



October 12, 2018

Tax Policy Branch  
Department of Finance Canada  
90 Elgin Street Ottawa, ON K1A 0G5  
Email: consultation-policy-politique@cra-arc.gc.ca

**Re: Draft Legislative Proposals Relating to the Income Tax Act**

We are writing to express the serious concerns of Canada Without Poverty (CWP) with regard to the draft legislative proposals by the Department of Finance on the engagement in non-partisan political activities and development of public policy by charities.

**i. Canada Without Poverty's Position re: the Proposed Amendments**

It is our position that the proposed amendments are unacceptable for the following reasons:

1. The government's proposed amendments are inconsistent with [Recommendation No. 3 of the Consultation Panel](#) on Political Activities which indicates that the Income Tax Act should be amended "**to explicitly allow charities to fully engage without limitation in non-partisan public policy dialogue and development, provided that it is subordinate to and furthers their charitable purposes.**"
2. The government's amendments are not consistent with the Hon. Justice Morgan's decision in [Canada Without Poverty v Canada](#) which states that charitable activity must be interpreted to include non-partisan political activities "**without quantum limitation, in furtherance of the organization's charitable purposes.**"
3. The Ministry of Finance has issued a [Backgrounder](#) and CRA has issued a new [Guidance](#) on how the amended legislation will be applied. They have clearly indicated that if the proposed amendments are accepted in their current form, CRA will continue to apply restrictions based on outdated common law. They **will continue to monitor any public policy advocacy by charities and revoke registration if such activities exceed what they deem acceptable.** Their position is that "as a general rule, the more resources a charity uses to carry out public policy advocacy activities, the more likely it has a political purpose" and therefore the more likely they are to be de-registered. In other words, the charitable sector will essentially be where it was prior to the CWP case.

ii. **Fears Regarding Implications of Permitting Unlimited Public Policy Dialogue/Political Activities are Unwarranted**

The government's decision to limit the proposed changes to the legislation so as to permit CRA to continue to enforce limits on public policy advocacy may be a response to unwarranted fears that removing limits on public policy advocacy by charities may open the door to organizations advancing the interests of private corporations or advantaged individuals securing tax advantages by registering as charities. One commentator even suggested that the decision in *Canada Without Poverty v Canada* might eventually open the door to charities acting as super-PAC's, based on the reasoning of the U.S. Supreme Court in the *Citizens United* case.

Such fears are based on a lack of understanding of CWP's Charter argument, and of Justice Morgan's decision. In Canada the critical *Charter* analysis in most freedom of expression cases occurs under in relation to whether a limit to expression is justifiable in a free and democratic society (section 1). The courts in Canada, therefore, were able to find in [Harper v. Canada](#), that although caps on election spending limit freedom of expression, such limits are justified because they promote equality in political discourse and maintain the integrity of the financing regime applicable to candidates and parties. The CWP decision does not contradict that. In the CWP case, Morgan J. found that **limiting public policy advocacy in pursuit of relief of poverty or another accepted charitable purpose has no justification.**

One commentator has suggested that Morgan J's decision would compel the government to recognize, as charitable, organizations formed to lobby for measures that would increase poverty, for example, employers lobbying against minimum wage protections. As the Consultation Panel report pointed out, businesses can generally deduct 100% of advocacy costs as expenses, so forming a charity to perform that role would provide no tax advantage to an employer. Moreover, an organization formed for the purpose of eliminating the minimum wage would not qualify under the current standard for public benefit required to register as a charity.

**The CWP decision and the legislative changes we propose do not prevent the government from deciding which purposes should qualify as charitable and which should not.** An organization seeking charitable status to lobby against minimum wage, for example, would simply have no charitable purpose and no viable Charter claim against being denied charitable status. **The protection of freedom of expression for charities as ordered by Morgan J. does not suggest in any way that charitable status can be demanded by advantaged groups to advocate for any purpose they might choose.**

Limiting the ability of all charities to advance accepted charitable purposes through the exchange of ideas is not an effective or appropriate means of limiting charitable status to organizations with truly charitable purposes. It simply creates a requirement of government monitoring and restriction of expressive activities that can't be accepted in a constitutional democracy.

The framework of the CWP's challenge and decision was clear. **It was about whether, having decided to provide the benefit of charitable status for the relief of poverty, including for expressive activities to advance that purpose, it is justified to limit the expressive activities or to revoke charitable status if they exceed some a limit.** CWP did not argue, and the court did not decide, that the government is obliged under the Charter to recognize the relief of poverty or any other purpose that might be pursued through the exchange of ideas as charitable. It was only argued that having recognized a purpose as charitable, a limitation on expressive activity to promote that purpose is counter-productive and is not justifiable in a free and democratic society.

**There is no benefit and no legitimate government interest, in limiting a charity's ability to engage in the free flow of ideas to advance its already stated charitable purpose.**

**iii. CWP's Recommendation**

CWP recommends that the Government's proposed changes be altered as follows, so that the legislation defines charitable organizations as:

**(a) constituted and operated exclusively for charitable purposes,**

**(a.1) all the resources of which are devoted to activities carried on by the organization itself to further its charitable purposes including, without limitation, those that engage non-partisan public policy dialogue and development.**

Thank you for your time and consideration. We look forward to answering any question you have in this regard.

Sincerely,



Leilani Farha  
Executive Director

cc. The Right Honourable Justin Trudeau  
The Honourable Bill Morneau  
The Honourable Diane Lebouthillier