



CANADA WITHOUT POVERTY  
CANADA SANS PAUVRETÉ

**Submission to the United Nations Human Rights Committee  
For the 114<sup>th</sup> Session of the Human Rights Committee (29 June – 24 July 2015)**

**Alternative Report Raising Issues Related to Articles 19, 22 and 6**

**Submitted by  
Canada Without Poverty  
June 5, 2015**

**1. Introduction**

Canada Without Poverty (CWP) submits this brief to the United Nations Human Rights Committee in preparation for the review of Canada under the International Covenant on Civil and Political Rights (ICCPR) in the 114<sup>th</sup> session of the Committee.

Founded in 1972 and operating as a leading national anti-poverty organization, CWP has represented the low-income population in Canada for over 40 years. Many of CWP's members are living in poverty and our Board of Directors is comprised of people with direct, personal experience of poverty, both past and present. CWP seeks to provide meaningful and effective representation of people living in poverty, promoting a better understanding of the lived experience of poverty in Canada and addressing problems of stigmatization and discrimination experienced by low income people.

CWP has a network comprised of over 1,000 members across the country made up of individuals living in poverty as well as organizations representing low-income individuals. With a pan-Canadian reach, CWP is often called upon by parliamentary committees, civil society, and the media to speak about poverty as it relates to various stages of the life-cycle and vulnerable demographic groups.

Under our former name, the National Anti-Poverty Organization, **CWP was the first NGO to appear before the UN Committee on Economic Social and Cultural Rights in 1993.** CWP continues to promote the implementation of human rights as the fundamental basis for the eradication of poverty and acts as a central resource point on poverty and human rights in Canada.

The following written report outlines two of CWP's key concerns with respect to Canada's compliance with the ICCPR. These concerns include the right to freedom of speech and to assembly due to restrictions on charities under the Income Tax Act of Canada, as well as the right to life as protected by the Covenant in relation to poverty, homelessness and hunger in Canada.

Further to this written report, CWP will present oral submissions at the formal briefing on July 6<sup>th</sup>, 2015 at the 114<sup>th</sup> session of the HRC.

## 2. Articles 19 and 22: Income Tax Act of Canada and Restrictions on Charities

### A. Understanding Provisions of the Income Tax Act

1. We are deeply concerned about possible infringements of Articles 19 and 22 of the ICCPR as a result of provisions in the Income Tax Act of Canada (ITA). (See also **Appendix** with media coverage of the issues described below).
2. Section 149.1 (6.2) of the ITA says: "For the purposes of the definition "charitable organization" in subsection 149.1(1), where an organization devotes substantially all of its resources to charitable activities carried on by it and (a) it devotes part of its resources to political activities, (b) those political activities are ancillary and incidental to its charitable activities, and (c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office, the organization shall be considered to be devoting that part of its resources to charitable activities carried on by it".<sup>1</sup> [emphasis added]
3. Accordingly, when an individual donates to a charity they are issued a charitable tax receipt that they may use to lower the income tax they owe (by the amount donated). This provides an incentive for individuals to donate to charitable organizations.
4. Under section 149.1 (6.2) of the ITA, in order to retain charitable status to issue such receipts to donors, a restriction is placed on the percentage of time and resources a charitable organization can devote to "political" activities. It is capped at 10%.
5. Political activities are defined in policy guideline "CPS-022", written by the Canada Revenue Agency, the administrative body responsible for monitoring charities' compliance with the law. According to CPS-022 'political activity' includes when an organization "explicitly communicates to the public that the law, policy, or decision of any level of government in Canada or a foreign country should be retained (if the retention of the law, policy or decision is being reconsidered by a government), opposed, or changed."<sup>2</sup> It also includes any broad calls to action to the general public, for example, encouraging people living in poverty to contact their local or federal member of Parliament to support or oppose a policy or law.
6. The consequence for a charity of going beyond this 10% "cap" are severe and include the loss of charitable status for an organization. **The implementation of this restriction has become an increasing impediment for NGOs to properly exercise their mandates and have curtailed freedom of expression and assembly.**

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<sup>1</sup> Income Tax Act (R.S.C. 1985, c. 1 (5th Supp.))

<sup>2</sup> Canada Revenue Agency, CPS-022 Political Activities Policy Statement, Effective September 2003. Online: <<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>>.

7. It is CWP's experience that **Section 149.1 (6.2) of the ITA** limits the ability of charities in Canada to express themselves freely and without constraint about the causes and consequences of poverty and solutions needed to eliminate poverty in Canada, among other issues. It also infringes on poor peoples' ability to form organizations to represent and amplify their voice in the public domain.

## **B. Understanding the Application of the Income Tax Act on Charities in Canada**

8. In 2006 and thereafter, the Federal Government began to implement a general policy of denying funding to organizations engaged in any kind of advocacy for policy or legislative change. For example, federal funding of NAPO/CWP was eliminated in 2006 and funding for the Government's arm's length advisory body on the relief of poverty, the National Council on Welfare, which had been formed in 1969 and recommended many changes to federal policy in order to relieve poverty, was eliminated in 2013.
9. To make up for this loss of support, NAPO/CWP like other organizations, has focused on developing a charitable donor base, upon which it now relies to fund its activities. Currently 80% of CWP's funding comes from charitable donations. CWP would not be able to function if it relinquished its charitable status as it relies on charitable donations to operate.
10. In the past, section 149.1(6.2) of the Income Tax Act was not the subject of rigorous enforcement. However, in recent years Canada Revenue Agency, at the direction of the Government of Canada, has devoted significantly more time and resources to publicizing and enforcing s. 149.1(6.2) of the Income Tax Act. In March 2012, the Government of Canada injected \$8 million (CDN) into political audits of charities. This amount later grew to \$13.4 million (CDN) over five years.<sup>3</sup> These audits have included organizations that have explicitly and publically expressed opposition to federal level government policy, many of which are human rights oriented organizations. Some argue that the political audits have in fact targeted such organizations.<sup>4</sup>
11. As of March 2015, 28 organizations were under political audit (this year), an additional 21 audits have been completed.<sup>5</sup> Organizations under audit include: Amnesty International Canada, PEN Canada, United Church of Canada (Kairos), Canadian Centre for Policy Alternatives, Tides Canada Foundation, Tides Canada

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<sup>3</sup> Dean Beeby, "Canada Revenue Agency's Political Activity Audits of Charities" CBC News (5 August 2014) online: <<http://www.cbc.ca/news/politics/canada-revenue-agency-s-political-activity-audits-of-charities-1.2728023>>.

<sup>4</sup> Dean Beeby, "Canada Revenue Agency's 'political' targeting of charities under scrutiny" Globe and Mail (3 August 2014) online: <<http://www.theglobeandmail.com/news/politics/canada-revenue-agencys-political-targeting-of-charities-under-scrutiny/article19900854/>>. See also Don McRae, CRA Audits of Charities Look Fair but Feel Foul Toronto Star (15 April 2015) online: <http://www.thestar.com/opinion/commentary/2015/04/05/cra-audits-of-charities-look-fair-but-feel-foul.html>

<sup>5</sup> Dean Beeby, "Sierra Club latest environmental charity hit by Revenue Canada audits" CBC News (30 April 2015) online: <<http://www.cbc.ca/news/politics/sierra-club-latest-environmental-charity-hit-by-revenue-canada-audits-1.3052770>>.

Initiatives Society, David Suzuki Foundation, Sierra Club Canada, Ecology Action Centre, Equiterre, Environmental Defense Canada Inc., Pembina Foundation, CoDevelopment Canada, and Alternatives.

12. **This rigorous enforcement of s.149.1(6.2) against charitable organizations perceived to be expressing political views that are in opposition to the current Government's policy has created a chill on free public discussion, debate and action regarding policy issues and legislation related to the relief of poverty and other areas.**
13. CWP and other charitable organizations are constantly worried about speaking out against policies and legislation which create or exacerbate poverty. When CWP seeks to act through networks of organizations with the common purpose of the relief of poverty, it is made clear by many participating organizations that they are unable to speak out about their concerns regarding government policies and legislation for fear of coming under audit and losing their charitable status in accordance with Section 149.1 (6.2).
14. Contrary the HRC's General Comment No. 34 (para. 25), within the charitable sector in Canada there is widespread uncertainty about what kinds of activities might be categorized as political activities and how the time and resources allocated to such activities is to be calculated. Charitable organizations find it impossible to chart and allocate their time and resources rationally in a manner that would comply with s. 149.1(6.2).
15. Section 149.1 (6.2) is being applied in a manner that may restrict organizations like CWP from pursuing the relief of poverty – a long recognized charitable purpose. For example, the board and members of CWP believe that the most effective means to relieve poverty at the present time is to advocate for changes to policy and legislation that cause or contribute to poverty and to adopt new legislation in this regard, a position that is consistent with what Canada has been told by a number of UN treaty monitoring bodies. However, were CWP to allocate the appropriate amount of time and resources to engage with government and the public to bring about these required changes, CWP could lose its charitable status and thus its funding base.
16. If CWP were forced to close its doors, poor people would lose an important vehicle through which they can engage in democratic processes. Their freedom of speech and assembly would be cut-off.
17. Harriett McLachlan is a member of CWP and is the President of CWP's board. She has lived most of her life in poverty. She and other individual members of CWP experience political marginalization. As individuals – without a representative body like CWP - they are unable to access policy forums and cannot exert any effective

influence on the policies and laws which keep them in poverty and deny them dignity and effective participation.

18. As a member of an organization such as CWP, however, Ms. McLachlan and others living in poverty are able to engage in political dialogue, appear before parliamentary committees and communicate their concerns and experiences to politicians and decision-makers. Ms. McLachlan has made submissions to parliamentary committees and submitted written briefs outlining aspects of her lived experience, which are of direct relevance to public policy and legislation under consideration by the federal government.
19. People living in poverty are frequently stigmatized, treated as burdens on taxpaying citizens, assumed to be bad parents and to lack work ethic. Their dignity, health and security issues are often ignored because decision-makers do not experience poverty themselves and rarely have the opportunity to hear from people living in poverty. Having a properly resourced organization to advocate for policy and legislative change that addresses the otherwise neglected interests and needs of poor people and to promote the dignity and equal rights of poor people is essential to combatting this stigmatization and dehumanization. CWP and other charities whose goal is to relieve poverty, is fundamental to promoting a more balanced discussion of federal policies and programmes related to the relief of poverty.
20. Democratic dialogue and policy discussions in Canada are negatively affected by the lack of effective representation of people living in poverty. Cabinet ministers; deputy ministers, members of parliament and high level civil servants involved in developing policy and legislation regularly meet with or otherwise communicate with representatives of charities representing particular associations or interests. Such interaction is essential to informed decision making and policy and to the efficient and fair functioning of Canadian democracy.
21. Freedom of assembly for poor people who want to join together to oppose national laws and policies contributing to poverty is also curtailed under the enforcement of section 149 (6.2) of the ITA. It would, after all, be virtually impossible for people living in poverty to fund their own associations through membership dues. They rely on organizations with charitable status for any meaningful engagement in the democratic process of developing policy and legislative responses to poverty.
22. Experts agree that the loss of free expression among organizations representing disadvantaged groups because of their reliance on charitable donations and the more rigorous enforcement of restrictions on political activities in the Income Tax Act, has created an advocacy chill for charitable organizations.<sup>6</sup> This has resulted an unprecedented loss of free expression on policy issues linked to poverty and

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<sup>6</sup> Gareth Kirkby, "An Uncharitable Chill: A Critical Exploration of How Changes in Federal Policy and Political Climate are Affecting Advocacy-Oriented Charities" Royal Roads University (June 2014) online: <<http://garethkirkby.ca/thesis/posting-final-version/>>.

disadvantage and has curtailed freedom of association particularly for people living in poverty.

23. Voices-Voix Canada, a non-partisan coalition of Canadians and Canadian organizations committed to defending collective and individual rights to dissent, advocacy and democratic space, has indicated that due to these restrictions on political activity, “[c]harities have reported taking greater caution in their communications, and voluntarily reducing their public profiles for fear of being targeted for an audit. This is in contrast to their usual mission of vocally engaging in public discussions and debate in order to maximize the exposure of their public policy ideas and critiques”<sup>7</sup>.

## RECOMMENDATION

**CWP recommends that the State party review section 149.1(6.2) of the ITA with a view to ensuring that it complies with Canada’s obligations under Articles 19 and 22 of the ICCPR.**

### **3. The Right to Life: Poverty, Homelessness and Hunger (Article 6)**<sup>8</sup>

24. The interdependence of civil and political rights with economic, social and cultural rights is a well-accepted principle, commonly referenced in General Comments and other international human rights documents. There may be no clearer example of this interdependence than the relationship between extreme poverty (and its manifestations – homelessness, hunger) and the right to life.
25. Canada Without Poverty submits that the Government of Canada’s failure to take positive steps to address extreme poverty, especially homelessness, has resulted in violations of the right to life as found in Article 6 (1) of the ICCPR.
26. **Poverty, homelessness and hunger continue to be problems that are disproportionate to Canada’s wealth and resources**, especially in light of the fact that, unlike other developed nations, the Government of Canada boasts of its economic well being in the aftermath of the global economic crisis.<sup>9</sup>
27. In Canada, approximately **4.8 million people live in poverty** according to the Low-Income Cut Off (After Tax).<sup>10</sup> Marginalized groups such as indigenous peoples, single mothers, newcomers and people who are racialized, persons with disabilities, youth and children are most likely to experience poverty, inadequate housing, homelessness and food insecurity in Canada.

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<sup>7</sup> Voices-Voix, “Canadian Charities and the Canada Revenue Agency” (May 2015) online: <<http://voices-voix.ca/en/facts/profile/canadian-charities-and-canada-revenue-agency>>.

<sup>8</sup> CWP replies on the submissions to the HRC by ESCR Net and the Social Rights Advocacy Centre et al for a deeper analysis of the concept of interdependence.

<sup>9</sup> Government of Canada (2012), “Chapter 2: Economic Developments and Prospects,” Budget 2012. <http://www.budget.gc.ca/2012/plan/chap2-eng.html>.

<sup>10</sup> Populations living in Private Households, Low Income Measure (After-Tax), Statistics Canada, 2011 National Household Survey, Statistics Canada Catalogue no. 99-014-X2011043.

28. Food insecurity is significant in Canada with **close to 900,000 households forced to turn to a food bank each month**<sup>11</sup>. This marks the second highest usage rate in the history of food bank usage in Canada and is a 26% increase since 2008 during Canada's economic recession.
29. **Nunavut, an Inuit Territory in the North of Canada, has the highest number of households in Canada that are food insecure at 28.8%, which is more than double the Yukon Territory, which holds second place at 11%.**<sup>12</sup> Olivier De Schutter, the Special Rapporteur on the Right to Food, on his first trip to Canada in May 2012, observed that there is a widening inequality gap that is affecting food security across the country.
30. The United Nations has described housing and homelessness in Canada as a "national emergency".<sup>13</sup> An estimated 250,000 people are homeless, with another 1.5 million living in inadequate housing, and/or facing a serious financial burden which threatens their housing security.<sup>14</sup>
31. Poverty has been recognized by the World Health Organization as the single largest determinant of health affecting both mental and physical health outcomes. This manifests in a number of adverse health issues including depression, diabetes, heart disease and other chronic conditions. In Canada, one in five dollars spent on health care is attributed to 'health inequities'.<sup>15</sup> These conditions can lead to ill health and the contraction of otherwise preventable life threatening diseases.
32. As Dr. Hwang at St. Michael's Hospital in Toronto has said, "homelessness affects tens of thousands of Canadians and has important health implications. Homeless people are at increased risk of dying prematurely and suffer from a wide range of health problems, including seizures, chronic obstructive pulmonary disease, musculoskeletal disorders, tuberculosis, and skin and foot problems. Homeless people also face significant barriers that impair their access to health care."<sup>16</sup>
33. Studies have also shown that living in shelters, rooming houses, and hotels, in other words, homelessness, is associated with much higher mortality than expected on the basis of low income alone.
34. In Hamilton, Ontario, a 21-year difference was found in the life expectancy of individuals between the poorest and wealthiest residents of the city.<sup>17</sup> In January

<sup>11</sup> Food Banks Canada, "Hunger Count Canada, 2011" (2011), p. 2, 8, online: <<http://www.foodbankscanada.ca/getmedia/dc2aa860-4c33-4929-ac36-fb5d40f0b7e7/HungerCount-2011.pdf.aspx>>.

<sup>12</sup> Health Canada, "Household Food Insecurity In Select Provinces and the Territories in 2009-2010", online: <[http://www.hc-sc.gc.ca/fn-an/surveill/nutrition/commun/insecurit/prov\\_ter-eng.php](http://www.hc-sc.gc.ca/fn-an/surveill/nutrition/commun/insecurit/prov_ter-eng.php)>.

<sup>13</sup> UN Committee on Economic, Social and Cultural Rights, Review of Canada 1996, 2008 and UN Special Rapporteur on Adequate Housing, Mission Report on Canada, 2009.

<sup>14</sup> Canada Mortgage and Housing Corporation, 2010.

<sup>15</sup> Health Council of Canada (2010), "Stepping It Up: Moving the Focus from Health Care in Canada to a Healthier Canada", p.7. <http://www.healthcouncilcanada.ca/tree/2.40-HCCpromoDec2010.pdf>.

<sup>16</sup> Stephen W. Hwang, "Homelessness and health" CMAJ (January 2001), online: <<http://www.cmaj.ca/content/164/2/229.short>>.

<sup>17</sup> [http://media.metroland.com/thespec.com/statistics\\_flash/](http://media.metroland.com/thespec.com/statistics_flash/).

2015, two homeless persons died in Toronto, Ontario due to cold weather, poverty and lack of adequate housing.<sup>18</sup>

35. The relationship between women's premature death and domestic violence is well documented. Many women experiencing domestic violence have few housing options, which means they are compelled back to a violent situation or are compelled into homelessness. Either way, their lives are at stake. One study in Toronto found that homeless women 18 to 44 years old are 10 times more likely to die than women of the same age group in the general population.<sup>19</sup>

**36. This Committee has already recognized the connections between homelessness and the right to life. In its concluding observations on Canada in 1999, the Committee stated that it was "concerned that homelessness has led to serious health problems and even to death"<sup>20</sup>.**

37. Despite these observations by the Committee and the Committee's recommendation that Canada undertake positive measures to address homelessness, Canada does not have a national housing/homelessness strategy or national poverty elimination plan in compliance with international human rights law.

38. In fact, the government of Canada has rejected the connection between poverty and homelessness and the right to life. In the ongoing court challenge *Tanudjaja v. AG (Canada)*, Canada's position has remained that there was no state deprivation of the right to life in the State's actions in sustaining and contributing to conditions of homelessness. In fact, in a response to a claim based on the right to life, the government filed a Motion to Strike to prevent the application from being heard in the courts.

39. CWP respectfully submits that that by failing to take positive steps to address extreme poverty, homelessness, food insecurity Canada has presented barriers to the right to life for people living in poverty as protected in Article 6(1) of the ICCPR.

## RECOMMENDATIONS

We agree with the submissions and recommendations made to the HRC for the review of Canada by the ESCR-Net Strategic Litigation Working Group in conjunction with member groups the Social Rights Advocacy Centre and the Charter Committee on Poverty Issues.

We support their suggested recommendations and paraphrase them, in part, here:

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<sup>18</sup> Daniel Otis, "Second homeless man dead as bitter cold envelops city" Toronto Star (January 2015) online: <[http://www.thestar.com/news/gta/2015/01/06/second\\_homeless\\_man\\_dead\\_as\\_bitter\\_cold\\_envelops\\_city.html](http://www.thestar.com/news/gta/2015/01/06/second_homeless_man_dead_as_bitter_cold_envelops_city.html)>.

<sup>19</sup> Angela M. Cheung, Stephen W. Hwang, "Risk of death among homeless women: a cohort study and review of the literature" CMAJ (April 2004) online: <<http://www.cmaj.ca/content/170/8/1243.full>>.

<sup>20</sup> Concluding Observations of the Human Rights Committee: Canada, CCPR/C/79/Add.105 (7 April 1999), para. 12.



**The State party should urgently respond to the crisis of homelessness by adopting positive measures as required by article 6 (1), including effective strategies with goals, timelines and independent monitoring and complaints procedures as recommended by the previous Special Rapporteur on Adequate Housing following his mission to Canada.**

**The State party should adopt a broader interpretation of Section 7 of the Charter of Rights and Freedoms, one that reflects interdependence.**



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## Open letter: Enhancing the role of charities in public policy debates in Canada, request for a platform commitment



*The following is an open letter that was sent to all five federal political parties by 18 charities and civil society groups concerned about the ongoing targeted audits of charities in Canada and the resulting "advocacy chill" it has caused. While Voices-Voix is not a signatory, we are re-publishing the letter in full as it reflects much of the research we have carried on the topic over the past months.*

February 10, 2015

Hon. Kerry-Lynne Findlay, MP  
Minister of National Revenue  
House of Commons  
Ottawa, ON K1A 0A6

### Re: Enhancing the role of charities in public policy debates in Canada, request for a platform commitment

As you are aware, over the last few years there has been significant debate in Canada about the role of organizations with charitable status in public policy development; with some government and industry officials suggesting that our organizations should not be involved in important public discussions. In our view there are several reasons why it is important to Canadian society that charities and non-profit organizations supported by charitable foundations continue to engage in the public policy process, and we are hoping that the Conservative Party of Canada will make a commitment to preserving and enhancing this role by strongly supporting a new legal and policy direction that enhances and protects the ability of registered charities to participate in public policy debates. We also request that the process to define this new approach be developed in an open and transparent consultation process involving a broad range of charities and the public.

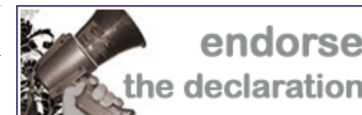
Here are the reasons we are making this request:

First, the work of charities contributes greatly to Canada's democracy, and the health and vigour of our democracy depends on much more than citizens voting in elections. The extent to which elections are informed and motivated by citizens engaging with each other on issues they care about is an indicator of the overall health of our political system. These values are also connected to fundamental freedoms under the Canadian Charter of Rights and Freedoms and basic rights under international human rights instruments that Canada has ratified. Increasingly, the international community is recognizing the importance of civil society's role in promoting and sustaining democratic and equitable societies, and the importance of an enabling regulatory and legal environment that protects these groups' freedoms of association, peaceful assembly and speech.

Second, organizations with charitable status often have good policy advice to give. It is expressed very well in the Canada Revenue Agency's *Policy Statement on Political Activities* (CPS-022):

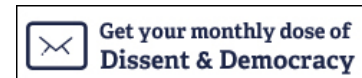
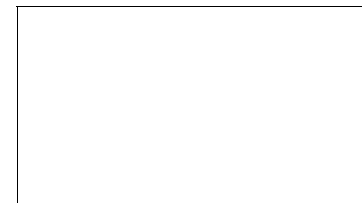
Through their dedicated delivery of essential programs, many charities have acquired a wealth of knowledge about how government policies affect people's lives. Charities are well placed to study, assess, and comment on those government policies. Canadians benefit from the efforts of charities and the practical, innovative ways they use to resolve complex issues related to delivering social services. Beyond service delivery, their expertise is also a vital source of information for governments to help guide policy decisions. It is therefore essential that charities continue to offer their direct knowledge of social issues to public policy debates.

Third, we bring valuable advice to governments. At the same time as their resources are shrinking, governments



(218)

(4926)



## Tactics

- [Charitable status attacked/revoked](#)
- [Defunding](#)
- [Fired or forced resignation](#)
- [Harassment/Privacy violation](#)
- [Information Withholding](#)
- [Interference with independent institutions](#)
- [Surveillance](#)
- [Vilification/Smearing](#)

## Targets

- [Aboriginal peoples](#)
- [Academia](#)
- [Environment](#)
- [Foreign Policy](#)
- [Human Rights](#)
- [Immigrants and Refugees](#)
- [International Development](#)
- [Labour movement](#)
- [Military and Veterans](#)
- [National security](#)
- [Palestinian Human Rights](#)
- [Think tanks](#)
- [Watchdogs](#)
- [Women](#)

are facing heightened expectations from an electorate that is increasingly diverse. Canadian charities help in a range of ways: surfacing front line knowledge; convening stakeholders; facilitating and informing dialogue; helping to integrate newcomers to Canadian society; developing and assessing pilot projects; and providing neutral spaces for engagement.

Youth

Most of all, however, charitable organizations serve a vital purpose in bringing the public interest to the forefront of public conversations. Without years of organizing effort by Canadian charities, Canada would not have dealt with issues such as addressing acid rain, promoting safe driving, reducing smoking and banning toxic chemicals — these initiatives have all been led by the charitable sector.

We believe in the value of broad participation in the public policy process by a diverse range of informed actors. We believe that public policy — always but most particularly in a country such as Canada — is likely to be more relevant, robust and reflective of Canadian values if it is informed by a diverse range of interests and perspectives. We have a shared collective interest in ensuring the active participation of as wide a range of voices as possible, with particular attention to minority and marginalized voices and those who lack ready access to decision-makers. Charitable organizations play a crucial role in this regard, engaging diverse constituencies, capturing their views and experience, informing their analysis, mobilizing their energies and amplifying their voices.

While the work of registered charities can have enormous payoffs in the public policy sphere, it's seldom an easy path. A confusing regulatory environment leaves many would-be advocates unclear how proactively charities can advocate for policy change. The existing interpretation of the *Income Tax Act* appears to be open to widely divergent interpretations of what constitutes charitable activity and what activities, whether charitable or otherwise, are seen as permissible engagement in the public policy development process. The result is a chill where charities feel that their efforts are being discouraged, subjected to rhetorical attacks or harsh or arbitrary review.

We ask that the Conservative Party of Canada strongly support a new legal and policy direction that enhances and protects the ability of registered charities to participate in public policy debates. We also request that the process to define this new approach be developed in an open and transparent consultation process involving a broad range of charities and the public.

We would be happy to meet with you at your convenience to discuss our request.

Sincerely,

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Mark Butler Policy Director Ecology Action Centre	Bruce Campbell Executive Director Canadian Centre for Policy Alternatives	Jessica Clogg Executive Director and Senior Counsel West Coast Environmental Law Association
Julie Delahanty Executive Director Oxfam Canada	Eleanor Fast Executive Director Nature Canada	Tim Gray Executive Director Environmental Defence
Éric Hebert-Daly Executive Director Canadian Parks and Wilderness Society	Joanna Kerr Executive Director Greenpeace Canada	David Miller President and CEO World Wildlife Fund Canada
Alex Neve Secretary General Amnesty International Canada (English Branch)	Devon Page Executive Director Ecojustice	Sidney Ribaux Executive Director Equiterre
Peter Robinson CEO David Suzuki Foundation	Julia Sanchez President-CEO Canadian Council for International Co-operation (CCIC)	Caroline Schultz Executive Director Ontario Nature
Ed Whittingham Executive Director Pembina Institute	Jennifer Henry Executive Director KAIROS: Canadian Ecumenical Justice Initiatives	Michel Lambert Executive Director ALTERNATIVES

News / Canada

## Outdated law hampering the work of Canadian charities, B.C. university report says

Ambiguous and outdated laws are hampering the work of Canadian charities, says a new report.



TANNIS TOOHEY / TORONTO STAR FILE PHOTO

Environmental Defence, which helped organize a demonstration at Queen's Park in 2011 to promote environmental issues, is one of 52 charities being audited by Canadian Revenue Agency to determine if they have crossed the 10-per-cent limit.

By: [Raveena Aulakh](#) Environment, Published on Wed Mar 25 2015

Ambiguous and outdated laws are hampering the work of Canadian charities, says a new report, adding that Canada lags behind countries like the U.S., England and New Zealand.

Under Canadian law, charities can be stripped of their charitable status if they are found to have spent more than 10 per cent of donated money on political activity. But it's unclear what constitutes such activity, the report says.

"Things have changed from Queen Elizabeth I," said Calvin Sandborn, legal director of the Environmental Law Centre at the University of Victoria, which prepared the report. "She didn't brook much political activity against her but in a modern society, we benefit from having charities do political activities."

Currently, [Canadian Revenue Agency \(CRA\) is auditing 52 charities](#) — environmental, developmental and human rights groups — to determine if they have crossed the 10-per-cent limit.

Some high-profile and highly respected organizations like Environmental Defence, Ecology Action Centre and Amnesty International Canada are being audited.

Since CRA started the audits, "people (at charities) are shutting down and the public is being deprived of solutions," Sandborn said in an interview.

Both the ministry of finance and CRA declined to comment on any aspect of the report.

Charities and charity law first made headlines in the 2012 federal budget when the Conservative government allocated \$8 million to the revenue agency to take a close look at environmental charities and their political activities.

The opposition at the time called the move a witch hunt.

The report calls for such drastic measures as establishing an independent commission so there is no potential for political interference, and being clear on what constitutes political activity. Charities also need more leeway on what is currently allowed as political activity, it says.

This report closely examined charity laws in other countries, especially what constitutes “political activity.” It found that Australia and New Zealand are now allowing more political activity, regulations in England are way more liberal, and the law in the U.S. is less vague and more generous in what it allows charities to do.

Continental Europe, the report found, places no limit on a charity’s political activities.

These countries recognize how important charities and their political activities are, said Sandborn.

Talking specifically about environmental groups, he said Ottawa’s characterization of them as radicals who are opposed to the economic health of the country is wrong. “. . . (Green) groups are sincerely concerned about the health of our air, the water, the land . . . our global climate and it is important they (do) not shut up.”

Emma Gilchrist, executive director of DeSmog Canada, a non-profit online news outlet that asked the law centre to compare Canadian charity law to other jurisdictions, said the idea was to help inform the public conversation about the role of charities in policy advocacy in Canada.

The report has brought out important information “about the role charities should play and the reality around political activity,” she said.

If it weren’t for charities and their political activity, “we wouldn’t have got smoking laws, we wouldn’t have got drunk-driving laws we have now, and the Great Lakes may have never been cleaned up,” said Sandborn.

The recommendations in the report are bang on, said Tim Gray of Environmental Defence.

“The role of charities has grown in our society but the law we are operating under is open to abuse and needs to be reformed in a way that encourages the activities that charities do.”

[Environmental Defence is still being audited](#) and is in the appeal process now, said Gray.

Opinion

## The Canada Revenue Agency's political inquisitions

By Steven Zhou, [for CBC News](#) Posted: Apr 16, 2015 2:54 PM CT Last Updated: Apr 16, 2015 2:54 PM CT

If a democratic system thrives on participation from a civil society free to express itself without state intervention, then Canadian democracy could use some help these days.

Citizens who band together into groups that push politicians to engage a problem should, in theory, be a vital aspect of democratic decision-making. Yet the Harper administration, in its infinite political wisdom, has devoted millions of taxpayer dollars via Canada Revenue Agency, formerly Revenue Canada, to, in effect, target groups that are critical of federal policies.

The CRA launched a series of 60 audits in 2012, and, tellingly, the targeted organizations all seem to espouse views that don't fit so well with the Harper agenda.

Canadian NGOs with charitable status can devote up to 10 per cent of their resources to political activities, or risk losing their status as a charity under the law. Since 2012, \$13 million has been earmarked by the Harper administration to audit organizations that, in the eyes of the CRA, may have devoted too much to political activities.

These 'political-activity audits' have primarily targeted environmental groups, human rights organizations, and labour-backed think tanks like the Canadian Centre for Policy Alternatives. Meanwhile, more conservative-minded groups like the Manning Foundation or the Fraser Institute have not faced such aggression from the CRA. Many of them have also, like their leftist counterparts, participated in 'political activities.'

### 'Right-wing' groups don't get same attention

Though a CRA spokesperson will come out once in a while to proclaim that the executive branch has no influence over which groups the agency targets, right-wing civil society organizations have yet to receive much attention from the tax agency. Rather, the latest charity to be targeted in a significant way is the United Steelworkers' Humanity Fund, a labour-backed organization that has supported food banks and disaster relief initiatives for over 30 years.

It has donated about two per cent of its annual revenue to the Canadian Network on Corporate Accountability (CNCA), an umbrella organization that advocates for more accountability in the Canadian mining sector, among other things.

This support for the CNCA, an organization that hasn't shied away from its political purposes, is apparently what the CRA is zeroing in on. The fund has often butted heads with the Harper administration over labour issues, and wants more oversight of Canadian mining practices abroad, which, according to its president Ken Neumann, is primarily why the CRA began auditing the group's finances last year.

Such audits can certainly disrupt an organization's day-to-day operations significantly, but this kind of trouble isn't the main reason why these intrusions are bad for Canadian democracy in the long run. Targeted organizations that are forced to go through the lengthy auditing process can, whether the government intends it or not, become examples of what not to say or do in the Harper era.

### Groups practice self-censorship

One can hardly blame other charities if they decide to interpret the current inquisitorial atmosphere as being politically motivated. This means that if they want to keep their charitable status, practicing a degree of self-censorship may end up being totally rational. This is an anti-democratic development almost by definition, and it hardly matters whether a particular agenda is behind it all, though the available evidence suggests that Revenue Canada's choices aren't exactly politically neutral.

Earlier this year, Dying with Dignity Canada lost its charitable status after being audited for about three years. It's a non-profit that advocates for terminally ill patients to have a choice when it comes to euthanasia - not exactly a 'pro-life' stance according to contemporary political standards.

The CRA says that it made a mistake back in 1982 and 2011 when it confirmed charitable status for Dying with Dignity. It remains a mystery as to how more conservatively minded charities have managed to follow the rules so well as to not even attract the attention of the agency, which has certainly found a new kind of zeal for revoking charitable status.

Equally mysterious is why there hasn't been more uproar when it comes to the government's auditing targets. The list of charities being investigated and audited by the CRA looks increasingly like Stephen Harper's enemy list. The numbers are so lopsided as to be almost comical, yet no significant amount of public scrutiny coalesced to call for a re-evaluation of the agency's methods.

*Steven Zhou is a Toronto-based journalist and writer.*

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# Sierra Club latest environmental charity hit by Revenue Canada audits

## Group's director calls political-activity audit an 'abuse of power' by Harper government

By Dean Beeby, [CBC News](#) Posted: Apr 30, 2015 11:00 AM ET Last Updated: Apr 30, 2015 1:48 PM ET

Another environmental charity is about to undergo a political-activity audit by the Canada Revenue Agency, in what the charity's director says is part of an "intimidation campaign."

Auditors are set to appear at the Ottawa offices of the Sierra Club Canada Foundation on May 11 to examine the books for evidence of excessive political activity.

- [CRA charity audits creating confusion, fear at tax time](#)
- [ANALYSIS | PM's charity audits look for 'bias, one-sidedness'](#)
- [Dying With Dignity loses charitable status after audit](#)
- [Foreign-aid charity faces closure after Revenue Canada audit](#)

"It's a huge undertaking for us to do this," said John Bennett, the foundation's national program director, who has been asked to produce a list of all the politicians he met in 2012 and 2013, among other documentation.

The audit was to have started in February, but Bennett was given a two-month reprieve to assemble the material the agency is demanding, including an accounting of the political activity its many unpaid volunteers may have undertaken.

"It's an accounting nightmare for us to figure out how to do it," Bennett said in an interview.

The Harper government's 2012 budget launched a series of 60 political-activity audits of charities, with a budget that has grown to more than \$13 million through to 2017.

The audits are to determine whether any groups engaged in partisan activity, which is forbidden, or broke a rule limiting the resources devoted to political activities to no more than 10 per cent.

The initial wave of audits hit environmental charities, after several Conservative cabinet ministers vilified environmentalists as "radicals" and "money launderers," with possible links to terrorists. Many such charities had vocally opposed government energy and pipeline policies.

## Denies any bias in selection

The audits have since widened to include poverty, international development and human-rights groups, among others, many of them also critical of Harper government policies. One group, Dying With Dignity, has [had its registration annulled](#), while others such as Environmental Defence are appealing notices to deregister.

National Revenue Minister Kerry-Lynne Findlay has repeatedly denied any bias in the selection of charities to audit, saying CRA officials make their own independent decisions without political input.

*It is an abuse of power- John Bennett, Sierra Club Canada Foundation*

CRA spokesman Philippe Brideau declined comment on the Sierra Club Canada Foundation audit, citing confidentiality provisions of the Income Tax Act. The agency has not released a master list of charities undergoing political-activity audits.

Critics and spokespersons for charities say the audits have created an "advocacy chill," as groups self-censor for fear of retribution.

The foundation escaped the first wave of political-activity audits in 2012, though Bennett says that was likely because the group had passed a regular CRA audit in January 2011. Like other environmental groups, the foundation was the focus of formal complaints to the tax agency by EthicalOil.org for its alleged political activities, particularly with regard to the energy sector.

EthicalOil.org promotes Canadian oil exports as ethical because of the country's positive record on human rights compared with other oil-exporting nations.

## Called 'intimidation'

"Clearly, the governing party is targeting groups it sees as its political enemies and is using the taxpayer's money and a government enforcement agency to do it," Bennett said in a recent fundraising letter.

"It is an intimidation campaign designed to harass and distract organizations from doing the charitable work their donors want them to do ... it is an abuse of power."

The foundation reported revenues of about \$700,000 in its 2013 filing with Canada Revenue Agency. Bennett is the only full-time employee in the Ottawa office, with two part-time staff and a summer student.

The Sierra Club Canada Foundation has been registered as a charity since 1971. Elizabeth May, now Green Party leader, was executive director from 1989 to 2006, when the group had some 20 staff.

As of March 31, the Canada Revenue Agency had completed 21 political-activity audits, with 28 still under way and 11 still to begin. So far, five charities have received notices of the agency's intention to revoke their charitable status.

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**THE GLOBE AND MAIL** 

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## Silence of the charities

April 20, 2015

ELIZABETH RENZETTI

Posted with permission from The Globe and Mail

### *As 'enemies' of the government, many groups now live in fear of being shut down by tax audits*

Let's say you were a member of an environmental charity in the 1980s, working to bring an end to the acid rain harming Canada's lakes. That work would include policy research, public education, and pushing for political change – speaking loudly, in short. The important lobbying those groups did brought about the historic Canada-U.S. Air Quality Agreement in 1991.

Now, 30 years later, you're a member of an environmental charity working on one of the dozens of causes that threaten our collective future – climate change or species preservation or the effects of oil and gas retrieval. Every decision you make is fraught, and every word you speak is guarded, because you're afraid of attracting the attention of the Canada Revenue Agency, and its threat of an audit. You are allowed to use 10 per cent of your charity's annual resources for "political" purposes, but the rules around what constitutes political purposes are so vague, and the enforcement of them so arbitrary – to put it politely – that you don't say anything for fear of bringing on the wrath of the tax man. The tax man has the power to shut down your charity. If this were 30 years ago, the acid rain would continue to fall.

If you look at the 52 groups that have been targeted for audits since the Harper government's 2012 crackdown on political activity by charities, it's not hard to see what joins them: advocacy of causes that the Conservative government thinks are, by its own admission, "radical." I don't actually know the full list, because it's not been revealed, but last year the CBC revealed the names of seven environmental charities, including the David Suzuki Foundation and Tides Canada. The free-speech group PEN Canada and human-rights advocates Amnesty International were also targeted. Some 400 academics signed a letter denouncing the audit into the political activities of the progressive think tank Canadian Centre for Policy Alternatives.

The CRA swears up and down that there is no political motivation to the audits, but how is the public to know? The agency doesn't reveal who is the target of its audits, nor how they're prepared. Charities live in fear of catching the eye of Sauron.

"Among environmental groups right now there's a broad reluctance to speak out," says Calvin Sandborn, director of the University of Victoria's Environmental Law Centre. "It's kind of like in Nixon's America where you didn't want to be the enemy that he'd sic the IRS on."

The law students working with Prof. Sandborn recently released a report on the troubling legal underpinnings of the current audit system, and its need for reform. (Mr. Harper's government may not have been the first to target charities,



but it was certainly one of the more vehement, setting aside \$13.4-million for audits shortly after adding "environmentalists" to the roster of threats Canada faces.)

Canada's charities are hobbled in a bunch of ways, the report found. The CRA's rules around what constitutes "political activity" are murky and confusing; there is little transparency about how those rules are applied; charities subject to audit often have to spend precious resources putting together documents for auditors and providing legal training for staff; and most important, many charities are self-censoring for fear of breaching the 10 per cent rule and facing shutdown by the CRA.

Although the report does not come to any conclusions about whether the current spate of audits are politically motivated, it does find the threat alone has a sinister chilling effect: "The important thing is that the audits themselves – and the mere perception that they may be targeted – are clearly silencing charities that have much to offer society."

Other countries around the world don't hobble the political advocacy of their charities the way Canada does. In some countries, like the Netherlands, lobbying by charities is encouraged. In others, like England, the body that oversees charities is an independent entity at arm's length from government (in Canada, the CRA falls under the remit of the Minister of Revenue.) In the U.S., charities that spend too much on political activities (already set at a far more generous level than here) are taxed rather than shut down.

There are many ways to silence a political enemy, as any wily government knows. You don't have to shut them down to shut them up. It begins by thinking of them as "enemies" in the first place, and not say, as fellow citizens with a right to speak out.

"In the past," says Prof. Sandborn, "governments worked with charities to improve societies. It's a problem when that stops happening."

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