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The PGT in Ontario: How to Avoid Complaints and Court Audits

(Power Point Presentation)

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Supervision of Charities

- Charitable property is vulnerable to abuse, neglect and exploitation.
- As such property is for the benefit of the public and not a named individual, there is no one to protect the charitable property if the trustees act improperly.
- Historically, the role of protecting property donated for charitable purposes rested with the Crown.

Office of the Public Guardian and Trustee

- This is part of the Crown's *parens patriae* duty, which in addition to charitable property, includes the Crown's duty to protect the person and property of minors, absentees, and the mentally incapable.
- The Attorney General as the chief law officer of the Crown is charged with protecting charitable property. In Ontario, this role has been assigned by statute to the Public Guardian and Trustee.

CCRA

- Charities fall under provincial jurisdiction, but the federal government has responsibility under the *Income Tax Act* (Canada).
- Federally, Canada Customs and Revenue Agency (CCRA) focuses on tax law and tax principles to prevent abuses of the charitable donation tax credit system.

Charitable Property Program

- The Charitable Property Program of the Office of the Public Guardian and Trustee monitors compliance with the laws relating to the proper use of charitable assets and to ensure trustees of charitable property are carrying out their fiduciary duties.

What PGT Can Look Into

The Public Guardian and Trustee can inquire into allegations that:

- charitable property is not being used for the purposes for which it is intended.
- those responsible for the administration of charitable property have abused their fiduciary duties;
- charitable property is being held in breach of legislation.

Note: Property includes all assets of a charity and not just real estate.

Use of Charitable Property

- Property can only be used for purposes consistent with the objects of the organization
- Special purpose or restricted purpose trust funds can only be used for the restricted purposes and not the general purpose of the organization. For instance, a bequest made solely for the purpose of maintaining the church should be segregated from the charity's other property and separately accounted for.

Administration of the Charity

Complaints that trustees or directors are not complying with their fiduciary duties include the following:

1. inadequate controls over the property resulting in it being wasted or placed at risk;
2. conflict of interest situations. This means charitable property is being used for the personal benefit of the trustees or directors or their immediate family, i.e., hiring directors as employees and paying them a salary;
3. excessive administrative or fundraising expenses.

Property Held in Breach of Legislation

- *Charities Accounting Act* – any land owned by a charity must be actually used or occupied for the charitable purposes.
- *Religious Organizations' Lands Act* – religious organizations that are not incorporated can lease any unused land for up to 40 years; any unleased land is subject to the *Charities Accounting Act*.

Property Held in Breach of Legislation Cont'd

- *Charitable Gifts Act* – restricts charities from owning more than a 10% interest in a business. This restriction does not apply to a business given to or vested in any organization of any religious denomination.

Avoiding Complaints- Use of Charitable Property

1. Know the constating documents. These are the documents that set up the charity such as a trust document, constitution or letters patent. These documents describe the objects the charity can undertake and set out the powers and any limitations on those powers.
2. Know if you have any restricted or special purpose trust funds. Know what restrictions apply. Make sure you keep detailed records, showing the restricted funds are held separately and you retain any documentation which establishes the trust.

Avoiding Complaints – Administration

1. If you are a director or trustee of a charity know your duties, responsibilities and powers. These include the duty to act reasonably and prudently; to keep proper accounts; to not place one's personal interests in conflict with the charity; to protect the property under your care. You need to be actively involved in the charity's decision making process. You need to act in the best interests of the charity making sure the charity operates effectively and within the law.

Administration Cont'd

2. Comply with all internal governance requirements, whether established by legislation i.e. the Ontario *Corporations Act* or internally i.e. your bylaws or constitution.
 - While we generally do not look into internal governance issues, breaching these requirements may indicate more serious problems with the organization and those who are running it.
 - Consider establishing a by-law that provides for the removal of directors who are not complying with their obligations.

Administration Cont'd

- 3. Keep your records of directors and officers accurate and up to date. All resignations should be in writing and keep copies. Ensure you keep your corporate information filings up-to-date.
- 4. Document your deliberations and actions not just your decisions

Administration Cont'd

- 5. **Be an open and transparent organization, when possible. Encourage your members to be informed and involved. Many complaints come from members who have tried to get information about decisions or finances concerning their religious organization but have been met with silence.**
- 6. **Keep full and complete financial records and make sure your records set out any special or restricted purpose trust funds.**

Administration Cont'd

- 7. If you do have special purpose trust funds or other funds not needed for current expenses, you have an obligation to invest those funds. You must comply with the obligations of the *Trustee Act* including having an investment plan.

Administration Cont'd

- 8. **If your organization is fundraising, be knowledgeable about all aspects of the campaign. Like any business, a charity should create a fund development plan that should closely consider the costs and risks of different fundraising strategies. Make sure there are no misrepresentations being made and the costs of your campaign are reasonable. The trustees and directors are personally responsible even if others do the fundraising including hired for-profit fundraisers.**

Court Audits

- **Court Audit** – Also known as a passing of accounts. In a court audit, a charity is required to apply for court approval of its accounts that it files with the court in estate form. The accounts are then reviewed by the OPGT to determine if funds have been misapplied. The OPGT can require a charity to submit its accounts for a court audit under s. 3 of the *Charities Accounting Act*.
- **Audit** – Audit report required under section 96 of the *Corporations Act* for all corporations incorporated under this Act.

Steps of Investigation

1. Request information from the charity.
2. Review information received.
3. Request clarification from the charity or require charity to take certain actions.
4. If information not received or organization does not take required action, OPGT may require a Court Audit.

Avoiding Court Audits

1. If you receive a request for information from the OPGT – section 2 of the *Charities Accounting Act* requires the charity to provide the requested information.
2. You are entitled to obtain professional advice, such as from a lawyer or accountant, before you forward the information. It is important to keep the OPGT advised of your actions. An extension of the time maybe granted for valid reasons.

Avoiding Court Audits cont'd

3. Even if you seek the assistance of professionals, continue to gather all relevant information to avoid unnecessary delays in responding.
4. Silence, vague, defensive answers and inconsistent information will cause closer review and scrutiny. An organized, comprehensive response that provides context, will help our office to better understand the rationale for the charity's actions. The more factors that cause concern, the greater the chance there will be a requirement for a court audit.

Avoiding Court Audits con'td

5. Comply with the filing requirements of the *Income Tax Act*. T3010's are reviewed to obtain information and to see if they are current and match the information received from the charity.
6. It is important to indicate what remedial actions have been taken by the charity or its plan to deal with the situation.

Conclusion

- **These suggestions cannot guarantee a complaint will not be made against your organization or prevent the OPGT from taking action when necessary. They should assist you to understand the complaint process and may provide both the organization and those who run the organization some protection if action is taken.**
- **The philosophy of the OPGT in reviewing complaints about charitable organizations is to work with charities to correct errors and to avoid problems in the future.**

Conclusion

- The OPGT acts to ensure the public's trust in the charitable sector is maintained. The actions taken by the office should not be seen as an obstacle but as improving the operations of the charity. All legitimate charities benefit if the public has confidence in the Charitable Sector.