



Dec. 10, 2016

Submission from the Broadbent Institute to the Canada Revenue Agency's online consultation on charities' political activities

Thank you for this important opportunity to give input into the modernizing of the rules governing the charitable sector. This brief outlines the distinct lack of clarity of the current rules regulating political activity and highlights how the biased scrutiny and targeted auditing of certain types of charities has undermined public trust in the CRA's fairness, its independence, and the continued risk of further politicized interference. This brief outlines how the current rules are hindering charities in advocating for their causes and the people they represent and recommends rule changes that deepen transparency and ensure charities are able to engage in political activity without fear of unwarranted audits and intimidation.

The role of charities in our democracy:

At the Broadbent Institute, an independent non-profit organization, we agree with the CRA that "charities play a critical role in our society" and that "they make a valuable contribution to policy and public debate for all Canadians." Moreover, we believe charities are a constitutive part of a healthy civil society and that their political advocacy and activity contributes to making our democracy more robust. From poverty relief to environmental research, from the dangers of smoking to the relative merits of different salt levels in food, Canadian charities make invaluable contributions to the health and welfare of the country.

Bias on the part of CRA:

In October 2014, the Broadbent Institute released [Stephen Harper's CRA: Selective Audits, "Political Activity" and Right Leaning Charities](#). The report was published amidst news that high-profile progressive charities continued to be audited by the Canada Revenue Agency (CRA), and threatened with revocation of their charity statuses. The report called into question the motivation behind the CRA's scrutiny of certain groups over others, given that many charities (environmental, human rights, anti-poverty) being audited had openly disagreed with the policies of the then Conservative government.

That report put forward compelling evidence of biased scrutiny by the CRA of charities that were critical of the government. It highlighted a pattern of right-leaning charities claiming 0% political activity in their tax filings, despite compiled evidence of clear political activity. The report raised questions about the accuracy of the filings of 10 right-leaning charities between 2011 and 2013, calling into question their interpretations of the CRA's definition of "political" activity and raising concerns about whether the rules were clear or useful.

Of the known groups targeted in recent rounds of audits, many are environmental, international development and human rights organizations, including household names such as Amnesty International, the David Suzuki Foundation and the Canadian Centre for Policy Alternatives (CCPA). Tax filings showed that many of these progressive charities were taking pains to carefully document their political activity in accordance with the rules, and yet were still under audit. Meanwhile, right-leaning charities clearly engaged in political activity were reporting 0% political activity and yet were not subject to scrutiny or audits. The Institute argued that this provided evidence of political interference and called the CRA's independence into question. At the very least, this discrepancy highlighted a serious lack of transparency in how decisions about audits were being made and pursued.

The report also pointed out that in addition to creating a substantial red-tape burden that siphons off badly needed resources from charities, the audits create an "advocacy chill" – sending a message that those who criticize the government may be subject to special scrutiny and hindering their ability to advocate on the issues and on behalf of the people they serve. If this isn't a clear challenge presented by the current rules, we don't know what is. In the case of Canadian charities, moreover, the threat is delivered through an agency that controls their ability to accept the donations that pay for staff salaries and all other operating expenses.

Significantly, subsequent Broadbent Institute [reports](#) and [investigations](#) came to similar conclusions regarding the biased scrutiny of charities based on tax filings for 2014 and 2015. Conservative charities clearly engaged in political activity continue to claim 0% political activity on their yearly filings while the audits of progressive charities continue. These findings point to a serious problem of subjective application of the law – over many years, and despite the problem being publicly underlined by the Broadbent Institute and others -- by the CRA.

Progressive or conservative, the blunting of the ability of civil society to advocate and to engage in those most fundamental democratic rights – debate and dissent – should concern us all.

New legislation with clear rules:

Ultimately, changing CRA's guidance is not enough.

In mandate letters to the Minister of Finance and Minister of National Revenue the Prime Minister made a strong commitment to consult with the charitable sector, clarify rules regarding political activities and move to introduce a new legislative framework for the sector.

The mandate letters read:

“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.”

The Broadbent Institute’s view is that if the charitable sector is to operate in a free and open atmosphere and contribute fully to public dialogue and public policy development, a new legislative framework must include amendments to the Income Tax Act.

Currently there is a disconnect between how common law treats charities and how they are treated under the Income Tax Act and in CRA policy guidance. The common law has found that a charity is defined by its purposes, not by the activities that it undertakes for the fulfillment of those purposes. By focusing on activities, the CRA is judging charities in a way that is inconsistent with how they are judged before the courts. As a result, charities are reluctant to engage in political activities that serve to further their charitable purposes even though the courts have stated they are allowed to do so. The disconnect between the Income Tax Act and policy guidance focus on activities, and the common law focus on purposes is the basis for much of the current difficulty. To refocus on purposes would alleviate much confusion.

Following the example of other countries, this change would allow charities more freedom in terms of the activities they can undertake that fulfill their charitable purposes. The Income Tax Act lacks a provision that specifically protects the right of a charity to act in a way that fulfills its charitable purpose, unless specifically directed not to in statute. In other countries the test for disqualification is often limited to openly partisan activity or unlawful activity.

Recommendations:

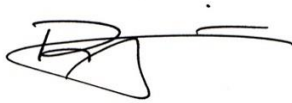
Based on the foregoing, the Broadbent Institute recommends as follows:

1. The establishment of a revamped and transparent process dictating how the CRA decides on audits. Rules must be applied fairly and charities and the public more broadly must be confident in understanding how and when audits can take place.
2. The establishment of clear safeguards (including civilian and/or parliamentary oversight) that prevent any direct influence by elected officials or appointees in the determining of audits and investigations.

3. Assurance that any changes be adequately communicated to the charitable sector and to the public so that there is true clarity on what constitutes political activity and how it must be reported.
4. Reconsideration of whether the 10% limit is appropriate or desirable and consideration for increasing it or excluding elements of advocacy work that are clearly in the public interest.
5. Introduction of a legislative amendment to the Income Tax Act that achieves, for the CRA, a change in focus from charitable activities to charitable purposes. This amendment should ensure that charities are free to choose the most effective approaches to accomplish their purposes unless an activity is expressly prohibited by statute.
6. There needs to be an independent inquiry into the audits of charities over the past ten years to determine if there was any undue political interference behind them.
7. Audits currently underway need to be halted until this independent investigation has occurred and a new legislative framework for the sector is in place.

Thank you again for the opportunity to comment on this critical issue.

Sincerely,

A handwritten signature in black ink, appearing to be 'Rick Smith', with a horizontal line extending to the right.

Rick Smith,
Executive Director, Broadbent Institute