



YOUR GUIDE TO

# Charitable Giving

SPRING 2019

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# New Rules for Charities and their Public Policy Dialogue and Development Activities

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by John Wilkinson and Cecile Ko Brock

Charities bring valuable perspectives to public discourse through their services to Canadians and interactions with the most vulnerable. These experiences are vital for the creation of public policy that builds strong communities, and ideally, charities would be fully engaged in public debate and ongoing dialogue with policymakers. However, much of this has been frustrated by a convoluted legal and administrative framework governing charities and the extent to which they may become involved at all.

The recent *Report of the Consultation Panel on the Political Activities of Charities* (the “Report”) supported the ability of charities to engage in public policy dialogue and development activities (“PPDDA”) to support their charitable purposes. The Federal Government adopted these recommendations in Bill C-86, *Budget Implementation Act*, 2018, No. 2, which received Royal Assent on December 13, 2018. The resulting amendments to the *Income Tax Act* (Canada) (the

“ITA”) are consistent with the long-standing requirement that charities must be constituted and operated exclusively for charitable purposes. The ITA now deems that PPDDA carried on by a charity in support of its stated charitable purpose(s) are to be carried on to further those purposes and not for any other non-charitable purpose, such as a political purpose.

In this context, the ITA has been amended to remove reference to “non-partisan political activities”. Previously, the ITA provided that charities had to devote “substantially all” of their resources to charitable purposes or activities. The Canada Revenue Agency (“CRA”) interpreted this as meaning that only up to 10% of a charity’s resources could be devoted to “political activities” (not defined) ancillary and incidental to its charitable purposes (but which could not include partisan activities). As a result, the reporting and monitoring of political activities to demonstrate compliance was challenging and costly for many charities.

With the removal of these provisions, charities are now permitted, without limitation, to fully engage in PPDDA as long as they are carried out to further the charity’s stated charitable purpose(s) and do not support or oppose, either directly or indirectly, a political candidate or candidate for public office. PPDDA includes research, disseminating opinions, advocacy, mobilizing others, representations, providing forums and convening discussions and communicating on social media.

On January 21, 2019, the CRA issued a draft administrative guidance for public consultation about how the CRA intends to administer the new rules on charities’ PPDDA. CRA is accepting feedback on this draft guidance (available online) until April 23, 2019.

Charities and those who want to become charities should be aware that changes related to PPDDA have now (March, 2019) been made to the annual Registered Charity Information Return (T3010) and to the Application form for registration as a charity.

The suspension of the Political Activities Audit Program has been lifted and affected charities will be contacted by the CRA to discuss outstanding audits and objections. Furthermore, the Government has decided to discontinue its appeal of *Canada Without Poverty v. Attorney General of Canada*

due to the aforementioned changes.

The Government will also provide up to \$5.3 million in funding over the 2018-2019 to 2023-2024 period for the CRA to enhance sector outreach and education. This includes information sessions for charities across Canada, updated forms, and training for CRA employees to ensure consistent implementation of policies. As part of the new Charities Education Program, the CRA will conduct visits with registered charities to assist them with meeting their obligations and maintaining registered status.

Finally, the Government also confirmed \$3.2 million in funding over the 2018-2019 to 2023-2024 periods to support the creation of an Advisory Committee on the Charitable Sector (the “ACCS”). Led by the CRA, the ACCS will consist of members of the charitable sector and the Government and will provide recommendations to the Minister of Revenue and Commissioner of the CRA regarding pertinent issues facing the charities and other ‘qualified donees’. The intent is for the ACCS to provide substantive and ongoing dialogue with the Government around issues that affect the charitable sector.

Until now, the rules governing charities’ political activities impeded the efforts of charities,



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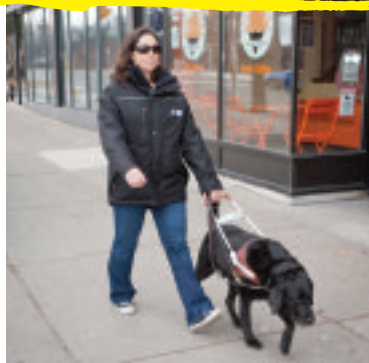


Cecile Ko Brock

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## New Rules for Charities ...

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and those of policymakers, the courts and the CRA alike, to facilitate appropriate public discourse while achieving compliance with the law. These new measures are steps to expand the types of non-partisan activities in which charities can actively participate and to increase the extent of this involvement. Perhaps more importantly, the lines of communication among stakeholders in the sector have been opened with a view to working together. While it remains to be seen how effective these initiatives will be, charities will likely take advantage of these allowances by devoting

more resources to non-partisan political activities and to advocate for what they perceive to be better public policy.

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