

ICN Submission to the Canada Revenue Agency's Consultation on the Political Activities of Charities



Prepared by Krista Dinsmore, Marie-Audrey Girard and Deborah Glaser



ICN National Submission to the Canada Revenue Agency Consultation on the Political Activities of Charities

Upon election, Prime Minister Trudeau issued mandate letters to his Minister of National Revenue and Minister of Finance that outlined a clear priority to “[clarify] the rules governing “political activity,” with an understanding that charities make an important contribution to public debate and public policy.” In response, the Canada Revenue Agency (CRA) has initiated a series of consultations on the political activities of charities, which aim to clarify the rules and guidelines governing the activities of charities through a series of questions.

The Inter-Council Network of Provincial and Regional Councils (ICN) welcomes the initiative led by Prime Minister Trudeau and the CRA to modernize the rules regarding charities as well as this government’s understanding of the key role played by these actors and how that role has evolved since 1891 when the first legal framework relating to Canadian registered charities was adopted.

This report presents the ICN’s national submission to the CRA. The ICN is a coalition of the eight Provincial and Regional Councils for International Cooperation that span the whole country. These member-based Councils are committed to global social justice and sustainability and represent nearly 400 diverse civil society organizations (CSOs) from across Canada.

To represent this nation-wide civil society network, the ICN conducted a survey of the combined membership of the Provincial and Regional Councils in late October. The survey, which directly addresses the issues raised by this consultation, was developed in collaboration with the Canadian Council for International Cooperation (CCIC) and John Cameron (Dalhousie University). The ICN’s submission to the CRA consultation is founded on empirical findings from the survey, both quantitative and qualitative, based on data offered by 70 council members. Of this number, 68.6% represented Small and Medium-Sized Organizations (SMOs)¹ and 87.1% represented registered charities.



¹ Small organizations are defined as having a budget of less than \$100,000 per year and Medium-sized organizations are defined as receiving between \$100,000 and \$500,000 per year. (See “Small and Medium-Sized Canadian Civil Society Organizations as Development Actors: A Review of Evidence.” : <http://bccic.ca/small-medium-sized-organizations-their-operations-funding-and-impact/>)

This report begins by outlining the ICN’s four overarching recommendations based on trends gleaned from the survey. The second section responds directly to the CRA’s guiding questions. The report includes a final conclusion.

Section 1: Overarching Recommendations

The ICN recommends that the new regulations proposed by the CRA take into account the following issues:

1. The CRA regulations should recognize the difference between policy work and political activities.

Charities, given their expertise, should be able to articulate policy positions on the issues that they explicitly seek to address through their charitable objectives. For charities to fully participate in public debate and policy, the rules should be modernized in such a way that they are allowed to partake in those processes, but some regulation of political activities should remain.² Survey respondents generally supported allowing charities to do policy work, but shied away from a complete deregulation of political activities.

Several survey respondents expressed concern that addressing the root causes of poverty and injustice are being viewed by the government as “political.”³ If poverty is considered systemic and Canadian international assistance policy is geared toward addressing poverty and injustice, then politicizing and limiting those directives through charitable work is at direct odds with the intended goal. Charities cannot help to create positive, long-term change, and tackle the drivers of poverty without working to also impact policy and legal and regulatory frameworks. A charitable act can include the prevention of poverty and addressing the root causes of poverty as well as the alleviation of poverty.

Charities are sector experts with real world perspective and grassroots knowledge of the issues being faced, as well as the ultimate outcomes of government policies. Ultimately, if charities are not consulted and involved in the policymaking process, it is a lost opportunity.

“In an increasingly globalized and issues-based foreign policy process, charities provide a critical link between policymakers and on-the-ground realities where policies and decisions taken will have impact.”⁴

² Survey Question: The Canadian Government must modernize the rules that govern charities, including ‘political activities’, if it truly wants to enable charities to do good and to contribute to public policy and debates (28.6% agree, 40.8% strongly agree.)

³ In response to survey question (open ended): Does your organization have other concerns about the CRA rules on ‘political activities’ by charities and / or the ways in which CRA enforces the rules?

⁴ Quote from survey

As such, the definition of political activities, including a situation wherein a charity “*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*”⁵ is problematic. This is corroborated by survey data indicating that the vast majority of respondents believe that social justice and improvements in the well-being of poor and marginalized people in developing countries cannot be accomplished without changes to the laws and policies of those countries and in some cases the laws and policies of Canada.⁶ Furthermore, almost 90% of respondents believe that Canadian charities should be able to work to change laws and policies that stand in the way of social justice and improvements in human well-being which are clearly articulated and defined through international covenants, agreements and declarations. This view is also held by the Canadian public. The “2013 Talking About Charities survey” (Lasby & Barr, 2013, p. 88) found that 94% of Canadians think it is acceptable for charities to speak out on matters of public concern like the environment, poverty, or health care.

The “Upholding Human Rights and Charitable Registration” Guidance (CG-001) holds that it is a charitable purpose to “*encourage, support, and defend human rights that have been secured by law, both in Canada and abroad.*” However, Canadian charities are prohibited from working to change laws, policies and decisions that do not uphold international agreements signed onto by the Canadian government. While a charity’s stated objective should not be to change laws, policies or decisions, advocating for these changes should be possible if such activity is connected and incidental to the charity’s purposes to promote social justice, environmental sustainability and improve human well-being.

2. Regulations of charities, the list of charitable purposes, definitions of political and partisan activity, as well as the CRA’s accompanying guidelines should be modernized and clarified.

Respondents indicated that the lack of clarity in the rules and definitions leaves too much open to interpretation and that the policy statements and guidelines are vague. In a climate of uncertainty of when and how the rules will be applied, there is a palpable sense of fear in the sector, as charities are reluctant to undertake certain activities without knowing how these will be categorized or what punitive actions will be taken. To correct this issue, the CRA should ensure that the guidelines are clear and include more modern considerations and the implications of straying from the guidelines.

⁵ Source: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>

⁶ 76.1% of respondents think that social justice and improvements in the well-being of poor and marginalized people in developing countries cannot be accomplished without any changes in the laws and policies in those countries, 82.6% think that social justice and improvements in the well-being of poor and marginalized people in developing countries cannot be accomplished without any changes in the laws and policies in Canada, 91.3% believe that charities should be able to work to change laws and policies that stand in the way of social justice and improvements in human well-being.

In addition to this, the range of charitable purposes should be broadened beyond “*the relief of poverty, advancement of education, advancement of religion, or certain other purposes beneficial to the community in a way that law regards as charitable.*” One hundred percent of survey respondents stated that there should be more options for charitable purposes, which include preventing poverty or addressing other structural and rights issues. In particular, 91.3% of respondents think there should be charitable purposes related to advancing human rights and equity.

3. The CRA should adapt Direction and Control requirements to fit Canada’s international commitments and reflect best practices for partnerships, international cooperation and solidarity.

The Direction and Control requirements, as currently outlined, are not in line with generally accepted best practices and sector knowledge of those working on the ground, many of which have been ratified in international agreements that Canada has signed.⁷ Canadian charities working internationally are disproportionately affected by these rules, as their foreign partners are not considered “qualified donees” and thus have to report back as if they are implementing a foreign agenda instead of one developed locally. In fact, multiple respondents challenged the necessity for direction and control when working with international partners. Upholding best practices requires equitable partnerships based on trust, local ownership over the process and a spirit of solidarity instead of power imbalances.⁸ Under the current regulatory structure, which is based on predetermined contracts, the work and activities become more Canadian-owned rather than locally owned and therefore, less responsive to local needs. In addition, Canadian charities are not able to help foreign or domestic partners campaign for changes in law or policy to reflect Canada’s international commitments, such as the Universal Declaration on Human Rights, Agenda 2030 and women’s rights as outlined in Beijing.

4. The CRA regulations and reporting requirements should take into account the gap in resources of Small and Medium-Sized Organizations (SMOs).

While being a key part of the sector, Small and Medium-Sized Organizations (SMOs) have unique capacity when compared to larger organizations.⁹ Within the survey, respondents made multiple comments relating to an inability to navigate charity law, which is seen as too confusing, without bringing in lawyers. This additional cost presents a barrier to SMOs, which tend to have fewer financial and human resources, yet which ICN research has shown to hold a valued role in the work and results of our sector.

⁷ 56% believe that the current regulations are not compatible with current development practice, which emphasizes principles such as equitable partnerships, local ownership and solidarity.

⁸ See Nairobi Outcome Document of the Global Partnership for Effective Development Cooperation (December 1, 2016), Principle 3 (pg. 14). <http://effectivecooperation.org/wp-content/uploads/2016/12/Global-Partnership-Nairobi-Outcome-Document-FINAL-1-December-2016.pdf>

⁹ See “Small and Medium-Sized Canadian Civil Society Organizations as Development Actors: A Review of Evidence.” <http://bccic.ca/small-medium-sized-organizations-their-operations-funding-and-impact/>

The structure of the direction and control requirements, reporting of political activities, as well as CRA audits, currently put an undue burden on Small and Medium-Sized Organizations registered as charities. These requirements are onerous and time consuming, taking human resources away from fulfilling their mandates. Meeting these requirements is especially difficult for charities who work internationally and have to report on the political activities undertaken by their foreign partners. This requires time for capacity building within their organization and then with their foreign partners to become familiar with the regulations, as well as extensive reporting.

Section 2: Addressing guiding questions from the CRA

1. Carrying out political activities

a. Are charities generally aware of what the rules are on political activities?

As stated above (see Recommendation 2), there is a need for clarification and modernization of the rules on political activities. While registered charities tend to recognize that there are rules, they tend to be unclear on what these rules are. Staff understanding tends to be higher when compared to board members yet board members remain liable. Survey respondents recommended potential mechanisms for increasing the understanding of board members, which are discussed in section 2, question 2. Over 45% of the respondents feel that their staff and board members require additional training to better understand CRA definitions of “political activities.” Small, medium, large and very large organizations alike recognized the need for additional training for staff and board, underscoring that the rules, policies and guidelines are where the confusion lies. That said, the majority of organizations that noted a lack of resources to ensure that their staff and board receive training were small and medium in size.

b. What issues or challenges do charities encounter with the existing policies on charities’ political activities?

With the ambiguity found present in the definitions, policies and current legal framework, many respondents noted the need to consult with charity lawyers to navigate the law. There is also, however, the related issue that lawyers offer varying interpretations of the same documents, (see Recommendation 4). The cost associated with legal consultations represents a barrier to SMOs. The ambiguity also presents a large drain on staff time for all sizes of organizations attempting to interpret the rules. Collectively the framework represents a net drain on the entire sector as charities and non-profits try to navigate the rules.

Almost all of the respondents (91.3%) agreed that the current restrictions on “political activities,” which limit charities’ capacity to issue calls to action and conduct other related work, hinders their ability to realize their mission. According to 65% of respondents, confusing legislation and the

threat of punitive audits has produced a “chill” effect, in which staff are required by their organization’s Board of Directors to be cautious in how they conduct their work. Compounding this issue is the fact that even charity lawyers are often not able to give more than an opinion and the pervasive feeling is that an organization only receives clarity in an audit.

“We have become very cautious on speaking out on issues that are integral to our work, for example access to medicines.”¹⁰

Overall, the climate that this policy and legislative framework creates does not foster an enabling environment for registered charities to operate and achieve their objectives.

2. The CRA’s policy guidance

a. Is the CRA’s policy guidance on political activities clear, useful, and complete?

As already mentioned, there is a significant lack of understanding of the terminology, distinctions between different concepts, such as partisan, political and lobbying activities, and applications of charity law, so the guidelines should be improved to enable the charitable sector to focus on its work instead of on interpretation of the regulations. In addition, guidelines need to be more accessible to help promote a wider familiarity with the rules at all levels, but especially for organizations with fewer human resources, such as small and medium-sized organizations, and for board members. We recommend that the CRA develop a short, clear, and concise overview of the rules that allows for quicker capacity development and is accessible to board members.

For example, how could the CRA improve its policy guidance on these topics:

i. The description of a political activity

The CRA’s definition of a political activity was considered unclear by 46.8% of survey respondents. In particular, many (53.2%) noted that the distinction between “political activities” and “lobbying activities” is confusing. There was noted confusion on how to report political activity when it comes to policy research and analysis. One survey respondent stated that *“the rules appear to be interpreted differently by different auditors, in different organizations,”* a statement that was corroborated by another respondent who claimed that, *“depending upon interpretation, [the definition] prevents people, especially women, to approach their national, state, or even municipal governments to change policies to improve their social and economic conditions.”¹¹*

23.9% found CRA guidelines and educational materials on political activities to be confusing, while 21.7% found the examples too simplistic to be helpful. On the other hand, many respondents

¹⁰ Quote from survey

¹¹ Quotes from survey

noted that examples were a particularly helpful way of explaining how the rules are applied, but these are not exhaustive and should be added to. Overall, examples need to be modernized to include activities that charities are doing online, such as sharing over social media.

ii. The description of a partisan political activity

The guidelines currently define partisan activity as “[an activity] that involves direct or indirect support of, or opposition to, any political party or candidate for public office.”¹² Considering that partisan activities are prohibited for charities, the definition should be made clearer. In particular, the concept of “indirect support” and what that means for charities should be defined. The definition, as it currently stands, leaves much open to interpretation and can limit charities’ ability to achieve their objectives.

iii. Charities’ accountability for their use of resources

As indicated in Recommendation 3, the direction and control requirements are particularly problematic for charitable organizations working internationally, as these create imbalanced partnerships. Direction and control requirements should be adjusted to reflect best practices of solidarity in the international development sector, such as local empowerment, capacity building and ownership. As mentioned above, multiple respondents challenged the necessity for direction and control when working with international partners.

b. Which formats are the most useful and effective for offering policy guidance on the rules for political activities? For example: two to three minute videos, videoconferences, comprehensive guidance documents like those on the CRA website, webinars or other types of presentations delivered by organizations other than the CRA, other formats.

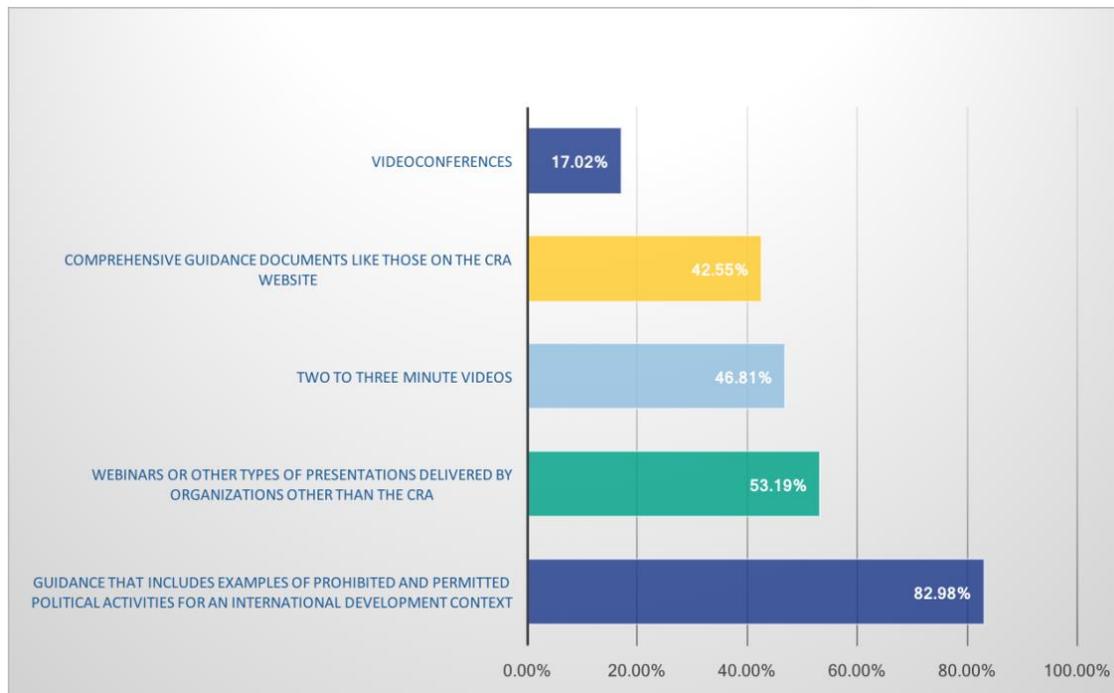
Many respondents found the framework regulating registered charities in regard to political activity work confusing and recommended it should be modernized (see Recommendation 2). Respondents would like to have access to clearer guidelines and be provided with examples of prohibited and permitted political activities that reflect their work in international cooperation.

In addition, respondents would like to have access to webinars or other types of presentations delivered by organizations other than the CRA and insisted on the importance of having access to clear and comprehensive documents related to the regulations of registered charities (like the ones that can be found on CRA website).

The main challenge the respondents identified is finding clear information about what is allowed or not allowed as registered charities in relation to “political activities.” They believe they would benefit from clearer guidelines and examples of permitted and prohibited activities in an international context.

¹² See Section 6.1: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>

Survey respondents indicated that the following resources would be useful and effective for offering policy guidance on the rules of political activities: guidance that includes examples of prohibited and permitted political activities for an international development context (82.98%), webinars or other types of presentations delivered by organizations other than the CRA (53.19%), two to three minute videos (46.81%), comprehensive guidance documents like those on the CRA website (42.55%), and videoconferences (17.02%). Other useful guidance materials recommended by survey participants included guidelines for working with First Nations communities and organizations, and the provision of materials in languages other than English and French for recent immigrants.



3. Future policy development – Should changes be made to the rules governing political activities and, if so, what should those changes be?

The survey found that the vast majority of respondents (97.83%) are of the opinion that changes should be made to the rules governing “political activities” by registered charities of the enforcement of the existing rules by the CRA.

In order to do so, 100% of the respondents said that there should be more options for charitable purposes to include preventing poverty or addressing other structural and rights issues. Further, 93.1% are in favor of including a charitable purpose related to advancing human rights and equity. A majority of respondents think that it could be beneficial to increase the allowable percentage of “political activities” for registered charities.¹³

¹³ 54.4% of the respondents said that they would like to increase the allowable percentage of “political activities” for charities, as the current guideline is 10% of resources for most charities).

While there was a split on whether the political activities of charities should be restricted or not (41.3% no restrictions, 26.1% some restrictions, 32.6% unsure), our survey delivered a clear message that the restrictions should be reformed. In particular, the CRA should recognize the difference between political and policy activities and allow registered charities to articulate policy positions within their areas of expertise. Respondents agreed that lines should be drawn in regards to lobbying and partisan activities, but policy work is distinct and important. Finally, 78.3% and 17.4% of respondents respectively agreed that calls to action are very important or somewhat important activities for charities to undertake in support of their work as well as an additional 17.4% finding calls to action somewhat important.

Section 3: Conclusion

The Inter-Council Network appreciates the opportunity to consult with government on the issue of political activities of charities. The voluntary and charitable sectors are a key part of Canada's role in the international and domestic spheres. We firmly believe that ongoing consultation is an important component of policy development. Our network represents a significant voice in charitable action and is among the stakeholders most affected by charitable law, as well as foreign policy around issues of sustainability. The charitable sector is diverse, including small, medium-sized and large organizations, representing different challenges when it comes to charitable law and regulation. We believe the CRA must take this into account when considering changes to policy. This report presents evidence-based policy analysis based on survey results that reflect the breadth of the sector's opinion and knowledge.

Ultimately, this consultation must consider not only registered charities, but also those in our sector doing charitable work that were denied charitable status based on the current framework. It must also consider non-profits that have chosen to forego charitable status to better meet their missions to eradicate poverty or achieve sustainable development, recognizing their important contribution to society.

Clearly, changes and clarification to guidelines, definition and policy are required in order to warm the current chill in the voluntary sector. In particular, the ICN holds that in reforming current laws and regulations, the CRA should 1) recognize the difference between policy work and political activities, 2) reform the direction and control requirements to better reflect best practices and international agreements, 3) modernize and clarify the list of charitable purposes and definitions of political and partisan activities, and 4) not unduly burden small and medium-sized organizations that have access to fewer resources.

There is a need for policy coherence between the CRA, charity law and Canada's international cooperation and foreign policy objectives to foster an enabling environment for Canadian civil society. The Inter-Council Network commends the CRA for recognizing the value of charities and taking action to address the issues in the current regulations to allow the charitable sector to thrive in years to come.