

Political Activities for Charities: Expanded Q&A

Would our policy advocacy organization now be able to become a charity when it couldn't before?

Probably not. While we cannot say for sure without knowing the facts of your situation, these proposed rules would not change what is deemed to be an acceptable charitable purpose by the federal government, pursuant on common law decisions.

Political purposes are NOT charitable purposes.

You should talk to a lawyer with experience in charity law for an answer specific to your situation.

Do these changes open the door to many lobby groups getting charitable status?

No. there is no reason why a lobby group should obtain charitable status after these changes are made compared to before, if this group has political purposes, not charitable purposes.

Canada is not the first country to allow charities to engage in unlimited public policy advocacy.

- Australia changed its legislation in 2013 and saw a slight decline in the number of “law, policy, and advocacy” charities (from 533 to 523).
- New Zealand’s rules were changed by a Supreme Court case in 2014. In the four years before the decision, on average, 19.6% of newly registered charities provided “information, advice, or advocacy”. In the four years after, the average dropped to 18.8%.

Is inviting government ministers to events/performances (e.g. provincial Minister of Culture) considered partisan?

- If they’re being invited because their responsibilities relate to the event or the cause, then the charity is probably on safe ground. But you may want to also invite the relevant critics from other parties, so that there is no question about being nonpartisan.
- If a charity invites their local MP to an event (even if that MP is a Minister), that should be fine. They are there because of their responsibility as an MP.
- If the event is taking place during an election campaign, invite candidates from the other parties. This may not be strictly necessary in all cases, but demonstrates that the organization is going out of its way to be nonpartisan.

Is it considered partisan if a member of a charity's staff or board makes or receives a partisan response on their personal social media feed (e.g. facebook or twitter)? How do we deal with this without infringing on privacy or freedom of speech, etc.

- The CRA guidance is clear that staff and board members are free to engage in whatever partisan activity they would like on their own time and using their own resources, as long as they do not claim to be speaking on behalf of the organization.
- To be safe, they should avoid using charity-issued devices when making such posts or comments, nor should staff make such posts while they are actually working.

Sometimes a high profile executive staff member is perceived on social media as a company representative no matter what. Should they put a disclaimer on their social media?

- In such situations, you'll want to make sure you've taken whatever reasonable steps you can to separate the individual from the organization. A disclaimer on personal social media accounts (e.g. "Views are my own, not my employer's") is one such step. Also, as employees, we shouldn't include any reference to our employer in, for example, our Twitter user names or handles. (e.g. "@billschaper" is preferable to "@billschaperimaginecanadapolicydude").

Are you able to please give us an example of a PPDD activity that would be considered 'indirectly' partisan?

- The CRA guidance gives the example of a charity that does things that do not publicly appear partisan, but their internal records show that they are only getting involved in the issue in order to help a particular party or candidate. This is a somewhat unlikely circumstance.
- Another example might be: Charity X invites all of the candidates for mayor to tour its facility. Candidate 1 is invited at 2:00 on a Wednesday afternoon and has a chance to meet and be seen by all of the staff and a large number of program participants. Candidate 2 is invited at 5:30 on a Friday afternoon, when most staff have left for the weekend and no programming is running. By giving the candidates a different level of exposure, the charity has offered an advantage to Candidate 1.
- At the end of the day, "partisan" is "partisan" and rather than split hairs about terms like "directly" and "indirectly," use your judgement to answer a simple question: "Would a reasonable person think we've done something to give one candidate or party an advantage over the others?"

Is advocating to government in other countries is acceptable? Eg on human rights in Burundi

- Yes!
- The guidance specifically refers to policy activity aimed at any level of government in Canada or abroad.
- You need to follow the same general rules, even when engaged in other countries. That is, the work must be related to your charitable purpose and you can't be partisan about it.

If a charitable organization hosts an educational panel discussion with members of sitting government is this considered partisan?

- If the government members are there because of their expertise on the topic, or their responsibilities within government, then there shouldn't be an issue.
 - For example, the Minister of Health is invited to participate in a panel about the updated nutrition guide.
- During an election period, though, you would want to consider inviting representatives of the other parties, should the government member still plan to participate.

How is determining whether a political activity is related to an organization's charitable purpose determined? For example, if you were an organization working in healthcare and argue that poverty worsens health outcomes, is doing public policy activities around poverty related to that organization's charitable purposes?

- CRA has indicated to us that they plan to provide some clarity around this issue.
- Your own charitable registration documents should tell you how broadly or narrowly your purposes are framed, which will have an impact. If your purpose is related to health outcomes, and is relatively broadly phrased, then policy work related to the intersection of poverty and health outcomes should be acceptable. It will be incumbent upon you, though, to be clear about the link.

Does rating candidates (or parties) based on their voting record and/or responses to questions/issues constitute a partisan activity?

- The CRA guidance cautions against singling out how any parties or members voted on a particular issue. A charity is free to link to the complete vote and let people draw their own conclusions, but should not separate members or parties into those that were "for" or "against" the charity's preferred position on an issue.
- The CRA has indicated to us that they frown upon, and we strongly recommend against, report-card style summaries of parties' positions on issues. A charity is free to highlight what each party says on a particular issue, particularly if you quote directly from their platform or a response to a questionnaire, and let supporters draw their own conclusions. Where a party has not provided a position, this can be noted but the charity should not make any judgemental comments in so doing.
 - A grid can be an effective way of providing supporters with a summary of parties' positions on issues. Blank spaces, without further comment, can be used to indicate a party's lack of position or response on the issue in question.
 - Avoid giving letter or numerical grades to parties' responses or positions.

What is the difference between advocacy activities and lobbying?

- “Advocacy” is really anything you do to try to further your position on an issue. Lobbying is one form of advocacy, but others would include media statements, written submissions to government, or appearing in front of public tribunals or parliamentary committees.
- The legal definition of what constitutes “lobbying” can vary depending on whether it’s at the federal, provincial, or even municipal level, but in general lobbying is the behind-the-scenes, private meetings you have with decision-makers – the mythical smoke-filled back room. There are also different requirements for which lobbying activities you might have to publicly report.

Do these changes open the door to wealthy donors inappropriately influencing elections through US-style Super-PACs?

No.

Super-PACs are organizations that have raised and spent billions of dollars in the US around elections to support or oppose political parties or candidates. They are not registered or organized as charities. The proposed rules do not open the door to charities as Super-PACs in Canada because Canadian charities:

- are not allowed to engage in any partisan activities;
- face the same election spending limits as other organizations;
- must dedicate all their activities to advancing charitable not political purposes.

Election spending limits are imposed by the *Elections Act*. This will not change.

Other countries that allow charities to engage in unlimited political activities (and even to have political purposes) have not seen any major problem of veiled partisan activities:

- New Zealand’s charities database shows only 3 cases since 2014 dealing with political activities. None of these were about partisan activities.
- In Australia, in 2017, the Australian Charities and Not-for-profits Commission reports complaints against charities related to political activities accounted for only 2.8% of total complaints. These complaints only resulted in 5 investigations.
- In the United Kingdom, the Charities Commission for England and Wales published a report of its compliance work during the 2017 election. It did not report any super-PAC type concerns. In all cases, charities followed their advice and no more serious action than a warning was needed.