



HOW CHARITIES CAN GRANT TO NON-CHARITIES: A GUIDE FOR GRANTEES

July 2024

About Nonprofit Law Ontario

Nonprofit Law Ontario (NPLO) is a project through which Ontario Nonprofit Network (ONN) provides legal education and training for public benefit nonprofits. This project was initially launched by Community Legal Education Ontario (CLEO) in 2013, and transferred to ONN in 2024. [Nonprofit Law Ontario](#) creates sector-driven collective solutions that help nonprofits and charities meet their legal needs through caring legal education.

About Laidlaw Foundation

This resource was made possible through the generosity of [Laidlaw Foundation](#). Laidlaw Foundation supports young people impacted by the justice, education, and child-welfare systems to become healthy and engaged by investing in innovative ideas, convening interested parties, advocating for systems changes, and sharing learning across the sector.

ONN is grateful for the foundation's ongoing support of our work.

The logo for the Laidlaw Foundation, featuring the word "LAIDLAW" in large, bold, blue capital letters, with the word "FOUNDATION" in smaller, brown capital letters underneath it. The logo is tilted slightly to the right. Below the logo, there are three light blue wavy lines that sweep across the bottom of the page.

LAIDLAW
FOUNDATION

TABLE OF CONTENTS

About Nonprofit Law Ontario	2
About the Laidlaw Foundation	2
Disclaimer - Understanding what this document can and can't do	4
Introduction	5
Charity grants to non-charities is now possible: how and why we got here	6
Step One: Making sure you are the right grantee	7
• 1. The Funder must have a purpose other than granting to qualified donees	8
• 2. Your activities must be considered to further the Funder's purposes by the standards of charity law	9
How the Funder May Assess Your Trustworthiness and Capacity	10
You already have a donor or funder lined up	12
Step Two: Ensuring resources are used for exclusively charitable purposes	13
• How the funder may assess the risk level of the grant	14
• The funding agreement	16
◦ 1. Formal v informal funding agreement	16
◦ 2. Terms and Conditions of funding agreement	16
Step Three: Proving you followed the rules and reporting to the public	19
• Your responsibility to track funds separately	19
• The Funder's responsibility to report to the public	20
Conclusion	20

DISCLAIMER - understanding what this document can and can't do

This guide can offer you. ✓	This guide can't offer you. ✗
General legal information.	Legal advice tailored to your situation.
Information about a policy guidance created by the Canada Revenue Agency (CRA) to interpret the Income Tax Act (ITA).	Information about provincial charity law, as well as other laws, that may affect you.
An overview of the considerations for non-charities in receiving grants from charities.	A deep dive into the many questions raised by this new and as yet untested system.
Insight into legal considerations in the decision of whether or not to pursue grants from charities.	Insights into all the other considerations (political, economic, cultural, etc.) that may drive your decision to pursue grants from charities.

Ultimately, after reading this guide you may still need to seek advice from a qualified legal, or other, advisor.

Introduction

In 2022, Parliament changed the Income Tax Act to allow registered charities to make grants to non-charities (most of whom are called “non-qualified donees” or NQD for short).¹ The Canada Revenue Agency (CRA) then undertook consultations to develop their policy on how they would interpret and implement these new rules. On December 19, 2023, the CRA published its policy position called [CG-032 Registered charities making grants to non-qualified donees](#) (“the Guidance”).

If you are a non-charity (such as a nonprofit corporation, a grassroots collective, a co-op, or an unincorporated social enterprise) already receiving or hoping to get grants from charitable funders, this guide is for you.

In this guide, we will strive to simplify the guidance and highlight what the implementation of this policy may look like in practice from the perspective of the non-charity receiving the grant (“the Grantee”), rather than that of the charity making the grant (“the Funder”).

Our purpose in providing you with this information is two-fold:

- **We want you to be able to speak to funders with confidence.**
This system is new for funders too, and many are still deciding whether to expand their granting to non-charities. By being able to speak with confidence about this new system, we hope you will be able to help funders along in their journey to more accessible funding.
- **We want you to be able to easily navigate these new rules.**
Working with charitable funders may be new to you and there is a learning curve to keeping in mind all the regulations charities have to follow. By understanding what those rules are and how to follow them, you will both be a more appealing grantee and it will help both you and your funder stay onside of the rules.

After we have explained how we got here, this guide will set out the steps the guidance recommends that funders follow when granting so you can know how to prepare yourself.

Charity grants to non-charities is now possible: how and why we got here

Previously, charities could only operate by either carrying on the work itself or granting to other charities. If a charity wanted to fund a non-charity, it had to fall under the category of the charity “doing the work itself”. You may be wondering if the charity is working with a non-charity, how would it be doing the work itself? To answer this question, CRA developed a concept called “direction and control”. If a charity gave its resources to a non-charity, as long as the charity was directing and controlling everything that was happening with the resources, it was like the charity was doing the work itself. It didn’t matter that the non-charity was actually doing the work on the ground because it was only doing that work on behalf of the charity. At the end of the day, the non-charity could advise and implement, but the charity legally had to make the final decisions, and take the credit.

“Direction and control” ultimately created a system that was paternalistic, hierarchical, colonial, artificial, and therefore often cumbersome and inconvenient as well. For decades, some nonprofits, particularly those from the international development sub-sector, lobbied against these rules. These perspectives envisioned a different system that was more egalitarian, collaborative, flexible, and better reflected the realities of who was doing the work and why.

¹ Although technically there are some non-charities who would not need to rely on this new system to receive a grant from a registered charity, since the vast majority of non-charities are non-qualified donees, we will use the term “non-charity” in this guide.

At the end of the day, these advocates asked, isn't the point of the charitable tax credit to maximize the resources that go to charitable activities? By getting too focused on the minutiae of accountability requirements, we lose sight of the goal.

After a Senate Bill proposed by Senator Ratna Omidvar in 2022, much lobbying, and some amendments, the Income Tax Act was finally changed to introduce an alternative to direction and control.

Now, a charity can grant both financial and non-financial resources to a non-charitable grantee without having to claim credit and call the shots, as long as they ensure the resources are used for charitable purposes. This is called a qualified disbursement in the Income Tax Act, but like the CRA does in the guidance, we will simply be calling it a grant.²

STEP ONE

Making sure you are the right grantee

Before a grant is even made, funders must be able to demonstrate to the CRA that they have carefully vetted their grantees to ensure they are both trustworthy to only use charitable resources for the funder's charitable purposes and capable of carrying out the funded activities. For example, the funder needs to make sure individuals involved in the grantee will not use the resources for personal benefits or for other work of the grantee which may be good work but would not be considered charitable at law.

Below, we will consider in greater detail what it means to only use resources for the funder's charitable purposes, and how the CRA recommends that funders assess a prospective grantee's trustworthiness and capacity.

2. Income Tax Act (R.S.C., 1985, c. 1 (5th Supp.)) at s.149.1(1).

Lastly, we will consider the special situation in which a grantee can initiate the interaction with the funder because the grantee has an interested donor who wants a tax receipt or another funder who only wants to grant to a charity.

Only using resources for the funder's charitable purposes

The funder is only allowed to grant to non-charities if it would further one of the charitable purposes set out in the funder's governing documents. Consequently, two things must be in place before the funder can grant to you.

1. The funder must have a purpose other than granting to qualified donees.

Many foundations only have purposes that say "make grants to qualified donees". A funder whose purposes are limited to making grants to qualified donees must expand their legal purposes in their governing documents in order to be able to make grants to non-charities.

So, for example, a funder that says on its website that it supports education may only say on its governing documents that its purpose is to make grants to qualified donees. If this funder wanted to make a grant to you, a non-qualified donee, they would need to change their governing documents to say something like "advancing education by supporting the building of schools". That would be a purpose that could be furthered by granting to a non-charity.

For the funder, this involves at least the following steps:

- Internal discussions and deciding on what the funder's purposes are.

- Drafting those purposes in a way that follows charity law, this may involve consulting a lawyer or soliciting the views of the CRA regarding what they consider charitable.
- Holding a board meeting to pass the changes.
- Holding a members' meeting to pass the changes.
- Filing the changes with the Corporate Registrar and the CRA.

These steps are entirely feasible even for small funders. However, it does take some time and may take some thought if the funder has never defined its purposes before. This can be a very constructive process for the funder.

Consequently, if a funder tells you that they cannot grant to you because you are a non-charity, it may be because they have purposes that limit them to qualified donees. You may therefore legitimately ask if they have considered changing their purposes and if not, why not.

2. Your activities must be considered to further the funder's purposes by the standards of charity law.

A funder is not free to fund any work simply because it is good work or even because it is charitable. The work must specifically further the funder's charitable purposes. This means that it is important that you know what a funder's official purposes are in their governing documents and understand what activities charity law considers to further those purposes. Since charity law comes from the accumulation of more than 400 years of case law, what is considered charitable can be hard to determine, or may sometimes seem outdated, but is wide-ranging and can be quite flexible if you do your research.

Some examples of activities you would think further a charitable purpose but the law does not consider them to, include:

- Preventing poverty is not considered relief of poverty because the beneficiaries aren't already poor.³
- Having a purpose to introduce legislation that bans animal testing is not considered to promote animal welfare in the charitable sense because charitable purposes cannot be "political".⁴

As a grantee, before you apply for funding, make sure that the full scope of what you would use the grant on exclusively falls within one or more of the funder's charitable purposes. Since you can also engage in activities that are non-charitable, it's that much more important to ensure you will not accidentally use the funder's resources for some of your activities that would not qualify. You can learn more about what the CRA views as charitable by visiting their website and reading relevant guides that they have published.⁵

How the funder may assess your trustworthiness and capacity

The CRA provides advice to funder's on what to look for in a grantee to assess your trustworthiness and capacity to apply the funder's resources exclusively to charitable purposes.

3. Credit Counselling Services of Atlantic Canada Inc v MNR, 2016 FCA 193 at para 19.

4. Positive Action Against Pornography v. M.N.R., 1988 CanLII 9460 (FCA), [1988] 2 FC 340 Relatedly, a Funder cannot make a qualified disbursement to a grantee simply to engage in public policy dialogue and development activities, although this is something the charity could do itself.

5. <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/charities-giving-a-index.htm>

How intensely the funder scrutinizes you will be a function of your pre-existing relationship with them and how risky the funder considers the grant to be (we will discuss below how they may do this assessment).

Here are factors the CRA provides as examples of what the funder should document about you as the grantee:

- Purposes and mission (as set out in your governing documents not just promotional material)
- Programs
- History of the organization
- Reputation
- Staff
- Associated individuals or entities
- Experience and capacity to carry on the grant activity (for example, personnel and equipment)
- Potential use of the charity's resources.

The CRA also provides examples of how the funder may collect information about you as the grantee:

- Independent research
- In-person visits
- Virtual meetings
- Requesting information from the grantee, such as governance documents and website links related to the grant activities
- Reviewing the outcome of past grants
- Letter of reference or support

The CRA states that while the funder should review all grantees, if the funder already has a successful relationship with a grantee, the review may be limited.

Note that a funder is not limited to looking at the factors that CRA suggests.

For example, another way that funders might assess if an organization is the right grantee for the proposed work is if there's community support or endorsement - does the group or organization have the experience (lived and work experience) to work with the populations mentioned in a grant proposal? For some funders, the "by and for" is also very important, e.g. if an initiative wants to work with Black or Indigenous youth, the group members need to also be Black and Indigenous.

Finally, due to the time sensitive nature of the grant, or because you are a new organization, it may not be possible for the funder to do a complete review before they make the grant. In such a case, CRA expects that the funder will follow up with you and complete its review over time.

If the funder believes that you are trustworthy and have the capacity to deliver they can grant to you.

You already have a donor or funder lined up

In some cases, you may already have a donor lined up who wants to give to your organization, but wants to get a tax receipt. Alternatively, you may want to apply for funding but that other funder is only willing to grant to a charity. You may be wondering, "Could we simply get a charity to issue a tax receipt or accept this grant then simply grant it to us?"

The short answer is "Generally, no. A charity cannot just be a flow-through".

The Income Tax Act specifically prohibits a charity from accepting a gift on the condition that it will be granted to a non-charity.⁶ The funder could lose their charitable status for doing this.

However, at least one of two other arrangements may be possible.

6. Income Tax Act (R.S.C., 1985, c. 1 (5th Supp.)) at s.168(1)(f).

- 1. The donor/funder can express a non-legally binding desire that the charity grant to you.** As long as all parties understand this is not binding and the charity is at liberty to keep the gift and do what it wants with the gift, this is not a problem. Obviously, you would only enter into such an arrangement if you genuinely trusted the charity. Additionally, when the charity does grant to you, the grant must meet all the ordinary conditions set out above and in the next two sections of this Guide. The funder cannot simply grant you the gift with no strings attached.
- 2. The donor/funder can require that the charity use you as an intermediary when using the gift to carry out charitable programming.** In such a case, you and the Funder must follow all [direction and control rules](#). If you are currently a trustee organization, this may be the arrangement you have with your trustee or "[shared platform](#)".

STEP TWO

Ensuring resources are used for exclusively charitable purposes

While the funder no longer needs to call the shots or claim the credit, they are still responsible for ensuring the resources they provide are applied exclusively to charitable purposes. CRA acknowledges that funders can't always guarantee this, so instead they recommend that funders put in place safeguards that are proportionate to the assessed risk that you as the grantee may use the funder's resources for a non-charitable purpose. Below, we will explore the guidelines the CRA provides to funder's to help them assess the risk of grants and how this may affect your accountability under the funding agreement.

The CRA acknowledges that these are not black and white rules that the funder must apply in each case, but these guidelines do set out CRA's expectations.

If you want to convince your funder to take a different approach to risk assessment or accountability, they are going to need to have an explanation ready for CRA as to how they were still able to ensure resources were exclusively applied to charitable purposes.

How the funder may assess the risk level of the grant

FACTORS	LOW RISK	MEDIUM RISK	HIGH RISK
Charity's experience with grants or working with Grantees	Significant	Some	None
Grantee's experience with charities or charitable program	Extensive (with both)	Some	Newly established
Grantee's purposes	Closely aligned with funder's	Some differences but at least one of the Grantee's purposes aligns with funder's	Not clear that the charitable grant activity would fall within a purpose of the grantee
Governance and reporting structure of grantee	Clear and comprehensive	Some but not comprehensive	Little to none
Grantee's regulation and oversight	Subject to charitable regulation, including in a jurisdiction outside Canada	Not subject to charitable regulation, but is subject to other governmental oversight in a jurisdiction outside Canada	Not subject to any regulatory oversight

FACTORS	LOW RISK	MEDIUM RISK	HIGH RISK
Private benefit concerns 7	Limited	Some	Significant
Location of grant activity	Inside Canada and/or in a stable country or region, including security and social stability, with strong infrastructure, where the charity or grantee have strong presence	Outside Canada in a country or region that is somewhat stable, with at least basic infrastructure, where the charity or grantee do not have significant previous experience or connection	Outside Canada in a country or region that is significantly unstable, with a lack of infrastructure, where the charity or grantee do not have any previous experience or connection
Grant amount	\$0 - \$5,000	\$5,000 - \$50,000	\$50,000+
Nature of resources granted	non-cash resources that are likely to be used only for charitable purposes, such as charitable goods, including textbooks or medical supplies	resources that could be used for charitable or non charitable purposes, such as a mix of cash and non-cash resources	resources that could be used for non-charitable purposes, such as cash, cryptocurrency, and real property
Grant duration	0-2 years	2-5 years	5+ years, including grants with no end date

The funding agreement

In this section we will look at how the risk assessment above may affect whether you need to enter a written funding agreement with your funder, what the terms and conditions of that agreement might be with a special focus on three key provisions: description of grant activities, reporting expectations, and payment schedules.

1. Formal versus informal funding agreement.

CRA states that for one-time grants under \$5,000 a formal funding agreement may not be necessary. Nevertheless, the funder will still need to document by email or other written correspondence or through meeting minutes the basic terms of even a grant under \$5,000. It is important that these communications at least have a clear description of the grant activities (see the next section for more detail on this).

Consequently, if no formal agreement exists, it is important to act in a way that is consistent with any formal communications you've had with the funder about how grant resources will be used.

In most cases, funders will need to have a formal written agreement.

2. Terms and Conditions of funding agreement.

Below are some examples that the CRA provides of provisions that could be in a funding agreement:

- Provision that clearly indicates the charity intends to make a grant (as opposed to a direction and control agreement).

7. A private benefit concern means the risk that someone will take the charitable resources and personally profit from it. For example, if the grantee's board consists entirely of family members of the executive director, this poses a risk of private benefit since there is a lack of independent oversight for how the charitable resources are being spent.

- Start and end dates.
- Full legal names and physical addresses of the parties, where possible.
- Description of the grant activity and the charity's charitable purpose it furthers (see below for more detail).
- Location of the activity.
- Where appropriate, provisions for:
 - Transferring resources in periodic installments based on demonstrated performance, as well as for withholding resources (see below for more detail)
 - Terminating the grant
 - Returning unused resources when required
- Provision that any resources transferred to the grantee will continue to be used only for the charity's charitable purposes in the future.
- Timelines and frequency of reports, including financial and progress reports (see below for more detail).
- Requirement for the grantee's books and records to be sufficiently detailed and for grant funds to be tracked separately to allow the Funder to assess that the grant has been used exclusively for charitable purposes (see step 3 for more detail).
- Signature of directors, trustees, or like officials authorized to receive the grant the date the agreement was signed.

In general, the higher risk the grant is, the more detailed and stringent each of these provisions will be and the more documented it will have to be. For example, if the funder is granting you real estate, since this is a permanent grant, it will require a framework for ongoing reporting and a clear set of binding conditions for how the funder will provide instructions for what will happen to the real estate if the grantee stops using it for charitable purposes.

We will now examine three of the above sections in greater detail.

A. Key provision: Description of activities

A written description of activities allows the Funder and Grantee to form a shared understanding of the purpose, scope, and terms of the grant. This is why it is important to read the funding agreement carefully and ask questions as needed.

Here are some questions that may influence the writing of the description or be answered in it.

- How will you ensure accountability for the resources?
- What is the charitable activity and the charitable purpose it furthers?
- What are the deliverables and performance objectives?
- Where will the grant activities take place?
- Do you intend to have any partners, contractors, and third parties to use to carry on the grant activity?
- What is the public benefit?
- How will you ensure there is no unacceptable private benefit?
- When will the grant start and end (and other relevant timelines) be?

It is important to address at least these questions in writing with your funder even if you do not have a formal written agreement.

B. Key provision: Reporting requirements

The CRA provides flexibility for how a grantee reports to its funder, so you can feel free to express to your Funder what would work best for you.

Here are some examples the CRA provides of types of reporting that could be acceptable:

- Final reports with supporting documentation, such as expense receipts, financial statements, and bank records
- Interim reports, if appropriate, with supporting documentation
- Records of communication by telephone, videoconference, email
- Photographs or videos
- Audit reports
- On-site visits from the charity's staff

C. Key provision: Payment schedule

In the case of longer-term or higher risk grants, CRA recommends that the funder disburse funds in installments rather than in one lump sum, have a clear termination provision, and the requirement to return any unused funds. You may need to pay special attention to how any payment schedule or the requirement to return unused funds by a certain date may affect your cash flow.

STEP THREE

Proving you followed the rules and reporting to the public

It is not enough to do the right thing. You must be able to prove that you have done the right thing to the funder, and they in turn must be able to prove it to a CRA auditor if they are ever audited. Keeping detailed records is part of the accountability that comes with the extraordinary ability of charities to issue tax receipts and thereby implicitly direct where public money will be spent. In this section we will explore your responsibility when tracking grant activities and your funder's responsibility when reporting to the CRA.

Your responsibility to track funds separately

CRA expects you to track funds that you receive from funders separately from your other funds. This does not necessarily mean you have to keep the funds from the funder in a separate bank account. What it does mean is that you will be expected to prepare financial and other reports with enough detail to allow the funder to determine how their funds specifically have been used. At the end of the day, your records must be able to confirm that you met the terms of the grant agreement and verify that you used the resources for what you said you were going to use them for. You should be able to provide the funder with any supporting document in original format (e.g. photocopy) or electronic format (e.g. scanned).

The funder's responsibility to report to the public

As a charity, the funder is required to file an annual report with the CRA called a T3010. This report includes details on the charity's governance, activities, and finances. The T3010 now contains sections that require the funder to report:

- Name of every grantee that received more than \$5,000 in grants.
- Purpose of each grant over \$5,000.
- Total amount in that year disbursed by the funder to each grantee who received a grant over \$5,000.

This information is publicly available, so if you have privacy concerns, you may need to discuss this with your funder. A charity can apply to the CRA to make a special request that certain information not be made available to the public if its release would place the charity, grantee, their staff, or volunteers in danger.⁸

Conclusion

A report by Mark Blumberg notes, in 2022, Ontario charities alone held over \$129 billion in assets.⁹ Granting to non-qualified donees offers nonprofits that are not charities a whole new way to potentially access large parts of these assets. It also unlocks assets for the many nonprofits led-by, focusing-on, and/or serving equity-deserving communities that have to continuously make the case for any investment and are underfunded to begin with.

Report after report has told the sector we need to do funding differently. This change in the Income Tax Act is yet one more opportunity for funders to shake up their funding practices, put their missions first and ensure resources get to where they are needed most.

It will take some time for both funders and grantees to adapt to these new rules, but we are confident that funders who prioritize mission will find ways to get resources to those often unfunded and overlooked grantees closest to the ground with the knowledge and relationships to deliver real change for their communities.

8. For more information on reporting grants, see [T4033 Completing the Registered Charity Information Return](#).

9. Mark Blumberg (April 9, 2024). Blumbergs' Snapshot of the Ontario Charity Sector 2022 [blog]. Blumbergs. Available at: <https://www.canadiancharitylaw.ca/blog/blumbergs-snapshot-of-the-ontario-charity-sector-2022/>