



April 17, 2014

Ms Lynda Steele  
Consumer Reporter  
CTV News, Vancouver

Delivered via email: steeleonyourside@ctv.ca

Dear Ms Steele

Subject: Your Tax Shelter News Items aired April 14 and April 15 and Posted on the CTV Website.

Profitable Giving Canada (PGC) is a federally regulated Not-For-Profit organization with a mission to help regulate certain Fourth Sector initiatives in Canada. The subject Registered Profitable Gifting Arrangements (RPGA), or donation tax shelters as you call them, fall into that category.

We have reviewed your videos on the CTV website and are writing to bring some additional information to your attention. It is clear that you have not fully understood the law and regulations regarding RPGAs in Canada and the role of the Canada Revenue Agency (CRA). Your opinions aired are very much one sided and unfortunately do not represent the whole picture. There are some glaring inaccuracies which we would like to point out to you.

1. Tax Shelters are lawful in Canada and are provided for in the *Income Tax Act*. We are attempting to be co-regulator of this industry along with the CRA. Your videos painted a picture of unlawful or fraudulent tax activities with the structure of these two programs. We do not agree with your aspersions.
2. The CRA is not the Government and does not make the tax laws in Canada. The CRA is an independent administrative body reporting to the Government and charged with administering the *Income Tax Act*. The CRA interprets the tax laws, as do many taxpayers and their advisors. Taxpayers have the right to disagree with the CRA. It is the Tax Court of Canada that decides the ultimate tax position of any taxpayer who disagrees with the CRA, not the CRA itself. We believe you have taken a very one sided stance by relying on the CRA as the definitive source regarding these programs. Would you ask Burger King to comment on the quality of McDonald's hamburgers and rely on their opinions?
3. The CRA has not made a final decision on the compliance of the two RPGAs you mentioned in your videos, namely the Canadian Organization for International Philanthropy and Mission Life Financial. The CRA Audit division has issued reassessments for some years, most taxpayers have objected to these reassessments, and the matter has been referred to the Appeals Division of the CRA according to the process prescribed. No decision from CRA Appeals has been rendered yet. So it is not factual to report that the CRA has finalized its denial of the donations and is authorized to collect the refunds issued, with interest. It is simply not true in these examples. Tax in dispute stays in the hands of the taxpayer according to the law until a final decision is rendered.

4. You interchanged the word “sham” and “scam” in your pieces. These are two very different words. The CRA has never called any RPGA a scam that we are aware of. Sham doctrine is a legal argument that CRA auditors have used to justify disallowing donations by claiming the donor never intended to honour his participation contracts. Scams, on the other hand are generally considered illegal and reprehensible. Nobody condones a scam.

5. In our view, there really is a “scam” being perpetrated now, but it is not what you have reported. PGC is presently conducting an investigation into alleged wrongdoing by several RPGAs and you can see details on our website. We do not deny that there are and have been some unlawful tax schemes being improperly promoted. That is one of the reasons for our existence.

6. The CRA’s new policy of delayed processing of certain taxpayers returns based on their donation claims is, in our view, solely a deterrence tactic and not compliant with the law. In fact, the Federal Court has already ruled to that effect in Ficek vs. the Attorney General. The CRA is choosing to ignore that ruling. In addition, the law was just recently changed in the 2013 Federal Budget to give CRA more flexibility in collecting tax in dispute after an RPGA reassessment. The new CRA policy flies in the face of this new legislation and as a result, PGC is challenging it in Federal Court on behalf of over 400 of our members. Again, details of our Mandamus action are posted on our website. Should the CRA be allowed to exercise its broad “discretionary” powers according to a deterrence agenda, and avoid the *ITA*, the Courts and even the will of Parliament whenever it wants and with impunity?

7. Your pieces neglected to spend any time or attention to the philanthropy that is being done by compliant RPGAs. There is strong evidence that many lives have been saved or altered for the better as a result of donations through the two programs you mention. These people that are only alive today as a result of these donations are surely not happy that you and the CRA are trying to stop the flow of support that they have been receiving. After all, the Government only provides these generous tax credits if the philanthropy is real and verifiable.

We trust that we have been able to provide you with a slightly different perspective and some food for thought. There are always two sides to every situation and we are disappointed you did not take the time to seek out the facts of the situation as we see it. If you wish any further information, I or several members on our Board would be well qualified to answer your questions specific to the two programs you reported on.

Yours truly,



J. Jaye Torley  
President  
Profitable Giving Canada  
[www.profitablegiving.ca](http://www.profitablegiving.ca)