

CHARITIES and ADVOCACY Project

Project Goals

To inform voluntary groups about the current law governing charities
To build consensus on the need for change:

- What a new law might look like.
- To have a clear and consistent interpretation of the law

How The Current Law Affects Groups

- **Groups can't get the money they need.** Registered status is either a legal requirement or a stamp of credibility for most funders.
- **Groups waste countless resources** on fruitless attempts to get registered or defending their registration. Many just give up.
- **New groups can't get "in".** In the past, it was easier to get registered. So new groups can't compete on a level playing field with established groups who do the same things.
- **Groups are frightened to speak out** for fear of putting their status at risk.

The Stories...

..... a **YWCA** in rural Ontario is refused charitable status until they remove reference to the rights of women from their application.

..... the tax number of a **women's employment centre** is yanked when they neglect to file a report - although their activities hadn't changed and losing the number put their United Way funding at risk

..... the activities of a **refugee settlement group** are deemed charitable but their objectives contain "the possibility" of political purpose — so they're refused charitable status and therefore access to most private and foundation funds

..... a **social service group** refused status because they serve only "a specific part of the community" - refugees and immigrants

..... a **national association serving immigrants** informed that their objects "reflect purposes which are not charitable at law"

..... a **national coalition of ethnocultural groups** refused status because multiculturalism has not been judged either charitable or non-charitable by the courts

..... few **environmental groups** that advocate policy change have managed to get registered in the past five years

CONTACT

Brenda Doner
Co ordinator
Charities and Advocacy Project
C/o Canadian Centre for Philanthropy
700-425 University Avenue
Toronto, ON M5G 1T6
Tel: 416-597-2293 ext 263
Fax: 416-597-2294
Email: brendad@impacs.org

Produced with the generous assistance of the Maytree Foundation.

www.impacs.org



The Institute for Media, Policy and Civil Society

THE LAW ON CHARITIES and ADVOCACY

The Charities and Advocacy Project



The Institute for Media, Policy and Civil Society

The Law In Summary

The law in this field is found in three places: the common law (past court decisions); the federal *Income Tax Act*; and the administrative policies of the Canada Customs and Revenue Agency ("CCRA" - formerly Revenue Canada).

The Common Law:

The leading case in charity law is a 1891 decision of the British House of Lords which established that the purposes of a charity must fall within one or more of the following categories, which trace their roots back at least 400 years this year, to the Statute of Uses, 1601, from Elizabethan England.

- relief of poverty;
- advancement of education;
- advancement of religion; or
- other purposes beneficial to the community.

The common law also provides that charities cannot have political purposes or engage in partisan political activity. Unfortunately, the cases do not provide clear guidance as to the types of activities charities may engage in to advance or support their charitable purposes. This is where the confusion surrounding advocacy begins.

The Income Tax Act:

The *Income Tax Act* adds very little substance or clarity to the old and inadequate common law in this field. Section 149.1(6.2) provides that:

- charities may devote part of their resources to political activities that are "ancillary and incidental" to their charitable activities; but

Why It Matters

- The law in this field is unclear, out of date, poorly reasoned, and poorly stated. As a result its application and enforcement by the CCRA are inconsistent and arbitrary.
- The uncertainty and additional administrative burden for charities wastes resources.

may not participate in partisan political activity.

The *Income Tax Act* does not define "ancillary and incidental," nor does it state how much of such activity can be performed.

Administrative Policies of the CCRA:

The CCRA administers Canada's system of charity law. This includes applying the imprecise and inadequate common law and *Income Tax Act* to existing charities and organizations seeking charitable status. CCRA staff determine whether charitable status will be granted or rejected, whether audits will be conducted and whether charitable status will be revoked.

While not truly "the law," CCRA enforces a "10% rule" - that is, charities can apply no more than about 10% of their resources to political activity.

For more details, ask for "The Law of Advocacy for Charitable Organizations: The Case for Change" by Richard Bridge, LL.B. or get it from the web-site www.impacs.org.

Info on CCRA regulations and guidelines is available at <http://www.ccradrc.gc.ca/tax/charities/>.

- If our voices are silenced by "advocacy chill" - who will speak for our clients and members?
- It promotes a band-aid approach to social ills, not long-term solutions
- Even if you're OK now, your group could be affected next

Who We Are

IMPACS - a nonprofit communications and policy development organization that works across Canada and internationally

Canadian Centre for Philanthropy - a national service organization dedicated to the interests of the nonprofit sector

The project is independent from but working hand in hand with the Working Group on Advocacy of the Voluntary Sector Initiative, (http://www.vsi-isbc.ca/eng/working_groups/advocacy/index.cfm)

What's Done

Legal Research Paper (see www.impacs.org)

Options for Change Paper

Get Involved

- use your newsletter, website, listserve to spread the word, discuss the issues
- distribute this brochure
- participate in the fall dialogue event in your region

What's Coming

Fall Dialogues

Sep. 28- Oct. 4 for eastern Canada
Oct. 12-19 for western Canada
dates in the North tbc

Consensus Report

December, 2001

Lobby for Change

January 2002 onwards

What You Can Do

- visit our website:
www.impacs.org
- join the forum
(listserve) **IMPACS -CANADA**
by visiting
www.charitychannel.com
- join the mailing list