



**BLUMBERGS**

CRA's Fundraising Guidelines – Legal, Ethical  
and Practical Issues

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# Who We Are – Blumbergs

- Blumberg Segal LLP is a law firm based in Toronto, Ontario
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# Introduction

- Legal information not legal advice
- Questions during and at end
- Logistics and timing

# FUNDRAISING MATTERS

**F**undraising is not charitable  
**U**nderstand the problem  
**N**o prohibited activities  
**D**isclosure  
**R**atios  
**A**llocation  
**I**ndicators of best practice  
**S**olicitation of support  
**I**llegal, Main, Private  
**N**on-arms length  
**G**uidance

**M**isrepresentation  
**A**void commissions  
**T**elemarketing  
**T**ests for allocation  
**E**valuation  
**R**esources  
**S**ole source fundraising

# Charity Law Basics

- Registered charities are regulated by Charities Directorate of the Canada Revenue Agency (CRA) under the *Income Tax Act (Canada)*
- Registered charities fall under both federal and provincial jurisdiction
- Non-profits and charities are both tax exempt
- *Income Tax Act* – concept of “registered charity” can issue “official donation receipt” with income tax savings for donor
- Benefits and restrictions on registered charities
- Doing good and charity are not synonymous

# CRA Fundraising Guidance

- Consultation draft in 2008
- Published guidance on June 11, 2009 (“Guidance”)
- Is fundraising and charitable sector simple?
- If not, can we expect that the regulation will be simple?
- Most of the Guidance is very straightforward, a couple of issues are complicated like allocation of expenses and amount of disclosure



# Ideas for understanding Guidance

Focus on the simple parts. Then tackle allocation etc.

Read the Guidance Fundraising by Registered Charities

<http://www.cra-arc.gc.ca/tx/chrts/plcy/cps/cps-028-eng.html>

Bigger font version

[http://www.globalphilanthropy.ca/images/uploads/Guidance\\_on\\_Fundraising\\_from\\_CRA.pdf](http://www.globalphilanthropy.ca/images/uploads/Guidance_on_Fundraising_from_CRA.pdf)

Also consolidated bigger font version of the Guidance from CLIP with Guidance and additional information together in one document

<http://www.capacitybuilders.ca/clip/clip-resources.php>

# CRA Guidance for Fundraising

- Prohibited fundraising conduct (illegal, main purpose, too much private benefit, misleading or deceptive)
- Disclosure and transparency
- Apportioning expenses between fundraising and charitable
- Indicators of concern
- Best practices

# Canadian views on fundraising

- 77% of Canadians trust charities (Muttart)
- Some charity subsectors are trusted more than others
- 60% feel it is appropriate to have some of the funds raised go towards the charities' operating expenses, as long as they are reasonable!
- 58% say “charities spend too much money on fundraising”

# Canadian views on fundraising

- 94% think charities should be required to disclose how donors' contributions are spent.
- 52% believe there should be a legal limit set on the amount of money charities can spend on fundraising [and what do you think 40% of Canadians who don't think any funds should be spent on fundraising will think that limit will be?]

# Canadian views on fundraising

“Canadians continue to place great importance on the information charities provide to the public. Almost all Canadians think it is important (very or somewhat) for charities to provide information on how they use donations (98%), information about the programs and services the charities deliver (98%), information about charities’ fundraising costs (97%), and information about the impact of charities’ work on Canadians (96%).”

Talking About Charities 2008 - Canadians’ Opinions On Charities And Issues Affecting Charities, The Muttart Foundation

# Do we need rules for fundraising?

- Do we care if 90% of funds raised go to program activities or 5%?
- Do we care if aggressive telemarketing is considered “educational”?
- Do we care if “fundraising” becomes associated with deceptive practices?
- Do we care if there is more pressure to regulate individual fundraisers rather than charities?

# Do we need minimum legal standards?

- Yes – 85,000 charities – if even 1% are aggressive, problematic etc then 850 charities
- Voluntary standards are very important and useful – but they are not the answer to bad apples and wilful misconduct
- Voluntary standards without extensive educational efforts and/or monitoring enforcement may be “window dressing”

# Why Have A Guidance?

- There are some charities doing things they should not be doing
- Public and media has been demanding it for years.
- It makes little sense not regulating such an important part of the work of charities.
- Do we want to know what the Charities Directorate (regulator of registered charities) thinks about appropriate fundraising or do we want that information held by a few “high priests”?



# 1. Introduction

- “While recognizing the necessity of fundraising, the CRA expects charities to be transparent and to not devote excessive amounts of time and/or resources to fundraising as opposed to fulfilling their charitable purposes.”
- “It also confirms to the public that fundraising expenditures are appropriate and in fact necessary for the sustainability of the sector.”

## 2. Jurisdiction

Under section 91(3) of *The Constitution Act, 1867*, the federal government is empowered to establish the federal tax system. The *Income Tax Act (Canada)* exempts registered charities from tax on their income and entitles them to issue official tax receipts. The CRA is responsible for administering the *Income Tax Act* and, therefore, for regulating registered charities in Canada.

# Provincial Regulation

- “Under sections 92(7) and 92(13) of the Canadian constitution, the regulation of most aspects of charities' operations falls within provincial jurisdiction. This guidance deals only with issues related to the **federal regulation of fundraising by charities registered under the *Income Tax Act***, as derived from the authority described above, and is not intended to address the various provincial obligations.”

# CRA regulation

- If you establish a charity and do not apply for charitable registration with CRA then this Guidance does not apply
- Many charities are not registered charities
- There are benefits of being a registered charity and there are restrictions.

## 3. Scope

- Guidance does not deal with whether fundraising activities of a charity amounts to the carrying on of a business. See. [Policy Statement CPS-019, What is a Related Business?](#) and [Policy Commentary CPC-002, Related business,](#)
- Guidance does not deal with fundraising to support terrorism. See CRA checklist on terrorism: <http://www.cra-arc.gc.ca/tx/chrts/chcklsts/vtb-eng.html>

## 4. Fundraising and Charitable Purposes

- Fundraising (whether undertaken as a purpose or activity) is not in-and-of-itself charitable.
- Direct costs of fundraising cannot usually be reported as charitable expenditures on a charity's annual Form T3010.
- Can allocate between charitable and fundraising for purposes of the T3010 reporting.

# 5. What is fundraising

As a general rule, fundraising is any activity that:

- includes a **solicitation of support** for cash or in-kind donations (solicitations of support include sales of goods or services to raise funds);
- is part of the research and planning for future solicitations of support; or
- is related to a solicitation of support (efforts to raise the profile of a charity, donor stewardship, donor recognition, etc.).

# What is fundraising (cont)

- Fundraising includes activities carried out by the registered charity, or someone acting on its behalf.
- Fundraising does not include requests for funding from government or from other registered charities, or the operation of a related business as defined in the *Income Tax Act*.
- Recruitment of volunteers is not considered a solicitation of support.



# What is fundraising (cont)

- Includes activities in which receipt issued and activities in which no receipt issued

## 6. Definitions

- a. Ancillary and incidental purpose
- b. Arm's length / non-arm's length
- c. Cause-related marketing / social marketing
- d. Disclosure
- e. Fundraising activity – external or internal
- f. Resource(s) – includes staff, volunteers, directors, premises, and equipment.

# 7. Prohibited Fundraising Conduct

Prohibited fundraising conduct includes:

- a. is illegal or contrary to public policy;
- b. is a main or independent purpose of the charity;
- c. results in more than an incidental or proportionate private benefit to individuals or corporations; and
- d. is misleading or deceptive.

# 7a) Illegal or Contrary to Public Policy

- Criminally fraudulent
- Violate federal or provincial statutes governing charitable fundraising, charitable gaming use of charitable property or consumer protection
- “Illegal fundraising is prohibited whether it is carried on by the charity itself or it is carried on by a third party on behalf of the charity. Charities should ensure that third parties raising funds on their behalf are complying with all applicable laws.”

## Illegal Activities and Third Parties (cont)

“Illegal fundraising is prohibited whether it is carried on by the charity itself or it is carried on by a third party on behalf of the charity. Charities should ensure that third parties raising funds on their behalf are complying with all applicable laws.”

## Tax Shelters (7a)

“In particular, fundraising that includes the issuance of improper donation receipts is contrary to the *Income Tax Act* and can lead to revocation. The CRA takes the position that fundraising is not acceptable even where the fundraising activity is not in itself illegal, but is associated with illegal conduct. This is the case where a charity knows, or ought to have known, that it is furthering illicit practices or transactions. In particular, see section 168.1(4)(d) of the *Income Tax Act* and Regulation 3501 of the *Income Tax Regulations*, which set out charities' obligations regarding issuance of receipts.”

# Contrary to Public Policy

- “incontestable harm to the public interest or if they do not comply with government rules, directives, and regulations.”
- Eg. Misrepresentation about whether donated funds going to telemarketer or charity (PGT v. Aids Society for Children (Ontario) [2001] O.J. No. 2170
- Violation of CRTC rules or privacy obligations

## b) Conduct that is main purpose

- Fundraising cannot be main purpose
- Fundraising cannot be collateral purpose
- Can be ancillary and incidental
  
- What about Parallel Foundation – they fundraise and then give funds to hospital or school etc. - main purpose is providing funds to another charity, not fundraising, even though it may take up almost all the time and efforts of the Parallel Foundation.



## c) Disproportionate Private Benefit

“Any private benefit to individuals or corporations is only acceptable as an incidental and proportionate by-product of the activity undertaken to fulfill a charitable purpose.”

Is benefit exceeding fair market value?

## d) Deceptive Conduct

- Causes harm
- Even when misrepresentation is not illegal or fraudulent
- Irrespective of whether intentional or negligent
- “Ensure representations made by it, and those acting on its behalf, are fair, truthful, accurate, and complete.”

# Examples of Misrepresentation

- which charity will receive the donation;
- the geographic area in which the charity operates, and the amount and type of its work; or
- the percentage of funds raised that will go to charitable work.

## 9. Evaluation of fundraising activities

- **Fundraising revenues** include Lines 4500 (receipted) and 4630 (fundraising) of the charity's annual Form T3010.
- **Fundraising expenditures** include amounts reported on Line 5020 of the charity's annual Form T3010. All expenses determined to be fundraising expenses in accordance with this guidance should be reported on line 5020.

# Ratios and CRA's approach

- Ratios is one element, recognize diversity in sector
- Reasons for higher fundraising cost with event or year
- CRA will also look to
  - a. The size of the charity
  - b. Causes with limited appeal
  - c. Donor acquisition and planned giving campaigns

In addition Best Practices and Indicators of concern

# Ratios and CRA's approach

“Fundraising ratios alone are not determinative in assessing whether a charity’s fundraising complies with the requirements of the guidelines in this guidance. However, these ratio ranges give charities a way to generally gauge their performance and understand the circumstances where the CRA is likely to raise questions or concerns.”

# Fundraising Ratio of Costs to Revenues

## Ratio of Costs to Revenues over Fiscal Period for all fundraising activities

- Under 35%
  - *Unlikely* to generate questions or concerns.
- 35% and Above
  - The CRA will examine the *average ratio* over recent years to determine if there is a *trend* of high fundraising costs. The *higher the ratio*, the more likely it is that there will be concerns and a need for a more *detailed assessment of expenditures*.
- Above 70%
  - This level *will raise concerns* with the CRA. The charity must be able to provide an *explanation and rationale* for this level of expenditure to show that it is in compliance; *otherwise, it will not be acceptable*.

# Indicators of Concern

- Sole-source fundraising contracts
- Non-arm's length fundraising contracts
- Fundraising initiatives that are not well-documented
- Fundraising merchandise purchases that are not at arm's length, not at fair market value, or not purchased to increase fundraising revenue.
- Most of the gross revenues for non-charitable parties.
- Commission-based fundraiser remuneration
- Misrepresentations in fundraising solicitations or in disclosures about fundraising or financial performance.



# Best Practices for Fundraising

- a. Prudent planning processes
- b. Appropriate procurement processes
- c. Good staffing processes
- d. Ongoing management and supervision of fundraising practice
- e. Adequate evaluation processes
- f. Use made of volunteer time and volunteered services or resources
- g. Disclosure of fundraising costs, revenues, and practice (including cause-related or social marketing arrangements)

## Disclosure of fundraising costs, revenues and practice

- It is good practice for charities to disclose as much as possible about their operations, including the costs they incur to raise funds to support their work.
- Required disclosures - T3010, may be other legally required disclosure (fundraising, financial reporting)
- Funders may impose additional disclosure requirements

# Additional Public Disclosure

- What is publicly disclosed?
- "The CRA expects charities to provide complete disclosure of all fundraising costs and revenues so that members of the public-and, more specifically, donors or prospective donors-are not deceived or misled about the amount of resources from fundraising that is ultimately available to a registered charity for its programs, services, or gifts to qualified donees."
- Amount of disclosure depends - protect public from being deceived
- Eg. Membership vs. Public fundraising, low cost vs. High cost fundraising

# Indicators of Commitment to Disclosure

- the extent of public disclosure of fundraising costs and revenues in financial information released by the charity, including but not limited to its annual Form T3010;
- adoption of policies requiring appropriate disclosures to donors and prospective donors to reduce the risk of inadvertently misleading them;
- training staff or volunteers making solicitations on appropriate and inappropriate fundraising representations;

## Indicators of Commitment to Disclosure (cont)

- pre-approving scripts and other solicitation materials to be used by staff, volunteers, or third parties in making representations on its behalf;
- including provisions in contracts with third parties specifying that misrepresentations must not be made when acting on behalf of the charity; and
- use of independent auditors and/or externally established standards to promote full, accurate, and consistent disclosure of financial performance

# Accessible Disclosure of fundraising

- Disclosure must be accessible - at minimum to donors or potential donors, but usually the public
- Generally website is most cost effective but can be annual reports, mailings, print and broadcast media, events, and through contacts made during solicitations.
- If obscure not accessible
- Include all relevant information

# Accurate Disclosure of fundraising info

- "disclose the best information available at the time the information is disseminated, and should strive to share updated information as soon as possible."
- If further information is pending, it is good practice to indicate that the information being disclosed is not final.

# Disclosure Content

In addition to the information available on its Form T3010, a charity may consider disclosing information before, during and after a fundraising initiative.

Before or during a campaign, a charity might disclose:

- the estimated fundraising costs and revenues included in its annual budget;
- any revision of budgeted fundraising costs and revenues based on actual performance;



## Disclosure Content (cont)

- whether the fundraising is being done by volunteers, employees, or third-party fundraisers;
- whether the fundraising is being done by volunteers, employees, or third-party fundraisers;
- whether the fundraiser or the fundraising company is receiving commissions on donations or other payments based on the number or amount of donations;

## Disclosure Content (Cont)

- the general terms and conditions of any fundraising contract entered into, including the method by which compensation is calculated (and/or actual amount of compensation), anticipated costs and revenues provided for in the agreement, and any requirement in the agreement for the charity to bear expenditures incurred during the fundraising; and
- if the fundraising is being done internally, how performance of fundraisers is assessed and how they are compensated.

## Disclosure Content – After campaign or fiscal period

- The costs and revenues for specific types of fundraising or campaigns within a fiscal period;
- Whether any costs for the fundraising are being allocated to expenditure categories on the Form T3010 other than fundraising expenditures;
- Whether any costs are being underwritten, and accounted for, through an entity other than the registered charity; and
- The breakdown of consolidated fundraising costs and revenues included in financial statements.

# Cause Related Marketing Disclosure

- Cause-related ventures are not subject to this guidance provided that more than 90% of the costs of the initiative are borne by a non-charitable partner and all costs and revenues of the charity are adequately disclosed.
- In calculating charity contribution do not need to assign value to charity's intellectual property if the charity or the partner discloses to the public the terms of the arrangement, including information on next slide.

# Cause Related Marketing Disclosure

Before or during the initiative:

- any requirement for costs to be paid by the charity; and
- the terms for the payment of any revenues to the charity;

During or after the initiative:

- the amount of any costs paid by the charity; and
- the amount of any revenues received by the charity, provided either as a total amount or as an amount or percentage from the sale of a good or service.

## 8. Allocation of expenditures

- The most complicated part of guidance
- Trying to achieve consistency in reporting

## 8. Allocation of expenditures

- All expenditures should be allocated to one or more of:
  - charitable expenditures,
  - fundraising
  - management and administration,
  - political activity,
  - or other expenditures as applicable.

# Why Allocate?

- Activity can relate to many objectives
- Ratios, public perception and disclosure
- T3010 and disbursement quota
- “fundraising expenditures include all costs related to any activity that includes a solicitation of support, or that is undertaken as part of the planning and preparation for future solicitations of support.”  
[whether or not it included a solicitation of support].



## In-kind and Sale of goods

- “A solicitation of support includes requests by the registered charity, or someone acting on its behalf, for financial or in-kind donations. It also includes the marketing and sale of goods or services not within the charity’s own charitable programs, but sold specifically to fundraise. This applies even where no donation receipt is issued for the transaction.”

# Grant writing and Grants/Contributions

- For purposes of reporting on fundraising expenditures, solicitations of support do not include asking for government funding.
- Also does not include asking for money from other registered charities (eg. foundations)

# Allocation

- In circumstances where a receipt is issued for any part of a transaction, the activity is deemed to be a solicitation of support and therefore the costs associated with the entire activity must automatically be allocated to fundraising expenditures

# De Minimus Donor Recognition

- Donor recognition is the acknowledgement or thanking of a person who has made a gift.
- Donor recognition is fundraising and must be reported as such unless de minimus (per-donor cost of \$75 or 10% of the donation (whichever is less)).
- When nominal and not reported as fundraising then report as administrative expenses.

## Is Donor Stewardship a Solicitation of Support

- Donor stewardship occurs when a charity invests resources in relationships with past donors to prompt additional gifts. This could include providing donors with access to information, services, or privileges not available to others. These activities are considered solicitations of support.

# Sale of goods/services

- ***Sale of goods or services are solicitation of support except when:***
  - the provision of the good or service serves the charity's beneficiaries, directly fulfills a charitable purpose, and is sold on a cost-recovery basis, or
  - is a related business as defined in the *Income Tax Act*. [Policy Statement CPS-019, What is a Related Business?](#)

# Tests to allocate to non-fundraising

- Would activity have been undertaken without the solicitation of support? Can show this by satisfying either
  - A. Substantially All Test (90% non-fundraising objective)
  - B. Four Part Test (main objective, emotive, audience, commissions)

# Substantially All Test

- Substantially all = 90% - advancing objective other than fundraising
- “Generally, this determination will be based on proportion of the fundraising content to the rest of an activity, as well as the resources devoted to it. However, the prominence of the fundraising content in the activity must also be considered.”
- If test satisfied then charity may report all the expenditures of the activity on its Form T3010 as non-fundraising.



# Four Part Test

If failed “substantially all test”, a charity can still show that the activity would have been undertaken without the solicitation of support if the answer to **all** of the following questions is “no”:

1. Was the main objective of the activity fundraising?
2. Did the activity include ongoing or repeated requests, emotive requests, gift incentives, donor premiums, or other fundraising merchandise?
3. Was the audience for the activity selected because of their ability to give?
4. Was commission-based remuneration or compensation derived from the number or amount of donations?

## Four Part Test (Cont).

- When the answer to all four questions above is “no”, the charity may allocate a portion of the costs as non-fundraising expenditures and a portion as fundraising expenditures on its annual Form T3010.
- If any of the answers to the four questions above is “yes”, all costs must be reported as fundraising expenditures, unless the exception below applies.

## Exception to Four Part Test

- Even if an activity would not have been undertaken without the solicitation of support, charities may still be allowed to allocate a portion of the costs other than to fundraising, if the activity furthers one of the charity's purposes. The CRA recognizes that, in certain circumstances, an event or activity may serve multiple purposes—for example, as a way to advance its charitable programs and to raise funds for the charity.

# Exception – Multiple Purposes

- The charity promotes an event or activity where revenues are raised based on the charity's work with its beneficiaries, such as the sale of goods from the operation of a sheltered workshop involving persons with disabilities
- Event featuring its beneficiaries or to foster their skills or well-being, such as a concert performance by autistic children or an endurance race to build the stamina of cancer survivors

# Raising Awareness

- **Note:** The CRA generally does **not** consider raising awareness of a charity's mandate or work, when it is carried on in conjunction with fundraising through non-charitable third parties (such as for-profit telemarketing, direct mail or canvassing companies), to qualify for the exception. So, charities must allocate costs for such activities to fundraising expenditures.

## 4 Part Test, Q.1

**Was the main objective of the activity fundraising?**

## Was the main objective of the activity fundraising?

- Resources devoted to fundraising
- Nature of activity – free PSA vs. paid advertisement vs. infomercial or telemarketing
- Always fundraising eg. Gaming, product or services being sold as a fundraiser
- Sometimes fundraising - advance the programs, services, or facilities of charity or raising awareness of issue
- Not fundraising when “Providing useful knowledge to the public or the charity’s stakeholders about the charity's work or an issue related to that work”

## Was the main objective of the activity fundraising?

***iv. Being transparent and accountable for its practices by providing information about its structure, operations, or performance to the public or its stakeholders***

- Not generic branding (that is, activities focusing on the general promotion or marketing of the charity's name and logo, image or past work) that occurs outside the charity's reporting to the public as part of its transparency and accountability efforts
- Not cause-related marketing



## 4 Part Test, Q.2

**Did the activity include ongoing or repeated requests, emotive requests, gift incentives, donor premiums, or other fundraising merchandise?**

## 4 Part Test, Q.3

- **Question 3: Was the audience selected because of their ability to give?**
- Audiences selected based on the likelihood of support may lead to an activity being considered fundraising.

## Q4 – Commission-Based Compensation

- If payment of commissions or other compensation is tied to the amount or number of donations, the whole activity is considered fundraising.
- However, if compensation is tied to work completed (rather than to success in obtaining contributions), and there is a main objective other than fundraising, the activity will not necessarily be considered to be wholly fundraising.

## Questions on allocation and ratio

- Is it an expenditure? Yes or No
- Is it fundraising expenditure? Yes or No (charitable, social, business, political, core cost)
- Does it meet substantially all test? – if yes then 0% included in fundraising
- Does it meet 4 Part Test? – if yes then between fundraising and other?
- If not meeting 4 Part Test then is it exception or allocate 100% to fundraising?

## Questions on allocation and ratio (cont)

- What are your total fundraising expenditures?
- What are your total fundraising revenues?
- What is the ratio of expenditures to revenue?
- Is ratio high (ie. over 35%)?
- What are doing to reduce ratio?
- Is your board and senior staff aware of ratio?
- Are you disclosing to public accurately ratio?

# Some Frequently asked questions

- Is DQ and fundraising ratio the same? No
- Is gov funding and foundation funds included in fundraising revenue? No
- Is funding from corporations and non-profit (non charity) included in fundraising cost/revenue? Generally, yes.
- Does this Guidance apply to non-profits that are not registered charities? No.
- Do you need to track staff time by the minute? No.
- Can pledges (non-enforceable) be counted as revenue? No.
- If a foundation fundraises for a charitable organization is the main purpose of the foundation then fundraising? No.

# Some Frequently asked questions

- If our charity has one fundraising event that lost money will we lose our charitable status? Generally no. CRA is looking at all events together and all relevant surrounding circumstances.
- Is there an exemption for small charities under \$100,000 in revenue as discussed in the draft in 2008? No, the guidance applies to all charities but it is specifically pointed out that small charities may have particular difficulty in meeting the ratios because of size.
- Who do I go to ask questions about the guidance? First read the document. Then try CRA (1-800-267-2384), other knowledgeable fundraising professionals, legal professionals who are knowledgeable about the guidance.

# Some Frequently asked questions

- What is the difference between fundraising ratios and disbursement quota?



# Questions for Follow-Up

- Have you read the CRA Guidance on Fundraising and do you understand it?
- Have you provided a copy of the Guidance to your board of directors and senior staff?
- Is your board of directors aware of the policy and its implications?
- Are any of your activities prohibited?
- Do any of the indicators of concern apply to your charity?

# Questions for Follow-Up (Cont)

- What are your charity's ratios of cost to revenue?
- Are your charity's ratios in line with CRA expectations?
- What steps are you taking to reduce your fundraising costs?
- What steps are you taking to be more transparent and provide more disclosure?
- What steps are you taking to enhance best practices?
- Do you report regularly to your board about compliance with the Guidance?

# Ontario Public Guardian and Trustee

## ***Charitable Fundraising: Tips for Directors and Trustees***

<http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/charbullet/bulletin-8.asp>

# Ontario Public Guardian and Trustee

- The courts have stated that fundraising costs must be reasonable in relation to the amount of funds raised. While the courts have not stated the maximum amount that can be spent on fundraising the Income Tax Act disbursement quota provides, in part, that registered charities use at least 80% of official charitable receipts issued by the charity in the previous year for charitable purposes. This requirement gives some guidance as to what might be considered a reasonable proportion for administrative and fundraising costs.

# Duty to Account

Directors and trustees of charities are responsible as fiduciaries to the public for all donated funds. This includes all of the funds collected by commercial fundraisers. A charity should keep detailed records and ensure it receives a full and complete accounting from any commercial fundraisers it uses. Charities that raise funds outside of Ontario must keep a separate accounting of all of the donations and expenses for each campaign in each province.

# Director Liability

“The Public Guardian and Trustee can require a charity to account for donations and related expenses of a fundraising campaign and can require information about fundraising appeals. If the Public Guardian and Trustee has serious concerns about fundraising expenses the charity may be asked to pass its accounts before the court. Directors and trustees can be personally liable for fundraising costs that are found to be unreasonable.”

# PGT – Factors to Consider w/ Contract

## **Appendix A: Factors to Consider Before Signing a Fundraising Contract**

- Has the fundraiser provided references from other charities for which similar campaigns have been conducted? Were those charities satisfied with the results that were achieved?
- Are the fees and charges reasonable? If potential donors were aware of the fees and charges associated with a donation, would they still make the donation?
- Does the fundraiser subscribe to a code of ethics?
- Are the terms of the contract clear and well understood?
- Are acceptable fundraising methods specified in the contract? Are the fundraising methods consistent with the written fundraising plan?

## PGT – Factors to Consider w/ Contract

- Will the fundraising campaign generate sufficient revenue to allow the charity to engage in activities related to its charitable purpose?
- Are canvassers required to provide accurate information to potential donors about the proportion of the donation that will be used for charitable purposes?
- Are canvassers required to identify themselves as commercial fundraisers? Are they prohibited from representing themselves as employees or volunteers of the charity?
- Will fundraisers provide donors with receipts? Is the fundraiser required to keep receipt books secure and safe? If the charity is not registered under the *Income Tax Act*, will canvassers make this fact clear to donors?



# PGT Factors

- Will the donor list remain the exclusive property of the charity?
- Will the donation bank account remain under the sole control of the charity?
- How will fees and charges be calculated? If there is a disagreement, how will it be resolved?
- Will the fundraiser provide a full accounting for expenses and funds received? Will the fundraiser provide periodic accountings to enable the charity to monitor the performance of the campaign? Will receipts and vouchers be provided to document all disbursements?
- When does the contract terminate? Are there any penalties for terminating the contract early if the charity is not satisfied with the services that are provided?

# Special Purpose Fundraising

- Raising funds for special purpose
- Only use funds for that purpose
- Good idea to have alternative purpose, if original purpose cannot be carried out or surplus funds
- Communicate purpose and alternative to potential donors
- Otherwise may need to return funds or apply to court
- Keep record of fundraising campaign and purpose

# Discourse of fundraising

- Can we have a more moderate discussion about regulating fundraising and allowing for core costs (overhead)?
- Dominant voices have been two extremes – either no fund raising/admin costs or no restrictions on it.
- Need for balance – you might want to read

[http://www.globalphilanthropy.ca/index.php/blog/comments/how\\_much\\_should\\_canadian\\_charity\\_spend\\_on\\_overhead/](http://www.globalphilanthropy.ca/index.php/blog/comments/how_much_should_canadian_charity_spend_on_overhead/)

# Charity Law Problem Solving

- Understand basic framework and definitions
- See CRA site for information
- See other sources of info (e.g. [www.capacitybuilders.ca/clip](http://www.capacitybuilders.ca/clip), [www.canadiancharitylaw.ca](http://www.canadiancharitylaw.ca))
- Seminars and webinars
- Bolster board with diversity, skills, knowledge, passion, resources, active educational program
- Call CRA if you need
- Have charity lawyer on retainer or hire as needed

# Charities Directorate of CRA

- Regulates registered charities
- Based in Ottawa and other offices throughout Canada
- Website: [www.cra.gc.ca/charities](http://www.cra.gc.ca/charities)
- E-mail list: [www.cra-arc.gc.ca/esrvc-srvce/mlist/sbscrbchrts-eng.html](http://www.cra-arc.gc.ca/esrvc-srvce/mlist/sbscrbchrts-eng.html)
- Webinars: [www.cra-arc.gc.ca/tx/cmmnctn/sssns/wbnrs-eng.html](http://www.cra-arc.gc.ca/tx/cmmnctn/sssns/wbnrs-eng.html)
- Telephone: 1-800-267-2384 (English)  
1-888-892-5667 (Bilingual)

# Blumbergs

- Blumberg Segal LLP is a law firm based in Toronto, Ontario
- Mark Blumberg is a partner at Blumbergs who focuses on non-profit and charity law
- Assists charities from across Canada with Canadian and international operations and foreign charities fundraising here
- [www.canadiancharitylaw.ca](http://www.canadiancharitylaw.ca) and [www.globalphilanthropy.ca](http://www.globalphilanthropy.ca)
- Free Canadian Charity Law Newsletter. Sign up at: <http://www.canadiancharitylaw.ca/index/php/pages/subscribe>
- (416) 361 – 1982 or 1-866-961-1982
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