



CANADIAN COUNCIL of CHRISTIAN CHARITIES
ADVANCING MINISTRY TOGETHER

December 9, 2016

VIA Electronic Mail

Tony Manconi, Director General

Charities Directorate

Canada Revenue Agency

320 Queen Street, Tower A, 6th Floor

Ottawa ON K1A 0L5

consultation-policy-politique@cra-arc.gc.ca

Re: Consultation on the Rules Respecting Political Activities

Mr. Manconi,

We write in response to the Canada Revenue Agency's consultation request regarding the clarification of the rules that govern political activities for registered charities (the "Rules") that are described in policy CPS-022 (the "Policy" or "Policy Guidance"). We would like to thank the Charities Directorate (the "Directorate") for the opportunity to provide feedback that we trust will be earnestly considered. As you are aware, the Directorate has requested responses to six questions as a part of the consultation process. For your convenience, our responses to those questions have been reproduced below.

The Canadian Council of Christian Charities (the "CCCC") is a registered charity that was founded in 1972 out of concern that good stewardship practices be carried out by Christian charities. CCCC is an association of approximately 3,400 charities that includes religious organizations such as churches, denominational offices, educational institutions, international developmental agencies, nursing care homes, religious summer camps, and a host of other ministry organizations. The CCCC's focus is on charity management and advocacy for a favourable legal and regulatory framework in which its members can operate.

CCCC's membership represents a significant segment of the approximately 86,000 registered charities in Canada. Membership with CCCC is evidence of a charity's intent to take its obligation to comply with CRA policy and Canadian law seriously. It is within this context, as a registered charity that promotes good stewardship practices amongst other Christian charities, that the following comments are provided.

General Comments on Consultation

Whether the Directorate looks to clarifying the rules through an administrative change or through a comprehensive reform of the *Income Tax Act*, RSC 1985 changes should recognize the fundamental role that religion occupies in the charitable sector. As you are aware, approximately 38% of charities are

registered for the advancement of religion, which has been part of charity law prior to the *Statute of Elizabeth*, 1601 43 Eliz 1 c4 (the *Statute of Charitable Uses*) and the seminal *Pemsel* case of 1891.¹ Indeed, Canadian and other common law courts repeatedly acknowledge the protected place that religious belief and practice occupy in a democratic society. Common law courts also recognize that ‘advancement of religion’ inherently involves the promotion and dissemination of religious beliefs. The Supreme Court of Canada in *Fletcher v AG Alberta*, [1969] 66 WWR 513 wrote at paragraph 521:

[r]eligion, as the subject matter of legislation, wherever the jurisdiction may lie, must mean religion in the sense that it is generally understood in Canada. It involves matters of faith and worship, and freedom of religion involves freedom in connection with the profession and dissemination of religious faith and the exercise of worship.

Advancement of religion is also recognized as not being limited to the dissemination of religious belief but includes related activities, such as addressing social, moral, and ethical issues.² CRA’s Policy fails to address these principles while other CRA policies address them.³ The Policy addresses a related but dissimilar issue of public awareness campaigns in section 7.1. Fostering public awareness is materially disparate to the charitable work religious charities do when they address social, moral, and ethical issues. This permitted activity warrants independent commentary by CRA which will remove unnecessary ambiguity and not dissuade charities from speaking to relevant societal issues, as they are permitted by law.

The Directorate effectively fosters understanding among charities throughout the sector. Charities rely upon CRA policy to understand their obligations and responsibilities. As such, CRA ought to clarify the rules respecting political activities as it relates to all charities and, in particular, those established for the advancement of religion. It is imperative that any amendments or changes carried out by CRA include clarification of the foregoing principles.

Commentary on Consultation Questions

Topic #1 – Carrying out Political Activities

- *Are charities generally aware of what the rules are on political activities?*
- *What issues or challenges do charities encounter with the existing policies on charities’ political activities?*
- *Do these policies help or hinder charities in advocating for their causes or for the people they serve?*

Charities are generally aware that there are rules and prohibitions relating to a charity’s involvement in political activity. Charities are generally aware that there is a prohibition regarding partisan political activity and that there is a generally accepted level of permissible political activity in which charities can

¹ *Special Commissioners of Income Tax v Pemsel*, [1891] AC 531 (HL).

² *Advancement of Religion as a Head of Charity: What are the Boundaries?*, Terrance S. Carter, October 2006.

³ See for example CRA Policy CG-021 which cites *Vancouver Society of Immigrant & Visible Minority Women v the Minister of National Revenue*, [1999] 1 SCR 10.

engage. Charities have varying degrees of awareness as to what the rules are, how to classify political activity, what the definitions are and how they apply.

Charities that either engage in political activities or have a greater desire to participate have a better understanding of the rules. The charities that need to be aware of the rules are generally aware of them. As the Directorate is aware, charities operate with limited financial and personnel resources and exert little effort to become aware of the rules if they do not believe they are engaged, are not engaged, or have no desire to become engaged in political activity. In these circumstances, it is our experience that charities likely have no knowledge of the Rules or possibly believe that any political activity is prohibited.

The primary issue charities face with the existing Policy is difficulty in determining whether an activity is political activity or not. **Even still, CRA Policy helps charities advocate for their charitable causes by defining boundaries and by providing sufficient latitude for their involvement in political activities as provided in sections 6, 7, 9, and 9.1.**

Topic #2 – CRA’s Policy Guidance

- *Is the CRA’s policy guidance on political activities clear, useful, and complete?*
- *How can the CRA improve its policy guidance on political activity, partisan political activity, and accountability for their resources?*
- *Which formats are the most useful and effective for offering policy guidance on the rules for political activities?*

CRA’s policy guidance is largely clear, useful, and complete. However, CRA’s Policy Guidance creates some confusion as the result of its structure and length. It is our experience that the issues charities face with the Policy relate to how the Policy is drafted. The Policy, while comprehensive, is not accessible to many unsophisticated charities. The policy guidance lacks a clear statement of the Rules and examples that are directly applicable to the common practices of religious charities. The CRA Policy Guidance could better clarify obligations that would better aid religious charities in determining whether their common practices are permissible.

Generally, CRA’s Policy Guidance would benefit from a re-write which would remove unnecessary sections and include an executive summary, infographics, and examples that relate to issues faced by religious charities. Charities generally prefer policies that are concise and written in plain language. Charities also prefer documents with executive summaries or infographics that convey rules and restrictions easily.

With respect to policy CPS-022, sections 1, 2, 3, and a significant portion of sections 4 and 5 could be removed without impacting the substance of the Policy. This would result in a document with a greater focus on the actual rules regarding political activity. Ideally, the Policy would contain a summary of the Rules up front and then follow with discussion and examples. It is recommended that the CRA Policy also include a new section that articulates that religious activity is charitable and not political activity as CRA has done in section 8 with respect to Education as a charitable purpose.

While it is not our intention to redraft the Policy for CRA, we would like to provide the following example of policy CPS-022 section 6 that is redrafted for your assistance.

6. Permitted Activity

A charity's activities are divided into three types: partisan, political, and charitable.

Charities are not permitted to engaged in the following:

- a) Partisan political activity - activity that directly or indirectly supports or opposes a political party or to a candidate for public office.*
- b) Political activity where more than 10% of the charitable assets are devoted to political activities. See section 9 for the rules on expenditures. Political activity includes:*
 - a. encouraging the public to contact an elected representative or public official and urging them to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country;*
 - b. communicating to the public that the law, policy, or decision of any level of government in Canada or a foreign country should be retained, opposed, or changed; or*
 - c. explicitly indicating in its materials 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.*

Charities are permitted to engage in the following:

- a) Charitable activity; and*
- b) Political activity where less than 10% of the charitable assets are devoted to political activities. See section 9 for the rules on expenditures.*

As previously discussed, an essential element of the advancement of religion is the promotion and dissemination of religious belief, which involves addressing social, moral, and ethical issues. One of the most common practices of religious charities is the hosting of church services that involve preaching. Preaching often involves the delivery of a sermon or religious address to the public by individuals often recognized and ordained by religious denominations. Sermons inherently involve advocating specific positions on various issues that may appear political but is more accurately charitable permitted activity.

The nomenclature used by CRA to distinguish between permitted and prohibited activity is not generally an issue for charities. Many charities find the rules and framework regarding political activity to be clear. Changing the nomenclature without an underlying change in the law is unnecessary and will create further and unnecessary confusion within the sector.

Topic #3 - Future Policy Development

- *Should changes be made to the rules governing political activities and, if so, what should those changes be?*

It is our experience that no problems or issues exist with the Rules regarding political activities and as such no changes, other than those discussed above, should occur. Our experience is that charities regularly engage in activity, like receipting, that is subject to more numerous and complex rules without significant issue.

The Rules regarding political activity are central to the integrity of charities, the protection of charitable assets, and the reputation of the charitable sector. We do not recommend changes to the Rules and caution the loosening of the Rules that would permit charities to engage further in political activity. Such an increase in political activity would come at the expense of charitable activities and may manifest in other unintended consequences throughout the charitable sector.

Conclusion

The Directorate has an ability to ensure that the CRA Policy Guidance incorporate that 'advancement of religion' (which inherently involves the promotion and dissemination of religious beliefs and related activities, such as addressing social, moral, and ethical issues) be excluded from CRA's definition of political activity.

If the Directorate proceeds with amendments to the *Income Tax Act*, it is urged that the foregoing protections be enshrined in the CRA Policy Guidance as a temporary measure while the Directorate ensures that similar protection be integrated into the amendments.

CCCC makes no recommendation to what the Rules respecting political activities should be. We see no conflict or problem with the Rules, other than the normal confusion created by the current draft as discussed.

Again, we would like to thank the Directorate for the opportunity to be involved with this important process. We trust that you will earnestly consider the foregoing considerations.

Yours very truly,



Philip A.S. Milley,
Association Director, Legal Affairs