
THE 2007 ANNUAL CHURCH & CHARITY LAW™ SEMINAR

Toronto – November 7, 2007

CRA Top Ten Compliance Issues

By Terry de March

Director General, Charities Directorate, Canada Revenue Agency

CARTERS™.ca

CARTERS PROFESSIONAL CORPORATION

Société professionnelle Carters

Barristers, Solicitors & Trade-mark Agents

Affiliated with **Fasken Martineau DuMoulin LLP**

Avocats et agents de marques de commerce

Affilié avec Fasken Martineau DuMoulin S.E.N.C.R.L., s.r.l.

Offices / Bureaux

Ottawa (613) 235-4774

Mississauga (416) 675-3766

Orangeville (519) 942-0001

Toll Free: 1-877-942-0001

By Appointment / Par rendez-vous

Toronto (416) 675-3766

London (519) 937-2333

Vancouver (877) 942-0001

www.charitylaw.ca™

CRA Top Ten Compliance Issues

Terry de March
Director General
Charities Directorate

1

Mandate

It is the mandate of the Charities Directorate to enhance compliance with provisions of the legislation (ITA) administered by the Canada Revenue Agency (CRA) and to encourage and assist charities to comply with the requirements of the legislation through a balanced program of education, service and responsible enforcement.

2

Compliance Approach

- The Charities Directorate's basic approach for achieving compliance:
- First and foremost, facilitating voluntary compliance;
- Assisting clients to comply whenever possible;
- Enforcing compliance where necessary
- Audit program is primary means of assessing, monitoring and enforcing compliance. However, we continue to implement changes from Budget 2004 to improve CRA's capacity to carry out enforcement responsibilities

3

Compliance Tools

General approach for audit program:

- Education
- Compliance Agreements
- Sanctions
- Revocation of Charity's Registration

4

Discovering Non-Compliance

- Generally, cases of non-compliance are discovered through the course of an audit.
- However, issues are also identified through educational outreach activities.
- The following list of issues are encountered all too frequently through the audit process.

5

Incorrect Issuance of Receipts

- Registered charities are often unaware of requirements for contents of receipts.
- Registered charities often make mistakes as to what type of property is receiptable.
 - Receipts are often incorrectly issued for services
- Establishing FMV also tends to be a hurdle for charities.

6

Failure to File T3010

- Continues to be the biggest compliance issue
- Thousands of charities file late each year or fail to file and are revoked as a consequence
- In an effort to increase compliance, in addition to the \$500 late filing penalty, a reminder to file notice is sent to charities one month prior to the annual information return's due date.

7

T3010 – Errors and Omissions

- The T3010 forms that we do receive are often completed incorrectly or are missing information entirely
 - line 5000 (charitable program expenditures) has consistently been omitted by hundreds of charities since 2003
- Incomplete or inaccurate information, obviously, diminishes the usefulness of the information provided. Information that is used by the CRA and the public to evaluate a charity's "good works".

8

Non - Charitable Activities

- Usually emerge when a charity expands to undertake new programs or as the charity's focus shifts.
- Although charities may wish to undertake a variety of activities to benefit the community in which they operate, they must restrict their activities to the realm of what is charitable.
- Charitable purposes include: the relief of poverty, the advancement of education, the advancement of religion and certain other purposes that the courts have recognized as charitable.

9

Gifts to Non-Qualified Donees

- Registered charities tend to be unaware of the restrictions surrounding “Qualified Donees”.
- Registered charities may use their resources in one of two ways:
 - in support of their own charitable programs or;
 - by gifts to Qualified Donees.

10

Gifts to Non-Qualified Donees (cont’d)

- Gifting to organizations that are not Qualified donees is a serious issue:
 - There are monetary penalties which apply (105% of amount gifted).
 - Also a common ground for revocation.
- Confirming an organization’s status as a registered charity is easily accessible through the CRA’s website or by calling the Charities Directorate.

11

Failure to Maintain Direction and Control

- Often registered charities operating in foreign jurisdictions carry out activities through an agent or other intermediary.
- Where a registered charity conducts activities through an intermediary it must maintain direction and control over the use of its resources.
- A properly structured agreement (containing all the necessary elements required by the CRA) helps demonstrate direction and control.
- Frequently, even when an agreement is in place, charities fail to properly implement and monitor the arrangement.

12

Fundraising

- From the media's perspective this is a number one compliance issue.
- While the CRA accepts that charities can have fundraising costs, our expectation is that these expenses be reasonable and proportionate to the charitable activity being conducted.

13

Fundraising (cont'd)

- A charity which spends excessive amounts on fundraising to the detriment of its charitable programs is not considered to be devoting all of its resources to charitable activities.
- Additionally, spending excessive amounts on fundraising results in disbursement quota shortfalls and often deliberate, incorrect categorization of expenses (i.e., including fundraising expenses as a charitable program expenditure).

14

Political Purposes and Activities

- Charities cannot operate for political purposes but can carry on limited amounts of non-partisan political activity.
- Generally defined as activities that aim to retain oppose or change the law, policy or decision of any level of government.
- Partisan political activities are completely prohibited.
- A spike in political activity (partisan and non-partisan) by charities often coincides with election calls or discussion of sensitive social issues.

15

Unrelated Business Activities

- Registered charities can carry on limited business activities provided that they are linked to and subordinate to their charitable programs.
- Usually emerge when a charity develops a new fundraising program or can often occur where a charity's focus shifts and an existing fundraising program becomes a purpose in and of itself rather than a means to an end.
- Unrelated businesses are commonly seen in activities like tournaments and events, gaming activities and sale and rental of properties.

16

Religious Tuition

- Schools that are also registered charities may issue receipts in two circumstances:
 - The school teaches exclusively religion
 - The school operates in a dual capacity (provides secular and religious education)
- Receipts may be issued for the religious portion of tuition, which, in the case of dual capacity schools, is based on the calculation set out in IC 75-23
- The CRA often finds that charities are not taking care to properly apportion (and document) the amount of tuition devoted to religious instruction - resulting in inflated tax receipts.

17

Tax Shelters

- Popularity has increased dramatically and as a result these arrangements have become a serious concern
- To date 26,000 taxpayers have been audited and about \$1.4 billion in claimed donations have been denied.
- Audits of another 70,000 taxpayers are at various stages of completion. Disallowed donations in these cases are expected to exceed an additional \$1.8 billion.
- Charities involved may face revocation.

18

Fraudulent Charities

- Currently an on-going issue with individuals “selling” tax receipts.
- CRA is discovering that the tax receipts are being sold, sometimes by individuals in the charity’s employ, often where the charity is unaware.
- CRA is encouraging charities to be diligent in safeguarding the charity’s receipts and to report any suspected fraud immediately to the CRA.

19

Transactions with Directors

- A charity’s assets should be protected and used only for the benefit of the charity’s programs.
- Transactions with directors are more closely scrutinized by the CRA to ensure that they are “above-board”.
- Salaries, loans to directors, investments in companies of directors, transactions with businesses owned by directors etc. are common areas of concern.

20

Other CRA rules

- Charities must be aware that their responsibilities with the CRA do not start and end with their tax receipts and charitable filings.
- For example, Charities have a responsibility to maintain a payroll account and report taxable benefits where applicable.
- GST is also a responsibility of a charity – some charities depending on the types of supplies they make and their size (based on gross revenue) need to register for GST
- For information on these, and other tax matters, the charity should consult their local tax service office.

21

Thank you!

- * Charities Information Line
 - 1-800-267-2384 (English)
 - 1-888-892-5667 (bilingual)
- * Charities Information on the Web
 - WWW.CRA.GC.CA/CHARTIES
- * Charities Electronic Mailing List
 - To connect, follow instructions on CRA's Charities Web site (Electronic Mailing Lists link in left menu)

22
