



Consultation on proposed policy on fundraising by Registered Charities

The material posted below relates to the proposed guidelines of the Charities Directorate, Canada Revenue Agency (CRA) concerning the fundraising activities of registered charities. The posting includes:

- A summary document setting out the reporting guidelines for fundraising expenses and the process and considerations for determining whether a registered charity's fundraising is acceptable; and
- A checklist for use by small and rural charities to conduct a simple assessment of their fundraising activities.

Detailed explanations of the individual elements set out in the summary document will be posted by late April or early May. The elements of the summary document that will be hyperlinked to the additional information have been highlighted in the document. Those wishing to comment on the policy may wish to await posting of this detailed information before submitting their feedback.

The CRA wants to hear from charities, individuals involved in charitable work, government departments, and the general public. We would like your opinion on how these guidelines can be made easier to understand or more useful for charities' self-assessment of their fundraising, and we welcome your comments about any aspects of the proposed guidelines.

Please note that guidance on a registered charity's particular practices or individual fundraising initiatives is not available through this consultation process. Charities with specific questions about their own situations or conduct may contact our Client Service Section at 1-800-267-2384 for information.

We will consider all of the comments that we receive by June 30, 2008.

Where to send your comments

Please send all replies in writing to the address or fax below or by email to consultation-policy-politique@cra-arc.gc.ca

The mailing address is:

Charities Directorate, CRA
Ottawa ON K1A 0L5
Fax: (613) 948-1320

POLICY ON FUNDRAISING

Fundraising activities

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1. Objective of this policy statement

This policy statement replaces the policy statement “ **Applicants that are Established to Hold Periodic Fundraisers**”, **CPS 001**, and provides information for registered charities on the treatment of fundraising under the *Income Tax Act* (the *Act*). It provides a framework that explains how to distinguish between fundraising and other expenditures, and clarifies how to classify and report activities intended both to raise funds and advance charitable programming. It explains when fundraising activities may preclude registration or may result in revocation of registration. It also explains what factors are considered when assessing if the fundraising undertaken by a registered charity puts its registration status at risk.

The guidance in this policy statement is based on the provisions of the *Act* and on general principles of charity law and court decisions that define what is charitable and what it is permissible for registered charities to do.

2. Application

This policy statement applies to **all** registered charities.

Many charities, especially charitable foundations, include fundraising as an incidental and ancillary purpose in their objects. It is established Canadian law that where fundraising is a stated purpose it must be a means-to-an-end, rather than an end-in-itself.¹ Charities with fundraising as one of their stated purposes are subject to the same requirements as charities that undertake fundraising as an activity in support of their purposes.

3. Jurisdiction

Federal authority over fundraising by registered charities derives from legislative and common law sources. Under section 91(3) of *The Constitution Act, 1867*, the federal government is empowered to establish the federal tax system. The *Income Tax Act* (Canada) sets out the scheme whereby registered charities are exempt from tax on their income and entitled to issue official tax receipts for certain donations they receive. Eligibility for registration under the scheme is based on meeting the common law definition of charity and abiding by the provisions governing registered charities set out in the *Income Tax Act*. The common law definition of charity is developed through the courts by analogizing from past cases to determine whether a purpose is charitable at law and assessing whether there are any common law grounds for holding the endeavour under consideration not charitable.

Under sections 92(7) and 92(13) of the Canadian Constitution, most aspects of charities’ operations are within provincial jurisdiction. This guidance deals with issues related to the **federal regulation of fundraising by registered charities**, derived from the authority described above, and is not intended to address the various obligations of charities that exist owing to provinces exercising their jurisdiction over charities (i.e., either through provincial legislation or through common law cases in areas of provincial jurisdiction). Charities, whether federally registered or not, should be aware of and meet any provincial requirements imposed on them with respect to fundraising or other aspects of their operations.

4. Prohibited fundraising not dealt with in this policy statement

It is prohibited for a registered charity to carry on its fundraising as an unrelated business. The CRA publishes specific policy guidance on this topic, and registered charities should reference that guidance at <http://www.cra-arc.gc.ca/tax/charities/policy/cps/cps-019-e.html> and <http://www.cra-arc.gc.ca/tax/charities/policy/cpc/cpc-002-e.html> to make sure that any commercial or trading activities they carry out do not constitute an unrelated business.

Similarly, it is unacceptable for a registered charity to fundraise, or otherwise make its resources available, to support terrorism. Registered charities doing so are subject to immediate revocation of their registration and other penalties. See Registered Charities Newsletters No. 12 and No. 20 for additional information.

¹ *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10. at para. 190-192.

5. Charities in Canada

In Canada, charities can become registered by meeting certain requirements of the *Act* and common law. Once registered, a charity pays no income tax and is able to issue official tax receipts to donors who may, as a result, claim non-refundable tax credits or deductions.

Notwithstanding the common law requirement that registered charities have exclusively charitable purposes and the *Act*'s requirement that a registered charity must devote all of its resources to charitable purposes and activities, it is permissible for a charity to use a modest amount of resources for fundraising without breaching common law or statutory rules. This policy statement focuses on the use of resources for fundraising and the limits imposed by the law. The information in this policy statement should be used as a **general guide only**. In cases of appeal, a decision about the activities of a registered charity or an applicant seeking registration will ultimately depend on how a court interprets the facts of a specific situation.

6. The difference between fundraising and charitable purposes or activities

All registered charities are required by law to have exclusively charitable purposes, which are set out in the charity's [governing documents](#). As the *Act* does not define what is charitable, we look to the common law for both a definition of charity in its legal sense as well as the principles to guide us in applying that definition.

The courts have determined that fundraising (whether undertaken as a purpose or activity) is not in-and-of-itself charitable.² Consequently, the costs of fundraising cannot usually be reported as charitable expenditures on a charity's T3010A, *Registered Charity Information Return* (T3010A return), and fundraising activities are not normally treated as advancing the charitable purposes of a registered charity.

This policy statement outlines the CRA's position on how costs associated with fundraising activities, or activities undertaken for fundraising and one or more other purposes, should be reported on a registered charity's T3010A return. This policy statement also sets out guidance for registered charities on how the CRA assesses a charity's fundraising to determine if it is acceptable.

This guidance is intended to make charities aware of conduct that may lead to ineligibility—owing to failure to meet statutory and/or common law requirements—of an entity for status as a registered charity. It also sets out information on how registered charities can demonstrate their commitment to ensuring their fundraising accords with their legal obligations.

Every action of a registered charity does not have to be in-and-of-itself charitable. Under the common law, charities can fundraise in support of their charitable purposes even though fundraising activities, taken alone, would not necessarily be charitable.

Similarly, some purposes and activities are permitted under provisions of the *Act* which, considered separately from the legislation, would not necessarily be charitable—either by defining them as charitable for purposes of the *Act* or by explicitly allowing them to be undertaken by registered charities. So, for example, fundraising through related business (treated as such because it is substantially operated by volunteers) or fundraising to disburse funds to qualified donees (that are not registered charities), is allowable because these things are provided for in the *Act*.

7. Prohibited conduct

The following areas of prohibited conduct are the principal grounds, related to fundraising activities, for revocation of a registered charity's status, imposition of sanctions or other compliance actions, or for denial of charitable registration to applicants:

- a) **Conduct that is illegal or contrary to public policy**
- b) **Conduct that has become a main, prevailing, or independent purpose of the charity**
- c) **Conduct that results in excessive or disproportionate private gain by individuals or corporations**
- d) **A charity not devoting 100% of resources to charitable ends since the harm arising from the charity's fundraising practice outweighs its public benefit**

² See *Oxford Group v. IRC* [1949] 2 All ER 537 (fundraising purpose not charitable) and *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10 at para. 152 (fundraising activity not necessarily charitable).

8. Allocation of expenses

As a general rule, on their T3010A return, charities are to report as fundraising expenditures 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 without the solicitation of support.

Solicitations of support do not include asking for funding from government or other registered charities. A solicitation of support includes any request by the registered charity, or someone acting on its behalf, for financial or in-kind donations and also includes the marketing and sale of goods or services not within the entity's charitable programs, such as selling chocolate bars to fundraise. This applies even where no donation receipt is issued for the transaction.

To demonstrate that the activity would have been undertaken without the solicitation of support, charities must demonstrate either A or B below:

A. Substantially all of the resources devoted to the activity advance an objective other than fundraising.

or

B. All of the following apply to the activity:

1. The main objective of the activity was not fundraising, based on the resources devoted to fundraising in the activity, the nature of the activity, or the resources used to carry it out.
2. The activity does not include ongoing or repeated requests, emotive requests, gift incentives, donor premiums, or other fundraising merchandise.
3. The audience was selected for reasons other than their ability to give.
4. Commission-based remuneration or compensation derived from the number or amount of donations is not being used.

Where the test in A is met, on the T3010A return, all costs for the activity may be allocated as non-fundraising expenditures. Where the tests in B are met, on the T3010A return, a portion of the costs for the activity may be allocated as non-fundraising expenditures, and a portion as fundraising expenditures.

In some instances, even if the activity would not have been undertaken without the solicitation of support, charities may be allowed to allocate a portion of the costs other than to fundraising expenditures, where the activity also demonstrably furthers one of the charity's purposes. The CRA recognizes that, in certain circumstances, an event or activity may serve a multiple purpose – for example, as a way to advance its charitable programs and a means of raising funds for the charity. This might be, for example, where:

- the charity promotes an event or activity where revenues are raised based on the charity's work with its beneficiaries, such as the sale of goods from the operation of a sheltered workshop involving persons with disabilities;
- the charity mounts an event or activity featuring its beneficiaries for treatment purposes or to foster their skills or well-being, such as a concert performance by autistic children or an endurance race to build the stamina of cancer survivors; or
- the charity ties a fundraising appeal to a political activity allowed under the *Act* (i.e., non-partisan and to which less than 10% of the charity's resources are devoted), such as mounting a public awareness campaign about a policy issue.

The CRA only considers that an event or activity advances its charitable programming where it can be shown to prompt an action or change a behaviour other than the giving of a donation or other financial support. The event or activity should also reach a significant portion of the charity's stakeholders other than its current or prospective donors, or clearly exhibit greater emphasis on helping beneficiaries than on obtaining financial support.

The CRA generally does not consider raising awareness of a charity's mandate or work, when carried on in conjunction with fundraising through non-charitable third parties (such as for-profit telemarketing, direct mail or canvassing companies), to meet these requirements. So, charities may not allocate costs for such activities except as fundraising expenditures.

9. Evaluation of fundraising activities

The ratio of fundraising costs to fundraising revenue during a fiscal period will place a charity in one of the five categories, ranging from acceptable to rarely acceptable, in the evaluation grid below. The grid is the initial tool used in assessing the acceptability of a charity's fundraising, and serves as a general guide to the CRA's expectations.

Before concluding that a charity's fundraising is not acceptable, the CRA will examine a charity's fundraising conduct based on the considerations set out below. The presence of sound practices, the absence of practices that increase the risk of unacceptable fundraising, as well as the recent trend in the charity's ratio of costs will be considered in making a final determination.

Other circumstances may be relevant in determining whether the fundraising is acceptable. Section 13 below lists the circumstances that the CRA may also consider before making a determination that a charity's fundraising practices are unacceptable.

10. Evaluation grid

Ratio of fundraising cost/fundraising revenue in fiscal period

Rarely acceptable:	more than 70% (charity nets less than 30%)
Generally not acceptable:	50% to 70% (charity nets 30% to 50%)
Potentially not acceptable:	35.1% to 49.9% (charity nets 50.1% to 64.9%)
Generally acceptable:	20% to 35% (charity nets 65% to 80%)
Acceptable:	less than 20% (charity nets more than 80%)

11. Conduct considered as decreasing the risk of 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
- Disclosure of fundraising costs, revenues and practice

12. Conduct considered as increasing the risk of unacceptable fundraising:

- 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
- Needless purchase, non-arm's length purchase or purchase not at fair market value, of fundraising merchandize
- 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
- Fundraisers receiving disproportionate compensation relative to non-fundraisers
- Total resources devoted to fundraising exceeding total resources devoted to program activities
- Misrepresentations in fundraising solicitations or disclosures about fundraising or financial performance
- Combined fundraising and charitable program activity, where contracted to a party that is not a registered charity or that is compensated based on fundraising performance

13. Other circumstances that the CRA may consider

- a) Small charities or charities with limited appeal
- b) Charities that are investing resources in donor acquisition or other types of fundraising in which the return will not be realized in the same year in which the investment is made
- c) Charities whose main or major purpose is to make gifts to qualified donees, or to one or more registered charities and as a result have a different cost structure than charities that carry on their own activities
- d) Charities whose activities include lotteries or charitable gaming that is regulated provincially
- e) Charities engaging in cause-related marketing initiatives
- f) Charities with extraordinary spending, relative to their size, on infrastructure to ensure compliance with this fundraising policy



Checklist for Small or Rural Charities

This checklist will help small or rural registered charities self-assess their fundraising conduct. The checklist is a guideline only.

If a charity has total revenues of less than \$100,000 and can answer yes to all the questions in either Part I or Part II below, the charity will generally satisfy compliance requirements related to its fundraising.

Yes No

Part I

- Its fundraising is done by volunteers;
- No more than \$10,000 is spent on the services and supplies* used for its fundraising activities; and
- It accurately completes its annual Form T3010A, *Registered Charity Information Return*.

or

Part II

- Its fundraising expenditures are not more than 35% of its total revenues;
- If it contracts for fundraising services or supplies*, it only contracts with parties at arms length;
- For staff or contracted fundraisers, the charity does not use commission-based compensation or other compensation based on the number or amount of donations;
- It can show it takes adequate measures to control costs and receives best value in its fundraising activities; and
- It accurately completes its annual Form T3010A, *Registered Charity Information Return*.

* Services and supplies include:

- goods or services bought to be used for fundraising (e.g., collection envelopes, advertising, and donors lists);
- contracted services for direct mail, telemarketing, or other solicitation work, or for organizing a fundraising event;
- contracted services for prospect research or other donor acquisition activities; and
- goods or services sold or used in fundraising (products such as chocolate bars and cookies, as well as merchandise distributed as gift incentives or donor premiums, such as mailing labels, key chains, T-shirts, and tote bags).