



What does the 2015 Federal election mean for Canadian charities?

By Mark Blumberg (November 2, 2015)

The Conservative loss in the 2015 Federal election and the Liberal majority government will have some impact on the Canadian charity sector. While it is difficult to predict exactly what the Liberal government wishes or will be able to do, we can probably make some educated guesses. Keep in mind that there will be challenges for the Liberals – they have an ambitious general agenda and non-profits and charities are not likely to be their most pressing concern.

With the installation of our new government, some people think that there is going to be a completely different regulatory structure or that there will be no regulation of charities at all. They think that charities will be able to undertake unlimited fundraising, political and business activities and that charities will be able to pay their executives unlimited amounts of money to attract the ‘best and brightest’. They think there will be a statutory definition of “charity” that will dramatically increase the scope of what is charitable in Canada. They think that anything that calls itself a ‘social enterprise’ will get all the benefits of being a charity without any of the restrictions. They think the Liberals (influenced obviously by pot smoking) are going to welcome fringe ‘religious’ cults to Canada. They think the Liberals are going to eliminate the rules on foreign funding so that it will be easier for Canadians who support groups like ISIS or Hamas to get their money through without ‘harassment’ and to get a tax receipt.

None of this is likely going to be the case. What we can expect over the next few years is some small incremental changes when it comes to the regulation of registered charities.

The Harper government was notorious for doing what it wanted, often with little input from the public sector or the charitable sector when it came to charity issues. I expect the Liberal government will take advice from the public sector and will consult widely so that their policies take into account different stakeholders. Keep in mind change by itself is not necessarily a good thing. Many changes have unanticipated consequences; sometimes with the changed rules comes additional rules which can leave those advocating for the change wondering if they are, in fact, better off once they get the change. Just a word of caution.

Tone

The biggest change in terms of the regulation of registered charities will probably be a change in tone. I think it would be fair to say that the Conservatives were unfair to the charity sector, specifically and most importantly in trying to push charities out of the public policy space. They talked about helping charities by giving more tax incentives to donors but, for example, slammed some charities who received foreign funds as being “money launderers”, etc.

Political Activities

Will there be any changes in the regulation of registered charities relating to political activities? There probably will not be further funds for political audits. If CRA wishes to pursue such audits it will likely need to use regular audit funds. While it is possible that there may be changes to the definition of political activities, I think that it is more likely that there will not be any substantial changes and certainly not in the short-term.

Ultimately, Canadian charities have tremendous room to conduct political activities. The real test is whether with a Liberal government charities will actually conduct more political activities. There still is a major problem with charities being less than transparent about their political activities; less than 500 charities declare on their T3010

form that they are involved in political activities when, in fact, thousands of charities appear to be involved in political activities. There is certainly a need for greater education by Canadian charities on the extent to which they are allowed to be involved in political activities and the importance of complying with the rules relating to political activities. There is no question that the tone of the new government will be very different when it comes to charities and political activities. We hope that curious statements and distortions of what is the law from some Senators and Conservative representatives will stop.

The three year audit program that CRA was conducting relating to political activities was largely coming to an end, whether or not the Conservatives would have been re-elected. At this point in time, CRA has proposed the revocation of the charity status of about 5 groups based on their political activities. How many of those are 'left-wing' versus 'right-wing' is difficult to say, as we are forbidden from knowing until after revocation has occurred which may only take place years from now. There are approximately 1,200 environmental charities in Canada and perhaps 2 or 3 of those will lose their charitable status. This is comparable to 5 or so anti-abortion charities that lost their charitable status under the Chretien government for violating the same rules.

Ultimately, certain evangelical churches and anti-abortion groups are likely going to be some of the biggest critics of Justin Trudeau and his government. If Trudeau decides to open the flood gates to charities becoming political lobby groups he is going to be the one who feels the impact the most. CRA would be delighted to be able to avoid the political activities issue.

Science

The issue of preferring an evidence-based approach to solving problems rather than a highly ideological approach will be beneficial to charities that are in front of trying to solve some of society's most difficult problems. The long-form census will probably be restored. Some monitoring of the environment that Harper eliminated will be replaced. Scientists will presumably not be muzzled. It will be interesting to see if the Liberals

bring in legislation to protect whistleblowers so that any government official who blows the whistle on inappropriate conduct is protected.

Collaboration

The emphasis on different levels of government working together will be helpful in trying to come up with national solutions to some large national problems such as housing, poverty, etc. We need to see more cooperation between charities, business, as well as municipal, provincial and the federal government. Furthermore, many issues such as climate change are international in scope and it is anticipated that the Liberal government will work much more closely with other countries in dealing with these issues.

Government Funding

The charity sector as a whole receives about 68% of their revenue from government at various levels. Even a cutback of 10% of government funding can have an extremely negative impact on the charity sector and would require approximately a 100% increase in fundraising to make up the difference. The Liberals, in the short term, will put less emphasis on balancing the budget and more on infrastructure which will be positive for the charity sector.

As well, I anticipate less games in terms of budgets and accounting. For example, if funds are allocated for international development they will hopefully be spent and not held back in order to artificially balance the budget.

Syrian Refugees

It will be interesting to see how the Liberal government deals with the issue of Syrian refugees. There was definitely a huge empathy gap and reluctance on the part of the Conservatives to do anything for Syrian refugees. Unfortunately, at the moment there seems to be some charities pushing for a slowdown in the Liberal plan to bring 25,000

Syrian refugees to Canada by the end of this year. These charities argue that it would result in a better integration and smoother transition if the 25,000 were brought in by the end of 2016. Personally, I think that Canadians can rise to any challenge if they want to and there is tremendous desire to help the Syrian refugees. I think we should put General Hillier in charge of this effort and bring in 50,000 by December 31, 2015!

Taxation

There will be some slight changes to the tax system. Placing slightly higher taxes on those earning over \$200,000 will allow a middle class tax cut, which will help to create a slightly more progressive system. This is important for reducing the extremes of inequality that have pervaded Canada and many other industrialized countries. It might also result in the Federal government having more money to pay for other social programs and to fund charities to deal with important challenges.

Higher taxes also provide greater incentives for giving, as the donor will usually receive a greater tax incentive if they donate and they are in a higher marginal tax bracket. There will also be greater emphasis on cracking down on tax havens and tax evasion. The Liberals have promised to provide greater support to CRA so that they can stop elaborate international tax evasion schemes.

Tax Incentives for Giving

The Conservatives, and the Liberals before them, heavily skewed the tax benefits of donating in favour of the philanthropy practiced by wealthy and well advised Canadians. It will be interesting to see if the Federal government continues with that approach and brings into force the Conservative government's promises to eliminate the capital gains pro rata on donations made within 30 days of the sale of real estate and private company shares which the Conservatives had promised to be in effect by 2017. Personally, I think the biggest threat to donations is the potential drop in public trust in charities. We are already the most generous country in the world when it comes to donation incentives and we should focus on weeding out bad apples that can undermine the charitable sector rather than even more tax incentives for giving.

Definition of Charity

Will we have a statutory and broader definition of “charity”? It is possible. However, there are a number of impediments. First, many people think that we have too many charities to begin with. By broadening the definition we will have far more charities. If you allow sports groups in, we could see an increase to 150,000 registered charities. If we allow magazines, newspapers, and television stations in, we could have a further 100,000 charities. Second, some groups will be worried that a statutory approach would remove religious charities from the definition of registered charities. Keep in mind that 32,000 charities are churches, mosques, synagogues and temples. There are other groups that might be worried that their mission is antiquated in this modern world and they may not be recognized as charities. In other words, playing with a definition of charity may result in winners but it could result in some losers as well.

Fundraising

With the reduction in emphasis on political activities, CRA will presumably focus again on inappropriate fundraising and receipting practices. Charities should review CRA’s guidance on fundraising to remind themselves of the expectations. I don’t anticipate any loosening of the rules on fundraising. If you look at the situation in the UK over the last year, it is clear that public trust was diminished by poor fundraising practices and media criticism (sometimes unfair criticism) and now the government is in the process reviewing oversight on fundraising.

Business and social enterprise

Some would like to see the expansion of the scope of business activities that charities can conduct. Already charities bring in a large amount of revenue from related business activities. Many small businesses may be concerned with such an expansion as it increases the amount of competition from charities. Also, the various finance departments are concerned when taxable business activities become non-taxable. Ultimately, taxes have to be collected and therefore if non-profits are not paying for the goods and services that taxes provide then individuals and corporations are left to pay

more. It is unlikely that Finance would extend tax breaks that charities receive to any business just because it describes itself as a “social enterprise”.

Foreign activities

Over 5,000 Canadian charities conduct activities outside of Canada. They collectively spend about \$3 billion. Some have argued for loosening the rules or eliminating the need for “direction and control”. There has been a recent case (the fourth of its kind) that upheld the direction and control rules. With rapidly increasing amounts spent on foreign activities, it appears that the system is working well and it is unlikely that there will be significant change in this area. There may be some more foreign charities receiving ‘gifts’ from the Canadian government who therefore become qualified donees for a period of three years with the ability to issue Canadian tax receipts.

Non-Profits (that are not registered charities)

The Harper government had started a review of non-profits that are not registered charities, which was called the Non-profit Organization Risk Identification Project (NPORIP). There are approximately 80,000 to 100,000 of such organizations. They specifically focused on the issue of the business activities conducted by and the transparency surrounding these non-profits. We can assume that the new government will probably continue with this initiative to try and clarify what a non-profit is. The definition and expectations were largely established in 1917 and greater clarity would be helpful.

Transparency

In terms of transparency, it will be interesting to see whether the Liberal government will make it a priority to have greater transparency of the non-profit and charitable sector.

Trudeau has stated: "As the saying goes, sunlight is the world's best disinfectant. Liberals will shed new light on the government and ensure that it is focused on the people it is meant to serve: Canadians." The same goes for the charity sector and rules that limit the public's right to information about charities only help those who want to abuse charities.

Much of the Conservative government's interest in transparency was an attempt to have certain groups, arguably those that were critical of them (such as unions or aboriginal bands), be extremely 'transparent' while ignoring other types of non-profits.

Will the 80,000 to 100,000 non-profits that are not registered charities be able to completely hide behind the confidentiality provisions of the *Income Tax Act* such that there is little public information available on them even though they have tax exempt status?

Will CRA be precluded from providing any warning to donors about a charity that they have significant concerns with because of the confidentiality provisions of the Income Tax Act? Recently, the Toronto Star had coverage of a charity that CRA had concerns with in 1998. The CRA was only able to publicly identify these concerns in August 2015 when they revoked the charity. Even Stephen Harper apparently donated to that charity. The media has been pushing for greater transparency and unfortunately we have a small number of Canadian charities conducting highly inappropriate activities but the CRA cannot say anything about it. This ultimately creates mistrust in and about the whole sector.

The CRA is undertaking a 5 year project to have the T3010 and charity application be available online. Being able to file the T3010 online will help with transparency and reducing errors in filings.

Conclusion

The non-profit and charitable sector is very diverse and while many welcome the change in government, it is by no means universal. In general, many charities think that government is an important player in solving many of the largest problems that we have in Canada. Unfortunately, the Federal government has been largely absent on certain files and has been obstructionist on others. Hopefully the new government will work

harder on certain issues such as poverty, housing, day care and will collaborate more with other levels of government and the charity sector. In terms of the regulation of registered charities there may be some incremental improvements but it is unlikely there will be massive change to the rules. In terms of non-profits that are not registered charities it is more likely there will be significant changes as this area has not been touched for almost one hundred years.

Mark Blumberg is a lawyer at Blumberg Segal LLP in Toronto, Ontario. He can be contacted at mark@blumbergs.ca or at 416-361-1982. To find out more about legal services that Blumbergs provides to Canadian charities and non-profits please visit www.canadiancharitylaw.ca or www.globalphilanthropy.ca

This article is for information purposes only. It is not intended to be legal advice. You should not act or abstain from acting based upon such information without first consulting a legal professional.