



BLUMBERGS' CANADIAN CHARITY LEGAL CHECKLIST FOR WORKING WITH INTERMEDIARIES IN CANADA 2020

LEGAL CHECKLIST FOR CANADIAN CHARITIES WORKING WITH INTERMEDIARIES IN CANADA

Qualified donees are organizations that can issue official donation receipts under the *Income Tax Act* (Canada). The most common example is a registered charity.

An “Intermediary” is an individual, business or non-profit organization (that is not a qualified donee) that carries out activities for a Canadian charity through a “structured arrangement” with “direction and control” to benefit the charitable beneficiaries. An intermediary can be a contractor, agent, joint venture participant, or co-operative participant.

A “beneficiary” is the ultimate recipient of charitable resources or benefit. For example, a hospital can be a qualified donee, or it could be an intermediary, but the beneficiaries are the patients. The beneficiaries of a school are the students at the school.

1. PRE-CONSIDERATIONS	YES	NO	N/A	COMMENTS
<p>→ The Charity has determined that it will be working with an Intermediary to conduct its activities after having considered/explored alternative options available for the proposed activities, such as:</p> <ul style="list-style-type: none"> ✓ Using the Charity’s own staff/volunteers; ✓ Providing a gift to or working with another Qualified Donee (“Qualified Donees” include the following): <ul style="list-style-type: none"> ▪ a registered Charity (including a registered national arts service organization) ▪ a registered Canadian amateur athletic association ▪ a registered housing corporation resident in Canada constituted exclusively to provide low-cost housing for the aged ▪ a registered Canadian municipality ▪ a registered municipal or public body performing a function of government in Canada ▪ a registered university outside Canada the student body of which ordinarily includes students from Canada ▪ a registered charitable organization outside Canada to which Her Majesty in right of Canada has made a gift ▪ Her Majesty in right of Canada, a province, or a territory ▪ the United Nations and its agencies ✓ Arranging for another organization (for-profit/non-profit/foreign charity) to conduct and pay for the activities rather than the Charity such as an affiliated entity or international federation 				

2. LEGAL OBJECTS	YES	NO	N/A	COMMENTS
<p>→ The Charity has determined that the proposed activities with the Intermediary are allowable within the scope of the Charity’s existing legal objects that have been approved by the Canada Revenue Agency.</p>				
3. RISK ASSESSMENT	YES	NO	N/A	COMMENTS
<p>→ The Charity has evaluated the potential risk versus the benefit of the proposed activities with the Intermediary by considering:</p> <ul style="list-style-type: none">✓ The likelihood and nature of harm to anyone delivering the activity, receiving the benefit, or otherwise affected;✓ The urgency of the need for the charitable assistance;✓ The experience of the Charity or applicant operating in situations with significant risk;✓ The Charity’s proposed measures to mitigate any significant risks. <p>→ The Charity has conducted the appropriate due diligence on the Intermediary to determine the following:</p> <ul style="list-style-type: none">✓ The Intermediary has the capacity (personnel, experience or equipment) to carry out the Charity’s activities;✓ The Intermediary will use the Charity’s resources appropriately and as directed by the Charity.				

4. PROPOSED STRUCTURE OF ARRANGEMENT	YES	NO	N/A	COMMENTS
<p>→ The Charity has determined that it will conduct the proposed activities with the Intermediary through one of the following structured arrangements:</p> <ul style="list-style-type: none">✓ <u>Contractor</u>: the Charity will hire the Intermediary to provides goods and/or services as a contractor. This is the most common arrangement.✓ <u>Agent</u>: the Intermediary will carry out specific activities on behalf of the Charity as an agent of the Charity.✓ <u>Joint venture participant</u>: the Charity will work with the Intermediary by pooling their resources in order to accomplish a commonly-agreed upon goal/activity. The Charity has ensured that the Joint Venture arrangement demonstrates the following:<ul style="list-style-type: none">▪ presence of members of the Charity on the governing body of the joint venture▪ presence in the field of members of the Charity▪ joint control by the Charity over the hiring and firing of personnel involved in the venture▪ input by the Charity into the venture's initiation and follow-through, including the Charity's ability to direct or modify the venture and to establish deadlines or other performance benchmarks▪ signature of the Charity on loans, contracts, and other agreements arising from the venture				

<ul style="list-style-type: none">▪ review and approval of the venture's budget by the Charity, availability of an independent audit of the venture, and the option to discontinue funding when appropriate▪ authorship by the Charity of such things as procedures manuals, training guides, and standards of conduct▪ on-site identification of the venture as being the work, at least in part, of the Charity▪ evidence that the Charity is receiving complete financial information for the whole venture on a regular basis▪ documentation to show how the Charity's contribution fits into the overall undertaking, and how the Charity's resources have been devoted to activities that further its charitable purposes. <p>✓ <u>Co-operative Participant</u>: the Charity will work side by side with the Intermediary to complete a project and take on responsibility for different parts of the proposed activities.</p>				
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5. ENSURING PROPER DIRECTION AND CONTROL	YES	NO	N/A	COMMENTS
<p>→ The Charity has implemented the following measures of control to demonstrate direction and control when providing funds/resources to an Intermediary:</p> <ul style="list-style-type: none"> ✓ Creation and implementation of a written agreement with the Intermediary which includes all necessary CRA elements below: <ul style="list-style-type: none"> ▪ exact legal names and physical addresses of all parties ▪ a clear, complete, and detailed description of the activities to be carried out by the intermediary, and an explanation of how the activities further the Charity's purposes ▪ the location(s) where the activity will be carried on (for example - physical address, town or city) ▪ all time frames and deadlines ▪ any provision for regular written financial and progress reports to prove the receipt and disbursement of funds, as well as the progress of the activity ▪ a statement of the right to inspect the activity, and the related books and records, on reasonably short notice ▪ provision for funding in instalments based on satisfactory performance, and for the withdrawing or withholding of funds or other resources if required (funding includes the transfers of all resources) ▪ provision for issuing ongoing instructions as required ▪ provision for the Charity's funds to be segregated from those of the intermediary, as well as for the intermediary to keep separate books and records ▪ if any of the Charity's funds or property are to be used in the acquisition, construction, or improvement of immovable 				

<p>property, the title of the property will vest in the name of the Charity</p> <ul style="list-style-type: none">▪ for joint ventures, provisions that enable the Charity to be an active partner, with a proportionate degree of direction and control in the venture as a whole, as well as assurances of the following:▪ the Charity's resources are devoted to activities that further its purposes▪ the Charity maintains and receives financial statements and records for the entire project on a regular basis▪ effective date and termination provisions▪ signature of all parties, and the date <p>✓ Creation and communication of a clear, complete and detailed description of the proposed activities (which is discrete and separate from existing projects of the Intermediary), which forms part of the written agreement;</p> <p>✓ Ongoing monitoring and supervision of the activities by receiving timely and accurate reports from the Intermediary;</p> <p>✓ Providing clear, complete and detailed ongoing instruction/direction to the Intermediary with respect to the activities;</p> <p>✓ Providing periodic payments to the Intermediary based on demonstrated performance of the activities;</p> <p>✓ Arranging for the Intermediary to keep the Charity's funds separate from its own and to keep separate books and records;</p> <p>✓ Maintaining proper books and records with respect to the activities:</p>				
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<ul style="list-style-type: none"> ▪ Must be kept within Canada (at one of the Charity’s address on file with CRA) ▪ Preferably in English or French ▪ Original source documents, if possible 				
6. OTHER LEGAL CONSIDERATIONS	YES	NO	N/A	COMMENTS
<p>→ The Charity has implemented measures and internal controls to protect charitable property from potential abuses such as money laundering, bribery, corruption and fraud.</p> <p>→ The Charity has considered any relevant donor restrictions and/or funder constraints when implementing activities.</p> <p>→ The Charity has considered the protection of valuable intellectual property (IP) of the Charity such as trademarks, copyrights, patents, and trade secrets in other countries.</p> <p>→ The Charity has obtained relevant insurance or required the Intermediary to obtain insurance for the proposed activities.</p>				

7. RESOURCES FOR CHARITY COMPLIANCE	YES	NO	N/A	COMMENTS
<ul style="list-style-type: none">→ Blumbergs' Canadian Charity Legal Checklist by Mark Blumberg→ Canadian Charities Working with Non-Charities in Canada – A Very Simplified View of the Process→ Blumbergs' directory on “Using Intermediaries in Canada”→ Course on Canadian Charities Working with Non-Charities in Canada				

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This checklist is for information purposes only. It is not intended to be legal advice. You should not act or abstain from acting based upon such information without first consulting a legal professional.