
EFFECTIVE ASSET PROTECTION THROUGH MULTIPLE CORPORATE STRUCTURES*

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A. INTRODUCTION

PLEASE NOTE: This Bulletin has been expanded and updated in a paper by Terrance S. Carter entitled “Strategies for Protecting Charitable Assets Through Multiple Corporate Structures” dated March 31, 2008, available at <http://www.carters.ca/pub/article/charity/2008/tsc0331.pdf>. Readers are directed to not rely on this bulletin but instead refer to this updated paper.

This *Charity Law Bulletin* (“Bulletin”) discusses effective ways to contain liabilities and protect assets through the use of multiple corporate structures. The three main types of multiple corporate structures are discussed: parallel operating charities, parallel foundations and umbrella associations. In addition, this Bulletin reviews how, in using a multiple corporate structure, a governing organization can co-ordinate and standardize the operations of the separately incorporated member organizations by way of contractual and/or licensing mechanisms. In this regard, through the appropriate use of inter-corporate relational mechanisms, a governing organization can create an effective contractual relationship with its member organizations by enumerating the requirements for the relationship, the consequences of losing that relationship based upon the licensing of trade-marks, industry names, domain names and copyrights owned by the governing organization.

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However, despite the more sophisticated nature of multiple corporate structures, affiliated corporate entities within the relational corporate structure can still be exposed to liability where it can be shown that affiliated corporations have not operated at arm's length from one another. In that regard, where it can be shown that one corporation is effectively controlled by another corporation, then the legal integrity of the separate corporations could be lost. Where this is found to be the case, the liabilities of the controlled corporation could potentially become the liabilities of the controlling corporation. As such, this Bulletin offers a number of steps that can be taken in order to reduce the possibility of one affiliated corporation being exposed to cross-over liability for the actions of another affiliated organization.

Finally, there are a number of highlights taken from Canada Revenue Agency's ("CRA") draft policy on umbrella organizations. Due to the breadth of the topic, this Bulletin does not address the numerous income tax issues that may arise when utilizing multiple charitable corporations.

B. PURPOSE OF MULTIPLE CHARITABLE CORPORATIONS

Multiple corporations have long been used by the for-profit sector to contain liabilities and protect assets. While similar use of multiple corporations by charities has been slow to develop, it is now increasing. The advantages of multiple corporations are just as significant for charities as they are for the business sector, as well, for that matter, not-for-profit corporations.

The traditional use of corporations by charities has been focused primarily on obtaining limited liability protection for members of the charity. However, there are many other benefits associated with carrying on charitable operations within a separate corporation in order to contain liabilities and protect charitable assets, provided that the use of multiple corporations is implemented correctly.

In this regard, the board of a charitable corporation has a fiduciary obligation at common law to protect charitable assets. The use of multiple charitable corporations fulfils this fiduciary obligation by protecting charitable assets, as well as assisting in the reduction of potential personal liability exposure of the directors.

C. DIFFERENT TYPES OF MULTIPLE CHARITABLE CORPORATIONS

While there are different types of multiple charitable corporations, the three discussed in this Bulletin are: (1) parallel operating charities, used to contain liabilities of high risk operations from the assets of the main

operating charity; (2) parallel foundations, used to protect assets from the liabilities of the main operating charity; and (3) umbrella associations, used to control liability exposure between it and its member organizations, as well as among the member organizations themselves.

1. Parallel Operating Charities

A parallel operating charity could be used when an incorporated charity has one or more operating divisions involving a greater degree of liability risk than others. For example, if a church corporation operates a school or children's camp, as well as operating a traditional church facility, then the risks associated with those operating divisions could severely prejudice the future viability of the church and the assets that it owns, including its land and buildings. A parallel operating charitable corporation, such as a summer camp or a school, could be established to take over these various high risk operations. They could be operated through one or more separately incorporated entities for the purposes of containing the liability associated with their operations, thereby protecting the assets of the main operating charity, such as a church corporation.

2. Parallel Foundations

A parallel foundation can be used for a broad range of reasons, including:

- the protection of donor-restricted funds, as a result of the Ontario Court of Appeal's decision in *Christian Brothers of Ireland*;¹
- the establishment and management of endowment funds, including coordinating the delegation of investment management;
- the protection of surplus funds from government directives for religious health care institutions in Ontario as a result of Local Health Integrated Networks (LHINs);²
- the separation of capital fundraising campaigns from operating fundraising campaigns; and
- the encouragement of *inter vivos* gifts, testamentary gifts and planning giving programs.

¹ *Christian Brothers of Ireland in Canada (Re)* [2000] O.J. No. 1117. See Terrance S. Carter, "Donor Restricted Charitable Gifts Revisited: Part I", in *The Philanthropist*, Vol. 18, No. 1, September 2003 and "Donor Restricted Charitable Gifts Revisited: Part II", Vol. 18, No. 2, December 2003, online: <http://www.charitylaw.ca/articles.html>.

² See Terrance S. Carter, assisted by Nancy E. Claridge, "Implications of New Ontario Health Legislation for Charities" in *Charity Law Bulletin* No. 90 (March 16, 2006, revised April 12, 2006), online: <http://www.carters.ca/pub/bulletin/charity/>.

Given the *Christian Brothers* decision, the utilization of parallel foundations has now become very important for purposes of protecting future donor-restricted gifts, as well as endowment funds, where the capital is held in perpetuity and is not subject to any operating liabilities of the charity.

A parallel foundation can also be used as a form of holding corporation for the assets of the charity, such as holding lands and buildings, intellectual property, specialized libraries and/or existing endowment funds. However, the option of utilizing a parallel foundation as a holding company is dependent upon the charity complying with creditor protection legislation. As a result, only future or existing assets not subject to past or present claims can be transferred to a parallel foundation without residual claims against those assets remaining.

Where a parallel foundation is established for the purpose of holding land and buildings for a church or other types of religious organizations, consideration needs to be given to the *Assessment Act* (Ontario).³ This is to ensure that the church parallel foundation would meet the definition of a “religious organization” in order to maintain the municipal tax exemption of the property of the church or other type of religious organization.⁴ It may also be necessary to develop a license or lease agreement between the church parallel foundation and the church, as well as possibly seeking a pre-ruling from the Municipal Property Assessment Corporation (“MPAC”)⁵ with regard to the ability to maintain the tax exemption on the church property.

3. Umbrella Associations

The use of an umbrella association would involve structuring a national or provincial charity that consists of member organizations into multiple legal entities instead of operating under the auspices of a single corporation. This would involve having a separately incorporated governing organization, normally established as a federal corporation, to act as the umbrella organization. Each member organization, *e.g.*, local churches and/or separate ministries, could then be separately incorporated under the auspices of the governing organization.

³ R.S.O. 1990, c. A.31.

⁴ *Ibid.* at par. 3(1)(3).

⁵ Municipal Property Assessment Corporation, online: <http://www.mpac.ca/>.

The alternative way of structuring a national and/or provincial charity would be by operating it through a single corporation that includes all of the various divisions and chapters as part of the single legal entity. While a single corporate entity provides simplicity in administration and operations, the disadvantage is that all the assets of the various divisions are left in one single legal entity. This would result in the loss of all of the assets of the national or provincial charity in the event that a claim was successfully made against any one of the divisions or chapters of the charity.

The advantages of utilizing an umbrella association model in comparison include the following:

- Reduced overall liability exposure in operating a national or provincial charity by containing the liability associated with a member organization within a corporate entity that is separate and apart from the governing organization;
- The use of separate corporations to co-ordinate the operations and administration of the entire organization being carried out in different parts of the world, while maintaining the overall co-ordination and supervision of a single governing body having general oversight;
- In addition to separate corporations to carry out national and international work, a separate intellectual property holding corporation could be established to hold all of the intellectual property of the governing organization, *i.e.*, trade-marks, copyrights and domain names, and control its use, even on an international basis to ensure that there is consistency and quality assurance in its use throughout the world;
- Where one member organization owns real estate that is subject to toxic contamination, the costs associated with the clean up of the contamination will generally be limited to only the assets of the incorporated member organization;
- If a member organization was to lose its charitable status with CRA, the charitable status of the governing organizations and other member organizations would not be at risk;
- For national charities which carry on operations in Ontario, the creation of a separate charitable corporation in Ontario to oversee Ontario activities would mean that the jurisdiction of the Public Guardian and Trustee in Ontario (“PGT”) would generally be limited to only the assets of the Ontario charity; and
- Similarly, the operations of the umbrella association that are carried on outside the province of Ontario through separate corporations in other provinces would not be subject to the provisions of the *Charities Accounting Act* (Ontario).⁶

However, the utilization of an umbrella association can also involve the following disadvantages:

- The governing organization could lose control over the various member organizations unless an inter-corporate structure is implemented to ensure that the member organizations are subject to appropriate indirect corporate, contractual and/or licensing mechanisms;

⁶ R.S.O. 1990, c. C.10.

- The member organizations would need to utilize the industry name and/or trade-marks of the governing organization. As such, if the industry name and/or trade-marks of the governing organization have not been properly protected by obtaining trade-mark registration as necessary, or the usage of the trade-marks by the member organizations is not properly documented through appropriate trade-mark license agreements, then the ability of the governing organization to protect and enforce the trade-marks of an umbrella association could be seriously prejudiced due to unintentional infringement of trade-marks by the various member organizations, or by unauthorized third parties.
- Effective utilization of an umbrella association requires the creation of multiple charitable corporations, as well as the implementation of numerous and sometimes complex relational provisions as discussed below. The complexity in the relationship could result in confusion of the operations of the various corporations unless the relational mechanisms are carefully established and consistently applied.

D. ISSUES TO ADDRESS IN UTILIZING A MULTIPLE CORPORATE STRUCTURE

While it is important to ensure that exposure to cross-over liability is minimized as much as possible between affiliated corporations involved in a multiple corporate structure, it is usually the case that the governing organization does not wish the separately incorporated member organizations to operate completely autonomous without regard to maintaining co-ordination and standards amongst the various corporations. As such, there are various relational types of mechanisms that can be utilized in order for a governing organization to retain an appropriate level of input, while at the same time minimizing any potential cross-over liability between them.⁷

In this regard, when businesses use multiple corporations, the parent corporation can maintain control over subsidiary corporations through the ownership of the majority of the voting shares of a subsidiary corporation. Charities, however, are non-share capital corporations that do not afford themselves such control through the ownership of shares.

As a result, non-share capital corporations need to utilize other types of relational mechanisms between multiple corporations in order to ensure co-ordination and the maintenance of standards. This is normally achieved through appropriate provisions being included in the incorporation documents of the member organizations, as well as the contracts between the governing organization and the member organizations.

⁷ See Esther S.J. Oh and Terrance S. Carter, "Update on Case Law Involving Cross-Over and Vicarious Liability for Charitable and Not-For-Profit Organizations" in *Charity Law Bulletin* No. 114 (April 23, 2007) and Esther S.J. Oh and Terrance S. Carter, "Cross-Over Liability: Principles from the Residential Schools Cases" in *Charity Law Bulletin* No. 19 (January 31, 2003), online: <http://www.carters.ca/pub/bulletin/charity/index.html>.

Such types of relational mechanisms usually involve ensuring that the member organizations are subject to specific contractual and/or licensing requirements.

When dealing with the relationships between a governing organization and a member organization, the separate nature and autonomy of each charitable corporation must be recognized and respected. As separate and autonomous legal entities, a governing organization and a member organization have to carefully structure their relationship to ensure that the two organizations work cooperatively under the oversight but not the control of the governing organization. Carefully structuring this relationship from the inception will help to avoid “re-writing the rules” of the relationship later.

Outlined below are some important considerations with respect to that various types of relational models, as well as the related association agreements. As well, a list of practical steps that can be taken in order to reduce the risk of exposure to cross-over liability between corporations is also included in this section of the Bulletin.

There are three types of inter-corporate relational models that can be considered, which can establish different degrees of inter-corporate relationships between a governing organization and a member organization: (1) Ex Officio Relational Model; (2) Corporate Relational Model; and/or (3) Franchise Relational Model.

1. Ex Officio Relational Model

Historically, the Ex Officio Relational Model has been the more common method of linking member organizations with a governing organization. This model requires that the by-laws of the member organization provide for ex officio directors who are either directors of the governing organization or alternatively hold officer positions in the governing organization. This is for the specific purpose of allowing those individuals to become qualified to sit as representatives of the governing organization on the board of the member organization. The number of ex officio board members can vary from one all the way up to all of the board members of the member organization.

Both the *Canada Corporations Act*⁸ and the *Corporations Act (Ontario)*⁹ permit the establishment of ex officio directors within their corporate by-laws. A variation involves having all the board members or corporate members of the governing organization being deemed to be the corporate members of the member organization ex officio.

However, the Ex Officio Relational Model should not be relied on to any great extent, *i.e.*, there should be no more than one or two ex officio members on the board. This is because an excessive number of ex officio directors could result in an increased risk of cross-over liability between the corporations, as it could be argued that the directors of the governing organization who are “ex officio directors” are essentially the governing minds of the member organization. In addition, the Ex Officio Relational Model fails to address the performance expectations between a governing organization and its member organizations or related intellectual property licensing considerations.

2. Corporate Relational Model

The Corporate Relational Model has also been commonly used by governing organizations as an indirect means of maintaining inter-corporate relationships with member organizations. The Corporate Relational Model, in essence, involves the governing organization exercising a right of approval or veto over certain key aspects of the corporate structure of the member organization. This model can involve different variables, such as a percentage (*e.g.*, up to 49 per cent) of the directors/members of the member organization being required to receive and maintain the approval of the governing organization. Of course, it is possible to have more than 49 per cent approval, but a higher percentage increases the possibility of cross-over liability between the corporations. There could be some overlap of the board of the member organization with the board of the governing organization, but such overlap should be kept to a minimum for the same reasons set out above in the Ex Officio Relational Model. Another variation would be a requirement that approval be obtained from the governing organization before any changes could be made to the corporate documents of the member corporations.

⁸ R.S. 1970, c. C-32.

⁹ R.S.O. 1990, c. C.38.

Although the utilization of ex officio directors can be an effective means of maintaining an inter-corporate relationship with a member organization, it is not recommended that it be relied upon as the only means of maintaining a relational, since this model does not encompass contractual arrangements or intellectual property licensing considerations. As well, the Corporate Relational Model, which evidences a level of control by the governing organization, could be problematic because the member organization could be construed as an agent of the governing organization, thereby potentially exposing both corporations to cross-over liability.

Because of these concerns, the Corporate Relational Model should simply be used in conjunction with the Franchise Relational Model described below.

3. Franchise Relational Model

A practical parallel can be drawn involving the relationship between a franchisor and its franchisees and the relationship between structuring multiple charitable corporations. By way of example, in applying the Franchise Relational Model to an umbrella association, the governing organization of an umbrella association, as the franchisor, must establish an alternative means of exercising co-ordination and standards with regard to its member organizations as the franchisees. This would be done through the contractual relationship of a franchise agreement, which can be adapted to establish an effective inter-corporate relational mechanism between a governing organization and its member organizations.

By utilizing the Franchise Relational Model, a governing organization can establish an effective contractual relationship with its member organizations involving key factors, such as the contractual requirements for a relationship with the governing organization and the consequences of losing that relationship. The franchise agreement can also be used to authorize the licensing of trade-marks, corporate names and copyrights owned by the governing organization.

However, it should be noted that the Franchise Relational Model can only be properly implemented provided that the name or trade-marks of the member organizations are derivatives of the name or a trade-mark of the governing organization. This is because the effectiveness of the Franchise Relational Model is premised upon the ability of the governing organization to terminate the right of the member

organizations to utilize the goodwill of the governing organization by having their corporate names or trade-marks being very similar to that of the governing organization.

The Franchise Relational Model works well with all types of multiple charitable corporations discussed above. One example of this is with an umbrella association, such as a religious denomination or other types of national charities, since the model provides an effective tool to ensure compliance by member churches with denominational standards and expectations.

The implementation of the Franchise Relational Model would involve the establishment of an umbrella association, the development of an association agreement between the governing body of the umbrella association and each member organization as a form of franchise agreement, including appropriate relational provisions within the incorporation documents of each of the member organizations, and implementing a licensing arrangement to protect the applicable intellectual property.

a) Association Agreement

The association agreement (or “charter agreement”, “affiliation agreement”, or “membership agreement”) sets out the contractual relationship between the governing organization and its member organizations. There are a number of important considerations that should be included in an association agreement:

- The preamble should state that the governing organization and the member organizations have similar charitable purposes, that the governing organization and the member organizations are recognized at law as being separate and distinct corporate entities with separate boards of directors and that the governing organization and the member organizations are to remain independently responsible for their own management and governance;
- The term of the association agreement should be indicated, e.g., a five-year term with an automatic renewal provision thereafter for an additional five-year term, unless written notice is given by one party to the other;
- An explanation of the parameters under which the name and trade-marks of the governing organization can be utilized by the member organization, with particulars to be set out in a separate trade-mark license agreement, including the consequences of violating the agreement;
- The actions by the member organization which can lead to termination and the resulting consequences of that termination, such as the loss of an ongoing right to use its corporate name, the loss of a right to represent itself as being associated with the governing

organization, the loss of a right to use of the governing organization's intellectual property, and the requirement to transfer all of its assets to another registered charity acceptable to the board of directors; and

- An arbitration or mediation clause which outlines how disagreements between the entities will be resolved, and failing a resolution, that the direction of the courts will be sought.

The basic requirements for the member organization's incorporation documents should also be clearly articulated:

- The letters patent of the member organization must include at least the general parameters for the charitable purposes of the member organization, a requirement that the member organization include a denominational statement of faith (if applicable), the wording for the dissolution clause, etc.;
- The qualification requirements of the directors, officers and members of the member organization;
- The requirement of a dissolution clause stating that the remaining assets of the member organization revert to the governing organization or be transferred to another registered charity appointed by the governing organization;
- The incorporating documents for the member organization must be drafted or amended in accordance with the requirements set out in the association agreement;
- The governing organization must then be given an opportunity to review and approve the final form of the application for letters patent and the general operating by-law for the member organization; and
- The governing organization must also be given an opportunity to review and approve other fundamental changes to corporate documentation, including supplementary letters patent.

Provided that the member organization complies with the terms of the association agreement, the governing organization will normally agree that the member will be entitled to the following rights flowing from the association relationship:

- The right to use of the governing organization's trade-marks, industry names and copyrighted materials in accordance with the license agreement;
- The right to seek advice from the governing organization on fundraising, administrative, governance, donor care, public relations, human resources and programming matters;
- The right to use a particular way of operating a charitable program or a fundraising campaign, both of which might be copyrighted and possibly even patentable; and
- The right to obtain resource, promotional, administrative and financial services from the governing organization.

In exchange for these rights, the member organization will be required to comply with certain expectations that would need to be clearly articulated:

- Operate pursuant to agreed upon charitable objects;
- Maintain identifiable standards in operation;
- Provide for regular reporting; and
- Permit inspection and audit of operation.

b) Intellectual Property Considerations

Generally, a member organization will need to utilize the intellectual property (*i.e.*, trade-marks, corporate names, domain names and copyrighted material) of the governing organization. Some or all of these rights should be owned by the governing organization. The correct ownership and usage of this intellectual property requires proper protection and licensing.

In this regard, the most important asset of a charity is the goodwill associated with its name as a trade-mark. In the context of a governing organization, its name as a trade-mark and associated design logo constitute the basis by which the public will identify the organization and the activities that it carries on. Generally, the corporate name and various operating names and logos of the governing organization should be separately registered as trade-marks. The registered trade-marks should then be licensed to each member organization by a separate trade-mark license agreement that is attached to the association agreement as a schedule to include the following:

- Recognition of the ownership of the trade-marks by the governing organization;
- An explanation of how the trade-marks can be used by a member organization and sufficient means by which the governing organization can exercise control over the use of the trade-marks;
- How the trade-marks are to be protected and enforced; and
- A description of what constitutes default under the trade-mark license agreement and the consequences resulting from the termination of the trade-mark license.

Copyright issues can also be an important part of establishing an inter-corporate relationship between a governing organization and a member organization. Once the issue of ownership of the copyrighted material has been established, it may be prudent to register the copyright, particularly if the materials are going to be used in the public domain, such as on an internet web page.

Examples of copyright materials belonging to the governing organization that are used by member organizations include resource materials, audiotapes, videotapes, training manuals, checklists, brochures, fundraising documentation, charitable programs, etc. A copyright license should be prepared and entered into similar to a trade-mark license. It is important that the governing organization set out in a copyright license agreement an acknowledgment of its ownership rights in the copyrighted materials, the parameters under which the member organization can use those copyrighted materials, the basis by which the copyright license will be terminated and the consequences of such a termination.

c) Reducing the Risk of Cross-over Liability

A fundamental aspect of utilizing multiple charitable corporations is the need to maintain the integrity of the limited liability protection of the various incorporated entities. While the concept of limited liability protection is still the general rule for corporate entities, there are instances where the governing organization or operating charity might be found liable for the actions of a member organization or affiliated corporation as a result of the equitable doctrine known as “piercing the corporate veil.”

Instances where courts in the U.S. have been prepared to “pierce the corporate veil” have occurred where a subsidiary corporation has been found to be a mere instrument or alter-ego of the parent corporation and where there have been significant elements of common identity established between the parent and the subsidiary corporation.

In Canada, recent case law involving residential schools has suggested that a multiple corporate structure could still leave affiliated corporate entities exposed to liability where a member or employee of either an affiliated member entity or a governing entity is found liable for damages in a lawsuit. The *Christian Brothers*¹⁰ decision was a landmark case on the application of cross-over liability for charitable and not-for-profit organizations.

Based on a review of recent residential school case law, cross-over liability may result where a governing organization which has a significant degree of control over the actions of the members

¹⁰ *Supra* note 1.

or employees of associated incorporated entities, either based on the assertion of an employer/employee relationship or a principal/agent relationship. In the case of a single national legal entity, such as a national religious denomination, liability arising in any part of the entity will affect the assets of all of the other parts of the national entity.¹¹

The following are some practical steps that can be taken to reduce a finding of cross-over liability between multiple charitable corporations:

- Ensure separate incorporation of each entity is properly done;
- Expressly define the limits of power and authority each entity so that each separate entity is clearly self-contained in its operations;
- Permit only very limited cross-over board membership, if not completely separate boards of directors and board meetings;
- Permit only minimal overlap of membership in key committees of the corporations; and
- Have each incorporated entity keep up-to-date records of activities in its own corporate minute book to show its independence from other affiliated entities.

In addition to different board composition between corporations, each corporation should ideally have a separate head office address, separate staff, and possibly even separate lawyers and accountants, all of which will assist in evidencing that they operate on an arm's length basis.

Some of the factors suggesting "central control" over multiple corporations which should be avoided, where possible, are as follows:

- Having the governing organization involved in the licensing, hiring, disciplining, payment or general day-to-day direction and supervision of employees of the member organization;
- Having common bank accounts or investments shared between the governing organization and the member organization;
- Making explicit or implicit representation that the governing organization is responsible for the operations of the member organization;
- Having both organizations occupy the same location for either operational or administrative activities;
- Using the same officers or employees unless there is documentary evidence establishing that one organization is invoicing the other organization for the services provided by the employees of the other organization;

¹¹ *Supra* note 7.

- Using the land, buildings or property of the other organization without an arm's length lease agreement;
- Having the same individuals serve on the board of directors or key committees of both entities where there is a significant overlap in membership; and
- Indicating on letterhead, signs, brochures or other documentation that the member organization is an operating division of the governing organization.

E. CRA DRAFT POLICY ON UMBRELLA ORGANIZATIONS

1. Overview

CRA released a draft policy on umbrella organizations in July 2005, entitled *Consultation on Proposed Guidelines for the Registration of Umbrella Organizations*¹² (the “Guidelines”).¹³ The Guidelines will be relevant in the establishment of a multiple corporate structure involving property holding and umbrella organizations. The Guidelines define a charitable umbrella organization as one that “works to achieve a charitable goal by supporting, improving, and enhancing the work of groups involved in the delivery of charitable programs.” The Guidelines make it clear that an umbrella organization can now qualify for registration, since it is the position of CRA that “umbrella organizations that, through their activities, improve and enhance the charitable activities of other, generally community-minded organizations, are also advancing a charitable purpose.”

2. Types of Umbrella Organizations

a) Charities Established to Assist Other Registered Charities

These are organizations that support the charitable sector by promoting the efficiency and effectiveness of registered charities. The beneficiaries of the services of an umbrella organization must be predominantly other registered charities, although some incidental support of organizations that are not registered charities is permitted, *i.e.*, must not exceed 10% numerically and in terms of devoted resources.

The objects of these charities must clearly reflect that the purpose of the organization is to improve the efficiency and effectiveness of other registered charities. As well, the activities must be the logical means of accomplishing its charitable purposes and reasonably result in the improvement and effectiveness of the other registered charities.

b) Umbrella Organizations Advancing a Recognized Charitable Purpose

These are organizations which are established to further a particular charitable purpose, *i.e.*, other than assisting charities, which may convey benefits on constituent groups as ancillary to the

¹² Canada Revenue Agency, online: <http://www.cra-arc.gc.ca/tax/charities/consultations/umbrella-e.html>.

¹³ See Jacqueline M. Connor and Terrance S. Carter, “New CRA Policy on Umbrella Organizations” in *Charity Law Bulletin* No. 78 (October 12, 2005), online: <http://www.carters.ca/pub/bulletin/charity/index.html>.

achievement of that purpose. Where these types of umbrella organizations are specifically designed to increase, enhance or improve services to charitable beneficiaries, then it is also acceptable for such umbrella organizations to increase the capacity and ability of member organizations as a secondary result of their work. The purposes of this type of umbrella organization must always be stated in relation to the charitable category that the organization is established to advance. As well, acceptable activities include those that achieve or advance a charitable purpose.

c) Charities Established to Hold Title to Property

The recognition by CRA that organizations established to hold title can be charitable organizations, as opposed to charitable foundations, is an important development. It is now possible for charitable foundations to incur debts in taking title to property, thereby increasing the availability of asset protection arrangements to both charitable organizations and foundations. The beneficiaries of this third type of umbrella organization must only be registered charities. Its formal purpose must be to provide a charitable service or benefit to the tenant charity and not merely to hold title to the property, as this alone is not charitable at law.

The activities of these title-holding organizations can vary from merely title-holding entities to ones that provide a more comprehensive range of services, *e.g.*, property management services. Further, the land holding charity must show that it provides some benefit to the tenant charity, although it is not clear why, since the provision of land, typically with a building on it, should be recognized as an inherent benefit to the charity.

The Guidelines¹⁴ then address the requirements of these title holding entities with regard to reporting expenses. CRA takes the position that a mere permission to occupy the premises does not constitute an expenditure, nor does it constitute a gift to the tenant charity. However, if the provision of services to other charities is considered to be charitable for the first type of umbrella organization, *i.e.*, charities established to assist other registered charities, there is no reason why the fair market value of the provision of the premises to the tenant charity should not also constitute a charitable expenditure for a title-holding charity.

¹⁴ *Ibid.*

F. CONCLUSION

There are many advantages to a charity in the use of a multiple corporate structure as an effective means of containing liabilities and protecting assets. A charity could choose from a wide variety of structures, including a parallel operating charity, a parallel foundation and an umbrella association. In addition, inter-corporate relational mechanisms can be utilized in a multiple corporate structure to require separately incorporated member organizations to abide by standard and co-ordinating efforts by the governing organization. However, since the implementation of a multiple corporate structure can leave affiliated corporate entities exposed to cross-over liability in some situations, it is important for charities to take careful steps in implementing such a structure in order to avoid the appearance of “central control” by the governing organization over its member organizations.