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Fundraising Law in Ontario: The Changing Legal Landscape

(Powerpoint Presentation)

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**Fundraising Law in Ontario:
The Changing Legal Landscape**

Presented by
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INTRODUCTION

Topics to be Discussed

- Law in other provinces
- Federal law
- Law in Ontario
- Uniform Law Conference of Canada
charitable fundraising legislation
- Suggestions for organizations that are
fundraising

Canadians have been very
generous in supporting charities.

In 2003 5.6 million Canadians
made financial or in-kind
contributions worth \$6.5 billion
dollars to registered charities.

PROVINCIAL REGULATION OF FUNDRAISING

- Regulation of charities falls within provincial jurisdiction and can be regulated by the provinces and territories
- Charities have the power to fundraise but it is not a charitable object
- There is little regulation of charitable fundraising in most provinces and territories
- Ontario - there is provision for investigation of those who handle charitable property and those who fundraise for charities

PROVINCIAL REGULATION cont'd...

- Four provinces have enacted fundraising legislation, which are each different from each other.
- The four provinces with fundraising legislation are:
 - Alberta
 - Saskatchewan
 - Manitoba
 - Prince Edward Island

FEDERAL REGULATION

- Charities registered under the *Income Tax Act* do not have to pay income tax on income and are able to issue receipts for donations which give donors special tax treatment
- Charities Directorate, part of the Canada Revenue Agency, is responsible for this part of the *Income Tax Act*

FEDERAL REGULATION cont'd...

- CRA's authority over fundraisers is limited by the tax code to its regulation of registered charities
- Main federal provisions:
 - Complying with disbursement quota - 80% of all receipted funds to be used for charitable purposes, 20% for administrative and fundraising costs
- Proper receipting, including valuation of gifts

FEDERAL REGULATION cont'd...

- Sanctions range from loss of registration to fines and suspension of tax receipting privileges and right to receive funds from other qualified donees

REGULATION IN ONTARIO COST OF FUNDRAISING

- Donors expect some cost to fundraising, but also expect that most of the funds raised will be used to fund charitable activities
- Common Law - fundraising cost must be reasonable in relation to the amount raised
- No statutory guidance on "reasonable cost", however, federal *Income Tax Act* sets out the disbursement quota which limits administrative costs including fundraising costs to 20% of receipted funds

COST OF FUNDRAISING

- Cases in Ontario have held that fundraising costs of 70% cannot be accepted as reasonable
- What is Reasonable? – depends on the facts and circumstances of a particular fundraising appeal
- Delivering Brochures - educational or fundraising expense

DUTY TO ACCOUNT

- Accounting of the gross amount of funds donated by the public
- Charities are responsible for accounting for all of the funds received even if the funds are received by the commercial fundraiser.

DUTY TO ACCOUNT cont'd...

- Charity should keep detailed records of all gross amounts received, and of all expenses
- If fundraising in other provinces or territories as well as Ontario, then must keep separate accounting for funds collected in Ontario
- If court action taken, directors and trustees of charities may be personally liable for fundraising costs that are found to be unreasonable

SPECIAL PURPOSE TRUST FUNDS

- Donation received for a specific purpose or project, and donor directed funds must be segregated from the charity's operating funds and used only for the stated purpose.
- It is good practice to provide an alternative purpose for which funds can be used if the original purpose cannot be carried out or to deal with a surplus of funds.

UNIFORM LAW CONFERENCE OF CANADA *UNIFORM CHARITABLE FUNDRAISING ACT*

- ULCC established to harmonize the law of the provinces and territories of Canada. Delegates are government policy lawyers, private lawyers and law reformers from across Canada
- In 2003 the Ontario Commissioners raised the possibility of a uniform Act dealing with charitable fundraising. The ULCC commissioned the preparation of a Report on the advisability of uniform legislation.

UNIFORM LAW CONFERENCE OF CANADA *UNIFORM CHARITABLE FUNDRAISING ACT* cont'd...

- In 2004 the ULCC considered the report and recommended the drafting of legislation.
- In 2005 the ULCC adopted the *Uniform Charitable Fundraising Act* and recommended it be adopted by the provinces and the territories.
- A copy of the Act and the two reports can be found online at: www.ulcc.ca/en/home

OVERVIEW OF THE ACT (UCFA)

Goal of legislation

- Curb fundraising abuses
- Provide donating public as much information as possible to make informed decisions about charitable giving
- Avoid where possible imposing burdensome regulatory regime upon charities

OVERVIEW OF THE ACT (UCFA) cont'd...

- Act applies only to charitable fundraising, not to fundraising by all not-for-profit organizations
- Act does not apply to solicitations made by a **charity** to a person who is a member of the charity at the time of solicitation or the spouse or child of a member
- Act also does not apply to any gaming activity.

CONSUMER PROTECTION

- The Act allows solicitation by telephone, in person at someone's home, or by fax only between the hours of 8 am – 9 pm in the time zone where the person is located.
- Specified information is to be provided to donors to allow them to make informed decisions

CONSUMER PROTECTION cont'd...

- A cooling-off period (3 business days after making the contribution) is provided where the solicitation is made by telephone or in person at someone's home by a fundraising business; or where a fundraising business manages, facilitates or is responsible for the solicitation.
- Receipt must be given for any contribution of ten dollars (\$10.00) or more

CONSUMER PROTECTION cont'd...

- All registered charities and fundraising businesses must comply with the standard of practice; the standard of practice is set out as a Regulation to be adopted by each jurisdiction

CONSUMER PROTECTION cont'd...

DO NOT CALL LIST

- A registered charity and a licensed fundraising business must use their best efforts to comply with a person's request that they not be solicited on behalf of a specified charity and to have their name removed from any donor list

CONSUMER PROTECTION cont'd...

- Donors have the right to apply to court where they allege their contributions were not used for the charitable purpose stated or implied in the solicitation
- Court can order the funds be used for the purpose, or paid to another charity, or if appropriate re-paid to the donor

CONSUMER PROTECTION cont'd...

- **Caution:** if the court finds that the application was frivolous or vexatious, court can require the applicant to pay the costs

REGISTRATION OF CHARITIES

- Only charities registered under the Act can solicit funds from members of the public. The legislation does not apply if anticipated annual amount of solicitations is below an established amount.
- A registered charity under the Income Tax Act is registered for the purposes of this legislation
- Notwithstanding any exceptions noted in the legislation, no charity can use a fundraising business unless the charity is registered

REGISTRATION OF CHARITIES

cont'd...

- Some jurisdictions may not wish to require the registration of charities, therefore there is an option to adopt only part of the Act

FUNDRAISING BUSINESSES

- A fundraising business is required to obtain a license in order to solicit funds for a charity
- The Act sets out grounds for refusing a license or renewal, or to impose conditions on a license of a fundraising business
- If a charity wishes to retain the services of a fundraising business, there must be a written fundraising agreement that complies with the terms set out in the legislation

FUNDRAISING BUSINESSES cont'd...

DONORS LISTS

- Any list compiled by a fundraising business of the names of the contributors remains the property of the charity and is under the charity's exclusive control; a fundraising business can only use the list with the charity's written permission

FUNDRAISING BUSINESSES cont'd...

- Contributions received by a fundraising business are held by the fundraising business in trust for the charity

RETAIL INCENTIVE DONORS

- A Retail Incentive Donor is a person who carries on business and offers goods and services for sale and as part of its overall operations, represents that purchasing the goods and services will benefit a charity or charitable purpose
- Retail Incentive Donors are not required to be licensed.

RETAIL INCENTIVE DONORS cont'd...

- Must provide information upon request from the Regulator and must maintain financial records for a six (6) year period.
- One or more inspectors can be appointed under the Act to act on behalf of the enforcement authority

ENFORCEMENT

- Legislation establishes an enforcement authority with administrative powers to deal with fundraising and fundraising abuses
- The enforcement authority can commence an investigation after receiving a complaint or on its own initiative
- Inspectors have broad powers to enter and inspect the premises of a charity, fundraising business, or Retail Incentive Donor.
- Powers includes authority to remove or copy records found on the premises

ENFORCEMENT cont'd...

- A charity or fundraising business is required to maintain records and if the records are maintained in another jurisdiction, they have an obligation to ensure that their records are available for inspection in the enforcement authority's jurisdiction.

ENFORCEMENT cont'd...

- If entry is refused a warrant can be obtained without notice from a JP
- Enforcement authority can:
 - freeze funds at any time
 - apply to court for additional powers
 - apply to court for orders dealing with charitable property and those who manage charitable property

ENFORCEMENT cont'd...

- Legislation sets up a mechanism to suspend, cancel, or impose conditions on a registration, deemed registration, or a license.
- If registration or license is suspended, all fundraising must cease immediately

ENFORCEMENT cont'd...

- Persons affected by decisions under the legislation can appeal any decision to the Superior Court of Justice
- Decisions concerning suspension, cancellation, or conditions attached to a registration or license can only be appealed after the internal appeal mechanism is used

PROVINCIAL OFFENCES

- The Act sets up a number of provincial offences for failure to comply with the legislation
- Upon conviction the person is subject to:
 - Fine not less than \$1,000, not greater than \$100,000 or 3 times the amount of money the defendant obtained as a result of the offence
 - Possibility of imprisonment of not more than 2 years

PROVINCIAL OFFENCES Cont'd....

- If there is a conviction any aggrieved person can bring an application for repayment of funds

DISCLOSURE OF INFORMATION

- The Act allows for disclosure of information obtained under the Act
- This information can be made available to the public to assist them in making informed decisions
- Allows disclosure to enforcement agencies to allow co-ordinated enforcement and sharing of information

SUMMARY OF UCFA

There are 5 key elements to the UCFA:

1. Registration and deemed registration of charitable organizations is a condition to charitable fundraising
2. Licensing of fundraising businesses and requirement of a written fundraising agreement
3. Regulation of retail incentive donation schemes

SUMMARY OF UCFA cont'd...

4. Consumer protection
 5. Creation of regulatory body which has investigative and administrative enforcement powers along with the right to apply to court for remedial relief to prosecute breaches of the Act
- To date no province or territory has adopted the legislation

TIPS FOR ORGANIZATIONS FUNDRAISING

Directors and trustees who wish to avoid complaints about a charity's fundraising practices and the use of charitable property should follow the guidelines set out below:

1. Know the governing documents.
2. Document all deliberations, actions and decisions regarding fundraising campaigns.

TIPS FOR ORGANIZATIONS FUNDRAISING cont'd...

3. Become familiar with fundraising best practices
4. Be knowledgeable about all aspect of any fundraising campaigns
5. Know if the charity has any restricted or special purpose funds
6. Keep full and complete financial records and ensure that special or restricted purpose funds are deposited and accounted for separately

TIPS FOR ORGANIZATIONS FUNDRAISING cont'd...

7. When soliciting special purpose funds, provide an alternate purpose in case the original purpose fails
8. Ensure that special purpose funds that are not immediately needed are invested (*Trustee Act, Charities Accounting Act and Regulation, Bulletin #7*)
9. Be an open and transparent organization
10. Know your duties, responsibilities, and powers as a director or trustee (*Bulletin #3*)

CONTACT INFORMATION

- Ministry of the Attorney General
Office of the Public Guardian and Trustee
Charitable Property Program
(416) 326-1963 or toll-free 1-800-366-0335
www.attorneygeneral.jus.gov.on.ca/english/family/pgt
Investigates complaints about charities and protects the public's interest in how charities raise and use their money.

CONTACT INFORMATION

- Charities Directorate
Canada Revenue Agency
1-800-267-2384
www.cra-arc.gc.ca/tax/charities/menu-e.html
Registers charities and monitors compliance with the *Income Tax Act*. Only charities that are registered with the Charities Directorate are eligible to issue charitable donation tax receipts.

CONTACT INFORMATION

- Association of Fundraising Professionals
(613) 236-0658
www.afpnet.org/tier3_cd.cfm?content_item_id=1984&folder_id=1325
Maintains a Code of Ethical Principles and Standards of Professional Practice for fundraisers.
- Canadian Association of Gift Planners
(613) 232-7991 or toll-free 1-888-430-9494
www.cagp-acpdp.org/main_frame.htm
Maintains a Code of Ethics for gift planners that is overseen by an Ombudsman.

CONTACT INFORMATION

- Imagine Canada
(416) 597-2293 or toll-free 1-800-263-1178
www.imaginecanada.ca
Maintains an Ethical Fundraising and Financial Accountability Code for charities.
- Alcohol and Gaming Commission of Ontario
(416) 326-8700 or toll-free 1-800-522-2876
www.agco.on.ca/en/h_home.html
Regulates the conduct charitable gaming events and lotteries.
