

NATURAL LEGACIES:

Your Educational Guide to Conservation in BC



Exploring the Parameters of Environmental Political Activism by Charitable Organizations

Information for distinguishing between political and charitable activities

Prepared for the Land Trust Alliance of British Columbia

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1. Introduction

The purpose of this guide is to provide information on differentiating between political and charitable activities in the context of overall activities of federal charitable organizations in Canada. In preparing this guide, we have primarily relied on information from the Canada Revenue Agency's (the "CRA") policy statement website for registered charities.¹ References to the *Income Tax Act*² (the "ITA") as well as appropriate case law were also made.

This information should be used as a resource for learning about what kinds of activities constitute political and charitable ones. It is essentially a summary of the legal information provided by the CRA's website and is not intended as a comprehensive guide on what actions are permitted for charities. This information is not legal advice on how to manage activities for non-profit organizations.

2. Charitable and Political Purposes and Activities in Canada

a. Definitions

Registered charities do not pay income tax and, unlike non-profit organizations, can issue tax receipts to donors. Section 149.1(1)(f) of the *ITA* states that: "[n]o tax is payable under this Part on the taxable income of a person for a period when that person was [...] a registered charity."

To qualify as a registered charity, an organization must be: (1) resident in Canada, (2) be established and operated for charitable purposes, and (3) devote its resources to charitable activities. The organization would then have to complete *Form T2050, Application to Register a Charity Under the Income Tax Act*, and submit it to the CRA. This guide will only address registered charities (shortened to "charities").

Land trusts are charities under the "qualifying environmental trusts" definition in s. 211.6 of the *ITA*. They may also be charities by virtue of their charitable purpose being education and providing information to the public.³

¹ <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>

² <http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-1-5th-supp/latest/rsc-1985-c-1-5th-supp.html>

³ <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html#education8>

b. Charitable Purpose & Activities

An important distinction needs to be made between charitable “purpose” and “activities”. To qualify for registration, a charity must:

1. have a **charitable purpose**, the pursuit of which has to substantially come from **charitable activities**; and
2. devote “**substantially all**”, meaning 90% or more, of its resources towards charitable activities, with exceptions for certain political activities.⁴

RULE 1: “Substantially all”, defined as 90% or more of a charity’s resources, has to be devoted towards charitable activities and 10% or less of its resources may be devoted towards political activities, as long as those political activities:

1. are ancillary and incidental to its charitable activity, and
2. do not include the direct or indirect support of, or opposition to, any political party or candidate for public office.⁵

Charitable purposes, under s. 149.1(6.1) of the *ITA*, are defined as follows:

For the purposes of the definition charitable foundation in subsection 149.1(1), where a corporation or trust devotes substantially all of its resources to charitable purposes and

(a) it devotes part of its resources to political activities,

(b) those political activities are ancillary and incidental to its charitable purposes, and **(c)** those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office,

the corporation or trust shall be considered to be constituted and operated for charitable purposes to the extent of that part of its resources so devoted.

Charitable activities, under s. 149.1(6.2) of the *ITA*, are defined as follows:

For the purposes of the definition charitable organization in subsection 149.1(1), where an organization devotes substantially all of its resources to charitable activities carried on by it and

(a) it devotes part of its resources to political activities,

(b) those political activities are ancillary and incidental to its charitable activities, and

⁴ *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, at para 157.

⁵ *Income Tax Act*, ss 149.1(6.1) and 149.1(6.2).

(c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office, the organization shall be considered to be devoting that part of its resources to charitable activities carried on by it.

A **charitable purpose** must be clearly stated in the charity's governing documents and is only charitable if it generates a public benefit. In working towards its charitable purpose, the charity may engage in political activities as long as those political activities adhere to the two aforementioned conditions in RULE 1.

e.g. Donating to the Green Part of Canada or promoting its activities through Land Trust programs may be *ancillary* to charitable activities of Land Trusts, but it directly *supports a political party* and as such would be an impermissible political activity.

c. Political Purpose

Charities cannot have a **political purpose**; however, their activities can be political in furtherance of their charitable purposes. Political purposes include entering into political debates in order to justify a point of view on a certain subject, instead of focusing on working towards a defined public charitable good.

Political purposes are those that seek to:

1. further the interests of a particular political party; or support a political party or candidate for public office; or
2. retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country.⁶

Charities can, however, advocate for law reforms in other ways than having a set political purpose. These law reform purposes have to be ancillary to their charitable purposes.

e.g. In educating the public about the importance of protecting biodiversity in a certain area, a charity is essentially advocating for local political action or laws being enacted in a way that is consistent with protecting biodiversity. This is consistent with the charity's charitable purposes and is ancillary to the charity's activities.

⁶ *Positive Action Against Pornography v MNR*, [1988] 2 FC 340 (CA).

3. What can be considered political activity?

a. Definition of “political activity”

The CRA presumes activities to be political if a charity engages in certain types of conduct. For instance, explicitly communicating a call for political action to members of a charity or the public is considered a political activity—in other words, “[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”.⁷ As well, directly communicating to the public a charity’s position on Canadian or foreign legislation is also seen as political activity. Furthermore, this presumption also applies if a charity explicitly indicates in its materials that the intention of its activity is to have an effect on legislation at any level of government, even if the material in question is for internal use only.

RULE 2: An activity is considered political if the charity:

1. Explicitly communicates a call to political action,
2. Explicitly communicates 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
3. Explicitly indicates 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.

In practical terms, these presumptions mean that charities are limited in their capacity to express opinions on legislation. CRA policy covers instances of charities directly publishing its views on legislation, encouraging the public to do so, and even internally acknowledging that their activities have a political goal. Moreover, as of 2012, political activities now include “the making of gifts to qualified donees intended for political activities.”⁸ There are additional conditions mentioned in section 5 of this guide.

e.g. If A is a registered charity and gives money to B, a qualified recipient, so that B performs a political activity, that donation by A would be considered a political activity.

⁷ <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html#N102C1>

⁸ *Ibid.*

However, the CRA does not prohibit non-partisan political activities that include activities that are “connected to and subordinate to the charity's purposes”, as previously explained under “Political Purpose”. Charities may indirectly advocate for laws to be improved, as long as this is ancillary to one of their charitable purposes or activities. The CRA defines partisan political activity as: “one that involves direct or indirect support of, or opposition to, any political party or candidate for public office.”⁹

In its policy statement, the CRA reiterates that charities are not allowed to provide direct or indirect support to any political party or candidate for public office, but that a charity *is* allowed to publish its position on legislative and policy issues. If a charity supports a particular policy that is also supported by a political party, a charity is not prevented from showing their support for that policy. It can promote a policy or make the public aware of its position on a particular issue, provided it does the following:

1. The charity does not explicitly connect its views to a political party or candidate,
2. The issue or policy is connected and subordinate to the charity's purpose,
3. The views or position advanced is based on a well-reasoned position, and
4. Public awareness campaigns do not become the charity's primary activity.

In addition to the restrictions noted above, a charity must not single out the voting pattern of a particular party or elected representative. A charity can provide information regarding how all members of parliament (or provincial / territorial / municipal legislators) voted on an issue connected to the charity's purpose but a charity cannot inform its supporters only of how one party voted on an issue.

b. What are the restrictions on political activities?

i. General allowable limit

A charity must devote “substantially all” of its resources to charitable activities (meaning 90% or more). The corollary is that no more than 10% of its resources may be devoted to political activities. Though “resources” is not a term defined in the *ITA*, the CRA has considered resources to include the following:

- Financial assets,
- Staff,

⁹ <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html#N1029B>

- Volunteers,
- Directors,
- Premises,
- Equipment, and
- Anything else a charity can use to further its purposes.

ii. Small charity exception

The CRA recognized the 10% limit may cause undue hardship to smaller charities. As such, a “resource scale” was created for charities with an annual income of less than \$200,000 in the previous year. Specifically, within the meaning of the *ITA*, charities with:

- Annual income of less than \$50,000 can devote up to 20% of resources to political activities in the current year,
- Annual income between \$50,000 and \$100,000 can devote up to 15% of resources to political activities in the current year, or
- Annual income between \$100,000 and \$200,000 can devote up to 12% of resources to political activities in the current year.

iii. One-of-a-kind political activities exception

A charity risks revocation of its charity status if it exceeds the 10% resource limit available to political activities. However, there can be an exception if there was a “unique condition” that led the charity to devote more than 10% of its resources to political activities. CRA has described “unique” as being infrequent, one-of-a-kind, or short-term.

To determine the “uniqueness” of the over-allocation of resources, CRA will compare the charity’s current resource allocation to past resource allocation patterns and behaviour. Specifically, the CRA will look to see whether the charity has devoted the maximum number of resources for political activities in the previous years. A charity is allowed to use the unclaimed portion of resources it was allowed to spend on political activities but did not spend from the two preceding years. This is considered a “unique condition” and is an acceptable action for a charity to take.

4. Communications

a. Public awareness campaigns

Charities use public awareness campaigns ("PACs") to communicate to the public about the work of the charity. Though there are overlaps, this is not the same as charities under the head of "advancement of education", as explained in the next subsection. PACs are subjected to the same restrictions on political activities as any other activities in which the charity partakes (please refer to section 3.a. of this guide). PACs are also constrained to keep their information complete and unbiased to avoid advocating a particular cause or create a climate of opinion and advance education on the subject rather than propaganda. The CRA views communication of activities in PACs as being charitable when three criteria are met:

1. The communication must be about an issue that is connected and subordinate to the charity's purpose,
2. The charity's position on the issue must be well reasoned and not based on information the charity ought to know is false, inaccurate, or misleading, and
3. The form of communication must not be based on primarily emotive material.

In addition to the three criteria outlined above, the CRA requires charities to include contact information during public awareness campaigns to allow interested parties to obtain additional information. The charity's telephone number, mailing address, and/or internet address should be provided. Please refer to section 6 of this guide for further information about public awareness campaigns for educating the public about an issue.

PACs informing the public on a charity's legal victories are also classified as charitable activities, as long as "substantially all" of the communication involved is not political.

b. Education

Charities under the head of "advancement of education" **must actively educate others** and there must be **some structure to their approach**. Simply making information available to the public for self-education is not enough, i.e. distributing pamphlets. That would be considered a PAC; educating the public requires more.

Most importantly, the information needs to be factual information; in other words, unbiased and objective. A well-reasoned position should not solely present a particular point of view, but should also address relevant facts to the contrary.

*“To be considered charitable, an educational activity must be reasonably objective and based on a well-reasoned position. This means a position that is based on factual information that is **methodically, objectively, fully, and fairly** analyzed.”¹⁰*

c. Contacting public officials

When a charity makes a representation to a public official, it is considered a charitable activity, regardless of whether the charity was invited by the official or not. A charity can explicitly advocate that a law of any level of government in Canada or a foreign country ought to be changed and this activity would still be fall within the scope of “charitable activities” as long as the representation meets the following three criteria:

1. It relates to an issue that is connected to the charity’s purpose,
2. It is well-reasoned and,
3. It does not contain information the charity knows or ought to know is false, inaccurate, or misleading.

Before or after meeting with a public official, a charity can choose to release the text of the representation made to that public official. For the release of the text of the representation to be considered a charitable activity, the entire text must be released and there must not be an explicit call to political action in the text or in reference to the text. An “explicit call to political action” is when a charity tells others to contact a public official (or elected representative) and urges them to retain, oppose or change a certain law or policy. A charity may issue the entire representation to the public by many methods, including a press release, website, or newsletter.

If there is an explicit call to political action in the representation released to the public, it could be considered a political activity. As such, all the resources associated with it would be considered devoted to a political activity.

¹⁰ <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html#N10354>

5. Giving resources to another charity to conduct political activity on its behalf

The CRA allows charities to pay other charities to pursue political activity on their behalf, though this capacity is limited. However, any resource given to another charity towards a political goal counts as a political expenditure for both the donor and the donee. Another limitation is that a charity can only pay other organizations to engage in political activities that it is allowed to do. Finally, money or resources given in this manner cannot count toward a charity's disbursement quota.

6. Summary and Other Considerations

RULE 1: "Substantially all", defined as 90% or more of a charity's resources has to be devoted towards charitable activities and 10% or less of its resources may be devoted towards political activities, as long as those political activities:

1. are ancillary and incidental to its charitable activity, and
2. do not include the direct or indirect support of, or opposition to, any political party or candidate for public office.¹¹

RULE 2: An activity is considered political if the charity:

1. Explicitly communicates a call to political action,
2. Explicitly communicates 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
3. Explicitly indicates 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.

a. Important records to keep

To demonstrate that "substantially all" of a charity's resources have been devoted to charitable activities, it is important for charities to keep record of their expenditures. Where 90% or more of

¹¹ *Income Tax Act*, ss 149.1(6.1) and 149.1(6.2).

an expense relates to charitable activities, the whole expense should be considered a charitable expense. The same logic applies if “substantially all” of an expense relates to political activities.

The CRA has not identified a specific record-keeping method, but chosen methods should be:

- o are applied consistently
- o comply with the requirements of the *ITA*, and
- o are sufficient to disclose its position

Form T3010¹², *Registered Charity Information Return*, should be accurately completed and filed annually for proper record-keeping practices.

7. Examples¹³

a. Charitable activities

- Distributing the charity's research
- Distributing the research report to election candidates
- Publishing a research report online
- Presenting the research report to a Parliamentary Committee
- Giving an interview about the research report
- Distributing the research report to all Members of Parliament
- Participating in an international policy development working group
- Joining a government advisory panel to discuss policy changes

b. Prohibited political activities

- Supporting an election candidate in the charity's newsletter
- Distributing leaflets highlighting lack of government support for charity goals
- Preparing dinner for campaign organizers of a political party
- Inviting competing election candidates to speak at separate events

c. Permissible political activities

- Buying a newspaper advertisement to pressure the government

¹² <http://www.cra-arc.gc.ca/E/pbg/tf/t3010/>

¹³ <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html#14-0>

- Organizing a march to Parliament Hill
- Organizing a conference to support the charity's opinion
- Hiring a communications specialist to arrange a media campaign
- Using a mail campaign to urge supporters to contact the government
- Organizing a rally on Parliament Hill

8. Conclusion

- Charities must devote 90% or more of their resources towards charitable activities and are restricted to spending 10% or less on political activities, subject to the exceptions discussed in section 3.b.
- As a general rule, when an activity communicates a call to political action to the public, it is considered a political activity. A “call to political action” is a call to urge the public or the public official to whom the information is addressed to take political action on a certain law. To be objective in communicating information to the public, including both sides of the issue in a comprehensive manner is good practice to promote education and avoid the political designation.
- Making representations to public officials, to advocate for a change in the law for instance, is still considered a charitable activity as long as the representation: (1) falls within the purpose of the charity, (2) is well-reasoned and (3) does not contain any misleading information.
- It is important for charities to keep records of their expenditures, fill out the appropriate return forms and ensure that the 10% limit on political activities is not passed.