
THE OTTAWA REGION CHARITY LAW SEMINAR

Ottawa – February 11, 2009

Highlights in Charity Law: The Year in Review

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Highlights in Charity Law:
The Past Year In Review
(Current as of February 3, 2009)

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A. INTRODUCTION

- This presentation provides brief highlights of the following topics affecting charities:
 - Recent Changes, Rulings, and Tax Decisions Under the *Income Tax Act* (“ITA”)
 - New Policies, Publications, and Sanctions by Canada Revenue Agency (“CRA”)
 - Other Recent Federal and Provincial Issues Affecting Charities
 - Other Recent Case Law Affecting Charities

2

B. RECENT CHANGES, RULINGS, AND TAX DECISIONS UNDER THE *INCOME TAX ACT* (“ITA”)

1. Bill C-10 Proposed Amendments to the *Income Tax Act* Affecting Charities
 - Bill C-10 amended and consolidated earlier proposed amendments released on December 20, 2002, December 5, 2003, February 27, 2004, July 18, 2005, November 18, 2006, and October 29, 2007
 - On September 7, 2008, Bill C-10 died on Order Paper as a result of the dissolution of Parliament

3

2. 2008 Federal Budget

- The February 26, 2008 Federal Budget proposes a number of measures which will impact registered charities
- Bill C-50, an act to implement certain provisions of the 2008 Budget, received Royal Assent on June 18, 2008, and includes some, but not all of the 2008 Budget’s provisions dealing with charities

4

Included in Bill C-50

- Provisions to extend the capital gains tax exemption to donations of unlisted securities that are exchanged for publicly traded securities before being gifted to a registered charity on or after February 26, 2008, within 30 days of the exchange

Not included in Bill C-50

- The 2008 Budget's measures to amend the excess business holding rules that were enacted in December 2007, by:
 - Exempting certain unlisted shares that were held on March 18, 2007 from the divestiture requirements, subject to certain exceptions

5

- New rules with respect to shares held on March 18, 2007 by “non arm’s-length” trusts
- Extending anti-avoidance provisions to address certain inappropriate uses of trusts
- Introducing concept of “substituted shares”
 - “Substituted shares” are shares acquired in a corporate reorganization in exchange for other shares
 - “Substituted shares” will be treated the same as the shares for which they were exchanged for purposes of applying the exemption from the excess business holding rules

6

3. 2009 Federal Budget

- On January 27, 2009, Canada's federal government released its annual budget (“the Budget”)
- In the lead up to the Budget, Imagine Canada submitted a brief (“the Brief”) to the Prime Minister and the Finance Minister
- The Brief put forward the following three key stimulative measures to assist Canada's vulnerable populations and the charitable and non-profit sector that supports them:

- 1) maintain direct funding through federal grants and contributions agreements

7

- 2) earmark federal infrastructure funding for community and social services, arts and culture, sports and recreation and green retrofit initiatives
 - 3) provide a time-limited enhanced tax credit measure to stimulate giving
- The sector has expressed disappointment that, while the Budget provides for various grants, contributions, and earmarks that will benefit charities and non-profits, it does not establish any new tax incentives that might stimulate charitable giving

8

4. CRA Rulings on Flow-through Shares

- CRA released a number of advance income tax rulings approving the donation of flow-through shares
 - February 6, 2008 ruling (2007–0242361R3)
 - May 14, 2008 ruling (2007–0232271R3)
 - July 23, 2008 (2008–0281941R3 and 2008–0269281R3)
- However, there is need for caution in valuing flow-through shares for receipting purposes

9

C. NEW POLICIES, PUBLICATIONS, AND SANCTIONS BY CANADA REVENUE AGENCY

1. CRA Publishes Proposed Guidelines for Research as a Charitable Activity

- On January 9, 2008, CRA published the draft policy *Consultation on Proposed Guidelines for Research as a Charitable Activity*
- CRA generally defines research, for charitable purposes, as “the systematic investigation into and study of materials and sources on any non-frivolous subject to discover or improve knowledge”

10

- To be considered charitable, the research must be disseminated and made freely available to others who might want access to it, as opposed to being used for private or commercial purposes
- The mere accumulation and production of information on a given subject or about a specific event, or the gathering of market research about consumers’ needs and preferences, will not, in and of itself, be considered to be a charitable research activity

11

2. New CRA Guide on Charitable Work and Ethnocultural Groups

- On January 29, 2008, CRA released a new Guide to help ethnocultural organizations that want to apply for charitable status
- The Guide also provides some direction on the “advancement of religion” head of charity
 - The Guide reiterates that “it is a charitable purpose for an organization to teach the religious tenets, doctrines, practices, or culture associated with a specific faith or religion” but adds that “the religious beliefs or practices must not be subversive or immoral”

12

- “[T]eaching ethics or morals is not enough to qualify as a charity in the advancement-of-religion category”
- “There has to be a spiritual element to the teachings and the religious activities have to serve the public good”
- A group’s social events or cultural celebrations, such as “banquets, picnics, and Canada Day celebrations”, are not considered charitable purposes by CRA

13

3. New Checklists and Forms for Charities

- **On March 26, 2008, CRA released a number of new checklists:**
 - Basic Guidelines Checklist
 - Activities Checklist
 - Books and Records Checklist
 - Receipting Checklist
 - Spending Requirement Checklist
 - Receipting Checklist
 - T3010 Checklist
 - Legal Status Checklist
 - Change Checklist
- **On December 12, 2008, CRA also released its GST/HST Checklist**

14

- **CRA’s new Registered Charity Information Return package, which includes the following Forms:**
 - T3010B (09), Registered Charity Information Return
 - T1235 (09), Directors/Trustees and Like Officials Worksheet
 - T1236 (09), Qualified Donees Worksheet/Amounts Provided to Other Organizations
- **is to be used when filing annual information returns for fiscal periods ending on or after January 1, 2009, only**

15

- **For fiscal periods ending on or before December 31, 2008, registered charities must continue to use Form T3010A (05), with accompanying Forms T1235 and T1236**
- **Returns filed on the wrong form will be returned with requests to file on the right form**
- **The Registered Charity Information Return is now comprised of a simple core form with topic-related schedules**

16

4. CRA Proposed Policy on Fundraising by Registered Charities

- On March 31, 2008, CRA released its proposed policy in fundraising to provide registered charities with information pertaining to the use of resources for fundraising and the limits imposed by law
- On June 26, 2008, CRA released a 30-page background information document explaining the proposed policy
- The proposed policy provides a framework that explains how to distinguish between fundraising and other expenditures, and when fundraising activities may preclude registration or may result in revocation of registration
- Consultation on the proposed policy was open until August 31, 2008 for comments

17

- CRA plans to share the results of the consultation in its Fundraising Guidelines for Canadian Charities, which it expects to publish by late-February
- CRA is not currently planning a press release or other communications around the release of the Guidelines but, rather, expects to just post the guidelines on its website within the above time frame
- For more details on this topic, reference should be made to Terrance S. Carter's 2009 *Church and Charity Law Seminar* (Ottawa) presentation entitled, "The New CRA Proposed Fundraising Policy: What it Means for Your Charity"

18

5. CRA Policy Statement on Promotion of Volunteerism

- On May 1, 2008, CRA released a policy statement and summary policy in relation to organizations established to promote volunteerism in the community-at-large through broad-based activities
- To be registered under this policy, the applicant has to satisfy the following criteria:
 - Its formal purposes must clearly state that it is promoting volunteerism generally for the benefit of the community-at-large
 - It must accomplish its purpose through broad-based activities, which may or may not be set out in the objects, but must not be limited merely to fundraising

19

- The applicant has to clearly promote volunteerism to the community-at-large as opposed to supporting only one organization or one particular type of organization that reflects a single interest, unless the beneficiaries are registered charities or otherwise qualified donees
- The applicant can provide services only to qualified donees and non-profit organizations
- If the applicant funds any organizations, they must be registered charities and other qualified donees

20

6. CRA Policy Statement on Umbrella and Title Holding Organizations

- On May 6, 2008, CRA released its final form of policy statement and summary policy in relation to umbrella organizations and title holding organizations
- Umbrella organizations are described as organizations that support the charitable sector by promoting the efficiency and/or effectiveness of registered charities, or that advance a charitable purpose by working with and through member groups
- Title holding organizations can also be charitable if they are holding property for a registered charity or other qualified donee

21

7. CRA Releases a Consultation Paper for Proposed Guidelines for Sport and Charitable Registration

- On May 9, 2008, CRA released a consultation draft policy intended to clarify the ways in which organizations carrying out activities that include sport can potentially qualify for charitable registration
- Although the promotion of sport is not recognized as charitable, there are circumstances in which sports activities can be used to further a charitable purpose

22

- For an organization to be registered, the sport activities an organization pursues should:
 - Relate to and support its wholly charitable purpose(s) and be a reasonable way to achieve them, such as:
 - Promotion of health
 - Advancement of education
 - Advancement of religion
 - Relieving conditions associated with disabilities
 - Be incidental in nature
- Whether or not a sports activity will be acceptable will depend on the facts of each case and the charitable purpose the activity is intended to further

23

8. CRA Releases Model Objects

- On May 21, 2008, CRA released a non-exhaustive list of model objects that would be acceptable to CRA in order to assist organizations that wish to apply for charitable status or registered charities that want to amend one or more of their purposes
- CRA indicates that it will likely only need to consider whether:
 - The organization will deliver a public benefit
 - The proposed activities are charitable, will be carried out in a manner allowed by the Act, and will further one of its charitable objects
 - The organization is appropriately set up

24