

Court File No.

CV-16-559339

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:



CANADA WITHOUT POVERTY

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER Rule 14.05(3)(g.1) of the *Rules of Civil Procedure*, R.R.O. 1990, O. Reg. 194 and under the *Canadian Charter of Rights and Freedoms*

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following page.

THIS APPLICATION will come on for a hearing at a date and time to be fixed, at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a Notice of Appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your Notice of Appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it with proof of service, in the Court office where the Application is to be heard as soon as possible, but not later than 2 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: August 25, 2016

Issued by:



Registrar
393 University Avenue
10th Floor
Toronto, ON M5G 1E6

TO: THE ATTORNEY GENERAL OF CANADA
3400 Exchange Tower
First Canadian Place, Box 36
Toronto, ON M5X 1K5

APPLICATION

THE APPLICANT MAKES AN APPLICATION FOR:

1. a declaration that section 149.1(6.2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) violates s. 2(b) and s. 2(d) of the *Canadian Charter of Rights and Freedoms* (the “Charter”), is not reasonably justified in a free and democratic society, and is struck down as being of no force and effect;
2. costs of this application; and
3. such further and other relief as counsel may advise and this court may permit.

THE GROUNDS FOR THE APPLICATION ARE:

CWP

1. CWP is an incorporated, not-for-profit and charitable organization whose primary purpose is the relief of poverty in Canada. CWP was granted charitable status by the Charities Division of Revenue Canada in 1973 as the National Anti-Poverty Organization (NAPO). In 2009, the name of the organization was changed from the National Anti-Poverty Organization to Canada Without Poverty. It is based in Ottawa, Ontario.
2. CWP relies primarily on charitable donations to hire staff, maintain an office and website and to carry on its activities. CWP would not be able to perform its national role of relieving poverty if it were to lose its charitable status. CWP’s total revenue is approximately \$318,000,

all of which is derived from donations – 79% from charitable sources including individuals, foundations and corporations and 21% from unions.

CWP's approach to the relief of poverty

3. From the time of its formation as a charity with the purpose of relief of poverty in 1973, NAPO/CWP has engaged with political processes in order to identify and promote changes to laws and policies necessary for the relief of poverty. NAPO/CWP has viewed such activity as a critical component of its activities to promote its charitable purpose.

4. During the 1990s NAPO's approach to the relief of poverty in Canada was informed by the emergence of a global framework for the relief of poverty which prioritized the need to address marginalization and social exclusion as aspects of poverty and to promote the active participation of people living in poverty in strategies to address it. During the 1990s NAPO began to participate in reviews of Canada's record on poverty before UN human rights bodies and in 1995 NAPO attended the World Summit for Social Development. UN human rights bodies expressed concern about the extent of poverty in Canada, recommended changes to laws and policies and urged the Canadian government to enter into a dialogue with NAPO and other groups. The Copenhagen World Summit adopted a *Programme of Action*, signed by Canada and other states, affirming that poverty is characterized by a lack of participation in decision-making and that strategies to address poverty must ensure participation of those affected.

5. In 2009 CWP participated in comprehensive reviews of poverty reduction strategies by the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA Committee) and by the Senate

Subcommittee on Cities of the Standing Senate Committee on Social Affairs, Science and Technology. Extensive reports submitted to parliament by these Sub-Committees recommended that in order to ameliorate poverty in Canada, governments must make significant changes to laws and policies, work in partnership with organizations working on poverty issues and engage directly with people living in poverty.

6. CWP's experience has been consistent with the findings of these reports. CWP has found that effective poverty relief requires strategies to remedy the social and political marginalization of people living in poverty and to facilitate their active participation in identifying necessary changes to laws and policies.

7. NAPO/CWP found that people living in poverty faced increasingly widespread stigmatization and negative stereotypes during the 1990s and that such stigmatization has continued to the present day. CWP has responded to this challenge by developing programs to combat stigmatization, encourage the recognition of the equal dignity and human rights of people living in poverty and facilitate the more active engagement of people living in poverty in public policy related to the relief of poverty.

Section 149.1(6.2) of the Income Tax Act interferes with CWP's approach to the relief of poverty and its freedom of expression and with CWP's members' freedom of association

8. On a number of occasions when CRA has reviewed the activities of NAPO/CWP it has informed NAPO and CWP that activities which it considers essential for the relief of poverty are considered political activities and must be severely restricted for compliance with section 149.1(6.2) of the Act. CRA has clarified that whenever CWP staff, volunteers or members

publicly express a view about the government's laws or policies – either suggesting that they should be retained or that they should be changed - such expressions constitute political activity and as such must be monitored, reported and restricted.

9. After the federal government made a special budgetary allocation to CRA to enforce the political activities restrictions more rigorously, CWP was required to provide to CRA minutes of all meetings, copies of all emails exchanged by the staff, volunteers, and board members, all publications and other communications.

10. CWP was informed by CRA in January 2015, following its review of the documentation, that approximately 98.5% of CW's activities constituted political activities contrary to the restrictions imposed by 149(1) 6.2. CRA found, for example, that hosting a dinner where people living in poverty could communicate with members of parliament and other decision-makers constituted political activity because recommendations for changes to laws and policies were discussed. Organizing and hosting policy summits with social policy experts was political activity because recommendations for changes to laws and policies were formulated and disseminated. Offering an online course on international human rights was found to be political because it created an atmosphere conducive to advocating for changes to laws and policies. Publishing links on a website to newspaper articles and other materials which recommended changes to laws and policies was political activity.

11. CWP has been informed by CRA that in order to conform with section 149.1(6.2) of the Act it must monitor, report to CRA and severely restrict the content of published materials, websites, emails, workshops, panels, public education campaigns, online courses or any public expression of views by its staff or members about laws, policies or decisions of the government.

It has also been informed that initiatives taken to encourage interaction between people living in poverty with politicians and other decision-makers about strategies for the relief of poverty must be severely restricted.

12. CWP has found that the restrictions imposed by section 149.1(6.2) are contrary to its charitable purpose and prevent it from pursuing the relief of poverty in a reasonable and effective manner. It has found that the restrictions:

- prevent the development of balanced, evidence-based policy informed by the knowledge and experience of those directly affected;
- further the marginalization, stigmatization and social exclusion of people living in poverty;
- restrict effective association and collective action for the purpose of the relief of poverty;
- require an unreasonable degree of monitoring and control of the expression of opinions and reasonable political participation by CWP staff, members and volunteers;
- render political activities for the relief of poverty particularly vulnerable to interference; and
- create a significant chilling effect on the free exchange of ideas about the most effective means to relieve poverty.

13. CWP's belief, based on much internationally recognized research into poverty and its causes, is that poverty in Canada is primarily the result of laws and policies that neglect the needs or fail to ensure the dignity of people living in poverty. CWP further believes, again based on internationally recognized research into poverty and its causes, that such laws and policies are the result of the social and political marginalization of people living in poverty such that their needs are inadequately understood and addressed. CWP's experience has shown that effective poverty relief requires strategies that remedy the social and political marginalization of

people living in poverty by facilitating and increasing their active participation in the development of laws and social policy.

14. CWP therefore believes that to effectively relieve poverty it must promote the participation of those living in poverty in policy discussions and other democratic processes, and encourage its members to identify and promote changes to laws and policies necessary for the relief of poverty. This conviction is crucial in keeping with CWP's charitable purpose of poverty relief on behalf of people living in poverty. Indeed, when properly understood, CWP's charitable purpose cannot be achieved without that which section 149.1(6.2) characterizes as "political."

15. While CWP encourages its members to identify and promote changes to laws and policies for the relief of poverty, CWP does not have as its purpose the adoption or retention of any particular laws or policies. CWP only promotes changes to laws and policies that are necessary for the relief of poverty – a means to achieve a purpose (the relief of poverty), and not a purpose in itself.

Breach of section 2(b) of the *Charter*

16. Put simply, Parliament has accepted that relief of poverty is a charitable purpose but section 149.1(6.2) of the *Income Tax Act* imposes restrictions on the expression or promotion of ideas that are central to that charitable purpose by CWP members or staff. This is an unconstitutional violation of CWP's right of freedom of expression under section 2(b) of the *Charter of Rights and Freedoms*. CWP wishes to pursue its purpose of relieving poverty without

interference with the expression or promotion of ideas that are critical to the effective pursuit of that legitimate charitable purpose.

17. CWP is not arguing that Parliament is constitutionally obliged to confer the benefit of charitable status for the promotion of any particular purpose or view. Though an argument could be advanced that governments have an obligation to provide statutory or financial support for organizations such as CWP to promote the relief of poverty, that is not the issue in this case. Parliament has accepted that relief of poverty is a charitable purpose and CWP has been granted charitable status to pursue this purpose. CWP relies on the fact that even if there is no constitutional obligation to provide charitable status for the relief of poverty, Parliament must ensure that where it chooses to provide the benefit, it does so in a manner that complies with the *Charter*. Restrictions imposed on CWP's political expression must therefore be in compliance with the *Charter*. Section 149.1(6.2) has as its clear purpose the restriction of political activities or expression. All of CWP's activities that are subject to this restriction have expressive content, thereby bringing them *prima facie* within the scope of s. 2(b) protection.

18. The type of communication and expression that is restricted by Section 149.1(6.2) is core to equal citizenship and participation in parliamentary democracy which is at the centre of the expressive content protected by s. 2(b) of the *Charter*.

19. CWP's political expression is not excluded from protection as a result of either the location or method of expression.

20. This violation of CWP's rights cannot be justified in a free and democratic society. Section 149.1(6.2) of the *Income Tax Act* is not in furtherance of a pressing and substantial

objective, it is not rationally connected to said objective, it does not minimally impair the rights of CWP and its members and it is disproportionate in its effects.

21. The restrictions on CWP's political expression deny equal dignity and participation within Canadian society to people living in poverty and are contrary to central values that guide the section 1 analysis, including social justice and equality, enhanced participation of individuals and groups in society, and Canada's international human rights obligations. Restrictions on political expression of CWP and its members exacerbate the marginalization of members of an historically disadvantaged group which lacks avenues for expressing their views, for promoting knowledge of their circumstances, or for engaging with governments and the public about public policy and legislation affecting the relief of poverty.

22. Accordingly, Section 149.1(6.2) ought to be struck down as an unreasonable limitation on CWP and CWP's members' freedom of expression, contrary to section 2(b) of the *Charter*.

Breach of section 2(d) of the *Charter*

23. As an organization pursuing the purpose of the relief of poverty on a national scale, CWP relies on facilitating collective action for the relief of poverty. Individually, CWP's members rarely have the resources or opportunities to engage in political processes or public policy debate. If CWP were not able to provide resources to organize a dinner in which politicians and decision-makers sit down with people living in poverty, for example, members of CWP would be very unlikely to have the opportunity as individuals to discuss social policy and legislation with their political representatives. The ability to engage in political processes in a meaningful

fashion is dependent, for CWP's members, on their ability to associate through an adequately resourced national organization.

24. Poverty creates significant barriers to democratic participation for CWP's members. External barriers such as transportation costs and lack of social connections are compounded by internal factors, including feelings of unworthiness and shame and lack of confidence in formal settings. By associating as a charitable organizations, CWP's members are able to engage directly in initiatives to ameliorate poverty, develop a sense of self-worth and provide essential input into the development of sound policies, informed by the realities of the experience of poverty

25. The freedom of CWP and its members to collectively pursue the goal of relieving poverty in Canada through associating with others in political activities is severely interfered with by Section 149.1(6.2).

26. Section 149.1(6.2) of the ITA breaches CWP's freedom of association by

- (a) restricting CWP members from associating in the collective charitable pursuit of relieving poverty in Canada through political activities; and
- (b) forcing CWP and its members to refrain from activities where CWP associates with politicians, decision-makers or other individuals or organizations where such interactions involve any proposals for laws or policies to relieve poverty in Canada.

27. Accordingly, Section 149.1(6.2) ought to be struck down as an unreasonable limitation on CWP and CWP's members' freedom of association, contrary to section 2(d) of the *Charter*.

Constitutional and other grounds relied upon

28. CWP will rely on the *Charter of Rights and Freedoms*, ss. 1, 2(b), 2(d), 24 and 52.
29. CWP will also rely on such further and other grounds as counsel may advise and this court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the application:

1. the Affidavit of Leilani Farha, sworn August 24, 2016; and
2. such further and other materials as counsel may advise and this court may permit

August 25, 2016

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Respondent

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Proceeding commenced at Toronto

NOTICE OF APPLICATION

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