

CHARITY COMMISSION OF ENGLAND AND WALES RELEASES COMPLIANCE TOOLKIT ON CHARITIES AND TERRORISM

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A. INTRODUCTION

On November 10, 2009, the Charity Commission of England and Wales (“the Commission”) launched the first chapter of their online toolkit, *Protecting Charities from Harm*, with guidance entitled *Charities and Terrorism* (“the Guidance”).¹ Chapters covering the topics of safeguarding charity funds, people, property and reputation, as well as a case studies and best practices archive are to be released in the future. The Guidance is broken into 11 Modules, each covering a different topic. The Commission aims to have trustees, who in Canada would occupy the same position as the board of directors, become familiar with the legal framework in the United Kingdom dealing with terrorism affecting the work of charities. Although the Guidance has no direct legal effect in Canada, it can be a useful reference for Canadian charities in establishing good due diligence practices based on the case studies and recommendations of the Commission, and like other foreign guidance, may be relied upon by Canada Revenue Agency (“CRA”) in the future.

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¹ More information about the toolkit as well as the full chapter can be found online at: <http://www.charity-commission.gov.uk/investigations/toolkitintro.asp>

B. OVERVIEW OF THE TOOLKIT MODULES

The Guidance is broken into the following Modules:

1. What this guidance is about and how to use it
2. Background information on the Commission's and U.K. Government's counter-terrorism strategies
3. How might a charity be abused for terrorist purposes
4. Counter-terrorism legislation - an overview
5. Proscribed organisations
6. Designated individuals and entities
7. Terrorist financing
8. Charity law duties and responsibilities
9. Reporting requirements
10. The international dimension
11. Further information

Module 1 provides an overview of and scope of the Guidance, noting that the Commission's Guidance is only to provide an overview of areas where charities may need further guidance from the Commission. Module 2 provides background information on the Commission's four-fold approach to dealing with potential terrorist abuse of charitable assets, focusing on awareness, oversight, co-operation and intervention. The Guidance is highlighted as being part of the Commission's "awareness" head of the strategy. The Guidance remarks that it is the responsibility of charity trustees to safeguard their charity from abuse, and this includes abuse from terrorist organizations.

Module 3 can be more useful for Canadian charities, in that it explores how a charity might be abused for terrorist purposes. The Commission recognizes that, "the charitable sector is diverse and far-reaching, spanning many different types, aims, activities, sizes and places."² The Module outlines many of the reasons for which a charity might be vulnerable to abuse, including the fact that charities:

- ◆ Enjoy high levels of public trust and confidence, which is crucial to their success;
- ◆ Often rely on goodwill and voluntary support in one form or another;
- ◆ Are diverse in nature, providing a broad range of activities and reaching all parts of society. Because of this reach, large numbers of people come into close contact with charities, including

² Module 3, page 1

those who may abuse them, through their services, the use of their property and through their trustees and volunteers;

- ◆ Are relatively easy to set up;
- ◆ May depend on one or two individuals who play a key, and often unsupervised, role, particularly with smaller charities;
- ◆ Have a global presence, including in conflict areas and/or where there is little infrastructure, and frequently move money, goods and people to these areas;
- ◆ Often have complex financial operations including multiple donors, investments and currencies, often receiving and using cash, having to account for high volumes of small scale transactions and using informal money transfers;
- ◆ May have complex programmes of operation and may pass funds through intermediary partner organizations to deliver their services, as well as operating directly themselves;
- ◆ May have unpredictable and unusual income and expenditure streams, so suspicious transactions become harder to identify;
- ◆ May have branches and/or projects that are not under the direct supervision or regular control of trustee management;
- ◆ May be subject to different and, in some case, weaker levels of regulation in different parts of the world; and
- ◆ Are powerful vehicles for bringing people together for a common purpose and collective action, and may inadvertently provide a ready-made social network and platform of legitimacy for terrorists or terrorist sentiments.³

The Guidance also mentions that charities working solely in the United Kingdom can experience risks of abuse, as well as charities operating abroad. With regard to what aspects of a charity are open to abuse, the Guidance highlights that a charity's funds, facilities and name are all "precious" assets that are vulnerable to exploitation. This abuse can be perpetrated from both outside, and within the charity. It is also important to note that the Guidance comments that charities can be set up as a sham, whose sole purpose is to raise funds or use facilities for unlawful activities, only in extreme cases.⁴

Module 4 provides an overview of the legislation in the United Kingdom that applies to charities, and will be of little relevance for Canadian charities that do not operate in the United Kingdom. However, Canadian charities operating in the U.K. should review this Module. Module 5 deals with "proscribed organizations," those organizations that are referred to in Canada as "listed entities." Like the comparable U.S. and other foreign lists, it is prudent for charitable organizations to perform their due diligence investigations against the U.K. list of proscribed organizations to ensure that they have no links to such organizations. Some

³ Module 3, page 1-2

⁴ Module 3, page 3.

portions of Module 5 can be useful for Canadian charities, as the Guidance points out that proscribed organizations or their members operate in places where charities may work or fundraise, and therefore requires vigilance on the part of the charity to ensure that their assets, staff, volunteers and other resources are not open to abuse. The Guidance comments that even where a link to such an organization does not amount to a criminal offence under U.K. law, the Commissions' position is that, "it is difficult to see how a charity could adequately manage the risks to the charity and find a way in which the trustees could properly discharge their charity law duties and responsibilities" were such a link to arise.⁵

The Commission explicitly recognizes the difficulties that charities face in working under counter-terrorism measures when they comment that;

...we appreciate it may be difficult to identify members of a proscribed organization. Members are unlikely to admit their support. A partner organization is unlikely to openly admit to supporting terrorism. A charity is unlikely to know for certain whether the partner organization indirectly or covertly supports a proscribed organization.⁶

However the Guidance goes on to point out that the charity cannot ignore the above risks, and must do all that it can to demonstrate that steps have been taken to ensure that no links to terrorist organizations arise. Therefore, whatever the level of risk involved, charities should check their partners and individuals against the lists provided by the government.⁷ In order to meet their due diligence, the Guidance recommends that charities in the U.K. "...ensure they adequately assess the nature and extent of the risk of their charity coming into close contact with proscribed organizations. The greater the risk, the more charity trustees need to do."⁸ The Commission in this regard has opted for a risk-based approach, as opposed to a one-size-fits-all attempt to address counter-terrorism measures in relation to charities. The Report points out that the, "detail of checks and due diligence required, possibly extending to all staff or partners, donors or beneficiaries, will depend on the extent of the risks evident in the circumstances."⁹

Module 6 discusses designated individuals and entities, or those individuals or organizations that are subject to financial restrictions in the U.K. The Guidance warns that given the financial restrictions on the affairs of

⁵ Module 5, page 3.

⁶ Module 5, page 4.

⁷ Canadian charities are encouraged to check the list of listed entities found online at: <http://www.publicsafety.gc.ca/prg/ns/le/cle-eng.aspx>.

⁸ Module 5, page 6.

⁹ Ibid.

the designated individuals, they may seek to take advantage of charities and their operations. Therefore, the Guidance recommends that charities should consider incorporating regular checks of the list of designated individuals and entities when considering partnering with new people or organizations, and ensuring that aliases or common variants in spelling are covered to help identify matches.¹⁰ Module 6 also discusses instances in which a designated individual may volunteer for a charity. The Guidance illustrates that individuals can volunteer in a number of ways, by providing health programs, social services, running advice centers and fundraising activities. In this regard the Guidance points out that while not every volunteer may have direct access to a charity's funds, they may still benefit from other resources provided by the charity. The Commission takes the position that the, "...risks to a charity taking on a volunteer who is designated are so high that it is difficult to see how trustees would be able to show this is in the interests of the charity and properly discharge their legal duties as trustees."¹¹ The Guidance also cautions charities to take steps to ensure that a charity does not damage its reputation or appear to support terrorism by allowing individuals or entities who are designated to also be beneficiaries of the charity. The Guidance notes that the greater the proportion of the charity's beneficiaries there are, the more likely it is that this may be a problem. The Guidance focuses on the harm to the reputation of the charity such an activity may have. The Guidance warns that, "...even direct or informal links with terrorists or people suspected of being terrorists could result in a charity's reputation and public trust and confidence in charity in general being harmed."¹² Charities are therefore recommended to check the appropriate lists to try and determine if their partners may be listed.

Module 7 can be of interest to Canadian charities, in that it provides an overview of terrorist financing. The Module begins by highlighting that, "money underpins all terrorist activity – without it there can be no training, recruitment, facilitation or support for terrorist groups."¹³ The Guidance defines terrorist financing to be the raising, moving, storing and using of financial resources for the purposes of terrorism. Even small amounts of money, those often considered to carry minimal risk, can be used to carry out an attack by small groups, and are open to terrorist financing and money laundering. The Guidance illustrates a number of ways in which terrorist financing may affect charities;

¹⁰ The Canadian Lists of Names subject to the Regulations Establishing a List of Entities made under subsection 83.05(1) of the Criminal Code, and/or the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism (RIUNRST) and/or United Nations Al-Qaida and Taliban Regulations (UNAQTR) are available online at: http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?ArticleID=524.

¹¹ Module 6, page 10.

¹² Module 6, page 14.

¹³ Module 7, page 1.

- ♦ Raising funds in public collections in the name of charity generally, or for a named charity for charitable causes such as a humanitarian relief campaign or following a natural disaster. These funds are then diverted away from the charity and used for criminal and terrorism purposes. This may happen without the knowledge of the charity;
- ♦ Establishing a charity for the purpose of providing cover for channelling funds for the purposes of terrorism, directly or indirectly;
- ♦ Where a charity's funds are being moved from one place to another, or in different forms, for example, through international currencies or through cash transfers, in particular internationally, that may be diverted before reaching the intended recipients;
- ♦ A charity may be used to launder money;
- ♦ Cash may be transported in a way that looks legitimate under the name of charity and charitable causes so its transportation may be less likely to be questioned or challenged; or
- ♦ Recipients of charity funds, whether partners or individuals, may misuse the money they have been given for terrorism purposes.¹⁴

The Guidance also flags certain regions that pose higher risks to charities, such as those subject to U.N. trade sanctions, those identified by international agencies as lacking appropriate anti-money laundering regulations, those known to be operational areas of terrorist organizations and those that have significant levels of corruption or criminal activity. Therefore, charities must ensure that risk assessments take into account the circumstances that could arise from the above considerations to ensure that appropriate due diligence is conducted.

Module 8 discusses the duties and responsibilities for trustees of charities under U.K. law. Although charity law between the U.K. and Canada differ significantly, it is worth noting that directors in Canada have many of the same duties, such as ensuring they comply with all counter-terrorism laws, preventing any misuse of charitable assets, and ensuring that such assets are used in furtherance of their charitable purposes. Module 9 reviews the reporting requirements in the U.K. with regard to when charity trustees and staff should report suspected terrorist activity to their local police and the Commission as well.

Module 10 examines the international dimension of terrorism laws, and can also be of some assistance for Canadian charities in making sure they are conducting appropriate due diligence when operating abroad. In this regard, the guidance notes that;

Different countries are likely to have their own legislation dealing with terrorism.
They are also likely to hold their own lists of terrorists and banned terrorist

¹⁴ Module 7, page 3.

organizations. Trustees need to be aware that different countries refer to these by different names, for example, terrorist persons, banned organizations, proscribed groups, designated organizations, illegal entities or asset controlled entities. The consequences of being named on these lists will vary from country to country and list to list.¹⁵

Therefore the Guidance recommends as good practice for charities to check the individual country lists prior to making the decision to work with new partners abroad. While the Guidance recognizes that these individual country lists have no legal effect in the U.K., reference to them will increase the awareness of the charity so that they can reduce the risks of partnering with a terrorist organization. The Guidance further counsels charities to take care in deciding to work with an organization that is on another country's list, but not on the U.K. list, as this can put the charity at risk of significant liability, as well as jeopardizing the safety of their staff.

Lastly, Module 11 provides a resource of further information, such as references to other publications and governmental departments. The Module contains several quick charts that, with some modification, may be helpful for Canadian charities conducting due diligence to vet potential partners in other countries.

¹⁵ Module 10, page 1.

C. CONCLUSION

While it would be preferable for charities in Canada not to have to look to international sources for additional guidance on how they can get keep on track with their charitable purposes and avoid abuse by terrorist organizations, the Guidance, particularly in regard to information relating to terrorist financing and due diligence in vetting partners, can be a useful supplement to CRA's *Checklist for Charities on Avoiding Terrorist Abuse*.¹⁶ Portions of the Guidance from the Commission can be helpful for Canadian charities in conducting due diligence, but should not be relied upon to comply with Canadian anti-terrorism law. The Guidance recognizes that while links between charities and terrorist activity are rare, they are completely unacceptable. Many charities in Canada undertake work over seas, and are concerned primarily with furthering their charitable purposes. Unfortunately, charities can often be distracted from their purposes by a confusing array of anti-terrorism measures with which they have to comply.¹⁷

¹⁶Canada Revenue Agency, Checklist for Charities on Avoiding Terrorist Abuse, available at: <http://www.craarc.gc.ca/tx/chrts/chcklsts/vtb-eng.html>. See *Anti-Terrorism and Charity Alert* No. 17 for commentary, at: <http://www.carters.ca/pub/alert/ATCLA/ATCLA17.pdf>.

¹⁷ For commentary on the difficulties that charities face in conducting charitable programs because of anti-terrorism measures, see *Anti-terrorism and Charity Law Alert* No. 19, online at: <http://www.carters.ca/pub/alert/ATCLA/ATCLA19.pdf>.