

# Helping Charities Speak Out: What Funders Can Do

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In September 2003, the Canada Revenue Agency released a new policy statement on “political activities” by charities. This policy gives lengthy and detailed guidance on what charities can and can’t do in public awareness campaigns, meetings with policymakers, issuing public calls to action, and many other activities that generally fall under the heading of advocacy, social action, or public policy work. The new CRA policy is an improvement over the previous one in several ways, but it is very detailed and some grey areas remain.

IMPACS, the Institute for Media, Policy and Civil Society, is a national charity that has been working since 2000 to lift the restrictions on charities speaking out and participating in public policy development and dialogue. Working collaboratively with national partners and local organizations, the Charities and Democracy Project has facilitated a dialogue among charities and policymakers and has helped thousands of charities across the country learn how to work within the CRA guidelines on political activities.

Funders that are charities (such as private foundations, community foundations, and United Ways) must also conform to the CRA policy on political activities. Yet many funders believe they have a vital role to play in supporting charities that are working toward progressive public policy in the health, social service, arts, and environmental sectors.

In the first part of this article, Foundations and Advocacy, IMPACS associate and lawyer Richard Bridge explains the key points of the CRA policy on political activities and suggests some practical measures that funders can take. In the second part, *Philanthropy’s Strategic Advantage: A Funder Perspective*, Nathan Gilbert, executive director of the Laidlaw Foundation, offers a funder’s perspective.

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\*For more information about the Charities and Democracy Project, visit <[www.charitiesanddemocracy.net](http://www.charitiesanddemocracy.net)>. We would like to thank our foundation partners, particularly the Community Foundations of Canada that provided support for a longer study of this issue. For a complete list of our project partners, please see the IMPACS Web site at <[www.impacs.org](http://www.impacs.org)>.

## I. Foundations and Advocacy

Tackling the root causes of social and environmental problems often involves advocating for better public policy. Canadian charities have been reluctant to fully engage in such advocacy because of murky rules set by the Canada Revenue Agency (CRA).

A 2003 policy change by the CRA, however, provides greater clarity so that Canadian charitable organizations and the foundations that support them can engage in advocacy with a greater comfort level. While not ideal, this new policy can serve as a springboard for more activity in this field.

### *The Heart of the Problem*

The problem has been the lack of meaningful distinction between fully permitted “charitable activities” and partially permitted “political activities,” or what charities often call “advocacy.” This distinction has not been made coherent by Parliament through the federal *Income Tax Act*, by the Courts through case law, or by the CRA through earlier policy statements.

As a result, many charities have not engaged in public policy debates for fear of running afoul of these incoherent rules and then losing their charitable status. Having spoken with hundreds of charities across Canada on this issue, I am convinced that this chill has led to lost opportunities for better public policy decisions on countless issues. This is a serious loss.

We need to encourage public interest ideas and voices, not discourage them. After all, our tax system encourages corporations to voice private interests, for they can not only spend unlimited resources lobbying, but they can also deduct these resources from their income for tax purposes as a cost of doing business.

### *Highlights of the 2003 Policy Statement*

In 2003 the CRA took a step forward when it adopted Policy Statement CPS-022 on “Political Activities.”<sup>1</sup>

Here are five key highlights of this policy:

- 1. Three Categories of Activities:** The CRA has better defined three categories of activities. *Prohibited activities* consist of partisan politics (direct or indirect support of or opposition to a political party or candidate for office) or anything illegal. *Political activities* (definition below) are permitted in limited amounts—10% of total resources for large charities (i.e., those with annual budgets of more than \$100,000) and up to 20% for small charities (i.e., those with annual budgets of \$50,000 or less). *Charitable activities* are permitted without limitation.

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1 Policy statement CPS-022 can be found at <[www.cra-arc.gc.ca/tax/charities/policy/cps/cps-022-e.html](http://www.cra-arc.gc.ca/tax/charities/policy/cps/cps-022-e.html)>.

2. **“Political” Defined:** For the first time, the CRA has produced a definition of political activities. It is the key to the CRA’s new position, and rather than paraphrase it, here it is in its entirety from section 6.2 of the Policy Statement:

“We presume an activity to be political if a charity:

- a. explicitly communicates a call to political action (i.e., encourages the public to contact an elected representative or public official and urges them to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country);
  - b. 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; or
  - c. explicitly indicates in its materials (whether internal or external) that the intention of the activity is to incite, or organize to put pressure on, an elected representative or public official to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country.”
3. **Public Awareness Campaigns.** These are campaigns that “aim to give useful knowledge to the public to enable them to make decisions about the work a charity does or an issue related to that work.” These are charitable (not political) activities so long as they are connected to the charity’s purposes, are well reasoned, and are based on accurate information.
  4. **Communicating with Government.** The CRA now holds that it is a charitable activity to make a representation to an elected representative or public official, even if the charity calls for policy change. Again, the representation must be connected to the charity’s purposes, and the representation must be well reasoned and based on accurate information.
  5. **Releasing the Text of a Representation.** A charity that has made—or is about to make—a representation to government can also safely release the text of that representation to the public. The entire representation must be released, and it cannot include a call to political action, or it will fall into the partially permitted “political” category.

Other noteworthy features of the Policy Statement are:

- Charities can average their political activities over three years.
- Charities may contract with non-charities for the delivery of political activities on the charities’ behalf.

### *Still Not Ideal*

Now there is greater latitude for Canadian charities to advance ideas and share their wisdom to improve laws, policies, and decisions of governments. The CRA’s new policy is an improvement, but is not ideal.

In England and Wales, political activity by charities is recognized as a valuable contribution to policy making. So long as it does not become a charity's dominant activity, it is permitted. In essence, in these countries there is a "49% rule," an approach that is popular among many Canadian charities.

### *What Foundations Can Do*

Given their potential to finance community, social, and environmental solutions, foundations have opportunities to show their leadership in fostering advocacy. Here are some practical measures foundations can take:

- Foundations can help grant applicants understand and use this new CRA policy in order to both remove the chill on advocacy and to reduce the perceived risk of violating limits on political activities.
- Foundations can themselves engage in political activities to share their credibility and expertise in public debate. This requires careful internal tracking of the percentage of resources devoted to such activities. Also, as stated above, charities may contract with non-charities to conduct advocacy on their behalf.
- A foundation could both more easily track advocacy grants and maximize its spending on advocacy by creating a special advocacy fund with its 10% to 20% limit. (Neither the grant maker nor charitable recipients can exceed their overall percentage limits over a three-year period).
- Two or more foundations could pool the resources they devote to political activity to create a larger advocacy fund. This could bring more resources and attention to larger issues.

With the greater clarity and scope of the CRA Policy Statement, foundations and charitable organizations can move beyond the treatment of symptoms into the ultimately more productive realm of problem solving.

## **II. Philanthropy's Strategic Advantage: a Funder Perspective**

Unlike government and business capital, foundation capital is entirely discretionary. It is money freed from quarterly profit projections or regular election cycles, unconstrained by the need to please political constituencies or maintain shareholder value. As a result, it is money that has the most ability to take risks and be patient, or move quickly in response to something unexpected. It can support work of great potential and little popularity. A foundation can think about its giving as a balanced portfolio.

— Katherine Fulton and Andrew Blau,

in *Looking for the Future: An Orientation for 21<sup>st</sup> Century Philanthropists*.

Philanthropy has the capacity (if not the responsibility) to act as a guarantor of democratic pluralism: supporting broad policy discourse, particularly discordant voices, to ensure that our institutions benefit from a rich and diverse chorus of voices and instruments.

Supporting advocacy should be a hot topic in the current climate. However, many grantmakers are leery and need clarification about the policies that

govern such support. They need to become better informed about the current permissions and limitations and to work effectively within them.

### *An Alternative Approach*

The traditional charitable impulse is to help people in need and support charities that fill the gaps left by government and the private sector. Many of these foundations operate in relative isolation and are extensions of private family giving.

An alternative approach is to support activities that influence public policy and the allocation of government assets to leverage the foundation's own financial resources.

Many charities are grounded in practical policy experience and wisdom, knowing what works, what doesn't, and what might work. They can draw attention to the lessons they have learned and their prescriptions for new public benefits, but few charities have the resources to hire lobbyists or purchase media. They need support to develop effective communication strategies to get their point of view into the public domain.

### *Support for Advocacy*

Advocacy strategies are often required to advance the goals of foundations and their grantees. Support for advocacy can include such strategies as:

- research and policy development,
- grass roots organizing, and
- media and messaging,

all of which can be done effectively within the policy guidelines set out by CRA.

### *Networking and Collaboration*

Many foundations are looking for more sustainable mechanisms for change. They recognize that no one funder has sufficient assets to solve significant problems and that sustainable change is a long-term challenge and solutions cannot be known ahead of time.

Grantmakers are now finding new ways of collaborating in their giving with a wide range of new partners. These funder-collaboratives are networks based on interest or identity as well as on place. Grantmakers can pool funds, develop joint strategies, and collaborate to achieve outcomes that they would not be able to manage on their own.

More foundations should balance their philanthropic portfolio to, on the one hand, be responsive to emerging opportunities and, on the other hand, maintain a portfolio of grants that support longer term, more systemic change.