

HEALTH LAW

BULLETIN

*A Report on Recent
Developments
in Corporate and
Charities Law*

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**REGISTERED CHARITIES AND POLITICAL ACTIVITY:
HOW FAR CAN THEY GO?**

Canada currently boasts over 80,000 registered charities, and this number is growing. At the same time, Canadian charities are becoming more and more involved in economic and other activities, particularly public advocacy. With their increased involvement in public advocacy, many charities have become concerned about just how actively they may participate in political activities. The following briefly summarizes Canadian law governing a registered charity's right to engage in political activities.

POLITICAL ACTIVITY WITHIN A CHARITY'S OBJECTS

Any political activity that a charity pursues must fall within the charity's authorized charitable purposes or ancillary power clauses set out in its letters patent or special incorporating legislation. So, before engaging in political activity, a charity must always first consider whether its objects allow it to participate in the activity. If a charity's objects are broad enough to allow participation in the activity, the charity must then consider each of the following issues.

PROHIBITED POLITICAL ACTIVITIES

Under the federal *Income Tax Act* (the Act), all registered charities must either have exclusively charitable purposes or devote all of their resources to charitable activities. A charity may not have a political purpose and may not engage in partisan political activities, including directly or indirectly endorsing, supporting or opposing a political party or candidate for public office.

CHARITABLE ACTIVITIES WITH A POLITICAL FLAVOUR

The Canada Customs and Revenue Agency (CCRA) permits activities that are charitable at law, but contain some political element or flavour. In its draft guide *RC4107E, Registered Charities: Education, Advocacy, and Political Activities*, CCRA describes which seemingly political activities are permissible. CCRA allows charities to engage in the following activities designed to persuade government to adopt a particular viewpoint, as long as devoting resources to the activity is reasonable under the circumstances:

- presenting the charity's views or providing factual information to elected representatives or public servants,
- submitting briefs containing factual information and recommendations to government bodies, commissions or committees, and
- providing information and expressing non-partisan views to the media.

According to CCRA, these activities are intended to inform and educate, rather than influence public opinion or generate controversy.

POLITICAL ACTIVITIES PERMITTED WITH RESTRICTION

The Act allows registered charities to devote some of their resources to non-partisan ancillary and incidental political activities, if they devote substantially all of their resources to charitable activities. The courts have interpreted "ancillary and incidental" to mean something subordinate, additional or relative to something else. For charities, an ancillary and incidental activity is naturally connected with and subservient to a

charitable purpose or activity, or exists only along with a charitable purpose or activity. Should the activity exceed this standard at any time, it would lose its ancillary and incidental character and become a purpose in itself.

According to the courts, “political activities” includes a wide range of pursuits whose goal is to effect changes in law and policy. For instance, presenting views to the government and trying to influence and mobilize public opinion on an issue to pressure elected officials to take a course of action are political activities.

CCRA generally interprets “substantially all” to mean at least 90%, as described more fully below.

EXPENDITURE LIMITS

Disbursement Quota

In each tax year, charitable organizations must spend their “disbursement quota” on charitable activities and gifts to qualified donees. The Act uses a complicated formula to define “disbursement quota”. Basically, charitable organizations must spend no more than 10% on permitted political activities. Note, however, that this quota concerns only property for which the charity has issued receipts.

Substantially All Test

As noted, charitable organizations that do engage in political activities must devote substantially all of their resources to charitable activities, interpreted as at least 90% of the charity’s resources measured over its taxation year. CCRA interprets “resources” to mean all of the charity’s financial and physical assets (for example, available funds, real property, capital and depreciable property, office equipment and office space), as well as the services the charity’s human resources provide (for example services of its directors, officers, officials and employees).

WHAT IT ALL MEANS

In sum, non-charitable political activities that are subordinate to *bona fide* charitable purposes are permitted within the expenditure limits described above. Permitted activities include newspaper, magazine, television or radio advertisements designed to attract interest in or engender support for a charity’s position on political issues and matters of public policy.

The foregoing presents only a summary of the law governing charitable organizations’ political activities. Readers are cautioned against making any decisions based on this material alone. Instead, a qualified lawyer should be consulted.

For further information, please contact:

Lydia Wakulowsky 416.865.7066 lydia.wakulowsky@mcmillanbinch.com

McMillan Binch Health Law Group:

David G. Butler	416.865.7005	david.butler@mcmillanbinch.com
W. Brad Hanna	416.865.7276	brad.hanna@mcmillanbinch.com
David W. Kent	416.865.7143	david.kent@mcmillanbinch.com
John A. Paterson	416.865.7021	john.paterson@mcmillanbinch.com
Catherine A. Roberts	416.865.7202	catherine.roberts@mcmillanbinch.com
Harold P. (Hal) Rolph	416.865.7843	hal.rolph@mcmillanbinch.com
Graham W. S. Scott, Q.C.	416.865.7247	graham.scott@mcmillanbinch.com
Lydia Wakulowsky	416.865.7066	lydia.wakulowsky@mcmillanbinch.com

McMILLAN BINCH LLP

TELEPHONE: 416.865.7000
FACSIMILE: 416.865.7048
WEB: WWW.MCMILLANBINCH.COM