

Fundraising For Charities

Public Policy Issues in the 21st Century

(MAIN REPORT)

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EXECUTIVE SUMMARY

Over 70,000 charities are active in Canada today. These charities provide a wide range of philanthropic benefits and services to hundreds of thousands of Canadians annually.

1. THE PROBLEM

Recent actions by governments at all levels to check spending and lower their budget deficits have forced them to lessen their role as a revenue source for charitable activity. In addition, the thrust to restructure how government delivers public services has provided charities with an opportunity to expand their own delivery of services to Canadians. An example of this trend is provincial governments moving the delivery of some social services to non-profit groups active at the community level.

This increased need for charitable activity has meant a growing need for funds. To help manage new fundraising campaigns, many charities have come to rely on a growing stock of fundraisers.

While the vast majority of charitable fundraising is conducted in a forthright and ethical manner, there has been wide media coverage of several scandals where up to 80% and even 90% of a fundraising campaign's donations have gone not to the charity, but to a third party "for-profit" fundraiser. For example, in the U.S., three charities were named in a lawsuit for allegedly turning over to a fundraisers 95% of some \$8.6 million raised in charitable contributions (Los Angeles Times, November 20, 1992). The practices of a few third party fundraisers has the potential to harm the entire charitable sector, undermine public trust and make them less willing to donate to charitable causes.

Many charities have found it difficult to respond to questions regarding fundraising costs when these types of scandals occur. Sometimes, charities will spend more raising money than they receive in contributions. This is especially true when a charity is involved in a campaign to obtain new donors.

New donors are critical for future revenues and the long term financial growth of a charity. Money spent on donor acquisition is capitalized by the charity itself. This practice, while difficult to justify to new donors, is considered good management by many in the fundraising field as it reduces fundraising costs over the long run.

But, situations where 80-90% of the proceeds go to a third party fundraiser based on a "no risk" or commission basis is considered unethical practice by many in the charitable field. When this happens, it usually involves a charity lacking the available capital to properly invest in their own fundraising program. The use of a commission contract with a fundraiser allows the charity to take advantage of the fundraiser's capital and begin to raise funds. However, the trade-offs can be devastating. There have been instances where fundraisers have not returned substantial portions of the contributions back to the charity, and the charity has signed over one of its most critical assets for future growth – its donor list.

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CHARITY, BUT TO A THIRD
PARTY "FOR-PROFIT"
FUNDRAISER."*

Maintaining and enhancing the reputation of the non-profit sector is vital if charities are to be successful in accomplishing their mission. Various public opinion polls indicate that people generally retain a positive view of charities, but they are aware that some engage in less than ethical practices. Public support is guarded, and by no means guaranteed. There is evidence that the public supports stricter regulation of the charitable sector. On the other hand, the Alberta Court of Appeal recently struck down sections of Alberta's Public Contributions Act – legislation which attempted to provide a certain type of this regulation. The Court found that sections of the legislation violated the Charter of Rights and Freedoms. Indeed, addressing accountability without due care in the charitable sector has its pitfalls.

2. RESEARCH QUESTIONS

This research study explores several questions

- a) *What information needs to be disclosed to the public about fundraising activities?*
- b) *What are the best methods for charities to measure their fundraising performance?*
- c) *How can we build mechanisms to ensure public confidence in charities?*
- d) *Are explicit ethical standards for charities necessary?*
- e) *How can we provide adequate assurance of compliance with agreed upon standards, yet not burden the sector with government over-regulation?*
- f) *Is self-regulation a viable option?*
- g) *What are the other policy alternatives?*

The federal government and several provinces already have in place legislation regulating the activities of charities. Revenue Canada's "80/20" rule stipulates that charities must spend no more than 20% of receiptable donations on fundraising or other administrative costs. The effectiveness of such legislation is in doubt. There are no standard accounting procedures which can identify "fundraising costs." The recent action of the Alberta Court of Appeals and the legal history of similar legislation in the United States also casts a cloud over whether this type of legislation would pass if challenged in the Canadian courts.

To help assess the state of fundraising in Canada, a survey of financial reports submitted to the government by charities fundraising in the province of Alberta was undertaken. The data indicate that few charities (less than 9% of all charities submitting reports) actually used outside fundraisers in 1992. More important, only 3.5% of all charitable donations raised in the province that year were actually raised by outside fundraisers.

Arriving at hard conclusions on the data is difficult given the lack of consistent accounting standards, but it is clear that outside fundraisers, as defined in the Alberta legislation, constitute only a small portion of fundraising activity in the province.

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3. ALTERNATIVES

A wide variety of alternatives are open to both the non-profit industry and the federal and provincial governments to enhance and maintain public confidence in the charitable sector:

- a) *Limits on fundraising shares* might offer some protection against perceived charitable fraud by allowing fundraisers to retain only limited compensation. Such legislation has been ruled unconstitutional by the U.S. courts, and it is doubtful whether it would pass constitutional muster in Canada;
- b) *Consumer protection approaches* require non-profits to submit financial reports either to government agencies which then report the information back to the public or to the public directly. There is considerable controversy over the usefulness of such measures. Simple "bottom-line" cost ratios alone, no matter how high or low, may not be indicative of perceived abusive practices;
- c) *Industry self-regulation* would allow those most familiar with the issues and problems to devise innovative solutions. Several professional organizations already exist, and although their membership is voluntary, several have developed codes of conduct for their members. The problem with a totally self-regulating industry body is that it may be "captured" by the industry and rendered ineffective;
- d) *A prohibition on distributing profits* is the foundation of the non-profit sector. Government could enforce a ban on "private gain." Non-profits may make money, but it must not be distributed in such a way that an individual or associate of the organization gains personally;
- e) *Legislating "duty of care standards"* for boards of directors offers the industry another way to participate in a regulatory process. Either government, the industry or both would develop a code of ethics, standards of practice and the proper "duty of care" for which boards of directors would be legally accountable. Government would back the standards by passing legislation including specific sanctions against boards that fail to follow the standards; and
- f) *Mixed regulation* offers government and industry the opportunity to work cooperatively in establishing certain norms for good practices in the industry. Under a mixed system, for example, industry might set the standards of care and a code of ethics, while government would provide legal sanction.

Consultations with charities across Canada reveal limited support in the sector for unilateral government regulation. There is a strong industry consensus that measures such as "prior approval" or the "registering" of fundraising campaigns is an over reaction to any problems with charitable fundraising. For the most part, the sector wants the opportunity to tackle problems of accountability and credibility themselves. There is an expressed interest in the sector to develop guidelines for fundraising activities, a code of ethics and standards of good practice.

But, industry practitioners also realize that self regulation may not be entirely viable. Some government intervention in the form of legislation which provides for the enforcement of industry standards remains an option. What must be avoided is a situation where government regulation creates a barrier for non profit groups in carrying out their beneficial work in Canada.

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INTRODUCTION AND BACKGROUND

Over 74,000 registered charities are active in Canada today. ¹ These charities are diverse. Some are involved in public service areas such as education or social services, while others operate in recreational areas such as sport. Many charities are religious or cultural in nature. Other charities have formed to inform, encourage and educate people regarding health, poverty and a wide range of other matters.

In the past, federal, provincial and local governments served as key sources of funding for Canada's charities. Recent actions by governments at all levels to check spending and lower their budget deficits have forced them to lessen their role as a revenue source for charitable activity. Coupled with the thrust to restructure government public service delivery, charities are finding an opportunity to expand their own delivery of services to Canadians. An example of this trend is provincial governments moving the delivery of some social services to non-profit groups active at the community level. This shift from government funded programs has meant a growing need for the general public to provide funds for charitable activity.

Maintaining and enhancing the reputation of the non-profit sector is vital if charities are to succeed in accomplishing their missions. To be successful, charities must enjoy an excellent reputation in the minds of the general public.

To help manage new fundraising campaigns directed at the general public, many charities have come to rely on a growing stock of fundraisers. (For the purposes of this study, a "development officer" raised funds as an employee of a charity whose salary is based on a flat rate or fixed fee, a "fundraising counsel" provides advice to charities and boards of directors for a flat fee and a "third party fundraiser" solicits charitable donations on behalf of a charity on a commission or "no risk" basis.) Recently, there has been wide media coverage of several scandals where up to 80% and even 90% of a fundraising campaign's donations have gone not to charity, but to a third party "for-profit" fundraiser.

Perhaps the most profligate and current examples can be found in the U.S. For example, in California, three high profile charities were named in a lawsuit for allegedly turning over to fundraisers 95% of some \$8.6 million raised in charitable contributions. ² In the U.S., there is evidence that these practices are nation-wide, and have elicited millions of dollars from the public and are on the increase. And, other countries, such as Canada, are by no means immune.

The vast majority of charitable fundraising is conducted in a forthright and ethical manner, but the practices of a few fundraisers have the potential to harm the entire charitable sector, undermining the public's trust and making them less willing to donate to charitable causes.

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SURVEY OF 105 GIFT-
SUPPORTED
ORGANIZATIONS BY THE
AMERICAN ASSOCIATION
OF FUNDRAISING
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WAS DOWN BY ALMOST \$1
MILLION FROM THE
PREVIOUS YEAR.
ACCORDING TO THE
SURVEY, COMPETITION
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COMMONLY CITED
REASON FOR THE
DIFFICULTIES" ³*

The public themselves are increasingly demanding stricter accountability by the non-profit sector for the funds provided them. In the U.S. and England, there have been calls for increased government regulation of charities to enhance their credibility in the mind of the donating public and to ensure that practices perceived to abuse the public trust are ferreted out and dealt with appropriately. To deter fundraising abuses there is a need to make the current system more effective and to seek alternative approaches.

Most charities struggle with how to disclose fundraising costs since there are no set standards for accounting of fundraising expenses. Charities are sensitive to public perceptions about fundraising costs and, in particular, the public's negative reaction to high fundraising costs. These perceptions creates an unwillingness for charities to be up front with the public about fundraising costs. What charity wants to be compared with other organizations when everyone is using different rules for accounting of fundraising costs?

While there are federal and provincial regulations affecting charitable fundraising in Canada, it is unclear whether they are effective in addressing concerns perceived by the public and expressed within the sector. A recent Alberta Court of Appeals decision in June of 1994 declaring sections of Alberta's Public Contributions Act unconstitutional, placed limits on governments in how they might approach the regulation of charitable fundraising. A serious inquiry on how the accountability of the non-profit sector is met by current rules and how it might be improved in light of the new stresses on the sector, is warranted.

Obviously, government regulation of charities has pitfalls. In separating good fundraising practices from bad practices, issues of censorship and discrimination may emerge. This may occur whether "bad" practices are directly or indirectly targeted by outlawing marginal fundraising practices. Regulating inappropriate practices may result in lessening the free speech "opportunities" for the more unpopular charitable causes. Can a general regulatory scheme be created that would effectively curb abuse while at the same time pass scrutiny in the courts?

1. RESEARCH OBJECTIVES

Despite drastic changes in their operating environment, there is a noticeable lack of information available to charities on how to manage this new demand for increased accountability. There is little information available regarding cost effective performance, standards, "best practices" regarding fundraising and the legislative and regulative environment affecting such fundraising.

In part, this report focuses on the fundraising practices in the charitable sector as it relates to the practices of third-party fundraisers – those who contract with a charitable organizations to provide telemarketing, direct mail or special event services on a commission or "no-risk" basis. While these types of contracts, and the practices promoted in them, represent only a very small portion of the fundraising practice, they have garnered most of the attention by the media, government and the charitable sector.

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Without a proper base of information, charities cannot effectively respond to the increasing public demand for accountability and implement measures to improve current fundraising practices. This research report is intended to help fill this vacuum in three ways:

- a) *To better define the issues involved with fundraising costs and practices;*
- b) *To assess benchmarks which might lead to standards or guidelines; and*
- c) *To help construct a consensus within the sector as to the best strategies for managing the issue;*

In addition, the *Fundraising for Charities* research project attempts to provide answers to several questions:

- a) *How can we build mechanisms to ensure public confidence in charities?*
- b) *Are explicit ethical standards for charities necessary?*
- c) *How can we provide adequate assurance of compliance with agreed upon standards, yet not burden the sector with government over-regulation?*
- d) *Is self-regulation a viable option?*
- e) *What are the other policy alternatives?*

2. PROJECT SCOPE

The Fundraising for Charities research project encompasses eight specific themes:

- a) *An outline of the current environment of charitable fundraising;*
- b) *Identification and interviews with various stakeholders who may help define and respond to the issues;*
- c) *A review of current Canadian legislation, regulations and accounting practices related to fundraising;*
- f) *A review of policies, models and legislation in other countries;*
- g) *An analysis of specific cases directly related to recent developments in charitable fundraising; and*
- g) *Some recommended next steps and policy alternatives.*

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3. PROJECT METHODOLOGY

Throughout the project, a four -step methodology was employed:

- a) *An extensive review of existing literature related to charitable fundraising;*
- b) *Data collection;*
- c) *Interviews with staff, volunteers, development officers, fundraising counsel and third party fundraisers;*
- d) *A series of consultations with charities and interested parties across Canada to discuss the issues and build consensus on an appropriate public policy response.*

4. OUTLINE OF THE REPORT

This report will examine the following areas of charitable fundraising:

- a) *The unique character of the charitable and non-profit industry;*
- b) *Identifying standards of conduct and ethical practice;*
- c) *Examining data on fundraising costs and practices;*
- d) *Examining recommendations on how charities can monitor cost effectiveness and increase it;*
- e) *Outlining recent studies on fundraising efficiency;*
- f) *Methods by which fundraising potential can be increased;*
- g) *Reporting on a series of sector consultations held across Canada;*
- h) *Examining donor attitudes with respect to charitable accountability;*
- i) *Examining the current Canadian regulatory environment, both federal and provincial,*
- j) *Examining regulation in other countries;*
- k) *Assessing the potential impact on government regulation of charities as a result of several high profile U.S. Supreme Court cases on fundraising;*
- l) *Exploring the advantages and disadvantages of several basic regulatory avenues in light of the above research; and*
- m) *Exploring the accountability potential offered by sector professional organizations and other existing watchdog associations.*

A series of "matrices" accompanies several sections of this report. The matrices are designed to provide more detailed information than what appears in the body of the report. These matrices are located in the *Appendix* starting on page 72.

**THIS REPORT EMPLOYED A
FOUR STEP
METHODOLOGY. FIRST, A
COMPREHENSIVE
LITERATURE REVIEW WAS
CONDUCTED. SECOND,
FUNDRAISING DATA, WAS
COLLECTED AND
ANALYZED. THIRD,
INTERVIEWS WERE
CONDUCTED WITH
STAKEHOLDERS. FINALLY,
A SERIES OF
CONSULTATIONS WERE
HELD WITH INTERESTED
PARTIES ACROSS
CANADA.**

THE UNIQUENESS OF CHARITIES

Charities and charitable fundraising presents a unique set of problems for policy makers. These problems stem from the nature of charities and the special environment in which they operate. Following is a list of concerns and observations made by various commentators from the charitable sector:

1. BETWEEN GOVERNMENT AND BUSINESS

Charitable organizations occupy a position somewhere between government and business. Charities act like government because they provide “public types” of services, but they differ because they are primarily vehicles of private decision-making. ⁴ Today’s modern charitable sector is undoubtedly big business, but unlike traditional for-profit firms, they are not driven by the profit motive.

This implies that charities lack some economic incentives of the marketplace which imposed on business, discourages wasteful actions. ⁵ For example, a business will not engage in a high-cost or high risk venture that may yield only a marginal return. Business is subject to the profit and loss constraints of the market, and high risk activities with low profit margins acts as a constraint.

But some charities have spent millions in high-risk fundraising campaigns that have yielded only small returns. Professional solicitors have been hired on a commission or “no-risk” basis and then gone out to raise as much money as possible, take a large share of the money collected on a percentage basis or by deducting expenses, and then turn a certain remainder over to the charity. The charity obtains donations without incurring any cost or risk. It is “found money” – donations that someone else generated at no risk or cost (financial time, energy) to the charity. ⁶ A charity that has worked with professional solicitors offered these comments:

“If someone comes to a non-profit and says, “You get \$2000 for doing nothing and 50% of the profits, it sounds good. But when you raise \$60,000 - \$70,000 from the public, and they find out that only \$2,000 went to the cause, this is not helpful”. ⁷

Secondly, business is made accountable by its consumers. This is significantly blurred in the charitable sector. Charitable fundraising presents unique opportunities for defrauding the public. For example, a citizen who has been harmed by consumer fraud has every incentive to complain – perhaps he or she might receive a refund. But a victim of charitable fraud has few avenues of recourse. Donors have little redress against a charity’s fraudulent or unethical practices aside from the refusal to donate more money in the future. ⁸

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A donation is an expression of generosity alone. Donors cannot demand an exchange for a faulty product because there is no product to exchange. The situation is aggravated by the fact that solicitations occur on a one-to-one basis. Once a donation is received, there is no effective means for tracking the transaction.⁹ Ultimately, the risk of abuse and fraud is increased because of the lack of safeguards present in the standard consumer/business relationship.

Thirdly, charities offer a service to society in general, or a particular part of society as opposed to one individual consumer or client. Since charities provide essentially “free” or “low-cost” services, its clients are not able to hold the charity accountable by asking for a “refund.”

While the charitable sector may lack traditional mechanisms of accountability that keep them in line, most understand the vulnerability of the sector. Charities do engage competitively by voluntarily disclosing fundraising and administrative costs.¹⁰ Charities operate under a self imposed, but limited, accountability – the importance of appearance, a charity’s good name, reputation, and credibility to tap the public’s generosity. However, the actions of only a few “bad” charities have the opportunity to cause a breakdown in public confidence, making the public less willing to give to all charities.

2. PRIVATE BENEFIT

At the heart of the charitable movement is the so-called ban on private “inurement” or benefit. No one is to reap private gains (or profits) from the activities of a charity since they are funded by the generosity of the donating public. The prohibition on private benefit is the very foundation upon which the charitable community is built. Every time an instance of private benefit is overlooked, the public’s faith (which is essential to the continued operation of the charitable community) is undermined.¹¹

The use of for-profit fundraisers employing certain practices affects directly the concept of private benefit since someone may now be profiting from the activities of a charity. The ban against private benefit is designed to promote the integrity of the non-profit system.¹² Nothing has the ability to erode public support more than the indiscriminate actions of charities who have directly lent out their good name - and indirectly the integrity of charities everywhere - to benefit individuals rather than public interest. (For more information, see the DISCUSSION BOX on Page 10).

3. TRIANGULAR RELATIONSHIPS

A critical point related to charitable accountability is the fact that contracts between charities and professional fundraisers are not bilateral - they are triangular.¹³ A typical business transaction involves two interests - the seller and the buyer. Charities must take into account a third party - the donating public. Regulation of charities must be designed to provide a substitute for market mechanisms that influence for-profit organizations and to limit the environment for perceived abuse while encouraging charitable giving.¹⁴

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DISCUSSION BOX: PRIVATE BENEFIT

QUESTION: What is private benefit?

ANSWER: The prohibition on private benefit or gain is the very foundation upon which the charitable community is built.

At the heart of the charitable movement is the ban on private "inurement" or benefit. This principle holds that no one should reap private gains (or profit) from the activities of a charity since they are funded by the generosity of the donating public.

There is no case law in Canada defining private benefit. But, in the U.S., there is the ongoing case of United Cancer Council (UCC) vs. Internal Revenue Service (IRS). The UCC raised over \$27 million in a fundraising campaign and the third party fundraiser received over \$25 million for the cost of the campaign. The Independent Sector (an umbrella group of various charities) laid out a test for determining whether the UCC had improperly conferred a private benefit to the third party fundraiser:

- 1) A charity confers a benefit on a private party if that benefit is neither incidental or it is a payment of "unreasonable" compensation for services rendered.
- 2) A charity will violate the private benefit test if it enters into a relationship with a private party whereby the private party obtains unfettered control over assets essential to the discharge of an organization's charitable mission. If the arrangement is structured so as to give a for-profit entity control over resources the charity still owns and needs, it will generate impermissible private benefits. A charity has the responsibility to use its income and assets primarily to further its charitable purpose. It cannot fulfill that responsibility if it delegates control over its assets or income producing activities to private parties that have an interest in making profits for themselves rather than promoting the charity's program.
- 3) A charity violates the private benefit test if it pays a private party compensation for services that is "unreasonable." Reasonableness depends on the basic rationality of the compensation scheme and how it compares to the existing norm in the industry.
- 4) To be reasonable, a compensation arrangement must be rational and consistent with arm's length standards. The fact that two contracting parties are technically unrelated does not necessarily mean that the deal that is struck comports with arm's length norms. The private party may, for example, have exploited the charity's ignorance or weakness to get unusual terms that unreasonably favor the private party. The relative bargaining power of the two parties is an important consideration.

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CHARITY..."*

4. COMPETITION FOR SCARCE FUNDS

Funds are becoming more scarce, and non-profits continue to proliferate. Competition for funds is intense, and growing.¹⁵ The use of fundraisers may be necessary for some charities to survive.¹⁶ Telemarketing, direct mail, and other technological advances also allows charities to launch wider appeals with less interpersonal contact – and amidst the flurry – the public is inundated by charitable appeals. Confusion and concern grow.¹⁷

5. ACCOUNTING FOR EXPENSES

Regulators also face the intractable problem of separating legitimate expenses to further a charity's stated purpose from expenses used to raise funds. While some have argued that the two are "inextricably intertwined", raising money is simply not the same thing as spending it to further a beneficial charitable program. A charity's ability to seek support should be separate from a charity's ability to shield itself from financial scrutiny.¹⁸

While essentially a problem of accounting, it is nonetheless significant. For example, if a charity's stated purpose were "public education" on an issue, and it mailed out an informative letter that also asked for a donation, what portion of the cost should be listed as "fundraising" and what portion should be listed as a legitimate "program" cost?

While charities should not be muzzled in their right to speak freely, the public also has the right not to be misled.¹⁹ The challenge then, is to uncover that delicate balance where charities are not unduly silenced while at the same time unscrupulous organizations are not able to use their right of free speech as a ruse to obtain donations and deceive the public.

A fair, uniform and consistent system of accounting standards for the sector is needed, but the question is whether this is possible given the diversity of the sector and the complexity of discerning the real costs of fundraising.

A set of uniform accounting principles which more clearly distinguishes between fundraising costs and "direct program expenditures" would allow charities and fundraisers to better allocate costs. This would enable both charities and donors to make more accurate comparisons of fundraising cost performance, and would establish a standard to which charities might adhere.

But there is little agreement in the charitable sector and the accounting profession regarding the development of appropriate and clearly understood standards for reporting amounts going to an organization's charitable program, and amounts going to fundraising related activities. For example, suppose a charity's main purpose were public education concerning heart disease. The charity decided to send out a brochure to potential donors which provided information on heart disease, and then asked for a donation so that more letters could be sent to others.

What portion of the cost of mailing the brochure is an "education" cost used to further the charitable purpose of the organization? What portion should be allocated to fundraising?

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A. The Current Canadian Landscape:

Members of the Canadian accounting profession are self-regulated under Acts of the provincial legislatures. Accredited bodies such as the *Canadian Institute of Chartered Accountants (CICA)* or the *Certified General Accountants (CGA)* set accounting policy standards. For example, the Accounting Standards Board of *CICA* develops policy and standards in the form of a handbook which instructs members on the proper practices of the profession. Since 1988, this handbook has set accounting standards for non-profit organizations. *CICA* has issued several draft recommendations proposing changes to how financial statements are presented by non-profit organizations, but they have not addressed the allocation of fundraising costs.

B. The Current American Landscape:

In the U.S., the *Financial Accounting Standards Board (FASB)* and the *American Institute of Certified Public Accountants (AICPA)* set standards for non-profits. The *AICPA* has made several attempts to standardize the disclosure of this type of information, but they have not succeeded in establishing a standard which all charities feel is acceptable.

AICPA adopted a set of recommendations entitled Accounting Principles and Reporting Practices for Certain Non-profit Organizations. The recommended standards required accountants to look at the primary purpose of the expense. All joint costs involving fundraising would be charged to fundraising expenses except for those incremental costs directly attributable to a separate educational or informational activity. For example, only the incremental costs of joint mailings, such as the direct costs of an educational pamphlet, could be charged as a program expense. All other costs, such as postage, would be charged to fundraising.²⁰

The suggested standards were interpreted so many ways that the standard became essentially meaningless. Costs can be incurred for more than one basic function. Accounting problems arise in allocating the costs of informational materials that also serve fundraising purposes.

Diverging interpretations of the first set of recommendations led *AICPA* to issue a second set of proposed standards in August of 1987 with a new method for allocating joint costs.²¹ If it could be demonstrated that a bonafide program was conducted in conjunction with an appeal for funds, joint costs could be allocated between fundraising and the appropriate program. Unless an appeal were designed to motivate its audience to action rather than grant financial support, all costs of the appeal should be charged to fundraising. If, for example, an audience were selected based on a presumed ability to provide financial support, without consideration of its need for a particular educational information program, the cost should be attributed entirely to fundraising.

This second set of recommendations caused widespread disagreement among non-profit organizations and members of the accounting profession. They were criticized for allowing too much latitude in the accounting of fundraising costs. Donors would still not

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be able to assess whether a charity is efficient at collecting and disbursing monies for a worthy cause or just good at cooking the books.

The new accounting rules would still allow fundraising costs to be classified as educational costs as long as the charity could prove that the audience is specifically interested in its cause and the message motivates the recipient to act rather than just contribute. Now, several charitable solicitations come with a newsletter, sticker or some other educational material that allows the charity's officials to deflate reported fundraising costs and inflate the amount they disburse to "programs."

In addition, the statement did not provide for a proper definition of "educational promotion." Can a list of warning signs of a disease or a series of repeat slogans designed to help the entity attain its mission really be defined as educating the public in a meaningful manner?

The *National Association of State Charity Officials, (NASCO)* provided comments and revisions on *AICPA's* draft:

- a) The number of non-profits abusing the *AICPA* guidelines represent a very small percentage of the total, but the harm those few represent is very great. The non-profits currently abusing the cost allocation issue are contacting hundreds of millions of potential contributors each year, providing them with inaccurate information regarding fundraising costs and program services and collecting millions of dollars in contributions which are being consumed by commercial and personal interests.
- b) The draft is extremely lax as it does not require specific criteria to be met, only that certain factors be "considered."
- c) The draft guidelines will have no impact on existing practices and are not likely to curtail the abuses currently in practice. The draft may actually increase abuse by providing an easy to follow blueprint of lax criteria for justifying allocation of costs for activities which include a fundraising appeal.
- d) The draft is not likely to increase confidence in the profession or the credibility of non-profits' financial statements. ²²

The *Non-profit Mailers Federation* also responded to the draft guidelines:

- a) Over the past decade, the Supreme Court has struck down attempts by states to regulate charities by limiting the percentage of revenue that can be spent on fundraising. Now, regulators and self appointed oversight organizations are seeking to win through an accounting standard what they could not receive in the courts.
- b) The proposed policy favors certain types of fundraising over others. This bias constitutes interference with the right of a charity to communicate its message. ²³

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CHARITY ETHICS

Underlying the entire discussion of charitable accountability is the notion of ethics. Ethics provide the foundation for professional standards in many industries, but are especially important for charitable fundraising. In order for a charitable organization to enjoy continued viability in today's society, it must be accountable to its constituent public. A critically important aspect of accountability is the development and implementation of standards of ethical practice.

If a charity is to be successful in accomplishing its mission, it must enjoy a sterling reputation in the minds of the general public. It is vital that mechanisms exist to monitor the adequacy of ethical standards and provide adequate assurances of compliance with such standards.

A charity's primary obligation is to its constituent public, an integrally important part of which is the charity's pool of past, present and potential donors. The donors deserve assurance that the charity is a reputable organization. They should be assured that the charity is operating efficiently, ethically, and in accordance with its publicized mission.

However, there are many who seem to place a low value on the ethical side. They see their job as raising money by any means possible. While this may generate some immediate results, the long range consequences of unethical practices can be devastating. Unethical practices subject a charity to the danger of losing its "goodwill" – a charity's most valuable asset. It also tarnishes the credibility of charities everywhere, through no fault of their own. ²⁴

It has been suggested that charities undergo a regular evaluation of their ethical practices through an "ethical audit." Similar to a financial audit, the ethical audit would allow charities to review their ethical standards and practices, ensure that they are adequate and that the organization is in fact abiding by them. Four practical objectives can form part of this "ethical" audit:

- a) *Eliminating Conflict of Interest:* One's personal interest, the charity's interest, a donor's interest and a third party fundraiser's interest may clash. Each can be taken into account and given due consideration. But, the interest of promoting the charitable mission of the charity must remain primary.
- b) *Remaining Candid:* When soliciting funds, organizations and individuals must be forthright about the intended use of the funds being collected. If asked about the role of the person soliciting - the nature of his or her compensation - the response must be frank, forthright and honest.
- c) *Recognizing Your Sphere of Competence:* Individuals involved in fundraising should recognize their boundaries of competence and be forthcoming about their professional qualifications and credentials.
- d) *Eliminating Undue Influence:* A person being so influenced that the decision made is not their own but the will of another is not an ethical practice. Charities must maintain independence of thought and action.

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**DISCUSSION BOX: PERCENTAGE BASED COMPENSATION
(POSITION OF THE NATIONAL SOCIETY OF FUNDRAISING EXECUTIVES)**

The *National Society of Fundraising Executives (NSFRE)* is a professional organization for fundraisers with chapters in both Canada and the U.S. Recently it added a statement prohibiting its members from working for commission or percentage compensation to its "Code of Ethical Principles." This is just one example of how these bodies can set standards.²³

- 1) Charities are not businesses. The recipient of their services is society, a community or some unknown party usually unknown to donors. The donor's belief that the charity will use the contribution purposefully, effectively and efficiently for the charitable mission is the foundation of the philanthropic exchange.
- 2) Since the motivating factor in commerce is personal gain, employee compensation in the form of commission or other percentage income is appropriate. But the motivating factor in charitable behavior is social benefit. There is an inherent conflict of interest between charities founded without intent of private benefit and employees whose compensation and primary motivation are based on personal gain.
- 3) If commission or percentage compensation is accepted, the mission and long-term interest of the charity may become secondary to the worker's personal interest and self-gain. The donor's and the public's interest and needs may no longer be foremost.
- 4) Donor attitudes can be damaged with the awareness that a direct commission will be paid to a fundraiser from his or her gift, thus compromising the trust on which charity relies.
- 5) Percentage or commission compensation can foster unethical behavior or inappropriate conduct by individuals whose self interest is oriented to immediate results, irrespective of the donor's best interests.
- 6) Fundraising is an ongoing process of donor identification and cultivation. The role of the fundraiser should include building an increasingly committed, enthusiastic and capable group of volunteers. Tying compensation to commission may discourage this activity.
- 7) Commission compensation can provide reward without merit, since contributions are often the culmination of the efforts of many people, including volunteers, over long periods of time.
- 8) Donor's interests may not remain paramount. The percentage-paid fundraiser may influence donor choice so as to generate the greatest current result, rather than to preserve the donor's assets for the best long term benefit to the charity.

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ALBERTA CHARITIES AND DISCLOSURE

1. INTRODUCTION

Under Alberta's now defunct *Public Contributions Act*, non-profit groups conducting fundraising campaigns were required to file disclosure reports to the government. Reports filed to the province of Alberta in 1992 under the *Public Contributions Act* affords a unique opportunity to look at some hard data on the charitable sector in that province. Although sections of the *Public Contributions Act* were declared unconstitutional by the Alberta Court of Appeals in June of 1994, disclosure information provided to the public under the Act for 1992 offers a unique opportunity to examine the state of non-profit fundraising in that province.

Reports submitted under the Act include cost and revenue information, the type of appeals that were conducted, the number of organizations involved in fundraising and the net benefit that non-profit groups in various revenue brackets received from the various appeals. In addition, the reports offer a unique glimpse into the activities of outside fundraisers, along with an opportunity to compare the results generated by these fundraisers as opposed to the non-profit sector as a whole.

There is a major caveat in reviewing and analyzing this information in the hopes of making some conclusions on fundraising in Alberta. The problem stems from a lack of clear accounting rules governing what constitutes "fundraising costs" and "charitable program expenditures."

For example, suppose a charity's main purpose were public education about heart disease. The charity decided to send out a brochure to potential donors which provided information on heart disease, but went on to request a donation so more letters could be sent to others. What portion of the cost of mailing the brochure is "education" (or charitable program expense) and what portion should be allocated to fundraising? There has been little agreement in the charitable sector and the accounting profession regarding the development of some clearly understood cost allocation standards.

2. A WORD ON METHODOLOGY

Firstly, the data contained in this section of the report depends on information supplied to the Government of Alberta by various non-profit organizations. Thus, any conclusions cited are directly impacted by the accuracy of the non-profit groups in their financial disclosure reports.

Secondly, since there are no standard accounting procedures by which non profits allocate fundraising costs, the data commented upon may not be directly comparable across charities. If definitive reporting standards existed that required all organizations to allocate costs in a similar manner, comparisons of fundraising costs would be more accurate and benchmarks more easily established. Despite this flaw, we are confident that sufficient information in the data set is available in aggregate form to allow for the identification of certain trends which we have outlined below.

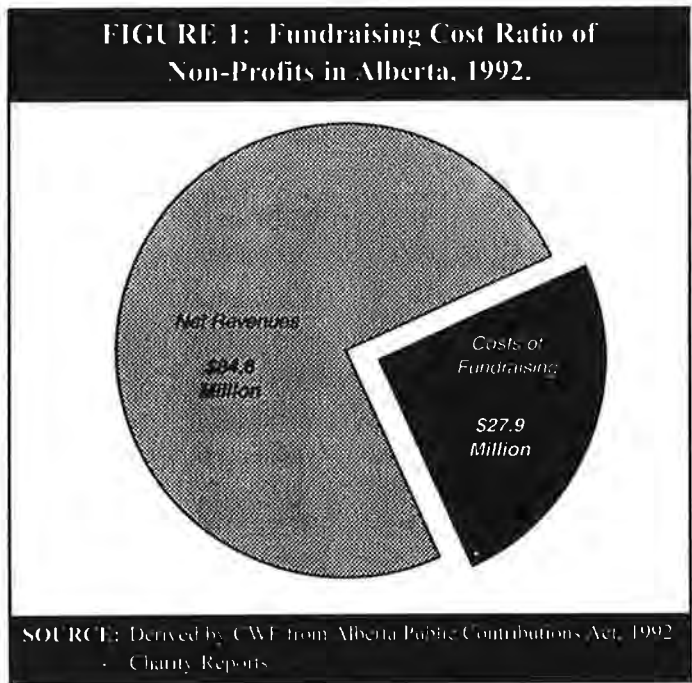
*"REPORTS FILED TO THE
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3. KEY FINDINGS

In 1992, 465 non-profit groups submitted reports to the Alberta government about their fundraising activities. ²⁶ The reports indicate that 683 fundraising campaigns were carried out in 1992, raising a total of \$112.5 million. ²⁷ An analysis of these financial disclosure statements lend support to the following conclusions:

- a) *Reports to the Alberta government under the Public Contributions Act for 1992 indicate that non-profits spend about one quarter of what they raise on fundraising costs.*

Figure 1 shows that non-profits report spending upwards of 75% of what they raise to further their charitable purpose. However, this must not be taken as a hard and fast rule. Without standardized accounting practices, it is near impossible to determine with precision what percentage of gross revenues non profits are really spending on fundraising. Some charities will have likely reported certain fundraising costs that other charities might not have reported.



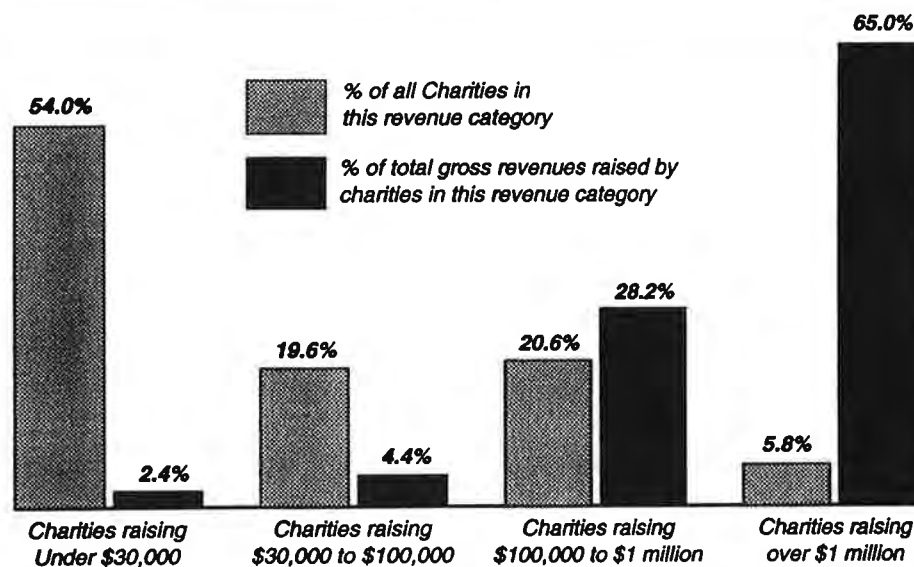
**"NON-PROFITS REPORT
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RAISE TO FURTHER THEIR
CHARITABLE PURPOSE."**

The aggregate data supports the 25% figure, but one must bear in mind that this number is only relevant to the extent it measures actual fundraising costs as defined and subsequently reported by the non-profits themselves.

- b) *The majority of non-profits raising funds in the province of Alberta are relatively "small" operators.*

As Figure 2 (page 18) indicates, the majority of non-profit groups in Alberta made under \$30,000 in 1992. Only 6% of all non-profits reporting to the government claimed to have made in excess of \$1 million. There were sixteen times as many non-profits (438) raising less than \$1 million than there were raising over \$1 million (27). The fundraising field is heavily populated with many small non-profit groups asking for charitable dollars.

FIGURE 2: Non-Profit Groups Conducting Fundraising in Alberta, 1992.



SOURCE: Derived by CWF from Alberta Public Contributions Act, 1992 Charity reports.

c) *Despite the fact that smaller charities are much more numerous, they do not dominate fundraising in the province. In fact, it is the exact reverse – larger and more experienced non-profit organizations raise most of the money.*

Figure 2 clearly shows that “large” organizations – those raising more than \$1 million – collected roughly 2/3 of the total gross revenue contributed to all non profits in Alberta in 1992. This occurred despite the fact that smaller organizations were nineteen times more numerous.

The only category of non-profit that raised amounts even marginally proportional to their relative presence in the charitable marketplace are those groups collecting between \$100,000 and \$1 million. In 1992, these charities represented about 21% of all non-profits raising funds in the province and they collected about 28% of all charitable dollars contributed. Non-profits falling on either end of this category experienced huge differences between their collective presence in the market and the amounts collected.

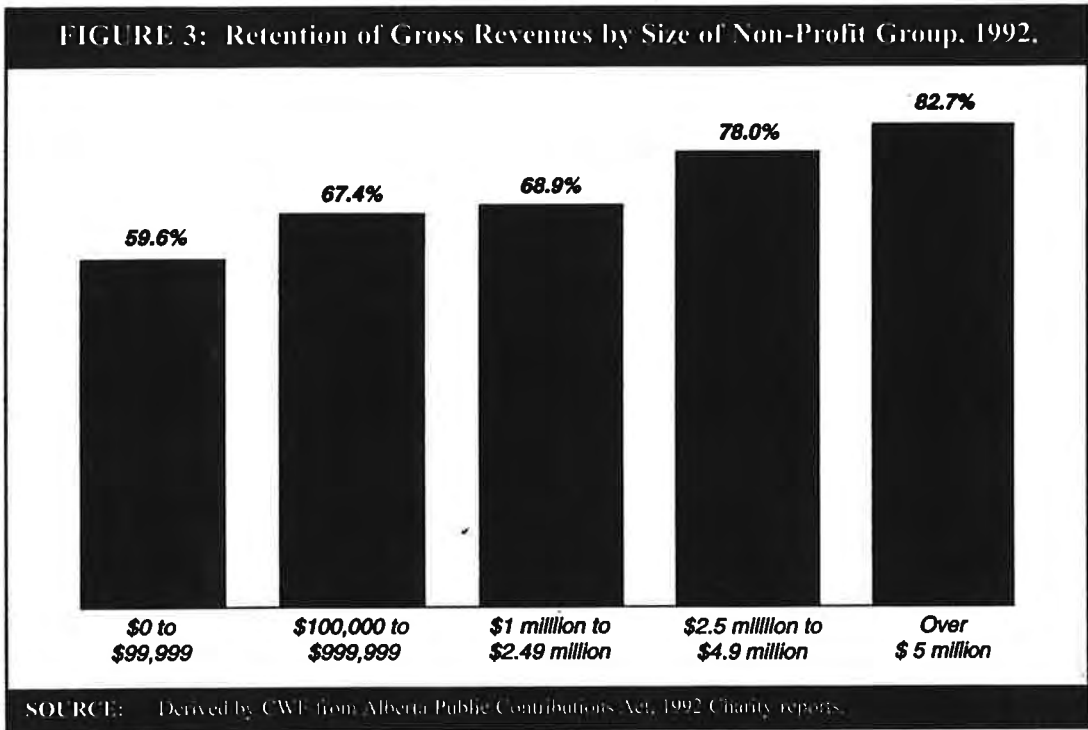
There are numerous explanations why larger charities collect such a disproportionate share of funds. Firstly, larger non-profits are more likely to take advantage of larger scales of production. Thus, they more likely have lower overhead costs and may experience higher cost efficiencies than the smaller non profit groups.

Second, larger non-profits have likely been around for a longer period of time than a small operator. As such, larger groups have built up a significant base of committed donors who may be involved in giving on a regular basis. In addition, they are likely more experienced in fundraising.

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REVENUE CONTRIBUTED
TO ALL NON PROFITS IN
ALBERTA IN 1992.”**

d) *Not only do the larger and more experienced non-profit groups raise most of the money, they also reported retaining a much larger portion of each dollar raised, spending less on fundraising than the amounts reported by smaller groups.*

The validity of this conclusion once again brings into play the cost allocation issue. But, as Figure 3 indicates, the aggregate data show that groups collecting over \$5 million said they retained almost 83% of the gross revenues they raised. Meanwhile, groups raising under \$100,000 said they retained only about 60% of their gross collections.



**"OUTSIDE FUNDRAISERS
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CAMPAIGNS TAKING
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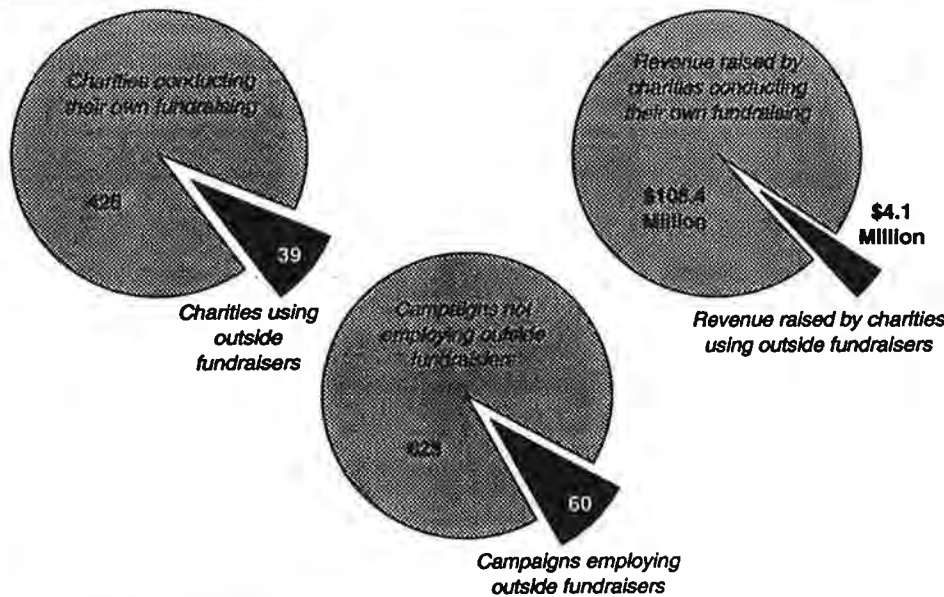
Since larger charities are more experienced, they are likely to have developed a broad base of regular contributors. The larger and more experienced non-profit groups are may also be pursuing lower cost and/or higher yield options such as donor renewal programs, corporate donations or foundation grants, along with the higher cost campaigns of donor acquisition.

The upshot of Figure 2 and Figure 3 is that the larger non-profit groups have grown to the point where they have substantially more resources to draw from in terms of their fundraising programs. Not only do they raise more money, they return more of the funds to their charitable program.

e) *Outside fundraisers play only a minor role in the fundraising campaigns taking place in the province of Alberta.*

Data from the reports submitted to the Alberta government indicate that most charities conduct their own fundraising campaigns without the assistance of an outside fundraiser. In 1992, only 8.4% of charities reported employing the use of a fundraising consultant or third party fundraiser (Figure 4, page 20). Out of the 683 campaigns that were registered with the government, only 60 (8.8%) employed an outside fundraiser.

FIGURE 4: Use of Outside Fundraisers in Alberta Fundraising Campaigns, 1992



SOURCE: Derived by CWF from Alberta Public Contributions Act, 1992 Charity reports

More important, fundraisers collect a relatively small portion of the charitable dollar. In 1992, they helped conduct campaigns that grossed just over \$4 million. While that figure is not insignificant, it pales in the light of the \$100 million plus collected by all other charities.

It is important to note that the data does not distinguish between the types of outside fundraisers. That is, it is not apparent whether a charity used fundraising counsel or a third party fundraiser. This is an important distinction to make since it impacts on the practices involved and how the fundraiser was compensated.

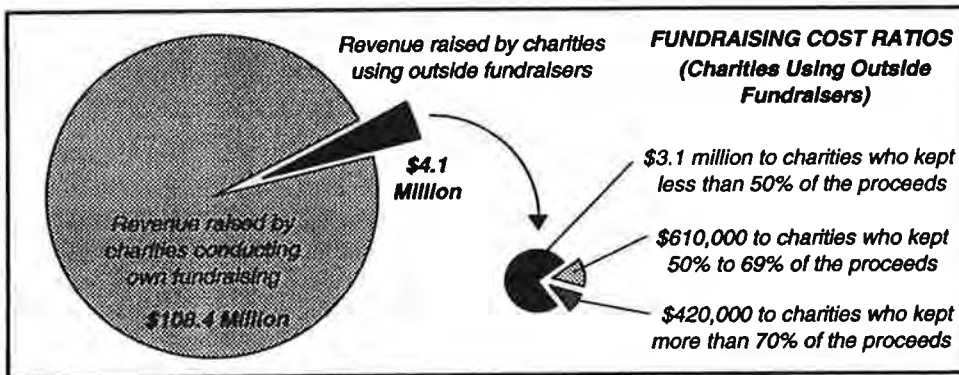
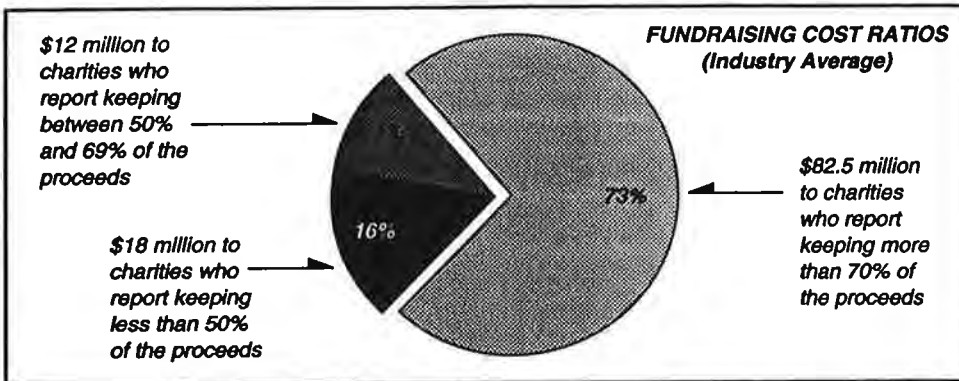
f) *Those using outside fundraisers retain less of their gross earnings than those who use "in-house" staff or volunteers.*

In Figure 5 (page 21) there are two boxes containing three pie charts. The single pie chart in the first box represents the total funds raised in Alberta in 1992 (\$112.5 million). The pie is split into three parts. Each part of the pie represents the share of monies raised by charities with different fundraising cost ratios.

Of all the funds raised in Alberta in 1992 (\$112.5 million), almost three quarters (or \$83 million) went to charities who retained over 70% of the funds for charitable purposes. (Indeed, half of the entire \$112.5 million actually went to groups retaining between 80% and 90% of it for charitable purposes.) About 11% of the \$112.5 million (or \$12 million) went to groups who retained between 50% and 69%, and only 16% of the \$112.5 million raised went to groups who reported retaining less than 50% of the money they raised.

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FIGURE 5: Use of Outside Fundraisers in Alberta Fundraising Campaigns, 1992



SOURCE: Derived by CWF from Alberta Public Contributions Act, 1992 Charity reports.

The large pie chart in the second box also represents the total funds raised in Alberta in 1992 (\$112.5 million). This pie is split into two parts – one representing the share of monies raised by charities who conducted their own fundraising campaigns (\$108.4 million) and those who used outside fundraisers (\$4.1 million). The small pie chart to the right represents the \$4.1 million in funds raised by those charities using outside fundraisers. Almost 80% of this \$4.1 million (or \$3.1 million) went to non-profit groups who actually spent more than half of it on fundraising costs.

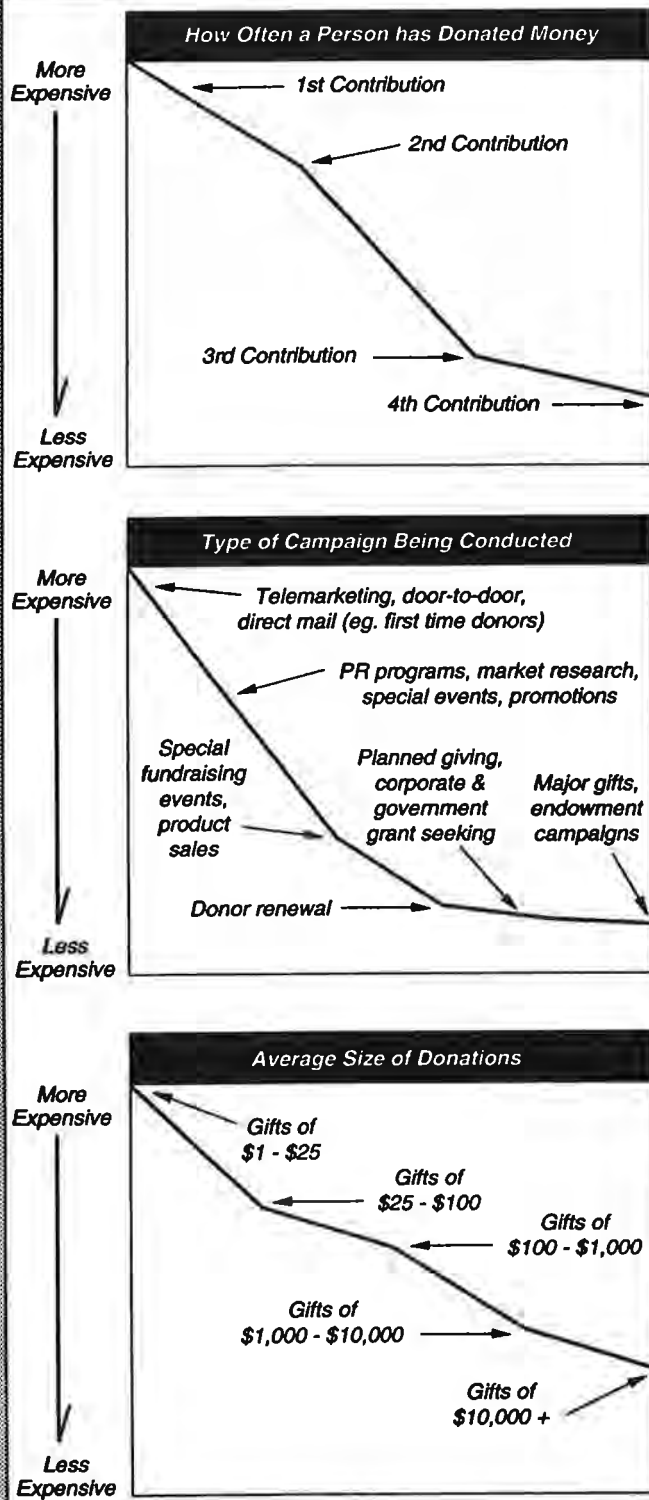
The contrast between the two types of cost ratios is striking, but several things must be kept in mind. First, a high fundraising cost ratio is not necessarily indicative of fraud or abuse. There are many valid reasons for high fundraising costs (see DISCUSSION BOX on page 22). These include the type of campaign being conducted, the average size of the donation and the age of the charity. Second, the amount of money raised by fundraisers is quite small proportional to the size of the amounts being collected by the non-profit sector as a whole. One cannot look toward high fundraising cost ratios among non-profits employing outside fundraisers, and extrapolate that they are the cause for high fundraising costs ratios in the industry as a whole. At best, they are a marginal factor in the debate.

The contracts that non-profits sign with outside fundraisers are perhaps the more important consideration. For example, it is percentage or fee based compensation that causes some of the greatest concern among other charities, professional organizations and regulators. Information of the provisions in these contracts was not made available. This information is key in determining whether there has been compliance with ethical standards.

"ONE CANNOT LOOK TOWARD HIGH FUNDRAISING COST RATIOS AMONG NON-PROFITS EMPLOYING OUTSIDE FUNDRAISERS, AND EXTRAPOLATE THAT THEY ARE THE CAUSE FOR HIGH FUNDRAISING COSTS RATIOS IN THE INDUSTRY AS A WHOLE."

DISCUSSION BOX: CRITICAL COST FACTORS OF FUNDRAISING

FIGURE 6: Critical Cost Factors of Fundraising



SOURCE: Derived by Canada West Foundation

The proportional cost of raising a dollar varies according to a number of factors often outside the direct control of non-profits and other charitable organizations. Figure 6 outlines some of these factors. They include:

- 1) *The frequency with which donors have given in the past:* Approaching donors who have given to your charity in the past lowers the cost of raising funds. Such donors have already been identified and are familiar with the charity. Donors who have contributed once or twice also tend to give larger donations.
- 2) *The type of campaign:* Locating first time donors through telemarketing and door-to-door campaigns are the most expensive way of fundraising. It is not hard to see why. First time donors have to be identified and informed about the charity. Each takes time and money. First time donors also tend to give smaller amounts which increases the total costs of securing donations. Donor renewal campaigns (which approach past donors) are less expensive, but they are only available to established charities with a list of past donors. The least costly campaign, securing a major endowment, is usually available only to larger charities.
- 3) *The average size of donation:* As alluded to above, securing larger donations from fewer people is less costly than securing smaller donations from a many people.
- 4) *The "popularity" of a charity or its cause:* The more popular a cause or charity, the less time and money it will take to secure donations. People will be more willing to donate to a well-known cause than one about which they know little.

In sum, smaller, newer and less established charities simply have to invest more in terms of their fundraising. As they grow and mature, those costs should decrease over time.

4. CONCLUSIONS

Arriving at a definitive conclusion on any of the above data is difficult. First, the quality of the data is heavily dependent on the accuracy of the non-profit groups in their financial disclosure reports. Second, the data was generated without a consistent definition of what constitutes "fundraising costs" and "charitable program expenditures." As such, the data may not be directly comparable across charities.

Yet, the data is not without any practical value. The information is helpful on an aggregate level since it does provide a window on some of the broader trends in charitable fundraising. We know that the great majority of non-profits raising funds within the province of Alberta are relatively "small operators" and that despite their numerical superiority over larger charities, they do not dominate fundraising in the province. About 25% of all monies raised within the province went to cover "fundraising costs" as defined by the charities themselves, but the amounts allocated to cover these costs are highly variable depending on a charity's unique circumstances and a number of key factors that may be out of their direct control. Larger and more established charities tend to retain for "charitable purposes" more of the funds they raise as compared to smaller charities. Those charities using outside fundraisers are likely to have higher fundraising costs, but in Alberta, most charities do not use outside fundraisers. Most charities opt for relying on "in-house" staff and a team of dedicated volunteers to raise the money they need to fulfill their mandate. Outside fundraisers play only a marginal role in the fundraising that goes on in the province.

To increase accountability within the charitable sector, there have been calls for charities to disclose financial information about the costs of their fundraising. On the surface this may seem a reasonable idea, but there are other factors to consider. For example, suppose a door-to-door campaign were to lead off with telling the potential donor that 30¢ of every dollar donated will be used to cover the direct costs of fundraising and that a further 20¢ will be used to cover administrative costs. What would happen? Some people would be so outraged to learn that only half of their money would be going to a charitable purpose that they would slam the door shut. Yet, comparatively speaking, many government programs deliver only a portion of each budgeted dollar towards their direct purposes.

The fact is, most people grossly underestimate the expenses associated with fundraising or delivering programs. The average member of the donating public may not possess a full awareness of the broader context of fundraising, and this is necessary to make proper use of any financial information being disclosed.

If the purpose of disclosing fundraising cost information to the public is to help donors make informed decisions about which charity to give their money to, the information provided will not likely accomplish this objective. In fact, such information may mislead rather than inform simply because of the lack of reporting standards on what constitutes fundraising costs and what constitutes program expenditure.

What would be useful, however, is finding the means for non-profits to evaluate fundraising performance and determine whether their organization is making the best use of its fundraising dollars.

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MEASURING COST EFFECTIVENESS

Notwithstanding the fact that charities must disclose fundraising costs and revenues to an external audience, it is curious to note that most charities do not know how to manage fundraising cost and revenue information internally. For example, do charities track fundraising cost information? How does a charity track the information? Can the information be used to improve future fundraising performance?

The use of guidelines for cost effective fundraising would enable charities to track results and guard against poor fundraising performance.²⁸ There are several model guidelines that are developing which allows charities to evaluate their fundraising cost performance. There are four types of measurements typically used in these various guidelines.²⁹

1. THE MEASURES

- a) *Percentage rate of return* is used to evaluate how well a solicitation message translates into donations. For example, in an initial donor acquisition campaign conducted through direct mail, a positive response rate of 1% can be considered successful. If results fall below 1% the organization should examine the list used to see if it was the best available and that it matched the type of project. The organization should also check the mail package to assess whether each item was helping the appeal message. To arrive at the percentage rate of return, simply divide the number of responses received by the number of solicitations made.
- b) *Average gift size* measures the cost to solicit against the income produced. The average gift size may be increased by asking for a higher minimum gift in the solicitation, but organizations should not increase it unless they are reasonably confident their potential donors will respond. Asking for a higher minimum gift opens the chance of reducing the number of responses, and this may not fit a mailing that is recruiting new donors. To arrive at the average gift size, divide the total amount of contributions by the number of gifts received.
- c) *Average cost per gift* measures the average "profit" per gift or the cost of raising a dollar. To arrive at this measure, divide the total of fundraising costs by the number of gifts received.
- d) *Program cost percentage* measures each fundraising method, technique, program, activity or event for its own cost effectiveness. Since each program performs differently, it is important to measure programs individually. To arrive at the program cost percentage, divide the program's total costs by the total contributions received and multiply by 100.

**"THE USE OF GUIDELINES
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PERFORMANCE"**

2. SOME PROPOSED GUIDELINES

Guidelines which outline appropriate fundraising costs are now being developed within the charitable sector, but there is disagreement among charities and their fundraisers on these guidelines. As a result none have been formally established. Part of the problem stems from the fact that charities are not the same in how they conduct fundraising, nor does any particular type of fundraising perform in the same way for each charity. Program costs and program results vary because of factors such as the organization's popularity and reputation, access to donors, availability of volunteers, access to corporations, management expertise, financial success and the management skill and experience of the fund raising professional.³⁰ Despite these difficulties, attempts to define appropriate criteria for evaluating fundraising performance continue:

A. Bottom Line Cost Percentage

This easy to understand measure simply boils down the sum total of all fundraising expenditures and revenues received to one percentage number (eg. 25% of all donations spent on fundraising). Bottom line cost percentages indicate the profitability and productivity of a charity's complete fund development program. To arrive at the bottom line cost percentage, divide total fundraising costs by the total gifts and multiply by 100.³¹

One should always use caution when using the "bottom line" as the only measure of cost effectiveness. Alone, it is inadequate and can lead to a misunderstanding of the levels of performance for each individual fundraising method. For example, an organization may receive an inordinate amount of bequests in one year. The bottom line cost percentage results would thusly be inflated and unrepresentative of the true performance of the fund development program. Measuring each fundraising program helps to verify how well its results relate to the other programs' performance.

As another example, the cost and time required by volunteers and staff to maintain an annual giving program remains a valid expense every year, as fundraising progress begins at the bottom of the pyramid of giving. Big gifts are unlikely to arrive unless time and energy are first invested in annual giving programs within the bottom tier of the pyramid.

Simple fundraising cost percentages (or ratios) are helpful, but their most useful purpose is for internal evaluation of the performance of an organization's fundraising program. Fundraising cost ratios may not be a good tool for reporting an organization's fundraising effectiveness to the general public since they can vary greatly based on a number of circumstances unrelated to program efficiency and effectiveness. The bottom line cost percentage method of assessing fundraising cost effectiveness has been heavily criticized:³²

- This type of information is new to the public and they might not fully understand what cost ratios actually represented;

*"ONE SHOULD ALWAYS
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MISUNDERSTANDING OF
THE LEVELS OF
PERFORMANCE FOR EACH
INDIVIDUAL FUNDRAISING
METHOD."*

- There are no comparative studies or guidelines available to charities or the public which measure cost ratios. Therefore, misinterpretations are likely;
- It is questionable whether the public should choose to support charities by comparing their fundraising costs. Charities are not the same in how they perform fundraising, nor does fundraising perform the same way for every charity; and
- Disclosure proposals based on cost ratios may prove to be harmful to public giving, which is now based on trust, perceived public benefit and charitable intent, rather than income and expense comparisons.

B. Reasonable Cost Guidelines

A second measure of fundraising costs are so-called "reasonable cost" guidelines.* These can be applied to measure cost effectiveness and to demonstrate future capacity for productivity. The guidelines employ averages that have been developed from actual experience in many charitable organizations and are based on mature fundraising development programs that have been in operation for at least three years.³³

Each of these measures should be applied separately to individual fundraising methods used by the charity in order to monitor progress at regular intervals. Each fundraising method has its own level of reasonable cost, so true comparisons between institutions are difficult. A more fair comparison is to measure similar institutions, method against method, using the following "reasonable cost" guidelines:

- Direct mail donor acquisition or constituency building generally costs \$1.25 to \$1.50 to raise \$1.00, plus a 1% rate of return on all lists used in the mailing;
- Direct mail donor renewal and constituency retention costs about 25¢ per \$1.00 raised plus a 50% rate of renewal among donors of the previous year;
- Special events and benefits cost 50¢ per \$1.00 raised;
- Corporation and foundation solicitation costs 20¢ per \$1.00 raised;
- Wills and estate planning costs 25¢ per \$1 raised; and
- Capital campaigns cost 5 - 10¢ per \$1 raised.

Most, if not all fundraising programs, must begin with basic donor acquisition – even if it is the least cost effective method. It is costly to seek out new donors. Basic retention of the donor base is also costly, but it must be continually undertaken because maintaining and renewing the donor base is essential. When donor involvement in a charity first begins to occur, donors typically contribute relatively small amounts as they

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are at the bottom of the so-called "giving pyramid." Once donors' increase their commitment to the charity, they can be encouraged to consider more substantial gifts. This development process is ongoing, and the aim is to build a strong base, constantly recruiting new donors to add at the bottom of the "pyramid" so that the potential for progress to the top will be greater. ³⁴

Results of research in the U.S. suggest that mature development programs should be able to reduce costs to 20 cents per dollar raised, leaving a net of 80 cents delivered to the charity. But, a special pressure for new and smaller charities, along with those just beginning formal development programs, is the unrealistic desire for instant results. Sometimes, newer and smaller charities are desperate for immediate gifts to cover operating costs. They may be tempted by offers of quick cash with no work on their part. ³⁵

However, a minimum three year investment in building a pool of interested and committed supporters is still the best way to go, so that traditional, proven, acquisition and retention methods can become effective and offer a sound base from which to seek major gifts further down the road.

In sum, there are no easy ways to build a solid base of committed donors. The speed of results is dependent on how quickly board members and volunteers make the personal commitment to give funds and solicit funds from others. ³⁶

There is truth to the axiom "it costs money to raise money" – fundraising costs are an investment. But, mature fundraising programs should still demonstrate highly "profitable" performance. This can be shown through the use of program budgeting. Program budgeting is a method where each fundraising program is viewed as a separate fiscal operation with a direct comparison made of its complete expenses against the gift income it produces. Direct costs include expenses for printing, postage, telephone, travel and the like. Indirect costs are more difficult to track, but they include percentage of staff time given to each program plus a corresponding share of their benefits, and a percentage of office operations as overhead. Charities should also keep track of gift income by purpose or restricted use.

Donors expect reports on how their money is spent, which requires fund accounting practices. It is important to report to all donors about the good use of their money. Such communication confirms the fulfillment of donor intent as well as progress in fulfilling the mission. Audited financial statements should report gift income clearly, as well as how the money is used.

Fundraising programs can be successful and well managed at a reasonable cost level, even below the reported national average of 20 cents on the dollar. Demonstrated cost effective programs will build public confidence in charities and in professional management of fundraising activities. ³⁷

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C. Return on Investment (ROI) Analysis

Although a standard formula for determining a reasonable return on investment (i.e. donations given as a portion of fundraising costs) is not yet agreed upon, it is generally agreed upon that a simple bottom-line cost percentage alone is an inadequate measure of performance. Different kinds of fundraising activities cannot simply be compared with others.

A recent project outlined in the *Philanthropy Monthly* (March 1993) establishes a suggested acceptable return on investment for charities on two primary dimensions:

- (i) The *type* of fundraising activity, (narrowed to 10 specific activities in the study). Different fundraising activities have to be evaluated separately because some are simply more cost efficient than others. For example, initial donor acquisition efforts always yield a lower return on investment than renewal efforts;
- (ii) The average *size* of donations (narrowed to six specific ranges in the study). "Reasonable" cost efficiency depends on the average size of donations and the corresponding number of donors. For example, an organization spending \$350,000 to raise \$1 million from 20,000 donors each giving an average of \$50 may be considered "reasonable." It is highly unlikely that spending \$350,000 to secure a single \$1 million gift could be considered "reasonable." Therefore, any suggested minimum return on investment would include a sliding scale that varies according to average gift size.³⁸

Available industry data was used to construct a set of minimum ROIs by comparing the average returns for different fundraising activities and average gift size. These minimum ROIS appear in Figure 7. The data represents reasonable costs for *mature* fundraising programs of three years or older and was developed by drawing on the *actual experience* of the charitable industry in the U.S. given the variable costs of different types of fundraising campaigns. To our knowledge, no similar data is available for the Canadian sector.

An ROI of 100% indicates that the amount of gifts received exactly equalled the amount invested. Any amount above 100% indicates fundraising expenses exceeding contributions, while any percentage below 100% indicates a net income.

Figure 7 suggests that fundraising costs for campaigns designed to elicit large contributions from corporations, governments and wealthy individuals are lower than those campaigns intended to raise *smaller* contributions from a *wider range* of *first-time* donors. For example, a corporate campaign yielding an average donation of \$20,000 should only cost 15% of the total raised. But, a campaign seeking out first-time donors who then gave gifts averaging \$7 each could very well cost twice the total amount raised.

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Fundraising activities which cost more than they raise may set off alarm bells because expenses exceed the return. But they should not. Given the *type* of campaign, the *size* of the donation and the *number* of donors, this can be considered “reasonable.” This type of campaign is a *start-up* activity – an investment in a larger and ongoing fundraising effort. Thus, specific fundraising *cost ratios* cannot be labeled as ethical or unethical. It is the *practices* of charities that must be considered. For example, it may be unethical for a charity to conduct a donor acquisition campaign that fails to generate net revenue, but only if that charity does not take those first-time donors identified in the original campaign and secure a second donation through a donor renewal program that can generate net revenue.

The availability of ROI minimums makes it possible for organizations to evaluate their fundraising cost performance. They also enable comparisons of actual ROIs against suggested ROI minimums at the end of each fundraising activity. For example, Figure 7 indicates that it may not be unethical to acquire a donor’s first gift through direct mail, at 100% of the fundraising cost, or even at a loss, depending on the average size of the gifts that the campaign yielded. But, it is perhaps unethical to do so if there is no follow-up through an adequate donor renewal program soliciting further gifts from that donor. Established direct marketing fundraising programs that produce less than two thirds of their income through donor renewal should be suspect. While direct mail fundraising programs do produce net income, their greater value to a non profit organization is to provide a prior donor base from which major donors who produce significant net income can be identified and solicited through appropriate methods.

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FIGURE 7: Suggested ROIs By Fundraising Activity and Average Gift Size

Percent of Donations Spent on Fundraising Type of Campaign	Average Gift Size					
	\$1 to \$10	\$10 to \$25	\$25 to \$100	\$100 to \$1,000	\$1,000 to \$10,000	Over \$10,000
Donor Acquisition	200%	143%	125%	100%		
Special Events & Promotions	143%	100%	77%	Not Applicable		
Donor Renewal Programs	50%	50%	33%	25%		
Special Events	77%	77%	50%	50%	25%	
Corporate Grants				25%	20%	15%
Major Individual Gifts				25%	18%	15%
Endowment Campaigns	Not Applicable			25%	18%	15%
Planned Giving					20%	15%
Government Grants					20%	15%

SOURCE: Developed by Canada West Foundation from *Philanthropy Monthly*, March 1993, pg 30.

It is unwise, if not unethical, to fail to upgrade as many donors as possible from direct marketing programs to major donor solicitation programs such as major gifts and planned giving. It is also imprudent, if not unethical, to incur unreasonable costs or pay more than fair market value for fundraising staff or outside counsel, printed materials, prospect lists, computer or other outside services, etc., and other such program needs, regardless of the fundraising ROI percentage achieved. It is unethical to invest in capacity building without also making corresponding investments in other net income producing activities.

Fundraising efficiency should not be confused with fundraising effectiveness. The objective of an institution's program should not be to spend as little as possible each year to raise money, but to maximize the net. For example, a program that annually produces \$2 million at a cost of \$160,000, or 8% may look good and is indeed efficient, but one that produces \$3 million at a cost of \$300,000, or 10% is presumably of more help to the institution because it is bringing in \$860,000 more. While the objective should be to maximize the net, there are limits beyond which it is impolitic if not unethical to spend money to raise money.

The ROI formula above is intended for use by all voluntary non-profit organizations controlled and directed by unpaid, volunteer boards and those who want to avoid unethical fund raising costs and practices in pursuit of their missions.

D. The Fundraising Efficiency Index

A fundraising efficiency index was also developed in the U.S. as a way for potential donors to compare charities.³⁹ In order to determine an organization's fundraising efficiency, Form 990 financial statements (which tax exempt organizations file with the IRS) were used as a statistical base. There are two basic indexes, arranged in order of revenues directly supplied by the general public:

- (i) *The Program Commitment Index* measures the amount of total funds that an organization commits to fulfilling its charitable mission as opposed to paying for fundraising expenses. This ratio should be analyzed with caution since many organizations may be a part of an affiliated group and could be sending their funds to the national organizations or vice versa;
- (ii) *The Efficiency Index* measures the amount of funds raised from the general public that are made available for the organization's general purposes.

The indexes clearly have their limitations. For example, some organizations like the Shriner's Hospitals do not report any fundraising costs because the costs are handled on behalf of their member affiliates. Some large organizations, like the YMCA, do not appear on the list at all because they do not consolidate their affiliated member organizations. Finally, the data base for the survey, the Form 990 financial statements, are no more reliable or consistent than the organizations that filed them.

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RECENT STUDIES ON FUNDRAISING EFFICIENCY

1. A U.S. STUDY

A recent U.S. report on fundraising efficiency observed that experienced donors usually try to evaluate fundraising efficiency by looking at the percentage ratio of fundraising cost to direct public support – that is, how much a charity had to spend to raise one dollar of public contributions.⁴⁰ The assumption here, is that the lower the ratio the more efficient the charity is at distributing money to worthy causes. The report used measurements not unlike the ROI Analysis to compare the costs of fundraising. The report used information from Form 990 financial statements and additional information from the charities themselves, especially the total number of gifts received during the year from individuals, corporations and foundations. Based on that information, the average fundraising cost per gift and average gift size was calculated.

Since charities may understate fundraising costs by charging a portion to “educational” programs, the report used National Charities Information Bureau information to adjust the fundraising costs based on a review of the educational materials that charities send out with their fundraising solicitations. If the educational amount turned out to be more than 40% of the total costs, an adjustment was made to keep the educational cost to no more than 40%, a reasonable cutoff according to most non-profit experts. In analyzing the list which was developed for the report, it is best to compare charities within groups. The median cost is what’s reasonable for that group. The fundraising cost per gift column shows how much of a gift goes to fundraising efforts.

2. A CANADIAN STUDY

In 1992, a study was conducted by a graduate student in the MBA program at the University of Ottawa entitled, Fund-Raising Effectiveness for Charitable Organizations.⁴¹ As background to the study, the following observations were cited:

- a) As of 1988, Canada is entering its third decade of a continuing decline in giving to charitable organizations;
- b) Individuals choosing to refrain from making charitable gifts say that they suspect their funds would be misused;
- c) Corporate donors place a high level of importance on knowing enough about charitable and non-profit organizations to choose recipient organizations.

This background review suggested a need for charitable organizations to be effective and efficient in the manner in which they approach potential donors, and the methods they use to try and convince potential donors to give. As the number of charitable organizations continues to grow and the funds available to support them diminishes, potential donors are becoming increasingly critical of some of the approaches used by charitable organizations. The corollary to this argument is that contributions from individuals and organizations might be expected to increase if they knew the recipient organizations better, and they were assured that they would make effective use of all donations.

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The purpose of the study was to evaluate the relationship between efficient fundraising and the types of information that is supplied to potential donors, both individuals and corporations, during a direct mail campaign. The study presented the following findings as a result of a survey of approximately 50 charitable organizations, having their head office in either Vancouver or Ottawa:

- a) The effectiveness of fundraising is affected by the information that is sent during direct mailings to potential donors. In particular, a statement indicating tax receipts will be issued for all contributions will generally have a positive impact in the mailout;
- b) Mailouts should include information about the organization's accomplishments, details of why the gift is being sought and benefits the donor will receive by donating to the organization;
- c) The more efficient methods of fundraising include direct mail campaigns to current donors and telephone solicitations. Methods with lower efficiency were direct mail campaigns to new, prospective donors and special events.

3. THE CCAE AND CASE STUDY

In 1988, the *Canadian Council for the Advancement of Education (CCAЕ)* struck a Task Force to examine the issue of reporting standards for fundraising activities of Canadian universities and colleges. Currently, there are no formally accepted standards for such reporting. The *Council for the Advancement and Support of Education (CASE)* in Washington, D.C. and the U.S. based National Association of College and University Business Offices (NACUBO) have done a great deal of work in this area. The two organizations collaborated on a report published in 1982 entitled, Management Reporting Standards for Educational Institutions: Fund Raising and Related Activities. All CCAE members received a copy of the report.⁴²

The Task Force then conducted a survey amongst its members, and found that of the 32 CCAE members who returned the survey, 23 were familiar with the CASE standards but only 3 followed the standards in full, while 16 followed the standards only in part. In the U.S., it was noted that institutions that use the CASE Management Reporting Standards still include non-approved items, such as revocable trusts, in campaign totals.

In addressing the issues surrounding reporting standards, the CCAE Task Force asked who would benefit from such standards. If there was no perceived benefit by the institutions, would there be any incentive to conform to any standards? It was also important to determine how institutions currently evaluated program or project effectiveness and what gifts might be included in public reports so as to better their understanding of the level of diversity among institutions. Another survey was developed by the CCAE Task Force. A total of 152 surveys were mailed out and 49 were used as a basis of the survey results.

Of the survey's respondents, 89% supported reporting standards, but the level of support weakened to 81% on the question of standards enhancing the acceptability of fundraising reporting with external users. In response to the CASE Management Reporting

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Standards, 75% said that they were useful standards, but needed modifications. CASE Management Reporting Standards need to be “Canadianized” and it would be useful if institutions answer honestly and completely and comparisons are made between similar institutions.

As a result of the survey findings, CCAE recommended to “Canadianize” the CASE Standards, provided workshops on evaluating program effectiveness and examined the impact of uniform reporting by member institutions. Recently, CCAE presented a report with modifications to the CASE Management Reporting Standards. There are two sections to the report:

A. The Gift Revenue Report

The primary reason to report gift revenues is so that the proportion of gift revenues coming from various constituent groups, the designated destination of gift revenue and the amount of gift revenue attributed to various fundraising programs can be better understood. The report cites four basic gift sources – corporations and corporate foundations, charitable foundations, individuals, and city, regional and other government support. Money provided through transfers from provincial or federal ministries or gifts in kind such as land, pledges, premium payments received to maintain life insurance policies, revocable trusts, expectancies for bequests, property which the institution cannot include in its asset base, gifts received by third party organizations like City Foundations, and revenue for research were not included.

The study suggests reporting gifts as going to one of nine designations: faculties or departments, chairs or professorships, student aid and support, libraries or museums, equipment, research, physical plant development, athletics, or unrestricted. Types of solicitation programs include annual giving, major gift or capital comprehensive program, planned giving, and bequests. Supplemental information that an institution should track include the number of alumni records, the number of persons solicited, and the number of bequests and planned gifts realized.

B. The Advancement Expenditures Report

This section of the report noted that practicality and feasibility have been the guiding principles in the development of guidelines and definitions as they relate to expenditures allocation. It is unlikely that these guidelines will conform with current practices for most institutions. After all, this diversity has created the demand for guidelines in the first place. This approach is an attempt to make it possible for all those who are responsible for managing such programs to “speak the same language” to report costs by the same rules.

The four main categories for allocating costs include administration, development, alumni costs, and other. Two or more purposes may be served simultaneously by activities associated with the broad categories of fundraising, alumni relations and other public relations. For the purposes of the report, the assumption was made that all activities are undertaken for a primary purpose. Secondary benefits from these activities may occur, but no allocation of expenditures is to be made for these secondary benefits. To date, the CCAE has not reached a conclusion about how reporting standards can be implemented given the diversity of their membership.

*“AS A RESULT OF THE
SURVEY FINDINGS, CCAE
RECOMMENDED TO
“CANADIANIZE” THE CASE
STANDARDS”*

INCREASING FUNDRAISING POTENTIAL

One of the authors of the ROI Analysis recommend investing more money into fundraising to increase the cost effectiveness of charities' fundraising programs. ⁴³ Using an industry standard of 15 percent average fundraising costs, the non-profit sector (in the U.S.) spent about \$16 billion in 1988 to raise \$104 billion and net \$88 billion for charitable programs. If the sector had invested \$25 billion in fundraising could it have raised \$140 billion and netted \$115 billion? Research indicates there is a vast untapped potential for giving in the United States. ⁴⁴ According to one source, the current rate of growth of giving is 10% to 12%, and if the non-profit sector were to increase fundraising budgets and invest the money wisely, could there be a corresponding rate of growth of giving? If fundraising budgets were increased by 12%, this could double the U.S fundraising budget in six years from an estimated \$19 billion in 1990 to \$40 billion in 1996. Non-profit boards should be encouraged to invest more money in asking more donors to give more money.

Individuals give because they are asked to give, not because they have the potential to give or because non-profits set goals for them. Therefore, investing in fundraising at a faster rate is required. Effective asking costs money. It involves needs assessment, case development, market research and feasibility studies, prospect research, fundraising planning and budgeting, volunteer solicitor recruitment and training, volunteer solicitation, gift processing and acknowledgement, donor recognition, donor record keeping, results analysis, and fundraising performance and evaluation. Research on the economics of fundraising shows that there is a direct relationship between fundraising expenditures and results. ⁴⁵

However, translating fundraising potential into actual results cannot be accomplished simply by increasing budgets. Instead, there are nine guidelines for investing more money in fundraising wisely. ⁴⁶

1. ATTITUDE

Set aside negative attitudes towards fundraising and fundraising costs. There are both legitimate concerns and uninformed negative attitudes toward fundraising costs. For example, new donor acquisition efforts usually cost 75% to 150% of what they raise. To be effective, fundraising investors must accept that such performance is considered reasonable by virtually all members of the fundraising profession and by most non-profit board executives. Investing more money in new donor acquisition broadening base of support is essential to increasing giving at a faster rate of growth.

2. MATCH EXPENSES FOR EVERY FUNDRAISING EFFORT

Budgeting and accounting systems should be set up to match expenses with related revenue for each and every fundraising effort. Budgeting, accounting and evaluating fundraising expenses and related revenue effort by effort may be new to non-profits, but it is vital if non-profits are to invest more money in fundraising wisely. The cost data is the most significant. Many fundraising operations have sophisticated analysis for the revenue side of their other fundraising equations, but they include little or no cost data.

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3. RECOVER COSTS FROM RELATED GIFTS

Recover fundraising investments (costs) from related gifts. Recovering investments in fundraising by deducting costs from related gifts when they are received is an uncommon practice today. However, no accounting concept could be more important for the non-profit sector. If there is a vast untapped potential for individual giving and if costs can be deducted from related gifts, there must be a vast untapped source of funds to spend on fundraising. All fundraising costs are deducted from somebody's gift. At the end of a fiscal year, non-profits in effect deduct all fundraising expenses from unrestricted, direct public support gifts.

If non-profits are to spend money on asking at a faster rate in order to increase giving at a faster rate, they need to take a bonafide investment approach to investing more money in fundraising. They need to start testing the overt deduction of the money they have invested in fundraising directly from the the gifts their investment generates. Non-profit boards should invest money in fundraising. Fundraising managers should submit requests for fundraising investments and then spend the money approved. The accounting department should recover the funds invested by the fundraising investors from related gifts as they are received.

If investors in fundraising can literally invest in, rather than spend on, fundraising, then what they will need is more working capital to invest, not to spend, and the amount of working capital needed to invest in fundraising will be a fraction of the total amount of the money needed to spend. Non-profit boards will be able to set up revolving fund budgets for investing in fundraising. Grant makers will be able to provide interest free loans, revolving fund grants, and recoverable grants to enable grantees to expand their fundraising efforts.

4. INVEST PROPERLY

Invest by appropriate categories of fundraising. Requests submitted to fundraising investors should be presented by categories appropriate for making wise investment decisions. Separate investment decisions, should be made for the following categories of activities related to fundraising.

a) *Fundraising investments in the capacity building category* are essential for long term increases in the rate of growth of giving. Capacity building produces no income and therefore cannot be evaluated in terms of return on investment. It includes; assessing an organization's capacity to raise money; board recruitment and development; development of a clear mission statement; setting goals to achieve mission; long range strategic planning to achieve goals; marketing programs and services; accounting and financial reporting; fundraising market research; major campaign feasibility studies; setting up donor records systems; setting up other fundraising office systems. Since capacity building produces no income, investments in this category cannot be matched directly with specific gift receipts from which these investments can be deducted. Capacity building investments are long term investments that must be charged to general operating fund and taken from reserves or funded through a capacity building grant.

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b) *New donor acquisition and related categories* are intended to broaden a non-profit's base of support from individuals. New donor acquisition efforts are income producing, but they are usually not expected or intended to produce net contributions. Most, if not all, direct, variable costs associated with new donor acquisition can be deducted from related gifts as they are received.

c) *Individual donor renewal* is the category of fundraising activity that produces net contributions from the second, third and so on gifts from prior individual donors. Donor renewal is expected to be efficient and focuses on retention and upgrading of prior donors. It includes major individual annual gifts, special gifts, capital gifts, and gifts for endowment. Because of the large margin of profit all the costs associated with donor renewal can be deducted from related gifts as they are received.

d) *Planned gifts* should be invested in separately from other donor renewal activities. Planned giving activities are directed toward those annual donors who respond to requests to consider making bequests or other deferred gifts. It should be invested in separately because the related costs occur many years before the income is received. Once a planned giving program begins producing cash income, current year planned giving costs can be deducted from unrelated cash planned gifts received.

e) *Grant seeking from corporations and foundations* generally produces net income, even with the first grant. Because of the large margin of profit, all the costs associated with grant seeking can usually be deducted from the unrestricted portion of related grants as they are received.

5. GIVE INVESTORS USEFUL INFORMATION

For investing in all fundraising activities except capacity building, fundraising investors need information that will enable them to determine if each proposed investment is projected to have the desired rate of growth and a reasonable fundraising cost percentage.

The fundraising cost percentage should present expenses, projected results, and projected cost percentages. The request should show the net return for last year, the projected rate of growth, the projected number of gifts, and the average gift size. This information will show the projected net return on investment and the projected annual rate of growth that net return represents. Investors will be able to see if the sum of the projected net returns is equal to or greater than the goal for financing the program services planned for the following year. Investors will also be able to see if the projected overall rate of growth of net return on investment is equal to the goal of growth.

The accounting system should be set up to match and report the actual expense and related revenue for each fundraising effort, in the same format as the budget. Actual expenses and results can then be compared with the budgeted expenses and projected results so that more accurate budgets and projections can be made in the future.

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6. KEEP COST PERCENTAGES REASONABLE

Keep fundraising cost percentages reasonable. Projected fundraising cost percentages should be reviewed during the budgeting process to assure that they are reasonable for each type of activity. Figure 8 contains a recommended cost percentage chart that can be used as a guideline.

FIGURE 8: Recommended Reasonable Fundraising Cost Percentages*

* <i>Fundraising Cost Percentage equals fundraising expenses as a percent of total contributions</i>	BROADENING THE BASE: (New Donor Acquisition, First Gifts, Special Event Promos, etc.)		RAISING NET DOLLARS: (Donor Renewals, Major Gifts, Planned Giving, Foundations, etc.)	
	<i>Objective</i>	<i>Maximum</i>	<i>Objective</i>	<i>Maximum</i>
<i>Average Gift Size Range</i>				
\$1,000,000 +	4%	10%	2%	5%
\$500,000 - \$1,000,000	5%	10%	2.5%	5%
\$250,000 - \$500,000	6%	12%	3%	6%
\$100,000 - \$250,000	8%	14%	4%	7%
\$50,000 - \$100,000	10%	16%	5%	8%
\$25,000 - \$50,000	12%	20%	6%	10%
\$10,000 - \$25,000	14%	24%	7%	12%
\$5,000 - \$10,000	16%	30%	8%	14%
\$2,500 - \$5,000	18%	40%	9%	16%
\$1,000 - \$2,500	25%	50%	10%	18%
\$500 - \$1,000	30%	75%	12%	20%
\$250 - \$500	40%	100%	14%	22%
\$100 - \$250	50%	100%	16%	25%
\$50 - \$100	50%	100%	20%	30%
\$25 - \$50	75%	125%	25%	40%
\$10 - \$25	100%	150%	35%	50%
\$5 - \$10	100%	150%	50%	75%
Under \$5	100%	150%	50%	100%

SOURCE: Levis, B., "Investing More Money in Fundraising - Wisely", in *Taking Fund-Raising Seriously*, Burlingame D. and Hulsey, L., eds., Jossey-Bass Inc., San Francisco, CA, 1991.

Criteria for determining reasonable fund-raising costs for each proposed fundraising investment vary according to the following two dimensions:

- a) *Objective:* A broadening of the donor base (eg new donor acquisition) is not expected to produce significant net gifts, and costs of 100% or more can be reasonable. Raising net dollars, usually from prior donors, should cost less than 30% on average;
- b) *Projected average gift size:* For example, reasonable donor renewal costs can vary from 2%-5% for a \$1 million average gift size to 50%-100% for an average gift size of \$250 or less.

Fundraising investors should keep in mind that if 80% of the money comes from the 20% who are major donors, then actually 90% of the net money comes from these donors as the cost percentages for major donors are 5% to 15% while gifts from the other 80% percent of the donors might cost 20% to 50%. But, tomorrow's major donors are among today's 80% that are at the small to modest level, and even those that today give little have their place in philanthropy – even at a 50% fundraising cost.

7. THE BOTTOM LINE COST PERCENTAGE

Do not try to lower bottom line cost percentages. Fundraising investors should not pursue an investment policy of lowering overall annual fundraising cost percentages by reducing efforts to broaden the base. In the long run, doing so significantly reduces the rate of growth of net contributions. In addition, there are no reasonable performance criteria for determining the reasonableness of fundraising efficiency when acquisition data are combined with renewal data, when major gift data are combined with small to modest gift data, or when capacity building costs are included.

Although legislators, regulators and the media continue to focus on the bottom line fundraising cost percentage, they need to discover other methods of exposing fundraising abuses without creating or reinforcing negative attitudes about fundraising costs. Bottom line fundraising cost percentage can be used as one tool for helping them identify potentially abusive situations that warrant further investigation, but high cost percentages are not abuses, in and of themselves, so other criteria must be applied in order to determine if an abuse has actually occurred.

8. TEST NEW FUNDRAISING EFFORTS

Always test the organization's new fundraising efforts. To the extent possible new fundraising efforts should start with modest a investment on a test basis.

9. LEARN FROM EACH INVESTMENT

Learn from each and every fundraising investment. Fundraising investment requests should be accompanied by data about the results of previous fundraising investments so that subsequent ones can be based on evaluations of the performance of previous efforts.

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CONSULTATIONS WITH THE SECTOR

As part of this research project, a series of regional consultation forums were held across Canada in November and December of 1994. In Ontario, workshops were held in Toronto, Ottawa and London. One session was held in Montreal and two sessions were held in Atlantic Canada – one in Halifax and the other in St. John's. Three sessions were held in the Western Canadian cities of Edmonton, Calgary and Vancouver. Representatives of various Canadian charities, fundraising firms and charitable organizations attended the sessions to discuss six topics:

- a) *Management issues such as cost effectiveness and fundraising practices;*
- b) *Professional issues such as the accreditation of fundraisers and a code of ethics;*
- c) *Government regulation, prior approval and changes to Revenue Canada's "80/20" rule;*
- d) *Third party fundraisers, percentage commissions, donor lists and disclosure requirements;*
- e) *Public education and communication; and*
- f) *Other issues of accountability.*

In the Appendix, **Matrix 1** details the major themes and questions that forum participants were asked to consider. In addition, the matrix outlines some of the main conclusions reached at each of the workshop sessions. A consensus began to emerge at the consultations with respect to the following:

1. MANAGEMENT AND COST ISSUES

In six of the nine workshop sessions, it was mentioned that the industry needs to come up with an agreement regarding a set of industry standards or "guidelines" to measure the cost effective performance of charities.

In four of the nine sessions, it was acknowledged that the industry will have difficulty in achieving this agreement because of the diversity amongst charities, their missions and the variety of fundraising programs. However, there is a general willingness to proceed in identifying at least some minimal guidelines on what constitutes cost effectiveness.

Participants were unclear in terms of who should set the guidelines. At least one workshop argued that the larger charities should grab the lead on this front. There was little to no support for government intervention.

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The consultation sessions reveal that the industry is concerned about the singular emphasis being placed on the fundraising cost issue. Three sessions report that other non-financial indicators (eg. outcomes, provision of services, impact on the public) are just as important a performance measure.

In over half of the meetings, participants expressed a clear concern that the public and government has misunderstood the “long term objectives” of fundraising. High fundraising costs today can pay off in terms of higher donations tomorrow and highly increased returns on investments over time. It was mentioned that the dominant thinking on this issue has to be turned around from fundraising “costs” to fundraising “investments.”

2. PROFESSIONAL ISSUES AND A CODE OF ETHICS

The accreditation of fundraisers and others active in the charitable sector was clearly supported in six of the nine consultation sessions. Participants felt that accreditation would help in the development of industry standards and would aid in quality control. It would recognize experience and enhance the general credibility of the sector.

Participants were unclear on where people should go for accreditation. It was mentioned that a two or four year program at various community colleges could be developed, but no consensus on this particular aspect of the discussion emerged.

In only two of the sessions was accreditation clearly ruled out. For those participants, the cost of accreditation was an issue. For others, it was felt that accreditation was more a question of “control” than actual education - accreditation cannot guarantee good practices.

Every workshop session lent full support to developing an industry-wide code of ethics. It was felt that such a code would help preserve the credibility of the sector and clearly outline industry practitioner’s social responsibilities and commitments to the health of the sector. There was less agreement, however, on what a code of ethics should include. The most popular ideas that emerged were:

- a) A prohibition on percentage/commission fees charged by professional fundraisers and a series of stipulations outlining the proper relationship of a charity with a professional fundraiser – including a “model” contract;
- b) The inclusion of sanctions against those who breach the code, such as a loss of industry certification; and
- c) A “donor’s bill of rights” which would stipulate that the donor’s interest is legitimate and must be served.

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3. GOVERNMENT REGULATION

There was a strong consensus that government approval prior to conducting a fundraising campaign was not an acceptable form of regulation. It was commented that pre-approval is really a form of overkill to get a few bad practitioners.

But, participants did not totally rule out government involvement. While many argued that an industry code of ethics, would help curtail abuse, some mentioned that official sanction in the form of government enforcement would be a necessary corollary to self regulation.

Several sessions made mention that it was simply too easy for an organization to achieve charitable status and a Revenue Canada charitable tax number. Participants urged government to review the definition of a charity and tighten the rules.

It was also agreed upon by about half of the working sessions that Revenue Canada's "80/20" rule was an impractical measurement of the cost-effectiveness of charities and difficult to apply across the board. Once again, the main problem is one of accounting differences, and the need to first get agreement on proper cost allocation.

4. THIRD PARTY FUNDRAISERS

Several themes emerged regarding the management of relationships between charities and professional fundraisers:

- a) About half of the workshop sessions mentioned that percentage based or commission type fees were an unacceptable form of compensation. Some participants argued that government should put in place legislation making the practice illegal. There were, however, a few participants who argued that this relationship was a contractual matter and that fundraisers should be allowed to set their fees as discussed with their clients, but fundraising firms should be registered.
- b) There was clear support for the idea that charities - not fundraisers - must retain 100% control and ownership of any donors' lists.
- c) It was generally agreed that donor's should be given forthright answers about a third party fundraiser's involvement in a campaign - but only if they asked. Some participants were inclined to take a harder stand, saying such disclosures should be mandatory, but they were in the minority.

5. PUBLIC EDUCATION & COMMUNICATION

The charitable sector recognizes that public education and communication with the donating community is a top priority in building and maintaining confidence in the sector. As a result of the consultation meetings, several themes on on this topic emerged.

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PRACTICE ILLEGAL."*

- a) Charities should provide more than just “cost data” and information about fundraising costs, since cost information is highly specific to each charity and the type of fundraising campaign. Other types of information that should be conveyed include more information on the charity’s programs and a breakdown of how each donated dollar is utilized.
- b) Many participants argued that charities should not make attempts to compare their cost efficiency with other charities when disclosing financial and cost information to potential donors. Information given to the public must be easy-to-understand and avoid overly complex scenarios. As a result, boiling down cost efficiency into one gross or net figure can be misleading.
- c) An interesting idea coming up in the discussion was the placing of a ban on “extravagant” claims by charities. It was argued that this could be handled through an industry code of ethics.

6. ACCOUNTABILITY ISSUES

There was general agreement that boards of directors should be responsible for upholding the integrity of their organization’s fundraising campaigns. Participants in favour of setting certain criteria to this effect were unanimous in stating that the criteria should be developed by the industry, not government. Some participants advocated that the Canadian Centre of Philanthropy (CCP) should take a lead role with respect to setting these criteria. It was widely recognized that boards of directors currently lack information on what their responsibilities are with respect to fundraising. More education and information should be made available to boards of directors so they are aware of their responsibilities.

With respect to fundraising cost disclosure, three sessions mentioned that “gross and net” financial information was probably the only way financial information could be easily communicated. But, as already mentioned, participants felt there are problems with this approach.

Less consensus emerged on the “public education” vs. “fundraising cost” issue. Several sessions mentioned they could not come to agreement on the issue. Some argued that public education is a “built-in” opportunity inherent in fundraising, and as such, cost allocation should be permitted.

7. CONCLUSION

Participants are aware that there are problems of accountability and credibility within the sector, and they are willing to take steps to solve those problems. For the most part, the sector wants the opportunity to tackle these problems themselves. Although the sector may want to leave the government with only a limited role in the process, government intervention in the form of legislation which provides for the enforcement of an industry code was not totally ruled out.

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DONOR ATTITUDES TOWARDS SOLICITATION

Maintaining and enhancing the reputation of the non-profit sector is vital if charities are to succeed in accomplishing their missions. To be successful, charities must enjoy an excellent reputation in the minds of the general public.

Little Canadian research has been done on donor attitudes towards charities. Matrix 2 (in the Appendix section of this report) identifies several American and British studies. Most of these studies were prompted by recent news stories on charitable fundraising scandals. The studies have attempted to measure the effect of these highly publicized scandals on donors' attitudes towards charitable fundraising, and how they felt the sector might be best regulated.

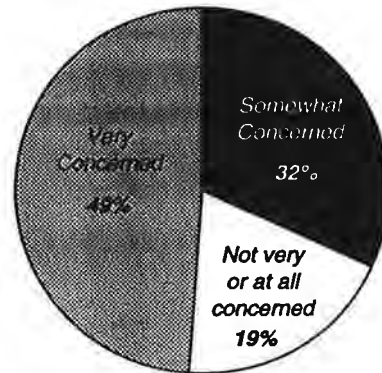
Various public opinion studies also reveal that people generally retain a positive view of charities, but they are aware that some engage in less than ethical practices, and some routinely waste resources given them by donors. In the absence of specific Canadian data, a look at some U.S. data is instructive.

One study conducted in the U.S. for the *Council of Better Business Bureaus (1990)* showed over 80% of respondents being "very or somewhat concerned" about the amounts that charities spend on activities not directly related to their stated charitable purpose (Figure 9). The same poll asked respondents how trustworthy they felt charities were today as compared to ten years ago. Over half felt that charities had become less trustworthy in the last decade. Almost 75% of the respondents indicated more regulation of charities was needed.

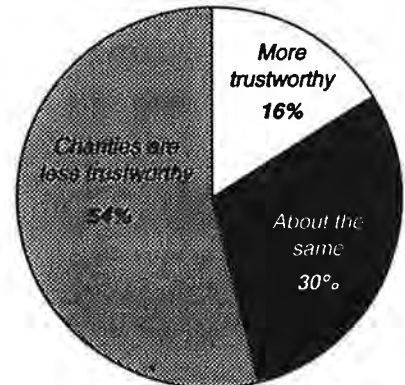
In general, the various studies and polls under consideration reveal that charities retain a certain level of public confidence and support, but it is guarded. Support for charities is by no means indefinite nor guaranteed. Yet, addressing charitable sector accountability without due care has its pitfalls as will be seen in the *Epilepsy Canada case*, to be discussed further on in the report.

FIGURE 9: Donor Attitudes Towards Charitable Solicitation

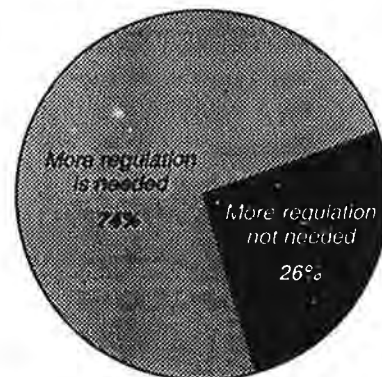
"How concerned are you about the amounts charities spend fundraising?"



"Are Charities more or less trustworthy than ten years ago?"



"Is more regulation necessary?"



SOURCE: Gallup poll conducted for the Council of Better Business Bureaus, 1995.

THE CANADIAN REGULATORY ENVIRONMENT

To protect charities' donors, clients and even charities' themselves, governments around the world have developed a series of legislative regulations affecting fundraising to both prevent perceived abusive practices and encourage charitable giving. Matrix 3 (in the Appendix section) outlines federal and provincial regulations affecting charities in Canada. Because charities are deemed to provide a public benefit, both federal and provincial governments have in place at least some minimal encouragements for the non-profit sector.

There are four basic methods that the federal government employs to enhance and encourage charitable activity:

- a) *Direct financial aid through grants, bursaries, etc;*
- b) *Indirect financial assistance by exempting charitable organizations from taxation and providing tax relief to donors;*
- c) *Providing a stable legal framework within which charity can operate with assurance; and*
- d) *Regulation and supervision of charities to ensure the public has confidence in the sector.* ⁴⁷

1. FEDERAL LEGISLATION

The piece of federal legislation governing charities in Canada is the *Income Tax Act*. Under the Act, Revenue Canada requires non-profit groups wishing to take advantage of a "tax free" status to first register with the government. Once registered, charities are exempt from taxation and can issue official tax deductible receipts to those who donate money or other resources to a charity.

Under the Act, Charities must also disclose to Revenue Canada the amounts spend on fundraising and amounts paid to third party fundraisers. Charities must commit at least 80% of receiptable donations to their charitable activities, spending no more than 20% of receiptable donations on administrative costs and fundraising - the so-called "80/20" rule.

However, there is evidence that charities do spend more on administrative and fundraising than the "80/20" rule suggests. Data from non-profits raising funds in Alberta (1992 reports filed under the provincial Public Contributions Act) indicate that the charitable sector in that province - on average - spends about 25% of donations on fundraising costs alone. ⁴⁸ Several groups of charities, particularly those raising less than \$100,000 annually, have reported spending upwards of 40% of their donations on fundraising. ⁴⁹

Despite this apparent anomaly, instances where a charity's license has been revoked under the Income Tax Act are extremely rare, if not non-existent.

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AND FUNDRAISING - THE
SO-CALLED "80/20"
RULE"**

In November of 1990, the federal government released a discussion paper focusing on issues of public accountability and the amounts going to professional fundraisers. The discussion paper indicates that government officials cannot completely hold the charitable sector to account, and that the public interest is best served when charities are self governing and accountable directly to their community. The legislative framework proposed in the discussion paper takes into account checks and balances which impose performance standards on charities while ensuring that the public interest is served.⁵⁰

However, the single most important key to accountability in the charitable sector is an open process. This approach encourages self discipline by charities, opens them to public scrutiny and enhances confidence in the sector by the public and the community it serves.⁵¹

2. PROVINCIAL LEGISLATION

Provincially, Alberta, Manitoba, Prince Edward Island and Ontario have all enacted legislation affecting charities and charitable fundraising. However, only Alberta and Manitoba have legislated comprehensive regulatory schemes for the sector. Prior to the Alberta court decision in Epilepsy Canada, both pieces of legislation include a "pre-approval" process where charities wishing to raise funds in the province have to register first with a provincial or municipal authority. Officials can reject applications for a number of reasons – including insufficient funds going to the charitable purpose. This provision permitted approving authorities to deny licenses to some charities contracting with professional fundraisers if not enough of the amounts raised, pursuant to the contract, were going to the charity.⁵²

3. THE ALBERTA COURT DECISION

The right of provinces to enforce this kind of legislation was restricted following an Alberta Court of Appeals decision in June of 1994. In 1993, Epilepsy Canada filed a statement of claim against the provincial Attorney General in Court of Queen's Bench, claiming that Sections 3, 5 and 6 of the Public Contributions Act violated freedom of expression as guaranteed in the Charter of Rights and Freedoms.

While the trial court ruled against Epilepsy Canada, the Court of Appeals overturned the decision, declaring the three sections of the Alberta Act unconstitutional. The court has given the Alberta Legislature until April 30, 1995 to amend or replace the legislation. In March of 1995, new legislation was enacted in the Alberta Legislature. (For a brief description of the legislation, see page 48).

Alberta's Public Contributions Act, enacted in 1951, called for the registration of charities and the filing of information for those soliciting public donations. In 1965, as a result of a much publicized case of embezzlement and forgery by an official of the Canadian Cancer Society, the Legislature amended the Act. Charities were now required to apply for authorization before they could solicit for public contributions.⁵³

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In arriving at their decision in Epilepsy Canada, the Court of Appeal determined:

- a) That solicitation is a form of expression deserving of charter protection;
- b) That the aims of the legislation – protection of consumers from misleading solicitations, the diversion of funds to fundraisers, and the promotion of efficient and productive charities – were not substantial enough to permit a limitation of freedom of expression;
- c) That the discretionary power given the authorities under the Act to be particularly disturbing. The Court decided that there were almost no limits on this power except bad faith. To refuse or revoke a license for “any reason considered to be in the public interest” was too broad and “unreasonable;”
- d) That the the limitations on expression were not proportional to the mischiefs aimed at;
- e) That the Act could apply to other groups other than charities, especially political or advocacy type groups, whose right to free speech is critical; and
- f) That the prior approval process was deemed unnecessary. Other jurisdictions rely on reporting and registration, which should suffice. The limitations were not the least intrusive measures available? ⁵⁴

The Court cited examples of how the legislation could be applied to unjustifiably limit freedom of expression:

“Does the legislation allow government to prevent solicitation for funds to help the poor if there are already organizations canvassing for the same purpose because it is inefficient – splitting the yield – or may annoy potential donors – reducing the total yield?” ⁵⁵

4. REACTION TO THE EPILEPSY CASE

The decision drew a number of different reactions. Some charities responded by stating that they feared the court challenge could relax present laws, leading to fraud and a slow erosion of public confidence. ⁵⁶

Before the case went to trial, Calgary Herald columnist Don Martin wrote an article entitled, “Tight Rein Needed on Charities.” The article cited several instances where the Calgary Approving Authority was able to prevent certain “questionable campaigns”. Martin expressed concern that the Approving Authority might lose its ability to approve campaigns in the future if Epilepsy Canada were successful with its challenge. He stated that:

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CANADA, THE COURT OF
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SOLICITATION IS A FORM
OF EXPRESSION
DESERVING OF CHARTER
PROTECTION...”***

"Regulation breeds credibility. A free market brings a free for all. And if Calgary is flooded by questionable causes, donors will have just cause to question their support for anyone." ⁵⁷

Responding to Mr. Martin's article in a letter to the editor, Mr. Geoff Pickering, a partner of the Calgary based fundraiser GWE Group Inc., took the opposite view. He wrote:

"The Public Contributions Act is nothing more than a gag order on constitutionally ordained not-for-profits. It is an insult to hardworking board members and volunteers of organizations which are struggling to survive." ⁵⁸

In a press release, the Better Business Bureau of Calgary and Southern Alberta, stated that:

"It is absolutely essential that every organization approaching the public for support of their cause, declare in advance what the money will be used for. We believe that it is critical to disclose before the fact what percentage of the donations will actually go to the cause for which funds are being raised. The charitable giving community should not support campaigns where the majority of dollars raised go to questionable, marginal projects, at a cost that is outlandish. There is no greater area in which the trusting public is more vulnerable than this one." ⁵⁹

**"FOLLOWING THE
DECISION, SEVERAL
NEWSPAPERS
PROMINENTLY DISPLAYED
THE RESULTS."**

Following the decision, several newspapers prominently displayed the results. An article entitled "Fundraisers' rights violated", reported the results of the decision. ⁶⁰

In response to the decision, Mr. Geoff Pickering issued a statement, saying that while it may be legal for the province to enforce the current legislation for another year "...whatever moral authority they may have possessed to do so has now evaporated." ⁶¹

In another editorial, one writer observed that:

"with municipalities unable to vet and license fundraising campaigns, a new breed that contracts with charities to run their public solicitations at a substantial profit will be turned loose on Albertans." ⁶²

ALBERTA'S BILL 15: KEY ELEMENTS, ISSUES AND ALTERNATIVES

Key Elements of the Bill	Issues	Alternative Approaches
<p style="text-align: center;">Purposes of the Act:</p> <p>The purpose of the Act is to:</p> <ul style="list-style-type: none"> • Ensure the public has sufficient information to make informed decisions when making contributions; • Protect the public from fraudulent, misleading or confusing solicitations; • Establish standards for charities and professional fundraisers when making solicitations. 	<ul style="list-style-type: none"> • Certain <i>practices</i> have the potential to undermine the essential trust relationship between donors and the charitable sector - especially those which violate a key principle of the philanthropic exchange - the ban on private benefit or "gain." • How can donors be made aware of the fundraising practices of charities? 	<ul style="list-style-type: none"> • Preserve the essential trust relationship between charities and their donors by promoting ethical practices. • Provide the public with both financial financial statements <i>and</i> information about fundraising practices.
<p style="text-align: center;">Disclosure of Financial Information:</p> <p>Charities and their fundraisers are to provide donors (if requested) with:</p> <ul style="list-style-type: none"> • a copy of the most recent audited financial statements; • the portion of gross contributions received during the charity's last financial year that were used directly for charitable purposes and not for administration or other purposes. 	<ul style="list-style-type: none"> • Disclosure of financial information alone is often misleading because there are no agreed upon standards on how to allocate costs. • How can charities and donors differentiate between <i>education</i> costs (incurred as a result of legitimate charitable activity) and <i>fundraising</i> costs? Both often occur through the same activity. • What constitutes "reasonable" fundraising costs? 	<ul style="list-style-type: none"> • Encourage charities to develop common standards regarding the identification of administrative and fundraising costs. • Require the disclosure of fundraising practices.
<p style="text-align: center;">Registration Requirements:</p> <ul style="list-style-type: none"> • No charity raising more than \$10,000 per year (gross contributions) may solicit for funds unless the organization is registered. • No professional fundraiser may solicit for funds unless the fundraiser is licensed and has posted a security and paid a fee to the government. 	<ul style="list-style-type: none"> • Should a <i>one-time</i> community project - such as raising money to pay for a needed surgical operation - be required to register <i>just</i> because that operation costs \$15,000? 	<ul style="list-style-type: none"> • Develop a range of criteria for registration based upon fundraising practices. • Raise the registration threshold amount to \$25,000.
<p style="text-align: center;">Agreements With Fundraisers:</p> <ul style="list-style-type: none"> • No charity may use a professional fundraiser unless the charity is registered. • Charities wishing to use a professional fundraiser must have in place an agreement outlining the terms of remuneration, the duties and responsibilities of both parties, an estimate of contributions to be received and provisions covering the creation / ownership of any donor lists. 	<ul style="list-style-type: none"> • Should questionable practices already identified by the sector (eg. percentage-based or commission type contracts and shared ownership of donor lists) be prohibited? • Should agreements between charities and outside fundraisers be made public? 	<ul style="list-style-type: none"> • The regulations accompanying the Act could include a provision requiring charities to publicly disclose the terms of the contracts they sign with outside fundraisers. This would allow donors to be more fully informed and would provide charities with incentives to employ "good" fundraising practices.

REGULATION IN OTHER COUNTRIES

Observing the regulatory approaches taken by others allows an opportunity to predict possible responses to the issues facing the Canadian charitable sector and allows an evaluation of the appropriateness or inappropriateness of certain types of regulations. Governments in both Britain and the United States actively regulate charitable fundraising activities. A more detailed survey of these countries' regulatory schemes appears in **Matrix 4** (located in the Appendix).

1. REGULATION IN THE UK

Britain has a long history of regulating charities. In 1853, Parliament passed an Act setting out numerous requirements for charities. More recently, in 1992, Parliament passed the Charities' Act, which included a pre-approval process and a limitation on the shares of public contributions that can be retained by fundraisers.

An article reporting on the acceptance of the Charities Bill by the House of Lords indicated a favorable response, but "...the bill was not without its problems". The clauses causing the most concern required professional fundraisers to give details about their remuneration and the proportions in which the proceeds would be distributed. There is a genuine fear that the clause would lead to a reduction in fundraising, as agents acting for charities (such as direct mail companies) would be required to state details of the method by which they are being paid. ⁶³

It is important to note that England does not have a constitution guaranteeing freedom of expression or freedom of speech in the same fashion as does Canada or the U.S. The British Parliament has much broader jurisdiction in legislating various activities, including charitable fundraising activities. In Canada and the United States, regulation of certain activities is limited by constitutional guarantees of individual freedoms, which allow people to challenge legislation on the grounds that it violates a "constitutionally protected freedom."

If comparable British legislation were adopted in Canada, the Charter of Rights and Freedoms may be invoked to limit or eradicate the legislation. The ability to identify and assess the British regulatory regime can only provide a general framework for understanding the current legislative environment in Canada.

2. FEDERAL REGULATION IN THE U.S.

The federal government regulates charities through the Internal Revenue Code (the corollary to Canada's Income Tax Act). The Internal Revenue Service (IRS) is the arm of government responsible for monitoring charities in the U.S. The Internal Revenue Code defines the types of organizations exempted from taxation and which may issue official tax receipts for contributions. Once receiving their "tax free" status, charities must file an annual return to the IRS. These returns must be made available for public inspection at the organization's principle place of business.

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Federal tax legislation provides no intermediate sanction against charities other than the revocation of their tax exempt status. A charity's tax exempt status may be revoked if its activities indicate it is not being operated as a charity, or its activities result in an individual receiving private benefit or "gain."

It is widely viewed in the U.S. that society benefits from the application of private wealth to specific purposes in the public interest, but also from the variety of choices made by individual philanthropists themselves as to which activities to further. Such decentralized choice-making is seen to be more efficient and responsive to public needs than the cumbersome and less flexible process of government administration. ⁶⁴

As of December 1993, there were 540,040 organizations exempt from taxation under the Internal Revenue Code. Of these organizations, about 485,000 were public charities and 54,700 were private foundations. ⁶⁵

Charitable organizations, maintained by tax exemption and nurtured by the ability to attract deductible contributions, are a reflection of the American philosophy that policy making should not be totally contained within the government sector. ⁶⁶ Few aspects of American society are characteristically more "American" than the nation's many volunteer organizations and both the time and money given them by its citizens. Underpinning the presence of these volunteer organizations is the practice – perhaps a deeply ingrained habit – of philanthropy (private giving) which provides a substantial resource base for the U.S. volunteer sector. ⁶⁷

3. U.S. STATE GOVERNMENT REGULATION

Over the years, state governments have become quite active in the regulation of the non-profit sector. Pennsylvania, California, Connecticut and Oregon, among others, have all passed regulatory legislation. Provisions of such legislation have included:

- a) Registration of fundraisers and reporting requirements on the amounts turned over to fundraisers (eg. Connecticut);
- b) Disclosure requirements which force solicitors to make accurate statements to potential donors about the charity's involvement with a fundraiser, etc. at the time of solicitation (eg. Pennsylvania); and
- c) Provisions holding boards of directors personally accountable if their charity enters into an agreement with a fundraiser which results in a breach of their financial responsibilities to the organization (eg. Oregon).

In the United States, state regulation of charitable solicitation is a contentious issue. Both charities and the fundraising profession have expressed their views on the matter:

*"FEW ASPECTS
OF AMERICAN SOCIETY
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MORE "AMERICAN" THAN
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VOLUNTEER
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BOTH THE TIME AND
MONEY GIVEN THEM BY
ITS CITIZENS."*

A. The Views of Charities

- (i) Gift solicitation in the United States is a constitutionally protected act of free speech. Despite this, more and more states are regulating charitable solicitation. This new found vigor damages the legitimate fundraising process. Charitable fundraising is over regulated. ⁶⁸
- (ii) The priority should be on discovering new ways for charities to police themselves and work cooperatively with regulators. ⁶⁹
- (iii) When regulation fails, the real losers are legitimate charities. Misleading appeals siphon away donations from worthwhile causes and undermine public confidence in charitable giving. ⁷⁰

DISCUSSION BOX:

EXAMPLES OF U.S. STATE GOVERNMENT LEGISLATIVE PREAMBLES

California: "The Legislature finds that there exists in the area of solicitation for charitable purpose a condition which has worked fraud, deceit and imposition upon the people of this state which existing legal remedies are inadequate to correct. Many solicitations have involved situations where funds solicited from the citizens of this state for charitable purpose, but an insignificant amount, if any, of the money solicited and collected actually is received by the charity." ⁷¹

Colorado: "The general assembly hereby finds that fraudulent charitable solicitations are a widespread practice in this state which results in millions of dollars of losses to contributors and legitimate charities each year. Legitimate charities are harmed by such fraud because the money available for contributions continually is being siphoned off by fraudulent charities, and the goodwill and confidence of contributors continually is being undermined by the practices of unscrupulous fundraisers. The provisions of this article, including disclosures to be made by paid solicitors, are necessary to protect the public's interest in making informed choices as to which charitable causes should be supported." ⁷²

Pennsylvania: "It is the intention of the General Assembly that this act shall not merely require proper registration of charitable organizations, professional fundraisers and professional solicitors, but shall protect the citizens of this state by requiring full public disclosure of the identity of person who solicit contributions from the public, the purposes for which the contributions will be used, by promoting consumer education about charitable concerns, by providing civil and criminal penalties for deception and dishonest statements and conduct in the solicitation and reporting of contributions in the name of charity and by publicizing matters relating to fraud, deception and misrepresentation perpetrated in the name of charity." ⁷³

"CHARITABLE

FUNDRAISING

IS OVER REGULATED."

B. The Views of Professional Fundraisers:

- (i) In the U.S., one fundraising firm in particular caused most of the problems catching the attention of state regulators and Congress. The firm sent out solicitation letters containing a small box with "Warning Signs of Cancer." Because the letters were dubbed a "public education" tool, the cost of sending the letter was listed as program expense. ⁷⁴
- (ii) State regulators did not consult with members of the fundraising profession in drafting legislation and developing new regulations. Earlier successes with a more collaborative approach within the spirit of cooperation had dissipated because of a lack of follow up and pressure for from the fundraising field at the state level. ⁷⁵
- (iii) The problem is greatly exaggerated. Attorneys General have an unfounded bias against commercial fundraisers. ⁷⁶

DISCUSSION BOX: A MODEL OF STATE REGULATION IN THE U.S.

Prior to the Supreme Court decision in the Riley case of 1988, the National Association of Attorney General's (NAAG) and the National Association of State Charity Officials (representatives of charitable organizations, the fundraising profession, the legal and accounting professions and donors) presented a model to regulate charitable solicitation. ⁷⁷

While there was strong objections to some of the provisions, the model was adopted in principle. The model required annual registration by charitable organizations. This included the filing of an annual financial report and that the report be audited for organizations receiving more than a specified amount. There were requirements to file copies of the written contracts with charitable organizations and professional fundraisers. Professional Solicitors also had to file their written contracts with the charitable organizations. In addition, at the time of the solicitation the professional solicitor must disclose before requesting a contribution, the name of the paid solicitor, that the solicitation is being conducted by a paid solicitor, and that the charitable organization shall receive a fixed percentage of the gross revenue or the reasonable estimate, expressed as a percentage of the gross revenue. If the campaign is conducted orally, written confirmation of the required disclosure would be sent to those who contributed within five days after the solicitation. No paid solicitor may represent that they are soliciting on behalf of a charitable organization unless the organization has consented in writing to the use of its name, prior to the solicitation.

After the Riley decision, it was determined that the professional solicitor disclosure provisions in the model would not pass constitutional muster.

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IMPORTANT U.S. SUPREME COURT DECISIONS

To understand the evolution and development of charitable regulation in the U.S., it is important to grasp the principles and arguments adopted by the U.S. Supreme Court in three constitutional cases (for more details on these cases, see **Matrix 5** located in the Appendix of this report). The most recent case, *Riley vs. National Federation of the Blind of North Carolina* (1988) saw the Court strike down sections of North Carolina's Charitable Solicitations Act which placed limits on the fees that professional fundraisers could charge. A fourth case involves the revocation of a charity's tax exempt status. This case is still pending in U.S. federal tax court.

The three cases address legislation (developed at either the state or local government level) regulating fundraising costs. In the cases, legislation which imposed a fundraising cost percentage limitation on charitable fundraising, was challenged. In two cases, a charity's fundraising costs were not allowed to exceed a certain percentage of the total revenues expected. Charities were required to justify their fundraising costs to a government approving authority before they could solicit the public for financial contributions.

In all three cases, the U.S. Supreme Court struck down the government regulation. In brief, the Court ruled the following:

- a) *Charities should not have to obtain permission from a government authority before communicating with the public;*
- b) *High fundraising costs are not indicative of fraud;*
- c) *When charities ask for money, they also educate the public and it is inappropriate for states to regulate educational or advocacy activities for charitable organizations.*

The ability of state governments to regulate charitable fundraising has been limited by these court cases. Despite this, more states today are regulating certain fundraising practices by demanding disclosure of financial information, enforcing tough standards in financial reporting and making charities' boards of directors more responsible for regulating their own fundraising practices. States with this type of regulatory scheme include California, Connecticut, Pennsylvania and Oregon. Regulatory activity has increased significantly in the past few years for a number of reasons. Most importantly, authorities cite growing abuse of donors by certain fundraising practices.

For example, a report from the Public Charities Unit (a joint program of the Connecticut Attorney General and Department of Consumer Protection) reported in 1992 that telemarketing brings in an average of 70¢ on the dollar to the fundraiser and only 30¢ cents to the charity.⁷⁸ In addition, there have been numerous reports by local and national media on certain fundraising practices that have created scandals. The scandals have not only affected the organizations which were reported, but have reflected negatively on the entire charitable sector. A U.S. state regulator has said:

"IN ALL THREE CASES,

THE U.S. SUPREME COURT

STRUCK DOWN THE

GOVERNMENT

REGULATION."

"Anybody can start a charitable organization, go out and raise money, and as long as I'm giving something to a charitable purpose, I am pretty much untouchable unless someone can prove fraud. Court decisions have told us that you cannot assume that just because a charity is giving five cents of every dollar raised, that's fraud. And there are charities out there everywhere, doing exactly that." 79

A critical turning point on this issue is a current case in the U.S. Tax Court, where the Internal Revenue Service and the Independent Sector (an umbrella group of various charities) are actively defending the revocation of the tax exempt status of a charity that had a contract with a professional fundraising firm that raised over \$27 million but where the charity received only \$2.5 million.

There is also action on the U.S. legislative front. A recent House Ways and Means Committee proposed certain amendments to the Income Tax Act to address the issue of private benefits extended to for-profit companies soliciting on behalf of charities.

As a result of this spate of recent Supreme Court decisions, numerous law review articles have appeared in the United States. Some of these reviews have advanced more arguments supporting the rulings, while others have attempted to show where the Court had failed in its reasoning. A summary of several relevant articles follows.

1. THE "KNIGHT" REVIEW ARTICLE

Knight acknowledges that extravagance and questionable tactics have surely soured people's attitudes toward charitable giving.⁸⁰ Knight is critical of the Court's recommendation that regulators use "less intrusive" measures than fundraising cost percentage limitations to guard against charitable fraud.

In particular, Knight targets the Court's suggestion of publishing detailed financial disclosure information on charities and commercial fundraisers. Simply having the government publish and communicate charities' financial information to the public is impractical because there is no means of assuring that the specific segment of consumers being targeted by a particular fundraising campaign will actually receive the disclosed information. Donors may never discover they have been deceived. Anti-fraud statutes are really of little consequence when fraudulently obtained funds cannot be traced to any particular transaction.⁸¹

2. THE "STEINBERG" REVIEW ARTICLE

In support of the Riley decision, Steinberg's review argued that statutes mandating a low fundraising cost percentage do little to protect donors' interests. Steinberg argues first that donors may be willing to support charitable goals which can only be achieved through a high fundraising cost percentage. Donor interests can be broader than simple charitable output alone.⁸²

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Secondly, there is nothing in the percentage limitation that prevents a dishonest organization from misdirecting funds.⁸³

Thirdly, Steinberg claims that the average fundraising share is itself a misleading statistic because it does not inform the donor as to the value of "incremental" donations. As total donations increase, the percentage of funds spent on expenses will decrease as certain fixed costs are paid off by earlier donations. While the average fundraising percentage is high, the incremental fundraising percentage, after fixed costs have been paid, may be lower.⁸⁴

Steinberg also draws some conclusions about how fundraising by one charity may or may not effect fundraising by another charity. When charities care only about their own net returns, fundraising by each charity becomes excessive. If all charities reduced their own solicitation expenditures, each would experience an increase in net returns. Yet, uncoordinated action by individual charities cannot accomplish this result. If one charity reduces its solicitation expenditures alone, the benefit will simply accrue to other charities.⁸⁵

3. THE "CAGEN" REVIEW ARTICLE

In this article, the author claims that the concern of most states is that professional fundraisers retain a majority of the funds, while charities may receive only a small percentage of the donations.⁸⁶ Cagen too is critical about using fundraising percentages as a tool for measuring effectiveness, however. The public may be compelled to contribute only to those organizations with low fundraising costs, unaware that they may have ineffective programs. Further, many times the reported fundraising costs are simply inaccurate.⁸⁷

*"Certainly the percentages of fundraising and management costs reported by even the best run charities are something less than thoroughly reliable and comprehensible. Judging a charity by its fundraising costs may not be a wholly reliable way to determine its effectiveness as a charity. Many annual reports often mask fundraising costs under such euphemisms as education, public information, administration and public services."*⁸⁸

Despite government attempts to eliminate charitable fraud through strict reporting and registration requirements, the most powerful deterrent to charitable fraud is public education. The availability of pertinent and generous information at the time of solicitation is necessary to ensure an informed contributing public.⁸⁹

4. HARRIS, HOLLEY AND MCCAFFREY'S REVIEW

This review focused not only on the constitutional concerns surrounding regulation of charitable solicitation but also the public's concerns. Government regulation ensures the integrity and public service character of charities, providing a substitute for market mechanisms that influence for-profit organizations. A limit on fees paid to fundraisers may protect charities against their own corrupt self interest.⁹⁰

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On the other hand, the review acknowledges that the use of professional solicitors by some charities may be necessary for some charities to survive. Fundraising is an important means for charities to communicate with the public, and many charities rely on solicitors to enhance their name recognition and make contact with potential supporters. ⁹¹

5. THE "ESPINOZA" REVIEW ARTICLE

This article criticized all three Supreme Court decisions. In particular, it targeted the Riley decision with respect to mandated disclosure. In Riley, the Court failed to develop a balanced conceptual framework to regulate charitable fundraising, resulting in an unacceptable trade-off of regulatory goals that undermines all interests concerned. Charities with high fundraising costs should not be prohibited from soliciting contributions, yet donors should not be prohibited from demanding, through legislation, the disclosure of fundraising information. Currently, the donor, the charitable community and government regulators are not equipped to control charitable fundraising. ⁹²

The public, spurred by "hard sell" gimmicks, inundated with telephone marketers, direct mail appeals and aware of "fund raising mill" charities, are responding with increased skepticism. Declining public confidence and a corresponding decrease in contributions escalates the pressure for unbridled competitive fundraising. ⁹³

The notion that a charity's "program" speech and its "solicitation" speech are inextricably intertwined is a fundamental flaw in the Court's recent decisions. Raising money is not the same thing as spending it on a program. The two should be separate - there is no need to equate them. ⁹⁴ The protection of charitable solicitation as advocacy speech also closed the door to effective disclosure regulation and is aimed at letting the donating public make their own judgments. Equating the use of the charity's name to raise funds with public education and advocacy deceives the public. ⁹⁵

The Court should have adopted a more flexible approach to addressing the regulation of charitable solicitation. There is much difference between silencing a charity and allowing a charity to use its speech rights as a trick to obtain funds. Charities should not be muzzled, yet the public should not be misled. ⁹⁶

6. A CONFERENCE ON CHARITABLE SOLICITATION

The program *Philanthropy and the Law* at New York University School of Law held a conference in October of 1990 called "Charitable Solicitation: Is There a Problem?". Several commentators presented their views on the regulation of charitable solicitation. One commentator characterized the regulatory attempts cited in the three United States Supreme Court decisions as misguided.

Fraud may indeed be a problem, but neither regulation of fundraising percentage nor point of solicitation disclosures do much to stem fraud. Regulations will stem fraud only by the sheerest of coincidences. Direct enforcement of anti-fraud and private benefit statutes may be difficult, but it would be no coincidence if they succeed. ⁹⁷

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BASIC REGULATORY AVENUES

There is a range of policy alternatives that both government and the industry might consider in addressing the concerns identified by charities and many fundraisers. Matrix 6 (in the Appendix) explores these alternatives in detail, along with the advantages and disadvantages that each possesses.

1. LIMITS ON FUNDRAISING SHARES

This form of government regulation places a percentage limitation on the amounts of contributions going to fundraising costs or to a third party fundraiser. While this method offers perhaps the most hard-hitting protection for donors against perceived fraud, it has been criticized heavily by industry practitioners. Some members of the industry argue that high fundraising costs may be reasonable for certain types of campaigns (such as initial donor acquisition) and not necessarily indicative of poor fundraising practices. Cost information alone is insufficient to measure the performance of any charity or fundraising program. Perhaps more importantly, the recent Alberta Court of Appeal decision and the unsuccessful defense of such legislation in U.S. courts indicate this type of legislation would be unlikely to pass a Charter challenge.

2. CONSUMER PROTECTION APPROACHES

Government may also attempt to protect consumers with a “mandated disclosure” legislation, which requires charities and their fundraisers to reveal fundraising costs to potential donors or some government agency which then publicizes these figures for public viewing. Donors could then be responsible for deciding themselves whether or not to contribute to a particular charity based on fundraising cost information.

This method has the advantage of being less intrusive than official limits on fundraising costs, depending on donor attitudes towards fundraising cost information or publicity about those charities with high fundraising cost ratios. But, industry practitioners argue that this method should only be considered with great caution. Like fundraising share limits, this method falsely assumes that rating charities on financial information alone is sufficient to inform the donating public. Also at issue is the fact that charities cannot be directly compared on cost information alone given the inconsistencies in how costs are allocated between charities. It has also been argued by some in the industry that “point of solicitation” disclosures – where fundraisers are compelled to inform potential donors about cost information before requesting a donation – is a limitation on the right to free speech.

3. ENFORCING NON-DISTRIBUTION CONSTRAINT

Underlying the concern over excessive fundraising costs is the perception that someone may be profiting at donor and charity expense. The “non distribution constraint” is a term defining “non-profit.” It does not prohibit the making of profit, just the distribution of a profit to those in control of the organization or potentially associated with it.

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If the non-distribution constraint were effectively enforced, much of the incentive for abusing the fundraising process would be largely removed because profits would become inaccessible. The best and most direct solution to alleged fundraising abuse may lie in better enforcement of the non-distribution constraint. It is already recognized as being the heart and soul of philanthropic activity by the industry. However, the problem of accounting for fundraising costs is still an issue. In addition, "excessive" compensation must be more clearly defined. Enforcement of the non distribution constraint could also increase the costs associated with the regulation of charitable fundraising.

4. DUTY OF CARE APPROACH

Government could also pass legislation which sets out criteria and enforces certain standards of care to be considered by a charity's board of directors when carrying out fundraising activities for the organization. These criteria can be defined by the industry, government, or both in concert.

Through legislation, boards of directors would be required to fulfill certain conditions when signing contracts with third party fundraisers. Boards of directors would become legally responsible for the protection and and enhancement of the value of their organization's assets, including such things as the "good name" of the charity and its donor lists.

This method ensures that government involvement is limited to the enforcement of standards as mutually agreed upon with the industry, while allowing those most familiar with the organization's fundraising affairs to be held accountable for their decisions.

The downside is that boards of directors would have to become more involved in day-today operations and would be required to focus more on fundraising than directing the purpose of the organization. Despite this, the fact remains that someone has to be handed responsibility for the organization's activities.

There is merit in this approach. It allows the industry and government to develop - in a spirit of cooperation - standards of conduct which are mutually agreed upon. Coupled with effective sanctions, this method presents the opportunity of convincing industry operators of the critical importance of maintaining public confidence in the non-profit sector.

5. SELF-REGULATION APPROACHES

Industry practitioners are more inclined to explore the self regulation approach. Many have argued that professional associations of charitable solicitors and non-profit organizations can develop standards of conduct and more easily urge acceptance of these rules thus lessening the need to apply sanctions.

Under this approach, industry-wide bodies for charitable organizations would develop codes of behavior for their members and discipline them for any violations of that code. Sanctions typically include suspension or expulsion from the organization.

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Self regulation seems an attractive option, and perhaps has much to recommend it. It's greatest advantage is that it allows the industry a certain measure of latitude to employ innovative and creative measures in building public confidence – for example - a “Seal of Approval” program.

However, as outlined in **Matrix 6**, self regulation also has its pitfalls. Perhaps the biggest disadvantage is that self regulating bodies are always under pressure of being “captured” by the industry - held hostage to current practices and traditions. A self regulating body which behaves act like a trade association of industry professionals will offer little promise of increasing accountability in the sector.

Membership in professional organizations and other industry-wide bodies remains largely voluntary. To date, only minimal success has been achieved on a proper course of action towards self regulation. Much discussion and debate is still taking place over many issues, of which fundraising cost allocation and accounting standards are only two examples. Because of these problems, a mixed system of industry and government regulation perhaps more to offer.

6. MIXED SYSTEMS

Self interested behavior can lead to an inability on the part of an industry regulating body to enforce rules on its members. Thus, some component of government regulation, authority or sanction may be needed.

A mixed system - a marriage between the self regulating framework and statutory legislation - offers the best of both worlds. It is still practitioner based, yet it offers an effective vehicle for sanctions. Under a mixed system, government legislation backs up industry standards such as “duty of care” practices, certain information disclosures and an industry-wide code of ethics.

For example, a charities board or commission would grant to an industry regulatory body the authority to admit charities to membership, develop rules of conduct, and discipline them for violations. Charitable fundraisers might be members of a provincial or national “Association of Charitable Fundraisers” - a self regulating organization analogous to the National Association of Securities Dealers. A federal or provincial “Charities Board” could then monitor the effectiveness of industry self-regulatory organizations.

7. THE ROLE OF THE MEDIA

The pitfalls of government regulation and the problems with industry self regulation underscore the importance of an independent and critical press to non profit accountability. In fact, in the U.S., it has been media coverage of the past few years which has led to increased public scrutiny of non-profit affairs.

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OTHER ALTERNATIVES

Aside from government regulatory legislation aimed at protecting the donating public through registration, licensing, disclosure requirements or fundraising costs percentage guidelines, there are many other avenues available that offer both improved accountability and protection against the potential for perceived abusive practices within the charitable sector.

1. ACCOUNTING BODIES

Various accounting associations and organizations may offer opportunities to promote standards and ethics for charities and professional fundraisers. Increased accountability in the sector would follow if the accounting profession could develop, in concert with the charitable sector, a set of appropriate, clearly understood and mutually agreed upon standards for reporting amounts going to an organization's "charitable program" and amounts going to cover the non-profit's "fundraising costs." As we have seen, however, the problem is reaching a mutually agreed upon standard as it relates to the allocation of these costs.

For example, some non-profits allocate large portions of their real fundraising costs to public education (a legitimate charitable program expenditure) as opposed to where it really belongs – fundraising. In the United States, the *Council of Better Business Bureaus (CBBB)* noted an increasing number of charity audit reports indicating a significant portion of direct mail appeals involving both public education and other advocacy-type activities. Some charities have allocated large portions of their fundraising costs to public education as opposed to fundraising. Some charities are attempting to hide their fundraising costs by inappropriately allocating direct mail expenses to the public education portion of the ledger in their financial statements.⁹⁸

In response to one set of proposed guidelines on the proper allocation of fundraising costs and public education expenses developed by the AICPA, the CBBB argued that the proposed guidelines would not effectively deal with the problem of accounting abuses, and do not help inform the donors at the point of solicitation.

The CBBB has therefore made two recommendations:

- a) In all multi-purpose requests for contributions, a clear statement should be provided to donors, at the point of solicitation, that the charity is carrying out its "public education" or advocacy activities in conjunction with an appeal for funds;
- b) Display the public education or advocacy disclosure in a prominent position in the same or a larger type size as the main body of the multi-purpose appeal.⁹⁹

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2. PROFESSIONAL ORGANIZATIONS

Several professional organizations have developed to promote standards and ethics for charitable organizations and professional fundraisers. **Matrix 7** examines several of these professional organizations, which exist at the international, national, provincial and local levels. In Canada, many of these organizations are chapters that belong to a parent professional organization with headquarters in the United States.

Although most professional organizations have as their mandate the fostering of ethical standards and practices, many also provide networking opportunities for their members. Most professional bodies have also committed themselves to enhancing the public's understanding of and support of philanthropy in general.

Whether professional bodies can effectively promote ethical standards within the industry and provide the public with increased accountability depends on how many charitable practitioners participate, and the degree to which they feel compelled to place themselves under the ethical guidelines developed by any association. Those bodies representing only a few relatively small charities and fundraisers will not enjoy much success.

Currently, membership in the numerous professional organizations which serve the charitable sector remains voluntary and relatively sporadic. Unless a more direct move is made towards industry self-regulation which is also backed by mandatory membership requirements as set out in legislative statute, membership will remain voluntary, and the ability of professional organizations to actively promote ethical practices will be limited.

3. WATCHDOG ORGANIZATIONS

Several watchdog agencies in both the United States and Canada now monitor the activities of operators in the charitable field. These groups, examined more fully in **Matrix 8**, remain at "arms length" from both the industry and government, and have had some impact on promoting ethical standards. They have also served as a place for the public to lodge complaints.

In Canada, the primary watchdog group is the *Council of Canadian Better Business Bureaus (CCBBB)*. However, they do exhibit a limited ability to check the activities of questionable charities and fundraisers:

- a) While the CCBBB has acted to fill a real need in the community, it is not possible to conclude that the need is being properly filled;
- b) The BBBs aim more to screen out phony charities, while they should look at evaluating charities on quality control;
- c) There is little evidence to show the BBB is competent to carry out the job of evaluating charities based on quality in a way that helps the public or the charities which serve it. ¹⁰⁰

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Across the border in the United States, several watchdog organizations operate on a national and state level, informing the public so they can make informed decisions when giving to a charity.

Many of these watchdog groups apply the charity's financial information to a set of standards they have developed and then publish the results of the charity's performance. This information helps donors make better decisions about giving, and in turn, gives charities an incentive to improve their level of performance.

For example, the *National Charities Information Bureau (NCIB)* helps potential donors assess fundraising appeals. The advice given to potential donors in assessing a fundraising appeal includes the following pointers:

- (1) Check the name of the organization to make sure it is the charity you think it is as some high-powered appeals deliberately trade on confusion by soliciting under a name similar to that of some better known charity;
- (2) Evaluate the appeal on the facts it presents and do not be influenced just by a dramatic presentation or heart rendering description of the general need;
- (3) Ask any person soliciting on the telephone or on your doorstep if they are a volunteer, an employee of the charity or an outside fundraiser. If they are associated with an outside firm ask about the financial arrangements between the charity or the firm. For example, is the person working on a commission basis? ¹⁰¹

If a contributor really wants to investigate a charity, there is other information available to analyze its performance. Charities can supply a copy of their audited financial statements. The NCIB suggests that potential contributors look at the amount spent of fundraising and the amount received in contributions. A ratio of more than 30% warrants caution.

However, it must always be keep in mind that calculating a fair fundraising percentage is tricky. Evaluating the significance of any such percentage is even more difficult.

Watchdog agencies are currently limited to the reporting of financial information and responding to and informing donors about specific charities. Since the financial information on which they report is often complex, donors may not fully understand the meaning of the numbers reported.

Without significant industry cooperation, it is very unlikely for watchdog organizations acting alone to offer any significant protection against potential abuses within the charitable sector.

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CONCLUSIONS

- 1) *The environment in which charities work has undergone rapid change.* Governments, for example, have moved to contain their spending in an effort to reduce deficits. This has had a double effect on the sector. First, charities have had to increase their attempts at securing public donations in light of declining government contributions. Second, charities are today accommodating new groups and concerns that just a few years ago were directly supported by government.
- 2) *In Canada, England and the U.S., certain types of fundraising activities in the charitable sector have caught the attention of the media and various government regulators.* Fundraising campaigns where as much as 80% to 90% of the proceeds went to a for-profit fundraising company and high pressure telephone sales tactics have generated extensive criticism.
- 3) *In recent years, more non-profit groups have turned to professional "for-profit" fundraisers, who help them conduct their fundraising efforts.* Because of some recent high profile scandals, the public is becoming increasingly concerned about the practices of some charities and the destination of their charitable dollars.
- 4) *Research shows that the vast majority of charitable fundraising is done in a forthright and ethical manner, but the practices of a few charities have the potential to harm the entire sector.* Most of the money in the charitable sector is actually raised by the charities themselves without the assistance of outside "for-profit" fundraisers. But because of the shadows cast by some scandals, the public reputation of the entire charitable sector is being called more and more into question.
- 5) *Finding ways to respond to questions over fundraising costs is critical.* The donating public has shown increased concern over the trustworthiness of the non-profit sector, and this must be addressed. Non-profits rely on the goodwill of the public, and a sterling reputation is necessary for this goodwill to continue. When public confidence is undermined by the practices of a few charities, the public becomes less trustworthy of the sector as a whole and less willing to donate to charitable causes.
- 6) *Some governments and various watchdog agencies have have advocated tighter regulation of the charitable sector.* The underlying rationale for this increased regulation is to enhance the credibility of the sector in the mind of the donating public by ensuring that practices which abuse the public trust are ferreted out and dealt with appropriately. But, regulations that simply limit the costs of fundraising may not be beneficial for the charitable sector.
- 7) *Charitable fundraising is a very complex issue.* While the public is clearly concerned about high fundraising costs, policy options which simply focus on outcomes (such as limiting the proportion of donations that may be spent on fundraising costs) may not be sensitive to the particular nuances of charitable fundraising. By themselves, such regulation will not improve the accountability of charities in their fundraising. Such policies may unduly punish smaller and newer charities which often must engage in higher cost campaigns in the early years, or those who want to tap the assistance and advice of knowledgeable and professional fundraisers.

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- 8) *The cost of raising a dollar varies according to a number of factors outside the direct control of some charities.* These factors include the type of campaign being conducted and the average size of the donation given. For example, industry data reveals that many charities make little – and can even lose – money when recruiting new donors. The public needs to understand that new charities seeking new donors will spend more on fundraising. The same goes for existing charities seeking to expand their donor base.
- 9) *Charities aim for a relationship with their contributors that goes beyond a single campaign.* The purpose of a fundraising campaign is to first establish a list of donors that can be accessed more cost effectively in the future as the average size of the donation increases from committed donors.
- 10) *Charitable fundraising costs are an investment in the future development and long term financial health of charities.* Fundraising campaigns yield more than just revenue – they are also designed to generate public awareness that will establish a list of donors for future campaigns. This expanded donor list can then be accessed less expensively in the future. The effort may cost considerable time and money. But, these costs are justifiable in certain circumstances.
- 11) *In Canada, the accounting guidelines offered to charities allow a great deal of flexibility to jointly allocate fundraising costs with public education program expenses.* This allows charities to allocate fundraising costs to program expense when reporting to Revenue Canada in a way that is consistent with the “80/20” disbursement quotas.
- 12) *Legislation which provides for the disclosure of fundraising cost information or the setting of minimal or “bottom-line” fundraising cost ratios only provides a partial solution toward enhancing the accountability of the charitable sector and protecting the donating public.* It is not simply the expense of fundraising or the use of outside fundraisers that is at issue. Part of the solution must centre around certain practices within the charitable sector that detract from their ability to serve the public trust. Some guidelines have used cost ratios as a means of providing measurements of cost effectiveness for various fundraising activities. Cost ratios, however, are limited in how they can be used for reporting purposes and as a management tool. Bottom line cost ratios are not helpful in comparing one organization with another given the multitude of variables that factor into any one organization’s fundraising program. In addition, donors generally do not know how to interpret cost ratios to fully understand how their money is being used. As a management tool, cost ratios are helpful as a primary analytical tool to assess some levels of fundraising performance, but they do fall short of providing an in depth analysis of an organization’s development program.
- 13) *By focusing on the practices of charities rather than variable outcomes, governments could contribute to the maintenance and enhancement of the charitable sector.* Questionable practices which jeopardize the essential relationship of trust between charities and their donors have already been identified, and guidelines for ethical and “best practices” have already emerged within the sector. What may be needed is the disclosure of practices thereby providing the donor with even more valuable information than that afforded by a charity’s financial information.

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 ESTABLISH A LIST OF
 DONORS FOR FUTURE
 CAMPAIGNS.”**

14) *The disclosure of fundraising practices is an important piece of information needed to accurately and adequately assess fundraising activities.* Percentage-based or commission type “no-risk” contracts and shared ownership of donor lists (a critically important asset to any charity) are two examples of practices that are unethical and must be avoided. By focusing on the practices of the sector, government may positively contribute to the maintenance and enhancement of the Canada’s charitable sector.

15) *By focusing on fundraising practices instead of bottom-line percentages, the door is opened to a more innovative and creative environment in which to construct public policy.* Among the options available is a model of self regulation combined with government sanction.

16) *Above all, it must be understood that the heart of the charitable sector is the ban on private “gain” or “benefit.”* This means that no one is to personally profit from the activities of a non-profit organization. This principle is designed to steer charities clear of that inherent conflict between “self interest” and the “public interest.” Certain practices have been identified within the sector as directly detracting from this basic principle.

17) *Increasing government regulation is not the only answer.* There are many professional organizations in Canada and the United States that have set codes of ethics and standards of practice for charitable fundraising. The codes of ethics and standards of practice for all of the organizations identified prohibited the use of commission based contracts between charity’s and fundraisers. In addition, most codes of ethics indicated that the list of donors acquired during a campaign belonged exclusively to the charity. Over the past few years, fundraisers themselves have attempted to establish guidelines for reporting fundraising costs and for providing management tools for effective fundraising. In the United States, the accounting profession is now grappling with the issue of joint cost allocation. In Canada, the Canadian Council of Better Business Bureaus already evaluates charities based on a number of criteria including fundraising practices. Charities can voluntarily submit to the evaluation process of the CCBBB. There are several watchdog organizations in the United States that actively evaluate charities and their fundraising performance using established criteria. Several of these organizations have called the attention of the media to specific organizations and specific fundraising practices.

18) *Recently, there has been some major undertakings in the academic field on the issues of reporting and evaluating fundraising performance.* An important emerging concept is the idea that fundraising costs should be viewed as an investment. The investment concept is helping to further shape the way in which organizations can evaluate their fundraising expenditures. In addition, a study is just beginning to get underway by the leading fundraising organizations that will attempt to better identify fundraising costs.

“ABOVE ALL, IT MUST BE UNDERSTOOD THAT THE HEART OF THE CHARITABLE SECTOR IS THE BAN ON PRIVATE “GAIN” OR “BENEFIT.” THIS MEANS THAT NO ONE IS TO PERSONALLY PROFIT FROM THE ACTIVITIES OF A NON-PROFIT ORGANIZATION. THIS PRINCIPLE IS DESIGNED TO STEER CHARITIES CLEAR OF THAT INHERENT CONFLICT BETWEEN “SELF INTEREST” AND THE “PUBLIC INTEREST.”

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Fundraising For Charities

Public Policy Issues in the 21st Century

(APPENDICES TO THE MAIN REPORT)

MATRIX #1: THE CONSULTATION PROCESS

	TOPIC #1: MANAGEMENT ISSUES	TOPIC #2: PROFESSIONAL ISSUES	TOPIC #3: GOVERNMENT REGULATION
Toronto	Percentage limitations on fundraising costs not practical to regulate or measure effectiveness. Need full disclosure of all costs and standardized financial statements. There is too much diversity in the sector for one set of rules. Small organizations may need special consideration. Best way to improve cost-effectiveness is to increase fundraising costs to increase revenue and return on investment (ROI). Value of charitable registration is diminished as there is no on-going monitoring.	Need to define professional fundraiser. Need to monitor/upgrade accreditation and an enforcement mechanism. Self-regulation is preferable to government regulation. Staff and compensation to be treated separately. Need for greater regulation for consultants. CSFPE designation is not enough - new standard and designation needed. Find common standards among existing codes. Self-regulation is the preferred route.	No <i>a priori</i> government approval. Opposed to more government regulation. Government pre-approval is needed to get a few bad practitioners. Charitable registration too easy to get - government should re-examine definition of charity. Delegation of authority to municipalities was controversial. Requirement to spend dollars where you raise them is bad policy and impractical. Fundraising costs should be recognized as a legitimate expense for charities. 90207 rule is not practical, but fundraising costs should be disclosed as such.
Ottawa	Standards are required for recording and allocating costs. These should be included in an industry code as opposed to legislation.	Accreditation for third party fundraisers should recognize experience. Any code of ethics requires sanctions if it is to be meaningful. Any code of ethics must be simple and be widely disseminated. A code of ethics for agencies that raise funds should be combined with a "donor bill of rights" and existing codes for fundraisers.	Government pre-approval for fundraising campaigns is not supported. Government regulation should be restricted to third party fundraisers. Pre-organization figures are meaningless - filings will be inaccurate (deliberately or inadvertently).
Montreal	No single rule on fundraising cost-effectiveness can be applied to all organizations - it depends on many factors. Some standards of performance, however, are needed. Best practices will vary for each organization, but all must be ethical and maintain costs.	Exams and certification should be required. A code of ethics is emphasized. A code of ethics is needed to preserve the sector's credibility. Cost and ethical issues should be dealt with by each organization as well as sector-wide. There are no fundraising courses offered in Quebec - some should be offered by an independent and credible organization. Any code of ethics must be well publicized. Fundraisers need a seal of approval.	Prior approval by government would be too slow and bureaucratic. Prior regulation is impractical as many organizations simply won't bother. An organization's credibility comes primarily from the people involved with it.
Hallifax	"Investment" is the appropriate concept - not "cost". Ranges for cost effectiveness could be used rather than "standards". Should be more talk about the positive benefits rather than the costs. Need a new way to measure effectiveness rather than simply "gross" and "net". Best approach might involve guidelines and ethics that are not based on money.	Standards of practice and a code of ethics should address a prohibition on commissions, the scope to exclude gaming activities and sales or merchandising, disclosure and the use of consultants, (distinguish between solicitors and consultants) and include a model contract regarding third parties.	<i>Inefficient Discussion</i>
St. John's	Program effectiveness is very difficult to measure. Cannot measure impact. National charities have difficulty in creating standards for charitable organizations. What are the calling costs? Different methodologies are needed for different organizations. Must also look at spending wisely - understand the long-term investment and the need to share costs (i.e. sharing administrative costs).	Completion of studies and examinations would give credibility to fundraisers and provide a mechanism for exercising quality control. Certification should apply to one paid (not volunteer) person per organization (the one responsible for fundraising). Use a standard exam, job description and recognized designation for the certified person. No consensus on whether this should be mandatory or voluntary. Code of ethics could be developed, but people may not abide. A breach could mean a loss of certification?	Both fundraisers and fundraising organizations should be regulated - but preferably by the sector rather than the government. It is easier to regulate fundraising activity than fundraising organizations because of the shifting nature of boards of directors. Standards of practice should be developed, and they should be related to activities - not dollars. Fundraising costs should be disclosed, as should the allocation of costs. Standards also to include third party fundraisers (see Topic #4).
Vancouver	There must first be agreement on a credible form of cost measurement. A second step would be to fully disclose actual costs. There may be a need for different standards for different charities and fundraising activities. There are 2 basic objectives: (1) ensure maximum return for programs, and (2) maintain public trust. Numbers of who should set standards but larger charities could lead the way.	There should be an accreditation process and an agency that polices paid fundraisers. Accreditation through a formal process will enhance the credibility of fundraisers and charitable organizations. A code of ethics could address the need to encourage a sense of social responsibility and commitment to the charitable sector. Any code must include sanctions and compliance mechanisms. A code of ethics may be a better measurement of performance than just "numbers".	Government pre-approval for a fundraising campaign should not be required, but there is a need to regulate both fundraisers and organizations. It is too easy to get a "charitable Canada charitable tax number. Government should review definition of charitable status as the will determine who gets regulated. Donation and donor acquisition is a major education process. For example, getting a first-time donor should be allowed as a "program" cost as this is entirely an education process (and there is a donation).
Calgary	Measuring cost-effectiveness implies industry guidelines, which is difficult to do. Boards are often unaware of what is a cost-effective campaign. Measurement is important, but there are so many ways that one measure will not be applicable across all agencies/events. Other measures aside from cost percentages are advancement of mission, impact on the public. Project evaluation forms and long term plan benchmarks could be developed. Fundraising between groups could be coordinated. Focus on longer term gain.	It is a good move to take formal education. Community colleges could provide a two-four year program. Qualifications and credential could then be presented upon being. Paid personnel should be certified personnel. Licensing should be at government level (or self-policing under government regulations). A code of ethics should cover commissions and relationship between a third party fundraiser and the donor. Must service best interest of the donor first. A code would help maintain public trust and integrity of charities.	Must ask: what the evil is that government should regulate. Is the evil unwhommed people or that unethical behaviors is rampant? The public clearly has a right to know. Everything about organizations should be disclosed to the public. Government needs to be the enforcing body. The present guidelines are too broad and too old. Regarding the 90207 rule, you can obviously report in many ways. Initial campaigns includes high costs. Penalties are not reflective of the variety of ways to raise funds.
Edmonton	Need to look more at outcomes to measure cost effectiveness. Measure effectiveness by programs delivered and the outcome related to the input. Donors, do however, want simple answers. Need to have a set of definitional guidelines. Different types of fundraising should be segregated. Need a process for budgeting. Consensus: (1) no regulation needed in the area and (2) guidelines for performance needed.	May want volunteers governed by a code of ethics, but not accredited. Many organizations cannot afford to train people in fundraising. It would likely cost to accredit these people. What is the purpose of accreditation - is educational or regulatory? Accreditation does not guarantee good practice. A code of ethics must exist before accreditation. The question is how to train disreputable practitioners from working - will a code of ethics or accreditation solve this? Public needs to know who to consult. They now go to the BBB.	The approval process is lengthy. Need to keep your public informed of the results of campaigns. The 90207 rule is difficult to operate across the board. Regulators protect charities from inappropriateness of personal profit from fundraising activities. Questionable if regulation needs to be in place so that the donor can be protected. A regulatory body should be industry driven - not by the government. A regulatory process could provide protection and provide for the disclosure of information.
London	Should measure direct costs of fundraising. Performance should be measured over several years to cover cycles - annual and multi-year figures should be reported. ROI measurements are appropriate for annual reporting. Program by program calculations are good for internal use. Need to standardize cost calculations (some organizations get "raw overhead"). Volunteer should be used as much as possible.	Fundraising should not have to complete studies or pass examinations. The field is still evolving/developing - it is multibillion, unregulated, unregulated. Communication skills & fundraising are more important than credentials. Standards of practice would be too restrictive, but standard guidelines could be developed which may form regulation. A code of ethics could include consent to organizational mission, explicit conflict of interest, require some disclosure of financial information, consistency of donor information, commitment to professionalism, donor's rights and a ban on incentive compensation.	No <i>a priori</i> approval process. No more government regulation or bureaucracy is needed. Likewise, fundraising campaigns should not have to be registered with the government. Information given to such a registry could be misleading. Charities should be treated like a business, with revenue generating costs. Public and government's perceptions need to change regarding the functioning and costs of charitable organizations.

MATRIX #1: THE CONSULTATION PROCESS (CONTINUED)

	TOPIC #4: THIRD PARTY FUNDRAISERS <i>(1) See section 4 on page 10 of the report. (2) See section 4 on page 10 of the report. (3) See section 4 on page 10 of the report.</i>	TOPIC #5: PUBLIC EDUCATION & COMMUNICATION <i>(1) See section 5 on page 11 of the report. (2) See section 5 on page 11 of the report. (3) See section 5 on page 11 of the report.</i>	TOPIC #6: ACCOUNTABILITY ISSUES <i>(1) See section 6 on page 12 of the report. (2) See section 6 on page 12 of the report. (3) See section 6 on page 12 of the report.</i>
Toronto	Fundraising organizations need to be protected from "phishing." Percentage based commissions should not be allowed. Third parties should not have access to the names of donors. This is a privacy issue. Organizations should fully disclose fees if asked, but not up front.	One standard does not fit all charities. Must communicate much more than simple financial information. The "90/20" rule is not a useful measurement tool. Increased information sharing will increase donor "buy-in." Donors need information to trust charities. Donors need clear, easy-to-understand financial information. Different info standards may be required for different areas of the sector. BBBIX are not an effective source for consumer protection. CCP should be more active in educating public on fundraising costs.	To stay fit on current practices. Charities need more help and information on ethics, etc. Fundraising standards to come from the sector - not the government. Ethics should be sector-organized not government-organized. CCP could develop a standard. Boards encouraged to support assisting codes. Boards should ensure that fundraising programs fit the organization's mission. Gross and net is the only way to prevent fundraising cost information. But, how much info has to be provided before a fundraiser is public education?
Ottawa	Third party fundraisers' involvement should be disclosed. Percentage based fees should be legal. Legislation in this area is required. Charities should retain sole ownership of donor lists. This should be part of an industry code, but not legislation. Disclosure should be compulsory if asked, but not otherwise required.	Information should be provided regarding "program" expenditures. Both gross and net revenues should be reported. Details of fundraising expenses (i.e. allocation of costs) should be explained.	<i>Insufficient Discussion</i>
Montreal	There is a need to address issues regarding third-party fundraisers.	Donors should be told about the use of their dollars. Attempt to compare efficiency of fundraising efforts between organizations, however, will be misleading. Real cost figures should be reported before allocations, and allocations should be disclosed. Donor education is needed to avoid scandals.	A single accountability standard cannot be set for all organizations. However, guidelines need to be developed. This could be done by a watchdog group from the sector, but not by the government.
Halifax	<i>Insufficient Discussion</i>	Educating donors and boards on costs is first priority. Donors and boards have different info needs. Donors do not necessarily want financial detail - they want program information. Boards want cost data. Donor acquisition costs should be reported separately. It is important to distinguish between cost-effectiveness (what charities do) and cost-efficiency (the numbers). Charities should report what they are about - providing quality services/ programs and respecting the donors by putting the maximum amount possible to the cause.	<i>Insufficient Discussion</i>
St. John's	Standards of practice should be developed that include third party fundraisers. Donor lists should be retained by the charity. Receipt-based compensation should be prohibited. Legislation for third party fundraisers is also needed, but no legislation is needed to restrict ownership of donor lists to the fundraising organization.	What does disclosure really mean? Annual reports do not tell you much. Many people do not know how to read a financial statement. Educated donors are those that ask questions. There is a need to have a mechanism to report to donors. Mandates need to be expressed. Cost effectiveness begins with the donors.	Training needed for board of directors. Boards of directors are responsible, but many do not have enough information to make informed decisions.
Vancouver	Most feel that percentage-type fees are inappropriate for charitable activities, but may be appropriate for other types of fundraising (as of yet still undecided). Many also feel that third party fundraisers should not be allowed to own or share ownership of a charity's donor list. But, most participants also felt that fundraisers should not be required to make point of publication disclosures about their fee arrangements to potential donors.	Need to educate the public that it costs money to raise money. In some cases, the sector has been promoting the wrong standard of measurement. Charities should report using a single hard number to report fundraising costs - they should report on the full mix of fundraising programs. A code of professional conduct should prohibit extravagant claims. Sector should shift the focus from "what is spent" to "what is accomplished or done."	Boards of directors should meet specific criteria to ensure integrity of fundraising campaigns, but it should not be set by government. The objective is to retain credibility. Must educate boards so that they can be accountable. Donor lists should be valued by placing them as an asset on the balance sheet.
Calgary	Third party needs to be better defined. Public needs to be better educated about percentage fees. Amongst third parties to keep or share ownership of donor lists may be a contractual matter. It's a question of confidentiality - don't know if it can be regulated. Regarding third party fundraisers disclosing their involvement and fee arrangements - that's a donor's responsibility. Third party fundraisers may disclose information when asked. Smaller organizations would suffer with regulation of third party fundraisers.	Non-profit communication to the public is information specific. The potential for scandal exists because information is often different from one non-profit to the next. The public may not know what questions to ask and there are inconsistent types of information available. Must encourage public to access information on charities (eg. "Registered charities" 1000 Form and DDP/R). Must inform public that fundraising is complex. Need common standard reporting procedures. Creation of an industry wide professional organization is suggested.	The setting of criteria is supported. Would be preferable if criteria were established and promoted by the industry. Recommend that the Canadian Centre for Philanthropy (CCP) act as an umbrella group on the fundraising issue. 90/20 rule needs to be changed to reflect the realities of the 50%. Let donors decide if they are getting good value. Public education is a built-in opportunity inherent in fundraising. No cost should be awarded. Costs need to be graduated relative to a non-profit's years of experience in fundraising.
Edmonton	The smaller, younger groups suffer from inappropriate third party practices. Needs to be more hard & fast controls in place. Monitoring and accountability - need to make informed decisions. Donor lists should become the property of the organization paying for the fundraising services. Third party fundraisers need to make honest disclosures when asked. Smaller organizations would suffer with regulation of third party fundraisers.	Donors need to have information available when they request it. This must be affordable. Donor's bill of rights suggested. What is done (i.e. program) with the funds donated is important to donors. Understanding of needs and how money is spent would help give "checkbox" information.	Government / industry regulations needed to maintain confidence of the public. Risk of a bad image & low public trust if the sector is not regulated otherwise. It is the responsibility of professional fundraisers to keep their boards advised. Industry may have already moved into the building of a regulatory process. Need education materials for boards of directors so they know what their accountability is. Gross and net is a good way to disclose fundraising costs. Fundraising costs as "public educator" issue - industry consensus!
London	Third party fundraisers should not be prohibited from setting their fees as a percentage of total money raised, but they should be criteria developed by the CCP to register legitimate third party fundraising firms. Donor lists should be the sole property of the charity. Third party fundraiser involvement in a campaign should be disclosed, but questions about fees should be referred to the charity's office.	Donors should be told "as much as possible" about the costs of a fundraising campaign. Standards are needed. Disclosure should be 100% regarding accepted donations. To help donors understand the need to disclose in accounting and law. Need a campaign in itself to educate donors regarding their rights and the need to ask questions.	Boards of directors should be required to meet certain standards and criteria to ensure integrity of fundraising campaigns, but these criteria should not be set by the government. Both gross and net figures are needed in financial statements to allow fundraising costs.

MATRIX #2: DONOR ATTITUDES TOWARDS CHARITABLE FUNDRAISING

BACKGROUND	TOPIC	ASSUMPTIONS & QUESTIONS	METHODOLOGY
<p>SAFTIG STUDY <i>United States</i> 1989</p> <ul style="list-style-type: none"> • Proper Title: "How Your Charitable Dollars Spent: A Donor's View" • Unpublished Master's Thesis at the University of San Francisco, California. • Dated May 1, 1989. 	<p>This study examined how donors interpret financial disclosure statements of various health organizations.</p>	<p>The purpose for legislation forcing charities to disclose certain fundraising information is that donors will be better able to separate legitimate charities from questionable ones. Charities will be more accountable to the public.</p> <p>If donors interpret the expenditures in disclosure statements differently from the definitions used by the <i>American Institute of Certified Public Accountants (AICPA)</i>, then legislating disclosures would fail to accomplish its objective - unless the donating public became more educated on the issue.</p>	<p>The study surveyed, by mail, 350 known donors of three San Francisco Bay area charities, of which 160 responded (46%).</p>
<p>HYNDMAN STUDY <i>Great Britain</i> 1990</p> <ul style="list-style-type: none"> • Proper Title: "Charity Accounting: An Empirical Study of the Information Needs of Contributors to UK Fund Raising Charities" • An article appearing in <i>Economic Accountability & Management</i>, Vol. 6 No. 4. • Conducted in England. • Dated Winter of 1990. 	<p>This study examined and assessed how information available to donors is used and viewed by them in deciding whether or not to donate to a charitable organization.</p>	<p>The purpose of accounting is to provide information to satisfy the questions of its users.</p> <p>A definition of accounting is the provision of economic information to permit informed judgements and a decision by the users of such information.</p> <p>This study looks to answer whether the information contained in charities' accounting information is useful to potential donors.</p>	<p>A study was first conducted on the reporting information provided by the largest fundraising charities. A model which listed and prioritized the main types of information relevant to the information needs of contributors was then developed. A survey based upon this model was then prepared.</p> <p>The survey was sent to a sample of known charitable donors, asking them to rate the importance of certain information in deciding whether to donate to a charity.</p>
<p>DOUBLE STUDY <i>United States</i> 1990</p> <ul style="list-style-type: none"> • Proper Title: "Public Opinion About Charitable Solicitation and the Law" • Research study conducted for the Program of Philanthropy and the New York University School of Law. • Conducted in the United States. • Dated October 1990. 	<p>The focus of this study was to explore public opinion on charitable solicitation and fundraising practices.</p> <p>The study was presented at a conference entitled "Charitable Solicitation: Is There a Problem?" sponsored by the New York University School of Law.</p>	<p>Numerous "focus groups" were held across the U.S. to uncover people's responses to two basic questions:</p> <ol style="list-style-type: none"> (1) Are people concerned about the amounts that charities spend on fundraising? (2) What do people feel is the proper role of government in regulating charitable solicitation? 	<p>Researchers interviewed 20 experts on charitable solicitation to identify the issues. In the interviews, there was a pronounced lack of agreement about the issues, and whether or not a problem even exists at all.</p> <p>Despite this lack of consensus on the issues, researchers proceeded with the public opinion study by holding a series of "focus groups" across the United States. A series of hypothetical situations were presented and the views on them collected.</p>
<p>COUNCIL OF BETTER BUSINESS BUREAUS POLL <i>United States</i> 1993</p> <ul style="list-style-type: none"> • Proper Title: "American's Attitudes Regarding Regulation of Charitable Organizations" • Public opinion research conducted for the CBBB by the Gallup organization nationwide in the U.S. • Dated August 1993. 	<p>The purpose of the study was to survey the public regarding their attitudes on government regulation of charitable organizations.</p>	<p>The study sought to gather information on the public's impression of charities and those organizations who work for them.</p> <p>The aim of the study was to identify and flesh out these impressions, eventually inferring from them the general mood of the public at large towards charities.</p>	<p>1000 Americans were contacted by telephone from randomly generated telephone lists. They were asked a series of questions about themselves and their attitudes towards charities.</p>

MATRIX #2: DONOR ATTITUDES TOWARDS CHARITABLE FUNDRAISING (CONTINUED)

KEY FINDINGS / CONCLUSIONS

RECOMMENDATIONS

<p>SAFTIG STUDY <i>(Continued)</i></p> <ol style="list-style-type: none"> (1) Overall, 75% of respondents supported proposed legislation for compulsory disclosure of fundraising information. (2) About 75% of respondents also feel that a statement of expenditures serves as a "good indicator" of an organization's effectiveness. (3) Results showed that despite growing concerns over the fundraising practices of some organizations, the respondents believe that their donation dollar is put to appropriate use. (4) Respondents were generally unaware that expenditures could be spread throughout many different expenditure categories. (5) Results suggest that disclosure statements, however accurate by professional accounting standards, are not fully understood by donors. They do not serve as indicators of an organization's efficiency and effectiveness on which to base a decision to donate. 	<ol style="list-style-type: none"> (1) The standards used to report charitable expenditures to the public should be revamped to provide a more accurate understanding among the donor public for which they were intended. (2) A simplistic comparison between total dollars raised and total fundraising costs is inadequate and can be misleading. (3) Compulsory disclosure of financial and fundraising information can prove harmful to the giving public, since they may begin making gift decisions based on income and expense comparisons rather than trust, perceived public benefit or charitable intent. 	
<p>HYNDMAN STUDY <i>(Continued)</i></p> <ol style="list-style-type: none"> (1) Of the ten most important types of information, five contained non-financial information and five contained financial information. (2) Reporting of information by charities is dominated by the use of audited financial information. (3) Financial information was perceived by the respondents as being relatively less important than other information that is seldom disclosed. The most important type of information sought by respondents is non-financial, while the most usual information disclosed is financial. (4) The information types rated highly by respondents related to the assessment of performance of a charity, a notoriously difficult area to measure in the charitable sector. 	<ol style="list-style-type: none"> (1) There needs to be a shift in emphasis from financial to non-financial disclosure if charity reports are to be relevant to potential donors. More information should be made available with respect to the performance, objectives, outputs, past performance and future plans of charities. This is based upon the argument that donors provide resources to charities for altruistic reasons, not economic reasons. (2) Financial information should be presented in a more simplified format rather than the traditional audited form. Donors may have difficulty understanding and therefore using audited statements. (3) Further research in developing reliable, acceptable and comparable measures of performance is crucial to the improvement of charity reporting in meeting the information needs of contributors. The charitable sector should invest time in defining measures of non-financial performance for use by donors. Charities should work together to arrive at defined performance measures. <p><i>Respondents favoured four measures to protect the public:</i></p> <ol style="list-style-type: none"> (1) The amount of money a charity can spend on administration should be limited; (2) Fraudulent claims or misrepresentations should be vigorously prosecuted; (3) Full disclosure laws should be implemented that would enable the public to easily find out how much a charity spends on administration and fundraising; (4) The state Attorney General's Office and the IRS should undertake active and continuous review of charitable activities. 	
<p>DOBLE STUDY <i>(Continued)</i></p> <ol style="list-style-type: none"> (1) Respondents had a positive view of charities, but felt charities routinely wasted 25% of the income they raised. (2) Most groups felt that hiring a fundraiser who would keep 80% of campaign donations is totally unethical. A few thought the practice should be illegal. Most were opposed to the practice on practical grounds - that it would damage a charity's reputation. Groups did not object if a fundraiser was well paid, however. (3) Respondents criticized telephone solicitations and methods used by the United Way of America. (4) Respondents did not think there was a national problem with charitable solicitation, as they felt the public is generally well protected by existing laws and institutions. They believed that a charity's disclosure statements and tax exempt status were thoroughly reviewed by appropriate regulatory agencies on a regular basis. Cases of fraud and abuse are quickly investigated and a charity's license could be easily revoked. 		
<p>CEBBB STUDY <i>(Continued)</i></p> <ol style="list-style-type: none"> (1) Approximately 81% of respondents were very concerned or somewhat concerned about the amount that charities are spending on activities not directly related to their stated mission, such as fundraising. (2) Only 33% felt that charities provided enough information about their activities to help them in their decision to contribute. (3) One third of respondents said charities are less trustworthy than they were a year ago, and 62% felt they are less trustworthy than ten years ago. 		<ol style="list-style-type: none"> (1) About 75% felt there needed to be more mandatory regulation to insure that organizations fulfill the promises they make to donors. (2) About 67% of respondents said they felt that an independent, reputable organization other than government was equally suited to administer regulations.

MATRIX #3: REGULATION IN CANADA

	BACKGROUND	BASIC PROVISIONS OF LEGISLATION	SPECIFIC PROVISIONS ON FUNDRAISING
<p>Federal Legislation</p> <p><i>Income Tax Act</i></p>	<p>This federal government offers charities tax free privileges as they often provide essential work that might otherwise have to be carried out by government. Charities can also carry out this work with more empathy & imagination. Charities fill gaps in publicly provided services, allow freedom of choice in the provision of services, and are seen as helping preserve some of society's highest values.</p>	<ul style="list-style-type: none"> Charities seeking tax free status must register with Revenue Canada. Charities are defined as organizations where all resources go towards charitable activity and where income does not privately benefit a member or trustee of the organization. Charities must disclose amounts paid to professional fundraisers. Charities must spend 80% of reciprocal donations on charitable activities. Charitable activities do not include administrative expenses such as fundraising costs. 	<ul style="list-style-type: none"> Registered charities must file an <i>Information return</i> with Revenue Canada each year outlining receipts and expenses. Charities must report or disclose any amounts directly related to fundraising - including amounts paid to third party fundraising agents. Information returns can be made public by the Minister of National Revenue.
<p>Provincial Legislation</p> <p><i>Charities Act (PEI)</i></p>	<p>The PEI Act requires charities to register with the government before they can solicit for funds within the province.</p> <p>The Act does not address or regulate amounts going to professional fundraisers.</p>	<ul style="list-style-type: none"> Charities must register with the government before soliciting funds. Registration is granted if: <ol style="list-style-type: none"> there is adequate provision for the charity's control; there is reason to believe that the specific purpose of the charity has not yet been satisfied by some other group; that the application is made in good faith. The Minister keeps a registry of all charities in the province. Registration can be terminated at the Minister's discretion providing it is deemed desirable in the public interest. 	<p>NOT APPLICABLE</p>
<p>Provincial Legislation</p> <p><i>Charities Accounting Act (Ontario)</i></p>	<p>This act does not regulate fundraising directly. Rather, it provides the public with a vehicle to register complaints. The Act employs more of a "consumer protection" approach to the regulation of charities.</p>	<ul style="list-style-type: none"> The Public has the right to register complaints about the manner in which a charity has solicited funds to the <i>Public Trustee's Office</i>. The Public may register complaints to the <i>Ontario Court</i> about the manner in which any funds have been subsequently disposed of. The Court may advise the Public Trustee to investigate any matter it deems within the public interest. Following such an investigation, the Court may order an independent audit of the charity's books. 	<p>Ontario's legislation does not regulate third party fundraisers. The government has produced a handbook with "guidelines" however:</p> <ul style="list-style-type: none"> fundraising is not a charitable purpose - it is incidental; the portion of donations going to fundraising costs should be disclosed, and it should be within 20%; charities should proceed cautiously when dealing with a profit third party fundraiser. Background checks should be carried out; a contract should be signed with professional fundraisers. The fundraiser should inform donors at the point of solicitation they are dealing with a professional fundraiser.
<p>Provincial Legislation</p> <p><i>Charities Endorsement Act (Alberta)</i></p>	<p>Charities and promotional organizations must receive authorization from the province before canvassing for public contributions.</p> <p>The legislation is administered by both the province and the <i>City of Winnipeg</i> and other municipalities.</p>	<ul style="list-style-type: none"> Authorization to solicit for funds must be granted by either the province or the City of Winnipeg through the <i>City Charities Bureau</i>. The authorization is granted at the discretion of the province or the City. It may be valid for only a period of time and can be revoked at any time. The Bureau will grant authorization if (1) the charity has satisfactory local management and a board of managers; (2) the accounts are audited when required by the Bureau; and (3) after 90 days the charity files a statement of revenues and expenses for the campaign. The Bureau examines the character & intention of charities seeking public contributions. If the Bureau believes insufficient amounts of the funds to be raised will go to the charitable purpose, authorization may be denied. 	<p>If a promotional agency is involved in any fundraising campaign, special provisions apply before authorization to solicit will be granted:</p> <ol style="list-style-type: none"> a copy of the contract must be made available to the authorities; remuneration to the fundraiser must be expressed as a fixed sum or percentage of the profits, and authorities must approve this amount; the fundraiser must agree to provide audited financial statements to the authorities; any contract between a fundraiser and a charity is not valid until proper authorization is first granted.
<p>Provincial Legislation</p> <p><i>Public Contributions Act (Alberta)</i></p>	<p>A comprehensive Act dealing with fundraising activities carried on by charities & professional fundraisers. Sections of the Act were ruled unconstitutional in June of 1994.</p> <p>The Minister of Consumer & Corporate Affairs requires professional fundraisers to obtain a license and post a bond under the <i>Charitable Promotion Business Licensing Regulation</i>.</p>	<ul style="list-style-type: none"> Charities must be authorized by the government to solicit funds. This power may be delegated to municipal governments. Charities must apply for authorization. In the application must be the objectives of the campaign, budgeted salaries, the locations where solicitation will occur, the purposes of the money collected and how much of it they plan to spend in Alberta. Accounts of the campaign must be submitted to the government, which can inspect them. The Minister responsible can make public any information on groups seeking donations. Authorization may be denied or revoked for any number of reasons considered to be sufficient in the public interest. 	<ul style="list-style-type: none"> Any contract entered into with a third party fundraiser must be included with the application for authorization to solicit; All contracts must include a detailed listing of expenses, the percentage of proceeds the charity is to receive, and the dates of both parties. Authorization can be revoked if there has been non-compliance with the Act, if not enough of the funds were going to the charitable purpose considering the total amount of funds to be collected, or if the funds may be misused. Authorization can also be revoked if there is speculation as to the honesty and integrity of the persons conducting the campaign.

MATRIX #3: REGULATION IN CANADA (CONTINUED)

RECENT DEVELOPMENTS

CHARITABLE SECTOR RESPONSES

<p>FEDERAL (Continued)</p>	<p>A report entitled <i>A Better Tax Administration in Support of Charities</i> was released in November 1990. It focused on issues of public accountability and amounts going to professional fundraisers. Specific concerns expressed include:</p> <ul style="list-style-type: none"> • excessive amounts going to fundraisers risks creating a perception harmful to the entire sector; • government needs more information from charities on fundraising costs; • charities have an implicit social contract with Canadians, and since they rely on the generosity of their donors, they must be accountable to their donors; • regulations must allow Canadians access to information on various charities; • the single most important key to accountability is an open process. This encourages self discipline. 	<p>Responses to the discussion paper by various charitable groups included these comments:</p> <ul style="list-style-type: none"> • greater transparency of fundraising costs was desirable; • all charities must adhere to the same standards - uniform accounting policies in allocating fundraising costs is important. Higher fundraising costs may be incurred by new charities & they should not be penalized for higher than normal costs. • fundraising costs incurred by external consultants are not necessarily worse than costs associated with internal fundraising personnel; • the goal is to achieve maximum economic efficiency. In order to retain the confidence of the public, charities must not just be run "flawlessly", they must first of all meet society's needs.
<p>PEI (Continued)</p>	<p>NOT APPLICABLE</p>	<p>NOT APPLICABLE</p>
<p>Ontario (Continued)</p>	<p>For several years, the <i>Ontario Law Reform Commission Project on the Law of Charities</i> has been addressing legislation affecting charities in the province. The Public Trustee has made several comments:</p> <ol style="list-style-type: none"> (1) government has the right to supervise charities because charitable property is unique - it is to be used for the benefit of the general public; (2) self regulatory efforts should be applauded, but they alone cannot replace government regulation; (3) professional fundraisers should be licensed. Licenses should be refused and/or revoked if reasonable grounds exist that much of the donations will not go to the charity for which it was intended, or if the fundraiser fails to properly account for donations received. 	<p>Responses to the charitable legislation reviews have included the following comments:</p> <ol style="list-style-type: none"> (1) involvement of federal, provincial and local governments in regulation of charities may place an unnecessarily heavy burden on charities and cause confusion with seemingly contradictory regulations; (2) Revenue Canada, or some other distinct federal agency should be the single central agency for the public administration of charities in Canada; (3) asking this, Ontario should set an example to other provincial jurisdictions by harmonizing its reporting requirements and regulations consistent with the Federal Income Tax Act.
<p>Manitoba (Continued)</p>	<p>NOT APPLICABLE</p>	<p>NOT APPLICABLE</p>
<p>Alberta (Continued)</p>	<p>In June of 1994, The Alberta Court of Appeals ruled certain sections of the <i>Public Contributions Act</i> unconstitutional. The suit was brought by <i>Episcopal Canada</i>. They argued that sections of the Act requiring prior approval before soliciting contributions were an unreasonable limit of freedom of expression as guaranteed under the Charter. The Court ruled that: (1) asking for donations was an act of expression deserving protection; (2) the activities the legislation sought to curtail did not warrant a limitation of this expression; (3) the discretionary power of the government in the legislation was unacceptable; (4) the legislation targeted more than charities; and (5) the prior approval process was not necessary given what other jurisdictions have used to regulate charities.</p>	<p>Reactions to the outcome were favourable and unfavourable:</p> <ul style="list-style-type: none"> • one person responded by arguing that the Act was nothing less than a "yag" order on non-profits, and that the Legislature should repeal it; • others responded that the ruling would inevitably relax present laws, increasing the likelihood of fraud and a slow erosion of public confidence in the charitable sector; • the Better Business Bureau of Calgary and southern Alberta argued that the public is vulnerable when it comes to fundraising for charities. Disclosure is critical for the community to know which campaigns to support.

MATRIX #4: REGULATION IN OTHER COUNTRIES

BACKGROUND	BASIC PROVISIONS OF LEGISLATION	PROVISIONS RELATED TO FUNDRAISING
<p>GREAT BRITAIN</p> <p>Britain has long regulated charities. The <i>Charitable Trust Act</i> was first passed in 1853. The <i>House to House Collections Act</i> (1939) required charities to be licensed. A license could be refused if an inadequate amount of donations were being applied to the charitable purpose. The <i>Charities Trust Act</i> (1960) set up a general Charity Commission to maintain a registry of charities and audit accounts.</p> <p>During the late 1980s, several government reports were commissioned following several scandals where up to 80-90% of a fundraising campaign's donations went to a professional fundraiser. The <i>National Audit Office</i>, the <i>Committee of Public Accounts</i>, the <i>National Council for Voluntary Organizations</i> and the <i>Home Secretary and Secretary of the Treasury</i> produced reports pointing to flaws in the monitoring of charities, increases in fraud and abuse, the poor state of the registry, excessive remuneration paid to professional fundraisers & deficiencies in the Charity Commission's auditing of accounts.</p>	<p>In May of 1989, the government presented a <i>White Paper</i> outlining their objectives in drafting new legislation for charities. It was partially based on the reports that had been issued earlier:</p> <ul style="list-style-type: none"> • Of most concern is the protection donors against dishonest appeal while keeping the law and its application as simple and streamlined as possible; • The objective is to achieve a balance between proper control/accountability and the freedom of charities to go about their business; • New, wide-ranging legislation to control all types of fundraising is inappropriate and insufficient. Self regulation by the charitable sector and the public itself will have to be relied upon to detect and control abuses; • Remedies for abuse included increased public watchfulness, greater self regulation through codes of professional conduct, and government voluntary codes of practice. <p>As a result of the <i>White Paper</i>, a new law, the <i>Charities Act of 1992</i>, was enacted. It included:</p> <ul style="list-style-type: none"> • Prior approval process - charities must have a license before soliciting for public contributors; • Local authorities can refuse a license if not enough of the proceeds will go to the charitable purpose, but they have no wide discretionary power to refuse a license; • A seven day cooling off period where contributors giving 50 or more pounds can claim a refund if they change their mind. 	<ul style="list-style-type: none"> • Britain's new legislation contains <i>stringent provisions</i> regarding the activities of third party professional fundraisers. <ol style="list-style-type: none"> (1) Point of solicitation disclosure must be made. Fundraisers must inform donors at the point of a request, whether verbal or written, that they are a professional fundraiser; (2) Fundraisers must inform donors as to how they are being remunerated for raising funds for the charity; (3) Fundraisers must inform donors they have a right to a refund based on the disclosures they give them. • The definition of professional fundraiser does not include employees of the charitable organization. • Licenses for fundraising can be revoked or refused if the amounts going towards the charitable purpose are deemed insufficient by the local licensing authorities. No limit, however, is set.
<p>UNITED STATES (Federal)</p> <p>Like Canada, federal government legislation regarding charities comes through the Income Tax Act - specifically the <i>Internal Revenue Code</i>. The <i>Internal Revenue Service (IRS)</i> is the arm of the federal government responsible for monitoring charities in America.</p> <p>The majority of states also have Government agencies involved with the regulating of non-profit organizations.</p>	<ul style="list-style-type: none"> • The Federal Income Tax Act defines the types of organizations exempted from taxation and which organizations may issue official tax receipts for contributions. These include any corporations, community chests, funds or foundations that are organized and operated exclusively for religious, charitable, scientific, or educational purposes where no part of the net earnings may go to the private benefit (or gain) of any private shareholder or individual of the organization. • Once receiving exempt status, the organization must file an <i>annual return</i>. This return contains information on finances, expenses, compensation and activities of the organization. • Copies of charitable organizations annual returns are available to the public from the IRS. • Copies of the annual return must also be made available for public inspection at the organization's principal place of business. • Federal tax legislation provides no immediate sanctions against charities other than the revocation of the organization's tax exempt status. A charity's tax exempt status may be revoked if: <ol style="list-style-type: none"> (1) If the activities indicate it is not being operated exclusively as a charity; (2) If its activities result in an individual of the organization receiving private benefit or gain. 	<p>Current federal legislation contains no controls over third party fundraisers. Further regulation is being attempted:</p> <ul style="list-style-type: none"> • The <i>Federal Trade Commission (FTC)</i> which enforces consumer protection laws, is looking to regulate telephone solicitors and tax exempt organizations existing solely to benefit for-profit fundraising companies. In July 1989 the FTC held hearings on deceptive fundraising by charities. • <i>House of Representatives Subcommittee on Oversight</i> - conducted hearings in 1989/94 to review the adequacy of and compliance with laws governing charities. The specific focus was on issues of private benefit, non-compliance with tax law and abuses. A report recommended that: <ol style="list-style-type: none"> (1) Annual returns do not provide enough information. Fundraising fees should be included and donors should know they have the right to examine these returns. Penalties for failing to file a correct return were increased. (2) Currently, the only sanction against charities is a revocation of the tax-exempt status. This drastic action is often disproportionate to a small violation. A two tiered excise tax will be applied in the case of some violations. In particular any excess "private" benefit. (3) IRS is to increase staff and have more funding to enforce the rules in current legislation. • It was hoped that these measures would aid the IRS in enforcing the law, increase compliance and accountability and increase public confidence in the charitable sector.

MATRIX #4: REGULATION IN OTHER COUNTRIES

BACKGROUND	BASIC PROVISIONS OF LEGISLATION	PROVISIONS RELATED TO FUNDRAISING
<p>State Regulation <i>California</i></p> <p>Since 1959, California has had registration and reporting requirements for charities.</p> <p>In the 1989 <i>Riley</i> decision, The US Supreme Court ruled that percentage limits on fundraisers were unconstitutional. As a result of that decision, California was forced to rewrite its legislation on charities, and rely solely on a reporting / registration regulatory scheme.</p>	<ul style="list-style-type: none"> • The Commercial Fundraisers For Charitable Purpose Law was enacted by the state of California in 1980. • The piece of legislation deals specifically with third party fundraisers. • Under this law, the Attorney General for the state produces an annual report entitled the <i>Attorney General's Report on Charitable Solicitation by Commercial Fundraisers</i>. This report is expected to help prevent abuse, and educate the public. • The legislation's prime purpose is to assist the public by providing them with information that will help them critically evaluate charitable solicitation and avoid becoming fraud victims. 	<p>California's legislation requires:</p> <ol style="list-style-type: none"> (1) All commercial for-profit fundraisers are to register with the government annually. (2) All for-profit fundraisers are to report annually the money they collect on behalf of charities and their fundraising costs. (3) In the Attorney General's report is listed all the commercial fundraisers and their percentages return to charitable organizations. <p>In the 1992 report, it was noted that two out of every three dollars donated did not go to a charity at all, but went to fundraisers. Out of the \$99 million raised by commercial fundraisers, only \$29 million (33%) went to the charitable organization.</p>
<p>State Regulation <i>Connecticut</i></p> <p>Connecticut's legislation is very similar to the California scheme.</p> <p>Like California, the state's legislation relies on registration and reporting to provide some control over professional fundraisers.</p>	<ul style="list-style-type: none"> • The basic provisions are similar to California. • Each year the Attorney general and the Department of Consumer Protection publishes a report on telephone solicitation for charitable causes. • Each year the report is issued the Attorney General's Office will release the results through a press release in order to ensure wide spread attention on the findings included within the report. • Copies of the report are distributed free of charge to anyone requesting a copy. 	<p>In the 1992 report, it was mentioned that out of the \$7.8 million raised by telephone solicitation within the state, \$5.4 million (or 70%) went to the cost of fundraising and only \$2.3 million (or 30%) to the actual charity.</p> <ul style="list-style-type: none"> • If a professional solicitor is contracted by a charitable organization for a fundraising campaign, specific disclosures must be made to donors at the time a contribution is requested: <ol style="list-style-type: none"> (1) The name of the professional soliciting company must be told; (2) The donor must be informed that the person requesting the donation is being paid for her/his services; (3) The donor must be informed of the name of the charitable organization requesting the donation; (4) The donor must be informed as to how the funds collected will be utilized for charitable purposes.
<p>State Regulation <i>Pennsylvania</i></p> <p>Pennsylvania's legislation is unique as professional fundraisers must make certain disclosures when approaching donors - at the time of solicitation.</p> <p>Pennsylvania is active in suing charities that violate provisions of the state Act. In 1992, the state filed lawsuits against four charities claiming that donors were improperly reported by the charities - they increased the amount attributed to programs to decrease the amount spend on fundraising.</p>	<ul style="list-style-type: none"> • Unlike the other two states, Pennsylvania has focused its legislative efforts on enforcing accurate disclosures on information at the time of solicitation - or when donors are actually asked to contribute. • The Act distinguishes between professional fundraising courses, who might give advice on how to raise funds and a professional solicitor, who is paid compensation for actually reviewing contributions. 	<ul style="list-style-type: none"> • Directors or other officers of a non-profit organization can be held personally accountable if they enter into an agreement with a professional fundraiser which results in a breach of their financial responsibilities to the organization. • If a fundraising campaign is to exceed two years in duration, the non-profit groups must first obtain written proposals from at least three professional fundraising groups.
<p>State Regulation <i>Oregon</i></p> <p>Oregon has extensive registration and reporting requirements for charitable organizations and professional fundraisers. It also contains a unique provision relating to the financial trusteeship duties of a charity's board of directors.</p>	<ul style="list-style-type: none"> • As with other states, Oregon's legislation focuses on registration and reporting of financial information returns with the state government. • If one of the purposes of a solicitation is to acquire an identified list of donors for use as a donor base for future public contributions, the non-profit groups must have exclusive rights to the ownership and use of that donor list. • It is presumed that such a donor list acquisition is the purpose of any campaign unless specified otherwise. 	<ul style="list-style-type: none"> • Directors or other officers of a non-profit organization can be held personally accountable if they enter into an agreement with a professional fundraiser which results in a breach of their financial responsibilities to the organization. • If a fundraising campaign is to exceed two years in duration, the non-profit groups must first obtain written proposals from at least three professional fundraising groups.

MATRIX #5: IMPORTANT U.S. COURT DECISIONS ON CHARITABLE FUNDRAISING

BACKGROUND	MAJORITY OPINION - ARGUMENTS	MINORITY OPINION - ARGUMENTS
<p>Village of Schaumburg</p> <p>VS.</p> <p>Citizens for a Better Environment</p> <p><i>U.S. Supreme Court 1980</i></p> <p>The Village of Schaumburg adopted an ordinance (by-law) regulating charitable solicitation. Groups seeking public contributions within the village had to first apply for a permit.</p> <p>The permit, among other things, required the organization to prove that at least 75% of the proceeds would go directly for the group's charitable purpose. In calculating the figure, charities were not allowed to include salaries/commissioners paid to solicitors or other administrative expenses.</p> <p>Citizens for a Better Environment (CBE) were denied a permit as the organization could not demonstrate that 75% of the proceeds would be used for a charitable purpose. The village alleged that CBE was raising funds solely for the benefit of its employees and its charitable purpose was negligible. CBE decided to challenge the law...</p>	<p>8 Justices declared the village ordinance unconstitutional.</p> <ul style="list-style-type: none"> A charitable appeal for funds is a freedom of speech issue involving the communicating of ideas, the propagating of views and the advocating of causes. These speech interests are all constitutionally protected under the first amendment. Charitable solicitation is subject to reasonable regulation, but it must be realized that such solicitation is intertwined with the right to inform and persuade people. Seeking support for a particular cause or view on economic, social or political issues without the right to solicit would cease the flow of information and advocacy. Campaigns are more than solicitations for money - they also seek to convince others of a particular point of view. There is a class of charities where solicitors act not as a mere conduit for contributions, but where the organization's primary purpose is to gather and disseminate information about and advocate positions on matters of public concern. These organizations would likely spend more than 25% on salaries and administrative expenses and under this ordinance, would be prevented from soliciting public contributions within the village. The argument that any organization using more than 25% of its receipts on fundraising is not a charity but a "for-profit enterprise" is not true for organizations that are primarily engaged in research, advocacy or public education. The Court ruled that the Village's interest in preventing fraud were legitimate, but its aims could be better accomplished using less intrusive measures than a direct prohibition on solicitation. 	<p>1 Justice dissented from the majority opinion</p> <ul style="list-style-type: none"> The challenged ordinance deals not with the dissemination of ideas but the solicitation of money. The simple spreading of unpopular ideas from house to house may be worthy of protection, but a <i>stringent</i> request for money lies far from the protections envisioned within the first amendment. The community's interest in insuring that organizations collecting donations meet some objective financial criteria is <i>indisputably</i> valid. Nothing in the constitution should prevent residents from making a collective judgment concerning worthy charities while at the same time insulating themselves from profiteers. The ordinance affects only door to door solicitations for financial contributions and thus leaves <i>little discretion</i> in the hands of the local authorities to censor unpopular speech. The ordinance is rationally related to the community's collective desire to bestow its largesse upon organizations that are truly charitable.
<p>Secretary of State of Maryland</p> <p>VS.</p> <p>Joseph H. Atkinson Co. Inc.</p> <p><i>U.S. Supreme Court 1984</i></p> <p>The state of Maryland passed a statute stating that charitable organizations could not use more than 25% of the gross income raised through a fundraising campaign to cover the expenses of the fundraising drive.</p> <p>Exceptions to the 25% rule were permitted if state regulators determined that the 25% rule would prevent an organization from raising contributions.</p> <p>The 25% rule did not apply to compensation paid to professional fundraising counselors for a feasibility study. Direct costs associated with putting on an fundraising event, cost of postage or printing connected with a solicitation were also exempt.</p> <p>Joseph H. Atkinson Co. Inc., a professional for-profit fundraiser, decided to challenge the law...</p>	<p>5 Justices declared the Maryland statute unconstitutional</p> <ul style="list-style-type: none"> Like the Schaumburg legislation, this legislation restricts how charities engage in solicitation. There is no necessary connection between high solicitation & administration costs and fraud. The Maryland statute made clear that public education activity is included in the solicitation costs regulated by the 25% limitation. <i>The provision hurts charities whose solicitation costs are high because they choose to disseminate information as part of their fundraising activities.</i> The majority opinion of the Court disagreed with this allocation as solicitation is intertwined with protected speech. Educational materials can serve two purposes - to educate and to ask for money. The discretionary power of the state in granting waivers to the 25% rule was troublesome. Although the state argued that waivers were granted in a "discrete" manner, the majority opinion of the Court was that the statute created the threat of censorship. It is no more <i>feasible</i> for a charity to pay a professional fundraiser to engage in legitimate public education activity that it is for the charity to engage in that activity itself. Unscrupulous fundraisers or charities can deal with through less intrusive measures - such as registration requirements and penalties for fraudulent conduct. The state of Maryland argued that there was no prior restraint on protected activities, and that the statute regulated only after the fact. The Court held that the statute did impose a prior restraint by forcing charities and fundraisers to file contracts with the state before receiving a permit to solicit. But regardless of whether the statute regulated before or after the fact, it makes little difference - the chill on protected activity is the same. 	<p>4 Justices dissented from the majority opinion</p> <ul style="list-style-type: none"> The Schaumburg legislation was suspect because its limitations on fundraising costs prohibited organizations whose primary activity was research, advocacy and public education to use even their own staff to solicit financial support if more than 25% went to cover fundraising costs. This legislation, however, is different. It is directed at controlling external economic relations between charities and professional fundraisers. Most professional fundraisers are not themselves engaged in speech activities, and hence the law is constitutional. Limitations on fees charged by professional fundraisers insure that funds from the public will not be excessively diverted to private gain. The limitation in the statute encourages the public to give by allowing the public to give with confidence that their money will be spent on charitable purposes. There is an element of fraud in soliciting money for a charity when in reality that charity will only receive a fraction of the funds collected. No statute contains an absolute guarantee that it will always be applied within constitutional bounds. The majority of the Court has misunderstood the primary purpose and effect of the statute and then it has proceeded to speculate how it might be improperly applied.

MATRIX #5: IMPORTANT U.S. COURT DECISIONS ON CHARITABLE FUNDRAISING (CONTINUED)

BACKGROUND	MAJORITY OPINION - ARGUMENTS	MINORITY OPINION - ARGUMENTS
<p><i>Riley</i> vs. <i>National Federation of the Blind of North Carolina Inc.</i></p> <p>Professional fundraisers could defend a higher fee than 35% if it could be proven that advocacy, discussion or education warranted it, or if the limit significantly diminished their ability to raise funds.</p> <p>The estate also provided for "point of solicitation" disclosures on fees charged by the fundraiser.</p>	<p>7 Justices declared the North Carolina statute unconstitutional</p> <ul style="list-style-type: none"> The legislation has two premises: (1) charities are unable to negotiate fair contracts without government assistance, (2) charities are incapable themselves of exercising their first amendment rights. There is no evidence that charities have been threatened in their attempts to speak or that contracts they have signed have been inequitable. The paternalistic premise that charities must be regulated for their own benefit is unsound. The legality of a fundraiser's fee as determined by percentage is not sufficiently tied to the state's interest in preventing fraud. There is no necessary connection between the percentage charged by a fundraiser and the likelihood of a fraudulent solicitation. Charities have high fundraising costs for many legitimate reasons (e.g. a sacrifice of short term gains (high fundraising costs) for long term/necessity benefits an expanded donor list). The Act is insensitive to small or unpopular charities who may have to spend more than 35% of their donations on fundraising due to the difficulty of attracting donors. The Court ruled against "point of solicitation" disclosure provisions. In forcing fundraisers to disclose financial information to donors before a request, the statute mandated speech, thus altering its content. Freedom of speech includes the right to speak and to refrain from speaking. No distinction was made between statements of fact and statements of opinion. The disclosure provisions would also hamper legitimate fundraisers, discriminate against small or unpopular charities and if the donor were unhappy with the fee charged by the fundraiser, that person would likely have little chance to explain the fee structure. States can use less intrusive measures, such as enforcing antifraud legislation or publishing detailed financial disclosure information if now requires from fundraisers. 	<p>2 Justices dissented from the majority opinion</p> <ul style="list-style-type: none"> The Court has refused to allow states to distinguish between incidental fundraising activities and the entirely commercial activities of people whose job it is to raise money for charity. The fee provisions are rationally related to the state's legitimate interest in preventing fraud on potential donors and protecting against overcharging of charities by professional fundraisers. The statute required that professional solicitors disclose certain relevant and verifiable facts to the potential donor. This type of disclosure, during a solicitation, is much the same as mandatory disclosure requirements that exist in securities transactions. The state should be allowed to regulate charities just as they now regulate admission into the legal profession. Bar admission requirements may have some incidental effect on the first amendment as it restricts a person's right to live whom ever he or she please to serve as his or her attorney. The Court has never suggested that the state regulation of admission to the bar should be subject to strict scrutiny.
<p><i>United Cancer Council</i> vs. <i>Commissioner of Internal Revenue</i></p> <p>Ongoing case in U.S. Federal Tax Court</p>	<p>UCC'S ARGUMENTS</p> <ul style="list-style-type: none"> In 1984, the United Cancer Council (UCC), a charitable group supporting research & promoting programs for preventing cancer, signed a no-risk contract with H&W, a professional fundraising firm. For 5 years, H&W conducted direct mail campaigns for UCC. H&W raised almost \$28 million, but UCC received only \$2.6 million in net revenue. Since H&W accepted responsibility for any losses of a failed direct mail campaign, the no-risk contract charged UCC a premium fee for each piece of mail sent to potential donors. Also, H&W would identify own with UCC the list of names built up during the contract. In November of 1989, the IRS revoked UCC's tax exempt status, retroactive to the signing of the contract in 1984. The UCC is now suing the IRS to reinstate their tax exempt status. The case is ongoing, and is expected to be appealed ultimately to the Supreme Court on First Amendment grounds. 	<p>IRS / INDEPENDENT SECTOR'S ARGUMENTS</p> <p>The IRS filed a brief in response to UCC's arguments, as did the Independent Sector (an umbrella group of charities). The Independent Sector's main points are as follows:</p> <ul style="list-style-type: none"> UCC signed a contract that gave H&W exclusive rights to rent or exchange UCC's mailing list (part ownership). UCC gave a private party virtually complete control over one of its most important assets. H&W used the list to generate significant economic benefits for itself by renting & exchanging it, thus diminishing the list's value as an important asset of UCC. The transfer of list ownership rights to H&W when added to the compensation agreed upon, represented compensation for professional fundraising services far in excess of industry standards. There was virtually no limit on the income that H&W could earn from use of UCC's mailing list. Unlimited compensation is unreasonable in and of itself. It cannot be justified in this case given the no-risk nature of the contract, for H&W was already generously compensated for adding premiums to their fees. In short, the UCC conferred a private benefit on H&W through this fundraising contract. UCC paid unreasonable compensation for services and it gave H&W unlimited control of its assets (the donor list). Economic necessity is not a defense to the violation of private benefit. UCC's board focused on the funds it would receive not on the unreasonable fees it would have to pay.

MATRIX #8: POLICY ALTERNATIVES FOR FUNDRAISING ACTIVITY

OBJECTIVE	DESCRIPTION	SANCTIONS	EXAMPLES
<p>Limits on Fundraising Share</p>	<p>Government would pass legislation which includes a percentage limitation on the amount of contributions that could legally go to fundraising costs / third party fundraisers. This form of regulation is usually married with some type of pre-approval process whereby charities are required to inform the government of any contract with a professional fundraiser and the nature of that fundraiser's compensation.</p>	<p>Most likely sanction would be a rejection of the charity's application during the pre-approval process to solicit funds. Further sanctions might include fines or a prohibition against further fundraising. Sanctions could also apply to the fundraising company as opposed to the charity itself.</p>	<ul style="list-style-type: none"> • Alberta's Public Contributions Act employed a pre-approval process. Charities first had to seek permission from the government before soliciting funds. Although no explicit fundraising limits were established, the Act gave government wide discretionary power to reject applications for "any reason considered to be in the public interest" including excessive amounts going to fundraising costs. Sections of the Act were declared unconstitutional by the Alberta Court of Appeal in 1994. • Several U.S. states (eg, North Carolina, Maryland) also set limits on fundraising share. The U.S. Supreme Court has determined that these restraints are not permissible under the US Constitution.
<p>Consumer Protection (Disclosure)</p>	<p>This approach has two variants:</p> <ol style="list-style-type: none"> (1) Government would legislate regulations requiring the disclosure of specific financial and other information which would then be made available to the public. (2) More controversial is "point of solicitation" disclosure. This variant requires fundraisers to inform potential donors (whether or not they ask) about specific aspects of a charity's fundraising activities, costs & professional fundraiser's compensation, etc. 	<p>If charities do not disclose the proper information or if they mislead the public, the government would impose sanctions to compel full disclosure. Other sanctions might include fines or a prohibition against further fundraising by the organization.</p>	<ul style="list-style-type: none"> • Revenue Canada already requires disclosures of how much charities spend on fundraising, although the information is not distributed as widely to the public as in the U.S. • Many states in the U.S. have implemented disclosure requirements through a registration system. Charities using third party fundraisers must report the results of their campaigns, and these are made available to the public by: (1) sending the results to the media and/or (2) having copies of the results available from the State Attorney General's Office.
<p>Enforcing the Non-Distribution Constraint</p>	<p>The ban on private benefit or gain is the very foundation upon which the charitable community is built. The non-distribution constraint - already in effect - does not prohibit the making of profit, just the distribution of any profit or gain to those in control of the organization or those who associate with it.</p> <p>This approach argues that government should become more diligent in enforcing the non-distribution of profits, ferreting out those charities and their associates who are gaining from fundraising.</p>	<p>Sanctions would be enforced by government. Possible sanctions might include the revoking of a charity's license / registration with Revenue Canada. Charities found to be breaching the ban could also be required to pay taxes on profits that were made.</p>	<ul style="list-style-type: none"> • One example of how governments have enforced the non-distribution constraint is evident in the United Cancer Council case - an ongoing case in U.S. federal tax court. United Cancer Council's license was revoked after the government felt private benefit was occurring. For more on the case, see Matrix #4.
<p>Duty of Care (Residual Directors)</p>	<p>To maintain & enhance public confidence in charitable fundraising by setting criteria and enforcing Standards of Care* of charitable boards of directors regarding fundraising activities of the organization.</p> <p>This approach uses regulators (formulated by government, the industry or both) that focus on the duties of a charity's board of directors, especially the duty of care that the board must exercise when engaging in fundraising activities. The board of directors would be legally accountable for the provision and enhancement of the value of their organization's assets (i.e. donor list).</p> <p>The duty of care standard would enumerate specific criteria that boards would be required to meet when signing contracts with third party fundraisers, and would be legally enforceable.</p>	<p>The main sanction is that members of charitable boards of directors could now be held legally accountable for the fundraising activities of their organizations.</p>	<ul style="list-style-type: none"> • Assume a professional fundraiser approaches a charity and offers a no-risk contract to engage in a fundraising campaign. The fundraiser offers to pay for all the costs of the campaign and the charity will receive the net revenue. The fundraiser charges a "high" rate to perform the campaign since they are assuming 100% of the risk if the campaign revenue does not exceed expenses. The proposal also stipulates that the list of names generated by the campaign would be jointly owned by the fundraiser and the charity. The campaign raises \$10 million over a three year period. The charity receives \$1.5 million. Did the board of directors establish the proper standard of care when entering into the contract?
<p>Self Regulation</p>	<p>To maintain & enhance public confidence in charitable fundraising by creating a set of standards for conduct enforced by members of the sector themselves under an independent self regulating body.</p> <p>An agreement among charities to adhere to a set of standards regarding fundraising activities. A self regulating body would be created to develop rules for membership, standards of conduct and a code of ethics for its members.</p> <p>The self regulating body assumes certain responsibilities from government as the key regulator of the industry. Sanctions would be taken against those who violate standards of conduct.</p>	<p>If a member violates the standards of conduct or code of ethics, they could face fines, suspension of their license or even expulsion from the association. Members of the donating public would be made more aware of those charities not meeting the association's standards of conduct.</p>	<ul style="list-style-type: none"> • The Canadian Society of Fundraising Executives (CSFFE) and the Alberta Association of Fundraising Executives (AAFRE) are examples of two organizations formed to provide standards of conduct and a code of ethics for fundraising professionals. Both prohibit members from entering into commission contracts with charities or third party fundraisers to the total amount of money raised. They also require that any list developed as a result of a campaign be left with the charity. Membership is small and self voluntary. Some of the larger fundraising companies are not members as they do not agree with the ethical code. While the attractiveness of these organizations in regulating the activities of the fundraising profession is currently limited, they do have potential.
<p>Mixed System</p>	<p>To maintain & enhance public confidence in charities by marrying components of self regulation with government sanction and regulation.</p> <p>Self interested behavior can lead to an inability to enforce rules violations by self regulating bodies. A truly private system often gives way to a mixed system employing some type of government regulation.</p> <p>The most likely vehicle in this kind of system would be the setting of some criteria by the industry (i.e. standards of practice, fundraising guidelines, code of ethics, etc.) which would then be backed with legally enforceable legislation by the government.</p>	<p>The standards would likely be set by the industry, with the government having the power to impose sanctions. Possible sanctions might include revocation of licenses, expulsion from industry bodies, etc.</p>	<ul style="list-style-type: none"> • Regulation of the legal and medical professions are mixed type systems. Industry bodies such as the Alberta Medical Association (AMA) and the Law Society of Alberta set standards of conduct for their membership. Government then applies official sanction to those regulations by backing it with legislation.

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MATRIX #8: POLICY ALTERNATIVES FOR FUNDRAISING ACTIVITY (CONTINUED)

	ADVANTAGES	DISADVANTAGES
Limits on Fundraising Share	<p>(1) This type of legislation is not likely to fair well in the courts, but it does offer perhaps the most "hard-hitting" protection for donors against charitable in-distribution - forcing charities to spend more of their contributions on furthering their charitable purpose.</p> <p>(2) Agreement on how to account for fundraising costs and other similar type activities like "public education" is a necessary requirement for this legislation to be effective.</p> <p>(3) Once the accounting issue has been settled, the enforcement of this type of legislation is easy to achieve and simple to understand.</p>	<p>(1) There is limited evidence that high fundraising costs are indicative of fraud, just as low fundraising costs are not indicative of reasonable cost.</p> <p>(2) Cost information alone is insufficient to measure the performance of a charity or fundraising program.</p> <p>(3) Limits may unduly punish newer, smaller charities whose initial fundraising costs are typically higher as they seek out first time donors.</p> <p>(4) High fundraising costs in the early years may be reasonable as charities seek out new donors - sacrificing short term revenue gains for a long term investment in expanding its donor base which may yield larger revenues in the future.</p>
Consumer Protection (Disclosure)	<p>(1) This method is less intrusive than fundraising share limits, and may avoid the free speech issue.</p> <p>(2) Publicity of disclosure mechanisms might pressure charities to keep their fundraising shares lower.</p> <p>(3) Charities would have an incentive to give information to donors in order to help them make a decision on whether or not to donate.</p> <p>(4) The marketplace could begin to play a greater role in determining which charities will receive financial support from the private sector based on a review of financial and program information.</p> <p>(5) Charities, on the whole, would become more accountable to the public as the notion of "consumer choice" begins to play a role in the competition for scarce funds.</p>	<p>(1) Cost information alone is insufficient to measure the performance of a charity or a fundraising program.</p> <p>(2) There are many ways to report fundraising costs, and it is near impossible for government and donors to compare organizations on fundraising criteria alone. This method assumes current accounting standards which simply do not exist.</p> <p>(3) The theory behind this approach is that an informed donor will be able to make a better decision. However, that approach assumes a sophisticated donor who will review the information, and will care about how the money contributed will be actually used. People contribute for a variety of reasons - of which pure altruism - may be the single most important factor.</p>
Enforcing the Non-Distribution Constraint	<p>(1) If the non-distribution constraint were effectively enforced, much of the incentive for abusive fundraising practices would be removed because profits would become more difficult for persons to use.</p> <p>(2) Enforcement of the non-distribution constraint may be the best and most direct solution to alleged fundraising abuse - it avoids thorny constitutional issues and remains a cornerstone of the charitable industry.</p> <p>(3) Campaigns conducted by non-profit staff / volunteers and by professional fundraisers can be scrutinized for excessive compensation.</p> <p>(4) Government regulations can be a vehicle for this approach. This can be combined with self regulation to build a set of industry standards to which charities and fundraisers can willingly adhere.</p>	<p>(1) The problem of accounting for fundraising costs is not solved with this measure - cost allocation is still an issue.</p> <p>(2) Excessive compensation must be defined.</p> <p>(3) It will be difficult to catch every violator of the non-distribution constraint. Easier alternatives such as a limitation on fundraising shares may lead to more successful prosecutors & higher levels of compliance.</p> <p>(4) Enforcing the non-distribution constraint is far more expensive than regulation of fundraising. However, the costs to society may be even higher if government employs a ceiling on fundraising shares.</p>
Duty of Care (Board of Directors)	<p>(1) Ensures accountability of those most familiar with a charity's financial affairs. Donors, far removed, are less able to judge the value of those affairs.</p> <p>(2) Government involvement is limited to the reasonable legal accountability of charities, not management issues.</p> <p>(3) Government involvement is not directed at activities that involve freedom of expression concerns.</p> <p>(4) The standard of care imposed upon the board of directors is based on "reasonable" or "common sense" standards so as not to burden most charities.</p> <p>(5) Boards of directors would be encouraged to look to industry norms and standards when negotiating contracts with fundraisers.</p>	<p>(1) People willing to donate their time to a charity may shy away from volunteering on a charity's board of directors because of the perceived threat of liability for their actions.</p> <p>(2) Boards of directors would become more involved in the day to day operations of the charity.</p> <p>(3) Boards of directors for charities would be required to focus more on fundraising than directing the purpose of the organization.</p>
Self Regulation	<p>(1) Members of the industry have more expertise & can resolve problems more expeditiously than civil servants; Practitioner based regulation is more likely to receive the support of the regulated, as regulators are assumed to know and sympathize with industry problems. Self regulation by sector practitioners can be more inclusive, reacting into more minute areas of conduct. Sector experts can be deployed more efficiently.</p> <p>(2) Cost of self regulation would be covered by the industry.</p> <p>(3) Self regulatory systems are flexible, informal and opens the door to creative approaches at curbing abuse/fraud. A self regulatory system can better address the ethical practices of an industry than governmental regulation which by nature proceeds through law and rulemaking.</p> <p>(4) Self regulation provides voluntary sector members with the incentive to cooperate, develop shared norms for the common good of the industry and to aspire to higher ethical behavior.</p>	<p>(1) Self regulating organizations often deal with conflicting roles. Private regulation serves a public purpose and opens the door to abuse of authority.</p> <p>(2) Self regulation not backed by government authority offers limited accountability. It may be difficult to discipline an established member of the industry as opposed to a fringe operator.</p> <p>(3) Charities are diverse. Established charities might adhere to the rules, but fringe operators might not.</p> <p>(4) Self regulatory organizations have strong anti-competitive tendencies. Expertise can be used to thwart regulations if the body acts only like a trade association.</p> <p>(5) A self regulating body may become "captured" by the industry it oversees - tilting towards its "trade association" function.</p> <p>(6) A self regulatory system without government oversight would not work. The non-profit sector is too diffuse and sanctions would be too difficult to employ.</p>
Fixed System	<p>(1) Self regulating systems often require at least some government oversight, eventually giving way to more direct government regulation or a mixed system. It is difficult for self regulating bodies to avoid conflicts of interest in dealing with their members, and they may experience an inability to enforce rules.</p> <p>(2) The model recognizes that industry organizations do have a legitimate role in improving the fundraising behavior of non-profits.</p> <p>(3) Mixed systems incorporate the best of both worlds. They allow those closest and most sensitive to industry concerns to formulate the standards - thus it is practitioner based. This increases the likelihood that the standards will be followed, decreases the need for enforcement, the application of sanctions and cost. Yet, should the need arise, legally binding sanctions can be applied by the authorities in cases of abuse or fraud.</p>	<p>(1) There could be controversy over the proper mix of industry versus government regulation. This will have to be discussed, debated and eventually decided upon. An imbalance which promotes one side over the other defeats the purpose of a mixed system.</p>

MATRIX #7: PROFESSIONAL ORGANIZATIONS

DESCRIPTION	OBJECTIVES	CONTRIBUTIONS TO INDUSTRY STANDARDS / ETHICS
<p>CANADA: Canadian Society of Fund Raising Executives (CSFRE)</p> <p>CSFRE is national organization with several chapters operating at the provincial or municipal level across Canada.</p>	<p>CSFRE is mandated to support and encourage professional development of Canadian fundraising executives, create a climate conducive to more favourable public and legislative support of the vital role of philanthropy in Canada and to further philanthropic traditions and practices in Canada.</p>	<p>CSFRE's Code of Ethics and Professional Standards are representative of other professional organizations with similar mission. CSFRE's Code of Ethics and Professional Standards have the following provisions:</p> <ol style="list-style-type: none"> (1) Members shall work for a salary, retainer or fee - not on a commission basis nor for a percentage of the total funds raised; (2) Fundraising executives should not seek nor accept finder fees nor any financial remuneration from disbursements by institutions or agencies served; (3) Members shall hold confidential all lists, records and documents acquired in the service of current or former employers and clients.
<p>ALBERTA: Alberta Association of Fund Raising Executives (AAFRE)</p> <p>AAFRE is an organization of fundraisers who serve in either salaried or volunteer positions.</p>	<p>To foster ethical standards for the management and implementation of fundraising programs for philanthropic institutions and agencies.</p> <p>The organization provides educational and networking opportunities for its members, and is mandated to enhance understanding of the benefits to society accomplished through charitable fundraising.</p>	<p>The AAFRE has established a Code of Ethics and a set of Professional Practices as well. For the most part, these are quite similar to the standards established by the national CSFRE.</p>
<p>CANADA & UNITED STATES: National Society for Fund Raising Executives (NSFRE)</p> <p>This national organization has 15,000 members in the United States. Canada has two NSFRE chapters with a total membership of 150. The two Canadian NSFRE chapters are located in Toronto and Vancouver.</p>	<p>To foster the development and growth of fundraising professionals in order to preserve and enhance philanthropy and volunteerism.</p> <p>The organization is mandated to promote high ethical standards for the fundraising profession.</p>	<p>NSFRE has often voiced concerns on the regulatory issues facing charitable organizations and fundraising in particular. In November 1992, NSFRE adopted a position paper on professional compensation, particularly the use of percentage compensation.</p> <p>This paper states that individuals serving charities for compensation must accept the principle that charitable purposes, not self gain, is paramount. If this principle is violated and percentage compensation is accepted, the charitable mission can become secondary to self gain, donor trust can be damaged, and there is incentive for self dealing to prevail over the donor's best interests. Percentage compensation encourages abuses, impairs the integrity of the voluntary sector and undermines the philanthropic values on which it is based.</p>
<p>UNITED STATES: American Association of Fund Raising Counsel (AAFRIC)</p> <p>AAFRIC is an organization made up of 28 professional fundraising firms.</p>	<p>The AAFRIC was founded in 1995 to advance professional and ethical standards in philanthropic fundraising and consulting, and to promote philanthropy in general.</p>	<p>AAFRIC publishes an annual research and resource report on the charitable sector entitled "Giving USA."</p> <p>AAFRIC, along with the NSFRE, the Association of Healthcare Philanthropy (AHP), and the Council for the Advancement and Support of Education (CASE) developed a "Bill of Rights" for charitable donors. The Bill of Rights states that donors have the right to be informed of an organization's mission, the right to expect the board to exercise prudent judgement, to have access to the organization's most recent financial statements, to be assured that their gifts will be used for the purposes for which they were given, and to be informed whether those seeking donations are volunteers, employees of the organization, or hired solicitors.</p>

MATRIX #8: WATCHDOG ORGANIZATIONS

DESCRIPTION	OBJECTIVES	CONTRIBUTIONS TO INDUSTRY STANDARDS / ETHICS
<p>CANADA: The Canadian Council of Better Business Bureaus is a national umbrella organization for regional Better Business Bureaus which are committed to promoting ethical business practices for a wide range of businesses. They serve as a resource centre for consumers to acquire information and lodge complaints against businesses.</p>	<p>The Council, through its Philanthropic Advisory Services, provides information on charities that raises funds on a national basis. The primary purpose of the service is to educate donors in the hopes that the information provided will help them make more informed giving decisions.</p>	<p>Canadian Better Business Bureaus, with the help of other agencies and professionals, have developed voluntary standards to promote ethical practices by philanthropic organizations and to encourage public support of charities. These Standards for Charitable Solicitation, broken down into five categories, include:</p> <ul style="list-style-type: none"> (1) Public accountability; (2) Use of funds; (3) Solicitations and informational materials; (4) Fundraising practices; (5) Governance. <p>Included in the Better Business Bureau's standards are several provisions relating to "reasonable" percentages. Charities must only spend a "reasonable percentage" of donations received on fundraising. However, the standards do not define "reasonable" percentage.</p> <p>Also, fundraisers should ensure that solicitations are <i>truthful, accurate and not misleading</i>.</p> <p>Fundraisers should identify, at the point of solicitations, in conjunction with the sale of goods, services or admission, who the benefiting organization is and what portion of the proceeds will benefit the charitable cause.</p>
<p>CANADA: <i>Devonian Foundation</i></p> <p>The Devonian Foundation, is located in Calgary, Alberta. Its primary purpose is to serve as a source of grants for various charities and other foundations.</p>	<p>In 1985, the Foundation investigated the possibility of forming a Review Board Program for Large Fundraising Requests modeled on the National Charities Information Bureau in the United States. The purpose of the organization would be to assess and prepare a report on the various aspects of a charitable organization that are of interest to potential donors.</p>	<p>The Devonian Foundation sought legal advice as to whether Revenue Canada would register this type of organization as a charity. After several years of corresponding with the government, Revenue Canada determined that an organization formed for this purpose is not charitable according to its interpretation of the law.</p> <p>Once this decision was made by the government, the Devonian Foundation decided not pursue the issue further.</p>
<p>UNITED STATES: <i>National Charities Information Bureau (NCIB)</i></p> <p>NCIB was founded in 1918 by a group of national philanthropic leaders who realized they were increasingly being asked to give to charities of which they knew very little. They created the NCIB so people would have a place to turn for information on charities.</p>	<p>The main objective of the NCIB is to provide people with information on charities in the hope that they will have a greater sense of confidence in the charities they are supporting.</p>	<p>NCIB has developed guidelines on:</p> <ul style="list-style-type: none"> (1) Proper governance of charities; (2) Organization purposes; (3) Programs; (4) Information; (5) Financial support; (6) Use of funds. <p>The Financial Support standard states that the board of directors is accountable for all activities generating financial support for the organization. This includes insuring that fundraising practices should encourage volunteer giving and not apply unwarranted pressure. The Use of Funds standard states that charities should spend at least 80% of annual expenses for program activities and insure that fundraising costs, in relation to fundraising results, are reasonable over time.</p> <p>NCIB also produces several publications to give potential donors advice and information to assess fundraising appeals. The reasons for the publications are three-fold: (1) charitable organizations are on the frontlines of philanthropy and they must produce what philanthropy in general promises to society; (2) competition for available dollars is increasing; and (3) donors and the public are demanding greater accountability from organizations that appeal for funds.</p>

MATRIX #8: WATCHDOG ORGANIZATIONS (CONTINUED)

DESCRIPTION	OBJECTIVES	CONTRIBUTIONS TO INDUSTRY STANDARDS / ETHICS
<p>UNITED STATES: <i>Council of Better Business Bureaus</i> (CBBB)</p> <p>Like the Canadian Council of Better Business Bureaus, the American Organization serves to promote ethical practices by businesses and charities.</p>	<p>The CBBB believes that adherence to a set of standards by soliciting organizations will inspire public confidence, further the growth of public participation in philanthropy and advance the objective of private initiative and self regulation within the charitable industry.</p>	<p>CBBB has developed several standards for charities to follow:</p> <ol style="list-style-type: none"> (1) <i>Public Accountability:</i> Charities should provide, on request, an annual report and complete financial statements that represent adequate information to serve as a basis for informed decisions. (2) <i>Use of Funds:</i> Fundraising and administrative costs should be reasonable. A reasonable percentage of income from all sources should be applied to programs and activities directly related to the purpose for which the organization exists. A reasonable percentage of public contributions should be used according to donors' expectations. Reasonable, however, is not been defined. (3) <i>Solicitation & Information Materials:</i> Charities shall not distribute misleading material. Professional solicitors should identify at the point of solicitation their relationship to the charity. (4) <i>Fundraising Practices:</i> Charities should have full control over fundraising activities and activities conducted for their benefit by consultants and others. Requests for funds shall be conducted without excessive pressure.
<p>UNITED STATES: <i>American Institute of Philanthropy</i> (AIP)</p> <p>This charities review council was only recently established. According to its founders, the organization will take a more aggressive approach than existing watchdog agencies such as the NCIB or the CBBB.</p>	<p>The American Institute of Philanthropy does not just set standards of appropriate conduct for charities, but also seeks to inform donors about which charities have the best performance according to the institute's standards.</p>	<p>The AIP publishes the "Giver's Charity Rating Guide." This guide is an annual publication.</p> <p>The guide rates the performance of charities according to a set of standards established by the Institute.</p> <p>Charities are given grades ranging from an "A" to an "F" based on what portion of the organization's total income is devoted to programs as opposed to fundraising. To date, the Institute has issued only one rating guide on charities.</p>
<p>MINNESOTA: <i>Charities Review Council of Minnesota</i> (CRC)</p> <p>The Charities Review Council was established in 1948, and is designed to watch national and local charities soliciting for public contributions within the state of Minnesota.</p> <p>As of January 1993, the CRC believes it is the only organization of its kind in the United States that evaluates both national and local charities and provides donor education services.</p>	<p>Like similar watchdog organizations, the Charities Review Council monitors and reports on various charities. A significant component of the CRC's mandate, however, is also the education of the donating public.</p> <p>Every year, the Charities Review Council undertakes a donor education campaign which it carries reaches thousands of Minnesotans. Media coverage, public speaking tours and public service announcements are key elements of the annual campaign.</p>	<p>The Council has set out four categories of standards for charities:</p> <ol style="list-style-type: none"> (1) <i>Use of Funds:</i> Charities must disburse at least 70% of annual expenses to programs and no more than 30% to management and fundraising expenses. (2) <i>Fundraising Practices:</i> Methods of promotion and solicitation should be ethical. Solicitations should encourage donors to give voluntarily and not place them under undue pressure or intimidating tactics. Fundraising and educational materials should clearly and completely represent the charitable organization's mission, accomplishments and future plans. The materials should be accurate, not misleading or sensational. <p>Other CRC standards include "accountability" and "governance."</p> <p>The CRC distributes educational information to donors in the form of a "Donor Giving Kit." This is given in response to telephone inquiries and at Council sponsored conference and workshops.</p>

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