

# Uniform Charitable Fundraising Act

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[NOTE The Act regulates both charities and fundraising businesses. Jurisdictions that wish to regulate only the latter will need to adapt the Act accordingly.]

[NOTE A model regulation is appended to the Act. See pages 33-34.]

## INTERPRETATION AND APPLICATION

### Purposes

1. The purposes of this Act are,
  - (a) to ensure that members of the public have sufficient information to make informed decisions when making contributions to charities or for charitable purposes;
  - (b) to protect the public from fraudulent, misleading or confusing solicitations; and
  - (c) to establish standards for charities and fundraising businesses when making solicitations.

### Definitions

2. (1) In this Act,

“charitable purpose” means any purpose that the law recognizes as charitable; (“fin de bienfaisance”)

[NOTE Some jurisdictions will want to use a more specific definition, or to have no statutory definition so as to rely on the common law.]

“charity” means an incorporated or unincorporated organization or a trust that is formed for a charitable purpose; (“organisme de bienfaisance”)

“contribution” means money, goods or services or a promise to give money, goods or services; (“contribution”)

“*enforcement authority*” means [*minister of the Crown, public servant, or some other person or agency*]; (“*autorité d’exécution*”)

“fundraising agreement” means an agreement between a charity and a fundraising business described in section 36; (“*contrat de collecte de fonds*”)

“fundraising business” means, subject to subsection (3), a person or other entity that,

- (a) is not a charity,
- (b) makes solicitations on behalf of a charity, directly or indirectly, or manages, facilitates or is responsible for solicitations made by or on behalf of a charity,
- (c) provides the services described in clause (b) for remuneration, and
- (d) in the case of an individual, is not acting as an employee of the charity; (“*entreprise de collecte de fonds*”)

“prescribed” means prescribed by the regulations; (“*prescrit*”)

“regulations” means the regulations made under this Act; (“*règlements*”)

“relevant offence” means,

- (a) an offence under this Act, or
- (b) an offence under any criminal or other law in force in [*jurisdiction*] or elsewhere that is of such a nature that, in the [*enforcement authority*]’s opinion, a person convicted of the offence is unsuitable to deal with contributions or to make solicitations; (“*infraction pertinente*”)

[NOTE The defined term is used in 17, 25 and 51. Some jurisdictions may wish to include in it things that are not technically offences but involve the imposition of penalties, as in 4 (k) of Ontario’s *Charities Accounting Act*, which allows the court to impose on an executor or trustee “a penalty by way of fine or imprisonment” for default or misconduct, but does not actually create an offence.]

“retail incentive donor” means, subject to subsection (4), a person or other entity that,

- (a) carries on business,
- (b) offers goods or services as part of its normal commercial activities, and

- (c) represents that purchasing the goods or services will benefit a charity or a charitable purpose; (“donateur du secteur du détail”)

“solicitation” means,

- (a) a direct or indirect request for a contribution in which it is stated or implied that the contribution will be used by a charity or for a charitable purpose, or
- (b) a request for a contribution through a direct or indirect offer to sell goods or services in which it is stated or implied that all or a portion of the purchase price will be used by a charity or for a charitable purpose; (“sollicitation”)

“volunteer” means a person who offers his or her services to a charity in any capacity, is accepted as a volunteer by the charity, and does not receive remuneration, directly or indirectly. (“bénévole”)

(2) In this Act, a reference to gross contributions is a reference to gross contributions calculated in accordance with the regulations.

[NOTE See s. 1 of appended model regulation.]

(3) In this Act, “fundraising business” does not include a person or other entity that provides consultation services or advice with respect to solicitations made by or on behalf of a charity but does not manage or facilitate the solicitations and is not responsible for them.

(4) In this Act, “retail incentive donor” does not include a person or other entity that has an affinity agreement with a charity under which the person or other entity makes payments to the charity in exchange for exclusive marketing opportunities.

(5) In this Act,

- (a) a reference to a solicitation made by a charity includes solicitations made by its employees, volunteers and other representatives; and
- (b) a reference to a solicitation made by a fundraising business includes solicitations made by its employees, volunteers and other representatives.

(6) In this Act, a reference to a solicitation is a reference to a solicitation made in [*jurisdiction*].

### **Solicitations in [*jurisdiction*]**

3. A solicitation is made in [*jurisdiction*] if any element of it takes place in [*jurisdiction*].

### **Non-application of Act to certain solicitations**

4. (1) This Act does not apply to a solicitation that is,

- (a) made by a charity to a person who is,
  - (i) a member of the charity at the time of the solicitation, or
  - (ii) the spouse or child of a person described in subclause (i); or

[NOTE “Spouse” and “child” may require definitions that are tailored to the law of the jurisdiction.]

[NOTE Some jurisdictions may wish to expand subclause 4 (1) (a) (i) to exempt solicitations made to a person (or the spouse or child of a person) who was previously a member, e.g. during the five years before the solicitation. ]

- (b) made in respect of a gaming activity that is authorized by a licence under the [*statute dealing with gaming*].

(2) For the purposes of subsection (1), the fact that a person makes a donation to a charity is not in itself sufficient to make him or her a member of the charity.

### **Person in same position as charity**

5. (1) If a person makes solicitations but is not connected to any charity that is formed for the charitable purpose to which the solicitations relate, this Act applies to the person, with necessary modifications, as if the person were a charity.

(2) For the purposes of subsection (1), the following persons are connected to a charity:

1. The charity’s directors, trustees, officers, managers, employees and volunteers.
2. Fundraising businesses that are retained by or on behalf of the charity.
3. Directors, partners, officers, managers and employees of a fundraising business that is retained by or on behalf of the charity.

(3) Subsections (1) and (2) also apply with respect to entities, other than persons, that make solicitations.

## SOLICITATIONS

### **Hours of certain kinds of solicitation**

6. A person who makes a solicitation by telephone, in person at someone’s home or by fax may do so only between 8 a.m. and 9 p.m., in the time zone where the person to whom the solicitation is made is located.

### **Providing information during solicitation**

7. (1) A person who makes a solicitation by telephone, in person or by fax shall, before accepting a contribution, give the person to whom the solicitation is made,

- (a) the information set out in subsection (3), in the prescribed manner and form; and
- (b) an adequate opportunity to review the information.

(2) A person who makes a solicitation by any other means than the ones mentioned in subsection (1) shall provide the information set out in subsection (3), in the prescribed manner and form, at the same time as the solicitation is made.

(3) The following information shall be provided under clause (1) (a) and subsection (2):

1. The name of the person making the solicitation, if it is made by telephone or in person.
2. If the solicitation is made, directly or indirectly, by a fundraising business, or if a fundraising business manages, facilitates or is responsible for the solicitation,
  - i. the fundraising business's name and details of the remuneration it receives, and
  - ii. details about the cooling-off period provided by section 8, and instructions for obtaining a refund under that section.
3. The name of the charity for which the solicitation is made, or if the person making the solicitation is not connected to a charity that is formed for the charitable purpose to which the solicitation relates, details of the charitable purpose for which the solicitation is made.
4. A statement that the other information set out in section 13 is available, and details of how it may be obtained.
5. Any other information that is prescribed.

[NOTE Adopting jurisdictions may wish to put the list set out in paragraphs 1 to 4 in the regulations instead.]

### **Cooling-off period**

8. (1) This section applies when a person makes a contribution in response to a solicitation that is made by telephone or in person at someone's home and,

- (a) the solicitation is made, directly or indirectly, by a fundraising business; or

(b) a fundraising business manages, facilitates or is responsible for the solicitation.

(2) The fundraising business shall refund the contribution in its entirety if the person who made it, within three business days after making the contribution,

- (a) makes a request for a refund to the fundraising business, in accordance with the instructions provided under subparagraph 2 ii of subsection 7 (3); and
- (b) mails or returns to the fundraising business any receipt that was given for the contribution.

(3) When the contribution is made by cheque or credit card, the fundraising business shall not deposit or process the contribution until the cooling-off period described in subsection (2) has expired without a request for a refund.

### **Receipts**

**9.** A person who makes a solicitation shall, on request, give a receipt to a person who makes a monetary contribution of \$10 or more.

### **Application of ss. 11-13**

**10.** (1) Sections 11 to 13 apply only to the following solicitations:

1. Solicitations made, directly or indirectly, by a fundraising business.
2. Solicitations made by or on behalf of a charity that uses a fundraising business to make solicitations on its behalf or to manage, facilitate or be responsible for solicitations made by or on behalf of the charity.
3. Solicitations made by or on behalf of a charity during its financial year if the charity intends to raise, as a result of those solicitations, gross contributions of the prescribed amount or more in [*jurisdiction*] during that financial year.

(2) Despite paragraph 3 of subsection (1) and regardless of the charity's intent,

- (a) if a charity raises during its financial year, as a result of solicitations, gross contributions of the prescribed amount or more in [*jurisdiction*], sections 11 to 13 apply to solicitations made by or on behalf of the charity from the time the gross contributions reach the prescribed amount until the end of that financial year; and
- (b) sections 11 to 13 apply to solicitations made by or on behalf of the charity during a financial year if they applied under clause (a) during the previous financial year.

[NOTE Re "prescribed amount", see s. 2 of appended model regulation.]

### **Duty to maintain records**

- 11.** (1) A charity or fundraising business that makes solicitations shall maintain,
- (a) complete and accurate financial records of its operations in [*jurisdiction*], for at least six years after the solicitations are made; and
  - (b) the other records that are prescribed, for the prescribed period.

(2) The charity or fundraising business may maintain the records required by subsection (1) outside [*jurisdiction*] but shall maintain separate records with respect to [*jurisdiction*].

### **Financial information**

**12.** A charity shall prepare audited financial statements or financial information returns, as prescribed, for every financial year in which,

- (a) the charity makes solicitations; or
- (b) a fundraising business makes solicitations on the charity's behalf, or manages, facilitates or is responsible for solicitations made by or on behalf of the charity.

### **General information**

**13.** (1) A charity shall, subject to subsection (4), provide the information set out in subsection (2) to any person who requests it, if,

- (a) the charity makes solicitations; or
- (b) a fundraising business makes solicitations on the charity's behalf, or manages, facilitates or is responsible for solicitations made by or on behalf of the charity.

(2) The following information is to be provided under subsection (1):

1. Reasonable detail about the purposes for which and the manner in which the contributions received as a result of the solicitations will be used.
2. A copy of the most recent audited financial statements or financial information returns that the charity is required to prepare under section 12.
3. The portion of gross contributions received during the charity's last financial year that were used directly for charitable purposes and not for the administration of the charity or other purposes, calculated in accordance with the regulations.
4. An estimate of the portion of gross contributions received in the charity's current financial year that will be used directly for charitable purposes and not for the

administration of the charity or other purposes, calculated in accordance with the regulations.

5. The information required under section 7.
6. If solicitations are made on the charity's behalf by a fundraising business, a copy of the fundraising agreement.

(3) The charity may provide the information set out in subsection (2) by making it available for public access on a website.

(4) If the charity does not make the information set out in subsection (2) available for public access on a website, or if the person requesting the information asks that it be provided in paper form, the charity may,

- (a) establish a reasonable fee for providing the information in paper form that is based on,
  - (i) the cost of reproducing the documents, and
  - (ii) the cost of postage if the documents are to be mailed; and
- (b) refuse to provide a copy of the documents unless the fee is paid.

(5) The enforcement authority is entitled to obtain the information set out in subsection (2) in paper form without paying a fee.

(6) The charity shall ensure that the information set out in subsection (2) remains available, during the six financial years that follow the financial year referred to in paragraph 4 of subsection (2),

- (a) in paper form; or
- (b) on a website.

## CHARITIES

### **Registration requirement, solicitations to individuals and corporations**

**14.** (1) No charity shall make a solicitation to an individual or corporation unless the charity is registered under this Act.

(2) A charity that is a registered charity under the *Income Tax Act* (Canada) is deemed to be registered under this Act.

(3) For the purposes of this section, a solicitation made to an individual includes a solicitation made to an individual who operates a sole proprietorship or is a partner in a partnership.

(4) This section does not apply to a charity during a financial year if the charity intends to raise during the financial year, as a result of solicitations it makes in [*jurisdiction*], gross contributions of less than the prescribed amount.

(5) Despite subsection (4) and regardless of the charity's intent, if a charity raises during a financial year, as a result of solicitations, gross contributions of the prescribed amount or more in [*jurisdiction*], the charity shall apply to be registered within 45 days after the gross contributions reach the prescribed amount.

[NOTE See s. 2 of appended model regulation.]

(6) This section does not apply to a charity if, throughout its financial year,

- (a) the charity is not incorporated;
- (b) the charity is a branch or division of another charity; and
- (c) the other charity controls the distribution of any contributions the first charity receives during its financial year as a result of its solicitations.

### **Use of fundraising businesses**

**15.** No charity shall use a fundraising business for either of the following purposes unless the charity is registered or deemed to be registered under this Act:

1. Making solicitations on behalf of the charity.
2. Managing or being responsible for solicitations made by or on behalf of the charity.

### **Registration procedure**

**16.** A charity that wishes to be registered under this Act or to have its registration renewed shall provide the [*enforcement authority*] with,

- (a) an application in the prescribed form;
- (b) the prescribed information; and
- (c) the prescribed fee.

### Grounds for refusing registration or renewal or imposing conditions

17. (1) The [*enforcement authority*] may take a step described in subsection (3) with respect to a charity if,

- (a) the charity or any of its directors, officers or managers have, at any time,
  - (i) been convicted of a relevant offence,
  - (ii) failed to pay a fine imposed under a conviction for a relevant offence or failed to comply with an order made in relation to such a conviction,
  - (iii) had the status of an undischarged bankrupt,
  - (iv) been named in a certificate signed under the *Charities Registration (Security Information) Act* (Canada), or
  - (v) been subject to an order described in subsection (2) the making of which, in the [*enforcement authority*]'s opinion, indicates that the person subject to the order is unsuitable to deal with contributions or to make solicitations;
- (b) in the [*enforcement authority*]'s opinion, the charity or any of its directors, officers, managers or employees have contravened subsection 21 (1) or (2); or
- (c) the [*enforcement authority*] has reasonable grounds to believe that the charity or any of its directors, officers or managers is likely to contravene this Act.

(2) Subclause (1) (a) (v) applies to orders made,

- (a) under this Act or under a similar Act in another jurisdiction in Canada; or
- (b) under the [*consumer protection statute*] or under a similar Act in another jurisdiction in Canada.

(3) In the circumstances described in subsection (1), the [*enforcement authority*] may,

- (a) refuse to register the charity under this Act or to renew its registration; or
- (b) in registering the charity under this Act or renewing its registration, impose conditions on the registration.

(4) When a charity's registration is suspended or cancelled under section 51, the charity continues to be required to comply with any conditions imposed on the registration, subject to any modifications made necessary by the suspension or cancellation.

**Notice to applicant**

**18.** (1) Before refusing to register a charity under this Act, refusing to renew its registration or imposing a condition on the registration, the [*enforcement authority*] shall,

- (a) notify the charity of the reasons why the registration or renewal may be refused, or of the proposed conditions and the reasons why they may be imposed; and
- (b) give the charity an opportunity to make representations to the [*enforcement authority*]'s designate.

(2) If, after subsection (1) has been complied with, the [*enforcement authority*] decides to refuse to register the charity, to refuse to renew its registration or to impose a condition on the registration, the [*enforcement authority*] shall give the charity written reasons for the decision.

**Expiry of registration**

**19.** The registration of a charity under this Act is effective for the prescribed time period.

**Changes in information**

**20.** (1) A charity that is registered under this Act shall inform the [*enforcement authority*] of any change in the information provided under section 16 within 30 days after the change.

(2) Subsection (1) also applies to changes in information that occur while the registration is suspended or within 30 days after the registration expires or is cancelled.

**Compliance with standards of practice**

**21.** (1) Every charity and every employee and volunteer of a charity shall comply with the prescribed standards of practice.

- (2) The directors, officers and managers of a charity shall,
  - (a) comply with the prescribed standards of practice; and
  - (b) take reasonable steps to ensure that the charity and its employees and volunteers comply with the prescribed standards of practice.

[NOTE See s. 3 of appended model regulation.]

**Request to refrain from making solicitations, etc.**

**22.** A charity shall use its best efforts to comply with a person's request that the charity,

- (a) refrain from making solicitations or causing solicitations to be made to the person; or
- (b) remove the person's name from a list of persons who may provide a contribution.

## FUNDRAISING BUSINESSES

**Licensing requirement, solicitations by fundraising businesses**

**23.** No fundraising business shall make a solicitation on behalf of a charity or manage, facilitate or be responsible for solicitations made by or on behalf of a charity unless the fundraising business is licensed under this Act.

**Licensing**

**24.** A fundraising business that wishes to be licensed or to have its licence renewed shall provide the [*enforcement authority*] with,

- (a) an application in the prescribed form;
- (b) the prescribed information;
- (c) the prescribed fee; and
- (d) security that meets the prescribed requirements and is in an amount specified by the [*enforcement authority*].

**Grounds for refusing a licence or renewal or imposing conditions**

**25.** (1) The [*enforcement authority*] may take a step described in subsection (3) with respect to a fundraising business if,

- (a) the fundraising business or any of its directors, officers or managers have, at any time,
  - (i) been convicted of a relevant offence,
  - (ii) failed to pay a fine imposed under a conviction for a relevant offence or failed to comply with an order made in relation to such a conviction,
  - (iii) had the status of an undischarged bankrupt,
  - (iv) been named in a certificate signed under the *Charities Registration (Security Information) Act* (Canada), or
  - (v) been subject to an order described in subsection (2) the making of which, in the [*enforcement authority*]'s opinion, indicates that the person subject to the order is unsuitable to deal with contributions or to make solicitations;
- (b) in the [*enforcement authority*]'s opinion, the fundraising business or any of its directors, officers, managers or employees has contravened subsection 32 (1) or (2) or section 34; or

- (c) the [*enforcement authority*] has reasonable grounds to believe that the fundraising business or any of its directors, officers or managers is likely to contravene this Act.
- (2) Subclause (1) (a) (v) applies to orders made,
- (a) under this Act or under a similar Act in another jurisdiction in Canada; or
  - (b) under the [*consumer protection statute*] or under a similar Act in another jurisdiction in Canada.
- (3) In the circumstances described in subsection (1), the [*enforcement authority*] may,
- (a) refuse to issue a licence to the fundraising business or to renew its licence; or
  - (b) in issuing a licence to the fundraising business or in renewing its licence, impose conditions on the licence.
- (4) When the licence of a fundraising business is suspended or cancelled under section 51, the fundraising business continues to be required to comply with any conditions imposed on the licence, subject to any modifications made necessary by the suspension or cancellation.

### **Notice to applicant**

**26.** (1) Before refusing to issue a licence to a fundraising business, refusing to renew its licence or imposing a condition on the licence, the [*enforcement authority*] shall,

- (a) notify the fundraising business of the reasons why the licence or renewal may be refused, or of the proposed conditions and the reasons why they may be imposed; and
- (b) give the fundraising business an opportunity to make representations to the [*enforcement authority*]'s designate.

(2) If, after subsection (1) has been complied with, the [*enforcement authority*] decides to refuse to issue a licence to the fundraising business, to refuse to renew its licence or to impose a condition on the licence, the [*enforcement authority*] shall give the fundraising business written reasons for the decision.

### **Expiry of licence**

**27.** A licence issued to a fundraising business is effective for the prescribed time period.

### **Changes in information**

**28.** (1) A fundraising business that has been issued a licence shall inform the [*enforcement authority*] of any change in the information provided under section 24, within 30 days after the change.

(2) Subsection (1) also applies to changes in information that occur while the licence is suspended or within 30 days after the licence expires or is cancelled.

### **Effect of security not being in force**

**29.** (1) If the security that the fundraising business has provided to the [*enforcement authority*] under clause 24 (d) is no longer in force, the fundraising business's licence is automatically suspended.

(2) Section 51 does not apply to the suspension, but the [*enforcement authority*] shall give written notice of the suspension to the fundraising business within 15 days after becoming aware that the security is no longer in force.

### **Donor lists**

**30.** (1) A list that is compiled by a fundraising business and consists of names of persons who have given a contribution to a charity and other information about those persons,

- (a) is the charity's property; and
- (b) is under the charity's exclusive control.

(2) No fundraising business that compiles a list described in subsection (1) for a charity shall use or deal with the list except with the charity's written permission.

(3) When an agreement between a charity and a fundraising business ceases to be in force,

- (a) any list described in subsection (1) to which the agreement relates and that is in the fundraising business's possession or otherwise under its management shall be turned over to the charity and deleted from the fundraising business's databases; and
- (b) the fundraising business shall ensure that any copies of the list that remain in its possession or otherwise under its management are destroyed.

(4) Subsections (2) and (3) apply in respect of a list described in subsection (1) even if it has been combined with other lists relating to other charities or incorporated into another document.

### **Holding contributions in trust**

**31.** (1) Every fundraising business that receives contributions on behalf of a charity, and every employee of a fundraising business who does so, is a trustee and holds the contributions in trust for the charity.

(2) The trustee has no power to invest monetary contributions received on behalf of a charity and shall, within three business days after receiving the monetary contributions, deposit them, without making any deductions, into an account held in a bank, trust corporation or credit union in Canada.

[NOTE Each jurisdiction will have its preferred way of referring to financial institutions that take deposits.]

(3) The account shall be in the name of the charity that is the beneficiary and shall be under its sole control.

(4) The trustee shall comply with the prescribed requirements.

(5) The [*statute governing trustees*] does not apply to the trust.

### **Compliance with standards of practice**

**32.** (1) Every fundraising business and every employee of a fundraising business shall comply with the prescribed standards of practice.

(2) The directors, officers and managers of a fundraising business shall,

(a) comply with the prescribed standards of practice; and

(b) take reasonable steps to ensure that the fundraising business and its employees comply with the prescribed standards of practice.

[NOTE See s. 3 of appended model regulation.]

### **Request to refrain from making solicitations, etc.**

**33.** A fundraising business shall use its best efforts to comply with a person's request that the fundraising business,

(a) refrain from making solicitations to the person on behalf of the charity specified in the request; or

(b) remove the person's name from a list of persons who may provide a contribution to the charity specified in the request.

### **Prohibition**

**34.** No fundraising business shall make a solicitation on behalf of, or manage, facilitate or be responsible for solicitations made by or on behalf of, a charity in which any of the following persons and other entities has an interest:

1. The fundraising business or its associate.

2. An officer or director of the fundraising business, or the spouse of an officer or director.

3. An associate of a person described in paragraph 2.

[NOTE Section 34 requires definitions of “interest”, “associate” and “spouse”. Each jurisdiction may wish to adopt definitions that correspond to the ones used elsewhere in its statutes.]

## FUNDRAISING AGREEMENTS

### **Agreement mandatory**

**35.** (1) No charity shall use a fundraising business to make solicitations on its behalf or to manage, facilitate or be responsible for solicitations made by or on behalf of the charity unless,

- (a) the charity and the fundraising business have entered into a fundraising agreement that complies with section 36; and
- (b) the agreement is in force.

(2) No fundraising business shall make a solicitation on behalf of a charity or manage, facilitate or be responsible for solicitations made by or on behalf of a charity unless,

- (a) the fundraising business and the charity have entered into a fundraising agreement that complies with section 36; and
- (b) the agreement is in force.

### **Requirements**

**36.** A fundraising agreement shall be in writing and shall,

- (a) set out everything agreed to by the parties respecting the proposed fundraising, including all the rights and duties of both parties;
- (b) state the estimated amounts of,
  - (i) contributions to be received, and
  - (ii) expenses;
- (c) establish the fundraising business’s remuneration and specify how it is to be calculated;
- (d) specify the methods of solicitation to be used;
- (e) if the solicitations will involve selling goods or services, describe the goods or services and specify the price for which they will be sold;
- (f) identify the account of the charity into which monetary contributions are to be deposited;

- (g) set out the charity’s address, its fax and e-mail addresses, if any, and the name and telephone number of its contact person;
- (h) set out the fundraising business’s address, its fax and e-mail addresses, if any, and the name and telephone number of its contact person;
- (i) state in what circumstances the parties are entitled to terminate the fundraising agreement, and set out the mechanism for termination; and
- (j) include any other prescribed matter.

[NOTE Some jurisdictions may prefer to have the content of 36 in regulations rather than in the statute itself.]

[NOTE Some jurisdictions may wish to add a requirement that copies of fundraising agreements be provided to the enforcement authority.]

## RETAIL INCENTIVE DONORS

### **Duty**

**37.** A person or other entity that acts as a retail incentive donor shall,

- (a) donate all or a portion of the purchase price for the relevant goods or services to a charity, in accordance with the representations mentioned in clause (c) of the definition of “retail incentive donor” in subsection 2 (1); or
- (b) use all or a portion of the purchase price for the charitable purpose in accordance with the representations.

### **Information**

**38.** (1) Subject to subsection (3), a retail incentive donor shall provide, on any person’s request, the prescribed information about its donations to the charity or the money it used for a charitable purpose, in the prescribed form.

(2) The retail incentive donor may provide the information referred to in subsection (1) by making it available for public access on a website.

(3) If the retail incentive donor does not make the information referred to in subsection (1) available for public access on a website, or if the person requesting the information asks that it be provided in paper form, the retail incentive donor may,

- (a) establish a reasonable fee for providing the information in paper form that is based on,
  - (i) the cost of reproducing the documents, and

(ii) the cost of postage if the documents are to be mailed; and

(b) refuse to provide a copy of the documents unless the fee is paid.

(4) The enforcement authority is entitled to obtain the information referred to in subsection (1) in paper form without paying a fee.

(5) If the retail incentive donor represents that purchasing goods or services will benefit a charity, the charity is entitled to obtain the information referred to in subsection (1) in paper form without paying a fee.

(6) The retail incentive donor shall ensure that the information referred to in subsection (1) remains available, during the six financial years that follow the financial year in which the donation or use of money for a charitable purpose took place,

(a) in paper form; or

(b) on a website.

### **Representations**

**39.** (1) No retail incentive donor shall make a representation,

(a) that an individual or corporation sponsors, endorses or approves of a charity or a charitable purpose, unless the individual or corporation has given written consent, in advance, allowing the use of the individual's or corporation's name for those purposes; or

(b) that all or a portion of the purchase price of the goods or services it sells will be donated to a charity, unless the charity has given written consent to the representation, in advance.

(2) No retail incentive donor shall use any thing that identifies a charity in a manner that indicates or implies an association between the retail incentive donor and the charity, unless the charity has given written consent to the use, in advance.

### **Certain activities of retail incentive donors not solicitations**

**40.** For greater certainty, the following are not solicitations for the purposes of this Act:

1. A retail incentive donor's offer of goods or services.

2. A retail incentive donor's representation that purchasing goods or services will benefit a charity or charitable purpose.

## INSPECTIONS AND INVESTIGATIONS

### **Inspectors**

**41.** The [*enforcement authority*] may appoint one or more inspectors for the purposes of this Act and the regulations.

[NOTE Appointment of inspectors is a governmental function, which becomes an issue if the enforcement authority is not part of government.]

### **Inspection**

**42.** (1) An inspector may enter and inspect the premises of a charity, fundraising business or retail incentive donor to ensure compliance with this Act and the regulations.

(2) An inspection under subsection (1) may be conducted only if,

- (a) the charity, fundraising business or retail incentive donor is given reasonable notice of the inspection; and
- (b) the inspection is conducted at a reasonable time.

(3) When acting under the authority of this section, an inspector shall carry identification and present it on request to the owner or occupant of the premises referred to in subsection (1).

(4) An inspector who makes an inspection under subsection (1) may inspect, examine and make copies of or temporarily remove,

- (a) records required to be kept under this Act; and
- (b) records relating to the collection, expenditure and distribution of contributions, including the records pertaining to accounts referred to in section 31.

(5) An inspector who removes a record under subsection (4),

- (a) shall give a receipt to the person from whom the record is taken;
- (b) may make copies of, take photographs of or otherwise reproduce it; and
- (c) shall, within a reasonable time, return the record to the person who was given the receipt.

### **Inspection of s. 11 records**

**43.** (1) A charity or fundraising business that is required to maintain records under section 11 shall make the records available for inspection by an inspector at a place in [*jurisdiction*] and at a time specified by the inspector.

(2) An inspector has the powers and duties described in subsections 42 (4) and (5) when inspecting records under subsection (1).

### **Warrant for inspection**

**44.** (1) The [*enforcement agency*] may apply to a justice of the peace for a warrant under subsection (2), without notice, if a person,

[NOTE Some jurisdictions may wish to assign the power to issue warrants (or orders) under s. 44 to judges of a named court rather than to justices of the peace.]

- (a) refuses to allow an inspector to enter the premises of a charity, fundraising business or retail incentive donor;
- (b) refuses to produce anything requested by an inspector to assist in an inspection under section 43; or
- (c) refuses to make records referred to in section 11 available for inspection in [*jurisdiction*] as specified by an inspector under section 43.

(2) The justice of the peace may issue a warrant,

- (a) restraining a person from preventing entry by an inspector or from interfering with the inspection; and
- (b) requiring the production of anything to assist in an inspection or requiring that records referred to in section 11 be made available to an inspector for inspection in [*jurisdiction*].

(3) The [*enforcement agency*] may apply to a justice of the peace for a warrant under subsection (4), without notice, if there is reason to believe that giving notice under clause 42 (2) (a) is likely to result in the loss or destruction of evidence.

(4) The justice of the peace, if satisfied that giving notice under clause 42 (2) (a) is likely to result in the loss or destruction of evidence, may issue a warrant authorizing an inspector to conduct an inspection under section 42 without notice.

### **Initiating investigation**

**45.** The [*enforcement authority*] may, on receiving a complaint or on its own initiative, direct an inspector to investigate,

- (a) any matter concerning the administration of this Act or the regulations; or
- (b) the circumstances surrounding,

- (i) any solicitation made by a charity or fundraising business, or
- (ii) representations made by a retail incentive donor as described in clause (c) of the definition of “retail incentive donor” in subsection 2 (1).

### **Order to assist investigation**

**46.** (1) In the course of an investigation under section 45, the inspector may apply to the [*superior court*] for an order,

- (a) compelling a person or the person’s agent to allow the inspector to enter the person’s or agent’s premises for the purposes of the investigation, requiring the person or agent to produce for the inspector’s examination the person’s or agent’s records relevant to the investigation, and authorizing the inspector to copy them or remove them on such terms as the court considers appropriate; and
- (b) authorizing the inspector to inquire into and examine the affairs of the person or agent that are relevant to the investigation and directing the person or agent to co-operate with the investigation on such terms as the court considers appropriate.

(2) The court may make an order under subsection (1) if satisfied on evidence under oath by an inspector that there are reasonable grounds to believe that,

- (a) the person or the person’s agent has evidence that is relevant to the investigation;
- (b) the person being investigated or the person’s agent has not co-operated or is unlikely to co-operate with the investigation; and
- (c) the order is appropriate in the circumstances.

(3) The order may be made without notice if the court is satisfied that giving notice is likely to result in the loss or destruction of evidence.

### **Order to conduct investigation with powers of commission**

**47.** (1) On application by the [*enforcement authority*], the [*superior court*] may make an order directing the [*enforcement authority*] to conduct an investigation into,

- (a) any matter concerning the administration of this Act or the regulations; or
- (b) the circumstances surrounding,
  - (i) any solicitation made by a charity or fundraising business, or
  - (ii) representations made by a retail incentive donor as described in clause (c) of the definition of “retail incentive donor” in subsection 2 (1).

(2) In conducting the investigation, the [*enforcement authority*] has and may exercise any of the powers conferred on the [*enforcement authority*] by this Act and any of the powers of a commission under [*equivalent of Part I of Uniform Public Inquiries Act*].

(3) [*equivalent of Part I of Uniform Public Inquiries Act*] applies to the investigation as if it were an inquiry under that Act.

(4) The [*enforcement authority*] shall report in writing on the investigation to the court and to the Attorney General.

#### POWERS OF [*ENFORCEMENT AUTHORITY*]

##### **Powers of [*enforcement authority*]**

**48.** (1) In the circumstances referred to in subsection (2), the [*enforcement authority*] may do any or all of the following:

1. Direct any person who holds any funds, securities or other property for a charity, fundraising business or retail incentive donor to continue holding them.
2. Direct a charity, fundraising business, retail incentive donor or other person to refrain from withdrawing funds, securities or other property referred to in paragraph 1 from any person who holds them for the charity, fundraising business or retail incentive donor.
3. Direct a person to hold in trust any contributions or funds related to a charity, fundraising business or retail incentive donor for a receiver, receiver-manager, trustee, liquidator or other official appointed under an Act of [*enacting jurisdiction*] or Canada.

(2) The [*enforcement authority*] may exercise the powers in subsection (1) in any of the following circumstances:

1. The [*enforcement authority*] is about to authorize an investigation of a person under this Act or such an investigation is being carried on or has been completed.
2. The [*enforcement authority*] is about to cancel or suspend or has cancelled or suspended a registration, a deemed registration or a licence.
3. Criminal proceedings that, in the opinion of the [*enforcement authority*], are connected with or arise out of matters under this Act, are about to be or have been initiated against any person.

4. Proceedings in respect of a contravention of this Act are about to be or have been initiated against any person.
5. The [*enforcement authority*] has reason to believe that the trust funds held by a fundraising business or the funds held by a charity in its accounts are less than the amount for which the fundraising business or charity, as the case may be, is accountable.

(3) The [*enforcement authority*] may amend or cancel a direction given under subsection (1).

(4) Directions, amendments and cancellations shall be in writing and shall be served on the persons to whom they are directed.

### **Application to court**

**49.** In any of the circumstances described in subsection 48 (2), the [*enforcement authority*] may apply to the [*superior court*] for one or more of the following:

1. The appointment of a receiver, receiver-manager or trustee to hold or manage all or part of the funds, securities and other property of a charity, fundraising business or retail incentive donor.
2. An order requiring a person who holds any funds, securities or other property for a charity, fundraising business or retail incentive donor to pay the funds into court and to transfer to [*court official*], or to a person appointed under paragraph 3, any securities or other property held by the first-named person.
3. An order removing a director or officer of a charity, fundraising business or retail incentive donor and appointing another person to act in his or her place.
4. An order directing that an attachment issue against a person to the amount of any funds, securities or other property with respect to which the person is in default.
5. An order fixing the costs of the application and directing how and by whom they are payable.
6. An order giving directions for the future investment, disposition and application of funds, securities or other property.
7. Any other order that may be appropriate in the circumstances.

### **Injunction**

**50.** (1) If, on the [*enforcement authority*]'s application, it appears to the [*superior court*] that a person has done, is doing or is about to do any thing that constitutes a contravention of

this Act or that involves the misappropriation of contributions, the court may issue an injunction ordering any person named in the application,

- (a) to refrain from doing that thing; or
- (b) to do any thing that in the court's opinion may prevent the contravention or misappropriation.

(2) At least 48 hours' notice of the application shall be given to the party or parties named in the application, unless the court is of the opinion that the urgency of the situation is such that giving notice would not be in the public interest.

#### SUSPENSION, CANCELLATION AND IMPOSITION OF CONDITIONS

##### Grounds

**51.** (1) The [*enforcement authority*] may take a step described in subsection (3) with respect to a charity or fundraising business, if,

- (a) the charity or fundraising business or any of its directors, officers or managers have, at any time,
  - (i) in the [*enforcement authority*]'s opinion, contravened this Act,
  - (ii) been convicted of a relevant offence,
  - (iii) failed to pay a fine imposed under a conviction for a relevant offence or failed to comply with an order made in relation to such a conviction,
  - (iv) had the status of an undischarged bankrupt,
  - (v) been named in a certificate signed under the *Charities Registration (Security Information) Act* (Canada), or
  - (vi) been subject to an order described in subsection (2) the making of which, in the [*enforcement authority*]'s opinion, indicates that the person subject to the order is unsuitable to deal with contributions or to make solicitations; or
- (b) in the [*enforcement authority*]'s opinion,
  - (i) in the case of a charity, any of its employees or volunteers have contravened subsection 21 (1), or
  - (ii) in the case of a fundraising business, any of its employees have contravened section 32.

(2) Subclause (1) (a) (vi) applies to orders made,

- (a) under this Act or under a similar Act in another jurisdiction in Canada; or
- (b) under the [*consumer protection statute*] or under a similar Act in another jurisdiction in Canada.

(3) In the circumstances described in subsection (1), the [*enforcement authority*] may suspend or cancel the registration or deemed registration of a charity or the licence of a fundraising business, or impose conditions on the registration, deemed registration or licence.

(4) Before a registration, deemed registration or licence is suspended or cancelled or conditions are imposed, the [*enforcement authority*] shall give the charity or fundraising business, as the case may be,

- (a) at least 15 days' written notice of the proposed suspension or cancellation or the proposed conditions, with reasons; and
- (b) an opportunity to make representations to the [*enforcement authority*]'s designate.

(5) The [*enforcement authority*] may suspend or cancel the registration or deemed registration of a charity or the licence of a fundraising business or impose conditions on the registration, deemed registration or licence, without notice or an opportunity to make representations if,

- (a) the charity or fundraising business is involved in an investigation under section 45 or 47; and
- (b) the [*enforcement authority*] is of the opinion that the charity or fundraising business, or its director, officer, manager or employee, has misappropriated or is likely to misappropriate funds that were collected for a charity or a charitable purpose.

(6) When the [*enforcement authority*] acts under subsection (5), it shall promptly give the charity or fundraising business, as the case may be, a written statement of,

- (a) the proposed suspension or cancellation or of the proposed conditions, with reasons; and
- (b) the right to an internal review under subsection (7).

(7) Within 30 days after receiving the statement described in subsection (6), the charity or fundraising business may request an internal review by giving the [*enforcement agency*] a written notice of objection.

- (8) The [*enforcement agency*] shall, with all due dispatch,
- (a) reconsider the matter;
  - (b) confirm, modify or cancel the decision made under subsection (5); and
  - (c) give the charity or fundraising business a written statement of the outcome.

## GENERAL

### General prohibitions

**52.** (1) No person shall,

- (a) use the fact that a charity is registered or deemed to be registered or that a fundraising business is licensed to lead any other person to believe that the registration, deemed registration or licence constitutes an endorsement or approval by the government of [*jurisdiction*], except to indicate that the charity or fundraising business is registered, deemed to be registered or licensed under this Act;
- (b) in a solicitation,
  - (i) make a representation that an individual or corporation sponsors, endorses or approves of a charity or a charitable purpose, unless the individual or corporation has given written consent, in advance, allowing the use of the individual's or corporation's name for those purposes,
  - (ii) use any thing that identifies a charity in a manner that indicates or implies an association between the person and the charity, unless the charity has given written consent to the use, in advance, or
  - (iii) make a false or misleading statement; or
- (c) having made a representation that contributions will be used for a charitable purpose, fail to provide them to a charity formed for that charitable purpose or to use them for that charitable purpose within a reasonable time.

(2) No charity or fundraising business and no director, officer, manager or employee of a charity or fundraising business shall give a person false or misleading information knowing that the person intends to use the information in a solicitation.

### **False statements**

**53.** No person shall make a false or misleading statement in any application or other document submitted to the [*enforcement authority*] under this Act.

### **Disclosure by [*enforcement authority*]**

**54.** The [*enforcement authority*] may disclose any information obtained under this Act for the purpose of assisting members of the public to decide whether they wish to make contributions to a particular person, charity, fundraising business or retail incentive donor.

[NOTE Each jurisdiction will need to consider what complementary amendments, if any, may need to be made to its legislation governing protection of privacy and freedom of information, in order to authorize disclosure to the public and disclosure to governments and government agencies.]

### **Appealing decision of [*enforcement authority*]**

**55.** (1) A person who is affected by a decision of the [*enforcement authority*] under this Act may appeal the decision on a question of law or jurisdiction to the [*superior court*].

(2) An appeal under this section shall be commenced by filing a notice of appeal that sets out the grounds for the appeal within 30 days after receiving notice of the decision.

(3) In the case of a decision under subsection 51 (5), the charity or fundraising business may appeal the decision under subsection (1) only if it has requested an internal review under subsection 51 (7), and the notice of appeal shall be filed within 30 days after receiving notice of the outcome of the internal review.

(4) The [*superior court*] may confirm or reject the [*enforcement authority*]'s decision or make any other order it considers appropriate.

### **Order compelling proper use of contributions**

**56.** (1) A person who has made a contribution to a charity may apply to the [*superior court*] for an order described in subsection (2).

(2) If the court is satisfied that a charity is not using the contributions it receives as a result of a solicitation for the charitable purpose stated or implied in the solicitation, the court may,

- (a) require the charity or any of its directors, officers or managers,
  - (i) to pay the contributions to another charity formed for the same charitable purpose, or
  - (ii) if the court considers it appropriate, to return the contributions to the persons who made them;
- (b) require the charity and its directors, officers and managers to use a contribution for the charitable purpose for which it was donated;

- (c) make a declaration respecting the use or misuse of contributions by the charity; or
- (d) make any other order that the court considers appropriate.

(3) Before making an order under subsection (2), the court may require the charity or any of its directors, officers or managers to provide to the court the documents or information that the court specifies.

(4) If the court dismisses an application made under subsection (1) and considers it to have been frivolous or vexatious, the court may require the applicant to pay costs as specified by the court.

(5) Nothing in this Act affects any right at common law, in equity or under another Act that a person may have in respect of a charity, fundraising business or retail incentive donor.

### **Restriction on municipal powers**

**57.** Despite the [*statute governing municipal powers*], the council of a municipality shall not pass bylaws regulating or prohibiting solicitations made by charities or fundraising businesses.

### **Offences**

**58.** (1) A person who contravenes any of the following provisions of this Act is guilty of an offence:

1. Sections 6 and 7, subsections 8 (2) and (3), and section 9.
2. Sections 11, 12 and 13.
3. Sections 14 and 15.
4. Sections 20, 21 and 22.
5. Section 23.
6. Sections 28 and 30 to 34.
7. Section 35.
8. Sections 37 to 39.
9. Subsection 43 (1).
10. Sections 52 and 53.

(2) A person who fails to comply with a direction of the [*enforcement authority*] under section 48 is guilty of an offence.

(3) A person who is guilty of an offence is liable, on conviction, to one or both of the following:

1. A fine that is not less than \$1,000 and not more than the greater of,
  - i. \$100,000, and
  - ii. three times the amount that the defendant obtained as a result of the offence.
2. Imprisonment for not more than two years.

(4) If a corporation is guilty of an offence, every director, officer, manager, employee and agent of the corporation who authorized the commission of the offence, assented to it, or acquiesced or participated in it is also guilty of an offence and is liable, on conviction, to the penalty provided for in subsection (3), whether or not the corporation has been convicted.

(5) If a partner in a partnership that is a fundraising business is convicted of an offence, each partner in that partnership who authorized the commission of the offence, assented to it, or acquiesced or participated in it is also guilty of an offence and is liable, on conviction, to the penalty provided for in subsection (3).

(6) In any prosecution under this Act relating to a solicitation there is a presumption, in the absence of evidence to the contrary, that this Act applies to the solicitation.

(7) A prosecution under this Act shall not be commenced more than two years after the date on which evidence of the offence first came to the attention of the [*enforcement authority*].

### **Compensation for loss**

**59.** (1) The court that convicts a defendant of an offence may, on the application of an aggrieved person, at the time sentence is imposed, order the defendant to pay to the applicant an amount as compensation for loss suffered by the applicant as a result of the commission of the offence.

(2) If an amount that is ordered to be paid under subsection (1) is not paid within the time ordered by the court, the applicant may file the order for payment in the [*superior court*], and the order may be enforced in the same way as a judgment of that court.

### **Regulations**

**60.** (1) The [*enforcement authority*] may make regulations,

[NOTE It may not be appropriate for the enforcement authority to make regulations independently. The regulation-making power could be made subject to the approval of the Lieutenant Governor in Council. Or it could be conferred on the responsible minister.]

- (a) exempting any person or other entity or class of persons or other entities from this Act and the regulations or from any provision of this Act or the regulations;
- (b) respecting the calculation of gross contributions;

[NOTE See s. 1 of appended model regulation.]

- (c) prescribing the manner and form in which information is to be provided under section 7 when a solicitation is made;
- (d) prescribing other information for the purposes of paragraph 5 of subsection 7 (3);
- (e) prescribing an amount for the purposes of sections 10 and 14;

[NOTE See s. 2 of appended model regulation.]

- (f) prescribing the other records to be maintained by charities and fundraising businesses under section 11 and the period for which they shall be maintained;
- (g) prescribing, for the purposes of section 12,
  - (i) the situations in which a charity is required to prepare either audited financial statements or financial information returns, and
  - (ii) requirements for financial statements and information returns;
- (h) prescribing accounting standards for charities;
- (i) respecting the calculation of the portion or estimated portion of gross contributions used directly for charitable purposes under paragraphs 3 and 4 of subsection 13 (2);
- (j) respecting the trust established under section 31;
- (k) prescribing the form of and the information required for the purposes of applications for registration, licences and renewals;
- (l) prescribing fees for registrations, licences and renewals;
- (m) prescribing the time periods during which a registration or a licence is effective;
- (n) prescribing requirements for security required under section 24;

- (o) respecting the conditions under which a security is forfeited and the procedures to be followed for claiming on a security that has been forfeited;
- (p) prescribing other matters that shall be included in fundraising agreements under clause 36 (j);
- (q) prescribing standards of practice for the purposes of sections 21 and 32;

[NOTE See s. 3 of appended model regulation.]

- (r) prescribing the information to be provided by retail incentive donors under section 38 and the form in which it is to be provided.

(2) A regulation made under clause (1) (b) may provide for different calculations for the purposes of different provisions of this Act.

(3) A regulation made under clause (1) (c) may treat solicitations made by different means differently.

### **Protection from liability**

**61.** No action for damages may be commenced against the [*enforcement authority*], an inspector or any person acting under the authority of the [*enforcement authority*] for anything done or not done by that person in good faith while carrying out duties or exercising powers under this Act.

[NOTE Each jurisdiction will need to consider any transitional issues that arise in connection with adopting this Act.]

## REGULATION

made under the

## UNIFORM CHARITABLE FUNDRAISING ACT

### GENERAL

#### Gross contributions

1. (1) For the purposes of the Act, gross contributions for a financial year shall be calculated by adding together the following, subject to subsections (2) and (3):

1. All cash received during the financial year and all cheques received that have cleared during the financial year, including bequests and amounts received from other charities.
2. The value, as determined by the charity, of all goods and services received as contributions during the financial year, including any property that is subject to conditions or to a trust.
3. The cash surrender value of all life insurance policies that are transferred to the charity during the financial year.
4. The amount of life insurance premiums that donors pay directly to insurers on behalf of the charity during the financial year.

(2) If a charity gives a receipt for the purposes of the *Income Tax Act* (Canada) in respect of a contribution, the amount to be included in gross contributions is the amount specified in the receipt.

(3) The following shall not be included in gross contributions:

1. Contributions that have been pledged but not actually received.
2. Contributions that are received as a result of solicitations to which the Act does not apply.

#### Prescribed amount

2. For the purposes of sections 10 and 14 of the Act, the prescribed amount is \$25,000.

#### Standards of practice

3. The standards of practice set out in the Schedule are prescribed for the purposes of sections 21 and 32 of the Act.

SCHEDULE  
STANDARDS OF PRACTICE

1. A charity or fundraising business shall comply with all relevant municipal, provincial, and federal laws.
2. A charity shall use accurate and consistent accounting methods that conform to the appropriate guidelines adopted by the Canadian Institute of Chartered Accountants.
3. A charity or fundraising business shall not take unfair advantage of donors or prospective donors.
4. A charity or fundraising business shall give donors the opportunity to have their names removed from lists that are sold or rented to other organizations or exchanged with them.
5. A charity or fundraising business shall not disclose any personal, confidential or identifying information about donors or prospective donors, except as necessary for the internal operations of the charity or fundraising business, as the case may be.
6. A charity shall ensure, to the best of its ability, that contributions are used in accordance with donors' intentions.
7. A charity shall, before using a gift in a way that departs from a condition imposed by the donor, obtain the explicit consent of the donor or of the donor's representative.
8. A person who is an employee or volunteer of a charity, an employee of a fundraising business, or a director, officer or manager of a charity or fundraising business shall,
  - (a) comply with sections 1 to 7; and
  - (b) disclose to the charity or fundraising business, as the case may be, any conflict of interest and any situation that the person realizes might be perceived as a conflict of interest.
9. A fundraising business shall not receive from a charity a finder's fee, a commission or compensation based on a percentage of contributions received by the charity. This does not prohibit the payment of performance-based compensation, if it is consistent with the charity's policies and practices and not based on a percentage of contributions received.
10. Section 9 also applies, with necessary modifications, in respect of compensation received from a charity or fundraising business by an employee, director, officer or manager of the charity or fundraising business, as the case may be.