



The Maritime Conference  
The United Church of Canada  
L'Eglise Unie du Canada

Maritime Conference Office  
21 Wright Street, Sackville, NB E4L 4P8  
Tel. (506)536-1334 • Fax (506) 536-2900 • Email: [info@marconf.ca](mailto:info@marconf.ca)

**Cautions around returning a gift to a donor**

In a variety of locations around Maritime Conference work is being done on the disbanding/amalgamation of congregations and the disposition of church property. Church buildings are being offered for sale and decisions are being made about the contents of church buildings. In Manual-speak, contents are also sometimes called “personal property,” which is to say, property used by persons, as compared to “real property” which refers to land and buildings.

In many cases, upon news that a church is closing and may be sold or demolished, requests are received to have certain items returned to the families that donated the item. While it may be seen as a desirable approach to dealing with this challenging issue, there are legal, tax and charities implications for this practice.

Once a gift has been given to a charity (the church), by law the donor has no more claim on it. In Canadian law the item only exists within the realm of the charity. If it goes anywhere, it can only be given to another charity. It cannot be moved outside the realm of the charity without its value being established and the value somehow retained within the charity. The easiest way for this to be accomplished is for the item to be sold.

The law makes no distinction between any person and the donor. To give an item back to a donor is the same as giving it away to anyone for free. The Canadian Revenue Agency includes the following paragraph in online information for charities:

“As a general rule, however, a registered charity cannot return a gift. The *Income Tax Act* requires a registered charity to devote its resources exclusively to its charitable purposes and activities, and prohibits it from making gifts to non-qualified donees. So, a registered charity that returns donated property could be regarded as making a gift to a non-qualified donee, or providing an undue benefit, which are contraventions of the Act and could result in sanctions that include revocation of registered status. Registered charities are also subject to provincial and other federal legislation, as well as common law, particularly the law of trusts, all of which might affect their ability to legally return donated property to donors.”

It has already been experienced in the United Church that when a gift has been returned to a donor at no cost, after a CRA audit determined what had happened, the fine charged to the church by the CRA was 100% of the value of the gift. Continued charitable status is also at risk.

Two CRA webpages of particular note are:

- Returning a gift to a donor: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/gfts/rtrnng-eng.html>

- Consequences of returning donated property: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/rtrng-dntd-prpty-eng.html>

The return of any donated item with a value of more than \$50 must be reported to CRA within 90 days.

We must also be mindful of the instruction of the United Church with respect to property at the time of ending of a congregation:

“The congregation makes a proposal to the presbytery for dealing with the congregation’s property, which must be used for the mission of the congregation or the wider United Church.”  
(2013 Manual G 1.5.4)

Consistent and persistent inquiries are being made about stained glass windows. Once donated, these are the sole property of the church. According to the information given above, they cannot simply be given back to donor families at no cost. Paying for the cost of removal and replacement of the stained glass window is not viewed by CRA as a sufficient payment for the value of receiving the asset. To fulfill the letter of the law, there should be an appraised value established for the window, and that amount PLUS the cost of removal and replacement should be paid before the window can be transferred into private hands. As provided in the CRA website information,

“...a charity may try to retain the goodwill of donors seeking the return of their gifts by offering to transfer the gifted property to another registered charity.”

An exemption exists in the CRA website materials, above, in that a court order will over-rule CRA requirements. So, if a family can make an application to the courts for the claim that the item should be returned to them, CRA will have no case to make against a church that complies with a court order.

The Charities Directorate should be contacted by any church or any individual who has questions about any of these matters: 1-800-267-2384.

It can be appreciated that the work involved in the sale and disposition of church property (real and personal) is a detailed, complicated and tedious process which stretches the abilities and patience of volunteer committees at congregational, Presbytery and Conference levels. The church is established and organized on the principle of seeking to fulfil the mission to which it is Called by God. It was never imagined that the closure and sale of church properties would ever occur but rarely, perhaps once in a lifetime. The result is that we are having to learn new skills and develop new perspectives and approaches to these unforeseen circumstances. Conference exists to offer support to congregations and Presbyteries as we work together to address these complex matters. Please be in touch with any questions.

David Hewitt  
Executive Secretary  
Maritime Conference  
[dhewitt@marconf.ca](mailto:dhewitt@marconf.ca)  
506-536-1334 x1  
[www.marconf.ca](http://www.marconf.ca)