

## **Starting a Basic Planned Giving Program for a Canadian Charity: A Lawyer's Perspective**

By Mark Blumberg (July 3, 2013)

Many larger Canadian charities receive millions of dollars in funding each year from planned gifts. Planned giving involves tools and techniques to facilitate gifts to charities typically involving the assistance of professional advisors in order to balance donor's financial, personal, family, tax and philanthropic objectives.

Planned giving can be as simple as putting a small legacy in your will to devising a complicated insurance arrangement. Some planned gifts, such as gifts of marketable securities, are immediate, while others, such as a charitable remainder trust are deferred. Some are revocable, such as a bequest in a will, while others are irrevocable such as a donation of marketable securities. In Canada, planned giving is often referred to as gift planning. For a description of different planned giving vehicles you can see my article "What is Planned Giving?"

Although planned giving can include many different vehicles for most charities the emphasis will be on gifts of marketable securities or bequests. In many cases the cost of obtaining a planned gift is a much less costly than other methods of fundraising such as expensive gala dinners. With the concern over high fundraising costs by donors and regulators, planned giving and especially bequests are an important fundraising mechanism. Many larger charities spend about 1-2% to receive bequests. Furthermore, many organizations rely too heavily on one or two sources of revenue and should consider diversifying their revenue streams to enhance the stability and sustainability of the organization. One of the great things about bequests is that it enables middle class Canadians to make major gifts to charities that they care about.

Many small to mid-sized charities are interested in setting up a planned giving program but are not sure where to start. In this article, I will try to cover some of the important steps in creating a planned giving strategy and program.

**Below are some steps for setting up a small-scale planned giving program:**

1. **Board or Executive approval.** Decide on whether your organization would like to develop a planned giving program. If your organization is in financial trouble and will probably not be around in 3 or 6 months it may make little sense. For a planned giving program you need a long time horizon –usually between 10-20 years to really see a payoff. Ideally the board or executive will discuss, support and provide the necessary resources to set up a planned giving program. They will also provide ideas and encouragement.

2. **Find out the legal name of the charity.** Review the letters patent (or articles of incorporation) which has the actual name and the objects of the charity. I always find it peculiar that many planned giving officers are not aware of the legal name of their charity or are aware of the legal name of the charity but encourage people to use a name other than the charity's legal name such as a unregistered business name or the name by which the charity is commonly known. If an organization considers their legal name to be cumbersome or old fashioned then it costs little to change the legal name and it should be done preferably before launching a planned giving program. If the name of a charity in a will is not the correct legal name then the executor in order to protect him or herself may choose not to release the funds to the charity without obtaining direction from the court. If the charity is a residual beneficiary then indirectly the charity is partly paying for the legal fees. As well, if there are a number of similarly named charities in 20 or 30 years' time then you may end up losing the whole bequest or may have to compromise with other charities in order to avoid a court fight.

3. **Appropriate Due Diligence.** Before launching a planned giving program a charity should, or ask a lawyer to, do some basic searches on your organization to check the sort of items that an estate planning lawyer would look at before preparing a will which includes a major bequest. For example, a lawyer would probably conduct a corporate search to check the correct legal name of the charity and that it is still active. The lawyer would also make sure that the address and contact information for the charity is up to date and that the Canada Revenue Agency website lists the charity under the same name as on the corporate database and that the charity still retains its charitable registration. Frequently a charity will be registered with the Canada Revenue Agency appropriately but the actual legal entity has been cancelled or dissolved for some reason including non-filing of certain forms etc. This is basic due diligence that every charity interested in having a planned giving program should consider.

4. **Gift Acceptance Policy.** Establish a gift acceptance policy which sets out what gifts the charity is prepared to accept. Although charities don't have to have a gift acceptance policy, these policies are important to protect a charity's reputation and to give guidance to fundraisers and planned giving professionals on a number of different issues relating to gifts. It is best to discuss the content of a gift acceptance policy with your board so your charity does not end up having problems later with encouraging a particular type of gift and then having your board feel ambivalent or reject a gift. For example, you may decide that you are not accepting certain restrictions or types of property.

5. **Brochure or Fact Sheet.** Prepare a short promotional piece explaining the planned giving vehicles your charity is interested in encouraging such as bequests, gifts of marketable securities, gifts of life insurance, etc. If your charity will encourage bequests you may wish to have a brief description of the charity, an explanation of how bequests have helped the charity or could help the charity, some sample wording for a bequest to your charity, and contact information. This fact sheet could be provided to a donor who requests information or be provided on your website.

6. **Marketable Securities.** Accepting marketable securities has become easier and easier. Some charities will have a brokerage account with a broker. In that case in addition to the basic fact sheet described above you should also develop a simple questionnaire for the donor or their investment advisor to complete and to provide to the charity so that the charity is aware of the donation and can provide instructions to the broker to accept the shares and to cash them. Without such instructions you may find that your charity's shares are returned to the donor. For many charities using CanadaHelps and their share donation system <https://www.canadahelps.org/Securities/DonateStep1.aspx> is the simplest and most convenient, especially if marketable security donations are infrequent. .

7. **Planned Giving Society.** Establish a planned giving society for individuals who have made bequests or those who have committed to do so. The main reason for doing so is to thank people who have made a planned gift or committed to doing so and to provide a positive example for other potential donors. For example, the Princess Margaret Hospital Foundation has The JCB Grant Society. The SickKids Foundation has the J.P. Bickell Society. The society may only have one event a year but it sends a message that the charity values planned gifts.

8. **Responsibility.** Decide who will be responsible for the planned giving program. Will it be the Executive Director, a combined position for the major gifts person, or will it be carried out by one or more volunteers or a dedicated part-time or full time planned giving officer?

9. **Budget.** A larger planned giving program includes many of the same items as you would see in a charity's budget – salaries, events, advertising, professional services including accounting, legal, broker, consultants etc., travel and training/education costs and printing costs. For smaller programs they may include no dedicated staff people or travel or publication – only a small reminder in the charity's newsletter. Planned giving programs need to have a long timeline. In some cases the first bequest received may only be 10-15 years after the program is created. In many cases time spent now only pays off in 20-30 years. Consequently, many charities will provide some support for such a program but will not be prepared to have one or more full time staff just encouraging planned gifts. Planned giving programs can be initiated with a very small budget and in some cases either a volunteer or part of a staff person's duties.

10. **Administration of Bequests.** Learn about the process and if necessary retain a lawyer who is knowledgeable about bequests to assist when and if a gift is received. You may wish to read Jasmine Sweatman's very helpful book "Bequest Management for Charitable Organizations"

11. **Continuing Education.** A number of different organizations, for example the Association of Fundraising Professionals (AFP) or the Canadian Association of Gift Planner (CAGP) have programs on planned giving. Have at least one staff member attend educational sessions and network with others responsible for planned giving. Planned giving officers are often generous of their time in assisting others and in promoting planned giving so if you have a question just give them a call.

12. **Professional Advisors.** Consider having an informal or formal relationship with various types of professional advisors to ensure that appropriate legal, accounting, insurance, and financial advice can be obtained by the charity when necessary. You may wish to review my article "Planned Giving and Professional Advisors: The Why and How to Involve Professional Advisors in Canadian charities" on the important relationship between professional advisors and charities in the planned giving area. In short, the article notes that a more formal planned giving committee can be very useful and can provide recognition to professional advisors involved in the charity. However, such committee structure can be cumbersome and time consuming to maintain and unless the charity is prepared to make such a commitment it may be preferable to start off with more informal relationships with professional advisors or to hire professional advisors to help with certain aspects of planned giving as they are required.

13. **Track Expectancies.** Although most people who leave a bequest in their do not advise the charity, it is a good idea to keep track of the expected gifts and the amounts of those gifts that you are made aware of.

13. **Marketing.** Although some people who leave a bequest to a charity are unknown to the charity, in many cases the best prospects for bequests are people who have regular interactions with a charity. Here are a few simple ideas to market your planned giving program:

- prepare a small advertisement in the charity's newsletter which encourages donors to consider planned giving options;
- ensure that your website has at least a small section on planned giving;
- place in the charity's mailings a small insert explaining about planned giving and the charity;
- insert a small 'signature file' at the end of e-mails from your charity encouraging planned giving;
- remember to mention planned giving opportunities at fundraisers and meetings;
- use social media to remind supporters of planned giving opportunities;
- educate staff and volunteers so they can be ambassadors of bequest giving and other planned giving;
- analyze your donor database and make a targeted approach to certain supporters such as annual or monthly givers in their 50s or later who would be good prospects, widowers especially who have no dependents, or active volunteers; or
- consider having a program to explain to professional advisors about the planned giving program and about your charity.

14. **Respond.** Sometimes planned giving opportunities will just walk through the front door. It cannot be emphasized enough the importance of responding to inquiries and meeting with people who are interested in making a planned gift. Sometimes a lot of work goes into setting up the program and interest either wanes or there are other more pressing matters that are given priority. When a lawyer is requesting information for a will there is often not a lot of time to respond. Many clients contact lawyers to prepare wills in the days before they are heading off on a family vacation!

15. **Ramping up a planned giving program.** If you have launched your planned giving program and wish to give it a boost consider hiring a part time planned giving officer if you have not already or consider a third party fundraising firm who specialize in assisting charities with planned giving programs by analyzing the charity's database and preparing a targeted mailing and phone campaign.

In summary, there are 8 or 10 different planned giving vehicles and some may seem quite complicated. However, planned giving can be quite simple. Almost all the dollar value of planned gifts in Canada came from bequests and gifts of marketable securities. If planned giving seems to be complicated, consider just promoting bequests and gifts of marketable securities.

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