

THE MUTTART FOUNDATION

Consultation on Promoting Democracy

29 October - 1 November 2024

Banff, Alberta

A Summary of the Discussion

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This report is a summary of one of a series of periodic discussions convened by the Muttart Foundation on voluntary sector regulatory issues. The session was held to promote an exchange of ideas and to develop a fuller understanding of the concerns of both sector groups and government regulators. Any remarks included in the report are intended to reflect the discussions. Written summaries of the presentations on international jurisdictions were provided by the international guests following the consultation and this content may vary slightly from the oral presentations. No undertakings or commitments from either regulators or sector participants are expected or made, notwithstanding any of the wording in the report.

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A Summary of the Discussion

Day 1 - AM

WELCOME AND INTRODUCTORY COMMENTS

Mr. Bob Wyatt kicked off this session by presenting the history of the Muttart consultations, their purpose and the ground rules and guiding principles for participant engagement. He then provided comments about the topic of discussion, the promotion of democracy, and why this topic was chosen. He posed a few key framing questions:

- *How can we use the power of the charitable sector to promote democracy?*
- *Is promotion of democracy already charitable?*
- *What does it mean to promote democracy? What are the rules for doing so?*

ROUNDTABLE INTRODUCTIONS

Participants introduced themselves and were asked to answer the question: What does the promotion of democracy mean to you?

Participants offered the following comments:

- "A wombat invited to a dingo picnic is safe from mortal harm".
- There is no common view of democracy. This makes it difficult to say what it means to promote democracy.
- Promotion of democracy always contains an educational component.
- Instead of using the word "promote," we should talk about enabling or facilitating democracy.
- Enabling the conditions for humans to flourish.
- It means that Canada's democratic institutions are resilient, fit for purpose, and engage respectfully with civil society. Canadians, especially those who face barriers to engagement, are enabled and prepared for respectful civic engagement. The public information and media environments contribute to constructive civic engagement.
- Having people engage in their communities and not be passive.
- Encouraging people to think about advocacy as part of the democratic process.
- The preservation of our way of life and the freedom to say what we have to say. Institutions don't reflect democracy. The treatment of parliamentarians is a great threat to democracy.
- Encouraging and facilitating active participation of citizens and the public.
- Participation and enablement of empowerment towards change.

- Owning the potent and legitimate pushback on democracy and finding ways to make the case for democracy.
- The protection of Canadian institutions and the enablement of civic organizations.
- Creating safe spaces for difficult conversations in a way that allows for and welcomes different views.
- We need good people willing to stand for elected office.
- Is promotion of democracy a charitable purpose in its own right?
- What does it mean to promote democracy in other countries?
- Concerns about the erosion of the integrity of the institutions.
- Need to promote facts. Concerns about how media portrays them.
- Charities can facilitate democratic rights.
- People from other countries have promoted democracy at great peril and loss. For them, democracy is righting a wrong.
- Sector can play a role in explaining the fundamental values of democracy.
- Charities represent groups that may not have a voice, so advocacy is important.
- Democracy is a form of human organization in which a person contributes without fear of retribution.
- Surveys indicate that Canadians are less generous than in the past (with donations, time, etc.). Why? Is it because of a lack of belonging and connectedness? Charitable organizations create opportunities for belonging and connectedness so that people are inspired to take action. There is a need to build civic cohesion.
- Democratic systems are vulnerable. What elements make it work?
- Democratic literacy is more than institutions.
- We sell democracy as the preferred system internationally; organizations doing the promotion of democracy can affect international relations. What are the impacts of doing this work abroad?
- Democracy is the freedom to have a voice that is equally heard among all the other voices.
- It is the freedom of participation without fear.

INTERNATIONAL PERSPECTIVES

Following the roundtable introductions, participants from three international jurisdictions provided context from their respective countries.

England and Wales

In England and Wales an organisation will not be charitable if it has a political purpose. A charity cannot carry out partisan political activities but may engage in non-partisan political activities to support its charitable purposes, provided they are not its continuing and sole activity. The focus of the Charity Commission, the charity regulator, is mainly on partisan political activities. After the General Election in July this year, the Commission published a report on their case work setting out the areas where charities had crossed the line into partisan activities. These occurred when charity officials gave explicit support for a party or candidate, where party political comments were made in social media and at charity events. In their guidance before the General Election the Commission stressed the need for charities to be respectful in all their campaigning.

In the run up to the General Election, Citizens UK, the national community organising charity, carried out a successful Voter Registration Campaign resulting in one million registrations. This was partly funded by the UK Democracy Fund, a pooled fund supported by several charitable foundations, set up to build support for electoral reform, extend the right to vote and increase

voter registration. A legal opinion on whether charities could engage in voter registration campaigns held that it could come within the charitable purpose of the advancement of citizenship. Another charity promoting citizen assemblies has an object to “encourage and facilitate the participation of the public in the democratic and decision-making processes with the outcome of enabling people to develop their capacities.” Others have objects for the promotion of civic responsibility and good citizenship.

Charities engaged in activities linked to the promotion of democracy are also registered with educational objects. These include Full Fact, which verifies facts used in public debate and the Citizenship Foundation, which promotes the study of Citizenship in Schools. Organisations with educational objects held by the Charity Commission to be promoting a particular form of voting have been turned down for registration on the grounds that they were seeking a change in the law.

Questions and Observations from Participants

- Is there a sense of extremism of views and an anti-politician sentiment that is resulting in people not running for elected office? Answer: There is general apathy; voter turnout was 60% in the last election. There is a lack of engagement and a feeling that politicians are just in it for themselves. Focus is moving back towards community engagement and away from politics as a way to engage.
- As the language of politics gets more polarizing, have you seen organizations having to compete and use language that brings them close to partisanship? Answer: Charity Commission looked at this and encouraged organizations to be more respectful - they emphasized that charities are values-based and should not adopt the more inflammatory language.
- Do you think the discourse about politicians and the process is having a negative effect on democracy? Answer: No, in the UK it is the rise of populism and riots that is more concerning. This was a wakeup call about what is going on below the surface and where it might lead.
- There is tension between democracy and being heard as individuals. We come together in groups to communicate and express our positions. Organizations that are charitable have every right to speak. There is a tension between the idea of speaking to government and getting a better government as a result, and the constraints of charitable law.
- What do organizations do in promoting participation on a day-to-day basis? Answer: Some promote different forms of consultation, bringing together organizations with local governments so that they can consult on policies and legislation - creating processes for speaking directly to governments. Others organize citizens' juries on public benefit with experts informing them about what public benefit is.
- There were issues with faith-based organizations telling people how to vote. Is that being addressed in an effective way in England and Wales? Answer: There hasn't been a major concern about preaching from the pulpit; these were more one-off cases than a trend.
- We have talked about protecting institutions (for example, a free press, political parties). What is being done in the UK? Answer: Membership in political parties is declining and new parties are emerging, which poses challenges.
- There are growing concerns about the lack of democracy in political parties, for example, candidates being chosen by the leader and being parachuted into a constituency. Are any charities actively addressing this issue? Answer: No.

Australia

Aid/Watch Case

Effective from July 2001, Aid/Watch was endorsed as a charitable institution under Item 1.1 of the Table in s 50-5 of the *Income Tax Assessment Act 1997* (ITAA 1997). However, after a review by the Australian Taxation Office (ATO), Aid/Watch's endorsement was revoked in October 2006. After its objection to this revocation was disallowed, Aid/Watch sought a review in the Administrative Appeals Tribunal (AAT).

The key facts ultimately relied on by the High Court are set out at paragraphs 5 and 6 of the majority judgment of the court where reference was made to the Full Federal Court's findings. It was accepted that Aid/Watch was an organisation concerned with promoting the effectiveness of Australian and multinational aid provided in foreign countries by means which include investment programs, projects and policies. The High Court included the following extracts from the Full Federal Court judgment:

"[Aid/Watch] researches 'generally in partnership with people that are recipients of the aid and non-government organisations'; it brings the issues it identifies to light by publicly releasing the reports that are the result of its research; and it campaigns for changes to the ways in which aid is delivered through media releases and public events designed to influence relevant agencies to alter the way aid programs are administered."

"This concern [of Aid/Watch] with the effectiveness of aid delivery is clearly aimed at the relief of poverty. Its premise is that if too little aid is delivered, if aid is delivered to the wrong areas, or if aid is of a particularly low quality, it will be ineffective, or at least less efficient, at achieving its goal: namely, the relief of poverty. By promoting the effectiveness of foreign aid, Aid/Watch clearly seeks to promote more efficient use of resources directed to the relief of poverty. Indeed, it may be said that the focus on ensuring that aid is environmentally sustainable is also directed towards the relief of poverty. Where aid is delivered in an unsustainable way it may destroy ecosystems upon which communities rely in order to prosper."

The AAT (Downes J, President) decided [2008] AATA 652 that Aid/Watch fell within the concept of charitable purposes described in *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531, in that it was a body established for the relief of poverty and also for the advancement of education. He held that as Aid/Watch's activities were not political, it was not disqualified from charitable status.

The ATO appealed to the Full Federal Court. The Court (Kenny, Stone and Perram JJ) held [2009] FCAFC 128 that the concern of and attempts by Aid/Watch to promote the effectiveness of aid delivery was clearly aimed at the relief of poverty. Further, the Court was of the view that the publication of the results of Aid/Watch's research concerning aid delivery also fell within the charitable notion of the advancement of education.

However, all three judges of the Court held that Aid/Watch's purpose was to engage in political activities, and so, it should be disqualified from having charitable status.

Following the decision of the Full Federal Court, Aid/Watch was successful in seeking special leave to appeal to the High Court of Australia.

Issues decided by the court:

The majority of the High Court found in favour of Aid/Watch.

The majority set out in paragraphs 5 and 6 of its judgment the facts upon which it would seem its decision was based. Specific reference was made to factual considerations taken into account by the Full Federal Court. They were that Aid/Watch was concerned with promoting the effectiveness of Australian and multinational aid provided in foreign countries by means of improved investment programs, projects and policies.

The court was of the view that the origin of the apparent "political activities" disqualification notion (i.e., *Bowman v Secular Society Ltd* [1917] AC 406) was decided in a context which did not take account of the Australian Constitution, and the inherent right of constituents for agitation and communication about matters affecting government, politics and policies.

The court decided that in Australia, there is no general doctrine which excludes from charitable purposes "political objects".

The court held that the concern of and attempts by Aid/Watch to promote the effectiveness of aid delivery was clearly aimed at the relief of poverty and that the promotion and generation by lawful means of public debate about matters affecting the better use of and delivery of Australian aid was a matter falling within the fourth *Pemsel* head, i.e., purposes beneficial to the community.

Greenpeace New Zealand Case

Greenpeace of New Zealand Inc v Charities Registration Board [2020] NZHC 1999

Over the span of 12 years of court cases, the High Court said that protection of the environment is a charitable purpose, but the question was whether advocating for such protection was also a charitable purpose. The High Court held that Greenpeace NZ's advocacy about the avoidance of catastrophic climate change, sustainable fisheries and cleaner rivers was of public benefit and was a charitable purpose. Therefore, the Board had erred in finding that such advocacy was not for charitable purposes and for the public benefit. Thus, Greenpeace NZ was not ineligible for registration as a charity on that basis.

As to Greenpeace NZ's advancement of education purpose, the Board had decided that Greenpeace NZ's research and education programs were not sufficiently structured, and not sufficiently balanced, to fall within the ambit of the purpose as it was recognised. The High Court said that advancing education in itself and the use to which the research commissioned by Greenpeace NZ were put should not be conflated. The High Court found that Greenpeace NZ did undertake activities to advance education that met its stated purpose of advancing education. These activities were for a charitable purpose and for the public benefit. In addition, advocacy related to Greenpeace NZ's findings from research and educational activities fell within the 'any other purpose' category of charitable purpose.

On illegal purposes, the High Court took the view that the examples of activities which had been considered by the Board and the Attorney General were non-violent protests, and one of the ways in which Greenpeace NZ advocated for the environment. The High Court commented that 'sometimes breaches of the law of the land ultimately advance a public benefit'.

Family First New Zealand Case

Attorney General v Family First New Zealand [2022] NZSC 80

https://eprints.qut.edu.au/233169/13/2022_93_Attorney_General_v_Family_First_New_Zealand_2022_NZSC_80.pdf

Family First takes a relatively traditional approach to the importance of families and marriage. Since its establishment in 2006 it has engaged in community discussions on divorce, prostitution, pornography, broadcasting standards and censorship, availability of alcohol and tobacco, gambling, abortion, euthanasia, embryonic cell research and the “anti-smacking” legislation. It has done this in many ways including published opinions, polemics and dissemination of various forms of research.

At the Supreme Court hearing, Family First argued that it had a charitable purpose to advance education. The Court found that it did not. This is because Family First’s activities primarily lacked the balance required to advance education in a charitable sense.

Family First also argued that it qualified as a charity on general community benefit grounds. The Court found that Family First’s advocacy for the traditional family, to the disadvantage of other forms of family, was discriminatory, and this was not compatible with charity.

The Court also held that it was not possible to determine whether Family First’s engagement with other issues (e.g. abortion, assisted dying and censorship) was of public benefit in a charitable sense. This contrasts with advocacy for recognised charitable ends such as human rights or protection of the environment.

In a separate opinion, Justice Joe Williams found that Family First’s advocacy was not charitable because it was not fair, balanced and respectful.

Applicable Purposes from *Charities Act 2013*:

- the purpose of promoting or protecting human rights;
- the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:
 - (i) in the case of promoting a change—the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k); or
 - (ii) in the case of opposing a change—the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs.

Disqualifying purposes

In this Act:

Disqualifying purpose means:

(a) the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy; or

Example: Public policy includes the rule of law, the constitutional system of government of the Commonwealth, the safety of the general public and national security.

Note: Activities are not contrary to public policy merely because they are contrary to government policy.

(b) the purpose of promoting or opposing a political party or a candidate for political office.

Example: Paragraph (b) does not apply to the purpose of distributing information, or advancing debate, about the policies of political parties or candidates for political office (such as by assessing, critiquing, comparing or ranking those policies).

Note: The purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country may be a charitable purpose (see paragraph (l) of the definition of **charitable purpose** in subsection 12(1)).

A charity can have:

- a purpose of advancing public debate, including promoting or opposing a change in law, where this furthers or aids another charitable purpose
- a purpose to promote or oppose a change to a law, policy or practice in the Commonwealth, a state or territory or another country where this furthers or aids another charitable purpose.

Purposes that will disqualify an organisation from being a registered charity are:

- engaging in, or promoting, activities that are unlawful:
 - one off not enough
 - unauthorised individuals not enough
- engaging in, or promoting, activities that are contrary to public policy:
 - not 'government' policy
 - advocating anarchy and the end of democratic government
- promoting or opposing a political party or candidate for political office:
 - can assess, compare or rank the policies of political parties or candidates in carrying out its charitable purpose
 - can spend money to publicly express views on the policies of different political parties relevant to its charitable purpose
 - can spend money to publicly express views on issues, including during an election
 - can spend money on broadcasting on 'political matters', or
 - conduct research in order to critique the policies of different political parties.
 - endorsing or financing a political candidate is problematic.

Does a charity have to vote in an election?

- Some local government jurisdictions require incorporated entities to vote. This would apply to some charities in those areas.
- If compulsory voting rules require a charity to vote in an election, it must do so. Voting, in this situation, would not be considered 'promoting or opposing a political party or candidate for political office'.
- However, if a charity seeks to convince or encourage other voters to vote a particular way, it runs the risk of being seen as promoting or opposing a political party or candidate for political office which could amount to a disqualifying purpose.
- It is important for every charity to consider how a requirement to vote fits with its obligation to meet the ACNC Governance Standards. For example, a charity may need to ensure it has processes in place to ensure there is accountability to members and that Responsible

People are acting properly in the best interests of the charity when considering the charity's vote.

- It is up to a charity to decide, and record, how it meets the Governance Standards if it is required.

Observations from Participants

- In the UK they are also moving towards taking legal action with individual protesters (ex. locking yourself to an immovable object), with the result that the individuals often received very long prison sentences.
- Amnesty Charitable Trust, which received the Nobel prize, was seeking charitable status but was refused because it was deemed that they did not provide a public benefit.
- Courts have to assume the law is perfect as it is. They can't change laws or make laws. Parliament does.
- Courts haven't been able to explain why charities can't engage in political activities.

USA

The presentation began with an overview of how US federal tax rules approach the promotion of democracy, noting that Congress did not provide a definition of "charity" when it first enacted laws that provided for tax-exempt status for charities. In order to address that omission, the US Treasury Department issued regulations in 1959 that provide some degree of clarity by drawing from the framework of general definitional principles in the Preamble to the Statute of Charitable Uses enacted in 1601 by the English Parliament. The tax-exempt status organizations formed to promote democracy is, depending on the activities of the entity, based on the notion of the education of the public or, more recently and frequently, on the standard of defending human and civil rights secured by law, a concept added to those in the Preamble of the Statute of Charitable Uses in the 1959 Treasury regulations, perhaps reflecting the civil rights struggles of that era.

Following the legal overview, the history of the promotion of democracy in the US was reviewed, beginning with the separation from British rule in the 18th century. Between 1776 and World War II, the concept of the domestic promotion of democracy, as referenced by the ability to vote, centered around the end of slavery, with its consequent confirmation of the ability to vote by African male citizens, as well as with regard to agitation and litigation regarding the ability of women of any race to vote.

With regards to the promotion of democracy outside of the US, the official focus of the US government was on countries in the Caribbean and Central America, particularly Cuba in the wake of the Spanish-American War, Haiti, Nicaragua and Panama, often more to protect US commercial interests than expand democracy in those countries.

During World War II, however, the US government began to focus on the promotion of democracy as a counterweight to the political philosophies of Fascism and Communism, as exemplified by an overview of Fascism with a comparison to democracy prepared by the US War Department in 1943 as training materials for US forces in the European theater of operations. Subsequent to World War II, the official focus of the US regarding the promotion of democracy was on freedom of the press, particularly newspapers in the formerly Soviet-dominated countries of Eastern Europe. During the Reagan administration, Congress directed the formation of a tax-exempt educational organization, the National Endowment for Democracy, with the specific mission of promoting democracy. However, at the same time, the Reagan administration also became involved in supporting dictatorship in Nicaragua, a contradictory approach to the

promotion of democracy by that administration, which continues to the present time, as reflected in the pronouncements by the candidates for US President in the 2024 election cycle.

Following the presentation on US federal tax rules, the roles of the states and the US Internal Revenue Service in evaluating charitable purpose and charitable activities of exempt charitable entities was explained.

Under US law, each corporation is a creature of a state (with some rare federal exceptions like the Red Cross and the Smithsonian Institution). Before the entity can apply for a tax exemption from the IRS as a charity, it must first apply to a state (through the Secretary of State or a corporations bureau) to authorize the incorporation. Nineteenth and early 20th Century law required a judicial approval of the charitable entity in many states before it could begin operations. This judicial approval in many states included an examination of the charitable purpose and planned activities. This duty devolved to state Attorneys General by the 1980's (in New York), and Attorneys General still conducted reviews of charitable purpose as set forth in the certificate of incorporation into the 1990's. In 2014, the New York legislature authorized a new charity to expressly state in its certificate its purpose as "any purpose for which corporations may be organized . . . as a charitable corporation. . ."

Other states reached this result much earlier. Delaware, for example, has no separate incorporation process for charitable corporations, and no review of charitable purpose of the charitable entity. Delaware obtains 20% of its state revenues from corporate franchise fees, and has no interest in any regulatory role which could discourage corporation formation in the state.

Although each charitable corporation is a creature of a specific state, there is no requirement that a corporation have any presence in the state to be incorporated there, other than designating an agent for service of process. As a result, charities' lawyers often advise a Delaware incorporation because of minimal regulation, and the US Constitutional requirement that each state give "full faith and credit" to the actions of each state. Delaware takes the position under full faith and credit that only its law governs the "internal affairs" of its corporations.

Once a charitable corporation is registered in a state, its next stop is the Internal Revenue Service to obtain a federal tax exemption, allowing contributions to be tax deductible. This exemption is also relied upon by states for exemptions from state income taxes, and real estate and sales levies. The IRS has conducted some review of charities to evaluate charitable purpose, and from time to time determines that applicants do not have a proper charitable purpose. Much of the guidance on this topic is now forty years old and has not been updated. However, after allegations of political targeting of applicants in 2013, the IRS has retreated from much of its review activity, and created in 2014 a "side door," the "streamlined" 1023EZ process, which allowed new charitable organizations to quickly obtain tax exempt status with essentially no review of charitable purpose or charitable activities. They were permitted to attest, rather than demonstrate, that they had a charitable purpose. The average review time is less than two weeks. The 1023EZ form is now used by the majority of applicants. State regulators joke that you could put a postage stamp on a monkey, mail it to the IRS, and get 1023EZ approval. The federal Taxpayer Advocate Service has opined that with 1023EZ, "the IRS effectively abdicated its responsibility to determine whether an organization is organized and operated for an exempt purpose."

In theory, the IRS and the states can act to revoke tax exempt or charitable status. In practice, the IRS has revoked exemptions rarely, and most frequently when the charity failed to file its returns for three years, or conducted no activities in furtherance of its exempt purposes. States on occasion seek dissolution of charities (for example, *People (New York) v. Trump Foundation*; *People v. Kermit Gittenstein Foundation*; *People v. Coalition against Breast Cancer*).

This summary does not discuss the use of limited liability companies for charitable purposes, a growing practice in the charities sector.

Questions and Observations from Participants

- The US system would not work in Canada – it allows for activities that are not deemed charitable. Example: a politician forms a charity to study education and develops policy positions, and then advances the policy positions through a Political Action Committee (PAC). Therefore, many modern political campaigns are based on information from tax-exempt organizations.
- Most Americans don't understand this "bleeding" between categories.
- The majority of charities in the US are doing charitable work and trust in those organizations is quite high. However, there is a small number of charities that are politically oriented and have significant financial resources.
- Although the US system allows for more charities to benefit from tax-exempt status and therefore, the potential for "bad actors" increases, it also allows for the development of small community-based organizations that provide great benefit.
- Another example provided was the Oath Keepers. This group was able to get tax exemption and raised money to support the events of January 6th.
- The US example raises the concern that if we liberalize our rules, we will need to ensure that boundaries are put in place.

Day 1 - PM

After the afternoon break, participants were engaged in a conversation about boundaries. What should we be concerned about? Should the rules allow for the promotion of democracy? What lessons can we learn from the US?

The following issues were discussed:

- There was a reduction in the IRS budget, specifically the dollars allocated to the section of the IRS that deals with tax exempt organizations. This resulted in a cutback to the oversight function.
- A few examples of US organizations that "promote democracy" were shared. These included "Open Society Foundations" and "Capital and Main".
- In 2021, Canada allowed journalism organizations to be registered as charities. Not many have come forward. To date twelve have been granted charitable status.
- In the US, organizations use the following narrative when applying for tax exempt status: 1) they are educational; 2) they defend civil and human rights; 3) they speak to government without fear of retribution.

The facilitators then suggested that the group spend some time brainstorming what should be included in a definition of democratic institutions. This is a term that was used in earlier conversations, and not all participants would define democratic institutions in the same way. This exercise also led to some elements of defining "Free Press" and "Civil Society". Below is the result of the brainstorming exercise.

Defining Democratic Institutions

- House of Commons
- Senate
- Governor General
- Courts
- Elections and election processes
- Constitution
- Free press (who are they?) reporters vs columnists
- Independent judiciary
- Political parties
- Civil Society (if defined more narrowly)
- Non-partisan vetting processes
- Freedom of information, access to information
- Colleges/Universities
- Protection of minority rights
- Procedural due process
- Peaceful transition of power
- Economic freedoms
- Majoritarian tilt
- Interdependence of institutions
- Democratic culture – different from democratic institutions
- Four basic elements: a) free and fair elections; 2) active participation; 3) basic human rights for all; 4) respect for the rule of law
- Quality of education/academia
- Freedom of thought
- Legitimacy and authority of democratic institutions
- Professional non-partisan public service (speak truth to power)
- Expansion of administrative bodies
- Bureaucracy
- Connecting values
- Role understanding and training for Members of Parliament

Free Press

- Trust in the media is eroding
- Importance of facts
- What are the differences in Quebec – given the success of some Quebec based media in moving towards a nonprofit model?
- Value of opinionated press
- What are the standards related to quality of information
- Need for a plurality of voices
- Emphasis on quality of information
- Information vs. entertainment

- Roles of journalists, columnists, influencers

Civil Society

- Society that is civil
- All that is outside family, government and market
- Charities and non-profits that advocate
- Concern: is there always a bias? Is that ok if the bias is declared?
- What is the role of civil society in a democratic society?

Day 2 - AM

The facilitators began the morning by asking the group whether the promotion of democracy is a charitable purpose in its own right. If this were accepted, it would fall under the fourth head of charity. How would an additional purpose be allowed under the fourth head?

One of the participants provided historical context related to the “definition of charity” and the existing purposes allowed by the CRA.

The historical context allowed the participants to understand that adding a purpose can be done by the courts or by the regulator if the desired purpose is analogous to those purposes already accepted.

The CRA would have to be cautious not to substitute the role of the court but there is likely enough similarity to several of the currently accepted purposes to allow the CRA to accept this type of new purpose.

The US participants spoke to using the same approach. Defending human rights (in the US context) was deemed analogous to the promotion of democracy.

The additional points below formed part of the discussion:

- Many of the activities that have been discussed amongst participants currently fall under advancement of education. If we create a new purpose, under the fourth head, consideration needs to be given to narrowing the allowable activities.
- The promotion of human rights is likely the purpose that is the most similar to the promotion of democracy. In the UK, because of the risk related to an inherently “political” purpose, sample purpose/objects clauses are provided to organizations seeking charitable status. In all cases, the objects clearly state that activities are subject to the rules of political activities.
- One of the participants reminded the group of the four basic elements of democracy. They are: 1) A political system for choosing and replacing the government through free and fair elections; 2) The active participation of the people, as citizens, in politics and civic life; 3) Protection of the human rights of all citizens; and 4) A rule of law, in which the laws and procedures apply equally to all citizens. For each of these, there is a direct reference in the Canadian Charter of Rights and Freedoms.
- Is promotion of democracy too broad? Would we allow for issues such as electoral reform? Can we go beyond ‘participating in existing democratic institutions’ to allow ‘challenging democratic institutions’? When does this become political? Or partisan?

- Should the group be discussing disqualifying factors? If an organization's purpose requires lobbying, does this make it a political purpose? What about organizations like Mothers Against Drunk Driving (MADD)?
- A discussion will be needed to explore issues and factors when considering international work. What is legal behaviour in Canada may be illegal in other parts of the world.
- There is a need to strike a balance between allowing a broad range of activities and setting boundaries.
- It is difficult to precisely define democracy. We currently don't define "religion" or "charity".
- Should we reframe the conversation to consider promotion of civic engagement? This might help in narrowing down what is allowable.
- Another possibility would be advancement of citizenship and civic engagement

After the break, participants were asked to break out into four groups to consider the following question: What are the elements and/or activities that would not be permitted under a potential purpose relating to democracy and/or citizenship and civic engagement?

Day 2 - PM

The afternoon session began with a report back from the breakout groups.

Group 1

- Unlawful activities such as promoting anarchy, advocating violence, engaging in partisan activities, promoting political party reform.
- Promoting human rights treaties could be used as a basis of activities to promote democracy.
- The group could not agree on the scope of acceptable activities to promote democracy outside Canada and how to define democracy, especially in the charitable sector's context.

Group 2

This group started by proposing some 'provocations' to deepen the thinking on this question.

Provocation #1:

Perhaps the promotion of democracy is not a stand-alone charitable purpose: charity law's facilitation of democracy is entirely captured by the four heads of charity. The first three heads of charity indirectly facilitate democracy through their direct support of poverty relief, education and religion. The fourth head of charity indirectly facilitates democracy through infrastructure and good citizenship causes.

Provocation #2:

If the CRA resists adaptation without express judicial authorities, is it shirking its role as an administrator of an adaptive body of law? Not adapting the boundaries of "charity" is not respecting an intrinsic feature of the common law of charity. Charity evolves from within organically as an adaptive and iterative set of principles.

The group then proposed various forms of engagement:

- Facilitating democratic processes is perhaps charitable
 - E.g., supporting participation in elections
 - E.g., supporting free and fair elections
 - E.g., encouraging joining a political party (Good Citizenship precedents)
- Protecting established human rights
- Protecting constitutionally protected freedoms

As for disqualifying rules:

- Partisan electioneering but with some caveats:
 - Is “indirect” too broad a prohibition on electioneering?
 - Partisan is not the same as “value neutral”.
- Subversive activities are disqualifying with caveats:
 - Not all disagreements over human rights are subversive. Sometimes they just reflect conflicts of values.
 - Public policy is an empty vessel and a poor basis to determine subversive activities.
- Illegality is disqualifying with caveats:
 - Greenpeace of New Zealand allows for some illegality provided it is not too much nor too severe.
- Changes from within the system versus changes of the system (or to the system):
 - Fundamental “changes of the democratic system (or to the democratic system)”, such as abolishing the Senate, are perhaps too substantial changes to be charitable.
 - On the other hand, more subtle “changes from within the system” through law reform to democratic processes are perhaps charitable:
 - E.g., fixed election date reform
 - E.g., reform over acceptable voter ID

Group 3

- There was no agreement about whether promoting electoral reform was a disqualifying purpose. Working to reform institutions may or may not be inherently political.
- Need to consider unregulated nonprofit participation in things like electoral reform. They aren’t regulated in Canada, so they are not subject to compliance of any kind. There are sometimes nonprofits operating within a charity to undertake these kinds of activities, which may pose a risk to the sector as a result.
- There were some questions about promoting freedom of expression and whether there were any guardrails around this. Who gets to say what is onside or offside? It would be useful to look at the language in the Constitution as a way to resolve this.

Group 4

- This group looked at ends vs means. Promotion of democracy as a purpose was not on (too broad), while civic engagement might be seen to be too narrow. What about the promotion of governance as a purpose instead?
- A purpose focused on civic engagement might not capture the four elements of democracy as described on page 12.

- Illegality is offside as are activities contrary to public policy, propagating propaganda, private benefit activities, promoting anarchy, providing misinformation or information that is deceitful, any discriminatory behaviours that are not attached to public benefit.
- Enabling donations from other countries could be offside.
- And we need to recognize that charities in foreign countries are now being challenged about how they might be inciting violence (for example, the Ford Foundation's activities and motives being questioned by Kenya).

Participant Discussions

- There seemed to be common agreement on what is out: partisan politics, anarchy, violence, illegal activities, etc. but there was no consensus on matters like promoting electoral reform, citizens' reform and supporting/promoting the role of democratic institutions. There was also no consensus on expanding the franchise/vote.
- What is considered good governance is subjective so probably not appropriate as a defined purpose. Also need to consider that Indigenous forms of governance are not compatible and different from forms of colonial governance.
- Democracy is a construct that is viewed in certain ways. Stating that the charitable purpose is tethered to a certain construct is not comfortable. It would be better to focus on activities.
- We seem to be narrowing down the purpose to one of promoting civic engagement/good citizenship.
- Would a purpose of civic engagement/good citizenship be able to refer to/include the promotion of the rule of law and the protection of human rights? It was suggested that these elements would not be included. We would also need to add protection for freedoms (like freedom of speech) so we still have not found the right label.
- So, what does civic engagement mean? Is it more of an activity rather than a purpose? Civic engagement may lend itself to too many interpretations.
- Parliamentarians see the danger of erosion of the right to speak freely, we need to encourage people to vote and become informed about the issues instead of supporting an organization that espouses a particular view.
- An organization that focuses on getting students to vote in the UK would be an example of promoting civic engagement.
- Addressing misinformation as an activity is more subjective and so more difficult to include in civic engagement.
- Is it fair to say that we are trying to uphold the four elements that constitute a democracy? The one about upholding human rights was rejected because that is already possible as a purpose, as per CRA's guidance.
- We need to define what we are trying to protect and so we should keep these four elements together. Where do these come from?
- The four elements come from Larry Diamond from Stanford University:
 1. A political system for choosing and replacing the government through free and fair elections.
 2. The active participation of the people, as citizens, in politics and civic life.
 3. Protection of the human rights of all citizens.
 4. A rule of law, in which the laws and procedures apply equally to all citizens.
- These reflect academic consensus about the fundamental aspects of a democracy. Another source is the UN Commission on Human Rights. They articulate the elements a bit differently.
- What about respect for the rule of law? Where would that fit in a purpose focused on citizenship engagement/good citizenship?

- A concern was also expressed that the four elements are at such a high level of intellectual concept, they may not be helpful to organizations because they don't detail what a charity can and cannot do. It would be too ambiguous and create problems.
- The law has been an 'ass'. Key figures have broken laws and laws have not kept up with society so respect for the law is in the eye of the beholder.
- Be careful of promoting liberal democracy that will create chaos around the world.
- This purpose could include activities like promoting the vote, ensuring people cast their vote, promoting participation in political processes like donating to and volunteering for political parties. The other element includes ensuring the ability to exercise their freedoms and their human rights, ensuring their right to protest and dissent.
- Embedding the concept of rule of law in charitable purposes accepts that society is guided by laws. There is room to support the rule of law while accepting that some laws need to be changed.
- We need to be careful about exporting democracy to other parts of the world. Who determines what is better vs worse programming when promoting democracy abroad? Making the promotion of democracy abroad noncharitable as a matter of law goes too far.
- The construct of democracy is different from civic engagement. It is more palatable to do civic engagement than promotion of democracy in other countries.
- We don't want to import the system that they have in the US into Canada. What do we need to consider to ensure that does not happen?
- Where is the mischief? Exporting Canadian values when promoting democracy abroad is an issue. We need to think about the flipside of organizations and entities who seek to import their approaches to democracy into Canada.
- The good you are promoting is not democracy. The good is participation in the political process. If one wanted to improve the state security for women in Parliament, that would be onside as an activity.
- What about promoting the peaceful transition of power? Constitutional privileges for Indigenous people? Should we go broader and say engagement in political processes is but one aspect?
- Civic engagement includes standing for office and would include efforts to encourage running for office. But it also includes encouraging debate about political issues but that may not be what we are proposing so far. The notion of civic engagement is too narrow as we are currently defining and discussing it.
- Encouraging people to stand for office is ok. Discussing public policies is ok but focusing on advocating for a particular issue is out of bounds.
- There is a difference between encouraging people to run vs. advocating for them to be paid more. Encouraging more women to run for office is the purpose of Equal Voice and they are a charity that comes under the head of advancing education.
- We may not need a charitable purpose after all. Electoral reform is out of bounds. Civic engagement in political processes could also be out of bounds.
- What are the things that charities would like to do to advance democracy now and in the future?
- If we stick with the objects as they are, some of what we are talking about to support democracy, encourage citizen engagement, etc. would not fit.
- We should also continue to ask the question- is it charitable?
- Encouraging people to contribute to political parties is ok, but encouraging them to contribute to one party is offside.
- If an organization was promoting civic participation by encouraging people to donate to parties, would that be in or out? Is volunteering ok? Promotion of volunteerism is a good hook and is a charitable good.

- Encouraging people to participate in the political process would be ok and better than encouraging people to donate to parties.
- What if a purpose was created for the promotion of democracy under the fourth head? Activities would include promoting electoral reform, encouraging voting, engaging in policy issues as long as it was in furtherance of your charitable purposes.
- Electoral reform activity, changes to the voting age and promoting campaign finance reforms would be offside. Are these really partisan issues?
- It depends on what you are doing for electoral reform generally without advocating a particular policy. Think-tanks already do that. Organizations must be non-partisan and reflective of diverse views. It all comes back to the purpose you are furthering.
- The problem lies with the notion of promoting democracy and some participants are not yet ready to concede that this would be charitable. If an organization advocates for wholesale change to the democratic process, there is a problem.
- If my purpose as an organization was civic engagement and included promoting electoral reform, would that be okay? It depends on the activities. For example, encouraging women to present themselves at elections is ok, but advocating to change the electoral system is political, so not acceptable as an activity.
- The unwillingness of government to move based on an analogy is the problem. We can make the link to an analogy. Why would we not do that? There is no intrinsic reason why this is not analogous. It's just a choice.
- It should be noted that the 'advancement of community citizenship or civic development' in the UK is a stated purpose, so there is a precedent here.
- And in the objects, you can refer to promoting democracy within the purpose.
- We perceive there is a problem. We sense threats to democracy that we may want to find ways to marshal resources against. It is puzzling as to why it would be okay to participate in the system but not contemplate being able to promote changes to the system.
- People identified a house on fire yesterday. CRA is the passthrough. Failing media, social media misinformation, illiberalism, authoritarian government- these are urgent issues. We are at an inflection point. Just sticking to the granular of regulations isn't good enough.
- Promoting reform of the democratic system is a political question and the ultimate one. There is room to advocate for exercising voting rights, the right to associate, the right to expression, advocate for removal of barriers, but structural changes to the democratic process is political. Lowering voting age or raising it? Should charities have the right to vote? Making changes to campaign financial rules? These are different and political questions. These have a different flavour than citizen engagement.
- Universities producing research that points to structural reforms is different from an organization advocating for changes to the political structure.
- We are struggling with a category of activities here, but we are talking about things that branches of government have reserved for themselves such as who gets to vote, how and when. These are government functions and not charitable functions.
- The activity of promoting electoral reform cannot be partisan and if this was the only purpose, it would be a problem. As an activity, nonpartisan electoral reform is okay. For example, providing information about the different types of electoral processes and getting people to understand them is okay.
- Some here would be comfortable with promoting civic engagement and citizenship. But some of the barriers to civic engagement are the first past the post system, voting hours, and campaign financing regimes where the contributions of citizens are outweighed by other donors. Electoral reform should not be a charitable purpose, but it can be an activity.

- Promotion of democracy veers into political purpose. It is inherently political because it seeks to change a system.
- It is absurd that charities, under citizen engagement, can talk about the right to vote and encourage people to vote but are denied the opportunity to talk about the issues that would cause people to want to vote. On the other hand, if I do it under promotion of democracy, there can be disagreements on what is democratic. As a purpose it would be political but as an activity, I am not so sure. On financing, is it democratic to stop unions from contributing? Are we trying to use activities to disguise a purpose that we can't have? If we can fit it under education, which of the restrictions do I have to remove to make it possible? I see both sides but there is no solution that makes any sense to me.
- Promoting reforms to voting hours would be okay as an activity.
- If we are promoting civic engagement and people aren't engaging because they don't see how they have impact, is the answer to reform the system on the premise that a new system would encourage more participation?
- As a practical consideration, talking about the promotion of democracy or civic engagement and providing guidance has limits. CRA can do guidance on engaging people to vote but it will be more difficult to do that for electoral reform. At the political level, that would be even more difficult because they have already made a decision on first past the post and don't have much interest in changing.
- Look to Aid/Watch in the UK. They are neutral on law reform but promote changes to the electoral system.
- What is political and what is not? What frame of reference is guiding the distinction?
- Not a lot of organizations are currently doing this kind of work, but we need to think about the future. This is an opportunity to be proactive. Democratic institutions are at risk.
- There would be a double tax privilege for those that engage. The political tax credit is more generous than the charitable tax credit. It's already there. If there is agreement on the broad goal of citizen engagement and less about democracy, we can reframe the title as such and look at activities.
- What if there was a different group of people here in this room? What would private companies and religious organizations be saying? What is the risk factor? What groups could conceivably exploit this opportunity?
- Because this would affect all organizations, we could choose to do nothing because of the potential negative impacts of making any changes.
- Whatever conclusions we come to; we are not a decision-making body. We put forward a set of ideas, some with consensus, others not. Others will have to weigh in at a later date if they ever go forward.

Day 3 - AM

The facilitators started the morning by reminding the participants of what was discussed on the previous day.

- The group reviewed the current four heads of charity and how they came to be.
- The group is still considering whether a specific purpose under the fourth head is necessary – and, if it is, what it would be called.
- The breakout groups provided a series of examples of what would not be permitted.
- Several issues remain unresolved: dealing with misinformation, peaceful transition of power, electoral reform, campaign financing, etc.

- The group did not reach a consensus of what acceptable activities would be in the international context.
- There is still some question as to whether all the activities that were discussed would fit under advancement of education.

The group then raised a few additional issues that can be discussed. These include:

- The need to consider unintended consequences.
- All of what has been discussed can take place now – but several of the activities cannot happen if an organization has charitable status.
- Is the concern that if the rules are opened up, charities could participate in activities related to electoral reform?
- In the current context, charities can undertake non-partisan political activities, as long as those activities are in support of the stated charitable purpose. A purpose of promotion of democracy is likely too broad.
- Several charities currently state on their websites that they undertake activities related to electoral reform. They are currently registered under advancement of education. It is important to understand that organizations may use different language on a website for marketing purposes and their respective charitable purposes as declared to the CRA.

Participants were then invited to participate in a breakout group to “play the regulator,” and determine if two nonprofits, currently not registered as charities and pursuing work that can be understood as “promoting democracy” could be granted charitable status. The groups were asked to discuss the following:

- What would these organizations have to stop doing if they wanted to be a charity?
- Could they register under the advancement of education head?
- If a specific purpose under the fourth head was required, would it best fit under promotion of democracy or promoting citizenship and civic engagement?

Day 3 - PM

After the break, the groups reported back as follows:

Group 1: Nonprofit A

In order to be a charity, the organization would have to stop some of its activities.

- Challenge is that it seems to have a primary goal of changing laws (that is not a charitable purpose).
- Many of the “what’s” outlined are generally acceptable but the “how” and the “why” would need to be changed.
- Research as currently outlined would not meet the test.

Under which head of charity could it be registered?

- None – current practices and the way the organization works is offside. The political purpose seems to be the real unstated purpose. Materials produced are biased therefore the organization cannot fall under advancement of education.

Group 2: Nonprofit A

This group felt that several of the activities on the website would have charitable purpose. These include: education and research and the reports published from same; conducting research into activities and decision-making processes of government and other corporations.

The group felt that advocating for good governance and corporate responsibility was a non-charitable purpose and identified partisan advocacy and biased reports as non-charitable activities.

This led to a few comments from the participants:

- Some of the activities were challenging to understand given the quality of the information on the organization's website.
- Should the regulator look at the website? How much should the regulator rely on the website information? Participants felt that the regulator should really consider the formal constituting documents and supplement that with the information on the organization's website.
- The question is whether the majority of what is described on the website aligned with the formal constituting documents – how much is offside? How can CRA discuss the offside elements with the organization applying for registration?
- The website is the public expression of who an organization is, it is important to ensure alignment. Activities need to be consistent with “what you are registering for”.

Group 3: Nonprofit B

The breakout group raised the following issues:

- The website stated activities that, in some cases, were deemed charitable and others not. Transforming political systems and institutions seemed like a political purpose and would be offside. Several other activities might need to be edited in order to be charitable.
- Citizen assemblies used as a mechanism to discuss public policy issues would be charitable.
- The solution would be for the organization to formulate their registration request without a political purpose.

Group 4: Nonprofit B

The breakout group raised the following issues:

- The activities fall outside the scope of education.
- Organization is advocating for different forms of government and governance (not limited to just government).
- Making recommendations to influence policymakers is allowable (as long as it isn't partisan).
- The education piece is about people developing skills.
- The concerns are that one of their purposes is to transform political systems – that would not be allowable as it would be considered a political purpose.

- In conclusion, the group felt that the organization could be registered with attention brought to the potential for political purpose. It would be important to have clarity on their overarching purpose.

Participant Discussions

- Promoting citizen assemblies to discuss public policy issues is a charitable activity but promoting citizen assemblies as a mechanism to reform democratic systems is more political and would likely be a hurdle to charitable status.
- A solution could be to do research, present the research, then advocate for changes based on the research.
- Framing a purpose under advancement of education brings a certain rigor; a stated purpose that requires a law change or law reform – by default – is a political purpose.
- One of the risks is that an organization could change its stated purpose after registration. How would that be handled?
- If the above happens, the CRA would conclude that the organization provided false information for the purpose of registration and would then take compliance action.
- The example of Mothers Against Drunk Driving (MADD) was raised again. A number of organizations would see their ultimate success as legislative change – that would be acceptable. But if your only purpose is to change laws – that might be different.
- Another example would be the Muttart consultations as some have resulted in legislative changes.
- Advancement of education is too restrictive for the activities that we are discussing.
- Promotion of democracy might be too broad. Would the group be comfortable with promotion of citizenship and civic engagement? The examples from the breakout groups would fit under this title.

Is the Advancement of Education Head of Charity the Answer?

Some charitable organizations that promote citizen engagement and undertake education on democracy are registered under the head of advancement of education. A question was posed to the group as to what requirements in the guidance on advancement for education would not align with those activities as well as others discussed thus far.

The responses included the following:

- The guidance refers to structured/targeted teaching and learning which may not always be the case for those organizations engaging in good citizenship or the promotion of democracy.
- Paragraphs 32-35 are inconsistent with activities relating to electoral reform.
- We may be giving this guidance too much credibility; some of the elements are not analogous.
- Activities like voter education and promoting voting would not align either.
- The Vancouver Society judgement is referenced in this guidance, but we need to recognize that the context has changed, especially with the advent of the internet and social media.
- The kind of activities we have been talking about may not be strictly educational, may be informal, and there is greater potential for bias.

- When considering purposes and activities, a possible relevant reference is the Project for Modern Democracy, an independent, non-partisan think-tank set up in 2014 in the UK to promote more efficient government and good citizenship. It is a registered charity and its formal aims are:
 - The promotion of efficient government.
 - The advancement of education to inform and contribute to overall public knowledge on issues of government, public administration and public service delivery.
 - The promotion of civic responsibility and good citizenship for the public benefit.

Based on the assumption that advancement of education is not the best fit for registration of organizations that seek to promote good citizenship and engagement, the participants were then paired to discuss possible purposes that would come under the fourth head of charity.

Examples of draft purposes for promoting good citizenship/citizen engagement*

** Title for illustrative purposes only.*

The purposes should include a reference to the Canadian Charter of Rights and Freedoms as it references a series of citizens' rights. These include the right to vote, the right to a fair trial and the right to move freely around the country. Citizens also enjoy freedom of religion, expression, thought, belief, peaceful assembly and association.

Canadian citizenship comes with responsibilities. Citizens are expected to obey Canada's laws and respect the rights and freedoms of others. They are also expected to participate in their communities. This includes voting in elections and engaging in the democratic process.

- Promoting and defending human rights and protected freedoms guaranteed by the Canadian Charter of Rights of Freedoms by distributing material that increases the public's knowledge about human rights.
- Improving respect of the rule of law in society/community, through workshops and presentations about our legal system.
 - Distributing material that increases public knowledge about the various aspects of the legal system and how they work.
 - Creating and undertaking awareness campaigns for society/community that encourages them to respect the law.
- Improving the moral or ethical development of society/community by promoting respect of human rights; encouraging civic engagement and good citizenship; increasing public awareness of citizens' rights.
- Developing and teaching civic values for the good of a community or society as a whole.
- Promoting public participation with voluntary and community organizations with the aim of fostering good citizenship.
- Upholding the administration and enforcement of the law as it relates to free and fair elections.
- Promoting good citizenship by facilitating participation of the public in democratic decision-making processes with the outcome of enabling people to develop their capacities.
- Advancing and promoting the right to free and fair elections.
- Conducting research related to citizenship and democracy.
- Convening conferences to educate the public about democratic processes.
- Improving the administration and efficiency of government processes.
- Advancing good citizenship through the education of individuals and promoting good practices.

Additional comments pertaining to these examples of purposes:

- There was a question about moral and ethical development. What is moral and ethical? Refer to the guidance document on upholding Human Rights.
- Participation in decision-making should be done through your elected representative.
- Ensure that when we refer to access to information, it needs to be informed/factual.

Issues that arise for charities that promote democracy or do citizen engagement in other countries

- Two participants who work in this field shared their experiences and perspectives on this topic.
- Most organizations never go anywhere assuming they will change the political and democratic systems of a country. They have ethical principles to uphold and their work focuses mostly on building capacity, supporting economic development, enabling women and building sustainable futures in communities to which they are invited.
- Some countries have more colonial approaches to development. In Afghanistan, the Germans trained women judges only. Other countries have undertaken sustainable long-term investments in infrastructure and democratic systems, bringing tribal groups together to develop the kind of governance they wanted. There are certain ways of behaving and cultural norms in those countries that don't fit well with western values. The groups did not get involved in politics but worked with communities and their Elders.
- Success factors for this work means sharing expertise but staying clear of politics. Bribery is a big deal, and you have to be able to say no. Organizations need to be in line with CRA rules, the policies of the country, and the practices of the community in which they work.
- The complexity of the context in which these organizations work cannot be overstated. The challenges are multifaceted and there are systemic issues of colonialization. Most do not engage in political activities abroad, but they are at risk of being used for political aims without their knowledge. For example, funding brought into a jurisdiction can be diverted for political benefit.
- Foreign funding brought into countries to support certain activities can be seen as positive, such as when it is for building the capacity of individuals to serve institutions and support a transition to democracy. But things can go badly quickly. In Kenya, in the last year, with a government mandated increase of income taxes, there were riots to protest tax policies, and the government called out the Ford Foundation for instigating violence. Governments can look to foreign funders as scapegoats. The organizations that work internationally have to maintain their independence.

Questions and Observations from Participants

- Do these organizations based in Canada have a code of ethics, values, standards for doing international work and how broadly have these been adopted? Answer: Some organizations have their own code of ethics and work with other international partners. Cooperation Canada also has a code of ethics to which its members must adhere. Australia has a code that is self-regulated.
- Do organization have to tell CRA if they go work in another country? Answer: If it's a registered charity, CRA doesn't really know which ones work outside the country nor what they have done. You have to know that they are working with qualified donees. You also need to contextualize what doing work means.

- There are religious organizations around the world who have gone into countries without much monitoring. Canada can't control what organizations do in other countries but there is the expectation that they have to respect the laws of that country. You can do development, but you can't promote democracy.
- Australia has regulatory controls for international organizations. Following a scandal, 200 or so organizations developed a code of conduct. It is a progressive code that produces results and kicks organizations out as necessary. The organizations take the code seriously. They developed a standard financial return as well with auditors reviewing them and calling people to account. There are also very vibrant communities of learning in Australia for charities operating overseas. The federal department that provides funding for international development only funds you if you are a member of the peak organization that self-regulates. Aid organizations in Australia need a 'tick' from the Treasury and from the line department funding them.
- The Charities Commission in the UK looks at risk issues for those working internationally. They focus especially on the smaller charities.
- Also see section 4.1 of the guidance *CG-002 Canadian registered charities carrying on activities outside Canada*.
- What harm would we cause if we say that you must comply with the law no matter which jurisdiction you are in? What happens if there is conflict between the laws of Canada and the laws of the other country? Answer: You can be offside of the laws of the country but that won't make you lose your charitable tax status.
- Just working with females to educate them can be viewed as subversive. Getting them out of the community and going to university can have an impact on the community when they return; what a woman can do with that education is incredibly important. You are always doing a delicate dance with influencing change in systems.
- CRA does not want to be in the business of measuring efficiency. They get questions from organizations about taking money out of the country. They don't want to include that in the guidance, but recognize that those without the support and guidance of umbrella organizations may be at risk. We also have to remember that guidance doesn't have the force of law.
- The challenges discussed so far are programmatic challenges. The standards stay the same for charities whether they work internationally or domestically.

CRA monitors illegal activities for income tax purposes only and from a Canadian perspective. They warn against doing things that are illegal in other countries, but they don't do anything - can't implement this. For example, bribery is illegal in Canada but not an issue in other countries. But paying a tax to the Taliban would be giving money to a terrorist organization and therefore breaking Canadian law.

Day 4 – AM

The draft purposes as described on page 22 were circulated to participants. Participants were asked to review the document and reflect on "what is missing". The following points were raised:

- Should these be reviewed in relation to international work? Would these purposes and activities be applicable for international work?
- One of the missing purposes is linked to the general benefit to the community. The participant framed it as follows: A thought contributed yesterday was that the "general benefit of the community" can include charities pursuing the general benefit of the community through democracy-oriented projects (e.g., promoting the general benefit of the community by...). Participant referenced Halsbury's Laws of England:

- *A gift in general terms for the benefit of a country or district, not indicating a specific purpose, is charitable, apparently on the principle that it is impliedly for purposes recognised by the law as charitable. Examples are gifts "to my country England"; and gifts, whether general or for specific purposes, for the benefit of the inhabitants of a county, town, ward or parish, and gifts in general terms for the benefit of the inhabitants, or a class of the inhabitants, of particular localities, for example a borough, city, town, village or parish, or the occupiers of certain cottages on a manor, or the free inhabitants of ancient tenements in a particular place. However, a trust for defined purposes which are not charitable is not rendered charitable by the fact that the area of benefit is a particular locality. The provision of housing stock, not limited to persons in charitable need, is not a charitable purpose.*
- None of the draft purposes specifically speak to political parties – we should be explicit about that.
- Suggest that the purpose statement that starts with “fostering good citizenship...” could end with... “voluntary and community organizations, and political parties.”
- The group has been speaking about Canadian citizens. What about permanent residents? Perhaps we should simply say “people in Canada”.
- The issue of integrity of information was raised. Although it is not necessarily needed in the purpose – allowing for activities that speak to people in Canada having information about the democratic process might be needed.
- A suggestion was made to edit the first purpose to read: “promoting and defending human rights and protected freedoms guaranteed by the Canadian Charter of rights and freedoms and treaties to which Canada is a signatory, by distributing materials that increases the public’s knowledge about human rights.”
- The list of purposes created by the group is not meant to be inclusive or refined – it’s simply a list of suggestions for CRA to consider.
- If the purpose is the promotion of active citizenship, and one of the activities is related to electoral processes – that would likely be allowable. What would likely not be allowable is if the purpose is explicitly stated as “promotion of electoral reform”.
- Most participants felt that the last purpose “improving the administration and efficiency of government processes” could be removed from the list.

The group then explored what some of the unintended consequences might be should a new category of promotion of citizenship and civic engagement be allowed under the fourth head. The discussion brought forward the following points:

- Interest groups with particular perspectives may try to take advantage of anything new and see this as an “opening”.
- Will this provide an opportunity for manipulation? Do we have appropriate mechanisms in place to prevent manipulation?
- This could potentially open the door for an organization that wants to target a specific issue through a political party. It will be important to think about guardrails for organizations that might seek to use this for partisan purposes.
- There could be hostile foreign actors that might want to take advantage of this new opening.

- One of the challenges that the CRA will face will be that if a bad actor gets charitable status and then needs to be revoked. The revocation process is lengthy.
- Public discourse is already polarized and even more polarized when people are politically active.
- Any purposes and activities will need to be tested against what public benefit is resulting.
- There may be some financial impact to the sector as some foundations will want to be engaged in this work.
- In some cases, the CRA may want to explore intermediate sanctions should non-charitable activities be undertaken.
- This new purpose could also help heal some of the divisiveness and polarization. There is reason for some optimism.
- Should this new purpose attract less-desirable organizations, it could affect the public trust in the charitable sector.

FINAL REFLECTIONS ON THE CONSULTATION

- There was much goodwill among the participants. That is dwindling in society but it was here in spades. Greater diversity of the population yields greater diversity of ideologies and the potential for conflict. What we have done here in the last few days will help CRA move incrementally. Thanks to Muttart for hosting.
- This is a special process and being able to engage with CRA makes it more productive; it creates trust between sector and CRA. Progress was made even if we don't have all the solutions.
- Thanks to Bob and his team. We can't overestimate the power of dialogue; no other organization does anything like this. Facilitators were great. I feel heartened about where we landed. Having regulators in the room was special. The presence of international experts was very useful.
- Thanks to Muttart. Having the readings categorized this time was helpful. This was one of the more challenging sessions. CRA had no presentation, so it was harder to focus on the problem. But we were more proactive this time.
- I am leaving with nervousness and hopefulness. Can we engage more people regardless of their viewpoint? We need to protect the charitable construct. The International guests' contributions were very helpful once again.
- I really enjoyed the consultation. There is an interesting culture here and the good selection process for participants facilitates this. There was also levity and an opportunity to talk about complex issues together. I am optimistic about engaging individuals who may not be connected in communities. Thanks to the international participants.
- Thanks to facilitators and to the Muttart Foundation. This was a fairly productive conversation; we have arrived at a place where in theory we can move forward. Thanks to the international guests.
- Thanks- it turned into a structured and productive event; I continue to learn more about the sector in Canada and having CRA in the room was particularly helpful.
- Thanks to the facilitators and to the Muttart Foundation; glad that we did trust the process. These events are unique. No other event is structured in the same way. These consultations have been happening for 25 years and have made a tremendous difference to the sector. New and diverse perspectives were brought to this table. Civil discourse is becoming rarer, so I am excited about where we got to. This will make a

difference for the sector and for communities.

- This was both blue skying and watching how policy gets made. There were lots of lawyers in the room, but it was helpful. Thanks to Muttart and the facilitators. We went from blue skying to concrete action perhaps a bit too quickly and it would have been useful to spend more time talking about the dimensions of democracy.
- Meals were a great place to mingle, and I felt welcome. Facilitators were great and there was a great discussion on the international work, with a recognition that the less sophisticated charities working internationally have a greater challenge. And thanks to CRA for being present.
- This is a unique experience for a regulator. The report will be helpful with the early thinking that could be part of future guidance. Thanks to the Muttart board and Bob and thanks to the international guests.
- I always learn so much from the participants who share their time, wisdom and expertise. We acknowledged the precarious state of democracy, and it is a privilege to dive in on a topic for four days. I appreciate the presence of the regulator and Finance. This can't not result in richer conversations going forward. What people do with this experience is up to them. The strength of democracy has an impact on the people and the sector issues. Thanks to the facilitators.
- I leave the room feeling more hopeful. In the immigration sector there has not been much opportunity for civil discourse about immigration. Maintaining civility and kindness was impressive here and this brings my year to a close in a way that was needed for my own spirit. It brings back hope.
- Thanks to the Foundation. This was a very special opportunity to focus on a topic, having charity law practitioners, international experts and practitioners in the sector was great; it allowed me to reflect on the role of charities in this space. I am happy to have reached common ground for further work.
- This is an extraordinarily important topic because democracy is more fragile than ever. The facilitators were great, and the results will be useful. This was also a great learning opportunity for me personally. Thanks to all participants and thanks to Muttart.
- I learned a lot. This was a special process, and I am thinking of how I might apply this in other contexts. It allowed us to talk about the things that are scary and uncomfortable. Thanks for the food. Facilitators were great.
- Facilitation was great and I learned a lot. This was a big topic. I have been working in this space for 20 years and so pleased that we are talking about improving our democracy. Good will come if people engage more and if funders are supportive.
- I was intimidated when asked to come and giving up five days was a big decision but I am happy that I did it. It's been a seamless process, thanks to the facilitators. Trusting the process worked out in the end. Democracy is a big thing, and charities are only a part of it. Who else do we need to work with? Young people need to be engaged because there is a risk if we don't engage them. Thanks to CRA and Finance. It is a privilege to listen to their perspectives.
- This was a great discussion. I am privileged to attend many of these sessions, and I continue to learn so much. The organization of the pre-reading materials was great. Thanks to the regulator and to international guests, thanks to facilitators. I feel the sense of the risk to liberal democracy and a sense that the urgency is greater now. I am excited that CRA will do something with this.
- Thanks to the host, the facilitators and thanks for the production of a good set of resources. There have been lengthy battles in different countries to argue for the rights of citizens to agitate and participate in civil society, outside family, business and government. There are other ways that law reform can occur which is through the court, but its long and stressful. The reform process here is cheaper, better, faster.

- Thanks to Muttart for the hospitality and to the participants for their expertise. I thought this would be a difficult subject; and could be taken at so many different levels. And at one point I thought we might be getting bogged down but the process came through. We came to a successful concrete outcome. This process is unique and it might not work elsewhere but I appreciate it.

Closing Remarks

Mr. Wyatt ended the session by reminding the group that we all desire a better Canada. If we were able to talk about important topics it was because you are willing to sacrifice five days. We had the right expertise in the room. He thanked everyone for coming and encouraged all participants to consider using this process in other parts of their lives or in their communities.