



Imagine Canada's new Ethics Code: Imagining a more ethical sector

By Mark Blumberg
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Imagine Canada has recently revised their Ethical Fundraising and Financial Accountability Code (the “Imagine Code”) which it refers to as “The Code of Ethics”. Here are my comments on the Imagine Code.

As a general overview my comments are:

- 1) the revised Imagine Code is an improvement over Imagine Canada's previous code and provides slightly more accountability. It is really important that there be a voluntary code relating to ethics in the fundraising area. Imagine Canada is to be commended for undertaking this project.
- 2) It is a difficult balancing act to decide how high the standard will be in a code of conduct or ethics. It is easy to have a very high standard but you may not have anyone agreeing to be bound by your code. On the other hand if you have a low standard you may have a high pick up rate with charities but the code may be essentially meaningless. My criticisms below of the Imagine Code should be viewed in that light. Hopefully Imagine Canada will again review the Imagine Code in the next year or two and perhaps include a couple of the points raised in this article.
- 3) There is no question that Kevin Donovan's writings in the Toronto Star spurned Imagine Canada to revise the Imagine Code. Some of the provisions are clearly aimed at not only increasing the standards of fundraising by charities but also, perhaps more importantly, making it look like charities are operating at high standards when they adopt the revised Imagine Code. Although some provisions are very good and require disclosure, some of the other provisions are really of little meaning or nothing more than what is legally required. Quite clearly this document is a compromise between different groups.
- 4) It is commendable that organizations adopt the Imagine Code; however, it has yet to be seen whether donors and professional advisors will put much

credence in the Imagine Code. In part it will depend on whether the Imagine Code is a marketing tool and only pasted on websites or whether some organizations will actually internalize some of the ideas in the Imagine Code and implement them.

- 5) It will be interesting to see if the Imagine Code makes it less likely that Finance and CRA will have their own expectations in terms of fundraising, accountability, transparency, etc. After all, it is a code that is voluntarily adopted, probably in the end by only 1,000-2,000 charities of the 82,000 registered charities in Canada. It also only covers a couple of areas of conduct – fundraising and finances. There is obviously more to ethics than just fundraising and finance. The advantage of Finance and CRA bringing greater clarity to certain issues is that it will then be applicable to all charities, either immediately or on some phased-in basis, and it will not require another ten years to get a better ethical code that only applies to 1% or 2% of charities. The disadvantage is that some may not like the greater regulation of this area or the specific requirements that Finance and CRA may introduce.
- 6) The revised Code does not deal with probably the biggest issue raised by the public, namely, charities that spend a lot of money on fundraising. In an October 2007 Imagine Canada PowerPoint presentation on its website it states “Focus of media attention related to Code over the last five years has been the high costs of fundraising, transparency, fraud, misleading donors, etc.” I don’t think that the Imagine Code is going to do much to deal with the “high cost of fundraising” because Imagine Canada and the Imagine Code cannot agree what a high cost is. In that same PowerPoint presentation it acknowledges that there is “No consensus on controversial issues like how ‘costs of fundraising’ should be handled in code.” Although it may add a little more transparency, which is important for accountability, and result in fewer mislead donors, I also believe it won’t do much to prevent fraud.
- 7) So why did Imagine Canada get rid of its earlier program which lasted for so many years? Again, according to the PowerPoint presentation, the problem was that there was:
 - “No way to ensure that charities are actually adhering to the Code once they sign up.”
 - “Difficult to remove charities from list as we have no legal relationship with them. Legal risk to removing them for poor practices.”
 - “No financial support for this portion of the program.”

Basically the previous code had no monitoring, no teeth and was not providing a revenue stream for Imagine Canada. The revised Imagine Code

has little monitoring, some baby teeth but will hopefully provide a good revenue stream to Imagine Canada.

8) I have already heard grumblings from charities about the annual cost for the Trustmark and being in the program. There are also concerns that different organizations adhere to different codes and each has their own cost and cumulatively the cost may be great and the time required for all the codes, in addition to government regulation, is substantial. Ultimately, each organization needs to decide on a cost-benefit basis whether the Imagine Code provides value for its charity. I don't take the concern about the financial cost too seriously as real accountability, transparency and ethical practice cost a lot of both time and money. The Imagine program does not seem expensive, although to some extent you are getting what you pay for.

I have made further comments in the body of the Code below and I have placed them in [] and bold.

The Ethical Code

ETHICAL FUNDRAISING AND FINANCIAL ACCOUNTABILITY CODE

The registered charity undertakes to adhere to the standards set out in the Imagine Canada Ethical Fundraising and Financial Accountability Code in its treatment of donors and the public, its fundraising practices and its financial transparency, and to be accountable through its Board of Directors for doing so.

A Donor policies and public representations

1. The charity prepares and issues official Income Tax receipts for monetary gifts and for gifts-in-kind pursuant to any policy established and published on minimum amounts to be receipted and in compliance with all regulatory requirements. The charity will acknowledge in writing contributions not entitled to be officially receipted, subject to any policy established and published on minimum amounts to be acknowledged.
2. All fundraising solicitations by or on behalf of the charity disclose the charity's name and the purpose for which funds are requested. Printed and on-line solicitations (however transmitted) will include its address or other contact information.
3. The charity provides the following information promptly upon request:
 - the charity's most recent annual report and financial statements as approved by the governing board;
 - the charity's registration number (BN) as assigned by the Canada Revenue Agency (CRA);
 - any information contained in the public portion of the charity's most recent Charity Information Return (form T3010A) as submitted to CRA;
 - a copy of the Charity's Investment Policy relating to its investable assets, if applicable (see C8);
 - a list of the names of the members of the charity's governing board; and
 - a copy of this Ethical Fundraising and Financial Accountability Code.

[I find paragraph 3, which lists documents that charities are to provide to donors, very amusing. First of all, to say that a charity should provide these documents

“promptly upon request” is neither effective nor efficient. That puts the onus on the donor to ask for the documents and the charity to send the documents. Any basic documents that a charity is required to provide should be on the website of the charity – otherwise a donor should suspect that the charity is either very inefficient or has something to hide. It costs charities close to nothing to put documents on their websites and it opens up the documents to review from a much broader audience than those that “request” the documents. Secondly, the list hardly provides much disclosure on a charity’s activities. Many charities provide numerous annual reports and financial statements on their websites, so to require charities to only provide their most recent annual report and financial statements is hardly much disclosure. As well, to understand the financial situation of a charity it would be helpful to review a number of years of financial statements, not only the most recent ones. Thirdly, the BN number is public information on the CRA’s website. Fourth, the public portion of the T3010 is also public information on the CRA’s website. The only piece of disclosure required that is any different from the earlier Code is a copy of the Charity’s Investment Policy. Unless a donor is making a very large donation or setting up an endowment, it is unlikely that most donors would have any interest in that. Fifthly, providing the names of the members of the charity’s governing board is useful; though, for federally incorporated non-profit organizations you can get that information for free on Industry Canada’s website. For provincial searches you may have to pay for such information. Sixthly, I am not sure that having to provide a copy of the Ethical Fundraising and Financial Accountability Code adds much to the equation – most donors would not know that such a Code exists, let alone the name of it to ask for a copy. Those who know the name probably either have a copy or know that it is available on the Imagine Canada website.]

4. The charity or those fundraising on its behalf will disclose, upon request, whether an individual or entity soliciting contributions is a volunteer, an employee or a contracted third party.
5. The charity will encourage donors to seek independent advice if the proposed gift is a Planned Gift and/or the charity has any reason to believe that the proposed gift might significantly affect the donor’s financial position, taxable income, or relationship with other family members.
6. The charity will honour donors’ requests to remain anonymous in respect to:
 - being publicly identified as a supporter of the organization; and/or
 - having the amount of their contribution publicly disclosed.

[Guidance: In some circumstances, when the source or size of a donation may be perceived as affecting the independence of the charity, the organization may negotiate the terms of public disclosure.]

7. The privacy of donors will be respected. Any donor records that are maintained by the charity will be kept confidential to the greatest extent possible. Donors have the right to see their own donor record, and to challenge its accuracy.
8. If the charity exchanges, rents, or otherwise shares its fundraising lists with other organizations, a donor’s request to be excluded from the list will be honoured.
9. Solicitations by or on behalf of the charity will treat donors and prospective donors with respect. Every effort will be made to honour their requests to:
 - limit the frequency of solicitations;
 - not be solicited by telephone or other technology;
 - receive printed material concerning the charity;

- discontinue solicitations where it is indicated they are unwanted or a nuisance.

10. Recognition mechanisms created due to a gift will not be arbitrarily changed or withdrawn. Unless otherwise negotiated at the time of the gift or changed through a joint agreement between the charity and the donor or the donor's family or legal representative, the original form of the recognition mechanism should be maintained. If the mechanism cannot be physically retained, it will be changed to another consistent with the original agreement. If continuation of the recognition creates a reputational risk for the charity, it may be terminated or altered.

[Guidance: The charity's Donor Recognition/Gift Acceptance Policy may be referred to in a gift agreement and may define recognition time limits and/or establish procedures if maintaining the original form of recognition becomes impractical or undesirable.]

[The last sentence providing continuation of recognition appears to be new and is probably a response to numerous high profile disputes over naming rights and high profile donations with naming rights given to people who have had legal or ethical issues that created "a reputational risk for the charity".]

11. The charity will respond promptly to a complaint by a donor or prospective donor about any matter that is addressed in this *Ethical Fundraising and Financial Accountability Code*.

B Fundraising Practices

1. Fundraising solicitations on behalf of the charity will:
 - be truthful; and
 - accurately describe the charity's activities and the intended use of donated funds.
2. The charity will not make claims that cannot be upheld. It will refrain from using marketing materials or making representations that could be misleading. The charity will not exploit its beneficiaries. It will be sensitive in describing those it serves (whether using graphics, images or text) and fairly represent their needs and how these needs will be addressed.
3. When the charity conducts online solicitations its practices will be consistent with or exceed the provisions of the Canadian Code of Practice for Consumer Protection in Electronic Commerce, which is downloadable at: [http://www.cmcweb.ca/epic/site/cmc-cmc.nsf/vwapj/EcommPrinciples2003_e.pdf/\\$FILE/EcommPrinciples2003_e.pdf](http://www.cmcweb.ca/epic/site/cmc-cmc.nsf/vwapj/EcommPrinciples2003_e.pdf/$FILE/EcommPrinciples2003_e.pdf)
4. When the charity conducts face-to-face solicitations, including but not limited to door-to-door campaigns or street-side fundraising, its practices shall include measures to:
 - provide verification of the affiliation of the person representing the charity; and,
 - secure and safeguard any confidential information, including credit card information, provided by donors.

[This appears new. Personally I think, and I doubt that I am alone on this one, that charities should not knock on people's doors. Maybe the federal government needs to institute a Do Not Knock List!]

5. Volunteers, employees and third party consultants/solicitors who solicit or receive funds on behalf of the charity shall:

- adhere to the provisions of this Ethical Fundraising and Financial Accountability Code;
- act with fairness, integrity, and in accordance with all applicable laws;
- adhere to the provisions of applicable professional codes of ethics, standards of practice, etc.;
- cease solicitation of a prospective donor who identifies the solicitation as harassment or undue pressure, or who states that he does not wish to be solicited;
- disclose immediately to the charity any actual or apparent conflict of interest or loyalty; and
- not accept donations for purposes that are inconsistent with the charity's objects or mission.

6. The charity will provide, upon request, its best available information on the gross revenue, net proceeds and costs of any fundraising activity (including the fundraising costs categorized as education and/or public awareness) it undertakes.

[This appears new. It is interesting and may be a response to (i) the interest of some Canadians in knowing how much of their donation is spent on administration and fundraising and (ii) some of the criticisms of charities that inappropriately classify expenses. Although I think it is admirable to require disclosure of the “gross revenue, net proceeds and costs of any fundraising activity”, I am sure most donors would agree that fundraising costs should not be characterized as “education” and/or “public awareness”. Furthermore, provision of this information is only “upon request”.]

7. Paid staff or consultants will be compensated by a salary, retainer or fee, and will not be paid finders' fees, commissions or other payments based on either the number of philanthropic contributions received or the value of funds raised.

[Guidance: Compensation policies for staff, including fundraisers, providing for performance-based compensation practices (such as salary increases or bonuses) will be consistent with the charity's policies and practices that apply to non-fundraising personnel.]

[Guidance: Permissible percentage-based payments:

- (i) This provision does not apply to commercial fees, such as commissions or percentage payments or similar administrative payments for credit card transactions.*
- (ii) This provision does not apply to administrative fees charged by registered charities subject to regulation by the Canada Revenue Agency who collect money on behalf of other charities (such as Community Foundations and United Ways).*
- (iii) This provision does not apply to cause-related marketing where a percentage of sales are promised to the charity or to lotteries.]*

8. Charities that undertake cause-related marketing in collaboration with a third party should disclose how the charity benefits from the sale of products or services and the minimum or maximum amounts payable under the arrangement. If no minimum amount is specified, the charity should disclose this.

[This appears new and is a good idea. One often has no idea how a charity will benefit from a cause-related marketing promotion.]

9. The charity will not sell its donor list. If applicable, any rental, exchange or other sharing of the charity's donor list will exclude the names of donors who have so requested (as provided in section A8, above). If a list of the charity's donors is exchanged, rented or otherwise shared with another organization, such sharing will be

for a specified period of time and a specified purpose and must be limited to what is allowed under Federal and/or Provincial privacy legislations.

10. The charity's governing board will be informed at least annually of the number, type and disposition of complaints received from donors or prospective donors about matters that are addressed in this *Ethical Fundraising and Financial Accountability Code*.

[Should this information not be made public or, at a minimum, provided to Imagine Canada?]

C Financial practice and transparency

1. The charity's financial affairs will be conducted in a responsible manner, consistent with the ethical obligations of stewardship and all applicable law.

[This is good. It mentions the obvious, namely, that financial affairs will be consistent with "all applicable laws". Some codes of ethics are not so explicit. In the old Code it referred to "the legal requirement of federal and provincial regulators". It is a small point but "all applicable law" is broader and as the applicable law is mandatory it is not a bad idea to include it.]

2. All donations will be used to support the charity's objects, as registered with CRA.

[This is interesting. It reminds charities of their obligation to act within their objects and also to provide to CRA any changes to the objects.]

3. All restricted or designated donations will be used for the purposes for which they were given unless the charity has obtained legal authorization to use them for other purposes. Alternative uses will be discussed where possible with the donor or the donor's legal designate. If the donor is deceased or legally incompetent and the charity is unable to contact a legal designate, the donation will be used in a manner that is as consistent as possible with the donor's original intent. If necessary, the charity will apply to the courts or the appropriate regulatory body to obtain legal authorization to use the donation for other purposes.

[The last sentence was added presumably as a reminder that often changing the purpose, unless contemplated in the gift agreement, may require a court application.]

4. Annual financial reports are necessary to achieve transparency and accountability to donors and the public. All charities issuing receipts should produce them and make them easily accessible. They should:

- be factual and accurate in all material respects;
- disclose the gross amount of fundraising revenues (receipted and non-receipted);
- disclose the total amount of fundraising expenses (including salaries and overhead costs);
- disclose all donations that are receipted for income tax purposes;
- disclose the total amount of expenditures on charitable activities (including gifts to other charities);
- segregate undesignated and designated funds (for aggregate amounts over \$100,000);
- identify government grants and contributions separately from other donations (for aggregate amounts over \$100,000); and

- Financial Statements should be prepared in accordance with generally accepted accounting principles and standards established by the Canadian Institute of Chartered Accountants, in all material respects (or disclose a discrepancy between the practice and GAAP).

[This is interesting. If people have to request financial statements, I don't think that you can say they are "easily accessible". The segregation of undesignated and designated funds (for aggregate amounts over \$100,000) is new. The identifying of government grants and contributions separately from other donations now only applies when it is for amounts over \$100,000.]

5. The cost-effectiveness of the charity's fundraising programs will be reviewed regularly by the governing board. No more will be spent on administration and fundraising than is required to ensure effective management and resource development. The charity will disclose its process for evaluating its spending.

[The last two sentences are new. Not sure if the middle sentence adds anything – sounds like a compromise between doing something and doing nothing and the doing nothing folk gracefully wins. Not sure exactly what the third sentence means but it could result in some interesting information.]

6. The charity will, upon request, disclose the revenue and expense assumptions for its fundraising activity as approved by its Board in its annual budget.

[This is new and good. Again, this information should be freely available and not only "upon request".]

7. If the charity has annual revenue in excess of \$250,000, the financial statements are audited by an independent public accountant.

[Interesting but confusing. What they are describing appears to be less than the minimum required by law in certain jurisdictions. For example, an Ontario non-profit corporation can only get an exemption from audit requirements if it has annual income of less than \$100,000 and all members agree. For federal non-profits there is no exemption from audit requirements.]

8. If the charity's investable assets surpass \$1,000,000, an Investment Policy will be established setting out asset allocation, procedures for investment decisions, and asset protection issues.

[This is a good idea although the threshold should probably be lower.]

9. If the charity receives, or anticipates receiving, gifts-in-kind of \$100,000 or more in a year and has annual revenue in excess of \$500,000, it will establish a Gift Acceptance Policy (including valuation issues) for the receipt of gifts-in-kind.

[This is a good idea. There are many reasons to have a gift acceptance policy such as to clarify what types of gifts a charity will accept or reject, what conditions or restrictions are appropriate, the importance in appropriate circumstances of obtaining legal and/or accounting advice, etc. For some organizations the gift acceptance policy would also cover the types of donors that the charity is not prepared to accept donations from (for example, an anti-smoking group may not be prepared to accept money from a tobacco company.) Gift acceptance policies are also important to remind organizations when they should consider declining a gift and about important issues they should cover before agreeing to a gift. It is sometimes hard on the spur of the moment to decline a gift when it is in front of you

and a gift acceptance policy may make it easier. While there is no legal requirement for Canadian charities generally to have a gift acceptance policy, the gift acceptance policy is an important cornerstone of risk management in the fundraising and planned giving area. It is also a very important document for educating new board members and fundraisers. As gifts of marketable securities are considered gifts-in-kind, this provision of the Imagine Code will probably affect more charities than perhaps realize it. Many charities have gift acceptance policies that have not been reviewed in years and probably could use some thought and updating and revisions.]

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