



October 4, 2010

Mr. Neil Cochrane  
Manager, Policy Planning and Legislation  
Charities Directorate  
Canada Revenue Agency  
Place de Ville, Tower A  
320 Queen Street, 12<sup>th</sup> Floor  
Ottawa, ON K1A 0L5

Dear Mr. Cochrane:

**Re: Guidance CPS-028 Fundraising by Registered Charities**

I am writing on behalf of the Charities & Not-for-Profit Section of the Canadian Bar Association to comment on the existing Guidance dealing with Canada Revenue Agency's interpretation of the rules applicable to fundraising by registered charities under the *Income Tax Act* (Canada). The Section writes pursuant to CRA's request that the sector provide input on the one year anniversary of the publication of this Guidance. The CBA thanks you for the opportunity to provide this input.

In brief, the CBA Section suggests that the Guidance document be reorganized and updated. It also suggests that the "four part test" be applied more flexibly. It further suggests that revenues raised from other charities should be listed differently and that certain other aspects of the Guidance should be reconceived. Finally, the CBA Section suggests that auditors should be trained to more clearly understand the precise legal role of the Guidance as a guide rather than a set of rules. Recommendations from the CBA Section are detailed below.

***Document Organization***

The CBA recommends that the links and the guidance be synthesized into one comprehensive document. The existing structure of the document is cumbersome. However, the subject matter to which it relates is complex. Charities have suggested to members of the CBA Section that a simplified document with links to explanations would be more user-friendly. However, the CBA Section takes the view that this structure is not preferable. Rather, a synthesized comprehensive Guidance would be a better document for the following reasons:

1. Charities, which are frequently very small-scale organizations, often only print the Guidance without realizing or understanding that further clarification is available on the CRA website;
2. The short document would be of little assistance without the substance. Some of the terms and concepts contained in the Guidance - or in links to it - do not show up on the printed version. Background information that is missing is critical to understanding the Guidance;

3. CRA will know that charities are accessing the full CRA policy if the Guidance is one document, rather than two; and
4. A clearer guidance document will assist auditors in their role of educating charities.

The previous CPS-028 document and the current one contain very helpful comments on best practices and areas of concern. Consideration could be given to including this information closer to the beginning of a revised document than they are in the current Guidance, as many organizations find these sections helpful and might miss or disregard these comments as “small print” in light of their current location.

The Guidance currently deals with two different broad issues: fundraising practices of charities; and how to reflect fundraising expenditures and revenues on the T3010B. It would be preferable to highlight the CRA’s policies with respect to fundraising practices in the first part of the document. Instructions on how to reflect fundraising revenues and expenses could be treated in a discrete second part of the T3010B. Instructions for the T3010B are technical in nature and relevant to a different audience, i.e. those responsible for completing the T3010B.

### ***Repeal of the 80-20 Rule of the Disbursement Quota***

Obviously, the Guidance needs to be updated consequent to the repeal of the 80-20 rule. We question whether it is still necessary to distinguish between expenditures in relation to management, administration, fundraising and charitable. These expenditures overlap. As noted by Justice Iacobucci in *Vancouver Immigrant Women’s Society*<sup>1</sup> it is next to impossible to allocate certain expenses between these categories. Financial statements and generally accepted accounting principles already require charities to reflect expenses in a manner that allows CRA and the general public to determine the nature of the expenditures of the organization. This provides transparency about whether donations and revenues of the charities are being effectively utilized.

### ***Four Part Test***

The CBA Section takes the view that the Four Part Test should be applied less stringently or with a broader range of exceptions. The Four Part Test as currently structured is difficult for organizations to apply, particularly because of its subjective requirements, such as determining whether something creates an “emotive request”. Allocation of expenditures should, in most cases, be permitted, even if the Four Part Test is not met. Such allocation is appropriate where it is clear and determinable that a portion of the expenditure is related to the charity’s mandate or work and a portion is related to fundraising.

### ***Fundraising Revenues line 4500 and line 4630***

Revenue lines referenced by the Guidance for purposes of determining the ratio of costs to revenue over a fiscal period should include revenues received from other charities. In practice, many expenditures incurred by a charity to raise funds to operate are made in connection with raising funds from individuals, corporations or other registered charities or qualified donees. Many organizations fundraise generally, but rely on donors to provide funding to the United Way, which in turn funds their operations. Omission of revenues from qualified donees from this line does not reflect the operational reality of many charities.

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<sup>1</sup> Vancouver Society of Immigrant and Visible Minority Women v. M.N.R., [1999] 1 S.C.R. 10

### ***Fundraising Expenditures Line 5020***

What expenses are to be included in line 5020 should be clarified. As indicated above, many organizations would normally include expenditures incurred to raise dollars from corporations, individuals and other registered charities as fundraising expenditures on the same line. The insistence on excluding revenues from other qualified donees requires organizations to allocate where it should be unnecessary. This is most difficult for smaller organizations with fewer staff. This may have the counterproductive tangible result of diverting staff away from providing direct charitable services.

### ***Foundations***

The Guidance should clearly state that, where Foundations are established to make grants to other qualified donees undertake activities related to raising funds, those grants should fall into the category of charitable activities. This would be consistent with the 2008 version of the Guidance.

It is not clear how the current Guidance applies to registered charities whose charitable purpose is to raise funds and support other qualified donees. Questions are often raised in the context of organizations established to support a particular operating charity, such as hospital foundations and hospitals. Also affected are general foundations that support many qualified donees.

The following example illustrates this concern. "A" is a small parallel foundation that has three to five staff with operational expenditures of about \$400,000. "A" would likely spend about \$100,000 on audit, investment management, legal and board management matters. The bulk of the expenses (\$300,000) would be used for the day-to-day activities of the staff, which would predominantly relate to raising funds for the operating charity. "A" would have to raise close to \$1 million each year to stay under the 35% level and at least \$600,000 to stay under 50% level.

Lawyers and clients indicate from experience that parallel foundations would have difficulty meeting the amounts in the example above if they allocated in a forthright manner. Indeed, some charities are rethinking the usefulness of a parallel foundation, as it would be easier to account for fundraising expenses in the operating organization as opposed to its parallel foundation.

The 2008 draft Guidance noted above addressed this issue by recognizing the distinct position of parallel foundations under "Other Circumstances the CRA May Consider". That position was unfortunately removed in the current version of the Guidance.

### ***Lotteries***

Theoretical application of the Guidance to registered charities that operate lotteries governed by Provincial Gaming Commissions continues to be an area of confusion. Provincial Gaming Authorities set fundraising cost ratios. Their permitted ratios are much higher than those which CRA identifies as acceptable.

In the Question and Answer section, CRA states it will generally not examine the lottery aspects of a charity's fundraising activities. We suggest this statement be in the main body of the Guidance. It should clarify either that amounts will be taken out when determining the ratios at the charity level. Alternatively, it should state that, to the extent these ratios throw the overall fundraising ratio into categories that CRA has identified as not acceptable, CRA auditors will not force the charity to alter its fundraising generally as a result of the lottery activity.

### ***Fiscal Year Approach***

The year-by-year approach adopted by the Guidance continues to present serious concerns for organizations that normally plan fundraising campaigns over a three to five year period. Operational costs may be high in the early years of a longer plan, with revenues higher in the later years. A rolling average ratio would more accurately reflect fundraising effectiveness for CRA auditors and for the general public.

### ***Disclosure of Fundraising Costs***

The section of the Guidance concerning disclosure of fundraising costs is lengthy and probably too complex for the average charity to comprehend without professional assistance. Examples would be helpful to assist charities in understanding how the Guidance would apply to their specific circumstances.

### ***Charities Audit***

Clients consistently articulate concerns that CRA auditors are not adequately versed in CRA policies around the use and purpose of the Guidance. CRA has confirmed that the Guidance is just that, a guide for organizations to use when planning their activities. It is also intended to inform about CRA's policies on audit. The statements in the Guidance are not intended to be regulatory in nature or to represent hard and fast rules. Auditors should either be better informed of the use and purpose of the Guidance or should be clearer when they explain its status.

In sum, restructuring this document and clarifying the matters of concern and confusion noted above would benefit registered charities that use the Guidance as a tool when planning their operations. Such restructuring and clarification would also ensure that the CRA auditors appropriately apply the Guidance at the time of an audit of an organization and its fundraising revenues and costs.

The CBA appreciates the opportunity to provide you with this input. We would be pleased to discuss our comments with you. You can contact the Chair of the CBA Section's Fundraising Guidance working group, Susan Manwaring, at [smanwaring@millerthomson.com](mailto:smanwaring@millerthomson.com).

Yours truly,

*(Original signed by Rebecca Bromwich for Terrance Carter)*

Terrance Carter  
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