

“PPDDA” IN, “POLITICAL ACTIVITIES” OUT: CRA’S NEW DRAFT GUIDANCE ON PPDDA OPEN FOR COMMENT

*By Terrance S. Carter and Ryan M. Prendergast**

A. INTRODUCTION

On December 13, 2018, the omnibus Bill C-86, *Budget Implementation Act, 2018, No. 2* (“Bill C-86”)¹ received Royal Assent and modified the rules in the *Income Tax Act* (“ITA”) concerning “political activities” by registered charities and registered Canadian amateur athletic associations. In doing so, Bill C-86 removed reference to political activities from the ITA, including the quantitative limits on non-partisan political activities in particular, and instead introduced the concept of “public policy dialogue and development activities” (“PPDDAs”). Although the Bill C-86 amendments were well received by the charitable sector, they did not include a definition of PPDDAs. In the wake of the amendments, the Canada Revenue Agency (“CRA”) released a substantive and carefully written draft administrative guidance CG-027, *Public policy dialogue and development activities by charities* (the “Draft Guidance”)² on January 21, 2019, shedding some light on its interpretation of PPDDAs and how it may administer the new rules. Further information on Bill C-86’s application to political activities and PPDDAs has also been published by the CRA on a new Questions and Answers webpage, released simultaneously with the Draft Guidance

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¹ Bill C-86, *A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures*, 1st Sess, 42nd Parl, 2018, cl 17 and 20 (introduction and first reading 29 October 2018) [“Bill C-86”].

² Canada Revenue Agency, *CG-027: Public policy dialogue and development activities by charities* (draft) (21 January 2019), online: Government of Canada <<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/public-policy-dialogue-development-activities.html>> [“Draft Guidance”].

(“PPDDA Q&A”).³ This *Charity & NFP Law Bulletin* provides a summary of the Draft Guidance and its impact on charities.

B. BACKGROUND ON BILL C-86

As previously discussed in *Charity & NFP Law Bulletin* No. 434,⁴ Bill C-86 completes the Federal Government’s commitment in Budget 2018 to respond to the Report of the Consultation Panel on the Political Activities of Charities (“Consultation Report”), which was published on May 4, 2017.⁵ The Bill C-86 amendments to the ITA maintain the prohibition against a charity devoting any part of its resources to the direct or indirect support of, or opposition to, any political party or candidate for public office, and removes the “substantially all” quantitative limit for what was previously non-partisan political activities, while introducing PPDDAs. In addition, any reference to “political activities” has been removed from the ITA. Although the amended provisions have varying in-force dates, all of the PPDDA-related amendments are now in force, retroactive as far back as 2008. The PPDDA Q&A confirms that this retroactivity will impact the remaining audits and objections related to the 2012 audit initiative concerning political activities.

In a significant move for the charitable sector, Bill C-86 also amended the ITA’s subsection 149.1(1) definition of “charitable activities” to include PPDDAs that are “carried on in furtherance of a charitable purpose”. This was done in conjunction with an amendment to the definition of “charitable organization” under subsection 149.1(1) of the ITA to clarify that, as is similarly required of a charitable foundation, a charitable organization must be constituted and operated exclusively for charitable purposes. As well, new subsection 149.1(10.1) provides that PPDDAs “carried on by an organization, corporation or trust in support of its stated purposes shall be considered to be carried on in furtherance of those purposes and not

³ Canada Revenue Agency, *Public policy dialogue and development activities by charities* (21 January 2019), online: Government of Canada <<https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/federal-government-budgets/budget-2018-equality-growth-strong-middle-class/public-policy-advocacy-activities-charities/qa.html>>.

⁴ Terrance S. Carter & Ryan M. Prendergast, *Charity & NFP Law Bulletin* No. 434, “New Draft Legislation Permits Public Policy Dialogue by Charities Without Limitation” (2 November 2018), online: Carters Professional Corporation, <<http://www.carters.ca/pub/bulletin/charity/2018/chylb417.pdf>>; For more information, see Terrance S Carter & Ryan M Prendergast, *Charity & NFP Law Bulletin* No. 428, “Draft Income Tax Act Changes Proposed for Political Activities by Charities” (27 September 2018), online: Carters Professional Corporation <<http://www.carters.ca/pub/bulletin/charity/2018/chylb428.pdf>>.

⁵ For more information on the Consultation Panel on the Political Activities of Charities’ recommendations, see Terrance S Carter, Jennifer M Leddy & Ryan Prendergast, *Charity & NFP Law Bulletin* No. 403, “Sweeping Changes Recommended in Report on Political Activities” (25 May 2017), online: Carters Professional Corporation <<http://www.carters.ca/pub/bulletin/charity/2017/chylb403.pdf>>.

for any other purpose.” With these amendments, charities can therefore devote 100% of their resources to PPDDAs while still meeting the requirement that all their resources are being devoted to charitable activities. As stated above, however, the amended ITA did not provide a clear indication concerning what PPDDAs encompassed, leaving some to question how the CRA would administer the provisions and what activities charities could and could not carry on.

C. DRAFT GUIDANCE CG-027 HIGHLIGHTS

The Draft Guidance was released on January 21, 2019, approximately one month after Bill C-86 received Royal Assent, and remains open for feedback until April 23, 2019. It will replace the archived CPS-022, *Political Activities*, and sets out the CRA’s interpretation of the new rules on PPDDAs. Use of PPDDAs was suggested in the Consultation Report to refer to, “providing information, research, opinions, advocacy mobilizing others, representation, providing forums and convening discussions.” As noted above, while Bill C-86 does not define PPDDAs, the explanatory notes indicated that they, “generally involve seeking to influence the laws, policies or decisions of a government, whether in Canada or a foreign country”. This is also the same language used in the PPDDA Q&A. As such, there was a question concerning how the Draft Guidance would interpret this term. In this regard, the Draft Guidance indicates that PPDDAs “generally involve seeking to influence the laws, policies, or decision of a government, whether in Canada or a foreign country” and are “activities a charity carries on to participate in the public policy development process, or facilitate the public’s participation in that process.”⁶ It interprets “public policy” as being “laws, policies, or decisions of a government, in Canada or a foreign country.”⁷

More specifically, the Draft Guidance expands on the CRA’s views of PPDDAs, which are generally in accordance with Recommendation 1 of the Consultation Report. The Draft Guidance states that the CRA considers PPDDAs to include:

Providing information – charities may provide information to their supporters or the general public related to their charitable purposes (including the conduct of public awareness campaigns) in order to inform or persuade the public in regards to public policy. Such information must be truthful, accurate, and not misleading.

Research – charities may conduct research into public policy, distribute the research, and discuss the research and findings with the media and with others as

⁶ Draft Guidance, *supra* note 2.

⁷ *Ibid.*

they see fit. Note that to advance education as a charitable purpose, a charity's research must meet the criteria in Policy statement CPS-029, Research as a charitable activity.

Disseminating opinions – charities may express opinions on matters related to their charitable purposes to participate in developing public policy, as long as they draw on research and evidence and are not contrary to hate speech laws or other legitimate restrictions on freedom of expression.

Advocacy – charities may advocate to keep or change a law, policy, or decision, of any level of government in Canada, or a foreign country.

Mobilizing others – charities may call on supporters or the general public to contact politicians of all parties to express their support for, or opposition to, a particular law, policy, or decision of any level of government in Canada or a foreign country.

Representations – charities may make representations in writing or verbally to elected officials, public officials, political parties, and candidates, and appear at parliamentary committees, to bring their views to the public policy development process, and may release such materials publicly. Note that a charity engaging in this type of activity may be required to register as a lobbyist organization. See Other legal requirements.

Providing forums and convening discussions – charities may invite competing candidates and political representatives to speak at the same event, or may request written submissions for publication, to discuss public policy issues that relate to the charity's purposes.

Communicating on social media – charities may express their views, and offer an opportunity for others to express their views, in regards to public policy, on social media or elsewhere.⁸

Assuming that a charity's activities fall within the CRA's interpretation of PPDDAs as outlined above, the Draft Guidance confirms that charities may devote up to 100% of their total resources to PPDDAs as long as the PPDDAs are carried on in furtherance of the charity's stated charitable purposes. As well, the PPDDA Q&A indicates that PPDDAs will be counted toward the calculation of the disbursement quota of a charity. In order for PPDDAs to further a stated charitable purpose, they cannot become the charitable purpose itself, but must relate to the charity's stated charitable purpose and be carried out as a means to achieve that purpose. A charitable purpose therefore cannot "refer to influencing the laws, policies, or decision of a government",⁹ but must rather fall within an already recognized charitable purpose at

⁸ *Ibid.*

⁹ *Ibid.*

common law. Additionally, although the amended ITA does not make reference to the public benefit requirements for registered charities, as an implicit requirement of the ITA the Draft Guidance reflects the CRA's position that PPDDAs must also provide a public benefit when considered with the stated charitable purpose.¹⁰

In elaborating on the continued prohibition on direct or indirect support of or opposition to any political party or candidate for office, the Draft Guidance sets out some helpful guidelines on what is permitted and what is not. In this regard, charities may publicly agree or disagree with government decisions and positions, as long as their communications focus on policy issues and do not refer to candidates or political parties. Further, the CRA will only consider the charity's activities, and not those of a political party or candidate for public office. To this point, the Draft Guidance provides an example where if a political party or candidate cites a charity's publication, the CRA will not consider this to be an activity of the charity and will typically not be concerned.

The Draft Guidance clarifies that "direct support or opposition", for instance, means (a) communicating a message that supports or opposes a political party or candidate publicly on the charity's external materials; and (b) transferring a charity's resources to a political party or candidate, or allowing them to use the charity's resources without compensation. The Draft Guidance also clarifies that "indirect support or opposition" happens, for instance, where (a) the charity's records "explicitly reveal it carried on an activity to support or oppose a political party or candidate";¹¹ or (b) the charity transfers resources to a third party for the purpose of supporting or opposing a political party or candidate. Notwithstanding this, the Draft Guidance allows charities to transfer resources to other qualified donees in support of the transferee's PPDDAs.

The Draft Guidance also states that the prohibition on directly or indirectly supporting or opposing a political party or candidate applies only to charities, and not to their representatives, such as directors. Rather, it indicates that the ITA does not prohibit representatives from becoming involved with elections, political campaigns, or other political processes where their involvement is in their own personal, private

¹⁰ Further information on the public benefit requirement for charities is available at Canada Revenue Agency, *CPS-024, Guidelines for registering a charity: Meeting the public benefit test*, online: Canada Revenue Agency <<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/policy-statement-024-guidelines-registering-a-charity-meeting-public-benefit-test.html>>.

¹¹ Draft Guidance, *supra* note 2.

capacity as individuals. However, where a charity's representative becomes involved in politics, they must do so on their own time and resources. The charity may not provide resources to support their personal involvement. Any such individuals who write or speak on political matters in their own capacity are encouraged to indicate that their comments are their own personal comments and do not represent the views of the charity.

Finally, the Draft Guidance reminds charities intending to carry out PPDDAs that there are other federal, provincial and municipal legal requirements that may apply to those PPDDAs. In this regard, it indicates that they will need to comply with federal and provincial lobbyist legislation and elections acts, amongst other legislation. Further, it indicates that charities that meet the PPDDA requirements under the ITA are not exempted from meeting provincial requirements concerning the use of their charitable resources.

D. CONCLUSION

In light of some uncertainty that had surrounded the new terminology introduced by Bill C-86, the Draft Guidance does a very good job in providing clarity on PPDDAs and how the CRA intends to administer the significant changes introduced by Bill C-86. In providing a clear and concise summary of the CRA's position on PPDDAs, as well as explaining what constitutes "direct or indirect support of or opposition to a political party or candidate for office", the Draft Guidance provides helpful guidelines for the charitable sector to follow and work within in order to comply with the new legislative requirements. However, as the Draft Guidance will remain in draft form until after the feedback period ends on April 23, 2019, charities should monitor its status and review the final guidance upon its release.