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Charities

Policy



Policy Statement

Political Activities

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1. Objective of this Policy Statement

This policy statement replaces Information Circular 87-1, *Registered Charities — Ancillary and Incidental Political Activities*, and provides information for registered charities on political activities and allowable limits under the *Income Tax Act* (the *Act*). It also provides a framework that explains how we distinguish between political and charitable activities. In addition, it seeks to clarify the extent to which charities can usefully contribute to the development of public policy under the existing law.

The guidance in this policy statement is based on subsections 149.1(6.1) and 149.1(6.2) of the *Act* and on general principles of charity law and court decisions that define what is charitable and what is political. This information applies to **all** registered charities.

2. Some context

Two years ago the Government of Canada and the voluntary sector launched a joint endeavour, called the Voluntary Sector Initiative, to better serve Canadians by enhancing the relationship between both parties and strengthening the capacity of the voluntary sector. The Reference Group of Ministers on the Voluntary Sector provided oversight on behalf of the Government of Canada. A Voluntary Sector Steering Group performed a parallel function on behalf of the voluntary sector.

A key element of the initiative was the development of an *Accord Between the Government of Canada and the Voluntary Sector* (the [Accord](#)) that was signed in December 2001. The *Accord* sets out the common values, principles, and commitments that will shape the future practices of both the sector and the Federal Government. In accordance with the *Accord's* provisions, a [Code of Good Practice on Policy Dialogue](#) was developed to implement the *Accord* commitments. This code is a tool for deepening the dialogue between the sector and the government in the public policy process. It states:

The Government of Canada recognizes the need to engage the voluntary sector in open, informed and sustained dialogue in order that the sector may contribute its experience, expertise, knowledge and ideas in developing better public policies and in the design and delivery of programs.[\[Footnote 1\]](#)

The *Accord* recognizes that Canadian society has been enriched by the invaluable contribution charities have made in developing social capital and social cohesion. By working with communities at the grassroots level, charities are trusted by and understand the needs of the people they serve. This is important work that engages individuals and communities in shaping and creating a more inclusive society.

Through their dedicated delivery of essential programs, many charities have acquired a wealth of knowledge about how government policies affect people's lives. Charities are well placed to study, assess, and comment on those government policies. Canadians benefit from the efforts of charities and the practical, innovative ways they use to resolve complex issues related to delivering social services. Beyond service delivery, their expertise is also a vital source of information for governments to help guide policy decisions. It is therefore essential that charities continue to offer their direct knowledge of social issues to public policy debates.

Much attention has been paid recently to the question of registered charities and their involvement in political activity. Many in the voluntary sector felt that the old interpretation of the *Act* was overly restrictive and did not allow a registered charity to inform the public about issues of concern or to participate adequately in the process of developing public policy. Consequently, we reviewed recent case law related to political activity and the *Act* and discussed it internally, and with people from the voluntary sector. As a result of this review we have come to the following conclusions.

In order to serve the public, the information charities give on public policy issues should be presented in an informative, accurate, and [well-reasoned](#) way to enable society to decide for itself what position to take.

In addition, when charities choose to contribute to public policy debates, they are required by law to do so in a way that considers certain constraints. A charity cannot be

established with the aim of furthering or opposing the interests of a political party, [elected representative](#), or candidate for public office. Also, a charity cannot be formed to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country. However, charities may choose to advance their charitable purposes by taking part in [political activities](#) if they are [connected](#) and [subordinate](#) to those purposes.

We have narrowed what we consider political activities to no longer include many attempts to inform public opinion on an issue. This change in policy should enable charities to more effectively carry out their public awareness programs.

3. Charities in Canada

In Canada, charities can become registered by meeting certain requirements of the *Act* and common law. Once registered, a charity pays no income tax and is able to issue tax receipts to donors that are then used for non-refundable tax credits or deductions.

Under the *Act*, a registered charity must devote all of its resources to charitable purposes and activities. Notwithstanding this general rule the *Act* allows a small amount of resources to be used for political activity. This policy statement focuses on resources used for political activity and the limits imposed by the law. It also uses plain language to discuss legal concepts relating to charities. Therefore, you should use the information in this policy statement as a **general guide only**. In cases of appeal, a decision about an organization's activities will ultimately depend on how a court interprets the facts of a specific situation.

4. The difference between political purposes and charitable purposes

All registered charities are required by law to have exclusively charitable purposes. As the *Act* does not define what is charitable, we look to the common law for both a definition of charity in its legal sense as well as the principles to guide us in applying that definition. [\[Footnote 2\]](#) The formal objectives or goals of a charity must be set out in its [governing documents](#).

Under the *Act* and common law, an organization established for a [political purpose](#) cannot be a charity. The courts have determined political purposes to be those that seek 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.

The main reason why the courts rule out political purposes for charities is a result of the requirement that a purpose is only charitable if it generates a public benefit. A political purpose, such as seeking a ban on deer hunting, requires a charity to enter into a debate about whether such a ban is good, rather than providing or working towards an accepted public benefit.

It also means that in order to assess the public benefit of a political purpose, a court would have to take sides in a political debate. In Canada, political issues are for Parliament to decide, and the courts are reluctant to encroach on this sovereign authority (other than when a constitutional issue arises).[\[Footnote 3\]](#)

It is important to remember that although the stated purposes of an organization are the obvious source of reference of whether or not an organization is constituted exclusively for charitable purposes, it is not the sole indicator. The CCRA also takes into account the activities that the organization is currently engaged in as a potential indicator of whether it has since adopted other purposes.[\[Footnote 4\]](#)

5. Unstated purposes and devoting more than the allowable maximum of a charity's total resources to political activities

When a charity focuses substantially on one particular charitable activity so that it is no longer subordinate to one of its stated purposes, we may question the legitimacy of the activity at law. This is because when an activity is no longer subordinate to a charity's purposes, it may indicate that the charity is engaging in an activity outside its stated objects, or pursuing an unstated:

- collateral political purpose; or
- non-charitable purpose; or
- charitable purpose.[\[Footnote 5\]](#)

In such circumstances, rather than just considering the explicit purpose of the activity in question, we will consider all the facts and determine whether it is reasonable to conclude that the charity is focusing substantially on a particular activity for an unstated political purpose.[\[Footnote 6\]](#)

In addition, when a charity's purposes are clearly charitable, but it devotes more than the allowable maximum of its resources to political activities, we may consider that the charity is operating to achieve a political objective that is not stated in its governing documents, and it will consequently risk revocation.

Finally, it is important to bear in mind that some purposes can only be achieved through political intervention and legislative change. For example, a purpose such as improving the environment by reducing the sulphur content of gasoline would very likely require changes in government regulations. Generally, any purpose that suggests convincing or needing people to act in a certain way and which is contingent upon a change to law or government policy (e.g., "the abolition of" or "the total suppression of animal experimentation") is a political purpose.

6. What kinds of activities can a charity participate in?

Although an organization established for a political purpose cannot be registered as a charity, a registered charity may take part in some political activities as a way of furthering its charitable purpose(s). However, charities do not have complete freedom to support any cause they like. Special legal rules apply to charities because of their charitable and tax statuses.

A charity wishing to carry out activities that go beyond the limits permitted by the *Act* may establish a separate and distinct organization that will not be a registered charity and therefore not able to issue charitable receipts. No limitations are placed on the political activities of such a body; it has complete freedom within the law to support any cause it chooses. But the charity cannot fund that separate organization or make resources available to it for any otherwise impermissible political activity.

For the purposes of this policy, a charity's activities can be divided into three separate types:

1. prohibited activities
2. political activities
3. charitable activities

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.

When a political party or candidate for public office supports a policy that is also supported by a charity, the charity is not prevented from promoting this policy. However, a charity in this situation must not directly or indirectly support the political party or candidate for public office. This means that a charity may make the public aware of its position on an issue provided:

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

In addition, a charity in this situation is also subject to the restrictions this guidance places on non-partisan political activity, public awareness campaigns and communications with an elected representative or [public official](#).

Finally, a charity may provide information to its supporters or the public on how **all** the Members of Parliament or the legislature of a province, territory or municipal council voted on an issue connected with the charity's purpose. However, a charity must not single out the voting pattern on an issue of any one elected representative or political party.

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](#) (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);
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; or
 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.

7. When is communication a charitable activity?

In carrying out their mandate, registered charities often have to communicate with the public or public officials. The following sections outline when such communication activities are charitable and when they are not.

7.1 Public awareness campaigns

A charity's public awareness campaigns aim to give useful knowledge to the public to enable them to make decisions about the work a charity does or an issue related to that work.

When a registered charity seeks to foster public awareness about its work or an issue related to that work, it is presumed to be taking part in a charitable activity as long as the activity is connected and subordinate to the charity's purpose. In addition, the activity should be based on a position that is well-reasoned, rather than information the charity knows or ought to know is false, inaccurate, or misleading. Finally, although the CCRA acknowledges that material produced in support of a public awareness campaign may have some emotional content, it would be unacceptable for a charity to undertake an activity using primarily emotive material.

To ensure that the activity is not considered a political activity, see the guidelines in [section 6.2 above](#).

Note: Organizations that provide information or promote a point of view, as their sole or main activity cannot qualify as a charity under the head of advancement of education. There is an important difference between a charity educating people in a way that furthers an educational purpose and an organization merely circulating information to the public about its work. For more information, see [section 8 below](#).

7.2 Rule about providing contact information during public awareness campaigns

Some media do not have much space for information or are time-limited (e.g., advertisements on buses or television). In these cases, the charity should ensure that the advertisement shows how interested parties can get background information. The charity's telephone number, mailing address, and/or Internet address should be provided.

7.3 Communicating with an elected representative or public official[\[Footnote 7\]](#)

When a registered charity makes a representation, whether by invitation or not, to an elected representative or public official, the activity is considered to be charitable. Even if the charity explicitly advocates that the law, policy, or decision of any level of government in Canada or a foreign country ought to be retained, opposed, or changed, the activity is considered to fall within the general scope of charitable activities. However, such activity should be subordinate to the charity's purposes and all representations should:

- relate to an issue that is connected to the charity's purposes;
- be well-reasoned (or where time constraints make this impractical, should be based on a well-reasoned position and such a position should be submitted in a timely manner to the elected representative or public official concerned); and
- not contain information that the charity knows or ought to know is false, inaccurate, or misleading.

7.3.1 Releasing the text of a representation

Releasing the text of a representation before or after delivering it to the elected representative or public official will be considered a charitable activity provided the **entire text** is released and there is no explicit call to political action either in the text or in reference to the text (i.e., others should not be told to contact an elected representative or public official and urge them to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country).

The charity may issue the entire representation to the public by using a press release or its Web site. The charity may also explain in a newsletter that it intends to make, or has made, the representation and is willing to distribute the information to anyone who wants a copy. In all cases, the **entire** representation should be made available.

Should a charity make an explicit call to political action in any part of this representation or in reference to it, the activities could be regarded as political activities and, as a result, all resources and expenditures associated with these activities could be considered to have been devoted to a political activity.

8. Education as a charitable purpose and how it differs from public awareness campaigns

The courts stipulate that to qualify as a charity under the head of advancement of education, a targeted attempt must be made to educate others—there must be some structure. It is not enough to simply provide an opportunity for people to educate themselves by making materials available with which they may accomplish this but need not.

To advance education in the charitable sense means:

- training the mind;
- advancing the knowledge or abilities of the recipient;
- raising the artistic taste of the community; or
- improving a useful branch of human knowledge through research.

Education is further explained in *Vancouver Society of Immigrant and Visible Minority Women v. The Minister of National Revenue*, [1999] 1 S.C.R. 10.[[Footnote 8](#)]

A charity whose object includes the advancement of education must take care not to disregard the boundary between education and propaganda. To be considered charitable, an educational activity must be reasonably objective and based on a well-reasoned position. This means a position that is based on [factual information](#) that is methodically, objectively, fully, and fairly analyzed. In addition, a well-reasoned position should present (i.e., address) serious arguments and relevant facts to the contrary. This notion was discussed in *Challenge Team v. Revenue Canada*, [2000] 2 C.T.C. 352 at para. 1 (Fed. C. A.):

We all agree with the appellant that educating people from a particular political or moral perspective **may be**[Footnote 9](#) educational in the charitable sense in that it enables listeners to make an informed and critical choice. However, an activity is not educational in the charitable sense when it is undertaken "solely to promote a particular point of view" (per Iacobucci J. *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*, [1999] 1 S.C.R. 10, at paragraph 169).

The degree of bias in an activity will determine if it can still be considered educational. The materials of some organizations may have such a slant or predetermination that we can no longer reasonably consider them as educational.

Also, to be educational in the charitable sense, organizations must not rely on incomplete information or on an appeal to emotions. Even in a classroom setting, promoting a particular point of view may not be educational in the charitable sense. As a result, courses, workshops, and conferences may not be charitable if they ultimately seek to create a climate of opinion or to advocate a particular cause.

This issue was discussed in [Southwood v. A.G., \[2000\] ECWA Civ. 204 \(BILII\) http://www.bailii.org/ew/cases/EWCA/Civ/2000/204.html](#), an English law decision in which the Court of Appeal examined the refusal of the Charity Commission to register the Project on Demilitarization (Prodem).

9. What expenditure limits does the *Income Tax Act* impose on political activities?

When a charity takes part in political activities, the *Act* requires that **substantially all** of its resources must be devoted to charitable activities. The term resources is not defined in the *Act*, but we consider it 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.

We usually consider **substantially all** to mean 90% or more. Any charity using at least this amount of its various resources for charitable work can be assured that we will not revoke its registration on the basis that it is not devoting enough of its resources to charitable activities. Therefore, as a general rule, we consider a charity that devotes no more than 10% of its total resources a year to political activities to be operating within the **substantially all** provision.

However, we recognize that this may have a negative impact on smaller charities. In an effort to alleviate this hardship, we will exercise our discretion and not revoke the registration of smaller charities for the excessive use of their resources on political activities as long as they meet the following administrative guidelines:

- 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.

Note: These administrative interpretations do not apply for other purposes of the *Income Tax Act*.

9.1 Averaging a registered charity's political activities over a number of years

A charity risks revocation if it devotes more than the allowable maximum of its total resources in a fiscal year to political activities. However, infrequent, short-term, one-of-a-kind political activities in excess of this amount will not necessarily disqualify a charity under the **substantially all** test. For example, an environmental conservation charity may decide to mobilize public support in favour of an international environmental treaty by taking out a full-page advertisement in a national newspaper (thereby devoting more than 10% of its total resources that year to political activities) because it reasonably considers that ratifying the treaty would help the charity achieve its goals.

In such cases, when deciding whether to revoke the charity's registration, we will consider whether the resources of the charity are still **substantially all** directed toward its charitable objectives, and if there were unique one-time conditions that led the charity to devote an unusual amount of its resources to political activities. We will determine this by looking at the year under review and comparing it to the charity's past expenditure patterns and behaviour over one or more previous years. To allow it to overspend in one year, a registered charity can use the unclaimed portion of resources it was allowed to spend but did not spend on political activities from up to two preceding years.

It is therefore extremely important that registered charities complete their annual return, the *Registered Charity Information Return* (form T3010A), as accurately as possible.

10. Can a charity give its resources to another organization of individuals to conduct political activities on its behalf?

Yes. A charity can hire others to conduct on its behalf any political activities that it is allowed to undertake itself. This includes hiring professional lobbying firms.

If the other organization is also a registered charity, see the next section on how such expenditures affect the spending requirements ([disbursement quotas](#)) of the two charities.

11. What impact do political activities have on a charity's disbursement quota?

While a registered charity can engage in political activities as described above, the *Act* limits its expenditures on these activities, not only through the **substantially all** test, but also through the operation of the charity's disbursement quota.

To maintain their registration under the *Act*, charities are required to spend a certain minimum amount of receipted donations each year (the disbursement quota) directly on their charitable activities or on gifts to certain other organizations. These other organizations (**qualified donees**) are usually other registered charities.

Charities cannot use the amounts they devote to political activities to help them meet their disbursement quota. Therefore, they should check to make sure they would have no difficulty meeting their quota before considering any expenditure on political activities.

Sometimes charities support the political activities of other charities or pay them to conduct political activities on their behalf. The impact of these payments on a charity's disbursement quota depends on whether the payment represents:

- a purchase of services; or
- a gift to help support the other charity's political activities.

If the payment is a purchase of services, neither the paying charity nor the recipient charity can use the amount to satisfy their disbursement quotas.

If the payment is a gift, the paying charity can use the amount gifted to meet its disbursement quota (as a gift to a qualified donee). Since the recipient charity will be spending the gifted amount on its own political activities, it cannot use the amount it spends to satisfy its disbursement quota.

Note: Registered charities cannot make gifts to organizations that are not qualified donees.

12. What records should a charity keep?

An organization that is involved in political activities will be expected to identify any expenditures made on such activities in order to demonstrate that **substantially all** of its resources have been devoted to charitable activities.

Where expenditures relate in part to political activities and in part to other activities, a reasonable allocation should be made and the methodology should be consistent from year to year. Where **substantially all** (90 % or more) of an expense is for charitable activities, then the whole expense should be considered a charitable expense. Similarly, if the expense relates substantially to a political activity, the whole expense should be counted as a political expense. In addition to its financial resources, any physical and human resources must be devoted substantially to its charitable purposes and activities.

A charity should choose record-keeping methods suited to its operations provided that the method chosen is consistently applied, complies with the requirements of the *Act*, and is

sufficient to disclose its position.

13. What are the filing requirements?

All registered charities must complete and file an annual return, the *Registered Charity Information Return* (form T3010A). Sections C7 and E5 of this Return asks for details concerning the charity's involvement in political activities.

14. Examples of activities undertaken by a charity

In the following hypothetical examples, the charity involved is called Healthy Retirement and was formed to promote the health of seniors in Canada. It has received a lot of media attention on its recently released, well-reasoned position on the hazards for seniors of using marked crosswalks. It concludes from its findings that a senior is four times more likely to be involved in a fatal accident with a car at a marked crosswalk than at an intersection with a stop sign or a light.

14.1 Charitable activities

The following scenarios outline allowable charitable activities.

14.1.1 Scenario 1 — Distributing the charity's research

Healthy Retirement distributes the results of its research to the media, its members, other charities that specialize in promoting the health and welfare of seniors, the general public, and anyone interested in its findings. It also publishes its report in medical association journals and on its Web site, and highlights its release in a newsletter sent to subscribers. In these cases, all the resources devoted to the research and distribution of the findings are considered resources devoted to charitable activities because:

- the activities are connected and subordinate to the charity's purposes;
- they do not contain a call to political action; and
- they are based on a well-reasoned position.

This is information that seniors can use to improve their safety and that decision-makers can use when deciding where and whether to use crosswalks or other traffic controls when considered in combination with other issues.

14.1.2 Scenario 2 — Distributing the research report to election candidates

Healthy Retirement decides to send its report to all candidates in a municipal election to inform them about the hazard marked crosswalks pose for seniors. This is a charitable activity because it is connected and subordinate to the charity's purpose. In addition, no one candidate is favoured over another.

14.1.3 Scenario 3 — Publishing a research report online

A major finding of the report was that many motorists fail to respect the right-of-way at marked crosswalks. When Healthy Retirement publishes its report online, it highlights this

fact and urges motorists to observe the law. This is still a charitable activity because it is encouraging people to respect the existing law on an issue that relates to its purposes.

14.1.4 Scenario 4 — Presenting the research report to a Parliamentary Committee

The research director of Healthy Retirement presents the charity's findings to a Parliamentary Committee formed to hear representations on whether there should be stiffer penalties in the *Criminal Code* for dangerous operation of a motor vehicle. She ends her representation with a recommendation (based on a well-reasoned position) that a driver failing to observe the pedestrian right-of-way at a marked crosswalk should be automatically subject to a charge of dangerous operation of a motor vehicle, as a deterrent.

Even though the charity explicitly proposed a political solution to the problem, this activity is charitable because it is a communication to an elected official based on a well-reasoned position.

14.1.5 Scenario 5 — Giving an interview about the research report

Following her representation, as the research director of Healthy Retirement is leaving Parliament, she is stopped by the media and interviewed for television and radio about what she said and the report. She outlines her representation and repeats the conclusion that on the basis of the research the charity has done, the charity thinks that the number of pedestrian deaths involving seniors might be reduced if drivers that failed to recognize the right-of-way of pedestrians at marked crosswalks faced stiffer penalties. This interview is not a political activity because the research director did not arrange a media campaign to publicize the charity's conclusion that the law should be changed; she simply explained what she said to the elected representatives.

14.1.6 Scenario 6 — Distributing the research report to all Members of Parliament

A bill is being debated in Parliament. The bill proposes a change to the *Criminal Code* that would allow a driver who fails to observe the pedestrian right-of-way at a marked crosswalk to be charged with dangerous operation of a motor vehicle. Healthy Retirement gives Members of the House, for use in debate, a relevant well-reasoned position regarding how such a charge may encourage drivers to uphold the law and thereby save lives. This is a charitable activity because Healthy Retirement is informing elected representatives about its work on an issue that is connected and subordinate to the charity's purposes and based on a well-reasoned position.

14.1.7 Scenario 7 — Participating in an international policy development working group

The research director of Healthy Retirement is asked to join a working group of the World Health Organization that is gathering together government policy makers, academics, and voluntary sector representatives from around the world to develop a charter to promote the health of senior citizens. Such an activity is connected and subordinate to the charity's purpose. Although the director is taking part in an initiative organized by an international body, this kind of activity is considered to be like communicating with a public official because government policy-makers are also invited (whether or not they actually attend). Therefore, as long as the director's contribution is based on a well-reasoned position, the

resources of the charity devoted to developing such a charter are viewed as resources devoted to a charitable activity.

14.1.8 Scenario 8 — Joining a government advisory panel to discuss policy changes

A provincial government launches a Health Sector Initiative to look at ways of improving its service delivery to residents of the province. Healthy Retirement is asked to join an advisory panel with other health charities and public officials to discuss possible policy changes. Based on a well-reasoned position, Healthy Retirement suggests that the province should increase its number of long-term hospital care beds for the elderly. Although the charity is recommending a change in provincial health policy, the charity's involvement in the advisory panel is a communication to a group of public officials based on a position that is well-reasoned. Therefore, the resources devoted to the activity are resources devoted to a charitable activity.

14.2 Prohibited activities

The following scenarios outline prohibited political activities.

14.2.1 Scenario 1 — Supporting an election candidate in the charity's newsletter

Healthy Retirement sends a newsletter to all its members that contains an editorial from the managing director of the charity conveying his views on the main issues it is currently facing. Just before an election, the director uses the column to give his personal support to the re-election of a candidate who happens to endorse a policy that the charity also supports. The director uses his personal funds to pay for that edition of the newsletter. In this case, the charity is engaging in a prohibited partisan political activity because although the director paid for that edition of the newsletter, it is an official publication of the charity and is being used to promote a candidate for an election.

14.2.2 Scenario 2 — Distributing leaflets highlighting lack of government support for charity goals

Healthy Retirement decides to distribute leaflets to members of the public during a federal election campaign. The leaflets highlight its research findings that drivers do not respect the pedestrian right-of-way at marked crosswalks. It also states that a private members bill that proposed to increase the penalties imposed on drivers failing to give the right-of-way to pedestrians at marked crosswalks did not become law because government-side Members of Parliament voted against it. In this case, the distribution of the leaflets is a prohibited partisan political activity because it could mobilize public opinion against the current government for failing to enact the private members bill.

Whatever the issue, a charity is not permitted to directly or indirectly support or oppose any political party or candidate for public office, at any level of government.

Had the charity merely published a leaflet that showed how **all** the Members of Parliament voted on the private members bill, we would not have viewed this to be a partisan political activity.

14.2.3 Scenario 3 — Preparing dinner for campaign organizers of a political party

During a provincial election campaign, Healthy Retirement invites, to one of its monthly "heart smart" dinners, all those involved in organizing the campaign for a political party that promotes policies targeted at increasing health spending on respite care for seniors. The campaign team is treated to a delicious three-course meal that is low in fat and salt, and they receive information about the charity's programs. This is a prohibited partisan political activity because the charity is providing direct support, by way of a free meal, to campaign organizers of a political party.

14.2.4 Scenario 4 — Inviting competing election candidates to speak at separate events

Healthy Retirement invites a candidate in a municipal election, who is in favour of increasing the money available to deliver hot meals to seniors in poor health, to talk about a particular issue on the candidate's electoral platform that is consistent with the charity's goals at its well-attended annual fundraising dinner. At a later date, it invites the other candidate in the election to speak at its poorly attended annual general meeting. The charity does not endorse either candidate at either meeting and no political fundraising occurs. Nevertheless, as the charity is not giving an equal opportunity for candidates seeking the same office to speak, it is possible to infer that the charity is indirectly supporting a particular candidate for public office and is therefore engaged in a prohibited partisan political activity. To avoid this assumption, a charity must ensure that in such circumstances, they invite all the candidates in an election to speak at the same time. Furthermore, the charity must give the candidates an equal amount of time to speak on their general platform.

14.3 Permitted political activities

A charity that devotes **substantially all** of its resources to charitable activities may carry on political activities within the allowable limits.

14.3.1 Scenario 1 — Buying a newspaper advertisement to pressure the government

Healthy Retirement takes out a full-page "Save Our Seniors" advertisement in a national newspaper to promote the well-reasoned position it has taken in its recent research. The advertisement states that the federal government is devoting proportionately less resources to senior health care now than ever before, and urges it to reverse this trend.

This is political activity because it is an explicit communication to the public that federal government policy on an issue that relates to Healthy Retirement's purposes should be changed.

14.3.2 Scenario 2 — Organizing a march to Parliament Hill

Parliament is debating the possibility of increasing the level of the Old Age Security benefits as a result of increases in the cost of fuel. Healthy Retirement has just published its research that sets out the well-reasoned position that 10% of seniors are malnourished because, once they have paid for fuel, they have little money to spend on food.

The executive director of Healthy Retirement sends an email to the charity's staff asking them to organize a march to Parliament Hill to coincide with the debate. He indicates that the purpose of the march is to highlight the charity's recent findings and to put pressure on Members of Parliament to vote for increases in the level of the Old Age Security Pension. On the day of the march, Healthy Retirement gives participants placards that state, "Seniors cannot afford to eat" and the address of the web site of the charity where the report can be downloaded.

As the executive director's internal email explicitly indicates that the purpose of the march is to put pressure on the government to change its policy on this issue, it is a political activity.

14.3.3 Scenario 3 — Organizing a conference to support the charity's opinion

Healthy Retirement organizes conferences and workshops to gain support for its point of view that penalties for motorists failing to observe the right-of-way or pedestrians at marked crosswalks need to be increased as a deterrent. It also advocates its well-reasoned position that all marked crosswalks should be updated to include a stop sign or light.

A charity that organizes a conference or workshop that explicitly promotes its point of view on an existing or proposed law, policy, or decision of 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.

14.3.4 Scenario 4 — Hiring a communications specialist to arrange a media campaign

A driver that failed to observe the right-of-way at a marked crosswalk accidentally kills three seniors from the same seniors' residence. There is a public outcry about the accident and the safety of marked crosswalks.

The provincial government where the accident occurs reviews its policy on marked crosswalks and holds consultations with stakeholders to get their views on the issue. Healthy Retirement is asked to present its well-reasoned position on the matter. The presentation is a charitable activity because Healthy Retirement is informing elected representatives about its work on an issue that is connected and subordinate to the charity's purposes and based on a well-reasoned position.

However, following its representation, Healthy Retirement concludes that the elected representatives were not enthusiastic about its well-reasoned position that marked crosswalks should be banned. The charity therefore decides to hire a communications specialist to arrange a media campaign to highlight its view that marked crosswalks should be banned. Note that this is not the same as saying that crossing at a crosswalk is four times as dangerous as crossing at a traffic light. From this point onwards, we will view the activity to be a political activity because the media campaign will explicitly communicate to the public that the law should be changed so that crosswalks are banned.

14.3.5 Scenario 5 — Using a mail campaign to urge supporters to contact the government

Healthy Retirement organizes a mail campaign by giving its supporters and members of the public a summary of its well-reasoned position on the dangers of marked crosswalks. The charity also encourages them to write to their municipal councillor and ask them to update the municipal marked crosswalks to include a stop sign or a light.

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.

14.3.6 Scenario 6 — Organizing a rally on Parliament Hill

Parliament is debating the possibility of increasing the penalties for offences in the *Criminal Code*. Healthy Retirement decides to organize a rally on Parliament Hill to coincide with the debate. When Healthy Retirement advertises the rally it invites the public to join it in sending a message to Ottawa that Canadians want drivers who fail to stop at marked crosswalks should be charged under the *Criminal Code* with the offence of dangerous operation of a motor vehicle. Explicitly communicating to the public that the law should be changed in this way is a political activity. It is also a political activity to organize a rally with the explicit purpose of pressuring any level of government in Canada, or a foreign country, to change the law.

Appendix I — Definitions

Advocacy — Advocacy is demonstrated support for a cause or particular point of view. Advocacy is not necessarily a political activity, but it sometimes can be. Refer to the definition of political activities in **section 6.2 above**.

Ancillary and incidental — In this policy statement, ancillary is defined as connected and incidental is defined as subordinate to make these concepts more easily understandable.

Call to political action — A call to political action is an appeal to the members of the charity or to 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 — An activity that relates to and supports a charity's purpose(s) and represents a reasonable way to achieve them.

Disbursement quota — The disbursement quota is the minimum amount a registered charity has to spend on charitable activities to keep its registered status, including gifts to qualified donees. In general, it is an expenditure test based on tax-receipted revenue of the previous fiscal period. In the case of foundations, certain investment assets and gifts from other registered charities must also be considered.

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.

Elected representative — A person who is a member of the Parliament of Canada or the legislature of a province, territory, or municipal council. It also includes an elected member of a legislative body, a school board, or a ruling member of government in a foreign country.

Factual information — Information used or produced by a registered charity that is based on facts resulting from the charity's direct experience or research from a reputable source. Research should be methodical and objective.

Governing document — Every registered charity (other than an **internal division** of an existing registered charity) must be legally established by a governing document. These are the documents that formerly establish an organization and govern its operations. Some examples of governing documents are letters patent, certificate of incorporation, memorandum or articles of association, a constitution, trust documents, and by-laws.

Political activities — Our administrative interpretation of this term is set out in **section 6.2 above**.

Political purpose — The courts consider the following to be political purposes:

- 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.

This definition is taken from *McGovern v. Attorney General*, (1980), [1981] 3 All ER 493 at 509 para. a (C.A), an English law case recognized by Canadian Courts as good law, (for example, refer to *Positive Action Against Pornography v. M.N.R.*, [1988] 2 F.C. 340 (C. A.)). In *McGovern*, Slade J. categorized political **purposes** as:

[T]rusts of which a direct and principal purpose is either
(i) to further the interests of a particular political party; or
(ii) to procure changes in the laws of this country; or
(iii) to procure changes in the laws of a foreign country; or
(iv) to procure a reversal of government policy or of particular decisions of governmental authorities in this country; or
(v) to procure a reversal of government policy or of particular decisions of governmental authorities in a foreign country.

Slade J. did not intend this list to be exhaustive, and in *Re Koeppler's Will Trusts*, (1983), [1984] 2 All ER 111 at 124 paras. h-j (Ch.), Gibson J. added "trusts to oppose a particular change in the law or a change in a particular law."

Public — The people of a nation or community, in whole or in part.

Public official — Any person employed by any level of government in any country that is responsible for the laws, policies, or decisions made in a given field.

Qualified Donee — Qualified donees are organizations that can, under the *Act*, issue official tax receipts for gifts that individuals or corporations make to them.

They include:

- registered charities;
- registered Canadian amateur athletic associations;
- registered national arts service organizations;
- housing corporations in Canada constituted exclusively to provide low-cost housing for the aged;
- the United Nations and its agencies;
- universities outside Canada with a student body that ordinarily includes students from Canada (these universities are listed in Schedule VIII of the *Income Tax Regulations*);
- charitable organizations outside Canada to which Her Majesty in right of Canada (the federal government or its agents) has made a gift during the registered charity's fiscal period, or in the 12 months immediately before the period;
- municipalities in Canada; and
- Her Majesty in right of Canada or a province or territory (the federal government, a provincial or territorial government, or their agents).

Subordinate activities — Activities that are subservient to a charity's dominant charitable purpose or are a minor focus of the charity. To determine whether this requirement is met, the activity should be considered in relation to the charity's entire program of activities. If the activity becomes the main way of furthering the charity's purposes, it may no longer be a minor focus of the charity, but an end or unstated purpose in itself.

Well-reasoned position — 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.

Appendix II — *Income Tax Act* and case law references

Subsection 149.1(6.1) of the *Income Tax Act*

For the purposes of the definition **charitable foundation** in subsection (1), where a corporation or trust devotes **substantially all** of its resources to charitable purposes and

- (a) it devotes part of its resources to political activities;

(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,

the corporation or trust shall be considered to be constituted and operated for charitable purposes to the extent of that part of its resources so devoted.

Subsection 149.1(6.2) of the *Income Tax Act*

For the purposes of the definition **charitable organization** in subsection (1), where an organization devotes **substantially all** of its resources to charitable activities carried on by it and

(a) it devotes part of its resources to political activities;

(b) those political activities are ancillary and incidental to its 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 organization shall be considered to be devoting that part of its resources to charitable activities carried on by it.

***McGovern v. Attorney General*, [1981] 3 All ER 493**

In *McGovern v. Attorney General*, (1980), [1981] 3 All ER 493 at 508-509 paras. j-a (C. A.), Slade J. categorized political purposes as follows:

Trusts for political purposes ("...") include ("...") trusts of which a direct and principal purpose is either

1. to further the interests of a particular political party; or
2. to procure changes in the laws of this country; or
3. to procure changes in the laws of a foreign country; or
4. to procure a reversal of government policy or of particular decisions of governmental authorities in this country; or
5. to procure a reversal of government policy or of particular decisions of governmental authorities in a foreign country.

***Vancouver Society of Immigrant and Visible Minority Women v. The Minister of National Revenue*, [1999] 1 S.C.R. 10**

Vancouver Society of Immigrant and Visible Minority Women v. The Minister of National Revenue, [1999] 1 S.C.R. 10 at paras. 169-171 explains education in the charitable sense:

There must be structure and a genuinely educational purpose:

("...") so long as information or training is provided in a structured manner and for a genuinely educational purpose — that is, to advance the knowledge or abilities of the

recipients — and not solely to promote a particular point of view or political orientation, it may properly be viewed as falling within the advancement of education.

There must be a teaching or learning component:

Even while advocating a more inclusive approach to education, the OLRC [Ontario Law Reform Commission] also cautioned against treating as educational those activities which, although they advance legitimate goods, do not include any actual teaching or learning component ("...") I would agree with that caution.

There must be a targeted attempt to educate others:

To my mind, the threshold criterion for an educational activity must be some legitimate, targeted attempt at educating others, whether through formal or informal instruction, training, plans of self-study, or otherwise. Simply providing an opportunity for people to educate themselves, such as by making available materials with which this might be accomplished but need not be, is not enough. Neither is "educating" people about a particular point of view in a manner that might more aptly be described as persuasion or indoctrination.

But knowledge and education can take many forms:

It can be theoretical or practical, speculative or technical, scientific or moral. Moreover, it can be sought in many different ways, and for many different reasons, whether for its own sake or as a means to an end ("...") there is no good reason why non-traditional activities such as workshops, seminars, self-study, and the like should not be included alongside traditional, classroom-type instruction ("...") there is no reason to exclude education aimed at advancing a specific, practical end.

***Southwood v. A.G.*, [2000] ECWA Civ. 204**

Southwood v. A.G., [2000] ECWA Civ. 204 at paras. 3.1, 29, 30 (BILII) <http://www.bailii.org/ew/cases/EWCA/Civ/2000/204.html> is an English law decision in which the Court of Appeal examined the refusal of the Charity Commission to register the Project on Demilitarization (Prodem).

Prodem's stated purpose was the "advancement of the education of the public in the subject of militarism and disarmament and related fields." The court held:

There is no objection—on public benefit grounds—to an educational programme which begins from the premise that peace is generally preferable to war. ("...") I would have no difficulty in accepting the proposition that it promotes public benefit for the public to be educated in the differing means of securing a state of peace and avoiding a state of war. The difficulty comes at the next stage. There are differing views as to how best to secure peace and avoid war. To give two obvious examples: on the one hand it can be contended that war is best avoided by "bargaining through strength"; on the other hand it can be argued, with equal passion, that peace is best secured by disarmament--if necessary, by unilateral disarmament.

The reason why Dr. Southwood's contentions ("...") must fail in this Court ("...") [is because] Prodem's object is not to educate the public in the differing means of securing a state of peace and avoiding a state of war. Prodem's object is to educate the public to an acceptance that peace is best secured by "demilitarization." ("...") It is because the court cannot determine whether or not it promotes the public benefit for the public to be educated to an acceptance that peace is best secured by "demilitarisation" that Prodem's object cannot be recognized as charitable.

Footnotes

[Footnote 1]

Voluntary Sector Initiative (Canada), *A Code of Good Practice on Policy Dialogue: Building on An Accord Between the Government of Canada and the Voluntary Sector*, pg 2, 1.1

[Footnote 2]

Vancouver Society of Immigrant and Visible Minority Women v. M.N.R., [1999] 1 S.C.R. 10, at para. 143, Iacobucci J.

[Footnote 3]

McGovern v. Attorney General (1980) [1981] 3 All ER 493 at 506e (C.A.).

[Footnote 4]

Vancouver Society of Immigrant and Visible Minority Women v. M.N.R., [1999] 1 S.C.R. 10 at para. 194, Iacobucci J.

[Footnote 5]

As Iacobucci J. observed in *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*, [1999] 1 S.C.R. 10 at para. 194 the question of whether an organization is constituted exclusively for charitable purposes cannot be determined solely by reference to its stated purposes, but must take into account the activities that the organization is **currently** engaged in:

In *Guaranty Trust, supra*, at p.144, this Court expressed the view that the question of whether an organization was constituted for exclusively charitable purposes cannot be determined solely by reference to the objects and purposes for which it was originally established. It is also necessary to consider the nature of the activities presently carried on by the organization as a potential indicator of whether it has since adopted other purposes. In other words, as Lord Denning put it in *Institution of Mechanical Engineers v. Cane*, [1961] A.C. 696 (H.L.) at p. 723, the real question is, "for what purposes is the society at *present* instituted? [Emphasis in original]"

[Footnote 6]

For example, in the following cases, the courts found the organization's under scrutiny had an unstated political purpose: *Human Life International in Canada v.*

M.N.R. [1998] 3 F.C. 202 (F.C.A.); and *Alliance for Life v. M.N.R.*, [1999] 3 F.C.R.

[Footnote 7]

Note: A charity engaging in this type of activity may be required to register as an in-house lobbyist organization under the *Lobbyists Registration Act*. Details of the requirements of this *Act* are available at the following Industry Canada web site: http://strategis.ic.gc.ca/epic/internet/inlr-el.nsf/en/h_lr00000e.html

[Footnote 8]

Refer to the case in Appendix II.

[Footnote 9]

Challenge Team v. Revenue Canada, [2000] 2 C.T.C. 352 (Fed. C.A.) [emphasis added]



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