Viewpoint

Viewpoint *expresses the particular views of contributors and does not necessarily reflect the opinions of* The Philanthropist. *Readers are invited to respond to articles in this section and, if appropriate, opposing views will be published.*

Political Activity and Charitable Organizations*

HENRY G. INTVEN**

Introduction

Debate about the extent to which charities should engage in political activities is a hoary tradition in the courts and legislatures of England, the United States, Canada and elsewhere. For a number of reasons, the issue has heated up in Canada over the past few years.

Registered Charities: Political Objects and Activities.[1]

First, was the appearance in early 1970 of the Department of National Revenue's information circular 78-3.

The circular warned that political objects or activities on the part of charities would be seen as a contravention of the *Income Tax Act*[2] and could result in the revocation of an organization's registration as a charity. It then indicated that the Department's interpretation of political activities was extremely broad: virtually any activity that could be seen as promoting a change in government policy or legislation or as encouraging government to take a stand.

Under strong protest from charities and in answer to opposition in the House of Commons and Senate, the circular was withdrawn by the government and a new one promised "which would clarify the whole situation".[3] However, a clarifying circular has not been issued and there is no indication that the views of Revenue Canada officials have changed.

The second recent occurrence which has brought this issue to the fore was the decision by the Department of National Revenue in early February, 1980 to "deregister" a Canadian charity because of its political objects or political activities.[4] More specifically, the Department refused to reinstate the registration of The Manitoba Foundation for Canadian Studies which publishes the magazine *Canadian Dimension*. This "deregistration" has been appealed to the Federal Court of Appeal. This will be the first time a Canadian court has been asked to consider such a matter since charitable organizations were first required to register under the *Income Tax Act* in 1967. The court's decision in the case could have considerable impact on the extent to which an organization may be permitted political objects or activities without risking its status as a registered charity.

* This paper was developed from an address given by the author at a Conference of The Canadian Centre for Philanthrophy on November 28, 1980.

** Member, The Ontario Bar

A third reason for more frequent debate is reports from a number of organizations and their advisors that Revenue Canada is tightening its charitable registration and renewal procedures and taking a tougher line against registration of organizations which the Department feels might be prone to political activity.

To understand the increasing controversy surrounding the issue of "politcal activity" it is necessary to review the nature of charitable registration, the Department of National Revenue's and the courts' interpretation of "charitable" and "political" and the *Canadian Dimension* case.

Charitable Registration Under The Income Tax Act

It is advantageous for an organization to become a registered charity within the meaning of the *Income Tax Act* for two main purposes: first, so that the organization itself will not have to pay taxes under the *Act*[5] and second, so that it may issue receipts to its donors who may then claim deductions for tax purposes.[6] The *Income Tax Act* specifies that registered charities may be either charitable organizations or charitable foundations or subdivisions of either.[7] The *Act* further specifies that charitable organizations must devote all of their resources to charitable activities[8] and that charitable foundations must be operated exclusively for charitable purposes.[9] The *Income Tax Act* sets out rather draconian consequences for registered charities which engage in activities that are not "charitable". The registration of such a charity may be revoked by the Minister of National Revenue 30 days after Notice of Revocation is mailed to the charity.[10] Not only will the charity then have to pay taxes on its income and lose the right to issue receipts for donations, it will also have to turn over all of its assets to another registered charity or forfeit them as a special penalty tax to the Crown.[11]

The problem faced by registered charities and organizations seeking such registration is that the *Income Tax Act* nowhere defines "charitable objects" or "activities" or provides any guidance on how to distinguish such activities from political activities. For that we must go to the common law as it has been, and continues to be, interpreted by the courts.

Revenue Canada's View of Political Involvement by Charities in IC 78-3

Let us first consider Revenue Canada's information circular 78-3. It should be pointed out at the outset that it is hard to fault Revenue Canada for its initiative in issuing an information circular on this topic. The Department frequently issues such circulars to publicize its interpretation of areas of income tax law and practice. As will be seen from later discussion of common law in the area, the cases governing political activity for charities are not clear. Some are directly in conflict with one another, some are set in the context of what must now be seen as archaic social values, and many substantial issues are simply not dealt with in the cases. Information circular 78-3 was designed to interpret and clarify the common law as it would be applied for charitable registration purposes.

Some criticisms of the circular are based on the fact that it relies on a body of English common law over 200 years old to construct an appropriate standard for present-day registered charities. The circular can also be criticized, however, on the basis that although some of its guidelines are linked to what some judges may have said about

a particular charity's activities, the circular itself is far more comprehensive than the statements in the common law. A number of the prohibitions set out in the circular have simply never been considered by the courts and to this extent they represent new restrictions, whether intended or not, by the Department on the activities of charities.

The circular could have very serious implications for registered charities. It describes a "political object" as an "ultimate intention to influence the policy making process of any level of government".[12] It then defines "political activities" as any activities "designed to embarrass or otherwise influence a government, take a stand, change a policy, or enact legislation for a purpose particular to the organization carrying on the activity".[13]

It is not hard to imagine the consequences of such blanket prohibitions against political objects and activities in an era of comprehensive government policies and regulation. Very few charities work in areas that are not somehow affected by government policy or legislation. In fact, ironically, some charitable programs such as those for the relief of poverty or of other types of human misery were first developed by the charities and only later by governments. To suggest that as soon as government makes policy or legislates in an area, the charities always involved with that area must take a hands-off posture has a somewhat totalitarian twist.

From a purely pragmatic point of view, it seems beneficial to the country as a whole to have a wide representation of informed points of view brought to bear on important public policy issues. Very often, particularly in the health, education and welfare fields, some of the best-informed points of view will be held by board members and professional staff of charities. What the information circular appears to do is to prevent such board members and staff from participating, actively at least, in the policy-making process thus leaving that field to government and organizations which are not registered charities.

One can think of numerous examples of charities which would have to stop engaging in activities that they had previously considered a normal part of promoting their charitable objects. To cite some examples: charities concerned with cancer, or respiratory or heart-related ailments could not promote a government policy which would educate school children about the dangers of smoking. Charities involved in assisting the handicapped could not promote a policy of accessibility to municipal, provincial or federal government buildings. International relief charities could not promote direct government aid in a case of disasterous famine or flood in a Third World country. Even a program aimed at changing the *Income Tax Act* to eliminate some of the problems being discussed today would, under the information circular, constitute a political activity which could result in the revocation of the charities' registration and forfeiture of their assets to the Crown.

In the balance of the information circular the Department sets out detailed examples of activities that it considers "political". Interestingly enough, the circular indicates that certain types of activities, although political in the sense that they are designed to induce government to take a stand or change a policy or law, will be considered "acceptable" for a registered charity; others will not.[14]

In some cases the distinction between "acceptable" and "prohibited" activities seems

to depend on how seriously the activities are pursued or whether they are intended to achieve results. For example, it is considered acceptable for charities to present briefs to governments, commissions or committees setting out their views and matters of concern and merely recommending corrective measures. It is, however, prohibited to undertake a program to promote the recommendations set out in the brief.[15] It is considered acceptable for a charity to make written or oral representations to its own elected representatives or to the relevant Minister of the Crown or public servant "on condition that such representations are limited to presenting the organization's interests and points of view and otherwise do not attempt to influence legislation".[16]

In both of these situations it seems unrealistic to make distinctions that allow charities to merely recommend reform of public policy but not to promote such reform by government. If nothing else, such distinctions are unfair in a society where a variety of public and private interests may be actively competing for the resolution of a policy issue. In such a situation, all interest groups may properly engage in activities to influence public and political opinion in their favour. All except charities that is, since they would lose their charitable registration in doing so.

The following are some other activities deemed political and unacceptable by the information circular:

- Letters to the editor which attempt to sway public opinion in relation to a political issue as defined in the circular;[17]
- Publication of a magazine, review of a newspaper, etc. on a political subject (again as defined in the circular), unless "an impartial and objective coverage is given to all facets of the subject matter";[18]
- Public demonstrations designed to apply pressure upon a government;[19]
- Form letters, if used, for example "to solicit the public to write letters of protest to their elected representatives";[20]
- Conferences, workshops, symposia and other like activities where subjects of "political content" are presented and discussed unless "their purpose is to present to the public all sides of a political question so that the public can make its own informed decision".[21]

These prohibitions seem to limit the rights of free speech, assembly and participation in our democratic institutions. On the other hand it must be pointed out that the information circular would not actually prohibit organizations from engaging in such activities, it would merely deprive them of favourable treatment under the *Income Tax Act*. In other words, the underlying theory would seem to be: representatives of an organization can participate in the government policy-making process but if they do so their organizations will not receive an indirect subsidy from other Canadian taxpayers through reduced taxes for the organization and its supporters.

The problem with this theory is that it is not equally applied to other classes of organizations which receive favoured tax treatment of one kind or another. For example, business corporations are generally taxed at lower tax rates than individuals. Such corporations also, quite legitimately, become involved in the public policy-making

process in a manner that is intended to further their interests. Yet corporations do not lose their favoured tax treatment nor is the extent of their indirect subsidy from other taxpayers reduced as a result of such activities. In fact, business corporations can quite legitimately deduct the entire costs of lobbying and related expenses when they are calculating their taxable incomes, thereby placing a heavier burden on all taxpayers. It has generally been felt that there is nothing wrong with this tax policy. It seems ironic then that the information circular would threaten revocation of the favoured tax treatment for charities in similar circumstances.

In fact, there is probably a consensus within Canadian society that the interests represented by most registered charities are "special interests". Accordingly. the view put forth in the information circular would use income tax legislation as an incentive to discourage involvement in the public policy-making process of representatives of public interests. Meanwhile there would remain an incentive for such involvement by representatives of private business interests.

It should be pointed out that there was little or no criticism of one aspect of the information circular, that is, that charities should not become involved in supporting particular political parties through what might be called large "P" Politics. In that sense, most charities themselves would probably consider political involvement improper and would take steps to avoid it. It doesn't seem, for example, that the recent trend towards involvement in party politics by some U.S. churches will arise in Canada. If and when it does, guidelines might be appropriate. However, large "P" Politics was clearly not the main concern of the information circular.

Common Law Treatment of Political Activities by Charities

It is interesting to note that during the protests following publication of the information circular there was less concern about whether the circular actually conformed to the common law than about the contents of the circular. It is, of course, quite proper for citizens of a parliamentary democracy to assume that if a law is inappropriate for the times it should be changed. Some commentators, such as the *Toronto Star*, clearly recommended new legislation. Prior to considering such legislation however, we should review the common law.

As indicated, it is only since 1967 that charities have been required to register under the *Income Tax Act* in Canada and there have been no cases on the principles directly applicable to deregistration for political involvement under the *Act*. English, American and Canadian cases dealing with charities in other respects, such as the establishment of charitable trusts, must therefore be considered.

The common law definition of a charity comes from a statute enacted in England in the reign of Elizabeth I. The statute has now been repealed but some elements of the definition have survived in judicial decisions. The statute defined charity as:

> "The relief of aged, impotent and poor people; the maintenance of sick and maimed soldiers and mariners; schools of learning and free schools and scholars of university; the repair of bridges, ports, havens, causeways, churches, seabanks and highways, the education and preferment of orphans; the relief, stock or maintenance of houses of correction; marriages of poor maids; supportation, aid and help of young tradesmen,

handicrafts men, and persons decayed; the relief or redemption of prisoners or captives; the aid or ease of any poor inhabitants concerning payment of fifteens; setting out of soldiers, and other taxes."[22]

It seems fair to say that conceptions of charitable objects have changed since that time. Relatively recent British decisions have defined charity more broadly as follows:

> "Charity in its legal sense comprises four principal divisions: — trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads".[23]

As can be easily understood it is the fourth category, that is, "other purposes beneficial to the community", that has posed the greatest number of problems and has led to some of the most fertile judicial reasoning on the subject.

A review of the cases reveals the following general themes:

First, reflecting both the strength and the weakness of the common law, the cases are characterized by elements of inconsistency and change, and in few of the fact situations which came before the courts was anything approaching a comprehensive look at political involvement by charities required or given. As a result, the law is unsettled in a number of areas and is of little real guidance on many of the current concerns of charities.

Second, the definition of charity through the years is to some extent set in the social context of the time and place decisions are made and thus, although some of the decisions have not been specifically overruled or reconsidered, they might well be if re-evaluated by a contemporary court.

Third, where the primary objects of an organization have been considered charitable there has been some leeway in allowing what might otherwise be seen as political activity to advance such objects. However, there is considerable conflict and confusion over this issue and political activities may still disqualify a charity, particularly if such activities are enshrined as an object in the constitution of the organization. (For example, promoting a change in legislation.)

Review of the cases reveals a veritable stream of decisions that make it quite clear that activities which are overtly or implicitly related to party politics cannot be considered charitable. There was an early exception to this rule which involved one Vicar Scowcroft of Warwickshire, who, in 1897, bequeathed a building known as "The Conservative Club and Village Reading Room" to be used "for the furtherance of conservative principles and religious and mental improvement and to be kept free from all intoxicants and dancing". That was held to be a valid charitable gift,[24] possibly because the "conservative" principles were seen as being apolitical and more related to an upright, moral lifestyle which was beneficial to the community. However, since that decision gifts to "The Conservative Cause",[25] an educational centre for the Conservative Party,[26] or the advancement of adult education with particular emphasis on the membership and principles of the Labour Party have all been considered political rather than charitable gifts.[27]

Where a social reform movement is not associated with a political party, however, it appears that some political activity was at first countenanced by the judges, possibly because these movements were seen as generally beneficial. Later, however, political activities, even by the same groups, were viewed less favourably, possibly as the social context of the decisions had changed. This trend appears both in the temperance cases and the anti-vivisection cases.

One of the early temperance cases in Ontario considered a bequest in a will that would certainly have run afoul of information circular 78-3. In 1892 Abraham Farewell left $2,000 to his trustees "to promote the adoption by the Parliament of the Dominion of Canada of legislation prohibiting totally the manufacture or sale in the Dominion of Canada of intoxicating liquor to be used as a beverage, and in order to give practical aid in the enforcement of such legislation when adopted, and whether by educating and developing a strong, public sentiment in its favour, or by other and more direct means, or in such other way as my trustees shall think best". In that case, the court found the purpose of the bequest to be both charitable and praiseworthy and the advocating of prohibition laws was not considered as a necessarily political activity.[28] Similar decisions were made in both England and The United States.[29] Then, in 1926, in England, that position was reversed by the courts and the promotion of temperance legislation, and incidentally any purpose of influencing legislation, was considered a political purpose.[30]

Decisions involving anti-vivisection societies have had a similar history. In a series of cases from 1890 through 1895, 1912, and 1938, Irish,[31] English,[32] Canadian [33] and American [34] courts held that it was a charitable purpose to promote legislation and arouse public opinion to procure the abolition of vivisection, that is, medical or other experimentation which used live animals. Then, in 1947, the British House of Lords held that the National Anti-Vivisection Society was not a charity because its main object was political, that is, the pursuit of laws to prohibit vivisection.[35]

It is interesting to speculate how much that decision might have been influenced by another finding of the court which was: that vivisection was beneficial to the public and therefore its abolition was not. In other words, it may be that science and laboratory experimentation on animals had both achieved greater respectability by the post-war period, and that this change in the social context had as much to do with the ultimate decision of the Law Lords to deny the Anti-Vivisection Society its charitable status as did the Society's political lobbying.This hypothesis is supported by a more recent British case which deemed such a society not to be a charity although its objects did not refer to influencing legislation but merely expressed a general opposition to vivisection. In one of the more far-reaching decisions on charitable status, the court held that the activities of the society must be viewed as political because opposition to vivisection must in the end involve an attack on legislation, namely the *Cruelty To Animals Act* which regulated but did not prohibit vivisection.[36] By that standard, all charities with objects related to matters dealt with in legislation could be considered to have political objects even if they never promoted legislative or policy change.

One vivisection case in which the court seems to have acted in step with the times is reported in Professor Sheridan's article on "Charitable Causes, Political Causes

and Involvement" which appeared in the Fall 1980 issue of *The Philanthropist*. According to Sheridan:

> "In one of the later English cases, the testatrix seems to have been moved by vindictiveness towards people as well as compassion towards other animals. She died in 1962 having left some of her property to an institution opposing vivisection, the property '... to be used by such institution to do all in its power as soon as possible to urge and get an act of parliament passed prohibiting such atrocious and unnecessary cruelty to animals and then to watch and have the offenders severely punished'. Buckley, J. had no hesitation in deciding that that was not charitable." [37]

It is interesting to speculate whether the courts would have found a similar bequest "not charitable" in earlier centuries when eccentric scientists first started carving up live animals in small rooms out of sight of the public, many of whom no doubt thought them mad as well as cruel.

It has been held in a minority of cases that promotion of any change in the law will deprive an otherwise charitable purpose of its charitable nature. This view has been expressed as follows:

> "A trust for the attainment of political objects has always been held invalid, not because it is illegal, for everyone is at liberty to advocate or promote by any lawful means a change in the law, but because 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." [38]

This line of cases was most eloquently criticized by Professor Sheridan in his article in *The Philanthropist* in which he said:

> "That is true pathos. It is also a strain on credulity. There are few people better qualified than judges to assess whether a change in the law would be for the public benefit. Change of the law so as to prohibit vivisection is not a charitable object because vivisection was proved in court to be for the public benefit. Change of the law so as to reduce cruelty to animals is a charitable object because reduction of cruelty to animals was proved in court to be for the public benefit. In cases where the judge cannot make up his mind whether a change would be for the public benefit or not, he ought to hold the achievement of that change not to be a charitable purpose, for no purpose is charitable unless it is proved to be for the public benefit. But that need not govern, and does not in reality govern, cases where the judge can make up his mind on the issue of public benefit."[39]

The majority of the cases suggest that promotion of legislative change for an otherwise charitable purpose, particularly if accomplished by low-key rational argument rather than high-profile public campaigns, will be considered charitable. However, this distinction between low-profile and high-profile lobbying which has found some favour in the British cases, and the distinction between informing the public about an area of possible legislative change and advocating such change which has emerged in United States jurisprudence, is problematic. It may to some extent represent the

law as lived by some Canadian charities, in that they generally have preferred to avoid high-profile tactics aimed at changing legislation in favour of more subtle attempts to influence public opinion or the views of legislators. However, this seems to be only a matter of style and not of substance.

In terms of determining what are charitable objects, the American courts appear to have been more liberal than their English counterparts. U.S. courts have determined as "charitable", activities aimed at maintenance of good government[40], general improvement of government[41], advancement of the civil rights of blacks[42], Indians[43], Jews[44] and women [45], as well as promotion of industrial and international peace.[46] At the same time, British courts have considered political, and therefore not "charitable", purposes such as the appeasement of racial feelings between the Dutch- and English-speaking peoples of South Africa[47], the promotion of Anglo-Swedish understanding[48], and a campaign to reinstate the supply of free milk to English primary school children[49].

Possible Solutions to the Political Involvement Issue

There are two general problems with the existing treatment of political involvement by charities under the common law which currently forms part of Canadian income tax law. First, the definition of charity and the related rules regarding political activities are unclear. Second, certain aspects of the interpretation that emerge from the case law appear to unduly restrict the activities of charities. These restrictions seem inappropriate in view of the existing role of charities in the comprehensively-governed Canadian society of the 1980's.

The main problem caused by the uncertainty of the law in this area is, to use a phrase of the American courts, the production of a "chilling effect" on the activites of charities and their representatives. No charity can be certain that taking a public stand on an issue cannot be seen as part of a campaign to promote change in policy or legislation. Nor can any charity be certain that engaging in any of the activities proscribed by information circular 78-3, will not, despite its withdrawal, result in Revenue Canada action to revoke a charitable registration. Certainly, if a charity felt its registration had been wrongly revoked on the basis of the common law, it could appeal National Revenue's decision to the courts, but there the uncertainty of the matter may well lead to protracted and expensive litigation, possibly ending in the Supreme Court of Canada. Many charities could be bankrupted by such a test case. It would hardly comfort them to know they had helped to clarify a contentious issue.

An aspect of the "chilling effect", the uncertainty surrounding the information circular, and the *Canadian Dimension* case can have on charities, was described in Arthur Drache's article on the subject in the Fall, 1980 issue of *The Philanthropist*:

> "Those who favour an 'activist' approach by churches and other charities on public issues feel that if Revenue succeeds in this case, conservative members may use the threat of a loss of registered charitable status to browbeat the charities into official silence on matters of pressing public importance."[50]

The question then is: how can the uncertainty surrounding this matter be resolved in a manner consistent with the interests of both the public and of charities? The first

possible answer is that the law may be clarified by the decision of the courts in the *Canadian Dimension* case. Any clarification might be beneficial. If the court defined "charity" in a manner that was considered unacceptably narrow by the charities and by the public generally, presumably the law could be changed by an amendment to the *Income Tax Act*. On the other hand, the court might come up with a definition acceptable to the majority. Unfortunately, the facts in the *Canadian Dimension* case are sufficiently unique that the case may well resolve nothing more than the question of whether one particular foundation has engaged in political activities to an extent sufficient to deprive it of its charitable status. No precedent would be set for other charities. Both Revenue Canada and the charities would then have to wait for another test case or a third or a fourth to determine rules of general application.

Despite the distinctiveness of the *Canadian Dimension* case vis-à-vis other charities, it is the first case challenging such a deregistration under the *Income Tax Act*. It is therefore possible that the court could, in the course of making its decision, set out some general rules regarding political activities of charities registered under the *Act*. Whatever happens, the case is likely to be a precedent of some sort for future deregistration cases.

As a result of these factors, a group of registered charities has decided to apply to the court to intervene in the case. They number about a dozen to date but support is still growing. They span interests as diverse as religion, international aid, social and physical development, mental health, consumerism, native rights, rights of the handicapped, education and others. They retained counsel (J.J. Robinette) to apply on their behalf for the right of standing to appear before the court to put forth their position. They will not specifically defend the Canadian Dimension foundation, but rather urge the court to adopt a view of registered charities which will not adversely affect their right to participate in changing public policy in areas affecting their charitable objects.

In all likelihood the best long-term solution to the problem lies in an amendment to the *Income Tax Act* defining a charity in terms of what it is generally accepted charities stand for and do today. I would like to suggest such a definition, not as a final product that should be incorporated into the *Income Tax Act* tomorrow, but as a basis for discussion.

The proposal is based on my view, which has certainly not been shared by some of the judges who have considered the matter, that there ought to be a clear distinction between acceptable *objects* of a charity and acceptable *activities*. The objects or purposes of charities are in my view, what differentiates them from other types of organizations. Thus, if an organization's objects are generally accepted to be charitable ones, the government should be less concerned about the means or activities used to advance those objects. The same view was expressed in straightforward terms in a letter from Senator John Godfrey to Revenue Minister Joseph Guay during the Senate debates on information circular 78-3. He said:

> "The commonsense approach surely is that if any political activity indulged in by the charity is for furtherance of its primary charitable aim, then it is permissible because such activities are then strictly speaking not political ones but charitable ones."[51]

That is part of the theory. Here is the proposed definition:

1. "Charitable objects" shall include:
   (a) Assistance to economically or physically disadvantaged classes of persons;
   (b) Advancement of religion;
   (c) Advancement of education;
   (d) Other purposes beneficial to the community, including social or cultural development or improvement of the physical or mental health of the community.
2. "Charitable activities" means all activities carried on by a charity in furtherance of its charitable objects.

Rather than engage in a long defence or critique of the proposal, here are some of the considerations that went into it and a few of the issues that it raises:

The interpretation of acceptable "charitable objects" starts from the basic objects permitted in the case law, which are related to poverty, religion, education and other, and then supplements these with some specific objects characteristic of many current charities and which might generally be seen as "charitable".

As with Senator Godfrey's proposal there is no restriction on charitable activities so long as they are carried on by a registered charity in furtherance of its charitable objects. Such a provision would leave it to the directors of charities to determine what means to use to advance their charitable objects without risk of loss of their charitable status. To coin a phrase, it would remove government from the boardrooms of charities.

Some might prefer certain restrictions on the activities of charities. In this respect it should be remembered that illegal activities and activities contrary to the constitutions and by-laws of charitable organizations are already prohibited and no *Income Tax Act* restriction is required. The members of charities can, of course, pass any restrictions they deem fit without any government supervision of the matter.

One restriction on charitable activities which has some precedent in American practice would limit the resources devoted by a charity to influencing public policy, legislation and similar matters to a certain percentage of available resources. There are, however, both practical and philisophical objections to such an approach. Practically, such a proposal would be complex to administer and to supervise, it could be open to fairly easy abuse, and it would result in the same difficulties in defining allowable political activities which we have today. In principle, such a proposal would still amount to a restriction on the rights of charities to be involved in the public policy process and whatever percentage restrictions were set would, in some circumstances for some charities, be unwarranted.

The proposed definition of "other" charitable purposes merely requires that such be beneficial to the community, not to the community "as a whole" as prescribed in another Revenue Canada information circular, 80-10.[52]

The proposed definition is supported by some of the cases and is adopted not because of any major opposition in principle to the National Revenue definition but rather

because the words "as a whole" seem redundant. These are obviously only a few of the issues raised by the proposed definition. It is possible that some bona fide charities would be excluded from this definition and that some non- charitable or even disreputable groups might be sheltered.

It does, however, seem important to start discussing specific language for a definition of charity which would provide a solution to the uncertainty and restrictiveness of the existing definitions. Former Finance Minister Allan MacEachen and others within government have indicated a willingness to co-operate in developing a new definition. As an aside, it is hard to imagine that a judge or a National Revenue official would even consider deregistration of a charity for promoting policy or legislative change on that issue. The National Voluntary Organizations Committee has already been involved in discussions with the government for some time. It would be in the best interests of other charities to join that discussion.

FOOTNOTES

[1] Revenue Canada, Information Circular No. 78-3, February 27, 1978; *Registered Charities; Political Objects and Activities*.

[2] *Income Tax Act*, S.C. 1970-71-72, c. 63, as amended.

[3] Joseph Guay, to a question asked in the Senate by Senator John Godfrey, *Senate Debates*, May 10, 1978, 755.

[4] The decision consists of a letter dated February 5, 1980, to solicitors for the Manitoba Foundation for Canadian Studies from the Chief of the Charitable and Non-Profit Organizations Section of the Department of National Revenue, Taxation. The letter is attached as Appendix A.

[5] *Income Tax Act, supra*, subparagraph 149(1)(f).

[6] *Ibid.*, subparagraph 110(1)(a)(i).

[7] *Ibid.*, subsection 149.1(1).

[8] *Ibid.*, subparagraph 149.1(1)(b).

[9] *Ibid.*, subparagraph 149.1(1)(a).

[10] *Ibid.*, subsection 168(2).

[11] *Ibid.*, subsection 149.1(16).

[12] Information Circular No. 78-3, subparagraph 4(a).

[13] *Ibid.*, paragraph 5.

[14] *Ibid.*, paragraph 5.

[15] *Ibid.*, subparagraph 5(a)(ii).

[16] *Ibid.*, subparagraph 5(b).

[17] *Ibid.*, subparagraph 5(f).

[18] *Ibid.*, subparagraph 5(g).

[19] *Ibid.*, subparagraph 5(d).

[20] *Ibid.*, subparagraph 5(e).

[21] *Ibid.*, subparagraph 5(h).

[22] 43 Eliz., c. 4.

[23] *Special Commissioners of Income Tax* v. *Pemsel*, 3 T.C. 53, 96.

[24] *Re Scowcroft* [1898] 2 Ch 638. An excellent analysis of this and many of the other cases referred to below appears in L.A. Sheridan, "Charitable Causes, Political Causes and Involvement", in *The Philanthropist*, Fall, 1980, 5.

[25] *Re Jones* (1929) 45 T.L.R. 259.

[26] *Bonar Law Memorial Trust* v. *Inland Revenue Commissioners*, (1933) 49 T.L.R. 220.

[27] *Re Hopkinson* [1949], 1 All E.R. 346.

[28] *Farewell* v. *Farewell*, 22 O.R. 573.

[29] Sheridan, *supra* 11.

[30] *Commissioners of Inland Revenue* v. *Temperance Council of the Christian Churches of England and Wales*, (1926) 136 L.T. 27.

[31] *Armstrong* v. *Reeves*, (1890) 25 L.R. IV. 325.

[32] *Re Fouveaux* [1895], 2 Ch. 501.

[33] *Re Gwynne*, 5 D.L.R. 713.

[34] *Old Colony Trust Co.* v. *Welch*, 25 F. Supp 45 (Federal District Court).

[35] *National Anti-Vivisection Society* v. *Inland Revenue Commissioners*, [1948] A.C. 31.

[36] *Animal Defence and Anti-Vivisection Society* v. *Inland Revenue Commissioners*, 66 T.L.R. (Pt. 2) 1091.

[37] Sheridan, *supra*, 9.

[38] *Bowman* v. *Secular Society Ltd.*, [1917] A.C. 406, 442.

[39] Sheridan, *supra*, 12.

[40] *Collier* v. *Lindley* (1928), 266 P. 526; *International Reform Federation* v. *District Unemployment Compensation Board* (1942), 131, F. 2d 337; *Seasongood* v. *Commissioner of International Revenue* (1955), 227 F. 2d 907.

[41] *Taylor* v. *Hoag*, (1922) 21 A.L.R. 946; *Collier* v. *Lindley*, (1928) 266 P. 526.

[42] *Re Lewis' s Estate*, (1893) 25 A. 878 (Pennsylvania).

[43] *Collier* v. *Lindley* (1928), 266 P. 526 (California).

[44] *Re Murphey' s Estate* (1936), 62 P. 2d 375 (California).

[45] *Register of Wills for Baltimore City* v. *Cook* (1966), 22 A.L.R. 3d 872.

[46] *Parkhurst* v. *Burrill* (1917), 117, N.E. 39; *International Reform Federation* v. *District Unemployment Compensation Board* (1942), 131 F. 2d 337.

[47] *Re Strakosch*, [1949] Ch. 529.

[48] *Anglo-Swedish Society* v. *Commissioners of Inland Revenue* (1931), 47 T.L.R. 295.

[49] *Baldry* v. *Feintuck*, 1972 1 W.L.R. 558.

[50] Arthur B.C. Drache, "Political Activities: A Charitable Dilemma", in *The Philanthropist*, Fall, 1980, 21 at 24.

[51] Letter from Senator John J. Godfrey to the Honourable Joseph Guay, P.C., Minister of National Revenue, dated May 11, 1978. See Appendix B.

[52] Revenue Canada, Information Circular No. 80-10, August 29, 1980, *Registered Charities*.

APPENDIX A

Letter from:
REVENUE CANADA
Taxation
400 Cumberland St.,
Ottawa, Ontario
K1A 0X5

REVENUE CANADA
Impôt
400, rue Cumberland
Ottawa (Ont.)
K1A 0X5

REGISTERED MAIL
GINDIN, SORONOW & CO.
Attorney-at-law
2nd Floor Birks Building
297 Smith Street,
Winnipeg, Manitoba
R3C 1L1

Our file/Notre référence
48114
L.D. Huot
Tel. (613) 996-9365

Attention: Jodie Werier

February 5, 1980

Dear Sirs:

Re: Manitoba Foundation for Canadian Studies

This is in reference to the Application for Registration submitted on behalf of the above-mentioned Foundation for the purpose of the Income Tax Act.

We have now completed our review of all pertinent documents submitted and must advise that the activity of publishing and distributing the Canadian Dimension Magazine undertaken by the Manitoba Foundation for Canadian Studies would prevent its eligibility for reinstatement as a registered charity.

To qualify for such registration an organization must be constituted exclusively for charitable purposes and carrying on activities of an exclusively charitable nature. Charitable purposes are not defined in the Act and it is therefore necessary to refer in this respect to the principles of common law governing charity. Accordingly, charitable purposes have been enumerated generally, as being for the relief of poverty, the advancement of education, the advancement of religion, or other purposes of a charitable nature beneficial to the community as a whole.

On the basis of the material contained in the Canadian Dimension magazine, it would appear that its main goal is not to educate the reader in the sense of training the mind in matters of political science but to promote a particular political ideology. Accordingly, the purpose of the magazine does not come within the meaning of education in the charitable sense.

In accordance with the provisions of subsection 172(3) of the Income Tax Act, the Manitoba Foundation for Canadian Studies has the right to appeal the Department's denial of registration as a charity. Such an appeal may be instituted by filing a Notice of Appeal in the Federal Court of Appeal within 30 days from the

mailing of this letter.

We regret that a more favourable reply could not be forthcoming.

Yours sincerely,
"L.D. Huot"

for Mrs. Betty D. Wardle, Chief
Charitable and Non-Profit Organizations Section
Department of National Revenue, Taxation

APPENDIX B

THE SENATE OF CANADA LE SÉNAT DU CANADA

Ottawa, Ontario
K1A 0A4
May 11, 1978

The Honourable Joseph Guay, P.C.,
Minister of National Revenue,
Room 435 Confederation Building,
Ottawa, Ontario.

Dear Joe:

As I explained to you, the sole purpose of the second question I asked you yesterday was to get a short argument on the record as to what the new Information Circular about charities engaging in political activities should say.

Ordinarily, I believe a Minister of National Revenue should leave technical interpretations of the Act to his officials and be guided entirely by their advice. This, however, is one case which you, as the Minister, should intervene because the question of whether or not a charity is devoting all its resources to charitable activities is not solely a legal one. In spite of what you stated in the letter to Flora MacDonald, no doubt drafted by one of your officials, the question does get down to a matter of departmental policy because there isn't jurisprudence in this particular area and, in my opinion, any court would decide this as a matter of common-sense rather than on strict legal principles.

The common-sense approach surely is that if any political activities indulged in by the charity is for furtherance of its primary charitable aim, then it is permissible because such activities are then strictly not political ones but charitable ones. Let me give you an illustration. Raising funds by an organization would not by itself be considered a charitable activity. However, if the organization is a charity, then raising funds from the public would obviously be considered a charitable activity. Similarly, if the charity depends upon government grants, as well as public donations, any ac-

tivities indulged in by the charity to either ensure the continuance of the grants or increases in the grants surely would be considered in the same category as fund-raising activities from the public, and would be held to be charitable activities and not political activities, whether such activities are by way of presentation of briefs, or whether by way of written representations, to all Members of Parliament, or whether it is by lobbying. It would be in order, e.g., for the National Ballet, the Canadian Opera Association, Stratford Festival, and the Toronto and Montreal Symphonies, to get together and lobby all Members of Parliament in order to persuade the government to give larger grants in the estimates to the Canada Council so that these organizations, in turn, can receive larger grants. The test should be whether or not it is done to promote the other activities of those organizations which are in themselves considered charitable.

Take the case of churches. If there were laws which were proposed to be passed by provincial legislature taxing churches and the land they occupied, surely it would be legitimate for ministers of any church affected to lobby the Members of the Provincial Legislature in opposition to the proposed laws. There is presently a law before the legislature in Ontario which could seriously affect the rights of the clergy to counsel their parishioners, a result which I don't believe was ever intended. There is a very active lobby going on by all the churches against this bill and it will undoubtedly be amended. This would certainly be considered the type of political activity that would result in the churches' registration being cancelled under the Information Circular, but no one in his right mind would ever seriously take such action unless he was bound and determined to alienate every member of every church in the country, thus ensuring the government's defeat.

The question of temperance organizations mentioned in the Information Circular is another case in point. If an organization is formed to promote temperance generally, and an ancillary part of its activities is to promote temperance by securing legislation to reduce the consumption of alcohol, and the organization does some lobbying, surely this should be considered as part of the charitable activities of the organization.

As your department officials have, I hope, realized by now, this is a particularly sensitive question which requires intervention at the Ministerial level so that you do not get led astray by officials who are establishing policy, which can seriously embarrass the government, under the guise of interpreting the law.

Sincerely,
"John M. Godfrey"