

HEALTHCARE PHILANTHROPY: CHECK-UP 2009  
THE NEW CRA PROPOSED FUNDRAISING POLICY:  
What It Means to your Hospital and Foundation  
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June 11, 2009

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Overview of Presentation

- Background of New Proposed Fundraising Policy
- Overview of the New Proposed Fundraising Policy
- What It Means – Policies and Procedures for Compliance

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Background of New Proposed Fundraising Policy

- Allocation of expenses between those that are charitable and those that are related to fundraising has raised issues for charities when completing annual returns
- In response to requests for guidance on how to allocate expenses, the CRA has responded with a new draft policy for fundraising to assist charities
- The new policy also likely developed in response to public concerns for more accountability from charities with respect to their fundraising

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**Background of New Proposed Fundraising Policy (cont.)**

- March 31, 2008 – the CRA releases new proposed policy on fundraising
- June 26, 2008 – the CRA releases a 30 page background information document explaining the proposed policy
- June, 2009 – new proposed policy (with additional background information document) expected to be released.
- This presentation will be based on the latest version of the new proposed policy (with additional background information) which we have seen but has not been released to the public

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**Background of New Proposed Fundraising Policy (cont.)**

- Provides guidance on the proper treatment of fundraising under the Income Tax Act (Canada) and the common law, and includes:
  - Distinguishing between fundraising and other expenditures
  - Allocating expenditures for the purposes of reporting them on Form T3010
  - Dealing with activities that have more than one purpose
  - Understanding how the CRA assesses what is an acceptable fundraising activity, what may preclude registration or what may result in a sanction, penalty or revocation

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**Background of New Proposed Fundraising Policy (cont.)**

- CRA has advised that the Policy does not represent a new policy position but a confirmation of its existing policies
- Policy will apply to all registered charities
- Policy provides general guidelines only – individual cases will be decided on the specific facts of the situation
- Policy does not directly relieve charity from having to meet all other requirements of the *Income Tax Act* (Canada)
- Policy does not address business or related business activities (see CPS-019, “What is a Related Business” and CPC-001 “Related Business”) or fundraising to support terrorism (see Registered Charities Newsletters No. 12 and No. 20)

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## Overview of Policy

### *Fundraising and Charitable Purposes*

- All registered charities are required to have exclusively charitable purposes
- CRA's position is that fundraising, whether taken as a purpose or as an activity, is not in and of itself charitable
- Direct costs of fundraising cannot be reported as charitable expenditures on Form T3010
- Fundraising activities which are attached to activities primarily directed at achieving a charitable purpose can be allocated between charitable and fundraising expenses for the purposes of reporting

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## Overview of Policy (cont.)

### *What is Fundraising?*

- Any activity carried out by the charity, or someone acting on its behalf, that:
  - Includes a *solicitation for support* for cash or in-kind donations (solicitations for support include sales of goods or services to raise funds)
  - Is part of the research and planning for future solicitations of support; or
  - Is related to a solicitation of support (efforts to raise the profile of a charity, donor stewardship, donor recognition etc.)
- Applies even if no donation receipt issued for the transaction

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## Overview of Policy (cont.)

### *What is Fundraising?*

- Solicitation of support – not explicitly defined – but background information document shows that CRA takes a relatively broad view and generally any activity intended to encourage future donations will be caught
- Fundraising does not include requests for funding from government or from other registered charities, the operation of a related business or recruitment of volunteers
- If a receipt is issued for any part of a transaction, the activity is deemed to be a solicitation of support and therefore the costs associated with the entire activity must be automatically allocated to fundraising expenditures

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Overview of Policy (cont.)

*What is Fundraising – Implied Solicitations of Support*

- Donor Recognition – acknowledgement or thanking of a person who has made a gift
  - Must be reported as fundraising unless it is of nominal value –CRA considers per donor cost of \$75 or 10% of the donation (whichever is less) as nominal
  - If nominal and not reported as fundraising expenses must still be reported as administrative expense
- Donor Stewardship – investing of resources in relationships with past donors to prompt additional gifts, inclusive of providing donors with access to information, services or privileges not available to others
  - Considered to be solicitation of support and must be reported as fundraising

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Overview of Policy (cont.)

*What is Fundraising – Implied Solicitations of Support*

- Sale of Goods or Services – always a solicitation of support unless it serves the charity’s beneficiaries, directly fulfills a charitable purpose or is sold on a cost-recovery basis
  - Offering of good or service as part of the solicitation message (in order to encourage a donation) is a solicitation of support
  - If a charity partners with a business or other non-charity to offer a good or service on the basis that a portion of the proceeds will be paid to the charity, any costs incurred by the charity with respect to the activity will be considered fundraising expenses
- Membership programs – can be considered a solicitation of support if membership is associated with substantive benefits (i.e., more than being able to vote or receive a newsletter)

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Overview of Policy (cont.)

*What is Prohibited Fundraising?*

- Certain types of prohibited conduct related to fundraising may result in penalties, sanctions or revocation of a registered charity’s status, including fundraising conduct that:
  - Is illegal or contrary to public policy
  - Is a main or independent purpose of the charity
  - Results in more than an incidental or proportionate private benefit to individuals or corporations
  - Is misleading or deceptive
- The background information document contains additional information pertaining to each of these categories

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Overview of Policy (cont.)

*Allocation of Fundraising Expenses*

- The Policy explains two relevant issues regarding allocation of fundraising expenses:
  - When an activity that includes a solicitation for support will not be considered a fundraising activity and doesn't have to be allocated as such on the charity's T3010
  - The CRA's approach to reviewing the fundraising expenditures of charities and how it determines whether these costs are reasonable

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Overview of Policy (cont.)

*Reporting Fundraising Expenses*

- Charities must report all fundraising expenses on their T3010
- Fundraising expenses include all costs related to any *activity* that includes a solicitation of support (or is undertaken as part of the planning and preparation for future solicitations of support) unless it can be demonstrated that the activity would have been undertaken whether or not it included a solicitation of support

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Overview of Policy (cont.)

*What is Fundraising Activity?*

- A fundraising activity may be:
  - a single action, such as a magazine advertisement, or a series of related actions, such as a capital campaign
  - the charity may decide what it considers to be a separate activity so long as it can reasonably be treated as discreet
  - external activities – e.g., soliciting donations through telemarketing, direct mail, holding events, distributing information through the media or the charity's publications
  - internal activities – e.g., researching prospective donors or hiring fundraisers

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Overview of Policy (cont.)

*How can a charity demonstrate that an activity would have been undertaken without the solicitation of support?*

- The charity must satisfy Test A – The Substantially All Test;
- or
- The charity must satisfy Test B – The Four Part Test

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Overview of Policy (cont.)

*Test A – The Substantially All Test*

- An activity will have been undertaken without a solicitation of support if substantially all of the activity advances an objective other than fundraising
- For these purposes, “substantially all” is considered 90% or more
- Generally, the determination will be based on the proportion of fundraising content to the rest of the activity - the prominence of the fundraising content in the activity and the resources devoted to it may also be considered
- For these purposes, “resources” includes the total of the charity’s financial assets, as well as everything the charity can use to further its purposes, such as staff, directors, premises and equipment
- If Test A is satisfied – the charity may report all of the expenditures of the activity on its T3010 under charitable expenditures, management and administration, political activity or other expenditures as applicable

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Overview of Policy (cont.)

*Test B – Four Part Test*

- If the Part A test is not met, a charity can still show that the activity would have been taken without the solicitation of support if the answer to the following questions is “no”:
  - Was the main objective of the activity fundraising?
  - Did the activity include ongoing or repeated requests, emotive requests, gift incentives, donor premiums, or other fundraising merchandise?
  - Was the audience for the activity selected because of their ability to give?
  - Was commission-based remuneration or compensation derived from the number or amount of donations used?
- If Test B is satisfied (i.e., all of the answers to the above questions are “no”) – the charity may allocate a portion of the costs as non-fundraising expenses and a portion as fundraising expenses on its T3010

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Overview of Policy (cont.)

Test B – Four Part Test – Question 1 – “Was the Main Objective of the Activity Fundraising

- The background information document breaks this down into two sub-questions:

1. Do the resources devoted to the fundraising component of the activity indicate that the main objective is fundraising?

Generally if the largest portion of resources is devoted to an activity related to fundraising, the main objective of the activity is fundraising, even if some resources are used for other objectives. The amount of resources devoted to an activity is determined by the content and costs associated with carrying out the activity – see Test A “The Substantially All Test”. When the main objective of the activity is fundraising, the general rule is that all the costs must be allocated as fundraising expenses.

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Overview of Policy (cont.)

Test B – Four Part Test – Question 1 (cont’d)

2. Does the nature of the activity indicate that the main objective is fundraising?

A free paid service announcement is generally not considered to have fundraising as its main objective.

A paid advertisement is usually considered to have fundraising as its main objective unless it focuses primarily on aspects of the charity’s work other than fundraising – such as promotion of the charity’s programs or services to beneficiaries or potential beneficiaries – and then it will not be considered fundraising.

An infomercial, and telemarketing, as such terms are defined for CRTC purposes, are considered to be predominately fundraising

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Overview of Policy (cont.)

Test B – Four Part Test – Question 1 (cont’d)

2. Does the nature of the activity indicate that the main objective is fundraising?

- Certain undertakings will always be considered to be fundraising, including:
  - activities with content relating to charitable gaming; and
  - activities with content related to products or services being sold as a fundraiser by or on behalf of the charity

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**Overview of Policy (cont.)**

*Test B – Four Part Test – Question 1 (cont'd)*

2. Does the nature of the activity indicate that the main objective is fundraising?
- The content of certain initiatives that are carried out to fulfill a charity's purposes may be hard to separate from a charity's fundraising activity – the CRA will look to the following indicia to see if there is a distinct objective other than fundraising and to assess how much of the content relates to that objective:
    - Advancing the programs, services or facilities offered by the charity
    - Raising awareness of an issue
    - Providing useful knowledge to the public or the charity's stakeholders about the charity's work or an issue related to that work
    - Being transparent and accountable for its practices by providing information about its structure, operations or performance to the public or its stakeholders

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**Overview of Policy (cont.)**

*Test B – Four Part Test - Exception*

- If any of the answers to the Test B test is "yes" all of the costs must be reported as fundraising expenses, unless the charity can demonstrate that the activity demonstrably furthers one of the charity's purposes
- In such cases, the charity may be allowed to allocate a portion of the costs other than to fundraising expenditures
- The CRA will only consider an event to advance a charity's purposes where it is designed to prompt an action (other than giving a donation or other financial support) or a change in behaviour
- The event should also reach a significant portion of the charity's stakeholders other than its current or prospective donors or show greater emphasis on helping beneficiaries than obtaining financial support

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**Overview of Policy (cont.)**

*Evaluation of Fundraising Activities*

- A range of factors will be taken into account in the course of a CRA review
- One factor will be the ratio of fundraising costs to fundraising revenues
- Fundraising revenues – amounts reported on Lines 4500 and 4630 on the T3010
- Fundraising expenditures – amounts reported on Line 5020 on the T3010
- Fundraising ratios alone are not determinative – guidelines to allow charities a means to gauge their performance and to provide guidance as to when CRA may seek additional information or justification for fundraising costs

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Overview of Policy (cont.)

*Evaluation of Fundraising Activities*

- Ratios of Costs to Revenues Over Fiscal Period
  - Under 35% - Unlikely to generate questions or concerns
  - 35% and Above – CRA will examine the average ratio over recent years to see if there is trend of high fundraising costs. The higher the ratio, the more likely questions and concerns
  - Above 70% - Will raise concerns and is rarely acceptable. Charity must be able to provide an explanation and rationale for this level of expenditure to show it is in compliance

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Overview of Policy (cont.)

*Evaluation of Fundraising Practices*

- In addition to the ratio ranges, the CRA will take into consideration the following:
  - The size of the charity - which might have an impact on fundraising efficiency
  - Causes with limited appeal - which could create particular fundraising challenges
  - Donor acquisition and planned giving campaigns – which could result in situations where the financial returns are only realized in later years

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Overview of Policy (cont.)

*Evaluation of Fundraising Practices – Best Practices*

- The Policy lists a number of best practices that may be considered to decrease the risk of unacceptable fundraising:
  - Prudent planning processes
  - Appropriate procurement processes
  - Good staffing processes
  - Ongoing management and supervisions of fundraising practice
  - Adequate evaluation processes
  - Use made of volunteer time and volunteered services or resources
  - Disclosure of fundraising costs, revenues and practice (including cause-related or social marketing arrangements)
- These are considered to be indicators only – applicability will be dependent upon a number of factors, including the size of the fundraising event

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Overview of Policy (cont.)

- The Policy lists a number of indicators that could cause the CRA to further review a charity's fundraising activities:
  - Sole-source fundraising contracts without proof of fair market value
  - Non-arm's length fundraising contracts without proof of fair market value
  - Fundraising initiatives or arrangements that are not well-documented
  - Fundraising merchandise purchases not at arm's length, not at fair market value, or not purchased to increase fundraising revenue
  - Activities where most of the gross revenues go to non-charitable parties
  - Commission-based fundraiser remuneration or payment of fundraisers based on amount of number of donations
  - Total resources devoted to fundraising exceeding total resources devoted to program activities
  - Misrepresentations in fundraising solicitations or in disclosures about fundraising or financial performance

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What It Means - Policies and Procedures for Compliance

- Policy has been improved from previous drafts with consultation from the community – new evaluation ratios and processes
- Many of the requirements, factors and criteria in the policy are still complicated and subjective, open to interpretation
- The evaluation ratios are different from those of the disbursement quota
- As a result, new fundraising policies and checklists will need to be developed to take into account the Policy's requirements and evaluation criteria

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What It Means - Policies and Procedures for Compliance (cont.)

- Greater focus will be required on the analysis of proposed fundraising costs, revenues and practices on a going forward basis
- Best practices – as identified by the CRA – should be adopted whenever possible
- Prohibited fundraising conduct should be avoided and any of the indicators attracting CRA review should be avoided whenever possible
- Internal evaluation of each fundraising activity should be carried out and tracked throughout each fiscal year and beyond in order to ensure overall compliance

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THANK YOU.

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