



Brief from Philanthropic Foundations Canada To the Charities Directorate of the Canada Revenue Agency

November 2016

Philanthropic Foundations Canada (PFC) is a Canada-wide membership association of over 130 charitable grantmakers, including private and public foundations and corporate giving programs. Our mission is to promote the growth of effective and responsible foundations and organized philanthropy in Canada.

1. The Income Tax Act and Charitable Organizations

This brief is a response from PFC to the invitation by the Charities Directorate for comment on questions related to the so-called political activities of charitable organizations, including foundations. Before we respond to the specific questions, we wish to endorse the recommendation of Imagine Canada that consideration be given to amending the *Income Tax Act* to restore an emphasis on charitable purposes, rather than regulating how charities achieve those purposes.

Common law looks at the purpose of an organization, not how it fulfills that purpose, as determining whether the organization is charitable. CRA administrative practice has focused increasingly on defining charitable activities. As some observers have pointed out, an “activity” can never be inherently charitable or non-charitable; it is the context in which an activity is carried out that should be the guiding principle.

Reviewing the intent of the *Income Tax Act* with the idea of focusing on charitable purposes, rather than activities, would encourage charities who wish to pursue policy work and so-called “political” activities as a way of fulfilling their charitable purpose, including supporting the federal government in its efforts to promote social innovation and to accelerate “smart and inclusive” growth. In the same vein, a focus on purposes might also lead to a rethinking of the regulations that govern charities’ income-generating “business” activities. PFC would support the effort to re-examine the relationship between charities and businesses as we would like to see more regulatory flexibility for charities to increase their earned income to supplement or compensate for other sources of funding such as philanthropic grants. This is increasingly important as charities may well suffer a deficit, as indicated by Imagine Canada in its recent analysis *Charities, Sustainable Funding and Smart Growth* which notes that charities are unlikely

to have sufficient revenue to meet the increasing demands for their services. We strongly encourage the Minister of Revenue Canada to work with the Minister of Finance to review the policy intent and provisions of the *Income Tax Act* to ensure that the government's policy goal of ensuring that charitable resources are devoted to charitable purposes is achieved *without* preventing charities from innovating and exploring other new activities, including so-called business and political activities. This would be a constructive step towards a regime that allows the charitable sector and the government to lay the foundation for a renewed relationship.

2. 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?"

Is the CRA's policy guidance on political activities clear, useful, and complete? For example, how could the CRA improve its policy guidance on these topics: the description of a political activity; the description of a partisan political activity; charities' accountability for their use of resources.

In the experience of many PFC members, the term "political" activity is not well understood either by the charities they fund or indeed by they themselves. Part of the difficulty is the lack of understanding of how the word "political" is being used. This leads to reluctance on the part of funders and charities to engage in legitimate policy work, given that for them the boundaries of what is permitted are not clear. It would be very helpful for the Directorate to clarify, if it continues to use the term "political", that this does not refer to the activities of politicians or people practising politics but instead to activities that involve communicating about public policies or providing information that is relevant to public policy development.

We support the suggestion of Imagine Canada in this respect that some clarifications be made to the definitions and examples in CPS-022. In particular we endorse the following Imagine Canada suggestions:

"Registered charities are, by law, required to have reasonable, research-based positions on issues. Charities carry out research to inform their own programs and activities, to measure the impact of their efforts, and to inform their positions on public policy.

CPS-022 provides a number of examples outlining how the use of research in the public policy sphere may be considered charitable. It cautions that, in some cases, a portion of research investment may need to be counted as political activity, but it does not provide specific information to help charities determine these circumstances.

We recommend that ideally, references to research should be removed from the political activity guidance. In the absence of this, clear guidance must be developed, in partnership with the charitable sector, outlining the circumstances under which research may need to be reported as political activity. We also recommend that examples be provided in the guidance.

We recommend that references to “indirect” partisanship make it explicit that charities are not being partisan when they support or oppose legislative or policy proposals on their merits (regardless of whether the positions they take happen to be associated with particular political parties), as long as in doing so the charity does not make positive or negative statements about a political party.

We recommend that the Charities Directorate work with the charitable sector to more clearly define the prohibition on the use of charities’ resources by candidates and political parties.

We recommend that the Charities Directorate clarify its language so that (i) charities can indeed comment on their own policies at all times, and (ii) charities can, when asked, provide dispassionate and factual reactions to specific policy proposals made by political parties or candidates.”

“Which formats are the most useful and effective for offering policy guidance on the rules for political activities? For example: two to three minute videos; videoconferences; comprehensive guidance documents like those on the CRA website; webinars or other types of presentations delivered by organizations other than the CRA; other formats.”

PFC agrees with the comments made by Imagine Canada on the difficulty of finding and understanding the information made available by the CRA Charities Directorate on its website or in its documents (policy guidance etc). We do not have a preference for one format over another since in our experience almost all of the formats used are necessary and useful to diverse audiences. However, and ideally, the Directorate would emphasize even more clearly in *all* of its materials, whether written or in webinar or video formats, that charities can legitimately play a role in developing and communicating about public policy. We also agree with Imagine’s suggestion that “any communications and education effort must ensure clarity of the boundaries between the activities and roles that are allowed and not allowed. This effort must also ensure clarity regarding the interpretation of the administrative responsibilities of charities, as well as

the regulatory compliance process". We also completely agree that materials should be "as jargon-free as possible".

PFC is willing to do everything possible to support the Directorate's efforts to communicate and disseminate its educational materials. We would be prepared to work with the Directorate as suggested by Imagine to "audit existing educational materials and develop new ones where necessary...and to deliver workshops on charities' engagement in public policy activities."

Thank you for your consideration.