PILLAR NONPROFIT NETWORK
FOUNDATION INVESTMENT FORUM:
PHILOSOPHY, PROCESS AND PEOPLE

London – October 16, 2012

Emerging Issues for Foundation Directors

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OVERVIEW

- Corporate Update – CNCA / ONCA
- Federal Budget 2012 – political activities and other changes
- Federal Budget 2011 – ineligible individuals and other changes
- Recent CRA Publications
- Recent Case Law

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A. CORPORATE UPDATE

- Both the Federal and Ontario government enacted new corporate legislation for the non-profit sector
- *Canada Not-for-Profit Corporations Act* (CNCA)
- Ontario *Not-for-Profit Corporations Act, 2010* (ONCA)
- Practical steps to prepare for continuance

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STATUS AND OVERVIEW OF CNCA

- Canada Corporations Act since 1917
- Enacted on June 23, 2009, in force October 17, 2011
- Replaced Part II of *Canada Corporations Act* (CCA)
- The new rules do not apply automatically to CCA corporations
- Existing CCA corporations required to continue under the CNCA within 3 years– i.e., until October 17, 2014
- Failure will result in dissolution of the corporation
- See Industry Canada's website for resources: http://strategis.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs03925.html
- See paper by Theresa Man "The Practical Impact of the *Canada Not-For-Profit Corporations Act"* May 2011, http://www.carters.ca/pub/article/charity/2011/tlm1005.pdf
- See *Charity Law Bulletins* Nos. 191, 193, 199, 213, 215, 220, 231, 239, 247 for practice tips

- This means all CCA corporations will need to
  - Review letters patent and by-laws
  - Prepare Articles of Continuance, Notice of Directors and Registered Office, and new by-laws
  - Get membership approval - Articles must be approved by 2/3 vote
  - File required documents with Industry Canada, no filing fee
  - Industry Canada will issue a Certificate of Continuance
  - File approved new by-laws within 12 months of adoption
  - Charities – send Certificate of Continuance, Articles of Continuance and new by-law to CRA

STATUS AND OVERVIEW OF ONCA

- The Ontario *Corporations Act* ("OCA") has not been substantively amended since 1953
- ONCA will apply to OCA Part III corporations
- ONCA received Royal Assent on October 25, 2010, expected to be proclaimed in force on July 1, 2013
- Default by-laws and plain language guides will be available
- Outline of proposed regulations released on July 16, 2012 for public comment
- Ministry of Government Services – will be responsible for searches and filing
- Ministry of Consumer Services – will be responsible for remaining areas, including policy and interpretation issues

- Unlike the CNCA
  - Optional transition process for corporations to file articles of amendments or adopt new by-laws to comply with ONCA requirements within 3 years of ONCA in force
  - If no transition process taken, then
    - Corporation will not be dissolved
    - LP, SLPs and by-laws will be deemed amended to comply with new ONCA requirements, resulting in non-compliant provisions deemed invalid
    - Will result in uncertainty in relation to which provisions remain to be valid
  - Better to do transition process
- Social clubs with share capital will have 5 years to continue

- *Charity Law Bulletin* "The Nuts and Bolts of the Ontario *Not-For-Profit Corporations Act, 2010"* on our website at www.charitylaw.ca
- To view ONCA in its entirety, see: http://www.ontla.on.ca/web/bills/bills%20_detail.do?locale=en&Intranet=&BillID=2347

- This means that all OCA corporations will need to
  - Review letters patent and by-laws
  - Prepare Articles of Amendment and new by-laws
  - Get membership approval
  - File required documents
  - Certificate of Amendments will be issued
  - Charities – send Certificate of Amendments, Articles of Amendments and new by-law to CRA

ESSENTIALS TO KNOW ABOUT THE CNCA AND ONCA

1. Incorporation as of Right
- Incorporation as of right under CNCA and ONCA
- Simpler and faster process
- Replaces the letters patent system with a statutory regime
- Removes ministerial discretion to incorporate
- Obtain certificate of incorporation, not letters patent
- Corporation has the capacity, rights, powers and privileges of a natural person
- Eliminates the concept of a corporation’s activities being *ultra vires*

2. Corporations that Receive Public Funding
- Corporations that receive public funding are subject to special requirements
- Different rules in the CNCA and ONCA

CNCA - Soliciting and Non-soliciting Corporations
- Where a corporation receives more than the prescribed amount [$10,000] in its last financial period from public sources [(a) public donations, (b)federal, provincial and municipal governments or (c) conduit entities], it will become a soliciting corporation
- Status starts from the next AGM for 3 years

- Implications of being a soliciting corporation
  - Must have a minimum of 3 directors, at least 2 of whom are not officers or employees of the corporation or its affiliates
  - Required to file annual financial statements with the Industry Canada
  - Audit and public accountant rules more stringent
  - On liquidation, the articles must provide for the distribution of any remaining property on dissolution to qualified donees

ONCA - Public Benefit Corporations (PBC)

- PBCs include
  - Charitable corporations (at common law)
  - Non-charitable corporations that receive more than $10,000 in a fiscal year in funding from public donations or the federal or provincial governments, or a municipality
- When a non-charitable corporation reaches the $10,000 threshold, the PBC status won't attach until the first annual meeting of members in the next fiscal year

- Consequences of being a PBC
  - Not more than one-third of the directors of a PBC may be employees of the corporation or of any of its affiliates
  - Higher thresholds for dispensing with the auditor and/or review engagement requirements
  - On liquidation, the articles must provide for the distribution of any remaining property on dissolution
    - Charitable corporation - to a charitable corporation with similar purposes to its own or to a government or government agency,
    - Non-charitable corporation - to another PBC with similar purposes or to a government or government agency

- Low threshold means many corporations may become soliciting/PBC corporations
- Solution?
  - Monitor funding sources and quantum
  - Voluntarily be structured as a soliciting/PBC corporation

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3. Public Accountant and Financial Review
- CNCA
  – Corporations divided into two categories
  – Designated corporations:
    - A soliciting corporation with gross annual revenues for its last completed financial year that is equal to or less than $50,000 or that is deemed to have such revenues under the Act;
    - A non-soliciting corporation with gross annual revenues for its last completed financial year that is equal to or less than $1 million
  – Non-designated corporations are soliciting and non-soliciting corporations with annual revenues in excess of these amounts

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Type of Corporation (Gross Annual Revenues)			Appointment of Public Accountant (PA)	Review Engagement or Audit
Soliciting	Designated	$50,000 or less	Members must appoint a PA by ordinary resolution at each annual meeting. Exception – Members may waive appointment by annual unanimous resolution	PA must conduct review engagement, but members may pass an ordinary resolution to require an audit instead. (If no PA is appointed, then compilation only)
	Non-Designated	More than $50,000 and up to $250,000	Members must appoint a PA by ordinary resolution at each annual meeting	PA must conduct an audit, but members can pass a special resolution to require a review engagement instead
	Non-Designated	more than $250,000	Members must appoint a PA by ordinary resolution at each annual meeting	PA must conduct an audit.

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Type of Corporation (Gross Annual Revenues)			Appointment of Public Accountant (PA)	Review Engagement or Audit
Non-Soliciting	Designated	$1 million or less	Members must appoint a PA by ordinary resolution at each annual meeting. Exception – Members may waive appointment by annual unanimous resolution	PA must conduct review engagement, but members may pass an ordinary resolution to require an audit instead. (If no PA is appointed, then compilation only)
	Non-Designated	more than $1 million	Members must appoint a PA by ordinary resolution at each annual meeting	PA must conduct an audit.

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- ONCA
  - PBCs are subject to higher thresholds for dispensing with the auditor and/or review engagement

Type of Corp/Gross Annual Revenues (GAR)		Requirements for an Auditor	Audit/Review Engagement
Public Benefit Corporation (PBC) with GAR of →	Less than $100,000 (s.76(1)(b))	May, by extraordinary resolution (80%), decide not to appoint an auditor	May dispense with both an audit and a review engagement by extraordinary resolution (80%)
	Over $100,000 but less than $500,000 (s.76(1)(a))	May dispense with an auditor and have someone else conduct a review engagement. This requires an extraordinary resolution (80%)	May elect to have a review engagement instead of an audit by extraordinary resolution (80%)
	Over $500,000 (s.68)	An auditor must be appointed annually	Audit is required

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Type of Corp/Gross Annual Revenues (GAR)		Requirements for an Auditor	Audit/Review Engagement
NON-PBC corporation with GAR of →	Less than $500,000 in annual revenues (s.76(2)(b))	May, by extraordinary resolution (80%), decide not to appoint an auditor	May dispense with both an audit and a review engagement by extraordinary resolution (80%)
	Over $500,000 (s.76(2)(a))	May, by extraordinary resolution (80%), dispense with an auditor and have someone else conduct a review engagement.	May elect to have a review engagement instead of an audit by extraordinary resolution (80%)

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4. Directors – Number and Change

- CNCA
  - Minimum 1 director
  - For soliciting corporations – minimum 3 directors, at least 2 of whom are not officers or employees of the corporation or its affiliates
  - Articles may provide a maximum and minimum range
- ONCA
  - Minimum 3 directors
  - For PBCs - not more than one-third of the directors may be employees of the corporation or of any of its affiliates
  - Articles may provide a maximum and minimum range

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5. Directors Taking Office
- CNCA
  - Elected by members by ordinary resolution at an annual meeting
  - Maximum 4 year term (but no limit on number of maximum terms)
  - Ex-officio directors not permitted, need to find "work arounds"
  - May have staggered terms
  - Articles can provide for appointment of directors by board (up to 1/3 of those elected at previous AGM)

- ONCA
  - Elected at meetings of members
  - Board may appoint one or more additional directors up to 1/3 of the number of elected directors to hold office until the next AGM
  - Ex-officio directors continue to be permissible
  - Directors are no longer required to be corporate members
  - Maximum 4 year term (but no limit on number of maximum terms)

6. Directors and Officers – Powers, Duties and Defence
- Similar rules in CNCA and ONCA
- Directors may borrow money on the credit of the corporation without members' authorization, unless articles or by-laws provide otherwise
- Directors may view certain corporate records that the corporation is required to prepare and maintain (e.g. meeting minutes, accounting records, members' resolutions, etc.) and receive free extracts of them
- Objective standard of care for directors and officers to
  - Act honestly and in good faith with a view to the best interests of the corporation
  - Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances

- Directors and officers must comply with the ONCA, the articles and by-laws
- Reasonable diligence defence for directors (not officers)
  - Not liable if fulfilled their duty if they exercise the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances
  - Defence includes good faith reliance on financial statements and reports of professionals

7. Members

- Both CNCA and ONCA provide the same principles but different detailed rules
- A corporation must have members
- Can have
  - One class of members in which case all are voting
  - Two or more classes as long as articles give right to vote to at least one class
- Where more than one class, the members of each class have certain built in protections
- All classes of members, even non-voting classes of members, are entitled to vote separately as a class on certain amendments to articles and by-laws dealing with rights and classes of membership

- Non-voting members are given voting rights in some limited circumstances, e.g.,
  - Extraordinary sale
  - Amalgamation
  - Continuance to another jurisdiction
  - Change to any rights or conditions attached to those non-voting members or a change in the rights of other classes of members relative to the rights of the non-voting members
- Thus a class of members could reject a change - effectively resulting in a class veto (limited opt-out available)
- Corporations wanting maximum flexibility will have one class of members

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- Some corporations may want to collapse all membership classes into one class and remove non-voting membership classes
- Default rules to terminate membership and member's rights apply unless articles or by-laws state otherwise
  - Upon death, resignation, expiry of membership term, liquidation or dissolution of the corporation, expulsion, or termination of membership in accordance with the articles or by-laws
  - Rights terminated upon termination of membership
- ONCA - Articles or by-laws may give directors, members or a committee the power to discipline members or terminate the membership

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8. Members' Meetings

- CNCA
  - Regulations provide a variety of prescribed means of giving notice of members' meetings
  - Default rule is to vote in person, unless participate in meeting electronically
  - By-law can set out any prescribed method of absentee voting (mail in ballot, electronic voting or proxy)
  - May participate in members' meetings by electronic means
  - By-laws can provide for consensus decision making
  - Right to requisition a meeting of members (5% members)

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- ONCA
  - Every member entitled to vote at a meeting may appoint a proxyholder who does not have to be a member
  - By-laws may provide for three other methods of voting for persons who can't be present at a meeting in addition to or as an alternative to proxies: by mail, telephone, or by computer (electronic means)
  - Right to requisition a meeting of members (10% members)
  - No longer requires notice be sent by mail, provided that notice is given 10 to 50 days before the meeting
  - May participate in members' meetings by electronic means

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9. Members' Rights

- CNCA
  - Right of any member to submit proposals to amend by-laws, or require any matter to be discussed at annual meetings, or nominate directors (5% member) [nominations can also be made at the meeting]
  - Right to access corporate records
  - May sign resolutions in writing
  - Availability of unanimous members' agreement (except for soliciting corporations)

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- ONCA
  - A member entitled to vote at an annual meeting may raise any matter as a "proposal" but must give 60 days notice
  - A proposal may include nominations for directors if signed by at least 5% of members or such lower percentage set out in the by-laws. Nominations can also be made at the meeting
  - Proposal must relate in a significant way to the activities and affairs of the corporation
  - Directors can refuse to discuss the proposal if they give at least 10 days notice, but a member may appeal the refusal decision to court

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- Members may requisition meetings of the members
- Right to access membership lists - to include name and address, by-laws may provide for more information
- Right to inspect financial records
- There are certain minimum rights in the event of a disciplinary action or termination of membership
- Default 1 vote per member, unless articles provide otherwise

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10. Members' Remedies

- CNCA
  - Right to seek an oppression remedy against the corporation
  - Right to seek a court order to commence a derivative action
  - Compliance and restraining orders
  - Court ordered wind-up and liquidation on application of a member

- ONCA
  - Right to seek a court order to commence a derivative action
  - Compliance Order - where a corporation, or its directors and officers, fails to comply with the duties set out in the ONCA and regulations, the articles or by-laws
  - Derivative Action - gives members the right to bring an action in the name of the corporation (except religious corporations) to enforce one of its rights
  - Dissent and Appraisal Remedy - the right to a dissent and appraisal remedy is limited to corporations that are not public benefit corporations

11. Special Exemption for Religious Corporations

- CNCA
  - Precludes the members' remedies, referred to above, where the court determines that:
    - The corporation is a religious corporation
    - The act or omission, conduct or exercise of powers is based on a tenet of faith held by the members of the corporation; and
    - It was reasonable to base the decision on a tenet of faith, having regard to the activities of the corporation
- ONCA
  - Broader faith base defence for religious corporations

12. Amalgamations
- CCA corporations, once continued under the CNCA, will be able to amalgamate with one another
- Amalgamations between CNCA and ONCA corporations (as well as other jurisdictions) will also be possible

13. Change of Jurisdiction
- Possible for a corporation from another jurisdiction to be imported and continue as a CNCA or ONCA corporation
- Possible for a CNCA/ONCA corporation to be exported and continued as a corporation under another jurisdiction

14. By-laws
- CNCA - by-laws no longer require to be approved by Industry Canada, but must be filed with Industry Canada within 12 months, but failure to file will not affect validity
- ONCA – no need to file by-laws with the Ministry

15. Audit Committee
- Special rules about committee members, right of public accountant to attend or call committee meetings

16. Conflict of Laws
- ONCA must be read in conjunction with applicable charity law – explicit concept in ONCA
- If there is a conflict between the ONCA or its regulations and a provision made in any other legislation that applies to the following
  - A non-share capital corporation, then the provision in the other legislation prevails
  - A charitable corporation, then the legislation applicable to charitable corporations prevails
- Some provisions of the ONCA will not apply to charities

- ONCA permits directors to fix their remuneration and to receive reasonable remuneration and expenses for any services they provide to the corporation in any other capacity
  - Common law rule overrides the ONCA – prohibits directors a charity to receive direct and indirect remuneration from the charity
  - But directors may be reimbursed out-of-pocket expenses
  - Possible to seek PGT consent court order to permit directors be paid, but generally high threshold for such an order

- ONCA permits directors and officers to enter into contracts or transactions with the corporation as long as they disclose any conflict of interest that may exist
  - Common law rule overrides the ONCA - prohibits directors of charities to place their personal interests in conflict with their duty to the charity
  - Regardless of whether there is actual loss to the charity
  - Possible to seek PGT consent court order to permit directors be paid, but generally high threshold for such an order

- ONCA permits corporation to invest its funds as its directors think fit, subject to its articles or by-laws or any limitations accompanying a gift
  - Section 10.1 of the *Charities Accounting Act* overrides the ONCA - states that s.27 to s.31 of the *Trustees Act* applies
  - Prudent investor rule applies to the directors of charities
  - Directors must consider certain criteria to invest
  - Authorizes delegation to an agent in certain circumstances

- ONCA permits corporation to indemnify the directors and officers and to purchase insurance
  - ONCA expressly requires that the purchase of insurance be in compliance with the *Charities Accounting Act* and its regulations
  - Regulation 4/01 under the *Charities Accounting Act* requires directors to consider certain factors enumerated in the regulation before they consent to the indemnification of its directors or purchasing D&O insurance
  - The indemnification or the purchase of insurance must not render the corporation insolvent

TIMING OF CONTINUANCE

- Some corporations will want to continue right away after the applicable legislation becomes effective, others may want to wait
- Revising governance structure to be reflected in new by-law may need some time for directors and members to consider
- Some considerations
  - Increased director protection
  - Existing by-laws already require amendment
  - Contemplation of fundamental changes
  - Different levels of financial review

PRACTICAL STEPS

1. Collect Governing Documents

- Letters patent, supplementary letters patent
  - Locate all copies
  - Amendments made by board or members resolutions alone not valid, must have SLP issued
  - CCA corporations – can contact Industry Canada to obtain copies
  - OCA corporations – can obtain microfiche copies from Ministry
- All current by-laws, including amendments, corporate minutes
- Other governance related documents: organizational charts, policies, manuals

2. Review Governing Documents and Consider
- Do they reflect current governance structure? If not, what is current governance structure?
- Do they reflect current governance process? If not, what is current governance process?
- Are changes desired? What are they?
- Are there new provisions to be inserted? What are they?
- Write them down
- Come up with a wish list

3. Understanding the CNCA and ONCA Framework
- Rules in the Act
- Details in the Regulations: “prescribed” vs “regulations”
- CNCA also permits unanimous member agreement for non-soliciting corporations
- Need to refer back and forth between the Act, the Regulations, articles, by-laws and unanimous member agreement

4. Study the Key Features of the CNCA/ONCA and Consider
- Are your current by-laws or desired governance structure and process inconsistent with CNCA/ONCA statutory requirements?
- If inconsistent with statutory mandatory requirement, must comply with them
- If inconsistent with CNCA/ONCA default requirements, is the preferred option permitted under the CNCA/ONCA? Should the option be set out in the articles or by-laws?
- If CNCA/ONCA optional requirements provided, may choose one of the permissible options. Should the option be set out in the articles or by-laws?

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5. Draft Articles of Continuance and New By-laws
- By-laws will need to be replaced or substantially revised because the old and new rules are very different
- Minimalist approach by-laws
  – Rationale: CNCA & ONCA contains detailed rules, so by-laws not to duplicate mandatory rules or default rules that are not to be overridden
- Comprehensive approach by-laws
  – One stop approach - consolidation of all applicable rules
  – No need to flip back and forth between articles, but limited provisions in the articles
  – Can have governance policy manuals to address other matters, e.g., committee structures (but not audit committee)

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6. General Points
- Industry Canada have continuance tools available, e.g.,
  – Model by-laws (minimalist approach) and by-law builder
  – Guides for transition, operation and incorporation
  – Sample Articles of Continuance
- Ontario Ministry will have continuance tools available, e.g.,
  – Plain language guides
  – Default by-laws
  – Updating the Not-for-Profit Incorporator's Handbook
  – Information sheets

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- Some changes may only be administrative
- Some changes may require detailed considerations and consultation with members
- Have someone or a committee be responsible for the process
- Have the board engaged early on
- Seek legal help, conduct legal review, prepare draft by-laws

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B. HIGHLIGHTS OF FEDERAL BUDGET 2012

- Budget 2012 was introduced on March 29, 2012 (Budget 2012) and is available online at http://www.budget.gc.ca/2012/plan/toc-tdm-eng.html
- Bill C-38, received Royal Assent on June 29, 2012
- Budget 2012 does not include any new donation tax incentives, such as the charitable donation tax credit proposed by Imagine Canada
- Budget 2012 focuses the perceived lack of transparency and accountability concerning political activities, as well as a number of other ad hoc charity issues
- See *Charity Law Bulletin* No. 280 at http://www.carters.ca/pub/bulletin/charity/2012/chylb280.htm

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POLITICAL ACTIVITIES

1. Putting the Budget 2012 in Context

- Prior to the announcement of Budget 2012, there have been many allegations made against environmental charities, eg:
  - Senate debates have raised the fear that “foreign foundations” have been funding Canadian charities, and that Canadian charities, particularly environmental charities, have been using those funds for untoward political objectives
  - Government “Strategy on Counter-Terrorism” equating environmentalism with white supremacy and the terrorist activities in Oklahoma City in 1995 and Norway in 2011

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- Chilling effect on charities becoming involved in political activities
- No significant changes to rules permitting political activities under the ITA and CRA’s policies
- Changes in Budget 2012 do not stop charities from becoming involved in political activities
- Charities will need to carefully comply with the rules introduced by Budget 2012

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2. Key CRA Policies
- CRA Policy Statement (CPS – 022) "Political Activities" dated September 2, 2003
- CRA Advisory on Partisan Political Activities
- CRA Policy Commentary, Political Party Use of Charity Premises (CPC-0070)
- Speech by the Director General of the Charities Directorate on May 4, 2012
- These documents are available on the CRA website

3. Three Categories of Activities
- Currently, politically related activities undertaken by a registered charity can be separated into three categories

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(a) Charitable Activities (permitted without limits)
- A charitable activity is an activity undertaken to achieve a charitable purpose
- If an activity is considered by CRA to be charitable, then it is permitted without limits
- Under certain circumstances, communication with a public official or the public can be a charitable activity (e.g. submission to a public official on a law or policy provided that it relates to and is subordinate to the charity's charitable purpose, is well reasoned, and does not contain information that is false, inaccurate or misleading)

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(b) Political Activities (permitted up to certain limits)
- An activity is presumed to be political if a charity
  – Explicitly communicates a call to political action, or to the public that the law, policy or decision of any level of government in Canada or a foreign country should be retained, opposed or changed, or
  – Explicitly indicates in its material that its activity is intended to incite, organize or pressure governments to retain, oppose or change the law, policy or decision of a government
- Political activities are permitted if they are non-partisan, connected to and subordinate to charity's purpose, and up to 10% of resources
- How resources (i.e., funds, property and people) is to be calculated is not clear

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(c) Prohibited Activities

- Prohibited activities are either illegal or involve partisan political activities
- "Partisan political activity" involves the "direct or indirect support of, or opposition to, any political party or candidate for public office"
- CRA's examples
  - Gifting charity funds to a political party that supports the charity's views on a given matter
  - Making public statements (written or oral) that endorse or denounce a candidate or political party

4. Impact of Budget 2012

- Budget 2012 impacts charities and RCAAAs with regards to political activities in three ways
- #1 – Expanded definition of political activities in ITA
  - To include "the making of a gift to a qualified donee if it can reasonably be considered that a purpose of the gift is to support the political activities of the qualified donee"
  - Focus is intent of the donor charity - not the intent of recipient QD
  - Would result in a double count of political activities, once by the donor charity and once by the recipient QD

- Three possible scenarios in determining "can reasonably be considered"
  - Written designation <u>to use</u> the gift for the political activities of the QD
  - Written designation <u>to not use</u> the gift for the political activities of the QD
  - No written designation, then look at other circumstances to see if there was "a purpose"
- Likely best to avoid multi-purpose gifts, because Budget 2012 simply refers to "a purpose" so any political purpose for any part of the gift may taint the whole gift

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- Funding charities that are caught by the new inclusion rules will have to track and report political activities the same way as charities directly involved in political activities
- Funding charities that do not want to have to track political activities in their T3010 should designate in writing those gifts that are not to be used for political activities by the recipient QD

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- #2 - New intermediate sanctions
  - If a charity exceeds the limits in the ITA for political activities (generally 10% of its total resources a year), CRA can impose a one year suspension of tax receipting privileges (in addition to revocation)
  - If a charity fails to report any information (not just political activities) that is required to be included on a T3010 annual return, CRA can suspend its tax receipting privileges until CRA notifies the charity that it has received the required information
  - Therefore important to have the board, legal and accounting professionals, review and approve the T3010 annual return before filing it with CRA
  - $8 million committed to enforcement by CRA

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- #3 - More disclosure
  - More information about political activities will be required in the T3010, (including foreign donors)
  - Focus is on disclosure of funding of political activities by foreign donor
  - Such funding does not have to be counted towards the 10% resource limit until it is actually expended on political activities
  - Director General's Speech in May 2012 explores the type of disclosure about political activities that will be required in the T3010 in the future

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- New political activities schedule as part of T3010
  - Indicate the type of political activity that a charity has devoted resources to (financial, property or human)
  - Explain the relationship between such political activities and its charitable purpose
  - Need to indicate the amount received from foreign sources for political activities
  - No need to identify the name of the foreign donor
- Revised T3010 should be available in early 2013

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5. Practical Implications for Charities

- Know the rules before becoming involved in political activities
- Ensure that activities are either “charitable activities” or are “permitted political activities”
- Involvement in permitted political activities should be authorized by the board of directors
- Ensure that any permitted political activities undertaken fall within 10% resource limit)
- Keep careful books and records and do appropriate allocations of all expenditures with respect to permitted political activities

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- Avoid any prohibited partisan political activities
- Gifts to QDs should generally include a written designation which states that the gift should not be used for the political activities of the recipient QD
- Have the board of directors, and accounting and legal professionals, review and approve the T3010 intermediate sanctions and greater public scrutiny
- See Charity Law Bulletin No. 286, “*Playing By the Rules: Political Activities Fair Game for Charities*”

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GIFTS TO FOREIGN CHARITABLE ORGANIZATIONS

- Certain foreign charitable organizations that have received a gift from the Government of Canada in the previous 24 months are currently deemed to be QDs under the ITA, and may issue donation receipts to Canadian donors and receive gifts from registered charities
- Currently only 9 of these foreign charitable organizations, including William J. Clinton Foundation
- Budget 2012 proposes that foreign charitable organizations that receive a gift from the Government of Canada may apply for qualified donee status if they pursue activities:
  (i) That relate to disaster relief or urgent humanitarian aid; or
  (ii) Are in the national interest of Canada

- After consultation with the Minister of Finance, the Minister of National Revenue will have the discretionary power to grant qualified donee status to foreign charitable organizations that meet the above criteria
- Qualified donee status will be made public and will be granted for a 24 month period, beginning on a date to be chosen by CRA
- CRA will develop guidance regarding of this measure
- Foreign charitable organizations that currently have qualified donee status will continue to be qualified donees until the expiration of that current status
- Measures will apply to applications made on or after the later of January 1, 2013

C. HIGHLIGHTS OF FEDERAL BUDGET 2011

- The 2011 Federal Budget (“Budget 2011”) was originally introduced on March 22, 2011 and was reintroduced in almost the identical form on June 6, 2011
- Bill C-13, which implements Budget 2011, received Royal Assent on December 15, 2011
- Budget 2011 contained significant changes to the regulation of charities and other qualified donees, and introduced the concept of “ineligible persons”
- CRA comment on Budget 2011 http://www.cra-arc.gc.ca/chrts-gvng/chrts/bdgts/2011/menu-eng.html
- For more information on the Budget see Charity Law Bulletin Nos.245 and 253 at www.charitylaw.ca

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1. New Regulatory Regime for Qualified Donees

- "Qualified donee" (QD) is defined in the ITA - may issue official donation receipts for gifts and may receive gifts from registered charities
- Budget 2011 extends certain regulatory requirements, that in the past only applied to charities to the following types of QDs
  - Registered Canadian Amateur Athletic Associations
  - Municipalities in Canada
  - Municipal and public bodies performing a function of government in Canada
  - Housing corporations in Canada that exclusively provide low-cost housing for the aged

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  - Prescribed universities
  - Charitable organizations outside of Canada that received a gift from Her Majesty in right of Canada in the current or preceding year
- The remaining QDs are not affected by the new rules
  - The Government of Canada
  - The provincial and territorial governments in Canada
  - The United Nations and its agencies
- Registered national arts service organizations are deemed to be "registered charities," so they are already subject to the same regulatory requirements
- The effective date of these proposals was January 1, 2012

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- The new requirements that apply to QDs listed above
  - QDs are to be identified in a publicly available list maintained by CRA
  - If a QD does not issue donation receipts in accordance with the ITA and its regulations, it could have its receipting privileges suspended or its QD status revoked
  - RCAAAs will be subject to monetary penalties if they issue improper receipts or fail to file an information return
  - QDs are required to maintain proper books and records and provide access to those books and records to CRA when requested
  - Failure to do so may result in suspension of receipting privileges or revocation of its QD status

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- Additional regulatory requirements to RCAAAs that in the past only applied to registered charities:
  - Promotion of amateur athletics in Canada on a nation-wide basis as their *exclusive* (not primary) purpose and *exclusive* (not primary) function
  - Monetary penalties, suspension of receipting privileges, or revocation if an RCAAA provides an undue benefit to any person (e.g., excessive compensation to staff or professional fundraiser)
  - CRA may make available to the public certain information and documents in respect of RCAAAs (e.g. governing documents, annual information returns, applications for registration and the names of directors)

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2. New Governance Regime for Registered Charities and RCAAAs ("Ineligible Individuals")

- Budget 2011 identified a CRA concern that applications for charitable status were being submitted by individuals who have been involved with other charities and RCAAAs that have had their status revoked for serious non-compliance
- In the past, CRA could not refuse to register or revoke the status of a registered charity or RCAAA based on these grounds

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- Budget 2011 allows CRA to refuse or revoke the registration of a charity or a RCAAA or suspend its ability to issue official donation receipts, if a member of the board of directors, a trustee, officer or equivalent official, or any individual who otherwise controls or manages the operation of the charity or RCAAA is an "ineligible individual" – a person who:
  - Has a "relevant criminal offence" – convicted of a criminal offence in Canada or similar offence outside of Canada relating to financial dishonesty (including tax evasion, theft or fraud), or any other criminal offence that is relevant to the operation of the organization, for which he or she has not received a pardon

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– Has a "relevant offence" – convicted of an offence in Canada in the past five years (other than a relevant criminal offence), or similar offence committed outside Canada within the past five years relating to financial dishonesty or any other offence that is relevant to the operation of the charity or RCAAA
  - Includes offences under charitable fundraising legislation, convictions for misrepresentation under consumer protection legislation or convictions under securities legislation)

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– Has been a member of the board of directors, a trustee, officer or equivalent official, or an individual who otherwise controlled or managed the operation of a charity or RCAAA during a period in which the organization engaged in serious non-compliance for which its registration has been revoked within the past five years
– Has been at any time a promoter of a gifting arrangement or other tax shelter in which a charity or RCAAA participated and the registration of the charity or RCAAA has been revoked within the past five years for reasons that included or were related to its participation

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- Budget 2011 stated that CRA will look at the particular circumstances of a charity or RCAAA but does not state what those circumstances are
- Budget 2011 stated that CRA will take into account whether appropriate safeguards have been instituted to address any potential concerns – but no explanation of what these safeguards might be
- What due diligence will be required by a charity to ensure that an ineligible individual does not become involved or continue to be involved in the management of the charity?

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- Budget 2011 stated that a charity will not be required to conduct background checks, but even if the charity wanted to review the information required to independently assess whether an individual is ineligible may not be publicly or easily available:
  - Possible to search for relevant criminal offences in Canada, but abroad?
  - Many relevant offences are not tracked in publicly available databases in Canada, and unlikely abroad
  - Names of directors and like officials of revoked charities not maintained in a single publicly available database
  - Not likely that an individual who otherwise controlled or managed the operation would be identified in publicly available documents – likely information solely in CRA's control

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- Onus is shifted to charities to comply in a situation where it is impossible to ensure 100% compliance because the necessary information is not available
- This new cause for revocation is similar to a strict liability offence – no due diligence defence is available in the legislation
- Charities will be required to undertake other forms of due diligence and hope CRA will excuse any inadvertent non-compliance
- Are all charities going to be required to conduct police checks even if not dealing with ineligible individuals as a simple matter of due diligence?

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- Is a questionnaire necessary and if so, how frequent is a questionnaire to be used, how broad should the questions be and to whom should it apply?
  - Likely all directors, trustees, officers and like officials
  - Who is "an individual who otherwise controls or manages the charity" - likely all senior staff ?
- How does a charity deal with a director or officer that is an ineligible individual – usually only the members or directors can remove a director?
- How does a charity remove a staff member that is an ineligible individual – could have important employment law ramifications?

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3. Clarification on Charitable Gifts Returned to Donors

- Budget 2011 clarified the effect of a charity returning a donation with respect to the ITA
- CRA can now reassess a taxpayer outside the normal reassessment period and disallow a taxpayer's claim for a credit or deduction when gifted property is returned to a donor
- If a charity has issued an official donation receipt for the donation and subsequently returns the gift to the donor, if the fair market value of the returned property is greater than $50, the charity must file an information return (e.g. a letter) with CRA and provide a copy to the donor within 90 days after the return of the gift
- Effective for gifts returned on or after March 22, 2011
- Budget does not address the issue of whether or not a gift can be returned to the donor at common law
- Legal advice should be sought in this regard

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D. RECENT CRA PUBLICATIONS

1. Guidance on Working With an Intermediary in Canada

- On June 20, 2011, CRA released Guidance CG-004, *Using an Intermediary to Carry out a Charity's Activities within Canada* ("Guidance") (http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/ntrmdry-eng.html)
- The Guidance assists charities who are or intend to conduct charitable activities through an intermediary within Canada
- An intermediary is defined by CRA as an individual or a non-qualified donee (e.g. a non-registered charity)
- The Guidance is a modified version of Guidance CG-002, *Canadian Registered Charities Carrying out Activities Outside of Canada,* and contains relatively little new information

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- However, the Guidance modifies the examples provided in CG-002 with respect to intermediaries (e.g. agents and contractors)
- It is recommended that charities, even if they do not conduct any activities outside of Canada, who are conducting any activities through an intermediary review both Guidances, to ensure that they are adequately documenting the necessary direction and control over their charitable resources

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2. Guidance on Trust Document

- On August 15, 2011, CRA released Guidance CG-009, *Trust Document* ("Guidance") (http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/trsts-eng.html)
- A trust document is one of three types of governing documents that may be used to establish a charity for the purpose of registration as a registered charity
- For designation purposes, a trust document may be used for charitable organizations and private or public foundations
- Guidance sets out the requirements for the contents of a trust document (e.g. name of trust, charitable purposes of trust, rules governing how trustees will administer all property etc.)

- These requirements must be met for registration purposes, should the organization choose to use a trust document to be its governing document
- CRA recommends that applicants submit a draft copy of the trust document for its review because amendments to a pre-established trust may not be possible or may require court approval
- CRA will review draft governing documents, including trust documents, on a one-time basis when submitted with a complete application
- If CRA approves the application, applicants will have to submit a signed trust document prior to registration

3. Guidance on Arts Organizations and Charitable Registration under the *Income Tax Act*

- On November 1, 2011 CRA released draft *Guidance on Arts Organizations and Charitable Registration* ("Guidance") for public consultation (http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cnslttns/rts-eng.html#_edn4)
- Once finalized, the Guidance will replace Summary Policy CSP-A08 and Summary Policy CSP-A0A24
- Guidance sets out guidelines regarding the eligibility requirements for charitable registration of arts organizations
- Organizations will fall within one of two charitable heads
  - The advancement of education (2nd)
  - Other purposes beneficial to the community (4th)

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- There is a presumption that a public benefit exists in relation to second head but not the fourth head
- Arts organizations that fall under the fourth head will have to meet CRA's specific public benefit criteria
  - Artistic form and style: There must be a common or widespread acceptance of the form and style of art within the Canadian arts community
  - Artistic merit: The quality of a presentation, exhibition, performance, etc. must be sufficiently high
- Guidance would not apply to:
  - National arts service organizations, or
  - Organizations that seek to further other charitable purposes through arts programs, e.g. providing art therapy to relieve conditions associated with illness or disability

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4. New Fundraising Guidance (Revised 2012)

a) Introduction

- From the media's perspective this is the number one compliance issue for charities
- The new Guidance is a significant improvement but is a longer document at 39 pages compared to 31 pages
- Although much improved, the new Guidance is still a complex document and will therefore require careful reading
- The Guidance will have impact on current CRA audits, not just future audits
- The Guidance will apply to all registered charities and to both receipted and non-receipted fundraising

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- The Guidance is more directive than previous versions of the Guidance
- Charities must still meet their other obligations, including the 3.5% disbursement quota
- An organization carrying out unacceptable fundraising may result in denial of charitable registration or, for registered charities, sanctions or even revocation of charitable status
- The fundraising ratio referenced in this Guidance forms part of a charity's T3010 that is made available to the public on the web
- It is therefore important for the board of a charity to review and approve the T3010 for a charity before it is filed with CRA

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b) What is Fundraising?

- In general, fundraising is any activity that includes solicitation of present or future donations of cash or gifts in kind, or the sale of goods or services to raise funds, whether explicit or implied
- For the purpose of the Guidance, fundraising does not include (i.e. to be excluded from revenue and expenses):
  – Seeking grants, gifts, contributions, or other funding from other charities or government
  – Recruiting volunteers (except for fundraising volunteers)
  – Related business activities

- Examples of fundraising activities
  – The sale of goods or services
  – Donor stewardship
  – Membership programs
  – Cause-related marketing/social marketing ventures
  – Planning or researching fundraising activities
  – Donor recognition

c) When is Fundraising not Acceptable?

- The following conduct will be prohibited and will be grounds for revocation of a registered charity's status, imposition of sanctions or other compliance actions, or denial of charitable registration

  – Fundraising that is a purpose of the charity (a collateral non-charitable purpose)
  – Fundraising that delivers more than an incidental private benefit
  – Fundraising that is illegal or contrary to public policy
  – Fundraising that is deceptive
  – Fundraising that is an unrelated business

d) Allocating Fundraising Expenditures

- Registered charities must report fundraising expenditures (all costs related to any fundraising activity) on their annual T3010
- Where some fundraising activities include content that is not related to fundraising, some of these costs may be able to be allocated to charitable activities, management or administrative activities, or political activities

- Onus is on the charity to explain and justify the allocation
- The following are CRA's guidelines for allocation:
  - 100% allocation to fundraising
  - No allocation of costs to fundraising
  - Pro-rated allocation of costs

e) Evaluating a Charity's Fundraising

- Resources devoted to fundraising are disproportionate to resources devoted to charitable activities
- Fundraising without an identifiable use or need for the proceeds
- Inappropriate purchasing or staffing practices
- Fundraising activities where most of the gross revenues go to contracted third parties

- Commission-based fundraiser remuneration or payment of fundraisers based on amount or number of donations
- Misrepresentations in fundraising solicitations or disclosure about fundraising costs, revenues, or practices
- Fundraising initiatives or arrangements that are not well documented
- High fundraising expense ratio
- It is important to note that a charity's fundraising ratio can serve as a general self-assessment tool, although its not determinative on its own
  - The fundraising ratio is the ratio of fundraising costs to fundraising revenue calculated on an annual basis
  - It is a global calculation for a fiscal period

  - However, a high fundraising ratio for an individual event may be an indicator of unacceptable fundraising
  - It is totally distinct from the 3.5% disbursement quota, although elements of it overlap in the ratio
  - Fundraising revenues include amounts reported in the T3010 on line 4500 (receipted donations, regardless of whether these amounts can be traced to fundraising activity) and line 4630 (all amounts for which a tax receipt was not issued and that were generated as a direct result of fundraising expenses)
  - Fundraising expenditures will include all amounts reported on line 5020 as fundraising expenses in accordance with the Guidance

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- The fundraising ratio will place a charity into one of three categories:
  - Under 35%: unlikely to generate questions or concerns by CRA
  - 35% and above: CRA will examine the average ratio over recent years to determine if there is a trend of high fundraising costs requiring a more detailed assessment of expenditures
  - Above 70%: this level will raise concerns with CRA. The charity must be able to provide an explanation and rationale for this level of expenditure, otherwise it will not be acceptable
- See logic chart on next page (not by CRA)

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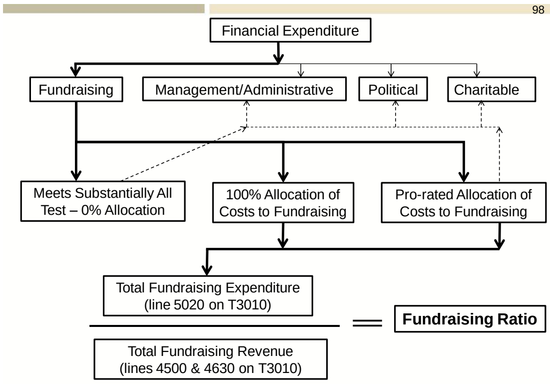

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f) Factors that may Influence CRA's Evaluation of a Charity's Fundraising

- CRA recognizes that the charitable sector is very diverse and fundraising efforts will vary between organizations
- CRA will look at a number of factors to evaluate a charitable fundraising activity that involves high fundraising costs
- Examples of relevant case-specific factors include the following:
  - The size of the charity, which may have an impact on fundraising efficiency (i.e. revenues under $100,000)
  - Causes with limited appeal which could create particular fundraising challenges

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– Donor development programs where fundraising activities could result in financial returns only being realized in future years (long-term investments)
– Gaming activities, such as lotteries or bingos, where it's commonly considered acceptable to have cost to revenue ratios of 70% or higher

g) Best Practices for Managing Fundraising
• Adopting best practices may decrease the risk of CRA finding that a charity is engaging in unacceptable fundraising
• The Guidance describes the following best practices in further detail:
  – Prudent planning processes
  – Adequate evaluation processes

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– Appropriate procurement and staffing processes
– Managing risks associated with hiring contracted (third party) fundraisers
– Ongoing management and supervision of fundraising
– Keeping complete and detailed records relating to fundraising activities
– Providing disclosures about fundraising costs, revenues, practices and arrangements
– Maintain a reserve fund policy and ensuring that fundraising is for an identified use or need

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5. Community Economic Development (CED)
• On July 26, 2012, the CRA released Guidance CG-014, *Community Economic Development Activities and Charitable Registration*
• This replaced Guide RC4143, *Registered Charities: Community Economic Development Programs*, which had operated since December 23, 1999
• New Guidance relaxes some of the requirements on specific forms of CED – will make it easier for charities to engage in CED
• See *Charity Law Bulletin* No. 287

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a) Definition

- Generally, CED involves improving the economic opportunities and social conditions of an identified community
- CED activities are often referred to as “community capacity building”, “social enterprise” and “social finance”
- Common forms of CED include:
  - Activities that relieve unemployment
  - Grants and loans
  - Program-related investments
  - Social businesses for individuals with disabilities
  - Community land trusts

b) Requirements of “Charitable” CEDs

- The law in Canada does not recognize CED as a charitable purpose in and of itself
  - Therefore, in order to be considered “charitable”, CED activities must directly further one of the four heads of charity
- A CED activity must not provide any private benefit that is more than incidental if it is to be considered “charitable”
  - This means any private benefit must be necessary, reasonable, and not disproportionate to the public benefit

c) Types of CED Include:

(1) Activities that relieve unemployment

- These activities are only charitable if they further a head of charity
- To pass the public benefit test, the emphasis of these activities must be helping beneficiaries find employment, not helping employers recruit employees
- On-the-job training programs must focus on providing training, not indefinite employment

(2) Social businesses for individuals with disabilities

- Social businesses employ people with disabilities or support people with disabilities who are self-employed. They seek to provide permanent employment for such individuals

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(3) Program-related investments (PRIs)

(i) Definition

- A PRI is an investment that is undertaken to further a charitable purpose. It may or may not involve the return of capital and interest
- PRIs can take the form of:
  - Loans
  - Loan guarantees
  - Share purchases
  - Leases of land or buildings
- New Guidance greatly expands opportunities for charities to engage in PRIs

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(ii) Non-qualified donees may now be recipients

- New Guidance no longer prohibits a charity from making a PRI with a non-qualified donee
- However, a charity that makes a PRI with a non-qualified donee must "maintain direction and control over the activity" in which it has invested
  - In essence, the recipient is merely the intermediary and the activity is that of the investor charity
- If the charity cannot maintain direction and control, it could invest in the activity as a conventional investment, provided it receives market rates and the investment meets the charity's conventional investment requirements

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(iii) When making a PRI, a charity must:

- Have a policy that stipulates the criteria it applies to PRI related decisions and explains how each PRI furthers its charitable purpose
- Include an exit mechanism that allows the charity to withdraw from the PRI or convert it to a regular investment in case the PRI no longer furthers the charitable purpose or the charity loses control over the activity of a non-qualified donee
- Ensure that its PRIs meet all applicable trust, corporate or other legal or regulatory requirements
- Maintain records that establish its direction and control over any PRIs with non-qualified donees

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(iv) Commentary on PRIs

- A charity may only make a PRI with an arm's length corporation
- Although a charity is not required to include the value of its PRIs in calculating its 3.5% disbursement quota, a charity is not permitted to include the PRI as a charitable expenditure
- All types of charities can make PRIs in the form of share purchases, but public and private charitable foundations cannot acquire a controlling interest in a company
  - Furthermore, if a private foundation acquires more than 20% of any class of shares in a company, it may trigger divestment obligations and sanctions

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(4) CED that promotes commerce or industry

- This type of CED can be charitable if it benefits the public or a sufficient section of the public, and not just members of the industry. Unlike other type of charitable CED, it is not required to benefit a specific eligible beneficiary
- Examples of purposes that may be acceptable are
  - Promoting greater efficiency within an industry
  - Promoting the achievement or preservation of high standards of practice within an industry
- Organizations that conduct these types of activities and wish to obtain charitable status will require independent and objective expert opinions stating their activities benefit the public

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(5) CED in socially and economically deprived areas

- CED may be charitable if it improves socio-economic conditions for the public benefit in deprived areas
- The prohibition on private benefits that are more than incidental is relaxed for a CED in deprived areas. For example, a charity could provide job training for a specific employer to keep it from closing its factory
- "Deprived areas" have rates at least 1.5% higher than the national average in one of the following:
  - Unemployment (for at least 2 consecutive years)
  - Crime, including family violence
  - Health problems, e.g. mental health and addiction
  - Children and youth taken into care or dropping out of school

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E. RECENT CASE LAW

1. *Victoria Order of Nurses for Canada v. Greater Hamilton Wellness Foundation,* 2011 ONSC 5684 (CanLII) (September 27, 2011)

- A parallel foundation unilaterally amended its objects so that it could disburse both existing and current funds to charities other than its operating charity
- Prior to doing so, the foundation had fundraised from the public on the basis that said funds would go to the operating charity's programs
- Confirmed that charitable property raised for the benefit of a particular charitable purpose cannot be unilaterally applied for a different charitable purpose by simply amending charity's objects through supplementary letters patent
- Above funds were to be held in trust for operating charity

- To change the charitable purpose of funds, charities must seek the approval of the Ontario Public Guardian and Trustee ("OPGT") under the *Charities Accounting Act*, not "self-help" remedies
- Supplemental reasons were issued on March 7, 2012 (2012 ONSC 1527 (CanLII))
  – The Court awarded the claimed costs of $454,686.19 to the charity and $24,853.95 to the OPGT on a substantial indemnity cost basis
  – The foundation's unsubstantiated and unproven allegations of dishonesty and deceit on the part of the charity, misrepresentations and refusal of two offers to settle justified the said costs
  – The OPGT has the right to claim against the directors for their role in the litigation

2. *St. John's Evangelical Lutheran Church of Toronto v. Steers,* 2011 ONSC 6308 (CanLII) (October 24, 2011)

- There was a series of disputes between the leaders and members of the congregation and the defendants (The English District Lutheran Church Missouri Synod (Canada) and The English District Lutheran Church Missouri Synod (U.S.A.)) regarding the ownership, autonomy, and operation of a church and its property
- A motion for certification of a class proceeding under the *Class Proceedings Act* ("CPA") was ultimately brought
- The parties ultimately settled their disputes, but the CPA requires a proceeding commenced or certified as a class proceeding under it to be discontinued or abandoned only with the approval of the court

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- Therefore, the class proceeding was certified on the basis of a number of common issues including: breach of fiduciary duty; negligent misrepresentation (regarding the defendants' authority and legal status to install their own church council without the approval of the members and to appropriate church property); and conspiracy (to disband and disenfranchise the class members)
- Under terms of court approved settlement, the defendants agreed to release their claim to the church's property and the church agreed to resign from the denomination
- The introduction of a class action into a church dispute may be the first in Ontario, if not Canada
- Decision could have broader application

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3. *Cannon v. Funds for Canada Foundation,* 2012 ONSC 399 (CanLII) (January 18, 2012)

- The Ontario Superior Court certified a class action involving a charitable donation tax scheme
- In summary, a donor's original donation of $2,500 was purportedly increased to $7,500 through the exchange of sub-trust units between the various trusts involved, therefore making the original donation seem larger than it actually was
- The recipient charities agreed to return 99% of the donations to the promoters to use a software program
- CRA disallowed donors' tax deductions because donations were not gifts and charged interest on outstanding taxes owing due to the disallowance

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4. *Robinson v. Rochester Financial Limited*, 2012 ONSC 911 (CanLII) (February 7, 2012)

- Ontario Superior court approved an $11 million settlement of the class action relating to the "Banyan Tree" tax shelter
- Small donations by donors were purportedly increased through a "loan" to donors
- CRA disallowed donors' tax credits because the "donations" were not gifts
- The defendant was a law firm which provided a legal opinion that the tax shelter complied with applicable tax legislation and that the tax receipts issued by the tax shelter should be recognized by CRA

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