



Fundraising Essentials

October 26, 2019

Leagues Alive Conference

Topics

- CRA requirements as a non-profit;
- Charitable Fundraising Act of Alberta;
- Non-profits and fundraising;
- Financial considerations;
- Canada's Anti Spam Law (CASL).



Income Tax Act of Canada

149 (1) No tax is payableon the taxable income of

Non-profit organizations

(l) a club, society or association that, in the opinion of the Minister, was not a charity within the meaning assigned by subsection 149.1(1) and that was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof.

CRA Rules for Non-Profit Business Activities

- To remain a tax exempt entity under the Income Tax Act of Canada, a non-profit must not plan to have a profit:
 - Don't budget for a surplus;
 - Incidental profit is ok up to a point;
 - Members expected to provide funds for activities.
- Must be operated for exclusively not for profit purposes;
- Cannot make income available to members.

How Would CRA Know?

- Annual Corporate Tax Return (T2);
- Not for Profit Information Return (T1044) required if;
 - \$200,000 in assets in prior year;
 - More the \$10,000 in investments in prior year;
 - Have filed in past years.
- GST Returns;
- Payroll;
- Other CRA communications.
- Fines for not filing by six months after fiscal year end:
 - \$25/day up to \$2,500

Charitable Fundraising Act of Alberta

“charitable organization” means:

- (i) any incorporated or unincorporated organization that is formed for a charitable purpose, or
- (ii) a person who makes solicitations for contributions to be used for a charitable purpose and who is not connected to any incorporated or unincorporated organization that is formed for the charitable purpose for which the solicitation is made.

“charitable purpose” includes a philanthropic, benevolent, educational, health, humane, religious, cultural, artistic or recreational purpose, so long as the purpose is not part of a business.

Note: This is not the same as a CRA registered charity!

Charitable Fundraising Act of Alberta

If you ask Albertans for donations - Comply with Charitable Fundraising Act if:

- The charitable organization uses a fund-raising business to generate donations;
- Intends to raise \$25,000 or more in gross contributions from individuals in Alberta (not from own members or gaming revenues) in its financial year;
- Already has raised over \$25,000 in its financial year or is within 45 days of hitting \$25,000.

Donors must be told...

- Name of charitable organization;
- The purpose for the funds;
- Estimate of the contributions;
- Estimate of the costs of making solicitations;
- Address and place of incorporation;
- Name and phone number of a contact person;
- If using a fundraising business (FRB):
 - Operating name and full legal name of FRB;
 - How the remuneration of the FRB is determined.

Additional Information Anyone May Request...

- A copy of your most recent financial information return or audited financial statement;
- The portion of gross contributions received during the last financial year that were used directly for charitable purposes and not admin or other purposes;
- An estimate of gross contributions received during the current financial year that will be used directly for charitable purposes and not admin or other purposes;
- Details about where and how the contributions received will be spent.

Fundraising Businesses and Donor Fund-raisers Must Also Register

Fundraising Business is a business that:

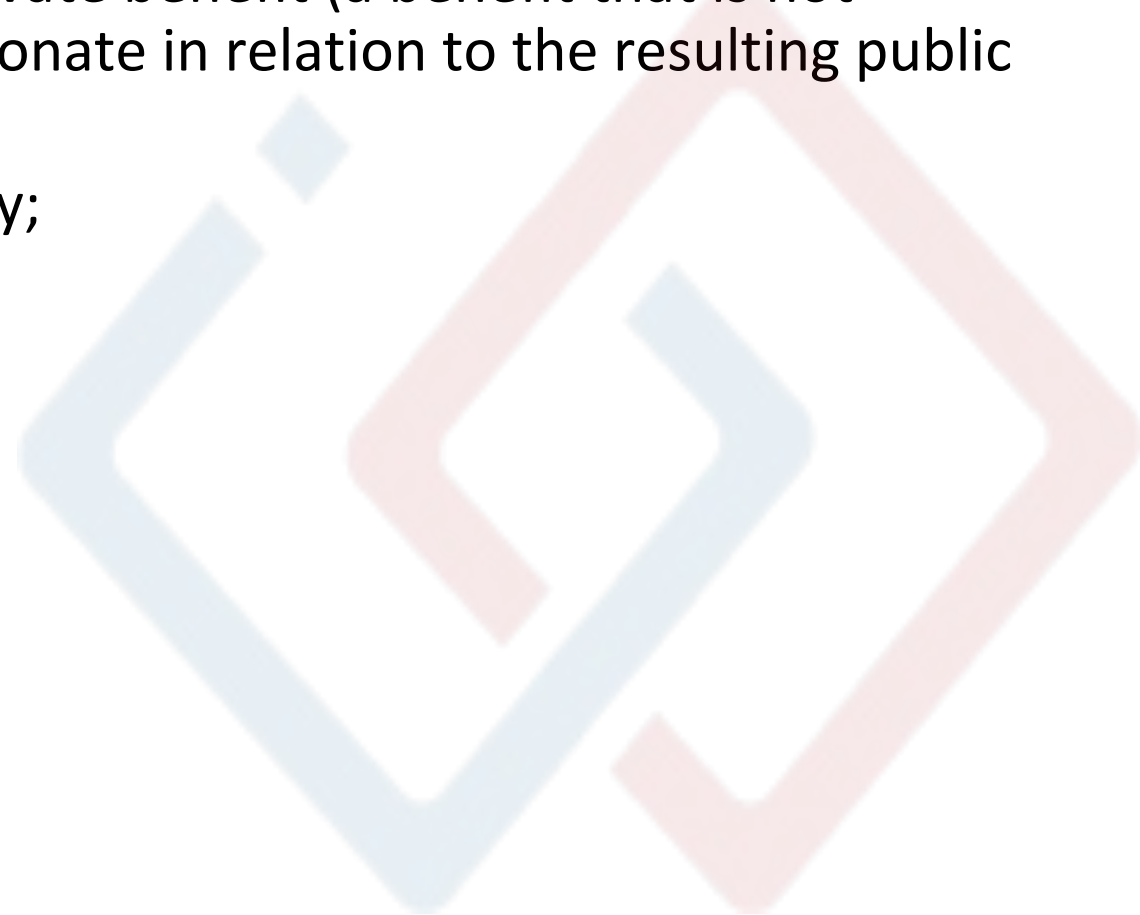
- makes solicitations on behalf of a charitable organization or managers or is responsible for solicitations made by or on behalf of a charitable organization;
- provides these services for remuneration; and
- is not an employee of the charitable organization.

Donor fund-raisers are a business that:

- makes a direct or indirect request to buy a good or service normally produced or provided by the business in which it is stated or implied that all or a portion of the purchase price will be donated to a charitable organization or be used for a charitable purpose.

Non-Profits and Fundraising

- Fundraising is acceptable unless it:
 - delivers a more than incidental private benefit (a benefit that is not necessary, reasonable, or proportionate in relation to the resulting public benefit);
 - is illegal or contrary to public policy;
 - is deceptive; or
 - is an unrelated business.



Examples of Fundraising Activities

- Gaming;
- Sponsorships;
- Events;
- Community activities;
- Social enterprise:
 - e.g. Rental of league assets.



NFP Social Enterprise

If the social enterprise is structured such that the activities can be described as follows, then may not be tax exempt:

- Intentionally making profit from activities with non- members;
- Making income payable or otherwise available to the personal benefit of members;
- Earning profits from business lines.

Social Enterprise

- **Imagine Canada – Sept 2016**

The Department of Innovation, Science and Economic Development (ISED) provided clarification on the government's definition of social enterprise:

“an enterprise that seeks to achieve social, cultural or environmental aims through the sale of goods and services. The social enterprise can be for-profit or not-for-profit but the majority of net profits must be directed to a social objective with limited distribution to shareholders and owners.”

CPA Canada

In its broadest sense, “social enterprise” refers to the use of a revenue-generating business-like activities to accomplish, at least in part, a socially beneficial purpose. The term may be used to describe the entity conducting the activity or the activity or program itself (particularly when conducted in an organization that also carries on a range of other activities).

20 Questions Directors of Not-for-Profit Organizations Should Ask About Social Enterprise

Financial Considerations - Planning

- Operational activities;
- Funding sources;
- Business plan and budget;
- Structure;
- Possibility of failure;
- Exit strategy.



Canada's Anti-Spam Legislation (CASL)

- CASL is the unofficial name for a law passed by the Parliament of Canada;
- The official name of the law is: *“An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act (“The Act”)”*.

Canada's Anti-Spam Legislation (CASL)

CASL deals with **commercial electronic messages (CEMs)** and it regulates a broad range of activities including:

- unsolicited commercial messages such as emails, texts and tweets;
- hacking, malware and spyware;
- “phishing” and other fraudulent or misleading practices;
- invading privacy through a computer; and
- collecting email addresses without consent.

What is a Commercial Electronic Message?

- A key question is the following: Is this message I am sending a commercial electronic message (CEM)?
- Is one of the purposes to encourage the recipient to participate in a commercial activity?
- When determining whether a purpose is to encourage participation in a commercial activity, some parts of the message to examine are:

The content:

- hyperlinks in the message to website content or a database, and contact information;
- These parts of the message are not determinative. For example, the simple inclusion of a logo, a hyperlink or contact information in an email signature does not necessarily make an email a CEM. Conversely, a tagline in a message promoting a product or a service, or encouraging the recipient to purchase a product or service would constitute the message as a CEM.

When does CASL apply?

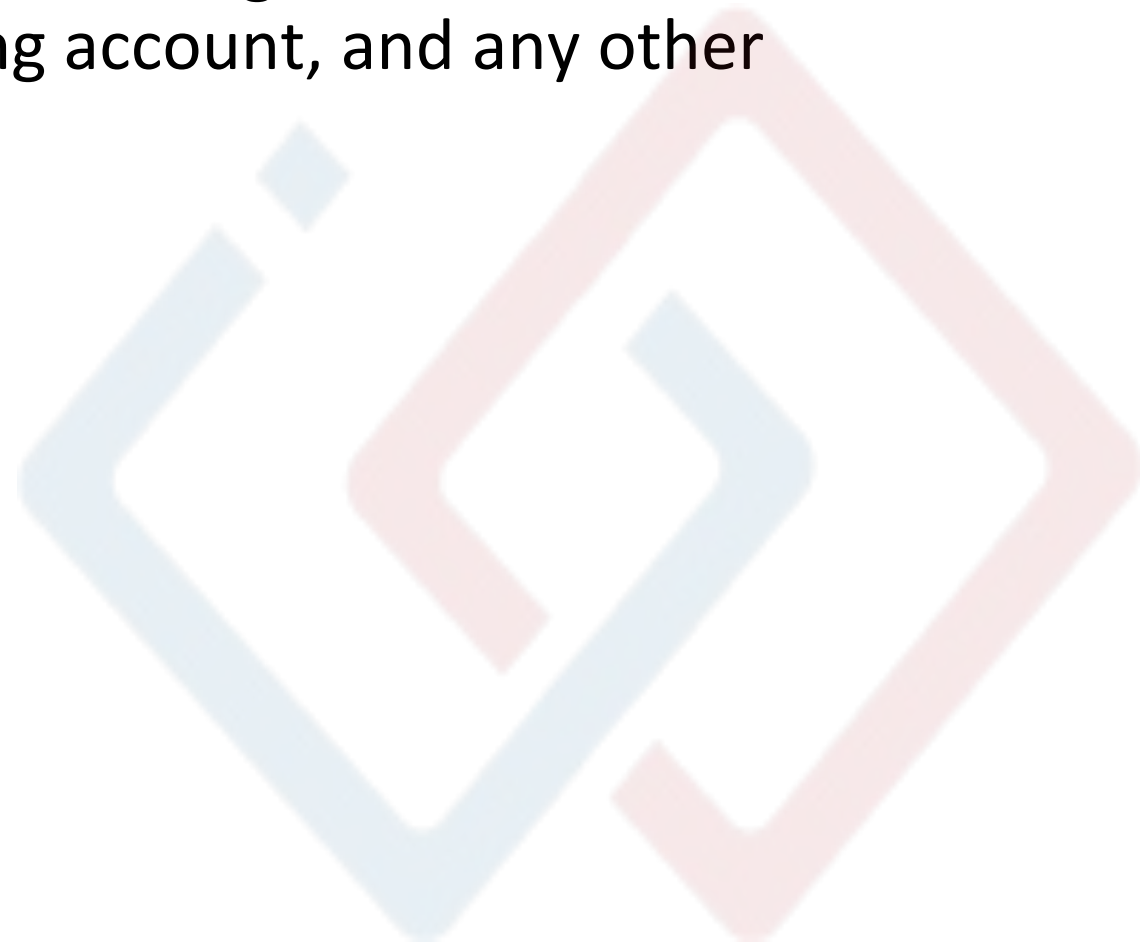
- CASL applies to (1) a commercial electronic message (CEM) that is (2) sent to an electronic address. If both of these elements are present, then CASL applies;
- CASL only applies if the CEM is sent to an electronic address, as defined in the legislation. This includes SMS and other messaging to mobile phones and devices;
- However, CASL does not apply to unsolicited telecommunications, including live voice and automated telemarketing calls, to telephone numbers, which are regulated under the Unsolicited Telecommunications Rules.

Some examples of CEMs include:

- offers to purchase, sell, barter or lease a product, goods, a service, land or an interest or right in land;
- offers to provide a business, investment or gaming opportunity;
- promoting a person, including the public image of a person, as being a person who does anything referred to above, or who intends to do so.

What is an electronic address?

An electronic address is defined in CASL as being: an email account, a telephone account, an instant messaging account, and any other similar accounts.



Social Media Accounts

Some social media accounts may constitute a "similar account." Whether a "similar account" is an electronic address depends on the specific circumstances of the account in question. For example, a typical advertisement placed on a website or blog post would be excluded.

Social Media

In addition, whether communication using social media fits the definition of "electronic address," must be determined on a case-by-case basis, depending upon, for example, how the specific social media platform in question functions and is used.

For example, a Facebook wall post would not be captured. However, messages sent to other users using a social media messaging system (e.g., Facebook Messenger and LinkedIn messaging), would qualify as sending messages to "electronic addresses."

Websites and Blogs

Websites, blogs and micro-blogging would typically not be considered to be electronic addresses.



Does CASL apply to messages sent by non-profit organizations?

Yes, CASL's provisions, such as those relating to sending commercial electronic messages (CEMs) and installing computer programs, applies to activities of non-profit organizations

Does CASL have an exemption for messages sent by registered charities?

Section 6 of CASL applies to registered charities when sending commercial electronic messages (CEMs). However, there is an exemption under section 3(g) of the Governor-in-Council Regulations for CEMs sent by or on behalf of a registered charity, as defined under the Income Tax Act, where the primary purpose of the CEM is to raise funds for the charity.

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