

ONTARIO LAND TRUST ALLIANCE

CRA and Legal Issues That Matter

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1. ADVOCACY AND ELECTIONS

Political Activities: Recent History

- Previously, ability of Canadian registered charities to carry out political activities significantly restricted under ITA:
 - Maximum = 10% of resources (including gifts to other charities)
 - Ancillary and incidental = connected and subordinate to charitable purposes (foundations) / charitable activities (charitable organizations)
 - Purpose of charity \neq political activity
 - Non-partisan = not direct or indirect support of, or opposition to, political party or candidate for public office
- Contravention could result in suspension of tax receipting privileges for 1 year





- Following lengthy and comprehensive consultations, on May 4, 2017, the Report of the **Consultation Panel on the Political Activities of Charities** was published.
- It states that the “legislative framework for regulating charities is out-dated and overly restrictive” and calls for sweeping changes to the current administrative and legislative framework governing “political activities” by charities.



- Four recommendations:
 1. Revise CRA's administrative position and policy to enable charities to fully participate in public policy dialogue and development
 2. Implement changes to CRA's administration of ITA provisions governing charities related to compliance and audits, appeals, and communication and collaboration
 3. Amend the ITA by deleting any reference to non-partisan political activities to explicitly allow charities to fully engage without limitation in non-partisan public policy development, provided that it is subordinate to and furthers their charitable purposes
 4. Modernize the legislative framework governing the charitable sector



Political Activities: Recent History, Continued

- Following release of the report, remaining audits and appeals were suspended. CRA committed to providing a formal response to the Consultation Panel's recommendations by the end of June 2017.
- Budget 2018 only contained a statement of intent to clarify restrictions on charities' political activities.
- In July 2018, the current legislative and administrative regime for restricting political activities was declared unconstitutional in *Canada Without Poverty*.
- In August 2018, the Federal government announced its intention to amend the *Income Tax Act* to implement changes consistent with Recommendation #3.



- On September 14, 2018, a draft of proposed amendments to the *Income Tax Act* was released.
- Open to comment until October 2018.
- Finance promised that if the draft legislative proposals are passed, they would “apply retroactively to related audits and objections that are currently suspended.”
- Simultaneously a draft guidance was released by CRA: CG-027, *Public policy dialogue and development activities* (the "Draft Guidance") – withdrawn and then re-released on January 21, 2019



Political Activities: New Legislation

- On December 13, 2018, Bill C-86, *Budget Implementation Act, 2018, No. 2* received Royal Assent.
- Now, charity can engage in unlimited public policy dialogue and development activities (PPDDAs) which further its stated charitable purpose(s)
- No longer use term “political activity”
- Eliminated restriction in respect of inter-charity transfers.
- Contravention could result in suspension of tax receipting privileges for 1 year
- Retroactive to 2008



- Prohibition on partisan political activities remains
- Subsections 149.1(6.1) and (6.2):
an organization “that devotes any part of its resources to the direct or indirect support of, or opposition to, any political party or candidate for public office shall not be considered to be constituted and operated exclusively for charitable purposes”
- No legislative definition of PPDDAs but the explanatory notes indicate that these activities:
"generally involve seeking to influence the laws, policies or decisions of a government whether in Canada or a foreign country" by "providing information, research, opinions, advocacy, mobilizing others, representation, providing forums and convening discussions"



Public policy dialogue and development activities by charities: New CRA Draft Guidance (CG-027)

- <https://www.canada.ca/en/revenue-agency/services/charitiesgiving/charities/policies-guidance/public-policy-dialogueddevelopment-activities.html>
- The Draft Guidance confirms that PPDDAs include "seeking to influence the laws, policies, or decisions of a government, whether in Canada or a foreign country"
- PPDDAs are described as activities a charity carries on to participate in the public policy development process, or facilitate the public's participation in that process.



- The Draft Guidance includes the following list of PPDDAs from the Consultation Report:
 - **Providing information** to supporters or the general public related to charitable purposes (including the conduct of public awareness campaigns) in order to inform or persuade the public in regards to public policy, information must be truthful, accurate, and not misleading.
 - **Research** –conduct research into public policy, distribute the research, and discuss the research and findings with the media and with others as they see fit, but research must meet the criteria in Policy statement CPS-029, Research as a charitable activity.



- **Advocacy** to keep or change a law, policy, or decision, of any level of government in Canada, or a foreign country
- **Mobilizing others** – charities may call on supporters or the general public to contact politicians of all parties to express their support for, or opposition to, a particular law, policy, or decision of any level of government in Canada or a foreign country
- **Representations** in writing or verbal to elected officials, public officials, political parties, and candidates, and appear at parliamentary committees, to bring their views to the public policy development process, and may release such materials publicly, but note that a charity engaging in this type of activity may be required to register as a lobbyist organization



- **Providing forums and convening discussions** – charities may invite competing candidates and political representatives to speak at the same event, or may request written submissions for publication, to discuss public policy issues that relate to the charity's purposes.
- **Communicating on social media** – charities may express their views, and offer an opportunity for others to express their views, in regards to public policy, on social media or elsewhere.
- No limit on amount of PPDDAs provided that they further charity's stated charitable purpose(s) – could be 100%
- Expenses on PPDDAs count toward disbursement quota
- Can also transfer resources to another qualified donee to support the recipient's PPDDAs.



- Prohibition on partisan political activity remains.
- Examples of direct support:
 - endorsing a candidate over social media
 - telling people on a charity's website not to vote for a political party
 - making a donation to a political party or a candidate's election campaign
- Examples of indirect support or opposition:
 - internal planning documents of a charity explicitly confirm it will oppose a political party that takes a different view on certain policy issues
 - internal minutes of a directors meeting record decision to oppose a candidate in a provincial election.



- Examples of allowed activities:
 - communicating about policy issues either in or outside of an election period, provided they do not identify a political party or candidate
 - informing the public about policy positions of political parties and candidates so long as it does so in a neutral fashion, hold all candidates debates, or provide the voting record for all MPs or other levels of government
- Blogs or websites must be monitored, messages that support or oppose a political party or candidate removed
- Representatives of a charity are permitted to engage in political processes in their personal, private capacity, but:
 - must not use the charity's resources
 - should indicate that their comments are personal



Changes to T3010

- To reflect PPDDA changes, the annual information return (T3010) and the application to register will be revised for **November 2019**
- Until then, CRA has posted detailed instructions to guide charities and applicants on how to report PPDDAs on these forms: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/whats-new/ppdda-reporting.html>
- As the legislative change is retroactive, the changes to the reporting requirements **apply immediately** to registered charities filing their information return for any given fiscal period-ends



Primer on Lobbying

- Typical lobbying definition includes:
 - Communication for an employer or a paying client, with a public office holder, in an attempt to influence:
 - Bills and regulations
 - Policies and programs
 - Grants and financial benefits
 - In some jurisdictions, contracts
- Exceptions:
 - Communicating about interpretation or enforcement of law
 - Communicating about implementation or administration of policy or program
 - Public hearings
 - Making information request



- Many non-profit entities are exempt
- Does not include lobbying by volunteers, eg. directors
- Required to register and report unless exempt



Canada Elections Act - Changes

- Changes affecting third parties came into force June 13
- Canada Elections Act now regulates third party activities during pre-election period (June 30 to Sept. 10) and election period (Sept. 11 to Oct. 21)
- Regulated activities include:
 - Advertising
 - Non-Advertising Activities that are Partisan
 - Surveys
- Spending limits and requirement to register
- Prohibitions
 - Accepting contributions from foreign persons
 - Colluding with partisan figures/ entities and third parties
 - Making monetary or non-monetary contributions to parties



2. CHAMP

CRA's Charities Modernization Project

- The 2014 Federal Budget provided the Charities Directorate with \$23 million to modernize its IT systems over a five year period:
 - [Form T2050, Application to Register a Charity under the Income Tax Act](#), will be replaced by a new online application for registration.
 - Paper T2050s will no longer be accepted.
- CHAMP was expected November 2018.
- Release of CHAMP happened on June 2019.



- Sign up now to access My Business Account in order to be ready for online filing
- Form T2050, Application to Register a Charity under the Income Tax Act, has been replaced by a new online application for registration
- Registered charities are able to complete and file their [T3010 Registered Charity Information Return](#) online through CRA's My Business Account **or on paper**
- Charities are able to update their organization's information online and correspond with the Directorate electronically through My Business Account



3. SPECIAL SENATE COMMITTEE ON THE CHARITABLE AND NOT-FOR-PROFIT SECTOR

- On January 30, 2018, the Senate of Canada appointed a Special Committee to study and report on the impact of federal and provincial laws and policies governing the charitable and not-for-profit sector
- The study and final report (*Catalyst for Change: A Roadmap to a Stronger Charitable Sector*) on how Canada can better assist the charitable and not-for-profit sector is available at https://sencanada.ca/content/sen/committee/421/CS/SB/reports/CSSB_Report_Final_e.pdf



4. CORPORATE LAW UPDATE

- Bill 154, *Cutting Unnecessary Red Tape Act, 2017*, passed, and receiving royal assent November 14, 2017. It amends three important statutes affecting the non-profit sector:
 - *Ontario Corporations Act*
 - *Ontario Not-for-Profit Corporations Act, 2010*
 - *Charities Accounting Act*



Update to the Ontario *Corporations Act* (OCA)

- The new amendments to the existing statute add some important modern provisions:
 - meetings of members may be held by telephonic or electronic means
 - corporations are given the capacity, rights, powers and privileges of a natural person
 - the duties and standard of care of the directors and officers are clarified
 - members may remove a director from office by majority vote, rather than two-thirds vote.
 - a person may be a director even though he or she is not a member (requires consent in writing of the person to be a director).



Update on Ontario *Not-for-Profit Corporations Act* Bill 154 contains all the enabling legislation needed for the ONCA to come into force (potentially as early as January 2020) and some important improvements:

- Existing provisions regarding membership classes will not be proclaimed, permitting organizations to retain classes of non-voting members
- Proxies will be optional
- Organizations will be able to specify fewer than 21 days for distribution of financial statements before annual meeting
- New subsection 115 (10) preserves certain rights in respect of a body corporate, with or without share capital, after it is continued under the ONCA and is intended to clarify the status of certain religious organizations under the OCA



Current status of ONCA

- Ontario *Not-for-Profit Corporations Act* (ONCA) will apply to Ontario *Corporations Act* (OCA) Part III corporations
- ONCA received Royal Assent on October 25, 2010
- In November 2017 and January 2018, Bill 154, or the *Cutting Unnecessary Red Tape Act, 2017*, made many changes to the ONCA
- To be proclaimed into force January 1, 2020 (maybe)
- Default by-laws and plain language guides will be available – not yet!



How ONCA differs from CNCA (the Federal equivalent)

Unlike the CNCA:

- There is an optional transition process to file articles of amendment or adopt new by-laws to comply with ONCA within 3 years of ONCA coming into force
- If the transition process is not undertaken, then
 - Corporation will not be dissolved
 - Instead, the LP, SLPs, and by-laws will be deemed amended to comply with new ONCA, resulting in non-compliant provisions deemed invalid
 - This will result in uncertainty in relation to which provisions remain valid
- Better to go through the transition process



Charities Accounting Act (CAA)

- Changes have been made to permit charities to make social investments to forward its purposes and receive a financial return
 - A response to report released in June 2016, *Ontario's Social Enterprise Strategy: 2016-2021*
 - CAA applies to all charities in Ontario and provides that provisions of the *Trustee Act*, dealing with investment powers by trustees, apply to directors holding property for charitable purposes.
 - The amendments permit “social investments” and exclude the application of the *Trustee Act* (with minor exceptions) with regard to “social investments”



Charities Accounting Act (CAA)

- On April 1, 2018, Ontario *Regulation 112/18* came into effect
- Modifies existing Ontario common law rule that prohibited a charity from making payments to a director (or any person related to him/her) for any reason (other than reimbursement of expenses) without first obtaining a court order
- Board must satisfy itself that the following conditions (subsection 2.1(4)) have been met:
 - the transaction must be in the charity's best interests;
 - the amount of the payment must be reasonable for the goods, services or facilities provided and cannot exceed the amount expressly authorized by the Board; and
 - the payment must not cause the charity's liabilities to exceed the value of its charitable property, or cause the charity to become insolvent.



Charities Accounting Act (CAA)

- Further,
 - must have at least 4 independent voting directors (not including the one receiving payment) and directors receiving payment must not exceed 20% of the voting directors;
 - the director recuses from deliberations regarding the proposed transaction;
 - the directors must unanimously agree in writing on the maximum amount of the payment and that the conditions of the regulation have been satisfied;
 - the Board must consider any guidance issued by the Public Guardian and Trustee; and
 - information regarding the payments must be noted in charity's records and financial statements for the annual meeting.



Charities Accounting Act (CAA)

- The Regulation continues to prohibit payments for services provided as a director (no *honoraria*, the duty to act gratuitously remains) or an employee of the charity, payments for fundraising services and payments in connection with the purchase or sale of real estate
- OPGT has published detailed guidance on the Regulation, *Guidance on Payments to Directors & Connected Persons* (available at https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/authorization_of_payments.html)



5. CASE LAW UPDATE

Promised Land Ministries v. R., 2019 TCC 145

- June 28, 2019, the Tax Court of Canada released its decision to suspend the receipting privileges and qualified donee status of Promised Land Ministries because it failed to maintain proper books and records, including invoices, receipts, and vouchers, for expenditures made on activities outside of Canada.
- The breadth of the definition of “records” under subsection 248(1) of the ITA includes “invoice, voucher and “any other thing containing information, whether in writing or in any other form”
- It was up to PLM to find ways to substantiate its expenses for the mission trips., including a voucher book where details of the expenses could have been recorded and signed by the individual receiving the funds.



6. PRIMER ON DONATIONS

- Donors are eligible for a charitable tax credit/deduction if:
 - a gift of money or property is made to a qualified donee;
 - an official receipt is issued by the qualified donee; and
 - an income tax and benefit return is filed
- What is a gift?
 - Common law defines a gift as a voluntary transfer of property without valuable consideration
 - Amendments to the *Income Tax Act* create a new concept of “gift” for tax purposes which permits a donor to receive benefit, provided that the value of the property donated exceeds the benefit received by the donor
 - Concept is commonly referred to as “split-receipting”



- Charitable donation receipts must now reflect the following formula:

$$\begin{aligned} & \text{FMV of property transferred} \\ & - \underline{\text{Advantage received}} \\ & = \text{Eligible amount of the gift} \end{aligned}$$

- Must be voluntary transfer of property with a clearly ascertainable value



- Donative intent required
 - Must have a clear donative intent by the donor to benefit the charity
 - Donative intent will generally be presumed if the fair market value of the advantage does not exceed 80% of the value of the gift
- CRA's administrative exemption applies where there is a token advantage of the lesser of 10% of the value of the gift and \$75 (*de minimis* threshold)



- What is not a gift? Examples of transactions that do not constitute a “gift”:
 - Pledged amounts which are not received
 - Donation of services
 - Payment of sponsorship fees
 - Loans
 - Provision of free use of property
 - Donations which are court ordered or otherwise compelled



- Official Receipts:
 - Must be issued in accordance with the requirements of the *Income Tax Act* and CRA's policies
 - Must only receipt donations that are "gifts"
 - Comply with split receipting rules
 - Include required information on receipts
 - Ensure accuracy of information on receipts



QUESTIONS??

THANK YOU!

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