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## **Advocacy/Political Activity and the Canada Revenue Agency**

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## A. INTRODUCTION AND BACKGROUND

- This presentation applies only to not-for-profit organizations that are also registered charities
- General misconception among charities that they are either unable to participate in any public policy debates involving political issues or alternatively that they can participate completely unrestrained. Both assumptions are incorrect
- Charities can become involved in public policy debates so long as they do so within the limits imposed by Canadian law

## B. KEY CRA POLICIES AND *INCOME TAX ACT* PROVISIONS

- This Presentation is based on key *Income Tax Act* Provisions and CRA policies
- CRA Policy Statement (CPS – 022) “Political Activities”, Sept. 2, 2003
- CRA Advisory on Partisan Political Activities Sept. 24, 2007
- These documents are available on the CRA website <http://www.cra-arc.gc.ca/tax/charities/menu-e.html>

- Subsection 149.1(6.2) of the *ITA* provides that where a charitable 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
- Subsection 149.1(6.1) contains similar provisions for charitable foundations

## **C. DIFFERENCE BETWEEN POLITICAL PURPOSES AND CHARITABLE PURPOSES**

- All registered charities are required by law to have exclusively charitable purposes (relief of poverty, advancement of education, advancement of religion and other purposes beneficial to the community)
- An organization established for a political purpose cannot be a charity

- The courts have determined political purposes to be those that seek to:
  - Further the interest of a political party or support a political party or candidate for public office, or
  - Retain, oppose, or change the law, policy or decision of any level of government in Canada or a foreign country
- CRA will look at the stated purpose of an organization, as well as its activities to determine whether it has adopted political purposes

## D. THREE CATEGORIES OF ACTIVITIES

- For the purposes of this presentation, activities undertaken by a charity can be separated into three categories:
  1. Charitable activities (permitted without limits)
  2. Political activities (permitted up to prescribed limits)
  3. Prohibited activities (never permitted)

## 1. Charitable Activities (Permitted Without Limits)

- A charitable activity is an activity undertaken to achieve a charitable purpose.
- If an activity is considered by CRA to be charitable, then it is permitted without limits
- The CRA policy provides that communication with the public or a public official is a charitable activity in the following circumstances
  - Public awareness campaign about the work of a charity or an issue related to that work, so long as the activity is connected and subordinate to the charity's purpose



- Communicating with an elected representative or public official, even if the charity advocates that the law, policy or decision of any level of government in Canada or abroad be retained, opposed, or changed, provided that such activity is subordinate to the charity's purpose and all representations:
  - Relate to an issue that is connected to the charity's purpose
  - Are well reasoned, and
  - Do not contain information that is false, inaccurate or misleading

- Releasing the text of a representation before or after delivering it to the elected representative or public official, provided that the entire text is released and there is no explicit call to political action
- “Call to political action” means encouraging the public to contact an elected representative or public official to urge them to retain, oppose, or change a law, policy or decision

- Other examples of charitable activities given in the CRA Policy Statement
  - Distributing the charity's research, including distributing it to all election candidates
  - Publishing a research report on line
  - Presenting a research report to a Parliamentary Committee
  - Giving an interview about a research report
  - Distributing a research report to all Members of Parliament
  - Participating in an international policy development working group
  - Joining a government advisory panel to discuss policy changes

- Examples of religious activities that would likely be considered to be charitable activities:
  - Sermon, homily or pastoral message on a topic such as refugees, marriage, the environment or euthanasia from a biblical or doctrinal perspective but without calling for political action
  - A religious leader speaking out on abortion or the homeless from a faith perspective but without explicitly communicating that a law, policy or decision should be retained, changed or opposed

## 2. Political Activities (Permitted Up To Prescribed Limits)

### a) What is a Political Activity?

- An activity is presumed to be a political activity if a charity:
  - Explicitly communicates a call to political action, (i.e. encouraging the public to contact an elected representative or public official to urge them to retain, approve or change a law, policy or decision)
  - 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, opposed or changed, or

- Explicitly indicates in its material that the intention of the activity is to incite, organize or put pressure on governments to retain, oppose or change the law, policy or decision of a government
- A charity may take part in political activities if such activities are:
  - Non-partisan (as discussed below)
  - Connected to the charity's purposes
  - Subordinate to the charity's purposes
  - Fall within expenditure limits under the *Income Tax Act*

- An example of a permitted political activity for a religious group would be a sermon or pastoral statement on any given topic based on doctrine, sacred texts, or tenets of faith and a call for church members to contact their respective MPs to pressure them to support or oppose a particular existing or proposed law

- Examples given in the CRA Policy Statement on permitted political activities:
  - Buying a newspaper advertisement to pressure the government
  - Organizing a march or a rally on Parliament Hill
  - Organizing a conference in support of the charity's opinion on a given matter
  - Hiring a communications specialist to arrange a media campaign
  - Using a mail campaign to urge supporters to contact the government on a particular issue



- b) Limits on Expenditures on Permitted Political Activities
- Where a charity takes part in political activities, it must devote “substantially all” of its “resources” to charitable activities
  - “Resources” is not defined in the ITA but administratively CRA considers “resources” to include the total of a charity’s financial assets, as well as everything the charity can use to further its purposes, such as its staff, volunteers, directors and its premises and equipment
  - “substantially all” usually means 90% or more
  - Therefore, as a general rule, a charity that devotes no more than 10% of its total “resources” a year to political activities would be operating within the “substantially all” provision

- CRA's administrative discretion concerning the limits on expenditures on political activities has been extended in certain situations by its Policy Statement:
  - A charity with annual income of less than \$50,000 can devote up to 20% of resources in a given year
  - A charity with annual income of between \$50,000 and \$100,000 can devote up to 15% of resources in a given year
  - A charity with annual income of between \$100,000 and \$200,000 can devote up to 12% of resources in a given year

- In limited circumstances, expenditures on political activities can be averaged over a number of years
- Resources used towards permitted political activities do not count toward meeting a charity's disbursement quota (i.e. 3.5% D.Q.)
- A charity that is involved in political activities will need to keep careful records in order to demonstrate that substantially all of its resources have been devoted to charitable activities in order to be prepared for an audit

### 3. Prohibited Activities

- Prohibited activities are activities that are either illegal or involve partisan political activities and therefore are not permitted at all
- According to Subsections 149.1(6.1) and (6.2) of the ITA, and the CRA Advisory on Partisan Political Activities, “partisan political activity” involves the “direct or indirect support of, or opposition to, any political party or candidate for public office”

- A “candidate for public office” is different from an “elected representative”, but support or opposition of an “elected representative” may still be seen as “direct or indirect support of or opposition to, any political party”
- An example of a prohibited partisan political activity would be a gift of charity funds to a political party that supports the charity’s views on a given matter - not permitted because it is both a prohibited activity and is not a gift to a “qualified donee”

- Another example of a prohibited partisan political activity would be inviting an MP who is a member of a church and who is running for re-election to speak at a church without giving an equal opportunity to all other candidates seeking election for the same office position

- Examples of prohibited partisan activities in the CRA Advisory include the following:
  - Making public statements (written or oral) that endorse or denounce a candidate or political party
  - Hosting an all candidates meeting or public forum in a partisan manner
  - Inviting candidates to speak at different dates or different events in a manner that favours a candidate or political party

- Publishing the voting records of selected candidates or parties on an issue
- Posting signs in support of, or in opposition to, a particular candidate or political party
- Distributing literature or voter guides that promote or oppose a candidate or political party explicitly or by implication
- Explicitly connects its position on an issue to the position taken on the same issue by a candidate or political party



- Examples of activities in the CRA Advisory that would be permissible during an election
  - Employees, members and leaders of a charity may assist any candidate or political party in a personal capacity
  - They should not, however, make partisan comments in speeches at charity functions or in charity publications; in other situations, they are encouraged to indicate that their comments do not represent the views of the charity

- Posting information on a charity’s website about candidates and political parties is allowable, provided that:
  - It is connected and subordinate to the charity’s purpose
  - It reflects the position taken with regard to all political parties or candidates
  - No political party or candidate is singled out favourably or unfavourably
  - There is no explicit direction to support or oppose a political party or candidate

- Charging fair market value rent to a political party for occasional meetings in charity's facilities is permitted so long as equal access and opportunity is given to all political parties
- However, this is a grey area, as prolonged association with one party may lead to conclusion the charity favours that party, thereby constituting a prohibited political activity – analysis is fact specific  
(CRA policy commentary, CPC -007, October 14, 1992)

- The CRA Advisory reminds charities that “during election campaigns the CRA steps up monitoring of activities of registered charities and will take appropriate measures if a registered charity undertakes partisan political activities....Charities engaging in partisan political activities risk being deregistered”

## E. PRACTICAL IMPLICATIONS FOR CHARITIES

- Charities need to take the following practical steps
  - Ensure that activities are either “charitable” or are “permitted political activities”
  - Ensure that any political activities undertaken fall within expenditure limits
  - Remember that any resources expended on permitted political activities cannot be included in amount used to meet a charity’s disbursement quota

- Keep careful records of all expenditures with respect to permitted political activities
- Abstain from prohibited activities
- If in doubt over whether an activity is permissible, make formal request for direction from CRA before engaging in the activity
- When filling out charitable income tax return (T3010 B), charities should pay careful attention to the guidelines provided by CRA which accompany the return

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