



Canadian Charities and Political Activities: Keeping room temperature in a chilly environment

By Mark Blumberg (August 2, 2015)

Since 2012 there has been greater scrutiny of Canadian charities and their political activities. The Canadian government has allocated over \$13 million to improve transparency, educate charities and to conduct approximately 60 audits on political activities. CRA recently noted that all 60 organizations have either been audited, are in the midst of an audit or have been selected for audit under the program. Some would argue that such increased scrutiny has resulted in a “chill”, although fundamentally the rules have not changed and Canadian charities are conducting significant political activities.

With the calling today of a Federal election for October 19, 2015, it is expected that there will be additional scrutiny of Canadian charities and their political activities. The rules around charities and political activities would not be that significant if not for the fact that for many charities it is important for that charity to conduct political activities in order to advance its mission.

Unfortunately many charities are conducting political activities but the charities and their boards think that they are not. Many organizations are not disclosing their political activities on their T3010 annual return. For example, if you publicly support any of the following changes then you are probably conducting a political activity: the Imagine Canada stretch tax credit, a higher minimum wage, and more governmental funding for a particular area. With the advent of social media the likelihood that a charity will conduct a political activity is far greater.

In this brief article we cover the basic rules and considerations for Canadian registered charities when conducting political activities.

The Income Tax Act (Canada) (the “Act”) restricts Canadian registered charities in the type and quantity of political activity. The Charities Directorate of the Canada Revenue Agency in its guidance entitled [Political Activities \(CPS – 022\)](#) has set out CRA’s position on political activities by registered charities. Essentially under the Act, a registered charity can be involved in non-partisan political activities as long as it devotes substantially all (generally 90% or more) of its resources to charitable activities. Any political activity has to help accomplish the charity’s purposes and remain incidental (generally 10% or less) in scope. In CPS-022 what the public would describe as ‘political activities’ could be classified as prohibited activities, allowable political activities or in fact charitable activities.

Summary of CPS-022 (Political Activities)

Here I provide a quick summary of some of the most important points from CPS-022 (Political Activities):

1) Canadian charities have experience, expertise and ideas that they should communicate to government so that government can develop better public policy and deliver better programs. Some types of political activity are very beneficial and charities are encouraged within certain limits to be involved with certain political activities.

2) A registered charity CANNOT be involved in PARTISAN political activities. Charities should always keep this in mind. It is especially important to remember this during an election because there is a greater likelihood that a volunteer officer or paid staff person or a board member while representing the charity may deliberately or accidentally breach this prohibition. A political activity is considered partisan if it involves direct or indirect support of, or opposition to, a political party or candidate for public office.

3) According to CRA, an activity is presumed “political” if a charity:

explicitly communicates a call to political action (i.e., encourages the public to contact an elected representative or public official and urges them to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country);

explicitly communicates to the public that the law, policy, or decision of any level of government in Canada or a foreign country should be retained (if the retention of the law, policy or decision is being reconsidered by a government), **opposed, or changed**; or

explicitly indicates in its **materials** (whether internal or external) that the intention of the activity is to incite, or organize to put pressure on, an elected representative or public official to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country.

As of the 2012 Federal budget, a “political activity” “includes the making of a gift to a qualified donee if it can reasonably be considered that a purpose of the gift is to support the political activities of the qualified donee.”

4) The political activities that the charity carries out must be “connected and subordinate” to the charity’s purposes. Therefore, be aware of what your objects or purposes are before engaging in “allowable political activities” and if your objects are no longer relevant or not broad enough consider changing your objects.

5) The content of the political activities is important. “In order to serve the public, the information charities give on public policy issues should be presented in an informative, accurate, and well-reasoned way to enable society to decide for itself what position to take.”

Furthermore, “well-reasoned” does not mean vetted by the “elites” but rather not false, inaccurate, or misleading.

6) For the purposes of CPS - 022, a charity’s political activities can be divided into three separate types:

prohibited activities (partisan or illegal (i.e. cash in brown bag for elected official) and therefore prohibited)

allowable political activities (acceptable, but generally less than 10% of resources can be spent on this, with a little more for smaller charities)

charitable activities (there is generally no limit on the amount of charitable activities a registered charity can conduct as long as they are within their objects)

7) CRA is quite generous in CPS-022 in considering certain matters “charitable activities” and not “political activities”. Several examples are given and many activities for purposes of political expenditures are considered by CRA to fall within the “charitable activities” of the charity as either “education” or “public awareness” depending on how they are conducted. Most importantly, CRA would consider that a charity meeting with elected representatives or government officials will not be a political activity, but instead a charitable activity.

6) Just because a charity and a political party have the same position on a matter does not mean that the charity has to be quiet with respect to the issue. “However, a charity in this situation must not directly or indirectly support the political party or candidate for public office. This means that a charity may make the public aware of its position on an issue provided: it does not explicitly connect its views to any political party or candidate for public office; the issue is connected to its purposes; its views are based on a well-reasoned position; public awareness campaigns do not become the charity’s primary activity.”

7) “... a charity may provide information to its supporters or the public on how all the Members of Parliament or the legislature of a province, territory or municipal council voted on an issue connected with the charity’s purpose. However, a charity must not single out the voting pattern on an issue of any one elected representative or political party.”

8) The Act limits the amount of allowable political activities in that “the Act requires that substantially all of its resources must be devoted to charitable activities.” This is sometimes referred to as the 10% rule. CRA takes the view when determining “substantially all” that the charity not only look to the charity’s financial assets but also staff, volunteers, directors, and its premises and equipment. CRA consider “substantially all” in this case to mean 90% or more. However, with smaller charities CRA says that they will:

exercise our discretion and not revoke the registration of smaller charities for the excessive use of their resources on political activities as long as they meet the following administrative guidelines: Registered charities with less than \$50,000 annual income in the previous year can devote up to 20% of their resources to political activities in the

current year. Registered charities whose annual income in the previous year was between \$50,000 and \$100,000 can devote up to 15% of their resources to political activities in the current year. Registered charities whose annual income in the previous year was between \$100,000 and \$200,000 can devote up to 12% of their resources to political activities in the current year.

9) In some cases, CRA may allow a charity to average out the political activities over the preceding two years to take into account “infrequent, short-term, one-of-a-kind political activities in excess of this amount ...”

10) Organizations need to keep records on political expenditures and if an activity is partly charitable and partly political, a reasonable allocation can be made between the two. See CRA’s Fundraising Guidance, and specifically Schedule “B”, which discusses allocations.

11) The CRA guidance suggests ways in which Canadian charities can conduct significant political activities and “a charity wishing to carry out activities that go beyond the limits permitted by the Act may establish a separate and distinct organization that will not be a registered charity and therefore not able to issue charitable receipts. No limitations are placed on the political activities of such a body; it has complete freedom within the law to support any cause it chooses. But the charity cannot fund that separate organization or make resources available to it for any otherwise impermissible political activity.” The prohibition on partisan political activities or the 10% of resources requirement does not apply to the 80,000-100,000 non-profits that are NOT registered charities and some charities may benefit from having an affiliated entity that is not a registered charity.

12) In terms of the disbursement quota, political activities, just like fundraising expenses and administration costs, are not considered charitable expenses. Some charities may run into disbursement quota problems if they cumulatively have too much fundraising, administration, and political expenses and not enough charitable activity expenses. However, the 2010 Budget changes, which removed the 80/20 disbursement requirement, have made it easier for charities to comply with the disbursement quota.

13) It is important that charities, when filing their T3010 Charity Information Return, accurately reflect their political activities. Remember that charities must file the T3010 within six (6) months of their fiscal year end. The vast majority of charities that lose their charitable registration lose it as a result of non-filing of their T3010. There is a new Schedule 7 to the T3010 with questions on political activities. If the T3010 filed by the charity is incomplete or inaccurate then CRA can suspend the receipting privileges of the charity.

14) Examples of prohibited activities, allowable political, and charitable activities, and also partisan activities are provided along with explanations of each in CPS-022.

Also, remember that if you are undertaking political activities that the registration of lobbyists (federally, provincially or otherwise) is a separate issue in addition to the Act and CRA constraints. You may wish to review the Federal, provincial or in some cases municipal lobbyist registration acts to check whether you and your organization are compliant. Also during the

Federal election be aware of the third-party election advertising requirements of the Canada Elections Act if you are advertising on political issues.

Lots of food for thought. While it is important that many charities conduct political activities they should not do it casually or without thought. If you conduct political activities, especially in certain areas that are extremely controversial, one should expect greater scrutiny from various sources. It is worthwhile for charities that will conduct or are conducting political activities to do a risk and legal compliance assessment as they are more likely to be scrutinized by various stakeholders, including CRA. Furthermore, there should be some consideration as to whether a separate entity should be created in order to carry out certain activities or other structural changes such as coalitions with other organizations. Registered charities that conduct significant political activities also need to be more careful to comply with the restrictions on the amount of resources that can be used.

It is really important to understand the requirements in CPS-022 for the following reasons:

- 1) failure to do so can result in a charity losing its charitable status;
- 2) failure to respect the rules in this area can result in significant reputational harm to the charity and its directors/staff; and
- 3) for many charities, their mission will be advanced by the use of political activities but if they don't understand the rules they may avoid political activities or spend less resources on political activities than they are legally allowed.

Whether or not there is a “chill” on political activities in Canada, it is important that any registered charity conducting political activities does it with care and thought as to the rules.

Mark Blumberg is a partner at Blumberg Segal LLP in Toronto, Ontario. He can be contacted at mark@blumbergs.ca or at 416-361-1982. To find out more about legal services that Blumbergs provides to Canadian charities and non-profits please visit www.canadiancharitylaw.ca or www.globalphilanthropy.ca

This article is for information purposes only. It is not intended to be legal advice. You should not act or abstain from acting based upon such information without first consulting a legal professional.