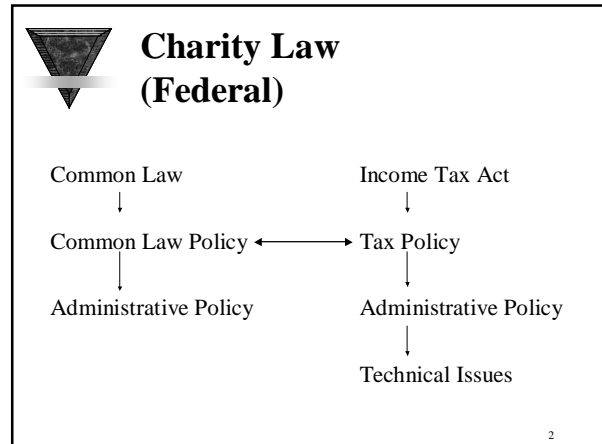



**Charities Policy Update**  
Charities Directorate, Policy and Planning Branch  
Church and Charity Law Conference  
November 10, 2004

**Charity and Income Tax Act**

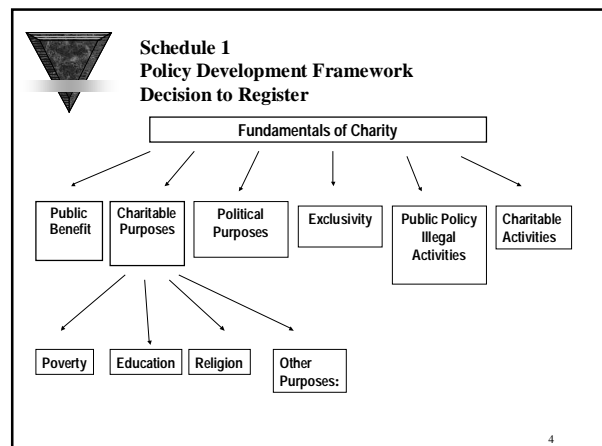
Income Tax Act provisions are the sole reason for federal involvement in substantially provincial domain

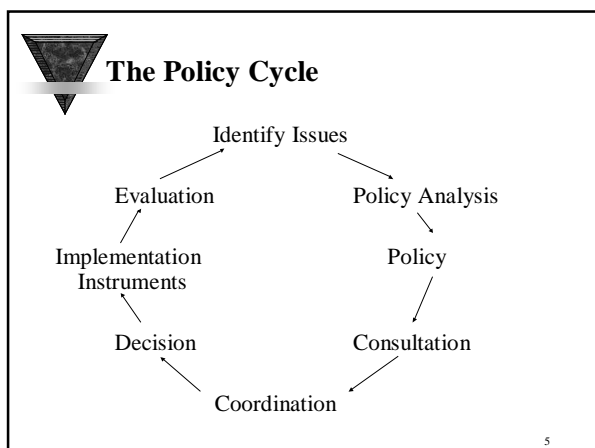
Purpose: Provide tax incentives to promote charitable giving

Common Law is adapted and supplemented to achieve this purpose

Charity Tax Policy places common law in a Canadian context through provisions of the Income Tax Act

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### New Policies Update

**Fall 2003**

- Registered Charities that Promote Racial Equality CPS-021
- Political Activities Policy Statement CPS-022

**Currently online for consultation**

- Proposed Guideline for Registering a Charity: Meeting the Public Benefit Test
- Proposed Guideline on Applicants assisting Ethnocultural Communities in Canada

### Registering Charities that Promote Racial Equity CPS - 021

**Aim of new policy**

- Clarify guidelines for applicants proposing to educate about racial equality, or about methods of promoting racial equality within the 2<sup>nd</sup> category of charity, “advancement of education”
- Provide the rationale for recognizing the promotion of racial equality as a charitable purpose within the 4<sup>th</sup> category of charity “other purposes beneficial to the community”
- Provide guidance for the registration of such applicants

### Previously

educating about race relations was charitable

Promoting good race relations was not accepted as a charitable purpose

Applications were judged on their own merits, “having due regard to the legal principles already established”



## What's new

Promotion of racial equality can now be recognized as a charitable purpose within the 4<sup>th</sup> category of charity based on:

- Clear public benefit
  - Parliamentary recognition of the promotion of positive race relations and the elimination of racial discrimination in Canada establishes these as beneficial to the public, and no longer political
- Analogy to an existing charitable purpose
  - Promotion of racial equality can be recognized as analogous to “mental and moral improvement”, an established sub-grouping of the 4<sup>th</sup> category of charity

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## What do we mean by promoting racial equality?

Working to ensure the full and equitable participation of racial and ethnocultural groups in Canada (consistent with the equality rights guaranteed by the Canadian Charter of Rights and Freedoms, existing legislation, and public policy)

- This includes:
  - eliminating racial (including ethnic) discrimination
  - encouraging positive race relations and/ or ethnic groups in Canada)

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## Guidelines

Objects can potentially qualify within the 2<sup>nd</sup> or 4<sup>th</sup> categories of charity, or both

Objects cannot include efforts to retain, oppose or change the law or policy or decisions of any level of government in Canada or a foreign country

Objects also cannot include a focus on international relations, or on fostering good relations between countries

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## 2<sup>nd</sup> category “advancement of education”

Educating about racial equality, or about methods of promoting it, are recognized as charitable

- No change in current policy
- Acceptable to carry out activities that start from the premise that equity is preferable to discrimination (for example, activities or materials may use an anti-racist framework)
- Purposes must be:
  - non-partisan
  - based on factual information
  - based on a well-reasoned position

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### 4<sup>th</sup> Category “Other Purposes Beneficial to the Community”

Promoting racial equality by eliminating racial discrimination or promoting positive race relations is considered a charitable purpose

- ensuring conformity with existing legislation, as in the case of opposing racial discrimination, is not considered political
- it is acceptable for programs to include an educational component, resulting in an overlap of the 2<sup>nd</sup> and 4<sup>th</sup> categories
- programs must be open to anyone who wishes to access them (except where restriction is clearly linked to the proposed benefit)

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### Political Activities Policy Statement CPS – 022

Why did we change our policy?

- Need for clarity
- Rules were considered to be too strict and did not reflect current sector values or practice
- Calls to distinguish between
  - the need for a charity to communicate with the public on day-to-day issues,
  - the need to usefully inform the public and government on public policy development,
  - and communication strategies aimed at pressuring governments
- Social recognition of charities’ need to do more than deliver programs in order to solve systematic problems

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### What stays “as is”?

Political purposes are not charitable

- Includes purposes so broad that on a normal reading, they could include a political purpose
- Includes unstated political purposes – i.e., political activities so significant on their own that they amount to a co-equal if unstated purpose
- 10 –percent rule – although applies to a narrower scope of activities – and is scaled for smaller charities
- Prohibition against partisan politics

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### What has changed?

We have clarified our administrative interpretation of political activities

Public awareness campaigns: distinguished from political activity

Representations to elected or public officials: existing rule clarified and expanded (7.3)

Rule for small charities: compensates for regressive impact of restriction (9)

Averaging provision (9.1)

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### **Proposed guidelines for registering a charity: meeting the public benefit test**

What is the above guidance about?

- Applicants for charitable registration must fit within the definition of charitable at common law
- A key part of every determination for charitable status is that an applicant's purposes and activities must be for the "public benefit" or, have a sufficiently "public character"

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### **Proposed guidelines for registering a charity: meeting the public benefit test cont'**

The determination of public benefit is a difficult task – the case law is complex and the tests developed therein are difficult to apply

Many questions have been raised about the clarity, consistency, and reasonableness of the rules relating to public benefit

In light of this, the proposed guidelines are intended to clarify the meaning of public benefit

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### **Proposed guidelines**

Start with a general overview of some of the fundamentals of charity

Briefly describe the theory behind, and application of, the two-pronged test for public benefit

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### **Proposed guidelines**

Discussion of some key questions such as:

- what constitutes a sufficient segment of the community?
- when can an organization restrict benefit to a narrow group of beneficiaries?
- To what extent can individuals benefit privately?

Other questions arise in the context of the type and character of the benefit that is proposed:

- how important is it that the benefit be tangible or direct?

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### **Proposed guidelines on applicants assisting ethnocultural communities in Canada**

#### **Aim of proposed guidelines**

- Charities play a vital role in meeting the needs of disadvantaged ethnocultural communities, and in assisting refugees and immigrants in need to make the transition to life in Canada
- By developing clearer charitable registration guidelines, we hope to promote a better understanding of what types of organizations may be registered within the parameters defined by charity law and the *Income Tax Act*

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### **Proposed guidelines**

Take into consideration the many goals and undertakings of ethnocultural organizations in Canada, and outlines how organizations that help a disadvantaged ethnocultural community or communities are potentially eligible for charitable registration

Reviews which of the objects and activities of these organizations may be considered charitable, and which are not

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