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Political Activities – What Churches and Charities Can and Cannot Do

(Powerpoint Presentation)

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INTRODUCTION AND BACKGROUND

- This is an important and relevant topic for charities, particularly churches and religious charities that are concerned with the outcome of an election
- General misconception among churches that they are either unable to participate at all in any public policy debates involving political issues or alternatively that they can participate completely unrestrained. Both assumptions are incorrect
- Churches can become involved in public policy debates so long as they do so within the limits imposed by Canadian law

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- However, in order to ensure that churches or other types of charities avoid jeopardizing their charitable status by engaging in political activities which contravene CRA requirements, it is essential to carefully review both the *Income Tax Act* and Canada Revenue Agency (CRA) publications on the issue of political activities

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KEY CRA POLICIES AND *INCOME TAX ACT* PROVISIONS

- CRA Policy Statement "Political Activities" effective as of Sept. 2, 2003
- CRA Advisory "Political Activities Guidance and Partisan Politics" released on June 11, 2004
- Other related CRA publications based on subsections 149.1(6.1) for charitable foundations and 149.1(6.2) for charitable organizations of the *Income Tax Act* ("ITA") are available at the CRA website
<http://www.cra-arc.gc.ca/tax/charities/menu-e.html>

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- 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) contain similar provisions for charitable foundations

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THE DIFFERENCE BETWEEN POLITICAL PURPOSES AND CHARITABLE PURPOSES

- All registered charities are required by law to have exclusively charitable purposes (as determined at common law)
- An organization established for a political purpose cannot be a charity

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- 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

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THREE CATEGORIES OF ACTIVITIES

- For the purposes of this presentation, activities undertaken by a church or 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)

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CHARITABLE ACTIVITIES (Permitted Without Limits)

- If an activity is considered by CRA to be charitable, i.e. it is a means to achieving a charitable purpose, then it is permitted without limits
- However, neither the *Income Tax Act* nor CRA policies define what a “charitable activity” is

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- CRA Policy Statement does comment upon when a communication will be a charitable activity
 - 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, 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
 - Is well reasoned, and
 - Does not contain information that is false, inaccurate or misleading

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- Releasing the text to a representative 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

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- 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

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- Examples of church related activities that would likely be considered to be charitable activities:
 - Sermon on the importance of New Testament teaching to pray for political leaders and emphasizing the unchanging, timeless nature of the Bible’s truths on a particular topic but without calling for political action
 - A pastor or a priest speaking out on abortion or same sex marriage from a Biblical context but without commenting on how a political party is or should be dealing with the issue

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- However, churches should also be aware of the circumstances under which statements could constitute hate propaganda under the *Criminal Code*, especially in relation to issues involving same sex marriage (see Churchlaw Bulletin #2 at www.churchlaw.ca)
- Where possible, a church or charity should try to ensure that an activity is a charitable activity
- As a fall back, a church or other charity can expend a limited amount of its resources on political activities as described below

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POLITICAL ACTIVITIES (Permitted Up To Prescribed Limits)

1. What is a Political Activity?

- An activity is presumed to be a political activity if a charity:
 - Explicitly communicates a call to political action,
 - 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

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- 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,
 - Connected to the charity's purposes,
 - Subordinate to the charity's purposes, and
 - Fall within expenditure limits under the *Income Tax Act*

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- An example of a permitted political activity would be a sermon on the interpretation of the Bible's truths on any given topic and a call for church members to contact their respective MPs to pressure them to support or oppose a particular existing or proposed law

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- 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 church'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

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2. Limits on Expenditures on Permitted Political Activities
 - Where a church or 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 church's financial assets, as well as everything the church 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 church or charity that devotes no more than 10% of its total "resources" a year to political activities would be operating within the "substantially all" provision

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

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- 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 church or charity's disbursement quota
- A church or 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

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PROHIBITED ACTIVITIES

- Prohibited activities are activities that are either illegal or involve partisan political activities and therefore are not permitted at all
- The CRA Advisory (June 11, 2004) entitled Political Activities Guidance and Partisan Politics provides as follows:
 - Recognition that charities are confused about what constitutes "partisan political activities" so the Advisory was intended to clarify matters

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- Advisory explains that this issue is determined by subsections 149.1(6.1) and (6.2) of ITA, which states that
 - Partisan political activity involves the “direct or indirect support of, or opposition to, any political party or candidate for public office” and is clearly prohibited.
- 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”

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- An example of a prohibited partisan political activity would be a gift of church monies to fund a political party that supports the church’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 a Christian MP 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

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- Other examples of prohibited partisan activities in the CRA Policy Statement includes the following:
 - Publishing statements that support a particular electoral candidate in the church Sunday service bulletin or church e-mail distribution list or on the church website
 - Distributing leaflets highlighting lack of government support for church’s position on any given matter
 - Preparing a special dinner for campaign organizers of a political party

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- Attendance by a representative of a church e.g. church pastor, elder or deacon in their official capacity at a political fundraising dinner
- Charging fair market value rent to a political party and allowing usage of church 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 church favours that party, thereby constituting a prohibited political activity – analysis is fact specific

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IMPLICATIONS FOR CHURCHES AND CHARITIES

- Churches and other Charities need to
 - Ensure that activities are either inherently “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 church’s disbursement quota

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- 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), churches should pay careful attention to the guidelines provided by CRA which accompany the return

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