

Elections and the nonprofit sector:

What are the rules, anyway?



ONTARIO NONPROFIT NETWORK

FASKEN

CARTERS

BARRISTERS · SOLICITORS

TRADEMARK AGENTS

IM  GINE
CANADA



CANADIAN ARTS
COALITION
CANADIENNE DES ARTS

CDA | ACD

Canadian Dance Assembly
L'Assemblée canadienne de

TODAY'S AGENDA

- Welcome
- Context: Why advocate during an election and beyond?
- Carters Professional Corporation
 - Background and context for registered charities
 - What are the rules under the Income Tax Act?
- Fasken
 - Complying with third-party election laws
- Imagine Canada
 - Election 2019: Time to advocate
- Canadian Arts Coalition/Canadian Dance Assembly
 - Why and how we advocate
- Q&A with the panel

[#weadvocate](#) [#nonprofitsadvocate](#)

Disclaimer

Today's webinar and information from presenters is intended to provide general guidance on matters of interest for the personal use of attendees, who accept full responsibility for its use.

It is not to be used as a substitute for consultation.

Please seek legal advice if you have questions specific to your organization.

Why does it matter for charities and nonprofits to get engaged?

Our organizations are an important bridge connecting governments to the people affected by government policy.

Public policy impacts your organization and your communities.

This election is especially important.

There are major public policy issues political parties and candidates are talking about that the nonprofit sector is working on, from affordable child care, affordable housing and anti-poverty initiatives, climate change, to diversity and inclusion and Truth and Reconciliation.

During an election, or anytime!

1. Public policy impacts you: How your nonprofit goes about its work, what you can do, how you do it and why your work is needed.
2. Advocacy is required to change public policy, and creating better public policy can make systemic changes.
3. Advocacy empowers communities.
4. Advocating helps you meet your mission.



Background and context for registered charities

Terrance Carter, Managing Partner

CARTERS

BARRISTERS · SOLICITORS

TRADEMARK AGENTS

OUR
PEOPLE

OUR
FINANCING

OUR REGULATORY
ENVIRONMENT

Who regulates matters? And who do they impact?

Canada Revenue Agency (CRA)

Income Tax Act (ITA)

-Only charities

Elections Canada

Canada Elections Act

-Charities

-Nonprofits

What does the *Income Tax Act* have to say?

Bill C-86 that received Royal Assent on December 13, 2018 included amendments to the ITA to remove the “substantially all” test that had restricted registered charities from devoting no more than 10% of their resources on permitted political activities.

However, Bill C-86 kept the prohibition on charities from the “direct or indirect support of, or opposition to, any political party or candidate for public office”.

Bill C-86 added a new definition of charitable activities that “includes public policy dialogue and development activities carried on in furtherance of a charitable purpose”.

- Explanatory notes clarified that charities’ participation in “public policy dialogue and development activities” is “without limitation”.

What does the Income Tax Act say.. Part 2

Also added a new definition of “public policy activities”, which provides that:

- “Subject to subsections (6.1) and (6.2), public policy dialogue and development activities carried on by an organization, corporation, or trust in support of its stated purposes shall be considered to be carried on in furtherance of those purposes and not for any other purpose”

Amendments to the ITA did not define “public policy dialogue and development activities”

- The explanatory notes stated that they “generally involve seeking to influence the laws, policies or decisions of a government, whether in Canada or a foreign country”
- The May 4, 2017 CRA Consultation Report recommended use of the term “public policy dialogue and development” and recommended that it mean “providing information, research, opinions, advocacy mobilizing others, representation, providing forums and convening discussions”

Draft Guidance

On January 21, 2019, CRA released CG-027 Public Policy Dialogue and Development Activities by charities (the “Draft Guidance”), together with a new Q&A webpage on public policy dialogue and development activities (“PPDDAs”) by charities.

Definition of PPDDAs confirmed to include “seeking to influence the laws, policies, or decision of a government, whether in Canada or a foreign country”.

The Draft Guidance confirmed that the ITA places no limits on the quantum of PPDDAs.

As such, charities may devote up to 100% of their total resources to PPDDAs, provided that PPDDAs further the charity's stated charitable purpose.

However, PPDDAs, as a means to achieve a charitable purpose, cannot become the purpose itself.

- E.g., "charitable purpose" cannot "refer to influencing the laws, policies, or decision of a government"; Rather, the purpose has to be a charitable purpose at common law, but PPDDAs can be utilized to achieve that purpose
-

In addition, PPDDAs, when considered together with the charity's stated purpose, must provide a public benefit.

However, charities continue to be prohibited from "directly or indirectly support or oppose a political party or candidate for public office," examples of which are provided in the Draft Guidance

- In addition to the ITA, during election periods, charities must be mindful of complying with the *Canada Elections Act*

Examples of direct or indirect support

Examples of direct support or opposition, include, for example:

“endorsing a candidate over social media”

“telling people on a charity’s website not to vote for a political party”

“making a donation to a political party or a candidate’s election campaign”

Examples of indirect support or opposition:

“a charity’s internal planning documents explicitly confirm that it will oppose a political party that takes a different view on a certain policy issue...”

“the internal minutes of a meeting of the directors of a charity record their explicit decision to oppose a candidate in a provincial election...”

The Draft Guidance also requires that a registered charity with a website or blog, “must monitor these platforms, and remove messages that support or oppose a political party or candidate for public office” or post a notice that “messages that support or oppose a political party or candidate will be removed”

Examples of allowed activities:

Communicating about policy issues

- PPDDAs can occur at any time, either in or outside of an election period, provided they do not identify a political party or candidate

Informing the public about policy positions of political parties and candidates

- Registered charities can, “[p]ublish on its website or social media platforms... the policy positions of all political parties...” provided it does so in a neutral fashion
- Hold all candidates debates
- Provide the voting record for all MPs or other level of government on an issue

Representatives of charities getting political

The Draft Guidance also clarifies the application of the ITA to representatives of a charity involved in politics during “personal time”

- Must be done carefully
- Registered charities cannot “use its resources, such as office space, supplies, phone, photocopier, computer, or publications, and human resources such as employees or volunteers, to support that individual’s personal political involvement”
- Representatives are suggested to “indicate that their comments are personal rather than the views of the charity”

Intersection of other laws

The Draft Guidance notes that while ITA permits PPDDAs without restriction, registered charities need to be aware of the intersection of other legal requirements, such as:

- Federal and provincial lobbying and election legislation
- The common law in different provinces, although the Draft Guidance is unclear at this point

The scope of this webinar is limited to a discussion on the requirements under the Income Tax Act and Canada Elections Act.

Charities and nonprofits should be mindful of other legislation, such as federal and provincial lobbying legislation.

Complying with Third-Party Election Laws

Kyle M. Morrow, Associate

FASKEN

OUR
PEOPLE

OUR
FINANCING

OUR REGULATORY
ENVIRONMENT

Introduction

Remaining portions of Bill C-76 (*Elections Modernization Act*) came into force on June 13, 2019.

Bill C-76 regulates third party activities during the pre-election period (Jun. 30 to Sep. 10) and during the election period (Sep. 11 to Oct. 21).

- Previously only regulated “advertising” during the election period.

Third party activities

Regulated activities include:

- Advertising
- Partisan Activities
- Surveys

Third party registration

Pre-Election Period (Jun. 30 to Sep. 10)

- Must register if the third party incurs \$500 or more in expenses on advertising, partisan activities, and/or election surveys.

Election Period (Sep. 11 to Oct. 21)

- Must register if the third party incurs \$500 or more in expenses on advertising, partisan activities, and/or election surveys.

Advertising

Pre-Election Advertising (Jun. 30 to Sep. 10)

- Must have a placement cost
- Must promote or oppose a political figure/ entity

Election Advertising (Sep. 11 to Oct. 21)

- Must have a placement cost
- Must promote or oppose a political figure/ entity **or promote or oppose an issue associated with a political figure/ entity**

Advertising

“Promote or oppose” a political figure/ entity

- Naming the figure/ entity
- Identifying the figure/ entity
- Using a logo of the figure/ entity
- Using a photo, cartoon, or drawing of the figure/ entity
- **Also—linking to a website that “promotes or opposes” a political figure/ entity.**

“Promote or oppose” an issue associated with a political figure/ entity

- “Individuals or groups can learn more about issues associated with registered parties and candidates from the registered **party or candidate's political platform, debates they participate in, social media campaigns, etc.**”

Partisan activities

Pre-Election Partisan Activities (Jun. 30 to Sep. 10)

- Includes an activity or event that promotes or opposes a political figure/ entity. Does not include an activity or event that (solely) promotes or opposes an issue.

Election Partisan Activities (Sep. 11 to Oct. 21)

- Same as above

Partisan activities

Examples:

- Making telephone calls (that promote/oppose political figure/entity)
- Sending emails or texts messages (that promote/oppose political figure/entity)
- Holding rallies or events (that promote/oppose political figure/entity)
- Creating/disseminating social media (that promotes/opposes political figure/entity)
- Door-to-door canvassing (that promotes/ opposes political figure/entity)
- Creating a campaign website (that promotes/ opposes political figure/entity)
- Etc.

Social media- Example #1

Example #1: Charity posts a tweet about the carbon levy/ rebate program. It **does not** pay to boost/advertise the tweet. The tweet **does not** contain a link to other websites, articles, etc.

Pre-Election (Jun. 30 to Sep. 10)		Election (Sep. 11 to Oct. 21)	
Advertising?	Partisan Activity?	Advertising?	Partisan Activity?
No. (No placement cost.)	No. (Doesn't promote/oppose partisan figure/entity)	No. (No placement cost.)	No. (Doesn't promote/oppose partisan figure/entity)

Social media- Example #2

Example #2: Charity posts a tweet about the carbon levy/ rebate program. The business or organization pays to boost/advertise the tweet.

Pre-Election (Jun. 30 to Sep. 10)		Election (Sep. 11 to Oct. 21)	
Advertising?	Partisan Activity?	Advertising?	Partisan Activity?
No. (Issues advertising is not covered)	No. (Doesn't promote/oppose partisan figure/entity)	Yes. (Issues advertising is covered)	No. --

Social media- Example #3

Example #3: Charity posts a tweet about defeating a political party. The business or organization does not pay to boost/advertise the tweet.

Pre-Election (Jun. 30 to Sep. 10)		Election (Sep. 11 to Oct. 21)	
Advertising?	Partisan Activity?	Advertising?	Partisan Activity?
No. (No placement cost)	Yes. (Promotes/opposes partisan figure/entity)	No. (No placement cost)	Yes. (Promotes/opposes partisan figure/entity)

Social media- Example #4

Example #4: Charity posts a tweet about defeating a political party. The business or organization pays to boost/advertise the tweet.

Pre-Election (Jun. 30 to Sep. 10)		Election (Sep. 11 to Oct. 21)	
Advertising?	Partisan Activity?	Advertising?	Partisan Activity?
Yes. (Promotes/opposes partisan figure/entity)	No. --	Yes. (Promotes/opposes partisan figure/entity)	No. --

Election surveys

Pre-Election Surveys (Jun. 30 to Sep. 10)

- Must be about a political figure/ entity **or** an issue associated with a political figure/ entity
- Must be used (i) to decide to conduct advertising or activities or (ii) to organize, transmit, or carry out advertising or activities.

Election Surveys (Sep. 11 to Oct. 21)

- Same as above

Registering as a third-party advertiser

Pre-Election Period (Jun. 30 to Sep. 10)

- Must register if the third party incurs \$500 or more in expenses on advertising, partisan activities, and/or election surveys.

Election Period (Sep. 11 to Oct. 21)

- Must register if the third party incurs \$500 or more in expenses on advertising, partisan activities, and/or election surveys.

Expenses

- Expenses include labour (unless it is volunteer labour).
- Expenses include existing content.
- Expenses include in-kind contributions. In other words, an in-kind contribution (from a contributor) is an expense (for a third party).

Spending limit

Pre-Election Advertising, Activities and Surveys (Jun. 30 to Sep. 10)

- National spending limit is \$1,023,400
- Riding spending limit is \$10,234

Election Advertising, Activities and Surveys (Sep. 11 to Oct. 21)

- National spending limit is \$511,700
- Riding spending limit is \$4,386

Requirements

- Disclosure Requirements
- Audit Requirements
- Advertisement Labelling Requirements
- Etc.

Foreign contributions

Third parties are prohibited from accepting contributions from foreign persons.

Collusion

Third parties are prohibited from colluding with partisan figures/ entities (and persons “associated” with partisan figures/ entities).

- “Associated” person is not defined. Likely includes: children, partners, and parents of candidates. Also likely includes: volunteers and employees of political parties.

Third parties are also prohibited from colluding with *other* third parties.

Enforcement

Range of enforcement options, including compliance agreements, administrative monetary penalties, and prosecutions.

Prosecution

Willful blindness applies to the Canada Elections Act. (R v. Del Mastro)

- “The doctrine of wilful blindness imputes knowledge to an accused whose suspicion is aroused to the point where he or she sees the need for further inquiries, but deliberately chooses not to make those inquiries.” (R v. Briscoe)

Subsection 21(2) of the Criminal Code applies to the Canada Elections Act. (R v. Del Mastro)

- Persons who aid or abet are also liable.

Election 2019: Time to advocate

Bill Schaper, Director of Public Policy

IM  G I N E
C A N A D A

OUR
PEOPLE

OUR
FINANCING

OUR REGULATORY
ENVIRONMENT



Things you can do anytime

- ✓ Meet with your elected officials at a meeting or an event you are hosting.
- ✓ Run campaigns to increase awareness and understanding of community challenges and opportunities for government actions.
- ✓ Respond to government consultations or call for information.
- ✓ Give information about your organization's policy position on issues related to your mission and communities you serve.
- ✓ Publish op-eds on issues related to your mission.
- ✓ Use your social media platforms, website, and email lists to share issues, stories of impact and voices of your communities.



Things you can do during election season

- ✓ Provide information about party platforms. But don't endorse any of them if you want to be nonpartisan.
- ✓ Give information about how MPs have voted on a particular piece of legislation (or elected officials at other levels of government). But don't single out MPs if you want to be nonpartisan.
- ✓ Publish op-eds on issues related to your mission.
- ✓ Use your social media platforms, website, and email lists to share election information.
- ✓ Invite candidates to visit your facility or program (candidates must pay their own costs). You should invite all candidates to be nonpartisan.
- ✓ Host an all-candidates debate.

See more examples at

<https://www.imaginecanada.ca/election-hub>

Charities: Things you can't do



Give staff paid time to work on political campaigns.



Use any of your charity's resources – including volunteers – to support or oppose a party or candidate.



Encourage your communities to vote for or against a party or candidate.



Give any financial support for a party or candidate, including donations or tickets to fundraisers.



Give unequal treatment to parties or candidates. For example, if you invite a candidate to an event you must invite all candidates.

Being nonpartisan

While the ITA does not refer to the term “nonpartisan activities”, the activities of **charities** must continue to be “nonpartisan” in nature, i.e. not devoting resources to the direct or indirect support of, or opposition to, any political party or candidate for public office. However, CRA has confirmed that **“the mere act of a charity registering as a third party under the Canada Elections Act would not itself mean the charity is undertaking activities that support or oppose a political party or candidate as prohibited by the Income Tax Act.”**

Canada Elections Act

“The [*Canada Elections*] Act does not prevent individuals or groups from talking about issues or publishing information...

The only instance in which the *Act* covers the promotion of an issue, without mentioning a candidate or party is when someone spends money on issue advertising during the election period. Also, in such cases, the issue must be clearly associated with a candidate or party. When someone spends money on issue advertising, they have to register with Elections Canada and provide reports.

The rules in the *Act* on issue advertising that is clearly associated with a party do not cover other advocacy activities and communications, such as sending emails or text messages, having a website, canvassing door-to-door or giving media interviews.”

Stéphane Perrault, Chief Electoral Officer of Canada



What does it mean to be nonpartisan?



Do provide equal opportunity by talking with all candidates or elected officials and policy makers relevant to your issue.



Don't advocate for any political party or assume how a party will react before engaging them.



Don't instruct or attempt to influence constituents as to which candidate or party to support.



Don't make partisan statements or endorse a party, for example, by posting their photos on your website.



Don't do report cards that obviously favour or are critical of a particular party or candidate. Stick to the policies, not the people or parties.



It's ok to provide analysis of party platforms or positions on issues.

Nonprofits are not subject to rules that apply only to charities under the *Income Tax Act*. This includes rules around being nonpartisan. The decision should be based on how best to support your nonprofit's mission. **So, as a nonprofit, you have a choice.**

How might this look in the real world for a CHARITY?



An environmental charity wants to promote the message: “Think about the environment when you vote.”

Action: It wouldn't need to register.



The charity wants to run a specific campaign with paid ads: “Canada needs a carbon tax to fight climate change. Send a message with your vote.”

Action: It would need to register.

Why is it issue advertising? Because there is at least one federal party that is known to be in favour of a carbon tax, and at least one federal party that is known to be against a carbon tax. Elections Canada would consider this to be advertising on an issue “associated” with a candidate or registered party.

This wouldn't be a problem with the CRA because:

- It's an issue related to the organization's purpose.
- It's an issue on which the charity has been active, and if the charity's views happen to be similar to one or more parties.
- You are not telling people who to vote for or against.

How might this look in the real world for a NONPROFIT?



A nonprofit serving refugees and newcomers wants to promote the message:

“Refugees are welcome here.”

Action: It wouldn't need to register.



The nonprofit wants to run a specific campaign with paid ads:

“Canada needs to continue offering a safe place for all refugees. Send a message with your vote.”

Action: It would need to register.

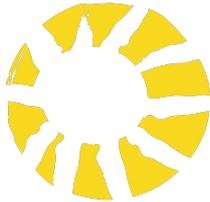
Why is it issue advertising? Because there is at least one federal party known to be in favour of accepting refugees, and at least one federal party that is known to be in favour of tightening the rules for refugees entering Canada.

Elections Canada would consider this to be advertising on an issue “associated” with a candidate or registered party.

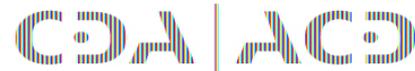
Why and how we advocate

Kate Cornell

**Co-Chair, Canadian Arts Coalition and
Executive Director, Canadian Dance Assembly**



CANADIAN ARTS
COALITION
CANADIENNE DES ARTS



Canadian Dance Assembly
L'Assemblée canadienne de

@cornell_kate #policywonk #VoteArts2019

OUR
PEOPLE

OUR
FINANCING

OUR REGULATORY
ENVIRONMENT

Canadian Arts Coalition



The Canadian Arts Coalition is a collaborative non-partisan movement spearheaded by a group of national arts service and membership organizations, with a volunteer Steering Committee comprised of artists and arts administrators. We are united in the belief that the future of our citizens, their towns and cities, and the nation itself depends on a rich, vibrant and diverse arts and heritage community. Since its inception, the CAC has successfully advocated for increased support for the arts through the Canada Council for the Arts and the Department of Canadian Heritage.

Canadian Arts Coalition

Arts Day on the Hill

2018:

94 meetings

75 MPs

104 delegates from 77
organizations across Canada



Canadian Arts Coalition- Election asks

1. Follow through on the planned increment of \$35M to the Canada Council for the Arts' budget in 2020- 21 and maintain the Canada Council's new base funding level of \$362M in 2020-21 through 2024-25 to address important demographic changes.
2. Optimize base funding levels for the Canadian Arts Presentation Fund (CAPF) and the Building Canada through the Arts and Heritage Fund (BCTAH) in 2020 (in concert with a renewed export strategy).
3. Grow the Strategic Initiatives component of Culture Days by \$2M per year within the Canada Cultural Investment Fund.
4. Pursue meaningful relations with First Nations, Métis and Inuit peoples built on respect and self-determination, and to support Indigenous languages, and dedicate funding to arts and cultural development, as well as cultural infrastructure and dissemination, both on and off reserve.

See the full list of Election Asks

<http://www.canadianartscoalition.com/>

Canadian Arts Coalition

[Sharing the platforms](#) of the 5 federal political parties

[Federal 2019 Election Platform](#) Resources, and growing!

Get out the vote **#VoteArts2019**



POLITICAL PARTIES

Liberal Party of Canada

Response to CAC's questionnaire – coming soon
Liberal Party platform – coming soon
www.liberal.ca

Conservative Party of Canada

Response to CAC's questionnaire – coming soon
Conservative Party platform – coming soon (expected Wednesday, September 11)
www.conservative.ca

New Democratic Party of Canada

Response to CAC's questionnaire – coming soon
NDP platform – [Click here](#) and select “Supporting Canadian arts and culture” for arts platform plank
www.ndp.ca/commitments

Green Party of Canada

Response to CAC's questionnaire – coming soon
Green Party Arts Platform plank: [Click here](#) and read page 44
www.greenparty.ca/en/vision-green

Bloc Quebecois

Response to CAC's questionnaire – coming soon
Bloc platform: www.blocquebeois.org/nation-quebeoise
www.blocquebeois.org

Canadian Dance Assembly

The Canadian Dance Assembly (CDA) is the voice of the professional dance sector in Canada and promotes for a healthy, sustainable environment in which professional dance practice can grow and thrive.



Canadian Dance Assembly- Everyday advocacy

Five things you can do to help the dance sector:

from Arts Advocate &
CDA's Executive Director



**Kate
Cornell**

- 1** Always pay yourself and everyone else involved in productions well - professional artists receive funding, amateurs do not.
- 2** Know who your representative is (BONUS: know their party affiliation).
- 3** Invite MPs, MLAs, and municipal councillors to performances.
- 4** Talk to them about your work and your organization often.
- 5** Always VOTE in municipal, provincial, and federal elections!



Follow @CDAACD for the latest in dance advocacy | www.cda-acd.ca

PANEL Q&A

Type your questions in the chat box
of GotoWebinar

Resources

#weadvocate #nonprofitsadvocate



Elections Canada: [Tools for Third Parties](#), including registration forms and financial forms
[Third party roadmap](#)

Elections Canada **Political Entities Support Network:** 1-800-486-6563

Monday to Friday 9:00 a.m. to 5:00 p.m. (Eastern Time)

[CRA guidance on P2D2A](#)



Imagine Canada Election Hub: <https://www.imaginecanada.ca/election-hub>

Imagine Canada and ONN Election Rules tool: <https://www.imaginecanada.ca/election-hub>



Carters Professional Corporation, Lobbying and Elections Legislation in Canada:

<http://www.carters.ca/pub/bulletin/charity/2019/chylb453.pdf>

Canadian Arts Coalition Election Platform: <http://www.canadianartscoalition.com/>

Know the rules, get involved, and spread the word

KNOW THE RULES

Be aware of
CRA and/or
Elections
Canada rules
and their
effects.



GET INVOLVED

Make your
voices and
views heard
during election
campaigns and
beyond.



SPREAD THE WORD

Share and
promote your
advocacy work
in your
community and
online.



Thank you

STAY CONNECTED

Nonprofit Driven 2019, November 27-28:

<https://theonncan.ca/join/nonprofitdriven2019/>

Build your nonprofit muscle.

Become an ONN member today: theonncan.ca/membership

Subscribe for news and updates: theonncan.ca/subscribe



@o_n_n



Ontario Nonprofit Network



theonncan.ca

OUR
PEOPLE

OUR
FINANCING

OUR REGULATORY
ENVIRONMENT