

## Legalese for Charities

In two recent *Registered Charities Newsletters*, Canada Revenue Agency has reviewed several legal terms charities may need to understand in their daily work and in their relations with the tax agency. As it points out, sometimes words which may seem familiar, like “shall”, have a different meaning in a legal context and/or in the *Income Tax Act*. Following are the CRA’s definitions:

**Cy-près** – Where property is given in trust for a particular charitable purpose and it is or becomes impossible, impractical, or illegal to carry out the particular purpose, the trust will not necessarily fail if the intention of the trust is to devote the property to charitable purposes. The court can apply the *cy-près* doctrine and direct the property to some charitable purpose that falls within the general charitable intention of the trust.

**Fiduciary** – Relationship between a trustee/director and a charity.

**Fiduciary duty** – A duty to act for someone else’s benefit exclusively. It is the highest standard of duty implied by law (eg trustee, guardian). For charities, this means to accept and hold a public trust to maintain, preserve, and develop the organization’s resources to be used for charitable purposes, to ensure that the organization’s activities remain charitable, and to manage the organization for the benefit of the public.

**Charitable trusts**– A legal relationship created for the benefit of a class or the public generally, and established for charitable purposes (eg religious, educational).

**Estoppel** – The doctrine under which a person cannot change previously made statements, acknowledged facts or conduct if doing so would be detrimental to another person who has acted on those statements, facts or conduct.

**Prescribed** – The content or use of a form or process having been authorized.

Subsection 248(1) of the *Income Tax Act* gives the following meanings for prescribed:

- (a) *in the case of a form, the information to be given on a form or the manner of filing a form, authorized by the Minister;*
- (a.1) *in the case of the manner of making or filing an election, authorized by the Minister; and*
- (b) *in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation;*

*eg 149.1(14) Information returns. Every registered charity shall, within six months from the end of each taxation year of the charity, file with the Minister both an information return and a public information return for the year, each in prescribed form and containing prescribed information, without notice or demand therefore.*

**Deemed** – To be considered as such, regardless of other facts.

For example, under proposed legislative amendments:

*248 (35) Deemed fair market value. For the purposes of subsection (31), paragraph 69(1)(b) and subsections 110.1(2.1) and (3) and 118.1(5.4) and (6), the fair market value of a property that is the subject of a gift made by a taxpayer to a qualified donee is*

*deemed to be the lesser of the fair market value of the property otherwise determined and the cost, or in the case of capital property, the adjusted cost base, of the property to the taxpayer immediately before the gift is made if*

- (a) the taxpayer acquired the property under a gifting arrangement that is a tax shelter as defined in subsection 237.1(1), or*
- (b) except where the gift is made as a consequence of the taxpayer's death,*
  - (i) the taxpayer acquired the property less than three years before the day that the gift is made, or*
  - (ii) the taxpayer acquired the property less than 10 years before the day that the gift is made and it is reasonable to conclude that, at the time the taxpayer acquired the property, one of the main reasons for the acquisition was to make a gift of the property to a qualified donee.*

**Shall** – in a legal context, generally imposes a duty or compulsory obligation. It means “must”.

*eg 189(6.1) Revoked charity to file returns. Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year shall, on or before the day that is one year from the end of the taxation year, and without notice or demand,*

- (a) file with the Minister:*
  - (i) a return for the taxation year, in prescribed form and containing prescribed information, and*
  - (ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and*
- (b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and*
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.*

**May** – An optional course of action. It allows for choice. In contrast to “shall”, which is to be construed as imperative, “may” is to be construed as permissive. It is generally found in deduction provisions – “may be deducted”. For example, a taxpayer is entitled to a credit for receipted charitable donations under subsection 118.1(3), but is not required to claim them. The use of the word “may” in the *Income Tax Act*, in relation to the actions of the Minister, makes Ministerial discretion possible.

*eg 149.1(13) Designation of private foundation as public. On application made to the Minister by a private foundation, the Minister may, on such terms and conditions as the Minister considers appropriate, designate the foundation to be a public foundation, and on and after the date specified in such a designation, the foundation to which it relates shall, until such time, if any, as the Minister revokes the designation, be deemed to be a public foundation.*