
Policy Forum: Editors' Introduction— Political Activity by Charities

In many places around the world, the involvement of charities in political activity has been a controversial issue. It is often asked, for example, whether tax administration is subject to partisan influence when it comes to charities: Does the revenue authority engage in “harassment through audits,” applying more audit effort to charities that support political points of view advocated by the party in opposition and less to charities that support points of view advocated by the governing political party? This question was raised in reference to both the Obama administration in the United States and the Harper government in Canada. In this policy forum, however, we move away from such short-term issues to address more fundamental ones, on the basis of the insights of two tax practitioners, an economist, a political scientist, and a legal academic.

In the first article, Robert Hayhoe and Nicole D’Aoust, both of whom are tax practitioners, address the practical issue of whether a charity wanting to go beyond current restrictions on political activities (a charity is limited to non-partisan political activity that consumes essentially no more than 10 percent of the charity’s resources) can do so. Clearly, avoiding these restrictions is not possible for a registered charity, but could it be done through a non-profit that is not a registered charity? Money given to the non-profit will earn the donor no tax receipts, but that might be acceptable to donors who are keen on the organization that is engaging in those otherwise prohibited activities.

The answer given by Hayhoe and D’Aoust is that such dual structures are indeed possible, but care must be taken to meet the Canada Revenue Agency’s (CRA’s) unpublished but fairly well-established rules in this area:

- Charitable funds must not be directed to the non-profit without the donor’s receiving fair market value (FMV) consideration in return.
- The two entities—the charity and the non-profit—must have clearly separate identities, including separate books and records, separate websites, and separate handouts, leaflets, and other written programming.
- The governing boards of the two entities cannot be identical and must be sufficiently distinct.

Case law in this area is limited to a single court decision from 1999 in which the court did not address the question of whether the charity and the non-profit had been operating as sufficiently separate entities.

In the second article, Rose Ann Devlin—the economist who is addressing these issues regarding charities and political activity—begins by asking why charities should receive favourable tax treatment. When a charity provides a good or service, many people in society benefit. Economic theory suggests that, because the provider itself doesn't fully capture this benefit, charitable goods and services may be underprovided by the market on its own. This market failure justifies public intervention through government grants or tax incentives. From this perspective, the key question is whether charities' spending for political purposes provides such a public benefit; and, if not, whether restrictions on political activities are justified.

Devlin cites data from T3010 forms (charities' information returns to the CRA) to show that the number of charities reporting political activities peaked at about 2 percent of all charities in 2003 and fell to one-quarter of that from 2010 to the year of the latest data (2013). Similarly, the amount of money devoted to political activity by all charities peaked at about \$85 million in 2006 and stayed below \$30 million from 2008 to the year of the latest data (again, 2013). Thus, Devlin asks whether the controversy over political activities is a tempest in a teapot. She adds two caveats, however: (1) charities' involvement in political activities might have burgeoned without such scrutiny, and (2) greater clarity about what constitute acceptable political activities might reduce the number of revocations of charitable status.

Geoffrey Hale, a political scientist, provides a different perspective in the third article: he is quite concerned about any lessening of restrictions on charities' political activities. He feels that this would lead to self-interested activities by charities, which could lead, in turn, to an erosion of public trust in charities as institutions aimed at the public good. He sees two avenues through which charities could engage in such self-interested activity:

1. The charitable sector consists of “the big and the rest.” For the top-100 charities, including hospitals and universities, government funding is often the main source of revenue, with charitable donations a secondary source. Lifting or loosening the restrictions on political activities could lead to such organizations' using tax-subsidized charitable donations to engage in expensive efforts to increase their government funding.
2. The top 10 percent of donors contributed 66 percent of overall revenues of charities. This dependence on big donors appears to be increasing over time, with the donor pool shrinking as a percentage of the population. In addition, these big donors appear to be, increasingly, high-income people; donations as a share of income are falling except among taxpayers earning over \$250,000. Thus, lessening the restrictions on political activities by charities could lead particular types of charities (those supported by high-income people who are big donors) to engage in political activity to get more public financial support of various kinds.

In the fourth article, Adam Parachin, a law professor, begins by asking whether charities should be allowed to engage in political activities at all. He says the answer

is yes: although charities and government are pursuing different goals, charities exist to “do good.” One way for them to do good is to use their frontline service-delivery experience and grassroots connections to provide helpful comments on government policy. However, Parachin is of the view that the Income Tax Act rules that now restrict the political activities of charities reflect muddled thinking about charitable purposes and charitable activities. He states that the current CRA rules are the proper ones in policy terms, but are not backed up properly by law; to correct that deficiency, he proposes new legislative wording, including, in particular, a definition of “political activity.” According to Parachin, the statutory definition of “political activity” that he proposes would relieve most of the many intractable interpretive problems that have afflicted subsections 149.1(6.1) and (6.2).

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