BLUMBERGS

# Canada Without Poverty vs. Attorney General of Canada – a pyrrhic victory for CWP and a disaster for the charity sector

By Mark Blumberg (July 30, 2018)

On July 16, 2018 there was an Ontario Superior Court decision in the case of Canada Without Poverty vs. Attorney General of Canada. This decision overturned the long-held restriction on Canadian charities spending more than 10% of their resources on non-partisan political activities. The decision may allow Canadian registered charities to carry on unlimited non-partisan political activities that are connected to their purposes but does not allow charities to be involved in partisan political activities. It is not clear whether this case will be appealed by CRA, whether Finance will bring in new or different restrictions on political activities or there will be other consequences as we discuss below.

Some are very pleased with the decision viewing it as providing 'freedom of expression' for Canadian charities and with this greater flexibility charities will be able to have greater impact. Others are very concerned with the long-term impact of this decision on the charity sector in Canada. There is a fear that by saying that registered charities have freedom of speech will essentially bring the US case *Citizens United* to Canada. Citizens United was a precursor to huge amounts of dark money entering the US political system and ultimately created the environment that elected Donald Trump as President of the United States.

There is a legal adage that "hard cases make bad law". Wikipedia says:

> The phrase means that an extreme case is a poor basis for a general law that would cover a wider range of less extreme cases. In other words, a general law is better drafted for the average circumstance as this will be more common. … The legal scholar Glanville Williams questioned the adage's usage in 1957, writing, "It used to be said that 'hard cases make bad law'—a proposition that our less pedantic age regards as doubtful. What is certain is that cases in which the moral indignation of the judge is aroused frequently make bad law.

I am sympathetic to some of the views that CWP has on poverty and the importance of government working hard to eradicate poverty.

For those interested in the case who have not been following the last 8 years of discussion here is an overview of the background.

1) There are almost 200,000 non-profits in Canada. It is easy to set up non-profit in Canada. We have about 80-100,000 non-profits that are not registered charities. They are and have always been free to be involved in as much partisan and non-partisan activities as they want. They have and always have had "freedom of speech".

2) We have a type of non-profit that has special requirements and rules and receives special privileges over and above other non-profit organizations and we call it a "registered charity" and there are about 86,000 of them and they are regulated under the Income Tax Act of Canada.

3) The advantages of being a registered charity is that if a person (individual, corporation etc.) makes a donation to the registered charity they receive an official donation receipt, which depending on the donor and the type of property donated could save the donor between 40 – 70% of the value of the donation in taxes. So a wealthy person creating a private foundation for $100 million may only cost them about $30 million but it costs the Federal and Provincial governments (or other taxpayers/public) about $70 million. Also another advantage of being a registered charity is that it can more easily receive grants from some foundations.

4) This generous tax incentive comes with many requirements. Only non-profits in the areas of poverty relief, education, religion and certain other areas determined by the courts to be charitable are allowed to have the status. The organization must have a "public benefit", and the non-profit has to go through an application process whereby the Charities Directorate of the Canada Revenue Agency checks whether there may be other concerns such as undue private benefits, inappropriate political activities or a host of other issues. See my article Top 68 CRA Reasons for Denying your Canadian Registered Charity Application

5) One of the sets of rules for Canadian charities was certain limits on political activities. Canadian charities are not allowed to carry out any "partisan political activities". Canadian charities can carry out non-partisan political activities within certain limits. Meetings with members of parliament or elected officials were essentially unlimited. But public facing political advocacy was limited to between 10-20% of resources depending on the size of the charity. Also if a charity had not spent any resources on political activities in the previous 2 years then the amount could be averaged over three years allowing charities to spend between 30-60% of their resources on political activities in a given year.

The CRA guidance suggests ways in which Canadian charities can essentially conduct unlimited political activities in their guidance by noting "a charity wishing to carry out activities that go beyond the limits permitted by the Act may establish a separate and distinct organization that will not be a registered charity and therefore not able to issue charitable receipts. No limitations are placed on the political activities of such a body; it has complete freedom within the law to support any cause it chooses. But the charity

cannot fund that separate organization or make resources available to it for any otherwise impermissible political activity."

6) This is how the system worked and in 2011/2012 the former Conservative government was very concerned about environmental charities opposing certain pipelines in Canada. Perhaps more accurately the Conservatives had a hissy fit on the issue. Instead of the Conservatives complaining to CRA about these environmental charities, (when a small number of them were clearly not abiding by the rules), the Harper government, as it was known at the time, allocated over a 3-year period significant funds to the CRA to carrying out various initiatives, including most importantly, to audit more charities in the political realm. $13m was allocated over 3 years for increased transparency, education and the audit of 60 charities, (although only 52 were ever audited). The Harper initiative was like taking a Boeing 747 to fly to the corner store to pick up milk. The Conservatives complained of "foreign money" when a miniscule percentage of funds coming from foreign charities into Canada were for political issues. The Conservatives complained about environmental charities being involved with "money laundering" and I have never seen any evidence of that.

7) Let us be clear that we know very little about which charities were audited under the program because of secrecy provisions in the Income Tax Act which survive today. Only about 1/3 of the 52 charities have come forward to say they were audited and NONE of those registered charities have been prepared to publicly provide copies of the letters from CRA to the charity outlining non-compliance. So if you think that you know what happened in those audits, you really don't. CRA has said that 7 charities were going to be revoked – but CRA said the predominant reason for each revocation was other factors (which are not identified) rather than political activities. This is very important and we will discuss it later. Some of those other factors could be unrelated business activities, inappropriate receipting, not maintaining direction and control over resources sent to a foreign country, to name but a few reasons for revocation. If you are wondering how it is possible that political activities were not dominant reasons then see these letters from the CRA to Greenpeace Canada Charitable Foundation from about 20 years ago (in the Pre-Harper era), when it was revoked and included such reasons like gifts to non-qualified donees, lack of direction and control over funds provided to another organization, loans to a non-qualified donee, disbursement quota issues, and issuance of receipts when significant advantages were received. It is amazing to me how many thoughtful, caring and brilliant people don't seemed to be worried that when they make pronouncements on the audit story how little information they have on it. Very few people are asking that the law be changed to force CRA to disclose this information or alternatively putting pressure on these 7 charities to disclose the correspondence.

8) The Liberals hammered the Conservatives on the political activities audit program while in opposition and promised to 'modernize' charity law in Canada and stop the 'harassment' of charities. Then the Liberals came to power. Over the last two years they had consultations on political activities. The Liberals claimed to have about 20,000 submissions but in fact there were about 460 'unique submissions' and 19,500 email forms/petitions on the issue. They "suspended" certain audits and consequently flip flopped on what they described to be the fundamental importance of politicians not

interfering in CRA regulatory matters, which they had promised in their first year. With the very limited information available it appears that the Liberals have interfered more with the independence of the CRA than the previous Conservatives did. Then after the consultation, the Liberals received a report from a CRA consultation panel on March 31, 2017, and there has been no government response since then. The last Federal Budget of 2018 stated "The Government will provide a response to this report in the coming months." As I noted in February 2017, "This will be disappointing for some registered charities who were looking for charities to be able to conduct either far more political activities or unlimited political activities." What seemed urgent while in opposition, appears to be less urgent when in government. Political activities have been a political football and unfortunately all of the political parties have conveniently used it to further their own agendas at the expense of the charity sector.

9) On July 16, 2018 there was the Ontario Superior Court decision in Canada Without Poverty vs. Attorney General of Canada, which overturns the restriction on Canadian charities only spending 10% of their resources on non-partisan political activities. I was shocked by the decision but not totally surprised – any judge at a lower court level can declare any piece of legislation unconstitutional.

In 2016 I wrote a blog on the application by CWP. Here is what I said:

> "I am not a constitutional expert but I think/hope that the application does not succeed. The US had a similar case in the Supreme Court and it was called Citizens United. We don't need to look too far to see the disastrous consequences of Citizens United.
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> Citizens United has a role to play in the current US presidential election. Donald Trump wants US charities to have a greater role in political activities and to be able to engage in partisan activities. He supports the US Supreme Court decision in Citizens United. The Democrats on the other hand want to overturn "Citizens United" to limit "free speech" i.e. spending by the super wealthy on political and partisan activities.
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> The Chronicle of Philanthropy recently noted:
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> "…the Republican Party platform urges the repeal of the Johnson Amendment, which bars charities and foundations from spending money in election campaigns. The Democratic Party platform, on the other hand, calls for a constitutional amendment to overturn Citizens United, the 2010 U.S. Supreme Court case that allowed advocacy groups to raise and spend unlimited amounts of money on behalf of candidates in elections. The parties have thus taken opposing sides in the latest round of the debate over the proper balance between public authority and private resources in American elections."

I doubt that the Canadian application will be successful. However, if it is successful it will either result in a large amount of funds entering the charity sector for partisan purposes with all attendant tax benefits that ironically primarily benefit the super wealthy. Alternatively, the charitable system - just like a chair, is not going to stay in the same place if you remove a leg or two. If the application is successful there will be tremendous pressure to eliminate the charitable tax deduction and make a far narrower deduction for a smaller set of organizations. Perhaps the $4 billion in tax incentives for donations can be used instead to provide more programs for those who are disadvantaged in our society.

With the Harper government gone I was mildly hopefully that we could move on from the 'charities and political activities' issue. The issue has been characterized by ridiculous extremes – some saying charities should not be involved in any political activities of any kind and others wanting essentially unlimited political activities by charities. There was also a third group, perhaps a subset of the second group, who essentially said that the rules are impossible to understand and therefore should not be enforced.

The rules as they are currently drafted provide Canadian charities with huge opportunities to be involved in political activities. It is very important that charities are involved in political activities as many important structural issues will only change with political action. That being said only five hundred charities typically claim that they're doing political activities when we know that for more or involved in political activities according to studies by organizations such as Imagine Canada.

We also know that Canadian charities claim to have spent approximately $25 million per year on political activities. Yet if Canadian charities have expenditures of over $245 billion a year in theory Canadian charities could in fact spend almost $25 billion on political activities. In other words, Canadian charities under the current rules can spend 1000 times more funds on political activities than that which they claim to spend. Obviously that will never happen but fundamentally the issue holding back charities is not the rules.

Organizations that are committed to primarily being engaged in political activities should not seek charitable status in Canada. Unfortunately a small number of "charities" are causing a lot of stress and distraction for the rest of the charitable sector.

After reading the decision, here are a few of my thoughts on the case:

a) Apparently CRA alleged that CWP was spending almost all of their resources on political activities. Sounds exaggerated. However, the judge found that CWP was spending all their resources on political activities!

b) The decision refers to only the "10% limit on resources" and makes no mention of CRA's position in their guidance of higher thresholds for smaller organizations of up to 20%, or the ability to average expenditures over 3 years, which allows those smaller organizations to even spend more as noted in section 5 above. It is just curious that it was not mentioned in the decision as clearly the judge has read the whole CRA guidance.

c) The CRA rules are generous in allowing, for example registered charities to meet with government officials and elected representatives and having that generally be considered to not fit within the political activity limitations. The CRA Guidance provides:

> "7.3 Communicating with an elected representative or public official
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> When a registered charity makes a representation, whether by invitation or not, to an elected representative or public official, the activity is considered to be charitable. Even if the charity explicitly advocates that the law, policy, or decision of any level of government in Canada or a foreign country ought to be retained, opposed, or changed, the activity is considered to fall within the general scope of charitable activities. (Footnote 7). However, such activity should be subordinate to the charity's purposes and all representations should:
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> - relate to an issue that is connected to the charity's purposes
> - be well-reasoned (or where time constraints make this impractical, should be based on a well-reasoned position and such a position should be submitted in a timely manner to the elected representative or public official concerned)
> - not contain information that the charity knows or ought to know is false, inaccurate, or misleading

For most charities if they engage in political activities it would be to meet with government officials or elected representatives. In paragraph 6 of the decision it notes "in this respect, political activities and charitable activities are not always treated as distinct." Actually I would view a meeting of a charity with Members of Parliament to discuss changes to legislation as being political but for purposes of the ITA CRA is excluding them. CRA is quite cognizant of the impact of this concession under the ITA and the CRA footnotes this section with "A charity engaging in this type of activity may be required to register as a lobbyist organization. For more information, visit Office of the Commissioner of Lobbying Canada"

Unfortunately, because CRA was being generous in 2003 (probably because of certain interest groups or politicians requesting this) it is now used against them.

d) In paragraph 10 of the decision it relies on academic literature to that there is no widely agreed upon definition of what is political. Yes that may be true. But there are cases in the charity context that do define for charitable purposes what is political and those cases are largely ignored in this judgement. The decision then goes on to say "can one coherently distinguish between political activities and charitable activities, or, for that matter, any other kind of activities?" [my emphasis] It is put as a question but the judgement seems to favor the answer that you cannot distinguish activities. I can definitely see the argument, but don't agree with it, that it is impossible to distinguish between any activities – political, fundraising, administration, social, investments, or charity. Can we really not distinguish between any kind of activity. Where does that line of reasoning ultimately lead us? I can see some libertarians loving this decision!

e) The decision notes that "The Applicant views the limitation on its public communicative activity to 10% of its resource use as imposed by the CRA Policy Statement regarding s. 149.1(6.2) to run counter to its charitable purposes and its overall goal of ending poverty through advocacy." Interesting that the court provides the legal objects of CWP in full in judgment but then notes that CWP has the "overall goal of ending poverty through advocacy". Then in paragraph 39 the decision notes that CWP "whose goal is entirely wrapped up with communicating to the public that a law, policy or decision at any level of government should be changed or retained for the purpose of relieving poverty." I think both but especially the 2nd explanation of the goal is a more accurate definition of their purpose than the legal purposes referenced in the decision. In other words, the real purposes of CWP is "communicating to the public that a law, policy or decision at any level of government should be changed or retained for the purpose of relieving poverty." I think we need organizations to advocate on all sorts of important issues and we have tens of thousands of them but if they are single mindedly focused on changing legislation they are not registered charities. They are called non-profit organizations. Some might call them non-governmental organizations or NGOs. We have so many non-profits that are not charities and they are so easy to be established that we don't even know how many we have. There is no registry of them. Estimates are there being between 80-100,000 but I have seen much higher estimates as well. Do we want many of these organizations to also apply to become registered charities? Do we want everyone who has a political view to set up a registered charity and have their "freedom of speech" subsidized more than other Canadians because they have the money and very strong political views.

f) In paragraph 42 of the decision it notes "Simply put, there is no way to pursue the Applicant's charitable purpose – using methodology that is recognized as necessary by Parliament itself- while restricting its politically expressive activity to 10% of its resources as required by CRA under s. 149.1(6.2). As counsel for the Applicant points out, **the Applicant does not claim a right to engage in political objectives or purposes**; rather, it seeks to pursue its existing charitable purpose

through means which are self evidently expressive and protected by s. 2(b) of the *Charter.* In effect, the language of s.149.1(6.2), and CRA's 10% rule in application of that statutory provision, makes the Applicant's charitable purpose untenable." [my emphasis in bold] I don't agree. It is quite clear from paragraph 39, which is only a few paragraphs earlier that CWP "whose goal is entirely wrapped up with communicating to the public that a law, policy or decision at any level of government should be changed or retained for the purpose of relieving poverty" is a political objective or purpose and this decision seems to not see any problem with having a political purpose in addition to conducting exclusively political activities – because as the decision sees it exclusively political activities is the same as exclusively charitable activities.

g) The decision notes "[43] Moreover, the evidence is that the Applicant cannot function- or will have difficulty in functioning - in the absence of registered charitable status. The Attorney General presents no evidence that counters the Applicant's description of its needs. The charity registration platform created by the *ITA* exists to support charitable works, and enforcement of s. 149.1(6.2), in burdening free expression, seriously impairs those works." This appears to be a bit of an exaggeration and ignores the 80-100,000 non-profits that are not charities. There are some many non-profits that are well financed and many of them better financed than registered charities. Furthermore, if one needs charitable status to have freedom of speech then should we not urgently be providing every Canadian individual with registered charity status so that they have freedom of speech? Of course, the answer would be that if everyone was a registered charity then pretty much no one would be paying taxes – a wonderful dream for libertarians but not sure how that advances the idea of reducing poverty in Canada. There is a very valid argument that we need more redistribution of wealth in Canada – but providing wealthy people with the ability to receive unlimited tax benefits for their political speech not only reduces funds that government would have to reduce poverty but as we have seen in the US with Koch and others results in a particular political climate that is not conducive to helping poor people.

h) It is ironic that the decision refers to a case "Harper v. Canada" from 2004 in the Supreme Court which dealt with some guy by the name of "Stephen Joseph Harper" challenging the Canada Elections Act as limiting third party election advertising to only $3000 per district and $150,000 nationally. The decision does not quote the majority decision but rather the minority dissenting decision:

> The right to participate in political discourse is a right to effective participation - for each citizen to play a 'meaningful' role in the democratic process ... s. 2(b) aspires to protect 'the interest of the individual in effectively communicating his or her message to members of the public ... ' The ability to engage in effective speech in the public square means nothing if it does not include the ability to attempt to persuade one's fellow citizen through debate and discussion. This is the kernel from which reasoned political discourse emerges.

The argument that Harper made was that such restrictions violated the Charter – freedom of expression, freedom of association etc. – but keep in mind that those rules apply to everyone, not just a narrow subset receiving special privileges ie. registered charities. If the SCC found the election advertising rules ultimately to be acceptable to encourage electoral fairness and to protect the integrity of the financing regime for candidates and parties, then I don't see why the SCC would have a problem with limitations on the ability of registered charities to be involved in non-partisan political activities, especially when the evidence seems to indicate that those limitations only provide a problem perhaps for less than 1 in 1000 charities. Canadian charities who currently say they spend about $25 million per year under the current rules could spend about 1000 more i.e. $25 billion (or 10% of the $250 billion budget of the charity sector). The SCC talks about the rules minimally impairing the right to free expression and this could be similar. But is it not ironic that a small anti-poverty group working to eliminate poverty in Canada is essentially aligning itself with the opinions of an earlier and more strident Stephen Harper when he was president of the National Citizens Coalition in undermining protection in our tax system. Stephen Harper won at 2 lower court levels but most importantly lost at the Supreme Court.

i) The CWP decision is quite strident in providing "[47] The Applicant, a registered charity, has a right to effective freedom of expression- i.e. the ability to engage in unimpaired public policy advocacy toward its charitable purpose. The burden imposed by the impugned section of the *ITA* and by the policy measure adopted by CRA in administering that section runs counter to that right." I am generally uncomfortable with the equation of "registered charities" with individuals as if they are the same but more importantly if effective freedom of expression must be "unimpaired" why should charities be impaired by commenting on important topics like which political party or candidate should you financially support or vote for. It seems a pretty big and arbitrary impairment if you take this freedom of expression above all else view.

j) The decision does not find any legitimate reason to limit the non-partisan political activities of registered charities. In paragraph 66 the decision notes: "there is no justification for the infringement of the Applicant's right to freedom of expression under s. 2(b) of the Charter." Not some justification or a little justification or questionable justification but "no justification". Amazing how all those judges over decades have been so wrong about this issue until now.

k) The decision notes "The legislative purpose appears to be to minimize the very activity that the government supposedly wants to foster- a registered charity's ability to participate in public policy dialogue where these activities advance its charitable purpose." Actually, I don't think it is contradictory. There are tens of thousands of registered charities working hard every day to conduct charitable activities and even though they get generous tax incentives from the system, they are doing important charitable work and have particular expertise, knowledge and

experience. BECAUSE of their charitable work, it is a good idea that they do participate in the non-partisan political activities and the 10% allows for about $25 billion to be spent by registered charities on political activities. That is different than a political activist organization, for example Ethical Oil, who advocated unceasingly in public and private for what they believed were the right political decisions by government. Why should Ethical Oil become a registered charity? What charitable activities is Ethical Oil doing? What is good for the goose is good for the gander and this decision opens up a hole in the charity legislation system that could overwhelm the whole sector. As we have seen from the US, little changes that many don't understand the importance of at the time, sometimes cumulatively over years having very negative impacts.

l) Normally when one has a complicated issue involving balancing of rights and when the government is involved in a process to decide how to deal with the important issues, the courts will give the government time to make changes to the legislation, if they felt it contravened the Charter. In this case the decision is effective immediately. On the bright side, perhaps this will force the Liberals, (who seem to make lots of promises to lots to different constituencies without necessarily acting on them), to move more quickly on their charity regulation reform agenda. We can then stop talking about whether charities are allowed to conduct political activities and work hard to encourage some large charities (who ostensibly do no political activities), to set aside 1% or so of their budget to do political activities so it is well done and well resourced. Ok I am exaggerating trying to get them to spend 1/10$^{th}$ of one percent on political activities may be a better even if unattainable goal!

m) This may be a pyrrhic victory for CWP and other groups caught in the political activities audit program. All these groups may still be revoked because the predominant reason according to CRA is the violation of other requirements under the Act, but the letters have not been released so we don't know the details. Having a court set aside 1 of say 10 reasons for revocation does not mean that you get to keep your registered charity status. I assume because none of the charities have released their letters publicly from CRA, that there are probably significant non-political non-compliance issues involved as well, and as I have been complaining about for years the public, (including MPs and Senators), are completely in the dark about the CRA allegations. It might be another 2-3 years before any of the public gets to read those letters. Is this how we run a democracy? It is not the CRA who is withholding information – it is the ITA that prohibits CRA from releasing vital information on charities, in a way that some other charity regulators are not constrained. Finance looking to you on that one!

n) This case is written in terms of freedom of expression, but it is really about money more than freedom of speech. People who work or volunteer with charities are free to express their personal views on their own time and that can even include partisan activities. However, some want more - the ability to be paid using a charity's resources, which are subsidized by taxpayers to express their political views and to not have to do any charitable activities. The 10% - 20% is not enough.

They want 100%. As the case notes there is difference between “free speech” and “subsidized speech”.

o) The decision is sympathetic to the idea that the 10% limit of non-partisan political activity is arbitrary. In my view it can be argued that any number is arbitrary – how is 49% less arbitrary. Perhaps a total prohibition of charities conducting any political activities (i.e. 0%) is less “arbitrary” but not helpful for our country or the charity sector. I don’t remember many progressive groups making that argument so vociferously when a number of right to life groups were revoked in the past.

p) The court case still does not allow for direct or indirect partisan activities. Some groups that are spending 100% of their funds on “non-partisan” political activities will likely stray into at least some direct or indirect partisan activities and they can therefore be revoked even under this decision. If you are going to do lots of political activities it is a far better strategy to have a non-profit working alongside a registered charity as noted above in section 5 and as many charities have done over the last few decades. The non-profit cannot issue official donation receipts and other than lobbyist registration and third-party election advertising there are no other restrictions on their political activities – either in terms of resources or whether it is partisan.

q) The court case still restricts any political activities to be related to the objects of the charity. If one thinks it is unconstitutional to impair the freedom of expression rights of registered charities then this is a huge impairment. If you have any particular objects then you cannot discuss the vast majority of political topics that are outside of your objects. I guess all impairments are equal but some impairments are more equal than others.

r) I have argued that some groups have used the debacle of the Harper political activities audit as a successful fundraising tool. It is interesting to note that CWP in 2017 had the highest amount of revenue in over 11 years. Clearly something was working in the fundraising department. Also their total assets were the greatest in over 10 years. This is consistent with my argument that this topic has been good for raising the profile of a small number of groups and increasing their revenue, but terrible for the sector as a whole.

s) I have already had calls from a number of controversial and purely political activity non-profit organizations looking to become registered charities. I have noted that before they gleefully decide that they want to follow this decision into becoming a registered charity, they should realize that it may be appealed or new legislation may be brought in to regulate non-partisan political activities of registered charities - but more importantly political activities is only one reason for revocation .There are many other reasons that CRA can revoke your status, if they think that you are not a charity and it is easier to become a registered charity than to give up the status without losing all your property. Also no need to rush – the CRA charity application process for an operating registered charity typically takes a year.

There are a number of options for the Liberal Government and CRA moving forward.

1) **Appeal.** This is a lower court decision and can be appealed to the Ontario Court of Appeal and if necessary further to the Supreme Court of Canada. CRA can appeal the decision on many grounds.

2) **Finance can introduce changes to the ITA.** The Department of Finance can bring in new legislation as has been promised for years to "modernize" the framework governing registered charity, which could adjust the rules on the amount of political activities that a charity can undertake and/or how they are defined. The Liberals promised that in their last budget.

3) **Leave the decision to stand.** Finance and CRA can decide to do nothing. This will open the flood gates like the US experienced with Citizens United and the public increasingly will be repulsed by a small number of 'charities' who obsess exclusively about controversial political issues such as abortion, cutting taxes, sex ed curriculum, reducing the minimum wage etc. and the quality of the information provided by some is closer to propaganda than educational. In the US it resulted in Trump-not sure what it will bring to Canada. Perhaps we will get Ezra Levant as our prime minister.

4) **Finance can remove tax incentives for donating to charity.** Finance can change the tax incentives for donating to a charity (or a subset of charities) like Australia has with its deductible gift recipient rules (churches generally don't get to issue them); or take away the generous tax incentives for charitable donations. This has already happened in the US in the last year where Trump's reforms of the tax system have resulted in 19 out of 20 Americans when they donate to charity now receiving no tax benefit. If Finance abolishes the donation tax incentive, this will remove the major incentive for being a charity and not every political action committee will want to be a charity. Many in the sector may not be happy with this outcome but it is a potential logical next step to follow in the footsteps of the CWP decision.

5) **Impose limitations on government funding.** Almost 70% of the revenue of the charity sector comes from government funding. Donations are only about 5% of the revenue of charities. We might see some additional and unfortunate restrictions on organizations that receive government funding as it relates to political activities. A few years ago, the Ontario Liberal government (a theoretically progressive government) under the BPSAA, prohibited certain groups that receive Ontario government money from spending any of that money on lobbying the Ontario government. Not a concern to groups that never have and never will receive government funding, but a very big concern to about 25% of charities who receive government funding and again a potential logical next step to the CWP decision.

Within CRA I can only imagine that there are differing viewpoints on this decision. There are probably some who are delighted that the courts have said there can be unlimited non-partisan activities, because they then no longer need to police it and almost no one

at the CRA was interested in policing resources spent on political activities. CRA is far more concerned by issues relating to abusive receipting, undue private benefits, financing terrorism etc. There are probably others who are worried that this is going to open up a floodgate of what you used to call political organizations that are now going to be called registered charities, which will undermine the public's trust in the charity sector. In the US where the floodgates have been open for a number of years and the IRS' tax-exempt area has been decimated you have human rights groups point out that dozens of white power or Neo-Nazi groups seem to have no problem registering in the US. I know that Canada is different than the US, but we are not that different.

Andrew Coyne's article in 2014 "Problem with charities isn't their politics, it's their generous tax credit" may unfortunately be prescient. He argued that the rules were fine but perhaps if others who argued the whole system of restricting charities and their political activities is just too complicated and that registered charities should have unlimited ability to carry out political activities were to prevail, then registered charities will lose the tax privileges of issuing receipts.

This is going to be a big mess and a distraction for the sector but as with many messes it takes years to see the reactions and counter reactions and the damage.

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