

WHAT CHARITIES AND NFPs NEED TO KNOW FOR THE UPCOMING FEDERAL ELECTION

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A. INTRODUCTION

FOLLOWING the announcement by Prime Minister Justin Trudeau on August 15, 2021 calling a federal election, Canadians will be going to the polls on September 20, 2021. As the country prepares for the federal election, it is important that registered charities and not-for-profits (“NFPs”), also generally referred to as non-profit organizations for tax purposes, are aware of what they can and cannot do regarding advocacy, including “lobbying”, as well as what registered charities can do as part of the “public policy dialogue and development activities” (“PPDDAs”) regime that replaced the previous rules concerning political activities in 2018.

There are several pieces of legislation at the federal, provincial, and municipal levels, which regulate the election-related activities of charities and NFPs. These include the *Income Tax Act*’s (“ITA”) requirements for PPDDAs,¹ as well as the *Canada Elections Act*,² *Lobbying Act (Canada)*,³ *First Nations Elections Act*,⁴ and provincial lobbyist legislation, such as the *Lobbyists Registration Act, 1998 (Ontario)*,⁵ among others.⁶

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¹ RSC 1985, c 1 (5th Supp), s 149.1.

² SC 2000, c 9.

³ RSC 1985, c 44 (4th Supp).

⁴ SC 2014, c 5.

⁵ SO 1998, c 27.

⁶ For further information on provincial Lobbying Legislation, see: *Lobbyists Act (Alberta)*, SA 2007, c L-20.5; *Lobbyists Transparency Act (British Columbia)*, SBC 2001, c 42; *The Lobbyists Registration Act (Manitoba)*, SM 2008, c L178; *Lobbyists Registration Act (New Brunswick)*, RSNB 2014, c 11; *Lobbyist Registration Act (Newfoundland and Labrador)*, SNL 2004, c L-24.1; *Lobbyists’ Registration Act (Nova Scotia)*, SNS 2001, c 34; *Lobbyists Registration Act (Prince Edward Island)*, RSPEI 1988, c L-16.01; *Lobbying Transparency and Ethics Act (Québec)*, CQLR 2002, c T-11.011; *The Lobbyists Act (Saskatchewan)*, SS 2014, c L 27.01; *Lobbyists Registration Act (Yukon)*, SY 2018, c 13.

This *Charity & NFP Law Bulletin* provides a brief overview of the PPDDA regime and lobbying legislation that charities and NFPs need to be aware of in light of the ongoing election period.

B. CHARITIES AND PPDDAs

AS REPORTED in *Charity & NFP Law Bulletin No. 438*, changes to the ITA in 2018 disposed of references to “political activities”, including the quantitative limits on non-partisan political activities.⁷ In place of political activities, amendments to the ITA opened the doors for registered charities and registered Canadian amateur athletic associations (“RCAAs”) to devote 100% of their resources to PPDDAs while still meeting the requirement that all their resources are being devoted to charitable activities. NFPs other than RCAAs are not restricted by the PPDDA requirements.

The ITA does not define PPDDAs, but the CRA Guidance CG-027, *Public policy dialogue and development activities by charities* defines PPDDAs to “generally involve seeking to influence the laws, policies, or decisions of government, whether in Canada or a foreign country.”⁸ Charities may engage in PPDDAs if such activities further their stated charitable purpose(s). This means that a PPDDA must be connected to the charity’s stated charitable purpose and provide a benefit to the public. A charity must also ensure that its PPDDAs remain non-partisan and never directly or indirectly support or oppose a political party or candidate for public office. For full details on the CRA’s position concerning what constitutes direct or indirect support of a political party or candidate for public office, reference should be made to the CRA Guidance CG-027.

Charities must be particularly careful of the “indirect” prohibition, because the CRA may consider internal messaging, such as director’s meeting minutes or unmonitored comments on social media posts, to be sufficient to meet the threshold of indirect support or opposition.⁹

⁷ Terrance S. Carter and Ryan M. Prendergast, “PPDAs in, ‘Political Activities’ out: CRA’s New Draft Guidance on PPDDA Open for Comment”, *Charity & NFP Bulletin No. 438*, (31 January 2019), online: *Carters Professional Corporation* <<https://www.carters.ca/pub/bulletin/charity/2019/chylb438.pdf>>.

⁸ Canada Revenue Agency, “Public Policy Dialogue and Development Activities by Charities” (21 January 2019, revised 27 November 2020), online: *Government of Canada* <<http://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/public-policy-dialogue-development-activities.html>>.

⁹ Canada Revenue Agency, “Public Policy Dialogue and Development Activities by Charities” (21 January 2019, revised 27 November 2020), online: *Government of Canada* <<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/public-policy-dialogue-development-activities.html>>.

Charities also need to be aware that the CRA guidance on PPDDAs may allow activities which are regulated by other pieces of legislation. For example, the CRA guidance allows a charity to carry out PPDDAs that support or oppose a law, policy, or decision of government that a political party or candidate also supports or opposes.¹⁰ But if a charity does so, it may be engaging in an activity regulated by the *Canada Elections Act* (discussed in further detail below).

C. CHARITIES, NFPs AND LOBBYING LEGISLATION

REQUIREMENTS OTHER THAN those in the ITA also apply to regulate the lobbying activities of charities as well as NFPs. *Charity & NFP Law Bulletin No. 453* from the last federal election gives an introduction to the federal and provincial lobbying legislation, which has not substantially changed since 2019.¹¹ As *Bulletin No. 453* notes, there are nuanced differences between jurisdictions regarding which lobbying activities are allowed and in what circumstances. The Office of the Commissioner of Lobbying of Canada indicates that it considers lobbying to be:

communicating, with public office holders, for payment with regard to:

- the making, developing or amending of federal legislative proposals, bills or resolutions, regulations, policies or programs;
- the awarding of federal grants, contributions or other financial benefits; and
- the awarding of a federal government contract (for consultant lobbyists only).

In the case of consultant lobbyists, the *Lobbying Act* also defines lobbying as arranging a meeting between a public office holder and any other person.¹²

Therefore, lobbying legislation will only apply to paid lobbyists, not to volunteers or unpaid workers that may be working for a charity or NFP. For a further discussion regarding situations when organizations may be considered to be lobbyists, as well as information regarding thresholds for compliance, and filing requirements, reference should be made to *Charity & NFP Law Bulletin No. 453*.

¹⁰ *Ibid.*

¹¹ Ryan M Prendergast and Terrance S Carter, “Lobbying and Elections Legislation in Canada: An Introduction for Charities and Not-For-Profits”, *Charity & NFP Bulletin No. 453* (29 August 2019), online: *Carters Professional Corporation* <<https://www.carters.ca/pub/bulletin/charity/2019/chylb453.pdf>>.

¹² “Frequently Asked Questions” (26 July 2021), online: *Office of the Commissioner of Lobbying of Canada* <<https://www.lobbycanada.gc.ca/en/registration-and-compliance/frequently-asked-questions/>>.

D. CHARITIES, NFPs, AND THE *CANADA ELECTIONS ACT*

CHARITIES AND NFPs must also be aware of activities regulated by the *Canada Elections Act*, such as election advertising, partisan activities, and election surveys.¹³ Election advertising is particularly broad – it is considered to be any “transmission to the public” made by any means which takes a position on an issue with which a registered party or candidate is associated. Some activities are not included in this, such as sharing an editorial, debate, or commentary with the public. Also, individuals who are not being compensated may share their personal views on the Internet. Despite these allowances, charities and NFPs should take care to avoid engaging in election advertising. Similarly, partisan activities (which may include canvassing door-to-door and organizing rallies) which promote or oppose a political candidate or party are not allowed. Election surveys – where third parties such as charities or NFPs ask people about their voting intentions or about issues associated with a particular party or candidate – are also regulated under the *Canada Elections Act*.

If organizations spend \$500 or more engaging in election advertising, partisan activities, and election surveys, they will immediately need to register as a “third party” and comply with registered third party reporting requirements.¹⁴

“Third party” status means that charities and NFPs will need to avoid collusion. The *Canada Elections Act* prohibits collusion between third parties and registered parties, potential candidates, and associated persons.¹⁵ Collusion is “generally an agreement made between two or more people or groups to achieve an objective prohibited by law.”¹⁶ For example, collusion would be when a charity enters into an agreement with a candidate to distribute that candidate’s message to the charity’s contact list; collusion would not occur where a charity forwards that candidate’s message to the charity’s contact list absent an agreement to do so. The distinction between prohibited collusion and acceptable activities can be quite

¹³ *Canada Elections Act*, *supra* note 2 at ss 2(1), 349.

¹⁴ A third party is generally a group that wants to participate in or influence elections other than as a political party or candidate. See *Canada Elections Act*, *supra* note 2, s 349 “third party” (b).

All registered third parties must provide a campaign return detailing all inflows and outflows no later than four months after election day. There are also interim reports required during a general election when contributions for regulated activities or the regulated activities themselves exceed \$10,000.

See “Questions and Answers for Third Parties” (3 August, 2021), online: *Elections Canada* <https://www.elections.ca/content.aspx?section=pol&dir=thi&document=backgrounder&lang=e&mc_cid=a7fb30fdcf&mc_eid=fc51fa_d2ff>.

¹⁵ *Canada Elections Act*, *supra* note 2, ss 349.03(b), 349.2, 349.3, 351, 351.01.

¹⁶ *Political Financing Handbook for Third Parties, Financial Agents and Auditors – June 2021*, “9. Interacting with Other Regulated Entities” (14 July 2021), online: *Elections Canada*

<<https://www.elections.ca/content.aspx?section=pol&dir=thi/ec20227&document=p9&lang=e#a>>.

subtle, so charities and NFPs are encouraged to read some of the posted examples from Elections Canada.¹⁷

E. CONCLUSION

AS THERE ARE MANY different regimes regulating the activities of charities and NFPs with regard to political advocacy during elections, it is important that charities and NFPs be aware of what they are and are not permitted to do in order to act within the scope of the law. While this *Bulletin* has provided only a very brief overview, the resources linked and cited throughout this article provide further details and may be of help to organizations that wish to engage in some form of permitted political advocacy during the current federal election.

¹⁷ *Ibid.*