
THE 2008 ANNUAL CHURCH & CHARITY LAW™ SEMINAR

Toronto – November 6, 2008

When Bad Things Happen to Good Charities: How to Avoid and Respond to Criminal Activity

By Bruce W. Long, B.A., LL.B. (Counsel)

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 Charities: How to Avoid and Respond to
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OVERVIEW

- Charities Legislation Table
- Introduction
- Categories of Offences
- Regulatory Offence – An Example
- Charges
- Trial
- Penalties
- Criminal Offence

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1. CHARITIES LEGISLATION TABLE

Statute (Federal)	Description of Offence	Penalty
<i>Income Tax Act</i> s.163.2(2)	A person who makes, furnishes, or participates in making, or causes someone to make or furnish a statement that the person knows or ought to know is false commits an offence	Minimum fine: \$1,000
<i>Criminal Code</i> s.336	It is a criminal breach of trust for the trustee of a charitable purpose trust to convert, with the intent to defraud, the property of the trust to a use that is not authorized under the trust	Maximum imprisonment: 14 years

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Statute (Federal)	Description of Offence	Penalty
<i>Cultural Property Export and Import Act</i>		
s.40	Exporting an object included in the Control List not in accordance with the Act is an offence (some items in the list include: fossils, artefacts, minerals, military objects, ethnographic material culture, objects of fine art, scientific or technological objects, graphic records, etc.)	Summary: <ul style="list-style-type: none"> • Max fine: \$5,000; and/or max imprisonment: 1 year Indictable: <ul style="list-style-type: none"> • Max fine: \$25,000; and/or max imprisonment: 5 years

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Statute (Federal)	Description of Offence	Penalty
<i>Cultural Property Export and Import Act</i>		
s.41	Transferring a permit to export without authorization is an offence	Summary: <ul style="list-style-type: none"> • Max fine: \$5,000; and/or max imprisonment: 1 year Indictable: <ul style="list-style-type: none"> • Max fine: \$25,000; and/or max imprisonment: 5 years

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Statute (Federal)	Description of Offence	Penalty
<i>Cultural Property Export and Import Act</i>		
s.42	Wilfully furnishing any false or misleading information or knowingly making a misrepresentation in an attempt to obtain a permit to export is an offence	Summary: <ul style="list-style-type: none"> • Max fine: \$5,000; and/or max imprisonment: 1 year Indictable: <ul style="list-style-type: none"> • Max fine: \$25,000; and/or max imprisonment: 5 years

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Statute (Federal)	Description of Offence	Penalty
<i>Canada Corporations Act</i>		
s.114.2	A person who fails to permit an inspector to enter upon any premises or to make any inspection where a company or any officer fails to provide a report, return, bylaw or other document when required to do so, is guilty of an offence	Summary: <ul style="list-style-type: none"> • Max fine: \$1,000; and/or max imprisonment: 6 months

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Statute (Federal)	Description of Offence	Penalty
<i>Canada Corporations Act</i>		
s.149	A general penalty clause exists if a director, manager or officer of a company, or someone acting on its behalf, commits an offence or neglects any act contrary to the provisions under Part I (Companies with Share Capital)	Summary: <ul style="list-style-type: none"> • Max fine: \$1,000; and/or max imprisonment: 1 year

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Statute (Federal)	Description of Offence	Penalty
<i>Competition Act</i>		
s.52	Knowingly or recklessly making a material false or misleading representation to the public to promote the supply or use of a product or business interest is an offence	Summary: <ul style="list-style-type: none"> • Max fine: \$200,000; and/or max imprisonment: 1 year Indictable: <ul style="list-style-type: none"> • Max fine: discretion of the court and/or max imprisonment: 5 years

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Statute (Federal)	Description of Offence	Penalty
<i>Competition Act</i>		
s.52.1	When telemarketing, certain disclosures must be made, including: the identity of the person on behalf of whom the communication is made; the nature of the product or business interest being promoted; and the purposes of the communication If such disclosures are not made, the telemarketer commits an offence	Summary: • Max fine: \$200,000; and/or max imprisonment: 1 year Indictable: • Max fine: discretion of the court and/or max imprisonment: 5 years

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Statute (Provincial)	Description of Offence	Penalty
<i>Charitable Gifts Act</i> s.6	Prohibition of charities in Ontario from owning more than a 10% interest in any business	• Max fine: \$10,000; and/or max imprisonment: 1 year
<i>Corporations Act (Ontario)</i> s.303	A director, officer or employee of a corporation who makes or assists in making any entry in certain records and documents, knowing it to be untrue, is guilty of an offence	• Max fine: \$1,000; and/or imprisonment 3 months

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Statute (Provincial)	Description of Offence	Penalty
<i>Corporations Act (Ontario)</i>		
s.306(2)	Anyone who uses a list of shareholders or members of the corporation to send them advertisements or other printed matter relating to share or securities, other than those of the corporation, or for purposes not connected with the corporation is guilty of an offence	• Max fine: \$1,000

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Statute (Provincial)	Description of Offence	Penalty
<i>Corporations Act (Ontario)</i>		
s.308	<p>Anyone who offers, sells, or purchases a list or copy of a list of shareholders or members of a corporation is guilty of an offence</p> <p>Every director or officer of such corporation or transfer agent who authorized, permitted or acquiesced in such offence is also guilty of an offence</p>	<p>On conviction:</p> <ul style="list-style-type: none"> • Max fine: \$1,000

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Statute (Provincial)	Description of Offence	Penalty
<i>Donation of Food Act</i>		
s.1(1)	<p>A person who acted with reckless disregard for the safety of others and donates or distributes donated food is liable for damages caused by food that is rotten or otherwise unfit for consumption food</p>	Damages

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Statute (Provincial)	Description of Offence	Penalty
<i>Donation of Food Act</i>		
s.1(2)	<p>The director, agent, employee <i>or volunteer</i> of a corporation that donates or distributes donated food is personally liable for any damages caused by the food, if:</p> <ul style="list-style-type: none"> • the food was adulterated, rotten or unfit for human consumption; and • in donating or distributing the food, the director, agent, employee or volunteer, <ul style="list-style-type: none"> - did not act in good faith, - acted beyond the scope of his or her role as director, agent, employee or volunteer, and - acted with reckless disregard for the safety of others 	Damages

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Statute (Provincial)	Description of Offence	Penalty
<i>Health Protection and Promotion Act</i>		
NOTE: Inspectors to enforce this Act are assigned through the Ministry of Health There are Approximately 36 offices in Ontario		

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Statute (Provincial)	Description of Offence	Penalty
<i>Health Protection and Promotion Act</i>		
s.16(1)	Every person operates a food premise shall maintain and operate the food premise in accordance with the regulations	Individuals: <ul style="list-style-type: none"> • Max fine: \$5,000 for every day or a part of a day on which the offence occurs or continues Corporations: <ul style="list-style-type: none"> • Max fine: 25,000 for every day or part of a day on which the offence occurs or continues

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Statute (Provincial)	Description of Offence	Penalty
<i>Health Protection and Promotion Act</i>		
s.1	“food premise” means a premises <u>where food or milk is manufactured, processed, prepared, stored, handled, displayed, distributed, transported, sold or offered for sale</u> , but does not include a private residence	

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Statute (Provincial)	Description of Offence	Penalty
<i>Health Protection and Promotion Act</i>		
s.100(3)	Any person who contravenes section 16 commits an offence	Individuals: <ul style="list-style-type: none"> • Max fine: \$5,000 for every day or part of a day on which the offence occurs or continues Corporations: <ul style="list-style-type: none"> • Max fine: \$25,000 for every day or part of a day on which the offence occurs or continues

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Statute (Provincial)	Description of Offence	Penalty
<i>Health Protection and Promotion Act</i>		
s.100(4)	Any person who contravenes a regulation is guilty of an offence	Individuals: <ul style="list-style-type: none"> • Max fine: \$5,000 for every day or part of a day on which the offence occurs or continues Corporations: <ul style="list-style-type: none"> • Max fine: \$25,000 for every day or part of a day on which the offence occurs or continues

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- **Regulation 562 (the Regulation) under the Health Protection and Promotion Act sets out how food premises and food must be maintained and handled, etc.**
 - **The Regulation applies to all food premises except:**
 - A food premise on a camp site that is either recreational or on unorganized territory
 - Food premises owned, operated or leased by religious organizations, service clubs and fraternal organizations
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- However, certain precautions must be followed if a religious organization, service club or fraternal organization prepares and serves meals for a special event to which the general public is invited, and “hazardous food” that originates from a food premise that is not inspected under this Regulation is included in such a meal
 - “Hazardous Food” means food that is capable of supporting the growth of organisms, including bacteria, viruses or cysts, capable of causing diseases in a host
 - e.g. Any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish

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- Some precautions that the Regulation mandates include:
 - Patrons attending the special event shall be notified in writing as to whether or not the food premise has been inspected in accordance with the Regulation
 - The notice shall be posted in a conspicuous place at the entrance to the food premise at which the special event meal is held

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- In addition, the operator must keep a list of all persons who donate hazardous food for the special event meal and must provide a copy of that list to a public health inspector on request
 - The list must contain each donor’s name, address and telephone number in full

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2. INTRODUCTION

- **Enforcement is increasing**

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3. CATEGORIES OF OFFENCES

- **Crime – Federal**
- **Regulatory – strict liability**
- **Absolute liability**
- **Administrative monetary penalties**

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4. REGULATORY OFFENCE – An Example

- **Church fundraiser where general public is invited**
- **Inspector present**
- **Answers to be guarded**
- **An inspection or an investigation**
- **Charter rights may exist**

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5. CHARGES

- Disclosure mandated
- Settlement discussions
- Pretrial hearings

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6. TRIAL

- Defences available
- Pros and cons to a trial

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7. PENALTIES

- Ontario favours large fines
- Regulatory offence fine compared to criminal offence fine
- Present sentences are not constructive or effective

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8. CRIMINAL OFFENCE

- Young victim
- Steps to be taken
- Avoid prejudging
- Avoid rumour mill
- Responses to police and media involvement
- Patience required

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