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SUBMISSION

to the

SPECIAL COMMITTEE OF THE SENATE

ON THE CHARITABLE SECTOR

October 2018

SUMMARY OF RECOMMENDATIONS

That the Committee recommend amendments to the *Income Tax Act* so that all appeals from decisions of the Charities Directorate proceed first to the Tax Court of Canada for a hearing de novo, following consideration (or delay) by CRA's Appeals Directorate

That the Committee recommend that government provide funding to Statistics Canada to conduct one major study related to Canada's voluntary sector each year and to ensure funding is available for dissemination of the results.

That the Committee recommend inclusion within the *Income Tax Act* of a provision that would allow a charity to have a political purpose that is ancillary to an otherwise charitable purpose.

That the Committee recommend that CRA fundamentally review its interpretation of "direct or indirect support" and its determination of when a person becomes a candidate for public office.

That the Committee address the question of whether the confidentiality provisions of the *Income Tax Act* should be amended so as to allow CRA to make publicly available information leading to a decision to give notice of intention to revoke a charity's registration.

That the Committee consider proposals made by other witnesses to create a greater "culture of giving" within Canadians, without proposing any change in the basic structure of the charitable-donation tax credit.

That tax on the capital gain realized on the sale of real estate and private equity be waived where the donor donates the proceeds of such sale within 30 days of receiving the income (in whole or in part) from such sale.

That the Committee recommend that the Government of Canada immediately implement the recommendations contained in the report of the Blue Ribbon Panel on Grants and Contributions and encourage provincial and territorial governments to do the same.

That the Committee recommend that Treasury Board review grant agreements used by government departments and eliminate unnecessary restrictions in such agreements and encourage provincial and territorial governments to do the same.

That the Committee endorse the “destination of funds” test and recommend that charities be allowed to carry out any type of business activity so long as the proceeds of such activity are used to support the charitable purposes of the charity.

That the Committee recommend legislative and policy changes that would allow charities to further their charitable objects, inside and outside Canada, with a minimum administrative burden, while ensuring that charitable resources are appropriately stewarded.

That the Committee recommend amendments to the *Income Tax Act* that would significantly narrow the definition of who is ineligible to serve as a director or manager of a registered charity or registered Canadian amateur athletic association (RCAAA).

That the Committee endorse the qualities of a regulator set out in Chapter 3 of the Joint Regulatory Table’s final report and recommend that the government provide the resources necessary to achieve those qualities, while requiring CRA to report publicly on a regular basis on its progress toward achieving the goals that are set out in the report.

That the Committee recommend re-establishment of an Advisory Committee on Charities, to be appointed by, and responsible to, the Minister of National Revenue.

That the Committee recommend that the government commit to the Accord and appoint “champions” of the Accord throughout government departments and agencies.

That the Committee propose an ongoing mechanism for regular review of the legislative provisions related to charities and not-for-profit organizations.

SECTION 1

INTRODUCTION

The Muttart Foundation welcomes the opportunity to present observations and suggestions to the Special Senate Committee on the Charitable Sector.

For more than two decades, Muttart has taken an active role in dealing with issues related to the regulation of charities. It has worked with government, academics, sector organizations and allied professionals to examine particular issues and general matters of how the sector in Canada is regulated. It has supported organizations active with public-policy work, has engaged with partners in education about policy issues, and has convened meetings to discuss and inform regulatory issues.

From our experience, our Directors have agreed on certain suggestions we would offer to the Committee for its consideration. There will be suggestions that are surprising (at least in terms of the priority we attach to them), and there will be suggestions that run contrary to what others in the sector will suggest.

This is not necessarily a bad thing: the sector is not homogenous; indeed, its diversity often adds to its strength. Various organizations will put forward arguments to the Committee and we fully expect that the members of the Committee will bring their own experiences to bear on the issues that are canvassed before it.

The task accepted by the Committee is one that happens maybe once in a generation. It invites a full review of all the laws and policies that affect charities and not-for-profit organizations. There has not been such a review since the existing provisions of the *Income Tax Act* were drafted in 1967. It is true that there have been a number of amendments since that time, but they have been more in the nature of “band-aids,” dealing with some sort of specific problem that has arisen, or has been perceived as having arisen. This means that we have legislative provisions that predate our having computers on our desks, let alone phones that give us immediate access to information from around the world. It is difficult to imagine another area of human endeavour that has not seen a more comprehensive review in more than a half-century.

The unfortunate aspect of that situation is that the Committee is being inundated with suggestions of what is needed just to catch up, as well as suggestions as to what future needs should be anticipated and addressed now. This will provide the Committee with a wide variety of possible avenues that will call on members’ abilities to foresee the future.

Much of our submission will focus on things Muttart believes need to be fixed now to create a framework that will serve Canadians well into the future. We would be happy to discuss with the Committee, or its staff, any of our suggestions and provide whatever assistance we can to assist the Committee in developing a report the sector has long awaited.

We will not encompass every possible change in the laws related to charities and not-for-profits. Instead, we are focusing on the issues that we consider to be the most critical, and we will address them in the priority we think attaches to them.

Although the Committee's mandate is related to the federal laws and policies that affect Canada's charities and not-for-profit organizations, we encourage members of the Senate to approach this task with a broader overview.

The voluntary sector exists in virtually every community in this country. Whether dealing with local, regional, national or international issues, these organizations exist to help support and improve the quality of life of Canadians and those beyond our borders. They bring together millions of volunteers and at least hundreds of thousands of professional staff – all devoted to making the world, or their part of it, a better place.

Members of the Committee have already been privy to submissions that talk about the significant breadth of the voluntary sector. All of the members of the Committee have, or have had, significant involvement with voluntary organizations. You are aware of the great successes that are achieved on any number of levels, and you are aware of the struggles that these organizations face as they go about doing their business.

In reporting to the Senate on its findings and recommendations, the Committee should, we respectfully suggest, focus on creating an environment in which the abilities of these organizations are enhanced. While it will always be necessary to protect against those who would seek to take advantage of the benefits of charitable status, we encourage the Committee to help create an environment in which the 99% of well-meaning and well-behaved charities are not constrained for fear of the actions of the 1% that might be fraudulent.

As one of Canada's leading charity lawyers is fond of saying: "It should not be this hard to do good."

We hope that the Senators will place their recommendations within the broader context of what Canada's charities and not-for-profit organizations do, and could do.

An Issue of Language

As the Committee learned from its earliest meetings, language matters in discussing the issues the Senate has assigned to you for consideration. The words “charity” and “not-for-profit” are sometimes used interchangeably; there is talk about the “charitable sector” and the “voluntary sector” and the “community benefit sector” and the “public good sector.”

As members have now come to realize:

**all charities are not-for-profits
but not all not-for-profits are charities**

In our submission, when we talk about “charities,” we will be referring to the slightly more than 86,000 organizations that are registered charities under the *Income Tax Act*. This includes charitable organizations, public foundations and private foundations. These organizations have undergone a rigorous examination to ensure that they exist only for charitable purposes and that they serve the public or a significant segment of the public and act in the public interest. They are subject to certain rules and, in return for complying with them, they are eligible for certain tax advantages, including, especially, the ability to provide donors an opportunity to receive tax credits for their donations.

When we talk about “not-for-profits” in this submission, we will be talking about organizations that are not charities, but which exist for a purpose other than making a profit. They can exist for a general public benefit, or they may exist for the mutual benefit of their members. While they do not pay income tax on their earnings, and do not distribute earnings to members, they do not have the privilege of issuing receipts giving members or donors any tax credits.

While charities are subject to a vigorous regulatory process, including the filing of annual returns that are publicly available, most not-for-profits face little regulatory supervision. Some are required to file tax returns (although it is not clear what percentage of those who should actually do), but those returns are not publicly available, nor is the information from those returns aggregated and made available. To maintain their corporate status, federal not-for-profit organizations must file certain returns; some of that information is publicly available, but it does not include information about the nature of the organization’s activities.

In other words, we know a great deal about charities, but not nearly as much about not-for-profits. This creates a rather large burden when talking about regulation.

Another issue that can cause significant confusion – and has – is the difference between charitable purposes and charitable activities. Although these are often conflated – by the Canada Revenue Agency (CRA) and by the courts, amongst others – they are different concepts.

Every charity must exist for purely charitable purposes. What constitutes a charitable purpose has its roots in an 1892 case called *Pemsel*, which established four “heads” of charity:

- the relief of poverty
- the advancement of religion
- the advancement of education
- other purposes beneficial to the community, not falling under any of the preceding heads

Because this is a common-law concept, it is meant to change with the times. As will be discussed later in this submission, the evolution in Canada has been slower than in some other jurisdictions. However, issues including the environment, health and ethno-cultural organizations and the promotion of human rights have come within the fourth head of charities.

While all purposes of a charity must be exclusively charitable, the same is not true of activities, although there is anecdotal evidence that the Canada Revenue Agency (CRA) has not yet accepted that reality. The issue was clearly addressed by the Supreme Court of Canada in the *Vancouver Society of Immigrant and Visible Minority Women* case in 1999 after the Court went to great lengths to make clear that purposes and activities are different things. Still, there is anecdotal evidence that CRA believes that an organization, one that has not yet started to operate, must be able to demonstrate that all of its activities are or will be charitable. In fact, according to the Supreme Court, what is required is that a charity demonstrate that all of its activities are meant to further the charity’s purposes.

In this submission, we will be very careful to differentiate between purposes and activities, because many of the regulatory hurdles seem to arise because, as the Supreme Court pointed out, there has been a tendency to conflate the two concepts.

SECTION 2

SCOPE OF STUDY

A Caution about “Mixing and Matching”

The Special Committee’s mandate is very broad, with authority to look at all laws and policies that affect charities and not-for-profit organizations.

The Committee has already received some submissions and heard from some witnesses that would propose to extend the mandate even further to include matters such as social finance, social innovation, social enterprise, hybrid organizations and more. Some of these suggestions have the potential to be of benefit to some (unknown) number of charities.

We do wish to offer a caution, however. Muttart believes there is some potential risk in starting to try to extend rules that apply to charities to other types of organizations with different missions and needs. That is not to say that there is no need to find ways to allow for co-operation between charities and non-charities, a topic we will discuss later in this submission. However, we believe that it could be potentially dangerous to accord “charity-like” status to organizations that operate for different purposes and in different spheres.

To be sure, “civil society” requires co-operation between charities, not-for-profit organizations, private businesses and government. There are relationships between those organizations now, but some are, admittedly, perhaps more complicated than they need to be. On the other hand, one must always bear in mind that charitable donations result in tax credits to donors and those donations are meant to support the purposes of the charity.

When we start introducing into the mix new types of entities, we run the risk that charitable dollars could end up being used for purposes that would not be considered charitable.

By way of example, there are different definitions of “social enterprise.” Some require the involvement of a charity; others would allow any entity to declare that it exists for a “social purpose.” How does one develop a system to police what is a “social purpose” and whether an organization maintains its commitment to that purpose? How broad does that purpose have to be? Would this entity be required to have some sort of non-distribution clause and/or “asset lock” as is the case with the legislation passed recently in British Columbia? Would a publicly traded company ever be in a position to declare that it exists for a social purpose?

The issue we encourage the Committee to bear in mind that is if one is going to propose some sort of tax advantage, someone must be able to draw a boundary around who is eligible and who is not. It would not appear that a self-declaration would (or should) be sufficient, absent some significantly expensive enforcement mechanism.

To be sure, Canadian law already recognizes certain types of organizations as “charity-like.” The *Income Tax Act* provides that there are certain types of “qualified donees” beyond charities: the United Nations, municipalities, amateur athletic associations, national arts service organizations, universities outside Canada that normally includes Canadian students, and others. These “qualified donees” are allowed to receive gifts from other charities and are able to issue receipts to donors that lead to tax credits for the donor, but some are excused from other rules related to charities, including the requirement to file an annual return. There would likely be public acceptance that the type of entities listed exist for a public benefit, but would that same degree of acceptance exist for other types of entity? And what public benefit would be sufficient: most entities are able to say that they create employment, which is clearly a public benefit, but there could well be disagreement beyond that as to whether a particular type of enterprise is or is not beneficial to the public.

Our point is not to suggest that the Committee should shy away from finding ways to allow charities to extend their reach, but rather only to suggest that the Committee exercise significant caution in creating a potential tax loophole that could tarnish the reputation of charities. We saw that in the early part of the century with the emergence of tax shelters; no one wants to relive that experience.

If the Committee believes that there should be tax advantages for organizations that are neither charities nor not-for-profits, then we would encourage the Committee to recommend that those provisions be placed in some other part of the *Income Tax Act*, not simply placed on top of the existing rules regarding charities. Those could require consequential amendments to the sections dealing with charities, but that is a “cleaner” method than trying to mix the concepts of charity with other concepts that may, or may not, withstand the test of time.

A Word about Not-for-Profit Organizations

The Committee's mandate includes an examination of not-for-profit organizations and laws and policies that affect them. As the Committee has already learned from its research and witnesses, this is a very large task if only because of the broad range of not-for-profit organizations that are not registered charities.

As a reminder, the *Income Tax Act* currently has minimal requirements for an organization to be exempt from taxation as a not-for-profit. The organization must:

- exist for some purpose other than profit
- not qualify as a charity
- comply with a non-distribution clause

This can encompass a wide variety of organizations. A local book club is, technically, a not-for-profit organization. So is a business revitalization zone or a homeowners' association. So is a large professional organization or trade association.

Establishing a regulatory regime or reporting mechanism for such a varied group of organizations will, at best, be a challenge. Certain not-for-profits, based on income or assets, are already required to file returns with CRA, although the information is not captured and made publicly available, either on an individual or an aggregated basis. Thus, we have no idea of the degree of compliance with the existing rules, or the amount of effort necessary if those reporting requirements were extended. The Committee would also have to consider whether the additional information that would be gathered would be worth the administrative burden: to what problem would increased regulation of not-for-profit organizations be a solution? And what resources would be required by CRA to police any new requirements: would the benefits justify the costs?

Muttart takes no position on extending the regulatory regime for not-for-profit organizations. At first blush, we think that available evidence does not support the costs and administrative burden of a reporting and enforcement mechanism similar to that for registered charities. However, if the Committee concludes otherwise, we encourage it to be mindful of the administrative burden on smaller organizations that are operated entirely or mainly by volunteers. We would also encourage the Committee to recommend that whatever information is collected should be publicly available, at least in aggregate form.

We do, however, encourage the Committee to examine one issue that has become problematic in recent years.

In a series of notices and rulings, CRA has said that a surplus realized by an organization in a given fiscal year constitutes “profit,” and therefore something that would eliminate the not-for-profit’s exemption from income tax. It has argued that a not-for-profit organization is required to have a “zero” bank balance at fiscal year-end, and only in occasional and unforeseen situations could such an organization have money remaining at the end of the year. The one exception seems to be if the organization is building up resources for a future capital expenditure, but even then, there are stories of CRA trying to determine what level of reserve or expenditure is appropriate.

We suggest that such a position fails to take into account the realities of operating a not-for-profit organization, particularly a large one. When one considers the timing of special events and the timing of membership payments, and the need to continue to pay rent and utilities and salaries, the idea of expending all funds by each fiscal year-end is, at best, imprudent.

We do not believe CRA’s interpretation of “profit” corresponds with the public’s understanding. A surplus earned by a not-for-profit organization cannot be distributed to its members; it must continue to be used for the purposes of the organization.

We encourage the Committee to recommend either a statutory or policy remedy to deal with this situation.

SECTION 3

APPEAL MECHANISM

Recommendation: That the committee recommend amendments to the *Income Tax Act* so that all appeals from decisions of the Charities Directorate proceed first to the Tax Court of Canada for a hearing de novo, following consideration (or delay) by CRA's Appeals Directorate

The Muttart Foundation respectfully suggests to the Committee that if only one legislative change regarding charities is made, it be this one: give the Tax Court jurisdiction over cases related to charities.

We believe that this change has the potential to address a number of the other issues that are of concern to the sector – issues related to what qualifies as charitable in 21st-century Canada, how the rules on business activities should be interpreted, issues related to political activities and so on. We believe that it is a change that, at little cost, could help with the evolution of common law – the very purpose of having common law, as opposed to statutory solutions.

This recommendation has been put forward by any number of commentators over the last 30 years, and was one of the recommendations of the Joint Regulatory Table during the Voluntary Sector Initiative. It has never been adopted, although there has been, in the Foundation's view, no good reason not to adopt it.

The Current Situation

If an individual taxpayer disagrees with how CRA has assessed his or her return, or wishes to complain about a denial of eligibility, the taxpayer files an objection. It is considered within CRA and if the taxpayer is still not satisfied, he or she may file an appeal to the Tax Court of Canada.

If a corporate taxpayer disagrees with a multi-million-dollar assessment, it seeks internal review within CRA and, if not satisfied, files an appeal to the Tax Court of Canada.

In either case, a judge of the Tax Court conducts a hearing. The taxpayer or corporation presents its evidence, CRA presents its evidence and the judge makes a decision.

But if an organization applies for charitable status and is refused, or if an existing charity has its registration revoked, its first stop, after the internal CRA appeal, is to the Federal Court of Appeal. This makes no sense on the face of it, and it makes no sense even after explanations that have been offered in the past.

(Ironically, if an existing charity is subject to an intermediate sanction – including suspension of its privilege of writing charitable-donation tax receipts to donors for up to a year, it can appeal to the Tax Court of Canada.)

Only issues related to registered plans – such as the eligibility or administration of RESPs or RRSPs – have to follow a similar course; in all other matters adjudicated by CRA, appeals go to the Tax Court.

A number of years ago, the cost of an appeal in a charity-law case was estimated to be in the order of \$50,000. That number may well have doubled by now. So, an organization that argues it exists for some public benefit, but faces disagreement from CRA, is somehow supposed to come up with a significant amount of money simply to have the issue heard by an impartial party. Or an existing charity has to use funds it received to support its programming in an attempt to maintain its status.

This makes the whole concept of an appeal mechanism in charity law cases illusory at best. It also helps explain why Canada has less jurisprudence about charity law than almost any other common-law jurisdiction. When the Supreme Court of Canada heard the case of the *Vancouver Society of Immigrant and Visible Women* in 1999, it was the first charity-law case that had arrived before the court in almost 30 years. The common law cannot evolve if cases are not brought before the courts.

Organizations simply cannot afford the cost of litigating. We do not consider it fair, or reasonable, to put an impartial hearing beyond the means of organizations seeking to provide some type of public benefit, and it is even less fair and even less reasonable, to impose this requirement when it applies to almost no other entity seeking some sort of benefit under the *Income Tax Act*.

The format of the appeal at the Federal Court of Appeal is problematic. It is an appeal “on the record.” Exchanges of correspondence are placed before the court. There is no cross-examination of witnesses. There is usually no room for expert testimony about societal changes. Evidence is untested. We do not accept that for any other type of dispute under the *Income Tax Act*; there is no reason why it should be accepted in charity-law cases.

In recent years, the Federal Court of Appeal has decided that an appeal from a decision by the Charities Directorate (whether a refusal to register or a proposed revocation) should be treated as a judicial review.

In that situation, the Court does not generally address whether a decision was correct, but rather whether it was reasonable – within a range of possible outcomes. Correctness is only required on extricable questions of law. It defers to the decision-maker on “questions of fact or of mixed fact and law, including the exercise of the Minister’s discretion based on those facts.”¹ That creates a significant issue when an organization is seeking to demonstrate that society has moved to a new place, and that the common-law definition of “charity” should evolve.

The most recent example where this led to a result that was perplexing to many was a decision that “prevention of poverty” was not a charitable purpose. “Relief of poverty” is, and always has been, recognized as a valid charitable purpose; to suggest that prevention of a problem is not seems unusual at best. There may, to be sure, need to be limits placed on what constitutes “prevention,” so as to avoid people trying to “scam the system,” but we would argue that most Canadians would characterize the prevention of poverty as something that is, or should be, charitable.

In the past, the most common reason given for maintaining the status quo is that the Tax Court deals with statutory law, not common law. Since the law related to charities is, in essence, a matter of common law, so the objection states, the Tax Court is not well-equipped to deal with this type of case.

We consider that objection to be both ill-founded and disrespectful. Issues before the Tax Court involve common-law considerations on a regular basis. Moreover, those appointed to the Tax Court are senior members of the bar who have vast experience in many aspects of legal issues. To suggest that the type of issues they would be called upon to deal with in charity-law cases is beyond their abilities is an unreasonable slight on the talent of that bench.

The Proposed Solution

We ask that the committee recommend that charity-law cases be handled in the very same way as other issues that arise under the *Income Tax Act*. After the internal appeal, cases should go to the Tax Court of Canada and evidence should be heard and tested. The Tax Court sits in more locations than any other federal court, and its procedures have been developed to deal with unrepresented litigants, as some charity appellants will likely be.

¹. *Prescient Foundation and Minister of National Revenue*, 2013 FCA 120

We would also propose that the legislative change provide a right of appeal to the Tax Court where the CRA's Appeals Directorate has not rendered a decision on an appeal within six months of it having been referred to that directorate.

Based on the information we have, we believe this change could be accomplished with minimal new resources. The Tax Court, in the 2016-17 fiscal year, dealt with more than 6,300 cases. It is unlikely that the number of charity appeal cases would represent anything more than perhaps a 1% increase in that caseload. We acknowledge that an increased caseload might require some redeployment of resources in the Department of Justice, which represents the CRA before the Tax Court, but we think such resources can be justified in the name of fairness.

A change in an appeal mechanism would also change, somewhat, the roles of some people within the Charities Directorate. In a hearing *de novo*, examiners or auditors would be required to give evidence before the Tax Court. They could be cross-examined. This is not unlike public servants who work in other departments that have regulatory authority over a particular issue or group of organizations. There is, we suggest, nothing so unusual about charity-law cases that this would pose an insurmountable problem. Indeed, the fact that there might be more cases and more guidance from the courts could, in the long run, assist the Charities Directorate.

Implementation of our recommendation could mean there is a need for the Tax Court to adopt rules specific to charity-law cases, but the Court is well-equipped to take on that task, aided by members of the legal profession who specialize in this area.

As with any other decision of the Tax Court, an unsuccessful litigant – whether CRA or the would-be charity – would maintain the right to have an appeal before the Federal Court of Appeal. However, the Federal Court of Appeal would be aided by having a full evidentiary record before it, rather than simply an exchange of correspondence.

We acknowledge that this change does have one other potential issue. Given the hierarchy of courts and the principle of *stare decisis*, the Tax Court of Canada is bound by decisions of the Federal Court of Appeal. Certain decisions of the Federal Court of Appeal in charity cases could create difficulties in evolving common law. By way of example, the Federal Court of Appeal has held that any commentary on a contentious social issue is, by definition, a political activity. It may be that a statutory amendment would be required to remove obstacles such as this.

SECTION 4

RESEARCH

Recommendation: That the Committee recommend that government provide funding to Statistics Canada to conduct one major study related to Canada's voluntary sector each year and to ensure funding is available for dissemination of the results.

We don't know what we don't know. And what we don't know can hurt us. It can hurt us because it is impossible for government to make good public policy decisions in the absence of evidence. That, we believe, is self-evident.

What we don't know about Canada's voluntary sector (including charities AND not-for-profit organizations) is wide-ranging. We do not know exactly how large it is. We do not know exactly how many people are employed in it. We do not have good data on why people give and don't give – whether time or money.

It has not always been thus.

In 2003, Statistics Canada released the National Survey of Nonprofit and Voluntary Organizations. This was a landmark study. Sixteen years later, we have no newer data.

Between 2004 and 2009, Statistics Canada produced a report on Satellite Accounts of Non-profit Institutions and Volunteering. A decade later, Statistics Canada has combined information related to charities and not-for-profit organizations into a broader category, making it impossible to draw information specifically about the voluntary sector.

For a number of years, Statistics Canada produced a report entitled the Canadian Survey of Giving, Volunteering and Participating (CSGVP). This longitudinal data was of considerable help to the sector, to academics and to government. There was evidence about who gave and how, who volunteered and didn't. As a result of funding decisions, Statistics Canada has now significantly reduced the number of questions and placed them in the General Social Survey. We have lost the depth and richness of the data.

Members of the Committee have heard – and know from their own experiences – the breadth and depth of the voluntary sector. You have heard from other witnesses the significant contribution that the voluntary sector makes to the GDP, leaving aside the contribution that it makes to the social fabric of the country.

Yet we know more about the manufacture of asphalt shingles than we do about the voluntary sector. On a quarterly basis, you can receive information about frozen and chilled meat, but for 10 years, we haven't been able to see the satellite accounts for not-for-profit organizations. Every three months, if you are interested, you can find out how much urea has been shipped in Canada, but no one can tell you how many Canadians are employed by the voluntary sector.

This is not to suggest that the other studies referred to aren't important. They are. They provide important data for people involved in those industries, and for the governments that need to take policy decisions affecting those industries.

But the need for data – quality data, up-to-date data – is as critical to the voluntary sector as it is to any other part of our national concerns. And governments at all levels require these data to make informed policy decisions.

There is information available about registered charities. The public nature of the T3010 annual report provides good data and, of course, Statistics Canada as well as CRA and other government departments may draw on data that is not publicly available, but contained on the annual report. But there is essentially no data about not-for-profit organizations that are not registered charities. This is, we believe, a huge hole, given the finding in 2003 that the number of not-for-profits that are not registered charities is roughly equal to the number of registered charities. At best, then, we are gathering information about 50% of the whole. That is unlikely to be considered acceptable in any other field; we see no reason why it should be acceptable when it comes to the voluntary sector.

We do not ask that all three of the studies to which we have referred be conducted each year. But we think it reasonable to ask that one of them (including the return of the CSGVP to a stand-alone study) be in the field each year. While data would be three years old before being replaced, that is significantly better than the current situation.

Therefore, we suggest that the Committee recommend that Statistics Canada be given the funding to carry out one of the studies each year, with the funding to include enough to allow for significant dissemination by and to the sector.

SECTION 5

POLITICAL ACTIVITIES

Recommendations:

- 1. That the Committee recommend inclusion within the *Income Tax Act* of a provision that would allow a charity to have a political purpose that is ancillary to an otherwise charitable purpose.**
- 2. That the Committee recommend that CRA fundamentally review its interpretation of “direct or indirect support” and its determination of when a person becomes a candidate for public office.**
- 3. That the Committee address the question of whether the confidentiality provisions of the *Income Tax Act* should be amended so as to allow CRA to make publicly available information leading to a decision to give notice of intention to revoke a charity’s registration.**

For the last six years, there has been considerable discussion about the rules related to political activities by registered charities. There have been conflicting claims about the nature and extent of the issue, there has been a variety of demands for changes of various types, there have been questions regarding the constitutionality of long-standing limits.

One might have thought that the September 14, 2018 announcement of proposed legislative changes (in response to a decision of the Ontario Superior Court) would put an end to that discussion. In fact, we would submit, those changes have the potential to create greater issues that will need to be considered.

Before dealing with this issue, it is important that Committee members be clear on the difference between charitable purposes and charitable activities. These two terms have been used interchangeably over the years, and even the Supreme Court of Canada has noted that this has led to confusion.

To be registered as a charity, an organization must have exclusively charitable purposes. Those purposes must fall into one of the four “heads” of charity set out in the Pemsel case. Activities are, in the view of the Supreme Court, those things that further the intended purposes of a charity.

At various times, there has been confusion about whether all activities of an organization must be charitable in order for the organization to be qualified.

The majority opinion in the *Vancouver Society* case said this:

152 While the definition of “charitable” is one major problem with the standard in s. 149.1(1), it is not the only one. Another is its focus on “charitable activities” rather than purposes. The difficulty is that the character of an activity is at best ambiguous; for example, writing a letter to solicit donations for a dance school might well be considered charitable, but the very same activity might lose its charitable character if the donations were to go to a group disseminating hate literature. In other words, it is really the purpose in furtherance of which an activity is carried out, and not the character of the activity itself, that determines whether or not it is of a charitable nature. Accordingly, this Court held in *Guaranty Trust*, supra, that the inquiry must focus not only on the activities of an organization but also on its purposes.

153 Unfortunately, this distinction has often been blurred by judicial opinions which have used the terms “purposes” and “activities” almost interchangeably. Such inadvertent confusion inevitably trickles down to the taxpayer organization, which is left to wonder how best to represent its intentions to Revenue Canada in order to qualify for registration. In fact, as may become clear shortly, the Society may have suffered exactly this difficulty in drafting its purposes clause.

The dissenting opinion went further:

121 Again, though notionally a purpose clause, it must be recalled that what is contemplated by clause 2(e) is the ability to conduct activities, not purposes. As I indicated above, the precise boundary between an activity and a purpose is rather protean, and so one should not expect a bright line to separate them. The key observation is that an organization whose purpose is charitable does not surrender that status merely because it engages in some activities which are not in themselves charitable, so long as those activities are subordinate to, and in furtherance of, the exclusively charitable purpose of the organization.

With this issue of terminology in mind, we turn to a review of the recent history of this issue.

In the 1980s, as a result of a court decision, there was a parliamentary debate around the question of the degree to which charities should be allowed to engage in political activities. There was not then (nor is there now) a clear public understanding of what “political activities” are: most of the things that someone might consider “political” do not constitute “political activities.” The resulting amendment to the *Income Tax Act* provided that a charity’s registration would not be at risk if it spent “substantially all” of its resources on charitable purposes but spent some portion of its resources on incidental and ancillary non-partisan political activity.

The provision was interpreted (and continues to be interpreted) in two different ways. Some held that it was a hard limit: that a charity could not spend more than 10% of its resources on political activities. Others held it was a “safe harbour,” an “insurance” provision as it were.

In the mid to late 1990s, the suggestion of limitations on a charity’s ability to engage in public-policy debates became controversial again, with some organizations suggesting there should be no limit.

The issue was specifically excluded from the mandate of the Joint Regulatory Table established during the Voluntary Sector Initiative. However, the issue could not be avoided. As a result, a new guidance document was developed and released by the Charities Directorate. It was written in language that was easier to understand and provided examples to help guide organizations.

Between 2003 and 2011, the issue essentially disappeared from the landscape. There were virtually no conversations that suggested any problem with the policy.

That changed in 2012 with the announcement of the Political Activities Audit Project. We do not intend to rehash the charges and counter-charges that led up to or followed that announcement.

We would, however, make the following points:

- **There is little independent evidence that there was an “advocacy chill.”** Statistics provided to us by the Charities Directorate do not demonstrate any significant change in either the percentage of charities reporting any expenditure on political activity or the amount spent on political activity. Since 2000, we have never had more than 1% of all reporting charities indicate they had made any expenditures. There are, in Muttart’s experience, a large number of charities that do not engage in political activity. Some do not engage because they don’t want to engage; most, in our experience, don’t report engaging in political activities because their relationships with government do not fall within the definition of “political activity.”

- **We do not know the grounds on which CRA issued notices of revocation to the seven charities who received such notices following the Political Activities Audit Project.** Under the confidentiality provisions of the *Income Tax Act*, CRA is prohibited from releasing the “administrative fairness letter” that sets out the grounds for the proposed revocation. There is no such prohibition on the recipient of that notice, but none of the letters has been released. Some organizations have said that the revocations are based on political activities, yet Charities Directorate officials and ministers have told Parliament that no notice of intention to revoke was issued based solely, or even primarily, on political activities.

With that background, we turn to discuss some of the issues that are likely to arise in future, and offer recommendations for the Committee’s consideration.

Charitable and Political Purposes

In July 2018, the Ontario Superior Court issued a decision holding that the limitations on non-partisan charitable tax credits offended the Charter of Rights and Freedom.² The government has announced its intention to appeal that decision but, at the same time, announced its intention to amend the *Income Tax Act* to remove the impugned provisions.

On September 14, 2018, the Department of Finance released a legislative proposal to eliminate the “substantially all” provisions that relate to political activities. A bill enacting that proposal will presumably come before Parliament in the near future and, according to the proposal, would be retroactive in the case of those organizations which were reviewed under the Political Activities Audit Project.

This is not, however, the end of the issue. Indeed, it could be the start of new issues which could be even more confusing than the situation that has existed up to now.

The court decision and the legislative proposal both make clear that a political purpose would still be prohibited. So the new question that will arise, after the legislative proposal, is this: What degree of activity is necessary to create a purpose? Within the regulatory sphere and in trust law, this is known as having an unstated “collateral non-charitable purpose.” Is a charity doing so much of something that is non-charitable that it has become a purpose in its own right? If so, then the organization’s charitable status is at risk.

² *Canada Without Poverty v AG Canada*, 2018 ONSC 4147

We need to ensure that we are not trading one issue for another. For that reason, Muttart suggests that the Committee consider recommending an amendment to the *Income Tax Act* to deal with this. We can do no better than to suggest that we appropriate a provision from the *Charities Act* of New Zealand. Section 5(3) of that Act provides:

(3) To avoid doubt, if the purposes of a trust, society, or an institution include a non-charitable purpose (for example, advocacy) that is merely ancillary to a charitable purpose of the trust, society, or institution, the presence of that non-charitable purpose does not prevent the trustees of the trust, the society, or the institution from qualifying for registration as a charitable entity.

This will not be a total solution. There will still be questions raised about the test for “ancillary.” As the announcement of the legislative provision made clear, this is one of the issues that will need to be addressed by CRA, in consultation with the sector. CRA has now released a draft of its guidance and opened consultations on the draft. We look forward to those consultations; it will be important that there be clarity about the tests that will be applied. At first blush, the guidance raises a number of interesting questions, if not problems.

The solution to this issue requires open listening and understanding on the part of both CRA and the sector. Absent that, we will not gain the clarity. If it is missing, we are going to find ourselves in exactly the position we are in now, and we will end up engaging in even more time-consuming and expensive litigation and uninformed public debate.

Partisan Political Activities

No one has ever suggested that charities should be allowed to engage in partisan political activities. The sector is fine with that ban.

Within the *Income Tax Act*, the phrase that is used bans charities from “the direct or indirect support of, or opposition to, any political party or candidate for public office.”

The problem we encounter is how these terms are interpreted.

Attached at the end of this chapter is an excerpt from CRA’s website. We suggest this interpretation raises at least two questions.

The first is when a person is or becomes a “candidate” for public office. One would have thought that this would be clear from legislation governing elections. However, at least some charities have been told by CRA that a person will be considered a candidate from the time he or she indicates a desire to seek public office. We believe such an interpretation is expansive, at best.

The other issue is some of the examples given of CRA's interpretation of partisan political activities. By way of illustration:

- Hansard (at the federal and provincial levels) shows how every member votes on every recorded vote, and many municipalities provide the same information when they publish minutes of council meetings. It is not clear why using such information would constitute something for which a charity could find its registration revoked.
- The absolute ban on a candidate using the "facilities" of a charity is problematic, particularly for charities such as universities or hospitals. Policy statements are often made at such locations. Similarly, if a candidate wanted to suggest that a particular charity's program should be expanded, it would seem to make little sense to require that candidate to stand on the street outside the charity's door to make the announcement.

We agree that the prohibition on partisan political activities is important and must be maintained. We believe, however, that the interpretation of what is prohibited should be narrowly drawn. We encourage the Committee to comment on this issue and recommend that CRA revise its guidance to charities.

Confidentiality

Section 241 of the *Income Tax Act* provides for a high degree of secrecy about the affairs of any taxpayer. (For the purposes of the Act, a charity is a taxpayer.) Certain exceptions apply to charities, allowing for publication of their annual returns, and the public availability of certain other information.

On the whole, confidentiality is a critical consideration. However, as was discussed earlier, there are times when allegations are made about the reasons for a proposed revocation and CRA is not able to respond, except in the most general terms.

This conundrum is a difficult one to resolve and it is why we have encouraged the Committee to discuss it, rather than putting forward a recommended solution. We understand that providing information about a proposed revocation can have a significant negative effect on a charity, particularly if the allegations are later proven to be unfounded. On the other hand, when a charity puts a dispute into the public arena, the public (and most government officials) are left in the dark about the facts of a situation.

The Joint Regulatory Table reported that it struggled with this question, and the struggle is no less a problem now. We look forward to the Committee's wisdom on this issue.

SECTION 6

REVENUE GENERATION

Recommendations

- 1. That the Committee consider proposals made by other witnesses to create a greater “culture of giving” within Canadians, without proposing any change in the basic structure of the charitable-donation tax credit.**
- 2. That tax on the capital gain realized on the sale of real estate and private equity be waived where the donor donates the proceeds of such sale within 30 days of receiving the income (in whole or in part) from such sale.**
- 3. That the Committee recommend that the Government of Canada immediately implement the recommendations contained in the report of the Blue Ribbon Panel on Grants and Contributions and encourage provincial and territorial governments to do the same.**
- 4. That the Committee recommend that Treasury Board review grant agreements used by government departments and eliminate unnecessary restrictions in such agreements and encourage provincial and territorial governments to do the same.**
- 5. That the Committee endorse the “destination of funds” test and recommend that charities be allowed to carry out any type of business activity so long as the proceeds of such activity are used to support the charitable purposes of the charity.**

In this section, we propose to examine three of the most significant forms of revenue generation by charities – donations, government transfers and business activities.

DONATIONS

Canada has one of the most generous systems of tax credits and deductions of any of the G7 countries. It would be difficult for anyone to suggest that further incentives could be justified.

As witnesses have already told the Committee, there is a need to encourage more people to give, and to give more. Clearly, people can find motivation to give, as is witnessed by the outpouring of support following the Humboldt Broncos tragedy (although it is important to remember that not all of these donations came from Canada).

Various proposals have been placed before the Committee to encourage donations, greater in number and in amount, and we would certainly encourage the Committee to give these due consideration. We believe that these attempts to change behaviour should be driven by government and the voluntary sector, working together.

In addition to the general concern, certain specific proposals have been put before the Committee and we welcome the opportunity to address them briefly.

Charitable vs political tax credits

There have been conversations within the Committee and elsewhere, wondering why the charitable-donation tax credit is not as “generous” as the tax credit for donations to political parties. Indeed, during the current Parliament, a private member’s bill would have made the two credits equivalent.

This is a topic that has been discussed within the voluntary sector for years. What is usually forgotten – or ignored – is that there is an upper limit to the political-donation tax credit. So while the percentage of tax credit that applies to a political donation is higher, the federal tax credit for political donations has a maximum value of \$650, based on a maximum contribution of \$1,575. By contrast, the tax credit for charitable donations has a maximum contribution of 75% of income (and higher in certain circumstances.) Imposing the limit applicable to a political tax credit to charitable donations would be to the detriment of larger donors.

Bill C-239, introduced in 2016 as a private member’s bill, would have ignored the upper limit of the political-donation tax credit, and simply accorded charitable donations the same percentage of tax credit that applies to political donations. The Parliamentary Budget Officer reported that such a move would increase the cost of the federal charitable tax credit by approximately \$1.7 billion in 2016, rising to \$1.9 billion in 2020.

There is little, if any, empirical evidence that this type of expensive change would increase either the number or the amounts of charitable donations in any meaningful way.

Gifts of real estate and privately held shares

In the late 1990s, the federal government provided an incentive to those who wished to donate publicly traded securities to charities. These people would have to pay only half of the capital gains tax that would otherwise be payable. About a decade later, a further incentive was added, eliminating all liability for capital-gains tax on donations of publicly traded securities.

Over the last few years, a suggestion has been put forward that the same treatment should be accorded to those who donate to charities either real estate or shares of privately held corporations. In 2015, the then-government proposed to give that benefit, but only on condition that the property was first sold, and the proceeds then donated to a charity within a specified period.

Some argue that the change that was proposed is not enough. They argue that charities should be able to accept the real estate and private equity in kind and issue receipts to donors on that basis. Muttart cannot support those arguments; we believe that the risks are too great.

Donations of publicly traded shares are one thing: there is an immediate market for the sale of such securities and conversion of the securities to cash. This fact alone has allowed intermediary charities such as CanadaHelps to provide a mechanism for any charity to receive gifts of publicly traded shares.

Real estate and private equity represent a significantly different situation. Issues of valuation are one matter that would suddenly become a major consideration. By law, a charity must be able to justify the amount recorded as a donation. Who will have the onus of obtaining an appropriate valuation? Particularly in issues related to private equity, if one looks at cases involving matrimonial-property disputes, one can see that there can be wide variations in appraisals. Do we really wish to place charities in the middle of that type of issue?

One can also raise the question of what charities are going to do with the real estate or with an interest in a private corporation. There may be some charities that want the real estate in its current state, but that is probably a fairly small number, and for them, there are ways in which to facilitate the transfer as a charitable donation. We are not aware of any charity that has a particular desire to hold shares in a private corporation. Indeed, owning them may create any number of legal and liability issues for the charity.

Most charities want cash. They need cash in order to serve their beneficiaries. If those who wish to sell real estate and private equity wish to help charities, we would leave it to those donors to convert their assets into cash and then make a donation for which charities would be very grateful.

If the Committee feels that encouraging this type of philanthropy is reasonable, then we would suggest it include, in its recommendations, a recommendation that payment for some of these assets – particularly shares in a privately-held corporation – may be received over a lengthy period of time, and allow for the donation of those assets to be made within 30 days of receipt of the payment, rather than at the time of transfer of the asset.

Donations from foreign sources

Concern has been raised by some Committee members about the amounts of money that are contributed to the voluntary sector from foreign sources.

Before commenting, let us first point out that this is another area where we do not have a great deal of information. We do have data from the last few years about the amounts received from outside Canada by registered charities. We do not have any similar information about not-for-profit organizations that are not registered charities.

Even for the amounts received by charities – just under \$2 billion in 2015 – we do not have much information about the source of those donations; the information is not publicly available.

Contrary to what some would suggest, the donation of funds to Canadian charities from those outside Canada is not a new thing; it predates even the formal requirement for charities to register. Indeed, there are provisions in tax treaties that Canada has signed with other countries that specifically address such cross-border philanthropy and in some countries – notably the United States – there are specific legislative provisions that address the ability of their citizens to donate to charities outside their country. We do not believe that it is the role of the Canadian government to tell other countries what tax advantages to give to their respective citizens.

The specific concern of some members of the Committee is that persons outside of Canada may have supported certain not-for-profit organizations in an attempt to influence elections. Bearing in mind that not-for-profit organizations have fewer limits on their objects and activities than do charities, we respectfully suggest that this type of concern is a matter for electoral law, not charity law.

Differential Tax-Credit Rates

At least one witness before the Committee suggested that the regime by which donors receive tax credits should be changed in a fundamental way – by assigning different tax-credit rates to different types of charities, depending on the degree to which the charity matches policy goals established by government.

The Muttart Foundation respectfully suggests that the Committee not pursue that line of thought.

The suggested change would be fundamental and would seriously change the very nature of the charitable-donation tax credit. Taxpayers are free to donate to the charities of their choice, without government interference.

Governments pursue their policy goals through taxation, as they should. To suggest that policy goals – which can change frequently and would certainly change any time there is a change of government – should drive a determination of the tax credit for charitable donations is to turn philanthropy into a different form of taxation. That would, in our view, be a most lamentable action that could destroy, rather than encourage, philanthropy.

GOVERNMENT TRANSFERS

Government transfers are a significant source of revenue for a small number of charities and not-for-profit organizations. It is important that the Committee recognize, though, that the vast majority of voluntary-sector organizations receive little or no money directly from government at any level.

At one time, governments were inclined to award core-funding grants to certain organizations that were considered to be vitally important. For the most part, those days are gone. Sadly, so are some of those organizations. The most common form of payments now are in the nature of fee-for-service: governments providing funds to charities to carry on activities that would otherwise have to be carried on directly by government.

There are advantages to government, to not-for-profit organizations and charities, and to service recipients from this kind of arrangement. Yet, this kind of relationship also has problems associated with it.

Those problems, and the potential solutions, were appropriately identified by the Blue Ribbon Panel on Grants and Contributions. The Committee has heard from members of that Panel during its current deliberations and the Muttart Foundation endorses their comments and the report.

While the report was accepted in principle by the government in 2006-07, and a flurry of activity followed, we suggest that the time has long since passed when the recommendations should have been put in place across government. We encourage the Committee to give new life to the Panel's recommendations and to set a target date by which the changes should be put in place.

We would also encourage the Committee to include a recommendation calling for a re-examination of the agreements that are imposed upon charities and not-for-profits when they receive grants and contributions. In our experience, these agreements often contain provisions that are problematic, whether they are an outright ban on any advocacy – even the non-political type of advocacy – or requiring evaluations that are unfunded and excessive under the circumstances. We would also encourage the Committee to recommend that the provincial and territorial governments also undertake such a review of granting agreements, given that they are also significant funders of voluntary-sector organizations.

BUSINESS ACTIVITIES

Probably in no other area has the environment for charities changed than in the field of earned income, including – and particularly – business activities.

When the current provisions of the *Income Tax Act* were written more than a half-century ago, charities operated primarily on the basis of receiving donations from individuals and corporations.

According to some of those who were involved in drafting the existing rules related to business activities by charities, those provisions were meant to cover things like hospital auxiliaries running gift shops. They certainly did not foresee situations where charities would be landlords or even developers, when they would operate state-of-the-art fitness facilities or provide endorsements for a fee.

The current situation has also become more complicated because of rules and exceptions that are meant to try to overcome the legislative provision. For example, a counselling organization can have a sliding scale of fees, so that those who can afford a higher fee can subsidize service to those who cannot pay any fee. A charity can operate a fitness facility if its charitable objects include making facilities available to children. A charity can operate a restaurant if its primary purpose is to provide training for the hard-to-employ. We do not take issue with these exceptions, but rather use them to illustrate the patchwork of rules that have developed to try to deal with legislation that fails to recognize the realities of the modern world.

The time has come, we suggest, to adopt the “destination of funds” test and put an end to the problems that are created in the current situation.

Under the “destination of funds” test, a charity would be able to carry on any type of revenue-generating activity so long as the proceeds were used to further its charitable purposes.

This is the situation that has existed in Australia since the High Court of that country endorsed it in the *Word Investments*³ case in 2008 and is, we suggest, a model for Canada. It places the focus where it should be – on how a charity uses the money it has, not how it raises that money.

We hasten to add that engaging in business activities is not the answer for every charity. Entering into the commercial world requires certain expertise. Not every charity will have that. For reasons of liability and protection of charitable assets, it may well be that some charities find it best to own a separately incorporated business that is, itself, a taxpaying entity. That is a matter that should be left to each charity to determine in consultation with its professional advisors.

Charities also need to understand that some businesses fail – some quickly, some after a period of time. There is risk involved. But if the directors of a charity assess that risk and decide to proceed, we suggest there should be few legal impediments put in its way.

The argument most often put forward in opposition to the “destination of funds” test is that it would create an uneven playing field, and that charities would have an unfair advantage in the marketplace. We do not believe this argument stands up to scrutiny. There are a variety of corporate structures that exist. Certain corporate structures attract certain tax advantages. A charity operating a business is simply a group that has chosen a certain corporate structure that has certain tax advantages attached to it. In return for those advantages, it has to live by certain rules about how its funds can be used, what activities it can engage in and what its ultimate purpose is. If others don’t wish to live by those rules, they can choose a different corporate structure.

Other countries have adopted different strategies. In the United Kingdom, “trading subsidiaries” are a common way for charities to raise funds, and they are, for all practical purposes, tax-exempt or nearly tax-exempt.

The United States has adopted the Unrelated Business Income Tax (UBIT), a model we do not recommend for Canada. The administrative burden (and necessary administrative oversight provisions) of determining which transactions are directly related to a charity’s objects, and thus exempt from UBIT, and which are subject to UBIT, is simply excessive.

³. *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited*, [2008] HCA 55

With growing demand for their services, many charities can no longer rely solely on donations to fund their operations. Elimination of rules that were designed for a different time could provide significant assistance to those charities who believe they have the skills and knowledge to operate a business of some kind, and would eliminate the patchwork of rules that now exists.

Adoption of the “destination of funds” test would require additional guidance from CRA – guidance that should be drafted in consultation with charities. There may well need to be some rules that deal with such matters as ensuring reasonable compensation, the degree to which charitable funds may be used to finance the business start-up, and how to ensure that a charity continues to exist for a charitable purpose, rather than just operating a business. These are not insurmountable obstacles, and we may well be able to learn from other jurisdictions. While a challenge, they are not a reason to block something that simply makes sense.

SECTION 7

DEFINITION OF CHARITY

Statutory Definition

Canada has no statutory definition of charity. Instead, it has adopted the common-law test espoused in the Pemsel case. It has gone further by creating a certain class of organizations that receive treatment similar to that of charities; we call those “qualified donees.”

This is not much different from other countries that some witnesses before the Committee have pointed to as having a statutory definition. In each of them, those organizations that fall within the common-law definition are included, and other groups of organizations have been added.

Those who argue that there should be a statutory definition seem, in our view, to be asking not for a statutory definition, but rather charity-like treatment for certain organizations with purposes that do not qualify as charitable under the Pemsel case, or at least how that case has been interpreted by Canadian courts.

If the Committee or government feels that certain tax advantages should be afforded to certain types of organization, there are ways to accomplish that. As we have noted earlier in this submission, we do not believe that those decisions should be “tacked on” to the *Income Tax Act* provisions regarding charities; there are many other provisions within the *Income Tax Act* that provide special treatment to certain groups and establishing those discrete provisions would seem to make more sense than to add them to the rules that affect charities.

To the extent that anyone is thinking about an exhaustive list of organizations that will be considered to be charities, we believe such a step would create two significant problems.

First, the list would be static and could only be changed through legislative amendments through both houses of Parliament. We remind the Committee that it has taken 50 years for there to be a comprehensive review of this legislation; the idea of waiting that long for amendments to keep the law current is daunting.

Second, embedding a definition in a statute opens the matter up to the vagaries of politics. Would a future government decide that environmental charities were no longer worthy of the benefits that accrue to a charity? Perhaps a different government would decide that pet-care charities should lose their status. Could there be a public campaign by secularists to remove the charitable designation of religious charities?

We believe that there is significant value in allowing our understanding of what is charitable in law to evolve through the common law. That presupposes, however, that there is a mechanism which is effective in allowing the courts to consider cases. We thus turn to the most important recommendation we are making to the Committee: establish the Tax Court as the first level of court to hear appeals in charity-law cases.

If the Committee is not prepared to do that, or the government is not prepared to accept such a recommendation, then a fall-back position is to create the litigation fund recommended by the Joint Regulatory Table. This would be a fund similar to the Charter Challenges Program that would provide resources to allow appropriate cases to find their way into the court system.

The Muttart Foundation does not take a strong position against there being a listing of organizations who receive tax advantages similar to those of charities. However, we caution the Committee that neither this nor a “statutory definition of charity” is a complete solution. Indeed, either could simply create new problems.

Hospitals, Colleges and Universities

Members of the Committee have raised questions during some meetings as to whether hospitals, colleges and universities should continue to be treated the same way as other charities. This reflects a debate that has existed within the voluntary sector for at least the last two decades.

The argument is that these three types of organizations are effectively government-controlled bodies that are fully audited by provincial auditors-general and that there is, therefore, no requirement for them to be subject to the rules that apply to charities.

We understand that argument, but believe that it misses an important point. The provincial control and audits are to ensure consistency with provincial legislation; they do not seek to determine compliance with provisions that relate to charities. That falls within the authority of the CRA.

Colleges, hospitals and universities are amongst the largest fundraisers in the country. The multi-million-dollar campaigns of these entities are in direct competition to the fundraising efforts of social service, education and other types of charities. To exempt these large fundraising entities from the oversight of CRA would, we think, provide them with free licence to issue donor receipts without any supervision. We believe that would be a mistake.

There are other provisions of the charity-law regime that would also be lost. A concern over the years has been that some universities have, through research contracts, provided undue private benefits, because certain research has not been made publicly available. Indeed, it is that type of concern that led, in part, to the introduction of intermediate sanctions as an alternative to revocation for failure to comply with the law. Again, this is not something that would be reviewed by provincial auditors-general.

We do not believe there is any legitimate reason to exempt any class of charities – including these – from the provisions of the charity-law regime.

Categories of Charities

There are currently three categories of registered charities – charitable organizations, public foundations and private foundations. The Committee may well wish to consider whether there is still a need for these separate categories.

At one time, when there were different disbursement quotas, there may have been a reason to separate charities into these separate groups. Since 2008, that has not been an issue.

There remain certain restrictions on the activities of private foundations, primarily an absolute prohibition on engaging in any business activity and limitations on certain investment activities. We suggest that those rules are a throwback response to some attempts decades ago that might have been considered to be “self-dealing.” We believe there are now sufficient safeguards, through intermediate sanctions, to deal with any attempts at such unacceptable behaviour. We do not believe, therefore, that they provide justification for maintaining the separate categories of charities.

SECTION 8

DIRECTION AND CONTROL

RECOMMENDATION: That the Committee recommend legislative and policy changes that would allow charities to further their charitable objects, inside and outside Canada, with a minimum administrative burden, while ensuring that charitable resources are appropriately stewarded.

There are few issues that have caused as much confusion and controversy as the so-called “direction and control” provisions imposed by CRA on charities. These rules create a horrendous administrative burden and, in the case of Canadian charities providing overseas aid, run directly counter to the government’s principles. It is long past time to change these rules.

The vast majority of charities carry out their own activities. They use their staff and their volunteers to achieve the purposes for which they were designated a charity. However, the law also allows charities to further their objects through support of other organizations – so-called “agency arrangements.”

The issue is that CRA requires that such agency agreements contain provisions for inordinate amounts of administrivia. For example, funds from a Canadian charity must, in most cases, be segregated from other funds of the agent, even if those other funds are for the same purpose. Receipts for expenditures must, on demand, be translated into English or French, regardless of where the project is taking place. Books and records must be kept in Canada. (Indeed, there is anecdotal evidence that some charities have been told that cloud-based computing is not permissible, because they are unable to prove that the servers on which the data are kept are in Canada.)

These rules – difficult enough to comply with at the best of times – are even more troublesome when they conflict with the rules of the country within which the charity is operating.

The rules also run counter to the principles (and sometimes contractual arrangements) imposed by Global Affairs Canada. In recent years and in consultation with Canadian charities that work overseas, Global Affairs Canada has moved away from a paternalistic approach into one which seeks to strengthen local organizations in the country in which the aid is being offered. The rationale for this is simple: if there are strong local organizations, ongoing work is more sustainable when other groups withdraw.

No one is suggesting that Canadian charities simply be allowed to send money overseas without insisting on some accountability or without doing appropriate due diligence.

International-aid organizations in Canada are fully committed to compliance with Canada's obligations to prevent funding of terrorism, for example. But those who operate international charities find that the existing rules are nearly unworkable, particularly where – as is often the case – they are working with organizations from a number of different countries, all seeking to deal with the same issue and through the same delivery agency.

Turning to the domestic situation, there are cases – particularly when dealing with community development issues – when a charity wishes to work through a not-for-profit organization that is not a charity. The not-for-profit may choose not to seek charitable registration because some of its purposes are not charitable, or because they serve a relatively small geographic area or group of people. Yet it is precisely these organizations that may be best able to ensure change that lasts, because it comes from the people who will be most impacted by that change. Again, the rules that apply – from the separate bank account to being subject to the on-going “supervision” of the charity – can adversely affect motivation and occupy more time in record-keeping than in delivery of the service.

No one is suggesting that charities should be able to give money to whomever they wish without ensuring accountability. However, existing rules are perceived as being far too specific, intrusive and restrictive to allow for the types of relationships that need to be fostered.

The balancing of the various factors at play in these situations do not lend themselves to an easily drafted solution. The development of a workable system will require the constructive engagement of CRA, the Department of Finance and charities that make use of agency agreements. A recommendation from the Committee for change may well provide the impetus for these discussions to take place, and we would encourage the Committee to make the recommendation as well as to ensure that a mechanism is in place to ensure that change is made.

In asking for this recommendation, we want to differentiate the legitimate use of agency agreements and work with non-charities from the concept of “lending” an organization's charitable number to a non-charitable organization. There have been, over the years, situations where a charity has said that it would issue receipts to donors who wish to give money to a non-charity. The charity receives the money, issues a receipt to the donor, and then simply passes the money on to the non-charity. This has always been prohibited, and should continue to be prohibited.

SECTION 9

INEGLIGIBLE INDIVIDUALS

RECOMMENDATION: That the Committee recommend amendments to the *Income Tax Act* that would significantly narrow the definition of who is ineligible to serve as a director or manager of a registered charity or registered Canadian amateur athletic association (RCAAA).

In the 2011 budget, the then-government introduced new rules giving the Minister of National Revenue the authority to revoke the registration of a charity or an RCAAA if an ineligible person is a director, trustee, officer or like official, or controls or manages the charity or RCAAA, directly or indirectly, in any manner whatever.

The legislation sets out five situations in which a person is – or may be – an ineligible individual:

- the person was convicted of a relevant criminal offence for which a pardon or record suspension has not been granted. A “relevant criminal offence” is one that “(a) relates to financial dishonesty, including tax evasion, theft and fraud, or (b) in respect of a charity or Canadian amateur athletic association, is relevant to the operation of the charity or association.”
- the person was convicted of a relevant offence in the previous five years. A “relevant offence” is one that “(a) relates to financial dishonesty, including an offence under charitable fundraising legislation, consumer protection legislation and securities legislation, or (b) in respect of a charity or Canadian amateur athletic association, is relevant to the operation of the charity or association.”
- the person was a director or officer of an organization that had its charitable status (or status as an RCAAA) revoked in the previous five years for a serious breach of the requirements for registration.
- the person was a manager or controlled an organization that had its charitable status (or status as an RCAAA) revoked in the previous five years for a serious breach of the requirements for registration.

- the person was a promoter of a tax shelter that was involved with a charity that had its registration revoked in the previous five years for involvement in the tax shelter.

There was little explanation given at the time this legislation was introduced. The measure was contained in the Notice of Ways and Means Motions under the heading “Safeguarding Charitable Assets through Good Governance.”

In 2014, CRA issued its first guidance on these new provisions. In the introduction, it describes the purpose of the provisions as follows:

Previously when organizations were revoked for serious breaches of the Act, including issuing false receipts and participating in abusive tax shelter schemes, those who were in charge when the breaches occurred could apply for re-registration and establish new entities, and the CRA could not refer to this history as part of its decision-making process. Although the new legislative provisions give the CRA the discretion to determine which organizations will be registered, and which will have their registration revoked or suspended the CRA intends to act in a balanced way, recognizing that most organizations comply with the Act’s requirements.

There have been some suggestions that this provision started directly as a result of the tax-shelter promotions that went on for a number of years and that led to the revocation of some charities and RCAAAs and, according to CRA’s website, the reassessment of hundreds of thousands of taxpayers, disallowing billions of dollars of claimed tax credits.

We have been told that CRA had identified a problem because tax-shelter promoters who had been caught acting inappropriately were simply turning around and seeking to register a new tax shelter, and that CRA had no legislative authority to refuse such registrations. They asked for a change that would give them that authority. Instead, we got this piece of legislation which focuses far more on charities and RCAAAs than on tax-shelter promoters.

There are a number of problems with this legislation from our perspective. Among the leading problems:

- A tax-shelter promoter who was involved in a fraudulent scheme – one of those that resulted in those billions of dollars of disallowed credits and hundreds of thousands of reassessments – is ineligible from serving as a director or manager of any charity/RCAAA for five years, but someone who was convicted of shoplifting as a teenager is ineligible for life, unless he or she obtains a pardon or record suspension.

- A person who is a volunteer driver for an organization like Meals on Wheels could potentially become ineligible to serve on that organization's board if he or she were caught speeding, since that could be considered an offence that is relevant to the operation of the charity.
- The law is vague. A person is not an ineligible individual unless the Minister of National Revenue declares him or her to be. And revocation is not automatic; any action is at the discretion of the Minister.

We do not know how often the provision has been used. We are aware of only one case where use of the provision has become public.

CRA's guidance states that it intends to use this provision in a balanced way. It says:

The CRA recognizes that people with similar life experiences may provide important programming insights into the welfare, needs, and issues of certain beneficiary communities. It may, therefore, be appropriate in some cases for an organization to welcome an ineligible individual into its operations. The onus is on the organization to explain the role and contribution of the ineligible individual if the CRA expresses concern about him or her. For example, a registered organization that provides counselling services may explain that many people in its anger-management group have been convicted of assault. As such, a board member who is an ineligible individual because of a conviction of a similar criminal offense may be integral to helping the organization in hiring staff with appropriate skills and to designing effective programs for the group.

It is also important to note that the legislation does not require registered organizations to do searches or to proactively determine whether an ineligible individual is a member of the board or controls and manages the organization. Furthermore, there will always be an opportunity to explain why it is necessary to keep the ineligible individual or to outline what internal measures have been put in place to protect vulnerable beneficiaries and assets of the organization.

While this is comforting, it does not provide certainty, and it is for that reason that many charities are getting legal advice to include in their bylaws provisions that enable them to remove or disqualify a director who is an ineligible individual.

We believe that the legislation represents an “over-reach” by the federal government, particularly given the fact that the safeguarding of charitable assets is, constitutionally, the responsibility of the provinces. There is no evidence – documented or anecdotal – that has come to our attention that this is, or has been, an issue in the voluntary sector. We encourage the Committee to recommend that the scope of this provision be significantly narrowed, being sure to maintain – and perhaps extend the duration of – the ineligibility of those who engaged in the tax-shelter scams, taking advantage of charities and taxpayers.

SECTION 10

THE REGULATOR

RECOMMENDATIONS:

- 1. That the Committee endorse the qualities of a regulator set out in Chapter 3 of the Joint Regulatory Table’s final report and recommend that the government provide the resources necessary to achieve those qualities, while requiring CRA to report publicly on a regular basis on its progress toward achieving the goals that are set out in the report.**
- 2. That the Committee recommend re-establishment of an Advisory Committee on Charities, to be appointed by, and responsible to, the Minister of National Revenue.**
- 3. That the Committee recommend that the government commit to the Accord and appoint “champions” of the Accord throughout government departments and agencies.**

Where Should the Regulator Be?

The Muttart Foundation does not believe that there is any value to be obtained in moving the regulatory function from CRA to some new body. We do not accept the premise that the Charities Directorate is in any conflict-of-interest position because it is located within the CRA.

If we were starting all over again and were only now looking at how charities are registered and monitored, there might well be an argument in favour of a stand-alone regulator. But we are not starting fresh – we are 50 years into a registration and monitoring process.

We are far more concerned about the qualities of a regulator than where it is located, and the question of what qualities should be demonstrated by any regulator are described, in some detail, in Chapter 3 of the Joint Regulatory Table’s report. We believe the findings of the Joint Table are still relevant.

Many of those who suggest a new regulatory body point to the Charity Commission of England and Wales as an example of what could be. Unfortunately, the picture they draw tends to portray that Commission as it was in the years leading up to the turn of the century.

In recent years, as a result of government cutbacks and differing personalities, the Commission has become a mere shadow of its former self. Much of its education function has disappeared, charities complain that its attitude of service has disappeared, and it is now talking about imposing fees on charities to regulate them.

The commission established in Australia had a very solid first five years, but it must be borne in mind that its very existence was in jeopardy for three of those, as a newly elected government promised to abolish it. Once it was determined that the commission would continue, things went smoothly until the initial Commissioner's term of office expired, and a new Commissioner appointed. That has led to complaints and distrust.

New Zealand had a Commission and it was then abolished. Although the regulatory work is now within government, it is, admittedly, not within the taxation authority.

In the U.S., of course, regulation of charities has always been the responsibility of the Internal Revenue Service.

We would encourage members of the Committee to take the time to read *Regulating Charities: The Inside Story*. This book, published last year and edited by an Australian academic and the Muttart Foundation's executive director, is a very readable comparison of regulation in five common-law countries, offering perspectives of both former regulators and charity executives. It demonstrates clearly both strengths and weaknesses in various models of regulation.

There is another important factor to consider. Even if a new regulator were to be established tomorrow, it would still be bound by past decisions of the Federal Court of Appeal and the very few decisions of the Supreme Court of Canada. Absent statutory overrides of those decisions, a new regulator would be in no different place than CRA.

What are the attributes of a good regulator?

The Joint Regulatory Table made a series of recommendations related directly to the qualities that should be expected of the regulator of charities. Those recommendations (1-28) are attached as Appendix B to this submission. We believe that these recommendations remain valid and would encourage the Committee to endorse them.

Neither CRA nor any new regulator would be able to achieve these attributes without resources. There is a widespread perception that the Charities Directorate is the "poor cousin" within CRA because its role is to consider exempting organizations from the payment of tax, rather than collecting it.

Whether that perception is correct or not is a matter of opinion; there is certainly evidence that the Directorate's resources do not meet its needs – particularly if it is to adopt the ambitious goals set out in the Joint Table's recommendations.

We would particularly draw the Committee's attention to recommendation 28, calling for creation of an advisory committee. That recommendation was adopted by the government of the day and the committee was appointed and had started to function. Within a very short period of time, though, there was a change of government and all advisory committees abolished. We encourage the Committee to recommend reestablishment of the advisory committee.

A Minister responsible

Dating back at least 30 years, there have been discussions about the value of appointing a member of the federal Cabinet as the minister responsible for the voluntary sector. Under various models, such a minister would be a champion for the sector, would lead efforts to encourage Canadians to increase donations of time and money to charities and/or would be a constant reminder to other members of Cabinet of the need to consider issues related to the voluntary sector in all decisions.

The Muttart Foundation does not have a strong view on this question. Certainly, if everything worked well, it could be of significant benefit to Canada's voluntary sector.

We would suggest, however, that if the position is to have any real influence – within or outside government – then it must have the direct endorsement of the Prime Minister and be supported by a secretariat within the Privy Council Office. The position must be seen to be supported at the very centre of the machinery of government, or it will be too easily dismissed.

Even if the Prime Minister were to decide to create such a position within Cabinet, it cannot be a substitute for the attention every department and agency of government should give to the voluntary sector. Virtually every department of the federal government has some connection to the voluntary sector. Even if it does not provide grants or contributions to sector organizations, it has some charities and/or not-for-profit organizations as stakeholders. We suggest it is important that the departments and agencies understand these stakeholders and their positions.

In 2001, the Government of Canada signed an Accord with Canada's voluntary sector. It held out the promise of a total transformation of the relationship between them.

Some progress was made, including the development of two Codes that set out more detailed discussions about funding and policy development. There was hope that there would be long-lasting change.

Unfortunately, with a change of government, the Accord fell to the side. While not formally repudiated, there was no longer any encouragement for the principles enunciated in the Accord and the Codes to find their way into the day-to-day operation of government.

We believe that the Accord is still a document that can help guide the way to a more positive relationship between government and the voluntary sector, all for the benefit of those served by both. We would hope that the Committee would endorse a revitalization of the Accord and the Codes and encourage government to appoint champions in each department and agency to help create the culture that will give life to those documents.

SECTION 11

CONTINUING THE JOURNEY

RECOMMENDATION: That the Committee propose an ongoing mechanism for regular review of the legislative provisions related to charities and not-for-profit organizations.

The current provisions of the *Income Tax Act* dealing with charities and not-for-profit organizations date back more than a half-century. The Committee's work is the first comprehensive review of those provisions and the "add-ons" that followed them.

Even the establishment of this Committee took a significant period of time; the first suggestions of such a committee date back almost two decades.

While we expect the common law to evolve to meet changing needs of society, so, too, must statutory law evolve. The existing legislation was developed at a time before laptops, let alone watches that give you access to information from all over the world in real-time. The drafters could not possibly have foreseen how charities would develop, or the role they would be asked to play in society. The idea of on-line donations and crowdfunding would have sounded like the stuff of science fiction.

This benign neglect cannot be allowed to be repeated.

We have already proposed that the Committee recommend a new advisory committee on charities. However, we believe there also needs to be an ongoing mechanism for the consideration of legislative changes. This needs to involve a group that brings together government, the sector and allied professionals with a mandate to report to a committee of the House of Commons or the Senate on a pre-determined basis – we would suggest at least every five years, if not more often. The committee should then have the mandate to study the report and recommend legislative changes and require a government response.

Members of the Committee have, even at this relatively early stage of its process, learned of the vastness of Canada's voluntary sector. It has touched upon some of the issues faced by the sector and by government. These issues will not resolve themselves, and they are only precursors of issues that will arise as society and technology change.

The Committee's study is critically important, but it is only the next step along a path of modernization. If charities are to do what they are charged with doing, what they want to do – improve the quality of life for Canadians and those in other countries – then they need a regulatory framework within which they can do that. The Committee has an opportunity to bring the framework into the 21st century; an ongoing mechanism will ensure that the work of the Committee continues into the future.

APPENDIX A

EXCERPT

FROM THE CRA WEBSITE

**Guidance regarding
partisan political activity**

What is a partisan political activity?

- A partisan political activity is any activity that provides direct or indirect support or opposition to any political party at any time, whether during an election period or not, or to a candidate for public office.
 - An example of indirect support or opposition could include putting links on a charity's website, during an election period, to a candidate's own election website, but not to any of the websites of the other candidates.
- The use of a charity's resources for **partisan** political activities is always prohibited, even if a charity or its beneficiaries will clearly benefit from a particular election outcome.
- If a charity carries out partisan political activities, it can be subject to compliance action, including suspension of its tax-receipting privileges, or revocation of its charitable registration.
- Examples of partisan political activities include:
 - publicly endorsing a candidate
 - giving money or non-cash gifts to a candidate or political party, either directly or indirectly
 - allowing a candidate or political party to use a charity's equipment, facilities, volunteer time, or other resources
 - making public statements that support or oppose a candidate or political party
 - suggesting that people should vote for a particular candidate or political party, either directly or indirectly
 - attending a political fundraiser as a representative of a registered charity
 - using a charity's website to post or hyperlink to statements made by a third party that support or oppose a candidate or political party
 - publishing or otherwise disclosing the voting record of selected candidates or political parties on an issue;
 - posting signs that support or oppose a candidate or political party
 - distributing literature or voter guides that promote or oppose a candidate or political party, directly or indirectly

Supporting or opposing a policy

- A charity may publish records on how **all** elected representatives or political parties voted on an issue connected to a charity's purposes; however, a charity must not single out any elected representative or political party.
- A charity may support or oppose a policy that is also supported or opposed by a candidate or political party, but the charity must do so in a non-partisan manner.
- When supporting or opposing a policy, a charity should focus on the policy itself, and not explicitly connect its views to any candidate or political party.

APPENDIX B

RECOMMENDATIONS

RELATED TO THE CHARITY REGULATOR

FROM THE

JOINT REGULATORY TABLE,

VOLUNTARY SECTOR INITIATIVE

Recommendations

The regulatory framework

Scope and mandate of the federal regulator

1. The primary role of the regulator should continue to be to administer the charity provisions of the *Income Tax Act*.
2. To enhance public trust and confidence in both the regulator and in charities, four fundamental principles should guide federal regulatory reform:
 - 2.1 the regulatory framework that governs charities should facilitate public trust in the work of charities in Canada;
 - 2.2 the regulatory framework should uphold the integrity of the provisions in the *Income Tax Act* that govern charities;
 - 2.3 the regulatory framework should ensure fair application of the law and transparency in regulatory decision-making processes; and
 - 2.4 the regulatory process should be as simple, non-duplicative and cost-effective as possible.

Guiding values

3. As a foundation for meeting the challenges of the future, the regulator should have four enduring values to guide it:
 - 3.1 **Integrity.** The regulator should treat people fairly and apply the law fairly.
 - 3.2 **Openness.** The regulator should communicate openly about its decisions and performance.
 - 3.3 **Service Excellence.** The regulator should be committed to delivering consistent and timely decisions and information to its clients.
 - 3.4 **Knowledge and Innovation.** The regulator should have the means to continually improve its services by seeking to learn from both the things it does and does not do well. This means building partnerships and working with the sector and others toward common goals.

Educating the sector

4. The regulator should inform and assist its clients.
5. The regulator should find new, innovative ways of delivering education to charities by building partnerships with the sector.
6. The regulator should have responsibility for educating sector organizations specifically about:
 - 6.1 the *Income Tax Act* and common law rules affecting them;
 - 6.2 the criteria and process for attaining and maintaining federally registered charitable status; and
 - 6.3 how to complete their annual returns.
7. The regulator should not assume responsibility for educating charities about:
 - 7.1 board governance and accountability issues (but the government and sector should explore other ways to enhance the professional capacity of individual charities and the sector as a whole to maintain public trust and confidence in the sector); or
 - 7.2 the rules affecting charities in other jurisdictions (but should refer clients to other sources for information on other federal laws affecting charities as well as provincial and municipal requirements).

Educating the public

8. The accounting profession, the sector and the regulator should work together to develop improved reporting standards of relevance to donors and charities.
9. The regulator should have responsibility to educate the public specifically about:
 - 9.1 charities, by releasing aggregate information on registered charities;
 - 9.2 issues to be aware of when giving to charity;
 - 9.3 the regulatory process including the review process used to determine charitable status;
 - 9.4 how to confirm the status of individual charities;
 - 9.5 how to file a complaint about a charity; and
 - 9.6 how to understand financial statements of charities.

Profile/visibility of the regulator

10. The regulator should make a determined effort to increase its national presence so the public is aware of what it does and whom to contact for information.
11. The regulator's name and contact information should be required on the official donation receipts that charities issue to donors.

Resources

12. The regulator should be appropriately resourced for the tasks which it must undertake, and specifically:
 - 12.1 a compensation study should be undertaken to ensure that classifications and levels of pay reflect the requirements of the job;
 - 12.2 senior management within the regulator should examine methods to encourage public servants to remain within the regulatory body and develop additional levels of expertise;
 - 12.3 resources should be made available for additional travel by the regulator's staff to events, including information sessions, conferences and seminars;
 - 12.4 senior management within the regulator should introduce professional-development opportunities such as secondments and exchanges with charities;
 - 12.5 the staff complement should be examined in light of the increased workload that will result from the Table's recommendations; and
 - 12.6 priority should be placed on development of information-technology systems that will meet the current and future needs of the regulator.

Legal principles and powers to determine charitable status

13. Clear policy guidelines should be developed on the nature and extent of the regulator's authority to identify new charitable purposes that flow from the application of the common law to organizations under the *Income Tax Act*.
14. The regulator should enhance the training examiners receive upon entry and on a continual basis.

15. The regulator should introduce better research tools for decision makers, such as electronic access to a searchable database on previous decisions of both the regulator and the courts, to allow examiners to better identify similar fact situations and more consistently interpret the law.

Coordinated regulation

16. The regulator should enter into discussions with the provinces to explore opportunities to reassure the public that charities are being effectively regulated and to reduce any conflicting demands and duplicative administrative burdens on charities.
17. Legislative amendments should be made to allow the regulator to share information with the relevant provincial authorities and with other federal regulatory agencies.
18. Provincial governments should be encouraged to make appropriate changes to their legislation to provide better coordination of compliance programs.
19. A forum should be established to allow regulators to come together to discuss issues of mutual interest and concern.
20. The appropriate federal minister should play a lead role in convening the first gathering of charity regulators.

The broader voluntary sector

21. The government and the sector should undertake a thorough review of regulatory issues affecting the broader voluntary sector.

Public consultation

22. The regulator should develop ways to engage the sector in regular dialogue to hear concerns and issues identified by voluntary sector organizations.
23. The regulator should draw on the full range of methods to engage in a dialogue with the voluntary sector at the various stages of the policy development process.
24. The regulator should continue to consult on its draft policies.
25. The regulator should use its website to provide information about current consultations on draft policies, recently closed consultations, the results of previously held consultations, and consultations scheduled to begin.
26. The regulator should conduct its consultations in accordance with the Voluntary Sector Initiative's Code of Good Practice on Policy Dialogue.

Annual reporting

27. The regulator should be required to publish an annual report to the public on its performance and activities, and the report should include aggregate information about registered charities.

Ministerial advisory group

28. A ministerial advisory group should be established to provide administrative policy advice to the minister responsible for the regulator; and
 - 28.1 the advisory group should consist of appointees with a broad range of experience and knowledge;
 - 28.2 funding support should be provided to reimburse appointees for the direct costs associated with their participation on the advisory group; and
 - 28.3 sufficient funding should be provided to allow the group to carry out the tasks assigned to it.

Accessibility and transparency

Documents related to an application

29. The identity of applicant organizations should remain confidential until the regulator either accepts or denies the application.
30. The regulator should publish on its website reasons for all its decisions on applications.
31. The same documents that the *Income Tax Act* allows to be disclosed for registered charities should also be available on request for organizations that have been denied registered status, plus the letter setting out the reasons for the denial.
32. Organizations should be made aware early in the registration process that they can withdraw their application after receiving an Administrative Fairness Letter, and that, if they choose this option, then no information about their application will be released.
33. The regulator should establish a policy of denying applications where applicants do not respond within 90 days to communications from the regulator.