

Summary of the Fourth International Conference of Charity Regulators

Washington, DC
May 11-13, 2010

Conference Attendees:

Australia	–	Michael Hardy
Canada	–	Cathy Hawara
	–	Terry de March
New Zealand	–	Trevor Garrett
Northern Ireland	–	Frances McCandless
Republic of Ireland	–	Terry Dunne
Scotland	–	Jane Ryder
USA	–	Lois Lerner

Overview of Discussions

The following are highlights of the discussion and materials for each session. Please refer to the relevant materials in the conference binder for more detail.

Day One – Tuesday May 11, 2010

1. Welcome, Introductions and Conference Agenda

2. Review of Jurisdictions – Updates from 2009/2010

Each regulator presented a snapshot of their regulatory regime governing charities and highlighted current issues or trends.

Item 2.1 – Trevor Garrett – New Zealand

Three years after the Charities Register opened, 25,000 charities have been registered. Eight appeals of registration decisions have been lodged, with two decisions being delivered, both in favour of the Commission. All written decline and deregistration decisions are now posted on the Commission's website in order to promote greater understanding of what constitutes "charitable purpose." The Commission has now shifted some focus from registration to education and monitoring and investigations, with dedicated teams being established for each of these areas. Some areas of interest include recreational sports and whether recognition was too permissive. Such sports are not charitable, but could be used to meet other charitable purposes.

Item 2.2 – Cathy Hawara - Canada

The Charities Directorate is within the revenue department. While jurisdiction technically rests with the provinces, the revenue department is more active. Canada has developed an audit program, auditing approximately 1% of registered charities per year. The majority are selected due to risk, but some are selected randomly. Canada has also changed its disbursement quota rules, charities no longer have to spend 80% of their contributions but must still spend 3.5% of their investments. Charities can seek permission to accumulate funds however. Canada has also begun new education initiatives, including webinars and an employee blog.

Item 2.3 – Terry Dunne – Republic of Ireland

The Republic of Ireland's Charities Act was enacted on 28 February, 2009. It contains features similar to UK law, including Charities Regulatory Authority and Register of Charities. The Act provided the first statutory definition of "charitable purposes." The Act must now be implemented, requiring a wide range of data gathering and infrastructure construction activities. The new Charities Regulatory

Authority should be established in late 2011. Charities are working to develop voluntary codes of practice on charitable fundraising and a free public website is being set up by a company (with government and charitable funding) to provide data on the sector to the public and the government.

Item 2.4 – Michael Hardy - Australia

Australia oversees charities from within the revenue office, though there have been some calls for the formation of a charities commission. The issue is complex because some organizations are recognized as non-profits and some are eligible for charitable tax deductibility, but these two groups do not overlap.

Item 2.5 – Jane Ryder - Scotland

Scotland has approximately 23,500 charities registered with 1000 new applications per year. All organizations are required to report financial accounts and after 3 years compliance has increased. The reporting form has been reduced in size and optional online filings are available. A new audit requirement has been instituted that applies to all organizations but a sliding scale is used to determine how detailed the audits must be. Scotland has also developed an anti-fraud strategy based on intelligence gathering, prevention, and intervention. A new legal form is being instituted in 2011 that small organizations can utilize to give themselves a legal personality and limits on liability.

Item 2.6 – Frances McCandless – Northern Ireland

Northern Ireland passed its charities law in 2008, establishing a Charities Commission. All charities will be required to register with the commission, there is no *de minimis* requirement, which may burden small organizations. Previously, only a limited number of charities were registered with HM Revenue & Customs for tax benefits, while others operated independently. The Commission is working to import the registrations from HM Revenue & Customs but the information is old and limited.

Item 2.7 - Lois Lerner – The IRS Regulation of Charities

In the United States, the Federal government primarily oversees charities, with the state governments providing additional oversight in areas like charitable solicitations. New healthcare legislation has added additional requirements for tax exempt hospitals, and created new types of tax-exempt entities (health insurance cooperatives, reinsurance pools, others). It also provides grants to numerous types of non-profit entities. Changes from the 2006 Pension Protection Act (PPA) are also coming into effect: most charities which have not filed required annual information returns for three years will be automatically revoked, the first three year period closes this year; IRS is now capable of making additional disclosures to states, but recipients must have specific safeguards in place. Hybrid entities

are developing that blur the lines between charitable and for profit organizations and between private foundations and public charities.

3. Charity Accountability to Regulator and Public: Governance and Transparency; Form 990, *Return of Organization Exempt from Income Tax*; Media Influence

Item 3.1 – Michael Hardy - Australia

There is no annual return requirement, so the Australian Tax Office does not play a major role in publicizing the activities of charities. The government is interested in working on social welfare as a whole, however, and is conducting outreach efforts in that area.

Item 3.2 – Lois G. Lerner - USA

The IRS believes that transparency, good governance, and tax compliance go hand in hand. A useful tool for promoting all of these is the Form 990 annual information return, required of most organizations. It contains both financial and activity descriptions and is publicly disclosable, so it is used by the IRS, states, donors, the general public, and the media. The media help to leverage IRS efforts by highlighting issues of IRS concern, new programs, and possible areas of malfeasance by charities.

4. Applying for Charity Status

Item 4.1 – Frances McCandless – Northern Ireland

Organizations must be established for charitable purposes only and fall within one of 12 headings as well as meet a public benefit test. Charitable headings in Northern Ireland contain the advancement of human rights in addition to the typical purposes. Guidance on public benefit will be published and the first registrations with the Charities Commission are expected by the end of June 2010. All charities must register and once registered, charities may then apply to HM Revenue & Customs for tax benefits. This new system is a major change in how charitable status is understood because previously organizations were registered with HM Revenue & Customs for tax purposes only. Issues of dual registration and regulation must be addressed. (for example, universities and housing associations)

Item 4.2 – Robert Choi – USA

Most charities (except for churches) are required to apply for recognition of charitable status and must be operated for charitable purposes and have charitable limitations in their organizing documents. Applications and information

returns are open to public inspection. Potentially questionable organizations may be flagged for a review of operations several years after grant of exemption. Cases may also be reviewed by a dedicated financial investigative unit or groups specializing in abusive schemes, fraud or terrorism. The IRS has reduced the processing time for applications and it is projected to be 112 days in 2010. Applicants can view the current processing time on the IRS website.

Day Two – Wednesday May 12, 2010

5. Communication and Education Challenges

Item 5.1 – Bobby Zarin - IRS Academic Institution Initiative

Customer Education and Outreach helps customers understand their tax responsibilities, which is a challenge due to many different sub segments and varying levels of sophistication. In order to increase effectiveness, the office uses technology, such as tailored websites, facebook, and podcasts, and partners with 3rd parties to further distribute materials. One current project is the Academic Institutions Initiative, which helps prepare future non-profit leaders by giving them an understanding of the tax law, promoting good governance, and providing educational tools to the entities developing these future leaders.

Item 5.2 – Michael Hardy - Australian Efforts

Australia conducts many educational efforts, focus on what a charity is and aspects of charity law. These include a website, webinars, and chat rooms, and a GiftPack guide for charities, setting out the rules for qualifying for tax deductible gifts and explaining how donors can claim those deductions.

Item 5.3 – Cathy Hawara - Canadian Public Education Initiative

The Charities Directorate is responsible for educating the public by raising awareness of registered charities and regulations and facilitating the public's ability to make informed donation decisions. This is fulfilled by mailing information cards to taxpayers claiming charitable donations and holding at least one information event in each province each year. Mailings also are targeted to recent post-secondary graduates in order to educate them because they are likely to donate significant amounts. The Charities Directorate also uses videocasts and articles in publications likely to be read by donors.

6. Abuse of Charities

Item 6.1 – Michael Hardy - Australia

The formation of charitable trusts poses a challenge because such trusts are formed under state laws but the states do not oversee the charitable aspects.

Fraudulent fundraising is also a concern and the Tax Office works with other regulators to enforce fundraising rules.

Item 6.2 – Cathy Hawara - Canada

A primary area of concern is abusive tax shelter arrangements, where donors are promised tax benefits of greater value than the value donated. Most of the donated money is retained by promoters or it never existed and only small amounts are transferred to charity. Charities are willing to participate because they are happy for any donation and there is little cost to them. The Canada Revenue Agency has denied over \$2.5 billion in claimed donations and is considering third-party penalties against promoters. The Charities Directorate has also revoked 35 charities for participation. Donation receipts also may be sold for less than face value or forged. Canada has taken on a major communication effort using innovative interactive tools to educate donor on the benefits of charitable giving and the pitfalls to avoid.

Item 6.3 – Lois G. Lerner - USA

The presentation highlighted three current areas of concern. Businesses often attempt to gain charitable status and the dividing line between them may be unclear, such as for profit hospitals whose activities look very similar to charitable hospitals. Charitable assets may be appropriated for non charitable uses, either through excessive compensation to officers or more subtle diversions. This can be mitigated through increased transparency and improved governance/oversight. IRS also works to prevent charitable assets from being used for terrorism. Dedicated financial investigative and criminal units are available, along with statutory authority to automatically suspend charitable status for organizations that are supporting terrorism.

7. Charities Commission Experience: Challenges, Successes, and Lessons

Item 7.1 – Terry Dunne – Republic of Ireland

The Charities Act has been broadly welcomed and the new Commission is engaged with the sector, other regulators and the government. Due to the economic crisis, attitudes toward regulation in Ireland are emphasizing enforcement, while at the same time there is an impetus to reform the public sector and resist creation of new agencies. This may result either in continuing to move forward, lengthening the timeline for implementation, or scaling down the legislation and examining shared service options.

Item 7.2 – Jane Ryder - Scotland

The Scottish Charity Regulator has successfully implemented a new regulatory regime and established credibility with the sector and public. Positive returns are being seen on the investment in education in the form of increased compliance. Significant planning time (2 years) was needed, as well as close relationship with the rest of the government. It was also important to coordinate and consult with the sector and intermediaries such as the Council for Independent Schools and the Institute of Chartered Accountants. Going forward, the Charity Regulator must deal with the collapse of public finances and expectations by the public that are beyond the Charity Regulator's mandate.

Item 7.3 – Trevor Garrett – New Zealand

Registration applications have declined, those that are applying now tend to be more complex and less clearly charitable. The Charities Commission is now working to maintain a balance between the regulating and educating roles. The Commission has provided an information sheet on terrorism and money laundering and dealt with the use of a doctored registration certificate used in fraudulent fundraising activities.

8. Future of Charity Regulation: Based on Canadian Survey of International Regulators – Terry de March

Canada conducted a survey of 8 regulators to determine views on charity, emerging issues, and areas of common interest and possible collaboration. Most believe that government attention to charity will increase. Transparency of charity information, compliance and resources are the greatest issues. Abuse of charitable resources will continue to be a focus of media attention. Most believe that charity compliance has increased, primarily due to transparency. Regulators' strategies for dealing with compliance are in place, but may be lacking resources. Educational efforts are increasing, with greater focus on the web. Appropriate fundraising practices will continue to be an area of media focus, though several regulators do not have the authority to regulate fundraising methods. Finally, the globalization of charity poses an increased compliance risk as charities work more outside the borders of their home country and regulator.

9. Wrap Up and Plans for 2011 Conference

The attendees discussed plans and locations for the 2011 conference.

They also determined that prior conferences have established a good working relationship and built an understanding of the different jurisdictions' operations. In order to build on these achievements, the group agreed to select issues for joint discussion and action, if appropriate. The first issues to be discussed are the potential for reciprocal recognition of charities registered in different jurisdictions and the potential for additional information sharing between charity regulators.