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FEDERAL PRE-BUDGET 2022 CONSULTATION RESPONSE

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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 limit childcare funds to secular, non-profit, and public providers.

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 lead to a number of 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 excluded from the benefit.

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[1] 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 2021. In the words of MPs at the time, the deduction was explicitly brought into law to recognize the perceived public benefit of clergy members.

At the same time, 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 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] https://globalnews.ca/news/2594044/federal-budget-2016-trudeau-eliminatesharper-era-tax-credits/

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: *Charities Act 2005.*[6]
- England and Wales: *Charities Ac 2011*.[7]
- Australia: *Charities Act 2013*.[8]

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

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 undertaken. In particular, this perpetuates injustice against marginalized communities, including organizations representing BIPOC communities, by creating a barrier to their equal participation in charitable organizations.

We want to draw particular attention to the head of "advancement of religion," which has been clarified by the CRA to require "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 provided to the religious over the nonreligious. It relies on a presumed public benefit. 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

[6] https://www.legislation.govt.nz/act/public/2005/0039/latest/DLM344368.html
[7] https://www.legislation.gov.uk/ukpga/2011/25/contents/enacted
[8] https://www.legislation.gov.au/Details/C2013A00100
[9] https://www.bchumanist.ca/toward_a_modernized_charity_framework_for_canada
[10] https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/summary-policy-r06-religion.html

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. This can best be accomplished through 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. 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.

[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

LIMIT CHILDCARE FUNDING TO SECULAR NON-PROFIT AND PUBLIC PROVIDERS

Charitable, academic and private sector leaders recently called on the federal government to ensure the funding provided to childcare is targeted exclusively to non-profit and public providers.[14] We endorse this message and further urge the government to meet its duty of religious neutrality by ensuring that public funds are only provided to secular and inclusive facilities.

As discussed above, we do not believe that the duty of religious neutrality can be reconciled with the continued privileging of religious facilities. We further argue that the provision of public services by faith-based facilities violates the duty. Across Canada, we can already see countless examples of faith-based facilities that refuse to provide full reproductive and end of life healthcare options. In the City of Vancouver, for example, St Paul's Hospital is operated by the Catholic Providence Healthcare. While patients have the theoretical choice of whether to attend St Paul's or a secular institution operated by Vancouver Coastal Health, in practice people enter the closest facility. This can result in heart-wrenching cases where face excruciating transfers to access their right to a medically assisted death.[15]

Further, residents of remote and rural communities often do not even have the "choice" of healthcare facilities to attend. Until recently, the only hospital in the Comox Valley region of Vancouver Island was a Catholic facility.[16] Even in metropolitan areas, shortages of childcare spaces can mean that "choice" is merely an illusion and parents must simply send their children to the first available space.

Under Article 14 of the *Convention on the Rights of the Child*, Canada has committed to "respect the right of the child to freedom of thought, conscience and religion." Funding faith based childcare undermines this right by denying children the opportunity to be exposed to different ideas, worldviews and traditions that are only freely present in an inclusive and secular facility. Conversely, when we investigated faith-based schools in BC, we found countless examples of schools excluding LGBTQ2S+ students and staff[17] or teaching creationism as science[18].

While the federal government is not directly responsible for the provision of childcare, it holds significant power through the financial agreements its signing with each province. We urge the government to ensure federal funds target secular and inclusive childcare facilities.

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[14] https://ecdfwg.ca/en/open-letters/open-letter-june-2021/
[15] https://nationalpost.com/news/canada/b-c-man-faced-excruciating-transfer-after-catholic-hospital-refused-assisted-death-request
[16] https://www.comoxvalleyrecord.com/news/formal-goodbye-ceremony-takes-place-at-st-josephs/
[17] https://www.bchumanist.ca/are_lgbtq_families_welcome_at_bc_independent_schools
[18] https://www.bchumanist.ca/bc_subsidizes_the_teaching_of_creationism_in_science_class