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Books and Records for Charitable Organizations: Thinking Outside the Box

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Books and Records for Charitable Organizations: Thinking Outside the Box

Why Good Record Keeping Is Important

From a very practical perspective, keeping good records can help a charitable organization operate more efficiently. If documents and files are in order, they can be quickly accessed. Good record keeping can also make the job of external auditors much easier. A Canada Revenue Agency (CRA) audit can be more efficient and pleasant if there is no scrambling to find backup documents. Good records maintenance also helps organizations develop satisfactory donor and public relations by permitting easy follow up to inquiries.¹

The *Income Tax Act*² has specific rules relating to the period for which charities are to retain documents and records. In addition, charities carrying on a related business or charities required to withhold tax from amounts paid to employees or non-residents, are also subject to the general requirements regarding record retention. Part IX of the *Excise Tax Act*³ also requires charities to retain records, as do other statutes, such as those that regulate the *Canada Pension Plan*⁴ and the *Employment Insurance Act*.⁵

Good record keeping is not just for financial documents. For example, from a legal perspective, keeping governing documents and minutes of board meetings in good order is necessary. These minutes record all important decisions and the rationale behind them. Good minutes help demonstrate that directors have upheld their fiduciary duty.

In recent years some charities have faced claims for damages relating to wrongful or criminal acts by their employees. For example, sexual abuse. Claims may be made for acts that occurred twenty or more years ago, making it more important than ever to keep insurance policies as well as appropriate records on training and volunteers.

Audits

The Minister of National Revenue and therefore, CRA, is given authority by the *Income Tax Act* to inspect, audit, or examine books, records, and documents for information that may be or should

¹ For practical steps on how to organize a books and records basic retention system, see Appendix A.

² Revised Statutes of Canada 1985, c. 1 (5th Supplement), as amended, (*ITA*).

³ RSC 1985, c. E-15.

⁴ RSC 1985, c. C-8.

⁵ SC 1996, c. 23.

be contained in them.⁶ The general requirements⁷ address the information various taxpayers should maintain in their books and records. For example, taxpayers carrying on business, lawyers practicing law, and registered charities and registered Canadian amateur athletic associations.

CRA reports that in the 2007-2008 fiscal year, 790 audits were conducted. Of these, 71 per cent had insufficient books and records.⁸ In a February, 2011, CRA presentation to the Charity and Not-for-Profit Law Section of the Ontario Bar Association, CRA listed inadequate or deficient books and records as second in the top five audit findings for 2009-2010.⁹

CRA has the authority to enter any premises or place¹⁰ where any business is carried on, any property is kept, anything is done in connection with any business, or any books or records are or should be kept.¹¹ The owner or manager of the property or business is required to attend at the premises with the authorized person, provide all reasonable assistance and answer all proper questions.¹²

CRA also has the power to require information to be provided.¹³ Except that, CRA may not require information to be provided about any unnamed persons¹⁴ unless the Minister first obtains

⁶ *ITA* s. 231.1(1)(a).

⁷ *ITA* s. 230(1) to (8).

⁸ RC4457, *Small and Rural Charities: Making a Difference for Canadians*, Page 34 available at <http://www.cra-arc.gc.ca/E/pub/tg/rc4457/rc4457-e.pdf>

⁹ *CRA: Major Non-Compliance Issues* available at http://www.globalphilanthropy.ca/images/uploads/CRA_Major_Charity_Non-Compliance_Issues_Feb_2011_Danie_Huppe-Cranford.pdf

¹⁰ There are specific rules and procedures where the premises is a dwelling house. See *ITA* s. 231.1(2) and (3).

¹¹ *ITA* s. 231.1(1)(c).

¹² *ITA* s. 231.1(1)(d).

¹³ *ITA* s. 231.2(1). For a list of potential questions and list of documents which may be requested during an audit, see the list included in Appendix B, which has been assembled from various CRA audits of CCCC member charities.

¹⁴ *ITA* s. 231.2(2).

a court order.¹⁵ This issue was litigated in *Redeemer Foundation v. Canada (National Revenue)*.¹⁶

In *Redeemer Foundation v. Canada (National Revenue)*, the foundation operated a forgivable loan program for students at Redeemer University College. CRA was concerned the official receipts issued for contributions to the loan program were invalid because the payments were made by parents for the tuition of their children. CRA requested donor information. The foundation refused because CRA had not first obtained a court order authorizing this request. On judicial review, the judge agreed with the charity. CRA successfully appealed this finding to the Federal Court of Appeal. The Supreme Court of Canada decided CRA was entitled to the donor information, without a court order, through the books and records audit ability provided in the *Income Tax Act*.¹⁷ This outcome now allows CRA to bypass the obligation to obtain a court order for disclosure of donor information.¹⁸

Income Tax Act Requirements

The primary record keeping obligations of charities are contained in the *Income Tax Act*.¹⁹ Every registered charity must keep at an address in Canada, recorded with the Minister, records and books of account, which contain:

- (a) information sufficient for the Minister to determine whether there are grounds to revoke registration;
- (b) a duplicate of each donation receipt; and
- (c) other information enabling the Minister to verify donations for which a deduction or tax credit is available.

Failure to comply with this provision can result in revocation of the registration of a registered charity.²⁰ Alternatively, CRA may suspend the receipting privileges of the organization for one

¹⁵ *ITA* s. 231.2(3).

¹⁶ [2008] 2 SCR 643, 2008 SCC 46 available at <http://www.canlii.org/en/ca/scc/doc/2008/2008scc46/2008scc46.pdf>

¹⁷ Through the combined effect of *ITA* s. 230(2)(a) and s. 231.1.

¹⁸ As required by *ITA* s. 231.2(2).

¹⁹ *ITA* s. 230(2).

²⁰ *ITA* s. 168(1)(e).

year.²¹

Canada Revenue Agency Requirements

The provisions in the *Income Tax Act* are greatly augmented by CRA publications. CRA has produced considerable information on the requirements to collect and maintain adequate books and records. Books and records provide evidence to CRA that charities are maintaining sufficient direction and control over programs and finances. Hence, the desire that charities will adequately comply with the CRA requirements. The challenge for the charity is to maintain sufficient documentation to satisfy CRA without the mere keeping of records becoming overwhelmingly burdensome. Books and records of registered charities must be kept at a location within Canada.²²

Privacy Considerations

The *Personal Information Protection and Electronic Documents Act (PIPEDA)*²³ applies to federally regulated employers, such as banks. The legislation also applies to those collecting personal information in the course of commercial activity, not subject to other similar legislation. For example, consumers. Of the main principles of the legislation, the three key factors are:

- limiting retention of records;
- maintaining records for as long as required, but no longer; and
- ensuring security of information.

The principle of limiting retention of records implies keeping the records for as long as necessary, but not longer. The principle relating to security impacts how information is stored. This requires appropriate safeguards be in place to protect the privacy of personal information of individuals.

Privacy legislation may or may not apply to a particular charity. In the event it does not technically apply, the principles are still valuable. If followed, they will assist a charity in diligently keeping and maintaining records.

What are Books and Records?

The scope of the word "record" is very broadly construed by CRA. The *Income Tax Act* definition, includes an account, agreement, book, chart, table, diagram, form, image, invoice, letter, map, memorandum, plan, return, statement, telegram, voucher, and any other thing containing

²¹ *ITA* s. 188.2(2)(a).

²² RC4409, *Keeping Records* available at <http://www.cra-arc.gc.ca/E/pub/tg/rc4409/rc4409-09e.pdf>

²³ SC 2000, c.5.

information, whether in writing or in any other form.²⁴ "Book" is undefined in the *Income Tax Act*.

While not specifying, precisely, which documents will consist of books and records, CRA has augmented the *Income Tax Act* list by issuing various publications containing additional information. When these publications are taken all together, the list also includes: governing documents, bylaws, financial statements, copies of official donation receipts, copies of annual information returns, written agreements, contracts, board and staff meeting minutes, annual reports, ledgers, bank statements, expense accounts, inventories, investment agreements, payroll records, promotional materials, and fundraising information.

For CRA purposes books and records also include source documents which represent the proof of transactions. These documents are used to verify the information contained in the books and records. Source documents can include: accountants' working papers, appointment books, bank deposit slips, cash register receipts, cheques, contracts, correspondence, credit card receipts, deeds, delivery slips, deposit slips, dockets, invoices, logbooks, photos, purchase orders, vouchers, and work orders.^{25, 26, 27}

CRA expects all records to be reliable and complete, providing a comprehensive picture of the activities of the charity. Charities must also maintain confirmation of their charitable status, along with copies of their original and supplemental, if applicable, governing documents and bylaws, copies of all official receipts, information about ten-year gifts, and minutes of all executive and membership meetings.

How Long Should Records be Kept?

The general rule is to keep records for six years after year end.²⁸ This applies, for example, to financial statements, T3010 information returns, and all supporting source documents. The

²⁴ *ITA* s. 248(1) "record."

²⁵ *Books and Records* available at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/bks-eng.html>

²⁶ IC78-10R5, *Books and Records Retention/Destruction* available at <http://www.cra-arc.gc.ca/E/pub/tp/ic78-10r5/ic78-10r5-10e.pdf>

²⁷ RC4409, *Keeping Records*, supra at Note 22.

²⁸ *ITA* s. 230(4)(b). To ensure all documents are retained until after the retention period, CCCC suggests rounding up to seven years. Note that CRA can require records and books of account to be kept for any length of time which they specify, *ITA* s. 230(7).

retention period for other documents varies depending on the type of record.²⁹ A charity may apply to CRA for permission to dispose of documents prior to the retention period.³⁰

Keep the following documents for two years from the end of the last calendar year:³¹

- duplicate receipts for donations, other than ten-year gifts; and
- related donation envelopes.

Keep the following for six years while the charity is registered or for two years after the day the registration of the charity is revoked:

- general ledger or books of final entry containing summaries of year-to-year transactions; and
- special contracts or agreements necessary to understanding the general ledger.³²

Keep the following for two years after the day the registration of the charity is revoked, which means permanently:

- instructions for ten-year gifts;³³
- minutes of the membership, executive, and board meetings; and

²⁹ *ITA* s. 230(4)(a) and *ITA Regulation* 5800.

³⁰ *ITA* s. 230(8). To obtain permission from CRA to destroy records prior to the expiration of the statutory retention period, use Form T137, *Request for Destruction of Records* available at <http://www.cra-arc.gc.ca/E/pbg/tf/t137/t137-fillable-10e.pdf>

³¹ *ITA Regulation* 5800(1)(f). While duplicate receipts technically only need to be kept for two years, CCCC recommends rounding this up to three years to ensure all receipts are included. As a practical matter, duplicate receipts should be kept for at least five years in the possibility that some donors, who have not yet claimed the donation on their income tax returns, have lost their receipts and requested replacements. Duplicate receipts may also be kept for a full six years as a source document to back up the general ledgers.

³² *ITA Regulation* 5800(1)(c).

³³ *ITA Regulation* 5800(1)(d)(iv). If a charity receives a gift with a direction to retain the capital for at least ten years, the charity must permanently retain a copy of the receipt along with any other documentation to verify the restrictions placed on the gift. This is important, not only to satisfy the *ITA* requirements, but also to verify the charity has complied with the restrictions placed on the gift in accordance with the provincial or territorial laws in the applicable Canadian jurisdiction.

- all governing documents and by-laws.³⁴

If a charity is subject to a CRA audit, has filed a notice of objection with CRA, or is a party to an appeal at the Tax Court of Canada, all records should be retained until the matter is finally resolved and the appeal period has expired.³⁵

Records Retention for Governing Documents

In addition to the information a charity is required to retain in accordance with the *Income Tax Act*, the legislation under which a charity is incorporated or operates, will also prescribe records which must be retained. For example, the new *Canada Not-for-profit Corporations Act* sets out various types of records a corporation must maintain and the length of time accounting records must be kept. Part I of the draft regulations sets out the specific or prescribed information that must be kept for each type of record mentioned.³⁶ See, for example, section 21(1), (2), and (4) of the *Act*:

- 21(1) A corporation shall prepare and maintain, at its registered office or at any other place in Canada designated by the directors, records containing
- (a) the articles and the by-laws, and amendments to them, and a copy of any unanimous member agreement;
 - (b) the minutes of meetings of members and any committee of members;
 - (c) the resolutions of members and any committee of members;
 - (d) if any debt obligation is issued by the corporation, a debt obligation register that complies with section 44;
 - (e) a register of directors;
 - (f) a register of officers; and
 - (g) a register of members.
- 21(2) The registers referred to in paragraphs (1)(e) to (g) shall contain the prescribed information.
- 21(4) Subject to any other Act of Parliament or of the legislature of a province that provides for a longer retention period, a corporation shall retain the accounting

³⁴ *ITA Regulation* 5800(1)(d).

³⁵ *ITA* s. 230(6).

³⁶ See the *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23, available at <http://www.canlii.org/en/ca/laws/stat/sc-2009-c-23/latest/sc-2009-c-23.html> and see also Part I of the *Canada Not-for-Profit Corporations Regulations – For Public Consultation* available at <http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04591.html>

records referred to in subsection (3) for the prescribed period.

The “prescribed information” referred to in section 21(2) and (4) is given meaning in Part I of the Regulations:

- 2(1) For the purpose of subsection 21(2) of the Act, the prescribed information for the register of directors is
- (a) the name of each director;
 - (b) the current residential address of each director;
 - (c) an email address if the director has consented to receiving information or documents by electronic means; and
 - (d) for each person named in the register, the date on which that person became a director and, if applicable, the date on which that person ceased to be a director.
- 4 For the purpose of subsection 21(4) of the Act, the prescribed period is six years after the end of the financial year to which the accounting records relate.

Record Keeping for Human Resource Purposes

Records and supporting documents necessary to verify income tax which the charity is required to withhold from salaries, wages, and amounts paid by virtue of an office, or to non-residents who perform services in Canada, must be retained for at least six years from the end of the taxation year to which the records relate.³⁷ The *Canada Pension Plan* and the *Employment Insurance Act* also require employers to retain records and supporting documents for at least six years from the end of the year to which they relate to enable CRA to verify contributions and premiums required to be withheld from salaries or wages under these statutes.

Electronic (Income Tax) Records

A charity using a computer-based accounting system must maintain electronic records, with entry details, in an accessible format for the prescribed periods.³⁸ Two methods exist to meet the retention requirement. One is to have the computer program keep all records open and accessible for the required period. Since many computer programs consolidate data entry details after one or two years, this approach may require a costly rewrite of the computer software used by the charity. The second method is to make a backup copy of all records for each year just before the charity closes the records for the year. Label the backup, “official copy for retention of records.” Store the file with all other financial records for the year. The charity should

³⁷ *ITA* s. 230(4)(b).

³⁸ *ITA* s. 230(4.1). Note that there is an exemption to the general requirement in *ITA* s. 230(4.2).

maintain computer equipment and software that can read the official copy for retention of records for the minimum specified number of years.³⁹

Electronic Imaging of Income Tax Records

Electronic imaging is the representation of a source document that can be used to generate an intelligible reproduction of that document, such as microfilm. The electronic image is made with the intention of standing in the place of the original source document, so must give the same information. The benefit of this type of system is that there is less storage of paper records, and images are available online throughout the charity. CRA sets out standards for imaging systems as follows:⁴⁰

- A person in authority within the organization must confirm, in writing, that the program will be part of the usual and ordinary activity of the organization.
- All systems and procedures established must be documented.
- A logbook must be kept showing:
 - the date of imaging;
 - signatures of persons authorizing and performing imaging;
 - a description of records imaged; and
 - whether the source documents were destroyed and, if so, the date of their destruction.
- The imaging software must maintain an index to permit immediate location of any record. The software must also inscribe the imaging date and the name of the person who does the imaging.
- Images must be of commercial quality and must be legible on a computer screen and paper.
- The charity must establish a system of inspection and quality control to ensure that the necessary documentation, listed above, is maintained.
- Equipment must be available to view or reproduce hard copies of the image.

Record Retention for GST/HST Purposes

A charity is required to retain books and records pertaining to a related business or commercial activity carried on by the charity for six years after the year to which the records relate.⁴¹ CRA

³⁹ For additional information on this topic, see IC05-1R1, *Electronic Record Keeping* available at <http://www.cra-arc.gc.ca/E/pub/tp/ic05-1r1/ic05-1r1-10e.pdf>

⁴⁰ IC78-10R5, *Books and Records Retention/Destruction* available at <http://www.cra-arc.gc.ca/E/pub/tp/ic78-10r5/ic78-10r5-10e.pdf>

⁴¹ *GST/HST Memoranda Series* issued June 2005, 15.1 General Requirements for Books and Records available at <http://www.cra-arc.gc.ca/E/pub/gm/15-1/15-1-e.pdf> and 15.2 Computerized Records available at <http://www.cra-arc.gc.ca/E/pub/gm/15-2/15-2-e.pdf>

may require a specific charity to keep some records longer than six years. A charity may also request permission from CRA to dispose of records prior to six years.

Records should be kept pertaining to information required to be supplied in a prescribed form or pertaining to a rebate or refund claim, in order to enable CRA to determine liability for and compliance with the GST/HST legislation or the amount of any rebate or refund the charity is entitled to receive. If the charity has objected to, or appealed against, any determination made under the GST/HST legislation or has requested a determination under such legislation, records related to those actions must be retained until all appeals have been finalized.

When There is No Statutory Obligation to Keep a Particular Record

If there are no statutory obligations to keep a particular type of document, consideration should still be given as to whether the record has any evidentiary value either for defending against a future claim or to demonstrate due diligence.

In recent years some charities have faced claims for damages relating to wrongful or criminal acts by their employees. Claims may be made for acts which occurred twenty or more years ago. A charity with liability insurance for occurred claims rather than reported claims, should retain the policies indefinitely along with memoranda and policy statements.

In light of all the various legal requirements, a charity should exercise caution prior to destroying any records. When in doubt, a charity should consult professionals, for specific advice.⁴²

Inadequate Books and Records Case Law

Failure to maintain adequate books and records is a common ground of revocation, often in combination with additional grounds.⁴³ The following are reported cases where charities have been revoked for inadequate books and records.

*Christian Homes for Children v. Minister of National Revenue*⁴⁴

The charity was established in 1945. The charitable objects were mainly to provide homes and summer camps for needy children, operate missions, and to provide Christian home training services. Upon audit, the Minister of National Revenue determined the income of the organization was not used for charitable purposes, but almost entirely for the personal benefit of

⁴² For a chart summarizing minimum records retention obligations, see Appendix C.

⁴³ For an archive of CRA news releases, including announcements about revoked charities, go to <http://www.cra-arc.gc.ca/nwsrm/rlss/menu-eng.html>

⁴⁴ 66 DTC 736, Tax Appeal Board, October 24, 1966.

the founder and his family.

The organization had inadequate bookkeeping records. There was no accurate record of receipts and disbursements. The organization failed to comply with the charitable objects, failed to use charitable resources appropriately, used resources for the benefit of the officers and directors, and was carrying on activities for the pursuit of profit.

The lack of adequate bookkeeping records was used by the founder to further benefit himself. For example, when deposits into the bank account of the organization did not have a corresponding voucher or supporting source document, the founder assumed the deposit was money loaned to the organization by himself. The deposit was then recorded to his credit as a "director's loan." The organization was assessed for tax owing on the basis that the organization was not operating as a charity.

*College Rabbinique de Montreal Oir Hachaim D'Tash v.
Canada (Minister of the Canadian Customs and Revenue Agency)*⁴⁵

The status of the charity was revoked on several grounds, including failure to maintain adequate books and records. The entire Reasons for Judgment of Nadon, J.A. of the Federal Court of Appeal, consists of the following three paragraphs:

"We have not been persuaded that the Minister's decision to revoke the appellant's charitable organization registration was made in error.

Even though the appellant was not given an opportunity to respond to some of the grounds put forward by the Minister in his Notice of Intention to Revoke dated March 3, 2000, we are nonetheless satisfied that there were sufficient grounds to support the Minister's decision, in respect of which the appellant was given full opportunity to put its case forward, namely that it had provided official donation receipts for amounts that were not "gifts" within the meaning of subsection 118.1(1) of the *Income Tax Act*, that its resources were not all devoted to charitable purposes and activities, its failure to maintain proper records and books in accordance with subsection 230(2) of the *Income Tax Act*, that it made loans to non qualified donees and that it made loans which were not considered to be operating at arm's length.

The appeal will therefore be dismissed with costs."

⁴⁵ 2004 FCA 101, available at <http://www.canlii.org/en/ca/fca/doc/2004/2004fca101/2004fca101.html>

*Lord's Evangelical Church of Deliverance and Prayer of Toronto v.
Her Majesty the Queen*⁴⁶

This case was an appeal from the Minister of National Revenue's 2003 decision to revoke the church as a charitable organization. The church was incorporated and registered as a charity in 1991. The principal object was to preach, promote and advance the spiritual teachings of the evangelical faith. The church was audited in 2001 with CRA expressing concern that the pastor was not advancing religion, but was misappropriating funds. Other concerns raised by the audit were inadequate books and records, nonconforming receipts, the suspicion of personal expenses being reimbursed which were not included on T4 slips, and the gifting of \$150,000 to the pastor and her children. CRA was not satisfied with the efforts to address these concerns. In 2003 CRA moved to revoke the charitable status of the church.

In the Reasons for Judgment, Stone, J.A., stated:

"Even acknowledging the relatively small size of the appellant's operations and its need to rely heavily on volunteers for proper books and record keeping, the evidence does not show that these concerns of the Minister were met in any meaningful way. Thus, for example, there was no compliance with the Minister's request for a breakdown of benefits other than wages in respect of two T4 slips issued in February 2002."⁴⁷

Each issue of noncompliance raised by CRA was found to be a sufficient ground for revocation. The church failed to adequately argue a denial of procedural fairness. The appeal was dismissed.

*International Relief Fund for the Afflicted and Needy v. Day et al.*⁴⁸

The plaintiff, IRFAN, alleged that on November 22, 2004, the defendants published a press release that connected IRFAN to Hamas, a designated terrorist organization. The defendants included Stockwell Day, who at the time was a Member of Parliament and Critic for Foreign Affairs, along with a nonprofit organization called Canadian Coalition for Democracies. IRFAN sought damages for libel in the amount of \$6M and punitive damages of \$1M on the basis that the content of the

⁴⁶ 2004 FCS 397, available at <http://www.canlii.org/en/ca/fca/doc/2004/2004fca397/2004fca397.html>

⁴⁷ At Paragraph 17.

⁴⁸ 2008 CanLII 49581 (OSC), available at <http://www.canlii.org/en/on/onsc/doc/2008/2008canlii49581/2008canlii49581.pdf>

press release was defamatory, false, and malicious. The organization also argued that the press release brought IRFAN into disrepute, and exposed the organization to hatred, ridicule, and contempt.

The defendants claimed the statements in the press release were true. In order to defend themselves, they sought to examine IRFAN's books and records for information about donors and financial beneficiaries. IRFAN refused to comply. IRFAN argued the documents were protected by common law privilege and that donors and recipients had asked for, and received, assurances of confidentiality from IRFAN.

The court determined the defendants were entitled to disclosure of the documents. They were seminal to the issues in the lawsuit and more than met the threshold for production. A process for protecting donor anonymity was accepted by the Master who imposed a confidentiality order.

On April 13, 2010, CRA issued a news release advising that a one-year suspension had been issued to IRFAN. The suspension was for failing to maintain adequate books and records and for failing to provide books and records for audit and examination.⁴⁹ The charitable status of IRFAN was revoked April 9, 2011.⁵⁰

*Holy Alpha and Omega Church of Toronto v. Attorney General of Canada*⁵¹

CRA conducted an audit of this church apparently suspecting the official receipts had been sold to taxpayers by income tax preparers. On April 10, 2008, the Minister of Revenue issued a notice of intent to revoke the status of the charity, in part, because of concerns about maintaining adequate books and records. Significant portions of reported revenue had not been deposited into the bank account of the charity. Also, in 2003 approximately \$678,858 of \$742,553 and in 2004 approximately \$1,619,011 of \$1,696,069 in total expenditures failed to be substantiated by any documentation. There were additional noncompliance issues, such as a suspected failure to meet the disbursement quota, failure to maintain direction and control over charitable resources, nonconforming official receipts, and a non-arm's length board of directors.

The charity brought an application for an order extending the 30-day time limit prior to the Minister commencing the revocation process. This would grant the charity additional time to exhaust all the appeal rights. The charity was unable to establish that irreparable harm to the charity would result if the time limit was not extended, in accordance with the test established in

⁴⁹ Available at <http://www.cra-arc.gc.ca/nwsrm/rlss/2010/m04/nr100413c-eng.html>

⁵⁰ See the Charities Listings located at <http://www.cra-arc.gc.ca/chrts-gvng/lstngs/menu-eng.html>

⁵¹ 2009 FCA 265, available at <http://www.canlii.org/en/ca/fca/doc/2009/2009fca265/2009fca265.pdf>

RJR-MacDonald Inc. v. Canada (Attorney General).⁵²

Record Retention with Foreign Activities

Unique issues arise when charities carry out work via agency, joint venture, or similar agreements, whether in Canada or abroad. Charities must record the steps taken to direct and control the use of all charitable resources. The records must be sufficient to permit CRA to verify all of the resources of the charity have been used for its own activities. The comments provided in CG-002, *Canadian Registered Charities Carrying Out Activities Outside Canada*,⁵³ do not have the force of law, but inform charities of CRA's position on international operation. The comments can be applied, for the most part, to domestic and foreign situations. Excerpts or summaries of various sections of this policy follow.

Using Intermediaries

In general, when using intermediaries to carry out charitable activities, CRA strongly recommends the creation of a written agreement between the charity and the intermediary. The purpose of the agreement is to demonstrate the charity is maintaining direction and control over the resources and activities of the charity. To satisfy this requirement, the agreement needs to clearly and thoroughly describe the activity the intermediary will carry out. The charity must be able to demonstrate compliance with the agreement. In other words, the charity must monitor and supervise the activity, and provide clear, detailed instructions to the intermediary on an ongoing basis.⁵⁴

Written Agreements

Specific requirements of a written agreement, include:⁵⁵

- the exact legal names and physical addresses of all parties;
- a clear, complete, and detailed description of the activities to be carried out by the intermediary, and an explanation of how the activities further the purposes of the charity;
- the location(s) where the activity will be carried on (for example, the physical address, town, or city);
- all time frames and deadlines;

⁵² [1994] 1SCR 311 available at <http://www.canlii.org/en/ca/scc/doc/1994/1994canlii117/1994canlii117.pdf>

⁵³ Issued July 8, 2010, available at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html>

⁵⁴ CG-002, Paragraph 1.2.

⁵⁵ CG-002, Appendix F.

- any provision for regular written financial and progress reports to prove the receipt and disbursement of funds, as well as the progress of the activity;
- a statement of the right to inspect the activity, and the related books and records, on reasonably short notice;
- provision for funding in instalments based on satisfactory performance, and for the withdrawing or withholding of funds or other resources, if required (funding includes the transfers of all resources);
- provision for issuing ongoing instructions as required;
- for agency agreements, provision for the charitable funds to be segregated from those of the intermediary, as well as for the intermediary to keep separate books and records;
- if any of the funds or property of the charity are to be used in the acquisition, construction, or improvement of immovable property, the title of the property will vest in the name of the charity. If not, there will be:
 - provision indicating how legal title to that property shall be held (in the name of a local charity, government agency, municipality, or non-profit organization established to provide benefits to the community at large); and
 - provision for the intermediary to obtain reasonable assurances from the property holder, owner, or landlord, as the case may be, that the property will continue to be used for charitable purposes for the benefit of the public;
- for joint ventures, provisions that enable the charity to be an active partner, with a proportionate degree of direction and control in the venture as a whole, as well as assurances of the following:
 - the resources of the charity are devoted to activities furthering its purposes; and
 - the charity maintains and receives financial statements and records for the entire project on a regular basis.
- effective date and termination provisions; and
- signatures of all parties, and the date of signing.

Agents

When a charity works with an agent, CRA expects to see records supporting the following:⁵⁶

- an agreement establishing the details of the activity, and the parties respective roles and responsibilities;
- details about how the activity is to be carried out setting out the extent of the authority delegated to the intermediary to make decisions (for example, typical day-to-day operating decisions, such as hiring local staff and buying supplies);
- detailed reports to the charity about the use of the charitable resources, along with evidence the charity has knowledge of the use of its resources and is carrying out ongoing reviews;
- evidence the charity intervenes as required, that it provides ongoing instructions on the

⁵⁶ CG-002, Paragraph 6.2 and Appendix F. See also Question 4 regarding the need to have a written, rather than oral, agreement.

- use of its resources, that it ensures the activity continues to be carried out according to the agreement, and that the activity is achieving the charity's own charitable purpose;
- evidence the intermediary is segregating funds and is maintaining separate books and records;
- evidence the charity makes periodic transfers of resources, based on demonstrated performance.

In *Canadian Committee for the Tel Aviv Foundation v. Canada*,⁵⁷ the Committee was registered as a charity in 1985 for the purpose of promoting relief of poverty and sickness in Tel Aviv, Israel. The committee intended to carry out the charitable activities through an agent in Israel, the Tel Aviv Foundation. A written agency agreement was in place from July, 1986.

In a 1993 audit CRA raised the following deficiencies:

- violation of the agency agreement regarding control over funds disbursed to and by the agent;
- lack of details of money expended by the agent for scholarships;
- inability to demonstrate adherence to a system of continuous and comprehensive reporting as required by the agency agreement;
- co-mingling of funds of the Committee and the agent; and,
- no separate identification of the charitable activity of the Committee in projects and endeavours.

In a 1999 audit of the 1997 fiscal year, CRA noted a repeat of deficiencies identified in the 1993 audit. In 2000 CRA issued a notice of intent to revoke the charitable registration. The Committee argued revocation could not occur for noncompliance with an agency agreement and, the agency agreement had been superceded by oral arrangements. In the absence of other documentary evidence, because the agency agreement was ignored, the court found the Committee was not in control of the overseas activities. The *Income Tax Act* does not explicitly require a written agency agreement. However, Malone, J.A., stated, "Even though the Minister's reasons are couched in terms of non-compliance with the Agency Agreement, the requirements under the latter are, in my view, simply a means of ensuring compliance with the Act."⁵⁸

In dismissing the appeal of the Committee, the court agreed that the Committee was not maintaining adequate records of the activities undertaken by the agent as required by sections 230(2) and (3). The court refused to accept the Committee's reasoning that the lack of records was due to the frequent changeovers in the administration of the organization responsible for the agent.

⁵⁷ 2002 FCA 72 available at <http://www.canlii.org/eliisa/highlight.do?text=Canadian+Committee+for+Tel+Aviv&language=en&searchTitle=Canada+%28federal%29&path=/en/ca/fca/doc/2002/2002fca72/2002fca72.html>

⁵⁸ At Paragraph 40.

Joint Ventures

In determining whether a charity has direction and control over the use of its resources in a joint venture, CRA looks for documentation providing for the:⁵⁹

- presence of members of the Canadian charity on the governing body of the joint venture;
- presence of the Canadian charity's personnel in the field;
- joint control by the Canadian charity over the hiring and firing of personnel involved in the venture;
- joint ownership of foreign assets and property;
- right of the Canadian charity to have input into the venture's initiation and follow through, including the charity's ability to direct or modify the venture and to establish deadlines or other performance benchmarks;
- signature of the Canadian charity on loans, contracts, and other agreements arising from the venture;
- review and approval of the venture's budget by the Canadian charity, availability of an independent audit of the venture, and the option to discontinue funding when appropriate;
- authorship by the Canadian charity of such things as procedures manuals, training guides, and standards of conduct;
- on-site identification of the venture as being the work, at least in part, of the Canadian charity;
- evidence the charity regularly receives full and complete financial information for the whole venture; and
- documentation showing how its contribution fits into the overall undertaking, and how its resources have been devoted to activities that further its charitable purposes.

Record Keeping Issues that Arise with Foreign Activities

Original Source Documents

As a general rule CRA requires charities to have original source documents, such as receipts for purchases, notwithstanding that the *Income Tax Act* does not specifically require a charity to provide original source documents. However, when charities work outside Canada, original source documents are often impossible to obtain. CRA acknowledges that various circumstances such as war, natural disaster, lack of access to telephones or the Internet, low literacy rates, legal restrictions, or other conditions may make obtaining original source documents, either impossible or impractical. If this is the case, CRA suggests charities:

- should be able to explain why original source documents cannot be obtained;

⁵⁹ CG-002, Paragraph 6.2 and Appendix E.

- make all reasonable efforts to obtain copies, reports, and records from staff and intermediaries to support the expenditures, and demonstrating the efforts undertaken to obtain original source documents; and
- show when, how, and in what amounts funds were transferred.⁶⁰

Requirement to Keep Records in Canada

Charities must ensure that adequate books and records are maintained even if a third party is involved in preparing those records, such as a payroll service provider or where a joint ministry agreement is in place. Books and records of charities must be kept at the address in Canada recorded with CRA.⁶¹

When conducting foreign activities, maintaining books and records at a Canadian address can be challenging. Onerous document organization and shipping may become a problem. The Federal Court of Appeal decision in *eBay Canada Limited and eBay CS Vancouver Inc. v. Minister of National Revenue*,⁶² suggests charities should easily be able to satisfy this requirement because books and records stored outside Canada, but accessible within Canada, are considered to be records stored in Canada. Unfortunately, CRA has taken the position that this is not the case for charities. CRA has stated that, notwithstanding the *eBay* case, keeping records on a foreign server which is accessible in Canada, does not satisfy the requirement that charities must keep their books and records at an address in Canada.⁶³

In the *eBay* case, the Minister of National Revenue obtained an order requiring eBay Canada to provide CRA with income information on eBay Power Sellers located in Canada. EBay Canada appealed the order on the basis that the data was stored in the United States on servers owned by eBay US and maintained by eBay International. EBay Canada argued that the requested information could not be obtained from a foreign jurisdiction. Both the Federal Court and the Federal Court of Appeal observed that eBay Canada had been granted access to databases anywhere in Canada, even though eBay Canada did not download the information. Both courts concluded that even if the information was stored on servers outside of Canada, the information was readily available in Canada.

Evans, J.A., stated, “. . . with a click of a mouse, the appellants make the information appear on the screens on their desks in Toronto and Vancouver, or anywhere else in Canada. It is as easily accessible as documents in their filing cabinets in their Canadian offices. Hence it makes no

⁶⁰ CG-002, Paragraph 8.1.

⁶¹ *ITA* s. 230(2) and CG-002, Paragraph 8.

⁶² 2008 FCA 348 available at <http://www.canlii.org/en/ca/fca/doc/2008/2008fca348/2008fca348.pdf>

⁶³ CG-002, Question 3.

sense in my view to insist that information stored on servers outside Canada is a matter of law located outside of Canada for the purpose of section 231.6 because it has not been downloaded. Who, after all, goes to the site of servers in order to read the information stored on them?"⁶⁴

Despite this decision, CRA has not amended its position that books and records stored outside Canada, but accessible electronically within Canada, do not meet the requirement of being kept in Canada.

Capital Property in a Foreign Country

Charities carrying out foreign activities frequently build or help build capital property in a foreign country. This activity can create some complexities, given that Canadian charities may not give resources to nonqualified donees, such as foreign charities, individuals, or community groups. In addition, owning foreign real or capital property, such as land or buildings, may be neither practical, possible, or desirable. CRA acknowledges that some countries do not permit foreign ownership of real property. CRA also acknowledges the difficulties that may arise when operating and maintaining a building in a foreign jurisdiction. To accommodate these difficulties, CRA provides the following information:⁶⁵

"In these cases, a charity may seek to transfer ownership of real or capital property to a foreign non-qualified donee. These types of transfers can be problematic because land and buildings tend to have a relatively high value, and can also be used for a wide variety of purposes. For example, a charity might help an impoverished community build a bridge that allows people to cross a river and take their goods to a local market more quickly. Then a powerful member of that community may seize control of the bridge and start charging a toll for personal profit.

Transferring ownership of capital property to a local organization or government body might be acceptable to the CRA, as long as documentation with any non-qualified donee states that the property will be used only for charitable purposes. The charity should get reasonable assurances, and document and retain these assurances, that the property will, at least for its expected useful life, be used for the benefit of the community as a whole."(Emphasis added)

Anti-Terrorism

Canadian charities must also comply with various pieces of anti-terrorism legislation.⁶⁶ The

⁶⁴ At Paragraph 48.

⁶⁵ CG-002, Appendix B.

⁶⁶ CG-002, Paragraph 4.3.

accountability procedures necessary to maintain proper books and records will assist in avoiding exploitation by terrorist groups. CRA has provided a checklist to help charities avoid terrorist abuse.⁶⁷

⁶⁷ *Checklist for Charities on avoiding terrorist abuse* available at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/chcklsts/vtb-eng.html>

Appendix A

Basic Record Keeping for Charities How to Get Started

Being proactive about record keeping practices requires an ongoing commitment. A designated staff member should be assigned the task of retaining proper records for the organization.

Here are some practical steps:

- Review all records.
- Decide how long to keep each type of record.
- Decide the best time to move records into storage. Many organizations store financial records following completion of the annual external audit.
- Decide on the appropriate storage medium: paper files, microfilm, or electronic files. Consider the level of security required. Ensure the storage area is clean and dry.
- Store records of a similar type together, especially those that can be destroyed in the same year.
- Label boxes and other storage containers identifying the contents, the fiscal year, date of storage, and the year the documents may be destroyed. Label the front and sides of each box.
- Authorization for storage should be made by the designated staff member. This will provide a thoughtful second look at whether the documents are being handled appropriately.
- Create an index of stored documents, duplicating the information recorded on each box. Also record the date the documents were destroyed. This index can save a lot of time when searching for old records. The index should be kept permanently.

Appendix B

CRA Audits

Potential Pre-Audit Questions and List of Requested Documents

The following requests for information and documents was compiled from various CRA audits of CCCC member charities.

Name of Registered Charity: _____

Registration No. _____

Period to be Audited: Fiscal years ended _____ and _____

In order to expedite the audit, please have the following documentation available at the commencement of the field visit. This list is non-exhaustive. Additional information may be requested during the review.

Financial

1. The charity's books and records (including general ledger, cash receipts and disbursements journals, bank statements, cancelled cheques, expense invoices, duplicate official donation receipts, deposit books, revenue records, invoices and other documentation for expenses, fixed asset purchases, etc., and all adjusting journal entries) for the fiscal period under review.
2. The T3010 returns for the fiscal period under review along with a reconciliation of official donation receipts issued to the Information Return (Line 4500).
3. For cash gifts, a listing of donation receipts issued containing the receipt number, date, donor name, and amount.
4. For gifts-in-kind, a listing of official donation receipts issued containing the receipt number, date, donor name and address, amount, description of property, and name and address of the appraiser. If an appraisal of the property was not completed, provide details as to how the fair market value of the gift was determined.
5. Copies of official donation receipts, appraisals, and ten-year directions, as applicable, should be available for review.
6. A list of the gifts (including gifts-in-kind) received from other registered charities, containing the charity's name, registration number, description of the gift received, and the name and address of the appraiser (if applicable).
7. A reconciliation of disbursements as per the financial statements to the T3010 (Lines 4800 through 4920 and Lines 5000 to 5040, including a detailed breakdown of the

disbursements).

8. Copies of all T4/T4A slips and T4 Summaries pertaining to the fiscal periods. Copies of any contracts, invoices, or other types of documentation regarding individuals employed under personal service contracts (formal or otherwise) who are not accounted for under your payroll system.
9. A listing of the charity's bank accounts, including their type, account numbers, the names of all banking institutions, and locations of safety deposit boxes, if any.
10. Details of the charity's investments.

Organizational

1. A list of the current directors or trustees, including their positions within the organization, their occupations, and dates of birth. A description of job duties should also be available.
2. A list of each committee with their functional responsibilities. Include a list of the members serving on each committee.

Objects and Activities

1. A copy of the governing documents along with any amendments made thereto.
2. Details of the programs and activities of the charity, supported by information and documentation in respect of such things as:
 - annual reports and minutes (for the fiscal period reviewed during the audit);
 - committee reports and minutes, including a description of the functional responsibilities of each committee along with a list of members for each committee (for the fiscal period reviewed during the audit);
 - conferences, workshops, research and education-related papers and reports, etc.;
 - publications, advertisements, newsletters, press releases, media-related materials, brochures, pamphlets, cassettes and diskettes, public meetings or solicitations, demonstrations, write-in or mail-in campaigns, and submissions to any level of government, etc.
3. Details of eligibility requirements for services to be provided by the organization along with the record of persons who have qualified for and received assistance. For example, for scholarships, a copy of the selection criteria.
4. Details of any future projects and related activities. Where possible, please provide a copy of any business plans.

5. Details of correspondence or briefs submitted by the charity to any level of government, by invitation or otherwise.
6. Details of any involvement with registered lobbyists. Have you had any employees on staff during the past three years who hold registered lobbyist status? Has your charity contracted with any firm or consulting group or individual that, to your knowledge, employs staff with registered lobbyists status or is a registered lobbyist?
7. Copies of all current agency agreements governing charitable programs carried on outside of Canada.
8. Records related to foreign activities, including contracts, joint venture or similar agreements, copies of bank records, financial reports, photos, correspondence, etc.
9. Details of the charity's activities supported by copies of brochures, pamphlets, publications, membership and fundraising correspondence, newsletters, press releases, media-related materials, and other related literature.

Fundraising

Please provide details of any of the following fundraising activities undertaken:

- auctions
- bingo or casino nights
- collection plate or boxes
- discount books or cards
- door-to-door solicitations
- draws or lotteries
- fundraising dinners or galas
- fundraising sales
- gifts of goods
- gifts of services or labour
- joint ventures with other organizations
- mail campaigns
- planned-giving programs
- sale of goods
- sale of services
- targeted donations or sponsorships
- telephone solicitations
- tournaments or sporting events
- walk-a-thons etc.
- other (specify)

Please provide information regarding unsolicited donations, a list of major donors, and planned changes to your fundraising methodology.

Our review of the T3010 filed by the charity indicates the charity has used auctions as a fundraising activity. The CRA is reviewing the conduct of these activities with a particular focus on the valuation of property received for auction as well as property sold at auction. We would ask that you provide a response to the each of the following questions:

1. Does the charity conduct its own auctions or does it use an outside source?
2. How many auctions per year does the charity hold?
3. How is property procured for use in the auction?
4. If property is donated for use in the auction, are donation receipts issued?
5. Are donation receipts issued to bidders for property purchased at auction?

For the period under review, we would also ask that you:

1. indicate the total value of tax receipts issued for property that was donated for use in the auction and provide a separate total for each auction held;
2. describe the methods used by the charity to establish the value of property to be auctioned; and
3. provide copies of donation receipts where the value on the receipt was \$4,000 or greater,
 - for donors of property to the auction; and
 - for bidders at the auction.

Appendix C

HOW LONG SHOULD RECORDS BE KEPT?

The following chart provides some common examples of records and suggested retention periods. Every attempt has been made to give accurate information in this schedule.

You may wish to check with your lawyer or other professional advisor for information specific to your situation.

Type of Record	Retention Period
Church Envelope Records	3 years
Official Receipts for Income Tax Purposes	3 years
Approved Budgets	7 years
Bank Reconciliations	7 years
Bank Statements/Cancelled Cheques	7 years
Donation Records	7 years
Financial Statement Working Papers	7 years
Inventory Records	7 years
Invoices/Receipts of payment	7 years
Monthly Trial Balance	7 years
"Payroll Records, T4's"	7 years
Record of Employment (ROE's)	7 years
T3010 Annual Charity Information Return	7 years
General Ledger (7 years unless a Corporation, then permanent)	Permanent *
"Governing Documents (Letters Patent, Certificate of Incorporation, Bylaws)"	Permanent *
Minutes of Directors' Meetings	Permanent *
Minutes of Executive Committee Meetings	Permanent *
Minutes of Members' Meetings	Permanent *
Official Receipts for Income Tax Purposes (Perpetual Endowment Gifts)	Permanent *
Official Receipts for Income Tax Purposes (10 year gifts)	Permanent *
Authorization and Consent for Minors	Recommended Permanent
Confidential Record of Reference Checks **	Recommended Permanent
Employment Applications	Recommended Permanent
Insurance Policies	Recommended Permanent
Performance Reviews	Recommended Permanent
"Personnel Information: sick leave, time sheets, attendance, discipline, vacation"	Recommended Permanent
Suspected Child Abuse Report	Recommended Permanent
Suspected Child Abuse Followup Report	Recommended Permanent
T-4 Summaries	Recommended Permanent
Volunteer Application Forms	Recommended Permanent
Year End Financial Statements	Recommended Permanent

NOTE: Records that are to be kept for a certain period (e.g., 2 years or 6 years, after the end of the tax year to which they apply) are rounded up to the next year (e.g., 3 years or 7 years).

* Permanent means for 2 years after the charity's registration is revoked.

** The police record check itself may be destroyed, but keep a permanent record that it was received and vetted.

While duplicate receipts technically need only be kept for 2 years, practically they should be kept for at least 5 years in the event a donor who has not yet claimed the donation on their income tax return has lost the receipt and requests a replacement. It may also be practical to keep these for a full 6 years as a source document backing up the general ledgers.