



Starting a Basic Planned Giving Program for a Canadian Charity: A Lawyer's Perspective

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Many larger Canadian charities receive millions of dollars in funding each year from planned gifts. Planned giving involves tools and techniques to facilitate gifts to charities typically involving the assistance of professional advisors in order to balance donor's financial, personal, family, tax and philanthropic objectives.

Planned giving can be as simple as putting a small legacy in your will to devising a complicated insurance arrangement. Some planned gifts, such as gifts of marketable securities, are immediate, while others, such as a charitable remainder trust are deferred. Some are revocable, such as a bequest in a will, while others are irrevocable such as a donation of marketable securities. In Canada planned giving is often referred to as gift planning. For a description of different planned giving vehicles you can see my article at http://www.blumbergs.ca/articles_more.php?id=95_0_2_0

In many cases the cost of obtaining a planned gift is a much less costly than other methods of fundraising. In today's world astute donors are increasingly eyeing not only the good work of charities but also the percentage they spend on fundraising, planned giving can be a cost effective way of raising money and can result in future dividends for Canadian charities. Many larger charities spend about 1-2% to receive bequests. Furthermore, many organizations rely too heavily on one or two sources of revenue and should consider diversifying their revenue streams to enhance the stability and sustainability of the organization.

Many small to mid-sized charities are interested in setting up a planned giving program but are not sure where to start. In this article I will try to cover some of the important steps in creating a planned giving strategy and program.

Below are some steps for setting up a small scale planned giving program:

1. Board or Executive approval. Decide on whether your organization would like to develop a planned giving program. If your organization is in financial trouble and will probably not be around in 3 or 6 months it may make little

sense. For a planned giving program you need a long time horizon –usually between 10-20 years to really see a payoff. Ideally the board or executive will discuss, support and provide the necessary resources to set up a planned giving program. They will also provide ideas and encouragement.

2. Find out the legal name of the charity. Review the letters patent (or articles of incorporation) which has the actual name and the objects of the charity. I always find it peculiar that many planned giving officers are not aware of the legal name of their charity or are aware of the legal name of the charity but encourage people to use a name other than the charity's legal name such as a unregistered business name or the name by which the charity is commonly known. If an organization considers their legal name to be cumbersome or old fashioned then it costs little to change the legal name and it should be done preferably before launching a planned giving program. If the name of a charity in a will is not the correct legal name then the executor in order to protect him or herself may choose not to release the funds to the charity without obtaining direction from the court. If the charity is a residual beneficiary then indirectly the charity is partly paying for the legal fees. As well, if there are a number of similarly named charities in 20 or 30 years time then you may end up losing the whole bequest or may have to compromise with other charities in order to avoid a court fight.
3. Appropriate Due Diligence. Before launching a planned giving program a charity should, or ask a lawyer to, do some basic searches on your organization to check the sort of items that an estate planning lawyer would look at before preparing a will which includes a major bequest. For example, a lawyer would probably conduct a corporate search to check the correct legal name of the charity and that it is still active. The lawyer would also make sure that the address and contact information for the charity is up to date and that the Canada Revenue Agency website lists the charity under the same name as on the corporate database and that the charity still retains its charitable registration. Frequently a charity will be registered with the Canada Revenue Agency appropriately but the actual legal entity has been cancelled or dissolved for some reason including non-filing of certain forms etc. This is basic due diligence that every charity interested in having a planned giving program should consider.
4. Gift Acceptance Policy. Establish a gift acceptance policy which sets out what gifts the charity is prepared to accept. There are numerous examples of gift acceptance policies on the websites of different charities across Canada. If you are not sufficiently motivated to initially create a gift acceptance policy then at least review a few of the policies from similar charities and consider what types of gifts the charity is interested in receiving and what types of gifts you are not interested in receiving and the reasons for each. It is best to discuss this with your board so you don't end up having problems later with encouraging a particular type of gift and then having your board feel ambivalent or reject a gift. For example, you may decide that you are not accepting real estate because of your concern with environmental contamination then best to know that upfront.

5. Brochure or Fact Sheet. Prepare a short promotional piece explaining the planned giving vehicles your charity is interested in encouraging such as bequests, gifts of marketable securities, gifts of life insurance, etc. If your charity will encourage bequests you may wish to have a brief description of the charity, an explanation of how bequests have helped the charity or could help the charity, some sample wording for a bequest to your charity, and contact information. This fact sheet could be provided to a donor who requests information or be provided on your website.
6. Marketable Securities. Don't encourage donors to give donations of marketable securities to your charity until your charity has properly established a brokerage account with a broker. In addition to the basic fact sheet described above you should also develop a simple questionnaire for the donor or their investment advisor to complete and to provide to the charity so that the charity is aware of the donation and can provide instructions to the broker to accept the shares and to cash them. Without such instructions you may find that your charity's shares are returned to the donor.
7. Planned Giving Society. Establish a planned giving society for individuals who have made bequests or those who have committed to do so. The main reason for doing so is to thank people who have made a planned gift or committed to doing so and to provide a positive example for other potential donors. For example the Princess Margaret Hospital Foundation has The JCB Grant Society. The SickKids Foundation has the J.P. Bickell Society. The society may only have one event a year but it sends a message that the charity values planned gifts.
8. Responsibility. Decide on who will be responsible for the planned giving program. Will it be the Executive Director, a combined position for the major gifts person, or will it be carried out by one or more volunteers or a dedicated part-time or full time planned giving officer?
9. Budget. A larger planned giving program includes many of the same items as you would see in a charity's budget – salaries, events, advertising, professional services including accounting, legal, broker, consultants etc., travel and training/education costs and printing costs. For smaller programs they may include no dedicated staff people or travel or publication – only a small reminder in the charity's newsletter. Planned giving programs need to have a long timeline. In some cases the first bequest received may only be 10-15 years after the program is created. In many cases time spent now only pays off in 20-30 years. Consequently many charities will provide some support for such a program but will not be prepared to have one or more full time staff just encouraging planned gifts. Planned giving programs can be easily started with a very small budget and in some cases either a volunteer or part of a staff person's duties.
10. Administration of Bequests. Learn about the process and if necessary retain a lawyer who is knowledgeable about bequests to assist when and if a gift is

received. You may wish to read Jasmine Sweatman's very helpful book "Bequest Management for Charitable Organizations".

11. The Canadian Association of Gift Planning.(CAGP) Have at least one staff member attend CAGP meetings and network with other planned giving officers. Some CAGP local roundtables offer mentoring and other valuable services. Planned giving officers are often generous of their time in assisting others and in promoting the profession. Whether you decide to join the CAGP or not, they offer interesting programs in local communities as well as national conventions and weeklong courses on planned giving.
12. Professional Advisors. Consider having an informal or formal relationship with various types of professional advisors to ensure that appropriate legal, accounting, insurance, and financial advice can be obtained by the charity when necessary. You may wish to review my article at http://www.blumbergs.ca/articles_more.php?id=104_0_2_0 on the important relationship between professional advisors and charities in the planned giving area. In short the article notes that a more formal planned giving committee can be very useful and can provide recognition to professional advisors involved in the charity. However, such committee structure can be cumbersome and time consuming to maintain and unless the charity is prepared to make such a commitment it may be preferable to start off with more informal relationships with professional advisors or to hire professional advisors to help with certain aspects of planned giving.
13. Marketing. Here are a few simple ideas to market your planned giving program:
 - Prepare a small advertisement in the charity's newsletter which encourages donors to consider planned giving options.
 - ensure that your website has at least a small section on planned giving.
 - place in the charity's mailings a small insert explaining about planned giving and the charity.
 - insert a small 'signature file' at the end of e-mails from your charity encouraging planned giving.
 - remember to mention planned giving opportunities at fundraisers and meetings.
 - consider having a program to explain to professional advisors about the planned giving program and about your charity.
14. Respond. Sometimes planned giving opportunities will just walk through the front door. It cannot be emphasized enough the importance of responding to inquiries and meeting with people who are interested in making a planned gift. Sometimes a lot of work goes into setting up the program and interest either wanes or there are other more pressing matters that are given priority.
15. Ramping up a planned giving program. If you have launched your planned giving program and wish to give it a boost consider hiring a part time planned giving officer if you have not already or consider a firm such as Legacy

Leaders who specialize in assisting charities with planned giving programs by analyzing the charity's database and preparing a targeted mailing and phone campaign.

A couple of very useful resources include the recently revised *Planned Giving for Canadians* by Frank Minton. It is the most authoritative guide on planned giving in Canada and it is provided as a member benefit on CD to all CAGP members. Another very interesting resource is Leslie Howard's planforgifts.com. The website has dozens of precedents for various types of documents relevant to planned giving. It can save an individual countless hours if you are setting up a planned giving program from scratch.

In summary there are 8 or 10 different planned giving vehicles and some may seem quite complicated. However, planned giving can be simplified. About 80 - 90% of the dollar value of planned gifts in Canada come from one vehicle - bequests. Additionally with the changes in the 2006 budget and the elimination of capital gains on the donation of marketable securities to Canadian charities, gifts of marketable securities will become more important and charities should be ready to deal with them. If planned giving seems to be complicated, consider just promoting bequests and gifts of marketable securities.

Mark Blumberg is a non-profit, charity and estate planning lawyer in Toronto with the law firm of Blumberg Segal LLP. Mark is also a member of the Canadian Association of Gift Planners (CAGP), was formerly on the executive of the CAGP GTA Roundtable and is immediate past Chairperson of the CAGP GTA Roundtable Professional Advisors Committee. Mark is also a member and involved with the Princess Margaret Hospital Foundation Planned Giving Advisory Committee and the SickKids Legacy Advisors Committee. If you have questions or concerns with respect to legal issues affecting Ontario or Canadian charities or planned giving please contact Mark Blumberg at mark@blumbergs.ca or at 416-361-1982 x. 237.