
ONTARIO PUBLIC GUARDIAN AND TRUSTEE PROVIDES TIPS ON CHARITABLE FUNDRAISING

*By Terrance S. Carter**

A. INTRODUCTION

The Ontario Public Guardian and Trustee (“OPGT”) recently released a bulletin entitled “Charitable Fundraising: Tips for Directors and Trustees,” (the “Bulletin”) that provides helpful information to directors and trustees of charities in Ontario on conducting charitable fundraising.¹ The Bulletin reminds directors and trustees of Ontario-based charitable organizations that a poorly conducted fundraising program not only damages the reputation of the individual charity, but also brings harm to the sector as a whole, as well as possibly exposing directors and trustees to personal liability. It is interesting to note the Bulletin was posted only a month after Canada Revenue Agency (“CRA”) published its Guidance on Fundraising.² Charities in Ontario should therefore make a point of reading the CRA Guidance along with this Bulletin.

In essence, the Bulletin reminds charities that they cannot conduct fundraising activities as a charitable purpose in their own right; charities must be open and transparent about their fundraising activities; costs are to be reasonable and accurately recorded; and directors and trustees in Ontario have a fiduciary duty with regard to their charitable assets, as well as being in compliance not only with the *Income Tax Act*, but also with the *Trustee Act* (Ontario) and the regulations under the *Charities Accounting Act* (Ontario).

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¹ The full Bulletin can be found online at: <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/charbullet/Bulletin-8.asp>, posted in July 2009.

² For commentary, see Terrance S. Carter, “Revised CRA Guidance on Fundraising: Improved but Still Challenging” in *Charity Law Bulletin* No. 169 (June 25, 2009), online: <http://www.carters.ca/pub/bulletin/charity/2009/chylb169.htm>.

B. BRIEF OVERVIEW

1. Deliberations about Planning and Cost

The Bulletin reinforces the notion that in order to be successful in a fundraising campaign, directors and trustees should carefully plan their campaign based on *defensible business decisions*. The OPGT recommends that directors and trustees prepare a budget and a written plan of action before embarking on a fundraising campaign. In setting out a written plan, directors and trustees are also encouraged to give special attention to the method they will select for their campaign, as some methods may be inappropriate given the image of the charity, while others may require a permit or license such as a charitable gaming event.³

The Bulletin suggests that charities review the cost-effectiveness of their campaigns on a regular basis to ensure that expenses are reasonable in relation to the revenue they provide, as required by the courts. While the Bulletin states that the disbursement quota under the *Income Tax Act* can be used as a guideline concerning what are reasonable fundraising costs, the Bulletin fails to mention that the new CRA Guidance on Fundraising is actually the better guideline that should be used by charities. The Bulletin goes on to explain that should charities in Ontario fail to keep proper accounts of their fundraising activities, the OPGT can ask that their accounts be passed before the court should the OPGT become concerned.⁴

2. Comments on Commercial Fundraising Arrangements

Where a charity is considering the use of a commercial fundraiser, the Bulletin provides a useful appendix listing factors for charities to consider before signing a contract with a commercial fundraiser, which directors and trustees should review. The Bulletin explains that fundraising contracts that are unreasonable may be set aside by the courts and fundraising contract fees may be ordered to be repaid by either the directors or the fundraisers. The Bulletin indicates that the fundraising costs, combined with the charity's administrative costs, must be reasonable and the fact that the fundraiser is

³ *Ibid.* at p. 2.

⁴ *Ibid.* at p. 3.

receiving a fee and its quantum should be disclosed. As well, the board of directors or trustees must not have an interest in the commercial fundraiser in order to avoid a conflict of interest.⁵

The Bulletin explains that commercial fundraisers are agents of the charity and the charity and its directors or trustees are responsible for anything the fundraisers say to the public. In order to avoid liability in this regard, the Bulletin recommends fundraisers comply with a code of ethics, and provides as an example the codes developed by the Canadian Association of Gift Planners or the Association of Fundraising Professionals.⁶

3. Fundraising for a Special Purpose

A charity that fundraises for a special purpose must use those funds only for the stated purpose and must keep them separate from the charity's operating funds. The Bulletin also recommends that the charity should provide for an alternative purpose for the funds, and that such alternative purpose should be disclosed to potential donors.⁷

4. Misleading Representations in Solicitations for Charitable Funds

Organizations that are not charities registered under the *Income Tax Act* and do not have the ability to issue receipts must not make any misleading statements to the contrary in their solicitations. In addition, where the charity is not going to issue a receipt for amounts below a set minimum, this must also be clearly communicated to potential donors in their fundraising materials.⁸

⁵ *Ibid.*

⁶ *Ibid.* at p. 4.

⁷ For more information on special purpose funds, reference should be made to Terrance S. Carter, "Donor-Restricted Charitable Gifts: A Practical Overview Revisited II" available online at: <http://www.carters.ca/pub/article/charity/2006/tsc0421.pdf>.

⁸ *Ibid.*

C. CONCLUDING COMMENTS

Taken together with the recent CRA Guidance on Fundraising, the tips on fundraising provided by the OPGT provide a useful resource for directors and trustees in Ontario to ensure their fundraising practices are done in accordance with both federal and provincial requirements. Directors and trustees can spare their charity significant headaches by ensuring that their fundraising costs will not be subject to court review after investigation. It is not only poorly managed campaigns that can damage the reputation of the good work many do in the sector, but also regulatory crackdowns of a few bad charities that unfortunately can encourage the misconception that public funds are vulnerable to abuse by charities.