



On Fundraising and the Canadian Legal Framework

with **Mark Blumberg**



Transcript:

Jesse (00:00-1:04)

Good morning, Mark, and thank you so much for joining me this morning. My name is Jesse Clarke, and I am the lead consultant with JN Clarke consulting, and we are completing a very exciting set of courses on resource mobilization for small and medium organisations, supported by Spur Change. And what we're doing is taking a close look at how organizations can integrate important principles of equity, inclusion, de-colonization into their fundraising work, and also still be very conscious of, and keep well within, Canadian fundraising rules.

So, it's my great pleasure ... before I begin, also, I wanted to give you a description. I am a middle-aged woman, wearing a brown jacket, brown glasses, brown hair. Speaking to you with a black background, um, and I'm going to turn it over to Mark, who will also then describe himself and introduce himself, with his background as well.

Mark (1:05- 1:46)

Okay well, my name is Mark Blumberg, I'm at a law firm in Toronto that has 10 lawyers and just focuses on non-profit and charity law. And in terms of my description, I'm a very old white guy, who has different colour eyes and very grey hair. So that I guess would describe me, and I'm wearing a checkered shirt. And yes, our law firm just focuses on non-profit and charity law issues, and we help a large number of non-profits and charities with compliance and practical issues, and things like that, that they run into. And we have blogs and other resources on our website, that help charities dealing with things like transparency, etc.

Jesse (1:47)

So, the first thing that I wanted to just touch base with you on very quickly is the rules for fundraising in Canada, how do they differ for non-profits versus charities? And are there some relevant provincial frameworks that also need to be kept in mind. I think more people are familiar with the CRA but that supports just one element of the regulations. So Mark, over to you.

Mark (2:09)

Right. In brief, what I would say is that it depends in part on what you're trying to fundraise for. I'll give you an example. If you're trying to generate revenue for something that's just maybe not charitable at all, just as an example, then some of the rules wouldn't apply. So, the issue isn't just are you a non-profit or are you a registered charity. You could be a for-profit business, raising money for a disaster in a foreign country. And some of the rules relating to charitable fundraising could apply to you. OK, so that's the first thing. So, the distinction isn't so much non-profit or charity. Of course, that's one distinction, but there's also the distinction of what you're raising money for. So, let's assume you are raising money for something charitable like international development or global health or something like that.

Then there are rules around what you have to do, and they come from different places. The best summary of all the rules is probably CRA's Guidance on Fundraising, and I highly recommend to anyone who is doing any fundraising, to take a look at this document. They spent a lot of time working on it, they've updated it occasionally and it gives a good sort of overview of what are the requirements for a registered charity. But a lot of that would also apply to a non-profit.

But then you get into with non-profits, they have some obligations and charities have more obligations. So, I'll give you an example. Charities need to disclose certain information on the T3010 every year that then becomes public, whereas a non-profit probably would not have to, legally speaking, disclose it. Although I'm an advocate for transparency and see, unfortunately, far too little of it. So, I would encourage groups to, even if you're a non-profit, but you're working in these sort of charitable areas, to disclose information, relevant information to people so that donors and other stakeholders can be aware of that information. And many groups do a great job of it.

So yeah, I would say that the CRA's Guidance is obviously finely tuned for registered charities, but a lot of the same concepts apply to other groups. Some of it is just practical, they call them best practices and things like that. But some of it is really legal requirements and the main things are you want to be accurate when you're describing what you're fundraising for, you don't want to have too much fundraising costs, and that's a very subjective area, but CRA has a framework which is pretty generous where they say usually if you're fundraising and the costs are less than 35%, they usually won't challenge that. But they do know that some groups in some situations might have much higher costs than that, and it could be in some cases acceptable to CRA.

So, they go into all sorts of things, a lot about transparency and basically, you know, so for example, if you have information up on your website that's six years, ten years old that is not really what you're doing, but you just haven't changed it, that would be an example of something that the CRA would talk about in their guidance and lots of different things. So, lots to look at there.

In terms of the provincial framework, unfortunately. Well, the good news is the provinces aren't that involved. OK, that's the good news. The bad news is they all have different approaches and things like that. Some of them have no real involvement. The main ones I would be thinking, if I was a national charity, would be Alberta and Ontario, those would be the ones that jump out at me. Ontario because we have the Public Guardian and Trustee. It's important if you're going to fundraise in Ontario, that one is alerting the Public Guardian and Trustee, just a letter to them, it's not really that complicated. In Alberta they have a registry that you have to register if you're going to raise from individuals in Alberta. Over \$25,000 a year, you need to basically get on this registry that they have, under the Fundraising Act that they have there. So most other provinces, there isn't that much going on which is good but it's not a uniform sort of situation and de facto, certainly for the charities, the CRA is the main regulator when it comes to the legal side, but practically what I would say is de facto, who would I worry about the most? It's not the CRA coming to audit you, it's the Toronto Star or the Vancouver Sun or someone calling you. And if they write a bad story about your charity, it's going to take 20 years to recover. So that is what I would really worry about even more than the CRA, is the media and others.

So, you know, ask yourself questions like, is this something that I would be proud of? And you know, and if not, why are we doing it? What are we doing? Things like that. So, there's a lot of ethical things. It's not even just about compliance and legal requirements. There's reputation and ethics, which are huge. Because unfortunately, if you...you could be doing something completely legally, but it's unethical and then you can end up alienating a lot of your stakeholders. It could result in government money being cut, etc. So, it's not just the legalities of it, one has to look at the ethics as well, but hopefully that answers in terms of just fundamentally, you know, for most groups reading the CRA's Guidance will be helpful even if you're not a charity it'll give you some good ideas.

Jesse (7:03)

In terms of then... we're talking to leaders in organizations who want to keep current on all of the latest information. You've referenced the CRA Fundraising Guidelines, are there other ways that they can stay current and aware of the new information as it comes out, new regulations?

Mark (7:24)

Absolutely, I mean you can get onto mailing lists. CRA has a mailing list. We have a mailing list. We send out stuff to almost 10,000 people a month. There's lots of ways of keeping up. CRA has quite an extensive website which could be helpful. We have our canadiancharitylaw.ca website which we blog about things, some important, some not so important, and we've put up, you know, maybe 2,600 blogs. So, it really covers a lot of different issues that are percolating.

And I think the key thing is just to be aware... I will say this, 90% of what's important is not new, in fact very little sometimes, in most cases, it's not the new stuff usually that is also going to get groups into a lot of trouble. It's the old stuff, it's the stuff that's been around for 50 or 100 years and I know sometimes, professional advisors love to talk about what's new and every year what's new, as if there's so much that's new compared to what's old. What's old is the stuff that will really get you into, like I said, a lot of trouble. If you don't comply with the, you know, the finest points of some complicated new change, CRA usually is quite lenient. But if you're not complying with stuff that's been in the Income Tax Act for 20-30 years, then they're not going to be as lenient about it. So, I think what's old is probably more important than what's new. But certainly, and for those involved with international cooperation,

there is actually some changes, probably the first major set of changes in over a decade, so there are some things that they should be paying attention to.

there is a lot of money sitting in charities in Canada. We're talking, just in the private foundation space, \$130 billion. So, when people say there isn't enough money, you know, what do they want? Do they want middle class people to pay more taxes? There's money sitting there. There's more money than the international cooperation movement could use in the next five years, sitting just in Foundations, so hopefully people will be more generous. The disbursement quota was tweaked for groups over \$1,000,000. Now it's 5%. So, it may have a little impact. It won't impact an operating charity cause you're spending 60/70/80% of your money, not 5% or 3%.

So, it's not going to impact them, it will impact that maybe they'll hopefully be some more money floating around, because some groups that have traditionally only given out 3.5% will now be giving out about 5%. And then when we're talking about \$100 million foundation, that does add up to some real change you could say.

And let's hope that groups also stop using the disbursement quota as their guideline for how much they should be giving out. Many groups should be thinking about what is their mission? If your mission is to deal with, for example, the environmental problems that are going on right now, thinking for 4 million years in the future is not that helpful. You need to be thinking about the next five or ten years. And I was very happy to see one environmental foundation say we're shutting down within five years and giving out all our money.

So, I'm not saying groups have to do that. But they need to stop saying 3.5% or 5% is adequate when the needs are so great and there is so much money sitting there and it's not like there will be no more money. In fact, one thing we do know is there's a lot more wealthy people, and some of them are going to give money to charity because they don't want to give it all to their children and things.

I'm not one of these people who think "oh we've got to hoard a whole bunch of money now..." which we already have, 130 billion is a lot of money, but we don't need to hoard a lot of money right now, just because in 50 years there won't be any more people interested in philanthropy. I'm not sure that makes sense, that argument. So anyway. And it's just a disconnect cause I don't have a problem with groups having long term funds and all this. But the amount is just so obscene in light of the needs that people tell me are out there, right?

And in fact, some of the people who are hoarding the money tell me that the needs are so great. Well then why are we sitting on the money? So anyway, that's the, that's why I'd never be a good fundraiser because saying things like that, sometimes it's not what you're supposed to do, you're supposed to just say, "Oh my God, you're so generous cause you gave up 3.5%." So anyway, that's the world we live in, so hopefully that answers the question. But I think a lot of groups are going to have to do a lot of thinking on the topic of these new rules relating to anti-avoidance and whether money is going to end up going to a non-qualified donee.