

Registered charities' political activities

Advice to Minister November 2015

Canada Revenue Agency Agence du revenu du Canada

Canada

Advice to Minister

Overview

1. Regulatory framework
2. Political activities rules
3. Budget 2012: Political activities initiative
4. Next steps and options
5. Annex: The Charities Program at the CRA

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Regulatory framework - Charities

- The CRA registers charities under the *Income Tax Act*, and monitors the charitable sector to ensure continued compliance with the requirements of the Act.
- A registered charity is exempt from income tax and can issue official donation receipts.
 - Given this generous tax treatment, the Act restricts how they can use their resources, including for political activities.
- There are just under 86,000 registered charities.
- Over \$14 billion of receipts were issued for gifts in 2012, which resulted in approximately \$3.5 billion of foregone tax revenue.

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Regulatory framework – Non-profit organization

- The income tax exemption for NPOs has changed little since its introduction in 1917.
- The CRA conducted an NPO Risk Identification Project which issued a report in 2014.
 - The CRA found that a significant portion of incorporated organizations would fail to meet at least one of the requirements set out in paragraph 149(1)(f) of the Act.
 - Budget 2014 called for a review into whether the income tax exemption for NPOs remains properly targeted and whether sufficient transparency and accountability provisions are in place.
 - The CRA remains supportive of such a review.

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Regulatory framework – Non-profit organization

- Under paragraph 149(1)(l) of the Act, a non-profit organization (NPO) is one that:
 - does not meet the requirements to be a charity, and
 - operates for any purpose except profit.
- NPOs are exempt from income tax.
- NPOs cannot issue official donation receipts, but have fewer restrictions on the use of their resources than charities do.
- Statistics Canada estimates the number of NPOs to be about the same as registered charities.

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Regulatory framework – Federal responsibilities

- The Department of Finance is responsible for the development of tax legislation, including the *Income Tax Act*.
- The CRA is responsible for the administration of the *Income Tax Act*, which contains a number of provisions relating to registered charities.
 - The CRA often relies on the common law to interpret provisions as many key terms relating to charities are undefined in the Act.
 - These interpretations can evolve over time as a result of court decisions.

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Political activities rules for charities

- Charities make a valuable contribution to the development of public policy.
- Accordingly, the Act permits a charity to devote (as a general rule) 10% of its resources to non-partisan political activities to support its charitable purposes.
- In short, a political activity communicates to the public that a law, policy, or decision of government should be retained, changed, or opposed.
- Some activities that also influence public policy can be considered charitable, and not political, such as:
 - representations made directly to government; and
 - public awareness campaigns.

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Budget 2012 – Political activities initiative

- Budget 2012 recognized the important role played by charities in developing public policy, but expressed concern some charities were not following the rules for political activities.
- The Government provided the CRA's Charities Directorate with \$13 million over five years to implement administrative measures to address political activities, including enhanced:
 - transparency / reporting for charities;
 - educational resources; and
 - compliance activities.

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Budget 2012 – Reporting and education

- The annual information return for charities was amended to include a new schedule to capture more information on charities' political activities.
- Several new educational products were developed to better inform charities and the public more broadly, including:
 - webpages explaining and highlighting key concepts, including a self-assessment tool and FAQs;
 - a speaker's kit;
 - an updated webinar/webcast; and
 - a three-part video series.

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Budget 2012 – Compliance

- The Charities Directorate is carrying out 60 political activities-focused audits over four years, approximately 1.6% of the total estimated 3,700 charity audits during this time:
 - 2012-13 – 10 audits
 - 2013-14 – 20 audits
 - 2014-15 – 20 audits
 - 2015-16 – 10 audits
- All audits, including those focused on political activities, follow an "education first" approach.
- No charity is revoked for minor infractions or simple misunderstandings (e.g., devoting just over 10% of its resources to political activities).¹⁰

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Budget 2012 – Compliance: Audit selection

- The Charities Directorate selected the files for audit by using indicators from a variety of sources, such as:
 - self-reporting from charities' annual information returns;
 - complaints from the public; and
 - referrals from within the Charities Directorate.
- Files were selected for audit if officers detected possible non-compliance.
- Charities from all four categories of charitable purposes are represented:
 - Relief of poverty
 - Advancement of religion
 - Advancement of education
 - Other purposes beneficial to the community as a whole

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Budget 2012 – Compliance: Audit results

- As of September 30, 2015, the Charities Directorate has completed 28 audits, with the following results:

• No problem found	1
• Education letter sent to charity explaining rules	7
• Charity to sign agreement to comply in the future	13
• CRA proposes to revoke charitable status	5
• Charity voluntarily requests revocation	1
• Registration annulled (registration determined to have been in error – charity retains all its assets)	1
- Overall, charities have been largely compliant with the political activities rules.
 - Tracking and reporting issues are the most common problem identified by the audits.¹²
 - Some partisan political activities have also been found.

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Budget 2012 – Compliance: Audit results

- In the five cases where the Charities Directorate has proposed to revoke a charity's registration, serious non-compliance issues unrelated to political activities have been uncovered, such as:
 - carrying out non-charitable activities;
 - failure to direct and control the use of resources; and
 - making gifts to non-qualified donees.
- If these audits had not considered political activities, the Charities Directorate would still have pursued revocation.

24(1)

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Budget 2012 – Compliance: Remaining audits

- There are 26 audits in progress, and 6 that were placed on hold when the election was called and have yet to begin.
- Of the 26 audits in progress, 18 are nearing completion and the Charities Directorate currently anticipates that:
 - at least ²⁴⁽¹⁾ will be addressed through compliance agreements to comply in the future; and
 - ²⁴⁽¹⁾ may lead to the CRA pursuing revocation of registration

24(1)

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Options: 2015 Election commitments

- The Liberal Party platform included:
 1. allowing charities to work free from political harassment; and
 2. modernizing the rules governing the charitable sector and non-profit sector, including:
 - a) clarifying the rules governing "political activity"; and
 - b) a new legislative framework to strengthen the sector that would emerge from this process.
- The Minister of National Revenue could take action to address 1 and 2 (a).
- The Minister of Finance, however, would ultimately be responsible for 2(b), legislative changes.

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Next Steps – Overview

- The Minister of National Revenue could choose to take action in two phases.
- **Phase 1:** Announce decisions on the political activities program in a press release:
 - Option 1: Decide the path forward for remaining audits.
 - Option 2: 21(1)(b)
- **Phase 2:** 21(1)(b) public report, and sector engagement
 - Option 3: 21(1)(b)
 - Option 4: Publish an annual public report on the charities program
 - Option 5: Engage the sector in consultations on clarifying the rules governing "political activities".

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Options – Phase 1: Press release

- A Ministerial press release could announce:
 - The Minister's decision on how to proceed with the audit program and, if necessary, the decision on how to proceed with 24(1)
 - There was no impropriety in the Charities Directorate's selection of files for audit.
 - That the audits have found charities to be largely compliant with the political activities rules, though in some cases other areas of serious non-compliance were identified.
 - The formal delegation of Ministerial responsibility for charity audits.
 - Future engagement with the sector on clarifying the rules governing political activities.

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Options – Phase 1: Audit program

- **Option 1a:**
21(1)(b)

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Options – Phase 1: Audit program

- 21(1)(b) Complete the 26 audits in progress, but do not start the remaining 6.
 - This would ensure most of the resources received through Budget 2012 are used as intended.
- 21(1)(b)

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Options – Phase 1: Audit program

- 21(1)(b)

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Options – Phase 1:

- 21(1)(b) and 24(1)

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Options – Phase 2:

- 21(1)(b)

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Options – Phase 2: Annual public report

- **Option 4: Annual public report**
 - The Minister could announce a new annual public report on the charities program.
 - While the Charities Directorate posts a Charity Program Update (CPU) on its website each year, an annual report would be an opportunity to:
 - more actively promote the content of the CPU to the public;
 - raise the profile of the Charities Directorate by outlining its work and accomplishments; and
 - affirm its contribution to a strong regulatory framework.
 - The report could be issued by the Charities Directorate

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Options – Phase 2: Sector engagement

- The Charities Directorate is reviewing its guidance products on political activities to decide if they require updating.
- The Minister could also initiate a formal consultation with the charitable sector to facilitate the review by:
 - **Option 5a** – forming a Ministerial council, as with the Ministerial Advisory Council on Social Innovation (2013); or
 - **Option 5b** – calling for a round table discussion, as with the Joint Regulatory Table (2000) that examined the regulation of the voluntary sector.
- Any consultation on political activities should take into account other sector consultations that may be ongoing (for example, by Employment and Social Development Canada or the Department of Finance).²⁴

Options – Phase 2: Sector engagement

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- While the CRA could implement changes to its guidance products, sector engagement could also lead to recommendations for legislative change.
 - Any changes to the legislation would need to follow the budget process led by the Minister of Finance.
- The sector engagement would need to be closely coordinated with the Minister of Finance so that expectations are managed.
- The Agency would require additional resources if a decision were taken to establish a Ministerial council or sector roundtable.

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Annex

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The Charities Program at the CRA

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1. CRA as Charities Regulator
2. Registered Charities Profile / Basics
3. Applying for Registration / Decision framework
4. Maintaining Registration: Compliance, Education and Support
5. Security, Transparency and Confidentiality
6. Legislative and Policy Changes

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The CRA as Charities Regulator

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- The *Constitution Act* gives the provinces and territories jurisdiction over charities, but few exercise this power.
- The CRA administers the *Income Tax Act*, which gives charities a number of tax advantages, such as:
 - exemption from income tax; and
 - the ability to issue official donation receipts.
- The CRA registers organizations and ensures they continue to comply with the requirements of the Act, making the CRA the de facto regulator of charities.

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The CRA as Charities Regulator

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- The CRA's Charities Directorate is responsible for the provisions of the Act pertaining to registered charities, which includes:
 - reviewing applications for charitable registration;
 - monitoring the activities of registered charities to ensure compliance with the Act
 - revocation and annulment of charitable registration
- The Charities Directorate also regulates the activities or receipt issuing privileges of certain other qualified donees, such as:
 - Registered Canadian Amateur Athletic Associations (RCAAs)
 - Registered Canadian municipalities
 - Registered prescribed universities

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The CRA as Charities Regulator

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- The Charities Directorate is also responsible for administering the *Charities Registration (Security Information) Act* (CRSIA):
 - Introduced in December 2001 as Part 6 of the *Anti-Terrorism Act*
 - Allows the CRA to play a key role in preventing and suppressing fundraising and other forms of material support to terrorism
 - CRSIA provides new grounds for refusing or revoking registration relating explicitly to support for terrorism

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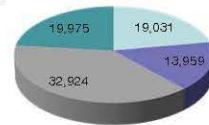
Advice to Minister The CRA as Charities Regulator

- There are approximately 280 employees in the Charities Directorate located in Ottawa
- In addition, there are more than 50 field auditors that carry out audits of charities across Canada
- Functions
 - Registration
 - Education (outreach) and client service
 - Compliance
 - Policy
 - National security

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Registered Charities - Profile

- 85,889 registered charities in Canada.
- Charitable organizations (88%); public foundations (6%); private foundations (6%)
- Over 4,000 applications and 1,400 revocations annually
- \$14.8 billion received in 2013
- 80% of registered charities are located in four provinces: Ontario, Quebec, BC, Alberta



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Advice to Minister Registered Charities – the Basics

Purposes	Must be established and operated exclusively for charitable purposes
Registration	Must apply to CRA for registration
Tax receipts	Can issue official donation receipts for income tax purposes
Returns	Must file an annual information return
Tax exemption	Exempt from income tax
Winding up	Must disburse remaining resources to one or more registered charities

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Advice to Minister Registration

- To qualify for registration as a charity, applicants must be constituted and operated for exclusively charitable purposes, and must provide a public benefit
- As the Act does not define the term "charitable", the common law meaning applies
- At common law, the courts have identified four categories of charitable purposes:
 - Relief of poverty
 - Advancement of religion
 - Advancement of education
 - Other purposes beneficial to the community as a whole
- Charities must also pursue these purposes for the public benefit, meaning:
 - The benefit must be demonstrable
 - They must not provide private benefit or gain beyond what is incidental to achieving the charitable purpose

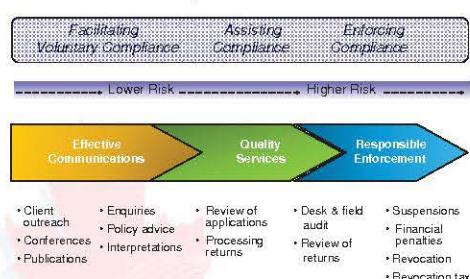
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Advice to Minister Maintaining Registration

- In order to maintain registered charitable status, charities must:
 - File an annual information return and financial statements
 - Continue to operate for exclusively charitable purposes
 - Meet an annual disbursement quota requirement (generally 3.5% of investments not used on charitable activity or administration)
- The Act permits a charity to engage in:
 - Non-partisan political activities within prescribed limits (generally 10% of resources)
 - Reasonable administration and fundraising
 - Business activities provided these are related to the charity's purposes or run substantially by volunteers

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Advice to Minister Charities Compliance Continuum



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Compliance Program

- Audit coverage rate of approximately 1% annually
- Selected for audit based on risk profile, project focus, or as part of random audit program
- “Education first” approach to compliance, using range of tools and sanctions:
 - Education letter
 - Compliance agreement
 - Monetary penalties
 - Suspension of receiving privileges / qualified donee status
 - Revocation

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Education and Support

- Providing information, guidance and advice on maintaining registered status through:
 - Client service
 - Call centre
 - Written enquiries
 - Web and outreach
 - Online information and policy guidance
 - Charities listings
 - Videos and webinars
 - Electronic updates and newsletters

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Engagement with charitable sector

- The CRA, through the Charities Directorate, maintains strong relationships with charities and their representatives
- Established consultative processes are in place and working well
 - Technical Issues Working Group
 - Consultations on broader issues of significance to CRA and the sector, organized by the Muttart Foundation
 - Consultations on new or revised guidance products
- Participation in and attendance at events, such as
 - Canadian Bar Association – Charity and Not-for-profit Law Section annual symposium
 - Church and Charity Law annual seminars

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Transparency and Confidentiality

- The Act (s. 149.1 and s. 241) specifically allows certain information about registered charities to be made available to the public, including:
 - a listing of registered, revoked, and annulled charities;
 - annual information returns and financial statements;
 - governing documents;
 - information from the application for registration;
 - notification of Registration letter;
 - names of Directors and like officials; and
 - if penalized, suspended or revoked, the letter outlining the reasons for that decision
- Any other information about registered charities is confidential.

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Legislative and Policy Changes

- The regulatory framework for charities has continued to evolve, with a number of legislative and policy changes over the years
 - Voluntary Sector Initiative – 75 recommendations to the government by the Joint Regulatory Table for modernizing the charities program (2003)
 - Anti-terrorism legislation – creation of Review and Analysis Division to prevent abuse of charities by terrorist organizations, with new funding (2004)
 - Policies – CRA guidance products released (e.g., fundraising, foreign activities, human rights, arts, health, related business, ineligible individuals)

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Legislative and Policy Change (cont'd)

- Recent noteworthy legislative changes from federal budgets
 - Budget 2010:
 - Reduction and simplification of disbursement quota
 - Budget 2011:
 - Registration requirements added for most other qualified donees
 - Ineligible individuals provisions introduced
 - Budget 2012:
 - Political activities – increased transparency and accountability
 - Eligibility rules changed for foreign charities
 - Budget 2013: First-time donor's super credit
 - Budget 2014: Funding for Charities IT modernization
 - Budget 2015:
 - Allowed charities to invest in limited partnerships
 - Proposed capital gains reduction for gifts of privately-held shares and real estate

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Pages 000008 to 000014 are out of
scope