

NEW CCRA POLICY STATEMENT ON POLITICAL ACTIVITIES

By Terrance S. Carter and Suzanne E. White

A. INTRODUCTION

This *Charity Law Bulletin* (“Bulletin”) provides a brief summary of the *Political Activities Policy Statement*, CPS-022 issued by the Canadian Customs and Revenue Agency (CCRA) on September 2, 2003 (“Policy Statement”). The *Bulletin* is not meant to constitute either a detailed review or an analysis of the *Policy Statement* or the resources and documents available on the matter of political activities, since to do so would be beyond the scope of a brief overview. Instead, the *Bulletin* summarizes some of the more important aspects of the new *Policy Statement* and directs charities to resources available from CCRA that may be of assistance in addressing questions on this issue. The *Policy Statement* can be found on the CCRA website at <http://www.ccra-adrc.gc.ca/tax/charities/policy/cps/cps-022-e.html>.

The *Bulletin* first outlines the background leading to the creation of the *Policy Statement*, then explains the categorization that CCRA uses to identify political activities that charities may or may not participate in, then proceeds to review the components of limits on political activities, and finally provides a brief explanation of implications for, as well as comments by charities concerning the impact of the *Policy Statement*.

B. BACKGROUND TO THE POLITICAL ACTIVITIES POLICY STATEMENT

The *Policy Statement* is the result of over two years work by the Government of Canada and the voluntary sector. The cooperative approach was undertaken in order to strengthen the relationship between both CCRA and the voluntary sector under a joint initiative called the Voluntary Sector Initiative. Part of the initiative to enter into a dialogue was the development of a document entitled *Accord Between the Government of Canada and the Voluntary Sector*, signed in December 2001 between the Government of Canada and the voluntary sector.

The *Policy Statement* represents an expansion on what CCRA has traditionally considered political activities, and “recognizes that Canadian society has been enriched by the invaluable contribution charities have made in developing social capital and social cohesion” (*Policy Statement*, page 3).

In January of 2002, CCRA published an Information Circular entitled *2002 Concept Draft – Registered Charities – Political Activities* (“2002 Concept Draft”), which invited contributions from charities on the guidelines concerning political activities and allowable limits for charities under the *Income Tax Act* (the “ITA”). The *2002 Concept Draft* can still be accessed at the CCRA website at http://www.cca-adrc.gc.ca/tax/charities/consultations/political_activities-e.html. The predecessor to the new *Policy Statement* was Information Circular (“IC”) 87-1, entitled “Registered Charities - Ancillary and Incidental Political Activities”. This document, released by CCRA in 1987, explained the provisions in the *ITA* which allowed registered charities to pursue ancillary and incidental political activities of a non-partisan nature. IC 87-1 can be accessed at <http://www.cca-adrc.gc.ca/E/pub/tp/ic87-1/ic87-1-e.html>.

The *Policy Statement* is based upon subsections 149.1 (6.1) and 149.1 (6.2) of the *ITA*, which apply to both charitable foundations and charitable organizations, and which for ease of reference have been summarized below as follows:

For the purposes of the definition "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,
 - b) *those political activities are ancillary and incidental to its charitable purposes [or “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 corporation or trust [or “organization”] shall be considered to be constituted and operated for charitable purposes to the extent of that part of its resources so devoted [or “to charitable activities carried on by it”]. [*Emphasis added.*]

C. DISTINCTION BETWEEN POLITICAL AND CHARITABLE PURPOSES AND ACTIVITIES

Registered charities are required to have exclusively charitable purposes. However, the *ITA* does not define either “charitable” or “purposes” and, as such, the courts have been called upon to determine the definition through caselaw. The courts have held that an organization that has been established for a political purpose cannot be a registered charity. Political purposes have been defined by the courts as purposes seeking to:

- further the interests of a particular 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.

Generally, a charity is not allowed to carry out any of the above activities, as they are considered to be furthering political purposes. However, CCRA, in certain limited situations, will allow charities to become involved in some political activities, either as part of its charitable activities in order to advance its charitable purpose(s), or alternatively because they fall within the limits of what CCRA has identified as permitted political activities.

D. CATEGORIZATION OF ACTIVITIES

Under the *Policy Statement*, a charity’s activities with regard to political activities are categorized by CCRA under three headings:

- ◆ charitable activities;
- ◆ prohibited activities; and
- ◆ permitted political activities.

1. Charitable Activities

Activities that directly further the charitable purpose of a charity but have a political nature will be permitted, such as participation in a public awareness campaign, provided that the political nature of the activity in a public awareness campaign:

- ◆ is connected and subordinate to the charity's purpose;
- ◆ does not contain a call to political action;
- ◆ is based on a well-reasoned position rather than information the charity knows or ought to have known is false, inaccurate, or misleading; and
- ◆ is not primarily of an emotive nature.

CCRA has created general rules to assist charities in knowing whether or not their activity in question is charitable or not: These helpful guidelines deal with:

- ◆ public awareness campaigns;
- ◆ providing contact information during public awareness campaigns;
- ◆ communicating with an elected representative or public official; and
- ◆ releasing the text of a representation.

The *Policy Statement* outlines a number of situations that will now be considered to be charitable notwithstanding that they have some political aspects to them, as long as the limits described above are adhered to. Examples in this regard are as follows:

- ◆ distributing the charity's research on a particular topic relevant to its charitable purpose;
- ◆ releasing and distributing a research report to election candidates;
- ◆ publishing a research report online;
- ◆ presenting a research report to a Parliamentary Committee;
- ◆ giving an interview about the research report;
- ◆ distributing a research report to all Members of Parliament;
- ◆ participating in an international policy development working group; and

- ♦ joining a government advisory panel to discuss policy changes.

2. Prohibited Activities

Prohibited activities are defined in the *Policy Statement* as an illegal activity or a partisan political activity, which in turn is defined as an activity “that involves direct or indirect support of, or opposition to, any political party or candidate for public office” (*Policy Statement*, para. 6.1). A charity, though, may make the public aware of its stance on a particular issue, provided that:

- ♦ it does not explicitly connect its views to any political party or candidate for public office;
- ♦ the issue is connected to its purposes;
- ♦ its views are based on a well-reasoned position; and
- ♦ public awareness campaigns do not become the charity’s primary activity.

The following activities would be considered prohibited activities by CCRA:

- ♦ supporting an election candidate in the charity’s newsletter,
- ♦ distributing pamphlets that underline the government’s lack of contribution to the charity’s goals;
- ♦ preparing dinner for campaign organizers of a political party,
- ♦ inviting competing election candidates to speak at separate events.

3. Permitted Political Activities

The *Policy Statement* states that “a charity that devotes substantially all of its resources to charitable activities may carry on political activities within the allowable limits” at paragraph 14.3. Under the *ITA*, a charity must devote substantially all of its resources to charitable activities. “Substantially all” is defined by the CCRA as 90% or more, meaning that a charity may not devote more than 10% of its total resources per year to political activities. According to the *Policy Statement*, a charity that refrains from engaging in prohibited political activities can devote up to 10% of its resources to permitted political activities (which in the case of smaller charities has been somewhat extended). It is important to note that a charity can give its resources to another organization, including a registered charity, to conduct political activities on its behalf. Permitted political activities (as opposed to prohibited political

activities listed above) would include the following, provided that they do not exceed the expenditure limit as stated above:

- explicitly communicates a call to political action (i.e., encourages the public to contact an elected representative or public official and urges them to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country);
- 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 (if the retention of the law, policy or decision is being reconsidered by a government), opposed, or changed; or
- 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.

As such, the following examples, as long as they fall within the charity's limit on political activities, would be allowable:

- ◆ buying a newspaper advertisement to pressure the government;
- ◆ organizing a march to Parliament Hill;
- ◆ organizing a conference to support the charity's opinion. In this scenario, the *Policy Statement* notes at paragraph 14.3.3 that "a charity that organizes a conference or workshop that explicitly promotes its point of view on an existing or proposed law, policy, or decision or any level of government, in Canada or a foreign country, that relates to the way it achieves its purposes is engaged in a political activity";
- ◆ hiring a communications specialist to arrange a media campaign;
- ◆ using a mail campaign to urge supporters to contact the government. The *Policy Statement* indicates at paragraph 14.3.5 that "whatever level of government the charity is urging its supporters and members of the public to contact, on whatever issue, such a communication is a call to political action and therefore a political activity";
- ◆ organizing a rally on Parliament Hill. The *Policy Statement*, at paragraph 14.3.6, clearly states that "...explicitly communicating to the public that the law should be changed in this way is a political activity";
- ◆ organizing a rally with the explicit purpose of pressuring any level of government in Canada, or a foreign country, to change the law.

E. *ITA* LIMITATIONS ON CHARITABLE EXPENDITURES AND RESOURCES ON POLITICAL ACTIVITIES

As indicated above, a charity may only devote 10% of its resources to permitted political activities. The term “resources” is explained in the *Policy Statement* to include “the 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” (*Policy Statement*, para. 9).

To make this rule somewhat more equitable for smaller charities, CCRA’s administrative discretion has been expanded in certain situations by the *Policy Statement* as outlined below:

- Registered charities with less than \$50,000 annual income in the previous year can devote up to 20% of their resources to political activities in the current year.
- Registered charities whose annual income in the previous year was between \$50,000 and \$100,000 can devote up to 15% of their resources to political activities in the current year.
- Registered charities whose annual income in the previous year was between \$100,000 and \$200,000 can devote up to 12% of their resources to political activities in the current year.

To maintain their registration under the *ITA*, charities are required to spend a certain minimum amount of receipted donations each year (i.e. the disbursement quota) directly on their charitable activities or on gifts to certain other organizations. These other organizations, also called “qualified donees”, and are usually other registered charities. It is also important to note that resources used towards permitted political activities are not applied to a charity’s disbursement quota for its receipted donations.

F. IMPORTANT DEFINITIONS

The *Policy Statement* provides definitions for a number of terms relating to charities and political activities, a few of which are set out as follows:

“advocacy” means demonstrated support for a cause or particular point of view. Advocacy is not necessarily a political activity, but it sometimes can be;

“call to political action” means an appeal to the members of the charity or the general public, or to segments of the general 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;

“connected activity” means an activity that relates to and supports a charity’s purpose(s) and represents a reasonable way to achieve them;

“disbursement quota” means the minimum amount a registered charity has to spend on charitable activities to keep its registered status, including gifts to qualified donees. The purpose of the disbursement quota is to ensure that registered charities actively use their tax-assisted donations to help others according to their charitable purposes;

“political purpose” means to support a political party or candidate for public office; or to seek to retain, oppose, or change the law or policy or decisions of any level of government in Canada or a foreign country;

“qualified donee” means an organization that can, under the *ITA*, issue official tax receipts for gifts that individuals or corporations make to them, including, among others, registered charities;

“subordinate activities” means activities that are subservient to a charity’s dominant charitable purpose or are a minor focus of the charity;

“well-reasoned position” means a position based on factual information that is methodically, objectively, fully and fairly analyzed. In addition, a well-reasoned position should present/address serious arguments and relevant facts to the contrary.

Readers are encouraged to refer to Appendix I of the *Policy Statement* in order to review a complete list of terms and their definitions.

G. NEW ADVISORY CLARIFYING THE POLICY STATEMENT

On September 30, 2003, the CCRA published an Advisory on *Political Activities Guidance and Prohibited Partisan Political Activities* in response to inquiries from registered charities with regard to what constituted partisan political activities. Many registered charities have been seeking clarification concerning whether the activities of certain organizations are partisan or allowable political activity. The Advisory states that “What constitutes partisan political activity has not changed in any way in the new guidance, as the limitation on this type of activity is contained in the *Income Tax Act* at subsections 149.1(6.1) and (6.2)”. This means that

[P]artisan political activity involves the direct or indirect support of, or opposition to, any political party or candidate for public office and is clearly prohibited. Registered charities may jeopardize their charitable status if they engage in partisan political activity...Section 6.1 of the guidance provides a general outline of the prohibition on partisan political activities.

This Advisory can be found on the CCRA website at http://www.ccra-adrc.gc.ca/tax/charities/policy/political_activities-e.html.

H. IMPLICATIONS FOR CHARITIES

As a result of the comments contained in the *Policy Statement*, charities will now need to ensure that their activities that may be of a political nature are either inherently charitable or fall within what is considered by CCRA to be permitted political activities, as well as to ensure that the latter fall within the *ITA*'s expenditure limits. Exceeding the maximum allowable expenditure limit will put a charity at risk of revocation.

CCRA has now expanded the allowable charitable activities that a charity can undertake. As such, charities will want to engage the bulk of their activities in permissible charitable activities, where possible, and thereby avoid the restriction associated with the safety net of permissible political activities. Charities must also keep careful records of all expenditures with respect to permitted political activities, particularly when filing the *Registered Charity Information Return* (Form T3010A), available at <http://www.ccra-adrc.gc.ca/E/pbg/tf/t3010a/t3010a-03e.pdf>.

In this regard, the recent decision in *Action des chrétiens pour l'abolition de la torture (ACAT) v. Canada*, found at 2003 D.T.C. 5030, is a clear indicator that charities that go beyond what CCRA considers to be either charitable or a permitted political activity may be deregistered. In the *ACAT* case, the Federal Court of Appeal found that the focus of the charity on the abolition of torture throughout the world, in conjunction with ACAT's political activities, including letter-writing and post-card campaigns to foreign governments, were incompatible with its status as a charitable organization and resulted in its deregistration.

I. COMMENTS FROM CANADIAN CHARITIES

A number of prominent Canadian charities have expressed the view that the *Policy Statement* presents an improvement over the previous guidelines applicable to charities, but that more work needs to be done in order to give charities greater input into the political process in Canada. The Canadian Centre for Philanthropy, for example, which participated in the drafting of the *Policy Statement*, states on page 1 of its *Issue Alert* dated September 19, 2003, that:

...public awareness campaigns are more precisely defined in the new document and more generous rules for smaller charities in calculating their political activity are included...[but] the Centre's view continues to be that a legislative amendment is required to free charities to speak out on issues about which they are knowledgeable.

The CCP's *Issue Alert* can be viewed at http://www.ccp.ca/issue_alerts/09-19-03_New_CCRA_policies.pdf.

Similarly, the Institute for Media, Policy and Civil Society (IMPACS) outlined its position on the new *Policy Statement* in a letter to the Minister of National Revenue, Elinor Caplan by writing that:

The draft represents an incremental improvement over the present administrative guidelines published by the CCRA. However, it is fundamentally flawed because it must comply with the poorly drafted and unworkable language in sections 149.1(6.1) and 149.1(6.2) of the Income Tax Act. In our view, amendment of these troublesome provisions is essential in order to resolve the current problems faced by Canadian charities in this field.

IMPACS' letter to the Minister is available at <http://www.impacs.org/files/caplan.pdf>.

J. CONCLUDING COMMENTS

CCRA's new *Policy Statement* represents an important and welcome expansion of what CCRA will consider to be acceptable political activities that a charity may engage in. The expansion in permitted political activities will provide charities with more ability to express their views and educate their members and the public on particular issues. At the same time, the voluntary sector continues to seek greater latitude in the way in which charities can conduct their affairs reflective of the fundamentals of democracy that govern Canada.

Notwithstanding the limitations of the *Policy Statement*, charities can take satisfaction in knowing that the administrative treatment of political activities by charities has now been broadened. The next step in order to provide charities with more meaningful participation in public policy discussions, will need to be at the legislative level, as there is not likely much more that CCRA can do in relation to broadening the role of charities in the political process under the *ITA* as currently worded.