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RESPONSE TO DRAFT “PUBLIC POLICY DIALOGUE AND DEVELOPMENT ACTIVITIES BY CHARITIES” GUIDANCE

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By Ian Bushfield, Executive Director

In response to CRA Draft Policy statement CG-027

We are writing in broad support of the proposed guidance with regard to public policy dialogue and development activities (PPDDAs); however, we have concerns about a couple of the examples cited, the vague description provided for indirect partisan activities and several sections that retain the restrictive approach of the former “political activities” limits. In general, we are pleased to see the policy recognize that charities must be free to advocate for any change to a law, policy, or decision of government that would further its stated charitable purpose.

More specifically, we’re supportive of the following elements:

1. Advocacy work should relate to the charity’s stated charitable purpose and the activities, when considered together with the charity’s stated charitable purpose, would provide a benefit to the public.
2. That information in the advocacy activities that are undertaken be truthful, accurate and not misleading. Such information can include: research, disseminating opinions, advocacy, mobilizing others, representations to elected and non-elected officials, providing forums and convening discussions, and communicating on social media.
3. Charities are prohibited from devoting any part of its resources to the direct or indirect support of, or opposition to, any political party or candidate for public office.
4. Informing the public about the policy positions of political parties and candidates is allowed.

The following sections detail our specific concerns with the draft guidance.

Vague restrictions on indirect partisan activities

While more clear than previous guidance, certain language on what qualifies as indirect support or opposition of a political party or candidate remains vague. For example, previous guidance has suggested that a charity must monitor comments on its website or social media platforms for partisan content. While the only platforms mentioned now are “a website or blog”, it’s unclear whether these rules still extend to Facebook pages or other platforms where charities have the ability to moderate replies. Further, the policies are unclear about what to do on platforms like Twitter where the charity has no ability to moderate replies beyond blocking anyone who responds with a partisan comment.

Regardless of the clarity of such a rule, it’s also not realistic and should not be desirable in a free society to expect charities to police everyone commenting on the charity’s social media accounts and in some cases may not be realistic for websites either. It’s not unimaginable that a charity could operate a popular blog or news website that generates dozens or hundreds of comments per day. In such a case, inevitably some commenters will negatively (or positively) mention a specific politician or political party. Requiring disclaimer statements that comments do not necessarily reflect the charity’s position seems a more reasonable compromise that doesn’t infringe upon the freedom of expression of people making such comments.

Poor choices of examples

A couple of the examples cited as how a charity could carry out PPDDAs raise alarm bells for us.

First, the guidance suggests a charity may advance religion through “constituting a targeted attempt to manifest, promote, sustain, or increase belief in the religion furthered by the purpose in a manner that is clearly and materially connected to the teachings, doctrines, or observances of the religion identified in the stated purpose.” This example reads exceedingly vague in the context of PPDDAs. Is the policy suggesting that a religious charity may be free to advocate that the state promote a specific religious belief, even though for the government to do so would be in violation of its constitutional duty of religious neutrality? We fail to see how the CRA can reconcile the need for charities’ PPDDAs to advance a public benefit if some of those activities may undermine the rights of other Canadians to practice a different or no faith or their right to equality (for example in regards to same sex marriage).

Second, in the related box of examples the policy suggests a valid activity might be when “A charity calls on its supporters to contact elected representatives of all parties and urge them to support provincial funding for religious schools of a certain faith through the public system, to further its purposes of advancing religion.” Again, this activity would seem to be unconstitutional, suggesting that members of a certain faith be entitled to additional privileges that are not available to others. Expanding sectarian faith schools runs contrary to the broader public benefit and the multicultural heritage of Canada.

Potentially chilling reporting requirements

Finally, the guidance says that “A charity must keep records that demonstrate its primary consideration in carrying on PPDDAs is to further its stated charitable purpose and provide a public benefit.” Alongside the new requirement to maintain records is a new reporting requirement on the T3010 return that a charity declare whether it carried out any PPDDAs and to describe those and their relation to the charitable purposes on Schedule 7.

This reporting scheme appears nearly identical to the previous political activities reporting requirements and with it comes the possibility that charities will still fear possible public policy audits of their activities if they undertake and declare these activities. Further, given the prevalence of charities communicating via social media, undoubtedly some small charities will share articles on public policy issues that relate to their purposes but might not consider such activities to be relevant to report, even though this guidance would suggest it is. In other words, this requirement will possibly result in continued underreporting of activities among some charities and a fear among others that reporting will make them liable to be pursued by auditors.

While being able to justify that PPDDAs further charitable purposes is clearly important, the majority of activities undertaken by a charity are likely to have a clear connection to those purposes. For example, a public health charity that advocates for anti-smoking bylaws or an anti-poverty charity that speaks out about social assistance rates. In these cases, it seems redundant and unnecessary to have to thoroughly document, and then reiterate on the T3010, that these activities are legitimate. Records can then be provided reactively should the CRA investigate border cases, where the connection between an activity and a purpose may not be as intuitive.

Instead, the proposed regime suggests these activities are still expressly forbidden except in the narrowest of cases, and only when accompanied by thorough documentation.