



Report of the Consultation Panel
on the Political Activities
of Charities

March 31, 2017

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ABOUT THIS REPORT

This Report was prepared by the Consultation Panel on the Political Activities of Charities (“the Panel”), appointed by the Minister of National Revenue in September 2016. The Panel was comprised of five individuals with broad experience in the charitable sector and expertise on the regulatory issues facing charities: Marlene Deboisbriand (Chair), Shari Austin, Susan Manwaring, Kevin McCort and Peter Robinson.

The Report presents the Panel’s recommendations, which are designed to clarify and broaden the ability of registered charities to engage in political activities in support of their charitable purposes, while maintaining an absolute prohibition on partisan political activities. We believe that our recommendations would preserve the ability of the Canada Revenue Agency (CRA) to meet its regulatory objectives. The Report calls for changes to the current administrative and legislative framework governing what is currently termed “political activities” of charities, namely:

- the policy and administration of the provisions of the Income Tax Act (ITA) relating to charities, under the jurisdiction of the CRA; and
- the ITA, falling under the jurisdiction of the Department of Finance Canada.

In arriving at these recommendations, the Panel carefully considered feedback received through the CRA’s on-line and in-person consultation processes, which took place between October and December, 2016, as well as research, information and input from CRA and Department of Finance officials. The Panel wishes to extend its sincere thanks to members of the charitable sector, legal experts and the public for their invaluable submissions, and to our colleagues in the Government of Canada, who were engaged, thoughtful and open.

EXECUTIVE SUMMARY

Charities have long played a critical role in our society. Along with providing much-needed programs and services, they serve all Canadians by pressing for positive social and environmental change. Charities bring commitment and expertise to the formulation of public policy, develop innovative solutions to issues and engage a diverse group of stakeholders, many directly affected by the matters under discussion. This is particularly valuable in an era of complex social and environmental challenges and constrained government budgets, where all informed perspectives and ideas are vital.

To enable and maximize the contributions of charities, we need a regulatory environment that respects and encourages their participation in public policy dialogue and development. This is not currently the case. The legislative framework for regulating

charities in Canada is out-dated and overly restrictive. It is, in the words of one submission, “antiquated, subjective, arbitrary and confusing – denying Canadians the right to have their voices heard through the charities they support.”¹

Indeed, the term “political activities” is problematic, as it is often interpreted to mean partisan activities, which are clearly prohibited. This problem of terminology lies at the root of much of the confusion and uncertainty that exists in the charitable sector. The Panel recommends (among other things) that the term “public policy dialogue and development” replace “political activities”, as it more accurately reflects the range of activities under discussion.

As this Report highlights, ambiguity and confusion about “political activities” rules have long been – and remain – of great concern to the charitable sector. More recently, these concerns have been intensified by the CRA’s Political Activities Audit Program, initiated with the 2012 Federal Budget. Numerous consultation submissions noted that this program has resulted in a pervasive “chill” on the public policy and advocacy activities of charities.

Our recommendations are intended to break the cycle of ambiguity, confusion and uncertainty, and to support the ability of charities to more fully participate in public policy dialogue and development. We believe that implementing these recommendations will improve the quality of public policy dialogue and development in Canada, while reducing administrative complexity and cost for both the sector and its regulator. Further, our recommendations preserve the legitimate regulatory objective of prohibiting partisan political activity.

As noted in many of the submissions received², the issues relating to “political activities” cannot be fully resolved by changes to the administration of current ITA provisions. Legislative change is required to broaden and simplify the requirements for charities and to remove other obstacles to their contribution to society that are unnecessary and counter-productive.

In this Report, the Panel offers four recommendations, with the first two relating to interim administrative changes, and the second two focused on the longer-term legislative changes required:

1. Revise the CRA’s administrative position and policy (including its policy guidance, CPS -022 *Political Activities*) to enable charities to fully engage in public policy dialogue and development.

¹ Submission from West Coast Environmental Law

² Such as from Imagine Canada, Muttart Foundation, and Pemsel Case Foundation

2. Implement changes to the CRA's administration of the ITA in the following areas: compliance and appeals, audits, and communication and collaboration to enhance clarity and consistency.
3. Amend the ITA by deleting any reference to non-partisan "political activities" to explicitly allow charities to fully engage, without limitation, in non-partisan public policy dialogue and development, provided that it is subordinate to and furthers their charitable purposes.
4. Modernize the legislative framework governing the charitable sector (ITA) to ensure a focus on charitable purposes rather than activities, and adopt an inclusive list of acceptable charitable purposes to reflect current social and environmental issues and approaches.

More specific and detailed recommendations relating to the above may be found in the body of this Report. **Appendix I** provides a brief summary of consultation themes and recommendations.

A. BACKGROUND AND HISTORY

Background

In November, 2015, the Prime Minister issued a Mandate Letter to the Minister of National Revenue, asking her to work with the Minister of Finance to modernize the legislation governing the charitable sector. This was specified to include a clarification of the rules governing political activities to allow charities to work "free from political harassment". The 2016 Budget included an announcement that, in the shorter term, the CRA would collaborate with the Department of Finance to engage with charities to clarify the rules governing political activities.

On September 26, 2016, the Minister of National Revenue launched a consultation process with the charitable sector and the public to assist in clarifying the rules for the participation of charities in political activities, and announced the creation of this Panel to provide recommendations using feedback from the consultations. The Panel's Terms of Reference, while largely focused on administrative improvements, included, to the extent that CRA receives proposals beyond those that are purely administrative, a mandate to review those areas and report on them.

The CRA has committed to providing a formal response to the Panel's recommendations by June, 2017.

History

An understanding of the current state of debate on the topic of “political activities” requires historical context. If there has been a constant over the past 40 years for charities advocating for public policy change, it is confusion about the limits imposed on what they can say, how much, and to whom. While charities’ insights into the needs of the communities they serve have long been recognized as invaluable for any discussion of laws or government priorities, the legal rules around their participation are blurry enough to make joining the conversation a challenge.

Much of this confusion stems from the use of the words “activities” and “purposes” in the ITA and associated case law, and how the CRA and the courts have chosen to administer and interpret these provisions. A prohibition on “political purposes” was developed in the early 1900’s, and has been accepted into Canadian law³. It remains in force to this day, although the courts have generally acknowledged that a charity may use some political means to achieve its charitable ends.⁴ However, establishing the precise line an organization must cross to be considered as having a political purpose is a challenge, both at law and in practice.

Courts have grappled with the focus on activities, suggesting that it is an inherent weakness in the ITA’s approach:

“While the definition of “charitable” is one major problem with the standard in s. 149.1(1), it is not the only one. Another is its focus on “charitable activities” rather than purposes. The difficulty is that the character of an activity is at best ambiguous; for example, writing a letter to solicit donations for a dance school might well be considered charitable, but the very same activity might lose its charitable character if the donations were to go to a group disseminating hate literature. *In other words, it is really the purpose in furtherance of which an activity is carried out, and not the character of the activity itself, that determines whether or not it is of a charitable nature* (emphasis added).”⁵

The CRA⁶ released its first policy on the subject in 1978 (Information Circular 78-3), maintaining that, not only had the courts ruled against political purposes for charities, the ITA also prevented charities from carrying out political activities. The reasoning was that since the Act requires charities to devote all of their resources to their charitable

³ *Positive Action Against Pornography v. The Minister of National Revenue* [1988] 49 D.L.R. (4th)

⁴ For example, *McGovern v. Attorney General* [1981] 3 All ER 493. Even *Scarborough Community Legal Services v The Queen* [1985] 17 D.L.R. (4th) argued some “exceptional and sporadic activity” should be acceptable.

⁵ *Vancouver Society of Immigrant and Visible Minority Women v. The Minister of National Revenue* [1999] 1 S.C.R. 10 at para. 152.

⁶ Then the Department of National Revenue. This report simply uses “CRA” for all references.

work, and given the CRA did not consider political activities to be charitable, any charity devoting resources to political activities was not in compliance with the law. The Panel believes that the CRA's interpretation was an unnecessary and incorrect extension of the statute and case law.

Information Circular 78-3 was quickly criticized by the charitable sector. The matter was raised in the House of Commons in 1978, with MPs noting the concern amongst charities, and suggesting that this was an attempt to stop charities from carrying out actions that might embarrass the government.⁷ The government of the day suspended the policy, while maintaining that it represented the law as established by the courts.

Until 1985, the CRA took the position that a charity could not carry out political activities, although exception was made for charities making representation directly to the government. Given the concern and uncertainty that had been created in this area, the government consulted with the charitable sector to determine a way forward. These consultations led to amendments to the ITA in 1986, adding new provisions intended to confirm that charities were permitted to carry out political activities, provided that:

- they devote “substantially all” of their resources to charitable work;
- any political activities are “ancillary and incidental” to their charitable purposes; and
- they do not engage in “partisan political activities”, being any direct or indirect support of or opposition to a political party or candidate.

Some saw these new provisions as confirming that an activity in furtherance of a charitable purpose was a charitable activity, while others viewed them as imposing a limit on what charities could do.

The CRA released another Information Circular in 1987 to further explain how the new legislation might affect charities. Notwithstanding this attempt to clarify the matter, there remained confusion, and the series of court cases dealing with political activities and purposes that followed did not help to clarify the rules for charities. As noted in one submission to this consultation:

“...there is no judicial guidance addressing how activities can be characterized in isolation. Focusing on activities creates a fertile ground for arbitrary application of the rules. It enables the regulator to characterize an

⁷ Commons Debates, May 1, 1978, 5008

organization's operations by parsing them into artificial component parts, or to brand them entirely as unacceptable based solely on one of those parts.”⁸

After a number of years of relative quiet on the issue, by the early 2000s, the charitable sector was again expressing uncertainty about where the lines were drawn.⁹ To address these concerns, and following discussion with charitable sector stakeholders, the CRA developed its current Policy Statement CPS-022, Political Activities, published in 2003. However, it has become apparent that this policy too failed to rectify the continuing confusion and still left ambiguity regarding charitable and political activities.

In the 2012 Federal Budget, the government of the day acknowledged the valuable contribution of charities to public policy development in Canada, but went on to state that concern had been raised about whether charities were following the rules. The CRA was given resources to audit charities engaging in political activities, to increase reporting requirements on the annual T3010 filing, and to provide additional educational tools. The CRA proceeded to develop several new educational resources and amended the annual information return for charities, asking for additional detailed information on political activities. It embarked on a series of 60 audits as part of a Political Activities Audit Program. These audits received a great deal of public attention, with concerns raised that they were politically selective. Many charities backed away from public policy engagement entirely. And, running through the highly critical commentary on this audit program was a continued assertion that the rules governing charities' political activities were unclear.

In January 2016, the Minister of National Revenue announced that the Political Activities Audit Program would be wound down, and the CRA would engage with stakeholders on the topic of charities' political activities. To date, 54 audits have been undertaken as part of the program (and no further audits will be undertaken); several of the 54 audits are not yet completed.

Looking back over the history of the regulation of charities' political activities, it is clear that both the courts (with some exceptions) and the CRA have tended to conflate the concepts of purposes and activities. However, as the Supreme Court of Canada stated in the *Vancouver Immigrant Society* case, these are different things, and an activity can only be characterized by reference to the purpose it seeks to further. The conflation has continued and, if anything, has become even more pronounced. The sector and the

⁸ Pemsel Case Foundation submission

⁹ For example, see *Regulation of Advocacy in the Voluntary Sector: Current Challenges and Some Responses*, Betsy A. Harvie, 2002, page 17, section 2.4 *Advocacy chill*, or [The Law Governing Advocacy by Charitable Organizations: The Case for Change](#), Richard Bridge, The Philanthropist, July 1, 2002

legal community continue to disagree with the CRA on whether the *Vancouver Immigrant Society* case resolved this issue.

In short, problems with the legislative framework and its administration have left the sector and its regulator stuck on a merry-go-round of consultation, clarification, and concern for nearly four decades. We believe it is time to break this cycle, and this is what we intend with the recommendations in this Report.

B. CURRENT LEGISLATIVE AND ADMINISTRATIVE FRAMEWORK

The current legislative framework relating to the political activities of charities is set out in subsections 149.1 (6.1) and (6.2) of the Income Tax Act (Canada). Essentially, these sections confirm that charities may carry out a limited amount of non-partisan political activities in support of their charitable purposes. The statute does not, in a clear or relevant way, define any of the pivotal terms, such as “charity”, “charitable purpose”, “political”, “political purpose”, “political activities” or “partisan political activities”¹⁰. The subsections provide that charitable foundations and organizations must devote “substantially all” of their resources to their charitable purposes or activities respectively and may devote part of their resources to “political activities” if these are “ancillary and incidental” to their charitable purposes or activities AND if they do not include partisan activities (i.e. “direct or indirect support of, or opposition to, any political party or candidate for public office”).

CRA’s current administrative policy is set out in the CRA’s guidance CPS-022, Political Activities (cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps-022-eng.html), published in 2003. In it, the CRA essentially interprets the Act’s references to “substantially all” as equating 90%, allowing a maximum of 10% of resources to be spent on political activities. Charities are required to monitor and provide a quantitative reporting of their political activities to demonstrate compliance with the CRA policy. It is our assertion that this is not a necessary interpretation of the statute, and that it would be open to the CRA to remove the policy limitation and quantitative reporting requirement, and assess whether a charity is, in the broader context of its charitable purposes, engaging in political activities that are “ancillary and incidental”. Further, what is considered to be “political activity” is itself very confusing and difficult to follow in CPS-022, and it is often interpreted by the charitable sector to mean partisan activities – which are clearly prohibited. This problem of terminology lies at the root of much of the confusion and uncertainty that exists through the charitable sector.

¹⁰ “Charity” is defined in s. 149.1(1) of the ITA to mean “a charitable organization or charitable foundation”, and “charitable purpose” is defined to include “the disbursement of funds to qualified donees”. Neither are particularly helpful for the discussion at hand. None of the other terms referenced are defined at all.

The Panel noted that many of the submissions to the consultation referenced the fact that the United Kingdom, Australia and New Zealand all have similar common law jurisdictions, and have adopted more permissible rules around public policy dialogue and development, focusing their restrictions, if any, on political purposes rather than activities. Although all jurisdictions are different, our recommendations would most reflect the current model in the United Kingdom.

C. CONSULTATION PROCESS (2016)

Toward the end of 2016, the CRA engaged in a consultation process on the topic of the political activities of charities, conducting both on-line and in-person consultations. Participants in both consultation streams were asked the same set of questions, developed by the CRA.

The in-person consultations took place from November 29 to December 13, 2016, with sessions in Halifax, Montréal, Toronto, Winnipeg, Calgary, Vancouver, and Ottawa. The CRA commissioned an independent external facilitator, Ipsos Public Affairs, to facilitate the in-person consultation sessions. One or more Panel members attended most of the in-person consultation sessions. A total of 167 individuals attended the in-person consultation sessions. Participants were largely drawn from charities with practical experience in carrying out political activities and in using the CRA's policy guidance and other educational resources, and a large majority (78%) had eleven or more years of experience in the charitable or non-profit sectors. Ipsos provided a summary report to the Panel and the CRA, which is included as **Appendix II** to this Report.

The online consultations ran from September 27, to December 14, 2016. Nearly 20,000 submissions were received. The large majority of these written submissions were generated by people joining online petitions. The CRA received 460 unique submissions from individuals working in the charitable sector, or representing a registered charity, non-profit organization, or other body. A summary of themes emerging from the on-line consultations is included as **Appendix III** to this Report.

The Panel met between November, 2016 and March, 2017 to review information and research relating to: legislative history and administration of political activities regulation in Canada and internationally (including, the United Kingdom, Australia, New Zealand and the United States), as well as the consultation submissions, all of which were available to the Panel.

D. WHAT WE HEARD

Overview

The themes and issues raised in the on-line and in-person consultations were remarkably consistent. There was an overwhelming call for legislative change, with a large number emphasizing that administrative changes will not be sufficient to address the fundamental concerns raised relating to political activities and to broader issues of modernization. Some focused only on the rules relating to political activities, and suggested approaches ranged from a complete removal of restrictions to a relatively modest increase in the amount of resources a charity can devote to political activities. There was also a great deal of feedback relevant to the CRA's administration of the provisions of the ITA related to charities' political activities, including on audit and appeal processes.

The following provides a brief summary of the primary themes that emerged and some of the key suggestions offered by participants, grouped in the question "buckets" used by the CRA:

Carrying Out Political Activities

The first category of CRA consultation questions asked about charities' experiences carrying out political activities, and the extent to which CRA's policies help or hinder charities in this regard.

Many respondents indicated that the rules were not clear, and even those that found the rules clear felt that the CRA's policy, educational materials and inconsistent application of the rules created uncertainty and confusion. And, it was acknowledged by several that under-reporting in the context of this uncertainty was rampant¹¹.

One strong message that emerged from the feedback was that the lack of clarity, whether with the rules or their application, means some charities view political activities as too risky to carry out and engage in self-censorship. Without knowing the exact parameters within which they can operate, and given the penalty laid out in the Act for even an accidental breach of the rules may be deregistration, many charities make a rational choice to avoid or limit the risk. Further, the financial and human resources

¹¹ This appears to be borne out by the statistics from Imagine Canada's survey of the charitable sector, which found that that many charities engage in work meeting the CRA's description of a political activity without necessarily realizing that this is the case and reporting it as such on their T3010 annual reports (with 31% carrying out such activities, and only 3% reporting).

costs of tracking the use of internal resources for political activities (including the need to obtain legal counsel to ensure that rules are not breached), acts as an additional barrier to participation.

These comments were often linked to concern about the Political Activities Audit Program, initiated following the 2012 Budget. Many participants noted that CRA audits were expensive and stressful for charities, and some chose not to carry out political activities, even if they were confident they could pass an audit. There was also concern about the lack of transparency surrounding audit results, which has led to assumptions and fears about what may or may not lead to audits and deregistration.

Suggestions for change raised through the consultation process included:

- Incorporate an inclusive definition of “charitable purpose” into the ITA reflecting contemporary social and environmental issues and values;
- Eliminate the limit on charities’ ability to engage in non-partisan political activities, along with the need to track the use of resources expended in such activities ;
- Develop clearer definitions of “political activities” and “partisan political activities” to differentiate and more fully allow the former, and maintain the prohibition on the latter;
- Ensure CRA policy positions complement and are consistent with other, relevant legislation, such as the Canada Elections Act and the Lobbying Act, and Canada’s international commitments so that charities are not subject to competing and sometimes contradictory obligations;
- Suspend the ongoing audits being conducted under the Political Activities Audit Program, at least until the rules are clarified – or cancel them altogether; and
- Demonstrate a greater degree of transparency in CRA compliance – and especially audit – processes, particularly in decisions to revoke charitable status.

CRA’s Policy Guidance

The second category of CRA consultation questions asked about the CRA’s Policy Guidance (CPS-022), including whether its positions were clear, what format should be used and how it would best be communicated.

There was widespread agreement that partisan political activities should continue to be prohibited, but that the CRA’s interpretations on this subject are unclear. Many participants indicated that they hesitate to comment on government policies for fear of being seen as supporting or opposing political parties that comment on the same policies.

A considerable amount of criticism was directed at the lack of guidance from the CRA on how to calculate the use of charities' resources to satisfy the requirement that substantially all of their resources be devoted to their charitable work, and the interpretation of this as generally being 90%. Many participants expressed frustration at their inability to get clear direction from the CRA on this issue, particularly given the administrative burden of tracking the use of resources.

Suggestions for change to the CRA's policy guidance included:

- adopt a more enabling, rather than prohibitive, tone;
- clarify and list more specifically which types of activities are allowed or not, and eliminate the concept that an activity is acceptable only within limits;
- offer examples only after providing clear guidance on an issue, rather than the current format of relying almost entirely on questions and answers;
- use a plain language approach across all documents;
- specifically address the use of social media by charities with realistic expectations on the level of control that can be exerted over public discussion and debate in that context;
- reduce the degree of subjectivity found in the explanations for key terms, such as "well-reasoned" and "indirect"; and
- reinstate the in-person Charities Information Sessions ("Roadshows"), and consider additional methods of delivering its policy guidance and advice to charities, such as updated webinars and/or text chat services.

Some participants complimented the CRA's Client Services section on their responsiveness and willingness to offer advice and counsel, although noted that the advice can vary from one Client Services representative to another.

Additional Legislative and Policy Changes

The third category of CRA consultation questions related to the rules governing political activities, and if there should be changes. The feedback on this question was clear: fundamental legislative change is needed, and new policy or other administrative measures, however helpfully and clearly drafted, would simply not be enough.

The rules themselves were often described as outdated, relying on a Victorian-era model of service delivery to alleviate the symptoms of social problems, rather than reflecting the modern realities that the issues are inter-related and require involvement within and across sectors, and that charities need to address root causes through advocacy and public engagement if change is to be achieved and sustained.

Many participants supported the recommendations of other organizations, such as Imagine Canada's call to ensure that the focus of the ITA is on charitable purposes rather than activities, and Réseau québécois de l'action communautaire autonome's call to ensure full freedom of expression for charities. In regard to the latter, it was argued the playing field needs to be levelled between charities, with their restrictions on political activities, and for-profit corporations, which can fully deduct lobbying and other related expenses without having to operate under the same type of restrictions¹². It was often noted that the current restrictions on political activities not only restrict charities' freedom of expression, but the freedom of expression of citizens themselves (whose views charities represent) and are therefore anti-democratic.

Suggestions for change included:

- Adopt an inclusive list of acceptable charitable purposes in the ITA that reflects contemporary society, its issues and expectations;
- Consider the approach of other jurisdictions, some of which have softened restrictions on political purposes;
- Clarify that public policy activities (for example, research, dialogue, advocacy, and calls to action) are charitable, provided they are non-partisan and subordinate to a charitable purpose. In other words, accept the Supreme Court of Canada decision from the *Vancouver Immigrant Society* case and incorporate it in future legislation (i.e. that an activity is considered in the context of the charitable purpose);
- Retain the prohibition on partisan political activities;
- Create a permanent mechanism for consultation with the charitable sector to ensure an ongoing and iterative process for developing policy guidance; and
- Enable charities to benefit from social enterprise and social finance models.

What we did not hear: Viewpoints from Indigenous Peoples

Unfortunately, the CRA and the Panel received little feedback from Indigenous organizations and peoples, and this represents a blind spot for the consultations. The Panel recommends that the CRA proactively seek input on what impact current and recommended rules relating to political activities of charities may have, if any. It is critical that any further consultations on the broader modernization of charities legislation incorporate Indigenous viewpoints, including on obstacles to the use of charitable organizations as vehicles for social change.

¹² Submitted also by the Pemsel Case Foundation

E. OUR APPROACH

In its deliberations, the Panel developed the following key principles to guide its work:

- i. The participation of charities in public policy dialogue and development should be recognized and valued, and seen as an essential part of the democratic process.
- ii. Any regulation of charities' engagement in public policy dialogue and development should be proportionate to verified problems and risks.
- iii. The CRA's compliance and enforcement processes should pay due regard to administrative fairness, and to the extent possible, have an educational rather than punitive focus.
- iv. Legislation and policy should strive for simplicity and clarity.

F. RECOMMENDATIONS AND RATIONALE

The following recommendations are based on what the Panel heard through the CRA's Consultation Process, information provided by the CRA, and our own research, knowledge and experience. In summary, the panel is recommending that the CRA focus on charitable purposes, rather than activities. In this approach, public policy dialogue and development would be allowed without restriction, provided that it is subordinate to the charity's approved purposes and is non-partisan in nature.

The first two of our four recommendations relate to administrative and policy changes that we believe CRA could implement in the near term pending legislative change. The third recommendation would require legislative amendment and could be implemented in the 2018 Federal Budget. The fourth recommendation would require charitable sector consultation and further legislative amendment, and while this recommendation will take additional time, the process could commence shortly. As noted by Imagine Canada in its submissions, "while there is value in examining existing guidance and administrative practice, with an eye to clarifying and revisiting aspects thereof...potential reforms should not be limited to such clarification. Discrepancies have arisen between the common law governing charities and the manner in which charities' activities are regulated...any administrative changes or clarifications should be seen as a short-term measure, building towards comprehensive reform of the ITA."

Recommendation 1

Revise the CRA's administrative position and policy (including CPS-022, Political Activities) to enable charities to fully participate in public policy dialogue and development.

The Panel recommends that the CRA proceed immediately to amend its administrative guidance to expressly permit a charity to engage in public policy dialogue and development, if it furthers a charity's charitable purposes, is subordinate to those purposes and is non-partisan in nature, and that charities should not have to quantify and report about the quantification of these activities. More specifically, the CRA should revise its policy guidance to:

- a) explicitly allow the engagement of charities in public policy dialogue and development in furtherance of charitable purposes, to include:
 - Information – charities may provide information to others related to their charitable objects (including the conduct of public awareness campaigns) for the purpose of informing and swaying public opinion. Such information must be truthful, accurate and not misleading.
 - Research – charities may conduct research, distribute the research to others and discuss the research and findings with the media and with others as they see fit.
 - Opinions - charities may express opinions on matters relating to their charitable objects, as long as they draw on research and evidence and do not impinge on hate laws or other legitimate restrictions on freedom of speech.
 - Advocacy – charities may advocate to keep or change law or policy, either in Canada (any level of government) or outside of Canada.
 - Mobilizing others - charities may call on supporters or the general public to contact politicians of all parties to express their support for, or opposition to, a particular law or policy.
 - Representations – charities may make representations in writing or verbally to elected officials, parties and candidates, and may release such materials publically. The adoption of a charity's policy by a political party does not in itself constitute partisan political activity.
 - Providing forums and convening discussions - charities may invite competing candidates and political representatives to speak at the same event, or may request written submissions for publication, provided that

candidates and parties are given an equal opportunity to speak and/or have views published.

- Social media – charities may express their views, and offer others opportunities to express their views, on social media or elsewhere, however, such platforms must be monitored and partisan political messages must be removed.
- b) remove the policy requirement that a charity's materials must reflect all sides of the argument, and add that they must be fact-based;
 - c) retain the prohibition on “partisan political activities” while removing the “direct or indirect” qualification; and
 - d) amend CRA Form T3010, Registered Charity Information Return (annual report) to remove the requirement to quantify resources used for political activities, and replace it with a requirement to describe, in narrative form, the nature of the public policy dialogue and development work undertaken.

Rationale

This recommendation is intended to address, in the short term, the concerns of the charitable sector regarding current limitations on “political activities” pending the legislative amendments outlined in Recommendations 3 and 4. In doing so, the policy guidance could define “political activities” (referenced in the ITA) to mean “public policy dialogue and development”, as defined above.

It is our view that CRA could find support for a more expansive view of what is a charitable activity in the case law. The *Vancouver Immigrant Society* decision supports looking at the activity in the context of a charitable purpose. If a charity calls for a change in the law in furtherance of its charitable purpose - and such activity is subordinate and non-partisan, the Panel believes the policy could accept it as charitable. *Bowman*, which CRA points to as suggesting a call to action is political and thus has to be counted, was not considering an activity that furthers an otherwise charitable purpose - the Court in *Bowman* was looking at the trust's purpose which was to advocate for changes to the law. *Bowman* held that was not a charitable purpose.¹³

The Panel believes that this would go a long way in providing clarity to the charitable sector, and would enable the sector to more meaningfully contribute to public policy reform and the democratic process. Further, it would remove the current disadvantage

¹³ *Bowman v. Secular Society Ltd.*, [1917] A.C. 406 (H.L.); A number of the submissions including those from The Muttart Foundation, The Pemsel Case Foundation and those from legal experts, supported this interpretation of the case law.

faced by the charitable sector vis-à-vis for-profit companies which can advocate in the public policy arena without restriction.

With respect to the current requirement that the materials of charities must reflect all sides of an issue, we suggest that this is an unreasonable and unnecessary extension of the meaning of well-reasoned, and that it should be replaced by a requirement that materials must be fact-based. It is also noted that the current requirement for all sides of an issue to be included is not, in any event, uniformly enforced (e.g. in respect of religious charities).

Further, the prohibition on both “direct and indirect” partisan political activities is highly subjective (particularly “indirect”), and has been the subject of much confusion in the charitable sector. Instead, the CRA could list examples of what will be considered to be partisan political activities, and what will not.

In regard to the current political activities reporting requirement, the Panel recommends that the quantitative approach be replaced with a qualitative approach. In other words, charities would not be required to track and report a percentage of resources expended on their political activities (public policy dialogue and development). However, they would be required to describe these and articulate how they further their charitable purposes. CRA would be well within its regulatory mandate to raise issues and apply sanctions if there are concerns the activities are not in compliance with the ITA.

Adopting this recommendation would eliminate the current confusion over what is acceptable and not, and how to calculate political activities.

Process to start immediately, with a revised CPS-022 to be issued by December 31, 2017.

Recommendation 2

Implement changes to the CRA’s administration of the ITA provisions governing charities in the following areas: compliance and audits, appeals, and communication and collaboration.

Many of the submissions received during the consultation process raised concerns with the CRA’s compliance and audit functions, the appeals process, and communication and collaboration approaches. The Panel recommends that the CRA implement the following changes to its administration of the provisions of the ITA relating to charities:

a) Compliance and audits

- Ensure consistent application of the CRA's compliance continuum, and enhance the education-first approach;
- Consider expanding the Charities Liaison officer role beyond new charities to include working with charities that are or may be experiencing compliance issues;
- Consult with the sector when identifying thematic audit topics;
- Publish and effectively communicate the risk rationale for thematic audits, so that charities and the public are aware, at a high level, of what types of activities and organizations are more likely to be subject to audit;
- For both random and thematic audits, limit review to the three fiscal years prior to the Notice of Audit (with exceptions for suspected criminal or fraudulent activity);
- Establish service standards for audits that require CRA to provide ongoing communication when in the audit process and a closing response that includes final audit results; and
- Conclude the remaining audits undertaken as part of the Political Activities Audit Program as soon as possible, and suspend any decisions specifically relating to political activities in these audits pending implementation of the recommendations in this Report.

Rationale

Implementing these recommendations would improve trust and collaboration between CRA and the sector by providing greater transparency and certainty about compliance and audit processes. Audits are costly for both charities and the CRA, and it is to everyone's advantage to have them concluded as efficiently as possible. Establishing expected timeframes and publishing more details on the CRA's approach to audits would provide a general guideline for charities, allowing them to know what to expect, how long it should take, and what the range of responses could be.

The political activities audits were a dominant theme during the Consultation process and have created fear and mistrust in the charitable sector. The Panel is of the view that concluding these audits must be a high priority. Furthermore, adoption of the recommendations in this Report would make any ongoing review of non-partisan political activities moot.

b) Appeals

- Assist applicants for charitable registration and registered charities in understanding the appeals process;

- Recommend to the Minister of Finance that such appeals should be heard by the Tax Court of Canada, rather than by way of judicial review to the Federal Court, to level the playing field and enhance fairness (change to legislation would be required); and
- Ensure that charities are aware that they can approach the taxpayers' ombudsman on issues of service delivery, and that the ombudsman has the expertise and resources to deal with issues from registered charities.

Rationale

The appeal process, when CRA refuses an applicant for charitable status or proposes to revoke a charity after an audit, is not well understood and is perceived to be biased in favour of the CRA. Further comment is made on this topic under Recommendation 4, and it is acknowledged that fundamental change, especially relating to where appeals must be heard, would require legislative change. However, in the meantime, the CRA could provide new guidance or other information disclosing that all materials submitted by a charity or prospective charity from the initial contact forward will be admissible and form part of the information received by the Federal Court of Appeal on appeal. This would be of great value to organizations seeking to challenge a decision by the CRA.¹⁴ Currently, charities do not understand how the appeal systems work until much later in the process, and this often works to their disadvantage.

There appears to be little awareness in the charitable sector that charities may engage the taxpayer's ombudsman on issues of service delivery. We did not receive submissions in this regard, but suggest that this option could be more broadly communicated by the CRA and/or the ombudsman's office.

c) Communication and Collaboration

- Reinstate the CRA-delivered Charities Information Sessions (the Roadshows), and the sector-delivered Charities Partnership and Outreach Program (CPOP). These in-person programs were seen as very valuable to the charitable sector.
- Enhance internal training within the CRA to ensure consistency in staff dealings with charities;
- Investigate mechanisms by which the CRA can engage with Indigenous communities, given the limited feedback in the political activities consultation; and

¹⁴ Submission of the Philanthropic Foundations Canada and the Environmental Grantmakers' Network on the topic of appeals.

- Establish a high-level standing working group of sector representatives to identify and address ongoing, significant issues. This working group should also be charged with monitoring, and supporting the implementation of the recommendations in this Report and ensuring a three-year review to assess the effectiveness of the implementation of these recommendations.

Rationale

The CRA's recent consultation on the political activities of charities has been much appreciated by the sector, and has illustrated the need for more in-person consultation, review, and communication regarding the issues facing both charities and the regulator. In particular, a number of submissions specifically requested the reinstatement of in-person information and training opportunities. These could be provided by either the CRA, or by umbrella organizations in the sector in partnership with the CRA, or both.

As previously noted, a number of submissions pointed to a lack of consistency in the information and advice provided by CRA staff, both within the same unit and across CRA units. The CRA might consider enhancing its internal training mechanisms, and potentially looking at knowledge management systems similar to those used by contact centres in the private sector.

It was clear to the Panel, based on our own experiences as well as the many submissions commenting on it, that an ongoing consultation process would be of benefit to both the sector and the CRA. A high level working group meeting several times a year to discuss issues of mutual concern and to support the implementation of these recommendations would be advisable.

Implementation of recommendations to start immediately.

Recommendation 3

Amend the ITA by deleting any reference to non-partisan political activities to explicitly allow charities to fully engage without limitation in non-partisan public policy dialogue and development, provided that it is subordinate to and furthers their charitable purposes.

The Panel recommends that amendments:

- a) retain the current legal requirement that charities must be constituted and operated exclusively for charitable purposes, and that political purposes are not charitable purposes;

- b) fully support the engagement of charities in non-partisan public policy dialogue and development in furtherance of charitable purposes, retiring the term “political activities” which tends to be understood in common parlance as partisan and is therefore confusing, and clearly articulating the meaning of “public policy dialogue and development” to include: providing information, research, opinions, advocacy, mobilizing others, representation, providing forums and convening discussions; and
- c) retain the prohibition on charities’ engaging in “partisan political activities”, with the inclusion of “elected officials” (i.e. charities may not directly support “a political party, elected official or candidate for public office”), and the removal of the prohibition on “indirect” support, given its subjectivity.

Rationale

The modernization of the charitable framework (recommendation 4) is urgent and needed. However, the Panel acknowledges and understands that such a task requires consultation with the charitable sector and careful review, and will therefore require time. As such, the Panel feels strongly that an interim legislative step directed specifically at political activities is necessary.

The present limits on political activities are confusing, costly to quantify and track, and do not address the substantive issue of ensuring charities are operating for recognized charitable purposes. While some of the Panel’s recommendations relate to and can be addressed in the CRA’s policy guidance, the Panel’s view is that a legislative change is essential to provide clarity and certainty for the charitable sector, as well as for its regulator. A policy position can be changed relatively easily by government, but a legislative amendment is more difficult to reverse. The Panel believes that the Government will also need to clarify the parameters that define ‘political purpose’.

The rationale for this approach is more fully described under Recommendation 1 in the context of interim changes recommended to the policy guidance.

This process should start as soon as possible, with legislative changes introduced no later than April 1, 2018.

Recommendation 4

Modernize the legislative framework governing the charitable sector

The Government of Canada, in consultation with the charitable sector, should proceed, as soon as possible, to modernize the rules governing the charitable sector through the

development of a new legislative framework. The Panel recommends that a new legislative framework include:

- a) a focus on charities' purposes, rather than activities;
- b) an inclusive list of charitable purposes reflecting contemporary social and environmental issues and values; and
- c) the ability to appeal a refusal to register and revocation decisions to the Tax Court of Canada.

While not directly within the Panel's mandate on political activities, it is also suggested that additional legislative change could be considered to:

- remove the need for "direction and control" of non-qualified donees in certain circumstances, to better enable charities to work with their domestic and foreign partners as equals in furtherance of their charitable purposes¹⁵;
- accommodate the use of social enterprise and social finance models benefiting the charitable sector.

Rationale

The present legislative framework is based on antiquated law, and does not reflect the reality of charities in Canada today or the expectations of their stakeholders. The formative pieces of legislation that have established the current regime were created in the mid to late 20th century, and have not kept pace with the rate or nature of social change. The current law and CRA's interpretation of it, present barriers to what charities can do and should be doing.

The proposed modernization of the legislative framework for charities would appropriately recognize the critical role played by charities in Canadian society, facilitate their involvement in public policy dialogue and development, better enable the provision of much-needed services to Canadians and others around the world, and recognize their contribution to the Canadian economy¹⁶.

A concern may be raised that this will lead to the entry, as charities, of lobbying groups whose sole purpose is to advocate for a specific cause. The panel believes that the "check" on such an outcome resides in the CRA's ability to register a new charity based

¹⁵ The submission from the Canadian Council for International Cooperation, "Modern Charities, Ancient Rules" provided a detailed summary of the conflicts between current CRA rules and international best practice in development work, supported by other government departments.

¹⁶ Statistics Canada, [Canada's non-profit sector in macro-economic terms](#) reports that the non-profit sector currently represents approximately 8% of the Canadian economy.

on established charitable purpose categories. As is currently the case, the CRA would assess eligibility as a charity under the ITA using a two-part test to determine if an organization¹⁷:

- is constituted for purposes that are exclusively charitable; and
- devotes its resources to charitable activities that further those purposes.

Accordingly, the ability of government to exercise oversight and prevent abuse is retained in the Panel's recommendations. The existing rules which provide that a charity may not have an unstated non charitable purpose give CRA the ability to audit organizations that may, over time, fail to advocate in furtherance of a charitable purpose.

In the course of determining the best approach to modernizing the legislation, it is crucial that the charitable sector be consulted and engaged to ensure that the new framework achieves the desired outcomes, has broad support and avoids unintended consequences. We believe that the charitable sector is ready and willing to fully participate in this process.

As previously noted in this report, the standard of review of a decision on whether to register an applicant as a charity or revoke the status of a charity favours the government by requiring a judicial review application to the Federal Court of Appeal. The Federal Court of Appeal is not mandated to review whether the government's decision is correct, but only whether it is reasonable. An appeal to the Tax Court of Canada would allow charities to fully argue why the decision of the Government is wrong and balance the position of the parties through this process¹⁸.

With regard to social enterprise and social finance, much has been written and discussed elsewhere over the past decade, and we are aware that another government consultation is underway on these topics. We would encourage the Government of Canada to ensure that the interests and needs of the charitable sector relative to these developments are fully addressed in the context of a legislative framework modernization effort.

This process should start as soon as possible.

¹⁷ cra-arc.gc.ca/chrts-gvng/chrts/pplyng/mdl/menu-eng.html

¹⁸ This recommendation is made and extensively explained in the submission on the appeals topic of the Philanthropic Foundations Canada and the Environmental Grantmakers' Network.

CONCLUDING COMMENTS

It is the view of the Panel that the characterization of what constitutes “political activities”, and the limitations imposed on charities in this regard, impede the sector’s participation in public policy dialogue and development, and do a disservice to Canadians, while offering no offsetting regulatory benefit. Our recommendations are intended to reduce the current high level of confusion, uncertainty and cost relating to the regulation of the political activities of charities, and to support their ability to more fully participate in public policy dialogue and development while preserving the CRA’s ability to fulfil its regulatory objectives. We believe that implementing these recommendations will improve the quality of public policy dialogue and development in Canada, as well as reduce administrative complexity and cost for both the sector and its regulators.

As noted in one submission, “it would be much better for both charities and the public if this debate could cease to be framed in the language of “political activities”. Instead, it should be described as citizens and institutions participating by lawful means in public debate designed to improve Canada’s “coherent system of law” based on our Constitution.”

The Panel strongly encourages the CRA to proceed with administrative and policy changes immediately (Recommendations 1 and 2), and to work with the Department of Finance to implement Recommendation 3 as soon as possible. The Panel also encourages the CRA to commence working with the Department of Finance, and the charitable sector, to institute a process for broader legislative change (Recommendation 4).

The Panel believes that the charitable sector recognizes its own responsibility to understand and operate within legislative and administrative parameters. It is ready and willing to assist the Canadian government in further developing and discussing these recommendations, and eagerly awaits the government’s response.

APPENDICES

I. Summary of consultation themes and recommendations

See on next page

Summary of consultation themes and recommendations

What we heard

The laws governing Canadian charities are out of date.

Public policy dialogue (political activities) should be allowed with no restrictions (except for partisan activities).

The CRA's administrative position on public policy dialogue is misunderstood.

The CRA administration of charities (beyond political activities) is often unclear and inconsistent.

How it manifests

Uncertainty about the role of charities; missed opportunities for charities to fully contribute to Canadian society.

Confusion; fear of participating in public policy dialogue; cost/time burdens to track and report.

Uncertainty about the guidelines on undertaking and reporting public policy (political) activities.

Confusion and uncertainty; audits and appeals take too long; inconsistent application of rules.

Recommendations

Modernize the legislative framework to reflect current norms and expectations; focus on charitable purposes not activities.

Amend the legislation to permit public policy dialogue without limitation; prohibition on partisan activities should be maintained and clarified.

Revise the CRA's administrative position to allow charities to fully engage in public policy dialogue; conclude remaining political activities audits as soon as possible.

Implement administrative changes to compliance and appeals, audits, and communications.

Outcome

New legislation better reflects Canadian values and expectations.

Better public policy; stronger charitable sector.

Interim relief for charities engaging in public policy dialogue pending legislative change; improved relationship between the CRA and the charitable sector.

Clear, consistent and enforceable standards.

II. Ipsos Public Affairs – Registered charities’ political activities consultations (Summary of in-person consultation sessions)

For a copy of the report, go to **cra.gc.ca/charities**, select “Resources for charities and donors”, and see “Resources for charities about political activities”. You can find a link to the report under “Consultation process 2016 to 2017”.

III. Summary of themes emerging from on-line consultation process

There is clear consistency between the on-line responses received by the CRA and the in-person consultations conducted by Ipsos. The Panel members had access, and read, the written submissions. These formed an important part of the Panel deliberations.

The CRA received a total of **19,990** written submissions.

Online Petitions

19,530 were submissions generated by people joining online petitions. These petitions called for the legislative framework governing charities to be modernized, to permit more involvement in the development of public policy. See below for the text from these submissions.

Unique Responses

There were **460** individually-written responses (from registered charities, individuals, and a variety of other sources)

Summary of the Online Responses

The CRA was able to identify 732 high-level comments, suggestions, or calls for a certain type of action. These can be broken down as falling into the following broad categories, from the most often heard to the most rarely:

1. there should be fewer or no restrictions on charities' political activities
2. commentary on the CRA's policies and policy positions as they relate to political activities
3. legislative framework for charities should be changed
4. criticism of the political activities audit program
5. commentary on the format for delivering the CRA's policy guidance to charities and the public
6. unclear
7. charities' ability to carry out political activities should be reduced or eliminated

8. out of scope of the consultation
9. general support for the existing rules
10. complaint concerning a specific charity
11. call to enlarge the scope of the consultation to a more public-hearing format
12. government should encourage charities to carry out political activities

Text of petition submission #1

Canadian charities have played a critical role in the development of a better Canada; from laws addressing acid rain, banning smoking in public spaces to those creating provincial and national parks.

I welcome the opportunity to comment on the current rules and guidance on permissible political activity and the changes that your government has promised to make to ensure a continued positive contribution of charities in shaping Canadian policies.

The rules governing charities involvement need to be modernized to enhance the role of charities in the development of new laws and policies. Corporations can spend freely on lobbying, advertising and any kind of political activity, including what is considered by CRA as "partisan." Furthermore they can deduct 100% of those expenses from their income. On the other hand, charities are severely restricted in the form and quantity of public policy work they can do. This restricts my ability as a citizen to have my voice heard on issues that I care about because I cannot hope to have the resources of a corporation. I need to be able to work with other like-minded citizens to support the work of charities in key issues I care deeply about.

I would like to encourage the federal government to develop a new legislative framework for charities that ends restrictions on the activities that they can pursue in achieving their goals. If a new law or policy is needed they should be free to tell their supporters, the media and government why that is the case. It is only fair and it is good for democracy.

I am looking to you to look out for the interests of all Canadians and keep your government's promise to enable Canadian charities to do their job of making a better Canada for all of us.

Text of petition submission #2

Canadian charities have played a critical role in the development of a better Canada; from laws addressing acid rain, banning smoking in public spaces to those creating provincial and national parks. Despite these and many other accomplishments, the outdated law that governs charities actually restricts what charities can say to influence public policies that impact Canadians' lives.

These rules must be modernized to enhance the role of charities in the development of new laws and policies. Corporations can spend freely on lobbying, advertising and any kind of political activity. Furthermore, they can deduct 100 per cent of those expenses from their income. In contrast, charities are severely restricted in the form and quantity of public policy work they can do. This restricts my ability as a citizen and as a supporter of a charity to have my voice heard on issues that I care about.

I strongly encourage the federal government to end restrictions on the activities that charities can pursue in achieving their goals. If a new law or policy is needed to achieve goals like protecting the environment, upholding human rights, fighting racism, preventing poverty or improving Canadians' health, charities should be free to tell the public, the media and government why that is the case. It is only fair and it is good for democracy.

Prime Minister Justin Trudeau promised to let charities speak their mind. I strongly urge you to follow through on that promise.

Text of petition submission #3

Charities Directorate

Dear Directorate,

Canadian charities have played a critical role in the development of a better Canada; from laws addressing acid rain, to banning smoking in public spaces to those creating provincial and national parks.

I welcome the opportunity to comment on the current rules and guidelines on permissible political activity of charities and the changes that your government has promised to make to ensure the continued positive contribution of charities in shaping Canadian laws and policies.

The rules governing charities' involvement must be modernized to enhance the role of charities in public policy debate and the development of new laws and policies. Corporations can spend freely on lobbying, advertising and any kind of political activity, including what is considered by the CRA as partisan. Furthermore, they can deduct 100 per cent of those expenses from their income. In contrast, charities are severely restricted in the form and quantity of public policy work they can do. This restricts my ability as a citizen to have my voice heard on issues that I care about because I cannot hope to have the resources of a corporation. I need to be able to work with other like-minded citizens to support the work of charities on key issues I care deeply about. Other countries have modernized their charity laws to protect free speech. It is time for Canada to do the same.

I strongly encourage the federal government to develop a new legislative framework for charities that ends restrictions on the activities that they can pursue in achieving their goals. If a new law or policy is needed to achieve goals like protecting the environment, upholding human rights, fighting racism, preventing poverty or improving Canadians' health, charities should be free to tell their supporters, the media and government why that is the case. It is only fair and it is good for democracy.

Our democracy is stronger when charities voice Canadians' concerns on issues of public debate, and our charity laws should encourage this.

I am calling on you to look out for the interests of all Canadians and keep your government's promise to enable Canadian charities to do their job of making a better Canada for all of us.