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# **THE 2009 ANNUAL CHURCH & CHARITY LAW™ SEMINAR**

**Toronto – November 10, 2009**

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## **CRA's New Guidance on Fundraising: What It Means in Practice**

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**By Theresa L.M. Man, B.Sc., M.Mus., LL.B., LL.M.**

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## CRA's New Guidance on Fundraising: What it Means in Practice

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## 1. CONTEXT FOR GUIDANCE

- Significant public and media pressure on CRA to more fully disclose internal guidelines
- CRA's desire to educate and achieve consistency of inputs and transparency
- Majority of Canadians feel that fundraising costs should be capped in the 12-14% range
- No consistency of fundraising reporting of cost allocation

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## 2. BACKGROUND TO GUIDANCE

- **March 31, 2008 - CRA released proposed policy for public consultation**
- **June 26, 2008 - CRA released 30-page background document**
- **June 11, 2009 – CRA released Guidance on Fundraising by Registered Charities (CPS-028) – includes a 9-page document and a 23-page detailed explanation – must be read together**  
<http://www.cra-arc.gc.ca/tx/chrts/plcy/cps/cps-028-eng.html>  
<http://www.cra-arc.gc.ca/tx/chrts/plcy/cps/cps-028-ddn-eng.html#d1>
- **See Charity Law Bulletin No. 169 at**  
<http://www.carters.ca/pub/bulletin/charity/2009/chylb169.pdf>

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### 3. PURPOSES AND APPLICATION OF THE GUIDANCE

- Guidance provides information on the current treatment of fundraising under the *Income Tax Act* and common law (not a new CRA policy position) on:
  - Distinguishing between fundraising and other expenditures
  - Allocating expenditures for T3010 reporting
  - Dealing with activities that have more than one purpose
  - Understanding how CRA assesses what is acceptable fundraising
- Applies to all registered charities

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### 4. WHAT IS FUNDRAISING?

- Fundraising is not charitable activities
  - All registered charities are required to have exclusively charitable purposes
  - Fundraising (either as a purpose or an activity) is not in and of itself charitable
  - CRA recognizes the necessity of charities to conduct fundraising, but expects charities not to devote excessive amounts of time and/or resources to fundraising as opposed to fulfilling their charitable purposes

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- Fundraising is an activity that involves any of the following:
  - “Solicitations of support” for cash or in-kind donations (including sales of goods or services to raise funds)
  - Research and planning for future solicitations of support
  - Other activities that are related to solicitations of support (e.g. efforts to raise the profile of a charity, donor stewardship, or donor recognition)

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- Donor recognition is acknowledging or thanking a person who has made a gift
  - It is administration– if the recognition is of nominal value (i.e. lesser of \$75 or 10% of the value of the donation, on per donor basis)
  - It is fundraising– if the recognition is not nominal
- Donor stewardship is fundraising when a charity invests resources in relationships with past donors to prompt additional gifts (e.g. providing donors with access to information, services, or privileges not available to others)

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- Fundraising activities may be external activities (e.g. telemarketing, direct mail, putting on events, distributing information through the media or a charity's own publications)
- Fundraising activities may also be internal activities (e.g. researching prospective donors, hiring fundraisers, donor stewardship and recognition)
- Fundraising can be carried out internally by the charity itself (e.g. the charity's employees or volunteers) or externally by someone acting on its behalf (e.g. third party fundraisers)

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- Fundraising may include a single action (e.g. an advertisement) or a series of related actions (e.g. a capital campaign)
- Fundraising can include both receipted and non-receipted revenue
- Fundraising does not include:
  - Requests for funding from governments or other registered charities
  - Recruitment of volunteers
  - Related businesses
  - Fundraising to support terrorism (which is prohibited)

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- Sale of goods or services is a solicitation of support, except if (1) it serves the charity's beneficiaries to fulfill a charitable purpose and is sold on a cost recovery basis, or (2) it is a related business
- Membership program is a solicitation of support if it (1) requires a donation to join, (2) involves extensive use of donation incentives or premiums, or (3) involves substantive benefits beyond being eligible to vote at a general meeting and/or receive a newsletter

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#### 5. PROHIBITED CONDUCT

- Four types of fundraising conduct are prohibited and will be grounds for revocation of charitable status, imposition of sanctions or compliance actions, or denial of charitable registration
- (a) Fundraising that is illegal or contrary to public policy
- Examples of illegal activities:
  - Involves criminal fraud

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- Violates legislation governing charitable fundraising, charitable gaming, use of charitable property, or consumers' protection
- Fails to take adequate care to ensure the integrity of a third-party tax shelter scheme
- Fails to keep adequate books and records to verify donations
- Activities that are harmful to the public interest or do not comply with government rules, directives, and regulations, e.g.
  - Misrepresentation to the public about fundraising costs

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- (b) Fundraising that has become a main, or independent purpose of the charity (even if only secondary) (i.e. a collateral purpose)
- Where a charity devotes more of its time, effort, and other resources to fundraising, rather than to carrying out its charitable purposes
- (c) Fundraising that results in more than an incidental proportionate private benefit to individuals or corporations
- e.g. A fundraising contract where a fundraiser enjoys a benefit exceeding fair market value for the work it does

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- (d) Fundraising that is deceptive
- A charity must ensure representation made by it is a fair, truthful account and complete
- A charity is responsible regardless of whether the misrepresentation is intentional or negligent
- A charity must not misrepresent
  - Which charity will receive the donation
  - Geographic area where the charity operates and the amount and type of work
  - Percentage of funds that will go to charitable work

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#### 6. ALLOCATION OF FUNDRAISING EXPENSES

- In general, all costs that relate to solicitations of support (and planning & preparation for future solicitations of support) must be reported on T3010 as fundraising expenditures, unless the activity would have been undertaken without the solicitation of support
- To demonstrate that an activity would have been undertaken without solicitation of support, a charity must meet either a “Substantially All Test” or a “Four Part Test”

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- The “Substantially All Test”
  - If the Substantially All Test is met, all costs of an activity may be reported as non-fundraising expenditures on the T3010 as charitable, administrative or political
  - The Substantially All Test is met where substantially all of the activity advances an objective other than fundraising (substantially all is considered to be 90% or more)

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- Generally, this determination is based on:
  - The proportion of the fundraising content to the rest of an activity
  - The resources devoted to it
  - The prominence of the fundraising content in the activity
- “Resources” include a charity’s financial assets, and everything the charity can use to further its purposes (e.g. staff, volunteers, directors, premises, and equipment)

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- The “Four Part Test”
  - If the Four Part Test is met, a portion of the costs for the activity may be allocated on the T3010 as fundraising expenditures, and remaining portion as non-fundraising expenditures as charitable, administrative or political
  - The Four Part Test is met where the answers to all of the following four questions is “no”

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**Question 1 - Was the main objective of the activity fundraising?**

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

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

- It may be hard to separate initiatives that are carried out to fulfill a charity's purposes from a charity's fundraising activities

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- CRA will look at the following to see if there is a distinct objective other than fundraising and how much of the content relates to that objective

(i) Advancing the programs, services, or facilities offered by the charity

(ii) Raising awareness of an issue

(iii) Providing useful knowledge to the public or the charity's stakeholders about the charity's work or an issue related to that work

(iv) 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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**Question 2 - Did the activity include ongoing or repeated requests, emotive requests, gift incentives, donor premiums, or other fundraising merchandise?**

**A. Are solicitations ongoing or repeated?**

**B. Are requests emotive?**

**C. Are gift incentives, premiums, or other fundraising merchandise offered?**

**Question 3 - Was the audience for the activity selected because of their ability to give?**

**Question 4 - Was commission-based remuneration or compensation derived from the number or amount of donations used?**

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- **Exception**
  - Even if an activity would not have been undertaken without solicitation of support, charities may still be allowed to allocate a portion of the costs other than to fundraising, if the activity furthers one of the charity's purposes
  - e.g. A charity holds an event featuring its beneficiaries for treatment purposes or to foster their skills or well-being, such as a concert performance by autistic children

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#### 7. Evaluation of Fundraising Activities

- CRA recognizes that the charitable sector is very diverse and fundraising efforts will vary between organizations
- CRA will look at four factors to evaluate a charitable fundraising activity
  - (a) Fundraising ratio
  - (b) Basic considerations
  - (c) Best practice indicators
  - (d) Area of concern indicators

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#### (a) Fundraising ratio

- It is the ratio of fundraising costs to fundraising revenue calculated on an annual basis
- Fundraising revenues include amounts reported in the T3010 on line 4500 (receipted donations) and line 4630 (all revenue generated as a direct result of fundraising expenses)
- Fundraising expenditures include amounts reported on line 5020 as fundraising expenses in accordance with the Guidance

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- The ratio provides a general guidance only and is not determinative on its own
- The ratio gives charities a way to generally gauge their performance and understand the circumstances where CRA is likely to raise questions or concerns
- Fundraising ratio is distinct from the 80/20 disbursement quota, although elements of it overlap in the ratio

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- The ratio will place a charity in 1 of 3 categories
  - Under 35%: Unlikely to generate questions or concerns by CRA
  - 35% to 70%: CRA will examine the average ratio over recent years to determine if there is a trend of high fundraising costs requiring a more detailed assessment of expenditures
  - Above 70%: This will raise concerns with CRA and the charity must be able to provide an explanation and rationale for this level of expenditure, otherwise it will not be acceptable

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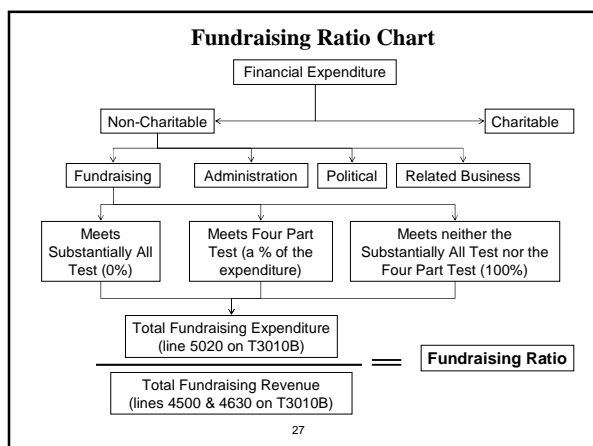
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**(b) Three basic considerations that CRA will look at when assessing a charity's fundraising activities**

- The size of the charity - may have an impact on fundraising efficiency
- Causes with limited appeal - could create particular fundraising challenges
- Donor acquisition and planned giving campaigns - could result in situations where the financial returns are only realized in later years

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**(c) Seven best practice indicators that decrease the risk of CRA finding unacceptable fundraising**

- Prudent planning processes
- Appropriate procurement processes
- Good staffing processes
- Ongoing management and supervision of fundraising practice
- Adequate evaluation processes
- Use made of volunteer time and volunteered services or resources

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- Disclosure of fundraising costs, revenues and practice (including cause-related or social marketing arrangements)
  - Charities are required to provide complete public disclosure for all fundraising costs and revenue
  - Generally greater disclosure required for solicitation to the public than to members
  - The higher the cost for a fundraising activity, the more there is a need for disclosure
  - Information must be accessible (e.g. the web and annual reports) and accurate, (e.g. the best information available)

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- A charity may need to consider disclosing information before, during and after a fundraising initiative, which information might include, e.g.:
  - Estimated fundraising costs and revenues in its annual budget
  - Whether fundraisers are receiving commission or other payment based on the number or amount of donations
  - The general terms of the fundraising contract, including the method of compensation and anticipated costs and revenues

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- How internal fundraisers are assessed and compensated
- The costs and revenues for specific types of fundraising or campaigns within a fiscal period (after completion)
- Cause-related ventures are not subject to close scrutiny by CRA, provided that more than 90% of the costs are borne by a non-charitable partner and all costs and revenues are adequately disclosed (excluding costs of intellectual property)

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- (d) Eight areas of concern indicators that could cause CRA to further review a charity's fundraising activities
- Sole-sourced 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 that are not at arms length, not at fair market value, or not purchased to increase fundraising revenue

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- Activities where most of the gross revenues go to contracted non-charitable parties
- Commission-based fundraiser remuneration or payment of fundraisers based on amount or number of donations
- Total resources devoted to fundraising exceeding total resources devoted to program activities
- Misrepresentations in fundraising solicitations or disclosures about fundraising or financial performance

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#### 8. LINGERING CONCERNS ABOUT THE GUIDANCE

- Many factors and criteria are subjective in nature and may lead to inconsistencies in the administration of the Guidance and CRA audits
- The fundraising ratio is calculated on an annual basis – perhaps a rolling average approach would be more appropriate
- The Guidance is complicated and may be difficult for charities to understand and comply with at a practical level
- The required disclosure of fundraising costs, revenues and practices may impact the ability to attract donors

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