
**TRANSCRIPTS: ORAL SUBMISSION TO
AND QUESTION & ANSWER PERIOD
WITH THE SPECIAL SENATE COMMITTEE
ON THE CHARITABLE SECTOR**

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NOTE: The following is an unofficial transcript of the question and answer period with Terrance S. Carter, Professor Gloria DeSantis, and the Special Senate Committee. Official transcripts will be posted on the Special Senate Committee's website.

Oral Submission to and Question & Answer Period with the Special Senate Committee on the Charitable Sector

By Terrance S. Carter, Managing Partner of Carters Professional Corporation

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Mr. Carter: I would like to express my thanks to the Hon. Senators for the opportunity to appear today. As a matter of background, I have had the privilege of practising charity law for 38 years and, in the course of doing so, have found that Canadians are generous in spirit, time and resources in wanting to support the public good through private actions. I applaud the Committee members for the important work that they are doing in assisting the charitable sector in facilitating a passion for the purpose.

I have been asked to present today on the topic of political activities involving charities and, in particular, with regard to an article that I co-wrote in 2015, as well as an earlier paper that I co-authored and presented at NYU in 2010, copies of which have been given to you.

The topic of charities and political activities has had a long and complicated history. I will therefore try to provide a high-level overview of where we have been and where we are at present concerning political activities by charities, as well as some thoughts concerning the proposals contained in Bill C-86 on political activities that the Senate will be considering.

A key point to remember is that charity law is grounded on the concept of charitable purposes as articulated by the courts over many years. The means, or activities, by which a charity achieves its charitable purpose is not the focus. Rather the focus is on the purpose to be achieved through the activities undertaken by the charity.

The difficulty that the charitable sector has faced in this regard is that the *Income Tax Act* has been drafted over the years with a focus on charitable activities rather than charitable purposes. When the government introduced the existing provisions in the *Income Tax Act* in 1985 to deal with advocacy by charities, they used the term “political activities” without defining it, which has led to much confusion. As well, charities wanting to engage in political activities were required to comply with a “substantially all” test that has generally limited charities to expending no more than 10% of their resources on non-partisan political activities.

The 1985 amendments resulted in a long list of court cases in the 1990s restricting what charities could do in the area of political activities. This, in turn, led the CRA to develop its current Policy Statement on Political Activities in 2003. While not perfect, the Policy Statement did a good job in explaining what charities could and could not do as a result of the 1985 amendments.

This relative calm came to an end in January 2012 when the federal government at the time targeted “environmental and other radical groups” as threatening “to hijack the regulatory system”. This led to the 2012 Federal Budget that imposed sanctions on charities that exceeded the 10% limit on political activities, as well as provided the CRA with \$13 million in funding to undertake “education and compliance activities”. As a result, 54 political activity audits were subsequently conducted to the dismay of the charitable sector. The upshot of these political

activity audits left the charitable sector feeling vulnerable and confused about the role they are able to play in public policy dialogue in Canada.

This takes us to the present and a consideration of the recommendations in the Report of the Consultation Panel on the Political Activities of Charities that you are familiar with, which was released by the Minister of National Revenue in May 2017. Although the government has been slow to respond to the Report, the Minister of National Revenue and the Minister of Finance finally issued a joint statement on August 15, 2018. Notwithstanding the government's appeal of the July 2018 decision in *Canada Without Poverty*, the joint statement indicated that the government would be proceeding with removal of the quantitative limits on political activities in accordance with recommendation number 3 in the Report, provided that charities would still be required to have exclusively charitable purposes and that the prohibition on partisan political activities would remain.

This announcement led to draft legislative proposals being introduced on September 14, 2018, to remove the 10% quantitative limit on political activities. However, the Department of Finance also indicated that political activities would only be permitted if they were "ancillary and incidental" to the charitable purposes of the charity. This led to a backlash from the charitable sector that this approach would lead to the imposition of a new quantitative test based upon the vague common law notion of "ancillary and incidental" that would be inconsistent with the recommendation in the Report that charities should be allowed to participate in public policy dialogue without limitation.

As a result, on October 25, 2018, the Department of Finance included new proposed legislation dealing with political activities by charities in Bill C-86. The key aspect of the changes provides that charities can be involved in "public policy dialogue and development activities" without limitation. The issue before this Committee and the Senate as a whole is whether Bill C-86 has got it right or whether it goes too far. It is my opinion that Bill C-86 has got it right for the following four reasons:

1. Bill C-86 will avoid charities having to deal with complicated quantitative thresholds that would otherwise be required with either an "ancillary and incidental" common law test or a more generous "subordinate" test that some have suggested as an alternative approach. With either, the question would be how to define the threshold – is the limit to be 20%, 49% or 51%, for instance, and what is the threshold to be calculated on; is it a percentage of resources of the charity as is the case now, or something else, and, if so, how do you define resources; and what does a charity do when dealing with intangibles like volunteer time as a resource, and how do charities monetise their resources. The questions are many but the answers are few.
2. Bill C-86 makes it clear that a charity must be "constituted and operated exclusively for charitable purposes" and that "public policy dialogue and development activities" must be carried on in "furtherance of a charitable purpose". This means that a registered charity must be established to further one or more legitimate charitable purposes in accordance with the common law. As well, "public policy dialogue and development activities" can only be done without limitation if done "in support" of those charitable

purposes. The CRA will be able to provide guidance concerning what is meant by “furtherance” and “support” in their forthcoming publication on the legislation.

3. Similarly, since “public policy dialogue and development activities” is not defined in Bill C-86, what those terms mean in practice can also be clarified by the CRA, likely in accordance with the broad description of such terms as reflected in the Report of the Consultation Panel that extend well beyond simply undertaking political advocacy.
4. The approach reflective in Bill C-86 is consistent with what is taking place in other common law jurisdictions, such as England, Australia and New Zealand without concern being raised in those countries that lobby groups are being able to obtain charitable status. The suggestion that Bill C-86 might lead to the development of Super PACs in Canada as has happened south of the border in accordance with the *Citizens United* decision by the US Supreme Court is not a concern in Canada. This is because *Citizens United* was a decision dealing with election expenditure issues by a non-charity in the US, whereas, in Canada, charities are prohibited from being involved in any type of partisan political activities.

Based upon the above, I believe the proposals in Bill C-86 are a very positive step forward for the charitable sector and hopefully will be supported by the Senate when it considers the Bill in the days ahead. If the proposals in Bill C-86 are adopted, the charitable sector will have much greater flexibility in achieving their charitable purposes as well as clarity in what they can do, although, as a consequence, charity lawyers may unfortunately have much less to do.

The Chair: I’ve never known it to be a bad thing that lawyers have less to do. I’ve always considered that to be a success story.

Senator Omidvar: I take it from both your presentations that you both support the measures to lift limits on non-partisan public policy dialogue activities, whatever term we use.

Last week, we heard from a witness who was not in agreement with you and, in fact, raised a great deal of concern in his witness statement.

He gave an example. He talked about how lifting limits on public policy advocacy would allow charities to promote views that are polarizing and extremist. For example, he said there could a charity whose purpose is to advance education and research in immigration policy, but in reality they could be promoting white supremacist views, anti-Jewish views, anti-Muslim views, et cetera.

What’s your response to that?

Mr. Carter: I would be happy to respond.

Those examples miss the point that, when we’re talking about public policy dialogue and development, it’s to be done in support of and in furtherance of a charitable purpose.

The situation that you’ve described is not a charitable purpose. A charity has to meet the common law definition of what is charitable, and supporting white supremacist or other types of extreme situations like that are not reflective of what is charitable at common law.

Everything that's contained within Bill C-86 is focused on supporting and furthering the charitable purpose. The issue that has to be looked at is what the charitable purpose is. That is the issue.

Senator Omidvar: I understand that. But the hypothetical situation that was described is this organization has charitable objectives, it's been approved by the CRA and it then proceeds to go about doing its work in a way that is promoting extremist views.

How do you prevent this?

Mr. Carter: Well, the charities, doing charitable purposes still have to comply with the law. So if you have an organization that is promoting hatred, we have laws in Canada that deal with that. Charities are not exempt from that. They have to comply, like every other charity or Canadian organization.

Ms. DeSantis: I was going to add to that. The Criminal Code of Canada deals with hate speech, et cetera. So I think there's a dovetailing of different laws that organizations need to be held to account for.

Senator Omidvar: If I may make the point that was made last week — and I do not support that point of view, but I want your opinion on it — you're making an assumption, rightfully so, that all charities will abide by the law.

The question is around possibly the small number of charities that will use charitable status after they have gained it to engage in activities that are clearly off the limits. You don't agree with the previous witness. Tell us why, again.

Senator Duffy: Did you read it?

Mr. Carter: Yes, I did. I watched the testimony, so I saw both and I read both on it.

What we're talking about, again, is purpose and activity. Activities have to be in compliance with Canadian law, whether it be human rights legislation, Criminal Code provisions — whatever. So every charity, in achieving a charitable purpose, it has to comply with the law. It does not get a free pass because of what's contained within Bill C-86.

All Bill C-86 is saying is that in order achieve the purpose, it will be possible to do so in accordance with public policy dialogue and development activities.

If you go back to the recommendations contained in the Panel Report from May 2017, you'll see that it talks about more than just influencing the government, more than just a change of law. So there are many aspects of dialogue which charities can have in the process, and all of those should be seen in the broader context and in the broader spectrum of what constitutes public policy dialogue and development activities.

Senator Duffy: Just picking up on that, under charity law — and I'm not a lawyer and you are and maybe you, Professor DeSantis — they have these heads of charities. One of the aspects of how you define a charity is if it works for religious purposes, educational purposes or the relief of poverty.

Under education, could we not see, with this wide open proposal, a group that wants to educate Canadians about the benefits of gun ownership and how safe gun owners are and how it's something that everyone should be involved in? If we had lots of money coming in from outside pouring into an education program to teach people that guns were good, it's not hate speech, but it's a point of view.

Would that not concern you? And we could go on, whether we pick abortion or other topics on which most Canadians think the debate has been settled.

Mr. Carter: Thank you, senator, for the further question. Let me try to answer that.

I think we still have to separate the purpose and the activity. Bill C-86 is talking about broadening the tools or the activities that are available. Your question, which is a good question, is dealing with the head of charity, the purposes that have been reflected by the common law.

Is it possible to have an organization get charitable status that is attempting to educate the public on either the use of guns or gun control? There, you have to go back to what the courts have said concerning what constitutes advancement of education. The Supreme Court of Canada, in the 1999 decision on the Vancouver Women's Society, provided context for what advancement in education involves. It needs to have a structure and a purpose to it. It needs to have an ongoing process. That is the mark of what constitutes advancement of education.

What you would have to do is look to see whether the applicant was meeting the common law requirements for advancement of education. Do that process. The Canada Revenue Agency does a good job of it. They are careful in going through that process. Then you layer on top of that whether or not you can have activities that involve public policy dialogue and development. That is a totally different discussion. That is trying to provide more flexibility to the charitable sector to achieve their purpose. I think you need to separate the two.

Ms. DeSantis: I am also thinking about this whole notion around to what degree would this happen? At this point, there is the capacity for organizations to probably make their way and do this anyway. As we have noted, there are some who end up with their charitable status revoked as a result of some of the problems that end up coming to light. Those numbers aren't large, but there are procedures in place to deal with that.

Senator Duffy: I think senators look at what has happened south of the border, where millions of dollars are poured into "educating" the public on certain points of view. Basically, those organizations that carry those messages are controlled or financed by a few wealthy people who stay in the shadows while their paid staff go out and advocate for these positions.

Senators, certainly myself, would want to be assured that we weren't inadvertently Americanizing Canadian public discourse.

Mr. Carter: If I can speak to that, senator, thank you for that question. I made brief mention of the situation south of the border in my comments, but let me elaborate a bit further.

The decision *Citizen United* by the U.S. Supreme Court was dealing with an organization that was not a charity. It was a 501(c)(4), which is different. It is like a non-profit organization. It was

dealing with political expenditure limitations. It was not dealing with what a charity does. Charities in the U.S. have rules somewhat similar to ours.

With the situation in Canada, you could not have a Citizen United situation because we have had and will continue to have prohibition against partisan political activities. It is impossible for a charity right now, directly or indirectly, to support a political party or a candidate for office. The wording contained within Bill C-86 repeats that.

The situation that you have south of the border cannot, senator, be repeated here in Canada. Raising that as an example was not an appropriate comparison to the situation in Canada.

Senator Duffy: Is there an appropriate comparison?

Mr. Carter: Appropriate comparison dealing with what?

Senator Duffy: Non-profits or other advocacy groups.

Mr. Carter: Non-profit organizations are not registered charities. They do not have, at the present time, any limitations concerning what they can do in political activities. That is the situation with non-profit organizations. We are talking about registered charities. Bill C-86 is dealing with registered charities and the involvement of political activities.

Ms. DeSantis: To add to that, again, the question is an important one as we think about the diversity of potential responses to new legislation.

When I think about the organizations that I am familiar with in Saskatchewan, there are the provincially registered non-profits where these kinds of groups already exist. There are rural gun owner clubs like there are motocross clubs, et cetera. There are a whole variety of groups that don't even come close, they are not registered charities, and they already exist. To what extent do they sound like some of the organizations south of the border? I don't know. I don't know enough about them because my focus is on the human services sector.

For provincially registered non-profits, the potential is already there for that to be going on.

(French follows — Senator Maltais: Madame DeSantis, merci d'avoir présenté...)

(après anglais - Mme DeSantis : ...that to be going on.)

Le sénateur Maltais: Madame DeSantis, vous avez cité dans votre mémoire une dame Blackwell. Qui était cette dame?

(anglais suit - Mme DeSantis : Angela Glover Blackwell wrote an article for Stanford...)

(Following French — Senator Maltais — Qui était cette madame?)

Ms. DeSantis: Angela Glover Blackwell wrote an article for the Stanford Social Innovation Review that focuses on a model or a way of thinking a bit about the value-added that the charitable sector offers. She talks about this curb-cut effect, about sidewalks and how it is easier

for people with disabilities to get around communities but, by extension, all kinds of other folks benefit.

(French follows — Senator Maltais: Je ne vous parlerai pas des OSBL...)

(après anglais - Mme DeSantis : ...of other folks benefit.)

Le sénateur Maltais: Je ne vous parlerai pas des OSBL parce que cela ne m'intéresse pas. Cependant, lorsqu'on parle d'organismes charitables, cela touche des êtres humains. Lors de votre étude, vous avez rencontré 19 ou 20 groupes en Saskatchewan, quel est le principal problème que vous avez analysé? Ce sont des gens qui se trouvaient sur le terrain tous les jours, ils rencontraient des personnes âgées, des sans-abri, des gens dans le besoin. Que retirez-vous de cette expérience avec les êtres humains et non pas l'aspect financier?

(anglais suit - Mme DeSantis : To give you a bit of a sense...)

(Following French — Senator Maltais — pas l'aspect financier?)

Ms. DeSantis: To give you a bit of a sense of some of the organizations' issues, for sure they were involved in anti-poverty and housing work, et cetera; work on the domestic violence act; the development of new domestic violence courts and advocating for a separate court system; supportive housing for adults with cognitive disabilities; working to advocate at the Ministry of Justice for First Nations spirituality in correctional institutions; and city-based anti-violence bylaws, so quite a variety of things. I think that also speaks to this notion that the work these organizations do cross different boundaries. People work together on different things. Some of us refer to that as cross-fertilization of issues because if we are talking about homelessness, housing and poverty, they often go together.

These charities support each other in their work. Sometimes collaboration like this around advocacy is frowned upon, but funders are often encouraging charities to work together, so it is an interesting contradiction sometimes. They work together to advance these issues using a variety of different approaches. Some of them are visible in the media right through to quiet conversations in small towns. Some of the advocacy work I looked at actually had people talking to each other in grocery stores. That happens in small towns.

Questions about whether or not we should be talking with people in that way is interesting.

(French follows — Senator Maltais: Madame DeSantis, si vous me le...)

(après anglais - Mme DeSantis : ...in that way is interesting.)

Le sénateur Maltais: Madame DeSantis, si vous me le permettez, je dois dire que je ne crois pas du tout au corporatisme charitable. Toutefois, je crois aux gens qui font la charité. Vous avez rencontré beaucoup de gens et je vous en félicite, mais outre l'aspect financier, quels sont leurs besoins?

(anglais suit - Mme DeSantis : Many of the policies...)

(Following French — Senator Maltais — quels sont leurs besoins?)

Ms. DeSantis: Many of the policies and programs that I just mentioned were fundamental changes they needed to see changed in order to make people's lives better. For example, the one around First Nations spirituality in correctional facilities, the general assumption is that we should have traditional spiritual healing in facilities; and yet, what was happening is many Indigenous peoples actually grew up in Christianity. If they ended up in a correctional institution, the assumption was that they should have traditional healing. So there was advocacy work to get the Minister of Justice to change that policy so that it was more open so that people who were in these facilities had access to what they needed. So that is a policy change within the Ministry of Justice.

That is an example that it touches real lives, it has a huge impact on how people's lives unfold. Similar kinds of things with regard to the social assistance policy area. There was a regressive welfare system in Saskatchewan and there was a need to separate out people with disabilities from people who are considered employable, because they felt like they were being treated badly and they didn't need to have their disability constantly questioned.

Senator R. Black: Just out of curiosity, under the current existing income tax rules, do you have any idea percentage-wise how many charities might currently exceed or even have expressed a desire to exceed that 10 per cent rule? Any ideas? Are we talking a lot? Are we talking a few? Do we even know?

Mr. Carter: I don't have statistics. What I can tell you is what I know, based upon discussions and what I have read from CRA. The numbers are not a lot that we report political activities on their T3010. Again, the numbers are somewhere around maybe 500, 700, in that range, out of 86,000 charities.

For those that do report that they are carrying on political activities, they are obviously wanting to make sure that they are staying under the 10 per cent limit.

What I find is that charities being worried about that 10 per cent resource limit become less interested in participating in public dialogue, policy dialogue because of the rules that are there. They are worried about how do you calculate that 10 per cent? As a result, there is a holdback with getting involved in discussions where charities should be participating.

Senator R. Black: Thank you.

Ms. DeSantis: To add to that, I had originally looked at trying to pull out the political activities data when I was working on my PhD, and I think I arrived at a number of something like, focusing specifically on Saskatchewan charities, which the number at that time was around 4800 organizations, only 3 per cent of them actually ticked off the box of political activities. That doesn't even get into talking about beyond the 10 per cent or whatever. So that is fascinating.

When we look at Imagine Canada and the research that David Lasby does, similar kind of thing, where they actually went out and interviewed people, CEOs and managers, about the advocacy work they do. The number was closer to I think two-thirds of them actually engaged in this thing called advocacy. Again, for sure, the focus is on non-partisan work.

Quite frankly, for me when I finished doing this research, the fact that there is such a fluid process whereby it is really hard to discern whether or not, okay, did this meeting that took place over here, was that the beginning or was it actually three meetings ago when a coalition of people first started talking about getting together? So it is really hard. This is this thing about quantifying, whether or not we are talking about a 10 per cent rule or an incidental number or whatever it may be.

Personal experience for sure, the same. As we actually kind of count our resources, where are the beginning and ending lines in a lot of this work? Many organizations just opt to use different language as I alluded to. They are not even thinking about political activities in the way that we may have current legislation that exists. That is a fascinating thing to think about.

When we set out to do this book, we did not find any studies that systematically looked for systemic studies on exactly that around — just people don't seem to be able to quantify that perspective.

Mr. Carter: Just to add on to the comments. In the paper that I referred to in 2010, the conclusion I came to was political activities were a bit of a sleeper issue for charities. If you worked through what was contained within the CRA policy statement, there actually was a fair bit of flexibility for charities to participate in dialogue. The difficulty is that the definition of “partisan political activities,” or at least the prohibition on that, and the 10 per cent rule in the Income Tax Act from 1985 created a lot of confusion and is still there. As a result, in 2012, when there was a focus by the government to crack down on environmental charities, then they were able to use those tools in the Act to put a number of charities through a very extensive political activity audit.

This is an opportunity collectively for Canada now to get up to speed with the reality of what there needs to be in place to engage charities in a public policy dialogue. This is a good thing for Canada. This is a good thing for charities. This is a huge turning point. It is very exciting, frankly, I think for this discussion to take place now because of the Senate committee and because the legislation is going through. This will be a historic opportunity for the government today to be able to empower charities to participate in a meaningful way, a full way, in public policy dialogue.

Senator R. Black: Thank you.

The Chair: It seems to me that so many times charities have to engage with governments, whether it be municipal, provincial or federal, as an ordinary way of doing business. Do you count that interaction with government, or with politicians, as political activity? The definition of political activity, I as a political operative define political activity differently than perhaps someone in CRA does. I always use the example when I as executive director of the kidney foundation. In those days we didn't have organ donor cards on driver's licenses in Nova Scotia. We lobbied government. We met with politicians. We twisted arms. We presented briefs, et cetera, to people to have that changed. As matter of fact, we were successful. As a sidebar, the interesting person that we had to convince was the Minister of Transport, who now happens to be a colleague of mine in the Senate.

We were being very political. There were Conservatives and Liberals in that particular time. The Conservatives were in power. If it was going to change, we needed to talk to Conservatives.

Mr. Carter: Senator, if I could respond to that. What you have just described shows the confusion there is concerning political activities. Under the 2003 Guidance, what you have described in making representation to government to change the law is permitted but not as a political activity, it is permitted as a charitable activity. It is specifically provided for in the Guidance. However, when you add on to that a call to action, to march on Parliament Hill, to ask individuals to write in to their MP that the addition of a call to action turns what has been labelled as a charitable activity into a political activity. When you get into a political activity, then you have to watch your P's and Q's because you have got a 10 per cent resource count.

The point is it is confusing. We need to make it simpler. We need to make it easier for charities to do the work that they are doing. Sometimes in order to achieve a charitable purpose, you have to change the law.

William Wilberforce, with the abolition of slavery on behalf of the churches in England, had to change the law. If we are going to be trying to prohibit human trafficking, we have to change the law. Sometimes to achieve the charitable purpose requires that we have to change the law. Charities need to be able to speak to that with clarity and without fear that they are going to be facing serious compliance issues with Canada Revenue Agency.

This is not a problem with the regulator. The Canada Revenue Agency is simply doing what they are told to do under legislation. This is why the legislation needs to change in order to allow the charities to achieve their purpose.

Senator Omidvar: I have so many questions that I am challenged to try and get them in, but I want to pursue the issue of indirect partisanship. This is when a charity may hold a position that is similar or becomes similar to that of a political party.

Let me give you an example. The Fraser Institute, which is a legitimate charity, is advocating for lower taxes. That may be aligned to a political party or Canada Without Poverty, which is maybe at the polar opposite end, may be advocating for higher taxes, and that may be aligned to a political party.

Ms. DeSantis, if you could help us clarify. Does Bill C-86 deal sufficiently with helping charities figure out if they will be indirectly partisan, or will that be contained in the guidelines of the CRA?

Ms. DeSantis: At this point, I imagine it needs to be clarified further in the guidelines. I am thinking about the way that Bill C-86 is, or my reading of it. It does free organizations, which is, just to reiterate the previous comment. I think that's what is needed, because right now it's way too complex for organizations. So whether or not you are the Fraser Institute or Canada Without Poverty, both are completely legitimate organizations to do as they see fit.

What I have seen in my research is that organizations — and this is the thing about how norms are shifting with these kinds of approaches to advocacy in that they appear to be becoming

more sophisticated and clear about what is doable or not doable when it comes to directly connecting, because you are talking about indirect political support, if you will.

What I am seeing is that there is a lot of this work already rolling out in communities. I wonder if our legislation has even caught up to it yet. By the nature of the way practice is unfolding is my point. The organizations are already doing a lot of this. The organizations that are actively engaged in front line legislative change are figuring out ways to move things forward and not even ending up on the radar screen, if you will, of CRA.

Both those organizations that you just referred to are prime examples of organizations that have figured it out.

Whether or not we are talking about these fluid processes where the question about the beginning and end to actually engaging in the previously defined “political activity” or not is interesting.

Bill C-86 moves us, in a way, forward. It relieves pressure on other ends of things when it comes to reporting. As soon as you say “yes” and tick off the box with “political activities,” then you are required to explain things, which is why a lot of organizations aren’t ticking that box.

Mr. Carter: To provide some clarity, the prohibition of partisan political activities in Bill C-86 is the same as has been in place since 1985. That is not changing.

The issue is whether or not it should refer to direct or indirect support of a political party or a candidate for office.

The report that came from the panel reviewing political activities recommended that there be removal of the reference to direct or indirect, because the concern was that it could be subjective interpretation. To be fair, Canada Revenue Agency has put out a number of publications and different policies that have tried to clarify the matter, and they have done a pretty good job.

If you leave it to the regulator, I think they will do a fair job. Would it be helpful to remove direct or indirect? I think there is merit to that. Either way, I think it can be managed because, for example, CRA, in dealing with what is problematic, if you have a charity that has a policy and that policy is the same as a political party, the fact that the charity is supporting a policy that happens to be the same as a political party is not problematic. However, if the charity was to say, “We support the policy, therefore, we support the party,” then you’ve stepped over the line.

A lot of it is common sense. My preference would be not to have reference to direct or indirect. At the same time, I think the regulator has done a fairly good job. They can always do better, mind you, but I wouldn’t be losing a lot of sleep over that one in particular.

The Chair: One of my concerns, Mr. Carter, is as we burden the CRA with more regulations, that is where we will get tripped up, by putting in words and people in the future interpreting it. They can’t read the minds of the writers of the legislation or the politicians who pass the legislation at any one time. We have to be careful how to word it so that it can’t be toyed with in the future.

Mr. Carter: Words mean something. The addition of the words “direct or indirect” compared to simply “you can’t support political parties” means something. Could it be better by removing the words? Yes, it could.

Senator Omidvar: Mr. Carter, you talked about this legislation being a turning point not just for charities but for public discourse in Canada.

We were warned last week that this legislation would open the floodgates of either right-wing money or left-wing money coming into the public sphere, creating a cacophony and noise. My question is not about the legislation but in your belief in our system and whether we have the resiliency to withstand these polarizing pushes and pulls on our deliberations.

Mr. Carter: The answer is, instead of my speculation or someone else’s speculation of what could be, if we take a look at the examples of what has happened over the last 10 years in the U.K., Australia and New Zealand, all common law jurisdictions that have allowed charities to be involved in unlimited involvement in political discourse, they have not encountered what you have just described. It has not been the experience in those jurisdictions.

Again, because we are dealing with specific words, the words are public policy dialogue and development in support of a charitable purpose. Canada Revenue Agency will have an opportunity to be able to explain what support means. What does furtherance of the charitable purpose mean? What do those particular terms of public policy dialogue and development mean? It will provide an opportunity for the regulator to provide some context, because at the end of the day, everything has to be focused on what? Achieving the purpose. These are only talking about activity, a means to an end.

Senator Omidvar: Thank you.

The Chair: Mr. Carter and Ms. DeSantis, thank you very much. This has been very helpful. I want to thank you for being here. I also want to thank you for your patience. Our viewers will not see this, but the start of this session was well over two hours late because of the goings-on in the Senate Chamber that required us to be there. Unlike the House of Commons, our committees are not allowed to sit when the Senate is sitting. That is why, when you watch Senate proceedings when they start to be broadcast in another two months, you will notice there are people in the seats in the Senate when debates are going on, whereas sometimes in the House of Commons, there are not as many because they are out at committee meetings.

I would encourage both of you that as you watch our proceedings, if you see that we have missed something, feel free to let us know via the clerk. If when you go home you say, “I should have mentioned this or that,” please feel free to do that as well, again via the clerk. He will then get it to us for our consideration, and it will be part of our deliberations. Thank you.

(The committee adjourned.)