



Government of Canada
Permanent Mission of Canada
to the United Nations and the
Conference on Disarmament

Gouvernement du Canada
Mission permanente du Canada
auprès des Nations Unies et de
la Conférence du désarmement

Note No.: GENEV-1601

Reference: Response to the Joint Communication from Special Procedures

The Permanent Mission of Canada to the Office of the United Nations at Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to acknowledge receipt of the joint letter AL CAN 2/2015 from the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders dated 29 June 2015, in which the Special Rapporteurs request further information concerning protracted undue interference in the form of intrusive audits and threat of revocation of charitable status for registered charities.

The Permanent Mission of Canada to the Office of the United Nations at Geneva would inform the Special Rapporteurs that this request has been forwarded to the appropriate authorities for consideration.

The Permanent Mission of Canada to the Office of the United Nations at Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 29 June 2015.



Canada

RESPONSE OF CANADA TO THE JOINT COMMUNICATION FROM THE SPECIAL
RAPPORTEUR ON THE RIGHTS TO FREEDOM OF ASSOCIATION AND OF ASSEMBLY
AND THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS
DEFENDERS

Introduction

1. On 29 June 2015, the Special Rapporteur on the Rights to Freedom of Assembly and of Association and the Special Rapporteur on the Situation of Human Rights Defenders (the "Special Rapporteurs") sent a joint letter to Canada, reference AL CAN 2/2015.
2. By way of this letter, the Special Rapporteurs communicated information that they had received concerning what was described as "protracted undue interference in the form of intrusive audits and threats of revocation of charitable status for registered charities."
3. Canada is a steadfast supporter of the UN and its founding values, and is committed to maintaining a constructive dialogue with the UN human rights bodies, which are a vital aspect of a strong and effective international human rights system. Canada welcomes the opportunity to respond to the information conveyed in the Special Rapporteurs' joint letter.

The Protection of Freedom of Expression and Association in Canada

4. Canada attaches great importance to the rights to freedom of expression and association. We take very seriously our obligations under the *International Covenant on Civil and Political Rights* ("ICCPR") to uphold these rights, which are fundamental to a free and democratic society. These rights are constitutionally protected in Canada through the *Canadian Charter of Rights and Freedoms* ("the Charter"). The Charter's constitutional status means that it is paramount over ordinary legislation.
5. Section 2(b) of the Charter protects "freedom of thought, belief, opinion and expression, including freedom of the press and of other media of communication." There is a significant body of caselaw in which courts have outlined strong protection for a broad range of expressive activities.
6. Section 2(d) of the Charter protects freedom of association. The Supreme Court of Canada has described the purpose of this guarantee as "the achievement of individual potential through interpersonal relationships and collective action."¹
7. The rights in the Charter, including freedom of expression and association, are guaranteed subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
8. All legislation and government action in Canada must comply with and are subject to scrutiny under these constitutional guarantees. The courts are empowered to strike down laws that are

¹ *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016, 2001 SCC 94

found to be inconsistent with them, and to provide other appropriate and effective remedies where violations of these rights are found.

9. Canada benefits from a thriving civil society that makes full use of the freedoms of expression and association that are guaranteed by the Charter. Where Canadians consider themselves to be subject to a violation of their rights, their avenues to advocate, challenge and seek redress are accessible and well-established.
10. Civil society organizations play an important role in the protection and promotion of human rights in Canada. Among other things, they monitor governmental activities, help individuals obtain redress in cases of violations of human rights and carry out educational programs. Civil society organizations operate freely in Canada and often benefit from advantageous tax exemptions and other tax benefits and may also receive governmental financial support to carry out their activities. However, many organizations also carry out their work without government funding or the type of regulatory oversight which necessarily accompanies special tax treatment such as charitable status.

Governance of the Canada Revenue Agency ("CRA")

11. The CRA is Canada's tax and benefits administrator, established under the *Canada Revenue Agency Act*.² In addition to the *Income Tax Act* and the *Excise Tax Act*, the CRA administers legislation for the Canada Pension Plan, and the Employment Insurance Program. The CRA is also responsible for registering and monitoring Canadian charities, collecting tobacco taxes and duties, ensuring registered pension plans comply with the regulations governing their administration, and collecting many non-tax debts for the federal government. The CRA also collects taxes on behalf of most provincial and territorial governments.
12. Although the Minister of National Revenue is accountable to Parliament for the CRA, the day-to-day activities of the CRA are managed by the Commissioner, a professional public servant. Day-to-day activities, including the selection of organizations and individuals for audit, are conducted without political interference.

Tax Treatment of Non-profits and Charities

13. Under Canada's *Income Tax Act* a number of organizations, including charities and non-profit organizations (NPOs) are provided an exemption from income tax. Depending on the type of entity, different criteria are used to determine their on-going eligibility for tax exemption.

NPOs

14. NPOs are clubs, societies and associations which are organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit. NPOs, pursuant to s. 149(1)(l) of the *Income Tax Act*, are generally not liable for the payment of income tax. The definition of NPO is broad and, as such, organizations such as advocacy groups can generally qualify as NPOs and take advantage of the tax exemption granted to NPOs.

Registered Charities

15. Canadian registered charities are also exempt from paying income tax. Additionally, the *Income Tax Act* provides for additional tax benefits, and associated responsibilities, for organizations

² S.C. 1999, c. 17

that are registered charities. Notably, the *Income Tax Act* provides special incentives to encourage individuals and corporations to make donations to registered charities. Registered charities can issue receipts for donations that they receive. Individual donors are eligible for a tax credit that reduces tax owing, and corporate donors are eligible for a tax deduction that reduces taxable income. The foregone government revenue on the income of donors that would otherwise be taxed in effect represents a subsidy from the government to registered charities.

16. There are more than 86,000 registered charities in Canada, which issued receipts worth just over \$14.8 billion in 2013. This resulted in estimated federal foregone revenue of \$2.9 billion and additional provincial/territorial foregone revenue of \$1.1 billion.
17. To be eligible for this preferential tax treatment, a charity must be established for exclusively charitable purposes and must devote all their resources to charitable activities. The *Income Tax Act* does not define what is charitable, rather this has been interpreted by the courts to mean the relief of poverty, the advancement of education, the advancement of religion, or other purposes beneficial to the community in a way that the law regards as charitable.³ Although the common law does not recognize political purposes as charitable, the *Income Tax Act* nevertheless recognizes that a limited amount of resources may be devoted to political activities where these are meant to further one of the charity's recognized charitable purposes.

Audits of Registered Charities

18. Given the many privileges it provides, registration as a charity results in an obligation to follow the longstanding rules for charities under the law. Because the charitable sector is supported by all Canadian taxpayers, these rules are in place to afford overall confidence in the charitable sector, ensuring that charitable donations are being used for charitable purposes.
19. The Government of Canada has an obligation to protect the integrity of the tax system and the charitable sector by ensuring that all registered charities follow the rules in the *Income Tax Act* and its Regulations.
20. The CRA's Charities Directorate fulfills this responsibility through a balanced program of education, client service, and responsible enforcement. Audits are an important part of the regulatory process. As a matter of longstanding practice, the CRA audits about 1% of the charitable sector every year, which generally results in 800-900 audits of registered charities across Canada. A charity can be selected for audit as a result of random selection, referrals from other areas of the CRA, complaints from the public, articles in the media or other publicly available sources, or to review specific legal obligations.
21. It is important to note that because the CRA places such importance on education, awareness, and client service, the majority of charities are able to meet their legal obligations. On average, 93% of charities selected for audit are able to continue their charitable work and, if necessary, work with the CRA to resolve any issues identified. Only a very small portion of the CRA's audits result in revocation of the charity's registration.

³ For a thorough discussion, see *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*, [1999] 1 S.C.R. 10. Available online: <<http://canlii.ca/t/1fqmt>>. Last accessed: July 20, 2015

22. Fairness is the cornerstone of the CRA's audit process. Throughout the audit process, a charity is given opportunities to provide explanations and/or further information before the CRA comes to a final decision on whether the charity is complying with the requirements of the *Income Tax Act* and its Regulations.
23. Once a final decision has been made, the charity is informed in writing. Following this, the charity can object to the Appeals Branch. The Appeals Branch is independent from the Charities Directorate, and its mandate is to conduct fair, transparent, and impartial reviews of the decisions rendered by the CRA. If a charity disagrees with the CRA's decision concerning its objection, the charity then has the right to appeal to either the Federal Court of Appeal, or the Tax Court of Canada, depending on the type of appeal.

Charities and Political Activities

24. The Government of Canada acknowledges that charities play an important role in our society and provide valuable services to Canadians. Because of their experience and the nature of their work, charities can make valuable contributions to public policy in Canada. Canadian law recognizes the importance of these contributions by allowing charities to devote a limited amount of their resources to non-partisan political activities, provided they are connected to their charitable purposes. The CRA's review of the political activities of Canadian registered charities does not change these rules, nor diminish the important role charities play in Canadian society.
25. A registered Canadian charity must devote its resources to the charitable purposes for which it was registered. Under the *Income Tax Act* and common law, an organization established for a political purpose cannot be registered as a charity. However, a registered charity may take part in limited, non-partisan political activities as a way of furthering its charitable purposes. Note that this is not a change in law, as the rules regarding the political activities of charities have been in effect since 1985 and apply only to charities registered for income tax purposes.
26. In 2012, the Government of Canada provided the CRA with \$13.1 million over five years to help charities understand and respect the rules related to political activities.
27. These additional funds are being used to:
 - Improve transparency with new reporting requirements for charities: the annual Registered Charity Information Return (T3010) was amended to require the disclosure of additional information about a charity's political activities.
 - Increase CRA's education and information activities: as part of the CRA's increased education activities, information has been coordinated on the CRA website (www.cra.gc.ca/charitiesandgiving) for the ease of use of charities seeking guidance. The CRA website now includes new pages of comprehensive information on the rules registered charities must follow,⁴ as well as frequently asked questions and a self-assessment tool.
 - Enhance CRA's compliance activities: the CRA has increased its monitoring and compliance activities, to ensure charities are complying with their obligations under the

⁴ See, for example, Canada Revenue Agency, Policy Statement CPS-022. Available online: <www.cra.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>. Last accessed: July 14, 2015.

Income Tax Act. These activities have included advising charities of possible T3010 reporting errors, sending reminder letters and conducting audits.

28. More specifically, the CRA is conducting 60 audits focused on political activities over four years, from 2012 to 2016. These are in addition to the other 3,600 audits of charities undertaken by the CRA through its regular audit program over the same period. That means political activity audits represent only about 1.6% of the total audits that will be conducted by the CRA over this four year period.
29. The audit selection was based on the identification of possible non-compliance issues with a charity's activities. To ensure that the political activities audits reflected the diversity of the charitable sector in Canada, charities were selected from all four broad categories of charity:
- charities with purposes of relieving poverty;
 - charities with purposes to advance education;
 - charities with purposes to advance religion; and
 - charities with other purposes beneficial to the community, including animal welfare, upholding human rights, protection of the environment, international development, promotion of health, and community development.
30. Identifying which charities will be audited for any reason is exclusively managed by the CRA's Charities Directorate, based on a fair and transparent process. This process is not subject to political direction or interference. With respect to the review of charities' political activities, the CRA has published a transparent and full account of how charities are selected for these audits.⁵
31. As of June 30, 2015, 24 audits were completed, 27 were underway, and another 9 will be started before the end of the project. The audits completed to date have resulted in one instance that required no further action, seven education letters, nine compliance agreements, five notices of intention to revoke, one voluntary revocation, and one annulment. In some instances, these audits also revealed several other serious non-compliance issues beyond those related to political activities, including the delivery of undue benefits, lack of sufficient direction and control over the charity's resources, and improper gifting practices.

Canada's Tax Laws Respect Canada's Commitment to Freedom of Expression and Association

32. The rules regarding registered charities are not intended to prevent organizations or individuals from expressing themselves or associating, nor do they have such an effect in practice. They are, on the contrary, aimed at defining which types of organizations are eligible for a particular form of government tax assistance. It is understandable that members of charitable organizations may have common interests and political viewpoints that they may wish to express collectively. The fact that charitable tax incentives are not generally available for such advocacy activities does not in any way restrict their members' freedom to engage in such

⁵ See Canada Revenue Agency, *Charities Program Update - 2014*. Available online: <www.cra.gc.ca/chrts-gvng/chrts/bt/chrtsprgrm_pdt-2014-eng.html>. Last accessed: July 13, 2015.

activities. This position has been reflected and upheld by a domestic court in *Human Life International in Canada Inc. v. M.N.R.*⁶

33. Groups of individuals (including members of a charity) who wish to engage in political activities are free to establish a separate NPO for that purpose, with separate finances. An NPO is not subject to the limitations on political activities that apply to registered charities, and still benefits from tax-exempt status. There are numerous NPOs active in the area of human rights advocacy in Canada.
34. In addition, Canada has an array of policies and programs, both at the provincial and federal level, that directly subsidize organizations (such as NPOs and Aboriginal organizations) that engage in research, lobbying and advocacy activities. This is in recognition of the important role that civil society organizations play in public debate in Canada, particularly in the field of human rights. What follows are just a few examples of the many such funding programs which exist in Canada.

Funding for women's issues

35. At the federal level, Status of Women Canada, through the Women's Program, funds projects at the national, regional, and local level that address the following three priority areas: ending violence against women and girls; improving women's and girls' economic security and prosperity' and encouraging women and girls in leadership and decision-making roles. The Woman's Program supports the Government of Canada's goal of advancing gender equality in Canada.
36. At the provincial and territorial level, the Manitoba Status of Women Division, among its other activities, provides small grants to Aboriginal organizations or NGO's to conduct research on a variety of women's issues, as requested, or as need arises.⁷
37. In the Northwest Territories (NWT), the NWT Women's Advisory Office administers the Women's Initiative Grants, which provide funding for projects that enhance the status of women and girls through regional groups or Aboriginal governments. The Office also provides funding to the Status of Women Council and the NWT Native Women's Association,⁸ who, among other things, respectively work towards the equality of women through advice to the Government, research, public education and advocating on behalf of all women, and aims to empower and support Aboriginal women and their families throughout the Northwest Territories.
38. From 2010 to 2014, the Quebec government's Secrétariat à la condition féminine provided financial support for 31 groups that defend women's rights. A large share of the funding went to the Réseau des tables régionales de groupes de femmes du Québec, which advocates for

⁶ *Human Life International in Canada Inc. v. M.N.R.*, [1998] 3 FCR 202 (C.A.). Available online: <<http://canlii.ca/t/4mm6>>. Last accessed: July 20, 2015.

⁷ More information on the Status of Women Division can be found at www.gov.mb.ca/msw/

⁸ The Council's mandate is to work towards the equality of women through advice to the Government, research, public education, advocating on behalf of all women and assistance to women's groups and other groups working on issues of concern to women. The NWT Native Women's Association is a not for profit organization that aims to empower and support Aboriginal women and their families throughout the Northwest Territories.

equality between women and men and an improvement in the living conditions of women. Aside from this funding, specific government programs enable women's groups to promote their rights, including *À égalité pour décider* (\$1M a year given almost entirely to women's groups since 1999), which funds projects that support the stereotype-free socialization of women and men so as to encourage gender balance in decision-making bodies. In addition, the program *Égalité entre les femmes et les hommes* (\$8.1M since 2007) has supported many projects, a number of which are led by women's groups and feminist research chairs.

39. The Government of Yukon provides funding to NGOs to advocate, lobby and research various issues. One of its Women's Directorate key goals is to enhance Aboriginal Women's equality. In partnership with Aboriginal women's organizations and First Nations governments, the Directorate identifies and addresses barriers to Aboriginal women's equality in the Yukon in the areas of leadership development, wellness, and education. The Women's Directorate has funding opportunities available for women's organizations, including assisting them in training, organizational development or program costs.
40. The province of Prince Edward Island provides Inter-ministerial Women's Secretariat Grants to fund projects that support organizations that provide direct services and programs for the benefit of women in Prince Edward Island; and/or support projects that enhance awareness, education and social action on women's legal, health, social and economic equality; and/or support the capacity of women's organizations that promote women's equality through advocacy, research and policy development.
41. The Government of New Brunswick provides \$200,000 annually to the independent Voices of New Brunswick Women Consensus-Building Forum which was established in 2013 to advise the provincial government on issues of importance to women and to focus public attention on those issues.

Funding for the promotion of domestic implementation of international human rights treaties

42. The Council of Canadians with Disabilities (CCD) is a national human rights organization of people with disabilities working for an accessible and inclusive Canada. Among the CCD's priorities are the promotion of human rights and particularly the ratification and implementation of the UN *Convention on the Rights of Persons with Disabilities* (CRPD). In support of CCD's work in this regard, Employment and Social Development Canada, through the Disability Component of the Social Development Partnerships Program,⁹ is providing funding to the CCD in 2015-16 for activities that will complement Canada's commitment to the CRPD.
43. As one example at the provincial and territorial level, the Yukon Council on Disability also received \$46,272 from the Yukon Government to develop the Yukon Framework and Implementation for the Canadian Convention on the Rights of Persons with Disabilities. The project's three objectives are: to develop skills, knowledge and employment capacity of persons with disabilities and their organizations; to engage key stakeholders; and to provide information to Yukon government and the Department of Justice regarding current programs and services from the perspective of people with disabilities.

⁹ http://www.esdc.gc.ca/eng/disability/social_development//index.shtml

Conclusion

44. Canada reiterates that freedom of expression and association are protected, respected and recognized in Canada as the foundation of a free and democratic society, and are subject to a robust framework of legal protections and remedial mechanisms. Canada benefits from a very active, articulate and independent civil society, including many non-profit organizations that engage in political activities such as advocacy and lobbying.
45. The special treatment provided to registered charities by the tax system, which is essentially a program of government subsidy, is limited to organizations that devote all or substantially all of their resources to charitable activities, as interpreted by the courts. Canada has made a policy choice not to extend the same tax privileges to organizations conducting substantial political or advocacy activities, although registered charities are permitted to devote a certain portion of their resources to political activities. Canada's decision not to subsidize political activities via special tax incentives in no way impedes the rights of individuals to express political opinions, or to participate in decision-making processes that affect them.
46. Individuals who wish to engage in political activities in association with others are free to do so via the creation of Non-Profit Organizations, which also enjoy special tax treatment, although less generous than that afforded to charities.
47. Moreover, Canada does provide, via federal, provincial and territorial funding programs, public resources to organizations that engage in advocacy, including in the area of human rights. This is another way in which Canada supports civil society, and creates an enabling environment in which civil society regularly makes valued contributions to public debate.
48. Canada would like to thank the Special Rapporteurs for the opportunity to respond to the information received. Canada trusts that this letter has helped clarify the matters referred to in the Special Rapporteurs' letter of 29 June 2015.

Ottawa, Canada

28 July 2015