



The Charities Directorate Releases New “Consultation on proposed policy on fundraising by Registered Charities” (RC4456-e)

By Mark Blumberg (April 8, 2008)

The CRA has just released a Consultation on proposed policy on fundraising by Registered Charities (RC4456-e). This is a relatively short overview document that will be followed by a much longer document in the next month or two. So here are some preliminary comments and I will be writing more about the consultation as more information is released by CRA.

It is a good idea that CRA set guidelines for Canadian charities in their fundraising. Although the vast majority of charities act appropriately in fundraising there are a small number who do not and their conduct tarnishes the reputation of the sector. As well, many charities wonder about what is appropriate in conducting fundraising and CRA’s guidance will help them in their decision-making about fundraising activities. CRA’s policy will also provide donors with some idea of what CRA considers appropriate in terms of fundraising. Fundraising is vital for charities in Canada. In essence most activities largely fall into two categories namely fundraising and charitable activities. It is a major part of the work of a charity – to obtain sufficient revenue to support its program.

Some of the important points in the Consultation on proposed policy are as follows [with my comments in brackets]:

- 1) the policy applies to all charities [not just the large charities];
- 2) the Federal government has authority over fundraising by registered charities [forget about constitutional arguments that that some tax lawyers may raise that charities are regulated under provincial

jurisdiction – true, all charities are subject to provincial jurisdiction and you can be a charity that is not registered with CRA but if you are not a “registered charity” then your donors will not receive a tax receipt. After all, the federal tax system is under federal jurisdiction.]

- 3) The requirements in the Consultation are over and above any other requirements imposed on charities by provincial regulators such as the Ontario Public Guardian and Trustee because of either legislation or common law [a registered charity needs to comply with both the CRA policy and the requirements, if any, of the provincial government having jurisdiction over it];
- 4) This policy does not override certain other policies which are already in place, such as restrictions on unrelated business or terrorist financing.
- 5) This policy is a general guide and ultimately it is the court that will decide whether the activities of a charity or the proposed activities of an applicant are appropriate. [The corollary of this is that if a registered Canadian charity does not comply with the policy statement then CRA may use its powers such as revocation, suspension, sanctions, etc. to deal with the registered charity. Yes, the charity can get its day in court eventually but the reputational, legal and other costs may be steep. About the only ones who think that is a good idea are tax lawyers who yearn to be in court to argue cases – not only is it lucrative for them – it is also I guess fulfilling! As an aside, the court may be far harsher than CRA in its interpretation of appropriate conduct for Canadian charities and if there is a decided case that is more stringent than this policy statement CRA would probably change the policy statement to reflect the court’s interpretation and such more stringent policy would be applicable to all charities.]
- 6) The policy statement outlines some prohibited grounds when fundraising namely:
 - a) Conduct that is illegal or contrary to public policy;
 - b) Conduct that has become a main, prevailing, or independent purpose of the charity;
 - c) Conduct that results in excessive or disproportionate private gain by individuals or corporations;

- d) A charity not devoting 100% of resources to charitable ends since the harm arising from the charity's fundraising practice outweighs its public benefit.
- 7) There is an interesting discussion of allocation of expenses between fundraising and charitable expenses.
- 8) The CRA has come up with a grid for evaluating fundraising expenses based on the percentage of fundraising cost to fundraising revenue. This appears to be based not on each fundraising activity but on the charity's aggregate fundraising activities during the fiscal year. This will give larger charities some degree of leeway to try new or costly methods of fundraising as long as they have other more traditional and more cost effective ways of fundraising to equalize the numbers.
- 9) The evaluation grid provides:

Ratio of fundraising cost/fundraising revenue in fiscal period

Rarely acceptable: more than 70% (charity nets less than 30%)

Generally not acceptable: 50% to 70% (charity nets 30% to 50%)

Potentially not acceptable: 35.1% to 49.9% (charity nets 50.1% to 64.9%)

Generally acceptable: 20% to 35% (charity nets 65% to 80%)

Acceptable: less than 20% (charity nets more than 80%)

When I first looked at the grid I started laughing and thought that the CRA, just to make the grid even better from a comedic point of view, should really assign colours to each level just like the US has a Color-coded Threat Level System for Terrorism or more importantly Toronto has a colour-coded system for restaurants (Green, Yellow, Red –as an aside some of the best value restaurants are occasionally yellow!). But, after reflection, the grid provides charities with some degree of comfort in knowing what percentages are acceptable and rarely acceptable and everything in between.

- 10) One very useful list is the CRA's list of "Conduct considered as increasing the risk of unacceptable fundraising" which provides a good checklist of conduct to avoid:

- Sole-sourced fundraising contracts without proof of fair market value;
- Non-arm's length fundraising contracts without proof of fair market value;
- Fundraising initiatives or arrangements that are not well-documented;
- Needless purchase, non-arm's length purchase or purchase not at fair market value, of fundraising merchandize;
- Activities where most of the gross revenues go to contracted non-charitable parties;
- Commission-based fundraiser remuneration or payment of fundraisers based on amount or number of donations;
- Fundraisers receiving disproportionate compensation relative to non-fundraisers;
- Total resources devoted to fundraising exceeding total resources devoted to program activities;
- Misrepresentations in fundraising solicitations or disclosures about fundraising or financial performance;
- Combined fundraising and charitable program activity, where contracted to a party that is not a registered charity or that is compensated based on fundraising performance.

The CRA Consultation on proposed policy on fundraising is a good start and I am looking forward to seeing more details in the future.

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