BRITISH COLUMBIA HUMANIST ASSOCIATION
422 Richards St, Suite 170
Vancouver, BC V6B 2Z4

(604) 265-9298
bchumanist.ca
info@bchumanist.ca

BC HUMANIST ASSOCIATION

FEDERAL PRE-BUDGET 2022 CONSULTATION RESPONSE

Prepared by Ian Bushfield, Executive Director
September 21, 2022

RECOMMENDATIONS:

1. That the government amend the *Income Tax Act* to repeal section 8(1)(c), the clergy residence deduction.
2. That the government amend the *Income Tax Act* to create a statutory definition of a charity and that such a definition removes the privileged status of 'advancement of religion' as a charitable purpose.
3. That the government no longer provide charitable status to anti-abortion organizations.

1. REPEAL THE CLERGY RESIDENCE DEDUCTION

The clergy residence deduction, prescribed by section 8(1)(c) of the *Income Tax Act*, costs the federal treasury over $100 million annually.[1] This deduction allows approximately 27,000 taxpayers to deduct their housing costs from their annual income, thereby reducing their taxable net income. Through tax collection agreements (with every province except Quebec), we estimated that the deduction reduces the combined federal and provincial income taxes payable by the median clergy member from anywhere between $2,150 in New Brunswick to $5,155 in the Northwest Territories.

The deduction was first introduced in 1949 when Canada was a more religiously homogenous country. Members of Parliament at the time argued the deduction was necessary to recognize the "signal service" of ministers and priests "in the religious life of our nation."[2] The criteria to qualify for the deduction are largely unchanged since its introduction: It is available to members of the clergy or a religious order who are in charge of, ministers to or are full-time administrators of a "diocese, parish or congregation."

Despite the text remaining unchanged, Canada has become increasingly pluralistic nation in the intervening decades. Notably, with the introduction of the *Charter of Rights and Freedoms*, the Supreme Court of Canada has recognized the right to freedom of religion creates a "duty of religious neutrality" for the state. This duty was most clearly articulated in the 2015 *Mouvement laïque québécois v. Saguenay* ruling.[3]

> *When all is said and done, the state's duty to protect every person's freedom of conscience and religion means that it may not use its powers in such a way as to promote the participation of certain believers or non-believers in public life to the detriment of others.*[4]

A tax advantage that benefits the elites of hierarchal religious organizations, and is unavailable to individuals employed in similar positions for organizations that promote non-theistic worldviews, like ours, clearly violates the duty of neutrality. Further, the text of the deduction eschews maximally neutral language and instead employs overtly Christian terms like 'minister', 'parish' and 'clergy'. This has led to several Tax Court cases in which members of minority faith groups have struggled to qualify for exemptions that were established within a Christian framework. In other words, the deduction not only discriminates against the non-religious but even members of non-Christian religions are frequently excluded from the benefit.

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[1] Thom, A., Bushfield, I. and Phelps Bondaroff, T. (2021). "An extra burden: The clergy residence deduction." *BC Humanist Association*. Available at: https://www.bchumanist.ca/an_extra_burden

[2] Graydon, G. (1949, November 10). "Income Tax Act". Canada. House of Commons. House of Commons Debates, 2. 21st Parliament, 1st session. Available at https://parl.canadiana.ca/view/oop.debates_HOC2101_02. (retrieved May 18, 2021).

[3] Mouvement laïque québécois *v.* Saguenay (City), 2015 SCC 16, [2015] 2 S.C.R. 3 https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15288/index.do

[4] Ibid. at para 76.

Beyond its unconstitutionality, it is unclear how the clergy residence deduction continues to advance the government's stated priorities in 2022. In the words of MPs at the time, the deduction was explicitly brought into law to recognize the perceived public benefit of clergy members.

Today, Canada is also going through a long overdue reckoning for its role in empowering various churches to operate the residential school system. Notably, the clergy residence deduction was introduced during a period of significant expansion in the enrollment of Indigenous children in residential schools, culminating in the Sixties Scoop. Simply put, the clergy residence deduction is a vestige of the Christian colonialist mindset that has dominated much of Canada's history. Reconciliation and decolonization require the dismantling of such institutions and privileges.

During the initial debates over the introduction of the clergy residence deduction, at least one MP feared a never-ending expansion of boutique tax credits. Those fears seem to have been largely born out by the orders of magnitude increase in complexity of the *Income Tax Act*. Amid increasing calls for a simplified tax code, the then newly elected Liberal government sought to repeal many of these credits in 2016.[5] Clearly there remains work to be done.

By phasing out the clergy residence deduction, the government can meet its constitutional obligations, increase equity in the tax code and recoup approximately $100 million annually in revenue.

We provide further information in our most report, *An Extra Burden*, available at https://www.bchumanist.ca/an_extra_burden

[5] Young, L. (2016, March 22). Federal budget 2016: Trudeau eliminates Harper-era tax credits. *Global News*. Retrieved September 15, 2022 from https://globalnews.ca/news/2594044/federal-budget-2016-trudeau-eliminatesharper-era-tax-credits/

2. CREATE A STATUTORY DEFINITION OF CHARITY

Despite recent steps to modernize portions of Canada's charity law, our system remains antiquated and ill-suited for modern purposes. We applaud the government for recent reforms that removed unconstitutional restrictions on the political speech of charities. This followed recommendations from the Consultation Panel on the Political Activities of Charities (2017) and the *Canada Without Poverty v Canada* ruling of the Ontario Superior Court of Justice in 2018. Despite these reforms, ultimately defining in law what a charity is has been left unfinished.

As we and others have documented, Canada's charity law relies on English law dating to 1601. While our courts have, thankfully, not stuck to a purely seventeenth century idea of what constitutes a charitable purpose, Canada remains an exception among Commonwealth countries by continuing to rely on this archaic definition.

- New Zealand updated its law in 2005.[6]
- England and Wales updated its in 2011.[7]
- Australia updated its law 2013.[8]

As we have previously recommended, the government should remove the definition of charity from the jurisprudence and bring it into the *Income Tax Act*. [9]

Presently to be classified as a charity an organization must have as its purpose the relief of poverty, advancement of education, advancement of religion or other purposes beneficial to the community. The latter category has been slowly broadened by our courts; however, this is an onerous and inefficient undertaking. This perpetuates injustice against marginalized communities, including organizations representing BIPOC communities, by creating a barrier to their equal participation in charitable organizations. Recent changes to permit charities to grant to non-profit agencies creates a workaround for this but it still maintains a paternalistic relationship between the (often white-dominated) charitable foundation and the upstart BIPOC-led non-profit. It's time to tear down these racist barriers to charitable incorporation.

We want to draw particular attention to the head of "advancement of religion." The CRA states this requires "an element of theistic worship, which means the worship of a deity or deities in the spiritual sense."[10] There is no similar provision to recognize the advancement of humanism or other nonreligious worldviews as a charitable activity. This is yet another clear privilege

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[6] *Charities Act* 2005, New Zealand. https://www.legislation.govt.nz/act/public/2005/0039/latest/DLM344368.html
[7] *Charities Act* 2011, UK. https://www.legislation.gov.uk/ukpga/2011/25/contents/enacted
[8] *Charities Act* 2013, Australia. https://www.legislation.gov.au/Details/C2013A00100
[9] Bushfield, I. (2018, September 17). Toward a modernized charity framework for Canada. BC Humanist Association. Available at https://www.bchumanist.ca/toward_a_modernized_charity_framework_for_canada
[10] Revenue Canada. (2002, October 25). Summary of policy R06 - religion. Retrieved from https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/summary-policy-r06-religion.html

provided to the religious over the nonreligious. It relies on a presumed public benefit of faith. As an organization representing British Columbians with no religion, we contest that assumption.

This is not merely a theoretical concern. In 2019, the Federal Court of Appeal ruled that the Church of Atheism of Central Canada could not qualify as a charitable religious organization, despite Justice Rivoalen conceding that "the requirement that the belief system have faith in a higher Supreme Being or entity and reverence of said Supreme Being is not always required when considering the meaning of 'religion'. The appellant rightfully pointed to Buddhism as being a recognized religion that does not believe in a Supreme Being or any entity at all."[11] The Church of Atheism ultimately failed to demonstrate its belief system was "based on a particular and comprehensive system of doctrine and observances" and was thus denied its charitable status. Yet it is unclear what the presences of such a system has to do with providing a public benefit.

We therefore specifically recommend that any such legislated definition end the discrimination faced by nontheistic organizations.

The simplest way to do this is by removing advancement of religion as a charitable purpose in any definition. Doing so would eliminate the presumed public benefit of belief. Any organization that is presently registered as advancing religion would simply need to identify how their activities benefit broader Canadian society. That is, what benefit do they provide to those who do not necessarily agree with their orthodoxy or do not attend their services. For example, a church that runs a soup kitchen or homeless shelter would be able to claim they exist for the relief of poverty, so long as they did not discriminate in the provision of these services. This approach would have the added benefit of removing the requirement that bureaucrats arbitrate what constitutes a religion when an organization applies for charitable status.[12]

Alternatively, a statutory definition could broaden the definition of religion to explicitly include the advancement of nontheistic worldviews as charitable purposes. This could be based on the amendments adopted in England and Wales where the advancement of religion is defined to explicitly include "a religion which involves belief in more than one god, and a religion which does not involve belief in a god."[13] While we would recommend a more neutral term such as worldview or belief system, the point is to broaden the tent to ensure equity between those who do and do not believe in a god or gods.

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[11] *Church of Atheism of Central Canada v Minister of National Revenue*, 2019 FCA 296. Available at: https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/item/453673/index.do at para 21.

[12] Bushfield, I., & Phelps Bondaroff, T. N. (2020). The Arbiters of Faith: Legislative Assembly of BC Entanglement with Religious Dogma Resulting from Legislative Prayer. Secularism and Nonreligion, 9, 8. DOI: http://doi.org/10.5334/snr.140

[13] *Charities Act* 2011, UK. http://www.legislation.gov.uk/ukpga/2011/25/contents/enacted

3. STRIP CHARITABLE STATUS FROM ANTI-ABORTION ORGANIZATIONS

In its 2021 election platform, the Liberal Party of Canada promised to:

> *No longer provide charity status to anti-abortion organizations (for example, Crisis Pregnancy Centres) that provide dishonest counseling to women about their rights and about the options available to them at all stages of the pregnancy.*

We fully support this pledge and encourage the government to use Budget 2023 to implement it.

According to the Abortion Rights Coalition of Canada (ARCC), over 200 anti-choice groups have charitable status as of September 2022.[14] ARCC argues that their use of misinformation and coercive techniques "cannot have any public benefit."[15]

The BCHA is currently finalizing a research report into the 25 crisis pregnancy centres across British Columbia. This will be released later this fall but initially we found that most have deep connections to local Christian churches and are often located near hospitals, clinics and other medical facilities. These groups often use branding that looks like local secular healthcare facilities. Their websites typically lack any inclusion of gender or sexually diverse individuals and many offer sex ed programs in local public and private schools.

We believe the best way to implement this pledge would be to implement our second recommendation and create a formal statutory definition of religion, with a robust public benefits test. Such a test would preclude the registration of organizations that seek to undermine the rights and autonomy of others.

[14] Anti-choice and Pro-choice Groups in Canada. (2022, September 2). Abortion Rights Coalition of Canada. Retrieved from http://www.arcc-cdac.ca/publications.html

[15] Artur, J. (2019, February). Why anti-choice groups should not have charitable tax status. Abortion Rights Coalition of Canada. Retrieved from https://www.arcc-cdac.ca/media/position-papers/80-Charitable-Tax-Status.pdf