

---

**CHURCH LEADERSHIP & THE LAW  
SEMINAR  
Christian Legal Fellowship**

**London – May 11, 2005**

---

**Political Activities: What Churches  
Can and Can't Do  
(Power Point Presentation)**

---

**By Terrance S. Carter, B.A., LL.B.**  
© 2005 Carter & Associates

**CARTERS™.ca**

**CARTER & ASSOCIATES  
PROFESSIONAL CORPORATION**

BARRISTERS, SOLICITORS & TRADE-MARK AGENTS  
Affiliated with **Fasken Martineau DuMoulin LLP**

**Main Office Location**

211 Broadway, P.O. Box 440  
Orangeville, ON, Canada, L9W 1K4  
Tel: (519) 942-0001  
Fax: (519) 942-0300  
Toll Free: 1-877-942-0001

**www.carters.ca**

**National Meeting Locations**

Toronto (416) 675-3766  
Ottawa (613) 212-2213  
London (519) 937-2333  
Vancouver (877) 942-0001  
*"Proactive Advice"®*

**www.charitylaw.ca**

---

- A. Outline**
- Introduction and Background
  - Charitable Purpose vs. Political Purpose
  - Education as a Charitable Purpose
  - v. Propaganda
  - Categories of Political Activities
  - Limits on Expenditures
  - Recent Case Law Concerning Political Activities
  - Implications for Churches and Religious Charities
- 2

---

---

---

---

---

---

---

---

- B. Introduction and Background**
- This is a highly volatile area for charities, particularly churches and religious charities that believe that they have a vested interest in the outcome of an election
  - In order to ensure that a charity stays onside with the applicable requirements of being a registered charity, it is important to carefully study both the *Income Tax Act* and Canada Revenue Agency (CRA) publications on the issue of political activities
- 3

---

---

---

---

---

---

---

---

- CRA policy statement “Political Activities” effective on Sept.2, 2003
  - CRA advisory “Political Activities Guidance and Partisan Politics” released on June 11, 2004
  - CRA publications based on subsections 149.1(6.1) and 149.1(6.2) of the *Income Tax Act* (“ITA”)
- 4

---

---

---

---

---

---

---

---

- For ease of reference, the relevant sections of the ITA have been summarized below as follows:  
  
**For the purposes of the definition of “charitable foundation” or “charitable organization” in subsection 149.1(1), where a corporation or trust devotes substantially all of its resources to charitable purposes or “charitable activities” and**
  - a) it devotes part of its resources to political activities

5

---

---

---

---

---

---

---

---

- b) those political activities are ancillary and incidental to its charitable purposes, 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

- *Accord Between Government of Canada and Voluntary Sector, Dec. 2001- developed - Voluntary Sector Initiative (CRA and the voluntary sector) developed the current CRA policy statement together after consultation process*

6

---

---

---

---

---

---

---

---

- Charities complained that previous CRA policy statement of February 25, 1987 “Registered Charities- Ancillary and Incidental Political Activities” was too restrictive and did not allow them to participate in policy development
- Revised CRA policy statement confirms that charities can take part in political activities, provided that such activities are connected and subordinate to the charitable purposes of the charity

7

---

---

---

---

---

---

---

---

**C. Charitable Purpose vs. Political Purpose**

- Any discussion of political activities requires that there must first be an understanding of the difference between charitable purpose and political purpose
- Charity must devote substantially all of its resources to charitable purposes and activities
- When determining whether an organization is constituted exclusively for charitable purposes CRA looks at:
  - Stated purposes of organization
  - Actual activities that an organization is currently engaged in

8

---

---

---

---

---

---

---

---

- Courts have determined that prohibited political purposes which are not charitable are those that:
  - Further the interests of a particular political party or candidate, or
  - Seek to retain, oppose or change a law, policy or decision of government
- Purpose is only charitable if it generates a public benefit
- In order to assess the public benefit of a political purpose, a court would have to take sides in a political debate

9

---

---

---

---

---

---

---

---

**D. Education as a Charitable Purpose v. Propaganda**

- Advancement of education is a charitable purpose whereas influencing public opinion or public policy is not
- Courts and CRA have determined that to advance education means to:
  - § Train the mind
  - § Advance the knowledge or abilities of the recipient
  - § Raise the artistic taste of the community
  - § Improve a useful branch of human knowledge through research

10

---

---

---

---

---

---

---

---

– CRA Policy on “Political Activities” explains what an educational activity is

- § “educational activity must be reasonably objective and based on a well-reasoned position”
- § “Must be factual information that is methodically, objectively, fully and fairly analyzed”
- § Degree of objectivity will determine whether it is education or propaganda

11

---

---

---

---

---

---

---

---

– CRA Policy on “Political Activities” explains what it means to influence law/policy vs. sharing view with government and public

- § Charity’s intentions determine the nature of the activity, not the actual effect of the activity
- § For example, if media seizes upon statement made by a spokesperson of the charity and as a result the government feels pressure to change its policies, this is not a political activity as long as the spokesperson’s intention was to contribute to informed public debate

12

---

---

---

---

---

---

---

---

– Question: Is the charity trying to educate the public or to persuade or influence public opinion?

– An activity will generally be considered to be furthering the charitable purpose of education if:

- § Charity speaks at invitation of others
- § Charity is responding to a call from government for public input into developing policy
- § Charity is providing information based on experience serving the public
- § Charity is presenting reliable facts and figures (scientifically based research)

13

---

---

---

---

---

---

---

---

**E. Categories of Political Activities**

- CRA provides the following classification of acceptable v. non-acceptable political activities for charities to be involved with:
  - Charitable activities are activities that directly further the charitable purpose of a charity and are of a charitable nature even though there may be a political element to such activities
  - Permitted political activities are activities that are political in nature but fall within the acceptable limits of political activities permitted for a charity

14

---

---

---

---

---

---

---

---

- Prohibited activities are activities that are either illegal or involve partisan political activities and therefore are not permitted at all
- Charitable Activities
  - There are no specific examples of charitable activities given in the CRA policy statement
  - The context is very fact specific: “a particular activity is fundamentally charitable or fundamentally political depending on the facts of a particular situation”

15

---

---

---

---

---

---

---

---

- Charitable activities are those whose activities are intended to further a charitable purpose, e.g. a purpose for:
  - § The relief of poverty
  - § The advancement of religion
  - § The advancement of education
  - § Other purposes beneficial to the community

16

---

---

---

---

---

---

---

---

- Therefore if an activity is intended to further a charitable purpose, then the activity will be seen as a permitted charitable activity, even though the activity may also have a political application
- For instance, a pastor or a priest speaking out on abortion or same sex marriage from a biblical or pastoral context as opposed to commenting on how a political party is dealing with the issue
- It is therefore prudent to try to categorize an activity as a charitable activity instead of as a permitted political activity as described below

17

---

---

---

---

---

---

---

---

- **Permitted Political Activities**
  - A charity can be involved in political activities that may make the public aware of its position on an issue provided that:
    - § The activity does not explicitly connect its views to any political party or candidate
    - § The issue is connected to its charitable purpose
    - § Its views are based on a well-reasoned position
    - § Public awareness campaign is not the primary activity of the charity
    - § Subject to statutory limitation on expenditures described below

18

---

---

---

---

---

---

---

---

- Some examples of political activities that are permitted by CRA include:
  - § Public awareness campaigns
  - § Communicating with public officials
  - § Distributing, publishing or presenting research on particular topic related to charitable purpose
  - § Participating in policy development working group or advisory panel
  - § Organizing a march on Parliament Hill or a rally

19

---

---

---

---

---

---

---

---

§ Organizing a conference in support of charity's opinion

§ Mail campaign urging supporters to communicate with the government on a particular issue

§ Buying a newspaper advertisement to pressure the government

§ Hiring a communications specialist to arrange a media campaign

20

---

---

---

---

---

---

---

---

• **Prohibited Political Activities**

- Charity cannot take part in an illegal activity or a partisan political activity
- For instance, in relation to partisan political activities, a charity cannot support or oppose a political candidate for office or party either directly or indirectly
- Campaigning against current government could constitute prohibited political activity depending on:
  - § Timing of campaign
  - § Known political associations of the people involved
  - § Audience being addressed

21

---

---

---

---

---

---

---

---

- New CRA Advisory (June 11, 2004) entitled **Political Activities Guidance and Partisan Politics**
  - § Charities are confused about what constitutes "partisan political activities" so advisory was intended to clarify matter
  - § 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."

22

---

---

---

---

---

---

---

---



- **Examples given by CRA concerning what are partisan political activities in previous information bulletin of September 2000**
  - Using charity’s premises, equipment, or personnel to benefit a particular political party, or candidate for public office
  - Posting a candidate’s signs on the office walls during an election
  - Giving the charity’s mailing list to political parties, or candidates for public office
  - Purchasing tickets to a fund-raiser to benefit political parties, or candidates for public office

23

---

---

---

---

---

---

---

---

- **The current 2003 policy statement cites the following examples as being “prohibited political activities”**
  - Supporting candidate in charity’s newsletter
  - Distributing leaflets highlighting lack of government support for charity’s goals
  - Preparing dinner for campaign organizers of a political party
  - Inviting competing election candidates to speak at separate events

24

---

---

---

---

---

---

---

---

- **Issues that are not yet clear and are awaiting further clarification from CRA**
  - Before or after an election, are politicians or potential politicians susceptible to support or opposition by a charity
  - When does support or opposition of an existing politician or possible candidate for office outside of an election become a prohibited partisan activity because it may be a “direct or indirect support of or opposition to a political party”
  - Under what circumstances could prohibited political activities become hate propaganda under the *Criminal Code*

25

---

---

---

---

---

---

---

---

**F. Limits on Expenditures**

- Charity can only devote 10% of its “resources” on permitted political activities
- “Resources” is defined as “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”
- “Resources” is defined in very broad and vague terminology

26

---

---

---

---

---

---

---

---

- CRA’s administrative discretion concerning the limited on expenditures has been extended in certain situations by the policy statement:
  - income less than \$50,000 then can devote 20% of resources
  - Income between \$50,000 and \$100,000 then can devote 15% of resources
  - Income between \$100,000 and \$200,000 then can devote 12% of resources

27

---

---

---

---

---

---

---

---

- 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 for its receipted donations, i.e. not part of the 80/20% or 3.5% disbursement quota

28

---

---

---

---

---

---

---

---

**G. Recent Case Law Concerning Political Activities**

- *Action des Chretiens pour L’abolition de la torture (ACAT)* (2002) charitable status was revoked because:
  - Engaging in mail campaigns to heads of state concerning torture
  - Federal Court of Appeal found that this was a “political activity” that, while permissible, had exceeded statutory limit and had become an “unwritten purpose”

29

---

---

---

---

---

---

---

---

- *Human Life International in Canada Ltd. (1998)* charitable status revoked because:
  - Purpose was to protect unborn, promote Christian family values, encourage chastity
  - Held lectures, seminars and conferences and published literature advocating its point of view
  - Activities resulted in the Federal Court of Appeal finding the purpose of the organization to be political because the purpose was designed to sway public opinion on social issues

30

---

---

---

---

---

---

---

---

- Query whether the same activities would have been seen as of a charitable nature if the purpose of the organization was seen as advancing religion, since advancing religion permits promoting and disseminating one’s faith, which by its very nature includes trying to change the opinion of others
- *Alliance for Life* (1999) charitable status revoked because
  - Main objective was to promote respect for all human life, but was not advancing religion

31

---

---

---

---

---

---

---

---

- Library packages that organization distributed were aimed at promoting charity's viewpoint and were one-sided and therefore were considered political and not "ancillary" to main purpose of the charity
- Resources were not being substantially used towards charitable purposes
- Incorporated a non-profit parallel organization called Alliance Non-Profit Pro Life action Inc. to do political activities but CRA found that they were not sufficiently separate and arms length

32

---

---

---

---

---

---

---

---

**H. Implications For Churches and Religious Charities**

- Churches and Religious Charities need to
  - ensure that activities are either inherently charitable or are permissible political activities
  - ensure that any political activities undertaken fall within expenditure limits
  - remember that any resources expended on political activities cannot be included in amount used to meet disbursement quota

33

---

---

---

---

---

---

---

---

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

34

---

---

---

---

---

---

---

---

**DISCLAIMER**

This handout is provided as an information service by Carter & Associates. It is current only as of the date of the handout and does not reflect subsequent changes in law. This handout is distributed with the understanding that it does not constitute legal advice or establish the solicitor/client relationship by way of any information contained herein. The contents are intended for general information purposes only and under no circumstances can be relied upon for legal decision-making. Readers are advised to consult with a qualified lawyer and obtain a written opinion concerning the specifics of their particular situation.  
© 2005 Carter & Associates

---

---

---

---

---

---

---

---