

Staying Ahead of the Curve

2019 charities seminar, Calgary
September 18, 2019



Agenda

- Opening remarks
- Sector update: The big issues to keep your eye on
- Do's and don'ts of donor-advised funds
- Networking break
- Brave new world: Public policy dialogue and development activities by charities
- Fraud against charities: Schemes, scams, and tips to avoid them
- Closing remarks

Facilitator



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Sector update: The big issues to keep your eye on

Margaret Mason, QC
Partner, Vancouver

Overview

- “Conclusion” of political activities debacle?
- “Resetting” the relationship with the Government of Canada
- Reconciliation
- Human resources
- Trends in giving

Policy work

- The “end” of political activities – *Canada Without Poverty*
- Legislative clarification and CRA guidance on policy activities
- Elections Canada
- Alberta public inquiry into foreign funding of charities

Resetting the relationship with Canada

- Amendments to the *Income Tax Act* regarding political activities
- Budget 2019 – pledge to establish a 10 year/\$755m social finance fund to support impact investing
- Permanent Charities Advisory Committee (to Canada)
 - Chaired by Bruce MacDonald of Imagine and Hilary Pearson (formerly PFC) and CRA official
 - Denise Byrnes, Terry Carter, Peter Dinsdale, Peter Elson, Bruce Lawson, Arlene MacDonald, Susan Manwaring, Kevin McCort, Andrea McManus, Peter Robinson, Paulette Senior and CRA officials

Reconciliation

- YMCA statement of reconciliation
- Imagine Canada's sector champions executive roundtable in Winnipeg (August 2019)
- Registration of First Nations as qualified donees

Human resources

- ONN – defined benefit pension plan for charities and NPOs (not just Ontario)
- Alberta and Ontario – funding cuts
- Challenges in finding seasoned fundraisers – particularly major gifts

Social deficit and 30 years of giving

- Report commissioned by Rideau Hall Foundation and researched and written by Imagine Canada
- Social deficit – the gap between the rising demand for the services provided by charities and the ability of society to pay for them
- What is driving this?
 - Slower economic growth
 - Rapidly aging population
 - Rising income inequality
 - Climate change
 - Transient needs of immigrants and refugees
 - By 2026 the estimated gap is \$26bn

Social deficit and 30 years of giving (cont'd)

- In 2014, Canadians gave \$14.3bn
- Since 1984, donations in real terms have increased by 150% but are being made by an ever decreasing proportion of the population

Trends from 1984 - 2014

- 4 phases of individual giving
 - Rapid growth; stagnation 1990 – 1995
 - More rapid growth 1995 – 2007
 - Instability (fluctuations – only in 2014 did donations return to 2007 levels)

Trends from 1984 – 2014 (cont'd)

- Proportion of tax filers claiming donations has dropped – 29.5% in 1990 and low of 20.8% in 2014 – a drop of 1/3
- Average amount claimed has doubled in the same period
- Charities have become more dependent on affluent Canadians
- In 1984, the top 1% of tax filers (\$80k+) amounted to 16% of donations; in 2014, 31% (\$250k+)
- Donors 50+ 74% of all donations, only 54% in 1985
- Donors 70+ account for 30% of all donations, only 15% in 1985
- Women now responsible for 41% of all donations (over the period the absolute value has roughly tripled, for men roughly doubled)

Disturbing trends

- Absolute value of giving has increased in all age groups EXCEPT those under 30 – decreased by 16%
 - The digital natives
- 49% of those with incomes exceeding \$150k do not give AT ALL
- 34% of those with incomes exceeding \$350k do not give AT ALL
- Conclusion: those with capacity are punching below their weight
- Those who give on a below average basis *believe* they are average to generous
 - Some work to be done by Imagine in the coming months – trying to get a Canadian “reset” of what it means to be generous from a financial perspective
- Crowdfunding – about \$35m raised on such platforms by charities in 2015 but no idea what is going to social “causes” outside of charities
 - Humboldt

Causes Canadians support

- Religious organizations – 40%
- Health – 13%
- Social services – 12%
- International – 10%
- Arts – 1%

Decline of endowments/increase in donor-advised funds

- Decline of capital restricted/endowment funds – greater flexibility is more desirable/nimble
- Rise of donor-advised funds (DAFs)

Summary

- Many positive changes in a number of areas, particularly federally, however the upcoming federal election may have an impact on such changes
- Fundraising and the retention/appropriate remuneration of people continue as areas of concern
- The challenges and opportunities of reconciliation must be acknowledged and addressed

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Do's and don'ts of donor-advised funds

Michael Blatchford
Partner, Vancouver

Donor-advised funds – The Canadian market

- Donor-advised funds (DAFs) increasingly popular as philanthropic vehicles
 - Flexible and provides a degree of perceived control
- Community foundations
 - 1st recorded DAF in 1952
- Affiliated foundations
 - Financial institutions and wealth managers (2000s)
- Independent DAF providers
- Charitable organizations and focused sponsors

Donor-advised funds – The Canadian market* (cont'd)

- Estimated 10,700 DAFs in Canada
- Estimated at \$3.2bn total
 - \$1.7bn in community foundations
 - 10 year growth > 23%
 - Estimate \$5.6bn-\$6.5bn by 2024
- Average balance per fund = \$300,000

❖ stats as of 2016

❖ from Donor Advised Funds Report published by Strategic Insight

Do's and don'ts

Don't

- Misunderstand what a DAF is
- Assume they are all alike
- Create them outside your purposes



Do

- Determine what kind of DAF your charity may want to create
- Document each DAF and the gift that creates it
- Clarify roles and scope of donor recommendations
- Specify what may be granted and where
- Provide a back up purpose
- Provide for expense recovery
- Allow for future amendment and termination

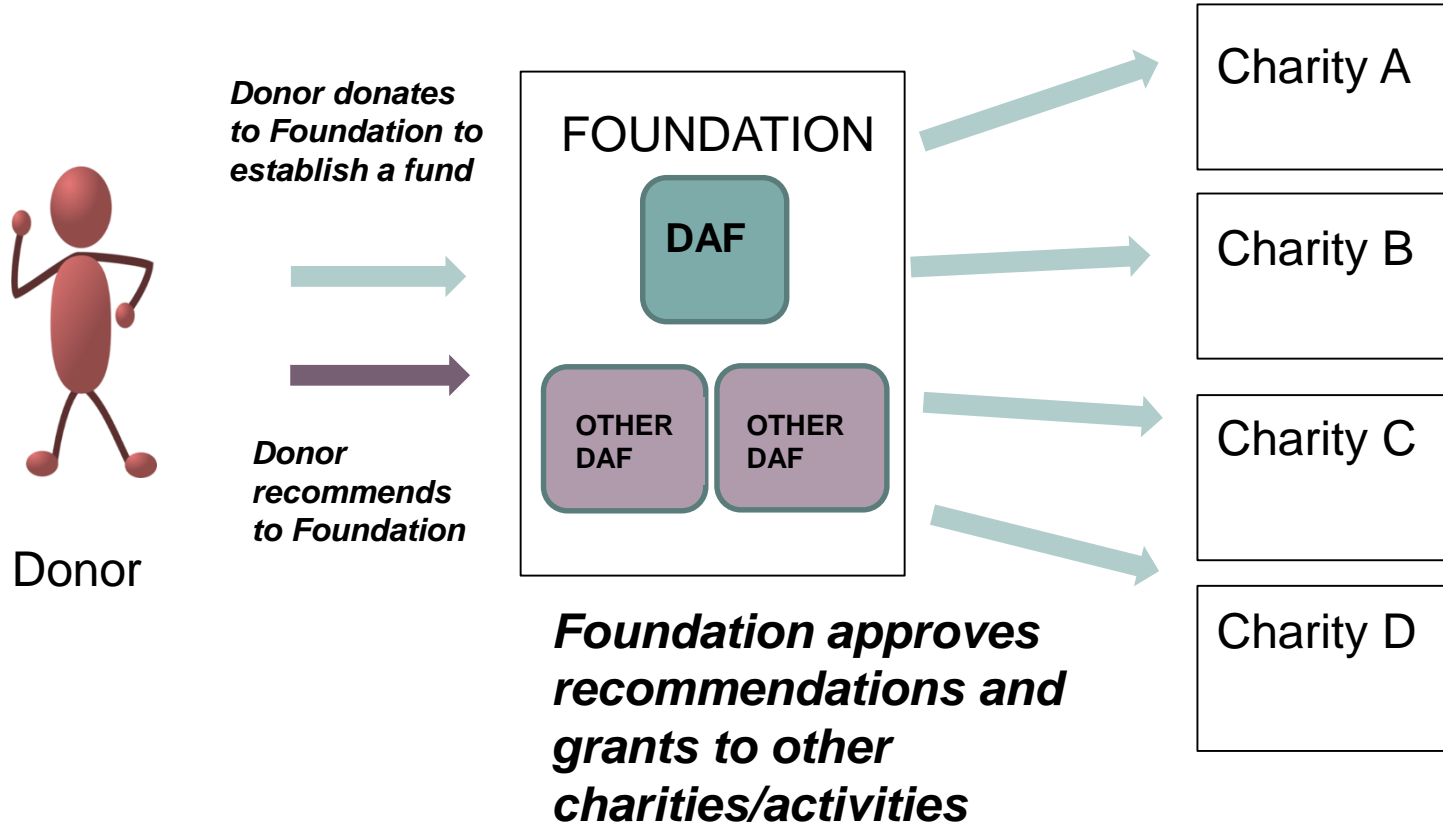


Don't misunderstand what a DAF is and is not



- DAF = a fund held within a charity where the charity allows the donor to provide non-binding recommendations on some aspect
 - Grants from/use of the fund
 - Investment of fund
- Charity owns the fund and assets in it
- Charity reviews and approves donor recommendations

How it works (the simple version)



A DAF is NOT

- An independent entity or separate charity
 - No existence on its own
 - Part of the foundation
- The donor's charitable chequing account
 - Donor transfer property; no longer owns it
 - Cannot call for property return
 - Cannot direct charity on use, only recommend within set parameters



Don't assume all DAFs are alike

- Beyond the core concept (making a gift and then providing recommendations) DAFs differ in the details:
 - Initial donation threshold to establish
 - Minimum fund balance & waiting periods
 - Purposes
 - Granting cycle and flexibility
 - Access to capital
 - Cost recovery allocation (fees)
 - Investment options
 - Reporting to donors
 - Sunset provisions
 - Acceptable property to donate



Don't create DAFs outside purposes

- Don't create a DAF to do something the charity cannot do
 - DAF is not separate from the charity
 - If purposes don't allow for granting to any qualified donee, don't create a DAF where the donor can recommend grants to any qualified donee
- Administration of DAF and recommendations from donor must fall under charity's purposes
 - Recommendations must be consistent with charitable purposes

Do determine what kind of DAF you may offer



- Are you a foundation that exists to grant to any other charity, or more limited in scope?
- Are you an operating charity with no granting purpose, but want donors to be able to recommend use of funds within your activities?

Do document each DAF and the gift that creates it



- Every DAF should have a document that clearly sets out the terms
 - Clarifies donor expectations and reduces risk of disagreement
- Can be combined with the document of the gift that is used to create a DAF
- Can create templates for most common DAFs
 - Get legal assistance



Do clarify roles

- Confirm in document and communications that creating a DAF means a donation of property to charity
 - Donor no longer owns or controls the property
 - DAF is not the donor's "foundation"
 - Donor cannot revoke transfer later
- Confirm whether donor can appoint alternate or successor advisors, and so on

Do clarify rights



- Confirm that donor/advisor's right is limited to recommendations and charity must approve
 - If purpose is to grant to any charity, then very little chance that charity would refuse to accept recommendation
 - If purpose is more limited, then wacky recommendations may be refused
- Clarify scope of recommendations
 - Grantees vs. internal use of funds
 - Investment
 - Timing and cycle



Do specify what may be granted/used

- Income only (endowment model)
- Income mostly, capital encroachment in limited circumstances
- Income and capital without restriction
 - This will allow transfer to another charity if requested
- Need to define “income” and “capital”
 - Otherwise income is limited to interest, does not include capital gains or “total return investing”

Do provide a backup purpose or grantee



- This is helpful where the donor/advisor makes no recommendations, you can look to the backup purpose (as well as past practice) as a default to make grants or allocate \$\$
- Can be a specific charity, a kind of charity or a broad purpose



Do provide for expense recovery

- DAF document should clearly allow for charity to recover reasonable administration expenses from the fund
 - Staff time, investment expenses, overhead etc.
- Can be specific, or leave to policies
- Don't refer to admin or other "fees"
 - Fees are what you charge against another person's money
 - The fund is the charity's money. Therefore you allocate expenses, rather than charge fees.

Do allow for future amendment and termination



- DAF should allow for its terms to be amended in the future
 - Absent this provision, there is no ability to repurpose or alter the terms later, even with donor consent
 - Require amendment in writing signed by charity and donor
 - Think about amendment after donor is gone – does amendment require approval by children/representative?
- Also – allow for fund to be terminated if no longer possible
 - Specify whether result is transfer to another charity, or
 - Poured over into another fund within the first charity

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Brave new world: Public policy dialogue and development activities by charities

Bryan Millman
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Overview

- How did we get here?
 - A brief recap of how we arrived in this brave new (advocacy) world
- Review of the CRA's draft guidance on public policy dialogue and development activities

Timeline

- **1987:** the *Income Tax Act (Canada)* (“**ITA**”) is amended to expressly require registered charities to devote substantially all (read: 90%) of their resources (read: funds, personnel and property) to charitable activities supported by its charitable purposes
- **2006 – 2015:** Media reports claim CRA targeting left-wing charities for “political audits”
- **January 20, 2016:** Minister of National Revenue announces winding down of “political audits”
- **May 4, 2017:** CRA publishes the *Report of the Consultation Panel on the Political Activities of Charities* (the “**Consultation Report**”), that recommends defining “political activities” to mean “public policy dialogue and development” and to permit charities to engage in public dialogue
- **Also May 4, 2017:** Minister of National Revenue announces suspension of remaining audits of charities for political activities

Timeline (cont'd)

- **July 16, 2018:** In *Canada Without Poverty v. AG Canada* (the “**CWP Decision**”), Ontario Superior Court of Justice rules that the quantitative limits on the non-partisan political activities imposed by the ITA infringes a charity’s right of freedom of expression under the Canadian Charter of Rights and Freedoms without justification. Strikes down the applicable provisions in the ITA
- **August 15, 2018:** Government of Canada appeals the CWP Decision, but confirms:
 - That the CWP Decision does “not change the policy direction the Government intends to take with respect to the removal of quantitative limits on political activities”
 - Its commitment to amend the ITA in line with the Consultation Report’s recommendation to “allow charities to pursue their charitable purposes by engaging in non-partisan political activities and in the development of public policy”
 - Appeal of CWP Decision later abandoned
- **December 13, 2018:** Bill C-86 receives Royal Assent, amending the ITA

Brave new world: The new rules in a nutshell

The quantitative limits
(i.e. 10% rule) on the
resources a charity may
devote to non-partisan
political activities are
now abolished

Brave new world: The new rules in a nutshell

Charities may now
devote an unlimited
amount of their
resources to
non-partisan political
activities carried out
in furtherance of a
stated charitable
purpose(s)

Brave new world: The new rules in a nutshell

Charities continue to be prohibited from devoting any resources to *partisan political activities* (i.e. “direct or indirect support of, or opposition to, any political party or candidate for public office”)

Brave new world: The new rules in a nutshell

Non-partisan political
activities now called
“public policy dialogue
and development
activities”
 (“PPDDAs”)

Brave new world: The new rules in a nutshell

PPDDAs are considered
to be charitable
activities

A charity can transfer its
resources to other
qualified donees to
support their PPDDAs

What exactly is a PPDDA?

- PPDDA is undefined in the ITA
- **January 21, 2019:** CRA released draft guidance CG-027 *Public Policy Dialogue and Development Activities by charities* (the “**Draft Guidance**”) and was open for comments until April 23, 2019. Describes PPDDAs as:
 - Activities “*seeking to influence the laws, policies or decisions of a government, whether in Canada or a foreign country*”
 - Activities a charity “*carries on to participate in the public policy development process, or facilitate the public's participation in that process*”
 - As long as a charity’s PPDDAs further its stated charitable purpose(s), there is no limit on a charity’s engagement in PPDDAs

What is a “stated charitable purpose?”

- The Draft Guidance explains that a “stated” charitable purpose must satisfy the following criteria:
 1. The purpose must be included in the charity’s governing documents (e.g., its Letters Patent, Articles, Constitution or any amendments to these documents);
 2. The purpose must fall within one of the four established heads of charity (i.e., relief of poverty, advancement of education, advancement of religion or other purposes that have been found by the courts to be charitable); and
 3. The purpose must provide a benefit to the public (and any private benefit conferred must be necessary, reasonable and proportionate)

What is a “stated charitable purpose?” (cont’d)

- Draft guidance confirms that the ITA places no limits on the amount of resources devoted to PPDDAs
 - Charities may devote up to 100% of their total resources to PPDDA, provided that the PPDDA furthers the charity’s stated charitable purpose
- But PPDDAs, as a means to achieve a charitable purpose, cannot become the purpose itself
 - E.g. a “charitable purpose” cannot refer to “influencing the laws, policies, or decision of a government”
- In other words, charities may not be established for the sole purpose of engaging in PPDDAs

Disbursement quota and PPDDAs

- Charity can gift funds to another qualified donee to support their PPDDAs
- Under old rules, resources in support of political activities used to be excluded from disbursement quota calculation
- Now, expenditures towards PPDDAs will be included in a charity's disbursement quota calculations

Examples of PPDDAs according to the CRA

Providing information	Providing information to their supporters or the general public related to a charity's charitable purposes (including the conduct of public awareness campaigns) in order to inform or persuade the public in regards to public policy. Such information must be truthful, accurate, and not misleading.
Research	Conducting research into public policy, distribute the research, and discuss the research and findings with the media and with others as they see fit
Disseminating opinions	Expressing opinions on matters related to their charitable purposes to participate in developing public policy, as long as they draw on research and evidence and are not contrary to hate speech laws or other legitimate restrictions on freedom of expression

Examples of PPDDAs according to the CRA (cont'd)

Advocacy	Advocating to keep or change a law, policy, or decision, of any level of government in Canada, or a foreign country
Mobilizing others	Calling on supporters or the general public to contact politicians of all parties to express their support for, or opposition to, a particular law, policy, or decision of any level of government in Canada or a foreign country
Disseminating opinions	Making representations in writing or verbally to elected officials, public officials, political parties, and candidates, and appear at parliamentary committees, to bring their views to the public policy development process, and may release such materials publicly (<i>*Charity may still need to register under lobbyist legislation</i>)

Examples of PPDDAs according to the CRA (cont'd)

Providing forums and convening discussions	Inviting competing candidates and political representatives to speak at the same event, or may request written submissions for publication, to discuss public policy issues that relate to the charity's stated purposes
Communicating on social media	Expressing views, and offering an opportunity for others to express their views, in regards to public policy, on social media or elsewhere

Partisan political activities still prohibited

- Charities prohibited from devoting any part of its resources to the direct or indirect support of, or opposition to, any political party or candidate for public office

Examples of direct support/opposition of a political party/candidate

- Endorsing a candidate over social media
- Telling people on a charity's website not to vote for a political party
- Making a donation to a political party or a candidate's election campaign
- Allowing a political party to use a charity's premises without compensation

Partisan political activities still prohibited (cont'd)

Examples of indirect support/opposition of a political party/candidate

- A charity's internal planning documents explicitly confirm that it will oppose a political party that takes a different view on a certain policy issue
- The internal minutes of a meeting of the directors of a charity record their explicit decision to oppose a candidate in a provincial election

Examples of allowable activities

- Informing the public about the policy positions of all political parties and candidates in a neutral fashion
- Holding candidates' debates, provided all candidates are given an equal opportunity to present their views and answer questions
- A charity that is registered to support newly arrived refugees in Canada posts on its blog its experiences working with these individuals, and its opinions on the refugee system, an issue on which a provincial political party has expressed differing views

Representatives of a charity involved in politics during their own personal time

- Representatives of a charity (such as a director) are permitted to be involved with partisan political activities outside of role within charity
 - BUT charity must not allow its resources to support such representative's personal political involvement
 - E.g. charity cannot permit its organized events, publications, social media accounts or other resources to be used as a platform to voice the personal partisan views of its representatives

Other legal requirements

- Charities must be mindful of the requirements of other federal, provincial, or municipal laws that govern PPDDAs
 - E.g. federal and provincial lobbying legislation may impose certain registration and/or reporting requirements on charities engaging in PPDDAs
 - E.g. Canada Elections Act applies to registered charities considering paid advertising during an election period

Concluding thoughts

- Beware of mission drift
 - Regularly review “stated purpose(s)” of a charity to ensure they support PPDDAs
- Maintain accurate books and records
 - Charity must keep records that demonstrate its primary consideration in carrying on PPDDAs is to further its stated charitable purpose and provide a public benefit
 - Avoid the creation of records illustrating indirect support or opposition to political candidates or parties
- Become familiar with the Draft Guidance

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Fraud against charities: Schemes, scams, and tips to avoid them

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The Fraud problem

- \$7bn per year global problem
- 22% of cases result in over \$1m in losses
- 12% of fraud victims in Canada are not-for-profits

The Fraud problem (cont'd)



Schemes and scams

- Asset misappropriation
- Corruption
- Business email compromise
- Cyber attacks

Asset misappropriation

- Cash or inventory theft
- Billing schemes
- Payroll or expense reimbursement schemes
- Cheque tampering

Billing schemes and expense reimbursement schemes: March of Dimes

Crime November 23, 2015 5:03 am

Updated: November 23, 2015 6:25 pm

Toronto woman charged for allegedly defrauding March of Dimes of \$800,000

By David Shum and Sean O'Shea Global News

WATCH ABOVE: Fifty-year-old March of Dimes employee Karima Manji is facing charges after allegedly defrauding the organization of \$800,000. Sean O'Shea has the story.

TORONTO — A longtime employee for a Toronto charity faces fraud charges after allegedly bilking March of Dimes Canada of approximately \$800,000.

It is alleged the accused was a property manager at the non-profit housing corporation and used various means to defraud the organization.

"Unfortunately this happens more often than we'd like to see," said Toronto police Det. Valerie Dahan.

"It was \$800,000 in an eight-year time span by fraudulent means."

<https://globalnews.ca/news/2355840/toronto-woman-charged-for-defrauding-march-of-dimes-of-800000/>

Corruption



**Conflicts of
interest**

Kickbacks

Bid rigging

Business email compromise

- Fake invoices from “suppliers”
- CEO impersonation
- Password or personal information theft

Business email compromise: Save the Children Federation

Hackers fooled Save the Children into sending \$1 million to a phony account

By [Todd Wallack](#) Globe Staff, December 12, 2018, 7:13 p.m.

Save the Children Federation, one of the country's best-known charities, said it was the victim of a \$1 million cyberscam last year.

The Connecticut-based nonprofit said hackers broke into a worker's e-mail, posed as an employee, and created false invoices and other documents, to fool the charity into sending nearly \$1 million to a fraudulent entity in Japan. The con artists claimed the money was needed to purchase solar panels for health centers in Pakistan, where Save the Children has worked for more than 30 years.

By the time the nonprofit realized it had been defrauded, it was too late to stop the transfer. But Save the Children Federation, the US affiliate of the international relief organization, said it recouped all but \$112,000 through insurance and tightened its security after discovering the theft in May 2017, according to a recent filing with the Internal Revenue Service.

<https://www.bostonglobe.com/business/2018/12/12/hackers-fooled-save-children-into-sending-million-phony-account/KPnRi8xIbPGuhGZaFmIhRP/story.html>



Business email compromise: City of Saskatoon

'Very encouraging,' Saskatoon says vast majority of \$1M taken by scam has been traced, frozen

Fraudster pretended to be CFO of Allan Construction, asked for bank information to be changed

David Shield - CBC News

Posted: August 19, 2019

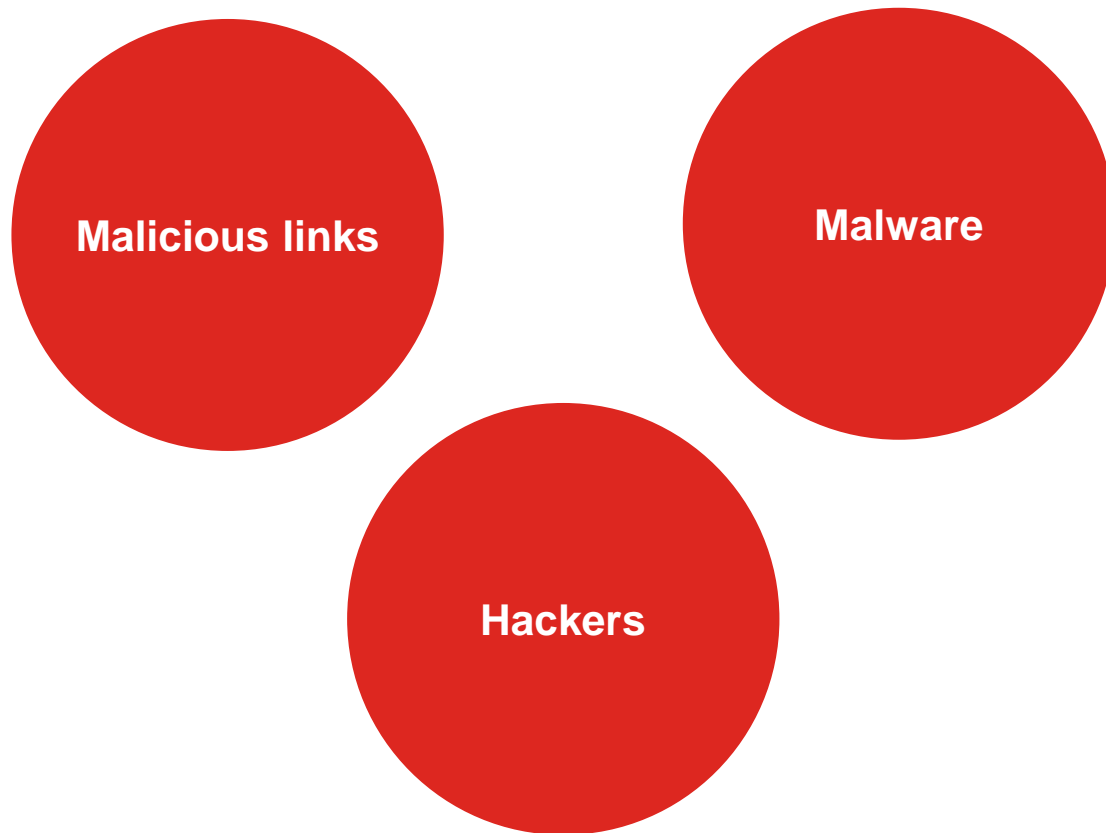
Last Updated: August 19, 2019



The City of Saskatoon says the vast majority of more than \$1 million stolen from the city has been traced and frozen. (Cultura RF/Getty Images)

<https://www-cbc-ca.cdn.ampproject.org/c/s/www.cbc.ca/amp/1.5252284>

Cyber attack



Cyber attack: Little Red Door

Small Indiana Nonprofit Falls Victim To Ransom Cyberattack

LISTEN • 3:38

PLAYLIST

Download

Transcript

May 20, 2017 • 8:02 AM ET

Heard on Weekend Edition Saturday

Everything was missing. Client files, financial data — all gone one Wednesday morning from the servers of Cancer Services of East Central Indiana — Little Red Door.

The small, Muncie-based nonprofit had been hit by a cyberattack like those that locked computers around the world last week.

The organization was hacked in January and, months later, is still recovering.

<https://www.npr.org/2017/05/20/529257365/small-indiana-nonprofit-falls-victim-to-ransom-cyberattack>

Cyber attack: British and Foreign Bible Society

Bible Society fined £100k for cyber hack of 417,000 Christian backers

The Bible Society has been fined £100,000 over computer security failings that allowed hackers to access the personal details of more than 400,000 mainly Christian backers.

The Information Commissioner's Office (ICO) said the details of supporters - including home addresses, telephone numbers and bank accounts - were compromised by cyber attackers who guessed the "weak password" of one the charity's databases.

The password was the same as the username on the account, set up in 2009 but not hacked until November 2016. The account contained details of 417,000 Bible Society supporters.

<https://www.telegraph.co.uk/news/2018/06/08/bible-society-fined-100k-cyber-hack-417000-christian-backers/>

Tips to protect against fraud

- Policies
- Training
- Tone from the top
- Internal controls
- Authentication protocols
- Firewalls and technology solutions

Tools to protect against fraud

- Watch for red flags
- Whistleblower line
- Insurance
- Fraud response plan
- Communications strategy

When the worst happens

- Involve legal counsel immediately
- Invoke fraud response plan

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