

Business Activities by Charities

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More and more Canadian charities are finding it necessary to carry on some type of business activity to generate additional revenues to support their charitable purposes. But the Canada Revenue Agency (CRA) takes a narrow view of the types of business activities that may be carried on by registered charities without putting their charitable status at risk.

To qualify as a charity under the Income Tax Act (Canada), an organization must have as its purpose the pursuit of and the carrying out of activities that are considered charitable by the common law, and it must devote substantially all of its resources to charitable activities carried on by it.

At common law, an organization will only be considered charitable if all of its purposes are exclusively and legally charitable, and the benefit is available to a sufficiently large section of the public so as to be considered a public benefit.

The key points here, that a charity “must devote substantially all of its resources to charitable activities” and that “all of its purposes must be exclusively and legally charitable” would seem to preclude the carrying on of any type of business activity by registered charities.

However, both the common law and the CRA recognize that charities may engage in business activity if that activity is directly related to and advances the goals of the charity. This is known as “related business” and as related business is considered to be charitable activity, there is no limit on the amount of such activity that may be carried on by the charity. (Under CRA administrative guidelines, private foundations may not carry on any business activity).

CRA considers there to be two kinds of related business activities that can be carried on by registered charities: (i) businesses that are run substantially by volunteers; and (ii) businesses that are linked to a charity’s purpose and subordinate to that purpose.

The CRA’s policy states that business activities that are linked to a charity’s purposes are “a usual and necessary concomitant of charitable programs”. That means that the activities are either necessary for the effective operation of the programs (hospital parking lots, cafeterias); or to improve the quality of service delivered in the programs (gift shops in art

galleries, student book stores); or are an offshoot of a charitable program, where in the ordinary conduct of its business the charity has created an asset that can be exploited; or involve the use of excess capacity of the charity's assets or staff (University's renting out space in the summer months); or involve the sale of objects that promote the charity or its objects.

Business activities that are subordinate to a charity's purposes are those that remain subservient to the dominant charitable purpose. This would be the case where, relative to the whole, the business activity receives a minor portion of attention and resources; where the business activity is integrated into the charity's operations, rather than a self-contained unit; where the charitable goals continue to dominate decision-making; or where the organization continues to operate for an exclusively charitable purpose by, among other things, permitting no element of private benefit to enter into its operations (for example, by not permitting employees in the business activity to earn more than their other employees).

You can see from this that a charity's ability to earn income from a business activity is quite constrained. That constraint is becoming an increasing challenge for charities these days, and I am finding many are seeking legal advice to determine exactly where the legal line is drawn. It also is a problem for entrepreneurs wanting to establish social enterprises. I will write more on that in another post.

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