
THE CANADIAN ASSOCIATION OF GIFT PLANNERS
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**LOOKING A GIFT HORSE IN THE MOUTH –
LEGAL LIABILITIES IN FUNDRAISING**

(Current to March 22, 2004)

APPENDIXES

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APPENDIX 1
**The Ethical Fundraising &
Financial Accountability Code**
by the Canadian Centre for Philanthropy



Canadian Centre for Philanthropy
Le Centre canadien de philanthropie

THE ETHICAL FUNDRAISING AND FINANCIAL ACCOUNTABILITY CODE

Introduction

This Ethical Fundraising & Financial Accountability Code has been developed by the Canadian Centre for Philanthropy, in consultation with charity leaders throughout Canada. Its primary purpose is to assure donors of the integrity and accountability of charities that solicit and receive their financial support.

Charities that adopt this Ethical Fundraising & Financial Accountability Code commit to fundraising practices that respect donors' rights to truthful information and to privacy. They also commit to manage responsibly the funds that donors entrust to them, and to report their financial affairs accurately and completely.

Donors or prospective donors who have questions or concerns about fundraising activities should contact the charity on whose behalf the funds are being solicited. Charities that adopt the Ethical Fundraising & Financial Accountability Code are committed to deal with such queries promptly and fairly. The Charities Division of the Canada Customs and Revenue Agency (CCRA) also provides information and receives complaints about registered charities at 1-800-267-2384.

This Ethical Fundraising & Financial Accountability Code complements the professional codes of ethics and standards of practice to which many fundraisers individually adhere (such as those of the Association of Fundraising Professionals, the Association for Healthcare Philanthropy, the Canadian Association of Gift Planners, and other national, provincial or sectoral organizations).

N.B.: There are some forms of revenue-raising for which official receipts are not issued for income tax purposes (for example, charitable gaming transactions, proceeds from product sales, affinity card or product fees, and fair market value charges for charitable benefits, tournaments, banquets, events or activities). These activities may be governed by specific legal requirements and/or involve additional ethical considerations that are not addressed in this Ethical Fundraising & Financial Accountability Code.



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In order to be recognized by the Canadian Centre for Philanthropy as having adopted this Ethical Fundraising & Financial Accountability Code, a charity's governing board must pass the following motion as a formal resolution:

"[Name of charity] hereby adopts the Canadian Centre for Philanthropy's Ethical Fundraising and Financial Accountability Code as its policy. In so doing, members of the governing board commit to being responsible custodians of donated funds, to exercise due care concerning the governance of fundraising and financial reporting, and to ensure to the best of their ability that the organization adheres to the provisions of the Code. It is hereby confirmed that each member of the governing board has received a copy of the Ethical Fundraising & Financial Accountability Code and that a copy will also be provided to each person who is subsequently elected to the governing board."

Charities that adopt the Code may be added to the list on the Centre website by completing the registration form at www.ccp.ca or by contacting:

Canadian Centre for Philanthropy
425 University Avenue, Suite 700,
Toronto, Ontario M5G 1T6
Fax: (416) 597-2294; E-mail: code@ccp.ca

A. Donors' Rights

1. All donors (individuals, corporations, and foundations) are entitled to receive an official receipt for income tax purposes for the amount of the donation. Donors of non-monetary eligible gifts (or gifts-in-kind) are entitled to receive an official receipt that reflects the fair market value of the gift. (Note: The term "Eligible gifts" is comprehensively defined by CCRA. A full definition can be found in CCRA's Interpretation Bulletin dealing with gifts and official donation receipts.¹ Some common gifts, such as donations of volunteer time, services, etc. are not eligible to receive official tax receipts.) The charity's governing board may establish a minimum amount for the automatic issuance of receipts, in which case smaller donations will be receipted only upon request.



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2. All fundraising solicitations by or on behalf of the charity will disclose the charity's name and the purpose for which funds are requested. Printed solicitations (however transmitted) will also include its address or other contact information.
3. Donors and prospective donors are entitled to the following, promptly upon request:
 - the charity's most recent annual report and financial statements as approved by the governing board;
 - the charity's registration number (BN) as assigned by CCRA;
 - any information contained in the public portion of the charity's most recent Charity Information Return (form T3010) as submitted to CCRA;
 - a list of the names of the members of the charity's governing board; and
 - a copy of this Ethical Fundraising & Financial Accountability Code.
4. Donors and prospective donors are entitled to know, upon request, whether an individual soliciting funds on behalf of the charity is a volunteer, an employee, or a hired solicitor.
5. Donors will be encouraged to seek independent advice if the charity has any reason to believe that a proposed gift might significantly affect the donor's financial position, taxable income, or relationship with other family members.
6. Donors' requests to remain anonymous will be respected.
7. The privacy of donors will be respected. Any donor records that are maintained by the charity will be kept confidential to the greatest extent possible. Donors have the right to see their own donor record, and to challenge its accuracy.



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8. If the charity exchanges, rents, or otherwise shares its fundraising list with other organizations, a donor's request to be excluded from the list will be honoured.

9. Donors and prospective donors will be treated with respect. Every effort will be made to honour their requests to:
 - limit the frequency of solicitations;
 - not be solicited by telephone or other technology; and
 - receive printed material concerning the charity.

10. The charity will respond promptly to a complaint by a donor or prospective donor about any matter that is addressed in this Ethical Fundraising & Financial Accountability Code. A designated staff member or volunteer will attempt to satisfy the complainant's concerns in the first instance. A complainant who remains dissatisfied will be informed that he/she may appeal in writing to the charity's governing board or its designate, and will be advised in writing of the disposition of the appeal. A complainant who is still dissatisfied will be informed that he/she may notify the Canadian Centre for Philanthropy in writing.

B. Fundraising Practices

1. Fundraising solicitations on behalf of the charity will:
 - be truthful;
 - accurately describe the charity's activities and the intended use of donated funds; and
 - respect the dignity and privacy of those who benefit from the charity's activities.



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2. Volunteers, employees and hired solicitors who solicit or receive funds on behalf of the charity shall:
 - adhere to the provisions of this Ethical Fundraising & Financial Accountability Code;
 - act with fairness, integrity, and in accordance with all applicable laws;
 - adhere to the provisions of applicable professional codes of ethics, standards of practice, etc.;
 - cease solicitation of a prospective donor who identifies the solicitation as harassment or undue pressure;
 - disclose immediately to the charity any actual or apparent conflict of interest; and
 - not accept donations for purposes that are inconsistent with the charity's objects or mission.
3. Paid fundraisers, whether staff or consultants, will be compensated by a salary, retainer or fee, and will not be paid finders' fees, commissions or other payments based on either the number of gifts received or the value of funds raised. Compensation policies for fundraisers, including performance-based compensation practices (such as salary increases or bonuses) will be consistent with the charity's policies and practices that apply to non-fundraising personnel.
4. The charity will not sell its donor list. If applicable, any rental, exchange or other sharing of the charity's donor list will exclude the names of donors who have so requested (as provided in section A8, above). If a list of the charity's donors is exchanged, rented or otherwise shared with another organization, such sharing will be for a specified period of time and a specified purpose.
5. The charity's governing board will be informed at least annually of the number, type and disposition of complaints received from donors or prospective donors about matters that are addressed in this Ethical Fundraising & Financial Accountability Code.



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C. Financial Accountability

1. The charity's financial affairs will be conducted in a responsible manner, consistent with the ethical obligations of stewardship and the legal requirements of provincial and federal regulators.
2. All donations will be used to support the charity's objects, as registered with CCRA.
3. All restricted or designated donations will be used for the purposes for which they are given. If necessary due to program or organizational changes, alternative uses will be discussed where possible with the donor or the donor's legal designate. If the donor is deceased or legally incompetent and the charity is unable to contact a legal designate, the donation will be used in a manner that is as consistent as possible with the donor's original intent.
4. Annual financial reports will:
be factual and accurate in all material respects; disclose:
 - the total amount of fundraising revenues (receipted and non-receipted)²;
 - the total amount of fundraising expenses (including salaries and overhead costs)³;
 - the total amount of donations that are receipted for income tax purposes (excluding bequests, endowed donations that cannot be expended for at least 10 years, and gifts from other charities)⁴;
 - the total amount of expenditures on charitable activities (including gifts to other charities)⁵;
 - identify government grants and contributions separately from other donations; and
 - be prepared in accordance with generally accepted accounting principles and standards established by the Canadian Institute of Chartered Accountants, in all material respects.



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5. No more will be spent on administration and fundraising than is required to ensure effective management and resource development. In any event, the charity will meet or exceed CCRA's requirement for expenditures on charitable activities. (The *Income Tax Act* sets out a requirement that all registered charities spend 80% of their receipted donations from the previous taxation year – excluding bequests, endowed donations that cannot be expended for at least 10 years, and gifts from other charities – on charitable activities; in addition, charitable foundations are required to expend 4.5% of their assets in support of charitable programs.⁶)
6. The cost-effectiveness of the charity's fundraising program will be reviewed regularly by the governing board.

Footnotes:

1. Currently, "Eligible Gifts" are defined in IT110R3 Gifts and Official Donation Receipts.
2. Total of amounts from lines 100, 102 and 113 of T3010 (CCRA's Registered Charity Information Return, 2001).
3. Amount from line 123 of T3010 (2001)
4. Amount from line 906 of T3010 (2001)
5. Total of amounts from lines 120 and 121 of T3010 (2001)
6. See Section 149.1 of the *Income Tax Act*.

APPENDIX 2

A Donor's Bill of Rights

**by the American Association of Fund Raising Counsel, Association for
Health Care Philanthropy, Council for Advancement and Support of
Education and Association of Fundraising Professionals**

A Donor Bill of Rights

PHILANTHROPY is based on voluntary action for the common good. It is a tradition of giving and sharing that is primary to the quality of life. To assure that philanthropy merits the respect and trust of the general public, and that donors and prospective donors can have full confidence in the not-for-profit organizations and causes they are asked to support, we declare that all donors have these rights:

I.

To be informed of the organization's mission, of the way the organization intends to use donated resources, and of its capacity to use donations effectively for their intended purposes.

II.

To be informed of the identity of those serving on the organization's governing board, and to expect the board to exercise prudent judgement in its stewardship responsibilities.

III.

To have access to the organization's most recent financial statements.

IV.

To be assured their gifts will be used for the purposes for which they were given.

V.

To receive appropriate acknowledgement and recognition.

VI.

To be assured that information about their donations is handled with respect and with confidentiality to the extent provided by law.

VII.

To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature.

VIII.

To be informed whether those seeking donations are volunteers, employees of the organization or hired solicitors.

IX.

To have the opportunity for their names to be deleted from mailing lists that an organization may intend to share.

X.

To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.

DEVELOPED BY

AMERICAN ASSOCIATION OF FUND RAISING COUNSEL (AAFRC)
ASSOCIATION FOR HEALTHCARE PHILANTHROPY (AHP)
COUNCIL FOR ADVANCEMENT AND SUPPORT OF EDUCATION (CASE)
ASSOCIATION OF FUNDRAISING PROFESSIONALS (AFP)

ENDORSED BY

(IN FORMATION)
INDEPENDENT SECTOR
NATIONAL CATHOLIC DEVELOPMENT CONFERENCE (NCDC)
NATIONAL COMMITTEE ON PLANNED GIVING (NCPG)
COUNCIL FOR RESOURCE DEVELOPMENT (CRD)
UNITED WAY OF AMERICA

APPENDIX 3
Code of Ethical Principles and Standards of
Professional Practice
by the Association of Fundraising Professionals

**Association of
Fundraising Professionals**

**CODE OF ETHICAL PRINCIPLES
AND
STANDARDS OF
PROFESSIONAL PRACTICE**



Preface

The Standards of Professional Practice, as revised and approved by the AFP Board of Directors and ratified by the Delegate Assembly, are a part of and are incorporated into AFP's Code of Ethical Principles.

This Code applies to AFP members and those holding certifications granted or sponsored by AFP while they are engaged in raising charitable gifts for philanthropic, nonprofit organizations.

The following guidelines are provided to assist AFP members and others in interpreting and using the Code of Ethical Principles and Standards of Professional Practice. They are intended only as suggestions to help guide thinking about ethical behavior and not as prescriptions for all possible situations.

By its nature, this list of guidelines is an evolving document. It is subject to revision and will reflect practice, laws and regulations as they change. Members are encouraged to use the AFP Fundraising Resource Center for additional information as they encounter ethical predicaments.

The AFP Ethics Committee will respond to specific questions upon request. Please submit inquiries, marked "Confidential," directly to the AFP President and CEO.

The committee welcomes examples and suggestions that might further clarify the Code. Please send them to the President and CEO.

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AFP Code of Ethical Principles and Standards of Professional Practice

STATEMENT OF ETHICAL PRINCIPLES

Adopted 1964; amended October 1999

The Association of Fundraising Professionals (AFP) exists to foster the development and growth of fundraising professionals and the profession, to promote high ethical standards in the fundraising profession and to preserve and enhance philanthropy and volunteerism.

Members of AFP are motivated by an inner drive to improve the quality of life through the causes they serve. They serve the ideal of philanthropy; are committed to the preservation and enhancement of volunteerism; and hold stewardship of these concepts as the overriding principle of their professional life. They recognize their responsibility to ensure that needed resources are vigorously and ethically sought and that the intent of the donor is honestly fulfilled. To these ends, AFP members embrace certain values that they strive to uphold in performing their responsibilities for generating charitable support.

AFP members aspire to:

- practice their profession with integrity, honesty, truthfulness and adherence to the absolute obligation to safeguard the public trust;
- act according to the highest standards and visions of their organization, profession and conscience;
- put philanthropic mission above personal gain;
- inspire others through their own sense of dedication and high purpose;
- improve their professional knowledge and skills, so that their performance will better serve others;
- demonstrate concern for the interests and well-being of individuals affected by their actions;
- value the privacy, freedom of choice and interests of all those affected by their actions;
- foster cultural diversity and pluralistic values, and treat all people with dignity and respect;
- affirm, through personal giving, a commitment to philanthropy and its role in society;
- adhere to the spirit as well as the letter of all applicable laws and regulations;
- advocate within their organizations, adherence to all applicable laws and regulations;
- avoid even the appearance of any criminal offense or professional misconduct;
- bring credit to the fund-raising profession by their public demeanor;
- encourage colleagues to embrace and practice these ethical principles and standards of professional practice; and
- be aware of the codes of ethics promulgated by other professional organizations that serve philanthropy.

STANDARDS OF PROFESSIONAL PRACTICE

Furthermore, while striving to act according to the above values, AFP members agree to abide by the AFP Standards of Professional Practice, which are adopted and incorporated into the AFP Code of Ethical Principles. Violation of the Standards may subject the member to disciplinary sanctions, including expulsion, as provided in the AFP Ethics Enforcement Procedures.

Professional Obligations

1. Members shall not engage in activities that harm the members' organization, clients, or profession.
2. Members shall not engage in activities that conflict with their fiduciary, ethical, and legal obligations to their organizations and their clients.
3. Members shall effectively disclose all potential and actual conflicts of interest; such disclosure does not preclude or imply ethical impropriety.
4. Members shall not exploit any relationship with a donor, prospect, volunteer, or employee to the benefit of the members or the members' organizations.
5. Members shall comply with all applicable local, state, provincial, and federal civil and criminal laws.
6. Members recognize their individual boundaries of competence and are forthcoming and truthful about their professional experience and qualifications.

Solicitation and Use of Charitable Funds

7. Members shall take care to ensure that all solicitation materials are accurate and correctly reflect their organization's mission and use of solicited funds.
8. Members shall take care to ensure that donors receive informed, accurate, and ethical advice about the value and tax implications of potential gifts.
9. Members shall take care to ensure that contributions are used in accordance with donors' intentions.
10. Members shall take care to ensure proper stewardship of charitable contributions, including timely reports on the use and management of funds.
11. Members shall obtain explicit consent by the donor before altering the conditions of a gift.

Presentation of Information

12. Members shall not disclose privileged or confidential information to unauthorized parties.
13. Members shall adhere to the principle that all donor and prospect information created by, or on behalf of, an organization is the property of that organization and shall not be transferred or utilized except on behalf of that organization.
14. Members shall give donors the opportunity to have their names removed from lists that are sold to, rented to, or exchanged with other organizations.
15. Members shall, when stating fundraising results, use accurate and consistent accounting methods that conform to the appropriate guidelines adopted by the American Institute of Certified Public Accountants (AICPA)* for the type of organization involved. (* In countries outside of the United States, comparable authority should be utilized.)

Compensation

16. Members shall not accept compensation that is based on a percentage of charitable contributions; nor shall they accept finder's fees.
17. Members may accept performance-based compensation, such as bonuses, provided such bonuses are in accord with prevailing practices within the members' own organizations, and are not based on a percentage of charitable contributions.
18. Members shall not pay finder's fees, or commissions or percentage compensation based on charitable contributions, and shall take care to discourage their organizations from making such payments.

Amended October 1999

Standard No. 1

Members shall not engage in activities that harm the members' organization, clients, or profession.

Guidelines

- a. Members shall subscribe to and become advocates for the mission and goals of their organization.
- b. Members shall conduct their personal and professional lives recognizing that their actions represent the organizations by which they are employed.
- c. Members shall respect the wishes and needs of constituents, and do nothing that would negatively impact their social, professional, or economic well-being.

Examples of *Ethical* Practice:

1. Refusing to participate in activities contrary to the organization's mission and goals.
2. Providing accurate and complete information to constituents regarding projects, programs, or other activities that they might support or endorse.
3. Maintaining one's education in philanthropy and fundraising best practices to convey appropriate advice to constituents, the community, and the public.

Examples of *UnEthical* Practice:

1. Conveying false or exaggerated information.
2. Neglecting to complete a transaction involving a gift or pledge as promised.
3. Ignoring unethical practices of others and not reporting same to organizational leadership or appropriate authorities (e.g., Legal, AFP, etc.)
4. Making public comments that are derogatory about leadership or organizational activities.

Standard No. 2

Members shall not engage in activities that conflict with their fiduciary, ethical, and legal obligations to their organizations and their clients.

Guidelines

- a. Members shall take care to assure that all legally binding gift planning obligations they propose are prepared or approved by qualified legal counsel.
- b. Members shall urge their clients to seek independent, qualified counsel in regard to any legal or fiduciary obligation that a member proposes.
- c. Members shall make every reasonable effort to assure that their organization's fiduciary obligations are held to the highest ethical standard and conform to applicable law.
- d. Members shall make every reasonable effort to assure that third party organizations that are appointed to carry out fiduciary obligations on behalf of their organization are held to the highest standard.

Examples of *Ethical* Practice:

1. Knowing and, if necessary, informing organizational leadership and/or organizational clients of applicable ethical and legal fiduciary practices.
2. Being prepared to inform appropriate organizational leadership of any illegal practices in which their organization may be participating.
3. Developing internal gift acceptance and stewardship policies that address the legal and fiduciary obligations of member's organization.

Examples of *UnEthical* Practice:

1. Failing to seek legal counsel in the drafting of legal contracts (e.g., pledge, endowment, or gift annuity agreements) that are proposed to others.
2. Failing to urge others to seek independent legal and/or professional tax counsel in regard to planned giving arrangements.
3. Ignoring known illegal practices of the member's organization.
4. Encouraging others to engage in unethical or illegal gift transactions.

Standard No. 3

Members shall effectively disclose all potential and actual conflicts of interest; such disclosure does not preclude or imply ethical impropriety.

Guidelines

- a. Members establish a clear understanding between themselves and their organizations regarding the extent to which members are permitted to engage in outside consulting.
- b. Members disclose if they or a member of their immediate family have a material interest in a current or potential vendor firm.
- c. Members disclose any formal relationship they may have with a donor.
- d. Members encourage their organizations to adopt policies on conflict of interest.
- e. Members understand that effective disclosure includes the sharing of sufficient information to adequately explain the facts so that persons or entities who might be affected by such possible conflicts of interest can make informed decisions.
- f. Members understand the provisions of the IRS "Intermediate Sanctions" regulations in the U.S., or their equivalent in other countries, that apply to persons associated with nonprofit organizations who might also benefit from business or commercial arrangements with the organization.

Examples of *Ethical* Practice:

1. Making sure there is agreement upon the amount of time per month that can be devoted to private consulting, and putting that agreement in writing.
2. Refusing to engage a consulting firm seeking to direct the member's organizational capital campaign after a fundraising staff member reports an offer from that firm of a position once the campaign ends.
3. Refusing to accept appointment as an executor or personal representative of a donor's estate.

Examples of *UnEthical* Practice:

1. Failing to report to one's employer knowledge of being a beneficiary of a donor's estate plan.
2. Holding an ownership interest in a vendor firm that provides products to one's employer without reporting such interest to the organization's leadership.

Standard No. 4

Members shall not exploit any relationship with a donor, prospect, volunteer, or employee for the benefit of the member or the member's organization.

Guidelines

- a. Exploitation in this context includes:
 - (1) taking advantage of, or making use of, another person for one's own ends;
 - (2) encouraging another person to take action that is to the person's disadvantage or to the disadvantage of that person's family; and,
 - (3) encouraging another person to action that would seem, to the reasonable person, contrary to the best interest(s) of the person so encouraged.
- b. Members assure that the compelling purpose of gift planning is to ensure that the wishes of the donor or the donor's representative are carried out, and that the organization receiving the gift provides services to constituents that are meaningful to the donor.

Examples of *Ethical* Practice:

1. Informing donors and prospects that the member is acting in a professional capacity with the express intent of relating the mission and goals of the member's organization to the individual in the hope that the individual will be influenced to accept the value of financial support to the member's organization.
2. Encouraging a donor or prospect to seek independent professional advice when including the member's organization in the individual's estate plans.
3. Encouraging a donor or prospect to inform his or her family of the intent to include the member's organization in the individual's estate plans.
4. Refusing to participate in the structuring of contributions by any prospect or donor who, to the reasonable person, is incapable of making an independent, informed decision.

Examples of *UnEthical* Practice:

1. Influencing a donor or prospect to arrange his or her affairs so that the member may personally benefit.
2. Manipulating a donor or prospect who is vulnerable because of age, handicap, infirmity, illness or emotional or physical impairment or dependence to arrange his or her affairs so that the member or member's organization becomes a beneficiary of the individual's estate or contributions plan.
3. Assuming the role of personal friend, confidant or caretaker in order to influence an individual to include the member or the member's organization in the individual's estate or contributions plan.
4. Accepting a gift of more than token value from a donor who became known to the member as a consequence of a member's current or past employment.
5. Using, or threatening to use, information detrimental to any person to coerce someone into any action that the individual would not otherwise willingly undertake.
6. Using, or threatening to use, status, position or power to coerce someone into any action that the individual would not otherwise willingly undertake.
7. Failing to provide on a regular basis, but not less than annually, information to donors who have made an open-ended pledge payable through electronic funds transfer, preauthorized checking, or similar program, which information discloses the status of the pledge and the procedure to change or cancel the obligation.

Standard No. 5

Members shall comply with all applicable local, state, provincial, and federal civil and criminal laws.

Guidelines

- a. Members recognize that compliance with applicable laws is a clear standard. Nevertheless, laws regarding fundraising are proliferating, and ethical practitioners, remembering the admonition that ignorance of the law is no excuse, must be alert to new laws.
- b. Members consult the legal counsel involved with their own organizations. Most nonprofit organizations have access to legal counsel, either paid or volunteer. Member consultants and suppliers of fundraising services also consult legal counsel regarding their contracts and practices.¹

Examples of *Ethical* Practice:

1. Undertaking personal responsibility for keeping up with changes in applicable laws and regulations.
2. Recognizing that one's employer may not be in compliance with applicable laws due to lack of knowledge, and bringing this to the attention of appropriate organizational leadership.
3. Ensuring that reports which are a part of regulatory requirements for which the member may have some responsibility are completed accurately and in a timely manner.
4. Maintaining appropriate licensure, registration, or certification requirements.

Examples of *UnEthical* Practice:

1. Having knowledge of a law or regulation, knowing one's organization is not in compliance, and choosing to ignore possible remedial action.
2. Completing reports that are a part of regulatory requirements inaccurately or in such a way as to distort fundraising results or costs.
3. Having knowledge of state requirements for consulting practice and failing to comply.

¹ The AFP Fundraising Resource Center has, in its collection, books and other publications that can be used for general guidance, but which are not substitutes for specific counsel.

Standard No. 6

Members recognize their individual boundaries of competence and are forthcoming and truthful about their professional experience and qualifications.

Guidelines

- a. Members state their professional qualifications in a manner that gives a clear and accurate picture of their skills, capabilities, levels of expertise, experience, performance, and credentials.
- b. Members clearly describe the parameters of their roles within the larger financial development efforts of any organization with which they have been affiliated.

Examples of *Ethical* Practice:

1. Being honest and above reproach concerning one's duties and responsibilities, and practicing an ethical approach to employment in the field.
2. Correcting any misstatement of one's education or experience, performance, and awards, even when not responsible for the error.

Examples of *UnEthical* Practice:

1. Inflating one's resume.
2. Exaggerating one's role in gift results.
3. Omitting from one's employment application short tenure or unsuccessful employment.
4. Taking credit for the work of others.
5. Indicating on one's resume or other materials that one is licensed or certified by a particular organization or state when one is not.

Standard No. 7

Members shall take care to ensure that all solicitation materials are accurate and correctly reflect their organization's mission and use of solicited funds.

Guidelines

- a. Members ensure, to the best of their ability, that the materials upon which individuals make decisions about support of the member's organization are direct and truthful. Such materials shall conform to fact and actuality and avoid obfuscation.
- b. Members are forthcoming and accurate when describing their organization's mission, needs, programs, goals, objectives, and achievements.

Examples of *Ethical* Practice:

1. Including in solicitation materials only statements that are accurate and facts that can be documented.
2. Omitting from solicitation materials information that may be confusing, inaccurate, or incapable of being documented.
3. Including in solicitation materials only those endorsements actually made by an individual or entity.

Examples of *UnEthical* Practice:

1. Misrepresenting the organization's mission: "The theater's mission is to make the performing arts available to all citizens of the city," when in actuality the price of admission excludes the economically disadvantaged and no free performances or scholarships are offered.
2. Misrepresenting facts to justify a case for support: "More than 20 homeless runaways are turned back on the streets every night," when, in fact, those 20 are absorbed by other agencies.
3. Misrepresenting the size, breadth and source of support in order to validate cause and case: "The overwhelming majority of neighborhood associations feel this need should be met," when, in fact, presentations at neighborhood association meetings elicited only head nodding from the majority of the audience.
4. Misrepresenting anticipated results in order to elicit an emotional response: "Your contribution will save a life" instead of, "You can help save a life."
5. Misrepresenting achievements.
6. Misrepresenting intent: "If we do not succeed in this campaign effort, we will have to close our doors," when partial success will allow for continuance albeit with reduced staff.
7. Misrepresenting philosophy: "We offer service to all needy citizens regardless of race, creed or ethnicity," when, in reality, choices are made along ethnic lines.
8. Misrepresenting facts about numbers of clients served, demographics of clients served, activities completed or programs planned.
9. Manipulating children, animals, the ill, the elderly, etc.: "The child in this picture was () and has a ninety percent chance of becoming a ()."
10. Creating mailings or other materials that mimic official government mailings or billing notices through deceptive appearance and content of materials.

Standard No. 8

Members shall take care to ensure that donors receive informed, accurate and ethical advice about the value and tax implications of potential gifts.

Guidelines

- a. Members with knowledge of the tax or ethical implications of a potential gift may advise the donor to the best of his or her knowledge. However, a member realizes the limit of his or her expertise and, as a result, should include other professionals in the process.
- b. Members always advise donors to seek the advice of their own independent counsel regarding tax and financial implications.
- c. Members are mindful of the implication of practicing law without a license when advising donors about legal instruments.
- d. Members do not draft legal instruments obligating donors and nonprofit organizations unless entitled to do so through the appropriate state licensure.
- e. Members relate the specific implications of gifts, providing the prospective donors have been told of the member's credentials (or lack thereof) and have been encouraged to seek their own independent counsel.
- f. Members ensure that appropriate forms are completed and filed in the event of noncash gifts. They also advise donors of these requirements, if applicable.

Examples of *Ethical* Practice:

1. Telling a donor that, to the best of one's knowledge, certain tax results are indicated in gift arrangements, but cautioning the donor to seek the advice of his or her own advisors.
2. Refusing to attest to the value of noncash gifts except when the values are readily and publicly available, such as listed stocks, bonds, etc.
3. Recommending an independent appraiser not connected to the recipient nonprofit organization when a qualified appraisal is required.
4. Including on all solicitations, tickets, and receipts for special events a statement as to the fair market value of services or goods to be received by the donor in exchange for a contribution.

Examples of *UnEthical* Practice:

1. Telling a donor the value of an appreciated asset without proper, current documentation.
2. Telling a donor the amount of taxes he or she may avoid by making a specific charitable gift without adequate knowledge of tax laws and the donor's financial responsibilities and capabilities.
3. Failing to tell donors their gifts will not be fully tax-deductible when they receive goods or services in return for the contribution.
4. Failing to include the fair market value of services received (dinner, dance, etc.) on material soliciting participation in a special event, including wording that informs the invitee the contribution is any amount in excess of the fair market value of the service.

Standard No. 9

Members shall take care to ensure that contributions are used in accordance with donors' intentions.

Guidelines

- a. Members ensure that proper documentation outlining the intention and expectation of the donor(s) is provided to all appropriate persons and organizational units within the recipient organization (i.e., development office, accounting office). This documentation, including copies of all relevant supporting materials, is made a permanent part of the records of such units.
- b. Members ensure that gifts are used if and as specified by the donor. If a donor indicates a use that is inappropriate, the member confers with the donor to determine an appropriate use that is in keeping with the donor's wishes and the organizational mission. In the event that no mutually satisfactory use can be determined, the member offers to return the donation.
- c. Members review documentation outlined in guideline 'a.' above on a regular basis to ensure that those responsible for administering gift funds continue to adhere to the donor's intentions.
- d. Also see Standards No. 10 and 11.

Examples of *Ethical* Practice:

1. Treating the terms of a document that describes donor restrictions as a contract, subject to applicable law.
2. Using donor contributions that are restricted in ways consistent with the restriction(s).
3. Declining to use restricted funds for general operating purposes, except when one of the following situations exists:
 - (a) the donor has given explicit directions in writing to do so retroactively; or
 - (b) the grant/gift document expressly includes a provision for overhead or administrative costs.
4. Designing a standard document or form to contain all pertinent gift information that will be completed by the development office and provided to all other appropriate organizational units.
5. Conducting an annual meeting of representatives of all appropriate organizational units to review the status and use of major gift funds and accounts.
6. Maintaining proper documentation and records of all uses to which funds have been put.

Examples of *UnEthical* Practice:

1. Deciding to change an endowed annual lecture series to biannual, and using the funds in the interim year for travel by department members to an annual meeting.
2. Accepting a gift for a specific use, e.g., "pediatric genetic clinical research," then subsequently eliminating that program and using those funds for another program within the pediatric department without obtaining the consent of the donor.
3. Borrowing from restricted funds for purposes other than the restricted purposes.
4. Diverting into the general operating budget funds intended to cover administrative costs for the program covered by a restricted gift.
5. Using contributed funds remaining as surplus after the restriction has been fulfilled/expired, without the written consent of the donor.

Standard No. 10

Members shall take care to ensure proper stewardship of charitable contributions, including timely reports on the use and management of funds.

Guidelines

- a. Members ensure that donors of endowment funds receive a report on their funds at least annually.
- b. Members provide an annual report to donors. This can be included in a general report about the organization or can be included in a constituent newsletter, mailing, etc., which is sent to donors.
- c. Members urge their organizations to adopt and operate within written policies governing planned gifts, donor recognition, and investments.
- d. Members maintain written protocols or agreement guidelines for the administration of each restricted fund.

Examples of *Ethical* Practice:

1. Developing policies that avoid placement of donated funds in high-risk investments which may erode the corpus.

Examples of *UnEthical* Practice:

1. Using restricted funds for purposes other than those specified by the donor.
2. Using endowment principal outside the written terms of the endowment agreement.
3. Misrepresenting use of restricted dollars, e.g., converting restricted funds from their intended use.

Standard No. 11

Members shall obtain explicit consent by the donor before altering the conditions of a gift.

Guidelines

- a. Members meet with the donor or the donor's surviving family or representatives to discuss any potential alteration in the original conditions of a gift.

Examples of *Ethical* Practice:

1. Altering the original conditions of a gift with appropriate permission, e.g., an organization phases out a program that is being supported from the income of a long-established endowment fund and the donor is now deceased. It is the responsibility of the organization to meet with the family or official representative of the donor, to inform them of the programmatic change(s), and to solicit their permission to alter the use of the gift. In some cases, this may require permission of the court.
2. Keeping donors aware of potential changes in the mission or organization's plans that may affect the conditions of a restricted gift.

Examples of *UnEthical* Practice:

1. Using restricted funds for purposes other than those specified by the donor.
2. Using endowment principal outside the written terms of the endowment agreement.
3. Misrepresenting use of restricted dollars, e.g., converting restricted funds from their intended use.

Standard No. 12

Members shall not disclose privileged or confidential information to unauthorized parties.

Guidelines

- a. Members do not discuss any information about prospective donors or donors outside the work environment, and they discuss it within the work environment only as appropriate.
- b. Members honor and protect donors' rights to anonymity.
- c. Members ensure that prospective donor and donor information is collected lawfully and presented factually.
- d. Members balance the obligation of their organizations to collect, record, and make public information with the right of prospective donors and donors to privacy.
- e. Members seek and record only information that is relevant to the fundraising efforts of their organizations. Such information is accurately recorded in an objective and factual manner, and verified or attributable to its source.
- f. Members ensure that the collection and use of information are done lawfully. Further, nonpublic information is the property of the organization for which it is collected and is not to be given to persons other than those who are involved with the cultivation or solicitation effort, or those who need that information in the performance of their duties for that organization.
- g. Members ensure that information, including research, about prospective donors and donors are stored securely to prevent access by unauthorized persons.
- h. Members give special protection to all giving records pertaining to anonymous donors. Those donors are informed of the organization's policies regarding access to such information, especially who is to have knowledge of the donor's identity.
- i. Members are respectful of the fact that information about donors and prospective donors is the property of the organization for which it was gathered and is not to be taken to another organization.
- j. Members urge the development of written policies at their organizations defining who may authorize access to prospective donor and donor files and under what conditions.
- k. Consistent with applicable law, members urge the development of written policies at their organizations defining whether and in what manner to make public information regarding donor gifts.

Examples of *Ethical* Practice:

1. Maintaining only those records and files that members would be willing to share with the subject if asked.
2. Assuring prospective donors and donors that these files and records are used only for and by the member's organization.
3. Storing records and files about prospective donors and donors in a secure manner to prevent access by unauthorized persons.
4. Urging one's organization to develop written policies based upon applicable laws defining what information shall be gathered, and under what conditions it may be released and to whom.
5. Personally retrieving files pertinent to the day's work and personally returning them to the protected site at which they are kept.

Examples of *UnEthical* Practice:

1. Providing a donor's file to unauthorized individuals or organizations.
2. Sharing donor information in a collegial or social setting with those not directly involved in the cultivation or solicitation of the donor.
3. Sharing donor information with friends, relatives and colleagues not involved in fundraising, or in social settings involving volunteers or administrative or professional staff of their organization.
4. Instructing an unauthorized staff member to retrieve confidential files.
5. Treating confidential information casually, e.g., taking files to a restaurant at lunch time so as to subject them to public view.

Standard No. 13

Members shall adhere to the principle that all donor and prospect information created by, or on behalf of, an organization is the property of that organization and shall not be transferred or utilized except on behalf of that organization.

Guidelines

- a. Members do not physically or electronically remove or transmit information from the possession of a nonprofit organization.
- b. Members encourage the nonprofit organization with which they have a professional relationship to develop written policies concerning the confidentiality of their files and the requirements for gaining access to them.
- c. Members whose organizations lease, sell, rent, or exchange their donor lists encourage the authorization of specific agents or employees who can negotiate and sign appropriate contracts for such transactions.
- d. Members do not imply information about specific prospects and donors they have learned in the course of work for one organization that would be a benefit to another as a consequence of their employment.
- e. Members respect the wishes of donors as to anonymity and the confidentiality of particular details of specific gifts. The member understands that the relationship between donor and development officer is based upon trust.
- f. Members understand that this standard does not apply to publicly available information; only information unique to a specific organization may not be removed.

Examples of *Ethical* Practice:

1. Encouraging one's organization to develop board-approved policies covering the use of donor lists and who may have access to them.
2. Refusing the request of a board member who asks for lists of donors to one's organization for use by another organization on whose board he or she serves.
3. Clearly stating, when interviewing for new employment or presenting a consulting proposal, that donors with whom the member has been previously involved are not portable and will only be involved with the new organization if they are, or can become, through their own personal involvement, part of the new organization's natural constituency.

Examples of *UnEthical* Practice:

1. Disclosing confidential information to unauthorized persons.
2. Providing donor or prospective donor files to another nonprofit or business entity without permission of the owner-organization.
3. Approaching a nonprofit with another organization's donor files.
4. Marketing as an organization's "exclusive" property, lists acquired from other organizations or individuals.
5. Revealing the identity of an anonymous donor to others without the authorization of the donor.

Standard No. 14

Members shall give donors the opportunity to have their names removed from lists that are sold to, rented to, or exchanged with other organizations.

Guidelines

- a. Members encourage the development of written policies and practices regarding the use of donor names.
- b. Members ensure that donors are informed in accordance with such policies and practices.

Examples of *Ethical* Practice:

1. Providing, on a regular basis but not less than annually, a written communication asking donors if they wish to have their names removed from lists that are sold, rented, or exchanged with other organizations. This communication may stand alone or be incorporated within another, broader piece, such as a mailing, newsletter, or annual philanthropic or financial report.
2. Making a good faith effort to remove names from a list upon request, even when names may be on the list in a form different from that on the request for removal.

Examples of *UnEthical* Practice:

1. Selling, renting, or exchanging names of donors without having given them periodic opportunity to have their names deleted from such lists.
2. Providing a vehicle for donors to have their names removed from lists to be sold, rented or exchanged when, in reality, no action is taken to remove names.

Standard No. 15

Members shall, when stating fundraising results, use accurate and consistent accounting methods that conform to the appropriate guidelines adopted by the American Institute of Certified Public Accountants (AICPA)* for the type of organization involved.

Guidelines

- a. Members recognize that fundraising results are recorded both for external financial and audited statement purposes, and for reporting and donor recognition purposes. Recording for external audited financial purposes must be in accordance with the appropriate AICPA guidelines* for the type of institution involved.
- b. In reporting fundraising results for external financial and audited statement purposes:
 - (1) Irrevocable unconditional deferred gifts are recognized in the fiscal year in which they are made. The nonprofit organization should recognize contribution revenue and related assets and liabilities. Assets should be recorded at their fair market value. Contribution revenue should be recorded as the difference between the asset value and the net present value of the payout to the beneficiary. Reevaluations should occur each fiscal year and at the time the gift matures.
 - (2) Unconditional pledges are recognized in the fiscal year in which they are made. The extent to which multi-year pledges are discounted should be determined with professional advice.
 - (3) Bequests are recognized at fair market value in the fiscal year in which they mature.
 - (4) Insurance policies that are owned by the organization should be recorded at their case surrender value.
 - (5) Revocable deferred gifts or conditional gifts should be recorded when the gift matures or when the condition is met.
- c. For reporting and donor recognition purposes:
 - (1) For campaign purposes, members may report results over more than one fiscal year.
 - (2) Members may report deferred gifts at fair market value and not take into consideration net present value of payouts.
 - (3) Members may report revocable planned gifts and conditional gifts.
 - (4) Members may report insurance policies at face value.
 - (5) Members may report expectancies from bequests.

Examples of *Ethical* Practice:

1. Reporting, as a footnote to financial statements, the number of deferred gifts for which there are signed documentation, without acknowledging financial value.
2. Disclosing the accounting practices used in the financial statements.
3. Developing organizational procedures to ensure that the accounting for gifts is consistent from year to year.
4. Requesting donors who have made verbal pledges to sign and date written documentation of their pledge.
5. Informing the reader when financial information has been reformatted.

Examples of *UnEthical* Practice:

1. Reporting as gift income the dollar value, stated or estimated, of information about a bequest prior to the distribution of the donor's estate.
2. Reporting as gift income the face value of insurance policies, whether revocable or owned by the organization, prior to the termination of the policy.
3. Reporting pledges in the year in which they are made and then counting the payment of the pledges in the years in which the payments are made.

* In countries outside the United States, comparable authority shall be utilized.

Standard No. 16

Members shall not accept compensation that is based on a percentage of charitable contributions; nor shall they accept finder's fees.*

Guidelines

- a. Members accept compensation based upon experience, expertise, and the time requirements of the engagement.
- b. Members, when declining an offer of compensation that includes a portion based upon a percentage of the charitable funds raised, provide information in support of this standard, such as the AFP Position Paper on Professional Compensation.
- c. Members recognize that fundraising is a continuing practice in which present funds received may be the results of efforts of others in previous years, and, likewise, current fundraising activities may result in future funds.
- d. Members do not seek, pay, or accept, and they discourage their organizations from paying, percentage-based compensation or commissions for obtaining charitable funds as defined by and subject to government regulations, or as reported on government reporting forms as contributions, gifts, grants, or similar amounts received.
- e. Members help organizations recognize that costs involved in fundraising include staff compensation and that donors do accept organizational costs for such activities.
- f. Members who offer services as proposal writers with any of their compensation contingent upon the funding of a proposal do so only if the terms are stated in writing in advance and the compensation is not based on a percentage of the funds sought or raised.

Examples of *Ethical* Practice:

1. Refusing to accept any part of one's compensation as a percentage of charitable funds raised or expected to be raised.
2. Recognizing the difference between percentage-based compensation and a bonus plan, accepting only the latter should it be part of an organization's regular practices. (See Standard No. 17)
3. Promoting the principles upon which the guidelines for this standard are based.
4. Encouraging your organization to avoid paying a third party — such as an attorney, financial planner, or provider of such services as direct mail and telemarketing — a fee for service that is a percentage of the value of the related gift or trust.

Examples of *UnEthical* Practice:

1. Accepting percentage-based compensation because an organization lacks sufficient budget, with the expectation that such will be converted to salary or fee when funds are available.
2. Disguising compensation as salary, fee or bonus when it is, in truth, a percentage of funds raised.
3. Accepting a compensation package in which a part is salary or fee and the balance is to be made up of a percentage of the funds to be raised.

* Refer to AFP's Professional Compensation Position Paper.

Standard No. 17

Members may accept performance-based compensation, such as bonuses, provided such bonuses are in accord with prevailing practices within the members' own organizations, and are not based on a percentage of charitable contributions raised.

Guidelines

- a. Members' freedom to accept performance-based compensation is based on the fact that AFP recognizes that such can be an ethical way to reward practitioners who exceed the scope of effort covered by their established salary or contracted fee.
- b. Members may accept performance-based compensation under the following conditions:
 - (1) the member's organization has a policy and practice that awards performance-based compensation; and
 - (2) the policy has the approval of the organization's governing body; and
 - (3) the policy and practice include, but are not limited to, the member's area of responsibility, e.g., are a norm within the organization; and
 - (4) the criteria are restricted to mutually agreed-upon, preestablished overall goals; and
 - (5) the criteria for determining the eligibility for, and amount of, such compensation shall exclude any consideration of a percentage of charitable contributions as defined by, and subject to, government regulations, or as reported on government reporting forms as "contributions, gifts, grants and similar amounts received." This should be interpreted as an absolute prohibition of any reference to, or use of, a percentage of charitable income to determine compensation, either in effect or actuality.
- c. Members understand the provisions of the IRS "Intermediate Sanctions" regulations in the U.S., or their equivalent in other countries, that apply to executive compensation.

Examples of *Ethical* Practice:

1. Including in the bonus plan's criteria nonfinancial indicators such as quality improvement, attaining anti-discrimination goals, management of human resources or achievement of overall unit goals.
2. Including in the criteria financial indicators such as cost effectiveness, budget savings, meeting or exceeding dollar goals and increasing the amount of the average gift.
3. Including in the criteria consideration of nonfinancial indicators of productivity, such as an increase in the number of contributors, an increase in the number of volunteers, an increase in the number of gift renewals and an increase in the number of prospects.
4. Including in the criteria consideration of financial indicators for which a contributor may not legally claim a charitable deduction, such as sales of products or services, membership dues and unrelated business income.

Examples of *UnEthical* Practice:

1. Accepting a bonus plan that includes in its criteria a percentage of the funds raised.
2. Accepting performance-based compensation developed and approved after the fact, e.g., after the end of the fiscal period.

Standard No. 18

Members shall not pay finder's fees, or commissions or percentage compensation based on charitable contributions, and shall take care to discourage their organizations from making such payments.

Guidelines

- a. Members recognize that there are two primary principles underlying this standard:
 - (1) Charitable giving is a voluntary action for the public benefit.
 - (2) The seeking or acceptance of charitable gifts should not provide personal inurement to anyone.
- b. A finder's fee is a fee paid for bringing a donor or contribution to a nonprofit organization, whether or not the fee is based on a percentage of charitable funds raised.
- c. Members promote and recognize the donor's relationship with the recipient organization and the fact that donors shall, therefore, wish to give freely to that cause or organization. The recipient organization shall in no way provide payment or inurement to a third party for matching the donor to the organization or the organization to the donor.
- d. Bonafide transaction fees are not subject to this standard. Transaction fee(s) include fees for credit card processing, stock transfers, electronic funds transfers, lock boxes, and processing Internet transactions.

Examples of *Ethical* Practice:

1. Refusing a gift if it is given to pay someone a finder's fee or could be perceived as such.
2. Helping a donor, estate planner, or counselor understand that a gift or bequest is to be given to benefit the organization receiving the gift, or a cause embodied therein, and not to benefit individuals.
3. Promoting the philanthropic or public benefit aspect of giving.

Examples of *UnEthical* Practice:

1. Paying a finder's fee to someone for identifying a donor or recipient organization.
2. Suggesting to someone that he or she might ask for a fee for making a match.
3. Paying a finder's fee for the purpose of generating a gift.
4. Paying a finder's fee for obtaining a corporate sponsorship.

APPENDIX A

AFP Ethics Enforcement Powers and Procedures

Anyone may file an ethics query or complaint alleging violation of the AFP Code of Ethical Principles and Standards of Professional Practice (Code) by an AFP member or person holding an AFP-sanctioned credential, whether or not the person lodging the complaint is a member of AFP. AFP considers all inquiries about actions of members to be strictly confidential. Before filing a complaint or ethics query, you may call and have a conversation with the assistant of the President & CEO of the AFP International Headquarters to see if you wish to proceed.

An ethics query is a means for inquiring whether or not a practice warrants filing a complaint alleging a violation of the Code, and to request assistance from the AFP Ethics Committee to resolve an issue or practice of concern without invoking the formal Code enforcement process. The goal is to bring about improvement in professional practice without having to resort to enforcement proceedings. An ethics query may be lodged via a confidential letter or memorandum to the office of the AFP President and CEO identifying the person against whom the ethics query is lodged and describing the incident or practice that is of concern.

A complaint is a formal allegation of violation of the AFP Code of Ethical Principles and Standards of Professional Practice. Formal complaints must be made on the complaint form and signed. The filing of a complaint initiates the Code's enforcement procedure. If a complaint is filed, AFP requires complaining parties to agree that, upon request of the Ethics Committee, the complainant will give personal testimony in the presence of the member against whom the complaint is lodged.

Once a complaint is filed, it is reviewed by the Ethics Committee. If the Committee finds that the complaint alleges a violation of the Code and is supported by sufficient documentation, the Committee chair sends written notification of the complaint to the person against whom the complaint is lodged requesting the member to respond in writing to the complaint.

If the person against whom the complaint is lodged responds to the complaint, the Ethics Committee reviews the information presented in the response. If the Committee determines that there are grounds to support a charge of violation of the Code and that efforts to persuade the person to cease and desist have failed, the Committee may decide to hold a hearing to (1) determine whether a violation of the Code has occurred, and (2) decide what disciplinary action, if any, is appropriate.

Penalties for violation of the Code can include:

- a letter of reprimand;
- a letter of censure and prohibition against holding Society and chapter office in AFP;
- suspension of membership in AFP for a stated period; and
- permanent expulsion from AFP membership, including withdrawal of any AFP-sanctioned credential.

AFP considers all communications and records regarding questions of ethical misconduct to be strictly confidential.

APPENDIX B

Principles and Roles in the Ethics Enforcement Process

The fundamental goal of the procedures for enforcing the AFP Code of Ethical Principles and Standards of Professional Practice is to eliminate unethical behavior, not to impose punishment.

The procedures for compliance adopted by the AFP Board of Directors on November 6, 1992, as amended, define the role of the chapters as educational and assign enforcement to the AFP Ethics Committee.

The procedures provide a process for receiving, investigating and adjudicating allegations of violation of the Code made against any AFP member or other person holding an AFP-sanctioned credential, and provide a process that is fair, responsible, confidential and consistent. The procedures are designed to protect AFP members from unfair allegations and to protect Association and chapter AFP officers and staff from personal liability in cases alleging unethical conduct.

The procedures reflect seven fundamental principles:

1. *To be considered, an allegation of violation of the Code must be made in writing and signed by an individual.*
2. *The written query or complaint must be filed with the office of the President and CEO, AFP International Headquarters for consideration by the AFP Ethics Committee. The written complaint must be received on the complaint form available upon request from the office of the President and CEO, AFP International Headquarters; a query can be in the form of a letter, a phone call or other means such as email.*
3. *Complaints and queries can be made/alleged only against AFP members or a person holding a AFP- sanctioned credential. AFP can take no action against persons who are not either AFP members or holders of an AFP-sanctioned credential, nor can AFP entertain allegations of violation of the Code on the part of a corporation, association, organization or other entity.*
4. *Laws takes precedence over ethical misconduct. If, in AFP's judgment, an allegation entails a violation of law or breach of contract, the AFP Ethics Committee may in its discretion refer the matter to the appropriate legal channels for resolution or remedy.*
5. *The role of AFP chapters in the ethics process is to educate members about ethical issues and standards, the Code and the AFP enforcement procedures in general. It is not the chapters' function to screen, adjudicate, review or advise in specific situations. Chapter boards should not be involved in specific discussions of possible or alleged Code violations. AFP does not want any chapter, chapter officer or individual to be sued.*
6. *Chapters have no formal or informal role in the processing or adjudication of complaints.*
7. *Chapters should focus their action on ethical issues, standards and education. It is suggested that chapters consider using the title "Ethics Education Committee" rather than "Ethics Committee" for their own committees. Education on legal or legislative issues is not the proper concern of a chapter's Ethics Education Committee. The AFP Ethics Committee seeks to vigorously reinforce a distinction between legal questions and ethical standards of professional practice.*

APPENDIX C

How to Register a Query about a Possible Violation of the Code

1. Write a letter explaining the concern; include identification of the AFP member involved.
2. Send signed query and a copy of any backup information corroborating your concern in a sealed envelope marked CONFIDENTIAL to:

President and CEO
Association of Fundraising Professionals
1101 King Street, Suite 700
Alexandria, VA 22314-2967

How to File a Formal Complaint Alleging Violation of the Code

1. Request a complaint form from the office of the President and CEO. Forms may be requested by telephone, fax or mail.
2. Fill out the complaint form completely and sign it. Be sure that the description of alleged unethical conduct is clear and complete. The complaint must be filed within one year of the alleged ethical misconduct.
3. Send the signed form and a copy of any backup information corroborating your allegation in a sealed envelope marked CONFIDENTIAL to:

President and CEO
Association of Fundraising Professionals
1101 King Street, Suite 700
Alexandria, VA 22314-2967

APPENDIX D

CONFIDENTIAL

AFP COMPLAINT FORM: ALLEGATION OF ETHICAL MISCONDUCT * * *

ALLEGED OFFENDER

Name: _____

Address: _____

AFP Chapter (if known): _____

ALLEGED OFFENSE

Please specify the alleged violation of the AFP Code of Ethical Principles and, identify the specific Standard of Professional Practice that is alleged to have been violated:

Date of alleged offense: _____

***** Any individual may file an allegation of ethical misconduct against an AFP member. To be considered, this form must be completed in full and signed by the person lodging the complaint. Complaints must be filled within one year of the alleged ethical misconduct. This form and the information contained herein will be considered strictly confidential by AFP, but may be disclosed to the alleged offender as part of the ethics review process.**

COMPLAINANT

Name: _____

Address: _____

Phone: _____

Fax: _____

Are you an AFP member? Yes _____ No _____

If yes, what is your member ID number? _____

Chapter affiliation? _____

PLEASE SIGN AND DATE THIS DOCUMENT

I affirm that, to the best of my knowledge, the information above is true, accurate and complete.

Signature of Complainant

Date

VERY IMPORTANT: Mark your envelope CONFIDENTIAL and return this form to:

President and CEO
Association of Fundraising Professionals
Suite 700
1101 King Street
Alexandria, VA 22314-2967
Phone: 703/519-8440

APPENDIX E

THE ROLE OF THE AFP ETHICS COMMITTEE

The committee is a vehicle through which AFP promotes responsible and ethical behavior by its members and those holding AFP certification, volunteers, other professionals and the public. To that end, the committee undertakes to:

- Educate members, other professionals, volunteers and the public about the Code of Ethical Principles;
- Educate members about ethical issues within the profession;
- Encourage compliance with the Code;
- Receive and respond to queries concerning ethics within the profession and the independent sector;
- Receive and respond to complaints alleging violation of the Code;
- Effect resolution of complaints through education and persuasion whenever possible;
- Sustain acute awareness of the implications of committee action on members, complainants, philanthropy, AFP, the profession and the public;
- Provide a fair and responsible hearing to both complainant and individual reported in violation of the Code;
- Render judgment based on facts presented;
- Apply sanctions fairly and consistently, based on board-approved policy;
- Function as a resource to AFP, its members, and the public in matters of ethical behavior;
- Develop and recommend standards that address evolving issues affecting ethics within the field;
- Refine the Code and professional standards as necessary and appropriate;
- Maintain confidentiality about queries, complaints, and hearings;
- Refrain from participation in cases that constitute personal conflict of interest;
- Maintain as much independence within AFP as necessary for objectivity;
- Recommend candidates for consideration as members of the committee;
- Act as complainant when necessary;
- Act as role models for adherence to the Code;
- In cooperation with appropriate AFP committees, educate the public about the Code and ethical practice within the field.



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APPENDIX 4
**“New Era” Scandal in U.S. Has Lessons for
Canadian Charities**

CHURCH & THE LAW UPDATE - No. 6

By Terrance S. Carter, B.A., LL.B.

Updating Churches and Charities on recent legal developments and risk management considerations.

1. INTRODUCTION

This is the sixth issue of Church & the Law Update. It is intended to provide an update for churches and charities on current legal developments as well as providing recommendations on matters of legal risk management where appropriate. The Update is prepared for distribution as a service to churches and charities and is published approximately three to four times a year as legal developments occur.

This issue of the Church & the Law Update includes a commentary on establishing lifestyle policy statements for churches, as well as a summary of lessons to be learned from the recent New Era scandal in the United States.

2. DATE FOR THE 1996 ANNUAL CHURCH AND THE LAW SEMINAR

The 1996 Annual Church & the Law Seminar will be held in Toronto on Wednesday, February 7th, 1996. More details of the topics and location will be given in future issues of the Church & the Law Update.

3. BOOK AVAILABLE ON INCORPORATION OF CHURCHES

A new book entitled "To Be or Not To Be, Incorporation of Churches in Ontario" by Terrance S. Carter, B.A., LL.B., is available from the Canadian Council of Christian Charities on a cost recovery basis of \$15.00. The precedent that is included in the book of a model By-Law for an incorporated church is based on a federal incorporation and therefore may be of interest to churches in other provinces other than Ontario, particularly those churches that are in the process of incorporating or revising their existing church constitutions or by-laws.

4. THE IMPORTANCE OF LIFESTYLE POLICY STATEMENTS FOR CHURCHES

The Globe and Mail carried an article on May 27th, 1995 entitled "The Ties that Bind - More Churches Blessing Gay Unions". The article stated that a handful of congregations had recently passed resolutions permitting their ministers to perform "holy union" services between individuals of the same sex.

The importance of the article from a legal context is not the fact that some congregations are blessing unions between individuals of the same sex, but rather the need for churches that do not condone such an interpretation of scripture to adopt lifestyle policy statements that reflect their understanding of biblical principles to avoid future controversy or possibly even a legal challenge concerning what the official position of a church is in such matters.

A policy on lifestyle considerations must be carefully drafted to avoid ambiguity. Some policy statements in this regard are so vague as to cause more confusion than having no lifestyle policy statement at all.

A properly drafted policy statement on lifestyle considerations should have clear scripture references so that the statement can be

justified as being a bona fide expression of faith to offset criticism of possible discrimination when the policy statement is implemented.

Once a precisely worded policy statement has been prepared, it needs to be circulated and voted upon by the congregation and made a part of the church constitution. The means by which a policy statement can be incorporated by reference into a church constitution is discussed in more detail in the book on Incorporation of Churches referred to above.

Finally, only lifestyle considerations that are fundamental to a churches understanding of the Christian faith should be included in a lifestyle policy statement, since policy statements should be diligently implemented and may form the basis of church discipline of members who vary from its standards. As a result, churches should shy away from etching in constitutional stone every "do and don't" involved with the Christian faith and instead leave policy statements on lifestyle considerations to those matters that are most important to a churches understanding of practical application of biblical principals.

5. "NEW ERA" SCANDAL IN U.S. HAS LESSONS FOR CANADIAN CHARITIES

A. Introduction

The Wall Street Journal recently ran a series of articles on a charity scam involving some of the largest charities in the United States, including a number of prominent Christian charities. The first reaction of Canadians in learning about this scandal may be to dismiss it as simply another example of extremism of our neighbours to the south, similar to the Jimmy Baker scandal a few years ago, which one assumes could never happen in the more conservative and constrained environment of our Canadian culture. However, there are enough similarities in some of the basic errors surrounding the U.S. scandal that occur north of 49th parallel to justify examining the scandal to determine what lessons can be learned to avoid similar problems in this Country.

B. Summary of Relevant Facts

The Wall Street Journal reported that the scandal centered around Mr. John G. Bennett, Jr., who was the chief executive officer of an organization called the Foundation for New Era Philanthropy, a charity based in Radnor, Pennsylvania, that was started in 1989. By the time the scandal broke in May of this year, New Era had attracted contributions from charities and individuals of approximately one quarter of a billion dollars in U.S. funds based upon the representations of Bennett, a highly respected figure in the Philadelphia area who had a high profile as a philanthropist in Christian circles, due in part to the prayer breakfasts that he often organized.

The scandal, in essence, constituted what is commonly called a "Ponzi Scheme", where payments are made by one wave of investors that are then used to pay back an earlier wave of investors with very high returns so that additional investors with new monies will continue to be attracted.

In the early 1990's, Bennett's New Era Foundation started to attract a great deal of attention, notwithstanding that it was not registered with the Internal Revenue Service as a foundation. The attention that Bennett attracted was due to his claim that the New Era Foundation would double contributions made by charities and individuals to New Era within a period of six months as a result of undisclosed donors who wished to remain anonymous and were prepared to match the gifts entrusted to the New Era Foundation by distributing matching gifts worth millions of dollars. Apparently, these wealthy donors were too busy to find worthy charities on their own to benefit from their excessive monies.

Why charities were required to contribute monies to New Era for six months was never adequately explained by Bennett, except that it was claimed to be a non-negotiable requirement of the anonymous donors. Most matching gift programs do not require the charity to deposit funds with the granting agency. Instead New Era could have simply distributed the millions of dollars that it purported to have available to it upon independent confirmation that the charity or individual in question had raised the monies against which the matching grant would apply or in the case of individuals, a gift had been made to the charity approved for the matching grant.

The scam was initially given credibility when a minister of a Baptist Church in Pennsylvania who was the driving force behind a small struggling seminary received a matching grant in return for a five hundred thousand dollar (\$500,000.00) contribution to the New Era Foundation. Not surprisingly, word spread quickly within the Christian community as well as within the secular philanthropic circles that the New Era Foundation and Bennett were true to their word in being able to produce a 100% return on contributions made to the Foundation.

Before long, New Era was attracting large contributions from many prominent Christian organizations in the United States, such as Wheaton College, Compassion International, Gordon College, Intervarsity Christian Fellowship U.S., Moody Bible Institute, Missionary Aviation Fellowship, the Salvation Army, and Youth for Christ, just to mention a few.

In addition, New Era Foundation also received contributions in the millions of dollars from a number of high profile U.S. philanthropists who were willing to make sizeable contributions to the New Era Foundation so that they could double their normal charitable giving. Included in the list of prominent philanthropists were Laurance S. Rockefeller, the brother of David Rockefeller, William E. Simon, former Treasury Secretary of the United States, Pat Boone, John C. Whitehead, the former Chairman of Goldman Sachs & Co., a large wall street brokerage firm in New York, and John Pepper, President of Proctor & Gamble. However, the single largest contributor to the foundation and as such its largest creditor when the scheme collapsed was the first contributor to the foundation, Reverend Glenn Blossom of Dresher, Pennsylvania, who was shown to be a creditor of New Era for the incredible amount of twenty-seven and one-half million dollars (\$27,500,000.00).

While the New Era scheme was initially being investigated, a number of individuals were interviewed who were willing to defend the matching gift program operated by New Era. The Wall Street Journal in May of this year contained a number of quotations that in hindsight are revealing. One of them was by the auditor for New Era Foundation who stated that:

"There is so much widespread cynicism in the world that people cannot accept that there is a wealthy philanthropist who has a net worth in the hundreds of millions who is willing to give away substantial amounts and get no credit for it."

Another quotation was that of John C. Whitehead, the former Chairman of Goldman Sachs & Co., who called Mr. Bennett "a visionary" and that New Era was "on the cutting edge of philanthropy". The former U.S. Deputy Secretary of State is also quoted as saying before the scandal broke, "We are not naive doops, I don't think".

The most recent annual report from New Era contained a telling statement concerning how Bennett described what New Era was doing:

"We do not fall within the general accepted model of an organization that provides financial support in a typical fashion. We consider ourselves philanthropic entrepreneurs and venture capitalists in philanthropy ... Much of what we are doing has no precedent."

Notwithstanding Bennett's claim that there was no precedent for what New Era was doing, Bennett was in fact following the example established by Charles Ponzi of Boston back in 1919, when Ponzi defrauded individuals by using current contributions from investors to pay off obligations to past investors at high returns. However, Charles Ponzi would have been envious of Bennett's scheme that promised one hundred percent returns to investors after only six months.

Bennett was able to maintain credibility in meeting the obligations of the matching gift programs by using not only new monies received from contributors but also by arranging a fifty-two million dollar (\$52,000,000.00) loan with Prudential Securities based upon deposits of approximately seventy-three million dollars (\$73,000,000.00). It is estimated that New Era at the time of its collapse in May of this year had received in excess of two hundred and fifty million dollars (\$250,000,000.00) in contributions, with liabilities arising out of the promises to double those monies of in excess of five hundred million dollars (\$500,000,000.00), but with only eighty million dollars (\$80,000,000.00) in assets. As such, there was a shortfall of approximately one hundred and seventy million dollars (\$170,000,000.00), not to mention an even larger liability if the promise to double the contributions are taken into account.

Although Bennett claimed that he did not receive a salary from New Era, he did see fit to have New Era Foundation pay consulting fees to various companies that he controlled in the amount of approximately 4.5 million dollars. Needless to say, contributors to the Foundation had no idea that Bennett was indirectly receiving this amount of money from New Era.

For anyone who wanted to investigate the validity of the matching program offered by New Era, they were a number of warning signs that were readily apparent. For instance:

1. New Era issued receipts for monies received by categorizing those monies as gifts to New Era, whereas individuals and charities that contributed considered those monies to be an investment that would double within a period of six months.
 2. The contributions made to New Era were held in a "brokerage account", to which Bennett had access, instead of depositing the
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monies into an "escrow account", i.e. a trust account that would have prevented both Bennett and New Era from having access to those funds.

3. New Era was not registered as a foundation with the IRS, even though its name implied that it was a foundation.
4. New Era issued financial statements based upon an accounting opinion that was only a review as opposed to a full audit.
5. There were indications in the last year that New Era was running short of the cash needed to double the investments received when New Era began to encourage charities that had given in the past to contribute their entire endowment funds even though those endowment funds were impressed with donor designated restrictions on the use of those monies.

Notwithstanding these obvious warning signs, a large number of charities, including a "who's who" of Christian charitable organizations, lined up to make contributions to New Era in the expectation that their monies would be doubled within six months. The Wall Street Journal quoted an accountant who had several clients who deposited money with New Era as saying: "It's amazing. Anyone who is significant in the evangelical community has been involved in this thing." This involvement was based upon the trust that Bennett had established as an evangelical Christian as well as by word of mouth testimony amongst Christian leaders concerning the paybacks that they had received on his promise to double their contributions after a period of six months. As such, many evangelical organizations encouraged other Christian institutions to become involved in the matching gift program of New Era.

The reputation of Bennett and New Era was enhanced by Bennett's association with Sir John Templeton, the founder of the popular Templeton Mutual Funds. After Sir John Templeton was introduced to Bennett in 1990, he asked Bennett to serve as a director and/or trustee of twenty-four mutual funds. In addition, the names of both Sir John Templeton and his son, Dr. Templeton, appeared on brochures of New Era under the heading of "client references", the Wall Street Journal reported. In addition, New Era established a Templeton Institute Prize for Excellence, although it was apparently never awarded.

Not only were leading political and Christian leaders fooled by the matching gift program, the Attorney General for Pennsylvania in reviewing the operation of New Era gave the institution a "clean bill of health" when his office was unable to find any dissatisfied donors. What the Attorney General missed in his investigation was a review of where the monies were coming from that were being used to double the contributions that had been made by earlier contributors within the last six months. As long as contributions were being doubled, it was no wonder that no donors could be found to complain about the matching gift program.

The unravelling of the New Era scam began as far back as July of 1993, but did not culminate until May of 1995. This unravelling process started in 1993 when Albert Meyer, an accountant who taught at a Christian college that had given monies to New Era, became suspicious when he found in excess of two hundred and fifty thousand dollars (\$250,000.00) had been transferred from the college to New Era.

When Meyer took his concerns to the college administrators, he was told "it's tough raising funds, and they didn't need my meddling". He then contacted institutions that had invested money with New Era, including Wheaton College in Illinois and Moody Bible Institute in Chicago. After those institutions ignored his warnings, he then wrote to the Internal Revenue Service and asked that they investigate. Meyer also called Bennett directly and found that Bennett was very amicable. Time Magazine quotes Meyer as saying, "at the end of our conversation when I put down the phone, I actually liked the guy". Just two weeks before the scam fell apart in May of this year, the administrator of the college that Meyer taught at assured his community of supporters of the Board's business savvy and warned faculty members, of which Meyer was one, that a "healthy scepticism was commendable, but a crusading zeal was often counterproductive". However, after the scandal broke, Meyer received a letter from the college which said in part "I believe you did something heroic, you followed your professional instincts when many of us believed you to be wrong".

A letter from Meyer to the SEC in April, 1995 prompted the SEC to commence an investigation of New Era which ultimately led to its collapse. As a result of the SEC investigation Prudential Securities found that New Era had borrowed 44.9 million on margin and failed to repay on demand. On Thursday, May 11th, 1995, Prudential Securities commenced an action against New Era and its chief executive officer to recover the funds. On Saturday, May 13th, 1995, Bennett finally admitted to his staff that there were in fact no mysterious benefactors who were supplying matching monies. Instead, the monies were coming from new contributors together with monies that had been borrowed on the strength of the contributions that he had already received.

As a result of Bennett's startling admission, New Era filed for protection under section 11 of the U.S. Bankruptcy Code, and after it was

clear that there was no hope of restructuring New Era, the matter was moved into liquidation proceedings under the same Act. The U.S. Security and Exchange Commission has now sued Bennett and his Foundation for New Era Philanthropy accusing Bennett of engaging in a massive "fraud that cheated hundreds of charitable institutions as well as some of the nations wealthiest financiers".

As news of the scandal travelled through the U.S. philanthropic and Christian community in May of this year, one of Bennett's chief supporters, John Whitehead, who had given over a million dollars (\$1,000,000.00) to New Era is quoted in the Wall Street Journal as having said, " I can't believe it, I'm normally very sceptical about these kinds of things and it's hard for me to believe that I was played for a sucker".

C. Lessons to be Learned in Canada

As Canadians, we are apt to dismiss what has taken place in the United States with the New Era scam as having little relevancy to charities in this Country. This is clearly not the case. Canadian charities that have close affiliation to their American counterpart will need to assure themselves that monies that were to be invested by their U.S. counterpart pursuant to joint ministry arrangements were not invested in the New Era program. If joint venture monies were invested in this manner, Canadian charities should speak with their legal counsel concerning the ramifications in Canada of Canadian charitable monies having been used in this way and possible liability to recover monies that may have been lost through the New Era matching gift program.

Even for those Canadian charities that have not been involved directly or indirectly with the New Era scandal, there is still a number of practical lessons from a legal context that can be learned and applied in Canada. A summary of some of the more important lessons in this regard are set out below:

1. The New Era scam was presented as a matching gift program, but in fact required the monies be given to New Era so that it would become part of its investment portfolio instead of having those monies held in trust pursuant to an escrow account to ensure that the monies would be kept separate and apart from the operating funds of New Era. If individuals and charities that gave to New Era did nothing more than simply read the receipts that were issued to them, they would have seen that New Era was treating those monies as gifts instead of trust funds in violation of how the donors assumed that their monies would be held.
 2. Since charities that gave to New Era assumed that they would receive back the initial contribution together with a 100% matching gift, the payments to New Era constituted a form of high risk investment that in hindsight make volatile "derivatives" investments on the stock market pale in comparison. In Canada, a high risk investment like the matching gift program offered by New Era could not be justified as a qualified investment under the *Trustee Act*. Nor could it be justified pursuant to the common law requirement that directors of charities act in a prudent manner in fully investigating a prospective investment before proceeding. Failure to restrict investments to carefully selected and conservative investments could leave directors in Canada personally liable for improvident investment decisions of the kind involved with the New Era matching gift program.
 3. An obvious but important lesson from the New Era scandal is that if a promise of return on an investment or tax advantage looks too good to be true, then it probably is. The bona fide desire to advance the charitable objectives of a charity cannot justify using charitable monies in ways that are either risky or questionable. Put simply, risk is not compatible with charitable objectives.
 4. The New Era matching gift program was touted as being on the "cutting edge of philanthropy" with much of what was done as "having no precedent". Charitable programs that are touted as not having any precedent and are claimed to be on the "cutting edge" should clearly not be utilized by a charity or church without the charity first obtaining a written opinion from a lawyer confirming that the program in question is legitimate. It may be necessary to provide the lawyers with the comments of a chartered accountant with respect to any financial information provided in connection with such a program. By doing so, if the program being offered turns out to be either invalid or results in loss of monies for a charity, then the charity in question can rely upon the professional opinion that was obtained to help establish a defense of due diligence in the event that a claim is subsequently directed at the charity or at its board of directors based on an allegation of negligence in making the investment decision.
 5. Beware of the "follow the leader" syndrome. Too often, a Christian charity and/or church will adopt a program, such as a stewardship program that promises to have significant benefits for the charity, based solely upon the fact that another Christian charity is using it without the charity first carrying out their own due diligence investigation of the program. An investigation in this regard should include
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consulting with charitable services like the Canadian Council of Christian Charities as well as contacting a number of other charities to determine whether or not they are using the program.

In addition, charities should obtain their own legal or accounting opinion. What often happens, however, is that one charity will rely upon the legal or accounting advice obtained by another charity. Even if that other charity did obtain their own legal or accounting opinion, such opinion will not necessarily mean that another charity can rely upon the opinion obtained in the event that the program in question turns out to be invalid.

What in fact often happens is that no legal or accounting opinion was ever obtained to justify the validity of a particular program in the first place. Instead, there are only "rumours" of some lawyer or accountant who is said to have given a "blessing" to the program in question when no written opinion was ever obtained. As such, it is essential that each charity carry out its own due diligence investigation by ensuring that they obtain their own legal or accounting opinion.

6. New Era called itself the "*Foundation* for New Era Philanthropy". Despite its name, New Era did not meet the accepted requirements for a U.S. foundation, i.e. an organization with an endowment that invests its earnings so that it can make gifts to other charities. In Canada, a foundation does not have to have an endowment, nor is a foundation prohibited from carrying on charitable activities itself. However, under section 149.1(1) of the *Income Tax Act*, a charitable foundation, whether it be a public or private foundation, is defined as meaning a corporation or trust that is constituted and operated exclusively for *charitable purposes*, which in turn is defined as including the disbursement of funds to qualified donees, i.e. other registered charities. As such, even in Canada, the use of the term "foundation" is normally intended to convey the fact that the charity will not be primarily carrying on charitable activities itself, but rather will be transferring monies to active charitable organizations which will in turn carry on charitable activities.

A number of charities established over the last few decades have used the word "foundation" in their name as a misnomer. However, new charities that have been established recently should be careful not to use the word "foundation" in their name when the charity is intending to primarily carry on charitable activities itself as opposed to funding other charities. Although there is technically nothing wrong with including the word "foundation" in the name of a charity, it does give the impression that the charity has a degree of stability through the assumed existence of an established endowment, which is often not in place. As a result, individuals or charities that deal with organizations that call themselves "foundations" should not necessarily assume that such an organization is either a public or private foundation. Inquiries should be made of the organization to find out exactly what it is, i.e. is it a foundation primarily established to fund other charities or is it intending to primarily carry on charitable activities itself.

7. In the New Era scandal, the Attorney General of Pennsylvania investigated the activities of New Era and gave it a "clean bill of health" after he was unable to find any dissatisfied donors, notwithstanding that shortly thereafter New Era was found to have perpetrated a fraud on a colossal scale. The lesson to be learned from the New Era scam is that an audit by a government authority, whether it be Revenue Canada or the Public Guardian and Trustee of Ontario, does not necessarily mean that everything that a charity does is legitimate. What is required instead is a specific ruling from Revenue Canada or from a qualified professional confirming that the program being offered by the charity is in compliance with all applicable legislation.
 8. Bennett was able to promote the matching gift program through New Era by eliciting the support of or using the names of various prominent philanthropists and Christian leaders, including at times the names of individuals like Sir John Templeton. The lesson to be learned from this type of association is that a charity which has to rely upon "name dropping" from either prominent individuals or other charities to elicit credibility for its program should be viewed with suspicion. A program being offered by a charity should either stand or fall on its own merit without having to obtain credibility by relying upon outside referrals.
 9. A number of Christian organizations not only invested surplus funds in the New Era matching gift program, but also transferred large portions of their endowment funds (and in some cases even one hundred percent [100%] of their endowment funds) to the New Era Foundation. Since endowment funds constitute donor restricted trust funds that can only be used for the specific purposes set out by the donor in making the gift, the duty upon the directors of those charities to ensure that the endowment monies are invested with caution is even greater than the normally high duty to carefully invest monies of a charity in a prudent manner. As a result, the directors of the charities who contributed or invested endowment funds in the New Era scam could, in Canada at least and possibly even in the United States, find themselves personally liable to repay the lost endowment funds.
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10 A number of auditors and accountants who advised charities that invested in New Era raised questions about the matching gift program being offered. The boards of directors of those charities either ignored these warnings or attempted to downplay them out of fear of appearing to "bite the hand that was feeding them". Boards of charities however should actively encourage their professional advisors and in-house accountants to diligently raise questions and bring concerns to the board without fear of reprisal or rejection. Auditors, accountants and lawyers who act on behalf of charities should be relied upon to provide a sober reflection on activities of a charities. In the New Era scandal, many leading Christian charity in the United States could have avoided losses of tens of millions of dollars if the advice offered by their auditors and other professionals had been heeded.

11 Although Bennett touted the fact that he did not receive a salary from the New Era Foundation, he did manage to divert approximately 4.5 million dollars of contributors monies from New Era to various companies that he controlled by categorizing them as consulting fees. While there is nothing wrong with a charity paying for consulting fees, it has to be in relation to a legitimate expense so that the charity receives value in return for the payment made. What happened in the New Era Foundation and what charities in Canada should be diligent to ensure does not happen here is the categorization of improper payments by a charity under the catch all guise of a consulting fee in situations where a payment made directly to that individual in the same amount could never be justified as a salary expense.

As such, due diligent requirements in investigating a charity or an investment opportunity should involve questioning whether there are consulting fees that the charity is paying, and if so, why are payments being made as a consulting fee as opposed to the payment of a salary, are the consulting fees reasonable, who are the shareholders and directors of the company to which the consulting fees are paid, and do such payments constitute a direct or indirect conflict of interest for any members of the board of directors, officers, or employees of the charity that is paying the consulting fee in question?

D. Conclusion

The New Era scandal has shaken the very roots of the philanthropic community in the United States and in particular the boards of many prominent Christian charities. The ramifications of the scandal will have profound consequences on Christian organizations for years to come. What has happened in the United States should act as a "wake up call" for Canadian Christian charities to become more diligent in reviewing promises of "quick return" investments or a "too good to be true" philanthropic stewardship vehicles before deciding to proceed.

The law in Canada requires directors of charities to be prudent in their dealings with the assets of their charity in a manner similar to how an executor of an estate with infant beneficiaries would carefully watch over the investments that he or she had been placed in charge of. This requires that boards of charities be vigilant in exercising a due diligence investigation of any new investment opportunity or stewardship vehicle. It is not sufficient to simply "follow the leader" and rely upon what other organizations are doing, even charities that themselves are credible and well respected. The law demands more and our faith as Christians requires no less. At times, public scrutiny can help Christian charities to pause and reflect upon their duties and obligations. In this regard, the New Era scandal, as disturbing as it is, will have at least served a useful secondary purpose.

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APPENDIX 5

Impact of the *Personal Information Protection and Electronic Documents Act* (PIPEDA) on Charitable and Non-Profit Organizations

IMPACT OF THE PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT (PIPEDA) ON CHARITABLE AND NON-PROFIT ORGANIZATIONS

*By Mark J. Wong, B.A., LL.B
Assisted by Shen Goh and Suzanne White*

A. INTRODUCTION

Recent developments that have been made in the area of electronic commerce have provided consumers with many conveniences, but at the same time these developments have given rise to significant privacy concerns. Modern day conveniences that consumers enjoy, such as online banking, online trading and the use of Interac have enabled businesses to collect with relative ease the personal information of consumers without their specific knowledge or consent. In addition, the combination of e-commerce and the internet means that personal information collected can potentially be made available to a worldwide audience.

In response to these concerns, the Federal Government of Canada passed the *Personal Information Protection and Electronic Documents Act* ("PIPEDA" or the "Act") to inspire consumer confidence in e-commerce activities. Although PIPEDA initially was proclaimed into force in response to e-commerce concerns, the Act is actually broad and far reaching in that when fully implemented it will purport to regulate all collection, use and disclosure of personal information by organizations in the course of commercial activities, regardless of whether the personal information was obtained through or is even related to e-commerce.

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B. OVERVIEW OF PIPEDA

The implementation and coming into force of PIPEDA is divided into three stages. On January 1, 2001, PIPEDA applied to personal information collected, used or disclosed in the course of commercial activities by federal works, undertakings and business. On January 1, 2002, the Act was extended to the collection, use or disclosure of personal health information by the same organizations already covered in Stage 1. Finally, on January 1, 2004, the Act will apply to every organization that collects, uses or discloses personal information, including personal health information, in the course of commercial activities.

PIPEDA is comprised of five parts, but only Part One deals with the protection of personal information in the private sector and will be the focus of this article's discussion. Part One, in turn, is divided into five divisions: Division 1 outlines the rules for the collection, use and disclosure of personal information in the course of commercial activities; Division 2 deals with remedies; Division 3 deals with privacy audits; Division 4 deals with general matters; and Division 5 contains the Act's transitional provisions.

The substantive portions of PIPEDA are not found in Part One of the Act, but can be found in Schedule 1 to the Act. The provisions of Schedule 1 of the Act, based on the Canadian Standards Association's "Model Code for the Protection of Personal Information" (the "Model Code"), are the core of PIPEDA. The Model Code was designed to provide businesses with some minimal guidelines concerning the protection of personal information in their care and control.

C. DOES PIPEDA APPLY TO CHARITIES AND NON-PROFIT ORGANIZATIONS?

As mentioned above, beginning January 1, 2004, PIPEDA will apply to every organization that collects, uses or discloses personal information, including personal health information, in the course of commercial activities. Whether a charity or non-profit organization will be subject to PIPEDA depends on whether these organizations engage in the kind of commercial activities contemplated by the Act.

Commercial activity is defined broadly as "any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or

other fundraising lists.” Priscilla Platt, et al., in *Privacy Law in the Private Sector – An Annotation of the Legislation in Canada*, explain that the term commercial activity is not limited to businesses engaging in regular commercial activities, but also includes single isolated acts of commercial activities by non-commercial organizations. Therefore, charities or non-profit organizations engaging in commercial activities that are ancillary to its primary purposes may be subject to the Act to the extent that those commercial activities involve the collection, use or disclosure of personal information.

The definition of commercial activity also includes the phrase “conduct that is of a commercial character”. The listed examples of conduct that is of a commercial character – selling, bartering or leasing of donor, membership or other fundraising lists – sets out a guideline as to what other activities may be viewed as “conduct that is of a commercial character”. As the drafters of PIPEDA specifically used the word “includes”, it is presumed that they intended for the Act to cover any other conduct similar to those already listed.

Although the term commercial activity has also been judicially interpreted under other statutes, the courts have found it difficult to assign a clear-cut judicial definition to this term. In *Windsor-Essex County Real Estate Board v. Windsor (City)* (1974), 6 O.R. (2d) 21, the court held that “there is no doubt that an intention to make a profit will be a very important factor in determining whether an activity is a commercial activity, but the lack of it does not automatically prevent it from being so characterized.” (This decision was overruled on other grounds in *Ontario (Regional Assessment Commission) v. Caisse Populaire de Hearst Ltee.*, (1983) 143 D.L.R. (3d) 590.) At this time, the scope of the term commercial activity is still under debate and will undoubtedly be subject to more judicial interpretation in the future.

Presently, it is generally agreed that the term commercial activity appears to cover for-profit activities. However, Priscilla Platt, et al explain that it is possible that the courts may broaden its interpretation to include any transaction that involves the exchange of consideration. Legal commentators have indicated that this position is supported by the fact that the definition of commercial activity includes “bartering”, which suggests that any transactions involving an exchange of consideration would be sufficient. Therefore, the

cautious approach would be to assume that PIPEDA can apply to charities and non-profit organizations that collect, use or disclose personal information while carrying out some form of commercial activity.

D. EFFECT OF PIPEDA

If a charity or non-profit organization is deemed to be subject to PIPEDA, the Act will impose onerous, and time-consuming administrative costs on the organization. The Act requires organizations to comply with the 10 principles incorporated in Schedule 1 of the Act. As indicated above, Schedule 1 is based on the Canadian Standards Association's "Model Code for the Protection of Personal Information". In summary, Schedule 1 sets out the following 10 principles:

1. *Accountability* – An organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization's compliance with the following principles.
2. *Identifying Purposes* – The purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.
3. *Consent* – The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.
4. *Limiting Collection* - The collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means.
5. *Limiting Use, Disclosure, and Retention* – Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfillment of those purposes.
6. *Accuracy* – Personal information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used.
7. *Safeguards* – Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.
8. *Openness* – An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.

9. *Individual Access* – Upon request, an individual shall be informed of the existence, use, and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.
10. *Challenging Compliance* – An individual shall be able to address a challenge concerning compliance with the above principles to the designated individual or individuals accountable for the organization’s compliance.

It is important to note that Schedule 1 contains both mandatory provisions and discretionary provisions. As all 10 principles use mandatory language through the word “shall”, an organization is obliged to comply with the principles. However, the subclauses within the 10 principles only use discretionary language through the word “should”; therefore, the subclauses are only recommendations and do not impose any obligations. However, an organization would be prudent to voluntarily follow the recommendations set out in the subclauses in light of the fact that section 11(1) of the Act allows an individual to file a complaint against an organization for contravening a mandatory obligation *or* for not following a recommendation set out in Schedule 1. It is clear that not only may the privacy Commissioner investigate an organization for breaches of the mandatory obligations but also for failure to follow discretionary recommendations.

E. CONSEQUENCES OF NON-COMPLIANCE

If an organization fails to comply with PIPEDA’s requirements in its data collection procedures, it can become subject to a complaint. As mentioned above, Division 2 of PIPEDA outlines the remedies available to an individual where it is alleged that an organization has contravened a requirement under Part I of the legislation. Section 11 (1) of PIPEDA provides that an individual may file a written complaint with the Commissioner alleging that an organization has either contravened a Division 1 provision, or a Schedule 1 recommendation. The Commissioner may also initiate a complaint if it is satisfied that there are reasonable grounds to investigate the matter (s. 11 (2)). Under s. 11 (4), the Commissioner must give notice to an organization if a complaint under PIPEDA has been filed against it.

The Commissioner must investigate all complaints as stipulated under s. 12(1) of PIPEDA, and has extensive powers by which to investigate complaints. These powers include:

- ◆ Summoning and enforcing the appearance of persons to give testimony before the Commissioner (s. 12 (1)(a));
- ◆ Administering oaths (s. 12(1)(b));
- ◆ Receiving and accepting any evidence, by oath, affidavit or otherwise, that the Commissioner deems fit, regardless of whether it would be admissible in court [Emphasis added] (s. 12 (1)(c));
- ◆ Enter any premises occupied by an organization, other than a dwelling house, at any reasonable time (s. 12 (1)(d));
- ◆ Converse in private with any person in any premises entered (s. 12(1)(e)); and
- ◆ Examine or obtain copies of or extracts of relevant materials found in any premises (s. 12 (1)(f)).

It is important to note that a Commissioner's findings after investigating a complaint are not binding on an organization. Under sections 14 and 15 of PIPEDA, a complainant, including the Commissioner, after the Commissioner's report has been issued, may apply for a court hearing to the Federal Court. Upon hearing the case, the Federal Court may give a number of remedies found in s. 16 of PIPEDA, including:

- ◆ An order that the organization correct its practices to comply with sections 5 to 10 of PIPEDA (s. 16 (a));
- ◆ An order that the organization publish a notice of any action taken or proposed to correct its practices (s. 16(b)); and
- ◆ An award of damages to the complainant, including damages for any humiliation that the complainant has suffered (s. 16(c)).

Section 28, under Division 4 of PIPEDA, outlines three statutory offences under which an organization can be charged, which include:

- ◆ knowingly contravening s. 8 (8) of the Act. Section 8 (8) stipulates that an organization has a duty to retain information until a requester's recourses have been exhausted.
- ◆ knowingly contravening s. 27.1 of the Act. Section 27.1 prohibits employers from taking action against employees and independent contractors who, in good faith, report contraventions of PIPEDA to the Commissioner, or refuse to participate in activities which fail to comply with the legislation.
- ◆ obstructing the Commissioner or the Commissioner's delegate in the investigation of a complaint or in conducting an audit.

The three statutory offences listed above are punishable by summary conviction and a fine not exceeding \$10 000 (s. 28 (a)), or by an indictable offence and a fine not exceeding \$100 000 (s. 28 (b)).

For charities and non-profit organizations, many of which have limited resources, paying a fine and/or being exposed to criminal conviction can be devastating to the organization's reputation, financial health, and future existence.

F. CONCLUSION

On January 1, 2004, all organizations collecting, using and disclosing personal information throughout the course of their commercial activities must comply with PIPEDA. Therefore, any charity and non-profit organization engaging in such activities would be well-advised to take immediate steps to implement a sound privacy policy. A sound privacy policy will provide both structure to an organization's information collection procedures, and protection from public complaints and criminal sanctions.

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APPENDIX 6

**Letter from Superintendent of Financial Institutions
on Self-Insured Annuities
British Columbia, November 5, 1999**



November 5, 1999

Our File Number: X019731-2

Ms. Kim Putnam
Student-at-Law
Wardlaw, Mullin, Carter, Thwaites & Ward
Barristers, Solicitors & Trade-Mark Agents
P.O. Box 67
235 Broadway
Orangeville, Ontario
L9W 2Z5

Dear Ms. Putnam:

Thank you for your letter of October 27, 1999, in which you set out three questions regarding the issuance of annuities by charitable organizations.

1. "For those charities with the corporate authority to do so, does the Superintendent consider the issuance of annuities to be similar to an actual insurance product?"

Section 1 of the Financial Institutions Act defines "insurance business" and the definition includes the issuance of a contract of insurance.

Section 1 of the FIA also sets out the definition of "life insurance" which includes an undertaking entered into by an insurer in the ordinary course of its business to provide an annuity, including an annuity in respect of which the periodic payments may be unequal in amount.

Section 75 of the FIA states that a person must not carry on insurance business in British Columbia unless the person is an insurance company or an extraprovincial insurance company that has business authorization to carry on insurance business and the section lists certain specifically exempted entities. Charitable organizations are not exempted from the requirement to have a business authorization and we are not aware of any charitable organizations with authorizations to conduct insurance business in British Columbia.

2. "If this is the case, what is the Superintendent's position regarding charities who use annuities as a fundraising mechanism?"

A charitable organization is allowed to use annuities as a fundraising mechanism as long as the annuities are provided by an authorized insurance company and are sold by licensed insurance agents.

.../2

Ministry of
Finance and
Corporate Relations

Financial Institutions Commission
• Superintendent of Financial Institutions
• Registrar of Mortgage Brokers
• Superintendent of Real Estate
• Credit Union Deposit Insurance
Corporation of British Columbia

Mailing Address:
1900 - 1050 West Pender Street
Vancouver BC V6E 3S7

Telephone: (604) 660-2947
Facsimile: (604) 660-3170



3. " Finally, I am wondering if this position changes depending on whether or not the specific organization has the corporate authority to issue annuities."

Our position is as set out in our answer to question two. However, we should note that the matter is being reviewed by the Finance and Corporate Sector Policy Branch, of the Ministry of Finance and Corporate Relations. We have yet to receive the results of that policy review.

We note that we are not able to direct you to any information on our website, or to any publications issued by this office, that would provide more information on the matter than we have been able to provide in this letter.

Should you have any additional questions, please do not hesitate to contact Mr. Larry Neilsen, Deputy Superintendent, Insurance, on his direct line at 604-660-4825.

Yours truly,



Robert J. Hobart
Superintendent and
Chief Executive Officer

APPENDIX 7
Checklist and Reference Guide:
Avoiding Wasting Assets II – Trade-mark and
Domain Name Protection for Charities

APPENDIX 7

CHECKLIST AND REFERENCE GUIDE: AVOIDING WASTING ASSETS II – TRADE-MARK AND DOMAIN NAME PROTECTION FOR CHARITIES April 14, 2004

By Terrance S. Carter, B.A., LL.B., Trade-Mark Agent
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A. INTRODUCTION

1. This checklist is a reference tool that can be utilized when meeting with clients.

B. THE ROLE OF THE LAWYER IN TRADE-MARK MATTERS

1. Charities must ensure that all assets of the charity are properly identified, protected and applied in fulfilment of the charity's purpose.
2. A trade-mark can be one of the most valuable assets of a charity.

C. WHAT IS A TRADE-MARK?

1. The basic nature of a trade-mark.
 - (a) a trade-mark is any mark used for the purpose of distinguishing wares or services manufactured, sold, leased, hired or performed from those of others;
 - (b) a trade-mark represents the goodwill of a charity;
 - (c) trade-marks are recognized and protected at common law but receive additional protection by registration under the *Trade-marks Act*.
2. What do trade-marks consist of?
 - (a) a single word, e.g.,
"Lego"

- (b) a combination of words, e.g.,
“Miss Clairol”
 - (c) a logo or symbol, e.g.,
the big “M” for McDonalds
 - (d) a slogan, e.g.,
“you deserve a break today”
 - (e) a package or container designs, e.g.,
“the Coca-Cola bottle”
 - (f) even a telephone number, e.g.,
“967-1111”
3. Types of trade-marks involving charities.
- (a) corporate name, e.g.,
“ABC Relief Agency of Canada”
 - (b) the portion of a corporate name by which a charity is identified, e.g.,
“ABC Relief Agency” of ABC Relief Agency of Canada
 - (c) a Charity division, e.g.,
“ABC Children's Clubs”, a division of ABC Relief Agency of Canada
 - (d) a logo, e.g.,
The panda for World Wildlife Fund
 - (e) emblems or crests, e.g.,
The cross for the Canadian Red Cross
 - (f) a slogan, e.g.,
“Here's Life”.

D. WHY ARE TRADE-MARK IMPORTANT TO CHARITIES?

1. Trade-marks represent the goodwill of a charity by providing a focal point for
 - (a) donations from regular supports;
 - (b) donations from estate gifts;
 - (c) enhancing the reputation of a charity;
 - (d) building the future expansions of charitable activities; and
 - (e) developing future sponsorship agreements.
2. Trade-marks distinguish one charity from another.
3. Trade-marks have both present and future marketing value in relation to the sale of promotional materials.

4. Trade-marks have licensing value in other countries and/or with local chapters.
5. As a result, a trade-mark is one of the most valuable assets of a charity.
6. Trade-marks are fragile assets that can be lost or seriously eroded through errors.
7. It is essential that trade-marks be used in a proper manner, to enhance and protect their value instead of diminish their value.

E. THE DIFFERENCES BETWEEN TRADE-MARKS AND TRADE NAMES

1. Trade name is the name under which a business is carried on.
 - (a) it is the corporate or business name of an entity as opposed to the trade-mark;
 - (b) a trade name and a trade-mark can be one and the same.
2. An example of a trade name is “The Coca-Cola Company”, whereas “Coke” is a trade-mark.
3. The *Trade-marks Act* does not provide for registration of a trade name unless it is a trade-mark.
4. Instead trade names are registered as:
 - (a) corporate names under either Provincial or Federal incorporating legislation; or
 - (b) business names under applicable Provincial legislation, e.g., *Business Name Act* (Ontario).
5. Registration of a trade name as either a corporate name or a business name is for public information purposes.
6. Registration of a corporate name or business name does not give trade-mark protection.
7. An owner of a trade name still has common law rights to the trade name based upon entitlement to restrain others from “passing off” on the goodwill of a trade name.
 - (a) a trade-mark owner may attack an application for registration or registration of a trade-mark and/or restrain its use under a common law action of “passing off”;
 - (b) an unregistered trade name may be used to expunge a trade-mark if used prior to the registered trade-mark and an expungement application is brought within five years of registration.

F. THE DISTINCTION BETWEEN TRADE-MARKS AND OTHER INTELLECTUAL PROPERTY

1. Copyrights:
 - (a) copyright is the sole right to reproduce an original work of art, music, drama, literature, photographs, manuscripts, computer programs, etc.;
 - (b) you do not need to register a copyright, although it may be advisable to establish an official record;
 - (c) generally a copyright exists for the life of the author and 50 years thereafter;
 - (d) a copyright and a trade-mark may co-exist.

2. Patents:
 - (a) a patent is a statutory protection given to an inventor to make, use and sell to others the invention that he or she has created;
 - (b) an invention is defined as any new and useful art, process, machine, manufacture, or composition of matter, or any new and useful improvement in such;
 - (c) patent protection extends for up to 20 years from the date the application.

3. Industrial Designs:
 - (a) provides an exclusive right to apply an ornamental design to an article of manufacture, such as a shape of a bottle;
 - (b) rights are limited to the ornamental appearance of an article of manufacturer.

4. Trade Secrets:
 - (a) a trade secret is a common law protection arising out of a fiduciary obligation to act in good faith;
 - (b) information that is secret to the owner that can be used in the operation of a business or other enterprise;
 - (c) e.g., the recipe for the coca-cola soft drink is a trade secret.

5. Registered Topography (Micro-Chips):
 - (a) provides exclusive rights to reproduce and manufacture the topography (i.e., three dimensional configuration) of integrated circuits, e.g., computer chips;
 - (b) application must be filed within 2 years of first commercial exploitation of the topography.

G. HOW TRADE-MARKS BECOME WASTING ASSETS FOR CHARITIES

1. Confusion with pre-existing trade-marks or trade names.
2. Failure to restrain unauthorized use of trade-marks resulting in loss of distinctiveness through:
 - (a) similar corporate names;
 - (b) similar charity names;
 - (c) similar logos; and
 - (d) similar domain names on the Internet.
3. Confusion in names involving estate gifts.
4. Failure to properly control licensing of a trade-mark.
5. Abandonment through lack of use.
6. Limitation on trade-mark rights as a result of trade-mark registration by others.
7. Dilution of trade-mark through inconsistent use.
8. Trade-marks are used with wares and services different from those listed in the trade-mark registration.

H. TRADE-MARK PROTECTION AND THE COMMON LAW

1. Common law provides protection to restrain a competitor from passing off its goods or services under the trade-mark of another.
2. The cause of action at common law is called a “passing off” action.
3. Common law protection of a trade-mark does not require that the trade-mark be registered.
4. However, trade-mark rights at common law are more difficult to establish and enforce.

I. THE ADVANTAGES OF TRADE-MARK REGISTRATION

1. Trade-mark registration provides a presumption of a valid trade-mark.

- (a) establishes legal title to trade-marks similar to the registration of a deed for real property;
 - (b) a court will presume the validity of a registered trade-mark;
 - (c) at common law, the validity of a trade-mark must be established before a court will enforce it.
2. Trade-mark registration is effective throughout Canada.
- (a) registration is effective even if the trade-mark has only a local geographic exposure;
 - (b) at common law, though, the trade-mark is limited to enforcement in the local area of exposure only.
3. Trade-mark registration permits enforcement across Canada.
- (a) either in the Federal Court of Canada or Provincial Superior Court;
 - (b) at common law, the owner must initiate a passing off action in Provincial Superior Courts which is more difficult, lengthy, and costly to enforce.
4. Trade-mark registration provides the exclusive right to use the trade-mark with respect to its goods or services.
- (a) exclusive right to use the trade-mark in association with its goods and services;
 - (b) in effect for fifteen years;
 - (c) is renewable every fifteen years thereafter.
5. Trade-mark registration gives public notice of the trade-mark.
- (a) will appear in subsequent trade-mark searches;
 - (b) will appear in corporate and business name searches;
 - (c) will deter others from using the trade-mark.
6. A trade-mark registration can become incontestable in some situations.
- (a) a registered trade-mark cannot be contested after five years based upon a claim of prior usage even if there is an unregistered trade-mark with an earlier date of use;
 - (b) no such similar benefit extends to an unregistered trade-mark at common law.
7. Failure to obtain trade-mark registration may result in a limitation of trade-mark rights.
- (a) if another party obtains a registered trade-mark, then after 5 years it will become incontestable based upon a claim of prior usage unless the owner of the registered trade-mark had knowledge of the unregistered trade-mark;
 - (b) this will result in the original trade-mark owner possibly facing a legal challenge to an expansion in usage of its unregistered trade-mark.

8. Trade-mark registration can assist in protecting a domain name on the internet.
 - (a) a domain name is harder to challenge if there is a registered trade-mark;
 - (b) the trade-mark registration should be identical to the second level domain name.
9. Trade-mark application in Canada permits “Convention” filing in other “Convention” countries.
 - (a) the filing date for a trade-mark application in Canada will permit the same filing date to be used in other “Convention” countries;
 - (b) application must be filed in other countries within 6 months of filing in Canada.
10. Trade-mark registration facilitates obtaining trade-mark registration in other “Convention” countries.
 - (a) a trade-mark registration facilitates a charity to apply for a trade-mark registration in other “Convention” countries.
 - (b) generally not available to a charity that has not registered its trade-mark.

J. THE ACQUISITION OF TRADE-MARK RIGHTS

1. A trade-mark registration confirms and enhances existing trade-mark rights.
2. Registration not essential.
 - (a) a trade-mark registration is not essential to acquire rights in a trade-mark;
 - (b) an owner of a trade-mark has the right to prevent the subsequent use of a confusing trade-mark by another but only in the geographic area of usage.
3. First use of a trade-mark generally establishes priority.
 - (a) first person to use a trade-mark in Canada acquires the right to the trade-mark and is entitled to priority in registration;
 - (b) subject to earlier filing of proposed use of a trade-mark;
 - (c) there is no minimum length of time that a trade-mark must be used;
 - (d) trade-mark use must be continued and not abandoned.

K. BARRIERS TO TRADE-MARK REGISTRABILITY

1. A trade-mark will not be registerable if:
 - (a) it is a word that is “primarily merely” the name or the surname of an individual who is living or has died within the preceding thirty years
 - e.g., “Smith” is not registerable because it is “primarily merely” a surname
 - but “Elder” may be registerable because there is another meaning beyond a surname
 - also can acquire distinctiveness through long term use
 - (b) it is a word that is “clearly descriptive or deceptively misdescriptive of the character or quality of the goods or services, the condition of or the persons employed in the production, or of their place of origin”
 - e.g., “all silk” for silk fabric, or “sweet” for ice cream, are “clearly descriptive”
 - e.g., “all silk” for non-silk fabrics is “deceptively misdescriptive”
 - e.g., “Paris Fashion” indicates the place of origin
 - the exception is where a secondary meaning has developed to overcome the descriptive or misdescriptive nature of the mark
 - (c) it is the name in any language of any of the goods and services in connection with its use
 - e.g., “Shredded Wheat” for cereal products
 - e.g., “Holy Bible” for bibles
 - (d) it is confusing with a previously registered, applied for, or used trade-marks
 - test is:
 - whether the trade-mark looks or sounds alike or suggests a similar idea; and
 - whether they are used to market similar wares or services
 - there only needs to be a likelihood of such confusion
 - the Trade-marks Office will consider:
 - the distinctiveness of the trade-mark and the extent to which it has become known
 - the length of time the trade-marks or trade names have been in use
 - the nature of the wares, services or business
 - the nature of the trade
 - the degree of resemblance between the trade-mark or trade name in appearance, sound, or in the ideas suggested by them
 - (e) it is an Official Mark under Section 9 or 10 of the *Trade-marks Act*
 - Section 9 are marks of public authority, i.e., for which public notice has been given
 - government marks or symbols
 - coats of arms of the Royal Family, Armed Forces and the R.C.M.P

- emblems of the Red Cross, Red Crescent, United Nations
 - universities or public authorities
 - Section 10 prohibits the adoption of a mark which by ordinary and *bona fide* commercial use has become recognized in Canada designating the kind, quality, quantity, or origin of a trade-mark
 - e.g., “Tweed Jackets”
- (f) it is not used to distinguish “wares and services manufactured, sold, leased, hired or performed by [the charity] from those manufactured, sold, leased, hired or performed by others.”

L. THE SELECTION OF TRADE-MARKS FOR CHARITIES

1. Inherently strong marks.
 - (a) the strongest trade-marks are those that have no inherent meaning;
 - (b) e.g., coined words like “Xerox” or “Exxon”;
 - (c) e.g., dictionary words that have no reference to the goods with which they are used in associated with, e.g., “Citizen” for watches.
2. Inherently weak marks.
 - (a) dictionary words that describe a characteristic or quality of goods;
 - (b) e.g., “Super Glue” for glue products;
 - (c) e.g., “Artistic Dancing” for a ballet program;
 - (d) many charities have descriptive names and may need to establish distinctiveness through long term use.
3. Suggestive marks.
 - (a) not “clearly descriptive” but because the marks is suggestive of products are not considered to be inherently strong marks;
 - (b) e.g., “Shake and Bake” for chicken coating.
4. Compound word marks.
 - (a) the combination of a distinctive word with a descriptive word;
 - (b) e.g., “Coca-Cola”, with “Coca” being distinctive and “Cola” being descriptive.
5. Marks that have acquired a secondary meaning.

- (a) a weak trade-mark can through length of usage become a distinctive trade-mark;
- (b) e.g., “Fridgedaire” for fridges.

M. THE IMPORTANCE OF CONDUCTING TRADE-MARK SEARCHES

1. When to do a trade-mark search.
 - (a) for existing unregistered trade-marks before proceeding to trade-mark registration;
 - (b) for future trade-marks or logos;
 - (c) for future corporate names or amended corporate names;
 - (d) for future operating names of a charity;
 - (e) for Internet domain names;
 - (f) for charities that are licensing its name.

2. Why conduct a trade-mark search?
 - (a) to determine the strength of an existing unregistered trade-mark;
 - (b) to determine if there are any pre-existing trade-marks that are confusing and should either be avoided or challenged (within 5 years);
 - (c) to determine the extent of future wares and services left open for expansion of trade-mark registration;
 - (d) to avoid trade-mark infringement and potential lawsuits.

3. Types of trade-mark searches.
 - (a) Trade-marks Office for registered trade-marks
 - manual search of Trade-marks Register in the Trade-marks Office
 - computerized search of trade-mark records
 - (b) trade names and common law searches:
 - unregistered trade names are entitled to trade-mark protection and may bar trade-mark registration
 - corporate NUANS searches (newly updated automatic name search)
 - business name searches
 - trade journals
 - yellow pages
 - Internet Domain Name Search
 - Revenue Canada Charities Division list of registered charities

4. The trade-mark registrability opinion.
 - (a) trade-mark opinion should state whether the trade-mark is registrable as a Canadian

- trade-mark;
 - (b) the opinion should state whether the client is free to adopt the name and use is as a trade-mark in Canada.
5. Expunging competing trade-marks.
- (a) expungement based upon non-use
 - if they are competing registered trade-marks, Section 45 of the *Trade-marks Act* can be relied upon to require the Registrar of Trade-marks to send notice to the owner of the competing trade-mark to produce evidence that the trade-mark has been used in the last three years
 - failure to produce such evidence will result in expungement.
 - (b) expungement based on earlier use
 - if an unregistered trade-mark was in use prior to the registration of a competing trade-mark, then the owner can apply to have the registered trade-mark expunged
 - can only bring application for expungement based upon earlier use if brought within five years of the date of trade-mark registration.

N. TYPES OF TRADE-MARK APPLICATIONS

1. Ordinary trade-marks.
 - (a) a basic trade-mark application will include a word, a series of words, a picture, a design, or a combination of design, picture and words;
 - (b) used in conjunction with a list of existing or proposed wares and services.
2. Distinguishing guise.
 - (a) a distinguishing guise registration protects the unique shape of an item or its container or a mode of wrapping or packaging of goods;
 - (b) e.g., the shape of a coca-cola bottle;
 - (c) e.g., an audio tape enclosed case in the shape of a book or other product.
3. Certification mark.
 - (a) a certification mark is a mark that the owner licenses to others to use as an indication of having met a defined standard;
 - (b) the owner of the certification mark cannot use the certification mark itself;
 - (c) ie., the “Good Housekeeping Seal of Approval”, the Canadian Standard Association “CSA” logo, and the Wool Bureau's “Wool” design;

- (d) certification marks were previously used to avoid Registered User Agreements;
- (e) certification marks are less popular now since licensing of trade-marks no longer require Registered User Agreements.

O. THE BASIS FOR OBTAINING ORDINARY TRADE-MARK REGISTRATION

1. Use in Canada.

- (a) trade-mark for wares (goods) can be registered based by use in Canada if it was used:
 - at the time of the transfer of property and possession of the wares; and
 - in the normal course of trade; and
 - if the trade-mark is marked on the wares or on packages
- (b) trade-mark for service can be registered based on use if:
 - it is used and displayed in the performance or advertising of those services
- (c) trade-mark must be used to remain valid
- (d) the priority date for registration is the date of first use
 - if use is recent, then the priority date will be shown as a date, month and year e.g., January 1st, 2004
 - if priority use was many years before then the priority date will be only a month or even a year, e.g., 1943 (presumed to be December 31st, 1943)

2. Proposed use.

- (a) can file a trade-mark application based on proposed use before any use has taken place for either a ware or service;
- (b) this allows the future reservation of a trade-mark for a specific ware or service;
- (c) use must take place subsequent to filing and before the application can issue to registration;
- (d) the priority date is the date of filing not the date of first use.

3. Registration in foreign countries.

- (a) registration abroad permits an application to be filed based upon use and registration in a foreign country without the requirement of any use in Canada;
- (b) If the foreign registration is an international “Convention” country, the applicant will be entitled to priority in Canada as of the date of filing in the other “Convention” country if the application is filed in Canada within 6 months.

4. Making known in Canada.

- (a) an application can be filed based upon “making known in Canada”;

- (b) the trade-mark must be used in another international “Convention” country and in association with the wares and services not yet used in Canada;
 - (c) extremely difficult to obtain since must establish “notoriety” of use in Canada;
 - (d) wares must be distributed within Canada; or
 - (e) wares and services must be advertised in:
 - printed publications in Canada; or
 - radio/T.V. broadcasting in Canada
5. Combination application.
- (a) a trade-mark application is not limited to any one type of application;
 - (b) a single trade-mark application can combine more than one type of trade-mark application.

P. FILING AND PROSECUTING TRADE-MARK APPLICATIONS

8. What does a trade-mark application cover?
- (a) a separate trade-mark application must be filed for each trade-mark.
 - (b) however, one trade-mark application can cover both wares and services.
 - (c) there is no limit to the number of wares and services that can be included in one application.
9. When to file the trade-mark application.
- (a) a proposed use application would allow the date of filing to become the priority date instead of the subsequent date of actual usage.
 - (b) if a trade-mark application has been filed in another “Convention” country within six months, the charity can claim the earlier filing date as the filing date for the Canadian trade-mark application.
10. The contents of a trade-mark application.
- (a) set out the basis of the application; and
 - (b) contain a statement in “ordinary commercial terms” of the wares and services with which the trade-mark has been or will be used.
11. Amendments to a trade-mark application are not permitted after the application is filed with respect to the following:
- (a) the trade-mark itself if it alters the distinctive character of the trade-mark;
 - (b) the name of the applicant; or

- (c) the enlargement of the statement of wares and/or services.
12. Examination by the trade-marks office to ensure that:
 - (a) the trade-mark is not confusing with another trade-mark registration or pending application;
 - (b) the trade-mark is described with ordinary commercial terms;
 - (c) the trade-mark is not clearly descriptive or deceptively misdescriptive; and
 - (d) the trade-mark does not require a disclaimer of a word or words.
 13. Advertisement in the trade-marks journal gives the public two months to file an opposition to the registration.
 14. Allowance of a trade-mark gives the applicant six months to pay the registration fee.
 15. After trade-mark registration, the trade-mark registration is renewable every fifteen years.

Q. THE IMPORTANCE OF FOREIGN TRADE-MARK REGISTRATION

1. Each country requires separate trade-mark registration.
2. Member countries to international “Convention” can claim priority date as the filing date of a trade-mark in another “Convention” country.
3. Using priority dates in foreign countries can be important in relation to protecting a trade-mark based on proposed use of a trade-mark.
4. In the United States:
 - (a) trade-mark registrations are done in accordance with a “class” system for each ware or service;
 - (b) each class requires a separate trade-mark registration;
 - (c) due to the proximity of the United States, U.S. trade-mark registration is an important consideration;
 - (d) but need to register in the United States within six (6) months of Canadian filing.

R. SECTION 9 OFFICIAL MARKS

1. What is a Section 9 Official Mark?

- (a) Section 9(1)(n)(iii) of the *Trade-marks Act* prohibits anyone from using an Official Mark in association with any wares or services in Canada;
 - (b) public notice is given through the filing and advertisement of the Official Mark in the Trade-marks Journal;
 - (c) examples of charities and organizations that have had Section 9 Official Marks published:
 - The Canadian Olympic Association;
 - The Ontario Minor Hockey Association;
 - The Alzheimer's Society of Canada;
 - Canadian Baptist Ministries; and
 - Ontario Society for Crippled Children;
 - The Hutterian Bretheran Church;
 - The Canadian Canoe Museum;
 - Anne of Green Gables Licensing Authority.
2. The advantages of a Section 9 Official Mark.
- (a) the test for a Section 9 Mark does not require a comparison of goods or services as is necessary under a test for a registered trade-mark;
 - (b) a Section 9 Mark allows the owner to prohibit anyone else using the mark for any wares or services, although it does not allow for a claim of damages;
 - (c) the cost of a Section 9 Notice is approximately 50% less expensive than a trade-mark application;
 - (d) there are no detailed examinations of a Section 9 Mark other than confirmation that the applicant is a public authority and uses the Mark in Canada, whereas trade-mark application must be prosecuted and objections answered;
 - (e) there are no renewal fees for Section 9 Mark, whereas a trade-mark registration is limited to fifteen years and can be expunged;
 - (f) a Section 9 Mark can be indirectly controlled similar to a license of a registered trade-mark by “consenting” to its use by others.
3. Recent Court Decisions Concerning the Definition of “Public Authority”.
- (a) public authority is not defined in the *Trade-marks Act*.
 - (b) the trade-mark office traditionally defined a public authority very narrowly.
 - (c) however, case law has now determined, and the Trade-Mark office published a new Practice Notice on October 2nd, 2002, clarifying that:
 - the activities of the body must benefit the public; and
 - there must be a significant degree of government control
 - significant degree of government control no longer requires that the charity have a public duty.
 - significant degree of government control now requires that the charity be subject to government monitoring, i.e., the government must be able to intervene in how the charity conducts its affairs.
4. The future for Section 9 Official Marks.
- (a) as a result of recent case law and the Practice Notice, it is now more difficult for

charities to qualify as a public authority in order to be entitled to Section 9 Official Marks.

- (b) therefore, charities currently holding Section 9 Official Marks should ensure that they also secure parallel registered trade-marks for those Official Marks.

S. TRADE-MARKS AND INTERNET DOMAIN NAMES

1. What are internet domain names?

- (a) a domain name is the numeric electronic address used to locate a computer on the internet.
- (b) there are two parts to a domain name:
- top level, i.e., generic domains such as .com and .org, or regional domains such as .ca or .us;
 - second level is 26 letters to identify the organization.

2. Conflicts between domain names and trade-marks.

- (a) there are a limited number of Internet domain names available, e.g., there can only be one “microsoft.com” or “redcross.org”.
- seven new top level designations have been introduced to reduce competition for names; and
 - ICANN and CIRA have both adopted dispute resolution policies.
- (b) both ICANN and CIRA’s policies require the complainant contesting the domain name to establish the following three elements:
- The domain name is identical or confusingly similar to a trade-mark in which the complainant has rights;
 - The domain name owner has no rights or legitimate interests in respect of the domain name; and
 - The domain name has been registered and is being used in bad faith.

3. Securing and protecting domain names.

- (a) obtain a domain name as soon as possible;
- (b) obtain as many domain names as possible;
- (c) when obtaining as many domain names as possible, be sure to register with multiple top level domain names;
- (d) when obtaining as many domain names as possible, be sure to also register multiple second level identifying names with the same top level domain;

- (e) conduct a trade-mark search for the second level identifying name to determine whether or not there is the potential for trade-mark infringement;
 - (f) apply for trade-mark registration of the exact second level identifying name;
 - (g) since a trade-mark registration in Canada takes eighteen to twenty-four months, consider obtaining a trade-mark registration in “first to file” jurisdiction; and
 - (h) monitor and renew domain names.
4. Contesting existing domain names that the charity has failed to secure.
- (a) through ICANN or CIRA’s dispute resolution policies; or
 - (b) through a trade-mark infringement action in court.
5. Licensing of domain name may be appropriate in certain situations:
- (a) when a charity permits an internet link from its site to the site of another charity.
 - (b) when a Canadian charity is set up on a national basis with chapters and these chapters are able to use geographic divisions of the main domain name, e.g., national charity has *www.athritis.ca*, and the provincial charities have *www.athritis.on.ca*.
 - (c) when a religious denomination across Canada wants to retain control over the use of the denominational domain names by local churches.
 - (d) when a charity expands to other countries and wishes to utilize similar domain names in those countries, such as *www.redcross.us* from the United States.
 - (e) when a charity permits its domain name to be used by business for web links or for advertising the domain name of the business in conjunction with the domain name of the charity.

T. TRADE-MARK LICENSING

1. When is trade-mark licensing relevant?
- (a) when a Canadian charity is setting up local chapters and wishes to maintain the ownership and control of a trade-mark;
 - (b) when a Canadian charity expands to other countries and wishes to maintain ownership and control of its trade-marks;
 - (c) when a charity permits other charities to use its trade-mark as evidence of membership or standards be maintained, e.g., “Canadian Council of Christian Charities”;
 - (d) when a charity permits its trade-mark to be used in conjunction with a fundraising event conducted by others on behalf of the charity;
 - (e) when a foreign charity is sponsoring a new charity in Canada and wishes to retain the ownership and control of the trade-mark;
 - (f) when a charity enters into a sponsorship agreement; and

- (g) when a religious denomination wants to retain control over the use of the denominational name by local churches;
2. Licensing requirements prior to June 9th, 1993 – Had to file a Registered User Agreement with CIPO.
 3. Licensing requirements after June 9th, 1993 – No longer necessary to have a Registered User Agreement.
 4. Current licensing requirements for trade-marks.
 - (a) there must be a licensing arrangement;
 - (b) the license arrangement should be in writing but not necessarily;
 - (c) license must be granted by the owner of the trade-mark;
 - (d) owner must obtain direct or indirect control of the character, quality and use of the trade-mark in association with wares or services;
 - (e) the *Trade-marks Act* deems the use of a licensee to be use of the owner.
 5. Use and enforcement of the trade-mark license.
 - (a) marketing
 - important to show that the user is a licensee
 - e.g., “Help The Children” is a Reg TM of “Help The Children International” used under licence by “Help the Children Canada”
 - (b) enforcement
 - licensee may call on owner to take proceeding to enforce protection of trade-mark
 - licensee can establish evidence of use for a proposed use by licensor
 6. General licensing considerations.
 - (a) scope of license
 - clarify which trade-marks are being licensed and which are not
 - (b) licensee’s undertaking
 - that the trade-mark being licensed is valid
 - that any goodwill arising from the licensee’s use will inure to the owner
 - (c) quality control
 - owner must set and monitor the standards for the trade-mark
 - (d) controlling “use”
 - give public notice of the fact that the trade-mark is a licensed use
 - give public notice of the identify of the owner
 - (e) assignment and sub-license
 - licensee should be prohibited from assigning, transferring or sub-licensing the

- trade-mark
 - owner will normally retain the right to assign its rights to other parties
- (f) licensee's standing
 - set out the scope and limits on what right or standing, if any, the licensee will have to commence legal proceedings for enforcing trade-mark rights
- (g) prescribe boundaries for licensed goods or services
 - set out geographic area within which trade-mark can be used
 - set out list of services and goods with which trade-mark can be used
- (h) liability
 - licensor should be liable for the registrability of the trade-mark
 - licensee should be liable for misuse of the trade-mark
 - licensor should maintain liability insurance for actions of the licensee
- (i) confidentiality
 - information obtained as a result of the license agreement is confidential
- (j) royalties
 - what kind of payment will be required
 - how the payment will be calculated
 - when the payment will be calculated; and
 - when the payment will be paid.
- (k) termination of license agreement
 - needs specific termination date for agreement
 - plus right to terminate early in the event of breach of the agreement
- (l) effect of termination of agreement
 - licensee ceases to use the trade-mark
 - licensee returns all items with trade-mark on it
 - licensor and licensee will issue a joint statement

U. PROPER USE OF TRADE-MARKS

1. Ensure continued usage.
 - (a) trade-mark is used on wares if it is displayed on the wares or their packaging.
 - (b) trade-mark is used in connection with services if it is displayed during the performance of the services, or in advertising or promotional materials for the services.

2. Ensure proper marking.
 - (a) prior to trade-mark registration use “*TM*”;
 - (b) after the trade-mark registration use “[®]”;
 - (c) identify ownership of trade-mark, e.g., “ABC Relief Agency is a Reg TM of ABC Relief

- Agency of Canada”;
- (d) use markings every time that a trade-mark is used
- on letterhead, publications, tapes, videos, advertisements, receipts, and solicitation
3. Ensure identification of license arrangement.
- (a) license arrangement must be shown on all markings;
- (b) e.g., ABC Relief Agency ®*;
- * a Reg TM of ABC Relief Agency International used under license by ABC Relief Agency of Canada
4. Trade-marks should be distinctive.
- (a) a trade-mark should be used in a manner to distinguish it from descriptive or generic words;
- (b) this can be done by using
- distinctive type
 - bold type
 - capitalization
 - prominent position on letterhead
5. Trade-marks should be used as an adjective, not a noun.
- (a) always use trade-marks as an adjective even if the trade-mark is a noun
- e.g., “Band-Aid Bandages”
 - e.g., “Jello Gelatine”
- (b) when trade-marks are used as a noun they will become unforceable
- e.g., “Linoleum”, “Zipper”, “Escalator”, or “Cellophane”
6. Trade-marks may need to be followed by generic name.
- (a) when a trade-mark is new or differs substantially from an existing one, it may be necessary to create or choose a suitable generic name to follow trade-mark;
- (b) a generic name should be highly descriptive, relatively short, and easily pronounceable.
- (c) e.g., “Copiers” in the phrase “Xerox Copiers”.
7. Trade-marks should avoid plural or possessive applications and maintain consistency.
- (a) never use a trade-mark in the plural form or as a possessive;
- (b) e.g., “Coca-Cola's great taste”;
- (c) a trade-mark should be shown in a consistent manner.

8. Change of name of trade-mark owner.
 - (a) all change of names of the registered owner must be shown on markings;
 - (b) all change of names of owners of registered trade-marks must be filed with the trade-marks office;
 - (c) failure to do so may result in the loss of trade-mark rights.
9. Other wares/services, in addition to those covered by the registration, must also be registered if they are to be used in conjunction with the registered trade-mark.
10. Importance of education concerning trade-mark use for:
 - (d) the board of a charity
 - (e) the executive staff of a charity
 - (f) the staff involved in media and publications

V. PROTECTING THE TRADE-MARK

1. Ensure parallel registrations of a trade-mark.
 - (a) incorporation with the name of a charity that includes the trade-mark;
 - (b) a trade-mark which is part of a trade name (i.e., business name) needs to be registered under Provincial legislation, e.g., *Business Name Act* of Ontario;
 - (c) a trade-mark needs to be registered under the *Trade-marks Act*;
 - (d) a trade-mark should be accompanying a Section 9 Official Mark;
 - (e) registration of trade-marks in foreign jurisdictions should be considered.
2. Monitor infringement by other competing trade-marks.
 - (a) regular review of competing trade-marks in the Trade-marks Journal;
 - (b) regular review of trade journals, magazines, and newspapers;
 - (c) review of corporate and business name registrations;
 - (d) review of names in telephone books in major cities;
 - (e) regular review of Internet domain names;
 - (f) periodic review of names of registered charities with Revenue Canada.
3. Be pro-active in stopping infringement of a trade-mark.
 - (a) give “polite but firm” first notice of infringement to offending party;
 - (b) if necessary obtain legal counsel to send formal letter of complaint of infringement;
 - (c) as an alternative, suggest establishing a licence agreement;

- (d) then propose non-binding mediation (“ADR”);
 - (e) if all else fails, then must proceed with litigation to protect the trade-mark or risk losing trade-mark rights.
4. Protect an unregistered trade-mark.
- (a) protection under corporate law
 - confusing corporate names can be forced to change
 - under the *Canada Corporations Act*
 - under Provincial Corporation Legislation
 - under Provincial Business Name Legislation
 - requires a complaint to the applicable government department
 - (b) expunging a competing registered trade-mark
 - Section 45 Notice available to require evidence of use of competing trade-mark within last three years
 - the Act permits expungement of a trade-mark within five years of registration if evidence can be shown of a prior use by an unregistered trade-mark
 - expungement proceedings can be brought at any time where
 - the offending mark was not registerable at the time of its registration; or
 - the trade-mark was not distinctive as of the date of institution of the legal proceedings
 - (c) “passing off” action at common law
 - must prove ownership of the unregistered trade-mark
 - passing off action is limited to local geographic area where a trade-mark has been used
 - passing off action is difficult to prosecute, is lengthy, and is expensive
5. Protection under *The Trade-marks Act* for registered trade-marks.
- (a) infringement action available;
 - (b) infringement action can be brought in Federal court or in any Provincial court;
 - (c) do not need to establish ownership of trade-mark;
 - (d) is not restricted to immediate geographic area;
 - (e) alternative dispute resolution is a realistic option to an infringement action.
6. Ensure usage of the trade-mark, as a registered trade-mark that is not used for three years is subject to expungement under Section 45.
7. Abandonment under common law.
- (a) to have a trade-mark abandoned at common law it is necessary to show not only the discontinuance of use but also an intention to abandon;
 - (b) abandonment means the loss of both registered and unregistered trade-mark rights.

W. CONCLUSION

1. Trade-marks are an essential asset of a charity.
2. Trade-marks can be lost if they are not properly protected.
3. A charity needs to be pro-active in protecting its trade-marks or risk losing its trade-mark rights by default.
4. Registration of a corporate name or business name does not by itself give trade-mark protection.
5. Trade-mark rights exist at common law but those rights should be protected by trade-mark registration under the *Trade-Marks Act*.
6. There is enhanced trade-mark protection available for charities that qualify as public authorities under the *Trade-Marks Act* for Official Marks.
7. Separate trade-mark registration must be done in each country in which the charity is operating.
8. It is essential to properly use and license trade-marks.
9. An infringement of a trade-mark by others, even if done unintentionally, must be immediately challenged.
10. The board members and executive staff of a charity need to be informed of the importance of trade-mark rights.
11. In addition to obtaining a trade-mark registration, a charity should secure a domain name as soon as possible using its trade-mark as part of the domain name.

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APPENDIX 8
Summary of Changes to the CRA Website
from 2002 – 2004

APPENDIX 8

SUMMARY OF ADDITIONS AND

CHANGES TO THE CRA WEBSITE FROM 2002 TO 2004

The reader is advised that this compendium of documents is *not* an official CRA publication. All documents referred to can be accessed from <http://www.cra-adrc.gc.ca/tax/charities/menu-e.html> .

1. Legislative Amendments

- *Department of Finance Releases Legislative Proposals Relating to Income Tax Affecting Registered Charities* – December 20, 2002, -updated December 24, 2002
- *Federal Government Releases Draft Technical Income Tax Amendments*, updated December 20, 2002
- *Legislative Proposals and Explanatory Notes Relating to Income Tax* – December 2002:1, updated December 20, 2002
- *Legislative Proposals and Explanatory Notes Relating to Income Tax* – December 2002:2, updated December 20, 2002
- *Legislative Proposals and Explanatory Notes Relating to Income Tax* – December 2002:3, updated December 20, 2002
- *Legislative Proposals and Explanatory Notes Relating to Income Tax* – December 2002:4, updated December 20, 2002
- December 5, 2003 - Draft Amendments to the *Income Tax Act*
- February 27, 2004 - Revised Draft Technical Amendments to the *Income Tax Act*

2. Charities – Interpretation Bulletins

- IT-288R2 – Subject: INCOME TAX ACT, Gifts by individuals of Capital Properties to a Charity and Others; Reference: Subsections 110.1(3) and 118.1(6) (also subsections 13(1), 20 (16). 110.1(1), 118.1(1), 118.1(4) and 118.1(7), paragraphs 69(1)(b) and 70(5)(a) of the Income Tax Act and sections 3501 and 3504 of the Income Tax Regulations), -dated January 16, 2003
- IT-75R4 – Subject: INCOME TAX ACT, Scholarships, Fellowships, Bursaries, Prizes, Research Grants and Financial Assistance, dated June 18, 2003

3. Information Circulars

- IC 75-2R6 – Subject: Contributions to a Registered Political Party or to a Candidate at a Federal Election, -dated July 18, 2002

4. Brochures and Guides

- CCRA – *Tax Advantages of Donating to Charity*, -printed January 21, 2002

5. Income Tax Technical News

- Newsletter No. 26, - dated December 24, 2002

6. Policy Statements

Becoming a Registered Charity:

- *Applicants that are Established to Relieve Poverty by Providing Rental Housing for Low-Income Tenants*, CPS-020, April 1, 2003
- *Group Insurance Rates for Registered Charities*, CPC-022, March 5, 2002
- *Holding of Property for Charities*, CPS-009, March 12, 1996 (Revised January 14, 2003)
- *What is a Related Business?*, CPS-019, March 31, 2003
- *Registering Charities that Promote Racial Equality*, CPS-021, September 2, 2003

Operating Day-to-Day:

- *Donations of Gift Certificates*, CPS-018, October 9, 2002
- *Management of Investment Portfolio*, CPC-023, August 1, 2002
- *Political Activities*, CPS-022, September 2, 2003
- *Third Party Fundraisers*, CPC-026, February 26, 2003

7. Summary Policies

- | | |
|--|-------------------|
| 1. <i>Aboriginal</i> , CSP-A01 | October 25, 2002 |
| 2. <i>Abortion</i> , CSP-A11 | June 9, 2003 |
| 3. <i>Accountability</i> , CSP-A02 | October 25, 2002 |
| 4. <i>Accumulation</i> , CSP-A03 | October 25, 2002 |
| 5. <i>Administration</i> , CSP-A16 | September 3, 2003 |
| 6. <i>Adoption</i> , CSP-A17 | September 3, 2003 |
| 7. <i>Advocacy</i> , CSP-A04 | October 25, 2002 |
| 8. <i>Aged (senior)</i> , CSP-A05 | October 25, 2002 |
| 9. <i>Agency</i> , CSP-A12 | June 9, 2003 |
| 10. <i>Agriculture</i> , CSP-A18 | September 3, 2003 |
| 11. <i>Alcohol</i> , CSP-A19 | September 3, 2003 |
| 12. <i>Allowances</i> , CSP-A20 | September 3, 2003 |
| 13. <i>Amalgamation (consolidation, merger)</i> ,
CSP-A21 | September 3, 2003 |
| 14. <i>Ancillary Activities</i> , CSP-A13 | June 9, 2003 |
| 15. <i>Animal</i> , CSP-A22 | September 3, 2003 |
| 16. <i>Annuities</i> , CSP-A06 | October 25, 2002 |

17.	<i>Annulment</i> , CSP-A23	September 3, 2003
18.	<i>Appeal</i> , CSP-A14	June 9, 2003
19.	<i>Arm's Length</i> , CSP-A07	October 25, 2002
20.	<i>Artist</i> , CSP-A24	September 3, 2003
21.	<i>Arts</i> , CSP-A08	October 25, 2002
22.	<i>Asset</i> , CSP-A26	September 3, 2003
23.	<i>Associated Charity</i> , CSP-A09	October 25, 2002
24.	<i>Auction</i> , CSP-A15	June 9, 2003
25.	<i>Audit</i> , CSP-A10	October 25, 2002
26.	<i>Bequest</i> , CSP-B04	September 3, 2003
27.	<i>Books and Records</i> , CSP-B01	October 25, 2002
28.	<i>Broad and vague Objects</i> , CSP-O02	June 9, 2003
29.	<i>Broadcasting</i> , CSP-B05	September 3, 2003
30.	<i>Business</i> , CSP-B02	October 25, 2002
31.	<i>Business Number</i> , CSP-B03	June 9, 2003
32.	<i>Canada-U.S. Income Tax Convention (1980)</i> , CSP-C14	September 3, 2003
33.	<i>Capital Fund</i> , CSP-C15	September 3, 2003
34.	<i>Caselaw</i> , CSP-C08	June 9, 2003
35.	<i>Cemeteries</i> , CSP-R17	September 3, 2003
36.	<i>Certification</i> , CSP-C16	September 3, 2003
37.	<i>Charitable Activities</i> , CSP-C09	June 9, 2003
38.	<i>Charitable Purposes</i> , CSP-C01	October 25, 2002
39.	<i>Charitable Remainder Trust</i> , CSP-C02	October 25, 2002
40.	<i>Club</i> , CSP-C17	September 3, 2003
41.	<i>Community Economic Development</i> , CSP-C03	October 25, 2002
42.	<i>Community Foundation</i> , CSP-C04	October 25, 2002
43.	<i>Confidentiality</i> , CSP-C12	June 9, 2003
44.	<i>Consideration</i> , CSP-C13	June 9, 2003
45.	<i>Contribution</i> , CSP-C05	October 25, 2002
46.	<i>Co-operative</i> , CSP-C18	September 3, 2003
47.	<i>Corporation</i> , CSP-C19	September 3, 2003
48.	<i>Crisis Centre</i> , CSP-C20	September 3, 2003
49.	<i>Crown (agent, corporation)</i> , CSP-C21	September 3, 2003
50.	<i>Crown (federal, provincial)</i> , CSP-C22	September 3, 2003
51.	<i>Cultural Property</i> , CSP-C06	October 25, 2002
52.	<i>Culture</i> , CSP-C07	October 25, 2002
53.	<i>Cy-près (gift by will)</i> , CSP-C23	September 3, 2003
54.	<i>Daycare</i> , CSP-D01	October 25, 2002
55.	<i>Debt</i> , CSP-D06	September 3, 2003
56.	<i>Deemed Disposition</i> , CSP-D07	September 3, 2003
57.	<i>Deemed Expenditure</i> , CSP-D08	September 3, 2003
58.	<i>Designation</i> , CSP-D02	October 25, 2002
59.	<i>Designation- Re-designation</i> , CSP-D05	October 25, 2002
60.	<i>Direct Designation</i> , CSP-D09	September 3, 2003

61.	<i>Director/Trustee</i> , CSP-D10	September 3, 2003
62.	<i>Disabled</i> , CSP-D11	September 3, 2003
63.	<i>Disarmament</i> , CSP-D12	September 3, 2003
64.	<i>Disaster Fund</i> , CSP-D13	September 3, 2003
65.	<i>Disbursement Quota</i> , CSP-D14	September 3, 2003
66.	<i>Disbursement Quota Reduction</i> , CSP-D03	October 25, 2002
67.	<i>Disbursements</i> , CSP-D04	October 25, 2002
68.	<i>Disposition of Property</i> , CSP-P19	September 3, 2003
69.	<i>Dissolution Clause</i> , CSP-D15	September 3, 2003
70.	<i>Doctrine</i> , CSP-D16	September 3, 2003
71.	<i>Donor</i> , CSP-D17	September 3, 2003
72.	<i>Ecological</i> , CSP-D17	September 3, 2003
73.	<i>Education</i> , CSP-E01	October 25, 2002
74.	<i>Efficiency</i> , CSP-E06	September 3, 2003
75.	<i>Employee Charity Trust</i> , CSP-E07	September 3, 2003
76.	<i>Employment</i> , CSP-E02	October 25, 2002
77.	<i>Environment</i> , CSP-E08	September 3, 2003
78.	<i>Ethnic</i> , CSP-E04	June 9, 2003
79.	<i>Expenses</i> , CSP-E03	October 25, 2002
80.	<i>Facilitator</i> , CSP-F01	October 25, 2002
81.	<i>Fair Market Value</i> , CSP-F02	October 25, 2002
82.	<i>Fair Market Value (appraisal)</i> , CSP-F07	September 3, 2003
83.	<i>Family Values</i> , CSP-F08	September 3, 2003
84.	<i>Festival</i> , CSP-F03	October 25, 2002
85.	<i>Financial Statements</i> , CSP-F09	September 3, 2003
86.	<i>Fiscal (period, year end)</i> , CSP-F04	October 25, 2002
87.	<i>Food Bank</i> , CSP-F10	September 3, 2003
88.	<i>Foreign Activities</i> , CSP-F05	October 25, 2002
89.	<i>Foreign Conduit</i> , CSP-C11	June 9, 2003
90.	<i>Foreign Organization</i> , CSP-F11	September 3, 2003
91.	<i>Fraud</i> , CSP-F12	September 3, 2003
92.	<i>Fringe Religion</i> , CSP-F13	September 3, 2003
93.	<i>Fundraiser</i> , CSP-F14	September 3, 2003
94.	<i>Fundraising</i> , CSP-F06	October 25, 2002
95.	<i>Gaming</i> , CSP-G02	September 3, 2003
96.	<i>Gift (anonymous)</i> , CSP-G03	September 3, 2003
97.	<i>Gift (conditional)</i> , CSP-G04	September 3, 2003
98.	<i>Gift (designated, directed)</i> , CSP-G05	September 3, 2003
99.	<i>Gift (donation)</i> , CSP-G01	October 25, 2002
100.	<i>Governing Document</i> , CSP-G06	September 3, 2003
101.	<i>Health Clinic</i> , CSP-H03	June 9, 2003
102.	<i>Hedge Fund</i> , CSP-H03	September 3, 2003
103.	<i>Heritage</i> , CSP-H05	September 3, 2003
104.	<i>Her Majesty</i> , CSP-H06	September 3, 2003
105.	<i>Historical</i> , CSP-H07	September 3, 2003

106. <i>Holistic Medicine</i> , CSP-M04	September 3, 2003
107. <i>Housing</i> ,CSP-H01	October 25, 2002
108. <i>Human Rights</i> , CSP-H08	September 3, 2003
109. <i>Immigrants</i> , CSP-I05	June 9, 2003
110. <i>Improvement District</i> , CSP-I07	September 3, 2003
111. <i>Income Tax Act</i> , CSP-I01	October 25, 2002
112. <i>Incorporation</i> , CSP-I08	September 3, 2003
113. <i>Indian Band</i> , CSP-I09	September 3, 2003
114. <i>Industry</i> , CSP-I10	September 3, 2003
115. <i>Information (security)</i> , CSP-I11	September 3, 2003
116. <i>Initiative (government, sector)</i> , CSP-I02	October 25, 2002
117. <i>Insurance</i> , CSP-I03	October 25, 2002
118. <i>Interest</i> , CSP-I12	September 3, 2003
119. <i>Interest Free Loan</i> , CSP-I13	September 3, 2003
120. <i>Internal Division</i> , CSP-I14	September 3, 2003
121. <i>Inventory</i> , CSP-I04	October 25, 2002
122. <i>Investments</i> , CSP-I15	September 3, 2003
123. <i>Joint Venture (joint ministry)</i> , CSP-J01	September 3, 2003
124. <i>Jurisdiction</i> , CSP-J02	September 3, 2003
125. <i>Lease</i> , CSP-L05	September 3, 2003
126. <i>Legal Aid</i> , CSP-L03	June 9, 2003
127. <i>Liability</i> , CSP-L01	October 25, 2002
128. <i>Life Insurance Policy</i> , CSP-L02	October 25, 2002
129. <i>Loan</i> , CSP-L06	September 3, 2003
130. <i>Loanback</i> , CSP-L07	September 3, 2003
131. <i>Lottery</i> , CSP-L04	June 9, 2003
132. <i>Mediation</i> , CSP-M03	September 3, 2003
133. <i>Membership Fees</i> , CSP-M05	September 3, 2003
134. <i>Mental and Moral Improvement</i> , CSP-M06	September 3, 2003
135. <i>Multiculturalism</i> , CSP-M01	June 9, 2003
136. <i>Municipality</i> , CSP-M07	September 3, 2003
137. <i>Mutual Understanding</i> , CSP-M02	June 9, 2003
138. <i>Non-Profit Housing</i> , CSP-N02	September 3, 2003
139. <i>Non-Profit Organization</i> , CSP-N03	September 3, 2003
140. <i>Non-Qualified Donee</i> , CSP-N01	September 3, 2003
141. <i>Non-Qualified Investment</i> , CSP-N04	September 3, 2003
142. <i>Non-Qualifying Security</i> , CSP-N05	September 3, 2003
143. <i>Objects (charitable)</i> , CSP-O01	October 25, 2002
144. <i>Objects (standard)</i> , CSP-O03	September 3, 2003
145. <i>Patriotism</i> , CSP-P07	June 9, 2003
146. <i>Planned Giving</i> , CSP-P01	October 25, 2002
147. <i>Pledges</i> , CSP-P14	September 3, 2003
148. <i>Political Activities</i> , CSP-P02	October 25, 2002
149. <i>Pornography</i> , CSP-P08	June 9, 2003
150. <i>Poverty</i> , CSP-P03	October 25, 2002

151. <i>Prescribed Donee</i> , CSP-P15	September 3, 2003
152. <i>Prescribed Stock Exchange</i> , CSP-P17	September 3, 2003
153. <i>Prescribed University</i> , CSP-P16	September 3, 2003
154. <i>Private Benevolence</i> , CSP-P09	June 9, 2003
155. <i>Private Foundation</i> , CSP-P04	October 25, 2002
156. <i>Procedural Fairness</i> , CSP-P10	June 9, 2003
157. <i>Profit Motive</i> , CSP-P12	June 9, 2003
158. <i>Pro-life/Pro-choice</i> , CSP-P11	June 9, 2003
159. <i>Promotion of Health</i> , CSP-H02	June 9, 2003
160. <i>Property</i> , CSP-P05	October 25, 2002
161. <i>Provision of Information</i> , CSP-I06	June 9, 2003
162. <i>Public Amenities</i> , CSP-P20	September 3, 2003
163. <i>Public Benefit</i> , CSP-P06	October 25, 2002
164. <i>Public Policy</i> , CSP-P13	June 9, 2003
165. <i>Purposes Beneficial to Community</i> , CSP-C10	June 9, 2003
166. <i>Qualified Donee</i> , CSP-Q01	October 25, 2002
167. <i>Racial Equality</i> , CSP-R23	September 2, 2003
168. <i>Registered Canadian Amateur Athletic Association</i> , CSP-R01	October 25, 2002
169. <i>Registered National Arts Service Organization</i> , CSP-R14	September 3, 2003
170. <i>Registered Pension Plan</i> , CSP-R15	September 3, 2003
171. <i>Receipt</i> , CSP-R02	October 25, 2002
172. <i>Registration – Registered Canadian Amateur Athletic Association</i> , CSP-R04	October 25, 2002
173. <i>Registration – Registered Charity</i> , CSP-R03	October 25, 2002
174. <i>Rehabilitation</i> , CSP-R16	September 3, 2003
175. <i>Related Business</i> , CSP-R05	October 25, 2002
176. <i>Religion</i> , CSP-R06	October 25, 2002
177. <i>Religious Charities</i> , CSP-R07	October 25, 2002
178. <i>Remission Order</i> , CSP-O04	September 3, 2003
179. <i>Repairs</i> , CSP-R18	September 3, 2003
180. <i>Re-registration</i> , CSP-R19	September 3, 2003
181. <i>Research</i> , CSP-R20	September 3, 2003
182. <i>Residency</i> , CSP-R21	September 3, 2003
183. <i>Resources</i> , CSP-R13	June 9, 2003
184. <i>Restricted Funds</i> , CSP-R22	September 3, 2003
185. <i>Return – Political</i> , CSP-R08	October 25, 2002
186. <i>Return – Registered Canadian Amateur Athletic Association</i> , CSP-R09	October 25, 2002
187. <i>Return – Registered Charity Information Return</i> , CSP-R10	October 25, 2002
188. <i>Return – Revocation</i> , CSP-R11	October 25, 2002
189. <i>Revocation</i> , CSP-R12	October 25, 2002

190. <i>Schemes</i> , CSP-S07	September 3, 2003
191. <i>Scholarship</i> , CSP-S08	September 3, 2003
192. <i>School Associations</i> , CSP-S09	September 3, 2003
193. <i>School Council</i> , CSP-S01	October 25, 2002
194. <i>Science</i> , CSP-S10	September 3, 2003
195. <i>Self-Help</i> , CSP-S02	October 25, 2002
196. <i>Services</i> , CSP-S03	October 25, 2002
197. <i>Share</i> , CSP-S04	October 25, 2002
198. <i>Social Activities</i> , CSP-S05	June 9, 2003
199. <i>Social Justice</i> , CSP-S06	June 9, 2003
200. <i>Social Organization</i> , CSP-S11	September 3, 2003
201. <i>Specified Gift</i> , CSP-S12	September 3, 2003
202. <i>Sponsorship</i> , CSP-S13	September 3, 2003
203. <i>Sport</i> , CSP-S14	September 3, 2003
204. <i>Stock Exchange</i> , CSP-S15	September 3, 2003
205. <i>Substantially All</i> , CSP-S16	September 3, 2003
206. <i>Tax</i> , CSP-T01	October 25, 2002
207. <i>Tax Shelter</i> , CSP-T08	November 26, 2003
208. <i>Tenants Associations</i> , CSP-T04	June 9, 2003
209. <i>Ten-Year Gift</i> , CSP-T06	September 3, 2003
210. <i>Titleholding</i> , CSP-T07	September 3, 2003
211. <i>Tourism</i> , CSP-T02	October 25, 2002
212. <i>Tuition Fees</i> , CSP-T03	October 25, 2002
213. <i>United Nations</i> , CSP-U01	September 3, 2003
214. <i>Voluntary Transfer</i> , CSP-V01	October 25, 2002
215. <i>Will</i> , CSP-W02	September 3, 2003
216. <i>Withholding Tax</i> , CSP-T05	September 3, 2003
217. <i>Women</i> , CSP-W01	June 9, 2003
218. <i>Youth</i> , CSP-Y01	October 25, 2002

8. Information Letters

Becoming a Registered Charity

- *Advocacy*, CIL-2002-04, February 26, 2002
- *Registration – Registered Charity*, CIL-2002-005, March 12, 2002

Operating Day-to-Day:

- *Advocacy*, CIL-2002-006, August 6, 2002
- *Crown (agent, corporation)*, CIL-2002-003, February 22, 2002
- *Disbursement Quota*, CIL-2002-001, February 18, 2002
- *Disbursement Quota Reduction*, CIL-2002-002, February 19, 2002
- *Political Activities*, CII-2003-001, February 18, 2003

9. Newsletters

- Newsletter No. 12, - Spring 2002
- Newsletter No. 13, - Summer 2002
- Newsletter No. 14, - Winter 2003
- Newsletter No. 15, - April 9, 2003
- Newsletter No. 16, October 10, 2003
- Newsletter No. 17, January 27, 2004

10. Guidelines

- Fact Sheet – “Art-donation schemes or ‘art-flipping’”, dated November 2002
- Interim Memorandum D19-14-1 – *Cross-Border Currency and Monetary Instruments Reporting*, - dated January 22, 2003
- Factsheet - “Advance Passenger Name Record”, dated July 2003

11. Consultation Papers

- *Consultation on Proposed Policy – Registering Charities that Focus on Eliminating Racial Discrimination*, updated January 23, 2003
- *2002 Concept Draft – Registered Charities – Political Activities*, updated January 6, 2003
- *Consultation on Proposed Policy: Charities Providing Rental Housing for Low-Income Tenants*, updated January 23, 2002
- *Consultation on Proposed Policy: Guidelines for Registered Charities on Related Business (Message from the Co-Chairs Regulatory Joint Table)*, -updated May 22, 2002

12. Improving the Regulatory Environment for the Charitable Sector

- Voluntary Sector Initiative/Joint Regulatory Table, *Improving the Regulatory Environment for the Charitable Sector – Interim Recommendations*, dated August 2002
- Voluntary Sector Initiative/Joint Regulatory Table, *Strengthening Canada's Charitable Sector – Regulatory Reform – Final Report*, dated March 2003

13. Future Directions

- *Future Directions – What is Future Directions?*, updated October 30, 2002
- *Charities – The Charities Directorate*, -updated December 10, 2002
- *Consultations – Spring 2002*, -updated September 20, 2002
- *Future Directions for the Canada Customs and Revenue Agency - Charities*, November 15, 2002
- *Charities – RC4313*, -updated December 12, 2002
- Sussex Circle Inc., *External Consultations on Charities Renewal*, dated January 2002
- Clinton Group Inc., *Final Consultations and Validation of Charities Directorate Action*, dated July 2002

14. Press Releases

- “Canada Customs and Revenue Agency launches new services for charities”, News Release, dated December 3, 2002
- “The CCRA: Protecting Canadians”, News Release, dated September 27, 2002

15. Forms

- T2050 E (01) – *Application to Register a Charity under the Income Tax Act*, updated March 13, 2002
- T2140 (96) – *Part V Tax Return – Tax on Non-Qualified Investments of a Registered Charity*, January 22, 2002
- T3010 - *Registered Charity Information Return*, February 19, 2002
- T3010A E – *Registered Charity Information Return*, February 28, 2003
- *Form T3010A: Re-designed annual return for charities*, updated November 28, 2002
- T1240 E - *Registered Charity Adjustment Request*, October 21, 2002
- T4033 – *Completing the Registered Charity Information Return*, February 19, 2002
- T4033A – *Completing the Registered Charity Information Return*, February 28, 2003
- T4603 – *Registering a Charity for Income Tax Purposes*, September 26, 2002