



**Canadians want charitable  
donations to benefit  
legitimate charities**

**Submission to the House of  
Commons Standing Committee on  
Finance on Motion 559**

January 16, 2012

Dear Members of the Standing Committee on Finance,

Blumberg Segal LLP is a law firm based in Toronto that provides legal services to Canadian non-profits, registered charities and donors. Blumberg Segal LLP maintains a website, <http://www.globalphilanthropy.ca>, that provides extensive information and resources to Canadian charities to encourage them to comply with their legal obligations and strive for higher ethical standards. We also encourage donors to be generous but careful in the way they practice charity and philanthropy. Our firm is concerned about the well-being of the non-profit and charitable sector. We are pleased that the Standing Committee of Finance will be studying charitable donation incentives and related issues.

We were very pleased to see that the charity provisions of the 2011 Federal Budget to increase transparency and reduce the misuse of charitable assets have received Royal Assent.

### **Summary**

Canada's system of registered charities provides the most generous tax support for charitable donations of any country in the world. While this generosity has helped strengthen the sector, it has also resulted in various people exploiting charities for their tax benefits. We wish that this was an isolated problem but as we will explain below, it is not. We are concerned that with the current generous tax incentive system there are not adequate measures in place to provide transparency and prevent the misappropriation of charitable assets. By providing further tax incentives without enhancing the safeguards and transparency available to donors, it will be more difficult for charities to protect themselves from promoters, professional advisors and others that wish to abuse the privileges accorded to the sector.

While in some countries there are proposals to dramatically reduce or eliminate tax incentives for donations at a national or state level, we are pleased that this is not the case in Canada. However, we are concerned that token increases in tax incentives may be used as a partial justification for various levels of government to cut funding provided to charities, as has been done in the past. While making changes to current tax incentives may be useful, it is much more important to focus on preventing the exploitation of charities that often leads to a precipitous decline in public trust. Reducing the abuse of charities will be beneficial for the overall reputation of the charitable sector. It could also save the federal and provincial governments significant tax revenue which could subsequently be redirected to other priorities, including funding of the sector.

## **Introduction**

According to the T3010 Registered Charity Information Return data from CRA, the charity sector has a total combined revenue of approximately \$192 billion per year<sup>1</sup>. From 2000 to 2009 that number rose by approximately 94%. The charitable sector obtains this revenue from several different resources; \$133 billion from various levels of government, \$46 billion from earned or business income, and \$13 billion from receipted donations. The amount of receipted donations has actually increased by 35% from 2003 to 2009. Currently, about 7% of the charity sector's revenue is a result of charitable donations and fundraising. This is why it is important that measures taken to provide for extra donations do not undermine the ability of government to continue funding the charitable sector. For example, if various levels of government decided to reduce their funding of the sector by 10%, the sector as a whole would need to fundraise twice as much to account for that difference.

## **Transparency**

The work that charities do is extremely important to our society, so it is vital that various stakeholders, such as the public, the media, the government, donors, employees, boards etc. have access to key information on what the charity is doing and how it is doing it. Transparency will ultimately increase public trust and confidence in the sector by making the public more informed about the work of charities and making it more difficult for people to misuse charities. However, there are a number of legislative impediments to transparency that currently exist. The confidentiality provisions of the *Income Tax Act* (Canada) prohibit those who know about current abuses (such as the CRA) from informing the public or anyone else, except in very narrow circumstances and often many years after the problem has occurred. The public, whether through donations, paying taxes or buying products from charities, should be provided with up to date and relevant information on charities. Expanding the scope of disclosure allowed with respect to registered charities under the *Income Tax Act*, has no costs associated with it and will result in tens of millions of dollars moving from charities involved with abusive schemes to charities involved in real charitable work.

## **What are some of the problems in the charitable sector?**

According to the CRA, over the last eight years there have been approximately \$5.7 billion dollars in donation receipts issued as part of "abusive charity gifting tax schemes". Approximately 1% of this amount was spent by these few registered charities on charitable activities and over 175,000 tax returns have also been filed as part of these schemes. Many of these gifting schemes involve a taxpayer receiving a higher tax receipt than the actual amount of their donation. For example, investing only \$1000, but receiving a \$5000 donation receipt. Over 100,000 Canadians have also filed tax returns with what CRA refers to as 'fraudulent receipting'. In addition, there have been several other elaborate schemes used to abuse receipting privileges.

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<sup>1</sup> [http://www.globalphilanthropy.ca/index.php/blog/category/canadian\\_charity\\_statistics/](http://www.globalphilanthropy.ca/index.php/blog/category/canadian_charity_statistics/)

## **Does the public care about transparency of charities and non-profits?**

There is tremendous public concern about the conduct of some non-profits and registered charities. Recent polling by Ipsos-Reid shows the public overwhelmingly wants more information about charities, their conduct and practices:

“Canadians continue to place great importance on the information charities provide to the public. Almost all Canadians think it is important (very or somewhat) for charities to provide information on how they use donations (98%), information about the programs and services the charities deliver (98%), information about charities’ fundraising costs (97%), and information about the impact of charities’ work on Canadians (96%).”

## **Confidentiality Provisions of the *Income Tax Act***

The non-profit and registered charity sector is essentially divided into two. While non-profits and registered charities are both exempt from paying income tax, only registered charities, and some other categories of qualified donees, can issue official donation receipts for income tax purposes. Currently, the confidentiality provisions in Section 241 of the *Income Tax Act* (Canada) forbid the Canada Revenue Agency (“CRA”) from disclosing any information about any non-profit or registered charity either through informal request or a formal access-to-information request unless the information falls within certain narrow exceptions such as the public part of the T3010 or the non-profit or registered charity consents to such disclosure.

## **Registered Charities**

Without the consent of the registered charity, currently CRA can only provide the “entirety of or any part of any letter sent by or on behalf of the Minister to the charity relating to the grounds for the revocation or annulment” but only after the charity’s registration has been revoked. By the time the charity has lost its registered charity status it could be years after CRA started having significant concerns about the charity. Therefore, CRA has no ability to disclose to the public information about charities involved with abusive gifting tax shelters (totaling approximately \$5 billion dollars over the last 7 years), complaints about systemic child abuse, inappropriate third party transactions or other major concerns. We welcome recent changes relating to some qualified donees that allows CRA to release slightly more information (for example, about RCAAAs). The public and especially donors should have the right to know when CRA is aware of serious non-compliance with legal requirements by a charity and it will take amendments to the *Income Tax Act* to allow for such disclosure.

**Recommendation: S. 241 of the *Income Tax Act* should be amended to allow the CRA to disclose serious non-compliance with legal requirements by a registered charity, Registered Canadian Amateur Athletic Associations or certain other qualified donees as well as all annual returns of such qualified donees.**

## **Non-Profit Organizations**

It is estimated that there are over 80,000 non-profits that are not registered charities or other types of qualified donees in Canada. They are exempt from almost all transparency requirements even though in many cases they receive government funding and support and some also receive public donations. Prior to the introduction of the *Canada Not-for-profit Corporations Act* (CNCA), non-profits did not have to publicly disclose their finances including revenues, expenditures, compensation and programs. With the CNCA, now financial statements of certain Federal non-profit soliciting corporations may need to be disclosed. This does not affect provincial non-profits or Federal non-soliciting corporations. While non-profits that are not charities in some cases are required to file the two page Form T1044, Non-Profit Organization (NPO) Information Return, such form is not made available to the public either electronically or by request. In essence, except for the limited disclosure under the CNCA, there is no transparency for these non-profits in Canada.

**Recommendation: S 241 of the Income Tax Act should be amended to allow the CRA to disclose information contained on the Non-Profit Organization (NPO) Information Return.**

## **Other Suggestions**

There is a big difference between bringing more money into the charitable sector versus actually having more funds spent on real charitable activities. Do we want to bulk up the foundation sector or do we want funds in the hands of charitable organizations? There are many ways in which the total amount of charitable donations can be increased while ensuring that these donations are actually spent on beneficial charitable initiatives including:

- 1) With small changes to the disbursement quota to increase the payout from 3.5% to 5%, hundreds of millions of dollars can be used for charitable programming that would have been otherwise an unauthorized encroachment on capital;
- 2) Require charities to demonstrate (as in the UK) that they actually have a “public benefit”, rather than this being assumed, which could help the sector tremendously, by increasing public confidence, and reducing the number of dormant charities;
- 3) Increase the capacity of the sector to understand their compliance obligations and help donors understand the importance of donations and carefully selecting charities and avoiding scams; and
- 4) Have a review of the T3010 to encourage greater disclosure of information to the public, as has been done in the US with their annual return.

## **Conclusion**

We need real transparency in the charitable sector. There are many great charities that work hard at being transparent. Others are not interested in transparency and fight hard to prevent disclosure of their transactions and affairs. Secrecy breeds mistrust and lowers public confidence in the non-profit and charitable sector. The *Income Tax Act* should be amended to allow greater disclosure of information on Canadian non-profits and charities. We anticipate that there will be little or no fiscal cost for the adoption of the transparency recommendations.

Regardless of the outcome of the final recommendations to change the tax incentives, we hope that it will include measures to increase transparency, prevent inappropriate receipting and misappropriation of charitable assets. Otherwise, a few individuals may continue abusing the system at the expense the charitable sector and all taxpayers.

If you require further information or wish to discuss this submission, please do not hesitate to contact us. If the Committee thought it would be helpful we would certainly be prepared and interested in presenting to the Committee.

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