



Charities and CED

The Principles and The Problems

A Presentation
To

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Economy

Rooting Development in Community

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Charities and CED

The Principles and The Problems

- 1:30pm - Introductions
- 1:40pm - What Is the Context
- 1:50pm - Key Concepts of the Law of Charities and the Income Tax Act
- 2:15pm - A Review of the Charities Directorate's CED Rules
- 2:30pm - Break
- 2:45pm - Further Review
- 4:00pm - Conclusion



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The Principles and The Problems

What We Said We'd Do

In 1999, the Canada Revenue Agency published guidelines outlining when **charitable registration** would be available for organizations having **community economic development programs**.



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What We Said We'd Do

Despite this advance, many CED **organizations** still **have difficulty** obtaining charitable status, while others that have it are sometimes **unclear** **about its specific implications**



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What We Said We'd Do

This session will **explore the guidelines** and the benefits of charitable status, **answer participants' questions**, and consider **how CCEDNet can support** CED organizations in their efforts to obtain charitable status

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- The purpose of this session is to explore the red bits:
 - ▶ what is charitable registration
 - ▶ look at why many CED organizations still have difficulty obtaining charitable status
 - ▶ clear up implications of registration
 - ▶ answer questions



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- The approach in my remarks is to:
 - ▶ Give an overview of the two dominant principles that govern the registration and operations of a charity;
 - ▶ Review the rules relating to Community Economic Development in light of those principles; and
 - ▶ Review the terms of RC-4143 the CRA's Registered Charities: Community Economic Development Programs brochure





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Revisiting The Program Description

In 1999, the Canada Revenue Agency published guidelines outlining when **charitable registration** would be available for organizations having **community economic development programs**.



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What RC4143 Says It Does

This guide explains **which programs** pursued by community economic development organizations **are charitable**.



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Side By Side

In 1999, the Canada Revenue Agency published guidelines outlining when **charitable registration** would be available for **organizations** having community economic development **programs**.

This guide explains **which programs** pursued by community economic development organizations **are charitable**.

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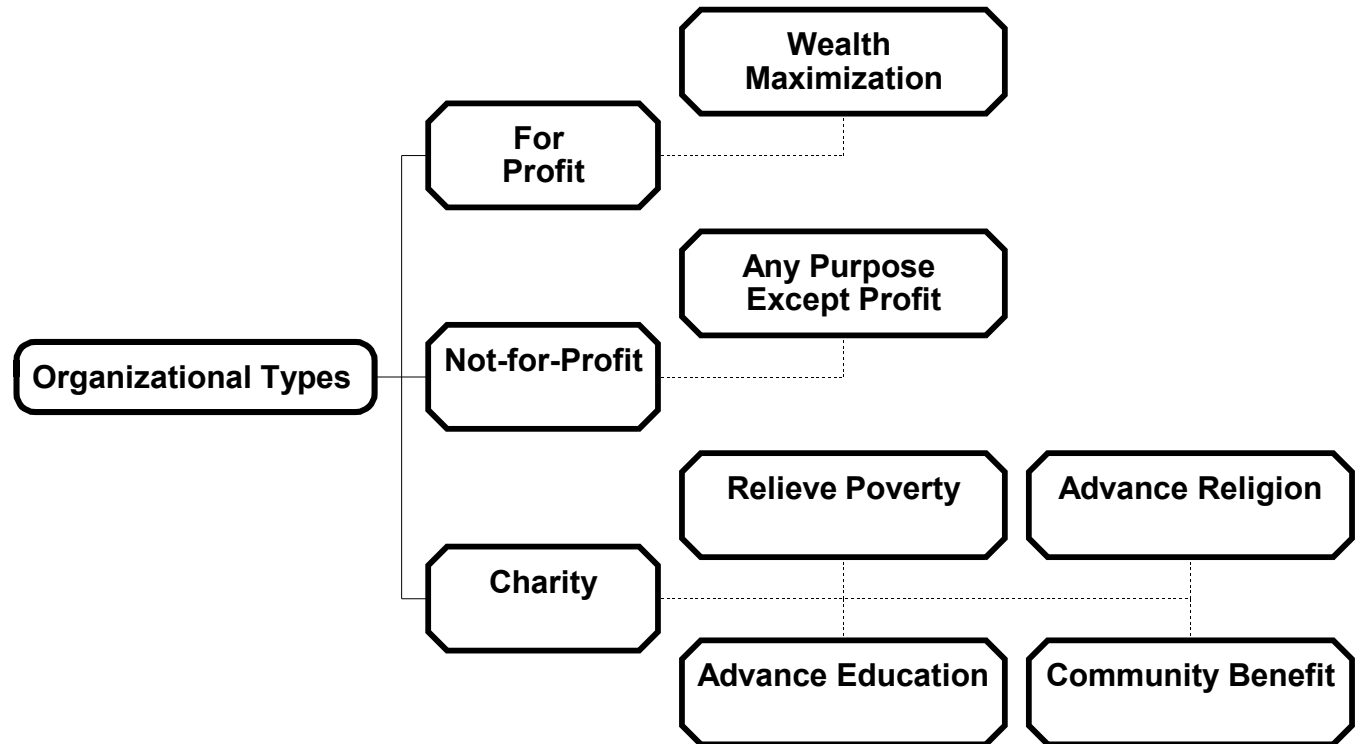
The Principles and The Problems

- The First Dominant Requirement
 - Under the Income Tax Act an organization's **purposes** and **activities** must be **exclusively and legally charitable** both to be registered and to operate



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- the distinctions between business corporations and non-profit organizations are two-fold:
 - ▶ the limits imposed on the range of objects that can be undertaken; and
 - ▶ the restrictions on what can be done with the wealth and income generated by the organization.



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- main distinctions:
 - ▶ business corporation has all the powers of a natural person, can carry out any lawful activity a person can undertake, and must declare dividends and distribute wealth to at least some of its owners.
 - ▶ A non-profit, on the other hand, can only pursue non-commercial purposes and must use its financial resources in promoting its objects.



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- but there are two broad types of non-profit organizations:
 - ▶ charities; and
 - ▶ non-profits that are not charities



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- the registered Canadian charity
 - ▶ *common law & the Income Tax Act*
- objects and activities





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- Canadian charity law
 - ▶ common law -the **What** of charity
 - ▶ the Income Tax Act -the **How** of charity

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- common law -the what of charity
 - ▶ doing good is charitable
 - ▶ arguing about what is good is not charity



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- charitable purposes
 - ▶ relief of poverty
 - ▶ advancement of education
 - ▶ advancement of religion
 - ▶ other purposes as determined by the courts and having a public benefit



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- Purposes or Objects
 - ▶ charity law sees an organization's objects as those ends towards which action is directed, not the manner in which any activity is undertaken.



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■ Activities

- ▶ Objects or purposes are best thought of as collections of possible activities. Activities must be both contemplated by objects and aim to advance them.
- ▶ But activities cannot stray outside the boundaries of the collection; and the collection must be charitable in the way the law describes and requires.



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- ▶ a charity must carry on its **own exclusively charitable activities**, or fund certain organizations identified in the *Income Tax Act* (“qualified donees”), or do both;



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Objects and Activities

Exclusively Charitable Purposes

Activities **MUST** Advance
Charitable Purposes
ONLY

Expenditures, Assets and Resources
Directed only to Activities that Advance Charity



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- ▶ Hunter's Maxim For Philanthropic Success
 - Every Activity That Is Good Is Not Necessarily Charitable



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- The Second Dominant Requirement
 - ▶ An organization must be established for the **benefit** of the **public** or a sufficient segment of the public.



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- The Details of Public Benefit
 - ▶ The benefit should generally be tangible.
 - ▶ The beneficiaries must be the public-at-large or come from a sufficient segment of the public as determined by the charitable purpose being considered.
 - ▶ The organization may not otherwise benefit private individuals except under certain limited conditions.





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- The Details of Public Benefit
 - ▶ Subject to some exceptions, the organization cannot exist for the benefit of its members. Professional associations, trade unions are not typically considered charitable at law.
 - ▶ The organization cannot restrict delivery of the benefits to a certain group or class of persons without adequate justification.
 - ▶ The organization cannot charge fees for its services where the effect of the charge would be to unduly exclude members of the public.

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- ▶ Hunter's Maxim's For Philanthropic Success
 - Every Charity When Doing Good for the Public Benefit Must Provide No More Than Incidental Private Benefit



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- Summary
 - ▶ Objects and Activities (Programs) Must Be Exclusively Charitable
 - ▶ Cannot be Undue Private Benefit





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The CRA's CED Rules

When looking at what's charitable the Charities Directorate asks:

1. Who benefits?
2. What is the nature of the benefit provided?



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A Comment About the Charities Directorate's Scope of Decision-Making

- the relationship between administrative responsibility and an applicable set of legal rules
- the Income Tax Act and the meaning of charity
- the “definition” of charity

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- CED groups ask other questions:
 - ▶ is there democratic control;
 - ▶ is there a broad representation of community interests;
 - ▶ is the venture located in the community or outside it;
 - ▶ does the project hire and buy locally;
 - ▶ does the project derive its income from within the community
 - ▶ does the project have assets that are controlled by the community.



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The CRA Questions and The CED Questions

The CED questions are only relevant if they speak to objects and activities that advance:

- relieve poverty
- advance education
- advance religion
- purposes determined by the courts as charitable that have public benefit





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What the CED Programs the CRA has Commented On

Programs relating to:

- Unemployment and employment
- Relieving poverty through running stores
- Relief of people with disabilities
- Relieving suffering in economically challenged communities
- Promoting industry and trade

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Unemployment and employment

- Who is the organization helping?
- A primary concern about preventing unemployment





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Unemployment and employment

Types of programs

- Job search assistance
- Assistance claiming benefits
- Vocational, employability, and entrepreneurial training
- Training “businesses”
- Individual development accounts
- Micro-enterprises and community loan funds (relief of poverty only)
- Loans and expenditures

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Relieving poverty through the operation of stores

- Providing low-cost necessities
- Selling goods produced by the poor



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Relief of people with disabilities

– Social “businesses”



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Relieving suffering in economically challenged communities

An economically challenged community (ECC) is a geographically defined community where the unemployment rate has been 50% or more above the national average for two or more consecutive years.

A community is no longer an ECC when its unemployment rate has fallen below this level for four years in a row.

When this happens, an organization would be given a further two years to wind up any of its programs that are **charitable solely because they have been located in an ECC.**



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Relieving suffering in economically challenged communities

- providing affordable housing to the poor, or specially adapted housing for the aged and the disabled;
- providing community facilities, such as a hall, park, or a multi-sport recreational centre;
- providing cultural facilities, the opportunity to see artistic works, or training in the arts and crafts;
- preserving heritage properties owned by the organization or a qualified donee such as a municipality;
- beautifying and preserving natural sites; and
- training volunteers.





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Promoting industry and trade

Promoting industry and trade for the benefit of the community (i.e., the public at large) is an acknowledged charitable purpose.

CRA notes that organizations often have difficulty finding a way of accomplishing this purpose without conferring a more-than-minor private benefit on individuals or corporations engaged in industry and trade.

The case law offers only one example directly relevant to community-based organizations: the promotion of agriculture and craftsmanship in this context.



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General Summary of CRA and CED

Whether something that is CED is also charitable is:

- a legal question; and
- program specific - being one that exclusively advances a recognized charitable purpose

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- Some Other Issues To Be Alert To:
 - ▶ Political purpose
 - ▶ Objects not fully charitable
 - ▶ Funding non-qualified donees





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How to Organize to Apply For Charitable Status

- as a program of an existing CED organization
- as a new entity
- in collaboration with an existing charity using agency agreements
- a “CED Community Chest”

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CED and Charity

Questions



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