



RC4106 Informal Legal Audits of Canadian Charities and their Foreign Operations

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There are approximately 12,000 Canadian registered charities that conduct foreign operations of one kind or another. In the Canada Revenue Agency (the "CRA") booklet RC4106 "Registered Charities: Operating Outside of Canada", the CRA sets out certain rules that govern Canadian charities and their foreign activities.

Our firm is occasionally requested by Canadian registered charities to conduct an informal legal audit or review of their activities outside of Canada in order to identify any issues or concerns.

In these informal legal audits we run into four types of registered charities that operate abroad, including those that are unaware of the requirements, those that deliberately ignore the requirements, charities that are not compliant but are trying to become compliant and charities that correctly or incorrectly believe they are compliant. I will discuss each of these below.

1) Unaware. The first type is a charity that is completely unaware of the CRA rules governing the foreign activities. In some cases these charities are small organizations that are wholly run by volunteers. Often, in addition to having no clue about the RC4106 rules, they also are unaware of other aspects of the regulation of charities. These charities require education of staff, if any, officers and board members. They then need to decide whether they wish to conduct the foreign operations and, if so, we assist them in implementing the necessary arrangements and controls. In addition to being unaware of the rules, in many cases a staff member or board member of a charity may be completely unaware of the foreign activities. This is particularly common in large organizations or when there is high turnover of staff.

2) Willful blindness. In this category the Canadian charity is aware that there are rules governing foreign activities, however, they wish to ignore those rules and pretend they don't exist. They are prepared to play a game of Russian roulette and hope that they are not discovered by the CRA, the media, donors, directors, etc. If the non-compliance is

discovered, it could create potential liabilities for the charity and its directors and the charity's name could be tarnished. However, such charities are prepared to take that gamble, in part because they are under pressure and they are gambling with other people's money (i.e. the charity's and board's reputation and money). We assist these charities by explaining to them that this is not the correct path to take and I find that, although there may be some people who are willfully blind, at some point when one or more members of the board or professional staff discover the problem, they are very concerned that, in fact, the charity does comply with the rules.

3) Non-compliant, but desiring compliance. The third type is charities that are aware of the rules and are concerned that they are not compliant with the rules. In some cases these charities are completely non-compliant and wish to become compliant and, in other cases, charities are essentially compliant but wish to improve their operations and documentation. In the case of complete non-compliance it may be a matter of really starting from scratch. The charities may have no structured arrangements with their representatives in foreign countries and may be transferring funds abroad contrary to RC4106. In those cases we would help the charities by determining what types of relationships they have and what would be the best agreements and controls to put in place and what books and records need to be kept. In some cases the charities are conducting activities under a structured arrangement such as an agency joint venture cooperative partnership contract or some other type of agreement, but are not doing it properly. It could be that the precedent they are using is 10 or 15 years old and doesn't contain certain elements that are important to the CRA, it could be that the party they are using as the agent is not correct or it could be various other factors. In many cases these charities are using the same guidelines to fund foreign activities as they use to fund a qualified donee in Canada which, depending on the details, may be a completely inappropriate practice. We assist these charities with these sorts of changes. This category of charity is easiest to assist as they are usually highly motivated. Also in many cases they are substantial charities that understand the rules and just require discreet assistance on one or two areas of concern. Obviously the majority of charities we are dealing with are ones who are aware of the rules and are interested in making sure they do comply with the rules. The typical charity that chooses to use our law firm is interested in undertaking its charitable activities in a responsible and cost-effective way and avoiding a major fight with the CRA, which it would view as being a drain on resources and a distraction to the objects of the charity or for that matter a public relations scandal.

4) Believing they are compliant. The fourth category is charities that think they are compliant and may or may not be compliant. In some cases the charities are following all of the requirements but just want a second opinion because of the importance of the activities and the potential consequences of non-compliance. These charities typically have always taken their RC4106 requirements, and other legal requirements, seriously and are hoping they are compliant with them. In other cases the charities, whether through the executive director or chairperson, are certain they are compliant but they quite clearly are not.

We assist charities that are in all four groups. In some cases clients contact us to look at some matter relating to their charity and we have a discussion about the fact that they are operating abroad and it comes up that they have no clue about the issues.

In many cases charities are not aware of whether their activities are compliant or they are in doubt as to whether they are compliant and they request that our firm conduct an RC4106 'audit' or legal review of their foreign activities. The audit typically covers the following:

- 1) A review of any foreign activities being conducted by the charity.
- 2) An assessment of how those foreign activities are being conducted and whether they are in compliance with RC4106. Many organizations conduct simple operations abroad, for example, where their employees go to foreign countries, and there is often very little required in order to make such a mode of operation compliant with RC4106. However, some organizations start out with simply sending employees abroad, but the foreign activities evolve in a number of ways, and may include funding from the Canadian registered charity to an organization in a foreign country without entering into proper contractual relations.
- 3) After the review of such arrangements, we make recommendations, if necessary.
- 4) We assist some clients that need help in structuring relationships between themselves and foreign non-governmental organizations (NGOs) and charities.

By way of conclusion, in this highly competitive world of charities raising money for many different causes and the increasing lack of trust that Canadian donors seem to be exhibiting towards Canadian charities that do international development work and other foreign activities, it is vital that these charities consider finding and fixing problems as soon as possible rather than having these problems brought to their attention in a way that is not conducive to their reputation and goodwill.

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