



CRA Fundraising Consultation: One giant leap forward in guidance for Canadian registered charities

By Mark Blumberg (August 30, 2008)

In April 2008, CRA released a Consultation on proposed policy regarding fundraising by Registered Charities (RC4456-e) (“Fundraising Consultation”). This document is a relatively short six page overview, and CRA has recently provided charities with a more detailed document entitled “Background information for proposed policy on fundraising by Registered Charities” which is 29 pages (“Background Document”). The background document provides greater detail, further definitions of terminology and CRA’s positions on various points. In this article I will discuss the content of the Fundraising Consultation and Background Document, discuss and analyze the criticisms from others of these documents, and provide my own comments.

As I had previously discussed with respect to the Fundraising Consultation, it is a good idea that CRA set guidelines for Canadian charities regarding 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 what appropriate conduct is when undertaking fundraising activities, 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 of charities in Canada fall largely into two categories, namely revenue generation (grants and fundraising) and expenditures on charitable activities. It is a major part of the work of a charity to obtain sufficient revenue to

support its programs. The Fundraising Consultation will encourage Canadian charities to closely examine their fundraising, the cost of fundraising, how to diversify sources of revenue, how to utilize more lower cost fundraising methods and decrease expenses. While many charities are very much on top of these points others are not.

Some of the important points in the Fundraising Consultation were as follows [with my comments in brackets]:

- 1) the policy applies to all charities [not just the large charities, although the vast majority of charities that use volunteers to do all or most of their fundraising will be less affected by the policy];
- 2) 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 (PGT) 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];
- 3) Despite the involvement of the PGT, the federal government has authority over fundraising by Canadian Registered Charities [in my view, one should forget about the constitutional arguments that some tax lawyers may raise that fundraising by registered charities should be regulated under provincial jurisdiction. While it is true that all charities are subject to provincial jurisdiction, you can be a ‘charity’ under common law without being 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. Furthermore, except for a few large national law firms, no one wants there to be 11 different regulators (CRA and the 10 Public Guardians and Trustees) all involved with creating their own fundraising rules. Furthermore as most of the PGTs are not actively interested regulating charities an argument for provincial regulation is really an argument for no regulation of this important area of charity activity];
- 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 some individuals who have a bone to pick with the Charities Directorate – mostly they yearn to be in court to argue cases – not only is it lucrative for them, but also it is fulfilling, I guess! As an aside, the court may be far harsher than CRA in its interpretation of appropriate conduct for Canadian charities and the fiduciary responsibilities of its directors 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, in which case more stringent policy would be applicable to all charities. Umbrella organizations may want to keep this in mind before they enthusiastically try to challenge these rules on the advice of some tax lawyers wanting a bit of the spotlight.];
- 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 resulting 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. As a general proposition, all fundraising costs associated with “solicitation of support” are to be included in “fundraising expenditures” [Unless there is some uniformity between charities’ reporting of fundraising and charitable expenses, the public will have no idea how much a charity actually spends on charitable expenses. This guidance will be helpful in

assisting charities in allocating expenses as either fundraising or charitable or a bit of both. This will not be helpful for charities that insist on calling every fundraising initiative a “charitable activity” and then say that their lawyer/accountant suggested that that was appropriate.

Here is an interesting statement from CRA: “The CRA generally does **not** consider raising awareness of a charity's mandate or work, when carried on in conjunction with fundraising through non-charitable third parties (such as for profit telemarketing, direct mail or canvassing companies), to meet these requirements. So, charities may not allocate costs for such activities except as fundraising expenditures.” This clarifies any ostensible ambiguity with respect to the issues raised by the Toronto Star in their coverage of MADD.];

- 8) The CRA has come up with a grid for evaluating fundraising expenses based on the percentage of “fundraising costs” to “fundraising revenue”. 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.]

Definitions for the Grid

CRA provides in the Background Documents that “Fundraising revenues include amounts reported on lines 4500 and 4630 of the charity's T3010A annual return. Fundraising expenses include amounts reported on line 5020 of the charity's T3010A annual return.” CRA may want to give a little more clarification in the policy when finalized because even this geek does not know off the top of his head what those lines mean. Ok may be I do know what those lines mean, but I am a super geek!

From the CRA guide used for completing the T3010 CRA (T4033A - Completing the Registered Charity Information Return), we learn:

Line 4500 – Total eligible amount of tax-receipted gifts. Enter the total eligible amount of gifts received by the registered charity during the fiscal period for which tax receipts were issued. Do not include gifts received from other registered charities. Report these amounts on line 4510. Also, do not include amounts reported on line 5520 here. See the Glossary at the end of this guide for an explanation of “eligible amount of gift”.

Line 4630 – Total revenue from fundraising. Enter the total amount of revenue from fundraising activities. Do not include revenue for which tax receipts were issued. These amounts should be reported as gifts on line 4500. Include the gross amounts the registered charity received from activities carried on by the registered charity as well as gross amounts received directly by contracted fundraisers.

[Therefore many sources of revenue are not included including “amount received from other registered charities”, revenue from the three Canadian levels of government, rental income, membership dues and “sale of goods and services”.]

Line 5020 – Total fundraising expenditures. Enter the part of the amount on line 4950 that represents fundraising expenditures. Enter the total expenses the registered charity paid out for fundraising

activities whether carried out by the registered charity or by contracted fundraisers. Examples of fundraising expenditures are:

- * expenditures for conducting fundraising activities, including salaries and overhead costs, promotional materials, campaign supplies, electronic data processing, and year-round office expenses directly related to fundraising;
- * expenditures for promoting the registered charity and its activities to the community primarily for fundraising purposes;
- * fees the registered charity paid to outside fundraising consultants or agencies (or amounts retained by them); and
- * postage costs for direct mail canvassing.

[It can be argued that the grid is generous in a couple of ways. First, the amount that CRA is allowing for fundraising expenses as acceptable and generally acceptable is far higher than many donors or foundations would accept. Secondly, the grid is based not on each fundraising activity but on the charity's aggregate fundraising activities during the fiscal year. This will give some 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. As there are so many caveats, exceptions and qualifiers on the grid, it should only be used as an initial tool and then other factors need to be brought into play to determine if there is a concern. Using the grid by itself does not answer whether you will have a problem with CRA with respect to fundraising; it only deals with the narrow issues of costs to revenue.]

9) 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 or in some cases to handle carefully:

- Sole-sourced fundraising contracts without proof of fair market value [Contracts, especially major ones should not be sole sourced. After all, governments and businesses for decades have been generally requiring competitive bidding. For large contracts this makes a lot of sense. There is a concern that the amounts paid under sole-source contracts may be more than fair market value];

- Non-arm's length fundraising contracts without proof of fair market value [There is a concern about "undue benefit" to the non-arms length party, and in the event that the charity enters into such a contract, it needs to be able to demonstrate that the amounts paid are less than fair market value. There are other trust, corporate and reputational considerations that may make non-arms length transactions inappropriate for a charity.];
- Fundraising initiatives or arrangements that are not well-documented [This relates to governance and record keeping. Are you having a meeting and keeping minutes showing discussion and approval of that major fundraising contract? Do you have documentation to show either bidding process or procurement process? Do you have a copy of the actual contract? Although some charities take governance, decision-making and record-keeping seriously, others could improve in this area.];
- Needless purchases, non-arm's length purchases or purchases not at fair market value of fundraising merchandise;
- Activities where most of the gross revenues go to contracted non-charitable parties [unlike the grid, this is looking at the particular activity on its own. If most of the gross revenue goes to an organization that is not a charity then you may be increasing the risk that CRA will find that your fundraising is unacceptable];
- Commission-based fundraiser remuneration or payment of fundraisers based on amount or number of donations [CRA in the Background Document states it is concerned with "disproportionate or excessive private benefit" and also that "such fees can result in a windfall profit for the fundraiser, particularly when the compensation is set at a high percentage and there are limited or no additional provisions governing how the work is to be undertaken." Many codes of conduct or ethics of fundraising organizations prohibit commission-based fundraising already because of the concern that CRA has raised as well as out of concern for public perception. Commissions may be fine for Bay St. but in our 'charity village' where government and taxpayers are subsidizing every donation, donors are giving for the cause,

volunteers are donating their time, and charity employees on the frontline are paid modest salaries, the commission-based fundraising can create tremendous tension and unfairness.];

- Fundraisers receiving disproportionate compensation relative to non-fundraisers [This may indicate that fundraising has become “a main prevailing or independent purpose of a charity”];
- Total resources devoted to fundraising exceeding total resources devoted to program activities [in the Background Document, it notes that "Where the total amount of resources devoted to fundraising exceeds the total amount of resources devoted to program activities, this may indicate that fundraising has become a main prevailing or independent purpose of a charity." CRA wants fundraising to be a means to support the charitable activities and not an end unto itself. CRA discusses the importance of volunteers and the importance of keeping track of volunteer time and resources. “A charity may make substantial use of non-financial resources, such as volunteers, in fulfilling its mandate. If use of such resources is documented, it can show that a purely financial analysis of the charity's operations does not accurately represent a fair picture of the resources devoted to the activity. So where the bulk of a charity's resources appear to have gone to fundraising, this may not be true if non-financial resources are considered.”];
- 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.

[In the Background Document, there is considerable detail on each point although most of the points are self explanatory.]

10) CRA also sets out various types of conduct, which will “decrease the risk of unacceptable fundraising” namely:

- Prudent planning processes;
- Appropriate procurement processes;

- Good staffing processes;
- Ongoing management and supervision of fundraising practices;
- Adequate evaluation processes;
- Use made of volunteer time and volunteered services or resources; and
- Disclosure of fundraising costs, revenues and practice.

[In the background document there is considerable detail on each point, and I will discuss them below]

11) The CRA realizes that there is tremendous diversity in the charitable sector. In addition to having a simple one page checklist for small and rural charities with revenues under \$100,000, CRA also lists a number of circumstances that they may consider in evaluating charities' fundraising including:

- a) Small charities or charities with limited appeal;
- b) Charities that are investing resources in donor acquisition or other types of fundraising in which the return will not be realized in the same year in which the investment is made;
- c) Charities whose main or major purpose is to make gifts to qualified donees, or to one or more registered charities and as a result have a different cost structure than charities that carry on their own activities;
- d) Charities whose activities include lotteries or charitable gaming that are regulated provincially;
- e) Charities engaging in cause-related marketing initiatives; and
- f) Charities with extraordinary spending, relative to their size, on infrastructure to ensure compliance with this fundraising policy.

The Background Document provides lots of interesting further details and interesting reading and here are a few comments:

1. CRA reminds charities for the 50th time that “Where a charity fails to exercise adequate care to ensure the integrity of a **third party tax shelter scheme** marketed to multiple donors, it may be facilitating or advancing wrongful conduct by others. This may be grounds for revocation or other sanctions.”;
2. Without getting into details, CRA reminds charities that “Making a fundraising solicitation that does not comply with Canadian Radio-television and Telecommunications Commission directives, the Commission's **telemarketing** rules, or other established government policy may be considered contrary to public policy and is also prohibited.” This is particularly important as a do-not-call list will be implemented September 30, 2008 in Canada, and although charities are ‘exempted’ from the do-not-call list, individuals can specifically request that a charity remove them from their list, and the charity should maintain its own DNCL and comply with that request;
3. There is an interesting paragraph on **geographic area** namely “Registered charities may not make solicitations that misrepresent to prospective donors the geographic area in which they work, or the amount or what types of work they do. A charity is not permitted to pretend to be national when it actually works only locally, or mislead the public about the extent or nature of the work it actually does in fulfilling its mandate.” [Some organizations may need to rethink their branding or at a minimum the accuracy of their material. There are many organizations that fundraise across Canada but only operate or conduct charitable activities in one city or one province. I think that although well intentioned the phrase “pretend to be national when it actually works only locally” is unnecessarily pejorative. Many organizations aspire to work in all provinces, territories etc. but do not. I think that an organization can be a “national organization” and represent needs across the country without operating in every jurisdiction;
4. CRA has an extensive discussion on the importance of **transparency and accountability** and how “Merely providing generic information about the charity and its work ... is not considered to be fostering transparency and accountability.” As well, it notes that the cost of “an annual report, financial statements or other information” is not fundraising. CRA also notes that “Where financial or fundraising

disclosures are inaccurate or misleading they are not considered to promote transparency and accountability.” [What CRA does not do in this document is in fact to require that charities provide transparency and accountability. Transparency and accountability are essential for the long term success of a charity. The current system is premised on CRA providing registered charity status to organizations and then CRA occasionally auditing organizations to ensure that they comply with the requirements of the *Income Tax Act*. However, with CRA only having the resources to audit about one percent of charities per year it is more likely that if you are 35 years of age or older, you will die of old age before CRA audits your charity. We need more transparency and it is not going to come through voluntary codes of conduct. How will donors know whether their funds are being well spent? One idea is to have the T3010 provide greater information especially with respect to larger charities and perhaps that is possible in the long term. Another set of short term ideas is either for CRA to provide copies of the financial statement provided with the T3010 or for CRA to require or alternatively suggest that organizations with a website and that take in a revenue of say over \$500,000 place copies of their financial statements on their website. Furthermore, charities over a certain size should have to explain their fundraising activities. In fact, the Imagine Code of Ethics (Imagine’s Code) suggests in B6: “The charity will provide, upon request, its best available information on the gross revenue, net proceeds and costs of any fundraising activity ... it undertakes.” Imagine’s Code in C6 provides: “The charity will, upon request, disclose the revenue and expense assumptions for its fundraising activity as approved by its Board in its annual budget.” Both of Imagine’s Code provisions should apply to all charities with over a certain revenue;]

5. CRA discusses “**appropriate procurement processes**” ie. fundraising contracts with for-profit third parties that are beneficial to the charity. CRA notes (I have added the italics):

A registered charity should undertake a reasonable process, in light of its resources and the size of the contract, to identify and select a supplier to provide the required services at a cost reflecting no more than their fair market value. This may include:

- *researching* fundraising methods and procurement options that could meet the charity's needs;
- contacting *organizations with a profile similar to the charity's* to determine costs and terms that are appropriate and reasonable for the type and amount of fundraising to be undertaken;
- soliciting *bids* from three or more potential suppliers;
- issuing a *request for proposals*;
- holding a *competitive bidding* and tendering process;
- carefully *reviewing all terms of contracts* to ensure they are understood and reasonable;
- *provisions to terminate a contract* where the third party acting on behalf of the charity does not act in compliance with the provisions of this policy; and
- *limiting the length of contracts*, particularly when signing an initial contract.

A charity should always ensure any benefit paid to a non-arm's length party is no more than reasonable consideration for the goods or services provided. Services should not be contracted out to non-charitable entities if they could be delivered as effectively and efficiently using the charity's own resources. The amount of fundraising activity undertaken under the contract or by the charity should never constitute a collateral purpose. Procurement, negotiation, and approval of contracts should be fully documented.

[CRA is responding to fundraising contracts where 50-95% of funds go to the fundraising business and not the charity – clearly more benefit for the fundraising business than the charitable sector. Charities that enter into such one sided contracts may have their registration revoked. As well, this section reminds charities that a particular type of event or fundraising method that may be appropriate to one charity (say a large hospital) may not be appropriate for a “start up charity”. It also emphasizes the importance of competition (bids,

RFP, tendering) rather than just contracting with a relative or business associate. It also really highlights the importance of avoiding conflicts of interests and obtaining legal advice with respect to fundraising contracts. There are no “standard contracts”. When hundreds of thousands or millions of dollars and the reputation of the charity are at stake, then charities should obtain professional advice before entering into fundraising contracts.];

6. CRA also discusses “**Good staffing processes**”. This is a discussion of compensation for fundraisers when they are employed in-house by the charity, which states:

Where fundraising activity is carried on as a staff function, rather than through a third-party contractor, the charity should make adequate effort to ensure that compensation paid does not result in employees receiving excessive benefits. The salary and/or benefits for any fundraising position should never exceed the fair market value for the services provided.

Determining fair market value may include:

- contacting organizations with a profile similar to the charity's to determine reasonable compensation for the type and amount of fundraising to be undertaken;
- basing the compensation on a salary survey; and
- setting compensation that is appropriate based on the remuneration received by other employees of the charity in light of the respective responsibilities and requirements for the positions.

Later on CRA under the heading “Adequate Evaluation Processes” notes:

Research and standards on various aspects of fundraising costs—such as salaries, return on investment associated with different types of fundraising, and typical cost ratios—are available from a number of organizations. Where it uses an external standard as evidence that its conduct has been reasonable, a charity should be able to show that applying the criteria is appropriate in its circumstances. For instance, a

survey of fundraising salaries at charities with large fundraising revenues and multiple fundraisers on staff is not an appropriate basis for proving that the salary of a single fundraiser at a small charity, which is just launching its fundraising program, is reasonable.

[There are lots of wonderful ideas that businesses can contribute to the charity sector. Unfortunately, executive compensation as practiced on Wall Street and Bay Street is not one of them. When the executive director of a self-described “start-up” charity, which does little charitable work, thinks they should get a \$90,000 salary which may be comparable to another charity with millions in revenue something is quite wrong. They are receiving an excessive benefit and may have their charitable status revoked. This is by no means a common problem, but we occasionally read about it in the papers and it seems that CRA is putting out a caution here.];

7. The CRA has an excellent few paragraphs on **volunteering** including the following:

Contributions of volunteers and voluntary contributions of resources may reduce the costs of fundraising and may not be apparent from a financial analysis of the activity. Use of volunteers and voluntary contributions demonstrates a commitment to minimizing the expenses associated with fundraising activities and may be taken into consideration when assessing a charity's fundraising activities.

[Some professional fundraisers have a real chip on their shoulder when it comes to volunteers. They consider them competition and not “professional”. They resent any suggestion that charities make more use of volunteers. They consider this as a threat to their jobs. Fortunately, this is only a small number of fundraisers. In most charities, where there are no staff or a small number of staff, those responsible for fundraising work closely with volunteers. In many bigger charities volunteers are used extensively to compliment the professional fundraisers. Charities should maximize the resources they are able to deploy. If you have a pool of people who are interested in volunteering and they have skills you should make use of

them. Many volunteers have very valuable experience and also loyalty to the organization. Use of more volunteers does not mean that charities should reduce staff – only that with the resources they have, the charity will be able to do more whether fundraising, administration or charitable programs. There is nothing wrong with paying fundraisers, and for organizations with highly skilled fundraisers that raise a lot of money, to pay fundraisers well. Professional fundraisers, whether employed or contracted, can provide skills, energy, focus, discipline to fundraising. However we should also remember that despite the egos of some fundraisers it is the charity and its good work that is raising money and the donor that is contributing to the organization. As well as many major gifts take years of stewardship to arrange it is the collective work of many people that usually results in the gift, not only one great fundraiser.];

8. With respect to **Oversight**, Control, Management and Supervision of Fundraising, CRA suggests that charities should take “reasonable steps, proportionate to the amount and type of fundraising being done, to oversee its fundraising.” They continue on to say: “Whether it is carried out as a staff function or contracted out to third parties, fundraising oversight measures to be considered include:

- establishment of *fundraising policies* setting out acceptable and prohibited fundraising practices;
- pre-approval of fundraising solicitation *scripts* or other representations;
- regular monitoring of the *receipting* process;
- periodic *financial analysis* of the quantity of resources being devoted to fundraising in comparison with the resources being devoted to other aspects of the charity's work;
- use of *internal audits* to review expenditures and revenues;
- exercising *contractual rights* to review or audit the financial and other records of the work done by any third party;
- *follow-up with stakeholders* to confirm what representations were made, fulfillment of undertakings (such as donor requests for

designation of funds to a specific purpose), and general satisfaction.

9. CRA is encouraging, without requiring, more **disclosure** on fundraising saying that:

The CRA does not require any specific disclosures related to fundraising and financial information other than the data included on the public portion of the T3010A. However, the CRA does examine what information is publicly disclosed by a registered charity in assessing the risk of regulatory non-compliance by a charity in its fundraising conduct, and in determining whether it has acted reasonably and prudently in how it has undertaken its fundraising. The CRA is not concerned with the source of the transparency—that is, if it is imposed by an authority other than the CRA or done voluntarily—it considers only its effect.

Reading further, CRA is encouraging charities to provide comprehensive disclosure and transparency on fundraising:

The CRA encourages 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. Lack of transparency or inaccurate information may erode trust in charities and undermine the broad public policy objective of supporting the work of registered charities through the tax system.

Charities that solicit donations from the public need to provide greater disclosure than charities who only solicit from members or government. CRA also advises that “more disclosure is generally needed where fundraisers are paid than when they are volunteers.”

CRA makes these specific recommendations with respect to transparency:

The following specific measures are indicators of a charity's commitment to transparency:

- the extent of public disclosure of fundraising costs and revenues in financial information released by the charity, including but not limited to its T3010A annual information returns;
- 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;
- 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 what 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.

10.CRA recommends that in most cases distributing information on fundraising practices would be best done through the organizations **website**:

Where information is presented in a way that makes it obscure or difficult to find, or when requirements for obtaining it are not reasonable, it is not considered accessible. Disclosure should include all relevant information. Material should never be withheld to prejudice or preclude conclusions being drawn from the disclosure. For instance, reporting net fundraising revenues without reporting on fundraising expenses is not considered making information fully accessible.

11.In terms of specific content for **disclosure** CRA suggests that a charity “may” wish to consider disclosing, in addition to the T3010, certain information before and during a solicitation and then further information after completing a fundraising campaign.

During or before a solicitation (in written campaign materials or as part of requests made for funds):

- the estimated fundraising costs and revenues included in its annual budget;
- any revision of budgeted fundraising costs and revenues based on actual performance;
- 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;
- 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 expenses incurred during the fundraising; and
- if the fundraising is being done internally, how performance of fundraisers is assessed and on what criteria compensation increases are determined.

After completion of a fundraising initiative or campaign or when financial information for a fiscal period is released by the charity (on the Web site or in an annual report, financial statements, or other published materials):

- 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 T3010A annual return other than fundraising expenditures and/or 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.

12. Cause related marketing (for example having the charity logo on a cereal box where the charity receives some funds from the cereal manufacturer for every box sold) is generally exempt from this policy. It does not matter that the charity is only getting five cents on the sale of a four dollar cereal box as long as “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.” The policy sets out details of the suggested disclosure.

Concerns about the Fundraising Consultation and Background Document

There have been a number of criticisms of the consultation policy that I will discuss below.

Length

The first criticism is that it is lengthy; it is about 35 pages in all. I think it is easy to have a short policy, however, you would not be acknowledging the complexity and diversity of the sector or providing much by way of useful guidance. Fundraising and revenue generation are important topics for charities, as it is important that charities have greater certainty in understanding their obligations. Many fundraisers work full time in the area and spending a few hours reading the consultation documents is a worthwhile activity.

Discriminates Against Certain Types of Fundraising

Some have noted that certain types of fundraising will now be frowned upon; this is true. However, I think that is in part the purpose of the policy. Yes you may be accosted with fewer charities selling chocolate bars for three dollars where the charity only receives fifty cents. Yes some charities may have to think carefully about having expensive special event fundraisers that raise little to no funds. If you have ten fundraising events, then your charity may be able to have a program that costs \$80,000 to raise \$100,000. But if you are only going to have one fundraiser may be you should try a different approach. If fundraising through direct mail is costing a lot and you are achieving little, then maybe a charity should be reviewing it. If you

are thinking of entering into a contract where the charity pays a percentage of funds raised, then maybe you should think again. If you are hiring a third party fundraiser, your brother, and your brother, who is a really nice guy, is getting 75% of the funds raised then this will be a problem. I see some concerns from direct marketing fundraisers who are concerned that charities may scale back on fundraising letters or telephone cold calling. I see far more concern from professional advisors and businesses that do fundraising about the Fundraising Consultation than I see from charities themselves. What I don't understand, and I will discuss below, is why certain types of fundraising, like lotteries, are given special exemptions which will encourage charities to use them, even though there are numerous public policy concerns about their use.

Phase-In

There is no phase-in of the policy and it is effective immediately. In essence it is a codification of CRA's current views. Some have criticized the immediate implementation of the policy and suggested if the policy is adopted that the policy be phased in over a year or two or longer. Although CRA may decide to have a phase-in period, perhaps even only for the grid, I don't think that a phase-in period is necessary or for that matter desirable. I think that an argument can be made that if you have a long phase-in period that it unfairly hurts charities that have been avoiding prohibited or unacceptable fundraising practices and provides more time for some charities to continue their conduct.

The Grid

There are lots of criticisms of the grid. Some are knee jerk reactions and some are more reasoned. There are a large number of high cost fundraising businesses that are not only praying CRA drops the fundraising policy, or at a minimum the grid, but also working very hard behind the scenes to undermine the grid. I think the idea of a grid is good. The grid is really the teeth of the policy. Many critics of the grid would rather have a fundraising policy that only has gums! Because the grid has merit does not mean it is perfect and that it does not need to be tweaked.

My main concerns with the grid are three fold:

Free Pass

First, the grid seems to imply that if you are spending less than 20% you are “acceptable”. I think that it should be clear that the factors in paragraph 11 (conduct decreasing risk), 12 (conduct increasing risk) and 13 (other circumstances) should apply whether or not a charity is in the “acceptable” range of the grid. In fact many organizations have historically spent 10-15% on fundraising, and they should not see this as a license to throw a few really expensive special events or to enter into a contract that provides lots of compensation to their relatives. Under 20% should not be seen as a pass to allow all sorts of unethical fundraising activities. The staff and board of an organization that is spending 13% on fundraising should be diligently thinking of how it can raise more funds and only be spending 12% on fundraising activities! Furthermore, some organizations, who for example receive 100% of their funding from receipted donations, if they are spending consistently 19% on fundraising, 10% on administration, will not over the long term be able to meet their disbursement quota. Keep in mind that this grid is referring only to fundraising costs and not administration expenses which are another inevitable cost of running a good charity. So if a charity raises \$1 million dollars by private donations, of which \$199,000 is spent on fundraising, that is “acceptable”. The charity may also be spending another 10-15% on administrative costs; therefore, the charity is *only* spending 65-70% on program activities. I think that many donors, perhaps unreasonably, will be expecting charities to be spending far less on administration and fundraising than that.

The 65-70% on charitable activities is more in line with the real costs of running many charities. I think that CRA is probably being more generous than many donors, foundations or members of the public would be. CRA’s fundraising policy is being more generous, than the assumptions contained in the disbursement quota. After all, if a charity receives only revenue from regular donations it needs to spend 80% the following year on programs, not 65% or 70%. Some of the confusion surrounding the policy, I think, is that many people think that the grid relates to “overhead” ie. both fundraising and administrative costs, which it does not.

Inclusions and Exclusions

My second concern is with respect to why some revenue and expenses are included or excluded from the grid. Although revenue from governments

and foundations can be viewed as different to soliciting funds from the public at large, we must realize that for many charities that receive a large amount of public funds or foundation funds, the grid is only looking at a very small part of the revenue/expenditures. Practically, this means that charities that receive grants and contributions from government do not include the revenue from the grants and the cost of obtaining the grants. It will mean that for many organizations with large amounts of grants and contributions that are not counted as revenue, the 'fundraising' component of the revenue may not provide a realistic view of the charity. Furthermore, some charities to reduce fundraising costs had ventured into trying to obtain grants from government and foundations but under the grid this will not help. Unfortunately, because the definition of fundraising revenue is so narrow, the grid for many charities will actually provide little useful information to a donor. Take for example a charity with revenue of \$1 million of which 95% comes from government and 5% from "fundraising". Do donors only care about how \$50,000 of the \$1 million budget is raised? Or do they care more about the cost of raising the \$1million in total? The grid as currently constituted if it is applied to many charities with excluded income then provides little to no useful information for a donor and is really only a tool to be used by CRA and the charity. For other charities that raise all their funds from fundraising from individuals it will provide more useful information. Another concern is the removal of lotteries and gaming from the equation which benefits some charities that use lotteries and gaming. From a public policy point of view, I am not sure if CRA should be encouraging more fundraising with lotteries and gaming, where the fundraising costs is very high but it is not included in the grid. The grid does not cover situations when a charity's fundraising is made to be low by shifting expenses to another entity. What about organizations other than the registered charity paying for expenses? Charities should disclose if another entity or person is paying a part of the fundraising or administrative costs which makes the charities numbers look artificially good and is misleading. This will put in context some claims that 100% of your donation is spent on programming!

Single Fiscal Year

My third concern is that the grid only applies to one single fiscal year at a time. This may be understandable with a charity that has only been around for a year (a "start-up") but perhaps with charities that have a longer record of fundraising CRA should look at a grid with 2-3 years. In fact, much

fundraising happens over a multi-year timeline, and donors do not donate based on the fiscal year of a charity – they donate when it is convenient for them, when they are inspired or in December so that they can use the receipt for next year’s taxes. The big problem with, for example, working on a five year average is that it means that a ‘start-up’ can run a fundraising program at 90% costs for 5 years before CRA would be able under the policy to do anything about it and this is not what most people want. It is not only the grid but also the disbursement quota that disadvantages multi-year fundraising.

Other Criticisms of the Grid

Some have criticized the grid as “arbitrary”. After all, it has various percentages and obviously reasonable people could disagree about whether “rarely acceptable” should be at 70% or perhaps lower at 65% or higher at 75%. I do not fully agree with the notion that the grid is arbitrary. I think it provides a good approximation of how CRA will view fundraising cost to fundraising revenue. These numbers which provide a guide to CRA were not arrived at by chance or whim. They reflect a preference for lower fundraising costs. I think almost everyone agrees that charities raising funds in a manner that costs less and leaves more for charitable activities is generally a good and desirable thing especially since Canadian taxpayers are subsidizing charities and we are all concerned that charities are successful at what they do.

There have been a number of open letters to CRA including one combined letter from Imagine Canada, AFP and Health Charities of Canada Coalition, and they cite a number of problems with the grid, some of which I will discuss below, namely that the grid:

- 1) “**encourages oversimplification**” – they are concerned that the media will focus on the grid and ignore legitimate reasons why some organizations have higher fundraising costs and worthy charities will be “punished”. It is true that fundraising is complicated. As well looking at a calculation which only reflects costs of fundraising to the revenue raised does not provide a whole view of the charity or its fundraising. Anyone after all with a T3010 and a calculator can do this. Although the grid may not be perfect, these organizations and many other critics of the grid are not suggesting any other way to catch problems like the charity that consistently spends 75% of what it takes in on fundraising and let other charities through. Their response to

CRA: “Your request for suggestions for specific wording changes has been passed on to our constituents, and we have encouraged them to respond individually.” In other words, these organizations seem to be saying that after six months they were not able to propose an alternative that they all agreed on. This is not difficult to understand as some of these organizations have broad membership with very different interests. The critics so far have not suggested an alternative other than the status quo. They do not like the grid, but many of them may be prepared to say that something is very wrong when a charity consistently spends 70-100% on fundraising and then after administrative expenses only perhaps 1-20% on charitable programs. We need to remember that high fundraising costs are not a bad thing if you are in a for-profit fundraising business!

2) **focuses on efficiency versus effectiveness** – they argue that the grid emphasizes low cost of fundraising and efficiency over diversity of sources of revenue. Although a large gift from one donor, rather than from a “broad and sustainable base”, may be more efficient, it may result in a charity being overly reliant on a donor with the attendant risks. Most charities court both major and minor donors – the major donors are often demanding and give gifts with strings attached while smaller donors are more likely to give unrestricted funds, which are often more valuable to a charity. The smaller donor this year may contribute a lot next year whether by volunteering or by making a major donation. I do not think the existence of the grid is going to make much difference in this regard. Charities should diversify their fundraising, and with this policy they should be looking at lower cost fundraising and more economical types of fundraising to raise more funds.

3) **discourages civic engagement because gifts from smaller donors are “inherently inefficient”**. This is an interesting argument. The *Income Tax Act* is very regressive when it comes to supporting average people and their charitable donations. There is far less benefit for the first \$200 of donations, and we heap on the tax incentives for donations of appreciated stock and private foundations which provides disproportionate benefits to the wealthy. If we want to encourage average Canadians to donate more, the *Income Tax Act* should give greater incentives for say the first \$500 in donations and less thereafter. In the political realm where we want to encourage donations by a broader group of citizens, this is already happening. Many organizations a long time ago have moved more into major gifts and less into \$10 contributions because the cost in some cases of stewarding and processing the \$10 gift may be more than the value of the gift. Perhaps as we start to

realize how important charities are to our country we will become a little more concerned with how some major donations may push charities in a direction proposed by a specific donor that is not beneficial to the charity or society. However, this issue and tension will exist whether or not we have the grid. Are these organizations actively pushing for changes to the *Income Tax Act* that gives the small donor more of a tax benefit for their donation? Or are they pushing for changes that will disproportionately benefit wealthy donors?

4) **promotes a one size fits all approach** and that charities are different sizes, have different missions, different abilities in fundraising and different challenges in raising funds. One of the main reasons that the policy is so lengthy is that it touches on extenuating circumstances that may only apply to a small number of charities or certain charities at certain stages, and it goes into tremendous detail to give guidance to charities. There is one *Income Tax Act* in Canada which applies to 33 million Canadians. There is no reason why there cannot be one fundraising policy for 83,000 charities. CRA has gone out of its way to try to incorporate previous comments they have received to cover different situations. As discussed before, many smaller charities will not be impacted at all by the policy and the vast majority of charities are either compliant or can easily become compliant.

In the Background Document, it provides:

There are a number of circumstances faced by charities that may cause them to perform less well in an assessment of whether their fundraising is unacceptable. The CRA recognizes that, given the breadth and range of fundraising done by registered charities, in some circumstances applying a strict assessment may result in an unfair result. Where a charity can show that in its circumstances it is not fair to apply a strict assessment, the CRA may permit higher costs or tolerate conduct that would otherwise be unacceptable. Where the CRA agrees to permit inordinate costs or tolerate otherwise unacceptable conduct, doing so will be based, among other things, on the charity taking reasonable steps to ensure that donors or the public are not misled about the use of their contributions. The charity must adequately disclose costs and revenues and ensure all statements made during solicitations are truthful, accurate, fair, and complete.

The one size fits all criticism really comes down to some people consciously or subconsciously believing that their charity or every charity is not only unique, but ‘uniquely unique’. Although they may profess to support the policy and CRA’s involvement in providing clarifications they do not want the policy to be an enforceable standard and it should not have teeth. Their pet charity or their client who has high fundraising costs should not be inconvenienced or threatened. Donors generally do not share this perspective.

The CRA Consultation on proposed policy on fundraising and the Background Document in my opinion has been carefully thought through by CRA to deal with both the complexities of the subject and also to incorporate suggestions from charities. It may have taken CRA a few years to put out the policy but they should be commended for doing so – especially since everyone knew that if it had any teeth there would be critics. The policy on fundraising is a good document that provides helpful guidance to charities about fundraising activities and programs. CRA will hopefully incorporate further suggestions from the charitable sector, but keep the teeth in the policy, to keep out the bad apples and continue to provide good guidance to the vast majority of hardworking charities that want to do the right thing.

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