

Provincial Charity-Related Legislation
by William Harper, CA
President, William Harper Associates

Over the course of several articles, we have discussed some of the risks associated with the requirements imposed on charities by the *Income Tax Act*, as administered by the Canada Revenue Agency (CRA). While these responsibilities are without a doubt important, they are just one of many sets of duties imposed on charities by federal or provincial legislation.

As with any organization or person in Canada, there are many other pieces of legislation that impact our day-to-day existence, some simple, and others significant. For example, every organization and person in Canada is affected by the Goods and Services Tax (or Harmonized Sales Tax or Quebec Sales Tax), either directly or indirectly. And, all organizations that employ people are affected by legislative provisions ranging from employment standards, to Canada/Quebec pension, to hazardous materials and workplace safety. The list of legislation with broad applicability to organizations of many types is long: think about issues as diverse as the environment, discrimination and harassment, traffic safety, and criminal matters. In fact, the list is too long for any article to cover in an adequate fashion.

But, there is a third category of legislation of particular interest to charities, and that is provincial legislation aimed directly at activities and practices common to charities. Regulation of charities is in fact primarily a provincial responsibility, and it has been suggested that CRA's *de facto* leading regulatory role is at best misplaced and at worst unconstitutional. But, there is no question that having national standards of accountability, not to mention consistent tax treatment of charities, is a positive feature of the current regime. This article isn't going to delve into the legal and political issues of charitable regulation: for most of us, it is enough just to keep on top of compliance, let alone debate these more conceptual issues!

This article will just briefly touch upon some of the more significant provincial statutes that charities should familiarize themselves with. The intention here is not to review these provisions, for there are simply too many laws to cover even in a highlighted fashion in one article. Rather, the intention is to raise a flag for charities about potentially significant legislation that they should review and decide for themselves about what steps they need to take to manage this risk.

First off, it is important to remember that the focus of this article is provincial legislation. Its application to your charity may depend on where your organization is legally resident or where it operates. So, the first challenge, particularly for larger, multi-province or national organizations is to determine exactly what laws it needs to comply with. Remember as well that this is not just a one-time challenge: as your charity grows and changes, possibly opening offices or starting new activities in different parts of the country, there needs to be a continuing assessment process.

So, what are some of the more common types of legislation to watch out for? The following list is intended to provide a broad, high-level look at some of these. Specific provisions, and their application and administration, will vary by province, and it is important to treat each as a separate and unique matter.

- **Trustee acts** -- most provinces have a Trustee Act or similar piece of legislation that will impact charities. Typically, this law will regulate various trust law aspects of charities, including the investment standards to which charities will be held.

- **Religious organizations' lands acts** -- most provinces have specific legislation aimed at regulating land ownership by unincorporated religious organizations. Some of this legislation will also have other provisions governing the operation of religious organizations.
- **Gaming legislation** -- charitable gaming, such as lotteries, bingos, raffles, etc., is regulated and licensed in many provinces.
- **Food donation legislation** -- most provinces have specific legislation addressing the liability of directors, agents and employees of organizations involved in distributing donated food.
- **Fundraising and solicitation legislation** -- the fundraising and solicitation activities of charities or third-party fundraisers are regulated, and in some cases registration is required, in several provinces.
- **Charitable property** -- a few provinces have specific legislation concerning the receipt and use of property for charitable purposes.

Fortunately, it is generally easy to find relevant statutes and related information online. At least, the information online in most provinces is sufficient to develop a basic understanding of whether the requirements merit further investigation, and there is generally a reference to the appropriate government contact or department for further information. This still necessitates knowing where to look, however, and this is one of the continuing challenges of remaining compliant with legislation: laws change, as do related regulations, administrative practices, forms and so on. Even knowing where to turn to find this information does not alleviate this challenge completely. It is necessary to regularly ensure that you are aware of recent changes that may impact your organization.

One resource that should prove valuable is Imagine Canada's [Charity Tax Tools](#). While the focus of this easy-to-understand resource is the CRA and Income Tax Act requirements for charitable regulation, it also includes a brief listing of the main provincial legislation that most charities should be aware of. At the time of writing this article, the site is due to launch in a few days -- as you read this, it is well worth checking, at charitytax.imaginecanada.ca, for this new resource!

The risks of non-compliance with the above legislation include various penalties and sanctions set out in each province's legislation. Suffice to say that those penalties are generally designed to promote adherence to the law's requirements, and to punish aspects of non-compliance, so it is wise, for this reason alone, to comply. But, another risk that pervades the area of legislative risk management is reputational risk. The laws of our land are generally the expression of public policy, for the public good. As a consequence, breaches of these laws will generally be seen by the public as improper behaviour, specific legislative requirements notwithstanding. With greater calls for accountability, and with heightened public scrutiny of charities' actions, the environment is hardly conducive to avoiding one's legal obligations, regardless of the specific sanctions and penalties that may be imposed. The public increasingly demands better of organizations, and the public has more access to information than ever before. Therefore, the incentive to be compliant and simply avoid the risks of non-compliance are greater than ever.

One final note: as we've suggested, it is a matter of continuous diligence to ensure that your organization is onside of its many, varied and changing legal obligations. This suggests that prudent

risk management, even for relatively small organizations, will include a specific management responsibility (though this could well be undertaken by volunteers) for regularly monitoring the legislative environment in which your organization operates. In addition to taking required actions to be, and remain, onside of these requirements, proper and timely board-level reporting is a prudent step to address board members' legal requirements and to manage their personal liability exposure.

* * *

For further information on the provincial legislation mentioned in this article, and for extensive information on the basics of CRA's charitable registration requirements, stay tuned for Imagine Canada's new Charity Tax Tools online resource. This comprehensive and user-friendly website, developed by Imagine Canada with the CRA's financial support, specifically for small to mid-sized charities, will be launching later this month, at charitytax.imaginecanada.ca!

Note: This post is provided as information only. Readers are cautioned not to act on information provided without seeking specific legal advice with respect to their unique circumstances.