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March 7, 2017

Hon. Rachel Notley
Premier of Alberta
307 Legislature Building
10800 97 Avenue
Edmonton AB T5K 2B6

Dear Premier Notley:

Our Board of Directors has instructed me to write and encourage the government to maintain the exemption that charities and public good not-for-profits enjoy under the Lobbyists Act and to avoid adoption of the recommendations made by the Commissioner.

As you are probably aware, The Muttart Foundation has been a philanthropic force in Alberta since its founding in 1953. It has, over the years, supported literally thousands of charities in ways large and small. Our current focus includes an emphasis on issues related to the charitable sector as a whole, and the encouragement of policies that allow charities to operate at peak efficiency for the benefit of those they serve.

We recognize that it is unusual to write to you while the matter is still before the Standing Committee on Resource Stewardship. Unfortunately, the process employed by the committee made it impossible to make direct submissions on the Commissioner's recommendations. Those proposals by the Commissioner were not made public until after the deadline for public submissions; her most recent proposals were presented to the committee after the deadline for a sector response (and are still not publicly available). As a result, the sector has not had the opportunity to address specific changes that the Commissioner proposes.

We suggest that the recommendations that we have seen (or can discern from the transcript of the committee's February 21 meeting):

- fail to recognize the nature of the relationship between government and the voluntary sector
- ignore the history of the Act and of the exemption
- are based on inaccurate information; and
- would create an unreasonable burden on charities and not-for-profit organizations with no corresponding public benefit

We address each of these points in turn.

Relationship between government and the voluntary sector

The provincial government and the voluntary sector work together constantly on the development and delivery of programs. Open relationships at the officials level and at the ministerial level work to the benefit of all Albertans. At both levels, government relies on charities to bring the voices of its beneficiaries and its members to policy discussions. Because government relies on the voluntary sector to deliver and promote so many government programs, these open lines of communication result in programs that are better planned and better operated.

Government turns to some charities for expert advice because the people working at the charities are "at the coal face." They provide government not only with real-time information, but also with ideas of how programs and policies could be improved.

These interactions, which occur across the province every single day, should not be considered as lobbying, but rather as program design and quality improvement. Yet, under the Act, every one of those charities would be required to register, were it not for the exemption that has been part of the Act since its inception.

Ministers use the backdrops of charities for announcements regularly, but under the Commissioner's proposals, a minister might not be allowed to ask a staff member of that charity how to improve services unless the minister did it in writing. If he or she did make such an inquiry, it would automatically (in the Commissioner's view) create an obligation on the charity to register under the Act and spend time and energy tracking every interaction with government.

The same minister could, however, probably ask the volunteer board chair the same question without triggering such an obligation. This seems to be somewhat nonsensical. The answer is not to remove the application of the Act only to people who are paid to have discussions with government, but to recognize that the very nature of the voluntary sector makes it different than other aspects of society.

The Commissioner's recommendations and her testimony to the committee put charities and not-for-profits on the same footing as commercial interests. That, we suggest, is a fundamental flaw.

The history of the Act and the exemption

You will recall that the Act was introduced as the signature bill of Premier Stelmach when he won the leadership of his party. His promise to introduce the bill came in the midst of significant media coverage about the activities of his predecessor's former chief of staff. At no time during the discussion of the bill was there any suggestion that a charity or not-for-profit had engaged in behaviour that was inappropriate in any sense.

When the voluntary sector began explaining to MLAs the difficulties that would be caused, Premier Stelmach is reported to have told his caucus that he had never had any intention of including the voluntary sector within the scope of the bill. Thus, the current move to remove the exemption represents the introduction of a new purpose for the bill – a purpose for which, we suggest, no reason has been demonstrated.

The exemption that currently exists in the Act was drawn from the Quebec legislation. It has subsequently been adopted by other jurisdictions. If there is a trend in the country, it is toward exempting charities from this type of legislation at the provincial level.

At the time the exemption was introduced, there was discussion about limiting it only to registered Canadian charities. It was the view of the government that other types of organizations, such as amateur sports organizations, should also be exempted. Thus, the wording taken from the Quebec legislation was chosen: it exempted those organizations which exist for a public benefit, and left other types of organizations, concerned primarily with private benefit, subject to the Act.

We would also point out that the exemption only applies to what the Act considers "in-house" officials. No one in the sector has ever argued that consultant lobbyists should not have to register their engagement by a charity or not-for-profit – a very rare occurrence, at best.

The Act as currently structured provides a balance, we believe, that remains appropriate, without putting a significant administrative burden on organizations that are of greater benefit to Albertans when they devote their attention to achieving their charitable purposes.

Inaccurate information

The transcripts of the committee's meetings reveal an unfortunate set of misunderstandings about the voluntary sector, the demographics of the sector and the work it does. Moreover, there were some unfortunate suggestions that legislation should be content-based, varying on whether an organization is supportive or not supportive of various initiatives.

To start with basics:

- All charities are not-for-profits; not all not-for-profits are charities.
- All charities must, by law, exist for a public benefit and must ensure that any private benefit is incidental.
- There is no statutory definition of charity and, contrary to the Commissioner's assertion, there is no definition of charity within the Criminal Code.
- No charity can, as a matter of law, exist for the sole purpose of advocacy.

While there is no statutory definition of "charity," the common law has developed a rubric through which an organization is assessed. Those organizations which pass that assessment are entitled to be registered as charities by the Canada Revenue Agency. Thus, a reference in the act to "registered Canadian charities" would point to a clearly identifiable group of organizations.

Not-for-profit organizations that are not charities come in a variety of structures and have a variety of purposes. They include everything from neighbourhood residents' associations and sports leagues to the Canadian Automobile Association and the Canadian Medical Association. Some exist for the purposes of advocacy – whether on a particular issue or in support of the organization's members; most others will periodically engage in some types of advocacy which may, or may not, involve discussions with governments.

As noted in the previous section dealing with history, the government of the day did not want to restrict the exemption to "registered Canadian charities," because it would subject certain other types of organizations, such as residents' associations or sports leagues, to the requirements under the Act.

It is true that other definitions have come into play. For example, the Alberta Gaming and Liquor Commission uses a different definition when determining the eligibility of an organization for a gaming licence. And now, apparently, according to the transcript of the Resource Stewardship's latest meeting, the Commissioner has developed something that creates 11 types of "community service organizations." We are unable to comment specifically on that submission simply because it has not yet been made public. However, in general, we do not see the need for a new definition.

Similarly, if the Commissioner actually has data to support her contention that 90% to 95% of Alberta-based not-for-profit organizations have fewer than four staff (and so would still remain exempt from the provisions of the Act under her proposal), we have not seen it because her submission has not been made public. We would be astonished if those numbers were accurate; they appear inconsistent with other data. The reality is that we do not have good data.

Added administrative burden with no corresponding benefit

We are hard-pressed to understand what benefit would come from removal of the exemption that now exists. We are not aware of any suggestion that an organization that is exempted under the relevant provision of the Act has behaved inappropriately. While the Commissioner and some members of the Resource Stewardship Committee pointed to some groups that have taken positions with which they disagree, we believe it would be highly inappropriate to use disagreement with an organization's beliefs as grounds for removal of the exemption.

Notwithstanding the Commissioner's views to the contrary, and her assurances that the registration and reporting systems are user-friendly, even those charities and non-profits she proposes to include as registrants (those with 4 or more staff) are not operating with excess staff. You know from your own experiences with charities and non-profits that the vast majority of them operate on a very lean basis, often having difficulty in ensuring there is enough funding to maintain their existing levels of service. Adding an administrative burden that may be highly appropriate for commercial interests when the nature of a non-profit's engagement with government is much different would, in our view, accomplish nothing other than create the need for more administrative resources in the Commissioner's office to monitor a large number of organizations that, for very good reasons, currently are exempted from registering and reporting under the Act.

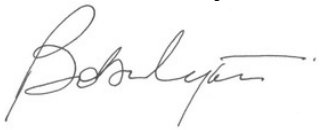
In conclusion, Premier Notley, we see absolutely no justification to change a fundamental principle that has existed in the Act since it was introduced. The Commissioner has not provided any accurate information that justifies removal of the exemption now enjoyed by certain non-profit organizations. We ask that whatever recommendations flow from the Resource Stewardship Committee, that your government maintain that exemption.

To quote a long-time government-relations professional:

> *If it ain't broke, don't fix it.*
> *It ain't broke. Don't fix it.*
> *If you fix it, you will break it.*
> *If you break it, you will need to fix it.*

We would be pleased to meet with you or your staff and to provide any other information that would be helpful as the government deals with this issue.

Yours truly



Bob Wyatt
Executive Director