



**Inter Pares Submission to the
Canada Revenue Agency**
Consultation on Guidance CG-027
on Public policy dialogue and development activities by charities

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Re : Feedback on draft guidance CG-027 on public policy dialogue and development activities by charities

Inter Pares has long called for the Canadian government to uphold the crucial role of charities in public debate and in Canadian society at large. In previous submissions¹, we have emphasized the importance of a charity being able to engage in non-partisan public policy dialogue and development activities without limitation, in order to advance the organization's charitable purposes. We have done so on the basis of the government's own commitments as expressed in the mandate letters provided to the Minister of National Revenue and the Minister of Finance; of Justice Morgan's ruling in the *Canada Without Poverty v Canada* case; of the Report of the Consultation Panel on the Political Activities of Charities; and of over four decades of experience as a charity working to address the root causes of social injustice.

We joined charities across the country in welcoming the amendments to the *Income Tax Act* enacted by the government of Canada in December of 2018 through the *Budget Implementation Act*, which formally removed limits on non-partisan PPDDAs, other than the requirement that they further an organization's stated charitable purposes. We also applauded the government's decision to discontinue its appeal of the decision in *Canada Without Poverty v. AG Canada*.

These actions were important steps in the right direction, opening a path to remove significant barriers and administrative burdens that have prevented charities from fully engaging in public policy dialogues and processes.

In January 2019, Canada Revenue Agency (CRA) issued its new guidance on public policy dialogue and development activities by charities (Reference number: CG-027). There were important changes, in compliance with the *Canada Without Poverty* decision and subsequent legislative changes.

¹ See Inter Pares' *Submission to the Government of Canada regarding the Canada Revenue Agency's online consultation on charities' political activities*, December 2016 (Inter Pares' December 2016 submission); see also Inter Pares' letter to the Tax Policy Branch, submitted on October 14, 2018.

However, we are deeply concerned about other changes, in particular the very broad definition of partisan activity, which we outline in more detail below.

We also take advantage of this opportunity to reiterate the importance of reforming antiquated “direction and control” requirements imposed on charities working with non-qualified donees in Canada or abroad.

Recommendation #1: Protect charities’ ability to publish clear public policy analysis

In a previous submission, we identified regulations that govern charities’ engagement in public debate and public policy as the single most significant obstacle Canadian charities face in making this essential contribution². We are concerned that the CRA has not addressed this overarching concern and that rather, through its new guidance, the **CRA has effectively conflated analysis of political parties’ policies with direct or indirect partisan activity**, expanding the meaning of prohibited partisan activities in a way that could limit charities’ ability to inform the public about the policy positions of political parties and candidates.

Specifically, the CRA fleshed out the definition of what constitutes direct or indirect support or opposition to a political party or candidate by providing several very specific examples of activities that it would consider to be prohibited partisanship. Under the draft interpretation, while a charity may support or oppose a law, policy or government decision, it cannot refer to or identify the political party or candidate associated with such. Any act CRA interprets as “targeting specifically a party or its members” is prohibited. This includes “singling out the voting pattern of any particular political party or candidate on any issue”.

The examples provided indicate that “targeting” a party or its members will be interpreted overly broadly, and cast doubt on charities’ ability to clearly communicate issues relating to political parties and candidates’ policy positions to the public, for instance by:

- Publishing accessible, report-card style non-partisan summaries of parties’ positions on issues
- Analyzing the implications of a party’s lack of position on a given issue
- Presenting an analysis that may challenge a political party’s statements about the practical effects of one of their policies
- Giving letter or numerical grades to parties’ responses or policy positions and measuring them against the charity’s own analysis of a given policy

We are concerned that under this guidance, the meaning of PPDDAs (i.e., non-partisan activities) may be interpreted so narrowly as to conflate analysis of political parties’ policies with direct or indirect partisan activity. This would seriously restrict charities’

² See Inter Pares’ December 2016 submission.

ability to inform the public and provide clear policy analysis, which is essential to public debate.

Moreover, there is a contradiction within the guidance with respect to how CRA intends to interpret partisanship. As the Canadian Council for International Co-operation (CCIC) points out in its submission for this consultation, on one hand, “[t]he draft indicates [that] ‘[a]s a general guideline, a charity’s communications should focus on the policy issue under discussion, and not refer to any candidate or political party.’”³ It then goes on to point out that “the draft guidance specifically allows charities to inform the public about the policy positions of political parties and candidates, provided this is done without preferential treatment, endorsement, or criticism of a particular political entity.” Indeed, CRA itself implicitly acknowledges the contradiction, “noting that the ban on direct analysis of political policy positions holds “even if it is obvious to an audience that one or more of the parties or candidates share or oppose the views of the charity”⁴.

CRA should resolve this contradiction in favour of transparency and consistency with the spirit of the recent amendments to the *Income Tax Act*. As long as “the direct analysis focuses exclusively on policy and makes no judgment on which party or candidate to support electorally”⁵, a charity should be able to say clearly how a political party’s policy would affect a particular issue, consistent with its analysis of impact on its charitable purposes, and measured against its own analysis of the policy.

In addition, we are concerned that – as written – the CRA’s draft guidelines could inadvertently result in differential and inequitable impacts on charities, and may even potentially be used as a tool by third parties to dissuade charities from public policy dialogue. For instance, as CCIC points out in its submission, there is a concern about “the timeframe in which a charity must review public messages to a platform hosted by the charity, and remove any that support or oppose a political party or candidate for public office”⁶. Charities always work with limited resources. CRA guidelines must be responsive to this reality and must provide adequate time for charities to respond, in proportion to their size and resources. Further, CRA must take into account the increasing weaponization of social media space. A charity with policy proposals that challenge powerful and well-funded third parties could easily find its social media feeds become the target of partisan comments, with the express purpose of making moderation so burdensome that the threat of CRA sanction for partisanship dissuades it from publishing such policy analysis. While

³ Canadian Council for International Co-operation, *Written Submission to the Canada Revenue Agency – Draft Guidance CG-027 – Public policy dialogue and development activities by charities*, 2019, 2019, p.2 (CCIC submission).

⁴ CCIC submission, p. 3.

⁵ CCIC submission, p. 3.

⁶ CCIC submission, p. 2.

not minimizing the effect of such activity on any charity, such attacks against smaller charities would be especially onerous.

As a result of the above mentioned examples, the lack of clarity around the rules applicable to charities persists. Further, the examples provided seem to blur the distinction between PPDDAs and partisan activities instead of clarifying and facilitating the ability of registered charities to engage in policy analysis and dialogue in support of their charitable purposes. This is inconsistent with the spirit of the amendments made pursuant to the *Canada Without Poverty* decision, with longstanding recommendations of the charity sector and of the Report of the Consultation Panel on the Political Activities of Charities, and with the government's own commitments as expressed in mandate letters provided to the Minister of National Revenue and the Minister of Finance.

Recommendation #2: Reform “Direction and Control” requirements for work with non-qualified donees

While outside the scope of this specific consultation, we reiterate the recommendation contained in our December 2016 submission concerning the need to remove or significantly reform the “direction and control” requirement for activities conducted in partnership with non-qualified donees, a recommendation that is echoed in the Report of the Consultation Panel on the Political Activities of Charities⁷, and the CCIC in its submission to CRA for this current consultation⁸. As previously stated, this requirement, by impeding charities’ ability to work as equals with domestic and foreign partners to further their charitable purposes, works against the government of Canada’s stated policy objectives on human rights⁹, local ownership and development best practices¹⁰, as well as the Sustainable Development Goals¹¹.

Further, the implications of the interaction of Direction and Control with the new draft policy on PPDDAs is even more problematic for charities working overseas with local partners. Given that interpretation of the term “partisan” in other countries differs significantly from that presented by CRA¹², and given that, as previously explained, the interpretation of “partisan” in the draft guidelines is itself contradictory, there is a perverse incentive for charities to prohibit any kind of policy analysis to be done on their behalf by

⁷ See Inter Pares’ December 2016 submission.

⁸ CCIC submission, 2019.

⁹ See Global Affairs, [Canada’s approach to advancing human rights](#), 2017.

¹⁰ See Canada’s [Aid Effectiveness Agenda](#), 2010, which emphasizes local ownership of development action; Countries, Territories and Organisations Adhering to the Busan Partnership for Effective Development Co-operation <http://www.oecd.org/dac/effectiveness/busanadherents.htm>; and the Global Partnership for Effective Development Co-operation <http://effectivecooperation.org/about/partners/>.

¹¹ See <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>

¹² See Inter Pares’ December 2016 submission, citing [Foreign Activities by Canadian Registered Charities: Challenges and Options for Reform](#), Andrew Valentine, The Philanthropist, November 21, 2016.

local partners, in fear that they might inadvertently (and understandably) connect the policy analysis to the platform of a political party. This perverse incentive will work to undermine the public policy advocacy that the Canadian government has repeatedly asserted is so important to democratic development.

We therefore echo the CCIC's call for further engagement and consultation by the Canadian government with Canadian charities working internationally, "to identify improvements to the CRA's direction and control policy that will ensure this policy reflects Canada's commitments to equal partnership and localization in development cooperation, including in relation to public policy dialogue and development activities"¹³.

We trust that these comments will assist the CRA and the Government of Canada to make good on Canada's commitments, and implement the necessary changes to fully implement the *Canada Without Poverty* decision and the new legislation consistent with the spirit of the law, in its policies and practices. Canadian society as a whole can only benefit from this much needed and awaited reform.

¹³ CCIC submission, 2019, p. 3.