as well as spreadsheets and photos, etc..

9) **Books and Records.** The Canadian charity keeps the required books and records about the project to verify that project was appropriately completed and that funds were well spent. The contractor has its records, but the Canadian charity has to have its books and records as well. Not every post-it note needs to be provided to the Canadian charity, but enough records to satisfy CRA, i.e. adequate books and records.

10) **Capital Projects.** If the project involves real estate or capital equipment being purchased with the Canadian charity's funds as part of the project, then it is more complicated. The Canadian charity needs to retain ownership of such real estate or capital equipment in Canada, or such real estate, or capital equipment would need at the end of the project to be transferred to another qualified donee in Canada. With capital property, it is a good idea to either discuss with CRA or obtain legal advice.

This is a very simplified view of the relationship between a Canadian charity and an Intermediary.

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