

# Political Activities and Canadian Charities

---

A presentation to the  
Ontario Council for International Cooperation  
January 27, 2009

Mark Blumberg  
mark@blumbergs.ca



globalphilanthropy.ca

# Overview of presentation

---

- ❑ Importance of Political Activities and Statistics
- ❑ Rules for Political Activities and Registered Charities
- ❑ CRA General Compliance concerns
- ❑ Lobbying Registration

Presentation is information and not legal advice. If you need legal advice speak to a charity lawyer.



# Importance of Political Activities to be conducted by charities

---

- ❑ some matters require government support, acquiescence or legislation (symptoms vs. root causes)(how much aid/which countries)
- ❑ ODA vital for foreign activities
- ❑ charities and Southern partners have expertise, are trusted
- ❑ governments have scarce resources and we want them to use those resources in the best way possible – other interests are well represented at the table



# Philanthropy, Official Development Assistance, Remittances per annum – circa 2006

---

Philanthropy from Canada	\$2.3 billion
Philanthropy (development)	\$1.1 billion (Hudson)
Philanthropy (development)	\$0.7 billion (CCIC)
ODA (“foreign aid”)	\$3.68 billion
Remittances	\$6.8 billion



# Importance for an organization of “political” activities

---

- ❑ assists in fulfillment of mission
- ❑ win/win (Canadian charity and government)
- ❑ government funding vs. fundraising
- ❑ donor, Southern partner and stakeholder interest



# Impediments to Int. Dev. Charities Conducting Advocacy work/policy dialogue

---

- ❑ knowledge of policy making processes in Canada and capturing knowledge from South
- ❑ resources – no time, skills, HR for policy research, analysis, no sources of funds
- ❑ organizational development issues – silos, lack of management/board will
- ❑ “legal and regulatory constraints (insufficient knowledge about the extent to which registered charities can engage in policy-influencing activities.” ie. CRA.



# Statistics on Canadian Charities and Political Activities – 2006 T3010

---

- ❑ 397 of 81,000 charities in 2006 conducted political activities (0.5%!)
  - ❑ only 33 spent over \$100,000
  - ❑ 139 spent over \$10,000
  - ❑ 298 spent over \$1000
- ❑ about \$49 million of political expenditures of over \$100 billion in annual expenditures by charities (0.05%)



# Top Canadian Charities by Spending on Political Activities – 2006 T3010

1. DUCKS UNLIMITED CANADA	\$5,266,908
2. CHAINE DE TRAVAIL ADAPTE C.T.A. INC.	\$3,625,080
3. UNITED ISRAEL APPEAL OF CANADA INC	\$2,038,143
4. CANADIAN CANCER SOCIETY	\$1,039,622
5. THE UNITED CHURCH OF CANADA	\$963,000
6. ASSOC. OF UNIV. & COLLEGES OF CANADA	\$804,000
7. WORLD VISION CANADA	\$711,361
8. ST LEONARD'S SOCIETY OF METRO. TORONTO	\$529,980
9. FAMILY SERVICE ASSOCIATION OF TORONTO	\$526,165
10. LLOYDMINSTER AGR. EX. ASSOC. LTD.	\$457,166





# Top Canadian Charities by Spending on Political Activities – 2006 T3010 (Cont)

11. PARKLAND SCHOOL DIVISION NO 70	\$389,311
12. THE DOROTHY LEY HOSPICE	\$354,433
13. DEVELOPMENT AND PEACE	\$285,786
14. MENNONITE CHURCH CANADA	\$252,515
15. MULTIPLE SCLEROSIS SOCIETY OF CANADA	\$246,154
16. UNITED WAY OF CANADA/CENTRAIDE CANADA	\$212,284
17. THE DAVID SUZUKI FOUNDATION	\$210,700
18. MS SOCIETY OF CANADA (ALBERTA DIVISION)	\$203,306
19. TORONTO EAST END LITERACY PROJECT	\$197,567
20. CANADIAN COUNCIL FOR INT. CO-OPERATION	\$190,969



# Why common law, ITA, CRA restricts charities involvement in politics

---

- ❑ tax policy – charities are not political parties who are accountable to electorate
- ❑ concern that it will divert funds and resources from charitable activities
- ❑ wealthy/major donors will use charities to espouse their political views, obtain benefits outside limits on supporting political parties
- ❑ CRA does not want to be censor and courts do not want to get involved in determining what is in public interest (legislature's role)



# Why common law, ITA, CRA restricts charities involvement in politics (cont)

---

- ❑ non profits that are not registered charities can do unlimited political activities - they just cannot issue tax receipts
- ❑ single issue advocacy groups -sometimes propaganda, distortion, shock tactics, imbalance in financial resources, questionable public benefit
- ❑ unlimited tax incentives supporting opposing sides of political debate is not charitable
- ❑ political, propaganda, education etc are matter of facts and degree



---

# Basic Rules for Registered Charities

# CRA – Considerations that apply to all charities

---

- ❑ objects exclusively charitable (not political)
- ❑ activities within objects (or it is *ultra vires*)
- ❑ only undertake charitable activities (relieve poverty, advance education, advance religion, other purposes beneficial to the community that the law considers charitable) with limited political
- ❑ cannot violate Canadian public policy or be illegal under Canadian law



# CRA – Considerations that apply to all charities (cont.)

---

- ❑ sufficient books and records in Canada
- ❑ disbursement quota (80/20) – generally receipted income this year, 80% spent on charitable activities next year, not fundraising, administration or political, in 2009 add 3.5% for endowments
- ❑ restrictions on “business” and commercial activities



---

# **Political Activities (CPS-022)**

# CRA Policy Statement on Political Activities (CPS-022)

---

- ❑ Background - introduced 2003
- ❑ reduces confusion
- ❑ greater latitude for charities to conduct political activities
- ❑ some want fewer restrictions on charities to participate in political discourse.
- ❑ policy statement is major step forward





# Political Purposes versus Charitable Purposes

---

- ❑ Charity defined by common law
- ❑ Cannot have political purpose
- ❑ Charity must have public benefit
- ❑ Charity can carry out political activities which are “connected and subordinate”



# Unstated Purposes

---

- ❑ when despite your stated objects you are really focused on something else
- ❑ collateral political purpose, non charitable purpose or charitable purpose.
- ❑ will look to actual activities, not just objects.



# What are political Activities?

---

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);



# What are political Activities? (cont)

---

We presume an activity to be political if a charity:

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



# What are political Activities? (cont)

---

We presume an activity to be political if a charity:

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.



# What is an elected representative and public official?

---

**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.

**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.



---

# Types of “Political” Activities

# Political Activities and Canadian Charities

---

- ❑ Prohibited activities (illegal and partisan)
- ❑ Political activities
- ❑ Charitable activities





# Prohibited Activities - illegal

---

- ❑ violence
- ❑ sabotage
- ❑ destruction of property
- ❑ jamming telecommunications



# Prohibited activities – partisan political

---

- ❑ “A partisan political activity is one that involves direct or indirect support of, or opposition to any political party or candidate for public office.”
- ❑ Information on how all MPs or MPPs voted on an issue connected with the charities purpose is not partisan



# Examples of Partisan Activities

---

- Recruiting a candidate for a particular party.
- Nominating a candidate.
- Organizing at the constituency level to sign up members for a particular party.
- Getting out the vote for a particular candidate or party.
- Endorsing a candidate or party publicly.
- Letters to the editor, op-ed pieces, media releases calling for support of or opposition to particular candidates or parties.
- Hosting a dinner for the campaign organizers of a party.
- Distributing leaflets highlighting a lack of government support for your organization's goals or programs.
- Inviting competing candidates to speak at separate events.

IMPACS, the Institute for Media, Policy and Civil Society  
[http://www.voluntary-sector.ca/eng/election06/election\\_kit.pdf](http://www.voluntary-sector.ca/eng/election06/election_kit.pdf)



# Examples of partisan political activities in CPS-022

---

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

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

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

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



# What are 'permitted' political activities? \* \*

---

- ❑ Non-partisan
- ❑ Connected and subordinate to charity's purposes
- ❑ information - informative, accurate, and well-reasoned (not false, inaccurate, or misleading)



# Income Tax Act and Political Activities – charitable organizations (149.1(6.2))

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.

Ancillary = connected  
Incidental = subordinate



# Income Tax Act and Political Activities – charitable foundation (149.1(6.1))

---

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.



# Examples of permitted political activities in CPS-022 (within allowable limits)

---

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

**14.3.2 Scenario 2 — Organizing a march to Parliament Hill**

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

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

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

**14.3.6 Scenario 6 — Organizing a rally on Parliament Hill**





# Charitable activities (ie. when is political not “political”?)

---

- ❑ Public awareness campaigns
- ❑ Communicating with an elected representative or public official
- ❑ Education



# Communication with the public - 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.”

- public awareness about its work,
- connected and subordinate, not primary activity
- well reasoned (not knowingly false, inaccurate or misleading)
- not primarily emotive/emotional content

- ❑ provide contact information if space is limited



# Communication with an elected representative or public official

---

considered charitable under CPS-022 as long as

- connected and subordinate to charity's objects
- well reasoned (or when little time a position paper is provided in a timely manner)
- not false, inaccurate or misleading

This is a major concession on CRA's part.



# Education as a charitable purpose

---

- ❑ education – more formal and structured than public awareness

education is

- 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 as Charitable (cont)

---

- ❑ education is not propaganda, should address “serious” arguments to the contrary.
- ❑ objective, well-reasoned position, factual, fully and fairly analyzed, complete, not emotive
- ❑ degree of bias/slant will determine whether educational



# Examples of charitable activity in CPS-022

---

**14.1.1 Scenario 1 — Distributing the charity's research**

**14.1.2 Scenario 2 — Distributing the research report to election candidates**

**14.1.3 Scenario 3 — Publishing a research report online**

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

**14.1.5 Scenario 5 — Giving an interview about the research report**



# Examples of charitable activity in CPS-022 (cont)

---

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

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

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



---

# "10%" Rule



# Expenditure limits under the *Income Tax Act* (Canada) on political activities

---

- ❑ “Substantially all” (90% or more) of activities must be charitable
- ❑ 10% rule (actually 10%, 12%, 15%, 20%)
- ❑ Higher percentages for charities with budgets under \$200,000
- ❑ Averaging up to two preceding years
- ❑ Financial AND other resources



# How can more be done than 10%

- ❑ work with another registered charity that spends less resources than 10% and DQ room
- ❑ establish separate non-profit or for profit

“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.” (CPS-022 from CRA)



# Can a charity use give/gift its resources to another organization for political activities?

---

- ❑ Qualified donee
- ❑ Non-qualified donee – no - need structured arrangement, direction and control
- ❑ For-profit professional lobbyist – no – but can hire on fee for service contractual basis



# Disbursement quota and political activities

---

- ❑ Charities cannot use the amounts they devote to political activities to help them meet their disbursement quota \*\* - important additional limit to "10% rule".
- ❑ Does charity have disbursement quota excess or shortfall?



# DQ when one charity giving funds to another charity

---

Is transfer of funds:

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



# DQ when one charity giving funds to another charity(cont)

---

If purchase of services - neither the paying charity nor the recipient charity can use the amount to satisfy their DQ.

If 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.



# What records should a charity keep?

---

- ❑ Identify expenditures that are political to show substantially all spent on charitable activities
- ❑ Consistent allocation between political and charitable when expenditures relate to both
- ❑ Not only financial resources but also “any physical and human resources”



# T3010B filing requirements

## T1030 DUE 6 MONTHS AFTER CHARITY'S FISCAL YEAR END

New T3010B - "A registered charity may pursue political activities to retain, oppose, or change the law, policy, or decision of any level of government inside or outside Canada provided the activities are non-partisan, related to its charitable purposes, and limited in extent."

Did the charity carry on any political activities during the fiscal period?  
Enter the total amount spent by the charity on these activities





---

# CRA General Compliance Concerns

# Top Compliance Concerns Presentation from Terry de March, CRA

---

- ❑ incorrect issuance of receipts (lack information, mistakes, FMV)
- ❑ failure to file T3010
- ❑ T3010 omissions\*
- ❑ non-charitable activities\*
- ❑ gifts to non-qualified donees\*



# Top CRA Compliance Concerns (cont)

---

- ❑ failure to maintain direction and control\*
- ❑ fundraising costs (reasonable and proportionate)
- ❑ political activities\*
- ❑ unrelated business activities
- ❑ religious school tuition receipts



\* Asterisk reflects my views of which of these are more relevant to political activities [globalphilanthropy.ca](http://globalphilanthropy.ca)

# Top CRA Compliance Concerns(cont)

---

- ❑ tax shelters
- ❑ fraudulent tax receipts
- ❑ transactions with directors
- ❑ other CRA rules (payroll, GST etc)



---

# Other Notes

# Lobbying the Canadian Federal Government

---

- ❑ *Lobbying Act* and Office of the Commissioner of Lobbying of Canada
- ❑ lobbying defined broadly, applies to charities
- ❑ *Lobbying Act* and ITA very different

for charities registration required when lobbying  
“duties constitute a significant part of the duties of one employee or would constitute a significant part of the duties of one employee if they were performed by only one employee.”



# Lobbying Federal Government

---

- ❑ What is “significant part of duties”
- ❑ Commissioner says:

when lobbying takes up 20% of an employee’s time or efforts or if you add all the employees together more than 20% of one full time employee’s overall duties.



# Lobbying the Ontario provincial Government

---

- *Lobbyist Registration Act and Office of the Integrity Commissioner*

<http://lobbyist.oico.on.ca/LRO/GeneralSettings.nsf/vwEnHTML/Home.htm>





# Other Thoughts

---

- ❑ involvement of Southern partners in choosing agenda, direction and in implementation
- ❑ dangers of silos and need board review and control over GRC committee
- ❑ be careful about use of advocacy and fundraising images
- ❑ board composition
- ❑ bench mark for funding – eg. 2%



# Marriage for civil purposes and same sex marriage

---

(6.21) For greater certainty, subject to subsections (6.1) and (6.2), a registered charity with stated purposes that include the advancement of religion shall not have its registration revoked or be subject to any other penalty under Part V solely because it or any of its members, officials, supporters or adherents exercises, in relation to marriage between persons of the same sex, the freedom of conscience and religion guaranteed under the *Canadian Charter of Rights and Freedoms*."



# Some Questions for consideration

---

What are your charities legal “objects”  
– not mission or vision etc.

Does your organization do political activities?

Are political activities reported on T3010?

Are political activities connected and subordinate to legal objects.

What % of expenses is political?

Does charity want to do more political activities?

Do you have DQ excess?



# Impediments to Int. Dev. Charities Conducting Advocacy work/policy dialogue

---

Discussions with CCIC members have highlighted that many of the assumed barriers to increasing policy capacity are barriers of perception, and are surmountable. In the end, increasing policy work is about *having the political will to do so, and making important subsequent organizational choices and changes to dedicate resources and staff or volunteer time to this end. The enhancements needed are achievable.* A great deal can be achieved by building the support base of Board members and leaders, and by expanded cross-sectoral collaboration, pooling resources and sharing knowledge, skills and strengths.



# Example of Organizations and Coalitions Doing Advocacy or Public Engagement Work

---

CCIC and regional councils (OCIC, MCIC)

Global Treatment Access Group (GTAG)

Make Poverty History

Halifax Initiative

Kairos: Canadian Ecumenical Justice Initiatives

Policy Action Group on Emergency Response (Pager)



# More information

---

[http://www.globalphilanthropy.ca/images/uploads/Canadian\\_Federal\\_Election\\_and\\_Canadian\\_Charities.pdf](http://www.globalphilanthropy.ca/images/uploads/Canadian_Federal_Election_and_Canadian_Charities.pdf) - an article on CPS-022 and political activities by Mark Blumberg

[http://www.ccic.ca/e/002/capacity\\_building.shtml](http://www.ccic.ca/e/002/capacity_building.shtml)

**Building Knowledge and Capacity for Policy Influence: Reflections and Resources (2006)** (from the Canadian Council for International Cooperation)

[http://www.globalphilanthropy.ca/images/uploads/Lobbying\\_and\\_Canadian\\_Charities\\_To\\_register\\_or\\_not\\_to\\_register.pdf](http://www.globalphilanthropy.ca/images/uploads/Lobbying_and_Canadian_Charities_To_register_or_not_to_register.pdf) **Lobbying and Canadian Charities: To Register or not to Register** by Mark Blumberg



# More Information

---

[www.globalphilanthropy.ca](http://www.globalphilanthropy.ca)

[www.blumbergs.ca/non\\_profit.php](http://www.blumbergs.ca/non_profit.php)

Mark Blumberg, Blumberg Segal LLP

390 Bay Street, Suite 1202, Toronto, ON M5H 2Y2

416-361-1982 x. 237

mark@blumbergs.ca



globalphilanthropy.ca