

## Federal Regulation of Charities in Canada

The federal government's authority over charities comes primarily from the *Income Tax Act*<sup>1</sup>. That Act makes charities exempt from the payment of income tax. It also allows registered charities to issue receipts for donations. These receipts allow donors to claim a tax credit for their contributions.

Canada's constitution gives the provinces responsibility for supervising charities that are "in and for" the province. Some provinces, notably Ontario, have sophisticated systems for registering and supervising charities, ensuring that charitable assets are used only for charitable purposes. Other provinces (and some municipalities) have introduced fundraising legislation. The majority of provinces do not regularly supervise charities. They may also use a different definition of "charity" than does the federal government.

### Registration

An organization that wants to become a registered charity must apply to the Charities Directorate of the Canada Customs and Revenue Agency (CCRA). The application includes the purposes for which the charity wishes to be registered. It also contains information about how the charity will achieve these purposes.

The application is reviewed by a Charities Directorate examiner. There is no legislated definition of charity, so the examiner has to compare the application against court cases that have helped explain what is considered to be charitable. Collectively, these cases form what is sometimes known as the common law of charity.

The courts have said there are four types or "heads" of charities. Charities can be created for:

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<sup>1</sup> This does not mean that the *Income Tax Act* is the only federal legislation that affects charities. See footnote 2 in Chapter 1.

- the relief of poverty;
- the advancement of religion;
- the advancement of education; or
- other purposes beneficial to the public and analogous (or similar) to purposes which the courts have found to be charitable.

The examiner who reviews an application may do one of several things. The examiner may:

- approve the application, sending a letter telling an organization that it has been registered;
- write or telephone the applicant, asking for more information; or
- send a letter, called an “Administrative Fairness Letter,” explaining why it appears the application cannot be approved.

In cases where an Administrative Fairness Letter is sent, the organization can submit additional information or arguments. If the examiner is persuaded, then the organization will be registered. If not, the applicant will receive a final letter saying that the application has been denied.

About 4,000 organizations apply for charitable registration each year. Almost 3,000 of the applications are approved. Another 200 receive final letters denying registration. The remaining 800 fail to respond to either a request for more information or to the Administrative Fairness Letter. They are considered to have withdrawn their applications.

If an organization is registered as a charity, its name appears on the list of charities that is maintained on the CCRA website ([www.ccr-aadrc.gc.ca](http://www.ccr-aadrc.gc.ca)).

Any member of the public has the right to ask the Charities Directorate for a copy of a registered charity’s application for registration. However, if an organization is denied registration, or if it drops out of the process, no information about the application is made available to the public.

## Monitoring

The Charities Directorate is responsible for ensuring that charities comply with the *Income Tax Act* and with the rules that have been established for charities.

All charities must file an annual information return with the Charities Directorate. This form contains information about what the charity has done in the previous

year as well as financial information. A copy of this return can be made available to any member of the public on request. The charity must also include a copy of its full financial statements with its return, but those statements are only made available to the public if the charity agrees.

The Charities Directorate conducts between 500 and 600 audits each year. An auditor visits the charity and reviews its books and records to ensure that the organization still complies with the laws and procedures. Some organizations are selected at random for an audit; others are selected because of information the Charities Directorate has received or because it has decided to pay particular attention to a certain type of charity.

Some of these audits end with the Charities Directorate saying that no problems were uncovered. Most result in an education letter, telling the charity about problems that were found and identifying what should be done to correct them. In some cases, the Directorate will ask for an undertaking – a promise that the charity will correct the problems. In a very few cases, the Directorate looks to revoke a charity’s registration for failing to comply with the law. In these cases, the Directorate writes the charity to give the reasons why it is proposing a revocation and invites the charity to address the concerns raised.

Under the law, the Charities Directorate cannot tell anyone other than the charity involved about an audit. It cannot even confirm whether an audit has taken place. However, if a charity’s registration is revoked, the Directorate’s letter setting out the reasons for the revocation is publicly available.

## **Sanctions**

If a charity does not comply with the law, the Charities Directorate has only one penalty readily available to it – deregistration, removing the organization’s status as a registered charity.

About 2,500 charities are deregistered each year. About 66% of those deregistrations are because the charity has not filed its annual return with the Charities Directorate. Another 30% are made at the charity’s request because it has decided to stop operating. In the last five years, very few have been deregistered “for cause” – for some serious violation of the rules governing charities.

# Appeals

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If an organization feels it has been unfairly denied charitable registration, or had its charitable registration revoked, it may ask the courts to overturn the decision. In that case, the organization takes an appeal to the Federal Court of Appeal.

A panel of three judges hears arguments and considers the documents and information that the Charities Directorate used in coming to its decision. Some of this material comes from the application for registration, or from documents obtained during an audit. Other material is gathered by the Charities Directorate as a result of its own research. This is called an appeal “on the record.” There is no testimony by witnesses at the appeal.

A further appeal can be taken to the Supreme Court of Canada, if that court grants permission.

These appeals help clarify the law about what is charitable in Canada. Since there is no legislated definition of charity, it is these court decisions that must be used by the Charities Directorate in considering future applications. Over the last 25 years, there has been an average of only one court decision on charity law each year. Decisions from provincial courts and courts in other countries can sometimes be helpful, but are not binding on the Charities Directorate.