

Fundraising: Prohibited Conduct

Introduction (Slide 1)

This module discusses the types of prohibited conduct that may result in revocation of a registered charity's status or other sanctions.

- ❖ illegal conduct
- ❖ conduct that is contrary to public policy
- ❖ conduct that puts fundraising as a main or independent object of the charity
- ❖ conduct that results in major private benefit to individuals or corporations
- ❖ misleading or deceptive conduct

Illegal Conduct (Slides 2&3)

Being involved in illegal fundraising activity may be grounds for revoking charitable status or other sanctions.

Certain federal and provincial laws guide charitable activities, charitable gaming, the use of charitable property, and consumer protection against fraud.

- ❖ Fundraising activity that violates the law is illegal.
- ❖ A fundraising activity may not be illegal in itself, but if it is associated with illegal conduct, the activity is not acceptable.
- ❖ Improperly issuing donation receipts is contrary to the *Income Tax Act*.

A registered charity is responsible for all fundraising activities carried on by staff and by a third party on behalf of the charity. It should ensure that those carrying out the activities are complying with all applicable laws.

If a fraudulent third party tax shelter scheme is marketed to multiple donors, the charity could be responsible for facilitating or advancing wrongful conduct by others.

Contrary to Public Policy (Slide 4)

A registered charity or a third party acting on its behalf is not permitted to engage in conduct that is contrary to public policy.

What is considered contrary to public policy?

- ❖ Fundraising activities that do not comply with government rules and regulations or those that cause harm to the public interest.
- ❖ Fundraising contracts that result in misrepresentation to the public about whether donations go to the charity or to pay the fundraising company.
- ❖ Fundraising activity that does not comply with the Canadian Radio-television and Telecommunications Commission's directives, its telemarketing rules, or other government policy.

Fundraising as a Main Purpose (Slide 5)

Fundraising cannot be the main or independent purpose of a charity.

- ❖ A registered charity can only raise funds to fulfill its mandate meaning that fundraising is an ancillary and incidental purpose.
- ❖ Fundraising might be considered as a main or independent purpose when a charity devotes more of its resources (cash, staff, volunteers, directors, other expenses) to fundraising than to its charitable activities.
- ❖ When fundraising becomes the main or independent purpose of a charity, the charity's status is questionable.

Note: Foundations are generally established to engage in charitable activities by disbursing funds to qualified donees, which include registered charities.

Private Benefit (Slides 6-8)

Fundraising activity that results in major or disproportionate private benefit to individuals or corporations is prohibited. The CRA may revoke the charity's registered charity status.

Exception

- ❖ It is possible for private benefit to be derived from a charity's activities, as long as the private benefits are *incidental* to and in *smaller proportion* to the public benefit and the activities advance the charity's goals.
- ❖ Proportion refers to the amount or percentage of the benefits or gains to private individuals or corporations compared to public benefits.
- ❖ For private benefit to be considered *incidental*, it has to be *necessary* for the activity.

For example, a charity buys and distributes an expensive autographed bestseller book as part of a fundraising activity. There are two questions to consider in determining if the private benefit is incidental.

- ❖ Can the charity show that the gift incentive (in this case, the bestseller) increases the number or amount of donations?
- ❖ Is the charity dealing with the book supplier at arm's-length?

If the charity can show that the private benefit is incidental, then the activity is not prohibited.

Article on Private Benefit

"Sponsorships: Private Interests, Public Benefit" by Peter Broder discusses the issue of private benefits in sponsorships.

This article is available at www.charitycentral.ca/site/?q=node/46

Misleading or Deceptive Conduct (Slide 9)

Fundraising activities that involve deceptive misrepresentation are prohibited.

Registered charities should ensure that representation made by staff and third party contractors is truthful, accurate, fair, and complete.

A registered charity must not misrepresent:

- ❖ who will be receiving the donations
- ❖ the amount and type of its charitable work
- ❖ the amount or percentage of the donations that will go to its charitable work

Notice (Slide 10)

Information in this module is provided for general educational purposes and not as legal or accounting advice. Consult a lawyer or accountant for professional advice.

Information is accurate as of May, 2009.

For changes after this date, consult Canada Revenue Agency.