



Position Paper #80

Why anti-choice groups should not have charitable tax status

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Canada has 224 anti-abortion groups with charitable tax status as of Feb 2019 – 72% of all anti-abortion groups.¹ Of the “charitable” groups, about 145 are anti-abortion "crisis pregnancy centres" that seek to dissuade Canadians from exercising the right to abortion. The other 79 are mostly advocacy groups against legal and accessible abortion (and other human rights), including some groups that have been engaged in political activities long before the 2018 changes to the *Income Tax Act*.

This paper explains the new requirements for charitable tax status, and why we believe that anti-abortion groups still² do not qualify as charities.

The 2018 changes for charities

On July 17, 2018, the Ontario Superior Court of Justice struck down part of the *Income Tax Act* that limited political activity by charities,³ based on that restriction violating the right to freedom of expression under the *Charter of Rights and Freedoms*. The ruling immediately quashed the requirement that charities could only spend 10% of their resources on non-partisan political activities. The Liberal government accepted the decision and passed Bill C-86 in Dec 2018 that

¹ Anti-choice and Pro-choice Groups in Canada: <http://www.arcc-cdac.ca/publications.html>

² Original archived version of this paper from 2006: <http://www.arcc-cdac.ca/postionpapers/80-Charitable-Tax-Status-archived.pdf>

³ <https://www.cbc.ca/news/politics/charity-political-audits-cra-lebouthillier-farha-poverty-environmental-gray-liberal-1.4750295>

amended the *Income Tax Act* (among other measures).⁴ The Canada Revenue Agency then published new proposed charity guidelines on its website.⁵

The key change is that charities can now spend up to **100%** of their resources on political activities, including trying to change laws, provided those activities further the group's charitable purpose. Political activities are now called "public policy dialogue and development activities", or PPDDAs.

Some key charitable requirements remain unchanged, including the four allowable charitable purposes (see next section), and the prohibition of any partisan political activity – i.e., supporting particular parties, politicians, or candidates. Further, charities must benefit the public or a sufficient segment of the public – the "public benefit" test.⁶ This means the charitable purpose must be directed towards "achieving a universal good that is not harmful to the public—a socially useful endeavour."

Charitable Purposes

To be eligible for charitable registration under the *Income Tax Act*, a group must designate one of the following as its main charitable purpose:⁷

- Relief of poverty
- Advancement of education
- Advancement of religion
- Certain other purposes beneficial to the community in a way the law regards as charitable (the "community benefit" purpose)

A registered charity must devote its resources (funds, personnel, and property) to activities that advance its charitable purpose.

While a few anti-choice groups are religious charities, the majority claim "welfare"⁸ or "education" as their main charitable purpose, and some claim "community organization" or "health".⁹ But the views and missions of anti-choice groups mean that their charitable purpose activities are shaped by the goal of dissuading people from exercising their rights and advocating for the restriction of those rights. In particular, the well-intended charitable purposes of "health" and "education" are misappropriated and warped by anti-choice groups:

⁴ <http://www.parl.ca/LegisInfo/BillDetails.aspx?billId=10127729&Language=E>

⁵ <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/public-policy-dialogue-development-activities.html> Public consultation remains open until April 23, 2019.

⁶ <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/policy-statement-024-guidelines-registering-a-charity-meeting-public-benefit-test.html>

⁷ <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/applying-registration/charitable-purposes.html>

⁸ "Welfare" in the charity context has traditionally meant relieving poverty, but this is not the mission of anti-choice groups, generally speaking. CPCs do donate baby supplies but this is usually a small part of their work.

⁹ <http://www.arcc-cdac.ca/CPC-study/list-anti-choice-charities.pdf>

- **CRA’s Health definition:** “The promotion of health means directly preventing or relieving a mental or physical health condition. To be charitable, a purpose that promotes health must, as a general rule, directly prevent or relieve a physical or mental health condition by providing effective health care services or products to the public in a manner that meets applicable quality and safety requirements.”¹⁰
- **CRA’s Education definition:** “To advance education in the charitable sense means formal training of the mind, advancing the knowledge or abilities of the recipient, or improving a useful branch of human knowledge through research.”¹¹ Further, in a 1999 court decision that upheld the revocation of an anti-choice group’s charitable status,¹² the court said that information must be “provided in a structured manner that would genuinely advance education,” and put learners “in a position to weigh the viewpoints [advanced by the group] against opposing viewpoints in making up their minds one way or the other”.

Implications of new changes to charity requirements

The new rule allowing advocacy and political activities is a welcome change for charities in general. Too many have had to forgo important advocacy work because they were hamstrung by the previous rules, or have had to endure disruptive and even politicized CRA audits.¹³

However, the change may be far less beneficial for society in cases where a group’s charity status really needs to be questioned. In particular:

Churches and religious groups now have free reign to promote their religious agenda in the public square, and lobby for laws or policies that favour religion. In a secular democracy like Canada, where governments and secular charities provide most social services, where a quarter of the population has no religion,¹⁴ and where 51% of Canadians believe that religion does more harm than good,¹⁵ it is unreasonable and unfair to give religious groups and churches a privileged charitable purpose dedicated to “advancing religion”.¹⁶

Anti-choice groups and other right-wing groups¹⁷ (as well as many churches) advocate discriminatory or harmful policies or laws, which do not serve any public benefit and are not

¹⁰ <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/promotion-health-charitable-registration.html>

¹¹ <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/summary-policy-e01-advancement-education.html>

¹² Alliance for Life v. Canada (Minister of National Revenue), Federal Court of Appeal, 1999-05-05, A-94-96. <https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/item/31484/index.do>

¹³ <https://www.nationalobserver.com/2016/01/21/news/ghost-harper-cra-audits-linger-some-charities>

¹⁴ <https://www150.statcan.gc.ca/n1/pub/91-003-x/2014001/section03/33-eng.htm>

¹⁵ <https://globalnews.ca/news/3522802/religion-is-increasingly-seen-as-doing-more-harm-than-good-in-canada-ipsos-poll/>

¹⁶ Of course, it’s unlikely the CRA will ever remove the well-entrenched but now undeserved charitable tax status from churches.

¹⁷ <https://pressprogress.ca/right-wing-charities-report-zero-political-activity-again/>

based on reputable research or evidence. Many of these groups have had charitable status for decades, long before major cultural and legal changes in Canada brought more rights and equality to women, the LGBTQ2 community, and other minorities – including animals, since many hunting groups are also long-standing charities.¹⁸

But CRA’s new guidelines¹⁹ will allow all charities – including anti-choice groups, churches, and right-wing groups like the Fraser Institute²⁰ – to freely:

- Express opinions in the context of participating in developing public policy.
- Advocate to keep or change a law, policy, or decision of any level of government in Canada or a foreign country.
- Mobilize supporters and the public to contact politicians of all parties to express their support or opposition to a law, policy, or decision of any level of government in Canada or a foreign country.
- Make representations in writing or verbally to elected officials, public officials, political parties, and candidates, and appear at parliamentary committees.
- Provide forums and convene discussions involving competing candidates and political representatives.
- Communicate on social media about public policy.

The only limitations to the above activities are: 1) they must relate to the group’s charitable purpose; 2) information disseminated must be “truthful, accurate, and not misleading”; and 3) opinions expressed must “draw on research and evidence” and not be “contrary to hate speech laws or other legitimate restrictions on freedom of expression.”

In August 2018, one month *after* the 10% rule was struck down by the Ontario court, the CRA revoked the charitable status of an Ottawa mosque because “Many of the views expressed by the organization’s speakers are misogynistic, homophobic, racist and/or promote violence.”²¹ This reflects CRA’s limitation against charities engaging in hate speech, and also calls out the mosque’s anti-human rights messaging. However, the CRA’s new guidelines do not specifically prohibit activities that challenge the Charter and human rights of protected groups, other than hate speech.

Earlier 2010 guidelines that are still under review state: “activities that uphold human rights can further charitable purposes under all four heads of charity.”²² So the CRA has recognized that advancing human rights is an important charitable purpose, but in 2010, charities were not

¹⁸ <https://newspaper.animalpeopleforum.org/2004/04/01/charity-action-team-hits-charity-status-of-canadian-hunting-groups/> And: <https://sqwabb.wordpress.com/2016/12/12/the-hunter-backed-canadian-wildlife-federation-charity-is-a-wolf-in-sheeps-clothing/>

¹⁹ <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/public-policy-dialogue-development-activities.html>

²⁰ https://www.sourcewatch.org/index.php/Fraser_Institute

²¹ <https://globalnews.ca/news/4373959/ottawa-mosque-charity-hate-intolerance/>

²² <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-001-upholding-human-rights-charitable-registration.html#toc12>

allowed to challenge laws. Now they can – including even the Charter and human rights codes, apparently. This loophole must be closed.

Why anti-choice groups should not have charitable tax status

ARCC’s position is that the CRA is insufficiently aware of the wider social-political influence some charitable organizations seek to promote. Abortion has been legal for over 30 years and has become a fundamental Charter right for women.²³ Yet anti-choice advocacy groups exist to oppose this right and ultimately re-criminalize abortion. This serves no public benefit, is harmful to society, and is discriminatory against women and transgender people.

While CPCs (“crisis pregnancy centres”) have not generally been politically active, they pose a threat to Canadians’ access to necessary healthcare. They function as not only a physical barrier, but also as a cultural and psychological barrier by reinforcing abortion stigma in their “private” communications with individuals, and by fostering feelings of guilt, fear, anxiety, and confusion in clients considering abortion. ARCC’s position is that Canada Revenue Agency’s view of PDDAAs is overly concerned with public communications, neglecting the effects of “private” communications such as occur in counselling sessions at CPCs. In effect, CPCs harm their clients by opposing their right to abortion, and to unbiased healthcare.

All anti-abortion charities use medical misinformation and ideological propaganda to advance their message,^{24, 25} which cannot have any public benefit since it is not based on sound research or evidence, and fails the requirement that charities be “truthful, accurate, and not misleading.” Further, the information provided does not allow for informed decision making or the weighing of competing viewpoints, thereby not meeting the definition of “education.” And contrary to the definition of “healthcare,” anti-choice CPCs do not provide any direct healthcare – just biased counselling by untrained peer counsellors. Instead of “preventing or relieving a mental or physical health condition” – i.e., unwanted pregnancy – they hope to dissuade clients from using contraception and having abortions.

Therefore, existing anti-choice groups should have their charitable status revoked, and new groups should not be allowed to become charities.

Further, the CRA should specifically require that the political activities of charities not oppose Charter and human rights, as per the similar requirement for the Canada Summer Jobs program.²⁶

²³ <http://www.arcc-cdac.ca/postionpapers/65-abortion-charter-right.pdf>

²⁴ <https://www.actioncanadashr.org/abortion-myths/>

²⁵ See Appendix 1 and 2: <http://www.prochoiceactionnetwork-canada.org/Exposing-CPCs-in-BC.pdf>

²⁶ <https://www.canada.ca/en/employment-social-development/services/funding/canada-summer-jobs/screening-eligibility.html>