

Charities Directorate
Attn: Policy, Planning, and Legislation Division
Canada Revenue Agency
Ottawa ON K1A 0L5

October 2018

Dear Agency Officials;

RE: Draft Guidance on Charities and Public Policy Advocacy

CCVO (The Calgary Chamber of Voluntary Organizations) would like to thank the Charities Directorate for the opportunity to provide suggestions on the charities and public policy advocacy draft guidance documents. CCVO promotes and strengthens the nonprofit sector by developing and sharing resources and knowledge, building connections, leading collaborative work, and giving voice to critical issues affecting the sector

CCVO recognizes the overall progress made with the proposed Income Tax Act (ITA) amendments and accompanying guidance documents and is particularly pleased with the shift in terminology from *political activities* to *public policy advocacy activities*. We are encouraged by the removal of the requirement for charities to quantify resources used for public policy advocacy. We are in support of a shift toward a qualitative assessment, including the ability to articulate, in narrative form, the nature of a charities public policy advocacy activities and development work. We believe that these shifts will work to remove barriers to public policy advocacy work while continuing to restrict *political* purposes in favour of public policy activities that support a *charitable* purpose.

CCVO supports the notions that public policy advocacy activities must be:

- a means of achieving a charitable purpose and not an end in itself
- subordinate to a charitable purpose

Nonetheless, upon reviewing the proposed ITA amendments in conjunction with the guidance documents, we fear that some of the perceived progress will be diminished in the following ways:

1. Public Policy Advocacy Activities as 'Incidental' and 'Disproportionate': The Return of Quantitative Measures

The language of the draft guidance documents, specifically the use of 'incidental' activities, measured by an indicator analysing whether or not public policy activities are 'disproportionate,' presents an imminent risk of returning to an arbitrary quantitative scrutiny of day-to-day activities of charities. If the application of 'incidental' activities is narrowed down enough, it can be decided at some point that anything just above 10% is no longer incidental, and we would be in the same position as prior to the changes and potentially returning to a quantification method of activities.

As a result, CCVO recommends a shift toward the use of a means/ends approach where there is a clear connection between public policy advocacy activities and charitable purpose and no discussion of the amount of resources allocated to said activities. Legal research in this area, using leading and historical case law, indicates that limiting the quantity of resources put toward non-charitable activities are not strictly necessary in determining whether or not activities are incidental.¹ This is the approach taken in most of the recent cases in Canadian and international “ancillary and incidental” jurisprudence.²

To further the above recommendation, we suggest using the word subordinate vs. incidental within the document. This suggestion is in line with the wording of the Consultation Panel on charities recommendations, that non-partisan public policy advocacy activities could be pursued without limitation, provided it is subordinate to and furthers the charitable purpose. Lastly, we recommend removing the “disproportionate” indicator and replacing it with an indicator that tests for the risk of a subordinate activity becoming a purpose above the primary charitable focus. We believe that this change in language will help close the gates to an arbitrary and low threshold on the amount of public policy advocacy work that is permissible and yet continues to protect the status of the charitable purpose.

2. Indirect Partisanship and the Lack of Clarity

CCVO has previously recommended, through our submission to the proposed ITA amendments, the removal of reference to the indirect partisanship requirement given its subjectivity. This area has lacked clarity and has been the subject of much confusion in the charitable sector. However, if the CRA intends to maintain this requirement in the guidance documents, it is recommended that further clarification be provided to highlight circumstances under which indirect partisanship may exist. The guidance document should list more specifically explanations with further examples of what will be considered indirect partisan activities.

3. Fact-based and Well-Reasoned

CCVO would like to see the addition of the requirement that public policy advocacy materials be fact-based and well-reasoned. This was mentioned in previous guidance documents but is missing in the proposed and revised version.

¹ <http://www.pemselfoundation.org/wp-content/uploads/2018/05/Haney-Ancillary-and-Incidental-OP-May-24-2018-pv.pdf>

² Ibid. An example of this is in Vancouver Society, when the court applied the incidental purposes doctrine from Guaranty Trust to find that the Society’s political activities were ancillary and incidental to its charitable purposes. In coming to this conclusion, the court made no reference to the proportion of the Society’s activities that were political, and the only relevant question was whether the activities were carried out in furtherance of one of the Society’s charitable purposes.

We believe that reducing overall scrutiny of day-to-day activities of charities in favour of strengthened support toward clearly defined and established charitable purposes will provide an environment that re-establishes focus and allows public policy advocacy activities to easily align with overall function of a charity. Charities with vague purposes can often have governing documents that allow for non-charitable pursuits, which in part leads to their charitable status being questioned. We believe that our recommendations will help facilitate coherence, which in turn can improve understanding and compliance. Our suggestions are in the spirit of allowing charities to more meaningfully participate in public policy reform, which in turn serves to enhance our collective democratic processes.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David Mitchell', with a stylized, cursive script.

David Mitchell, President & CEO
CCVO