

# WHAT PASTORS NEED TO KNOW ABOUT RUNNING A CHARITY

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Pastors, as key and influential members of a church's leadership team, should develop a practical understanding of how to operate a Canadian

charity, in addition to their spiritual leadership skills. This article provides an overview of the basic rules and issues affecting churches, as charities.

## A Hierarchy of Rules

Churches operate under a variety of levels of rules. Some are inflexible because they are set out in law. Other are inflexible because they are set out in bylaws or, for example, church order or denominational directives. Others might be flexible upon approval of the board or church membership.

**The Law:** Written legislation, along with the common law (i.e., legal precedents developed by court decisions) set out the general rules that govern charities in Canada. These rules address:

- What is charitable in Canada?
- What activities a charity may do?
- The criteria for becoming a registered charity with Canada Revenue Agency (CRA) and maintaining that status.

Charities are under provincial jurisdiction, but are in large part regulated by the federal Income Tax Act (ITA), which CRA administers. CRA informs charities how it applies the ITA through policies, guidances and rulings. These are helpful in understanding CRA's

administrative practices, but are not law.

There are also various laws which are not charity specific, but apply to a church in its capacity as a land-owner, an employer, a corporation, etc.

**Other Legal Boundaries:** A church, when it came into being, will have set out where it fits within the law's boundaries and is required to operate within those limits. For example, it may have stated that its charitable purpose is to advance the Christian religion by establishing and operating a church and a church school. These boundaries are captured within the church's governing or constating documents. These could be in various forms, including: a constitution, trust document, articles of incorporation, society, letters patent, by-laws and/or church order. A church cannot decide to exist or operate for a purpose that is not set out in its governing documents, without first formally amending them.

The governing documents will usually also include things such as: the church by-laws, church order (e.g., if applicable, adherence to denominational directives), rules about how the governing board will be structured, decisions made, how directors will be appointed, rules for dismissing directors, how committees will operate, if and how audits will be conducted, etc.

A church needs to make sure that there are no conflicts between its self-imposed rules and any legislation that might apply to the church, such as a Corporations Act. For example an incorporated church's bylaw may state that any member of the church can be appointed to audit the books. However, the Corporations Act the church was set up under may state

that only a Licensed Accountant can conduct an audit. The law overrules this church bylaw. Accordingly, any bylaw in conflict with legislation should be amended to bring it into agreement with the law.

**Flexible boundaries:** A church will often have its own policies, guidances and administrative procedures that help it operate and carry out its activities in a structured, efficient manner. As needed, these can be amended by the church's leadership or by congregation approval, depending on the traditional practices of the church.

## Related Issues

**Using Church Resources:** The church should not use its charitable resources to provide inappropriate or undue compensation to employees, or, to provide undue benefits to members. A church is not a private club. For example, if the church leadership decides to rent the church's facilities for private events, all renters must be treated the same, whether a church member or someone from the public. Similarly, if a church operates a cemetery, it should charge both members and non-members the same rates for plots.

If any benefits are provided to a church member, whether by discounts or other tangible benefits, the ITA's split receipting rules require the benefit's value to be deducted from any donation receipt amount.

**Restricted Funds:** Your church should be clear on whether it will, or will not, accept restricted gifts. If it does, ensure the donor's restriction is within your church's charitable purposes and that the church actually wishes to carry it out (i.e., its not too costly and there's adequate human resources to deal with the

work the restricted gift will create).

Ensure a published Designated Giving Policy is in place before accepting any restricted gifts. This policy assures donors their restrictions will be honoured, but provides flexibility to your church for the future, should the restriction become no longer viable.

Ensure restricted gifts held for the long-term are properly invested and clearly shown in the financial statements as being separate from operating and other funds.

**Starting a New Program:** Whenever your church wishes to start a new program, it must be within its charitable purposes. If the program proposal goes beyond them, it either should not be done, or, an application to the government to amend your church's governing documents would be required.

**Benevolence:** Churches typically engage in benevolence by using donations to help needy people from the church community and the public at large. The church should have procedures in place so the donors are not aware of who the aid recipients are, and, to provide assistance on an objective basis, via a Benevolence Policy.

If the donors direct their gifts to individuals they name, or the church makes the aid recipients known to the donors, then arguably these gifts are not donations to the church. Instead, they are gifts between people (i.e., private benevolence). The church should not be used as a conduit for private benevolence and, in accordance with CRA policy, tax receipts are not to be issued.

**Business Activities:** Running a business is not a charitable activity. However, the ITA does allow a church to run a related business (e.g., a thrift shop, day-care), if it is limited and ancillary to the church's charitable purposes or, if it is substantially run by volunteers (i.e., 90% or more).

**Political Activities:** These are allowed, within limits. Permitted political activity is speaking in general terms to issues related to your church's charitable purposes and can include things such as:

- buying a newspaper advertisement to influence the government;
- organizing a march or a rally;
- organizing a conference; or
- encouraging people to write to their elected representatives.

There is a general 10 per cent cap of a church's resources that can be used in political activities.

Prohibited political activity is engaging in partisan politics or political advocacy, either directly or indirectly. This would include things such as:

- Supporting an election candidate directly or indirectly.
- Telling the public the government's position on an issue during an election campaign.
- Inviting candidates to speak at different meetings that are not of equal opportunity in terms of prestige or audience.
- Singling out elected officials or a party for its voting record on any particular vote or its voting pattern over a series of votes.

**Foreign Activities:** These are activities carried on outside of Canada, such as: full-time and short-term missions, relief work (e.g., food aid, health services) and development (education, building projects). Remember that a church must spend its resources on its own activities. It cannot simply give money to a minister or church in another country for them to carry out their activities.

CRA considers certain arrangements to be acceptable where a church carries out its charitable purposes:

- by transferring money to a Canadian registered charity that already works with, for example, churches in another country;
- by sending the church's own employees or volunteers;
- by working **with** another organization via an arrangement such as a Joint Ministry Agreement or a Co-operative Agreement; or
- by hiring an organization or individual to work **for** your church via an Agency Agreement or contract for service.

Care needs to be taken in setting up mission projects to ensure that they are under the direction and control of the church. For example, it is doubtful a church has oversight of an activity where a missionary (whether short or long-term) is operating independently and asks the church to simply receive, receipt and forward money to them so that they can carry out their good works.

**Risk Management:** It is prudent to try to minimize risk of abuse, injury, liability, theft, etc. Managing risk could include:

- having proper insurance coverage;
- being open about how your church does things, via clear policies (e.g., abuse prevention, employment standards, health & safety, conflict of interest, privacy, ethics);
- having secure money handling procedures;
- carrying out proper physical maintenance of facilities.

**Governance and Administration:** Ensure time-sensitive matters become recurring items

on meeting agendas. For example failing to file the T3010 on time is the primary reason charities lose their registered status. It is helpful to annually affirm in the director's minutes that the T3010 has been filed with the government.

Verify that adequate books and records (e.g., minutes, program expenditures, duplicate receipts) are being maintained.

Stay aware of changes in the charity world through information from CCCC, government and church group/denominational sources.

**Human Resources:** Churches that employ people are subject to the same rules as any other employer. There are restrictions on what kinds of questions may be asked in an interview. For example, a church may not ask a prospective employee if and when they intend to have children, or what kind of constraints their family status puts on them.

The church as an employer must comply with payroll related obligations such as remitting source deductions for income tax, EI, and CPP. The church must adhere to employment standards setting out, for example: vacation entitlements; over-time rules; parental leave, sick-leave, compassionate leave entitlements; notice and severance requirements.

Where a church wishes to hire an individual on the basis that they are a self-employed contractor, (e.g., a janitor or grounds-keeper) the church needs to make sure that this position is defensible and that the individual is not, in fact, an employee.

## Conclusion

Canadian churches operate within various layers of legal rules and other boundaries. Pastors will serve their churches well by being aware of these basic rules and related issues as they lead the church in planning and carrying out their church's ministry work. 