

INSTITUTE *for* MEDIA, POLICY *and* CIVIL SOCIETY

CHARITIES: ENHANCING DEMOCRACY IN CANADA



IN ASSOCIATION WITH



Canadian Centre for Philanthropy™
Le Centre canadien de philanthropie™

INSTITUTE *for* MEDIA, POLICY *and* CIVIL SOCIETY

CHARITIES:
ENHANCING DEMOCRACY
IN CANADA



IN ASSOCIATION WITH



Canadian Centre for Philanthropy™
Le Centre canadien de philanthropie™

© 2003 IMPACS – Institute for Media, Policy and Civil Society

Any reproduction, modification, publication, transmission, transfer, sale, distribution, display or exploitation of this information in any form or by any means, or its storage in a retrieval system, whether in whole or in part, without the express written permission of the individual copyright holder is prohibited.

Published in Canada by IMPACS
207 West Hastings, Suite 910
Vancouver, BC V6B 1H7
Tel: 604-682-1953
Fax: 604-682-4353
E-mail: media@impacs.org
Web site: www.impacs.org

Aussi disponible en français

Charities and Democracy Project
IMPACS – Institute for Media, Policy and Civil Society
207 West Hastings, Suite 910
Vancouver, BC V6B 1H7
Tel: 604-682-1953
Fax: 604-682-4353
Email: outreach@impacs.org
Web site: www.impacs.org

About the Charities and Democracy Project

The Charities and Democracy Project is a joint project of IMPACS - the Institute for Media, Policy and Civil Society and the Canadian Centre for Philanthropy (CCP). The project, formerly known as the Charities and Advocacy Project, has also published *The Law of Charities and Advocacy: the Case for Change and Let Charities Speak: Report of the Charities and Advocacy Dialogue*. A collection of case studies and some tools about successful public policy influence by nonprofit groups are also available.

You can find these and more information on the project at www.impacs.org.

INSTITUTE *for* MEDIA, POLICY *and* CIVIL SOCIETY, Second Edition, September 2003

CONTENTS

INTRODUCTION	1
EXECUTIVE SUMMARY	2
THE NEED TO ENHANCE DEMOCRACY IN CANADA	3
THE PROPOSAL	3
WHY ARE CHARITIES LIMITED IN THIS WAY?	4
The Tax Policy Argument	4
The Fiscal Impact Argument	5
THE REASONS FOR CHANGE	6
Problem-Solving and Innovation	6
Civic Engagement	6
Public Interest Voices	7
Voices From the Margin	8
Freedom of Expression	8
Public Opinion	9
PRACTICES IN OTHER COUNTRIES	10
CONCLUSION	11
APPENDIX A: AMENDMENTS TO THE <i>FEDERAL INCOME TAX ACT</i>	12
APPENDIX B: CHARITIES AND DEMOCRACY – CHRONOLOGY OF KEY DEVELOPMENTS	13

CHARITIES: ENHANCING DEMOCRACY IN CANADA

Today, more than ever before, Canada depends on the combined strength of its private, public and voluntary sectors. While each of these contributes to our quality of life and deserves recognition, we are showcasing today the special value of the voluntary sector. A sector that engages Canadians across the country in the life of their communities, providing services and giving voice to shared concerns. A sector that is, in short, essential to our collective well being.

– Prime Minister Jean Chrétien, December, 2001¹

Canada's 80,000 charities form the core of the voluntary sector, and they are indeed essential to our collective well being. Unfortunately, Canada's charities face a limitation on their ability to give voice to shared concerns that is more restrictive than practices in virtually any other developed democracy.

This discussion paper is based on the assumption that vibrant, informed, and genuinely open debate, and greater civic engagement on all issues of public importance will lead to innovation, better public policy decisions, more efficient use of public resources, and a healthier, stronger democracy in Canada.

This paper argues that the impediment to charities adding their voices to the public debate adversely impacts the ability of charities to advance their charitable causes, and weakens the public policy debate and public policy development. This, in turn, ultimately weakens democracy in Canada. Removing the existing impediment to participation by charities, therefore, would be an important and achievable step in enhancing Canadian democracy.

¹This passage is part of the message from the Prime Minister that introduced the document entitled *An Accord Between the Government of Canada and the Voluntary Sector*, released in December, 2001, and available at: www.vsi-isbc.ca//eng/joint_tables/accord/the_accord_text/doc2.cfm

EXECUTIVE SUMMARY

Canada's charities are limited by the federal *Income Tax Act* and government administrative policy from speaking freely about the public issues, laws and policies that are relevant to their work. The "10% rule" limits what charities say, how much they say, and how they say it.

At the same time, key indicators, including voter turn-out and public trust in governments and elected officials, clearly establish that democracy in Canada is experiencing serious strain.

This discussion paper considers the relationship between charities and democracy in Canada and argues that one important way to begin to reverse this "democratic deficit" would be to remove the 10% rule and to allow charities greater freedom to engage in public policy debate to share their ideas and solutions in their fields of endeavour. The result will be greater civic engagement, more vibrant, informed and balanced public policy debate, and better policy decisions. In short, this change will strengthen democracy in Canada.

This paper weighs the arguments used to defend the current limitations on charities against the arguments for greater freedom for charities to speak out, and concludes that the case for change is far stronger and more substantial.

The primary justification for the current restrictions is a tax policy argument that reduces the issue to a question of subsidy,

and asserts that because charities receive favourable tax treatment, limits on what they say are acceptable. But on closer examination, it is clear that this is a weak justification and that the 10% rule is a very crude tax policy. Similarly, concern about a possible negative fiscal impact of providing greater latitude to charities to speak out is unfounded.

In contrast, the arguments for change are principled and fundamental to the nature of modern participatory democracy. They recognize that charity is more than treating symptoms, and that charities are the sources of innovation and solutions to problems. In addition, charities speak in the public interest and can bring greater balance and new, often excluded voices to public policy debate and policy formulation. Charities also increase civic engagement by individuals, and in the process, strengthen civil society.

Other reasons for change include the obvious freedom of expression argument, and the fact that there is very strong public support for greater freedom for charities to engage in advocacy to advance their charitable causes. Finally, practices and studies in other countries also support the case for change in Canada.

Minor amendments to the *Income Tax Act* are needed to remove these impediments to charities. These amendments will be consistent with the government's stated values and will make a significant contribution to enhancing democracy in Canada.

THE NEED TO ENHANCE DEMOCRACY IN CANADA

There are many signs that democracy in Canada is struggling. These include declining voter turnout in national and provincial elections, declining involvement in political parties, and diminished public trust in governments and elected officials.² These signs provide evidence of what many have called a “democratic deficit.”

Many reforms have been proposed to reverse these real and unhealthy trends and to address other real or perceived weaknesses of Canada’s democratic systems. Examples are proportional representation, an elected Senate, more free parliamentary votes, more independent and better-resourced parliamentary committees, increased use of referenda, the capacity to recall elected representatives, fixed election dates, preferential ballots, and new campaign finance rules.

This paper addresses another, more modest change that has the potential to make a significant contribution to the enhancement of Canadian democracy. No constitutional amendments, new spending commitments or new structures are required. All that is needed is a minor legislative amendment and an improved administrative policy.

THE PROPOSAL

The change proposed here is to remove the existing 10% rule, which impedes charities from engaging in public policy debate in their fields of expertise. The 10% rule is an administrative policy enforced by the Canada Customs and Revenue Agency (CCRA). It is an imprecise test based on the CCRA’s interpretation of the common law of charity and sparse, poorly drafted provisions in the federal *Income Tax Act*. The rule restricts charities to using no more than 10% of their resources on “political activities,” which include speaking out to achieve changes to laws, policies, or government decisions, which impact their charitable work and the communities and individuals they serve. Charities are the only organizations in Canada that face limitations of this kind on their participation in the democratic process.

The proposed change would enable and encourage charities to speak out on their charitable issues, instead of restricting them. To achieve this, minor changes to the federal *Income Tax Act* are required. Two amendment options are attached. New administrative guidelines for charities on this issue are also needed.

²Elections Canada reports that voter participation in federal elections declined from 75.3% in 1988 to 61.2% in 2000. Academic researchers Cross and Young found that only 2% of Canadians consider themselves members of political parties. (See <http://www.mta.ca/faculty/socsci/polisci/scppm/index.html>) Hugh Segal informs us that this is one of the lowest political party membership rates of any country in the world. See www.irpp.org/miscpubs/archive/020819e.pdf)

Public trust in Canadian politicians is very low. A survey by the Centre for Research and Information on Canada (CRIC) in 2001 found that 86% of Canadians agreed that politicians often lie to get elected. (See www.cric.ca/en/html/opinion/opv3n23.html) Public trust that the government will “do the right thing” has declined from 80% in the 1960s to 30% in 2001. (See www.ppforum.com/english/publications/staff/australiaspeech.html)

WHY ARE CHARITIES LIMITED IN THIS WAY?

Professor Frederick Bird of Concordia University argues that the 10% rule is a substantial deviation from the older, traditional approach in which charities were involved in both assistance and community development. They offered settings for both private services and public discussions. They played a major role in encouraging and supporting the civic engagement of Canadians in the life of our society.³

Bird argues further that the *Income Tax Act* and the CCRA have restricted charities in two ways. First, there has been a move away from the older common law tradition, which defined charities in relation to several large encompassing purposes, to an approach that defines charities in relation to specific sets of activities. In the past, charities retained their status as charities so long as their varied activities clearly supported the underlying purposes for which they were chartered. Currently, administrative policies result in charities losing their status if too many of their specific activities are deemed by the Agency not to be charitable, whether or not these activities are engaged in to support the larger charitable purposes of their organization.

Second, he argues that the CCRA, in applying the 10% rule, defines advocacy very broadly to include not just the kind of lobbying originally targeted by this term, but all manner of public involvement. Charities have traditionally served as a lively means of fostering public involvement, which is so essential to healthy democratic societies. As a result, this administrative stance has acted to suppress a vital feature of the traditional practice of charities.⁴

THE TAX POLICY ARGUMENT

The justification given for this deviation from the traditional view of charity relies on an argument based in tax policy. The principle asserted is a “general acceptance of the proposition that there should be limits on the degree to which one person can be required to subsidize the private political activity of another.”⁵

The reasoning goes this way:

- 1) Donations to charities provide an income tax advantage or credit for donors.
- 2) The tax implications are that other taxpayers must pay more income tax (a subsidy) as a result of the credit given to donors to charities.
- 3) Such a subsidy is acceptable when charities deliver services, but must be restricted if charities speak on policy matters in their charitable fields.

This justification for the 10% rule does not withstand serious scrutiny. Its fatal failing is that it does not recognize that the “tax expenditure” by the federal and provincial governments through charitable donation receipts amounts to just over 2% of the total revenue of Canada’s charities. The basic arithmetic is this:

- Canadians claimed donations of approximately \$5 billion last year.
- federal and provincial tax credits are worth 40% or \$2 billion (the “tax expenditure”).
- charities’ budgets total about \$90 billion annually. Most income is from service contracts won by charities. \$2 billion is approximately 2.2% of the total budget of charities.

³ Professor Bird contributed these ideas as comments on an earlier draft of this paper.

⁴ Ibid.

⁵ Davies Ward Phillips & Vineberg LLP. (2001). Political Lobbying and Advocacy Activities of Non-Profit and Charitable organizations. Unpublished memorandum.

The 10% rule limits the use of all charity revenue, not just the small portion that may with some validity be called a subsidy. As a tax policy instrument, the 10% rule is extremely crude in design and application.

A second serious failing of this tax policy argument is that it does not take into account the fact that the 10% rule is a quota that entrenches inefficiency by preventing charities from publicly advocating efficient ways to solve problems. Providing valuable public policy input to help solve a problem may be far more efficient than merely treating symptoms of the problem.

A third serious failing of the tax policy argument is the assertion that public policy input from charities amounts to “private political activity.” As discussed at greater length below, all charities are legally bound (and properly so) to advance the **public interest**, and cannot pursue private interests. To categorize the efforts of a health charity to have government establish higher workplace safety standards, for example, as “private political activities” misses a critical distinction between public and private interest, and misconstrues the nature of charity.

THE FISCAL IMPACT ARGUMENT

A second argument used in defense of the 10% rule is that if it is removed or modified, there will be a large increase in donations for charitable advocacy that will, through the tax credit and “tax expenditure” described above, have serious negative implications for the bottom line of governments.

The problem with this argument is that there is no evidence to support it. It is difficult to predict how much more receiptable donation revenue will come to charities if the 10% rule is changed.

An analysis by the Canadian Centre for Philanthropy (CCP) of data from the 1997 *National Survey of Giving, Volunteering and Participating* shows that Canadians gave \$19 million to “civic and advocacy organizations.” If one assumes that none of this amount is now receiptable and that a change in the law would make the full amount receiptable, at an average tax credit of 27%, the incremental cost would be approximately \$5.1 million per year to the federal government and, at an average of 42% of the federal tax rate, approximately \$2.2 million per year collectively to all provincial governments, for a liberally-estimated total of \$7.3 million per year. In the words of Gordon Floyd of the CCP, this is “a rounding error.”

Even if the numbers turn out to be 10 times greater than these, the argument that greater latitude will cause serious fiscal problems is not well founded.

THE REASONS FOR CHANGE

In contrast with the dubious tax policy and fiscal arguments used to defend the impediment to charities, the reasons to remove the impediment are based on principles of a higher order that address the very nature of modern participatory democracy.

PROBLEM-SOLVING AND INNOVATION

Currently, charities are limited by the 10% rule to treating the symptoms of problems rather than curing problems or preventing them in the first place. While charitable work that treats symptoms is important, addressing the causes of problems is often the best and most efficient way to advance a charitable purpose.

Canada's charities work in every community in the country on the issues that are neither profitable for private business nor effectively addressed by universal government programs. Given the difficulty of the tasks they undertake and the scarcity of resources available to them, charities must innovate to survive. As a consequence, charities understand their communities and their fields of work and they are well-placed and well-suited to identify systemic problems and propose innovations to solve them. Indeed, their untapped collective capacity in this regard is enormous, as is their passion. They have the potential to be what Professor Paul Pross calls "harbingers of change and the sources of renewal."

Problem-solving and innovation are also important elements of economic development at the community level, for healthy communities are cauldrons of economic development and

creators of marketplaces, opportunities, and prosperity.

Instead of limiting their ability to advocate solutions to problems and frustrating many organizations from fully advancing their charitable missions, Canada should encourage their innovations.

CIVIC ENGAGEMENT

Individual Canadians rarely engage in public policy debate or policy development on their own. Traditionally, trade unions, political parties, and churches have provided organized outlets for policy concerns. Individuals are increasingly joining or forming voluntary organizations that allow them to advance their issues and public policy goals with other like-minded individuals. Voluntary organizations, including charities, are increasingly seen as the place for individual democratic engagement in the discussion of public concerns.⁶

This pattern is particularly clear with young people. Those who participate in the community in this way are more likely to vote and to be active in community organizations as adults.⁷ Learning through service is very effective in fostering youth civic engagement when it is "cause-based" and connected to organizations that promote civic, moral, or religious ideals.⁸

Through charities, Canadians help each other in many and different ways. They offer assistance, education, and health care. They promote the arts and support Canadians' relations with our natural environment. In myriad ways, they help to foster, enliven, and enrich community life through religious and ethnic associations

⁶ United Kingdom Cabinet Office, Performance and Innovation Unit, Voluntary Sector Team (2001). *Campaigning and political activities of charities and voluntary organisations*. London, UK www.cabinet-office.gov.uk/innovation/2001/charity/attachments/Politicalactivities.pdf

⁷ Youniss, J., McLellan, J.A., & Yates, M. (1997). What We Know about Engendering Civic Identity, *American Behavioural Science*, 40(5), 620–631.

⁸ Youniss, J., McLellan, J.A., & Mazur, B. (2001). Voluntary Service Peer Group Orientation and Civic Engagement. *Journal of Research on Adolescence*, 16(5), 456–468.

and neighbourhood groups. Through our charities, Canadians have especially helped those in need, supported our central cultural values, and developed the intricate webs of volunteering and engagement that make for a lively civil society.⁹

This individual engagement in community and citizenship through charities creates many new centres of expertise and passion on important public issues, but the impediment to charities means that this potential is not being fully realized in Canada.

PUBLIC INTEREST VOICES

Private interests dominate public policy debate and decision-making through direct lobbying of government and advertisement campaigns. The corporate, commercial, and professional sectors are well-equipped to play an effective role in the public policy development process. In addition, Canada's tax system encourages these activities by allowing businesses to deduct expenditures of this kind for income tax purposes. Not only do private sector organizations have the financial means to retain experts to help them prepare and present well-researched and forceful public arguments, they are, in effect, subsidized by other taxpayers to do so.

These private interest voices can often make important contributions to public debate, for creative ideas and informed analysis add value. But public interest voices must also be heard. It is important that governments receive information and ideas from a variety of perspectives and that citizens have access to information and views from varied sources, not just from the business world.

Charities, by definition, pursue the public interest, not private interests. Legally, charities

must only pursue the relief of poverty, the advancement of education, the advancement of religion, or other purposes beneficial to the community. In addition, charities must meet a "public benefit" test, which strictly precludes private benefit and requires that the efforts of charities benefit a significant portion of the community. Charities can only work in the public interest, and therefore, if given room, could only speak in the public interest.

There are, of course, other public interest voices in Canada. These include: federal and provincial public services; political parties; and elected MPs, MLAs, and MPPs. All of these groups make valuable contributions to public policy debate, but face challenges regarding their capacity. Briefly, public bureaucracies are generally averse to controversy, risk and change, while most political parties have become highly centralized electoral organizations in which grassroots members play little role in determining final policy. Similarly, backbench MPs, MPPs, and MLAs are hampered in this regard by party and caucus discipline and centralized communications.

It is important to recognize that this field is not a zero sum game. It is not a matter of choosing between reforms to increase the effectiveness of elected officials *or* greater latitude for charities. The optimal approach would be to enable and encourage *all* potential sources of public interest innovation to engage in public debate and the policy-making process. Hobbling one source of input is not a productive way to proceed.

Overwhelmingly, Canada's charities are community-based and logically inclined to link with and inform local elected officials, thereby strengthening the voices of elected officials. The relationship between charities and elected officials should be viewed as complementary in the democratic process.

⁹ Professor Bird, note 3.

VOICES FROM THE MARGIN

Another related reason to encourage the participation of charities in public policy debate is that they very often speak on behalf of marginalized citizens who are unable to effectively engage in democratic processes on their own. People in poverty, people with disabilities, and new Canadians, for example, are often isolated and excluded from the mainstream activities and duties of citizenship. The number of Canadians marginalized in these ways is substantial. Many charities work to end that isolation and to help marginalized people participate in the community.

Allowing charities to advocate on behalf of those they serve brings voices to public policy debates that would otherwise not be heard. This, in turn, would help move toward a balance between those who are privileged and those who are not in terms of participation in public policy debates and influence on decision-making.

A similar argument can be made for organizations that work on behalf of public causes such as protection of the environment or animal welfare. The natural environment, endangered species, and domestic animals have no voices of their own. Charities that work in these fields can enrich the public debate on such matters.

FREEDOM OF EXPRESSION

Freedom of expression is a central value in Canadian democracy, enshrined in the *Charter of Rights and Freedoms*. Not only does it lead to more innovation and better decisions as described above, it is, as virtually all democracies have recognized, a “good in itself.” It is a freedom that should extend to all individuals and organizations, regardless of their income tax treatment.

It is no more acceptable to limit the voices of charities than it would be to deny freedom of speech to individuals who don’t pay tax, or to donors who benefit from charitable tax credits, or to sick people in hospitals because their care is paid for by tax revenues. Restrictions on making threats, spreading hatred, defamation, or other criminal or civil wrongs, are justifiable. However, restrictions on freedom of speech that are based on an organization’s tax status are not justifiable in a free and democratic society.

PUBLIC OPINION

Canadians trust charities. A comprehensive public opinion survey in 2000 by the Canadian Centre for Philanthropy and the Muttart Foundation¹⁰ revealed that most Canadians (77%) trust charities “some” or “a lot,” and most Canadians (84%) think that charities are honest about the way they spend donations. Moreover, 79% of Canadians agree with the statement, “Charitable organizations understand the needs of the average Canadian better than the government does.”

The survey also showed that Canadians expect charities to speak out on their issues. In total, 88% agreed somewhat or strongly with the statement, “Charities should speak out on issues like the environment, poverty and health care.” Furthermore, 49% think there should be no limit of any kind on the amount of time and money charities commit to speaking out about their cause. Another 31% indicated that charities should allocate more than the 10% to which they are currently limited.¹¹ In other words, 80% of Canadians think that charities should be allowed to do more policy advocacy in order to further their charitable purposes.

¹⁰ The survey, entitled *Talking About Charities: Canadians’ Opinions on Charities and Issues Affecting Charities*, is available at www.muttart.org/public.htm

¹¹ Ibid. p. 7.

PRACTICES IN OTHER COUNTRIES

Most other advanced democracies allow greater latitude for charities or equivalent organizations to speak out to advance their causes. For example, in Germany, charities “are entitled to lobby on behalf of legislation that supports their aims. In doing so, they may address their membership and the public at large. For that they may employ their own publications or the media. There is no ceiling concerning the amount of income spent on such public activities.”¹² The situation is very similar in France, the Netherlands, Japan, Spain, and Poland. In England, charities can speak out so long as it does not become their dominant activity.

Recently, major public reviews of charity law and administration were completed in Australia and Scotland. In both jurisdictions, the basic legal principles and practices are similar to those in Canada. Both reviews reached the conclusion that charities should be able to participate in public policy debate. In the words of the Scottish Report:

It is important that Scottish Charities contribute to public debate and we would encourage Scottish Charities to campaign on particular issues which are in fulfilment of their charitable purpose. We believe that an organisation whose purposes are charitable should be able to engage in activities which are directed at securing or opposing changes in the law or in the policy or decisions of government, whether in this country or abroad.¹³

This is a principled view that reflects the values of modern participatory democracy.

It is clear from our survey of practices in other jurisdictions that Canada lags behind other developed democracies in enabling charities to contribute to the public policy debate, and that the gap is widening.

¹² Salamon, L.M. (1997). *The International Guide to Nonprofit Law*. New York: John Wiley & Sons. p. 127.

¹³ The Scottish Report is available at: www.scotland.gov.uk/justice/charitylaw/csmr/csmr-00.htm

CONCLUSION

New ideas and innovation in the public interest are vital for a healthy democracy and must be encouraged. Existing barriers that impede new ideas and innovations from emerging should be removed. The 10% rule is such a barrier. It is an example of an ill-conceived and crude tax policy vehicle that is undermining fundamental democratic principles and values.

We should recognize charities for what they have become -- one of Canada's greatest strengths. Making the minor legislative and administrative changes needed to provide greater latitude for them to generate innovation in the public interest is a modest step, but one that will have a significant impact. It will help enhance democracy in Canada by leading to better debate, more informed public policy decisions and greater efficiency.

By making the proposed amendments to the *Income Tax Act*, the federal government can fulfill the commitment made in the September 30, 2002 Throne Speech, when it committed that it will put into action the accord it signed with the voluntary sector last December, to enable the sector to contribute to national priorities and represent the views of those too often excluded.

Amendments to the
Federal Income Tax Act
to provide greater latitude for charities to provide
public policy input

Section 149.1(6.2) of the federal *Income Tax Act* states:

Charitable Activities. For the purposes of the definition “charitable organization” in subsection (1), where an organization devotes substantially all of its resources to charitable activities carried on by it and

- (a) it devotes part of its resources to political activities,
- (b) those political activities are ancillary and incidental to its charitable activities, and
- (c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office,

the organization shall be considered to be devoting that part of its resources to charitable activities carried on by it.

Option A:

Amend section 149.1(6.2) as follows:

Charitable activities. For the purposes of the definition “charitable organization” in subsection (1), where an organization ~~devotes substantially all of its resources to charitable activities carried on by it and~~

- a) it devotes part of its resources to political activities,
 - b) those political activities are ancillary and incidental to its charitable activities, and
 - c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office,
- the organization shall be considered to be devoting that part of its resources to charitable activities carried on by it.

Option B:

Replace section 149.1(6.2) with the following clearer statement:

A charitable organization

- a) must not provide direct or indirect support of, or opposition to, any political party or candidate for public office,
- b) may participate in public policy debate and advocacy intended to advance its charitable purposes, if:
 - (i) there is a reasonable expectation that this activity will further the purposes of the charity to an extent justified by the resources devoted to it,
 - (ii) the views expressed by the charity are based on a well-founded and reasoned case, and expressed in a reasonable way, and
 - (iii) this activity does not become the charity’s dominant activity.

CHARITIES AND DEMOCRACY - CHRONOLOGY OF KEY DEVELOPMENTS

1601: *Statute of Uses or Statute of Elizabeth*. This English statute from the reign of Elizabeth I is the fount of charity law. Its preamble contains a list of charitable purposes that reads like poetry. Charity includes “the relief of aged, impotent and poor people...the marriage of poor maids, the supportation, aid and help of young tradesmen, handicraftsmen and persons decayed...” and so on.

19th Century: During this period “it was not uncommon for charities to be established which overtly and specifically made use of political activism in support of charitable causes. Examples include charities devoted to legislation against slavery, observance of the Lord’s Day, penal reform, promotion of anti-poverty laws, temperance, and animal welfare. Court decisions from the nineteenth century specifically upheld charities with political purposes.”ⁱⁱ

1891: *Pemsel’s Case*. This decision of the House of Lords in Victorian England is the most famous and frequently cited charity case. It formally adopted the reorganization of charitable purposes into four categories:

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

1917: *Bowman v. Secular Society*. An English House of Lords decision that held that an organization created for the **purpose** of changing the law could not be a charity. Despite the fact that this decision is inconsistent with earlier case law, and contains “significant flaws in its logic,”ⁱⁱ it has been cited in subsequent decisions as authoritative.

1978: Revenue Canada releases Information Circular 78-3, *Registered Charities: Political Objects and Activities*. This administrative guideline required charities to devote all of their resources to charitable activities, and stated that the use of resources for political activities could result in loss of charitable status. It defined “political activity” as an activity “designed to embarrass or otherwise induce a government to take a stand, change a policy, or enact legislation for a purpose particular to the organization carrying on the activity.” The circular was withdrawn by Revenue Canada after criticism and protest from charities and MPs.ⁱⁱⁱ

1981: *McGovern v. Attorney General*. A case from the English Chancery Division that attempted to describe “political purposes” in some detail. It held that political purposes included:

- to further the interests of a particular party; or
- to procure changes to the laws of this country; or
- to procure changes to the laws of a foreign country; or
- to procure a reversal of government policy or of particular decisions of governmental authorities in this country; or
- to procure a reversal of government policy or of particular decisions of governmental authorities in a foreign country.

1985: *Scarborough Community Legal Services v. the Queen*. This decision of Canada’s Federal Court of Appeal contains the first Canadian judicial commentary on the question of acceptable “political activities” by charities, and appears to establish that some political activities or advocacy by charities is permissible so long as it is “incidental” to other charitable activities.

1986: Canada’s federal *Income Tax Act* was amended to add sections 149.1(6.1) & (6.2) to address “political activities” by charitable foundations and charitable organizations respectively, apparently in an attempt to clarify the conclusions of the Scarborough case. Section 149.1(6.2) states:

- “Charitable activities – For the purposes of the definition “charitable organization” in subsection (1), where an organization devotes substantially all of its resources to charitable activities carried on by it and
- (a) it devotes part of its resources to political activities,
 - (b) those political activities are ancillary and incidental to its charitable activities, and
 - (c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office,
- the organization shall be considered to be devoting that part of its resources to charitable activities carried on by it.”

1987: Revenue Canada released Information Circular 87-1 *Registered Charities – Ancillary and Incidental*

Political Activities in an apparent effort to bring meaning and clarity to the new *Income Tax Act* provisions. It is brief and adds little clarity, but indicates that in Revenue Canada's view "substantially all" in the Act means 90%, therefore the limit on "political activities" by charities is 10 percent of a charity's total financial and physical resources.

1998: Revenue Canada released draft publication RC4107 *Registered Charities: Education, Advocacy and Political Activities*. It updated IC 87-1 in plain language and in more detail. Draft 2 of this document is made public in April of 2000. Neither draft was officially adopted, and IC 87-1 remained in effect.

1998: (February) The Broadbent Panel Report identified the limitations on advocacy by charities as a key concern for the voluntary sector.

1999: (August) A report entitled *Working Together – A Government of Canada/Voluntary Sector Joint Initiative*, produced by a group of leaders from the voluntary sector and key federal government officials, confirmed that the restrictions on advocacy by charities is an issue of serious concern.

1999: *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*. This was the first case in which the Supreme Court of Canada considered and discussed the issues of "political purposes" and "political activities," and one of very few charity law cases to reach the Supreme Court of Canada. The case did not turn on these issues, but both the majority and the dissenting judgments addressed them, and provided some insight as to how the Supreme Court of Canada may handle future cases. Legal commentators Patrick Monahan and Elie Roth argue that the majority judgment "has the potential to materially broaden the scope of advocacy activities that are open to charities. This is because Iacobucci J's recognition that political purposes and activities which are merely 'ancillary and incidental' to charitable purposes are themselves charitable."^{iv}

2000: *Voluntary Sector Initiative (VSI)*. This five-year initiative between the Government of Canada and the Voluntary Sector was launched to follow up on the work initiated in the 1999 Working Together: Report of the Joint Tables. Despite its inclusion in the recommendations from Working Together, advocacy

by charities is not one of the topics included for joint consideration under the VSI. The voluntary sector establishes the Advocacy Working Group to explore and develop a sector position on advocacy with the VSI.

2001: IMPACS conducted a cross-Canada dialogue and consultation with charities and interested citizens on the state of the law and administrative policy on this issue and on possible remedies and alternatives.

2001: (December) As part of the Voluntary Sector Initiative, Prime Minister Jean Chrétien and the sector sign the *Accord Between the Government of Canada and the Voluntary Sector*. The Accord recognizes that advocacy by the voluntary sector is legitimate and desirable.

2002: (February-March) The VSI Advocacy Working Group conducts nationwide consultations on advocacy and receives overwhelming support for the position taken in its paper *Advocacy: the Sound of Citizens' Voices*.

2002: (March) IMPACS released *Let Charities Speak: Report of the Charities and Advocacy Dialogue*, which highlighted the concern over this issues among charities and made a number of recommendations, including legislative amendment to provide greater latitude and clarity for charities.

2002: (May) A process called the "Alternative Mechanism" was convened. It involved discussions between officials from CCRA and the Department of Finance, and people from the charity community on possible new administrative guidelines.

2002: (October) The VSI launches *A Code of Good Practice on Policy Dialogue*. This document is part of the implementation of the Accord and includes further recognition of and support for advocacy by the voluntary sector.

2003: (January) The CCRA released *2002 Concept Draft, Registered Charities - Political Activities*; its attempt to address recent case law and the issues and concerns raised by charities. The CCRA sought public input on the Draft until the end of April, 2003.

2003: (September) CCRA is to release final version of the new administrative guidelines.

ⁱ Webb, K. (2000) *Cinderella's Slipper? The Role of Charitable Tax Status in Financing Canadian Interest Groups*. Vancouver: SFU-UBC Centre for the Study of Government and Business, p. 27.

ⁱⁱ Ibid.

ⁱⁱⁱ Ibid, p. 36.

^{iv} Monahan, Patrick J., Roth, Elie S., *Federal Regulation of Charities: A Critical Assessment of Recent Proposals for Legislative and Regulatory Reform* (Toronto: York University, 2000), p. 106.