

Charities and Political Activities: What Now?

August 16, 2018

The current legislative framework under the Income Tax Act (Canada) (the "Tax Act") relating to political activities of registered charities provides that charitable foundations and charitable 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").

The CRA current administrative policy on political activities of registered charities is set out in the CRA's guidance CPS-022 Political Activities, published in 2003. It is the CRA's position that references to "substantially all" in the Tax Act equate to 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, which has proven to be very difficult and costly for charities.

Furthermore, there is no clear definition of "political activities" in the Tax Act.

In the case of [*Canada Without Poverty v. Attorney General of Canada*](#), released on July 16, 2018, the Ontario Superior Court ruled that the current rules on political activities infringe on the constitutional right to free expression.

On August 15, 2018, the Minister of National Revenue and the Minister of Finance issued a [statement](#) that the Government of Canada recognizes the important role that charities play in Canadian society and the value they bring to public debate and the formulation of public policy. The Government indicated that it would appeal the decision of Justice Morgan; The Government has stated that they have "identified significant errors of law" in the decision.

Despite the pending appeal, the statement provides that the Government will remove the quantitative limits on political activities in the legislation. The Government intends to introduce new legislation this Fall. The intended amendments will allow charities to pursue their charitable purposes by engaging in non-partisan political activities and in the development of public policies. However, charities will still be required to have an exclusively charitable purpose, and the restrictions against partisan political activities

will remain. The legislation will be drafted with retroactive effect, including audits and objections that are currently suspended.

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