
**BUSINESS ACTIVITIES – RAISING REVENUE
THROUGH BUSINESS ACTIVITIES WITHOUT
VIOLATING LEGAL PRINCIPLES**

*By Donald J. Bourgeois**

Charities and not-for-profit organizations need money. That basic principle is inescapable. Money is necessary to pay rent, purchase supplies, hire employees, run programs, and support volunteers. But charities are not supposed to be in the business of making money. This dichotomy raises an ongoing issue, especially for charities, one for which there is no easy resolution. This column is the first of three that examines the issue of charities and not-for-profit organizations carrying out business activities to raise funds.

The “law of charity” is generally based on the common law (largely English) and some statutory provisions that address perceived gaps or concerns with the common law. There is no overarching Canadian statutory regime for charities but rather a mix of common law and taxation law combined with some special or sector specific legislation that governs certain charitable activities, such as health care or education.

A fundamental principle of charity law is that a charity is to have exclusively charitable purposes. As such, it must devote all of its resources to those charitable purposes and the charitable activities that flow from those charitable purposes. There are two types of activities that many charities find necessary to undertake but are constrained in doing so. One is political activities and the other is business activities. A number of underlying principles apply to both political and business activities.

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There are legitimate concerns with charities undertaking business activities. First, business implicitly involves risk. While there are few, if any, activities in life that do not involve some form of risk, in the case of business the risks are financial. A business risks its investment with a view to getting a return on this investment – a profit. While a charity will have risks, generally it is not thought to be appropriate for a charity to risk donations on business activities. On the flip side, a charity, which benefits from tax exemptions, ought not to be in competition with businesses that do pay taxes on profits. This type of competition is not considered to be fair.

The courts, over a period of time, have recognized that many charities cannot rely solely upon donations and grants to be successful. Indeed, in recent years, both businesses and governments have looked to charities to have an “earned revenue” flow to diversify sources of revenue, which, (ironically) reduces the exposure of charities. What the courts have concluded is any business activity must be related to the charitable objects or purposes of the charity. Thus, a theatre could sell tickets to performances; a social services agency could sell food at below-market rates; a housing charity could rent apartments to the poor.

What became more problematic was where the charity operated a business activity that was not directly related to its objects. For example, could a charity that is intended to relieve poverty in other countries operate gift shops where the general public could purchase things? Could a hospital operate a medical arts building? Or parking lots? Could a religious organization advance its religious beliefs through commercial farming operations? Could a charity carry on a maple syrup business if the funds were to be used for a future community centre?

For those familiar with the law of charity, the answer that “it depends” is not surprising. The facts in each of these and other cases are critical. For example, a charity could raise funds from selling donated goods to a commercial enterprise. In *Alberta Institute on Mental Retardation v. R.*,¹ the Federal Court of Appeal was satisfied that the Alberta Institute was not carrying on a wholesale business and that its objects were sufficient to make the activity a related business. But in *Earth Fund v. Canada (Minister of National Revenue)*,² the Federal Court of Appeal was very clear that the *Alberta Institute* case does not stand for the proposition that any business is a related business.

¹ [1987] 2 C.T.C. 70 (F.C.A.), leave to appeal to S.C.C. refused, [1988] S.C.C.A. No. 32.

² 2002 FCA 498.

The fact that a person may have to pay something does not render the organization non-charitable. But generally that payment must be related in some manner to the purposes of the organization. The courts have, at times, taken a liberal view of “related”, perhaps in recognition of the need to raise funds. Recently, the Ontario legislature repealed the *Charitable Gifts Act*³ which had placed strong restrictions on the ownership of businesses by charities. That statute had been enacted 60 years ago to limit a charitable foundation’s ownership of a newspaper, notwithstanding that the purpose was to generate profits for the foundation to use for its charitable purposes. The Ontario Bar Association, in its submission to the Government requesting the repeal, noted the need for revenues to sustain charities and charitable activities. The submission also took into account changes to the *Income Tax Act* that addressed the public policy concerns.

Canada Revenue Agency has also recognized the need for charities to raise money. In the next column, CRA’s policy guidance will be reviewed. We will also examine the impact of the *Income Tax Act* on the ability of charities to operate a business, undertake business activities, and invest in a business. The third column will examine some of the issues from a slightly different perspective – that of a not-for-profit organization that is not a charity.

³ For more information on the repeal of the *Charitable Gifts Act*, see Terrance S. Carter, “Bill 212 Brings Significant Reform to the Regulation of Charities in Ontario” in *Charity Law Bulletin* No. 181 (November 26, 2009), online: <http://www.carters.ca/pub/bulletin/charity/2009/chylb181.htm>. See also Terrance S. Carter, “Breaches of the *Charitable Gifts Act* ‘Cured’ by Bill 212” in *Charity Law Update* (January 2010), online: <http://www.carters.ca/pub/update/charity/10/jan10.pdf>.