

*Background Briefing*

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# Penalties on Charitable Organizations in the United States and Commonwealth Countries

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Marc Owens



The Pemsel Case  
FOUNDATION

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ISBN: 978-0-9940392-6-2

"The law of charity is a moving subject"  
– Lord Wilberforce

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Named after the 1891 House of Lords decision, *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531, which established the four principal common law heads of charity used in Canada and elsewhere, The Pemsel Case Foundation is mandated to undertake research, education and litigation interventions to help clarify and develop the law related to Canadian charities. The Pemsel Case Foundation is incorporated under the Alberta Societies Act and is a registered charity.



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# PENALTIES ON CHARITABLE ORGANIZATIONS IN THE UNITED STATES AND COMMONWEALTH COUNTRIES

By Marc Owens\*

Below is a graph setting out the different penalties to which charities may be subject in the United States and in various Commonwealth jurisdictions

\* Marc Owens is a member of the U.S. law firm Loeb & Loeb LLP, where he specializes in federal tax issues relating to tax-exempt organizations, including charities and issue advocacy groups. Prior to entering private practice, he spent 25 years with the US Internal Revenue Service, including serving as Director of the Exempt Organizations Division from 1990 until 2000.

PENALTY TYPE	UNITED STATES	CANADA*	UNITED KINGDOM	AUSTRALIA
<b>Failing to file annual information return</b>	<ul style="list-style-type: none"> <li>• If organization has gross receipts of \$1 million or less and is required to file Form 990 or Form 990-EZ, \$20 per day penalty until return is filed (not exceeding the lesser of \$10,000 or 5% of the organization's gross receipts).</li> <li>• If organization has gross receipts of over \$1 million, \$100 per day penalty, up to \$50,000.</li> <li>• If failure occurs 3 years in a row, will have tax-exempt status automatically revoked.</li> </ul>	<p style="text-align: center;">*Federal Court of Appeal decisions imply that any of the offences can be grounds for revocation</p> <ul style="list-style-type: none"> <li>• De-registration is automatic if filing is 6 months late.</li> <li>• \$500 penalty (assessed when an application for re-registration is made).</li> <li>• Income Tax Act, § 188.1(6).</li> </ul>	<ul style="list-style-type: none"> <li>• £150-1,500 penalty (depending on how many months late) for a private company failing to file annual returns and notices of changes.</li> <li>• Only applies to companies, not trusts or other incorporated or unincorporated legal entities.</li> <li>• <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/533358/GP5_Late_Filing_Penalties_v3.0-ver0.1.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/533358/GP5_Late_Filing_Penalties_v3.0-ver0.1.pdf</a>.</li> <li>• Charity trustees are subject to fines for failure to transmit</li> </ul>	<ul style="list-style-type: none"> <li>• If annual revenue is less than \$250,000, \$170 minimum penalty when less than 28 days late and \$850 maximum penalty if more than 112 days late.</li> <li>• If annual revenue is \$250,000 or more but less than \$1 million, \$340 minimum penalty when less than 28 days late and \$1,700 maximum penalty if more than 112 days late.</li> <li>• If annual revenue is \$1 million or more, \$850 minimum penalty when less than 28 days late and \$4,260</li> </ul>

PENALTY TYPE	UNITED STATES	CANADA*	UNITED KINGDOM	AUSTRALIA
<b>Failing to file annual information return: (Con't)</b>	<ul style="list-style-type: none"> <li>26 U.S.C. § 6652(c)(1)(A); 26 U.S.C. § 6033(j).</li> </ul>	<p>*Federal Court of Appeal decisions imply that any of the offences can be grounds for revocation</p>	<p>annual return to the Charity Commission.</p> <ul style="list-style-type: none"> <li>Charities Act 2011 section 173.</li> <li>It is defence to prove that the person took all reasonable steps for securing that the requirement was complied with.</li> <li>NB this provision has not been generally enforced.</li> </ul>	<p>maximum penalty if more than 112 days late.</p> <ul style="list-style-type: none"> <li>ACNC Act, §§ 175-35-175-40.</li> </ul>
<b>Providing incomplete or inaccurate information on annual information return</b>	<ul style="list-style-type: none"> <li>If organization has gross receipts of \$1 million or less, \$20 per day penalty until return is filed (not exceeding the lesser of \$10,000 or 5% of the organization's gross receipts).</li> <li>If organization has gross receipts of over \$1 million, \$100 per day penalty, up to a maximum of \$50,000.</li> <li>26 U.S.C. § 6652(c)(1)(A).</li> </ul>	<ul style="list-style-type: none"> <li>Suspension of "tax-receipting privileges" (charity's right to issue official donation receipts) until the required information is provided.</li> <li>Income Tax Act, § 188.2(2.2).</li> </ul>	<p>Penalties may be chargeable for companies which file inaccurate returns.</p> <ul style="list-style-type: none"> <li><a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/578126/CC-FS7a_11_16.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/578126/CC-FS7a_11_16.pdf</a> <ul style="list-style-type: none"> <li>This only applies to companies and not trusts or other incorporated or unincorporated entities.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Must correct any material errors on filings within 60 days of identifying the error.</li> <li>Making false or misleading statements due to failure to take reasonable care may result in 20 penalty units (\$3,400) or more.</li> <li>ACNC Act, §§ 60-65, 175-20.</li> <li>Also have co-joint obligations under tax legislation.</li> </ul>
<b>Failing to keep proper books and records, and providing to tax authority when requested</b>	<ul style="list-style-type: none"> <li>If failure is substantial or egregious, then may result in loss of tax-exempt status.</li> </ul>	<ul style="list-style-type: none"> <li>Suspension of tax-receipting privileges.</li> </ul>	<ul style="list-style-type: none"> <li>Section 173 of Charities Act 2011 provides for fines on charity trustees who fail to submit annual report and accounts to the Charity Commission.</li> </ul>	<ul style="list-style-type: none"> <li>20 penalty units (\$3,400).</li> <li>ACNC Act, §§ 55-10(6), 70-5(4), 75-40(6), 75-80.</li> </ul>

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<b>Failing to keep proper books and records, and providing to tax authority when requested: (Con't)</b>		<p>*Federal Court of Appeal decisions imply that any of the offences can be grounds for revocation</p> <ul style="list-style-type: none"> <li>If issue is minor, will try to enter into a compliance agreement with charity.</li> <li>Income Tax Act, § 188.2(2)(a), § 230(2).</li> </ul>	<ul style="list-style-type: none"> <li>NB not generally enforced.</li> <li>Charities who fail to file annual documents for two or more years face a statutory enquiry by the Charity Commission.</li> <li>There is a red flag for late filing on the online Register of Charities.</li> </ul>	
<b>Failure to make certain records available to the public</b>	<ul style="list-style-type: none"> <li>For annual returns and reports, \$20 per day penalty for as long as failure continues (imposed on person failing to comply with disclosure requirement), up to \$10,000 for any 1 return or report.</li> <li>For exempt status application materials or notice materials, \$20 per day penalty for as long as failure continues (imposed on person failing to comply with disclosure requirement).</li> <li>26 U.S.C. §§ 6652(c)(1)(C)-(D).</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Section 173 of the Charities Act 2011 provides for a fine on charity trustees for failure to supply copies of most recent accounts to members of the public on request.</li> <li>NB not generally enforced.</li> <li>Under Companies Act 2006 there are fines for failure to make certain records open to the public including the register of members.</li> <li><a href="https://www.cps.gov.uk/legal/assets/uploads/files/Annex%20A%20Companies%20Act.pdf">https://www.cps.gov.uk/legal/assets/uploads/files/Annex%20A%20Companies%20Act.pdf</a></li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>
<b>Failing to correctly issue documentation of donation to donors</b>	<ul style="list-style-type: none"> <li>\$10 penalty per contribution for which charity fails to provide a “written disclosure statement” when required (for contributions of over \$75 that</li> </ul>	<ul style="list-style-type: none"> <li>Issuing receipts with incomplete information results in a 5% penalty of the</li> </ul>	<ul style="list-style-type: none"> <li>May assess back taxes if, upon audit, find that entities does not have proper documentation for Gift Aid claims.</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> <li>There is no obligation to issue a deductible gift receipt, but if</li> </ul>

PENALTY TYPE	UNITED STATES	CANADA*	UNITED KINGDOM	AUSTRALIA
<b>Failing to correctly issue documentation of donation to donors: (Con't)</b>	<p>includes goods or services), not to exceed \$5,000 per fundraising event or mailing.</p> <ul style="list-style-type: none"> <li>• 26 U.S.C. § 6714.</li> </ul>	<p>*Federal Court of Appeal decisions imply that any of the offences can be grounds for revocation</p> <p>“eligible amount” stated on the receipt.</p> <ul style="list-style-type: none"> <li>• 10% penalty for repeat violations.</li> <li>• Income Tax Act, § 188.1(7).</li> </ul>	<ul style="list-style-type: none"> <li>• <a href="https://www.gov.uk/government/publications/charities-detailed-guidance-notes/chapter-7-audits-by-hmrc-charities#chapter-72-how-a-charity-is-chosen-for-audit">https://www.gov.uk/government/publications/charities-detailed-guidance-notes/chapter-7-audits-by-hmrc-charities#chapter-72-how-a-charity-is-chosen-for-audit</a>.</li> </ul>	<p>one is issued, it must contain specified information.</p> <ul style="list-style-type: none"> <li>• Income Tax Assessment Act 1997, s. 30.228.</li> </ul>
<b>Falsifying donor documentation</b>	<ul style="list-style-type: none"> <li>• \$1,000 penalty (considered aiding and abetting understatement of tax liability).</li> <li>• 26 U.S.C. § 6701.</li> </ul>	<ul style="list-style-type: none"> <li>• When total penalties do not exceed \$25,000, 125% penalty of eligible amount of receipt, for issuing receipts when there was no gift or when the receipt contains false information.</li> <li>• When total penalties exceed \$25,000, 125% penalty plus suspension of tax-receipting privileges.</li> <li>• Income Tax Act, § 188.1(9).</li> </ul>	<ul style="list-style-type: none"> <li>• May assess back taxes if, upon audit, find that entities does not have proper documentation for Gift Aid claims.</li> <li>• <a href="https://www.gov.uk/government/publications/charities-detailed-guidance-notes/chapter-7-audits-by-hmrc-charities#chapter-72-how-a-charity-is-chosen-for-audit">https://www.gov.uk/government/publications/charities-detailed-guidance-notes/chapter-7-audits-by-hmrc-charities#chapter-72-how-a-charity-is-chosen-for-audit</a>.</li> </ul>	<ul style="list-style-type: none"> <li>• Commission of fraud or intentional disregard of the Charities Act may result in 60 penalty units (\$10,200) or more.</li> <li>• ACNC Act, § 175-20.</li> <li>• See also: Income Tax Assessment Act 1997, Div. 30; Taxation Administration Act 1953.</li> </ul>
<b>arrying on unrelated trade or business</b>	<ul style="list-style-type: none"> <li>• Subject to tax at normal corporate tax rates on unrelated income (net of unrelated expenses). Certain types of passive unrelated income (interest, rent, dividends, etc.) are not subject to tax.</li> <li>• If the unrelated activity is substantial enough to be the primary activity of the</li> </ul>	<ul style="list-style-type: none"> <li>• 5% penalty on gross unrelated business revenue earned (charities only; foundations subject to separate rule – see below).</li> <li>• 100% penalty and suspension of tax-receipting privileges for repeat violations.</li> </ul>	<ul style="list-style-type: none"> <li>• Subject to direct tax (when providing goods or services) or VAT (when making supplies in furtherance of a business).</li> <li>• There are a number of exemptions both for direct tax and VAT/<a href="https://www.gov.uk/guidance/charities-and-trading">www.gov.uk/guidance/charities-and-trading</a>.</li> </ul>	<ul style="list-style-type: none"> <li>• If do not operate for charitable purposes, entity may be disqualified as a charity.</li> <li>• Charities Act 2013, § 5.</li> </ul>

PENALTY TYPE	UNITED STATES	CANADA*	UNITED KINGDOM	AUSTRALIA
<b>Arriving on unrelated trade or business: (Con't)</b>	<p>organization, may result in loss of tax-exempt status.</p> <ul style="list-style-type: none"> <li>• 26 U.S.C. §§ 511-512.</li> </ul>	<p>*Federal Court of Appeal decisions imply that any of the offences can be grounds for revocation</p> <ul style="list-style-type: none"> <li>• Income Tax Act, §§ 188.1(1)(b).</li> </ul>	<ul style="list-style-type: none"> <li>• Corporation Tax Act 2010, §§ 478-479 (for charitable corporations); Income Tax Act 2007, §§ 524-525 (for charitable trusts).</li> </ul>	
<b>Excessive private benefit</b>	<ul style="list-style-type: none"> <li>• If organization is found to be serving private interests or any individual or organization on a substantial basis, then may result in loss of tax-exempt status.</li> </ul>	<ul style="list-style-type: none"> <li>• 105% penalty of amount of undue benefit.</li> <li>• 110% penalty for repeat violations. If the undue benefit is not conferred from a gift, the suspension of tax-receipting privileges is also applicable.</li> <li>• Income Tax Act, § 188.1(4).</li> </ul>	<ul style="list-style-type: none"> <li>• If found to be providing more-than-incidental personal benefit, and not providing public benefit, the Charity Commission may take regulatory action against the charity trustees and in extreme cases the entity may be removed from the charities register.</li> <li>• Charities Act 2011, § 4.</li> <li>• <a href="https://www.gov.uk/government/publications/public-benefit-the-public-benefit-requirement-pb1/public-benefit-the-public-benefit-requirement">https://www.gov.uk/government/publications/public-benefit-the-public-benefit-requirement-pb1/public-benefit-the-public-benefit-requirement</a>.</li> </ul>	<ul style="list-style-type: none"> <li>• If do not provide public benefit, entity may be disqualified as a charity.</li> <li>• Charities Act 2013, § 6.</li> </ul>
<b>Providing excess benefit to insider/related person</b>	<ul style="list-style-type: none"> <li>• 25% excise tax on excess benefit imposed on disqualified person. If excess benefit is not corrected before IRS assesses penalty, second-tier tax of 200% of excess benefit.</li> <li>• 10% excise tax on excess benefit imposed on organization managers that</li> </ul>	<ul style="list-style-type: none"> <li>• Same as penalties for excessive benefit to any person (see above).</li> </ul>	<ul style="list-style-type: none"> <li>• Tax relief to donor denied for tainted donations. "Tainted donations" is when there is a connection between a donation and arrangements entered into by the charity to provide a financial advantage (directly or indirectly) to the donor.</li> </ul>	<ul style="list-style-type: none"> <li>• Same as concerns regarding excessive private benefit (see above).</li> </ul>

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<b>Providing excess benefit to insider/related person: (Con't)</b>	<p>knowingly participated in the excess benefit transaction, up to \$20,000.</p> <ul style="list-style-type: none"> <li>26 U.S.C. § 4958.</li> </ul>	<p>*Federal Court of Appeal decisions imply that any of the offences can be grounds for revocation</p>	<ul style="list-style-type: none"> <li>Charity, if it was a party to, and aware of, the arrangements, will also be jointly liable to pay income tax charge owed by the donor.</li> <li>Rules re: substantial donors to charity are repealed and do not apply to transactions taking place on or after April 1, 2013.</li> <li>Finance Act 2011, Schedule Parts 1-3.</li> <li>Providing excess benefit to insider/related persons may lead to the Charity Commission taking regulatory action under Charities Act 2011.</li> </ul>	
<b>Failure to distribute income or use assets for charitable purposes</b>	<ul style="list-style-type: none"> <li>If organization is found to be primarily operating in furtherance of non-charitable purposes (e.g., providing private benefit, operating unrelated business, etc.), then may result in loss of tax-exempt status.</li> </ul>	<ul style="list-style-type: none"> <li>Distributing charitable funds or assets to a 'non-qualified donee' may be grounds for revocation.</li> </ul>	<ul style="list-style-type: none"> <li>Tax exemption does not apply to that portion of income/gains that is non-charitable.</li> <li>Loans or investments that do not meet requirements to be charitable are also considered non-charitable expenditures.</li> <li>Corporation Tax Act 2010, §§ 511, 514 (for charitable corporations); Income Tax Act 2007, §§ 558, 561 (for charitable trusts).</li> </ul>	<ul style="list-style-type: none"> <li>If do not operate for charitable purposes, entity may be disqualified as a charity.</li> <li><i>Cy pres</i> laws apply to charitable trusts under State legislation. State Attorneys General have largely common law powers supplemented by Trust legislation to intervene <i>parens patriae</i> in such situations.</li> </ul>

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		<p>*Federal Court of Appeal decisions imply that any of the offences can be grounds for revocation</p>	<ul style="list-style-type: none"> <li>Failure to use assets for charitable purposes may lead to the Charity Commission taking regulatory action under Charities Act 2011.</li> </ul>	<ul style="list-style-type: none"> <li>Charities Act 2013, §§ 5, 18.</li> <li>See also: Income Tax Assessment Act 1997, s50-50.</li> </ul>
<b>Carrying out partisan political activities</b>	<ul style="list-style-type: none"> <li>10% excise tax on amount of political expenditures, imposed on organization. If not corrected before IRS assesses penalty, second-tier tax of 100% of expenditures.</li> <li>2% excise tax on amount of political expenditures, imposed on organization managers who make such expenditures knowing that it is a political expenditure. If not corrected before IRS assesses penalty, second-tier tax of 50% of expenditures.</li> <li>Is considered prohibited; may result in loss of tax-exempt status.</li> <li>26 U.S.C. § 4955.</li> </ul>	<ul style="list-style-type: none"> <li>May be grounds for revocation.</li> <li>Income Tax Act, § 188.2(2).</li> </ul>	<ul style="list-style-type: none"> <li>Is considered a non-charitable purpose, and regulatory action may be taken against charity trustees and in extreme cases entity may be removed from the charities register.</li> <li>Charities Act 2011, §§ 2-3.</li> </ul>	<ul style="list-style-type: none"> <li>Is considered a disqualifying purpose, and entity is disqualified as a charity.</li> <li>Charities Act 2013, § 11(b).</li> </ul>
<b>Lobbying expenditures</b>	<ul style="list-style-type: none"> <li>If Section 501(h) election is made, 25% excise tax on lobbying expenditures in excess of applicable limit.</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> <li>There are provisions for registration as a lobbyist and reporting of activities etc. at</li> </ul>	<ul style="list-style-type: none"> <li>The Transparency of Lobbying Non Party Campaigning and Trade Union Administration Act 2014 amended the rules for non party campaigners (which</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> <li>There are provisions for registration as a lobbyist and</li> </ul>

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	<ul style="list-style-type: none"> <li>If Section 501(h) election is not made and a “substantial part” of activities are devoted to lobbying, may lose tax-exempt status and also subject to 5% excise tax on lobbying expenditures in year that cease to qualify for exemption. May also have 5% excise tax imposed on organization managers who make such expenditures knowing it could result in loss of tax-exempt status.</li> <li>26 U.S.C. §§ 4911-4912.</li> </ul>	<p>*Federal Court of Appeal decisions imply that any of the offences can be grounds for revocation</p> <p>the federal level under The Lobbying Act, and also under legislation in some provinces (including, Ontario, British Columbia, Alberta).</p>	<p>includes charities) in the run up to elections. Various sanctions can be applied including fines for breaches of the law including failing to register with the Electoral Commission, spending more than the threshold or failing to properly report its spending.</p>	<p>reporting of expenses etc. under separate lobbying legislation. See Commonwealth Electoral Act 1918.</p>
<b>Entering into a transaction (including making a gift to another charity) for the purpose of delaying making expenditures for charitable purposes</b>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>110% penalty on amount involved in the avoidance/delay transaction.</li> <li>If gift made to another charity, both charities are jointly and severally liable.</li> <li>Income Tax Act, § 188.1(11).</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Prohibited for public and private ancillary funds.</li> </ul> <p>See regulations under Income Tax Assessment Act 1997, Div. 30;  <a href="https://www.legislation.gov.au/Details/F2011L02758">https://www.legislation.gov.au/Details/F2011L02758</a>  and  <a href="https://www.legislation.gov.au/Details/F2016C00435">https://www.legislation.gov.au/Details/F2016C00435</a></p>
<b>Accepting donations on behalf of a disqualified charity/other donee</b>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Suspension of tax-receipting privileges.</li> <li>Income Tax Act, § 188.2(2)(b).</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>

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<b>Foundation-specific penalties:</b>				
<b>Self-dealing or transactions with insiders/related persons</b>	<ul style="list-style-type: none"> <li>• 10% excise tax on amount involved, imposed on self-dealer. If not corrected before IRS assesses penalty, second-tier tax of 200% of amount involved.</li> <li>• 5% excise tax on amount involved, imposed on foundation managers when knowingly enter into self-dealing transaction. If not corrected before IRS assesses penalty, second-tier tax of 50% of amount involved.</li> <li>• “Wanton and flagrant” violations results in a tax of the lesser of (1) the aggregate tax benefit obtained from tax-exempt status or (2) the foundation’s net assets.</li> <li>• 26 U.S.C. § 4941; 26 U.S.C. § 507.</li> </ul>	<ul style="list-style-type: none"> <li>• Same as penalties for excessive benefit to any person (see above).</li> </ul>	<ul style="list-style-type: none"> <li>• See rules for tainted donations/providing excess benefit to an insider/related person (see above).</li> <li>• Regulatory action may be taken by the Charity Commission under Charities Act 2011.</li> </ul>	<p>See regulations under Income Tax Assessment Act 1997 for Public Ancillary Funds, and for Private Ancillary Funds;  <a href="https://www.legislation.gov.au/Details/F2011L02758">https://www.legislation.gov.au/Details/F2011L02758</a>  and  <a href="https://www.legislation.gov.au/Details/F2016C00435">https://www.legislation.gov.au/Details/F2016C00435</a></p>
<b>Failure to spend sufficient funds for charitable purposes</b>	<ul style="list-style-type: none"> <li>• 30% excise tax on amount of income remaining undistributed at the beginning of the next tax year. If not corrected before IRS assesses</li> </ul>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<ul style="list-style-type: none"> <li>• Regulatory action may be taken by the Charity Commission under Charities Act 2011.</li> </ul>	<p>See Income Tax Assessment Act 1997;  <a href="https://www.legislation.gov.au/Details/F2011L02758">https://www.legislation.gov.au/Details/F2011L02758</a></p>

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	penalty, second-tier tax of 100% of undistributed income. <ul style="list-style-type: none"> <li>• “Wanton and flagrant” violations results in a tax of the lesser of (1) the aggregate tax benefit obtained from tax-exempt status or (2) the foundation’s net assets.</li> <li>• 26 U.S.C. § 4942; 26 U.S.C. § 507.</li> </ul>	*Federal Court of Appeal decisions imply that any of the offences can be grounds for revocation		And <a href="https://www.legislation.gov.au/Details/F2016C00435">https://www.legislation.gov.au/Details/F2016C00435</a>
<b>Holding excessive interests in business enterprises</b>	<ul style="list-style-type: none"> <li>• 10% excise tax on value of holdings, imposed on foundation. If not corrected before IRS assesses penalty, second-tier tax of 200% of holdings.</li> <li>• “Wanton and flagrant” violations results in a tax of the lesser of (1) the aggregate tax benefit obtained from tax-exempt status or (2) the foundation’s net assets.</li> <li>• 26 U.S.C. § 4943; 26 U.S.C. § 507.</li> </ul>	<ul style="list-style-type: none"> <li>• 5% of the fair market value of the share amount that is the “divestment obligation” of the foundation.</li> <li>• 10% for repeated violations.</li> <li>• Income Tax Act, § 188.2(3.1).</li> </ul>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>
<b>Failure to disclose material transactions and total corporate</b>	<ul style="list-style-type: none"> <li>• May be considered a failure to provide a complete/accurate annual information return (see above).</li> </ul>	<ul style="list-style-type: none"> <li>• 10% of the fair market value of the share amount that is the “divestment obligation” of the foundation.</li> </ul>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>

PENALTY TYPE	UNITED STATES	CANADA*	UNITED KINGDOM	AUSTRALIA
holdings re: interests in a business		<ul style="list-style-type: none"> <li>Income Tax Act, § 188.2(3.1).</li> </ul>		
Holding investments that jeopardize charitable purposes	<ul style="list-style-type: none"> <li>10% excise tax on amount of investment, imposed on foundation. If not corrected before IRS assesses penalty, second-tier tax of 25% of investment.</li> <li>10% excise tax on amount of investment, imposed on foundation managers when make such expenditures knowing that it is jeopardizing investment. If not corrected before IRS assesses penalty, second-tier tax of 5% of investment.</li> <li>“Wanton and flagrant” violations results in a tax of the lesser of (1) the aggregate tax benefit obtained from tax-exempt status or (2) the foundation’s net assets.</li> <li>26 U.S.C. § 4944; 26 U.S.C. § 507.</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Treated as non-charitable expenditure (see above).</li> </ul>	<ul style="list-style-type: none"> <li>See Income Tax Assessment Act 1997 and regulations re: Public Ancillary Funds and Private Ancillary Funds.</li> </ul>
Taxable expenditures (expenses not	<ul style="list-style-type: none"> <li>20% excise tax on amount of taxable expenditures, imposed on foundation. If not corrected</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Same non-charitable expenditure rules apply to charitable.</li> </ul>	<ul style="list-style-type: none"> <li>See Income Tax Assessment Act 1997, s. 50-50.</li> </ul>

PENALTY TYPE	UNITED STATES	CANADA*	UNITED KINGDOM	AUSTRALIA
<p><b>consistent with charitable purposes)</b></p>	<p>before IRS assesses penalty, second-tier tax of 100% of expenditures.</p> <ul style="list-style-type: none"> <li>• 5% excise tax on amount of taxable expenditures, imposed on foundation managers when make such expenditures knowing that it is a taxable expenditure. If not corrected before IRS assesses penalty, second-tier tax of 50% of expenditures.</li> <li>• “Wanton and flagrant” violations results in a tax of the lesser of (1) the aggregate tax benefit obtained from tax-exempt status or (2) the foundation’s net assets.</li> <li>• 26 U.S.C. § 4945; 26 U.S.C. § 507.</li> </ul>	<p>*Federal Court of Appeal decisions imply that any of the offences can be grounds for revocation</p>	<p>corporations and charitable trusts (see above).</p> <ul style="list-style-type: none"> <li>• Regulatory action may be taken by the Charity Commission under Charities Act 2011.</li> </ul>	<ul style="list-style-type: none"> <li>• Charities Act 2013, § 18.</li> </ul>
<p><b>Lobbying expenditures</b></p>	<ul style="list-style-type: none"> <li>• Treated as a type of taxable expenditure (see penalties above).</li> <li>• Is considered prohibited; may result in loss of tax-exempt status.</li> <li>• 26 U.S.C. § 4945(d)(1).</li> </ul>	<ul style="list-style-type: none"> <li>• See separate legislation re lobbying (federal and provincial).</li> </ul>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<ul style="list-style-type: none"> <li>• See separate legislation re lobbying.</li> <li>• Commonwealth Electoral Act 1918</li> </ul>

PENALTY TYPE	UNITED STATES	CANADA*	UNITED KINGDOM	AUSTRALIA
<b>Carrying on a trade or business</b>	<ul style="list-style-type: none"> <li>Unrelated trades or businesses subject to tax (see above).</li> </ul>	<p>*Federal Court of Appeal decisions imply that any of the offences can be grounds for revocation</p> <ul style="list-style-type: none"> <li>5% penalty on gross business revenue earned.</li> <li>100% penalty and suspension of tax-receipting privileges for repeated violations.</li> <li>Prohibited for private foundations; possible grounds for revocation.</li> <li>Income Tax Act, § 188.1(1)(a).</li> </ul>	<ul style="list-style-type: none"> <li>Unrelated trades or businesses subject to tax (see above).</li> </ul>	<ul style="list-style-type: none"> <li>Must have charitable purposes, or may be disqualified as a charity (see above).</li> </ul>
<b>Acquiring control of a corporation</b>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>5% penalty on dividends paid to the charity by the corporation.</li> <li>100% penalty for repeated violations.</li> <li>Prohibited for private foundations; possible grounds for revocation.</li> <li>Income Tax Act, § 188.1(3).</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>



# The Pemsel Case

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