

# PFC Learning Series

## tool 3

### A Primer for Working with Non-Qualified Donees

COVID-19 has exacerbated the challenges and barriers for vulnerable populations across Canada. The pandemic has also created unique challenges and opportunities for grantmakers to support informal grassroots or community groups that are often at the forefront of the response to COVID-19 and that have had an important impact in their communities.

The COVID-19 crisis has also had an impact on how foundations operate and deploy their resources to support their grantees and communities. The magnitude of the crisis has led many foundations to recognize the need to be more responsive and less restrictive in the support they provide.

At the same time, there is an opportunity to reflect and learn from this moment in time regarding how foundations can work differently and what it means for contributing to positive change going forward.

This primer presents the basic elements of how foundations and other registered charities can work with front line organizations and other non-charity groups.



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# 1 Introduction

COVID-19 has had a significant impact on the way many grantmakers work. Grassroots or community groups have played an important role in responding to the pandemic. How can they learn from each other and work together?

This primer has been developed as part of a learning series of practical **PFC tools and resources on topics relating to grantmaking practice**. This primer presents the basic elements of how foundations and other registered charities can work with non-charities. It is not intended to replace legal advice. For current legal requirements and guidance, consult the Canada Revenue Agency charities web site and obtain legal counsel to guide your practice.

In this primer, we use the term 'non-charities' rather than the more technical term 'non-qualified donees' (NQD), unless referring to legal or regulatory aspects.



## **Did you know?**

In 2019, the **Special Senate Committee on the Charitable Sector** published a [report](#) with 42 recommendations on how to strengthen the sector and adapt to new realities. The report recognizes the important role of partnerships between charities and non-charities and states that charitable purposes are sometimes best achieved through these collaborations.

Recommendation 31 calls for the Canadian Revenue Agency to implement and evaluate a pilot project to allow registered charities to make gifts to non-charities (non-qualified donees) in certain circumstances.

**This primer aims to guide foundations that are considering working with non-charities and covers three general areas<sup>1</sup>:**

1. Understanding the legal requirements for working with non-charities;
2. Working with non-charities in partnership with a charitable organization;
3. Tools and resources to assist foundations that are considering working with non-charities.

## **Why work with non-charities?**

There are many reasons a funder could consider working with a non-charity:

- Advance diversity, equity and inclusion in grantmaking practices;
- Broaden the pool of partners that a foundation can work with to achieve its mandate;
- Direct resources to community groups working on equity issues for racialized people, people with disabilities; Indigenous peoples (First Nations, Inuit and Métis), women, and people of the LGBTQ+ community;
- Increase the legitimacy of the work of non-charities;
- Increase participation in foundation activities from next generation family members;
- Create trust and relationships between communities and philanthropic organizations;
- Create opportunities to fund a wider range of initiatives, innovations and organizations focused on community benefit.

Throughout the primer you will find **Steps to take Action**, **Did you know?** tips and **Resource Alerts** to direct you to a resource, tool or website with additional useful information included in the **Tools and Resources** section at the end of this primer.



## **Did you know?**

In addition to registered charities and registered national arts service organizations, **qualified donees include:**

- [Registered Canadian amateur athletic associations](#)
- [Registered journalism organizations](#)
- [Registered municipalities](#)
- [Registered municipal or public bodies performing a function of government in Canada](#)
- [Registered universities outside Canada](#)
- [Registered foreign charities that have received a gift from Her Majesty in right of Canada](#)
- [Registered low-cost housing corporations for the aged](#)
- [Her Majesty in right of Canada, a province, or a territory, and the United Nations and its agencies](#)

<sup>1</sup> Information for this primer has been adapted from PFC's webinar on [Working With Non-Qualified Donees](#) and [Partnerships for Community Benefit \(Better Together\)](#), a handbook on working with non-qualified donees prepared by a coalition of community leaders in Calgary.

## 2 Definitions

Canada's social and charitable infrastructure is made up of a broad range of social impact activities which are carried out not only by registered charities but also by non-charities, such as grassroots groups, resident-led community groups, not-for-profit organizations, societies, clubs, individuals and businesses that are not registered as charities with Canada Revenue Agency (CRA). These groups are referred to by CRA as non-qualified donees (non-charities).

Foundations, which are a type of registered charity, **can only make grants to qualified donees**. Under the *Income Tax Act* (Canada) and the *Taxation Act* (Québec), qualified donees, which include registered charities, are organizations that can issue official donation receipts for gifts they receive from individuals and corporations. Registered charities can only make gifts to other qualified donees.

**However, it is possible for registered charities, including foundations, to work with non-qualified donees (non-charities)**. For example, a foundation may partner with a charity to support a youth leadership group (non-qualified donee) in order to provide access to training and skill development programming for youth in rural Ontario. Provided the partnership is structured in a way that the foundation remains compliant with CRA requirements, this partnership enables the foundation to engage with a difficult to reach population and allows the non-charity to provide programming that might not otherwise be available.

For definitions, refer to the Tools and Resources section.



### Did you know?

A charity can carry out **charitable activities** in the following ways:

1. Make gifts to other qualified donees
2. Carry on their “own charitable activities,” being those which are directly under the charity’s control and supervision, and for which it can account for any funds expended. This may be accomplished through:
  - Using their own staff (volunteers, directors and/or employees) to carry out activities (charity must exert direction and control); or
  - Structured arrangements with intermediaries (non-qualified donees) to carry out activities (charity must exert direction and control).

As a general rule, foundations cannot simply grant funds directly to a non-charity. This is because registered charities can only make grants to “qualified donees.” Therefore, foundations can only provide funds to a non-charity under arrangements structured to ensure that the activities of the non-charity will be viewed as the foundation’s own activities.



### Did you know?

At the federal level, the Canada Revenue Agency (CRA) administers a system to register charities under the *Income Tax Act*. As the regulator of charities, the **CRA's responsibilities include:**

- Processing applications for registration;
- Offering technical advice on operating a charity;
- Handling audit and compliance activities;
- Providing general information to the public.

Registration provides charities with exemption from income tax. Registration also authorizes charities to issue official donation receipts for income tax purposes, meaning that donors can claim gifts made to registered charities to reduce their income tax.

[Source: What role does the federal government play in the regulation of charities?](#) Canada Revenue Agency charities and giving web site

## 3 Understanding the legal requirements

### a) Purposes or objects and activities

Canadian registered charities, including foundations, can operate anywhere in the world in two ways – directly or indirectly:

1. Direct activities: local or Canadian employees/volunteers
2. Indirect activities: [structured arrangements](#) with intermediaries (non-qualified donees)

**Table 1: Relationship between the legislative provisions and working with NDQ. (Miller, slide 9)**

Exclusively Charitable Purposes			
Activities MUST Advance Charitable Purposes ONLY			
Expenditures, Assets and Resources Directed only to Activities that Advance Charity			
Gifts to Qualified Donees	Carry Out Own Charitable Activities		
	Employees	Contractors	Intermediaries

Source: [PFC webinar](#), *Working with non-qualified donees*, Miller Thomson, 2020, slide 9

The four most common [types of intermediaries](#) recognized by [CRA Guidance CG-004](#)<sup>2</sup> are:

1. **An agent** is an intermediary that agrees to carry out specific activities on a charity's behalf.
2. **A contractor** is an organization or individual that a charity hires to provide goods and/or services. A contractor is an intermediary with whom direction and control is usually exercised through the terms and oversight of the contract between the charity and the person or business providing the goods or services.
3. **A joint venture participant** is an organization that a charity works with to carry out a charitable activity. The charity and one or more joint venture participants pool their resources to accomplish their goal under the terms of a joint venture agreement.
4. **A co-operative participant** is an organization with which a charity works side by side to complete a charitable activity. In a co-operative venture, the charity and other organization(s) each take on responsibility for specific parts of the project.

[Agents](#) and [contractors](#) are the most common types of intermediaries used by foundations to work with non-qualified donees.

### Key Questions

- Do you know the difference between a qualified donee and non-qualified donee?
- How can working with non-qualified donees assist your foundation in achieving greater impact?
- What are your charitable object(s)?
- Do your charitable objects allow for the specific activities proposed with intermediaries (non-qualified donees) to advance your purpose? Visit [CRA](#) for more information.
- Have you reviewed CRA's guide on "[Using an Intermediary to Carry out a Charity's Activities within Canada](#)" and/or "[Canadian Registered Charities Carrying out Activities Outside Canada](#)"?

<sup>2</sup> CRA has published similar guidance, [CRA Guidance CG-002 Canadian registered charities carrying out activities outside Canada](#), which addresses the "own activities" requirement in the context of foreign activities of registered charities.

## b) Legal requirements (structured arrangement)<sup>3</sup>

All charities, including foundations, are permitted to work with non-charities to carry out their own charitable activities. To do so, a foundation must fulfill the requirement known as the "[own activities test](#)."

To pass this test:

1. A structured arrangement should be in place to ensure that the intermediary is conducting activities on behalf of the charity and;
2. The arrangement must provide for "[direction and control](#)" on the part of the Canadian foundation.

### 🚀 Resource Alert

- [Establishing a Partnership Agreement](#)
- [Sample Foundation-NQD Agreement](#)
- [Partnerships between Charities and Non-charities, Tips for Funders \(page 28\)](#)
- [Collaborative Agreement Policy](#)
- [Charity and Non-charity Partnership Policy](#)

## c) Direction and control

Under CRA guidelines, a foundation must retain **direction and control** of the charitable resources (including funds) and the activities of the non-charity. The activities of the non-charity must align with the charity's mandate and objects and contribute to the achievement of that mandate.

The CRA strongly suggests that a charity enter into a written agreement to establish a real, ongoing and active relationship with an intermediary conducting activities on behalf of the charity.

Additionally, the CRA recommends that the following measures be adopted by a foundation to establish direction and control over the non-charity's activities:

- Communicating a clear, complete and detailed description of the activity to the intermediary;
- Initial and ongoing instruction from the charity/foundation to the non-qualified donee;
- Ongoing monitoring and supervision of activities;
- Separating the funds for this partnership from other charity funds;
- Keeping adequate records of all steps taken to exercise direction and control;
- Making periodic disbursements, based on demonstrated performance.

### 🚀 Resource Alert

- [Considerations for Charities and Foundations Questionnaire](#)
- [Simplified Overview of CRA Measures](#)
- [Direction and Control Checklist](#)

In some instances, when a foundation works with a non-charity in partnership with a charitable organization<sup>4</sup> (an operating charity), the [structured arrangement](#) will be between the non-charity and the charitable organization. This means that the charitable organization will be required to establish **direction and control** over the activities of the non-charity and the foundation can simply make grants to the charitable organization.

## Steps to take action

- With your staff, work through the [Direction and Control](#) checklist together to build on existing grantmaking processes and practices.
- Engage your staff in discussions on how best to work with and support NQDs.
- Does your foundation model practices of [trust-based philanthropy](#)? If so, your foundation may already have the practices and relationships in place to begin work with NQDs.

<sup>3</sup> A structured arrangement such as a written agency agreement, joint venture agreement or cooperative partnership agreement.

<sup>4</sup> For definitions of a public foundation and charitable organization see subsection 199.1(1) of the Income Tax Act.

## 4 Partnerships and working with a non-qualified donee

Another way foundations can work with non-charities is through a partnership with another charity. These partnerships can take various forms.

Listed on the next page are the most common examples for foundations to consider. As for partnerships between foundations and non-charities, provided that CRA guidelines for direction and control are followed, the partnership can be customized to the project needs<sup>5</sup>.

### Resource Alert

- [Choosing a Charity Partner Checklist](#)
- [Sample Charity- NQD Agreement](#)
- [NQD Intake Form](#)
- [Trust-Based Philanthropy: An Approach,](#)
- [OTF Organizational Mentor Tool](#)
- [OTF Mentor Registration Checklist](#)
- [Laidlaw NQD/Grantee Onboarding Package](#)

### a) Organizational capacity and power

When working with non-charities, it is important to recognize that many of these groups do not have dedicated staff or internal administrative infrastructure to ensure that the requirements of a structured arrangement are fulfilled. It is common for non-charities to partner with a charity that can provide support including administrative oversight, mentorship, and capacity building.

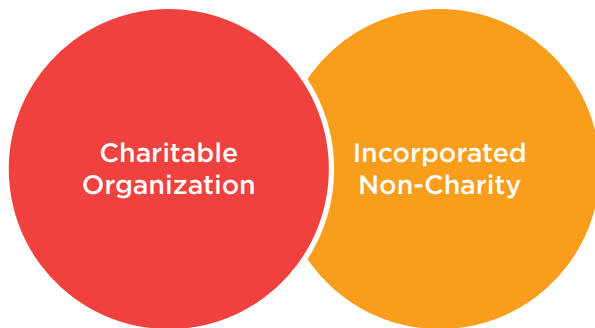
When a non-charity partners with a charity, organizational capacity and power may not be shared equally. To reduce the potential for power imbalances, foundations can:

- Learn about the organizational needs and context of the non-charities that they intend to work with;
- Investigate the non-charity's status and activities to ensure it has the capacity to carry out the activities and use resources as directed;
- Demonstrate their commitment to mutual charitable objects, learning, shared power, mutual authenticity, care, and full support between all partners (foundations, non-charities and charities) through policy, process and communication;
- Establish organizational tools and best practices to support their work with non-charities and;
- Gather and promote guidance and tools on creating meaningful partnerships between non-charities and charities.

### Steps to take action

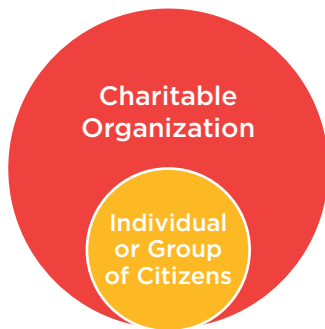
- Connect with peers to build your knowledge and capacity to work with NQDs.
- Explore opportunities to develop or expand program practices and criteria to allow for grant requests from NQDs.
- Identify what types of NQDs you are interested in working with.
- Investigate the NQD's status and activities to ensure it has the capacity to carry out the activities and use resources as directed.
- Identify short-term opportunities to work with NQDs to gain experience that can translate into long-term sustainable practices.
- Develop necessary policy, documentation, and process to adhere to CRA requirements on direction and control.
- Be aware of your institutional power and privilege. Build in practices of shared accountability, mutual trust, and support.

## b) Types of charity and non-charity partnerships<sup>6</sup>



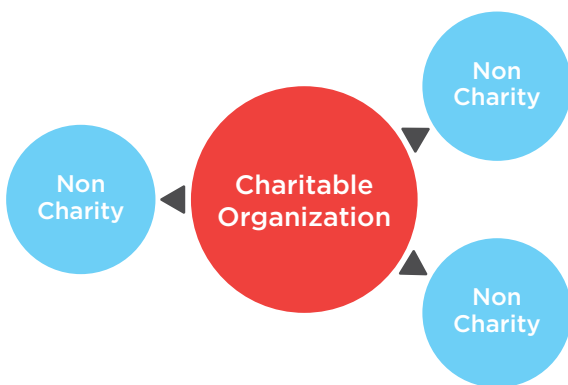
### A Charity Partners with an Incorporated Non-charity

In a partnership where the non-charity is a legally incorporated organization, the relationship may be one of agent, contractor, co-operative or joint venture (among others) as outlined by the CRA. In an **agent** relationship, the non-charity carries out activities on behalf of the charity and the charity is involved in determining how the activities will be completed. In a contractor relationship, the non-charity is hired by the charity and the charity is not involved in determining how the activity is carried out, only in ensuring that it is. In a joint venture, decisions are made collaboratively and resources are pooled.



### A Charity Partners with an Individual or Group of Citizens

Charity and non-charity partnerships also allow charitable organizations to support work at the grassroots level with individuals and groups of citizens. In this type of partnership, the individual or group of citizens become volunteers, staff or a project of the charity. Where the individual or group of citizens becomes a project of the charity, these partnerships are usually **agent** relationships in which the non-charity carries out activities on behalf of the charity.



### A Charity Partners with More Than One Non-charity

A charity may choose to partner with multiple non-charities in order to achieve its charitable mandate. The non-charities may be organizations, individuals or groups. The basic structure of the relationship will remain as outlined in the previous models except that the charity will be required to establish systems to support multiple partnerships. For instance, a foundation and multiple non-charities may enter into a tri-partite [structured arrangement](#). In this case, a foundation would be the supervising entity that would be required to establish direction and control over the activities of all the operating entities and non-charities.



## 5 Tools and Resources

The tools and resources in this section provide foundations with more information and access to tools and resources to learn more about working in partnership with non-charities (non-qualified donees).

### Definitions

[Qualified Donee & Non-Qualified Donee](#), Partnerships for Community Benefit (page 5)

[Charities and giving glossary](#), Canada Revenue Agency

### Understanding the Legal Requirements

[Working With Non-Qualified Donees](#): A PFC/CFC Webinar, Miller Thomson LLP

[Charity Legal Checklist for Working with Intermediaries in Canada 2020](#), Blumberg Segal LLP

[Canadian Charities Working with Non-Charities in Canada — A Very Simplified View of the Process](#), Blumberg Segal LLP

### Working in Partnership with Non-Charities

[Neighbourhood Trust: Shared Platform](#), East Scarborough Storefront

[Partnerships for Community Benefit: A Canadian Handbook on Partnerships between Charities and Non-Charities](#), Burns Memorial Fund

[Trust-Based Philanthropy: An Approach](#), Trust Based Philanthropy Project (US)

[Shared Platform Guidebook](#), Ontario Nonprofit Network

### Canada Revenue Agency Guidance

[Using an intermediary to carry out a charity's activities within Canada](#)

[Canadian registered charities carrying out activities outside Canada](#)

## TOOLS AND PROMISING PRACTICES

### Checklists

[Charity Partner \(mentor\) Checklist for Foundations](#), Ontario Trillium Foundation

[Choosing a Non-charity Partner Checklist](#), Partnerships for Community Benefit

[Considerations for Charities and Foundations Questionnaire](#), Partnerships for Community Benefit

[Writing a Collaborative Agreement Tip Sheet](#), Ontario Trillium Foundation

### Sample Agreements

[Establishing a Partnership Agreement, Partnerships for Community Benefit](#)

[Sample Agency Agreement for a Charity Working with a Non-charity, PFC and Miller Thomson LLP](#)

[Sample Foundation-NQD Agreement](#), Laidlaw Foundation

[Sample Charity- NQD Agreement](#), St. Stephen's Community House

### Samples Policies

[Collaborative Agreement Policy](#), Ontario Trillium Foundation

[Charity and Non-charity Partnership Policy, Partnerships for Community Benefit](#)

### Other

[NQD Intake Form](#), St. Stephen's Community House

[NQD/Grantee Onboarding Package Orientation, Laidlaw Foundation](#)

[Foundations in Action](#)

[Laidlaw Foundation](#)

[Collaborative Funders Table \(Member, Burns Memorial Fund\)](#)

[Lucie and André Chagnon Foundation](#)

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