

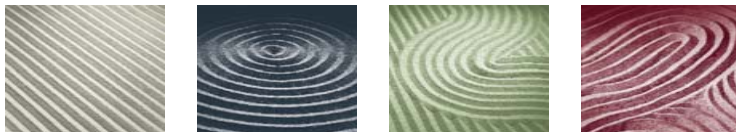
# MILLER THOMSON LLP

Barristers & Solicitors, Patent & Trade-Mark Agents

## **CRA UPDATE:** Fundraising Guidelines, Funding Non-qualified Donees, Policies on Charitable Activities, and New Gifts

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# Outline

- Draft Fundraising Expenditure Guidelines
- Other New Policies
  - Umbrella Organizations
  - Promoting Volunteerism
  - Research
  - Sport
- Working with Non-Qualified Donees
- New Gifts
  - Securities and Flow Through
  - Insurance

# Proposed Fundraising Policy

- CRA's position is that expenditures on fundraising are generally not expenditures on charitable activity
- CRA's view is that it is permissible to use a modest amount of resources for fundraising without breaching the rules
- To clarify the existing CRA administrative practice and educate registered charities

# Key Areas

- A. The “Grid”
- B. Allocation of Expenses
- C. “One Size Fits All”
- D. Prohibited Conduct
- E. Best Practices

# The Grid

Considers the ratio of fundraising costs/fundraising revenue in each fiscal period and categorizes them as follows:

- Acceptable - less than 20%
- Generally acceptable - 20% to 35%
- Potentially not acceptable - 35 to 50%
- Generally not acceptable - 50% to 70%
- Rarely acceptable - more than 70%

# Allocation of Expenses

- First principle is that all costs related to any activity that includes a solicitation of support (or is in advance of an ask) are fundraising

## **unless:**

- The charity can demonstrate the activity would have been undertaken without a solicitation of support

# Allocation of Expenses (cont'd)

- To demonstrate the activity would have been undertaken without the ask charity must demonstrate either:
  - A. Substantially all of the resources devoted to the activity advance an objective other than fundraising
  - Or
  - B. Allocate based on four part test

# One Size Fits All

- applies to all charities
- The other circumstances:
  - small charities
  - charitable purposes that have limited appeal
  - donor acquisition mode or multi year campaign
  - foundations
  - lotteries or charitable gaming activities
  - cause-related marketing
  - extraordinary spending to comply with this policy

# Prohibited Conduct

1. Illegal or contrary to public policy
2. Main purpose of the charity
3. Excessive/Disproportionate Private Benefit
4. Not devoting 100% of resources to charitable ends

# Conduct Which May Raise Concerns

1. Sole sourced or non arm's length fundraising contracts
2. Lack of proper documentation
3. Needless or non arm's length merchandise purchases
4. If > 50% of revenues goes to non charitable party
5. Commission based or bonus based remuneration
6. Disproportionate compensation and revenues on fundraising
7. Misrepresentation in fundraising

# Best Practices

1. Prudent planning
2. Use of appropriate procurement processes
3. Good staffing
4. Ongoing Management and Supervision
5. Evaluate activities internally
6. Use volunteers where possible
7. Disclose, Disclose, Disclose



**What fundraising issue do you foresee as being the most problematic for charities?**

# Umbrella Organizations

- Assisting other charities is charitable
- May also provide incidental (less than 10%) services to non-profit organizations that provide community benefit
- Any private benefit must be incidental
- Umbrella group can have membership made up of charities and other organizations, but must serve the public at large rather than focussing on its members

# Umbrella and Real Property

- Registered charity can hold real property for another charity
  - but restrictive position on the disbursement quota
  - space for use by another charity does not constitute an "expenditure" that counts toward the disbursement quota
  - cash expenditures on the building count as charitable to the proportionate degree to which the tenant charity uses the facility for charitable programming rather than administration

# Umbrella and Real Property (cont'd)

- Better approach
- Landlord charity to treat its property as an investment
- Charge fair market value rent to the tenant charity
- Landlord meet its disbursement quota through grants to the tenant charity
  - assumes consistent with the landlord charity's investment powers and objects



**Is there any other areas you wish CRA would address in this policy?**

# Promotion of Volunteerism

- Promoting volunteerism in the community at large is charitable
- Limitations
  - must be promoted to and for the community at large
  - that the volunteer services must be directed exclusively for qualified donees and (non-business related) non-profit organizations
    - expansion of an earlier position of CRA that only recognized volunteerism aimed at the support of charities (volunteerism was not viewed as providing a public benefit in itself)

# Acceptable Activities

- Increasing public awareness and support for volunteerism
  - news releases and community newsletters
- Encouraging residents to volunteer in the social development and social services of their community
- Providing a means and method for recruiting and referring volunteers
- Providing a community information resource on volunteering
- General training of volunteers, a board member development program

# **Volunteerism is Charitable by Analogy to:**

- Foster good citizenship
- Promotion of industry, commerce, agriculture, horticulture, and craftsmanship charitable where public benefit
- Benefit, improvement, or beautification of a locality
- Municipal infrastructure such as bridges, ports, causeways, and highways



**What programs does your organization run to promote volunteerism?**

# Proposed Policy on Research

- Research is a charitable purpose
  - “other purposes beneficial to the community”
  - advancement of education

Requirements:

## **1. Reasonable way to achieve charitable purpose**

- relate to the organization’s formal charitable purpose
- outcome of the research need not be certain
- reasonable prospect

# **Proposed Policy on Research (cont'd)**

## **2. Not frivolous and likely knowledge discovered or improved**

- not charitable to accumulate or produce information on a subject or an event
- plan how to assess results
- may request a literature review
- demonstrate its employees have the necessary training and experience
- expert opinion
- peer review or by publicizing

# Proposed Policy on Research (cont'd)

## 3. Public benefit and not private commercial consumption

- research for charity's internal advantage not charitable
  - i.e. donation patterns
- human subjects consider the ethics and mitigate the risk
- collaboration with commercial entity consider at outset why and the basis
  - private benefit must be incidental, reasonable and inevitable and necessary
  - an employee on the allocation committee is reasonable in exchange for the funds, if no veto
  - may grant exclusive license to produce a drug if need to ensure the drug is brought to the market benefit of all

# Proposed Policy on Research (cont'd)

## 4. Disseminate Results

- must disseminate if educational purpose
- publish in print, web site, or online database
- record in a public register if possible
- indicate how to access the full set of results
- if highly technical or obscure allow public access

# Disseminate

- No need to disseminate if the research does not produce constructive results
  - record title in a publicly accessible catalog, archive the research and make it available on request
- Intellectual property rights might prevent charity from satisfying these requirements
  - promptly seeks the patent and makes the results public as soon as possible after the patent is secured



**What are your thoughts on charities working with corporate donors to fund research and profit together from the results?**

# Proposed Policy on Sport

- Promotion of sport by itself is not charitable
- Can use sport to further a charitable purpose
- Must show it furthers the charitable purpose
- AYSA

# Examples of Charitable Sports Activities

Relieving Poverty	Subsidize children to participate in sports
Religion	Sports at religious children's camp
Care for Youth at Risk	Sports that build self-esteem
Relief of Aged	Sports that increase mobility of seniors

# Sports and Promoting Health Factors

- Health benefits
- Open to all
- Emphasis on participation
- Non-monetary reward for participation, if any
- Equal opportunity to participate, regardless of ability
- No cost to spectators
- Single sport unlikely to qualify, can rebut presumption



**Do you think this policy has  
changed the way charities  
approach sports?**

# Funding Non-Qualified Donees

- Registered charities
  - must devote their resources to its own charitable activities, or
  - make grants to qualified donees
- A Canadian charity cannot simply forward money to an entity that is not a qualified donee

# How can you fund a Non-Qualified Donee?

- RC 4106 *Registered Charities Operating Outside of Canada*
  - need binding written agreements
  - document compliance
  - Invoices and reports
- Have the non-qualified donee carry out charitable activities on your behalf

# Structured Agreements

- Arrangements with intermediary can be structured in many ways including:
  - agency
  - joint venture/joint project
  - cooperative partnership
  - fee for service/contractor

# Agency Agreement

- Principal (Canadian charity) hires agent to complete some task
- Project choice is made by principal
- Operational decisions can be made by agent
- Liability flows from agent to principal
  - Liability allocation
- Stringent recordkeeping requirements

# Joint Venture Agreement

- Core elements:
  - pooling of resources for common project
  - requires substantive Canadian participation in decision-making
    - Canadian votes proportional to monetary contribution; or
    - Canadian veto power/double majority
  - liability allocation
  - Canadian charity should regularly obtain financial information and reports relating to entire venture
  - term and termination

# Co-operative partnership

- Working side by side with other organizations and people towards a common project or objective
- Each participant takes responsibility for a particular aspect of the project
- Funds are not transferred to other “partners”

# Contractor Agreements

- Canadian charity may hire foreign charity for specific transfers or services
  - intellectual property licensing
  - worker training
  - evacuation facilities
  - field supervision
  - broadcast airtime purchase
- Need invoices
- Need written contract unless nominal amount (under \$5,000 per year)

# Charitable Property

- Canadian charity may give goods to foreign charity if:
  - goods are intrinsically charitable (Bibles, medicines etc.)
  - recipient organization can be trusted to only use goods for charitable purposes
  - agreement helps clarify purpose
  - records of use are received

# Consequences of Improperly gifting Non-Qualified Donees

- Loss of charitable registration
- Loss of tax exempt status
- Loss of tax recognition for donors
- Imposition of penalty tax equal to 100% of charity's assets
  - “capital punishment”
- Penalty of 105% of gifts made to non-qualified donee payable to CRA or arm's length Canadian charity



**What part of this regime is the most difficult to comply with – agreements, reporting, documenting?**

# Gift of Publicly Listed Securities

- No capital gains tax
- Charitable credit/deduction for the fair market value of the gift
- Must donate 'in kind' for tax break
  - unless cashless stock option plan
- Ensure the exchange is designated
  - Department of Finance website
  - [http://www.fin.gc.ca/news08/data/08-049\\_1e.html#Annex](http://www.fin.gc.ca/news08/data/08-049_1e.html#Annex)

# Individual Donates 100 Shares: ACB \$10, FMV \$50, 45% tax rate

	Sell Shares & Gift Cash	Gift Shares
Capital Gain	\$4,000	Nil
Taxable Capital Gain	\$2,000	Nil
Tax	\$900	Nil
Value of Tax Credit	\$2,250	\$2,250
Net Tax Relief	\$1,350	\$2,250

# Flow-through Shares

- A tax based incentive to foster exploration
- Corporation can renounce exploration deductions and allow the investors to claim deductions up to the cost of the share
- Deductions reduce cost base of shares
- Significant capital gain when sold
- Gift to charity eliminates capital gain

# Flow-through Shares

- Example: (assume tax rate of 45%)
  - cost of shares \$10,000
  - deductions \$10,000, cost base reduced to 0, income tax savings of \$4,500
  - gift to charity \$10,000, tax credit \$4,500
  - total real cost of gift \$1000
- Legitimate combination of two existing incentives
- Tax shelter concern where shares are packaged to emphasize tax savings, may eliminate charitable intent

# Issues

- Receipt for fair market value at the time of the gift
  - closing price or mid-point on day of receipt
  - charity's internal policies
- Charity may be required to divest
  - foundation cannot control a corporation
  - private foundations cannot own over 20%
  - (Ontario) *Charitable Gifts Act* 10% limit on interest in a business



**Has your charity instituted policies regarding gifts of securities?**

# Gifts of Life Insurance Policy

- CRA policy change on valuation of life insurance policy
- Previously, cash surrender value
- If no cash surrender value, such as a “term-to-100” policy, no receipt would be issued as a result
- Issue receipts for the premiums paid after the gift

# Additional factors

- Cash surrender
- The policy's loan value
- Face value of the policy
- The state of health of the insured and his/her life expectancy
- Conversion privileges
- Other policy terms, such as term riders, double indemnity provisions
- Replacement value

# Gifts of Life Insurance

- Will likely need valuator or actuary to determine the fair market value of the policy
- Gift may be a taxable event to the donor
- Value for purposes of determining the proceeds of disposition of the policy is its cash surrender value (not the value for receipting purposes)



**Have you experienced any increase in the number of people wanting to gift life insurance policies?**

# Keep Current

- The law is always changing
- Resources are available to keep up
  - CRA has a electronic mailing list that emails what's new
  - Miller Thomson has a free monthly email newsletter

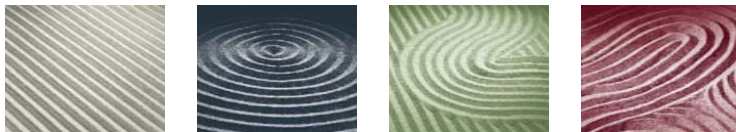
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