



# Green Titanic

**HOW BIG GREEN MONEY'S POLITICAL POWER WAS  
UNLEASHED**

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## Executive Summary

This is the third and final in a series of articles on the funding and activities of large environmental organizations in Canada, many of which play major political roles in opposing resource industry development and pipeline construction based on the thesis that this will address global warming.

This article describes how recent changes in the *Income Tax Act* and regulations governing charities and a recent court decision have freed activist environmental organizations with charity status from previous constraints on their ability to conduct and fund political activities.

Federal and provincial governments in Canada now provide \$170 billion per year in grants and contributions to registered charities.

Charities then raise an additional \$80 billion per year based on private contributions, some of which are stimulated by their registered charity status; the cost to the federal treasury alone of this is \$5 billion per year; the cost to provincial government treasuries is unknown.

Until recently, the *Income Tax Act* barred registered charities from spending more than 10 per cent of their revenues on political activities, which were defined narrowly to include only partisan support for candidates or political parties seeking election. They allowed charities to spend more on other political activities such as lobbying of politicians, publishing information, launching public advertising campaigns to oppose energy developments, mobilizing supporters to oppose certain laws, or organizing public demonstrations and blockades. Today, only about 5,000 charities, or 5 per cent of those in Canada, report being involved in political activities.

The Trudeau government passed legislation as part of the Omnibus Budget bill in 2018 authorizing charities to carry on unlimited “public policy dialogue and development activities” to influence laws and policies. In July 2018 Justice Edward Morgan of the Ontario Superior Court of Justice ruled that the *Income Tax Act’s* 10 per cent limitation on partisan political activity was unconstitutional. The Trudeau government decided to not appeal the ruling.

As a result of this legislative change and court decision, registered charity status now gives an organization, including activist environmental organizations, the freedom to spend up to 100% of its revenues on political activities, so long as these are consistent with its “charity” objectives.

The Trudeau government has directed CRA to stop requiring charities to report on how they spend on political activities, so it is unclear how anyone will be able to judge in future whether the activities carried out are consistent with charity status.

These developments open the door wide to potential abuses of political spending by radical ENGOs and other organizations that want to get heavily into political funding and can afford to do so.

The impact on the alignment of forces supporting and opposing resource development in Canada could be profound. The environmental organizations opposing development have enormous and probably permanent funding advantages, far greater than any political party could match. The long-term economic effects of this funding advantage could be especially damaging for provinces and regions whose prosperity depends on resource-based development.

## A Globally Significant Response

- Network of leading US and Canadian NGOs
- Coordinated Campaign Structure
- RBF & Hewlett Foundations
- \$7M/year Campaign



Excerpt of Tar Sands Campaign power point showing ENGO partners.

<https://corpethics.org/the-tar-sands-campaign/>

<https://www.cfact.org/wp-content/uploads/2014/09/Rockefeller-82144578-Tar-Sands-Presentation-July-2008.pdf>

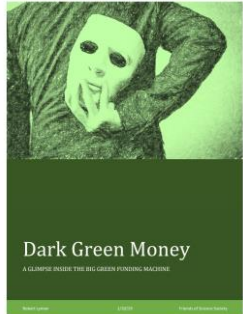
<https://www.counterpunch.org/2013/10/16/how-tides-canada-controls-the-secret-north-american-tar-sands-coalition/>

# GREEN TITANIC

## How Big Green Money's Political Power Was Unleashed

In previous reports<sup>1</sup> and blog posts, I described the current sources of funding for Canadian environmental groups (ENGOs), many of which have attained registered charity status.

In this article, I would like to describe how changes in the Canadian *Income Tax Act* and regulations governing charities and a recent court decision have freed activist environmental organizations with registered charity status from constraints on their ability to conduct political activities. I will offer some thoughts on the potential consequences of this for Canada.



### Background

There are more than 86,000 registered charities in Canada. They are exempt from paying tax on their income, and the federal government allows taxpayers to claim a tax deduction or a tax credit for charitable donations to reduce the income tax that they pay. The *Income Tax Act* provides other benefits to charities including the non-taxation of capital gains on donations of publicly listed securities, exemption from GST for certain supplies purchased by charities, and other rebates.

In 2019, the estimated cost to the federal government of providing tax relief to individuals for charitable donations is over \$5 billion, as indicated in Table 1.

Table 1

Value of Tax Expenditures Favouring Charities in Canada (2019)

<u>Category</u>	<u>Value(\$million)</u>
Charitable Donation Tax Credit	2,885
Deductibility of Charitable Donations	490
Exemption from GST for supplies	1,250
Non-taxation of capital gains	145
Rebate for registered charities	335
<b>Total</b>	<b>5,055</b>

Source: Finance Canada, Report on Tax Expenditures 2018

<sup>1</sup> <https://friendsofscience.org/assets/documents/Dark-Green-Money-Foundation-Funding-Jan-11-2019.pdf>

These are called tax expenditures because Finance Canada treats them as exceptions from the normal application of the tax system. If the exceptions were not in place, the donors to charities or the charities themselves would have had to pay income or sales taxes, so these taxes are “foregone” by the federal treasury. The revenues foregone by the treasury must ultimately be made up from taxes collected from all other Canadians. Consequently, the tax benefits enjoyed by the charities are effectively provided by all other taxpaying Canadians.

Beyond the revenue benefits that charities receive from favourable tax treatment, they receive over \$250 billion in annual revenues, of which about \$170 billion is direct funding from various levels of government. So, in total, Canadian taxpayers subsidize registered charities by about \$175 billion a year.

Most Canadians have a broadly favourable view of charities, because they are associated with “good causes” or organizations that provide “common or social goods and services”. The traditional definition of a charitable purpose is that it aims to:

- Relieve poverty by providing social services for the working poor
- Advance education by building more schools for students
- Advance religion by offering religious instruction to elementary school students
- Relieve conditions associated with disability by providing support to caregivers who are family members

Over the history of Canada’s tax treatment of charities, this narrow list of purposes has been vastly expanded. One might say that the categories of charities now used by the Canada Revenue Agency is so far wider than its traditional one as to be almost unrecognizable. It includes, among other categories: protecting the environment, promoting the welfare of animals, advancing the public’s appreciation of the arts, protecting human life and property, promoting racial equality, and promoting industry trade and commerce. The registered charity “industry” accounted for about 13 per cent of Canada’s \$1.8 trillion GDP in 2015.

There are many important public policy issues about the way charities are regulated in Canada and about the relationship between governments and charities. This note will address one of these: the effects of recent decisions concerning how charities, and especially certain environmental organizations, spend for political purposes.

## Big Green Money<sup>2</sup> – The Role and Activities of Large Environmental Organizations

No one objects to the efforts of environmental organizations to promote the natural environment by reducing harmful emissions of pollutants into local air, land and water. One certainly might ask, at this juncture, why Canada needs to rely so heavily on the supply of environment-related services by non-governmental organizations. The federal and provincial governments have immense and ever-growing organizations of experts whose job it is to assess risks, regulate environmental practices and respond to environmental emergencies. These organizations are accountable to the Canadian public through Parliament and the provincial legislatures. Thus, it is not all clear that the funds directed to non-governmental organizations deliver results as efficiently and with the same accountability as those delivered by government departments. Moreover, the private firms that provide environmental services often find themselves competing with ENGOs with charity status for government contracts, only to find that, because of the funding and favourable tax treatment accorded by governments to ENGOs, they can usually undercut the pricing of a commercial competitor.



Beyond the efficiency and accountability concerns, an increasing number of large environmental organizations have accepted the claims that human emissions may cause potentially catastrophic effects on the global environment and that costly actions by Canada (which constitutes only 1.6% of global emissions) will make a difference at the global level. In their campaigns to address alleged human influences on global warming and climate change, a number of federally registered, tax-subsidized environmental charities have chosen to take actions that harm the Canadian economy, such as:

- blocking necessary energy infrastructure,
- promoting increased reliance on expensive intermittent sources of electricity supply,
- urging the imposition of carbon taxes, which are essentially a consumption tax, that raise the costs of everything for consumers,
- advocating for constantly increasing regulations.

The information available on IRS and CRA public records has been well researched by various private citizens, including Vivian Krause and others, in Canada. Her blog can be found here:

[https://fairquestions.typepad.com/rethink\\_campaigns/](https://fairquestions.typepad.com/rethink_campaigns/)

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<sup>2</sup> <https://blog.friendsofscience.org/wp-content/uploads/2019/02/Big-Green-Money-NO-vs-PRO-FINAL-RevB-FEB-12-2019-1.pdf>

The now well-publicized Tar Sands Campaign is just a sliver of a much broader, global campaign, driven by both foreign and Canadian foundations.

The average Canadian, accustomed to thinking of environmental organizations as small and constantly searching for funds to meet a meager and parochial agenda, might be surprised to learn how rich they are. In a previous blog article (Money Matters; The ENGO Political Advantage<sup>3</sup>), I compared the funding of the 40 largest environmental organizations in Canada to those of Canada's political parties.

- The combined revenues of the ENGOs and their environmental law counterparts was almost \$11.4 billion over the period 2000 to 2018.
- The total revenues received by all four main federal political parties over the period was about \$631 million.
- The revenues received by the ENGOs and their environmental law counterparts over the period thus was over 18 times the revenues received by all federal political parties.
- The revenues received by the Tides organization, one of the most active opponents of Canadian energy development and infrastructure, is more than the combined revenues of Canada's two largest political parties, the Liberal Party of Canada and the Conservative Party of Canada.

No one should be under any doubt that, whatever their other purposes and activities, Canadian ENGOs are significant political organizations. They use their large funds in a wide variety of ways to influence politicians and to sway public opinion. These include lobbying of politicians and officials, publishing information (and propaganda) in print and social media, organizing "public education campaigns" to indoctrinate followers, launching public advertising campaigns to oppose energy developments, mobilizing others to support or oppose specific government policies and laws, and organizing public demonstrations and blockades.

This might be entirely acceptable in a democracy, except for a few things. One is that many of these organizations were created by and remain heavily funded by foreign foundations that may not have Canadian interests at heart. At a minimum, Canadians should be able to see which foreign sources are pulling the strings, especially when the competitiveness or market access of Canadian firms is at stake.

## What Does the Data Show?

It would be ideal if the information that the CRA required of registered charities, and especially those that are ENGOs active in opposing resource development, included details about their

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<sup>3</sup> <https://blog.friendsofscience.org/2019/02/16/money-matters-the-engo-political-advantage/>



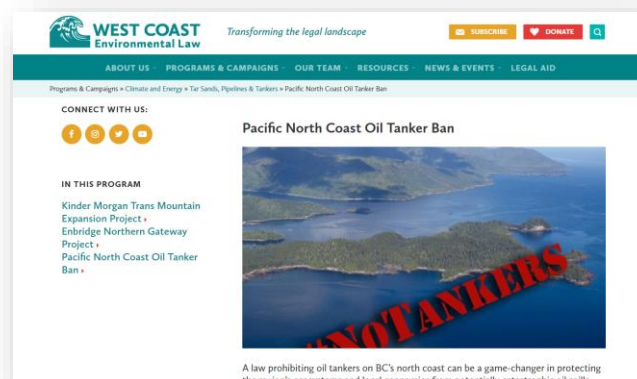
political activities. In fact, the generic reporting by CRA is done in terms of group aggregates, or classifications, defined in terms of activities and purposes. Thus, most environmental charities are classified as group C-52, whose purpose is “preservation of sites, beauty and historical”. Of the organizations that reported political activity, the independent observer cannot find out the specifics of who received the political contributions, the political activities in which the organization participated, how much was devoted to in-kind support for political objectives, what was the relationship between foreign-source revenues and the subsequent political contributions and activities, and the results obtained from the political activities and expenditures. The public and Parliament, which is supposed to exercise oversight, are essentially blind to what political activity taxpayers are funding.

Fortunately, it appears, only a small proportion of all charities are reporting political contributions and activities. Of the almost 103,000 charities that have filed T3010 reports since 1997, only 4,967, or 5 per cent, reported political activities and contributions. Of the 25 charities that reported the largest political expenditures, there were only two NGOs, Ducks Unlimited Canada and the David Suzuki Foundation. Since 1997, Ducks Unlimited Canada spent \$45.3 million on political expenditures and the David Suzuki Foundation spent \$4.8 million. The absence of organizations known to spend many millions of dollars on the anti-oil sands campaign from this list suggests that NGOs do not follow the same reporting practices. Fundamentally, however, we don’t know.

## A Brief Review of Past Decisions Concerning Political Spending by Charities

Prior to 1985, registered charities were not allowed to engage in political activities if they wished to retain their tax-free status. In that year, the Mulroney government introduced legislation to permit a charity to engage in such activities in certain circumstances, specifically if it devoted substantially all its resources to charitable activities carried on by itself. In addition, the political activities had to be ancillary and incidental to its charitable activities or purposes. The *Income Tax Act* stated that no more than 10 per cent of the resources of any charity could be devoted to political activities.

In administering the law, the CRA endeavoured to draw a distinction between acceptable and unacceptable political activities. The unacceptable ones were partisan, in the sense that they directly and explicitly supported a specific candidate or political party seeking office. More general efforts to “*retain, oppose or change laws and policy through public information and engagement activities*” were treated as acceptable.



In the 2012 Federal Budget, the Harper Government, concerned about the political activities of various charities using their funds to oppose energy development and energy infrastructure, gave the CRA additional resources to audit charities engaged in political activities and ordered it to increase reporting requirements on the annual T3010 filing that charities must make. The CRA embarked on a series of 60 audits, which were strongly criticized by the ENGO community and by the Opposition parties.

In January 2016, the newly-elected Trudeau government announced that the CRA's audit program would be wound down; the results of the audits completed to that point in time were never made public. In his mandate letter to the new Minister of National Revenue on November 12, 2015, Prime Minister Trudeau instructed her to *"allow charities to do their work on behalf of Canadians free from political harassment and modernize the rules governing the charitable and not-for-profit sectors, working with the Minister of Finance. This will include clarifying the rules governing "political activity" with an understanding that the charities make an important contribution to public debate and public policy."*

The Minister of National Revenue appointed a Consultation Panel on the Political Activities of Charities in September 2016. The panel members included Marlene Deboisebriand, Shari Austin, Susan Manwaring, Kevin McCort and Peter Robinson. All of the panel members have many years' experience in the charity and non-profit sectors; none represented outside constituencies or viewpoints. Peter Robinson is the Chief Operating Officer of the David Suzuki Foundation and also Chair of Imagine Canada. Further, the composition of the panel was curiously non-representative even of the registered charity community. There were no representatives of the Health and Education charity classes that have the largest revenues. There were no representatives of the most numerous charity class: Religion. Finally, where were the representatives of the charity class whose services arguably have the most direct effect on Canadians, the Welfare charity class?

The consultation process followed by the panel was similar to that which the Trudeau government has followed in a number of other cases; it focused on gathering input from organizations that supported the government's views and offered little or no opportunity for alternative views to be heard. The online consultations took about seven weeks and the in-person consultations took all of two weeks, from November 29 to December 13, 2016. Virtually all of the participants were representatives of registered charities. One might almost say that the outcome of the consultation was pre-ordained.

The Panel reported in March 2017, and recommended that the CRA's administrative position and policy be revised to enable charities to *"fully participate in public policy dialogue and development"* and amend the *Income Tax Act* *"to delete any reference to non-partisan political activities to allow charities to fully engage without limitation in non-partisan public policy dialogue and development, provided it is subordinate to and furthers their charitable purposes."*

The Trudeau government did not seek Parliament's approval of revisions to the *Income Tax Act* in separate legislation that would have afforded more opportunity for oversight, public hearings and media attention. Instead, it included in Bill C-86, the omnibus Budget Act for 2018, new rules to permit charities to carry on unlimited "public policy dialogue and development activities (PPDDAs)", which generally involve seeking to influence the laws, policies or decisions of a government. The amendments received Royal Assent at the end of 2018, and the CRA issued draft regulations to implement this in January 2019.

The government subsequently moved essentially to eliminate CRA's requirements on charities to report on political activities.

<https://www.canadiancharitylaw.ca/blog/cra-announces-upcoming-changes-to-the-t3010-to-account-for-changes-in-polit>

To further the complete removal of regulatory constraints on charities' political activities, in July 2018 Justice Edward Morgan of the Ontario Superior Court of Justice granted a ruling in a case launched by the charity Canada without Poverty (which the CRA had found was spending 98.5 per cent of its revenues on political activity). In his ruling, he found that the *Income Tax Act's* 10 per cent limitation on partisan political activity was an "arbitrary and unjustified infringement of freedom of expressions as guaranteed by Section 2 of the Charter of Rights and Freedoms." The Trudeau government decided to not appeal the ruling.

## Consequences

The combined effect of the Trudeau government's decisions and the Ontario Superior Court's ruling is that the CRA now has no legal basis to disqualify a charity from spending 100 per cent of its funds on either partisan or non-partisan political activities. The main remaining limitation on such activities may be in the initial CRA finding as to whether an organization is a charity.

Mark Blumberg is one of the most prominent lawyers in Canada specializing in issues related to charities law. In testimony before the Senate Committee on Finance in November 2018, he made several points that help to clarify the potential consequences of the recent changes.

*"We know that Canadian charities on the T3010 annual return claim to have spent approximately \$25 million per year on political activities. Yet, if Canadian charities have expenditures of over \$250 billion a year, in theory Canadian charities could in fact spend almost \$25 billion on political activities. In*

*other words, Canadian charities under the old rules could spend 1000 times more funds on political activities than that which they claim to spend...*

*Some people talk in terms of freedom of expression for charities, but it is really about money more than freedom of speech. People who work or volunteer with charities are free to express their personal views on their own time and that can even include partisan activities. However, some want more – the ability to be paid using a charity’s resources, which are subsidized by taxpayers, to express their political views and to not have to do any charitable activities. The 10 % rule is not enough for them. They want 100%. There is a difference between ‘free speech’ and ‘heavily subsidized speech’ ...*

*Finance in their fall update are estimating that the cost of this measure will be up to \$90 million in Federal taxes foregone by 2022, which means charities would be spending \$300 million more on political activities per year. These figures do not include the hit to provincial governments. By my off the napkin calculation it appears that Finance is guessing there will be about a 12-fold increase in the amount of spending by registered charities from the numbers declared at the moment... I think the Finance numbers are conservative, and if we look at the US experience we are going to have single individuals that will receive more than \$90 million in tax relief. The issue is not going to be foregone Federal and provincial tax but ultimately the quality of the work coming from a small number of charities with barely hidden partisan agendas that can undermine public confidence in the sector. Unfortunately, we only need to look at the US at the moment to see the corrosive impact of lots of dark money and political contributions funneled through the non-profit sector.”*

The full text of Mark Blumberg’s testimony can be found here:

<https://www.globalphilanthropy.ca/blog/senate-committee-on-finance-and-their-review-of-political-activities>

The list of further possible implications is a long one. Certain ENGO registered charities, like Ducks Unlimited or the David Suzuki Foundation, could greatly expand their partisan and non-partisan political activities. Thousands of non-profit organizations could seek to become registered charities. In future, a government could remove or scale back tax incentives for donating to charities. The federal and provincial governments might substantially reduce their direct funding of charities. The public’s view of charities could change completely from that of socially beneficial agencies to that of highly politicized advocates for special interests.



The “Green Budget Coalition features 21 ENGOs, most of them charities, advocating for expensive special interest projects for the federal 2019 budget.



## Conclusion

Registered charity ENGOs that receive taxpayer funding are now unrestrained by CRA regulations in terms of using their revenues to fund a wide range of political activities to oppose resource development. The current federal government has supported and enabled this change. Charities still will be subject to the requirements of the Canada Elections Act, which constrains political activities during election campaigns. Between elections, political contributions from charities will be used to fund a broader range of actions and to significantly improve the organizational capacity of organizations receiving donations, including third party organizations.

The court system has, in the name of freedom of expression, removed all limits on the use of funds by registered charities even for partisan political purposes.

The previous system of annual reporting requirements imposed by CRA on registered charities produced very little publicly-available information about the political funding and activities of individual charities. The current federal government has now eliminated most of those reporting requirements, so there is no way for the public to know how politically-active ENGOs will use their new freedom to spend for political purposes in future.

The impact on the alignment of forces supporting and opposing resource development in Canada could be especially profound. The forces opposing development may have enormous and probably permanent funding advantages, far greater than any political party could match. Natural resources industries in the oil and gas, mining, forestry and other industries should expect increasing activism

directed at their lawful activities, increased legal challenges, and grassroots opposition to development proposals. The long-term economic effects of such changes could be especially damaging for provinces and regions whose prosperity depends on resource-based development.

As the current federal government has empowered and directed the recent legislative changes, there will be no policy or legislative change to reverse them so long as this government is in office.

In future, a new federal government could of course make significant changes through legislation or regulation. It could, for example, change the definition of “charities” in the *Income Tax Act* and related regulations to more closely align with the Common Law origins of the term. It also could explore other legislative changes that would withstand court scrutiny over constraints on political “freedom of expression” for charities. It certainly should consider appealing the Ontario Superior Court of Justice decision.

It should be possible, perhaps with a simple regulatory change, to amend the definition of a charity from one that “protects the environment” to one that “protects the local environment from the effects of local pollution of air, land and water”. This could eliminate or circumscribe the charity status of organizations that seek to transform the Canadian energy economy because of the allegedly catastrophic effects of human-induced global warming.

Over the longer term, it would be desirable to introduce an entirely new way of regulating the registration and governance of charities. This could, for example, entail the creation of an independent organization at arms’ length from CRA and accountable directly to Parliament. It also might entail an increased role for provincial governments in regulating and auditing the activities of charities within their borders.

The charities sector should not be the battleground for competing views about the benefits and risks of resource development in Canada. If public trust in and support for the charities that provide key services to Canadians is to be assured into the 21<sup>st</sup> century, a future government should undertake a thorough, non-partisan review of the regulation and governance of the sector.





*About the Author*

Robert Lyman is an Ottawa energy policy consultant, former public servant of 27 years and a diplomat for 10 years prior to that.

**Friends of Science Society** is an independent group of earth, atmospheric and solar scientists, engineers, and citizens who are celebrating its 16th year of offering climate science insights. After a thorough review of a broad spectrum of literature on climate change, Friends of Science Society has concluded that the sun is the main driver of climate change, not carbon dioxide (CO<sub>2</sub>).

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