



Political Activities and Canadian Charities: Some CRA Policies and Information Letters on political activities

By Mark Blumberg (January 23, 2009)

Most of CRA's view on political activities by Canadian charities can be found in Policy Statement CPS-022 Political Activities¹. I highly recommend that any charity considering conducting any activity that could be construed as political, review in detail the CPS-022 Policy Statement on Political Activities. If you do not understand that Policy Statement then obtain legal advice from a charity lawyer knowledgeable about CPS-022.

In addition, here are some other CRA policies, commentaries and information letters dealing with political activities that also provide some insight into CRA views and obligations of registered charities.

Policy Commentary

Release Date
February 6, 1990

¹http://www.globalphilanthropy.ca/images/uploads/Political_Activities_-_CPS-022_CRAs_view_of_Canadian_charities_and_political_activities.pdf

Reference Number

CPC - 001

Subject

Partisan political activities - Whether the attendance by a registered charity official at a political fundraising dinner is considered a partisan political activity

Purpose

To clarify the Directorate's policy regarding partisan political activities in the case of a fundraising dinner for a politician.

Definitions

Resources: includes human, material and financial resources

Commentary

The attendance by registered charity officials, in their official capacity, at a fundraising dinner for a politician is not acceptable because it conveys the impression of partisan political activity by a registered charity. Registered charities are not permitted to carry on partisan political activities. Therefore, they cannot devote any resources to such activities.

Policy Commentary

Release Date

October 14, 1992

Reference Number

CPC - 007

Subject

Partisan political activity - Whether charging fair market rent to a political party for use of charity's premises constitutes direct or indirect support of a political party

Purpose

To clarify the Directorate's policy regarding political activities in the case of a registered charity making its premises available to a political party.

Commentary

1. A charity can charge fair market rent to a political party for occasional meetings. This, in itself, does not always indicate a charity's support of such a party, especially in rural areas where sometimes a registered charity may have the only hall that can accommodate such meetings.

2. This support can manifest itself in other ways. The charity could, for example, charge fair market rent to one political party, but be reluctant to rent the premises to all others. Similarly, a frequent and continued association of the charity always with the same political party could lead to the conclusion that the charity favours this party to the exclusion of others. For example, where a party's local headquarters are in a building owned by a registered charity.
3. While renting premises to a political party at fair market value is not necessarily prohibited, the issue will depend on the facts of each case. Charities are cautioned in engaging in this form of behaviour to the extent that it could be interpreted not only by the Canada Revenue Agency but also by the public-at-large as a prohibited political activity.

References

- *Income Tax Act*, R.S.C. 1985 (5th supp.) c. 1, paras. 149.1(6.1)(c) and (6.2)(c).

Information Letter

CIL - 1993 - 002

March 17, 1993

Subject: "XXXXXX"

I refer to your faxed communications of XXXXXXXXXXXX and XXXXXXXXXXXX concerning the above-noted Foundation's intention to involve itself in political activities. The Foundation's proposals are outlined in the letter dated XXXXXXXXXXXX addressed to your Director, XXXXXXXXXXXX, by XXXXXXXXXXXX of XXXXXXXXXXXX. XXXXXXXXXXXX requests an interpretation from Revenue Canada on two matters.

First, he asks whether we would consider the Foundation to be operated exclusively for charitable purposes if it engages in incidental and ancillary advocacy activities that consume less than 10% of its total revenues. The answer, in short, is that we have no difficulties in this regard providing the following factors are kept in mind:

Since the type of medical care to be offered in a given hospital is a matter of provincial government policy, it is our view that advocacy on the issue would indeed constitute a political activity for the purposes of subsection 149.1(6.1) of the *Income Tax Act*.

Acceptable political activities must be of a non-partisan nature.

They must be incidental to the Foundation's purposes, that is, they must conduce to the accomplishment of these purposes.

They must also play an ancillary role to the Foundation's purposes. The Department uses a two-part test in determining what is ancillary:

1. The Foundation must continue to meet its disbursement quota by making expenditures on charitable activities or by way of gifts to qualified donees. By virtue of paragraph 149.1(1.1)(b), expenditures on political activities are deemed "not" to be expenditures on charitable programs and thus cannot be used to satisfy the quota; and
2. The Foundation must expend less than 10% of its total financial, physical and human resources on its political activities. Financial resources include all income, not simply receipted donations as in the case of the disbursement quota calculations.

A registered charity must retain control over the use of its resources at all times, whether these resources are being applied to charitable or to political activities. We thus have some concern with the manner of advocacy proposed by XXXXXXXXXXXX in his paragraph 2.4. The reference to "an element of direction from the XXXXXXXXXXXX" indicates that the Foundation plans to cede control over its resources to an outside body. And the suggestion that the net proceeds of the fundraising should be paid to the XXXXXXXXXXXX "with the condition that they are to do the specified advocacy", as it stands, would we believe constitute the funding of a non-qualified donee. Nevertheless, if the Foundation chooses to employ XXXXXXXXXXXX as agent or contractor to carry out specifically detailed services on its behalf and enters into an agreement to this effect, the arrangement could well be acceptable. The Foundation should be aware that there are legal consequences to such arrangements whereby the charity is held responsible for the collection and use of the funds.

Second, XXXXXXXXXXXX asks whether the Foundation can issue official receipts for income tax purposes for donations made during a fundraising event conducted by XXXXXXXXXXXX. The proceeds from the event are to be paid to the Foundation, on the understanding that a significant portion will be used in the Foundation's political work.

In this regard, I would advise that a charity cannot "lend" its registration number to another organization even if it is the ultimate beneficiary of that organization's efforts. It may, however, enter into an agency relationship with another organization to provide it with fund-raising services. In such cases, it is a question of fact whether the intermediary organization is indeed acting as agent for the charity. XXXXXXXXXXXX's letter does not provide sufficient information for me to venture an opinion on this matter. "A clear understanding" as to the disposition of the net proceeds of the event says nothing as to the respective responsibilities of the parties involved in the operation of the event and as such is not, in my view, sufficient by itself to constitute an agency relationship.

Finally, I would venture a general comment on gifts to charities subject to an express or implied direction that they be used for a specific purpose. Examples of such gifts are one to a hospital to be deposited in the hospital's building fund or a gift to a church accompanied by an instruction that the monies be used to purchase and install a stained glass window. Such gifts are perfectly acceptable under both common law and the *Income Tax Act* provided they are not gifts of private benevolence (that is, directed towards the benefit of the donor or an individual named by him).

The proposal at hand, however, is distinguishable in that the donations will be directed towards an activity « political advocacy » that is not intrinsically charitable. I am not aware of caselaw dealing specifically with gifts of this type, and thus I believe that the position at common law remains undetermined. The Foundation may wish to secure the direction of the court in this regard.

As far as the *Income Tax Act* is concerned, it refers only generally to the making of gifts to charity. Accordingly, my view is that the Act does not prevent a charity from issuing a tax receipt for a donation directed towards the charity's political work.

If I can be of further assistance, please do not hesitate to contact me.

Technical Interpretation and Communications Section
Charities Division

Information Letter

CIL - 1993 - 003

March 29, 1993

Dear Sir:

I was given the letter of XXXXXX that you wrote to XXXXXXXXXXXX, Senior General Counsel, Legal Services, Department of National Revenue. I apologize for the delay in responding.

You mentioned that certain volunteers on your board of directors have political interests, more specifically, they belong to the XXXXXXXXXXXX. You referred to paragraph 10 of Information Circular 87-1, which was published by the Department and covers the political activities of registered charities. This paragraph explains the legislative provisions in the *Income Tax Act* that prohibit a registered charity from supporting a candidate, party or a person involved in politics.

You were concerned that the political interests of the members of your board of directors could compromise the status of your charity.

The Act does not prevent individuals on the boards of directors of charities from having political convictions or from belonging to a political party. These political affiliations in no way compromise their eligibility to sit on the board of directors of a charity insofar as there is no conflict of interest with the responsibilities of these same individuals in their capacities as directors of the organization.

The Act, however, prohibits registered charities from promoting the political interests of these same individuals by, for example, supporting them or funding their campaign for nomination to a public office on a local level.

A charity nonetheless does not necessarily use its resources for political purposes when it receives services from an individual involved in politics, particularly insofar as the services provided have no political connotation for the individual in question (for example, beneficial political advertising).

I would also like to point out that there would be conflict of interest if a member of the board of directors possibly confused the organization's interests with his or her own interests (political or other). In these situations, the member would normally be required to report the possibility of conflict of interest to the board of directors and abstain from voting on all issues that could involve his or her own interests.

I hope that you will find this information useful. Please do not hesitate to telephone me for further discussion.

Information Letter

CIL - 1994 - 009

September 28, 1994

Dear XXXXXX:

Allow me to congratulate you as Chairman, and the XXXXXXXXXXXX staff for holding the conference on XXXXXXXXXXXX and XXXXXXXXXXXX at XXXXXXXXXXXX. It was a pleasure to participate and to share insights with other specialists, on the problems involving the charities sector and the law.

However, I would also like to take this opportunity to comment on the issue of allowing charities a greater freedom to participate in political activities. When the subject arose during the final plenary session, I unfortunately did not voice my point of view because I was called away. Nevertheless, given what I perceived to be a generally favourable view among those gathered that greater freedom for political activity is desirable, I thought it useful to provide you with the point of view of a tax administrator.

You may choose to pass this letter on to other participants if you deem it useful. I derive some comfort from the fact that my views on the topic are somewhat compatible with those of other public administrators at the Conference.

In commenting, I must rely on my experience with the Canadian system of registering charities for tax purposes. In Canadian tax law, charities are distinct from non-profit organizations. Both are tax-exempt, but only registered charities can issue tax receipts to donors, which the latter can use to reduce their taxes owing, and only registered charities are prohibited from excessive involvement in political activities. Organizations that are "politically active" as that term is understood in charity law, have been seeking registered status as charities for some time, and the Charities Division at the Department of National Revenue deals with the issue of political activity on a constant basis.

To debate the issue of political activity properly, we must acknowledge certain conceptual difficulties that already permeate the legal definition of charity. One is that political activity, as that term is understood in charity law, deals with bias, as other charitable purposes do, in particular education. In the case of political activity, the bias is implicit[[Footnote 1](#)]. In the case of education, although there will inevitably be some degree of bias present, the law normally requires that, to be educational, an approach must be relatively balanced and objective. An organization with a substantially biased approach to a social issue will not be recognized as educational or charitable. The result is that differences between "education", "propaganda" and "political activity" will be too often one of degree[[Footnote 2](#)].

Another difficulty which we must take into account is that charities, even educational ones, are already involved to some extent in attitudinal shaping, in manner which authorities have never questioned. It is for example difficult to deal with smoking and heart disease, and claim to argue the benefits of smoking.

Because of the above, removing the prohibition against charities becoming involved in political activities will entail a fundamental change in how the law considers the charitable sector as a whole. The larger question is then, when should attempts to influence public opinion become political or unacceptable for charities, and when should these attempts be tax-subsidized.

This being said, the issue of political activities and charities is not primarily one of equality rights or freedom of speech. Any organization -- charitable or not -- should always be free to participate in political debate. But if that organization wants essentially what amounts to a tax privilege, it has to agree to certain conditions imposed by the taxing authority. One of these for example, is that it restrict its business ventures to those related to its broader (charitable) purposes. Another is that it focus its energies on direct relief rather than on an advocacy role. If, on the other hand, the organization prefers to pursue an advocacy role like other taxpayers, it is free to forgo part or all of its tax privileges[[Footnote 3](#)].

Moreover, the focus of the debate on political activities in my mind does not rest with garden-variety charities more interested in feeding the homeless or ministering to the sick, but wanting incidentally to voice constructive arguments to the state or to the community on the problems with which they are familiar. Instead the debate should be focused on single-issue advocacy groups.

If the legislator removes the barriers on political activities, it will affect the other traditional boundaries of the sector, in that any issue on which one wishes to convince others will tend to become "educational" or "beneficial to the community". Allowing charities to devote all of their resources to a political debate will place government regulators in one of two uneasy roles. They will either be forced to grant taxing privileges to organizations advocating on either side of any issue, or they will be forced to grant taxing privileges to the proponents of an issue based on perceived notions of political correctness.

It is wrong to claim that the public is more fully informed because of single-issue advocacy groups or because these are present on one or both sides of a public controversy. Advocacy groups are adept at influencing public opinion in particular through shock advertising and distortion that do not always contribute to an informed debate. Thus, a poster of a wide-eyed baby seal does not address the fact that sealing is an age-old industry whose demise would affect entire communities or whose end would affect cod stocks. A picture-postcard of an aborted foetus or -- on the other side of the abortion debate -- a placard showing a coat-hanger do little to help the public make an informed or educated choice. Organizations that promote media rights will usually not dwell extensively on the way journalists often intrude into peoples' privacy or compromise the outcome of a court case through sensationalism. Anti-abortion groups deliberately use the word "abortuary" to refer to abortion clinics, because of its similarity with the word mortuary and its association with death and morbidity.

As well, all too often, the forces on either side of a socially controversial issue are not balanced, not because one side is more deserving than the other, but for example, because one side represents more modest financial interests. Native communities in Canada's north that rely on fur trapping have few resources to fight the animal rights groups.

Are we as a sector and as a larger community prepared to live with organizations advocating for example, that the jewish holocaust never existed? Or that the lives of laboratory rats should be

preferred to advances in medical research? Or do you expect government administration to be selective and prefer the position *du jour*? I for one do not want to be accused of censorship.

Are we prepared to see charity dollars and indirect tax subsidies go to fund acrimonious debate on a multitude of issues? Do you think that truth-in-advertising legislation will adequately replace current restrictions on political activity without having to address the substance of each issue that is being debated?

Admittedly, the solutions to problems faced by the charitable sector often lie in the political realm and in legislative change. Charities often have a particular expertise in dealing with these problems and one that is invaluable to governments. If I may offer a third alternative, I believe that current Canadian policy as formulated by the Department of National Revenue, provides an acceptable solution: it does not recognize political purposes as charitable, but it treats as charitable those activities incidental to charitable purposes that are intended to persuade legislators and public officials, provided they are based on detailed information, sound analysis and factual arguments intended to allow full and reasoned consideration of an issue rather than to influence public opinion or generate controversy[[Footnote 4](#)].

Yours truly,

Technical Interpretation and Communications Section
Charities Division

Footnotes

[Footnote 1]

Political activity is not limited to influencing legislators or government officials. It also includes attempts to influence public opinion: *Re Strakosch*, (1949) 1 Ch. 529; *Positive Action Against Pornography v. Minister of National Revenue* (1988) 2 F.C. 340; *Canada UNI Association v. Minister of National Revenue*, Federal Court of Appeal, docket A-145-92, December 1, 1992.

[Footnote 2]

A similar problem arises with charities devoted to the advancement of religion. While religion implies a certain bias in favour of one's beliefs, when can it be said that a religious charity oversteps its bounds and penetrates the political arena?

[Footnote 3]

It is tempting to argue that political parties also receive tax assistance for the very activities which are being denied to charities. But the difference is that political parties express themselves through the legislative process and on a broad base of issues; the positions which they advocate are censored or supported by the electorate, sanctioned in the legislative forum and if such is the case, eventually implemented by the executive branch of government. On the contrary, a tax incentive that subsidizes unlimited political activity in effect finances opposition to the very decisions that have been made in the legislative forum and which the executive is trying to implement.

[Footnote 4]

Revenue Canada Taxation, Departmental Information Circular 87-1, *Registered Charities - Ancillary and Incidental Political Activities*, paragraph 9.

Information Letter

CIL - 1995 - 015

October 20, 1995

Dear XXXXXX:

Re: XXXXXXXXXXXX

Ancillary and Incidental Activities

This is in reply to your letters of XXXXXXXXXXXX, XXXXXXXXXXXX, and XXXXXXXXXXXX, on the above matter. I sincerely regret the delay in replying.

You are seeking our views on the XXXXXXXXXXXX and its proposed lobbying and judicial intervention in favour of Government funding for XXXXXXXXXXXX.

You have indicated that the expenditure towards this activity would be no more than .3% of XXXXXXXXXXXX's budget which would keep this within expenditure limits for allowable political activities. It follows that this activity could be undertaken by the XXXXXXXXXXXX's employees or agents.

Based on the above facts, we concur that these activities, undertaken in the manner you described, will not have a negative impact on XXXXXXXXXXXX's charitable registration.

I trust this satisfactorily answers your question.

Yours sincerely,

Charities Division

CIL - 2003 - 001

XXXXXX

February 18, 2003

Dear XXXXXXXXXXXX,

Thank you for your email dated XXXXXXXXXXXX concerning how the XXXXXXXXXXXX should calculate its expenditure on advocacy.

In your email you ask if when calculating the 10% figure for advocacy, this is for the whole organization, or by divisions. I assume you are referring to the so-called '10% rule' on political activities, a term commonly used to refer to the provisions of subsection 149.1(6.2) of the *Income Tax Act* (the *Act*). Where a registered charity engages in political activities, this subsection of the *Act* requires that "substantially all" of its resources must be devoted to charitable activities. The term 'resources' is not defined in the *Act*, but administratively the Canada Customs and Revenue Agency (Canada Revenue Agency), considers it to include the aggregate of a charity's total financial assets, as well as everything the charity can use, such as its staff and volunteers including directors, its premises, and its equipment.

In addition, the Canada Revenue Agency usually considers "substantially all" to mean 90 per cent or more. Certainly, any charity using at least this amount of its various resources for its charitable work can be assured that we will not question the extent of its political activities. Therefore, as a general rule, a charity that devotes not more than 10% of its total resources a year to political activities is considered by the Canada Revenue Agency to be operating within the "substantially all" provision.

I note that the internal divisions of the XXXXXXXXXXXX are governed by the Letters Patent and By-laws of the XXXXXXXXXXXX and therefore only exist legally through this parent organization. However, the XXXXXXXXXXXX has chosen to register its National Office and internal divisions separately, and therefore for the purposes of the *Act*, each is considered to be a registered charity in its own right. It is consequently our administrative position that the National Office and the internal divisions of the XXXXXXXXXXXX should calculate and account for the '10% rule' separately, on the basis of the resources each respective registered division has devoted to political activities. In other words, each of these internal divisions has what we can call for the purposes of this discussion, a "ten-percent allotment" which cannot be shared with the other internal divisions or with the Head Office.

We take this stance firstly because it is consistent with the way we administer the provisions under the *Act*. For example, it is similarly our position that should an internal division of the XXXXXXXXXXXX fail to file an annual *Registered Charity Information Return* within 6 months from the end of its taxation year, that particular internal division rather than the XXXXXXXXXXXX as a whole, would be at risk of revocation. In addition, we take this view to be able to track each registered charity's compliance with the provisions of the *Act*. Finally, we consider our administrative position on this issue will avoid disparities in the resources a registered charity is permitted to devote to political activities and thereby prevent a possible backlash from other charities and the Canadian public.

I am sorry this response was not the one you were hoping for. However, you may find it useful to refer to the Canada Revenue Agency's new draft policy entitled "Registered Charities - Political Activities", which is available online at: http://www.cca-adrc.gc.ca/tax/charities/consultations/political_activities-e.html (now [CPS-022](#)). The draft policy provides clearer definitions of the allowable limits, under the *Act*, on registered charities' political activities. Of significant note is a proposal that charities be allowed greater involvement in public-awareness campaigns. This represents a major shift because, to date, public-awareness campaigns had been viewed as political and had therefore been significantly restricted. The draft document also explains the administrative framework used by the Canada Revenue Agency to distinguish between political activities and charitable activities.

Alternatively, if the XXXXXXXXXXXX would prefer to calculate the resources the organization as a whole devotes to political activities annually, it could request the revocation of its internal divisions. Once revoked, the internal divisions of the XXXXXXXXXXXX would no longer be registered charities in their own right but rather considered to operate as a branch of the XXXXXXXXXXXX, under its control and supervision. Accordingly, the National Office would then be able to take advantage of the '10% allotment' on political activities for the organization as a whole.

I appreciate the opportunity to address your concerns in this matter and please do not hesitate to contact me should you require further assistance.

Yours sincerely,

Policy and Communications Division
Charities Directorate

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