

# HARBINGER FOUNDATION

International Granting

September 2010

# WHO WE ARE

- Harbinger Foundation, established in 1995, is a small family foundation based in Toronto
- We believe in the following:
  - in the efficiencies of collaboration (when appropriate)
  - in the power of communication and networks
  - being curious and pushing ourselves to look for creative solutions
  - being respectful and transparent
  - listening
  - learning
  - respecting indigenous knowledge
  - enjoying our work
  - a passionate and creative world
- We are committed to international issues and sharing of information

# HOW WE SELECT OUR GRANTEES

2001-2004: Personal connections in Colombia, Guatemala and with Canadian Network for International Surgery (CNIS)

In 2005 two things changed our approach to international granting:

- a CRA audit
- a desire from the Board to focus our granting on one issue
  
- 2005 we began using an annual juried, competitive **Requests for Proposals**
- Very occasionally, we respond to an unsolicited proposal

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# FIRST WE NEEDED TO NARROW THE FOCUS

In 2005 we committed to the Global Water Crisis as our primary granting program

*Where to begin?*

1. We made a 6 month commitment to learning all we could about the sector
  2. We sought out experts
  3. We looked to see what information already existed
  4. Began granting with purpose of learning and expanding our network
  5. We made an effort to learn from our mistakes.
- After 6 months we had a very good understanding of the global, political and financial issues in the sector, had met most key people

# LEARNING IN THE CANADIAN CONTEXT

Because of an open-ended audit, we still needed to find Canadian registered charities to fund

We researched and wrote our own landscape report of who was doing what in Canada (what technology, what countries, budgets)

# HOW TO FIND CANADIAN GRANTEES

- Our goal was to have maximum impact with limited funds
- Did not want to fund well digging projects, too expensive and too many issues with sustainability
- Saw a need for **capacity building** for Canadian NGOs working in international water and sanitation
- Saw opportunity to leverage our \$ in CIDA (**policy and advocacy** approach)

# CHALLENGES

- Donor (Board) fatigue with long-term, slow moving projects
- Measuring impact
- CRA Audit #1
- CRA Audit #2

# SUMMARY

## **Agency Agreements:**

Positive: very efficient use of funds; engaging and rewarding; more administrative work on both sides; potential to learn from own participation and from grantees

Negative: potential language issues; an element of risk that can affect your status with CRA; can create emotional and financial dependencies

## **Canadian-International NGOs**

Positive: the Canadian NGO bears the risk of their local partners; less work; less financial pressure because you are not the sole funder; can be part of a larger project or master plan

Negative: much more expensive; lack of engagement with end recipient of funds and process; less of an opportunity to learn

## OTHER OPTIONS

- **Tides Canada:** cross border and international granting services. It is slow and expensive (5% management fee) but easy and acceptable to CRA
- [www.tidescanada.org](http://www.tidescanada.org)
- **Microfinance:** ieKiva
- [www.kiva.org](http://www.kiva.org)

# INTERNATIONAL GRANTING AFFINITY GROUP?

- Is there interest in creating an affinity group along the lines of “Grantmakers Without Borders” or the Canadian Environmental Grantmakers Group?
- <http://www.gwob.net/>
- <http://www.cegn.org>





Global Giving:  
New Guidance on International Activities

**A presentation to Philanthropic Foundations Canada  
September 21, 2010**

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# CRA's Guidance on Foreign Activities

- **Guidance on Canadian Registered Charities Carrying Out Activities Outside Canada**
- <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html>
- **Bigger Font Version:**
- [http://www.globalphilanthropy.ca/images/uploads/Guidance\\_for\\_Canadian\\_Registered\\_Charities\\_Carrying\\_Out\\_Activities\\_Outside\\_Canada\\_-\\_July\\_8,\\_2010.pdf](http://www.globalphilanthropy.ca/images/uploads/Guidance_for_Canadian_Registered_Charities_Carrying_Out_Activities_Outside_Canada_-_July_8,_2010.pdf)

# Summary of Foreign Activity Guidance

- Consolidates guidance, statutes, case law, newsletters
- Updates
- Clarifies
- More flexibility
- Provides more guidance (50 pages vs 12)
- Minimum standards for charities
- Reminder to charities that there are rules for Canadian charities operation abroad

# Canadian Registered Charity

Gift to  
Qualified donee

“Own Activities”  
[Direction and Control]

**Qualified Donee,**  
eg. Canadian registered  
Charity, UN, prescribed  
University, Canadian  
Municipality, etc

**Employee  
Volunteer**

**Intermediary –  
contractor , agency,  
JV, partner,**

Structured  
Arrangement -  
Written agreement

# Measures of Direction and Control

- Create a written agreement, and implement its terms and provisions.
- Communicate a clear, complete, and detailed **description of the activity** to the intermediary.
- **Monitor and supervise** the activity.
- Provide clear, complete, and detailed instructions to the intermediary on an **ongoing** basis.
- For **agency relationships, segregate** funds, as well as books and records.
- Make periodic transfers of resources, based on demonstrated performance.
- Maintain books and records **in Canada** showing above

# What's "New"

# Activities IN Canada and OUTSIDE

- Guidance applies to activities inside and outside Canada
- Will be “**upcoming guidance called *Carrying Out a Charity’s Own Activities Within Canada Through an Intermediary.***”

# 4.1 Following Local Laws

- Charities not exempt from foreign laws
- Be aware of local laws and how enforced before carrying out activities
- “Being aware of local laws and their application will help make sure that the public benefit provided by a charity’s activities is not offset by harm that may result to those carrying on the activities, to the charity’s beneficiaries, or to anyone else.”

## 4.2 Charities and Risk

- “If a charity or applicant’s activity exposes anyone to the risk of harm, it may affect its charitable status.”
- “If an organization’s activity is likely to result in harm to the charity’s staff, the beneficiaries of its programs, or any other person, this harm is taken into consideration when assessing whether the public benefit test is met.”
- Look at likelihood, urgency, experience, measures to mitigate

## 4.3 Terrorism

- The CRA has produced a checklist to help Canadian charities identify vulnerabilities to terrorist abuse.
- Checklist for Charities on Avoiding Terrorist Abuse  
<http://www.cra-arc.gc.ca/chrts-gvng/chrts/chcklsts/vtb-eng.html>

# Charitable Goods Policy

In certain very limited cases own activities can be shown when:

- The **nature of the property** being transferred is such that it can reasonably be used only for charitable purposes (for example—medical supplies like antibiotics (not money))
- parties understand and **agree** the property is to be used only for the specified charitable activities.
- Based on an investigation into the status and activities of the non-qualified donee receiving the property it is reasonable for the charity to have a **strong expectation that the organization will use the property only for the intended charitable activities.**

## 5.3 Court decisions and intermediaries

Three Federal Court of Appeal decisions each confirmed that a charity working with an intermediary must exercise “direction and control”

- The Canadian Committee for the Tel Aviv Foundation v. Canada (2002 FCA 72), 2002-03-01
- Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue) (2002 FCA 323), 2002-09-13
- Bayit Lepletot v. Canada (Minister of National Revenue) (2006 FCA 129), 2006-03-20

# Requirements for intermediaries

- The intermediary usually has resources that a charity needs, such as a particular skill, knowledge of a region, staff in the area, or specialized equipment.
- Charity must investigate status and activities of intermediary

Ensure that:

- The intermediary has the capacity (for example—personnel, experience, equipment)
- strong expectation the intermediary will use the charity's resources as directed by the charity.

## 6.2 Agent

- no preference as to which type of intermediary used.
- **“the existence of an agency relationship may expose them to significant liability for the acts of their agents.”**
- separate bank accounts and books and records.

# 7.1 How much direction and control?

- Generally speaking, the nature and the number of measures a charity adopts to direct and control the use of its resources should correspond to the circumstances of the activity, such as:
  - the amount of resources involved
  - the complexity and location of the activity
  - the nature of the resources being transferred
  - any previous experience working with a particular intermediary
  - the capacity and experience of the intermediary

# One Time Activities Under \$1000

“Entering into a written agreement and implementing the terms of that agreement is usually an effective way to meet the own activities test. However, the CRA acknowledges that in situations where the amount of resources involved is minor, and is a one-time activity, the complications of developing a full, formal, written agreement may outweigh the benefits. In situations where the money spent on a one-time activity is \$1,000 or less, other forms of communication might be used to show direction and control over the use of resources by intermediaries.”

## 7.4 Monitoring and Supervision

Depending on factors such as the size, nature, and complexity of an activity, the reporting methods (as stated in any written agreement) can take many forms, including the following:

- progress reports
- receipts for expenses and financial statements
- informal communication via telephone or email
- photographs
- audit reports
- on-site inspections by the charity's staff members

# Keeping Books and Records in Canada

- Under the *Income Tax Act*, a charity must keep adequate books and records in Canada. The CRA recommends that books and records be kept in either French or English.
- Books and records must enable the CRA to check the following:
  - whether a charity's funds are being spent on its own activities or on gifts to qualified donees
  - whether the charity is directing and controlling the use of its resources
  - whether there are grounds to revoke the charity's status

# Other Points

- Concern with some activities being well-intentioned, but do not understand challenges and ongoing effort
- CIDA
- Disaster Relief
- Canadian Affiliate Organization
- Capacity Building
- Subcontracting
- Books and Records and eBay
- Written agreement not enough
- Template written agreement

# Some Take Aways

- Read guidance if dealing with non-qualified donees
- Foundations should engage Canadian charities on disaster relief discussion now, not during disaster
- Yes you need written agreement but you also need due diligence on intermediary, detailed description of activity and ongoing involvement – may want to work with QD
- Use appropriate intermediary relationship

# Further information

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html>

[www.globalphilanthropy.ca](http://www.globalphilanthropy.ca)

<http://www.interaction.org/document/interactions-pvo-standards>



## Blumbergs

- Blumberg Segal LLP is a law firm based in Toronto, Ontario
- Mark Blumberg is a partner at Blumbergs who focuses on non-profits and charities
- Assists charities from across Canada with Canadian and international operations and foreign charities fundraising here
- [www.canadiancharitylaw.ca](http://www.canadiancharitylaw.ca) and [www.globalphilanthropy.ca](http://www.globalphilanthropy.ca)
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