

Hot Button Topic – Charities Carrying on Activities Through an Agent or Intermediary

Presented by: Clifford S. Goldfarb, Counsel
September 15, 2016



Table of Contents

- Charities Must Devote All Activities and Assets to Charitable Purposes
- What is a Qualified Donee?
- Requirement for Foreign Organizations to Apply to Become QD
- Cases
- CRA Policy Statements
- Types of Intermediaries
- Important Steps
- Political Activities 1 - 9



Charity Must Devote All Activities and Assets to Charitable Purposes

Can accomplish this by:

- Carrying on Own Charitable Activity
- By Giving its Assets to a Qualified Donee



What is a Qualified Donee?

Qualified Donees are defined in ITA ss.149.1(1): all registered charities and certain other Canadian entities

AND

The following foreign entities:

- The United Nations and its agencies
- Prescribed universities outside Canada whose student body ordinarily includes students from Canada
- Foreign charitable organizations outside Canada to which the federal government has made a gift during the current and preceding taxation year

Foreign Organizations May Apply to Become Qualified Donee (“QD”)

Qualified donee: Foreign charities that have received a gift from Her Majesty in right of Canada

Guidance CG-023, June 16, 2016:

Effective for 24 month period

At least one of

- carries on relief activities in response to a disaster
- provides urgent humanitarian aid
- carries on activities in the national interest of Canada

As of September 6, 2016, the only currently registered foreign charities are Aga Khan Foundation (Switzerland) and Woodrow Wilson International Center for Scholars (USA)



Carrying on Own Activity Through Intermediary

- Difference Between Canadian Charities and other Common Law Countries
 - Most other countries allow direct gifts to organizations which would qualify as charities – e.g. US 501(c)(3)
 - Must Maintain “Direction and Control”
 - Must be “own activity” – not a “conduit”

Cases

- *Public Television Association of Quebec v. Canada (National Revenue)*, 2015 FCA 170 [acting as “conduit”]
- *Opportunities for the Disabled Foundation v. MNR*, 2016 FCA 94 [gifting funds to non-QD foreign hospital, not following terms of existing agency agreement]
- *Isna Development Foundation* – [Muslim – not exerting direction and control – possible funding of terrorist organization]
- *ASL Charity Foundation* – [Jewish – direction and control – inadequate books and records]
- *Bethesda Missionary Temple (Canada) Inc.* – [Christian – direction and control – acting as a conduit]

CRA Policy Statements

- Canadian Registered Charities Carrying Out Activities Outside Canada CG002

www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html

- Using an Intermediary to Carry out a Charity's Activities within Canada CG004

www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/ntrmdry-eng.html

Types of Intermediaries

- Agents
- Partners
- Joint Ventures

Important Steps

- Agency or other agreement
- Separate accounts
- Proper and complete records
- In English or French
- On-site supervision
- Ownership of capital property

Political Activities (1)

- Under the ITA, a charity cannot have a political “purpose”
- A charity is permitted to engage in political “activities” under certain circumstances (ITA, s.149.1(6),(6.1) & (6.2)):
 - Not partisan
 - Not more than allowed percentage of “resources”
 - Additional Elections Canada spending restrictions during federal election campaigns

Political Activities (2)

- Charity audits – 60 focused on political activities
- 38 completed as of August, 2016
- New Liberal government – No new audits, 24 ongoing audits to continue (16 currently)
- Education first – then revocation
- Results – charities mostly compliant with requirements – six charities given notice of proposed revocation – only one for political activities – most will appeal

Political Activities (3)

Policy Statement CPS-022

September 2, 2003 (updated to 2012)

The courts have determined political purposes to be those that seek to:

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

Political Activities (4)

CRA presumes an activity to be political if a charity:

- explicitly communicates a call to political action (that is, encourages the public to contact an elected representative or public official and urges them to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country);
- 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 (if the retention of the law, policy or decision is being reconsidered by a government), opposed, or changed; or



Political Activities (4)

...cont'd

- explicitly indicates in its materials (whether internal or external) 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.

Political Activities (5)

Expenditure Limits on Political Activities

“Substantially all” resources devoted to charitable activities = 90% or more (the “10% rule”)

Charity may devote not more than 10% of its total resources, but:

- Revenues less than \$50,000 = 20%
- Revenues \$50-\$100,000 = 15%
- Revenues \$100-\$200,000 = 12%



Political Activities (6)

Expenditure Limits on Political Activities

- “Resources” not defined in the ITA
- CRA considers “it to include the total of a charity's financial assets, as well as everything the charity can use to further its purposes, such as its staff, volunteers, directors, and its premises and equipment.”

Political Activities (7)

Expenditure Limits on Political Activities

Since 2012, a gift to a “qualified donee” is presumed to be used by the donating charity in its own political activities if it can reasonably be considered that a purpose of the gift is to support the political activities of the qualified donee.

Political Activities (8)

Mandate Letter

Allow charities to do their work on behalf of Canadians free from political harassment, and modernize the rules governing the charitable and not-for-profit sectors, working with the Minister of Finance. This will include clarifying the rules governing “political activity,” with an understanding that charities make an important contribution to public debate and public policy. A new legislative framework to strengthen the sector will emerge from this process.

One of three “top priorities”: The Honourable Diane Lebouthillier, Minister of National Revenue



Political Activities (9)

Resources for Charities about Political Activities

The Future:

- New legislation? Rumours abound
- Charter Challenge: August 25, 2016. Canada Without Poverty commenced action alleging that the ITA ban on political activities violates s.2 of the Charter of Rights and Freedoms, which guarantees freedom of expression and freedom of association.

Political Activities (10)

Resources for Charities about Political Activities

- <http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/pltcl-ctvts/menu-eng.html>



Questions?



Contact Us

Clifford S. Goldfarb, Counsel



T **416.865.6616**



E **cgoldfarb@grllp.com**



W **grllp.com**



@grllp

