

The CRA Political Activity Consultations: Context and Recommendations for Charities and Nonprofits

December 2016



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Imagine  Canada



ONTARIO
NONPROFIT
NETWORK

Your presenters

- Bill Schaper, Director of Public Policy at Imagine Canada
- Richard Keith, Program Coordinator at Environmental Defence
- Cathy Taylor, Executive Director of Ontario Nonprofit Network

Outline

1. Context, Consultation, Recommendations
2. Case study of Environmental Defence
3. Why does reform matter for all charities and nonprofits?
4. What can your organization do?

*Context,
Consultation,
Recommendations*

Bill Schaper, Imagine Canada



CRA Policy Guidance

6.2 What are political activities?

A charity may take part in political activities if they are non-partisan and connected and subordinate to the charity's purposes.

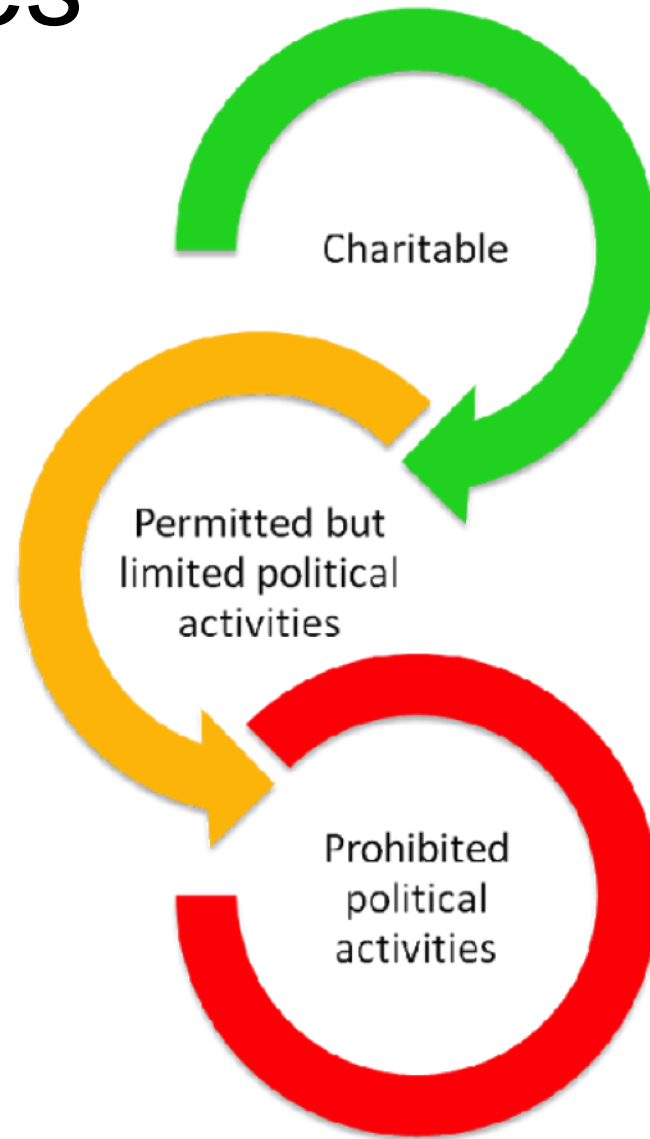
We presume an activity to be political if a charity:

1. explicitly communicates a call to [political action](#) (that is, 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)
2. 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
3. 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

6.1 What are prohibited activities?

A charity may not take part in an illegal activity or a partisan political activity. A partisan political activity is one that involves direct or indirect support of, or opposition to, any political party or candidate for public office.

Activities



2012 Federal Budget

- Political activity audit program
- New reporting rules for foundations, grantmakers
- More detailed reporting requirements

2015 Federal Election

“We will allow charities to do their work on behalf of Canadians free from political harassment, and will modernize the rules governing the charitable and not-for-profit sectors. This will include clarifying the rules governing ‘political activity,’ with an understanding that charities make an important contribution to public debate and public policy. A new legislative framework to strengthen the sector will emerge from this process.”

Mandate letter – National Revenue, Finance

“Allow charities to do their work on behalf of Canadians free from political harassment, and modernize the rules governing the charitable and not-for-profit sectors, working with the Minister of Finance. This will include clarifying the rules governing ‘political activity,’ with an understanding that charities make an important contribution to public debate and public policy. A new legislative framework to strengthen the sector will emerge from this process.”

Mandate letter - Justice

“Work with the Ministers of Finance and National Revenue to develop a modernized regulatory and legal framework governing the Charitable and Not-for-Profit sectors.”

Mandate letter – Employment, Workforce and Labour

“Work with the Minister of Families, Children and Social Development to develop a Social Innovation and Social Finance strategy.”

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CRA consultations

- December 14 submission deadline
- Five-person ministerial advisory panel
- Questions include:
 - Is the existing guidance clear? How to improve existing guidance? How to improve education and information? Are there other issues that should be addressed?

Imagine Canada process

Calgary, spring 2016: “Call to Arms” event (co-hosted by the Muttart Foundation and Max Bell Foundation)

- Broad consensus that legislative change is the end goal
- Consensus that sector needs to aspire to consistent core messages

Working group to provide advice and feedback

- 33 organizations from across Canada
 - Operating charities and granting organizations
 - Representation from the various subsectors

Imagine Canada recommendations

- *Income Tax Act* amendment
 - Focus on purposes rather than activities
 - Would have impacts beyond political activity
 - Laying down a marker on further regulatory/legislative reform
- Changes/clarifications to guidance
 - “Indirectly” partisan clarification
 - Research
 - Terminology
- Education and outreach

Case study:
Environmental Defence

Richard Keith, Environmental Defence



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Environmental Defence

- Medium-sized national environmental charity (approximately 30 staff)
- Charitable status granted in 1984
- Program areas include: water conservation, Blue Flag, toxic chemicals, livable communities, climate and clean economy
- Charitable purpose revised and re-approved in 2006

CRA audit



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- Began as a routine audit in 2011
- By end of 2011, we had received verbal confirmation from CRA staff that audit was fine and that we would be receiving written notice soon
- Did not hear back from CRA for seven months, file transferred from regional office to Ottawa
- July, 2012: received intention to revoke



The groups "threaten to hijack our regulatory system to achieve their radical ideological agenda," stack hearings with people who will delay or kill "good projects," attract "jet-setting" celebrities and use funding from "**foreign special interest groups.**"

January 9, 2012.

- \$13.4 million for political audits allocated by former federal government
- Announced at same time as public attacks on some charities by government
- Co-ordinated with complaints to CRA made by legal firms representing “Ethical Oil”



Reasons for Revocation

Four reasons for revocation stated by CRA:

- Charitable purpose not acceptable
- Conducting partisan political activities
- Conducting non-charitable activities
 - No public benefit
- Conducting non-charitable activities
 - Political



Charitable Purpose

The current stated purpose of EDC is:

“To encourage and support, in the public interest, the conservation of the natural resources of Canada and to promote the prevention of, and to discourage, pollution of the environment which is in any way detrimental to the public.”



Charitable Purpose (cont'd)

CRA Comment:

“The purpose of EDC is broadly worded. Consequently, it does not define the scope of activities engaged in by the organization since such broad wording could allow for the undertaking of non-charitable activities and the delivery of non-charitable benefits. Phrases such as “to encourage and support, in the public interest, the conservation of the natural resources” and “to promote the prevention of, and to discourage, pollution of the environment” do not confine EDC to charitable activities that directly further environmental protection.”

Partisan

Hats for Kate



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Non-Charitable

Just Beautiful/Toxic Nation Campaign

Call to action: Encouraging individuals to sign a template petition to the Minister of Health suggesting changes to cosmetic law.

CRA comment: The Just Beautiful campaign aims to change Canada's cosmetic laws. It has not been demonstrated to uphold an environmental law for the public benefit or remedy a threat to the environment, and would be political.



Non-Charitable

SERA campaign

SERA is a not for profit organization that aims to create, administer and promote widespread support for certification of responsibly sourced construction material.

CRA comment: While the organization's intent may fit within its charitable objective, the Organization has not demonstrated how these would deliver a charitable benefit as it does not uphold an environmental law, nor clear and tangible environmental improvement.



Non-Charitable

Exposing the Tar Sands Campaign

CRA comment:

Although the Organization's response stated this is a public education campaign meant to inform the public about pollution caused as a result of the oil sands development and exploitation, simply providing information on a website does not directly further any charitable purpose related to environmental protection. In addition, the research undertaken does not appear to be balanced or well-reasoned.

The Smoking Analogy



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- Smoking was used as an analogy to illustrate CRA interpretation of what charities can and cannot say about public policy.
- According to the analogy, in the 1970s it would have been illegal for charities to speak out about the dangers of smoking in school and on airplanes because these dangers had not yet been put into law.
- Now that governments have legislated restrictions on smoking in public places, charities are allowed to speak up about it.
- *What this means is that charities are not allowed to speak freely about issues until the government addresses the issue.*

ED's take



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- Reform must be an *Income Tax Act* amendment, not a policy guidance clarification or regulatory change
- We support a legislative amendment to focus on purposes rather than activities, because it:
 - Ends the “10% rule” on political activity and CRA’s second-guessing of research and programs
 - Ends political audit harassment so it can’t happen again
 - Protects free speech of all charities and NFPs
 - Allows for robust dialogue on how Canadian laws and policies should change – with charities and NFPs at the table
 - Creates a consistent, predictable, and fair regulatory environment – which any organization needs to thrive
 - Removes restrictions not faced by for-profit enterprises

Why reform matters for the whole nonprofit sector

Cathy Taylor,
Ontario Nonprofit Network



Charities and nonprofits and public policy

- Charities ***and*** nonprofits play a critical role in shaping policy and laws that impact their work with the people and communities they serve. “Political activity” is part of this role.
- Promote and advocate for public benefit
 - Expertise and on-the-ground knowledge that government can lack
- Important for provincial networks and associations

Charities' impact

Government services, laws and regulations shaped by charities, including:

- Child welfare services
- Integration of people with disabilities into community life
- Hospices for end of life care
- Reductions in acid rain
- Laws against impaired driving

Canadians' views on charities*

- 94% of Canadians agree that charities should speak out on issues of public concern
- 92% agree charities should use research results to support a message
- 91% agree charities should meet with government ministers or senior civil servants

*Source: *Talking About Charities 2013: Canadians' Opinions on Charities and Issues Affecting Charities* (Muttart Foundation)

How does Canada compare with other countries?

Canada is lagging behind other jurisdictions.

Many have enacted or updated legislation that changes the rules governing political activities:

- UK: charities are permitted to engage in political activity
- New Zealand: expanded definition of charitable purpose to include political activity

Nonprofit sector and advocacy- Ontario context

Recent legislation in Ontario: Lobbyists
Registration Act, Election Finance Statute Act

- [6 Things You Need to Know about the Lobbyists
Registration Act](#)
- [A New Advocacy Chill? The Election Finances Act](#)

ONN's take

- Support Imagine Canada's recommendations
- Amend Income Tax Act to restore the emphasis on charitable purposes, not regulate how charities achieve those purposes
- Don't waste time revising current definition

Potential for additional impact on other sector policy issues

Spillover effects

Rethinking of regulations that govern charities' business activities, like social enterprise and other activities generating revenue

*What can your
organization do?*

What you can do

1. Make a submission supporting Imagine Canada's recommendations
 - cc Min. of Finance, Min. of National Revenue, PMO, MP
 - Template on Imagine Canada website
2. Spread the word to other organizations
3. Engage your supporters
(www.protectcanadiansfreespeech.ca)
4. Engage in other activities in the new year (e.g. engage high profile validators, government relations)

Next steps

December 14, 2016: Deadline for written submissions and public input

March, 2017: Report of the expert panel (to the Minister)

2017: Tabling of a Bill?

Resources

Imagine Canada

[Call to Action](#)

Environmental Defence and partners

www.protectcanadiansfreespeech.ca

[ONN Take Action page](#)

[Nonprofits Step Up: The role of nonprofits in democracy \(Infographic\)](#)

Stay connected!

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