

Advocacy and Political Activities for Canadian International Development Charities: Some Legal and Ethical Perspectives

**A presentation to the
Ontario Council For International Cooperation (OCIC)**

July 27, 2010

Mark Blumberg, Blumberg Segal LLP
(mark@blumbergs.ca)

Overview of presentation

- Importance of Political Activities and Statistics
- Rules for Political Activities and Registered Charities
- Some ethical considerations
- Lobbying Registration

Presentation is information and not legal advice. If you require legal please advice speak to a charity lawyer.

Importance of Political Activities to be conducted by charities

- some matters require government support, acquiescence or legislation (symptoms vs. root causes)(how much aid/which countries)
- ODA is a lot of resources
- charities and Southern partners have expertise
- governments have scarce resources and want them to use those resources in the best way possible – other interests are well represented at the table

Philanthropy, Official Development Assistance, Remittances per annum

| | |
|----------------------------|------------------------|
| Philanthropy from Canada | \$2.3 billion |
| Philanthropy (development) | \$1.1 billion (Hudson) |
| Philanthropy (development) | \$0.7 billion (CCIC) |
| ODA ("foreign aid") | \$5 billion |
| Remittances | \$12 billion |

Importance for an organization of “political” activities

- assists in fulfillment of mission
- win/win (Canadian charity and government)
- government funding vs. fundraising
- donor, Southern partner and stakeholder interest

Impediments to Int. Dev. Charities Conducting Advocacy work/policy dialogue

- knowledge of policy making processes in Canada and capturing knowledge from South
- resources – no time, skills, HR for policy research, analysis, no sources of funds
- organizational development issues – silos, lack of management/board will
- “legal and regulatory constraints (insufficient knowledge about the extent to which registered charities can engage in policy-influencing activities.” ie. CRA.

Statistics on Canadian Charities and Political Activities – 2008 v 2006

T3010

- 842 v. 397 conducted political activities
- over \$100,000 expenditure 41 v 33
- over \$10,000 143 v 139
- Over \$1000, 275 v. 298
- total political expenditures 2008 \$46 million (minus 19.3m)
- total political expenditures 2006 \$49 million

Top Canadian Charities by Spending on Political Activities – 2006 T3010

| | |
|---|-------------|
| 1. DUCKS UNLIMITED CANADA | \$5,266,908 |
| 2. CHAINE DE TRAVAIL ADAPTE C.T.A. INC. | \$3,625,080 |
| 3. UNITED ISRAEL APPEAL OF CANADA INC | \$2,038,143 |
| 4. CANADIAN CANCER SOCIETY | \$1,039,622 |
| 5. THE UNITED CHURCH OF CANADA | \$963,000 |
| 6. ASSOC. OF UNIV. & COLLEGES OF CANADA | \$804,000 |
| 7. WORLD VISION CANADA | \$711,361 |
| 8. ST LEONARD'S SOCIETY OF METRO. TORONTO | \$529,980 |
| 9. FAMILY SERVICE ASSOCIATION OF TORONTO | \$526,165 |
| 10. LLOYDMINSTER AGR. EX. ASSOC. LTD. | \$457,166 |

Top Canadian Charities by Spending on Political Activities – 2006 T3010 (Cont)

| | |
|---|-----------|
| 11. PARKLAND SCHOOL DIVISION NO 70 | \$389,311 |
| 12. THE DOROTHY LEY HOSPICE | \$354,433 |
| 13. DEVELOPMENT AND PEACE | \$285,786 |
| 14. MENNONITE CHURCH CANADA | \$252,515 |
| 15. MULTIPLE SCLEROSIS SOCIETY OF CANADA | \$246,154 |
| 16. UNITED WAY OF CANADA/CENTRAIDE CANADA | \$212,284 |
| 17. THE DAVID SUZUKI FOUNDATION | \$210,700 |
| 18. MS SOCIETY OF CANADA (ALBERTA DIVISION) | \$203,306 |
| 19. TORONTO EAST END LITERACY PROJECT | \$197,567 |
| 20. CANADIAN COUNCIL FOR INT. CO-OPERATION | \$190,969 |

Why common law, ITA, CRA restricts charities involvement in politics

- tax policy – charities are not political parties who are accountable to electorate
- concern that it will divert funds and resources from charitable activities
- wealthy/major donors will use charities to espouse their political views, obtain benefits outside limits on supporting political parties
- CRA does not want to be censor and courts do not want to get involved in determining what is in public interest (legislature's role)

Why common law, ITA, CRA restricts charities involvement in politics (cont)

- non profits that are not registered charities can do unlimited political activities - but non registered charities cannot issue tax receipts
- single issue advocacy groups -sometimes propaganda, distortion, shock tactics, imbalance in financial resources, questionable public benefit
- unlimited tax incentives supporting opposing sides of political debate is not charitable
- political, propaganda, education etc are matter of facts and degree

Basic Rules for Registered Charities

CRA – Considerations that apply to all charities

- objects exclusively charitable (not political)
- activities within objects (or it is *ultra vires*)
- only undertake charitable activities (relieve poverty, advance education, advance religion, other purposes beneficial to the community that the law considers charitable) with limited political
- cannot violate Canadian public policy or be illegal under Canadian law

CRA – Considerations that apply to all charities (cont.)

- sufficient books and records in Canada
- disbursement quota – now 3.5% for average value of assets not used in charitable activities such as endowments
- restrictions on “business” and commercial activities

Political Activities (CPS-022)

CRA Policy Statement on Political Activities (CPS-022)

- Background - introduced 2003
- reduces confusion
- greater latitude for charities to conduct political activities
- some want fewer restrictions on charities to participate in political discourse.
- policy statement is major step forward

Political Purposes versus Charitable Purposes

- Charity defined by common law
- Cannot have political purpose
- Charity must have public benefit
- Charity can carry out political activities which are “connected and subordinate”

Unstated Purposes

- when despite your stated objects you are really focused on something else
- collateral political purpose, non charitable purpose or charitable purpose.
- will look to actual activities, not just objects.

What are political Activities?

We presume an activity to be political if a charity:

1. 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);

What are political Activities? (cont)

We presume an activity to be political if a charity:

2. 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

What are political Activities? (cont)

We presume an activity to be political if a charity:

3. 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.

What is an elected representative and public official?

Elected representative — A person who is a member of the Parliament of Canada or the legislature of a province, territory, or municipal council. It also includes an elected member of a legislative body, a school board, or a ruling member of government in a foreign country.

Public official — Any person employed by any level of government in any country that is responsible for the laws, policies, or decisions made in a given field.

Types of “Political” Activities

Political Activities and Canadian Charities

- Prohibited activities (illegal and partisan)
- Political activities
- Charitable activities

Prohibited Activities - illegal

- violence
- sabotage
- destruction of property
- jamming telecommunications

Prohibited activities – partisan political

- “A partisan political activity is one that involves direct or indirect support of, or opposition to any political party or candidate for public office.”
- Information on how all MPs or MPPs voted on an issue connected with the charities purpose is not partisan

Examples of Partisan Activities

- Recruiting a candidate for a particular party.
- Nominating a candidate.
- Organizing at the constituency level to sign up members for a particular party.
- Getting out the vote for a particular candidate or party.
- Endorsing a candidate or party publicly.
- Letters to the editor, op-ed pieces, media releases calling for support of or opposition to particular candidates or parties.
- Hosting a dinner for the campaign organizers of a party.
- Distributing leaflets highlighting a lack of government support for your organization's goals or programs.
- Inviting competing candidates to speak at separate events.

IMPACS, the Institute for Media, Policy and Civil Society
http://www.voluntary-sector.ca/eng/election06/election_kit.pdf

Examples of partisan political activities in CPS-022

14.2.1 Scenario 1 — Supporting an election candidate in the charity's newsletter

14.2.2 Scenario 2 — Distributing leaflets highlighting lack of government support for charity goals

14.2.3 Scenario 3 — Preparing dinner for campaign organizers of a political party

14.2.4 Scenario 4 — Inviting competing election candidates to speak at separate events

What are 'permitted' political activities? * *

- Non-partisan
- Connected and subordinate to charity's purposes
- information - informative, accurate, and well-reasoned (not false, inaccurate, or misleading)

Income Tax Act and Political Activities – charitable organizations (149.1(6.2))

For the purposes of the definition **charitable organization** in subsection (1), where an organization devotes substantially all of its resources to charitable activities carried on by it and

- (a) it devotes part of its resources to **political activities**;
- (b) those political activities are ancillary and incidental to its charitable activities; and
- (c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office,

the organization shall be considered to be devoting that part of its resources to charitable activities carried on by it.

Ancillary = connected

Incidental = subordinate

Income Tax Act and Political Activities – charitable foundation (149.1(6.1))

For the purposes of the definition **charitable foundation** in subsection (1), where a corporation or trust devotes **substantially all** of its resources to charitable purposes and

- (a) it devotes part of its resources to political activities;
- (b) those political activities are ancillary and incidental to its charitable purposes; and
- (c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office,

the corporation or trust shall be considered to be constituted and operated for charitable purposes to the extent of that part of its resources so devoted.

Examples of permitted political activities in CPS-022 (within allowable limits)

14.3.1 Scenario 1 — Buying a newspaper advertisement to pressure the government

14.3.2 Scenario 2 — Organizing a march to Parliament Hill

14.3.3 Scenario 3 — Organizing a conference to support the charity's opinion

14.3.4 Scenario 4 — Hiring a communications specialist to arrange a media campaign

14.3.5 Scenario 5 — Using a mail campaign to urge supporters to contact the government

14.3.6 Scenario 6 — Organizing a rally on Parliament Hill

Charitable activities (i.e. when is political not “political”?) – relevant especially when approaching 10% limit

- Public awareness campaigns
- Communicating with an elected representative or public official
- Education

Communication with the public - public awareness campaigns

“A charity’s public awareness campaigns aim to give useful knowledge to the public to enable them to make decisions about the work a charity does or an issue related to that work.”

- public awareness about its work,
- connected and subordinate, not primary activity
- well reasoned (not knowingly false, inaccurate or misleading)
- not primarily emotive/emotional content

- provide contact information if space is limited

Communication with an elected representative or public official

considered charitable under CPS-022 as long as

- connected and subordinate* to charity's objects
- well reasoned (or when little time a position paper is provided in a timely manner)
- not false, inaccurate or misleading

*Although charitable must still be subordinate

This is a major concession on CRA's part.

Education as a charitable purpose

- education – more formal and structured than public awareness

education is

- training the mind;
- advancing the knowledge or abilities of the recipient;
- raising the artistic taste of the community; or
- improving a useful branch of human knowledge through research.

Education as Charitable (cont)

- education is not propaganda, should address “serious” arguments to the contrary.
- objective, well-reasoned position, factual, fully and fairly analyzed, complete, not emotive
- degree of bias/slant will determine whether educational

Examples of charitable activity in CPS-022

14.1.1 Scenario 1 — Distributing the charity's research

14.1.2 Scenario 2 — Distributing the research report to election candidates

14.1.3 Scenario 3 — Publishing a research report online

14.1.4 Scenario 4 — Presenting the research report to a Parliamentary Committee

14.1.5 Scenario 5 — Giving an interview about the research report

Examples of charitable activity in CPS-022 (cont)

**14.1.6 Scenario 6 — Distributing the research report to all
Members of Parliament**

**14.1.7 Scenario 7 — Participating in an international policy
development working group**

**14.1.8 Scenario 8 — Joining a government advisory panel to
discuss policy changes**

“10%” Rule

Expenditure limits under the *Income Tax Act* (Canada) on political activities

- “Substantially all” (90% or more) of activities must be charitable
- 10% rule (actually 10%, 12%, 15%, 20%)
- Higher percentages than 10% for charities with budgets under \$200,000
- Averaging up to two preceding years
- Financial AND other resources (staff, volunteers, directors, premises, and equipment)

How can more be done than 10%

- work with another registered charity that spends less resources than 10% and DQ room (coalitions and joint ventures)
- establish separate non-profit or for profit

“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.”

(CPS-022 from CRA)

Can a charity use give/gift its resources to another organization for political activities?

- Qualified donee
- Non-qualified donee – no - need structured arrangement, direction and control
- For-profit professional lobbyist – no – but can hire on fee for service contractual basis

Disbursement quota and political activities

- Charities cannot use the amounts they devote to political activities to help them meet their disbursement quota ** - important additional limit to "10% rule".
- Does charity have disbursement quota excess or shortfall?

What records should a charity keep?

- Identify expenditures that are political to show substantially all spent on charitable activities
- Consistent allocation between political and charitable when expenditures relate to both
- Not only financial resources but also “any physical and human resources”

Guidance

“Upholding Human Rights and Charitable Registration”

Guidance “Upholding Human Rights and Charitable Registration”

Upholding human rights = charitable

“encourage, support, and defend human rights that have been secured by law, both in Canada and abroad. Upholding the administration and enforcement of the law is a well-recognized charitable purpose.”

Vs.

Attempting to change law, advocating for new legal rights = political – can have activities, not purposes and must be ancillary and incidental to purposes.

- <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/hmn-rghts-eng.html>

3.1 Human rights

For the purposes of this document, the term **human rights** refers to those individual rights and freedoms, within their prescribed limitations, set out in:

Canadian law, including:

- the *Canadian Charter of Rights and Freedoms*
- the *Canadian Bill of Rights*
- the *Canadian Human Rights Act*
- provincial and territorial human rights legislation

International treaties to which Canada is a party that come within the following categories:

- United Nations human rights covenants, conventions, and protocols
- International Labour Organization conventions
- Geneva conventions and protocols

Other human rights references not listed may serve as the basis for a charity's work if the relevant parts of their content are sufficiently similar to the human rights and freedoms recognized by Canada in the above documents.

Some ethical considerations

8.0 Public Policy

8.1 A member organization shall have a clear policy describing the circumstances in which it will involve itself in advocacy, public policy, and/or lobbying activities.

8.2 Members adopting advocacy and public policy positions shall have an organizationally approved policy that defines the process for adopting and implementing such positions.

8.3 Advocacy, public policy, and lobbying activities by members shall be non-partisan (i.e. not associated with a specific political party) in nature and shall conform to applicable U.S. non-profit law.

8.4 Activities intended to influence public policy in the U.S. or other countries shall be undertaken in accordance with the individual member organization's established policies and within applicable laws.

8.5 In taking public policy positions, member organizations shall be informed and guided by public policy positions unanimously adopted by InterAction.

http://www.interaction.org/sites/default/files/PVO_Standards_November16_2009_0.pdf

Do you have a policy which defines:

- a) circumstances in which the organization will involve itself in advocacy or public policy activities; and
- b) which define the process for adopting and implementing such positions.

Are you political activities in conformity with legal requirements?

Lobbyist Registration

Lobbying the Canadian Federal Government

- *Lobbying Act* and Office of the Commissioner of Lobbying of Canada
- lobbying defined broadly, applies to charities
- *Lobbying Act* and ITA very different

for charities registration required when lobbying
“duties constitute a significant part of the duties of one employee or would constitute a significant part of the duties of one employee if they were performed by only one employee.”

Lobbying Federal Government

- What is “significant part of duties”
- Commissioner says:

when lobbying takes up 20% of an employee’s time or efforts or if you add all the employees together more than 20% of one full time employee’s overall duties.

[https://oclc-
cal.gc.ca/app/secure/orl/lrrs/do/publicBasicSearch?
language=en_CA](https://oclc.ca.gc.ca/app/secure/orl/lrrs/do/publicBasicSearch?language=en_CA)

Office of the Commissioner of Lobbying of Canada - Internet Explorer provided by Dell

https://ocl-cal.gc.ca/app/secure/orl/lms/do/_ls63_ls6f_ls6d_ls4c_ls6f_ls67_ls50_ls75_ls62_ls6c_ls69_ls63_ls42_ls61_ls73_ls69_ls63_ls53_ls65_ls61_ls72_ls63_ls68?_ls66_ls6d_ls70_ls73=true&_ls73_ls65_ls...

Office of the Commissioner of Lobbying of Canada

Office of the Commissioner of Lobbying of Canada / Commissariat au lobbying du Canada

Canada

Office of the Commissioner of Lobbying of Canada
www.ocl-cal.gc.ca

Français Home Contact Us Help Search canada.gc.ca

Menu
Create Account

Registry of Lobbyists
About the Office of the Commissioner
Lobbying Act, Regulations and Code of Conduct
Interpretation Bulletins and Advisory Opinions
Registry of Lobbyists
Recent Registrations
Search the Registry of Lobbyists
Search Monthly Communications Reports
Statistical Reports
Multimedia Tutorials
Login

Communications Log - Search Results

To view a Communications Log entry, click on the communication date.

To change the order of the search results, select a criteria and click **Apply**.

[Return to Public Registry](#) Sort by: **Apply**

Results: 1-37 of 37

| Date | Activity Description | Designated Public Office Holders |
|----------------------------|--|---|
| 2010-06-22 | In-house Organization: WORLD VISION CANADA Responsible Officer: DAVE TOYCEN Communication number: 551-151578 | Stephen Harper Prime Minister Paul Wilson Director Julie Gaudreau Stakeholder Relations Jason Ransom Official Photographer Andrew MacDougall Deputy Press Secretary |
| 2010-06-18 | In-house Organization: WORLD VISION CANADA Responsible Officer: DAVE TOYCEN Communication number: 551-151580 | David McGovern Assistant Deputy Minister |
| 2010-06-18 | In-house Organization: WORLD VISION CANADA Responsible Officer: DAVE TOYCEN Communication number: 551-151570 | Andrew MacDougall Deputy Press Secretary Julie Gaudreau Special Assistant |

Done

Internet | Protected Mode: Off | 125%

Markwork2009... Inbox - Micros... 2008 DVD RW Drive... Office of the C... Document1 - ... Office of the C... 1:06 AM

Lobbying the Ontario provincial Government

- *Lobbyist Registration Act and Office of the Integrity Commissioner*

<http://lobbyist.oico.on.ca/LRO/GeneralSettings.nsf/vwEnHTML/Home.htm>

Other Thoughts

- involvement of Southern partners in choosing agenda, direction and in implementation
- dangers of silos and need board review and control over GRC committee
- be careful about use of advocacy and fundraising images
- board composition, board education, and advocacy skills
- bench mark for funding
 - eg. 2%

Some Homework

- 1) What are your charities legal “objects”
– not mission or vision etc.
- 2) Does your organization do political activities?
- 3) Are political activities reported on T3010?
- 4) Are political activities connected and subordinate to legal objects?
- 5) What % of expenses is political?
- 6) Does charity want to do more political activities?
- 7) Do you have DQ excess?

More information

http://www.globalphilanthropy.ca/images/uploads/Canadian_Federal_Election_and_Canadian_Charities.pdf - an article on CPS-022 and political activities by Mark Blumberg

http://www.ccic.ca/what_we_do/capacity_building_reflections_e.php
Building Knowledge and Capacity for Policy Influence: Reflections and Resources (2006) (from the Canadian Council for International Cooperation)

http://www.globalphilanthropy.ca/images/uploads/Lobbying_and_Canadian_Charities_To_register_or_not_to_register.pdf **Lobbying and Canadian Charities: To Register or not to Register** by Mark Blumberg

http://www.globalphilanthropy.ca/images/uploads/Political_Activities_and_Canadian_Charities_-_Some_CRA_Policies_and_Information_Letters_on_political_activities.pdf CRA Policies and Information Letters

More Information

www.globalphilanthropy.ca

@canadiancharity on Twitter

Mark Blumberg, Blumberg Segal LLP

390 Bay Street, Suite 1202, Toronto, ON M5H 2Y2

416-361-1982 x. 237

mark@blumbergs.ca