



News

Aussie Advocacy Crackdown Echoes Canadian Charity Fears

Political gag rules in Australia coincide with concerns across the Pacific.

By *David P. Ball, Today, TheTyee.ca*



Canadian and Australian charities feel a similar chill across the Pacific.

AUDIT FEARS 'UNFOUNDED': OTTAWA LAWYER

One Ottawa-based lawyer specializing in charities says that fears of a political crackdown by the Canada Revenue Agency are "completely unfounded."

"I spend most of my life fighting the CRA," said Adam Aptowitz, with Drache Aptowitz LLP. "But it's completely unfair to say the CRA is targeting one side or the other. The fact is they have a job to do and I think they're doing it."

Aptowitz said that the Income Tax Act, which allows charities to spend up to 10 per cent of their resources on political activities, was only a development of 2003. Before that, the rules governing the sector were mostly dealt with in the courts and not clearly defined. But despite charities being granted tax deductibility in the 1950s, regulators' efforts to agree on a definition of what makes an activity "charitable" have stalled in the last three decades, he argued.

"What Parliament giveth, Parliament can taketh away," he

quipped. "What people don't seem to realize is you don't have to be a registered charity to have freedom of expression.

"They're not being silenced -- they can talk all they want. They just can't use money donated for charitable purposes to participate in political activities."

In 2012, Aptowitz authored a report for the C.D. Howe Institute, a fiscally conservative think-tank that is itself a charity. He argued that the provinces, who actually have jurisdiction over charitable registrations, need to reassert themselves in a sector now largely regulated by the federal CRA because of associated tax deductions.

There's no point talking about reforming the sector, he said, without bringing the provinces back to the table. --
David P. Ball

"Radical and extreme minority." "Abusing their privileges." "Illegal activism."

Canadian environmental groups will recognize the words, perhaps recalling ex-natural resources minister Joe Oliver's 2012 letter about anti-oilsands groups that "threaten to hijack our regulatory system to achieve their radical ideological agenda," or late finance minister Jim Flaherty's 2014 remarks about "terrorist" and "organized crime organizations that launder money through charities."

<http://www.nrcan.gc.ca/media-room/news-release/2012/1/1909>

In fact, the phrases are excerpted from a speech made one month ago by Andrew Nikolic, a parliamentarian with Australia's newly-elected Liberals, before the right-leaning party's executive unanimously passed his motion to strip Australian environmental groups of charity status. The motion is non-binding on the Liberal-led coalition government, but signalled a ratcheting up of the party's anti-environmental rhetoric since it won power last September.

As the Canada Revenue Agency continues its 52 audits of charities' "political activities," including probes of Amnesty International, the United Church of Canada, the David Suzuki Foundation, Oxfam and dozens of prominent critics of federal energy and foreign policies; environmental, human rights and public interest legal organizations in Australia say something remarkably similar is underway.

What's happening there is "a targeting of particular groups," said Jeffrey Smith, director of the Environmental Defender's Office in New South Wales, one of eight environmental law centres across Australia that saw its annual federal funding (\$300,000) axed last fall following pressure from mining industry lobbyists. "That has a wider chilling effect on others."

In addition to defunding, the government's attempts to reform its charities regulator have been accompanied by new rules that federally funded charities cannot criticize the government or its policies. "They've threatened audits to look at environmental groups to assess whether they should be getting charitable status or not," Smith said.

Meanwhile, some Canadian charities are accusing their own government of imposing a similar "advocacy chill" through the threat of audits. The CRA, however, insists it operates independent of political influence.

'THEY'VE THREATENED AUDITS'

In Canada, a charity may devote a maximum 10 per cent of resources to "political" advocacy on issues related to their mandate, but never for partisan activities that endorse or promote a particular party. In 2012, the CRA was granted \$8 million over two years to ensure charities were complying with the limit. That amount later increased to \$13.4 million over five years.

<http://www.simcoe.com/news-story/4733089-timeline->

More than 20 Canadian charities have publicly revealed they've been audited since 2012. So far, all are left-leaning, environmental or human rights groups; the CRA said confidentiality rules mean it cannot reveal its targets.

The agency declined an interview request, but emailed a written statement.

"The CRA does not conduct research into the political views of any charity, and it does not base its decision to audit any charities on this criterion," wrote spokesman Noël Carisse. "However, regardless of its political views, a charity cannot be established for a political purpose and may only engage in limited, non-partisan political activities."

Royal Roads University researcher Gareth Kirkby examined the Canadian government's changing approach to charities in recent years. He said the timelines in Canada and Australia -- governments defunding outspoken charities, sharpening their rhetoric, and threatening audits -- appear to follow a similar course.

"Canada and Australia seem to be aligning themselves more," he said. "Maybe this is all coincidence, but we're two countries that seem to be going very strongly towards resource extraction as the only economic strategy in the game, and adjusting our environmental, charity and other policies to accommodate that."

For his research, Kirkby spoke to dozens of Canadian charities on the condition of anonymity, since many have been cautious about speaking publicly on their audits. He said the audits indicate that the government increasingly sees consulting with charities as a threat, not something that could help inform policy.

AUDITS A 'NUISANCE'

In Australia, registered charities are not restricted from political speech. In Canada, the definition of permitted "political activities" is ambiguous and needs to be clarified, said Erik Mathiesen, the United Church of Canada's chief financial officer.

The denomination has been under CRA scrutiny since spring 2013. Neither Mathiesen nor veteran staff had heard of the denomination's General Council Office ever being audited, but for now he's willing to give the agency the benefit of the doubt.

"We're a large charity, a multi-million dollar one, and we were arguably overdue," he said.

Mathiesen said auditors initially examined the entire church, but eventually narrowed in on the social justice organization Kairos, a coalition of many Christian denominations that uses the United Church's charitable number. He said the UCC provided its final batch of paperwork to auditors last week.

For Mathiesen, it's too soon to say if the audits are aimed at government critics.

"There are lots of folks saying it's an intentional effort to silence voices," he said. "I'm not saying I might not land there someday, but... I told my staff a few years ago we need to be more audit-ready."

Others have speculated that the audit's particular interest in Kairos stems from its criticism of Canada's oilsands, refugee, Aboriginal and foreign policies.

CANADA AND AUSTRALIA 'SORT OF TWINS'

"In many ways, we see the Australian government and the Canadian government as sort of twins on many issues," said Paul Power, CEO of the Refugee Council of Australia. "Perhaps at the heart of it is political arrogance."

The refugee council is another group that saw its funding axed by the Australian government after the election -- perhaps a sign the crackdown has extended beyond environmentalists to a wider range of organizations.

"My brief observation of things I hear are happening in Canada suggests that maybe the same thing is happening there: If the government is completely assured that it has the answers for every social ill, then it doesn't need quality policy or input from civil society."

When told about CRA's political activities audits, and Oliver and Flaherty's remarks, another Australian public interest lawyer who spoke on condition of anonymity said: "Yes, that totally is exactly

what they want to do here in Australia."

CRA spokesman Carisse would not comment on similarities between the approaches of the Canadian agency and its Australian counterpart, except to say that because Australia is currently consulting on plans to replace the Australian Charities and Not-for-profits Commission (ACNC), "the CRA is therefore not in a position to comment on any parallels that may exist nor would it be appropriate for us do so."

In April, however, the director-general of CRA's charities directorate visited Australia to attend the International Charity Regulators meeting in Melbourne, organized by its counterpart the ACNC.

"Most of our discussions highlighted the importance of an independent and effective regulator of charities in our respective countries," Cathy Hawara said in a May 23 speech upon her return to Canada.

Citing the ACNC's own controversial reform proposals currently underway, Hawara went on to say that questions about the independence of charity regulators were also at the top of her Australian counterparts' minds during her visit.

"Based on recent media reports and headlines, there is a perception that audits of charities are politically motivated, and the CRA is targeting certain types of charities at the instruction of the government," she said. "This was what they had gleaned from the media coverage that had made its way to them from the other side of the world.

"I will admit that the comments about the lack of independence from political interests, which we have read much about in the media in recent months, have been of greater concern to me."

A GREATER THREAT

Although Australia hasn't yet seen audits, one of the mechanisms charities say muzzles them is funding contracts that bar criticism of government policies. That has particularly outraged the National Association of Community Legal Centres, which provide free public interest advocacy nationwide.

"It really discourages any services from speaking about the systemic issues going on," said Michael Smith, the association's National Convenor. "We're concerned that we'll lose years of progress by just stopping those kinds of conversations and debates."

One irony of the Australian funding cuts and restrictions, said the refugee council's Paul Power, is that donations have since poured in -- surpassing his organization's losses.

"We're ironically now in a stronger position than we were before," he said. "So the odd thing... is that for organizations like ours, that rely on the support of angry and motivated electors, it can have reverse implications for the government."

While some charities, particularly those dependent on foundation funding, may stand to lose the most from potentially losing their status, Power said that his organization won't deviate from being a "strong, clear voice" on refugee policy.

"A greater threat in the longer term is not being seen as an authentic voice for our membership," he explained. "The challenge for organizations is not to be intimidated, and to find new ways of continue to do what they're doing."



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