Case Comments: *Human Life International* v. *Minister of National Revenue**

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Human Life International of Canada v. *Minister of National Revenue*[1] [hereafter *HLIC*] is the most recent judgment from the Federal Court of Appeal [the Court] dealing with charities and politics. In some respects it is not an easy decision to understand, and it seems on the surface to extend significantly the reach of the political purposes doctrine in charities law. This comment will argue, first and principally, that the decision is essentially correct although not as clear in its reasoning or meaning as it could have been. It will suggest a slightly different way in which the Court could have gone about analyzing the case and offer in the process a fuller explication of its meaning. Second, it will look at a series of additional issues raised by the case, some of which require clarification by the Court. It is possible that the Supreme Court of Canada will agree to hear an appeal and it is to be hoped that if it does, some of the confusion arising from the case will be cleared up.[2]

Understanding the *HLIC* Decision

HLIC is a de-registration case. We should begin with the principal purposes of Human Life International [HLI], which were centred on abortion and stated in the judgment as follows:[3] to receive, administer and expend funds for charitable and educational purposes in connection with the following:

1) to promote the social welfare and defend the human rights of persons born and unborn;

2) to promote, and to assist the promotion of, natural methods of child creation;

3) to educate, and assist the education of, persons in their obligation to respect and protect innocent human life.

HLI was registered as a charitable organization in 1984 and thereafter operated mainly by putting on lectures, seminars, etc., and by publishing literature advocating its views.

*The author wishes to thank John Gregory, editor of "The Philanthropist", for helpful comments during the preparation of this article.

In 1988 and early 1989 HLI did two things which brought it to the attention of Revenue Canada. It sent a postcard to all MPs "depicting a 20- to 22-week-old aborted fetus" and held a "march for life" on Parliament Hill. As a result, in 1989 Revenue Canada conducted an audit of HLI, although no further action was taken. A second audit was done in 1992, covering the years 1990-1992 and this time Revenue Canada took action. A series of letters was exchanged between Revenue Canada and HLI between July 1993 and May 1994 registering concerns and threatening revocation,[4] and registration was revoked in May 1994. Revenue Canada's reasons were twofold: that HLI was not pursuing charitable purposes and that it was engaging in political purposes to a greater extent than the law allowed.

Before the Court, HLI made a number of arguments, most of which need not concern us here.[5] Both the Court and HLI concentrated on whether the latter was a charitable organization. Strayer J.A.[6] found, first, that HLI was not charitable under the category of the advancement of education. The dissemination of material to the public on an issue or issues has consistently been considered not to be included in this category and, indeed, Strayer J.A. suggested that HLI "did not press this issue in argument".[7]

Second, Strayer J.A. dealt with HLI's alternative argument, that it was charitable because its purposes fell under the fourth head of charity, "other purposes beneficial to the community". Here the judgment becomes somewhat confusing and it is necessary to go through it carefully to identify what the Court said and what exactly it might have meant. After dealing with the education point, Strayer J.A. said that the next issue was "the central question of whether the appellant's activities essentially serve other purposes beneficial to the community within the fourth category of charity". In addressing that question he asserted that "the existing jurisprudence...generally supports the proposition that activities primarily designed to sway public opinion on social issues are not charitable activities".[8]

The potential confusion arises with what follows that conclusion. Why are such activities not charitable? There are two related reasons given. First, they are not charitable because they are essentially political. Here Strayer J.A. cited the leading English case of *McGovern* v. *Attorney-General*,[9] previously adopted by the Court as defining the scope of the political purposes doctrine.[10] He acknowledged that *McGovern* did not include "swaying public opinion" as a political purpose, but noted that *McGovern* had not given an exhaustive definition. More importantly, the principle that condemned the activities listed in *McGovern* also condemned the ones at issue here. Thus Strayer J.A. stated:

> The same rationale leads me to conclude that this kind of advocacy of opinions on various important social issues can never be determined by a court *to be for a purpose beneficial to the community*. Courts should not be called upon to make such decisions as it involves granting or denying legitimacy to what are essentially political views: namely what are the proper forms of conduct, though not mandated by present law, to be urged on other members of the community.[11] [emphasis added]

The emphasized phrase is important, for it stresses the second reason why HLI's activities were not charitable, i.e., that they did not advance a purpose considered to be charitable under the fourth head. The judgment reiterates this point:[12]

> It must always be kept in mind that the fourth category of charitable activities...is those "for other purposes beneficial for the community, *not falling under any of the preceding heads*". Thus the mere dissemination of opinions that are not found to be for the advancement of education or religion...must be justified under the fourth category if at all as having some beneficial value that can be ascertained by the Minister and by this Court on appeal. But how can we judge which are the views beneficial to society whose distribution merits the name of charity? ... Any determination by this Court as to whether the propagation of such views is beneficial to the community and thus worthy of temporal support through tax exemption would be essentially a political determination and is not appropriate for a court to make. [emphasis in original]

I have heard the *HLIC* decision roundly criticized within the charity law community. The principal critique is that the Court has unreasonably enlarged the definition of "political activities" to include "the advocacy of opinions on various important social issues" and has in consequence cast a "pall" over the activities of charities, leaving them unsure "as to whether what they do is permitted".[13] That is, organizations acknowledged (and registered) as charitable will now be uncertain about what kinds of information they distribute to the public. With respect for those who think differently, I believe that the case does much less than that, and that it is necessary to consider the reasoning carefully in context to delineate its precise scope.

First, we should return to the summary of the judgment given above and recall the context in which the comments about swaying public opinion were made. The Court was asking itself the question – are the organization's purposes charitable under the fourth head? The answer was that they were not and the reason was that the organization's principal purpose was not to advance any charitable objective, but to influence the political process. That is, and as stressed above, the comments about "swaying public opinion" were all made in the context of discussing whether HLI qualified under the fourth head. It

should be remembered that an organization is not charitable just because it does not pursue political purposes; it must also be shown to pursue a charitable purpose. It might have been better for the Court to have clearly distinguished between the two reasons for finding that HLI was not charitable, i.e., that it could not qualify independently under the fourth head and that it was pursuing political purposes. It would then have become clearer that HLI's problem, in part, was simply the lack of any affirmative reason for registration as a charitable organization. But the courts do not always make this distinction, and in this case there was a problem in doing so, because it concerned deregistration. That is, had the Court said that there was simply no evidence of pursuit of an acknowledged charitable purpose it would have effectively been saying that HLI had no entitlement to registration in the first place. That would have been to criticize Revenue Canada's initial decision, which the Court was presumably reluctant to do.

My second point is related to the first. It should be remembered that political purposes cases in charities law are essentially of two kinds. Most of the cases, certainly most of those in the standard canon of leading English cases, are about organizations which exist primarily to change the law or influence government policy. That is, whether or not the end in view could itself be considered charitable, the organization is devoted to achieving its ends through political means. I will call these the "pure" political purposes cases.[14] A second kind of political purpose case concerns organizations which are charitable and which spend at least some of their time pursuing those charitable purposes through nonpolitical means, but they also become involved in the political process and the issue then is whether they have done so to too large an extent. These might be termed "political activities" cases to distinguish them from the first group.[15]

I will have more to say about this second kind of case later in this comment. For present purposes the important point is that the Court considered HLI to fall squarely within the first category. It drew an analogy between HLI and the appellant in *Positive Action Against Pornography*,[16] which was principally devoted to changing the laws relating to pornography. It found that while *Positive Action* involved clearer "advocacy of new legislation and a new role for the state" than the *HLIC* case, the essential purpose of HLI was no different.[17] That is, there is no difference between stating that one wishes to persuade Parliament to change the law and stating that one wishes to persuade the public that there should be a law about abortion. It is hard to see that the Court is wrong here; if we are to have a doctrine that says that organizations that primarily pursue political purposes are not charitable, the doctrine will surely include in its scope organizations which employ the "indirect" method of "educating" or persuading the public.[18] If that were not the case, registra-

tion would turn on the choice of wording in constating documents, not on substantive differences between organizations.[19]

The analysis offered here does rely on a conclusion, implicitly offered by the Court and explicitly stated here, that HLI was principally devoted to changing the law. For this we have the evidence of the two events that prompted the Revenue Canada investigation. But if there were only two events this would be a case about a charitable organization potentially overstepping the bounds of allowable ancillary political activity. As we have seen, HLI is not such an organization and *HLIC* is not such a case. The two activities which drew HLI to Revenue Canada's attention were not isolated events, but particular manifestations of its general objectives. The objects of HLI, summarized above, begin by referring to education, a clearly inappropriate designation, and recognized as so by the Court. They then refer to the defence of "the human rights of persons born and unborn". The evidence makes it clear that the "human rights" of the "unborn" were the focus, not those of the "born".[20] That, of course, is code for legislation restricting or prohibiting abortion. Similarly, the references in the third object to the "obligation to respect and protect innocent human life" did not mean that HLI was concerned with the fate of non-combatants in wartime or other possible activities that might be captured by that phrase. It meant again, purely and simply, anti-abortion legislation. The second object – "to promote, and to assist the promotion of, natural methods of child creation"– is presumably to the same effect, although it also seems to have involved opposition to contraception. Presumably its plain meaning – sexual reproduction rather than in-vitro fertilization – was not intended. It may be that HLI devoted most of its activities to anti-abortion lobbying, or it may be that it only devoted some of them to that end and also devoted much time and resources to its other interests, such as the encouragement of chastity, but it does not matter which is true. If the former, it was principally engaged in politics. If the latter, and assuming that neither the encouragement of chastity nor "family values" are charitable purposes in themselves,[21] it was still, for these purposes, effectively devoting its resources to one issue – abortion. In either case, therefore, the point is that at the end of the day HLI is simply, like the applicant in *Positive Action Against Pornography*, a single-issue political lobby group. Implicitly the Court recognized this; as already noted, more explicit recognition was probably precluded by the fact that HLI did receive initial registration.

2. The HLIC Decision: Further Thoughts and Some Disquieting Suggestions

To this point the thrust of this *Comment* has been that the *HLIC* decision is essentially a good one – if if we are to accept the validity of a political

purposes doctrine at all, an issue with which I am not concerned here. This does not mean that nothing more need be said about the case, or that it is not subject to some criticism or potentially the cause of some concern. In what follows I discuss a number of other points from the case.

a) *Why a Political Purposes Doctrine?*

First, it is troubling that the Court continues to rely on the traditional English cases both for its authority to hold that an organization which pursues political purposes is not charitable and, more importantly, for the rationale for the doctrine. Strayer J.A. cited the justification first offered by Lord Parker in *Bowman*,[22] that "the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift". English cases, and the Federal Court of Appeal, have also suggested a related rationale - that the Courts must proceed as if the law as it stands is correct.[23]

These justifications, developed for the purpose of trusts law, have rightly been criticized,[24] and if they were all that supported the doctrine it would be easy to argue that it should be abolished. But while I have my reservations about the doctrine, there remains a simple and compelling justification of it: that when an organization is registered as charitable under the *Income Tax Act* it receives a state subsidy, which amounts to a subsidy from all of us. There is no good reason why those who support choice in abortion, or those who oppose abortion and wish to see it legislated against, should be required to provide a tax subsidy for an organization on the other side of the issue, and no reason either why those who do not care either way should provide a subsidy to anybody.[25] Strayer J.A. hinted at this rationale, noting that "[a]ny determination by this Court as to whether the propagation of such views is beneficial to the community and thus worthy of temporal support through tax exemption would be essentially a political determination".[26] He could have been more forthright on this point, and indeed there seems little reason for the Court, in deciding what are essentially tax cases, to go beyond the rationale suggested here for not registering single-issue lobby groups.[27]

b) *The Revenue Canada Registration Process*

A second issue arising from the case is one I have already alluded to – the fact that HLI was registered as charitable in the first place and should not have been. This exposes a general problem with the registration system – we only hear about cases where Revenue Canada refuses registration and the applicant appeals. Routine decisions are not publicized. One suspects, for example, that the appellant in *Positive Action*, a case substantially relied on by the Court in *HLIC*, would have liked to have made use of the fact that HLI was registered,

in its own appeal, for there is essentially no distinction between the two organizations. We are increasingly hearing calls for a more open registration process, for publication of decisions and consequent clearer guidance to applicants.[28] This case clearly highlights the need for that. Greater consultation and publicity will also, it is to be hoped, bring greater consistency and thereby remove one of the oft-cited criticisms of the political purposes doctrine, i.e., that whether or not it is right in principle, it is applied unevenly.[29]

c) *Charity and the Charter*

Third, the case does raise some interesting questions about the relationship between the law of charity and the *Charter of Rights*. As noted above, in addition to arguing that it was pursuing charitable purposes, HLI also offered a series of other contentions, one of which was that Revenue Canada's actions in deregistering HLI infringed its freedom of expression under s. 2 (b) of the *Charter*.[30] The argument was summarily dismissed by the Court as "untenable":

> On this premise it would be equally arguable that anyone who wishes the psychic satisfaction of having his personal views pressed on his fellow citizens is constitutionally entitled to a tax credit for any money he contributes for this purpose. The appellant is in no way restricted by the *Income Tax Act* from disseminating any views or opinions whatever. The guarantee of freedom of expression...is not a guarantee of public funding through tax exemptions for the propagation of opinions.[31]

In short, if you want funding, you may be required to submit to restrictions that would otherwise be unconstitutional.

The Court is probably correct here. There are no Canadian cases on what is known in American constitutional law as the "unconstitutional condition" problem – the question of the extent to which the state can "condition" a benefit by requiring people to give up constitutional rights. If the issue were more fully considered there is no reason to think that the Supreme Court would effectively repeal the entire political purposes doctrine by holding it an invalid restraint of freedom of expression. Interestingly, the American Supreme Court, in a case about charitable tax deductions and political purposes, has held that while direct government regulation of speech must generally be supported by a compelling governmental interest and narrowly tailored to serve that interest, a government decision not to subsidize speech does not offend the first amendment.[32]

This does not, however, exhaust the issue, and two further points can be made. First, in both the American cases and *HLIC* the conclusion that the political purposes doctrine does not offend the freedom of expression guarantee is based on the fact that speech is not restricted *per se*, only speech of certain

kinds done by organizations that want special tax status. If the issue was litigated as an aspect of trust validity, of whether a trust for purposes was not for charitable purposes but for political purposes, no such defence of the doctrine would be available. Such a challenge to the political purposes doctrine could not, of course, be based on a direct application of the *Charter* to the common law of charitable trusts, because the *Charter* does not apply to the common law when it is being used to decide private litigation.[33] But the Supreme Court has stated that the common law should nonetheless be interpreted in a manner consistent with *Charter* values.[34] It would certainly be possible to make the argument that the trusts law version of the political purposes doctrine offends those values, although the Court might well find that the doctrine serves important functions and is to be preserved in any event.[35]

Second, and more interestingly given what I have said above about uneven application by Revenue Canada, in *HLIC* Strayer J.A. went on to say that the general question of whether the political purposes doctrine offended the *Charter* was distinct from the issue of particular application:[36]

> It is possible, of course, that if it could be shown that there was discriminatory treatment in the registration and revocation of registration of organizations in a way that would offend section 15 of the *Charter* [the equality rights] there might be some basis for a constitutional attack.

Thus *HLIC* may not be the final word on this issue; it is open to an applicant or a registered organization to argue that it is being denied registration or threatened with revocation where other similar organizations are treated differently. This would, of course, require an organization to show that it came within the ambit of section 15, which lists specific prohibited grounds of distinction but which also allows for claims of "analogous" grounds.

d) *Politics and Religion*

Fourth, and this is a related point to the one just dealt with, *HLIC* raises the question of the relationship of religious activities to political ones. One of the criticisms often made of the political purposes doctrine is precisely that religious organizations effectively do make political statements and engage in political action, that the line between religion and politics is conceptually and practically too difficult to draw. Usually this leads to a conclusion that the political purposes doctrine should be abolished or modified, although the premise might equally support a reduction of the privileges afforded to religion. I am not interested in resolving that issue here. Rather, for current purposes, I simply note the suggestion that *HLIC* is seen by some as "encroach[ing] on the interest of religious charities in holding and teaching their views on moral issues".[37] It does not do this, any more than it offends

freedom of expression. But it does say that religious organizations cannot be single-issue political lobby groups and get away with it under the guise of religion. The political purposes rule is about the method, not the content, and religiously inspired political activity should not be treated differently than any other.[38] It cannot be the case that religious charitable organizations can engage in politics where non-religious ones cannot. That would clearly raise another version of the problem of unequal benefit of the laws.

3. The *HLIC* Decision and Political Activities as Ancillary Purposes under the *Income Tax Act*

My fifth and final point from *HLIC* is the most important. Despite what I said above about the reasonableness of equating "swaying public opinion" with other aspects of political activity in the context of organizations which do not have an independent charitable purpose, it would indeed be unfortunate if *HLIC* were to be seen as applying to the second kind of "political purposes" case discussed above, those I have termed the "political activities" cases. As is well known, the *Income Tax Act* allows a registered charitable organization to undertake political activities provided it continues to devote "substantially all of its resources to charitable activities" and provided any political activities are "ancillary and incidental to its charitable activities" and "do not include the direct or indirect support of, or opposition to, any political party or candidate for public office".[39] This is essentially a statutory version of the common law ancillary purposes doctrine and recognizes that charities necessarily lobby in the political arena. The Canadian Cancer Society, for example, if it is to carry out its charitable purpose of improving health, ought to be involved in discussions about tobacco policy.

The concern here is with two kinds of loose language in the *HLIC* decision. First, on one occasion the Court referred to "controversial social issues", as if there was some distinction between questions that are, and those that are not, controversial.[40] As the Court itself clearly stated in *Everywoman's Health Centre Society* v. *Minister of National Revenue*,[41] involvement in, or relation to, an area that is controversial has nothing to do with whether an organization is charitable. What should matter, and the only thing that should matter, is whether the organization's political activities are ancillary to its principal charitable mission. In my view a proper and contextual reading of the *HLIC* decision, as given above, shows that the Court is not saying that involvement in controversy offends the political activities rules. But if there is any ambiguity it should be resolved in favour of an otherwise charitable organization having no additional content-based restrictions on its allowable political activities.

Second, and more significantly, there is in *HLIC* a statement, quoted above, that activities designed to "sway public opinion" can "never" be acceptable

for a charitable organization. Simply put, they should always be acceptable if they conform to the ancillary activities test. Unfortunately Revenue Canada seems to have taken the opposite view, to have read HLIC as applying broadly to all organizations. The Department's latest draft statement on what constitutes unacceptable political activity includes "persuad[ing] the public to adopt a particular attitude on socio-economic or political issues".[42] It seems here to be taking on *HLIC* wholesale. This is surely unnecessary, unrealistic and unduly broad. It is unnecessary because an organization will not be able to conform to Revenue Canada's expenditure rules and operate as a single-issue lobby group.[43] And it is unrealistic and unduly broad because it potentially covers any kind of statement, including writing letters to newspapers, putting out information pamphlets, etc., even though some of these activities are listed as permissible in the draft statement. Revenue Canada has said that its draft is indeed a draft and that it will revise it where appropriate; this is surely such an area.

Conclusion

The Federal Court of Appeal's decision in *HLIC* raises a number of interesting and important questions. While the judgment is not fundamentally flawed, it could have been clearer and it could have provided better guidance for Revenue Canada in carrying out its registration tasks. Most important is what the case says about both political purposes generally and political activities of registered charities in particular. As far as the former goes, to the extent that the *HLIC* case effectively confirms the holding in *Positive Action*, it is consistent with past decisions and, I would argue, not wrong. But, in relation to the latter, if this decision provides the basis for curtailing the political activities of registered charities on the grounds that they are involved in controversy, that would be a retrograde step. If charities are to fulfil that part of their role which involves assisting those who do not otherwise have access to political and economic power, they must be able to lobby appropriately, without regard to, and indeed often precisely because of, "controversy".

FOOTNOTES

1. [1998] 3 F.C. 202 (C.A.).
2. Leave to appeal to the Supreme Court of Canada was denied on January 21, 1999.
3. These are the "specific and primary purposes" taken from the application for incorporation: see *HLIC*, p. 209. In its lengthy correspondence with Revenue Canada surrounding the revocation process HLI also stated that it had other aims: "to protect the unborn, elderly and handicapped, to promote true Christian family values, to encourage chastity, and to teach natural family planning" (*ibid.*). Its principal concern, however, as discussed below, appears to have been abortion.
4. HLI reacted to this, in part, by publishing a full-page advertisement in the *Globe and Mail*, 19 November 1994 (and presumably in other major newspapers) complaining that its

freedom of religion and speech were being abrogated. For a discussion of this publicity campaign and an assessment of the arguments presented there, see J. Phillips, "Viewpoint: Crossing the Line from 'Charitable' to 'Political'" (1995), 12 *Philanthrop.* No. 4, pp. 33–37.

5. In addition to the arguments about whether HLI was a charitable organization, HLI also suggested that Revenue Canada had exercised discretion unfairly by revoking registration in 1993–1994 when it had not done so in 1989 following the first audit, that Revenue Canada was estopped from revocation because it had not revoked the registration after the first audit, that any rule that limited an organization's advocacy on political matters was invalid because it infringed the *Charter* right to freedom of expression and that the charitable organization provisions of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), were "void for vagueness". All of these were given very short shrift by the Court.
6. The judgment is a unanimous one. Isaac C.J. and Robertson J.A. concurred.
7. *HLIC*, p. 215. For previous decisions by the Court establishing this principle see particularly *Positive Action Against Pornography* v. *The Queen*, [1988] 1 C.T.C. 232 (F.C.A.), where Stone J.A. stated (at 237) that the Society's purposes were simply "the presentation to the public of selected items of information and opinion on the subject of pornography. That, in my view, cannot be regarded as educational in the sense understood by this branch of the law". The Court has frequently relied on the definition of education contained in *Incorporated Council of Law Reporting for England and Wales* v. *Attorney-General*, [1972] 1 Ch. 73 (C.A.), which stated that education was the "improvement of a useful branch of human knowledge and its public dissemination" (at 102). The Supreme Court of Canada has recently broadened the meaning of "education" in the context of the *Income Tax Act*. See *Vancouver Society of Immigrant Women* v. *M.N.R.*, unreported judgment, January 1999, [1999] S.C.J. 5.
8. *HLIC*, pp. 215 and 216.
9. [1982] Ch. 321.
10. See especially *Positive Action Against Pornography*, *supra* footnote 7.
11. *HLIC*, pp. 217–218.
12. *Ibid.*, p. 218.
13. L. Hunter, "Not-For-Profit Law: Could This Be Controversial", *Law Now*, June/July 1998, p. 41. For another critique see a paper by Arthur Drache, HLI's lawyer, "Charities, Public Benefit and the Canadian Income Tax System", unpublished manuscript, 1998, p. 58.
14. Examples of this kind of case include *McGovern*, *supra*, footnote 9, where the Court accepted that Amnesty International's objectives were charitable but held that its sole method of pursuing them was through the political process. Cases which involved political purposes without an underlying charitable purpose include *Bowman* v. *Secular Society*, [1917] A.C. 406 (H.L.); *National Anti-Vivisection Society* v. *Inland Revenue Commissioners*, [1948] A.C. 31 (H.L.); *Toronto Volgograd Committee* v. *Minister of National Revenue* (1988), 29 E.T.R. 159 (F.C.A.).
15. The best-known Canadian cases of this kind are *Scarborough Community Legal Services* v. *The Queen* (1985), 17 D.L.R. (4th) 308 (F.C.A.) and, outside the *Income Tax Act* context, *Ontario (Public Trustee)* v. *Toronto Humane Society* (1987), 40 D.L.R. (4th) 111 (Ont. H.C.).
16. *Supra*, footnote 7.
17. *HLIC*, pp. 216–217.

18. Indeed the political purposes doctrine clearly includes the promotion of particular political creeds, that is, the propagation of general ideas not related to any particular legislative or policy change. See *In Re Loney Estate* (1953), 9 W.W.R. 366 (Man. Q.B.); *Re Patriotic Acre Fund*, [1951] 2 D.L.R. (2d) 624 (Sask. C.A.); *Bonar Law Memorial Trust* v. *Inland Revenue Commissioners* (1933), 49 T.L.R. 220 (K.B.); *Re Hopkinson*, [1949] 1 All E.R. 346 (Ch.D.).

19. In this sense the *HLIC* decision is in line not only with *Positive Action Against Pornography* but also with two prior decisions by the Court in which organizations were held to be political even though they did not explicitly advocate changes in the law: see *Toronto Volgograd, supra,* footnote 14, and *Canada Uni Association* v. *Minister of National Revenue*, [1993] 1 C.T.C. 320 (F.C.A.). Both of these decisions are, in my view, subject to criticism because the Court failed to discuss adequately whether the underlying purpose was charitable. But for present purposes the point is that there is some consistency in the Court's jurisprudence.

20. HLI, among other things, published anti-abortion literature, posters, etc., including material referring to "The American Holocaust", discouraged support of UNICEF, Planned Parenthood, and the United Way, presumably because of their stance on abortion, and encouraged the picketing of abortion clinics: *HLIC*, pp. 210–211.

21. In fact such activities might be charitable purposes if pursued as the propagation of the religious values of an organization considered to be charitable under the "advancement of religion" category. There seems no basis, however, for considering them to be charitable as free-standing purposes under the fourth head, especially given the holding in a case like *Positive Action, supra*, footnote 7.

22. *Supra*, footnote 14, p. 442.

23. See *National Anti-Vivisection Society, supra*, footnote 14; *Positive Action Against Pornography, supra*, footnote 7.

24. One text calls them "implausible": see S. Gardner, *An Introduction to the Law of Trusts* (Oxford, 1990), p. 107. See also, for critiques of these rationales, P. Michell, "The Political Purposes Doctrine in Canadian Charities Law" (1995), 12 *Philanthrop.* No 4, pp. 3–32; L.A. Sheridan, "Charitable Causes, Political Causes and Involvement" (1980), 2 *Philanthrop.* No. 4, p. 5.

25. I acknowledge that this is essentially what the law of charity does when it gives support to religious groups. That inconsistency might be justified by history, or it might be resolved by limiting tax privileges to religion; there seems no reason why it necessarily should be alleviated by also supporting political lobbies.

26. *HLIC*, p. 218.

27. The Ontario Law Reform Commission has recently offered another justification for the doctrine, that doing charity is a formally, though significantly, different kind of activity from doing politics. See Ontario Law Reform Commission, *Report on the Law of Charities* (Toronto, 1996), Vol. 1, p. 153.

28. The Ontario Law Reform Commission has argued for this: see *ibid.*, Vol. 1, pp. 337–338. See also the recent report *Building on Strength: Improving Governance and Accountability in the Voluntary Sector* (Panel on Accountability and Governance in the Voluntary Sector, 1999), pp. 38–39.

29. Interestingly, when Revenue Canada moved to revoke HLI's registration it did the same thing to that of the Childbirth By Choice Trust, a pro-choice lobby group. (See Phillips, *supra*, footnote 4, p. 33.) Presumably the revocation took place, but the same point can

probably be made as arises with HLI: why was the organization given charitable status in the first place?

30. *Canadian Charter of Rights and Freedoms*, Part 1 of *Constitution Act*, 1982. Section 2 (b) provides: "Everyone has the following fundamental freedoms...(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication".
31. *HLIC*, pp. 220–221.
32. *Regan* v. *Taxation Without Representation*, 461 U.S. 540 (1983). For a discussion of this case and of unconstitutional conditions generally see L. Chisholm, "Politics and Charity: A Proposal for Peaceful Coexistence" (1990), 58 *George Washington Law Review* 308, pp. 320–333. For an argument that the political purposes doctrine may indeed offend constitutional values see E. Hyland, "Charities and Political Activity: Reconsidering Traditional Limitations and Prohibitions", University of Toronto Faculty of Law, Centre for the Study of State and Market, Working Paper No. 50, 1998, pp. 21 *et seq.* See for other aspects of the relationship between charities law and the *Charter*, J. Phillips, "Religion, Charity and Canadian Public Law", paper presented to the Law Society of Upper Canada Continuing Education Programme, "Fit to be Tithed 2: Reducing Risks for Charities and Not-for-Profits", Toronto, November 26, 1998 and M. Moran, "Rethinking Public Benefit: The Definition of Charity in the Era of the *Charter*", in B. Chapman, J. Phillips, and D. Stevens, eds., *Between State and Market: Perspectives on Charities Law and Policy in Canada*, forthcoming in 1999.
33. For this principle see *R.W.D.S.U.* v. *Dolphin Delivery* (1987), 33 D.L.R. (4^{th}) 174 (S.C.C.).
34. *Ibid.*, p. 198, the Court stating, after holding that the *Charter* does not apply to the common law when it governs a dispute between private parties, that: "I should make it clear ... that this is a distinct issue from the question whether the judiciary ought to apply and develop the principles of the common law in a manner consistent with the fundamental values enshrined in the Constitution. The answer to this question must be in the affirmative." See also, generally, *Hill* v. *Church of Scientology* (1995), 126 D.L.R. (4^{th}) 129 (S.C.C.).
35. For a general discussion of the application of "*Charter* values" to the law of religious charitable trusts, see Phillips, *supra*, footnote 32.
36. *HLIC*, p. 221.
37. C. Juneau, "Defining Charitable Limits: Advocacy, Education, and Political Activities", p. 17, in "Fit To Be Tithed 2", *supra*, footnote 32.
38. There are a number of cases to this effect, reviewed in *ibid.*, pp. 18–21.
39. *Supra*, footnote 5, s. 149.1 (6.2).
40. "Controversial" appears at *HLIC*, p. 216, albeit where Strayer J.A. is summarizing Revenue Canada's position in its dealings with HLI. It does not appear in Strayer J.A.'s own summary of the legal position. Hunter makes much of the use of the word, *supra*, footnote 13, in his critique of the case.
41. [1991] 2 C.T.C. 320 (F.C.A.). For an extended comment see J. Phillips, "Case Comment: *Everywoman's Health Centre Society* v. *Minister of National Revenue*" (1992),. 11 *Philanthrop.* No. 1, pp. 3–14.
42. *Registered Charities: Education, Advocacy and Political Activities*, RC 4107, 1998.
43. The Department effectively requires registered charities to spend no more that 10 *per cent* of its revenues on ancillary political activities: *Interpretation Bulletin*, IT-486, 26 April 1982; *Information Circular*, IC 87-1, 25 February 1987.