

# Legal Limberness 101

## Maintaining a Financially Healthy Not-for-Profit Organization

Presented by

**Vancity**

citizensbank<sup>TM</sup>  
of canada



Human Resources and  
Social Development Canada

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*Funding for **Legal Limberness 101: Maintaining a Financially Healthy Not-For-Profit Organization** was provided by the Community Development and Partnerships Directorate of Human Resources and Social Development (HRSD) Canada. The views expressed in this handbook are the authors' and do not necessarily reflect the opinions of Human Resources and Social Development Canada or of the Federal Government.*

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## Introduction to the Financial Fitness Series

Vancity is very pleased to be able to participate in the development of these Financial Fitness materials for not-for-profit organizations. In our extensive work in the social and voluntary sector, it is a commonly expressed need for organizations to move themselves further along the curve of understanding what it takes to be a healthy, financially strong and stable organization.

Vancity, which is incorporated under the Credit Union Incorporation Act, has been helping British Columbia's organizations make the most of their assets and resources for many years. Vancity is Canada's largest credit union, with \$12 billion in assets, more than 340,000 members, and 51 branches throughout Greater Vancouver, the Fraser Valley and Victoria.

Citizens Bank of Canada is an online bank and a wholly owned subsidiary of Vancity, serving members across the country via the internet, 24-hour Service Centre and ATM network. The Vancity Group of Companies is guided by a commitment to corporate social responsibility, and to helping members and communities thrive and prosper.

At Vancity, we use our unique skills and expertise as a financial institution to create solutions to social, environmental and economic issues. Through innovative loan programs and deposit products, Vancity and its members are working to make a difference in communities here and around the world.

While there are a wide variety of support services available to assist entrepreneurs in developing healthy for-profit ventures, there appears to be a distinct lack of broad based informational supports for the not-for-profit sector. In 2006, Human Resources and Skills Development Canada (HRSDC) held a series of policy dialogues across Canada on social enterprises and the social economy. In many of the discussions practitioners talked about the challenges of effectively managing their organizations and enterprises. In response to the dialogues HRSDC has partnered with Vancity to develop the Financial Fitness Series. Vancity is grateful to, and acknowledges the foresight of HRSDC for their support in making the preparation of these handbook, and delivery of accompanying workshops possible.

In putting together the content for the three handbooks of the Financial Fitness series, Vancity has been able to leverage work already being done in the sector to provide education and training to enhance not-for-profit organization sustainability. It is Vancity's core belief that an organization's ability to make effective and enduring use of funding, whether in the form of grants, fee-for-service revenues, or bank loans, comes from a strong ability to organize, plan, manage and track the use of funding against pre-determined objectives.

In order to provide the most useful and streamlined information, we have brought together the resources of experts in the areas of legal matters pertaining to not-for-profit organizations, accounting issues which are most germane to the sector, and financial considerations to build healthy organizations. While there are considerable overlaps across these three areas, each has its own unique aspects which are deserving of more focused attention. We have constructed the handbook series in such a way as to provide an effective stand-alone presentation on each subject area, while maintaining a cohesive and uniform presentation style to facilitate a more robust educational experience that incorporates all three subjects.

The information and materials contained within this handbook are designed to assist individuals in the key management and Board roles within most not-for-profit organizations. The handbooks will be providing a crucial support piece to the delivery of a related workshop for each of the subject areas. However, acknowledging the widespread need for this information to be disseminated across the country, the workbook design will allow a user to understand the desired learning outcomes, gauge their own and organizational readiness in the subject area, and work through the core content and case material in a way which will not be entirely dependent on workshop attendance in order to receive significant value.

It is Vancity's hope to assist organizations in Canada by providing a more robust toolkit of skills and resources, and to assist with identifying areas for further development. We honour your work and your desire for self and organizational development and look forward to making this journey together.

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## Legal Limberness Self-assessment

The following is pre-test about legal issues that impact your not-for-profit organizations. It is designed to help you assess your base knowledge of this topic. The answers to these questions can be found throughout the text of the handbook and on page 50.

1. Which of the following are *not* part of the classic statement of the legal meaning of charity in Canada:
  - a) Relief of poverty
  - b) Provision of health care
  - c) Advancement of education
  - d) Altruism
  - e) Advancement of religion
  - f) Promotion of peace
  - g) Other purposes beneficial to the community
  
2. Approximately how often does the Supreme Court of Canada rule on a charity law case?
  - a) Every year
  - b) Once every 5 years
  - c) Once every 10 years
  - d) Once every 20 years
  
3. What are the three types or categories of charities in Canada?
  
  
  
  
  
  
  
  
  
  
4. Which of the following contains legal requirements that apply to all Canadian charities:
  - a) *Canada Corporations Act, Part II*
  - b) *Canada Charities Act*
  - c) *Federal Income Tax Act*
  - d) *Canada Donations Act*
  
  
  
  
  
  
  
  
  
  
5. How much of a charity's resources can be devoted to "political activities" each year?
  - a) 5%
  - b) 10%
  - c) 20%
  - d) 10 to 20% depending on the size of the charity
  - e) no more than 49%

6. Limited liability in a society or corporation without share capital protects:
  - a) Members from liability
  - b) Directors from liability
  - c) Both members and Directors from liability
  
7. For which of the following could a charity issue a donation receipt?
  - a) A gift of shares in a publicly traded company
  - b) The proceeds of a life insurance policy from a supporter who passed away
  - c) Ten hours of free computer repair work by a supportive computer company
  - d) A painting by a famous artist
  
8. The penalty for late filing of a charity's annual return – form T3010A – is?:
  - a) A \$100 fine
  - b) A \$500 fine
  - c) Revocation of charitable registration
  
9. True or False: Charities are prohibited from any business activities that compete with private sector businesses.
  
10. Which of the following are legal duties of Directors?:
  - a) Duty of knowledge
  - b) Duty of care
  - c) Duty of skill and prudence
  - d) Duty of diligence
  - e) All of the above

## Introduction

It is essential to acknowledge and fully understand how the legal mechanisms work in order to both maximize the advantages available to not-for-profit organizations, as well as to avoid potential pitfalls to successful operations. It is also just as important to identify where the knowledge gaps are for the organization's Board and management team so that appropriate expert advice can be solicited in a timely manner.

The sections which follow will provide an overview of the not-for-profit (NPO) and co-operative sectors and some background information which help to appreciate the full impact of these sectors on the Canadian economy. A discussion of some of the key governance issues and board duties accompanies this first section of the information. We will provide instruction on the differences in some of the more common forms of organization including co-operatives, social enterprises, not-for-profits and charities.

A core segment of the information is focused on the status of charitable organizations, including some of the benefits, the registration process, requirements to maintain charitable status and the regulatory environment for charities. Whether it is the goal of your organization to operate under official charitable status or not, it is valuable to understand what it takes to initiate and maintain the status, as well as developing a clear understanding of what the benefits will be.

While the information presented here is largely an overview of many concepts within the world of regulation and legal matters, it provides a sound starting point from which to identify key considerations which are applicable to your own organization. As the expression goes, "a little knowledge is a dangerous thing" – we hope this workbook will provide the seeds for further due diligence in the areas most applicable to your own situation.

The legal and regulatory environment within which all not-for-profit organizations operate in Canada can be a complex and confusing – albeit necessary – component of effective organization management. The same regulations which make it possible to provide much needed services and programs on a tax-free basis with access to funding also create their own reporting, registration and governance issues for not-for-profit organizations.

# 1. Overview of Canada's Not-for-Profit and Co-op Sectors

Research into Canada's not-for-profit sector has been led by Imagine Canada, Statistics Canada, the Muttart Foundation in Edmonton, Carleton University, and others across the country and internationally. The new data is triggering additional interest and research, so it is an exciting time to be working in the sector, as more and more becomes known about the contribution we make to the lives of Canadian communities and to the strength of the Canadian economy. Unfortunately, data on the size, scope and contribution of the co-operative sector lags behind: co-ops were not included in the Imagine Canada/Statistics Canada work done recently.

Sometimes described as the third leg of the three-legged stool that makes up Canadian society (the other legs being the public, or government, sector and the private, or for-profit business, sector), the not-for-profit sector plays a key role in both providing services for human needs, and identifying and advancing new policies to improve the lives of individuals and communities. This includes everything from managing animal shelters and food banks to advocating for environmental protection and international development initiatives.

How not-for-profits, or community benefit organizations, manage and organize themselves to do this mission work requires a set of skills and tools that call on issues of legal structures and reporting, financial management and funding, and accounting and reporting. This workbook focuses on the legal structures and reporting, and provides some guidance (and a number of references) for ensuring that not-for-profits – from provincially registered societies to federal registered charitable organizations, and including cooperatives and some forms of social enterprises – meet the requirements of operation and operate within durable, resilient and transparent structures.

With thirteen provinces and territories (and the provincial and territorial offices governing provincial and territorial “societies”) to the soon-to-be-abandoned *Canada Corporations Act*, Part II, which governs federally incorporated, non-charitable organizations, to different forms of charities registered under the Canada Revenue Agency, and to registration of cooperative structures and social enterprises; it is a confusing array of reporting requirements and legal obligations.

To compound the confusion, any one entity may be registered in more than one place: it is typical for many provincially-registered

Until recently, there was very little data on Canada's not-for-profit sector. But this is changing dramatically as social science researchers have turned their attention to the sector and produced new data that improves our understanding of the sector.

Canada's size and geography is reflected in the diversity of available legal structures and attendant rules governing those structures.

not-for-profit societies to also have federal charitable registration, or for an organization to have two conjoined twin organizations – a provincial society that does advocacy work; and, a sibling organization (that may be federally or provincially registered) that has federal charitable status, for the purposes of providing charitable receipts for donations, and with work limited to that prescribed under one of the four heads of charity (described later).

The recent enthusiasm by the federal government to support the “social economy” and the influence that is being felt by “investors” from organizations like Social Venture Partners is also adding to the range of structures being developed in the not-for-profit sector. So, also common is for a provincial society or a federal charity to have a subsidiary or related social enterprise (which may share premises, staff, and some governance features); the social enterprise may focus on generating financial surpluses to support the mission work of the charity or society.

Here are some examples of what registrations a not-for-profit organization might hold:

The Global South Development Initiative, established in Toronto in 1990 as a volunteer, non-registered all-volunteer organization.

- In 1998, it incorporates in Ontario, as a not-for-profit corporation (if it was registering in BC, it would be not-for-profit society). This makes it a legal entity, and it can enter contracts (lease an office, employ staff)
- In 2000, it seeks and is granted federal registered charity status. This allows it to issue tax-creditable receipts for donations.
- In 2002, it sets up a subsidiary social-enterprise, as a limited partnership. This allows it to generate “surplus” funds through the sale of consulting services to government and private companies interested in working in the global south. Those funds are kicked back up to the charity, in the form of a donation.
- In 2004, some of its long-time staff set up a co-operative, to import fair trade goods from global south partners, for sale to Canadian markets.

These four different registrations overlap to different extents and have different reporting and legal requirements.

There may be some overlap of Board members, and even some sharing of resources (including shared premises and shared staff); however, there are different rules for each type of registration and a not-for-profit that is diversifying its very organizational structures should seek legal and financing management counsel to ensure that the different rules are understood and respected. In particular, the

rules around “related business” are still being interpreted by Revenue Canada, and social enterprises that are now being contemplated – in part as a response to interest in the development of the social economy – are cautioned to fully consider all the requirements related to operating a related business. Taxation, governance, staff resources and use of premises are all to be considered.

## **Forms of organization**

While the focus of the information and discussion for this handbook series is towards pure not-for-profit organizations, there are a number of different forms of organization, or variations on the most common organizational structures which bear mention. In terms of financial stability of the organization, there are differences in revenue stream characteristics, decision making process, tax considerations, and member commitment to the mission.

A brief overview of several of the most common and emerging organization structures follows.

### **Not-for-profit and charitable organizations**

The most common form of organization is a not-for-profit organization. This is an organization which operates with a primary goal to deliver a program or service of benefit to others. The organization is governed by a Board of Directors and there are stringent regulations for the balancing of income and expenses in order that there is no or minimal excess of income over expenses, with all resources being directed towards the stated and agreed upon objectives.

The primary revenue source for not-for-profit organizations is through fundraising and grants. Some NPOs will engage in fee-for-service activities; however, this is typically a lesser part of overall revenue development. This heavy reliance on fundraising means that often a significant amount of organizational energy is spent on fund development in order to ensure a consistent and healthy revenue source going forward. Also, the goals and objectives of the funder become an important deliverable in conjunction with the services or program of the not-for-profit, and may become an onerous component of the funding itself.

### **Social enterprise**

An emerging form of organization with the objective of addressing social and/or environmental concerns is the social enterprise. In its purest form, a social enterprise is a corporation with shares held by one or several individuals, or by another organization.

Each organization form has its own strengths and weaknesses, however, the situation and purpose of the organization will dictate which structure is most appropriate. In some cases, involvement of professional advice will assist in drilling down sufficiently to determine the most applicable form of organization.

Organizations operating as a registered charity have the form of a not-for-profit and undergo rigorous evaluation of the charitable objectives and goals of the organization in order to qualify as charitable.

The primary revenue source is the service or program delivery itself. The owners of the social enterprise are responsible for identifying a niche where there is a gap in service delivery which can be supported by an income generating solution. Decisions can be very quick if the ownership or direction of the organization is held by one or a few people. They have the authority to change the direction of the organization, or commit the organization as they deem it to be required.

### **For-profit subsidiaries**

Often a not-for-profit organization can identify an area of expertise which it has developed in the course of delivery of its own services or programs. This area of expertise may have direct application to the for-profit world and the NPO may be able to compete very successfully with other for-profit entities to deliver this service. In order to establish the appropriate management and reporting structure to support delivery of a profit generating service, the NPO can establish its own social enterprise: a corporation with 100% of the shares being owned by the NPO. All profits will accrue to, and be used in delivery of services by the not-for-profit organization.

Careful attention to recording and tracking revenues and expenses will allow the organization to demonstrate and defend the appropriate channeling of the profits generated.

### **Co-operatives**

Another form of social organization which has existed for over a hundred years is the co-operative. One aspect of the social benefit delivered by a co-operative is in delivering on a defined need within population which gave rise to the co-op in the first place. Some co-operatives are formed with the specific intent to deliver needed social programs or services. Generally, the recipients or customers of the co-op become members to be eligible to receive the service. Any profit which may be generated by the co-op organization belongs to all the members according to the extent to which they make use of the services provided.

The ownership interest is held by the members and it is equally shared among all members. The decision process can also be a more cumbersome one, involving all members in a one-member, one-vote arrangement.

### **Related entities**

As the nature and complexity of organizations increases, sometimes encompassing several different organizations, and different forms of organization within one group, the task of effective management

The primary intent of a social enterprise is that of addressing the identified social or environmental need, however, there is the possibility, and generally expectation that a level of profitability will be maintained in the ongoing delivery of service or programs.

For profit subsidiaries have the benefit of creating a source of revenue which is separate from grants or fundraising, and allows for a higher level of self-sufficiency on the part of the organization.

The benefit of the member relationship that co-op service providers and users have is a greater level of commitment by all participants in the success of the organization.

grows accordingly. Often one individual staff member is fulfilling duties relating to several different entities, and salary and related costs must be allocated accordingly. While there can be benefits derived from a degree of flexibility in how costs or revenues are allocated, these must be managed, tracked and reported on in ways that are effective and efficient. The more complex the organization becomes, the greater the number of interested agencies it attracts, and the perceived benefits must be carefully weighed against the organization's capacity to fulfill all related obligations.

## ***Incorporation, or “coming into being”***

The term “incorporation” is generally associated with for-profit business corporations, but it applies also to the process of creating a society under the *BC Society Act*, the *Ontario Corporations Act*, similar legislation in other provinces, or the *Canada Corporations Act*, Part II. These are all types of corporations.

The term “corporations without share capital” is used in the *Canada Corporations Act*, Part II and some provinces, including Ontario, while “society” is used in other provinces, including British Columbia.

Historically charities took the form of trusts, since the legislation enabling incorporation for charities is relatively recent. New trusts still register as charities, as may organizations that are neither incorporated nor trusts, so long as they have adopted governance documents sufficient to meet the Charities Directorate's requirements.

The legal consequences of incorporation are profound. They include powers that in effect bring life to the corporation, including the power to:

- enter into contracts;
- buy, sell or develop property;
- borrow money;
- employ persons; and
- sue or be sued.


Incorporation of a society or corporation without share capital also provides that the members are not liable in their individual capacity as members for the debts or liabilities of the corporation.


The process for incorporating is quite similar, whether under federal or provincial legislation. If you want to incorporate **federally**, The *Canada Corporations Act* is administered by [Corporations Canada](#), which is part of Industry Canada, and provides information about

The needs of charitable organizations to stabilize revenue sources must be balanced with the interests of donors, contributors and government agencies.

Incorporation is the process by which a corporation is created.

Not all charities are incorporated.

This symbol  indicates a live weblink that can be found on the CDRom version of this handbook.

 Corporations Canada website has all the documents needed to incorporate federally: [forms](#); [information kits](#); [policies](#); [fee schedule](#); [legislation and other related documents](#).

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corporations without share capital. Before you decide on where to register, think whether you will need to operate nationally, or only provincially (but may need to have federal charitable status).

In November, 2004, a modern new bill to replace the inadequate legislation, Bill C-21 was given first reading in Parliament. Entitled *An Act respecting not-for-profit corporations and other corporations without share capital*, it represents a substantial improvement. As of December 13, 2006, Bill C-21 had not yet been passed by Parliament.

Across the country, there are provincial and territorial departments to deal with non-charitable registration, as a society (or corporation in Ontario). Many provinces also have other legislation that governs the activities of provincially-registered agencies, such as the Alberta *Charitable Fundraising Act*. Check the regulations and laws of the province in which you are (1) registered; and (2) carry on operations. From north to south and coast to coast, here is where to look for information about provincial or territorial registration.

In **Nunavut**, contact the [Department of Culture, Language, Elders and Youth](#) to find out how to register your not-for profit organization.


In the **Northwest Territories**, contact [Municipal and Community Affairs](#). Community projects supported by "Resident Community Governing Bodies" are eligible for territorial funding, without legal incorporation.


In the **Yukon**, contact the [Department of Community Affairs](#).


In **British Columbia**, the BC *Society Act* is administered by the BC Ministry of Finance, and electronic guidance and forms are available in the [Societies section](#) of their website. The Ministry also looks after the incorporation and registration of co-operatives and proprietorships/partnerships (which may be of interest to social enterprises).


In **Alberta**, the [Service Alberta](#) website contains information about charitable organizations and fund-raising businesses in the province, how to license a fund-raising business, how to incorporate a co-operative in Alberta and register an out-of Alberta co-operative, how to register a society, and how to register a non-profit organization.

In **Saskatchewan**, the [Communities and Society](#) website includes information for and about nonprofit and voluntary organizations in the province of Saskatchewan.

 The [Canada Corporations Act, Part II](#) is dated, inadequate and in need of replacement.

 Detailed information about the bill is available at the [Industry Canada](#) website.

 The text of the bill itself is available at the [Parliament of Canada](#) website.

 All of the territorial and provincial contacts in the body text at left are hyperlinked.

See **Manitoba** [Culture, Heritage and Recreation](#) for guidance on provincial registration of not-for-profits and cooperatives.

The **Ontario** *Corporations Act* is administered by the Ontario Ministry of Government Services. Ontario offers a terrific “[Not-for-Profit Incorporator’s Guide](#).” The Guide identifies not only the registration requirements for organizations and co-operatives, but also points to other legislation with which to comply for Ontario agencies.

In **Quebec**, [Revenu Quebec](#) provides information on operating in that jurisdiction, including issues of Directors’ liability and charitable registration. Extensive information and guidance is available on its website, in both official languages!

For **New Brunswick**, [information on how to establish and operate a not-for-profit organization](#) is maintained by the federal government.

In **Nova Scotia**, the [Societies Act](#) governs the establishment of not-for-profits.


On **Prince Edward Island**, [InfoPEI](#) sets out information on registering not-for-profit corporations in that province.

And in **Newfoundland and Labrador**, see the [government’s main page](#) at for information on community organizations and programs.

The same consideration about the scope of operations of a co-op should be made before determining which route to follow. Also, provincial/ territorial legislation is uneven across the country: there are good models and resources in some of the larger provinces, but agencies in some of the smaller provinces may need to rely on federal incorporation.

Please see “Regulation of Co-operatives,” later in this handbook for more information on setting up and managing a cooperative. Corporations Canada, which is part of Industry Canada, has something called an “[Incorporation Tool Kit](#)” for federally incorporated co-operatives. Likewise, both the Ontario and BC governments have excellent resources available on line (see reference materials), as does the [Canadian Co-operative Association](#).

Just as a not-for-profit agency can be incorporated provincially (or territorially) under the local legislation or it can be incorporated federally under the *Canada Corporations Act*, so too can a co-operative be incorporated provincially/territorially or federally.

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## Governance Issues

### The Potential Liabilities of Directors

Liabilities for Directors can take many forms. For example, a Director could be found criminally liable for a fraud committed by the organization if the Director allowed it to happen. Similarly, a Director could be found civilly liable if he or she authorized a wrongful act that harmed someone. There are also potential statutory liabilities under incorporation, tax, employment, environmental and other legislation. Cases of Director liability are rare in the charitable and non-profit world, but it can happen.

Two excellent guides to this field of law are:

- Kelly, HM (2004). *Duties and responsibilities of Directors of not-for-profit organizations*. Toronto, ON: Canadian Society of Association Executives.
- Bourgeois, DJ (2004, April). [\*Board governance: When does it become Director's negligence\*](#). Paper presented at the Canadian Bar Association 2<sup>nd</sup> National Symposium on Charity Law, Toronto, ON.

Unfortunately, *Duties and responsibilities of Directors of not-for-profit organizations* is not available online, but it can be purchased from the Canadian Society of Association Executives. It is a succinct and clear publication and worth purchasing for each Director; it is an excellent addition to the reference material of every charity or non-profit organization Director.

Another helpful reference tool is [\*Legal risk management checklist for charities\*](#) by Carter, TS & Connor, JM (2005). (Note: parts of this checklist are included in this Handbook in the Resources section.)

Finally, there is a great reference book published by Industry Canada. [\*The Primer for Directors of Not-for-Profit Corporations \(Rights, Duties and Practices\)\*](#) was jointly written with the Canadian Centre for Philanthropy, the Canadian Bar Association, and the Canadian Society of Association Executives, this resource provides valuable information in convenient format to inform these directors and officers about their duties, rights and liabilities.

These reference materials provide a good explanation and analysis of this rather complex field of law that can't be condensed to the space available here, but some of the basics elements and principles can be addressed.

Serving as a Director on the Board of a charity or non-profit organization is one of the best ways to engage in civil society. But it is a serious undertaking that can expose you to liabilities and should only be made with knowledge of how to fulfill the duties of Directors properly.

There are several steps Directors can take to avoid personal liability. These include:

- Ensuring the organization carries appropriate and sufficient insurance
- Seeking independent advice on issues beyond the Board's knowledge
- Seeking ratification of Board decisions by the membership; and
- Disclosing of all conflicting or competing interests a Director may have in relation to the organization.



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## ***Duties of Directors***

### **Duty of Care**

The Duty of Care – which has a particular legal meaning – has been captured in the BC *Society Act*, which states in section 25:

- (1) A Director of a society must
  - (a) act honestly and in good faith and in the best interests of the society, and
  - (b) exercise the care, diligence and skill of a reasonably prudent person, in exercising the powers and performing the functions as a Director.

There is some confusion as to whether this is an objective test or a subjective test. The BC legislation is clear that an objective test applies in BC – the care, diligence and skill of a reasonably prudent person. In some jurisdictions the test may be subjective – that is for a Director who is a lawyer or an accountant, the care, diligence and skill of a reasonably prudent lawyer or accountant.

The case law and legislation in each jurisdiction needs to be considered to determine the applicable test. Consult with your provincial or territorial registrar (of societies or not-for-profit corporations) to understand how Duty of Care is understood in your province or territory; refer to the list of agencies above in “Incorporation.”

### **Duty of skill and prudence**

Very closely related to the duty of care, the duty of skill and prudence requires Directors to be thoughtful, cautious and to apply foresight to courses of action, acting always in the best interests of the organization.

### **Duty of knowledge**

The duty of knowledge requires Directors to learn as much as possible about the organization: to study the incorporation documents, bylaws, policies, past minutes, history, plans and important issues.

### **Duty of diligence**

Duty of diligence means Directors must do their homework, be prepared, attentive and active. Directors should attend meetings regularly, raise questions and add value to discussions and deliberations.

Understanding and meeting the common law duties of Directors is critically important. They will help ensure that most potential problems are dealt with before they become real problems.

Duty of Care is the most important of the Duties listed here, because of its specific legal meaning.

## **Duty to manage**

The membership of the organization relies upon the Board of Directors to manage the business of the organization. In some organizations Directors must do this themselves, and in other cases Directors can delegate to officers and staff. Either way, the Directors have a duty to ensure that the organization is managed properly.

## **Duty to act within scope of authority**

Charities and not-for-profit organizations are limited by the law to doing just those things for which they are authorized in the objects or purposes language in their incorporation documents. It is unlawful or *ultra vires* for them to stray beyond these bounds. It is important for Directors to reference back to their purposes or objects each time a new proposal or opportunity comes before, for it is not uncommon for organization to drift in this regard over time.

## **Duty to avoid conflicts of interest**

Directors must be very careful not to profit from their position as Director at the expense of the organization. To be in a position to do so is a conflict of interest, which must be disclosed to the other Directors. A Director in a conflict of interest must not participate in or attempt to influence the organizations decision-making on the issue in question.

The law in this area is unsettled as to whether all Directors of charities and non-profit organizations are subject to the fiduciary duties. These are duties arising from trust law, and they apply to situations where one person holds power over another in a trust relationship. Fiduciary duties require that Directors meet a higher standard than the common law duties. Fiduciaries must act in the utmost good faith, confidence, candour, honesty and loyalty to the organization. The existence of two subtly different legal standards - common law and fiduciary – is an unhelpful grey area in the law.

Acting honestly, in good faith and in the best interests of the organization goes a very long way to avoiding potential liability.

A helpful distillation of all of this legal detail is from page 15 of *Duties and responsibilities of Directors of not-for-profit organizations*, by Hugh M. Kelly.


*“A Director who acts honestly and meets these standards of conduct and care will not be liable for simple errors or business judgment that occur while the Director performs the duties of the office.”*

## Portrait of the voluntary sector

Some of the findings of *The Canadian not-for-profit and voluntary sector in comparative perspective* are very interesting.

For example:


- Canada has one of the largest and most vibrant not-for-profit sectors in the world, second only to the Netherlands in terms of share of the economically active population.
- In 1999, the Sector contributed \$61.8 billion dollars to Canada's Gross Domestic Product. This equals 6.8% of Canada's total GDP.
- Also in 1999 the value of volunteer contribution to GDP as measured in accordance with international standards was an additional \$14 billion or 1.4% of GDP. This brings the total contribution of the sector to \$75.9 billion or 8.5% of GDP.
- The sector employs over 2 million full-time equivalents (FTEs), two-thirds of whom are paid employees, while one-third are volunteers. This is approximately 12 percent of Canada's economically active population.
- The sector is as significant an employer as Canada's entire manufacturing industry.
- The "big three" in the sector are hospitals, universities and colleges. When their contribution to GDP and employment are removed from the equation, the sector contributes \$34.7 billion to the GDP and 1.5 million FTEs, two-thirds of whom are paid employees.

 An excellent, current and accessible report is [\*The Canadian not-for-profit and voluntary sector in comparative perspective\*](#). This report compares what it calls Canada's "not-for-profit and voluntary sector" (charities and not-for-profit organizations) with those sectors in 36 other countries as part of the comprehensive international analysis being led by Lester Salamon from Johns Hopkins University in Baltimore.

## 2. The Regulation of Charities

### **80,000+ Charities Active in Canada**

While the [\*The Canadian not-for-profit and voluntary sector in comparative perspective\*](#) examines Canada's charities and not-for-profit organizations, the Charities Directorate at the Canada Revenue Agency publishes statistics each year that describe just the charities. [\*Registered Charities Newsletter No. 27 Fall 2006\*](#), includes the following table of data:

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#### **Number of charities as of December 2005**

The charitable sector continued to grow in the last year, and it now comprises more than 82,200 organizations.

Designation	Public foundation	Private foundation	Charitable organization	Total
Welfare	1,692	2,049	12,770	16,511
Health	1,018	265	4,333	5,616
Education	755	757	11,866	13,378
Religion	306	622	31,931	32,859
Benefits to the community	873	515	12,491	13,879
Total	4,644	4,208	73,391	82,243

### **Legal Meaning of Charity**

Canada does not have a national Charities Act with a comprehensive definition charity. Instead, we have legal concept of charity that has evolved literally over the centuries. The starting point is the Statute of Elizabeth, and English Act from 1601, which stated that charity consisted of:

... relief of aged, impotent, and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities; the repair of bridges, ports, havens, causeways, churches, sea banks and highways; the education and preferment of orphans; the relief, stock, or maintenance of houses of correction; marriages of poor maids; supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed; the relief or redemption of prisoners or captives; and the aid or ease of any poor inhabitants concerning payments of fifteens, setting out of soldiers, and other taxes.

In 1891, this was distilled in the classic English case *Pemsel* to the following statement:

“Charity” in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads.

These are the four heads of charity, modified in the Charities Directorate’s guidance. For an organization to be registered as a charity, its purposes have to fall within one or more of the following categories:

1. the relief of poverty;
2. the advancement of education;
3. the advancement of religion; or
4. other purposes beneficial to the community in a way the law regards as charitable.

The imprecision of this categorization, particularly the fourth head, has been criticized as inadequate guidance. Examples of the sorts of purposes included in the fourth head are:

- environmental protection
- parks and recreation facilities
- daycares
- ambulance services, crime prevention and fire protection
- animal welfare
- support and services for the charitable sector

But there is no definitive, comprehensive list to guide the public in Canada.

In England and Wales this changed dramatically on November 8, 2006, when a new *Charities Act* received Royal Assent. After broad public consultation and serious debate, the legal meaning of charity as state in the *Pemsel* case was significantly modernized (see reference material – Meaning of “charitable purpose” – England and Wales).

This is the biggest step forward in the history of charity law in jurisdictions that have inherited English common law. While this new legislation has no formal application to Canada, it begs the obvious question – should Canada move toward a clear and comprehensive “Made in Canada” definition of “charity”?

## **Charities Directorate, Canada Revenue Agency**

Like many fields of Canadian law, the regulation of charities in Canada has an odd constitutional twist. Section 92 of the *Constitution Act, 1867* states clearly that charities fall within provincial jurisdiction. Despite this, the key regulator is in fact the Charities Directorate, which is part of the federal government's Canada Revenue Agency (CRA).

The Charities Directorate is responsible for administering the provisions of the federal *Income Tax Act* that apply to charities and donations to charities. It is the keeper of the "register" of charities – determining which organizations meet the test of charity and enforcing rules that are based on its interpretation of the federal *Income Tax Act* and the law as of charity as developed by the courts over the decades and indeed centuries.


It is a difficult role because the legislative provisions are sparse and the case law poorly developed. On average, the Supreme Court of Canada has dealt with a charity law case just once every 20 years. The Charities Directorate must also deal with a tension between the CRA's role as protector of the federal purse and the role of guide and support to Canada's charities.

### **Role of the provinces**

It is a surprise to many to learn that Canada's *Constitution Act, 1867*, gives legislative jurisdiction over charities to the provinces. But as we have seen, it is the federal government that takes the lead role in regulating charities through the federal *Income Tax Act*.

Most provinces do not regulate charities beyond the basic incorporation functions. Ontario is an exception. There are three provincial Acts in Ontario that charities should be aware of: the *Charitable Gifts Act*, the *Charitable Institutions Act* and the *Charitable Accounting Act*. The first of these Acts prevents charities, other than religious institutions, from owning or controlling more than a ten percent interest in a for-profit business, and the second regulates charities that operate certain care facilities and homes.

The *Charitable Accounting Act* is significant for charities in two ways. First, it obligates charities to inform the Ontario Public Guardian and Trustee (PG&T) of all gifts they receive, and to provide other information at the request of the PG&T. Second, this Act creates a system for public complaints about the conduct of

 A very valuable resource for charities and potential charities is the [Charity Directorate's](#) website, which contains essential forms relating to registering and reporting, and also includes policy guidance on a wide range of issues. While some of the guidance is technical and complex, it's generally a user-friendly resource that all charities should add to their "favourites" list of weblinks.

charities and for investigations and public reports by the PG&T.

Alberta has one piece of legislation directed at charities. The *Charitable Fund-raising Act* provides information to the public to help prevent abuse during fund-raising efforts by charities.

## **Registering as a charity and maintaining status**

To register as a charity, an organization must apply to, and establish to the Charity Directorate's satisfaction, that its purposes and activities meet the test of charity (fall within the four heads of charity discussed above).


Great care and attention are needed when applying to register as a charity. A poorly crafted or incomplete application can create delays and complications that can take months to repair, or can result in rejection. It is always helpful to contact the Charities Directorate before submitting an application for guidance; it may help speed the application process, and it will certainly reduce the chances your application is returned for revisions.

The most critical elements to the application are the organization's purposes or objects language in its governing documents (constitution, deed of trust) as discussed above, and the activities statement – the answer to question 13A in the application form. These both receive thorough scrutiny from the Charities Directorate.

It is best to type the activities statement and include that with the application package rather than to write by hand in the space provided. That way a more complete and polished statement can be produced with wide input from your stakeholders. Take your time and compose something that will create a clear and complete picture for the Charities Directorate of what your organization does or plans to do.

Once the application is complete and submitted, patience becomes essential. It takes roughly four to six months to receive a substantive response from the Charities Directorate. It may be longer if the application is complicated.

It is very common to receive questions from the Charities Directorate and to be asked for more information. Often an applicant will be required to make changes to its purposes language or activities before it will be registered as a charity. It can often be very helpful to speak with the Charities Directorate staff person reviewing the application to learn more about possible concerns and to provide explanations that may help the reviewer.

 The two essential documents for completing the application process are Form T2050 - "[Application to Register as a Charity Under the Income Tax Act](#)" and the explanatory document T4063 - "[Registering a Charity for Income Tax Purposes](#)."

If all goes well you will receive a notice with a charitable registration number, classification as a charitable organization, public foundation or private foundation, and package describing the obligations of charitable status.

## Pre-approved charitable clauses

One way to ensure your charitable registration goes smoothly is to use a pre-approved clause for your objects and any special provisions you might be writing into your constitution and bylaws. The easier it is for the CRA staff to understand, and to compare to other existing charities, the easier it is for them to approve.

## Annual charitable return

Once registered, a charity must comply with a range of laws and Charities Directorate administrative policies unique to charities. They must also submit a detailed annual report to the Charities Directorate in form T3010A. It is a densely packed, four-page form that asks questions about income, expenditures, fundraising, programs, governance, and other details. It must be submitted within six months of the charity's yearend. It is a good idea to get an early start on it to avoid the \$500 fine for late filing (the penalty was previously revocation of registration).

## Keeping records

Record-keeping is important in all organizations, but it is particularly important for charities. This is primarily because the donation receipts issued by charities provide tax advantages to donors, which creates a strong public interest in the integrity of donation receipt system. Good record-keeping is fundamental to ensuring this integrity.

In addition to receipt management, charities like other organizations, should pay close attention to three types of records – financial, governance and contractual. Charities that fail to tend to all three of these types of records risk serious problems for the organization and potentially the Directors personally.

Financial record-keeping follows established rules and while they can be difficult for newcomers to the field to master, are quite straightforward (and is covered in detail in the Finance/Accounting handbooks which are part of this series).

Governance record-keeping means the constitution and bylaws, and any amendments, and the minutes of meetings of members, Directors and Board committees. The skilled production and management of records of these types is essential, and, when

A variety of pre-approved clauses, under each of the four heads of charity can be found in the Resource section of the handbook.



Charities Directorate form T3010 – [New Registered Charity Information Return Package](#).



The Charities Directorate has very specific [donation receipt handling and recording requirements](#). These requirements must be followed carefully.

dealing with an audit by the Charities Directorate, can be just as important as good financial records to demonstrate compliance with the law.

Contractual records also need regular attention. Documents such as leases, employment contracts, and insurance are too often misplaced or ignored. Responsibility for these documents should be clearly assigned and the relationships obligations they contain should be routinely reviewed. In addition, close attention should be paid to who is actually entitled/authorized to sign contracts: these authorities should be set out by the Board of Directors, and closely managed. Too commonly, the total dollar value (or potential exposure to the not-for-profit) is not considered when staff sign a contract for lease of premises or equipment, or a contract for employment.


The CRA has just closed the application process for groups to receive funding to registered charities and non-profit organizations in Canada to support activities associated with developing, delivering, and evaluating innovative education and training projects on regulatory compliance in the charitable sector. This approach will facilitate partnerships with the sector. It will also provide time-limited financial support to build the capacity to educate the sector beyond the funding period. From now until 2008, successful proponents will be developing new training tools; keep watching the website at for [updates on what tools and training are being developed](#).


### ***Pemsel in 2007 – an uncomfortable fit?***

While the four heads of charity are based on *Pemsel's Case* of 1891 in Victorian England, in recent years the Canada Revenue Agency has been pushed to make those four heads expand to fit new types of charitable activities. Some of the best work has been done in the areas of community economic development and racial equality. In addition, although not to everyone's satisfaction, significant progress has been made to clarify what constitutes acceptable political activity and the limits on same.

### **Community economic development and charity**


The relationship between community economic development (CED) activities and charity has never been completely clear. This is because CED activities are often new and innovative and expand beyond the traditional charitable notions of relief of poverty and advancement of education.

 The CRA has a [detailed guide to keeping records](#) to help organizations meet record-keeping requirements.

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The four heads of charity will continue to bump up against emerging public policy areas that aren't satisfactorily covered by traditional heads and more reform of our laws is indicated.


In 1999, the Charities Directorate published RC4143 – [Registered Charities: Community Economic Development Programs](#), in an effort to clarify its treatment of this complex area, and to keep pace with the new developments among CED organizations. It is a helpful guide that explains the regulatory approach to a range of topics, such as economically challenged communities, micro enterprise loan funds, social businesses employing individuals with disabilities, and program related investments.

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## Promoting racial equality

In 2003, the Charities Directorate expanded the fourth head of charity by officially adopting a new policy to recognize the promotion of racial equality as charitable. This move followed a similar expansion in England and Wales, where, following serious racial violence, the Charities Commission recognized the seriousness of racial tensions and the potential for community groups to address the problems underlying the violence.

Canada’s Charities Directorate responded with policy statement CPS-021 – [Registering Charities the Promote Racial Equality](#). This document illustrates that the legal concept of charity is not static in Canada, but can evolve to address serious issues and problems.

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## “Political activities” and participating in public policy debate

There has been wide spread fear among charities that they could lose their registration if they spoke out on issues relating to their charitable work. The Income Tax Act, the decisions of the courts and the policy guidance from the Charities Directorate was of little practical help to charities interested in tackling their charitable issues by advocating for changes to the law or government policy. It was clear that partisan politics was off-side for charities, but beyond that was a big grey area. It wasn’t clear, for example whether an environmental charity could initiate a petition to expand a park’s boundaries without jeopardizing its charitable status for being “too political.”

A longstanding sore spot for many charities has been the confusion arising from the law and related administrative policies regarding “advocacy” or participation in public policy debate by charities.

In 2003, after considerable work by IMPACS – the Institute for Media and Public Policy, Imagine Canada and a coalition of foundations and other charities, the Charities Directorate produced new policy guidance – CPS-022 “[Political Activities](#)”.

In this document the Charities Director sets out what activities are prohibited, what can be done in limited amounts, and what can be done without restriction. “Political activity” is defined, as are other concepts including, “public awareness campaigns” and “communication with government.”


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The Charities Director has removed much of the uncertainty from this area and have provided charities with more scope to participate in public policy debate than may have been the case before. While there is a coherent case for still greater latitude for charities in this area, this policy statement is an improvement, and important reading for all charities looking to solve problems rather than just treat symptoms.

### ***Related business activities***

Another somewhat controversial issue is business activity by charities. Economic pressures lead many charities to be entrepreneurial in their efforts to remain viable. Often this can create competition and tension with existing for-profit enterprises. This creates a difficult public policy balance between the need to enable viability among tax-subsidized charities on the one hand and the need to encourage healthy tax paying for profit enterprises on the other.

The federal government's treatment of this balance is found in CPS-019 – [What is a Related Business](#). This policy guidance is quite complex but does provide examples of the types of enterprises the Charities Directorate will accept as “related business.” The guidance also confirms that charitable organizations (as opposed to foundations) can create and control for-profit taxable corporations to house business activities, the proceeds of which can flow to the charity to support its works.

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### ***Operating outside Canada***

Canadian charities may only make grants to “qualified donees” as defined in the federal *Income Tax Act*, which includes, among some other entities:

- other Canadian registered charities;
- the United Nations and its agencies;
- a university that is outside Canada that is prescribed to be a university the student body of which ordinarily includes students from Canada; and
- a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift during the fiscal period or in the 12 months immediately preceding the period.

Otherwise, Canadian charities must do the international work themselves, retain an agent or hire a contractor to do the work on the charity's behalf. Another option is to participate in a joint venture or co-operative partnership as defined by the Charities Directorate in the publication RC4106 – [Registered Charities](#) –

Canadian charities engaging in international work cannot simply grant funds to similar organizations based in other countries, even if those organizations are recognized as charities by the governments of other countries.

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## Operating Outside Canada.

RC4016 sets high standards and provides detailed guidance as to how Canadian charities should structure, document and monitor international work. The public policy concern behind these standards is to ensure that the resources of Canadian charities are properly used for work considered charitable under Canadian law and to protect against possible misuse and abuse of these tax-assisted resources. All charities engaged in or considering work outside Canada should become very familiar with RC4016.

## **Taxes and charities**

In 2004 Canadians made \$6.9 billion in charitable donations. How much of this generosity is the result of the favourable tax treatment cannot be determined, but it is certainly a factor in donation decisions for many individuals and businesses.

For individual donors, a donation generates a federal tax credit equal to 16% of the first \$200 you give to registered charities in a taxation year. The tax credit equal is equal to 29% for donation amounts that exceed that \$200. The credit is applied directly against tax owed, rather than being deducted from taxable income. The donation also reduces provincial income tax payable.

Here is an example from the Charities Directorate publication RC4142 – [Tax Advantages of Donating to Charity](#).

In 2001, Mary makes a single donation of \$1,000 to a registered charity. She can claim the following tax credit:

16% of the first \$200	= \$ 32
29% of the remaining \$800	= \$ 232

The total credit she can apply against the federal income tax she owes is \$264.

To simplify, this example assumes that no federal surtaxes apply.

The charitable tax credit also reduces surtaxes and provincial or territorial taxes. In Quebec, a charitable gift provides a separate provincial tax credit.

The following chart shows the amount of federal and provincial assistance available in 2001 to individuals giving \$500 as charitable

The two big advantages of registering as a charity are the ability to receive grants from charitable foundations and the ability to issue donation receipts that provide donors with favourable tax treatment that encourages donations.



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gifts. To simplify, we assume that surtaxes do not apply.

Province or territory	Federal charitable donations tax credit	Impact on provincial or territorial taxes	Total tax assistance for a \$500 donation
Newfoundland and Labrador	\$119.00	\$75.20	\$194.20
Prince Edward Island	\$119.00	\$69.70	\$188.70
Nova Scotia	\$119.00	\$70.08	\$189.08
New Brunswick	\$119.00	\$72.88	\$191.88
Quebec	\$119.00	\$100.00	\$219.00
Ontario	\$119.00	\$45.80	\$164.58
Manitoba	\$119.00	\$74.00	\$193.00
Saskatchewan	\$119.00	\$67.00	\$186.00
Alberta	\$119.00	\$58.25	\$177.25
British Columbia	\$119.00	\$56.20	\$175.20
Northwest Territories	\$119.00	\$53.95	\$172.95
Yukon	\$119.00	\$52.36	\$171.36
Nunavut	\$119.00	\$42.50	\$161.50

The exact value of the charitable donations tax credit varies slightly according to your taxable income and province of residence.


Donations by corporations do not receive a credit, but can be deducted from taxable income.

There have been several tax policy and legislative changes in recent years to provide additional incentive for Canadians to donate to charities. These incentives include special rules for the donation of cultural and ecologically sensitive properties, elimination of the capital gains tax on the donation of publicly traded securities and new rules allowing “split-receipting.”

The new rules allow a charity to issue a receipt in circumstances where the donor has also received a benefit, for example at a dinner, golf tournament or charity concert. Here is an illustration from the Charities Directorate:

### Fund Raising Dinners

The value of a comparable meal provided by a comparable facility will have to be ascertained. If the event is held at a restaurant, then the price the restaurant would charge a regular customer would be the comparable value. In this regard, it is acceptable to take into

 For more information on split receipting, see [Income Tax – Technical News No. 26](#), December 24, 2002.

account group or banquet rates.

Generally, the right to participate in an auction to be held at the dinner will not be viewed as constituting an advantage.

**Example**

- A charity holds a fund raising dinner for which 500 tickets are sold at a cost of \$200 each.
- A comparable meal could be purchased for \$100, excluding GST, PST and gratuities.
- The door prizes are a trip having a value of \$3,000 and jewelry having a retail value of \$500 (\$3,500/500 or \$7 per attendee).
- Each attendee receives a logo pen and key chain with an aggregate retail value of \$10.

**Determination of eligible amount:**

Ticket price	\$200
Less: meal	<u>\$100</u>
Eligible amount	<u>\$100</u>

As a result of applying the *de minimis* threshold, the value of the door prizes and the complimentary items received by a donor will not be viewed as an advantage in determining the eligible amount, since the total value of such prizes and items is \$17 per donor, which is less than the lesser of 10% of \$200 (\$20) and \$75.


In this case, the amount of the advantage is \$100, which is not more than 80% of the ticket price (\$160). Accordingly, a tax receipt may be issued for the eligible amount.

### 3. The Regulation of Co-operative Enterprises

#### *The co-op way*

Here are some basic facts and figures about co-operatives in Canada and internationally.

- Across Canada, some 2,100 not-for-profit housing co-ops are home to about a quarter of a million people in 90,000 households.
- Canadian co-operatives and credit unions have combined assets of approximately \$300 billion.
- Co-operatives and credit unions employ over 155,000 Canadians.
- Co-operatives and credit unions in Canada give approximately \$60 million annually to their communities through donations and sponsorships.
- Co-operatives around the world employ 20% more people than do large multinational corporations.
- Co-ops are found in almost every sector and offer services, literally, from the cradle to the grave --- from daycares through to funeral co-ops.
- Housing co-ops cost less to operate – 19% less than municipal or private not-for-profit housing and 71% less than public housing.
- In 900 communities across Canada, a credit union is the only financial institution.
- One in four Canadians is a member of a co-op or credit union.
- The earliest Canadian co-operative began with the formation of a farmers' mutual fire insurance company in the mid 1800's.
- There are 8,000 individual members of fishing co-operatives.
- There are 9,500 co-operatives and credit unions in Canada.
- There are approximately 400 daycare and childcare co-ops in Canada.
- Three quarters of co-ops consult with members and Board members to determine community needs.
- Worldwide, 800 million people are members of a co-op or credit union.

 Data about Canada's co-operative sector can be found at the [Canadian Co-operative Association's](#) website.

## Choosing the co-operative model

Canada's approximately 10,000 co-ops and credit unions produce a wide range of goods and services, have 15 million members, employ over 155,000 people, and have assets of approximately \$300 billion. (The membership figure includes multiple memberships. For example, if an individual is a member of a credit union and an electricity co-op, each membership would be counted in this figure.)

Examples of well known and highly successful Canadian co-operatives are Mountain Equipment Co-op, Vancity Credit Union, Home Hardware and Agropur.

A co-operative organization is "an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise."<sup>1</sup> There are six main types of co-ops:

- **Producer co-ops** are established to process or market goods or services produced by the members of the co-op, or to purchase inputs to the production process. In Canada, producer co-ops are very strong in the agricultural sector, particularly with grain, dairy, poultry and fruit growers.
- **Consumer co-ops** are created by members to acquire goods or services, such as groceries, clothing, vehicle fuel, natural gas, electricity, or water, for use by members. The Co-op stores found across Canada and the very successful Mountain Equipment Co-op are examples of this type of co-op.
- **Service co-ops** provide services to their members, who can be individuals or corporations. Examples include child care centres, care facilities for seniors, and health care services.
- **Worker co-ops** are created by workers to provide or preserve their employment and to control the terms and conditions of their work by operating the enterprise. This type of co-op is found in all sectors of the Canadian economy, including industrial fields like forestry, construction and manufacturing, as well as fields such as theatres and nursing care services.

An organizational option sometimes overlooked when new enterprises or projects are forming is the co-operative. The co-operative legal structure can be an excellent choice in a variety of circumstances, so it should be given informed consideration.

Co-ops in Canada and around the world share the following seven key principles, which distinguish them from corporations and other structures:

1. Voluntary and open membership
2. Democratic member control
3. Member economic participation
4. Autonomy and independence
5. Education, training and information
6. Co-operation among co-operatives
7. Concern for community

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<sup>1</sup> McPherson, I. (1996). *Co-operative Principles for the 21<sup>st</sup> Century*. Geneva: International Co-operative Alliance, p. 7.

- **Financial co-ops** offer credit, investment, insurance, and related financial services to members. These are credit unions, caisses populaire, caisses d'économie, and insurance co-ops. Vancity, Canada's largest credit union, and The Co-operators insurance co-op are well-known examples.
- **Multi-Stakeholder co-ops** have members of different categories, for example workers, receivers of service, and investors, all of whom share an interest in the enterprise. Co-ops of this type have been established to deliver health, home care, and community services.

As with societies, co-ops can incorporate federally under the *Canada Co-operatives Act* or provincially under co-op legislation passed by each province.

### ***The co-op advantage***

Co-ops have some advantages over the corporate structure. In contrast with the corporate model, which has been badly tarnished by Enron, Worldcom and a host of other examples of excess and illegality, co-ops seek to “bring fairness, equity and justice to the marketplace.”<sup>2</sup> Co-ops are arguably more accountable to their members than corporations often are to their shareholders. One member, one vote is a powerful accountability device.

A second and quantifiable advantage is that co-ops are more likely to survive than private corporations, with a survival rate approximately twice as high after up to ten years after inception. After 10 years, the survival rate of co-ops is 46%, compared to 20% for private firms.”<sup>3</sup>

Another advantage of co-ops is that earnings they generate flow to members in local communities. In contrast, the profits of a business corporation often flow to shareholders far from the community where the profits are made. The best illustrations of this are the multinational corporations with manufacturing operations in developing countries that generate enormous profits for shareholders in the west, but pay local workers very little.

This is a problem in Canada to some degree as well, for many communities are dependent upon single industries and businesses that are owned by foreign interests. While pay rates are higher in Canada than in developing countries, the basic problem of lack or

One subjective advantage of co-ops is the commitment to the principles and values of co-operation.

<sup>2</sup> [Cultivating Co-ops: An Overview of Co-operatives and Their Role](#), produced by the Canadian Co-operative Association – BC Region.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

control and profits flowing out of communities remain. “Co-operatives enable communities to have a degree of self-determination that is less subject to outside forces. Community-based ownership also makes co-ops less vulnerable to takeovers, relocations, and closures by outside decision-makers.”<sup>4</sup>

A fourth advantage of co-ops is that they can be less vulnerable to disruption caused by swings in capital and equity markets. Publicly traded corporations often focus on short-term financial results to maintain share prices at the expense of longer-term organizational health. Co-ops are not the subject of speculative investment, and are not as exposed to the vagaries of markets as are publicly traded corporations. This arguably allows greater focus by managers on long-term issues, rather than short-term profits or share values.


A disadvantage of the co-operative structure for business enterprises is the greater difficulty co-ops have raising capital. For capital-intensive businesses, the corporate structure enables the relatively easy exchange of shares in the company for capital from outsider investors. Traditionally, co-ops have been dependent on their members for capital, which has made raising new capital more difficult than for corporations. While modern co-op legislation allows for investment shares, raising capital from outside investors remains more difficult for co-ops than corporations.

A second disadvantage of a co-op relative to a corporation is that it is often harder to get it off the ground. It can take more planning and organizational work to coordinate the goals and efforts of multiple members who are keen to be active participants in the new enterprise, not just passive shareholders. If this initial work is accomplished successfully, the shared focus and commitment of the members become the co-ops strength.

### ***Steps to forming a co-operative***

There is a strong network of co-op developers throughout Canada available to assist with this process. As well, existing co-ops are often very supportive and willing to share their experiences with potential new co-ops. Other helpful links are included in the Resource Section on Co-ops.

There are various guides available on-line that outline the steps to the creation of a co-op. As the legislation varies from province to province, care needs to be taken to meet the requirements of the law in the appropriate jurisdiction.

 A helpful guide to the creation of a federally incorporated co-op is [“The Seven Steps in Forming a Co-operative,”](#) and is available on the Canada-Ontario Business Service Centre website.

Briefly, the steps explained in more detail in the linked paper are:

- Step 1: Assemble a group of interested people
- Step 2: Conduct a pre-feasibility study
- Step 3: Hold an organizing meeting
- Step 4: Conduct a viability study
- Step 5: Organize the association
- Step 6: Organize the enterprise
  - Plan the operations of the enterprise
  - Plan and organize the enterprise's start-up financing
  - Recruit and train the enterprise's staff
  - Ensure the legality of the enterprise's operations
- Step 7: Hold the initial general meeting

### ***Co-operatives as Charities***

In the section above on incorporation we saw that most charities are incorporated as either federal or provincial corporations without share capital or societies.

Another alternative is the creation of a charitable co-operative. If a co-operative has purposes or objects that fall within the meaning of charity, it can qualify for registration as a charity provided:

- it is established for purposes other than the benefit of its members (*i.e.*, not-for-profit);
- no financial benefit to its members is permitted (*e.g.*, dividends); and
- upon dissolution, the remaining assets of the co-operative are transferred to a qualified donee.

For individuals committed to the values of co-operation, this is an organizational option worth considering.

## 4. Introduction to Social Enterprises

As described in the introduction to this handbook, there is current considerable interest in the establishment of social enterprises to augment the work of charitable and not-for-profit organizations.

For many in Canada, social enterprise and the term “social economy” became current topics of discussion when the federal government announced the commitment of significant support for the social economy, in February 2004. This was seen by many as the end of one chapter of previous federal support (over five years) for the Voluntary Sector Initiative - which shone a spotlight on the strength and breadth of the voluntary sector and what it contributes to the Canadian economy – and the opening of a new chapter. That new chapter – with its focus on social enterprise as a model for building financially diversified and stable not-for-profits – has attracted considerable attention.

But the social economy and the social enterprises that are included in the social economy are not a new phenomenon: rather, this was simply the first time that significant attention had been paid to the concept by all three sectors. Well-established, and venerable, agencies like the YWCA have been operating social enterprises for over a hundred years: thrift stores are a quintessential social enterprise.

But what is the social economy? There are as many definitions as there are uncertain offerings. Nancy Neamtan offers this definition:

The social economy includes five main features:

1. legal structure is non-profit mutual & cooperative enterprises
2. have certain rules about who controls use of capital
3. independence from government
4. democratic form of control
5. based on principles of collective and individual empowerment

The social economy is still evolving – it’s beginning to include others who have a triple bottom line vision of how development should be taking place. That triple bottom line includes an assessment of the environmental, social and economic impact.

“Most people consider the economy as the private sector, the stock exchange, etc.

But there is a *private* economy (privately owned companies producing goods and services), a *public* economy (government-run enterprises and services), and the *social* economy which is a collective economy based on collective, nonprofit, mutual principles.”

- Nancy Neamtan



[The End of the Beginning](#) is an article that describes the changing landscape as federal support moved from the Voluntary Sector Initiative to the social economy.



For a list of resources on the social economy, see the [Tamarack Institute](#).

## Thinking about Social Enterprise

While there have been social enterprises for over a hundred years in Canada, working in support of their charitable parent organizations, three intersecting events have both brought more attention to the role that social enterprises can play in the voluntary sector, and have brought pressure to bear on traditional charities and not-for-profits to establish social enterprises.


The last of these events has been the attention paid to the Chantier in Quebec, and the important work it has done there to mobilize communities for positive economic benefits. The other two events are (1) the significant change in government funding policies – at all levels of government – to move from core and program funding of voluntary sector organizations to short-term project funding; and (2) the sudden arrival of dot.com new money millionaires, who have been looking for ways to involve themselves in community and who bring a certain business lens and bootstrapping approach to their community involvement. On this latter point, the development of Social Venture Partners (SVP) across the country is proof of this influence, and groups like SVP are helping many traditional charities set up related enterprises to bring in new revenue streams.

Simply put, a social enterprise is a business operation that operates to the triple bottom line and that has the characteristics Nancy offers above. But, there is no specific legal form of organization for a social enterprise to distinguish it from a traditional enterprise, or to segregate it well from its parent charity or not-for-profit organization. There are dozens of different kinds of arrangements of social enterprises, and there are dozens of unanswered questions about which of those arrangements work best.

In one case, the social enterprise may be a wholly-owned subsidiary of a charity, and the enterprise's activities may be unrelated to the charity's objects: the enterprise may be a catering company and the charity may operate social housing.

In another case, the social enterprise may operate under as a not-for-profit sister of a charitable organization and have overlapping Boards of Directors; the enterprise may publish books on housing policy and generate a small surplus of funds which it contributes to its charitable sister, who provides social housing. In another example, the charity itself may be established to offer services to the voluntary sector which it provides on a fee-for-service basis, and so may be intrinsically established as a social enterprise.

There is no specific legal form of organization for a social enterprise to distinguish it from a traditional enterprise, or to segregate it well from its parent charity or not-for-profit organization.

 The federal government has some advice to offer, in its interpretation bulletin CPS019 "[What is a Related Business](#)," but it is early days in terms of federal interpretation of the plethora of social enterprise arrangements and there is more uncertainty than clarity around the rules of related business.

 The Fraser Valley Centre for Social Enterprise has a very good discussion paper about the shortcomings of existing social enterprise structures; see "[Social Enterprise and Business Structures in Canada](#)" by Sid Gould.

In each case, there are governance challenges, questions related to taxation, concerns about staffing (particularly if staff time is split between the enterprise and the charity), and issues related to accounting and financial statements. For anyone considering establishing a social enterprise, it is wise to consult legal and accounting counsel early on, to ensure that the right structures, accountability mechanisms and segregation of duties is established.

## **Forms of social enterprise**

Just as there are many reasons for starting a social enterprise, there are a range of forms that a social enterprise might take, as mentioned above. Generally speaking, the forms of organization fall into three broad categories, as described in [The Canadian Social Enterprise Guide](#). These are:

- employment development enterprises
- mission-based businesses
- ancillary or asset-based businesses

Under these three broad categories of type of enterprises, there is a range of services that can be offered, clients who can be served, amounts of revenue that can be generated and communities that can be strengthened. The *Guide* notes the following:

- From a product perspective, a social enterprise can create anything from planter boxes, fertilizer or patio furniture to packing cartons, meat pies and cookies.
- From a service standpoint, a social enterprise can deliver anything from consulting services, recycling or building management to courier and voice mailbox services, lawn maintenance, cafes or restaurants.
- From a fiscal perspective, not-for-profit enterprises can generate anywhere from 5 to 100 percent of a program's or organization's costs. Income sources can range from high-end businesses with private clientele or discounted services paid for by low-income clientele to government contracts or government-funded services.
- From an outcomes perspective, not-for-profit enterprises can provide pre-employment services for Aboriginal youth, supply food or dental services to low-income children, improve watershed management and increase fish stocks or support employing mental health consumers or people with developmental disabilities.

The list of possibilities may not be endless, but the field of social enterprise has plenty of room for growth.

The Canadian view of social enterprise is, notably, much broader and more inclusive than the American view, so if an organization is consulting American resources to help with business planning, legal structures and governance issues, one is likely only to find resources to support employment development enterprises.



[The Canadian Social Enterprise Guide](#) is one of the best current Canadian resources, and it can be ordered online.

More information can be found in the article "Range of Non-Profit Enterprises" included in the resource section of this handbook.

## ***Legal context for social enterprises***

*The Canadian Social Enterprise Guide* includes a helpful and clear chapter on the legal considerations of running social enterprises. Part of that chapter is reprinted in the resource materials for this handbook, but if social enterprise is a path upon which you are embarking, the *Guide* is a very worthwhile investment. Here is an excerpt from the chapter on legal matters.

Not-for-profits undertaking business ventures have different options for structuring their enterprises. If you're a not-for-profit that *doesn't* have charitable status or you're *not* applying for charitable status, you can (so long as no profits are distributed to members or management):

- operate your business within the non-profit structure;
- set up a separate non-profit or co-operative organization to run the business, or
- set up a separate for-profit business.

If you're a non-profit that *has* charitable status (under section 149.1 of the federal *Income Tax Act*) or you're *applying* for charitable status, you can:

- operate your enterprise within your non-profit structure if your business complies with the guidelines and policies established by the Canada Revenue Agency (CRA);
- set up a separate non-profit or co-operative organization to run the business; or
- set up a separate for-profit business.

In all cases, you should consult a lawyer for detailed information and advice about the best way to structure your business, either within your non-profit structure or as a separate structure.

## Additional Resources

### ***Checklist to Assess Legal Risk in Not-for-profit Organizations***

Many of the comments and recommended procedures contained in this legal risk management checklist are as applicable to not-for-profit non-charitable organizations, including co-operatives and social enterprises.

***By Terrance S. Carter, B.A., LL.B. and Jacqueline M. Connor, B.A., LL.B.***

The operations of charities have become complex and the possibility of litigation against charities occurring as a result of their operation is greater than ever before. The exposure of charities to liability goes further than the loss of charitable assets and/or the insolvency or winding up of a charity. Directors of charities may also face possible legal action against them personally by donors, members, third parties and governmental authorities for breach of their fiduciary duties or even breach of trust in failing to adequately protect or apply the assets of a charity. Given the increased risks to both charities and their Directors, there is an increasing need to protect charitable assets from lawsuits and creditors on a pro-active basis.

The purpose of this legal risk management checklist is to provide a brief outline of some of the more important issues that Directors and/or executive staff of a charity, whether incorporated or not, may need to consider in ensuring due diligence in the operation of the charity, as well as an overview of liability exposure faced by charities in Canada and some of the steps available to protect charities against such risks. As it is impossible to adequately address all aspects of liabilities being faced by charities and the pro-active steps which need to be taken to protect against such risks, this checklist provides only a general overview of some of the considerations that charities and their Board of Directors may need to be aware of to both identify and manage legal risks.

### **IDENTIFICATION AND MANAGEMENT OF LEGAL RISKS**

<b>Indicator</b>	<b>Meet</b>	<b>Needs Work</b>	<b>N/A</b>
<ul style="list-style-type: none"> <li>• Is charitable status needed?               <ul style="list-style-type: none"> <li>○ Do charitable receipts need to be issued?</li> <li>○ Can the organization work under the auspices of an existing charity?</li> <li>○ Business donors may not require charitable receipts.</li> </ul> </li> </ul>			
General overview of organizational & legal documentation <ul style="list-style-type: none"> <li>• Identify the existence and location of key organizational documents               <ul style="list-style-type: none"> <li>○ Develop an inventory of key documents</li> <li>○ Maintain central location for key documents</li> </ul> </li> <li>• Identify key organizational documents for an unincorporated charity</li> </ul>			

Indicator	Meet	Needs Work	N/A
<ul style="list-style-type: none"> <li>○ Constitution and amendments, if applicable</li> <li>○ Policy statements, if applicable</li> <li>● Key organizational documents for a corporate charity               <ul style="list-style-type: none"> <li>○ Letters patent and supplementary letters patent, if applicable</li> <li>○ Membership covenant and mission statement, if applicable</li> <li>○ By-laws and resolutions</li> <li>○ Directors, members and debt registers</li> <li>○ Copies of government filings</li> </ul> </li> <li>● Determining other key legal documents               <ul style="list-style-type: none"> <li>○ Leases, deeds and mortgages</li> <li>○ Agency, association and joint venture agreements</li> <li>○ License agreements</li> <li>○ Business name, trade-marks, Section 9 official marks and domain names</li> <li>○ Charitable registration number</li> <li>○ Policy statements, i.e. sexual abuse and volunteer policy statement</li> <li>○ Insurance policies</li> <li>○ Privacy policy</li> <li>○ Investment policy</li> </ul> </li> </ul>			
<ul style="list-style-type: none"> <li>● Review of key documents for unincorporated charity               <ul style="list-style-type: none"> <li>○ Are the objects clearly stated in the constitution and are they exclusively charitable?</li> <li>○ Do constitutional documents correctly reflect how the organization is actually structured and operated?</li> <li>○ Is a copy of the constitution filed with the appropriate government agencies, i.e. with Canada Revenue Agency (“CRA”) and the Public Guardian and Trustee (“PGT”)?</li> </ul> </li> </ul>			
<p>Review of key documents for an incorporated charity</p> <ul style="list-style-type: none"> <li>○ Review of letters patent               <ul style="list-style-type: none"> <li>▪ Is the name in the letters patent the correct name of the charity consistent with the charitable objects of the charity?</li> <li>▪ Are its objects exclusively charitable?</li> <li>▪ Are the activities carried out by the charity authorized by its charitable objects?</li> <li>▪ Is the dissolution clause complementary to the charitable objects?</li> </ul> </li> <li>○ Review of supplementary letters patent</li> </ul>			

Indicator	Meet	Needs Work	N/A
<ul style="list-style-type: none"> <li>▪ Has there been a change of corporate name?</li> <li>▪ Has there been a change of corporate objects?</li>   <li>▪ What is the effect of a change of objects upon existing charitable property?</li> <li>○ Letters patent of amalgamation (only for Ontario corporations) <ul style="list-style-type: none"> <li>▪ Are the charitable objects the same or similar?</li> <li>▪ What are the terms of the amalgamation agreement?</li> <li>▪ Is the existing charitable property held in trust for the charitable objects of the previous charitable corporations?</li> </ul> </li> <li>○ Review corporate bylaw for basic terms, such as <ul style="list-style-type: none"> <li>▪ Do provisions conflict with letters patent?</li> <li>▪ Do provisions reflect changes to applicable corporate legislation?</li> <li>▪ Is there an adequate indemnification provision?</li> <li>▪ Has the indemnification provision been authorized in accordance with the Charities Accounting Act (Ontario)?</li> <li>▪ Are by-law amendment procedures consistent with corporate legislation?</li> </ul> </li> <li>○ Was the initial corporate organization of the charity properly done?</li> <li>○ Was there a documented transfer of assets and liabilities on incorporation?</li> <li>○ Are the records of Board decisions and/or membership meetings complete?</li> <li>○ Was there adequate Board and/or members' authorization for indebtedness?</li> <li>○ Have corporate records been properly maintained?</li> <li>● Have necessary corporate filings and registrations been kept up to date? <ul style="list-style-type: none"> <li>○ Annual Summary (Form 3) – Canada</li> <li>○ Extra-Provincial Initial Notice (Form 2) – Ontario</li> <li>○ Business Name Act (Ontario) registrations</li> <li>○ Mandatory report to Public Guardian and Trustee</li> </ul> </li> <li>● Does the charity operate and/or fundraise in any other provinces? If so, there may need to be registration as an extra-provincial corporation and/or fundraiser in other provinces, together with applicant business name registrations.</li> </ul> <p>Does the charity need to continue itself under the proposed new Canada Not-for-profit Corporations Act? (Note: To be proclaimed into force in approximately June 2006).</p>			

Indicator	Meet	Needs Work	N/A
<p>Has there been loss of corporate status for failure to maintain government filings?</p> <p>Is the charity aware of the importance of proper use of corporate name and operating names?</p> <p>Has the charity developed and implemented risk management policy statements on:</p> <ul style="list-style-type: none"> <li>-child abuse</li> <li>-sexual abuse</li> <li>-sexual harassment</li> <li>-bullying</li> <li>-volunteer conduct</li> <li>-safety in the workplace?</li> </ul> <p>○ Has the charity conducted an inventory of its charitable assets?</p>			

## UTILIZING MULTIPLE CHARITABLE CORPORATIONS

Indicator	Meet	Needs Work	N/A
<ul style="list-style-type: none"> <li>● Should the charity consider utilizing multiple charitable corporations for its high risk activities in order to reduce liability exposure and protecting assets?</li> </ul>			
<ul style="list-style-type: none"> <li>● Should the charity consider establishing and utilizing a parallel foundation for either fundraising or protection of charitable assets?</li> </ul>			
<ul style="list-style-type: none"> <li>● Has consideration been given to balancing indirect control of multiple corporations with issues involving cross over liability?</li> </ul>			
<ul style="list-style-type: none"> <li>● Has consideration been given to implementing effective indirect control through contracts and/or licensing agreements as an alternative to overt corporate control?</li> </ul>			

## BOARD MANAGEMENT ISSUES

Indicator	Meet	Needs Work	N/A
<ul style="list-style-type: none"> <li>● Is the charity able to identify which group is in charge of the charity? <ul style="list-style-type: none"> <li>○ i.e., Where does the de facto control of the charity lie? Is it with a Board, a committee or executive staff?</li> <li>○ Is Board authority recognized by the membership?</li> </ul> </li> </ul>			
<ul style="list-style-type: none"> <li>● Are there clearly defined lines of authority between the Board and the executive staff?</li> </ul>			
<ul style="list-style-type: none"> <li>● Does the Board meet on a regular basis and do all Directors regularly attend?</li> </ul>			

<b>Indicator</b>	<b>Meet</b>	<b>Needs Work</b>	<b>N/A</b>
<ul style="list-style-type: none"> <li>● Has an independent audit committee been established to review financial statements and the auditors' report?</li> </ul>			
<ul style="list-style-type: none"> <li>● Is there adequate communication of Board responsibilities to existing and future Board members?               <ul style="list-style-type: none"> <li>○ Need to create a Board binder of all corporate documents, as well as an explanation of the general operations of the corporation as a charity and the Board of Directors' legal duties and liabilities</li> <li>○ Need to provide regular updates on changes in the law to Board members</li> </ul> </li> </ul>			

## **REDUCING BOARD LIABILITY**

<b>Indicator</b>	<b>Meet</b>	<b>Needs Work</b>	<b>N/A</b>
<ul style="list-style-type: none"> <li>● Do any Directors receive direct or indirect remuneration or other financial benefit from the charity in contravention of their fiduciary duties?</li> </ul>			
<ul style="list-style-type: none"> <li>● Has the charity adequately indemnified its Directors and officers?</li> </ul>			
<ul style="list-style-type: none"> <li>● Is there corporate authority to acquire Directors' and officers' liability insurance?</li> </ul>			
<ul style="list-style-type: none"> <li>● Has the Board delegated too much responsibility to executive staff by restricting itself to policy decisions only without careful and ongoing monitoring and review?</li> </ul>			
<ul style="list-style-type: none"> <li>● Should the charity consider reducing the size of the Board to limit the number of people who are exposed to liability as Directors?</li> </ul>			
<ul style="list-style-type: none"> <li>● Is the charity effectively making use of committees as an alternative to a large Board of Directors?</li> </ul>			
<ul style="list-style-type: none"> <li>● Do the Board members on occasion need to receive independent legal advice due to the possibility of liability exposure?</li> </ul>			
<ul style="list-style-type: none"> <li>● Should the charity consider implementing an advisory Board to complement the Board of Directors without a corresponding exposure to liability?</li> </ul>			
<ul style="list-style-type: none"> <li>● Has the charity established a comprehensive due diligence review procedure by establishing and utilizing the appropriate legal risk management checklist?</li> </ul>			
<ul style="list-style-type: none"> <li>● Has a legal risk management committee of the Board been established?</li> </ul>			

## INSURANCE CONSIDERATIONS

Indicator	Meet	Needs Work	N/A
• Has the charity maintained a historical record of its insurance coverage in the event of a future claim?			
• Is there occurrence-based or claims-made insurance coverage for sexual abuse?			
• Has the charity provided full written disclosure of all risks to its insurer to avoid denial of coverage?			
• Does the charity request regular reports from its insurance broker on existing coverage, exclusions from coverage and recommendations to enhance coverage?			
• Is there a regular review of the adequacy and extent of general liability coverage and property insurance?			
• Is there Directors' and officers' liability coverage in place and is it reviewed on a regular basis?			
• Do there need to be special insurance endorsements to extend insurance coverage, e.g. activities of agents in foreign countries?			

## THIRD PARTY USE OF CHARITABLE PROPERTY

Indicator	Meet	Needs Work	N/A
• Is the charity aware of the potential liability exposure in permitting third parties to use its property?			
• Has the charity developed and implemented a third party property use agreement with appropriate releases and indemnification?			
• Does the charity require evidence of liability insurance from third party users of its facilities?			
• Does the charity charge appropriate fair market rental fees to non-charities?			

## REAL PROPERTY ISSUES

Indicator	Meet	Needs Work	N/A
• Has an environmental assessment been conducted to determine the extent of liability exposure for contaminants?			
• Are there trust provisions in old trust deeds or title, and if so, are they being complied with?			

Indicator	Meet	Needs Work	N/A
• Has the charity addressed and rectified encroachments with neighbouring lands?			
• Are municipal zoning and legal non-conforming uses being complied with?			
• Could the charity be forced to sell off surplus land under <i>Charities Accounting Act</i> (Ontario) if it has been held for more than three years?			
• Has the charity reviewed its entitlement to possible exemption from municipal property taxation, or reviewed its assessment for accuracy, or its entitlement to a possible rebate of property taxes?			

## INTELLECTUAL PROPERTY ISSUES

Indicator	Meet	Needs Work	N/A
<ul style="list-style-type: none"> <li>• Does the charity need to register any of its key names and/or logos as trade-marks? <ul style="list-style-type: none"> <li>- Identify trade-marks <ul style="list-style-type: none"> <li>○-Protect trade-marks by registration</li> </ul> </li> <li>- Use trade-marks in conjunction with appropriate markings</li> <li>- Ensure that any third parties using trade-marks enter into a trade-mark licensing agreement</li> </ul> </li> </ul>			
• Has the charity protected its trade-marks by multiple corresponding domain names?			
• Who owns the copyright for publications of the charity?			
• Should copyright be registered, assigned or licensed?			

## EMPLOYMENT AND VOLUNTEER MATTERS

Indicator	Meet	Needs Work	N/A
• Is the individual an employee or an independent contractor?			
• Has the charity developed appropriate hiring policies and practices for its employees?			
• Is there compliance with applicable human rights legislation?			
• Is there need for an employment contract with employees?			
• Is there a need to develop and adopt policy statements and/or manuals for employees as well as volunteers?			
• Do employees and volunteers who deal with children need to be screened and supervised, together with criminal record checks, in accordance with an appropriate sexual abuse policy statement?			

Indicator	Meet	Needs Work	N/A
• Is there need for a discipline procedure for employees and/or volunteer members?			
• Has the charity developed appropriate policies and practices regarding the termination of employees and complied with appropriate provincial and/or federal legislation?			
• Is the charity aware of and complying with applicable statutory requirements, such as pay equity, employment standards, human rights legislation, privacy legislation and occupational health and safety prerequisites?			
• Are the charity and Board exposed to criminal liability under the <i>Criminal Code</i> i.e. Bill C-45 (Westray Mines)?			

## CHARITABLE AND FUNDRAISING ACTIVITIES

Indicator	Meet	Needs Work	N/A
• Has the charity ensured that its charitable activities are done in accordance with its charitable objects?			
• Are fundraising and/or administrative costs kept within the 80/20 disbursement quota?			
• Has provincial fundraising legislation, where applicable, been complied with?			
• Have fundraising programs been reviewed by legal counsel?			
• Are donors' rights to require accountability respected, particularly rights under the <i>Charities Accounting Act</i> (Ontario)?			
• Does the charity have a privacy policy in place in order to protect donors' rights?			
• Are sponsorship arrangements properly documented?			

## FISCAL MANAGEMENT ISSUES

Indicator	Meet	Needs Work	N/A
• Are all salaries, benefits and statutory deductions being paid by the charity on a timely basis with appropriate reports to the Board of Directors?			
• Is the charity operating with a deficit and, if so, for how long?			
• How is the deficit being funded?			
• Has a sinking fund been established to retire debt of the charity?			
• Are investments being offered to the public without full disclosure			

Indicator	Meet	Needs Work	N/A
to potential investors?			
• Is there an audit committee in place?			
• Are charitable funds being used to fund separate business operations of the charity?			
• Is there a violation of the <i>Charitable Gifts Act</i> (Ontario) by the charity owning more than 10% of a business?			

## INVESTMENT ISSUES

Indicator	Meet	Needs Work	N/A
<ul style="list-style-type: none"> <li>• What investment powers apply to the investment of surplus funds of the charity? <ul style="list-style-type: none"> <li>○ Prudent investor rule will generally apply; however, specific investment powers may sometimes apply as contained in <ul style="list-style-type: none"> <li>- Letters patent or supplementary letters patent</li> <li>- Endowment and gift agreements</li> <li>- Testamentary gifts</li> </ul> </li> </ul> </li> </ul>			
<ul style="list-style-type: none"> <li>• Does the charity need and/or have an investment policy? <ul style="list-style-type: none"> <li>○ Documenting compliance with prudent investor rule</li> <li>○ Establishing requirements for delegation of investment decision making</li> <li>○ Prohibition on sub-delegation</li> </ul> </li> </ul>			

## DONOR RESTRICTED TRUST FUNDS

Indicator	Meet	Needs Work	N/A
<ul style="list-style-type: none"> <li>• Are there donor restricted trust funds being held by the charity? <ul style="list-style-type: none"> <li>○ Building funds</li> <li>○ Endowment funds (perpetual)</li> <li>○ Ten year gifts under the <i>Income Tax Act</i></li> <li>○ Special project funds</li> </ul> </li> </ul>			
• Are restricted funds being used only in accordance with applicable restrictions?			
• Are restricted funds being used in whole or in part for general operational purposes or are they being borrowed against?			
• Are restricted funds segregated from operating funds?			
• Is the Board of the charity aware of the consequences of breach of trust for failing to comply with restricted funds?			

## MAINTAINING CHARITABLE REGISTRATION

Indicator	Meet	Needs Work	N/A
• Is the legal name of the charity and/or its operating name consistent with the records of CRA?			
• Does CRA have the current head office address of the charity?			
• Has the charity obtained Quebec charitable status for fundraising in Quebec?			
• Does the charity submit its annual charity information return (Form T3010A) within 6 months of the financial year end of a charity?			
• Has the charity complied with its disbursement quota?			
• Is the charity involved in political activities within CRA limits?			
• Is the charity involved in related business activities within CRA guidelines?			
• Is the charity aware of the applicable rules concerning the issuance of charitable receipts including the new rules on split receipting and anti-tax shelter provisions?			
• Are agency and/or joint venture relationships with non-qualified donees properly documented and implemented?			
• Does the Board of Directors review the annual return (T3010A) for the charity before it is filed each year?			
• Is the charity prepared for a spot audit by CRA?			

## NATIONAL AND/OR INTERNATIONAL RELATIONSHIPS

Indicator	Meet	Needs Work	N/A
• Are relationships with national organizations and/or subsidiary chapters adequately documented with specific reference to controlling trade-marks?			
• Are relationships between national and international organizations adequately documented in order to effect an international operation?			
• Has the ownership of trade-marks and/or copyrights been determined and documented?			
• Have trade-marks and copyrights been adequately protected and licensed in Canada and in other countries as necessary?			

## ANTI-TERRORISM LEGISLATION

Indicator	Meet	Needs Work	N/A
<ul style="list-style-type: none"> <li>• Does the charity carry on operations that may require it to be in compliance with anti-terrorism legislation?               <ul style="list-style-type: none"> <li>○ International operations</li> <li>○ Domestic operations</li> </ul> </li> </ul>			
<ul style="list-style-type: none"> <li>• Has the charity undertaken appropriate due diligence procedures in complying with anti-terrorism legislation?               <ul style="list-style-type: none"> <li>○ Development of an anti-terrorism policy statement</li> <li>○ Development of resource materials on anti-terrorism legislation</li> <li>○ Requiring disclosure statements for Board members and staff</li> <li>○ Evaluating all charitable programs for compliance</li> <li>○ Requiring disclosure statements from affiliated charities, third party agents and/or partners and conducting appropriate inquiries</li> <li>○ Determining when to make inquiries of donors</li> <li>○ Conducting due diligence internet searches on Directors, officers and agents</li> </ul> </li> </ul>			
<ul style="list-style-type: none"> <li>• Are Directors aware of risks associated with failing to comply with anti-terrorism legislation?               <ul style="list-style-type: none"> <li>○ Loss of charitable status</li> <li>○ Personal liability in civil law</li> <li>○ Possible criminal law sanction</li> </ul> </li> </ul>			

## **Case Study – Workshop Activity**

### **Situation**

A group of 10 artists have formed an informal relationship they call “Painters for Peace.” Twice a year, they hold an art show and auction of their own work that raises funds which the artists give to an orphanage run by a Danish aid agency in Kabul, Afghanistan, where one of the artists works as a volunteer art teacher for two weeks every year. These events are becoming quite successful, raising several thousand dollars each time.

The artists want to know whether it would be a good idea for Painters for Peace to incorporate and become a charity.

### **Instructions**

In your groups, read the case study situation above and be prepared to discuss the following questions:

- What impacts could charitable registration have for Painters for Peace?
- What questions should we ask Painters for Peace?
- Do you think Painters for Peace will be able to register as a charity?
- What recommendations do you have for Painters for Peace, and why?

Appoint a spokesperson to report back to the larger group.

### **Notes**

## Self-assessment on Legal Limberness - ANSWERS

1. Which of the following are *not* part of the classic statement of the legal meaning of charity in Canada:
  - a. Relief of poverty
  - b. Provision of health care**
  - c. Advancement of education
  - d. Altruism**
  - e. Advancement of religion
  - f. Promotion of peace**
  - g. Other purposes beneficial to the community

Provision of health care, altruism and promotion peace are *not* part of the classic statement of the legal meaning of charity in Canada.
  
2. Approximately how often does the Supreme Court of Canada rule on a charity law case?
  - a. Every year
  - b. Once every 5 years
  - c. Once every 10 years
  - d. Once every 20 years**

Once every twenty years.
  
3. What are the three types or categories of charities in Canada?

Charitable Organizations  
Public Foundations  
Private Foundations
  
4. Which of the following contains legal requirements that apply to all Canadian charities:
  - a. *Canada Corporations Act, Part II*
  - b. *Canada Charities Act*
  - c. *Federal Income Tax Act*
  - d. *Canada Donations Act*

*Federal Income Tax Act*
  
5. How much of a charity's resources can be devoted to "political activities" each year?
  - a. 5%
  - b. 10%
  - c. 20%
  - d. 10 to 20% depending on the size of the charity
  - e. no more than 49%

A charity may devote 10 to 20% of its resources to "political activities" each year depending on the size of the charity.

<p>6. Limited liability in a society or corporation without share capital protects:</p> <ul style="list-style-type: none"> <li>a. Members from liability</li> <li>b. Directors from liability</li> <li>c. Both members and Directors from liability</li> </ul>	<p>Limited liability protects members from liability.</p>
<p>7. For which of the following could a charity issue a donation receipt?</p> <ul style="list-style-type: none"> <li><b>a. A gift of shares in a publicly traded company</b></li> <li><b>b. The proceeds of a life insurance policy from a supporter who passed away</b></li> <li>c. Ten hours of free computer repair work by a supportive computer company</li> <li><b>d. A painting by a famous artist</b></li> </ul>	<p>The correct answers are in bold at left.</p>
<p>8. The penalty for late filing of a charity's annual return – form T3010A – is?:</p> <ul style="list-style-type: none"> <li>a. A \$100 fine</li> <li>b. A \$500 fine</li> <li>c. Revocation of charitable registration</li> </ul>	<p>The penalty for late filing is a \$500 fine.</p>
<p>9. True or False: Charities are prohibited from any business activities that compete with private sector businesses.</p>	<p>False.</p>
<p>10. Which of the following are legal duties of Directors?:</p> <ul style="list-style-type: none"> <li>a. Duty of knowledge</li> <li>b. Duty of care</li> <li>c. Duty of skill and prudence</li> <li>d. Duty of diligence</li> <li>e. All of the above</li> </ul>	<p>All of the duties listed are legal duties of a Director.</p>

## **Case Study – Activity Suggested ANSWERS**

### **What impacts could charitable registration have for Painters for Peace?**

The impacts of charitable registration could be both negative and positive. On the potentially negative side, charitable registration will make Painters for Peace subject to the reporting requirements, laws and administrative policies enforced by the Charities Directorate that apply to charities. These will create additional work (the annual charity return) and may limit what Painters for Peace can do. For example, it could not simply give the funds it raises to the Danish Aid Group unless the Danish Aid Group is a “qualified donee” under the federal *Income Tax Act*, which is unlikely. Painters for Peace may be able to contract with the Danish Aid Group to work on its behalf, but this will require more management by the Painters for Peace than a simple transfer of the funds raised as is currently done.

On the potentially positive side, charitable registration may help Painters for Peace attract more donations, for they will be able to offer donation receipts for gifts of cash or art work for auction. The Charities Directorate’s new policy on split-receipting may also be helpful with the auctions.

Charitable status will also make it possible for Painters for Peace to apply to charitable foundations for grants to support their work, for charitable foundations may make grants only to qualified donees, the most significant of which are charitable organizations.

### **What questions should we ask Painters for Peace?**

It would be productive to learn about their plans. Do they plan to carry on as they have been, or are they intending expand and pursue other opportunities? Making the organizational form fit the future plans is an important goal.

It would also be wise to find out how familiar the artists involved are with organizational governance and maintenance, and how interested they are in tending to a new entity and charity. If they simply want to paint, hold twice yearly auctions and give money to the Danish aid organization, and they have no organizational experience or interest there may be little to gain from incorporating and becoming a charity.

### **Do you think Painters for Peace will able to register as a charity?**

This will depend on how the purposes or objects of the organization are cast in its constitution and on the activities the organization intends to engage in. Care will be needed to meet the test of charity. Purpose language that might meet the test would be:

“To advance education in the arts among children in communities suffering from war and poverty by delivering and supporting art classes, workshops and training programs for children and teachers.”

Painters for Peace could then deliver these classes, workshops and training programs themselves, or they could contract with others to deliver them on their behalf.

### **What recommendations do you have for Painter for Peace, and why?**

Painters for Peace should give careful consideration to maintaining the *status quo*. If it is working well, they should be cautious about rushing down the road to charitable registration. They should also consider whether they need to incorporate. An option would be to incorporate as a society for the advantages described in section 4 and 5 of the *Society Act*, but to stay as a non-profit organization and not apply to register as a charity.

If they do decided to apply to register as a charity, they should consider all of the consequences and requirements, and proceed carefully to ensure they comply with the applicable laws and administrative policies. Particular care and attention to the drafting of their constitution and the description of their activities is essential.

## ***Meaning of "charitable purpose" – England and Wales***

- (1) For the purposes of the law of England and Wales, a charitable purpose is a purpose which falls within subsection (2), and is for the public benefit (see section 3)
- (2) A purpose falls within this subsection if it falls within any of the following descriptions of purposes
  - a) the prevention or relief of poverty;
  - b) the advancement of education;
  - c) the advancement of religion;
  - d) the advancement of health or the saving of lives;
  - e) the advancement of citizenship or community development;
  - f) the advancement of the arts, culture, heritage or science;
  - g) the advancement of amateur sport;
  - h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
  - i) the advancement of environmental protection or improvement;
  - j) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
  - k) the advancement of animal welfare;
  - l) the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services;
  - m) any other purposes within subsection (4).
- (3) In subsection (2)
  - (a) in paragraph (c) "religion" includes-
    - (i) a religion which involves belief in more than one god, and
    - (ii) a religion which does not involve belief in a god;
  - (b) in paragraph (d) "the advancement of health" includes the prevention or relief of sickness, disease or human suffering;
  - (c) paragraph (e) includes-
    - (i) rural or urban regeneration, and
    - (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities;
  - (d) in paragraph (g) "sport" means sports or games which promote health by involving physical or mental skill or exertion;
  - (e) paragraph (j) includes relief given by the provision of accommodation or care to the persons mentioned in that paragraph; and
  - (f) in paragraph (l) "fire and rescue services" means services provided by fire and rescue authorities under Part 2 of the Fire and Rescue Services Act 2004 (c. 21).
- (4) The purposes within this subsection (see subsection (2)(m)) are
  - a) any purposes not within paragraphs (a) to (l) of subsection (2) but recognised as charitable purposes under existing charity law or by virtue of section 1 of the Recreational Charities Act 1958 (c. 17);
  - b) any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of those paragraphs or paragraph (a) above; and
  - c) any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised under charity law as falling within paragraph (b) above or this paragraph.

## ***Pre-Approved Clauses for Charitable Objects***

(from the [Ministry of the Attorney General for Ontario](#))

These clauses have been developed by the Ontario Public Guardian and Trustee, in consultation with the CRA.

### **Religious Organizations**

- To advance and teach the religious tenets, doctrines, observances and culture associated with the (specify faith or religion) faith.
- OR
- To preach and advance the teachings of the (specify faith or religion) faith and the religious tenets, doctrines, observances and culture associated with that faith.
- To establish, maintain and support a house of worship with services conducted in accordance with the tenets and doctrines of the (specify faith or religion) faith.
  - To support and maintain missions and missionaries in order to propagate the (specify faith or religion) faith.
  - To establish and maintain a religious school of instruction for children, youths and adults.

### **Religious Schools**

- To establish and maintain a religious school of instruction for children, youths and adults.
- To establish and maintain a religious day school.

### **Foundations**

- To receive and maintain a fund or funds and to apply all or part of the principal and income therefrom, from time to time, to charitable organizations that are also registered charities under the *Income Tax Act* (Canada).

### **Services for Senior Citizens**

- Senior Citizens Centres. To relieve loneliness and isolation of the aged or to improve their mobility and fitness by establishing, operating and maintaining a senior citizens centre to provide recreation, education, cultural activities and other programs for senior citizens.
- Respite Services. To provide respite to persons caring for aged persons by providing temporary care to aged persons and by providing such services as housekeeping, meal preparation, nursing and shopping assistance.
- Home Care. To provide support services for aged persons including personal care, housekeeping, meals, nursing and shopping assistance.

### **International Development**

- Relief of Poverty. To relieve poverty in developing nations by providing food and other basic supplies to persons in need.
- Health. To develop or promote public health in developing nations by educating and instructing the public on prevention of, and curative measures for, health problems and by researching and documenting changes in the health of the community.
- Drinking Water. To improve the quality of drinking water in developing nations by constructing wells and water treatment, irrigation and sewage treatment systems.

- Agriculture. To improve skills in forestry, agriculture and horticulture and to assist in the preservation of the environment in developing nations.
- Disaster Relief. To provide necessities of life to victims of disasters.

## **Assistance for the Sexually/Physically Abused**

### **Enfants**

- Education. To educate the public and professionals about prevention of, and responses to, child sexual abuse by offering courses, seminars, conferences and meetings and by collecting and disseminating information on that topic.
- Counselling. To assist those affected by child sexual abuse through counselling and treatment programs

### **Spousal Abuse**

- Education. To educate the public and professionals about prevention of, and responses to, spousal abuse by offering courses, seminars, conferences, and meetings and by collecting and disseminating information on that topic.
- Counselling. To assist those affected by spousal abuse through counselling and treatment programs.
- Shelters. To provide affordable and secure housing for women who have been emotionally, physically or sexually abused or traumatized and for their children.

### **Relief of Poverty**

- To relieve poverty by providing food and other basic supplies to persons of low income, by establishing, operating and maintaining shelters for the homeless, and by providing counselling and other similar programs to relieve poverty.

## **Programs for Physically or Mentally Disabled**

- Residences. To provide residential housing and a stable living environment to persons with disabilities.
- Training. Education and Counselling.
  - To provide life management counselling and other support services to assist persons with disabilities to become more independent in the community.
  - To provide training for, and to assist in, the placement of persons with disabilities in employment.
  - To provide support and encouragement to persons with disabilities by offering programs in individual development and integration into the community.
  - To provide relief to persons with disabilities by developing and implementing recreation, education and social integration programs for the disabled.
  - Community Education. To educate the public on debilitating conditions and the needs of persons with disabilities by providing seminars and by collecting and disseminating information on that topic.

### **Promotion of Health**

- Respite Services. To provide respite to persons caring for aged, ill or disabled persons by providing temporary care to aged, ill or disabled persons and by providing such services as housekeeping, meal preparation, nursing and shopping assistance.

- Home Care. To provide support services for aged, ill or disabled persons including personal care, housekeeping, meals, nursing and shopping assistance.
- Health Care Centre. To operate a community health care centre by providing medical, health and support services for the general public.
- Health Care Co-ordination. To coordinate health care and social services for people with debilitating diseases, illnesses and conditions.
- To provide social services to persons with debilitating diseases, illnesses and conditions.
- Research. To conduct research into the causes, controls and cure of debilitating diseases, illnesses and conditions.
- Mutual Support. To provide support for those affected by debilitating diseases, illnesses and conditions by offering education and counselling and by establishing mutual support groups.

### **Substance Abuse**

- To educate the public about the causes and effects of, and treatments for, substance abuse by offering courses, seminars, conferences and meetings and by collecting and disseminating information on that topic.
- To conduct research for the benefit of the public into the causes of, and treatments for, substance abuse.
- To coordinate health care and social support services for persons affected by substance abuse.
- To assist persons in coping with the effects of substance abuse by offering education and counselling and by establishing mutual support groups.
- To provide a treatment and recovery facility for substance abuse clients and to provide medical and social support services at the facility.

### **Preservation of the Environment**

- To organize or participate in environmental projects designed to:
  - preserve and protect flora and fauna;
  - preserve, protect and restore rivers; or
  - improve the urban environment.
- To educate and increase the public's understanding of the environment and its importance by offering courses, seminars, conferences and meetings and by collecting and disseminating information on that topic.
- To develop and provide programs promoting the protection and preservation of the environment through re-use, reduction, recycling and recovery of waste and to educate institutions, industries, businesses and individuals about efficient waste management systems.
- To conduct research relating to the environment and to disseminate the results of such research.

### **The Arts**

- To educate and increase the public's understanding and appreciation of the arts by providing performances of an artistic nature in public places, senior citizens homes, churches, community centres and educational institutions and by providing seminars on topics relating to such performances.
- To provide instructional seminars on topics related to the performing and visual arts.

- To produce performing arts festivals for the purposes of educating and advancing the public's understanding and appreciation of performing arts and to educate artists through participation in such festivals and related workshops.

### **Community Centres, Immigrant Services, Literacy and Employment Training**

- To establish and operate a community centre to be used for workshops, programs, athletics, drama, art, music, handicrafts, hobbies and recreation for the benefit of the general public.
- Immigrant services. To provide education, counselling and other support services for immigrants and refugees in need, including language instruction, employment training, job search programs, translation services and information programs on Canadian culture and life.
- Employment preparation, training and counseling. To establish, maintain and operate an employment training centre for needy unemployed and low skilled workers.
- To provide assistance to needy persons in drafting resumes, searching for employment and preparing for job interviews.
- To provide counselling to needy persons experiencing long-term unemployment.
- To develop employment training and education programs for needy persons.
- Literacy. To provide literacy programs and classes to members of the public.
- To develop and provide education and training programs to persons who will conduct literacy training.

### **Low Cost Housing**

- To provide and operate non-profit residential accommodation and incidental facilities exclusively for:
  - Persons of low income;
  - Senior citizens primarily of low or modest income; or
  - Disabled persons primarily of low or modest income.

## ***Range of non-profit enterprises***

-- from *The Canadian Social Enterprise Guide*, 2005: © Enterprising Non-Profits Program

A social enterprise can take on a remarkable diversity of forms.

- From a product perspective, it can create anything from planter boxes, fertilizer, or patio furniture to packing cartons, meat pies, and cookies.
- From a service standpoint, a social enterprise can deliver anything from consulting services, recycling, or building management to courier and voice mailbox services, lawn maintenance, cafes, or restaurants.
- From a fiscal perspective, non-profit enterprises can generate anywhere from 5 to 100 percent of a program's or organization's costs. Income sources can range from high-end businesses with private clientele or discounted services paid for by low-income clientele to government contracts or government-funded services.
- From an outcomes perspective, non-profit enterprises can provide pre-employment services for Aboriginal youth, supply food or dental services to low-income children, improve watershed management and increase fish stocks, or support employing mental health consumers or people with developmental disabilities.

The list of possibilities may not be endless, but the field of social enterprise has plenty of room for growth.

### **Types of non-profit enterprise**

It isn't always easy to classify or categorize the types of social enterprises. You'll find several different approaches and a lot of different language used to describe them.

For our purposes, three broad categories describe the nature of business activities:

- employment development enterprises
- mission-based businesses
- ancillary or asset-based businesses

### **Employment development enterprises**

These kinds of enterprises provide training opportunities and/or employment to the clients who they serve. These enterprises may or may not aim to be self-sufficient, but all tend to be concerned with both the financial and social returns. Often, due to the social costs associated with supporting a disadvantaged population, these kinds of enterprises rely on some grants and donations to support their activities.

The products or services produced and sold by these business may or may not be related to the mission of the organization.

Common types of employment enterprise business activities include restaurants and catering, packaging and assembly, cleaning/janitorial or landscaping businesses, and woodworking and craft businesses.

Typically, an employment development enterprise aims to create permanent, flexible jobs, competitive wages, and/or career or ownership opportunities to people who face barriers to employment or are disadvantaged mentally, physically, economically, or educationally; for example, recovering substance abusers, members of inner-city minority groups, mental health consumers, at-risk youth, and people with disabilities.

This contrasts with a training business, whose principal purpose is to provide transitional employment or short-term training and skill development on the job to a specific target population in order to enhance their employability and integration.

## **Mission-based enterprises**

These enterprises are designed to generate income from the sale of products or services that are directly related to their organization's mission or program areas. Payment may come from clients or a third party such as a government agency; for example, home care businesses. In this case, the product or service that the organization sells directly accomplishes the organization's mission.

Mission-based enterprises can include those that —

- earn income directly from program delivery: these enterprises generate revenue from regular program delivery to target clients; for example, charging low-income clients fees to cover some costs of operation (fee-for-service); or
- earn income through selling services or products to markets outside the normal client or target group; for example, selling counselling services to the general population at higher rates than those charged to target clients.

These activities generally aim to generate profits that an organization can use to subsidize or support other programs or services, and often use existing staff expertise and resources.

These two enterprise types are programmatic in focus. The principal intent of the business is to provide a program, service, or other benefit to the organization's clients (whether that happens through providing services, products, employment, or training).

## **Ancillary/asset-based enterprises**

This final category includes businesses activities that are ancillary to an organization's mission or core purpose. These enterprises are less likely to be program-based and more likely to serve the function of generating revenue and possibly profits for the organization to support its charitable work.

Often these enterprises build on organizational competencies and underutilized assets, or they provide services/products that are complementary to their mission.

This broad category can include businesses that generate revenue from the following:

- **Hard or soft property:** This includes renting underutilized assets such as office space or equipment during downtime; for example, a charitable organization that prepares and provides free meals to the homeless, rents out its kitchen facilities to a private food processing company at night.
- **Ancillary services:** These include convenience stores, thrift stores, cafeterias, etc. These services may not be directly related to fulfilling the mission of the organization, but enhance

the service or convenience provided to target groups; for example, a thrift store provides both training opportunities for clients and inexpensive clothing for people whose lives are in transition.

- **Other unrelated businesses:** This catch-all category could include a wide range of business activities that have no relation to the mission of the organization or the members or clients it serves; for example, a disability organization operates an enterprise that collects and sells donated clothing and household items to a private thrift store.

There are many benefits to operating your own business and engaging in social enterprise. Along with the benefits come additional responsibilities and considerations. Therefore, it's imperative that non-profits enter the business world fully informed and understanding that charities are there to achieve social benefits as well as operate businesses. In this sense, social entrepreneurs act as role models in demonstrating ethical principles in their businesses' operations. To do anything less would compromise the integrity of the non-profit sector and the important role non-profits play in the community.

## Conclusion

This is only a brief overview of current developments in the emerging field of social enterprise. More and more, non-profits are developing revenue-generating services or products. The impetus may come from diminished funding, a realization that there are some needs the marketplace will never meet on its own, or an understanding of the potential that social enterprise offers to further your missions.

Your social enterprise may yield benefits such as enhanced organizational capacity, increased visibility, and enhanced reputation. It may even attract new donors and investors.

The range of social enterprises is diverse, and there are different types of businesses you might undertake. While it's helpful for you to be clear about why you want to start a social enterprise and what kind of enterprise that might be, it isn't important, especially in the early stages, to try to fit into one category or another. What is important is that your organization readies itself for the challenge.

## **Social Enterprises – The Legal Context**

by Irene Gannitsos, Kyle Pearce and Sidney Sawyer, from *The Canadian Social Enterprise Guide*, 2005: © Enterprising Non-Profits Program

### **Non-profits undertaking business ventures have different options for structuring their enterprises.**

If you're a non-profit that *doesn't* have charitable status or you're *not* applying for charitable status, you can (so long as no profits are distributed to members or management) —

- operate your business within the non-profit structure;
- set up a separate non-profit or co-operative organization to run the business, or
- set up a separate for-profit business.

If you're a non-profit that *has* charitable status (under section 149.1 of the federal *Income Tax Act*) or you're *applying* for charitable status, you can —

- operate your enterprise within your non-profit structure if your business complies with the guidelines and policies established by the Canada Revenue Agency (CRA);
- set up a separate non-profit or co-operative organization to run the business; or
- set up a separate for-profit business.

In all cases, you should consult a lawyer for detailed information and advice about the best way to structure your business, either within your non-profit structure or as a separate structure.

### **Registered charities and business ventures**

If you are a non-profit with charitable status or a non-profit that wants to apply for charitable status, it's important to understand charity law and the rules that govern when charities are allowed to carry on related business activities. The *Income Tax Act* and CRA's policy statements, which govern the activities of charitable organizations in Canada, permit charities to carry on (and generate profit from) business or commercial activities that directly accomplish or advance the organization's charitable mission. CRA draws a distinction between "related" and "unrelated" business. A related business is permitted within your charitable structure; an unrelated business is not.

If you operate an enterprise within your charitable organization, and it's determined not to be related, your organization could be required to pay penalties on the revenue generated by the business, or ultimately, lose its charitable status and be deregistered. Therefore, take the time before you embark on enterprise development to consider whether or not the enterprise could be operated within your existing structure, or if you would have to set up a separate entity.

### **How does CRA decide that a charity is carrying on a business?**

To understand how CRA applies its guidelines to your charitable organization, you need to know how they define the terms for business activities in conjunction with charitable endeavours. The

place to start is to determine whether or not CRA would consider what you're undertaking to be a business.

According to CRA policy statement, "business" in the context of a charity involves "commercial activity — deriving revenues from providing goods and services — undertaken with the intention to earn a profit." CRA states that whether a particular activity of a charity is considered a business depends on certain criteria that have been established by the courts. These criteria include —

- **The intended course of action.** Is the rationale for operating the activity to generate a profit? If so, then it's likely a business.
- **The potential to show a profit.** Does the activity have the potential to yield a profit at some point? If so, it's likely a business. If the activity is structured so that it's incapable of returning a profit, then it isn't a business.
- **The existence of a profit.** If the activity has generated a profit, it would generally imply that it's a business.
- **The expertise and experience of the person or organization** that undertakes the activity. If the person/organization has been selected for his/her/its commercial knowledge, skill, or experience, it may indicate that the activity is commercial in nature and therefore a business.

In addition to defining a business, CRA also describes activities undertaken by charitable organizations that would not be considered businesses even though they might generate a profit. These activities would fall within the broader categories of fundraising activities or fee-for-service programs.

For example, in the area of fundraising, CRA states that activities such as soliciting donations aren't considered commercial activities because donors don't expect any good or service in return for their contribution. Therefore, since the activity isn't commercial, it isn't a business. Likewise, if a charity sells donated goods, it's generally not considered to be a commercial activity, because businesses don't depend on donations to create their inventories. Further, in selling donated goods, the charity isn't assuming the risk that's usually associated with running a business. In these two cases — soliciting donations or selling donated goods — the activities would not be businesses.

Similarly, CRA recognizes that charities often charge fees for delivering their programs. Thus, charging fees doesn't necessarily mean that the program is non-charitable or that the charity is engaging in a business. The main question is whether the program continues to exhibit two characteristics of a charity: altruism and public benefit. If these qualities are no longer evident, then the activity could be considered a business. Here are some indicators that a charitable program involving fees isn't a business:

- The fee structure is designed to defray the costs of the program rather than generate profit.
- The program doesn't offer services comparable to those otherwise available in the marketplace.
- The fees are set according to a charitable objective as opposed to market objectives.

When CRA is deciding whether or not a charity is carrying on a business, two factors it considers are whether the activity is commercial and whether it's being undertaken to generate a profit. Another important factor CRA considers is whether the activity is continuous and regular. Therefore, although fundraising events are business activities (typically involving the sale of

goods and services for the purpose of obtaining income), CRA would not view them as businesses if the primary purpose of the events is to raise funds, and holding the events isn't an end in itself. The following factors are considered:

- A fundraising event has a clear start and end point, whereas a business is continuous.
- A fundraising event doesn't recur with such regularity and frequency that it amounts to carrying on a business.

## **Can you operate your business within your charitable organization?**

If you have decided that the activity you're considering is a business (as defined by CRA), then the next step is to determine if you can operate the business within your charitable organization.

CRA doesn't accept what is called the "destination of funds test" to define whether or not a business activity is charitable. This means that CRA doesn't care that the revenues you're generating in your business are being used to support your charitable programs.

The *Income Tax Act* (ITA 149.1[2]) states that a charitable organization can have its registration revoked if it carries on a business that isn't a related business of that charity. By implication, the law allows charities to carry on related businesses. CRA has developed policies to help determine whether an organization is carrying on an acceptable business ("related") or an unacceptable business ("unrelated").

In addition to CRA guidelines on related businesses, the *Income Tax Act* (ITA 149.1[1]) specifically states that a charity can also run a business that's unrelated to the objects of the charity if substantially all the people the charity employs to carry on the business aren't paid; i.e., they're volunteers. Therefore, as a charitable organization, if you want to operate a business within your existing structure, you either need to have to met the requirements of "related businesses," according to CRA guidelines, or the ITA legislation governing a business operated by volunteers.

### **What is a related business?**

CRA has published a policy document (listed in Resources at the end of this chapter) that defines the characteristics of businesses considered "related."

CRA recognizes two kinds of related businesses:

- businesses that are *linked* to a charity's purpose *and subordinate* to that purpose; and
- businesses that are *run substantially by volunteers*.

### **What if your business is unrelated?**

If your business doesn't meet any of the criteria for related businesses discussed above and/or your principal motivation for operating the enterprise is to generate a profit, it would be considered unrelated and therefore not allowable within the charitable structure, even if the ultimate destination of the business profits is your organization's charitable activities.

In many other countries, including the United States, a charitable organization can conduct unrelated business activities (and earn unrelated business income) within its charitable structure

(without jeopardizing its charitable tax-exempt status), but is required to pay income tax on any unrelated business income. This isn't so in Canada.

CRA guidelines require that you conduct any unrelated business activities outside the charitable organization. This means you're required to set up a separate business entity. As we mentioned at the start of this chapter, it's legal for your charitable organization to own and operate a separately incorporated unrelated business venture.

## **Business as a charitable program — community economic development**

In addition to distinguishing between related and unrelated businesses, CRA has developed specific guidelines to determine which programs pursued by community economic development organizations are charitable. The Resources section at the end of this chapter refers to the policy publication that outlines this unique situation.

If your organization is involved in the field of community economic development — combining economic and social goals — you may be able to operate an enterprise in your community, and it would be considered a charitable program of your organization.

- The CRA guide outlines that, in some cases, programs operated by community economic development organizations that address economic and social issues could be considered charitable. CRA also states that, within these broad charitable purposes, various types of enterprises would be considered charitable.

This section will discuss each of these types of enterprises, because CRA considers various factors, set out as follows, in determining whether or not these businesses would be considered charitable programs:

- Relief of unemployment: CRA would allow a **training business**.
- Relief of poverty through operating stores: CRA would allow a business that **provides low-cost necessities**.
- Relief of people with disabilities: CRA would allow what it refers to as a “**social business**.”
- Relieving suffering in economically challenged communities: CRA would allow **some community businesses or community professional/commercial services in “economically challenged communities.”**

## **Summary of permitted social enterprise categories**

According to CRA publications on the issue of charities conducting commercial and/or community economic development activities, enterprises can be placed into three categories, as shown in the figure below.

Enterprises that fall into the first two categories in the figure can legally be operated within the tax-exempt structure of the charity (which means that your business income is not taxed).

Business activities in the third category can't be housed within your charitable organization's structure, but can be housed outside your charity's legal structure and owned by your parent organization.

Most enterprises operated by non-profits tend to be either charitable programs or related businesses, although, as organizations continue to look for new sources of revenue for their programs, unrelated business activities may become more common.

## **Legal structures for non-profit enterprises: choosing your business structure**

There are several different legal structures available for you to set up your enterprise. Your decision about which structure to choose depends on what is best for your specific enterprise and for your organization as a whole.

Obviously, one of the first considerations about the legal structure for your enterprise is the extent to which your business activity meets CRA's criteria for charitable programs or related businesses, as discussed above. However, there are also several other important factors to consider in your decision, including the following:

- the primary purpose of your business (to generate profit versus to serve clients),
- the amount of control your organization wants to maintain over the enterprise,
- the scale of the business and potential for growth,
- your need to access capital and external finances,
- the level of risk and liability your organization/board is willing to take, and
- the potential effect on community image and reputation, including potential perceptions of unfair competition from private enterprises.

The first decision you'll have to make is whether or not to separate the enterprise from your organization's legal identity. If the business is unrelated, you have no choice: you must separate.

## Glossary of Terms

From [Duhaimé's Online Legal Dictionary](#). This comprehensive and free online dictionary is maintained by Canadian lawyer Lloyd Duhaimé.

- Acceptance** One of the requisites to a valid contract under common. A contract is a legally binding agreement between two or more parties which starts with an offer from one person but which does not become a contract until the other party signifies an unequivocal willingness to accept the terms of that offer. The moment of acceptance is the moment from which a contract is said to exist, and not before.
- Act** A bill which has passed through the various legislative steps required for it and which has become law, as in "an Act of the Commonwealth of Australia." Synonymous to statute, legislation or law.
- Ad hoc** Latin: for this purpose; for a specific purpose. An *ad hoc* committee, for example, is created with a unique and specific purpose or task and once it has studied and reports on the matter, it stands disbanded (compare with standing committee).
- Agent** A person who has received the power to act on behalf of another, binding that other person as if he or she were themselves making the decisions. The person who is being represented by the agent is referred to as the "principal."
- Arrears** A debt that is not paid on the due date adds up and accumulates as "arrears". For example, if you do not pay your rent, the debt still exists and is referred to as "arrears".
- Assign** To give, to transfer responsibility, to another. The assignee (sometimes also called "assigns") is the person who receives the right or property being given and the assignor is the person giving.
- Company** A legal entity, allowed by legislation, which permits a group of people, as shareholders, to create an organization, which can then focus on pursuing set objectives, and empowered with legal rights which are usually only reserved for individuals, such as to sue and be sued, own property, hire employees or loan and borrow money. Also known as a "corporation."
- Contract** An agreement between persons which obliges each party to do or not to do a certain thing. Technically, a valid contract requires an offer and an acceptance of that offer, and, in common law countries, consideration.
- Corporation** A legal entity, allowed by legislation, which permits a group of people, as shareholders (for-profit companies) or members (non-profit companies), to create an organization, which can then focus on pursuing set objectives, and empowered with legal rights which are usually only reserved for individuals, such as to sue and be sued, own property, hire employees or loan and borrow money. Also known as a "company."
- Creditor** A person to whom money, goods or services are owed by the debtor.
- Debtor** A person who owes money, goods or services to another, the latter being referred to as the creditor.
- Dissolution** The act of ending, terminating or winding-up a company or organization. Charitable organizations should ensure they have a clause in their constitution saying what will happen to any assets (ie, endowments) that may remain at dissolution.
- Donee** The beneficiary of a gift; this typically refers to the charity.
- Donor** The person who donates property or funds to the benefit of another.
- Endowment** The transfer of money or property (usually as a gift) to a not-for-profit or charitable organization for a specific purpose, such as medical research or scholarships.

<b>Executor</b>	A person specifically appointed by a testator to administer the will ensuring that final wishes are respected (i.e. that the will is properly "executed").
<b>Fiduciary</b>	Normally, the term is synonymous to a trustee, which is the classic form of a fiduciary relationship. A fiduciary has rights and powers which would normally belong to another person. The fiduciary holds those rights which he or she must exercise to the benefit of the beneficiary. Fiduciary responsibilities exist for persons other than trustees such as between solicitor and client and principal and agent.
<b>Goodwill</b>	An intangible business asset which includes a cultivated reputation and consequential attraction and confidence of repeat customers and connections.
<b>Lease</b>	A special kind of contract between a property owner and a person wanting temporary enjoyment and use of the property, in exchange for rent paid to the property owner. Where the property is land, a building, or parts of either, the property owner is called a landlord and the person that contracts to receive the temporary enjoyment and use is called a tenant.
<b>Legislation</b>	Written and approved laws. Also known as "statutes" or "acts." In constitutional law, one would talk of the "power to legislate" or the "legislative arm of government" referring to the power of political bodies (eg: Parliament) to write the laws of the land.
<b>Liability</b>	Any legal obligation, either due now or at some time in the future. It could be a debt or a promise to do something. To say a person is "liable" for a debt or wrongful act is to indicate that they are the person responsible for paying the debt or compensating the wrongful act.
<b>MOU</b>	Abbreviation for "Memorandum of Understanding." A document which, if meeting the other criteria, can be, in law, a contract. Generally, a MOU is considered to be a preliminary document; not a comprehensive agreement between two parties but rather an interim or partial agreement on some elements, in some cases a mere agreement in principle, on which there has been accord. Most MOU's imply that something more is eventually expected.
<b>Minutes</b>	The official record of a meeting. Some minutes include a summary (not verbatim) of the discussion along with any resolutions. Other minutes just contain a record of the decisions. Minutes start off with the name of the organization, the place and date of the meeting and the name of those persons present. Minutes are prepared by the secretary or organization staff and signed by either the president or secretary.
<b>Misrepresentation</b>	A false and material statement which induces a party to enter into a contract. This is a ground for rescission of the contract.
<b>Negotiate</b>	To communicate on a matter of disagreement between two parties, with a view to first listen to the other party's perspective and to then attempt to arrive at a resolution by consensus.
<b>Offer</b>	A explicit proposal to contract which, if accepted, completes the contract and binds both the person that made the offer and the person accepting the offer to the terms of the contract. See also "acceptance".
<b>Open-ended agreement</b>	An agreement or contract which does not have an ending date but which will continue for as long as certain conditions, identified in the agreement, exist.
<b>Payee</b>	The person to whom payment is addressed or given. In commercial law, the term refers to the person to whom a bill of exchange is made payable. On a regular cheque, the space preceded with the words "pay to the order of" identifies the payee.
<b>Payor</b>	The person who is making the payment(s). In commercial law, the word refers to the person who makes the payment on a cheque or bill of exchange.
<b>Postal rule</b>	A rule of contract law that makes an exception to the general rule that an acceptance is only created when communicated directly to the offeror. An acceptance is binding and the contract is said to be perfected when the acceptor places this acceptance in the mail box for return mail even if, in fact, it never reaches the offeror.

- Pro bono** Provided for free. *Pro bono publico* means "for the public good."
- Pro forma** As a matter of form; in keeping with a form or practice. Something done *pro forma* may not be essential but it facilitates future dealings. For example, an invoice might be sent to a purchaser even before the goods are delivered as a matter of business practices.
- Promissory note** An unconditional, written and signed promise to pay a certain amount of money, on demand or at a certain defined date in the future. Contrary to a bill of exchange, a promissory note is not drawn on any third party holding the payor's money; it is a direct promise from the payor to the payee.
- Quid pro quo** Latin: something for something. The giving of something in exchange for another thing of equal value.
- Quorum** The number of people who must be present at a meeting before business can be conducted. Without "quorum", decisions are invalid. Many organizations have a quorum requirement to prevent decisions being taken without a majority of members present.
- Rescind** To abrogate or cancel a contract putting the parties in the same position they would have been in had there been no contract.
- Retainer** A contract between a lawyer and his or her client, wherein the lawyer agrees to represent and provide legal advice to the client, in exchange for money.
- Share** A portion of a company bought by a transfer of cash in exchange for a certificate, the certificate constituting proof of share ownership. Persons owning shares in a company are called "shareholders". There are two basic kinds of shares: common and preferred. A shareholder is not liable for the debts or other obligations of the company except to the extent of any commitment made to buy shares.
- Statutes** The written laws approved by legislatures, parliaments or houses of assembly (i.e., politicians). Also known as "legislation". The written laws of the Canadian province of Newfoundland, for example, are in a multi-volume set of books called the Statutes of Newfoundland.
- Usury** Excessive or illegal interest rate. Most countries now prohibit interest rates above a certain level; and rates which exceed these levels are called "usury".
- Void** Not legally binding. A document that is void is useless and worthless; as if it did not exist.
- Waiver** When a person disclaims or renounces to a right that they may have otherwise had. Waivers are not always in writing. Sometimes a person's actions can be interpreted as a waiver.

## **Web Resources**

Note that all of the following links were verified on December 20, 2006.

### **Co-operatives**

Corporations Canada, which is part of Industry Canada, has something called an “[Incorporation Tool Kit](#)” for federally incorporated co-operatives.

The [Canada Cooperatives Act](#).

The [Ontario Co-operative Corporations Act](#)

The [Ontario Co-operative Association](#)’s website contains helpful information and relevant links.

The [British Columbia Corporate Registry](#) provides user-friendly materials on its website, including an excellent “Guide to Incorporating a Co-operative Association in British Columbia.”

The [BC Cooperative Association Act](#)

The [BC Co-operative Association](#) website contains many useful resources.

### **Social Enterprises and the Social Economy**

[The Canadian Guide to Social Enterprise, 2005](#); Enterprising Nonprofits Program.

This guide – in summary only online – can be purchased for \$15 through the ENP program. It is the most comprehensive guide to social enterprise in Canada.

[The Social Economy: Finding a Way between the Market and the State](#).

Nancy Neamtan explains the importance of the social economy movement nationally and internationally.

[The February 2006 issue of “Horizons,”](#) published by the Policy Research Initiative of the Government of Canada is completely concerned with the rise of the social economy as a political and economic movement.

[Conceptualizing the Social Economy in Canada Outside Quebec](#).

Presentation by Brett Fairbairn, professor of co-operatives studies, September 2004. This overview, in the form of a powerpoint presentation, is a helpful overview of the social economy and the role that co-operatives can play.

## Overview of the Voluntary Sector

[Summary of the Findings of the National Survey of Nonprofit and Voluntary Organizations](#), Statistics Canada, 2005. In addition, a number of [regional factsheets](#) are available.

Following the release of the [National Survey of Nonprofit and Voluntary Organizations](#), 214 representatives of government, the corporate sector, academia, foundations, and the nonprofit and voluntary sector gathered in twelve roundtable sessions to discuss the results. Their recommendations are presented in a report, titled *Strengthening the Capacity of Nonprofit and Voluntary Organizations to Serve Canadians: Recommendations Based on the National Survey of Nonprofit and Voluntary Organizations*.

*The Accord Between the Federal Government and the Voluntary Sector* and the two Codes: the *Code of Good Practice on Funding* and the *Code of Good Practice on Policy Dialogues* are available on the [Voluntary Sector Initiative website](#).

## Federal Government

Canada Business. [Business Start-Up Assistant. \(2004\). Not-for-Profit.](#)

This government website is organized by province. The site relates specifically to starting up a not-for-profit business in Canada and provides reliable information on incorporation, taxation, registration, management and governance, funding and fundraising and much more. This website is also available in French.

Canada Revenue Agency. [Charities Directorate.](#)

The Canada Revenue Agency (CRA) registers qualifying organizations as charities, gives technical advice on operating a charity, and handles audit and compliance activities. Registered charities are required to file an annual return with the CRA, a portion of which is available to the public, and must meet certain requirements of the *Income Tax Act* concerning their expenditures and activities. Visitors to the website can also search the listing of Canadian Registered Charities. This website is also available in French.

Canada Revenue Agency. [Registered Charities Newsletters.](#)

These newsletters are available from the Canada Revenue Agency website and are published regularly in both French and English and in an electronic format. Newsletters from 1991 to the present are available online and can be downloaded either as a PDF or HTML document.

Canada Revenue Agency. [Tax topics: Charities.](#)

This webpage was produced by the Canada Revenue Agency and last updated September 2003. The guides and forms on this page help organizations become registered charities; operate day-to-day; and keep their registered status. They have tried to simplify the rules. These guides are also available in French.

Corporate and Insolvency Law Policy Directorate, Policy Sector, Industry Canada. (2002, March). [Reform of the Canada Corporations Act: discussion issues for a new Not-for-Profit Corporations Act.](#)

This paper accompanies a separate draft framework setting out Industry Canada's proposals for a new *Not-for-Profit Corporations Act*. Highlighting certain topics in greater detail, it presents readers with a variety of options on a series of issues. The issues contained in this paper and the proposals contained in the draft framework are not in any sense government or even departmental policy. Rather, they are ideas that have come about largely through preliminary discussions with stakeholders across the country. This paper and the consultations that will follow, are intended to solicit further views on how the *Canada Corporations Act*, Part II can be improved.

Industry Canada. Corporate and Insolvency Law Policy. (2004). [Corporate Not-For-Profit Law.](#)

The Corporate and Insolvency Law Policy Directorate is responsible for the legislative policy development and review of a number of Canada's business framework statutes in the insolvency and corporate areas. These include the *Canada Corporations Act*, Part II, (sections 153 to 157.1(3)) which allows the incorporation of not-for-profit corporations at the federal level. The site for Corporate Not-For-Profit Law provides links to a number of research papers and background information which include: *The Primer for Directors of Not-for-Profit Corporations (Rights, Duties and Practices)*; *Framework and Discussion Issues Papers* and *Backgrounders for the Reform of the Canada Corporations Act*.

Industry Canada. Corporations Canada. (2004). [Not-for-Profit Organizations \(Canada Corporations Act Part II\).](#)

This section of the Industry Canada website provides information about corporations without share capital. Included in this section are forms, information kits, policies, the Corporations Canada fee schedule, legislation and other related documents. The website is available in French and English.

Industry Canada, Corporate and Insolvency Law Policy (2002), [Primer for Directors of Not-for-profit Corporations \(Rights, Duties and Practices\).](#)

The Primer for Directors of Not-for-Profit Corporations was commissioned from the Canadian Centre for Philanthropy as part of Industry Canada's consultation work on reforming the *Canada Corporations Act*. Directors of not-for-profit corporations are, like the organizations they serve, a diverse lot. Perhaps the two characteristics they are all most likely to share are that they are well-intentioned and time-pressed. This book was created with both these factors in mind.

Office of the Privacy Commissioner of Canada. (2004). [The Application of the Personal Information Protection and Electronic Documents Act to Charitable and Not-for-profit Organizations.](#)

This fact sheet is available from the Office of the Privacy Commissioner of Canada website and deals with the application of the *Personal Information Protection and Electronic Documents Act (PIPEDA)* to charities, not-for-profit organizations, associations and other similar organizations. In particular, many organizations and individuals want to know how the Act applies to fundraising and other activities such as mailing information to previous donors or members.

## Provincial Government: British Columbia

British Columbia Ministry of Finance. Corporate Registry. [Corporate Registry Information Packages: Society Act](#).

The Corporate Registry provides the legal framework and files documents for the incorporation, registration, maintenance and dissolution of companies, societies and cooperatives doing business or active in British Columbia. This information is made available to the public. The Corporate and Personal Property Registries facilitate and support commerce in the province by providing the mechanism to register and deliver information in a cost-effective manner, including: creating and registering business and not-for-profit entities; registering and securing personal property interests; and registering ownership and location of manufactured homes.

Government of British Columbia. [Changes to the Society Act](#).

Significant amendments to the *Society Act* were brought into force on November 1, 2004. This webpage allows users to review the *Society Amendment Act, 2004* and sections 42 to 44 of the *Finance Statutes Amendment Act, 2004* to ensure they understand and comply with the changes.

Government of British Columbia. [Society Act](#).

Note: In October 2004, Attorney General Geoff Plant introduced Bill 63, *The Charitable Purposes Preservation Act* in the B.C. Legislative Assembly. The Act is intended to ensure a balance between the interests of donors and charities, and the interests of those to whom a charitable organization is indebted or liable.

## Provincial Government Ontario

Government of Ontario. [Charitable Gifts Act](#).

Government of Ontario. [Charities Accounting Act, R.S.O. 1990, c. C.10](#).

Government of Ontario. [Charitable Institutions Act - R.R.O. 1990, Reg. 69](#).

Government of Ontario. [Corporations Act, R.S.O. 1990, c. C.38](#).

Portions of the *Corporations Tax Act* and the *Corporations Information Act* also apply charities and not-for-profits in Ontario.

Ontario Ministry of the Attorney General. Office of the Public Guardian and Trustee. [Charitable Properties Program](#).

The Public Guardian and Trustee works with charities to help them deal with the problems (i.e., improper investments, improper use of donated property) they encounter. The Public Guardian and Trustee can also inquire into complaints about charities and can protect the public's interest in how charities raise and use their money. The Office of the Public Guardian and Trustee has also published a number of information bulletins for people who use, run, or donate to charities. These seven bulletins are available from this webpage.

Ontario Ministry of the Attorney General. Office of the Public Guardian and Trustee. (2004). [Not for Profit Incorporator's Handbook](#).

The purpose of this Handbook is to provide both the layman and the professional with some general information on the nature of a not-for-profit corporation and guidelines on how to incorporate. This Handbook has been prepared jointly by the Companies Branch of the Ministry of Consumer and Business Services and the Office of the Public Guardian and Trustee for Ontario, Charitable Property Division.

Ontario Ministry of the Attorney General. Office of the Public Guardian and Trustee. (2004). [Not for Profit Incorporator's Handbook - Charities](#).

This document from the Not for Profit Incorporator's Handbook webpage provides information for charity organizations including: incorporating a charity; applying for Letters Patent; amalgamation; and registering with Revenue Canada.

## **An Annotated Bibliography of Selected Web Resources about Charity Law in Canada:**

Benefic Group Inc. [Papers on Charity Law](#).

Papers on legal and tax matters relating to charities. Blake Bromley, President of Benefic Group, is a globally recognized expert on the comparative law of charity and regularly advises charities and donors operating around the world on tax and legal issues relating to the international transfer and utilization of charitable funds as well as on matters of corporate control and structure. He has advised governments in China, Russia, Vietnam, England, Australia, South Africa and Eastern Europe on drafting their laws governing rights and tax privileges of social organizations.

Bourgeois, Donald J (2002). Introduction: Charitable and Not-for-profit Organizations. Excerpt from [The Law of Charitable and Not-for Profit Organizations](#).

This excerpt attempts to assist lawyers to better understand the complexities (legal and practical) of the law of charitable and not-for-profit organizations and to provide legal services to their clients in this area of law. It attempts to make the law, policies and practices more transparent. It distinguishes between "charitable" and "not-for-profit" organizations and reviews the options for legal structures (trust, unincorporated organization, corporation or co-operative corporation without share capital), and their advantages and disadvantages. It discusses the procedure for establishing and maintaining the legal structures, and provides precedents for each. The text also examines the major legal issues for officers, Directors, trustees and members of charitable and not-for-profit organizations. Finally, it reviews the law of taxation as it applies to charitable and not-for-profit organizations and the procedures for applying for registration as a charitable organization with the Canada Customs and Revenue Agency. This excerpt is Charter 1 of the book. Chapters 2 and 3 are also available on this site.

Boyle, Frances K, LLB. (1997, January). ["Charitable activity" under the Canadian Income Tax Act: definition, process and problems](#).

The term "charitable activity" used in the *Income Tax Act* poses problems for people working in the not-for-profit sector. It is seen as uncertain, subjective and arbitrary, and gives rise to complaints of unfair treatment, along with criticisms of laxity and abuse. Boyle

concludes that the definition of "charitable activity" cannot be considered in isolation. Related issues include the appropriateness of looking at activities rather than purposes, ways to create transparency in decision making, and reducing financial disincentives to reviews of decisions. The issue is relevant to every aspect of activity in the voluntary sector, and the sector is well-placed to consider the many subsidiary issues and provide context in commenting on policy issues.

British Columbia Ministry of Finance. Corporate Registry. [Corporate Registry Information Packages: Society Act](#).

The Corporate Registry provides the legal framework and files documents for the incorporation, registration, maintenance and dissolution of companies, societies and cooperatives doing business or active in British Columbia. This information is made available to the public. The Corporate and Personal Property Registries facilitate and support commerce in the province by providing the mechanism to register and deliver information in a cost-effective manner, including: creating and registering business and not-for-profit entities; registering and securing personal property interests; and registering ownership and location of manufactured homes.

Broder, Peter. (2001, August). [The legal definition of charity and Canada Customs and Revenue Agency's charitable registration process](#).

Broder, a policy analyst for the Canadian Centre for Philanthropy, presents an inventory of options for the charitable registration process. Assessment of the eligibility of groups for charitable registration in Canada has drawn sharp and sustained criticism. This assessment, which is made by the Canada Customs and Revenue Agency (CCRA) based on the legal definition of charity as evolved through common law and modified by statute, is widely seen as both unfair and out-of-step with contemporary Canadian values. Much of this criticism is rooted in dissatisfaction with the current legal definition of charity, which is said to be antiquated, inconsistent and inflexible. The purpose of this paper is to highlight the inadequacies of the current definition, as applied through the registration assessment process, and suggest means to improve it.

Bromley, Kathryn. (2000, September). [The Definition of Religion in Charity Law in the Age of Fundamental Human Rights](#). *International Journal of Not-for-Profit Law* 3(1).

This paper begins with the following introduction:

In 1813, Elizabeth Mary Bates settled an *inter vivos* trust in England, one half of whose profits went to the Moravian Church for the purpose of "maintaining, supporting and advancing the missionary establishments among heathen nations". Every year the Moravian Church applied for a return of the income tax paid on this income, and every year until 1886 the Church received it. In 1886, John Pemsel, the treasurer of the Moravian Church, was refused the tax rebate of 73 pounds, and so he sued the Income Tax Commissioners on the Church's behalf. The Court of Appeal awarded the tax rebate to John Pemsel, on the basis that the religious purposes specified in Elizabeth Bates' trust were charitable. The Commissioners appealed to the House of Lords. In 1891, Lord MacNaghten confirmed the analysis of the Court of Appeal in a decision that remains the leading case on the definition of charity. The issue this paper will address is whether the Supreme Court of Canada would reach the same decision on the same set of facts today. This paper will assume that the CCRA refuses to grant Pemsel the tax benefits because of its determination that the Moravian Church does not constitute a 'religion' within the meaning of the second head of charity. Faced once again with an unfavourable bureaucratic interpretation of a long-

standing legal concept, this time the term 'religion' within the definition of 'charity', Pemsel litigates to convince the court that (a) the Moravian Church is a religious institution, and (b) activities aiming to 'convert the heathen' to the Moravian Church qualify for tax privileges as being for the 'advancement of religion'.

Carter & Associates Charities Practice. [Charitylaw.ca](http://Charitylaw.ca).

The website at CharityLaw.ca provides information on legal issues of interest to charities and not-for-profit organizations both in Canada and internationally in the form of articles, seminar materials and newsletters. Regular newsletters provided through the website include the Charity Law Bulletin and Charity Law Update.

Carter Terrance S, BA, LL.B. (2001, October 5) "[Looking a Gift Horse in the Mouth" Avoiding Liability in Charitable Fundraising.](#)

This 238-page paper is "intended to provide a practical overview of the legal risks associated with charitable fundraising in Canada, with a particular emphasis on charities that operate in Ontario. The paper discusses practical steps that can be taken to avoid such legal liability, where possible. The paper was first prepared for the Law Society of Upper Canada 2nd Annual Trusts and Estates Forum held in November 1999, but has been considerably updated and expanded since then. The paper is primarily directed to lawyers who advise charitable clients or who themselves serve on the Board of Directors of charitable organizations. However, the comments contained in the paper are also intended to assist senior management and fundraisers who either work for or act on behalf of charities."

Legal Studies Program. (2004). [Not-for-Profit and Charity Law](#).

This website provides information on not-for-profit, non-profit, and charity management; liability; Directors, volunteers, and employees; fund-raising law; and tax law. Information is presented through the LawNow reprint series and Frequently Asked Questions (FAQs). Links to other sites, charity law news, and opportunities for discussion are also included.

Lewis, Mike. (2004). [The End of the Beginning](#)

The social economy movement is growing across Canada and was given significant support in both Paul Martin's 2004 Throne Speech and the 2004 federal budget. In this article, Mike Lewis explains that this support provides a unique opportunity and describes five ways social economy and community economic development activists can "advance [their] work and leverage it into the future."

The People's Law School. (2000 Revised). [Volunteers and the Law: A guide for volunteers, organizations and Boards.](#)

Publication states: Volunteers play an important role in our communities. The range of activities taken on by volunteers is endless: caring for children, providing information and support, organizing festivals, rescuing animals, participating in search and rescue missions. There are as many kinds of activities as there are volunteers who take them on. Most volunteer activities pose no legal risk - but some do. And some volunteer activities may hold a particular level of danger for the participants or the volunteer. Volunteers and staff of organizations who agree to engage in these activities take on certain responsibilities. If these responsibilities are not handled with care, the volunteer and organization can be held accountable. This book will help volunteers, staff and Board members learn about how the law applies to volunteer activities and the work you do.

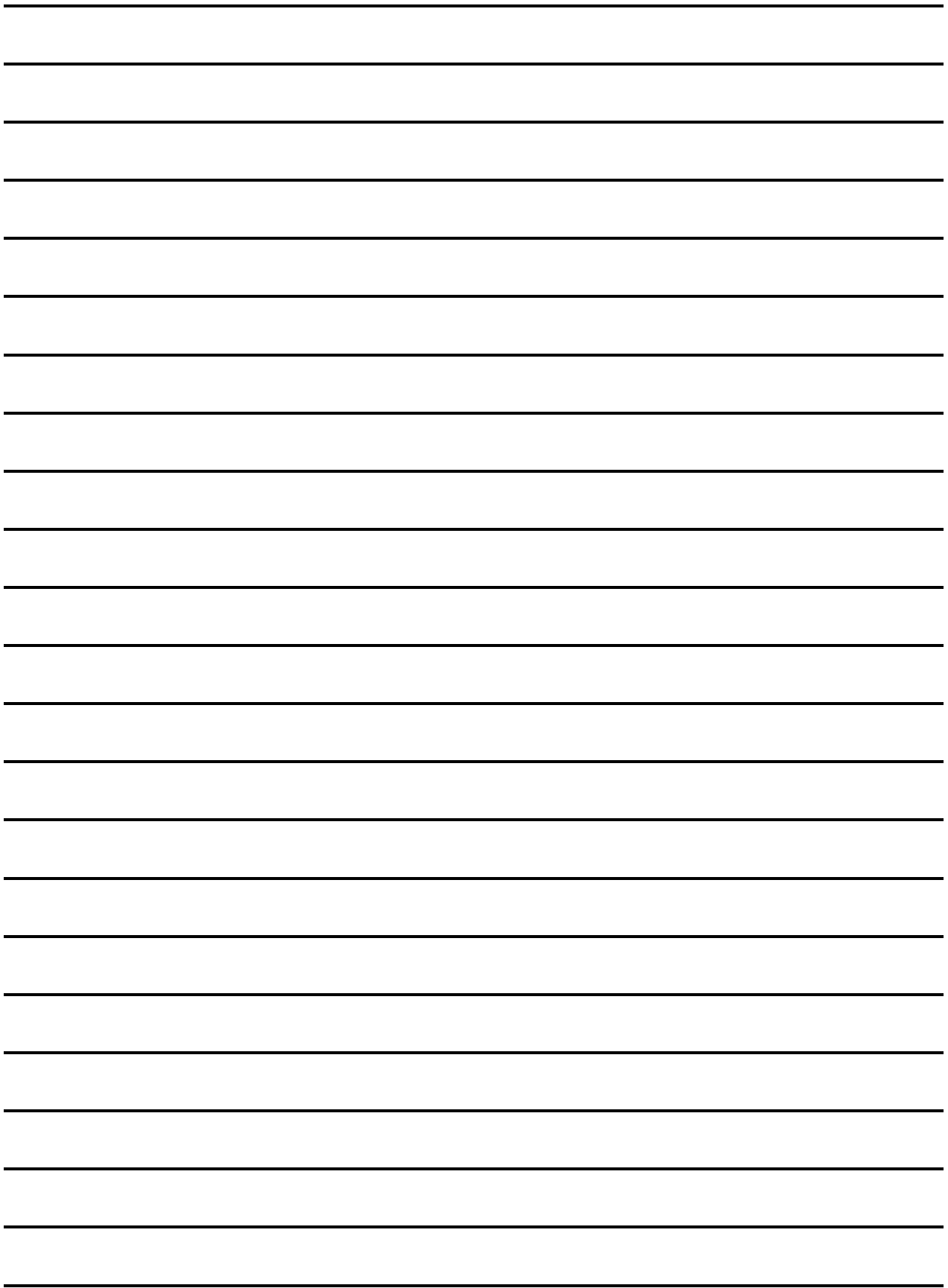
The Philanthropist. [A Journal on Canadian Tax Law and Philanthropy](#).

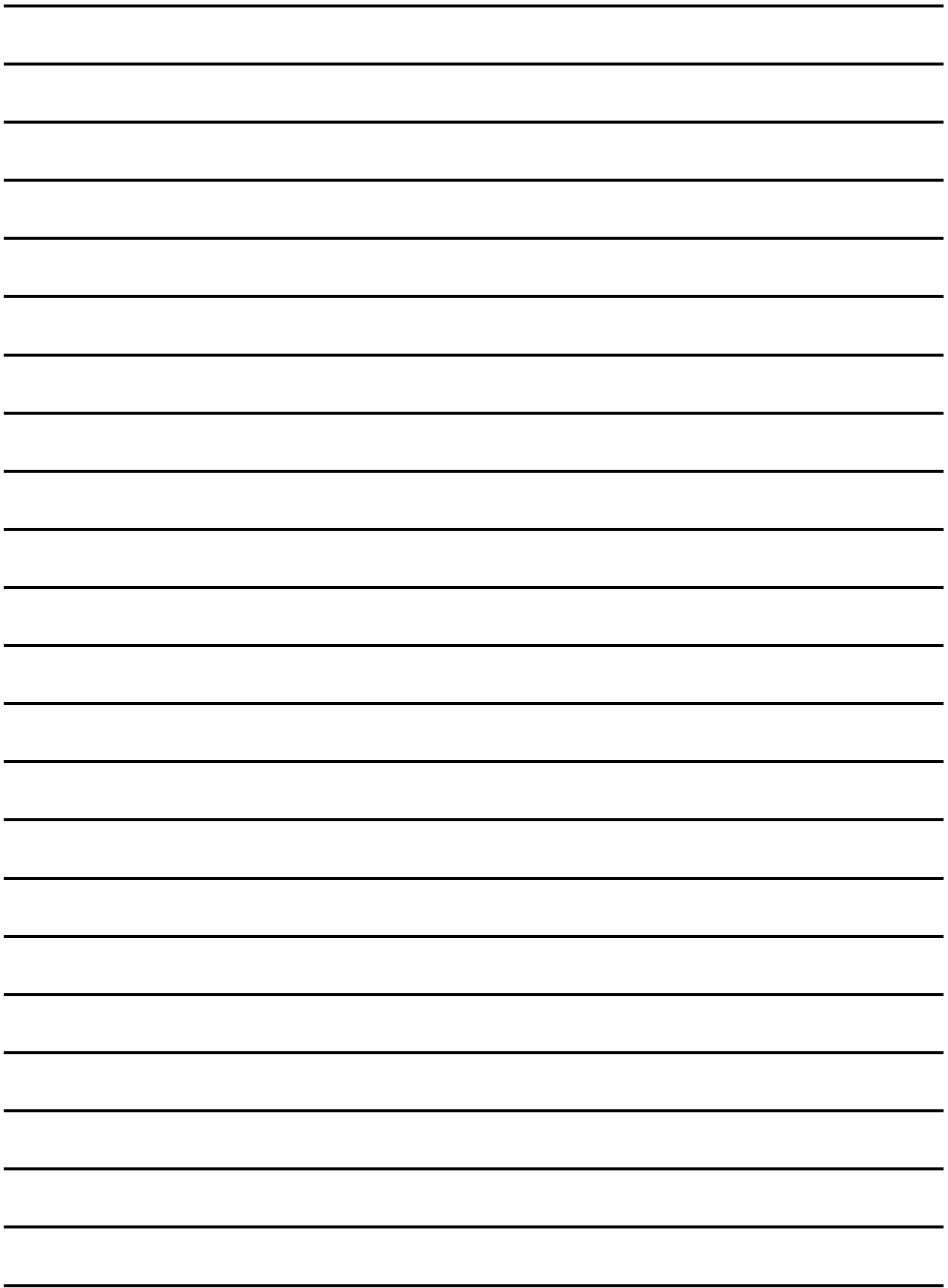
The Philanthropist is a quarterly journal that publishes articles and information of interest and assistance to the management and Directors of Canadian foundations and charities and their legal and financial advisors. It also provides a forum for discussion and informed debate of controversial issues arising in the philanthropic sector. The journal is published by the Agora Foundation with the assistance of the Charity and Not-for-Profit Law Section of the Ontario Bar Association, and the Canadian Centre for Philanthropy. The Journal's website is available in French and English.

Phillips, Jim, Chapman, Bruce, & Stevens, David (Ed.). (2001). [Between State and Market: Essays on Charities Law and Policy in Canada](#).

*Between State and Market* is a 299-page book that "surveys and critiques the existing literature on charities law as well as the laws themselves. The authors offer policy prescriptions for the future of an increasingly vital sector of Canadian society. After an overview of the charitable sector in Canada, the first section of the book contains a sociological review of altruism in different societies, a discussion of altruism in various philosophical and religious traditions, an economic analysis of "rational voluntarism," and an assessment of the relationship between the charitable sector and the welfare state. The second section contains five papers on the legal definition of charity, both general (the jurisprudence of the Federal Court of Appeal and a proposal for rethinking the concept of "public benefit") and particular (the political purposes doctrine, religion as charity, and a commentary on the recent Supreme Court decision on the meaning of charity). The third section deals with the tax status of charities: two papers evaluate the current tax credit system, and one deals with the administration of charities by the Canada Customs and Revenue Agency. The final section contains essays on charities and commercial enterprise, on the regulation of fund-raising, and on needed reforms in non-profit corporation law."









The information and materials contained within this handbook and the Financial Fitness series are designed to assist individuals in the key management and Board roles within most not-for-profit organizations. *Accounting Athletics, Financial Fitness* and *Legal Limberness* will help organizations move themselves further along the curve of understanding what it takes to be healthy, financially strong and stable organizations.

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