
POLITICAL ACTIVITIES: WHAT CHURCHES AND CHARITIES CAN AND CANNOT DO

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A. INTRODUCTION

The topic of political activities and the limitations imposed on charities by Canada Revenue Agency (“CRA”) under the *Income Tax Act* (Canada) (“ITA”) and related CRA policies is an important and relevant one, and is particularly timely for churches and religious charities that may be concerned with the outcome of the upcoming federal election. This *Church Law Bulletin* (“Bulletin”) provides an overview of the general principles which are relevant to a discussion concerning political activities in order to assist readers in understanding the types of political activities that churches and other registered charities may or may not engage in, pursuant to the limitations prescribed by Canadian law. While this Bulletin is directed at churches and other religious charities, the general principles reflected below would also apply to other non-religious charities and therefore the terms “church” and “charity” are used interchangeably throughout this Bulletin.

There are a number of misconceptions among churches concerning the extent to which they can become involved in public policy debates or activities that may be of a political nature. While some churches may believe that they are altogether barred from participating in any public policy debates or becoming involved in political issues, others assume that when political activities are undertaken by churches and charities those activities are completely unregulated. However, both assumptions are incorrect.

Churches and charities can devote a limited amount of their charitable resources towards permitted political activities as a means of furthering their charitable purposes, so long as they do so within the limits prescribed by CRA. However, in order to avoid risking revocation of charitable status by engaging in prohibited activities in contravention of CRA requirements or exceeding allowable expenditure amounts applicable to permitted political activities, it is essential to carefully review both the relevant provisions of the ITA and the CRA publications on the topic of political activities.

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

There are a number of CRA policies and publications on the topic of political activities that are available on the CRA website at the following internet address: <http://www.cra-arc.gc.ca/tax/charities/menu-e.html>. In this regard, relevant CRA publications include the following: the Important Advisory on Partisan Political Activities dated December 14, 2005; the Important Advisory on Political Activities Guidance and Partisan Politics dated June 11, 2004; the Summary Policy on political activities dated October 25, 2002 (CSP – P02); the Policy Commentary on a political party’s use of a charity’s premises released on October 14, 1992 (CPC-007); and the Policy Commentary regarding attendance by a registered charity official at a political fundraising dinner dated February 6, 1990 (CPC-001). Of particular importance is the CRA Policy Statement entitled “Political Activities” (CPS-022) effective as of September 2, 2003 (“CRA Policy Statement”). Reference should be made to the CRA Policy Statement and the other CRA publications for further information on issues relating to political activities.

The ITA provision which sets out the limitations imposed on political activities that can be carried out by a charitable organization is subsection 149.1(6.2), which 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 analogous provisions that apply to political activities funded by charitable foundations.

C. THE DIFFERENCE BETWEEN POLITICAL PURPOSES AND CHARITABLE PURPOSES

All Canadian registered charities are required by law to have exclusively charitable purposes as determined by the common law. In this regard, the courts have identified four general categories of charitable purposes: 1) relief of poverty; 2) advancement of education; 3) advancement of religion; and 4) other purposes beneficial to the community in a way that the law regards as charitable. For an organization to be registered as a charity, its purposes must fall within one or more of the above categories.

The objective of furthering political purposes does not fall into one of the four categories of charitable purposes outlined above and therefore, in accordance with the ITA and applicable common law, 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 interests of a particular political party, 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.

In determining whether an organization is constituted exclusively for charitable purposes, CRA will generally review the stated purposes of the organization as reflected in its governing documents, including its letters patent and/or constitution. However, CRA will also take into account the actual day-to-day activities carried on by a church or charity in order to determine whether it may have since adopted additional political purposes. In general, churches and charities are required to undertake *activities* which further and advance the charitable *purposes* reflected in their governing documentation in order to maintain their charitable status under the ITA.

D. THREE CATEGORIES OF ACTIVITIES

For the purposes of this Bulletin, activities undertaken by a church or a charity are separated into three categories:

1. *Charitable activities* which can be undertaken by churches and charities without limitation;
2. *Political activities* which can be undertaken by churches and charities to a limited degree and only up to prescribed limits in accordance with CRA requirements; and
3. *Prohibited activities* which must not be carried on by churches and charities under any circumstances.

1. Charitable activities (permitted without limits)

As indicated above, charitable activities may be undertaken by a church or charity without limitation. Pursuant to the provisions of the ITA, churches and charities are legally required to devote “substantially all” of their resources on charitable activities. Neither the ITA nor the CRA policies define what constitutes a “charitable activity,” although the CRA Policy Statement does provide examples of the types of activities that would be considered charitable within the context of political activities, as described below.

While the examples provided by CRA reflect general application to charities as a whole and are not restricted to churches, for the purposes of this Bulletin, we have applied the principles reflected in the CRA Policy Statement to the church context in order to facilitate an understanding of the issues by churches, where appropriate.

The following are examples of charitable activities that can be undertaken by churches and charities.

a) Public awareness campaigns

Public awareness campaigns that aim to distribute useful knowledge in order to enable the public to make decisions about the work undertaken by a church or an issue related to that work would be charitable so long as the following requirements are met:

- ♦ The public awareness campaign is connected and subordinate to the church’s purpose;
- ♦ The public awareness campaign is based on a well-reasoned decision;
- ♦ The public awareness campaign does *not* contain a call to political action;
- ♦ The public awareness campaign does *not* explicitly communicate that the law, policy, or decision of any level of government in Canada or a foreign country should be retained, opposed or changed; and
- ♦ The public awareness campaign does *not* explicitly indicate that the intention of the activity is to incite, organize, or 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.

b) Communications with an elected representative or public official

When a church makes a representation to an elected representative or public official, whether by invitation or not, that activity would be considered charitable even if the church explicitly advocates

that a law or a policy or decision of any level of government in Canada or a foreign country should be retained, opposed or changed. However, again the representation must be connected and subordinate to the church's purpose and all representations to the elected official or representative should:

- ◆ Relate to an issue that is connected to the church's purpose;
- ◆ Be well reasoned; and
- ◆ Not contain information that is false, inaccurate or misleading.

c) Releasing the text of a representation

The release of the text of the representation made to the elected representative or public official before or after delivering it to the public official would also be considered a charitable activity, provided that the entirety of the text is released and there is no explicit call to political action either in the text or in the reference to the text. In this regard, both the text and the reference to the text should not encourage the public to contact elected representatives or public officials in order to urge them to retain, oppose or change the law, policy or decision in question.

If the church were to make an explicit call to political action in any part of the representation or in the reference to the text containing the representation, all resources associated with those activities would likely be regarded as expenditures on a political activity and not a charitable activity.

d) Other examples of charitable activities

Other examples of charitable activities outlined in the CRA Policy Statement include those provided below. However, again it should be noted that in order to be considered charitable, an activity would need to meet the following requirements, i.e. the activity should relate to an issue that is connected and subordinate to the church's purpose, be based on a well reasoned position and should not contain information that is false, inaccurate or misleading. In addition, in order to qualify as charitable, the activity should not constitute either a political activity or a prohibited activity.

Provided that the requirements outlined above are met, the following would be additional examples of charitable activities:

- Distribution of the results from a charity's research to the media, its members, other charities or the general public;
- Distribution of a research report to *all* election candidates, provided no one candidate is favoured over another;
- Publishing a research report online;
- Presenting a research report to a Parliamentary Committee formed to hear representations on a given issue. In this example, the charity's recommendations for or against a given policy would be considered a charitable activity so long as the recommendation is based on a well reasoned position;
- Participation in an interview with the media about a research report where the charity representative did not initiate the media campaign in order to publicize the charity's position that a law should be changed;
- Distribution of a research report to *all* Members of Parliament;
- Participating in an international policy development working group; or
- Joining a government advisory panel to discuss policy changes.

For further information relating to the examples of charitable activities listed above, reference should be made to section 14.1 in the CRA Policy Statement.

The following are examples of church related activities that would also likely be categorized as charitable activities based on an application of the guiding principles reflected in the CRA Policy Statement, although they are not contained in the said statement.

- A sermon on the importance of the New Testament teaching to pray for political leaders, emphasizing the Biblical truths on a particular topic *without* calling for political action; and
- A minister or a priest speaking out on abortion or same sex marriage from a Biblical context, *without* commenting on how a political party is or should be dealing with the issue.

However, churches and other religious organizations that are opposed to same-sex marriage should be aware of the circumstances under which statements could constitute hate propaganda under the *Criminal Code*. For further information on this topic, reference should be made to *Church Law Bulletin* No. 2, which is available at www.churchlaw.ca

In summary, where possible, churches and charities are recommended to consider undertaking activities that would qualify as *charitable* activities for CRA purposes. However, where a church or charity decides to undertake activities that are *political*, it should be noted that those permitted political activities can only be carried on up to prescribed limits as described in greater detail below.

2. Political Activities (Permitted Up To Prescribed Limits)

A church or charity may take part in political activities if the activities are non-partisan, connected and subordinate to the organization's charitable purposes, and fall within expenditure limits under the ITA. As indicated earlier in this Bulletin, while the examples provided in the CRA Policy Statement reflect general application to charities as a whole and are not restricted to churches, those principles have been applied to the church context herein in order to facilitate an understanding of the issues by churches.

In general, CRA will presume that an activity is a political activity where:

- ◆ *the church or charity explicitly communicates a call to political action* by encouraging the public to contact an elected representative or public official to urge them to retain, oppose or change the law, policy, or decision of any level of government of Canada or a foreign country;
- ◆ *the church or charity 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*
- ◆ *the church or charity 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.*

In applying the above principles to the context of church related activities, an example of a permitted political activity would be a sermon on the interpretation of the Biblical truths on any given topic which concludes with an admonition to all church members to contact their respective Members of Parliament in order to pressure them to support or oppose a particular existing or proposed law.

Other examples of permitted political activities outlined in the CRA Policy Statement include those outlined below, provided that in each of the examples the activity relates to an issue that is connected

and subordinate to the organization's purpose; is based on a well reasoned position and does not constitute a prohibited activity, i.e. is non-partisan and is not illegal.

- Buying a newspaper advertisement in order to promote a reasoned position which the charity has taken on a given issue and to pressure the government to change its policy on a given matter which relates to the organization's charitable purposes;
- Organizing a march or a rally on Parliament Hill to pressure the Members of Parliament to vote on an issue in a manner that supports the charity's position;
- Organizing a conference in support of the charity's opinion on a given matter where the charity explicitly promotes its point of view on an existing or proposed law, policy or decision of any level of the Canadian or a foreign government;
- Hiring a communications specialist to arrange a media campaign that communicates that the law on a given issue should be changed; and
- Using a mail campaign to urge supporters to contact the government and take action on a particular issue.

a) Limits on Expenditures on Permitted Political Activities

Where a church or charity takes part in political activities, pursuant to the ITA the church must continue to devote "substantially all" of its "resources" to charitable activities. While the term "resources" is not defined in the ITA, administratively CRA has indicated that it considers "resources" to include the total of a church's financial assets, as well as everything the church can use to further its purposes, such as its staff, volunteers, directors, its premises and equipment.

In addition, "substantially all" usually means 90% or more. Therefore, as a general rule, a church or charity that devotes no more than 10% of its total "resources" in a given year to political activities would be operating within the "substantially all" provision.

In order to accommodate smaller charities with less disposable income, CRA has indicated that it will exercise its administrative discretion to extend the limits imposed on expenditures on political activities in certain situations, as reflected at section 9 of the CRA Policy Statement as follows:

- ... charities with **less than \$50,000** annual income in the previous year can devote up to 20% of their resources towards permitted political activities in the current year.
- ... charities whose annual income in the previous year was **between \$50,000 and \$100,000** can devote up to 15% of their resources towards permitted political activities in the current year.

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

Resources devoted to permitted political activities correspondingly are not devoted to charitable activities and therefore cannot be used to satisfy a charity's disbursement quota requirement. Accordingly, churches and charities that are involved in political activities should take steps to retain accurate and complete financial records and supporting documentation reflecting the disbursement of their funds and resources in order to demonstrate that "substantially all" resources have been devoted to charitable activities in anticipation of a potential audit by CRA.

In this regard, as indicated at section 5 of the CRA Policy Statement, when a charity's purposes are clearly charitable, but the organization devotes more than the allowable maximum of its resources to political activities, CRA may take the position that the charity is operating to achieve a political objective that is not stated in its governing documents, and as a result, the charity will consequently risk revocation.

3. Prohibited Activities

Prohibited activities are those activities that involve partisan politics or are illegal, and are not permitted under any circumstances.

The CRA Advisory dated December 14, 2005, entitled "Important Advisory on Partisan Political Activities," expresses recognition by CRA that there continues to be uncertainty among charities and members of the general public concerning what activities would constitute a "partisan political activity."

In addressing this issue, the said CRA Advisory states as follows:

Partisan political activities are those that involve direct or indirect support of, or opposition to, any political party or candidate for public office. Registered charities are prohibited from partisan political activity, because supporting or opposing a political party or candidate for public office is not a charitable purpose at law. There are two aspects to the prohibition: the first restricts the involvement of charities with political parties; the second restricts the involvement of charities through the support or opposition to a candidate for public office. Charities engaging in partisan political activities, which are clearly not in compliance with the law, risk deregistration.

As indicated in the CRA Advisory excerpt above, partisan political activities involve the “direct or indirect support of, or opposition to, any political party or candidate for public office.” Partisan political activities are clearly prohibited and therefore participation in partisan political activities may jeopardize an organization’s charitable status.

While not expressly addressed in the above CRA Advisory, a “candidate for public office” can, in some respects, be distinguished from an “elected representative.” Churches and charities are cautioned, however, that support or opposition of an “elected representative” may arguably be construed as “direct or indirect support of or opposition to, any political party.” Therefore it is recommended that support or opposition of an “elected representative” also be avoided.

In providing further comments on partisan political activities, the CRA Advisory also states as follows:

A registered charity is prohibited from directly or indirectly supporting or opposing a candidate for public office as well as a political party. In deciding whether a charity is engaged in prohibited activity, we generally consider whether the activity can reasonably be construed as intending to influence the outcome of the election. This may include but is not limited to situations where a registered charity:

- Provides financial or material contributions to a political party or candidate;
- Makes public statements (oral or written) that endorse or denounce a candidate or political party;
- Hosts an all-candidates meeting or public forum in a partisan manner;
- Invites candidates to speak at different dates or different events in a manner that favours a candidate or political party;
- Publishes or otherwise discloses the voting record of only *one* candidate or political party on an issue;
- Posts signs in support of, or opposition to, a particular candidate or political party;
- Distributes literature or voters’ 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.

Registered charities jeopardize their charitable status if they engage in partisan political activity and should consult [Political Activities, CPS-022](#) to ascertain whether, and to

what extent, the activities they seek to be involved in are permitted. Section 6.1 of the guidance provides a general outline of the prohibition on partisan political activities.

In application of the above principles to a church context, an example of a prohibited partisan political activity that a church must avoid would be a gift of church offering monies to fund a political party that supports the church's views on a given matter. This activity would not be permitted because it is a "prohibited" partisan political activity and is not a gift to a "qualified donee" which contravenes the ITA requirement that charities may only gift charitable funds to qualified donees. An additional church related example of a prohibited partisan political activity that should be avoided would be inviting a given Member of Parliament who is seeking re-election for public office to speak at the church without giving an equal opportunity to all other candidates seeking election for the same office position.

Other potential scenarios involving prohibited political activities which have been formulated based on an application of the principles reflected in the CRA Policy Statement include the following:

- Publishing statements that support a particular electoral candidate in the church service bulletin, church e-mail distribution list, church newsletter or on the church website;
- Distributing leaflets highlighting the lack of government support for the church's position on any given matter;
- Preparing a special dinner for campaign organizers of a political party; or
- Attendance by a representative of a church, whether a church pastor, elder or deacon, in their official capacity at a political fundraising dinner.

As indicated in the CRA Policy Commentary on partisan political activities (CPC-007) released on October 14, 1992, a charity can charge fair market rent to a political party for occasional meetings held at the charity's premises. In this regard, the CRA Policy Commentary stipulates that the rental of the charity's premises in and of itself, would not be indicative of support by the charity for the political party, especially in rural areas where the charity may have the only hall that can accommodate such meetings. Accordingly, the CRA Policy Commentary implies that charging fair market value rent to a political party and allowing usage of a church or a charity's facilities would be permitted so long as equal access and opportunity for such use is given to all political parties.

The CRA Policy Commentary concludes by indicating that the determination of whether rental of a charity's premises by a political party in exchange for a fair market value payment would constitute direct or indirect support of a political party is fact specific.

Accordingly, while renting premises to a political party at fair market value is not necessarily prohibited, the analysis of whether a given activity would constitute a prohibited activity would 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 CRA but also by the public-at-large as a prohibited political activity.

E. IMPLICATIONS FOR CHURCHES AND CHARITIES

In summary, churches and charities should keep in mind the following guidelines in carrying on their activities:

- Ensure that activities are either inherently *charitable* activities or *permitted political activities*;
- Ensure that any allocation of resources on permitted political activities are well within expenditure limits prescribed by CRA;
- Remember that any resources expended on permitted political activities cannot be included in the amount used to meet a church's disbursement quota requirement;
- Keep careful records of all expenditures devoted to permitted political activities in anticipation of potential audits by CRA;
- When completing the charitable income tax return (Form T3010), churches and charities should pay careful attention to the guidelines provided by CRA which accompany the return and should complete the forms as accurately as possible; and
- Abstain from prohibited activities.

Churches and charities should also review the CRA Policy Statement and related publications before engaging in any activities of a political nature. Where a church or charity is uncertain whether a given activity is a charitable activity or a permitted political activity, the organization can make a formal request for direction from CRA before engaging in the activity.