

THE MUTTART FOUNDATION

Consultation on Fundraising

23-26 April 2024

Banff, Alberta

A Summary of the Discussion

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This report is a summary of one of a series of periodic discussions convened by the Muttart Foundation on voluntary sector regulatory issues. The session was held to promote an exchange of ideas and to develop a fuller understanding of the concerns of both sector groups and government regulators. Any remarks included in the report are intended to reflect the discussions. Written summaries of the presentations on international jurisdictions were provided by the international guests following the consultation and this content may vary slightly from the oral presentations. No undertakings or commitments from either regulators or sector participants are expected or made, notwithstanding any of the wording in the report.

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A Summary of the Discussion

Day 1 - AM

Mr. Bob Wyatt kicked off the session by presenting the history of the Muttart Consultations, their purpose and the ground rules and guiding principles for participant engagement.

ROUNDTABLE INTRODUCTIONS

Participants then introduced themselves and were asked to share issues or concerns on the topic. (The responses below have been grouped for ease of reading).

Fundraising as a charitable activity

- Multiple participants raised questions related to whether fundraising can or should be considered a charitable activity.

Scams

- Concerns were expressed about fundraising scams (for example, donation of artwork with no real value).
- Creativity is required in fundraising, but it may lead to scams.
- There is a need to stay onside with fundraising rules while individuals come up with new ideas for giving and fundraising.
- Bad actors may elicit overreactions by the regulators.
- There is a need to maintain trust in the charitable sector by dispensing of bad actors.
- We need to ensure the effective transfer of donations to charities (i.e., no money laundering).

New types/forms of fundraising

- There may be a lack of rigour and capacity of charities to manage new types of fundraising (such as non-fungible tokens).
- Smaller charities sometimes lack the capacity to understand and manage complex gifts.
- Accountability becomes more complex as the money “moves around.”
- The complexity of fundraising is increasing as is the pace of change (e.g. blockchain, crowdfunding, cryptocurrency, the use of artificial intelligence etc.).
- The technology is moving faster than regulation.
- Professional gambling vs. charitable lotteries.

Considerations for how to improve the fundraising guidance

- The guidance document needs to be simplified.
- The regulatory environment needs to be enabling and safe as fundraising practice changes.
- How will the guidance address new forms of fundraising?
- There is a trade-off between a rules-based guidance and taking a principles-based approach.
- Reduce the length of the guidance (it was acknowledged that providing numerous examples makes the document much longer).
- A perceived lack of specificity in the guidance can at times create concerns about being offside, especially for small organizations. It is important to recognize varying levels of capacity among charities and that smaller ones can be at-risk and less sophisticated in terms of fundraising.
- Perceptions about ratios should be considered in the context of the rising cost of fundraising.
- Need to address instances where there is a lack of values/principles and transparency (for example, 50/50 lotteries where the charities only get 20%).
- Should the guidance comment on refusing donations?
- Need to articulate values.
- Don't follow Australia's example.

Lack of understanding among charities of strategic philanthropy and the legitimate use of giving incentives in the tax system

- Evolving perceptions of fundraising and philanthropy as a way to reduce taxes.

Sector-related issues that are broader than the fundraising guidance

- Financial sustainability of charitable organizations
- Retirement/succession and new leadership capacity to strengthen the social fabric of communities.
- Role of government vs. role of the charitable sector
- Need to increase the engagement and education of donors
- Time spent on donor management / stewardship
- Understand what has changed in fundraising, especially in a post-pandemic context
- Stipends for volunteerism
- Wealth and corporate interests can co-opt charities
- Impacts of the generational transfer of wealth on fundraising
- Corporate foundations on the rise
- Role of the provinces in fundraising regulation
- An inputs vs. outcomes focus to fundraising
- Role of fiscal agents in fundraising
- Donor-advised funds (DAFs) and the level of community benefits versus benefits to donors.

The key themes retained from the issues raised were identified as follows:

- Fundraising as a charitable activity
- Cost of fundraising and ratios
- Dealing with complex gifts including DAFs
- Scams

- Pace of changes in fundraising, new trends, cryptocurrency, crowdfunding, AI, etc.
- Wealth and corporate interests are co-opting charities
- Strategic philanthropy
- Updating and simplifying the guidance
- Gambling, lotteries, gifts in kind

INTERNATIONAL PERSPECTIVES

The international guests made presentations about how fundraising is regulated in their respective jurisdictions.

Day 1 - PM

England and Wales Presentation: Approach to Fundraising Guidance

There are multiple regulators and laws governing fundraising in England and Wales. In most cases, new regulations or laws have been the response to a fundraising scandal.

The primary regulator of charities in England and Wales is the Charity Commission which has an overview of fundraising and is mainly concerned with the fiduciary duties of charity trustees in this area, particularly with regard to risk and reputation. The Commission produces guidance and checklists. Charities are required to provide information on aspects of their fundraising in their annual return, but the Commission will only take regulatory action in extreme cases such as those involving damage to reputation and unmanaged conflicts of interest.

The Fundraising Regulator, described as a form of independent self-regulation, was set up in 2016. It is responsible for the Code of Fundraising Practice, a public complaints service and a Fundraising Preference Service. It is funded by dues from charities with a larger fundraising spend. The Code is currently undergoing an extensive review and it is proposed that it should move to a principles-based approach and include sections on new forms of fundraising.

Other agencies concerned with fundraising include His Majesty's Revenue and Customs (HMRC) with regard to the tax aspects, the Gambling Commission for lotteries, the Information Commissioner's Office for the use of personal data, and local authorities for the licensing of street and house-to-house collections. Professional fundraisers are subject to laws requiring disclosures on making solicitations including how much they are being paid.

Crypto assets are not widely used by charities, but the Charity Commission has added guidance on their use to its existing guidance on Financial Controls and, where used for the transfer of funds overseas, this must be disclosed in the annual return. Crowdfunding platforms are registered with the Fundraising Regulator, which also produces guidance on crowdfunding for the platforms themselves, for the public, and for individuals raising funds for charities and other nonprofits.

Questions from participants

- Q. Concerns in the UK seem to be largely focused on reputation. Are they protecting the charities from themselves?
- A. The Commission's primary focus is to ensure there is trust and confidence in charities and in the sector as a whole so as to increase giving.
- Q. Are churches and universities excluded from the Charities Commission mandate?

A. Churches are included (those with revenues over \$100,000 £). Universities are subject to dual regulation – that of the regime covering universities and the Commission that oversees non-registered charities.

Q. How well do you think your system works?

A. It works reasonably well. Charities have gotten used to the fundraising rules. There has been no huge call to change the law. It is about self-regulation, in the end.

Q. Do different levels of government have a role? Are other jurisdictions involved?

A. Local authorities are involved with licensing, street collections and house-to-house collections. 'Chuggers' (aka charity muggers) are people who will approach you to sign a regular giving form but not to collect money. They could be quite aggressive in the past and were not regulated. They are now covered by the Fundraising Regulator, through an informal agreement with the local authorities. There are strict rules: charities must be named, cannot collect outside banks, can't go to bus queues, etc.

Q. Do people trust charities more in the UK?

A. Charities are usually in the middle of the pack compared to other professions and sectors. The Oxfam scandal that happened some years ago led to a lower score in the past, but they have largely recovered.

Q. Are trustees forthcoming on any problems such as fraud, scandals, etc.?

A. Charities have to self-report if there is a problem.

Australia Presentation: Approach to Fundraising Guidance

Australian States and Territories primarily regulate charitable and nonprofit fundraising.

The regulation of charitable and nonprofit fundraising in Australia has its roots in the aftermath of the Second World War. At that time, a series of fundraising scandals emerged, prompting the Australian States and Territories to enact legislation. Interestingly, many of these laws have not been significantly revisited since their inception.

For organizations seeking to raise funds across Australia, the regulatory landscape is a complex patchwork. Registration and reporting are required in each State and Territory, with the exception of the Northern Territory, which has no direct regulation on the matter. Notably, some jurisdictions interpret a request for funds on a website or social media post as an appeal across all Australian jurisdictions, necessitating registration in each state.

The current provisions for fundraising in Australia are not fit for purpose. For instance, Western Australia has some provisions with maximum penalties under \$10, and some regulations are directly taken from the (British) *Metropolitan Streets Act 1903*, Edw. 7, c. 17, which was designed for collecting from stagecoaches in London streets. The reporting obligations and renewal requirements vary across jurisdictions, often with differing financial periods. Moreover, fundraising regulators are not adequately resourced, and their actions are often insignificant, with matters concerning fraud being handled by the police, if at all.

Table 16.2 *Administration of registered fundraisers in Australia (2011)*

	New South Wales	Victoria	Queensland	South Australia	Western Australia	Tasmania	Australian Capital Territory	Australia
Total No. Fundraising/Patriotic Licences/Authorities	5,206	2,388	3,835	688	889	590	368	13,964
No. of equivalent full-time staff engaged in administering the Act	(E) 7	2.5	2.5	2	2.4	0.05	0.5	16.95
No. of prosecutions ^a	0	2 ^a	7	0	1	0	0	10
No. of complaints	103	5 ^a	55	39	2	0	0	204
No. full-time staff per 500 Fundraising Licences/ Authorities	0.7	0.5	0.3	1.5	1.3	0.04	0.7	0.6

(E) = estimate

^a For Victoria, includes investigations/enforcements.*Source:* Annual reports and correspondence from each jurisdictional office.

From Chapter 16 Not-for-Profit Law: Theoretical and Comparative Perspectives Ed., Matthew Harding, Ann O'Connell, and Miranda Stewart, Cambridge University Press, 2104.

Since 1995, the nonprofit sector has been the subject of numerous reform reports, many of which have called for a revaluation of the regulatory framework. A common recommendation has been for the states to transfer the regulation of fundraising to the Commonwealth.

In 2023, with the election of a new Commonwealth government that promised fundraising reform, the Commonwealth, state and territory treasurers agreed to reform fundraising legislation in line with a set of nationally consistent fundraising principles.

It was agreed that each participating jurisdiction would release an implementation plan by July 2023, outlining how they will enact the principles through regulatory changes or legislation. It's important to note that these reforms are still in progress across the individual states, and the Australian Charities and Not-for-profits Commission (ACNC) is actively monitoring and reporting on their progress.

	Licensing requirements		Annual reporting obligations	
	Do charities need to apply separately for a fundraising license?	Do charities need to apply separately to renew a fundraising license?	Can charities report once through the ACNC?	Will ACNC financial reporting requirements satisfy the other regulator?
South Australia	⊗ ¹	⊗ ¹	✓	✓
Australian Capital Territory	⊗	⊗	✓	✓
Tasmania	✓ ²	⊗	✓	✓
Victoria	⊗ ³	⊗ ³	✓	✓
Western Australia	✓	⊗	✓	✓ ⁴
New South Wales	✓ ⁵	✓ ⁵	✓	✓
Queensland	⊗ ⁶	✓	✓	✓
Northern Territory	N/A	N/A	N/A	N/A

¹ Charities can choose to notify South Australia of their intention to fundraise through the ACNC's registration application form or the Annual Information Statement.

² Charities that are companies or incorporated associations registered in Tasmania do not need to apply separately for a fundraising license.

³ Charities need to notify Consumer Affairs Victoria that they are registered with the ACNC.

⁴ WA still require small charities to prepare financial statements. However, these statements do not need to be reviewed or audited. These financial statements do not need to be submitted to the ACNC.

⁵ Charities can access a streamlined application and renewal process with NSW Fair Trading.

⁶ Charities need to notify the Office of Fair Trading that they are registered with the ACNC.

Other Fundraising Regulators

As gathered from the material above, state fundraising regulators are inactive in the courts and usually leave fundraising fraud to the police. While state fundraising regulators have licencing provisions about street collections, local councils are active in policing public nuisances.

The Consumer Laws have a national reach and are administered by a federal body, the Australian Competition & Consumer Commission (ACCC), in conjunction with state authorities. Reformers have suggested that the ACCC could play a more active regulatory role. It has produced some material on charity fundraising but appears to be reluctant to extend its role.

Fundraising can also attract the attention of privacy regulators, electoral funding agencies, and the Australian Taxation Office (ATO) in some circumstances.

The Fundraising Institute Australia, representing professional fundraisers, has a code of practice for its members' professional fundraising activities, and the Australian Council for International Development has a code for member organizations raising funds in the international development arena. The codes are relatively mature and include compulsory education, monitoring, and compliance accountability.

Online Fundraising Platforms

A recent crowdfunding campaign, conducted on Facebook, and in response to the 2019 Australian bushfires raised issues regarding fundraising regulation. Celeste Barber, an internationally well-known New South Wales-based entertainer, launched a charitable crowdfunding appeal in early January 2020 after her family was evacuated near the fires in her home state. The fundraiser target was \$30,000 AUD but within a day it reached nearly \$2 million AUD. At the closure, it stood at \$51 million AUD from 1.3 million people, making it the largest fundraiser ever held on Facebook at that time.

An issue arose that the nominated charity, which had no prior warning in the appeal, could not legally apply the funds raised to all the purposes nominated in the appeal. Despite warnings in social media and print media about the issue in the days after the appeal was launched, no regulator acted. The charity trustees asked the Court for advice on how to spend the funds.

One lesson from the appeal is that online fundraising platforms allow significant funds to be raised in a very short period of time from a large number of donors, leaving regulators a small window to act to correct or prevent mischief. The ACNC review conducted months after the bushfires was useful, but too late for the donors to the online platform.

Crypto Assets

Several charities registered with the ACNC, such as Tokens for Humanity, Digital Playhouse Foundation, and Little Phil, seek to apply blockchain technology to charitable fundraising.

The Australian Taxation Office (ATO) estimated that in 2021, there would be over 600,000 taxpayers who invested in cryptocurrency.

The ATO has had a cryptocurrency data-matching program in place since April 2019. As part of this program, the ATO obtains data relating to cryptocurrency transactions and account information from various cryptocurrency exchanges. It then uses this data to identify buyers and sellers of cryptocurrency, quantify the related transactions, and compare the data obtained from the cryptocurrency exchanges against the ATO records.

The Commissioner of Taxation treats cryptocurrency as “property” for income tax purposes and not as “currency”. On the basis that Bitcoin and other crypto coins is property, it is also a capital gains tax asset for tax purposes.

The quantum of the deduction will be as follows:

- 1) Where the cryptocurrency was purchased during the 12 months directly before making the gift, the amount deductible is the lesser of its market value on the day the gift is made and the amount for which the donor purchased the cryptocurrency.*
- 2) Where the cryptocurrency was either not purchased or not purchased in the 12 months immediately before making the gift by the donor and is valued by the Commissioner at*

more than \$5,000, the amount deductible is the value of the cryptocurrency as determined by the Commissioner. In these circumstances, if the cryptocurrency is valued at less than \$5,000, the donor would not be entitled to a tax deduction.

The ATO will accept the relevant exchange rate on a reputable digital currency exchange.

A donor is usually better off cashing in and donating to the charity.

See further: Australian Tax Review Volume 50 No 4, 0328 Donating Digital Money to Deductible Gift Recipients: Decrypting the Australian Tax Implications: I. Introduction Original author(s): Eileen Liu, Bridgid Cowling, Shaun Cartoon.

USA Presentation: Approach to Fundraising Guidance

Jurisdiction over charity fundraising in the US is shared by a number of different agencies, with the principal regulators being located in state attorney general offices, supplemented in some states by consumer protection agencies. A good example of state oversight is found in the US Supreme Court case of *Illinois ex rel. Madigan v. Telemarketing Associates, Inc. (2003)* in which the Court upheld action by the Illinois State Attorney pursuing fraud charges against a telemarketer and a charity named VietNow National Headquarters. The telemarketer and the charity falsely represented that 100% of all contributions would be used to assist needy Vietnam veterans, when, in fact, 85% of the contributions went to the telemarketing company.

At the federal level, responsibility is shared between the Internal Revenue Service (IRS), when the fundraising activity impacts the valuation/timing of in-kind contributions or results in excessive compensation or diversion of charitable resources to non-charitable persons, organizations or purposes, the Federal Trade Commission, which regulates for-profit fundraising service organizations and the US Postal Service, if the US mail system is utilized in the fundraising.

The IRS has, for a number of years, employed the public release of guidelines for IRS enforcement personnel to utilize in conducting reviews of charities and other tax-exempt organizations as a form of public education regarding appropriate and inappropriate behaviour. The underlying concept being that by setting out its concerns and how it will analyze them, the IRS will effectively co-opt tax advisors into delivering the IRS' compliance message. Fundraising is one of the tax issues that has received that treatment, with the *IRS Audit Technique Guide – Fundraising Activities*.

The IRS guidelines, however, are heavily focused on more traditional forms of fundraising. California, alone at this juncture among US jurisdictions, has begun taking steps towards regulation of crowdfunding and Internet-based fundraising with the enactment of the *California Fundraising Platforms law, Gov. Code §12599.9*, effective January 1, 2023, which provides for disclosure and reporting by fundraising platforms. Operative regulations are in the process of being drafted and, when issued, may well serve as a model for other states and jurisdictions concerned about Internet-based fundraising platforms and crowdfunding.

A final issue noted in the discussion concerned charity acceptance and investment in crypto assets. In the US, such assets are a major focus of civil and criminal IRS enforcement, whether held by charities, individuals or organizations. Crypto's significant and abrupt swings in value and its use in money laundering and other illicit behaviour tend to make it quite risky as a vehicle for charity investment. As a result, many US charities that receive gifts of crypto have a policy of quickly converting such assets to traditional currency.

International Presentations: Questions from participants

Q. What protections are in place for solicitation? What are modern consumer protections regarding digital fundraising?

A. In Australia, the trends regarding digital, privacy, crypto, etc. have tended to deal with all decentralized autonomous organizations (both for-profit and not-for-profit). This has been a challenge for the nonprofit sector as their perspectives weren't considered when the reforms happened.

A. In the UK, there are no differences in the privacy laws for nonprofits and for-profit organizations. The nonprofit sector was provided with training, education, and support to ensure compliance with privacy laws.

A. In the US there is no centralized approach. Every legislative body (all the way to municipal councils) regulates fundraising. This means that it's nearly impossible to run a national fundraising campaign.

At the Federal level, the regulation is divided between the Federal Trade Commission (FTC) for for-profit fundraisers and the IRS for misuse of money raised (not necessarily circumstances of how it was raised). Both the FTC and the IRS can investigate.

At the State level, there is another layer of, more or less, effective regulation. Fundraising needs registration with the Secretary of State or the Attorney General. Although the registration is simple, there is a need to produce an annual report and some states report on organizations that are not complying.

There is a growing number of organizations that act as advisors to charities by helping charities to register in every state. These advisors also ensure that filings with each state are done in a timely manner. It has become "the cost of doing business" for many charities. The US has also had challenges in regulating crypto. A number of fraud examples were provided to participants.

Canada Revenue (CRA) Presentation (see appendix)

CRA Presentation: Questions from participants

Q. What does "the CRA monitors the sector for compliance" mean?

A. The CRA is looking for risk, where charities are non-compliant. The CRA seeks to resolve issues via phone calls, letters, and through audits.

Q. Is fundraising a charitable purpose? If fundraising is a charitable activity, in support of a charitable purpose, why can't fundraising be a charitable purpose?

A. Fundraising is not a charitable purpose. Fundraising can be a charitable activity when it supports a charitable purpose. What CRA is most concerned about is the level of risk, and most of the risk is associated with "private benefit". The intent of updating the fundraising guidance is to make the guidance clearer with more up-to-date examples.

Q. Has the CRA given any thought to the various types of crypto?

A. The CRA now has a virtual asset working group to better understand valuation and risk.

Q. How do donations and receipting happen through giving platforms?

A. Provided by a participant: The platform issues the receipt to the donor and gives the money to the chosen charity. If it's not possible to provide the charity with the donation, the platform returns the money to the donor.

A. Provided by the CRA: Using an intermediary (platform) is allowable if the charity furthers a charitable purpose. If the donations are for a specific individual, that is "offside" as it provides a private benefit.

Day 2 – AM

The questions that the CRA proposed for this consultation regarding crypto assets and crowdfunding were reviewed and explained. It was noted that we should be referring to virtual assets instead of crypto assets.

Discussion on Virtual Assets

A participant with subject matter expertise provided a primer on the history and origins of cryptocurrency. A discussion ensued.

The participants indicated that, in their experience, there have been very few inquiries made to charities about gifting virtual assets, and any such donations were converted to cash before being donated to the charity. Some noted that if Bitcoin becomes more common as an accepted currency in the future, charities may be more open to receiving them, but it is not an issue at this time, perhaps because there is currently no real incentive for charities to solicit and accept them. The approach Canadian charities are taking with regards to virtual assets seems consistent with other jurisdictions. Engaging charities on virtual assets may therefore be premature at this time.

Discussion on Crowdfunding

Crowdfunding can be led individually, by third-party fundraisers, or by charities themselves using their own platforms. The participants also indicated that to their knowledge, charities have policies and processes in place to manage crowdfunding activities. Donations portals are provided by some charities to channel donations from third-party funders. Some organizations have an application process for third-party crowd funders. Tax-receipted donations follow a different path than those that are not receipted.

Larger charities have the tools and knowledge to execute crowdfunding, and the smaller ones less so. PayPal partners with organizations to do crowdfunding, which can be particularly useful for smaller charities. PayPal provides the receipts to the donors.

Participants raised issues that can arise with crowdfunding. For example, the charity that is the object of fundraising may not be aware of the third party's intentions. Problems, such as the potential for private benefit, can arise when charities are informed after the fundraising activity has taken place and they are asked to receipt donations and/or reimburse expenses.

It is important recognize the reputational risks of crowdfunding, not only the risks of being offside the regulations, but also that individual donors' reputations can present as reputational risk to organizations.

There was a broader issue raised in that GoFundMe is 'competing' with charities for donor dollars. While this was deemed to be a discussion for another day, it was also pointed out that initiatives like GoFundMe help to promote the practice of giving as a learned trait, especially

among younger generations.

Crowdfunding for natural disasters often contributes to what becomes a confluence of philanthropic dollars, government funds, compensation to victims, and insurance payouts. As a result, some donees can receive significant funding in the aftermath.

Without the provision of tax receipts, the sector is missing out on donor data, which leads to an incomplete picture of giving in Canada.

It was felt that tools have now been developed which address the issues that surfaced when crowdfunding started, but that a clear definition of crowdfunding needs to be included in the updated guidance. It was suggested that the CRA look at the California regulations on crowdfunding as an example. They should also look at the Saskatchewan legislation (*Informal Public Appeals Act*, which was enacted in 2015). It was also suggested that the Pemsel Case Foundation could perhaps have a role to play in generating policy options.

The key concerns for CRA when it comes to crowdfunding are primarily about private benefit and receipting. Platforms may be issuing receipts that are not tax receipts, thereby confusing the donor. Private benefit exists in some cases and yet the charities are issuing receipts.

It was also noted that for various reasons, returning gifts can be a problem.

Finally, there is a need for more policy education on fundraising. The questions CRA receives from charities are pretty basic. But who educates? CRA, umbrella organizations, the educational institutions providing training and education in philanthropy, and senior fundraising staff all play a role in educating charities.

Day 2 - PM

Participants were invited to discuss issues in breakout groups. Two groups discussed “complex giving” and one group discussed “unintended consequences” (related to gambling, lotteries, and gifts in kind). Below are comments provided by the breakout group participants.

Group 1: Complex Giving

The group mostly discussed issues related to donor-advised funds (DAFs). The following points were raised:

- Issue of private vs. public benefit (advisors are getting fees when these funds are in financial institutions).
- Disbursement quota (DQ) – calculating on non-aggregate vs. aggregate – creates an administrative burden.
- DQ mischief – granting from one DAF to a private foundation – dollars are not reaching community.
- Potential for conflict of interest – Board members making decisions related to grants.
- Perpetuity issues – is there room for flow-through or spend-down clauses as a strategy for sustainability while ensuring that dollars are reaching community?
- Receipting – rules and guidance could be clearer.
- Guidance – examples provided need to be updated so they are current.
- There is a need for education, awareness, and collaboration.

Group 2: Complex Giving

The following points were raised:

- Gifts related to private shares are often complex and confusing.
- Gifts related to life insurance (various types of policies) are also complex and confusing.
- Guidance needs to reflect the differences between the provinces as it relates to gifts of life insurance.
- Guidance is good, the onus is on Boards to ensure due diligence.
- Guidance needs to be read and understood by sector organizations.
- Could the CRA have an “advice” document that refers back to the guidance?

Group 3: Unintended Consequences

- One of the implications of AI is related to the coding of “lotteries”; this can lead to charitable endeavours being coded to professional gambling.
- Solutions, products and services that are intended to support lotteries and gambling are designed for the for-profit sector with no thought as to the implications for the nonprofit sector.
- What needs to exist in the nonprofit sector to advance our interests at an early stage, such as when provincial governments make rules about gambling and lotteries?
- Flow-through fees paid to third parties to support lotteries can contribute to the ratio issues.
- The speed of the private sector creates one-off responses rather than coordinated responses. Coordinated responses take more time, more work and more dollars.
- There is a perception related to cause-related activities – letting Canadians “off the hook” for charitable donations.

These last comments led the group to a broader conversation related to corporate foundations.

Corporate Foundations

The following issues were raised:

- There is a growing number of corporate foundations
- Some of these foundations may be getting private benefit
- Why are these foundations getting the same tax benefits?
- Corporate foundations often claim no fundraising or administrative costs
- Should CRA be questioning those foundations that have no expenses? This is a problem for charities as it perpetuates the belief that charities can be run without costs.
- Some of these foundations provide services that displace the work of charities – this builds their respective brands
- The issue of conflict of interest was raised – some corporate foundation Boards are populated only with the corporation’s staff
- In Australia, there is regulation as to who is a Board member of a public charity – there has to be independence
- In the UK, the Charity Commission has guidance related to the degree of independence that would cover most of the issues raised.

Day 3 – AM

This day was largely devoted to reviewing the current guidance on fundraising in some detail.

The morning session began with a reminder to participants about the overall purpose of this consultation “to discuss the regulatory environment around fundraising by charities, including the acceptance of virtual assets including, but not restricted to, cryptocurrency. It has been some time since CRA’s guidance on fundraising has been comprehensively reviewed. New issues, including crowdfunding and virtual assets, have arisen. Updating the rules and guidance products would seem to be timely.”

Using the CRA questions on fundraising as a starting point, the conversation turned to the structure, flow and scope of the current guidance, whether the guidance is clear and whether it adequately addresses issues of concern to both large and small charities.

Participants were reminded of four of the questions raised by the CRA. These are: 1) Is the structure and flow of the current guidance straightforward and intuitive? Do you have any suggestions for improvement to the format? 2) Does the guidance adequately address issues of concern to both large and small charities? 3) Is the guidance clear on the fundraising requirements for charities? 4) Are there any fundraising topics that should be added to the guidance, e.g. practices that have emerged in the years since the current version was published?

CRA further noted that an update and modernization are needed. The issue of crowdfunding needs to be addressed. The guidance does not speak to receipting and the receipting guidance likely needs to be updated as well.

Participants provided the following input:

- Guidance should be as short as possible. CRA needs to develop the guidance and then communicate the updated guidance to the sector.
- Small and emerging charities don’t have the support to interpret the guidance. Training needs to be considered (who owns the training?) Could videos be developed for training purposes?
- CRA can’t produce videos and has significant restrictions in the use of graphics. All publications need to match the CRA and the Government of Canada web publication rules.
 - CRA does host webinars and the sector is notified when webinars are planned. Webinar recordings are not available because of security issues.
- There may be sector partners who could provide training (in different formats for different audiences) but this would require resourcing.
- Although we can discuss what needs to be added to the guidance, it is much more challenging to determine what can be removed.
- We should be looking at impact not just costs.
- The current guidance speaks to what can’t be done – it is written in a negative tone. If the guidance started with principles, it might change the tone of the document. What is unacceptable could be listed at the end of the guidance.
- The guidance would benefit from a review by e-learning specialists. Start with “here is what you need to know” – and links could be provided for those wishing to learn more.
- Removing repetition would shorten the document.
- CRA should consult with those employees who receive enquiries – this could help

ensure that the right questions are addressed in the FAQs. The FAQs could be updated annually.

- It is important for the guidance to be interpreted in the same way by the sector and by CRA field auditors.
- Many sector organizations are looking for the “goalposts” - what can and can’t be done? We need to have clarity and plain language.
- CRA needs to think about the next generation. They likely will be looking for YouTube videos, rather than reading through a lengthy guidance document.
- Structuring the guidance is challenging. Suggest starting with principles, then core guidance (what everyone needs to know). The rest can be dealt with through links or the FAQs.

The group then spent some time brainstorming about what the guiding principles could be. The following is a list of what was discussed:

- Need for accuracy of information
- Need to increase trust – causing no harm to other organizations
- Fundraising is one way to engage supporters on the mission and the purpose. Need to be accountable, efficient, and responsible. Fundraising practices need to be carried out with intent, design and execution in order to maintain trust.
- Be transparent on why, how and for what purpose
- Need for transparency with Boards, need to be arms-length and need to follow charitable objects.
- Without funding, there is no charity, fundraising is a fundamental building block of the public benefit that is provided by charities.
- Equity, belonging, inclusion and access.
- Consider starting with values – legal, open, honest and respectful.
- Fundraising is a cost for charities – commission-based is not allowed.
- Charities need to take responsibility for their own fundraising.
- Donors are entitled to know the benefits and limitations of their donations.
- Relational value – inter-connectedness between donor, charity, fundraiser and community.
- Some principles are for the CRA to consider, others relate to sector accountability.
- The sector needs to call out bad actors – by reinforcing best practices and signalling any problems to CRA.

Day 3 – PM

Discussion on Ratios

It was explained that the Department of Finance and CRA have no need for the fundraising ratios. That request came from the sector some years ago, so it may be time to take it out. Their use tends to perpetuate a narrative about the sector spending a lot on fundraising activities and may therefore feed into false perspectives about fundraising. And ratios may not be that beneficial because it can be challenging to know what exactly should go into fundraising costs.

A participant reminded the group that donors do want to know how much charities spend on fundraising. Ratios also help charities think about their fundraising costs while looking at their overall fundraising effectiveness.

Ratios provide some comfort to the sector; they act as a safe harbour and create more certainty for charities, especially those that are not connected to an umbrella organization that can give guidance and advice.

Finally, it was agreed that there is an ongoing need to educate donors and the public about fundraising expenses as part of the cost of doing business.

In the afternoon the participants were divided into breakout groups to discuss three topics related to the guidance:

- what charities cannot and should not do when it comes to fundraising;
- review of the Q&A section of the existing guidance; and
- identifying the audiences for this guidance, tools for dissemination, and training content on fundraising.

Group 1: What charities cannot and should not do when it comes to fundraising

- Anything that is contrary to public policy is not acceptable but there needs to be a better definition of what we mean by public policy in this document.
- Fundraising cannot be deceptive or misleading, including failure to disclose. There must be transparency in a charity's fundraising efforts.
- Commission-based fundraising
- Excessive compensation for fundraising
- Anything that runs contrary to laws on charity, gaming; must not be fraudulent, or criminal
- Fundraising without a stated purpose or intended use
- Non-arms length in staffing or purchasing (conflict of interest)
- Improper or abusive use of receipting
- Failure to document

Other considerations raised by this group:

- Resources in the document should point to sector codes of conduct.
- Private benefit should be dealt with elsewhere as should unrelated business (not fundraising)
- Substantially all resources to be devoted to charitable purposes.

Group 2: Review of the Q&A section of the guidance

- Q1 - keep if 2012 document is changed
- Q2 - should be updated to reflect an education-first approach; include compliance agreement
- Q3 - could be irrelevant if ratios are gone; example needs to be updated
- Q4 - keep as is
- Q5 - keep but use friendlier language; this is a good place to insert an example
- Q6 - keep as is, highlight, and link to definitions of terminology throughout
- Q7 - keep as is
- Q8 - keep as is; perhaps update cause-related marketing reference because that is outdated
- Q9 - add context to sharpen the response
- Q10 - this is helpful only when completing the T3010. (Need to note that this approach arms the charity watchdogs)

- Q11 - keep as is- but add a comment regarding receipting
- Q12 - keep as is- (T3010 implications)
- Q13 - keep as is- might need one that addresses non-qualified donees
- Q14 - keeping it or not depends on a decision about whether to keep or remove reference to ratios
- Q15 - depends on the decision on ratios
- Q16 - keep as is - links to private benefit

The group also made some suggestions for additional questions as well as a few more general observations:

- What should I know if my charity is considering accepting a gift of cryptocurrency?
- What are the principles I should keep in mind when creating our fund development program?
- What are examples of fund development issues that have triggered a CRA response in the past?
- A third-party fundraiser has approached us to fundraise on our behalf. What factors should we consider?
- Could also add examples of fundraising costs, add another crowdfunding example and include questions that are more generic (on topics like audits, T3010, tombstone information etc.)
- What about a Q&A about undue pressure applied to vulnerable individuals to donate?
- What about refusing donations? A donation acceptance policy should be recommended.
- There are references in the Q&A section to terms previously defined in the document. Need a link to those definitions.
- Need to update some examples, for example a telemarketing reference that is not as relevant anymore.

Group 3: Identifying the audiences for this guidance, tools for dissemination, and training content on fundraising

- Audiences include donors, boards, executive leaders, media, fundraisers, CRA, accountants, lawyers, bookkeepers, wealth advisors and volunteers
- Tools could include e-learning, AI and chatbots, and a helpline
- Outlets to educate and inform: CRA website, associations, designating bodies, events, in-person training, influencers, academic institutions and social media
- Formats: podcasts, website, webinars, print/graphic, in-person events, textbooks.

Content 101 – Basics

- CRA charity 101
- Basic definitions and terms
- Context
- High-level examples and case studies
- Roles and responsibilities
- Risk matrix
- Gifting types
- Receipting 101
- Common scams
- Policies and procedures
- Platforms

- How to stay updated
- Where to find more info

Content 201 – Intermediate

- Fiduciary responsibilities
- Provincial legislation
- Annual filings and reporting
- Conflict of interest
- Record keeping/internal controls
- Structured/complex gifts
- Avoiding common scams
- Receipting 201
- Associations and networks
- Gifting agreements
- Donor stewardship
- Working with allied professionals

Content 301 – Advanced

- Cross-border giving
- Risks and consequences
- Tax strategies

At the end of the day, the participants were asked to identify any other issues they wished to discuss on the last day of the consultation. The following were their suggestions:

- directed giving and receipting to ensure that a gift means a voluntary transfer and that it can't be directed to a particular activity;
- refusing gifts- are there ways to establish appropriate criteria for this practice?; and
- large donors having undue influence.

Day 4 – AM

Participants were reminded of the three issues that were suggested at the end of the previous day.

Directed giving and receipting

- The biggest issue related to this topic is the potential for private benefit. Examples were provided by participants.
 - An individual donor giving a gift and requesting that it be for a scholarship to a specific person.
 - A corporation providing a gift (and asking for a receipt) but wanting recognition, naming, promotion, etc.
- The guidance needs to reflect that the charity has control over the receipting. If a gift is provided and the individual/corporation is expecting something in return – it is worth discussing.

Refusing and returning gifts

- Can charities refuse or return a gift?
- CRA is only concerned about returning gifts.
- A few examples of refusing gifts were provided: gift was offside of CRA policy, gift was too complex for the charity, gift was misaligned to charitable purpose.
- Charities should have a gift acceptance policy – this could be stated in the guidance.
- If a charity needs/wants to return a gift, the CRA needs to be consulted and needs to provide consent. Could criteria be developed for “returned gifts” and made available to the sector?

Wealthy donors and undue influence

- Charities need to be concerned about this. Some examples include donors wanting a position on the Board of the charity; demanding that the CEO be removed; wanting the charity to “drift” from its mission; donor contributing to research and wanting to be part of commercialization; etc.
- Wealthy donors are sometimes calling themselves investors – we need to remind the sector about the need for public benefit.
- Again, the need for gift acceptance policies and gift agreements was raised.

Participants were then informed about the next steps after the consultation. Comments provided were as follows:

- CRA will create a draft which will then go to the Technical Issues Working Group. There could be additional focus groups if needed.
- Participants offered to provide additional support to the CRA if needed.
- Staff exchanges could be considered – it is helpful for CRA to have someone from the sector involved in the work – and it is also helpful for a charity to have someone from the CRA supporting them.

CLOSING SESSION: FINAL REFLECTIONS

Thanks were expressed to the Muttart Foundation for organizing this consultation, as well as thanks going out to the international guests for their valuable insights, advice and for sharing their wealth of knowledge on this topic. The co-facilitators were also thanked for their work over the course of the consultation and the CRA and Finance representatives were thanked for their engagement and interest in listening to the views of the sector.

Below are other comments and observations made by the participants:

- This consultation was not as legalistic as some of the others. A more relatable topic this time. We were also reminded that the bad actors are constantly poking holes and trying to find their way in, so we need to remain vigilant.
- This was a good opportunity for the government colleagues to hear about broader sector issues.
- It was a dream come true to have the freedom to speak out on this important issue. There was also an appreciation for the fact that we are all in this together, aiming for goals of impact, ensuring bad actors are called out and that good actors have the guidance they need to fundraise appropriately.
- It is always useful to think about why we do things in the sector and why we don’t do some things; this exercise is both rare and stimulating.

- We do tend to go down rabbit holes at times and not everything we discussed will be incorporated into the guidance on fundraising.
- There is value in hearing from the experiences of the regulators. This was a great opportunity to learn and especially to better understand the CRA's constraints.
- Question is now what? The group identified the need for a lot of work in the area of training and communications. Where will that go from here?
- It would have been good to have more representation of small charities in the room. We could have asked them questions about what they know and don't know.
- Appreciated the use of Chatham House rules that allowed for a safe sharing experience.
- This consultation exceeded my expectations and I'm comforted to know others are wrestling with the same issues. Crafting good policy takes time, intention and work.
- One question: Could we integrate the work of ACCS with this consultation? Can ACCS be used as a tool to mobilize the work done here?
- A rewarding experience, useful to get different perspectives, to be reminded of the good work charities do, and the roles that they fulfill in society. There was a good mix of people and lots of laughs.
- This was a vintage consultation. The right people were in the room and they came together in a particularly impressive way; I enjoyed having a wider conversation and we did not get bogged down in the legal issues.
- The collegiality of the sector and the regulator was impressive.
- We often only hear what goes wrong so it's been helpful to get the perspectives of the sector and how they work with the guidance.
- Small organizations are important and we need to be mindful of their needs.
- This was a great opportunity to step away from my day-to-day work. I heard lots of things I can take back to my organization and I appreciated openness to have conversations outside the ambit of the guidance.
- This was an organic process, yet we were able to get things done; the pace was good. But we need to think about the next generation and how they will work differently.
- It was a treat to be with good people who are doing good work and to know that the work that we do matters to CRA; it was nice to be able to think and learn about the role that you play.
- Muttart Foundation is the charities foundation. You become our interpreter and translator of all things related to the regulation of charities but unfortunately small charities don't know that they are being considered here and that they matter.
- Because of the rapid pace of change and the impact of technological advances, regulators may have to intervene more quickly in the future and won't have the luxury of time for consultations. What accountability do we put upon the discretion used by regulators in the future in these circumstances?
- Input was good and not overly lawyerly. All views are so valuable as was learning about cryptocurrency and blockchain.
- I enjoyed my time, and this consultation was a source of energy. It seemed formal at first but by the end we see each other as friends and colleagues.
- We have rare moments to reflect so the time spent here is a gift.
- I was impressed by the generosity of all in giving up their time to come here. The event has also fostered relationships.
- The facilitation and the process worked well.
- We have to recognize that much of what was discussed can't be done by CRA. It's up to the charitable sector to play its part. As a sector, we have more to do: training, supporting the lead organizations.

Closing Remarks

Bob Wyatt ended the session by thanking all of the participants for their investment of time and for sharing their valuable perspectives. He explained that small charities have participated over the years. Sometimes it can be difficult for them to attend, for instance when there is only one staff. Almost 500 different people have attended these consultations over 27 years.

We are fortunate to have the regulators that we do and our collective desire to get things right for sector organizations remains key.

**Appendix
CRA Presentation**

Crypto-assets, crowdfunding, and fundraising

Muttart Consultation

April 2024



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The Charities Directorate's role and activities

Role

- The mission of the Charities Directorate is, “To promote compliance with the income tax legislation and regulations relating to charities through education, quality service, and responsible enforcement, thereby contributing to the integrity of the charitable sector and the social well-being of Canadians”
- The Charities Directorate also fulfills similar responsibilities relating to other qualified donees, such as Registered Canadian Amateur Athletic Associations (RCAAAs), and Registered National Arts Service Organizations (RNASOs)

Activities

- In brief, the Charities Directorate:
 - Registers charities under the Income Tax Act (ITA)
 - Educates the public, charities and other qualified donees on the requirements for registration as charities as well as other qualified donees
 - Monitors the sector for compliance
 - Carries out compliance actions

What is a registered charity?

- A **registered charity** refers to any one of the three types of organizations created, operated, and registered for exclusively charitable purposes under the Income Tax Act:
 - A **charitable organization** is required to devote all of its resources to charitable activities carried on by the organization itself
 - A **charitable foundation** means a corporation or trust that is constituted and operated exclusively for charitable purposes. It may be either:
 - a public foundation, or
 - a private foundation

Charities are a “qualified donee”

A **qualified donee** is an organization that **can** issue a receipt for income tax purposes. It can also receive gifts from registered charities.

- **Registered charity**
- Low-cost housing corporations for the aged
- Municipality
- Municipal or public body performing a function of government in Canada
- University outside Canada
- Foreign charity that has received a gift from His Majesty in right of Canada
- Registered journalism organization
- Registered Canadian amateur athletic association
- His Majesty in right of Canada or a province
- The United Nations or an agency of the United Nations

What is a crypto-asset?

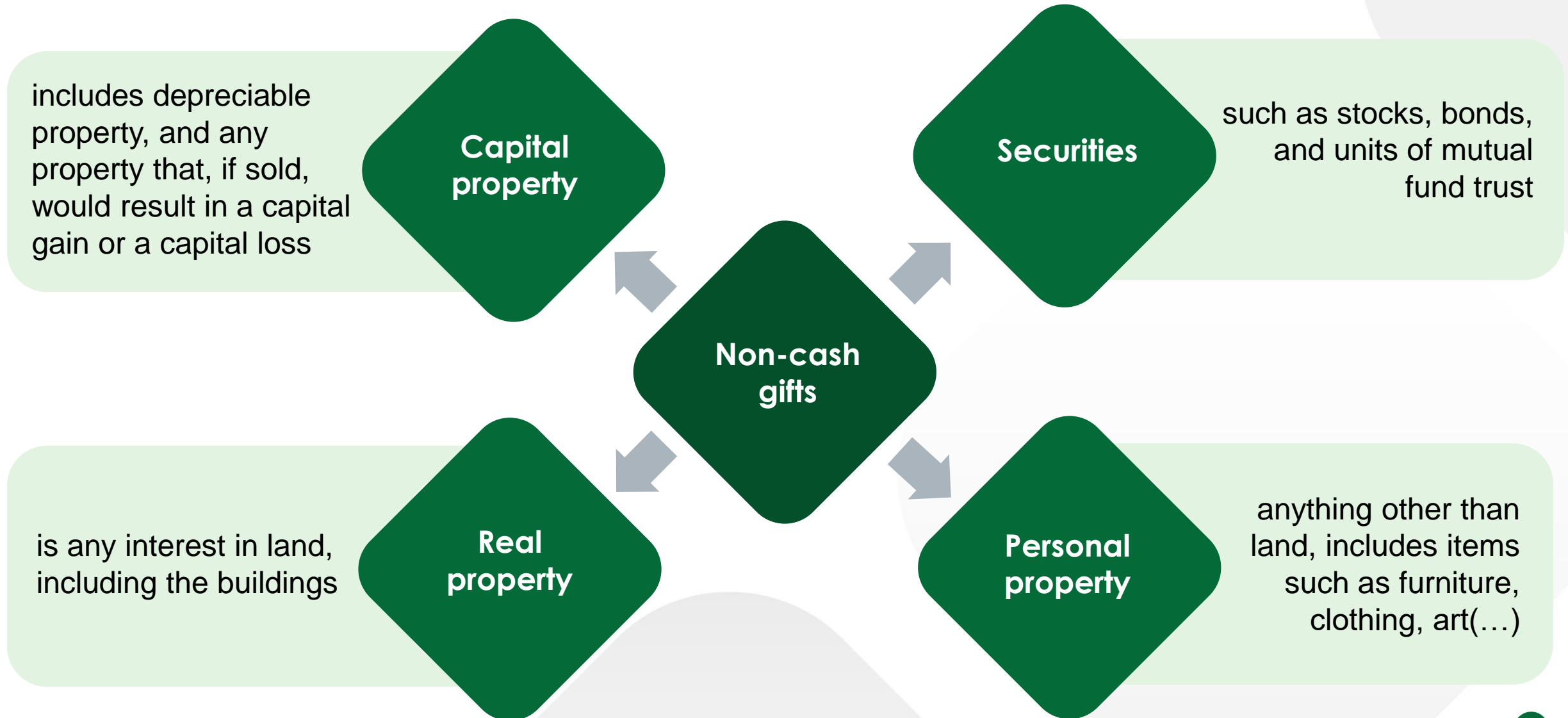
A **crypto-asset** is a digital representation of value that relies on a cryptographically secured distributed ledger, or a similar technology, to validate and secure transactions.

- Common examples of crypto-assets include, but are not limited to:
 - cryptocurrencies (payment/exchange tokens)
 - utility tokens
 - security tokens
 - non-fungible tokens (NFTs)

Receipting gifts of crypto-assets

- Crypto-assets received as gifts are one type of **non-cash gift**, also known as gifts-in-kind.
- For receipting purposes, it's treated as any other gift-in-kind, and the charity would have to look at the relevant considerations (e.g. FMV, deemed FMV rules, amount of advantage, etc.) in valuing the asset at the time of transfer to the charity.
- A charity should keep documentation, as part of its books and records, to support the value of the crypto-assets and any related amounts at the time gift is received, or when crypto-asset is being disposed.

What are non-cash gifts?



Determining FMV for crypto-assets

- When establishing the value of the crypto-assets, a common method should be used consistently, and a record should be kept on how it was used
- For example, exchange rates should be taken from the same exchange broker and an average high/low/open/close valuation should be used consistently to determine the value
- Whatever valuation method a charity uses, it must be able to show that the method is reasonable for tax reporting purposes

Documenting crypto-asset transactions

- A gift of a crypto-asset, like the gift of any property, results in an acquisition
- Therefore if crypto-assets are acquired or disposed of, the charity has to keep adequate books and records to support each transaction
- Records of the following information should be kept with respect to crypto-asset transactions:
 - The **number of units** and **type** of crypto-asset for each transaction
 - The **date and time of each transaction**
 - The **value of the crypto-asset (in Canadian dollars)** at the time of each transaction
 - A **description of the nature** of each transaction and the other party to the transaction (even if it is just their crypto-asset address)
 - The addresses associated with each **digital wallet used**
 - The beginning **wallet balance** (and its cost) and **ending wallet balance** for each crypto-asset for each year
- For more information, visit: [Information for crypto-asset users and tax professionals - Canada.ca](#)

What is crowdfunding?

Crowdfunding:

- is an online process used to fundraise for a broad range of purposes, especially where conventional fundraising methods might not be practical
- often involves raising small amounts of money from a large number of individual donors
- tends to be set up for the benefit of a named individual or group of individuals or businesses, in other words for a “private class”

Concerns with crowdfunding

- To be charitable, a purpose must provide **public benefit** (among other requirements)
 - This public benefit test requires that a charitable purpose be for the benefit of the community or a sufficient segment of the community
- A purpose will not be charitable if it confers **unacceptable** private benefits
- An unacceptable private benefit occurs when charitable benefits are conferred to a private class, or on the basis of criteria that are not relevant to the charitable purpose at hand
- While charities can use crowdfunding for their own programs (like disaster relief) where doing so benefits a private class, it makes it unlikely to meet the public benefit test, in which case it would not be charitable
 - For example, the 2022 Ottawa trucker convoy, 2018 Humboldt Broncos bus crash, individual victims of crime, etc.

Concerns with crowdfunding (continued)

- Even if crowdfunding is for a charitable purpose, and not for a private class, a receipt can only be issued if a registered charity is able to ensure it can identify the true donor
 - The charity may not be in a position to do so, if it is not involved in the fundraising activities themselves and is only presented a list of “donors” without enough information to identify the true donor from a third party it doesn’t deal with.
- For other qualified donees, e.g. RCAAAs, different considerations may apply

Main messaging in the fundraising guidance

- **Definition of fundraising:** As a general rule, fundraising is any activity that includes a solicitation of present or future donations of cash or non-cash gifts, or the sale of goods or services to raise funds, whether explicit or implied. Fundraising is acceptable, unless it is contrary to a requirement of the Income Tax Act
- **Unacceptable fundraising:** Fundraising cannot, for example, be a collateral non-charitable purpose, deceptive, illegal, or the carrying on of an unrelated business
- **Indicators of unacceptable fundraising:** Examples include no identified use or need for money, high ratios of expenditure to proceeds, or misrepresentations in solicitations or disclosures
- **Fundraising allocation on T3010**
- **Best practices to mitigate risk of unacceptable fundraising**

Review of Guidance CG-013, Fundraising by Registered Charities

- The Charities Directorate will be reviewing its fundraising policy guidance, which was initially created in 2012, and is seeking charitable sector input on areas where there are concerns or gaps
- The guidance will likely be condensed to make it better focussed
- The revisions will accommodate the incidental purposes doctrine, which the Directorate has started to consider as part of its decision-making framework
 - The guidance presently states “...it is the CRA’s position that fundraising is not a charitable purpose in itself or a charitable activity that directly furthers a charitable purpose.”

Review of Guidance CG-013, Fundraising by Registered Charities (continued)

- Under this doctrine, discussed in *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*, the Supreme Court tried to reconcile how a charitable organization could reasonably be expected to have exclusively charitable activities to further its charitable purposes
- The Court determined that nature of an activity is fluid, and can only be determined by reference to the purpose that it furthers
- As such, if the end or purpose is charitable, an activity will also assume a charitable character
- However, if the same activity furthers a collateral, non-charitable purpose, the activity will not be charitable

Questions and comments?

Thank you