

CATALYST FOR CHANGE:

# A Roadmap to a Stronger Charitable Sector



SENATE | SÉNAT  
CANADA

Report of the Special Senate Committee  
on the Charitable Sector

The Honourable Terry M. Mercer, Chair  
The Honourable Ratna Omidvar, Deputy Chair

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CANADA

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## Members



The Honourable  
Terry M. Mercer  
Chair



The Honourable  
Ratna Omidvar  
Deputy Chair

## The Honourable Senators



Robert Black



Michael Duffy



Yonah Martin



Percy Mockler



Judith G. Seidman

*Ex-officio members of the committee:*

The Honourable Senators

Peter Harder, P.C. (or Diane Bellemare or Grant Mitchell)

Larry W. Smith (or Yonah Martin)

Joseph A. Day (or Terry M. Mercer)

Yuen Pau Woo (or Raymonde Saint-Germain)



*Other Senators who have participated from time to time in the study:*

The Honourable Senators

Douglas Black

Marty Deacon

Donna Dasko

Norman E. Doyle

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*Senate Communications Directorate:*

Ben Silverman, Communications Officer



## Order of Reference

Extract from the *Journals of the Senate*, Tuesday, January 30, 2018:

Resuming debate on the motion, as modified, of the Honourable Senator Mercer, seconded by the Honourable Senator Fraser:

That a Special Committee on the Charitable Sector be appointed to examine the impact of federal and provincial laws and policies governing charities, nonprofit organizations, foundations, and other similar groups; and to examine the impact of the voluntary sector in Canada;

That the committee be composed of nine members, to be nominated by the Committee of Selection, and that four members constitute a quorum;

That the committee have the power to send for persons, papers and records; to examine witnesses; and to publish such papers and evidence from day to day as may be ordered by the committee;

That, notwithstanding rule 12-18(2)(b)(i), the committee have the power to sit from Monday to Friday, even though the Senate may then be adjourned for a period exceeding one week; and

That the committee be empowered to report from time to time and to submit its final report no later than December 31, 2018, and retain all powers necessary to publicize its findings until 60 days after the tabling of the final report.

After debate,

The question being put on the motion, as modified, it was adopted, on division.

*Clerk of the Senate*

Richard Denis

Extract from the *Journals of the Senate*, Thursday, November 29, 2018

Resuming debate on the motion of the Honourable Senator Mercer, seconded by the Honourable Senator Omidvar:

That, notwithstanding the order of the Senate adopted on Tuesday, January 30, 2018, the date for the final report of the Special Senate Committee on the Charitable Sector in relation to its study on the impact of federal and provincial laws and policies governing charities, nonprofit organizations, foundations, and other similar groups; and to examine the impact of the voluntary sector in Canada be extended from December 31, 2018 to September 30, 2019.

After debate,

The question being put on the motion, it was adopted, on division.

*Clerk of the Senate*

Richard Denis

## Executive Summary

Why is it so hard to do great works of charity? This was the question the Special Senate Committee on the Charitable Sector (the committee) set out to answer. Struck in January 2018, the committee was asked to examine and report on Canada's charitable and non-profit sector. The task was daunting, but urgent. While the sector is resilient and innovative, its potential is limited by what are seen by many stakeholders as complex, outdated rules and a lack of coordinated support within the federal government.

Canada's charitable and non-profit sector is diverse and vibrant. From sport to social support services, an estimated 86,000 registered charities and 85,000 non-profit organizations engage in public benefit activities that touch almost every aspect of Canadian life. The sector is also a significant economic driver, generating more than 7% of Canada's gross domestic product and employing more than 2 million people.

Today, we ask more than ever of the sector. Demand for services has increased, yet funding is constrained. In addition, technology has disrupted traditional models of service delivery and changed the way in which charities and non-profit organizations interact with volunteers and donors. A new roadmap is needed to enable the sector to continue to build on its strengths and adapt to new and emerging realities.

The charitable and non-profit sector has suffered from benign neglect for too long. Legal rules have been reformed in a piecemeal fashion; task force recommendations have gone unimplemented; and kind words have all too often served as a substitute for meaningful action. The time for real change has come.

Throughout the course of its study, the committee held 24 public hearings where it heard from 160 witnesses, including government officials, legal and policy experts, funders, volunteers, front-line workers and board members. These witnesses represented a wide-range of organizations of all sizes from across the sector and around the country. The committee also received written briefs from more than 90 individuals and organizations.

In addition to public hearings, the committee ran an electronic consultation (e-consultation) to extend the reach of its work and include the voices of stakeholders who might not otherwise participate in its study, particularly small and rural organizations. The committee is the first Senate committee to have held an e-consultation in over a decade and the results surpassed expectations. A total of 695 respondents took the time to complete the questionnaire and share with the committee their thoughts and experiences about the challenges and opportunities faced by the sector. E-consultation participants provided information on topics such as employee and volunteer retention, funding application processes and opportunities for collaboration, and their responses enriched the committee's work tremendously.

## Catalyst for Change: A Roadmap to a Stronger Charitable Sector

While each organization in the sector faces unique challenges, a great deal of common ground existed in the stories witnesses and e-consultation participants shared. The committee heard extensive evidence on four key topics: the people working and volunteering in the sector; funding for the sector; the rules governing the sector; and, the need for a “home” within the federal government for the sector.

People lie at the heart of the sector’s success. Yet, witnesses told the committee that charities and non-profit organizations are concerned about barriers to volunteering and the challenge of recruiting the next generation of volunteers. Organizations are also concerned about recruiting and retaining paid staff, telling the committee they struggle to compete with public- and private-sector employers in terms of pay, pension, benefits and training. Among other recommendations designed to support people in the sector, the committee recommends the creation of a national volunteer strategy to encourage volunteerism and a human resources renewal plan to ensure the long-term sustainability of the workforce.

The charitable and non-profit sector relies on three main sources of funding: government funding, donations and earned income. Innovative approaches are needed to ensure the future viability of these sources of funding. To this end, the committee recommends a wide range of measures designed to ensure strong and stable funding for the sector. Recommended measures include pilot projects to encourage the donation of private shares and to allow charities greater freedom to undertake revenue-generating activities. In addition, the committee recommends to explore ways of ensuring that donations do not languish in donor-advised funds so that they are instead used to fund charitable endeavours in a timely fashion. The committee also recommends measures to ensure the provision of predictable and sustainable grants and contributions agreements.

Making change possible also requires a legal framework that is fit for its purpose. Testimony from witnesses and e-consultation participants provided the committee with a clear understanding of just how out of date some of the existing rules are. For example, the committee learned that some current rules and guidance policies make it difficult for charities to work in partnership with other organizations, both in Canada and abroad. The committee recommends that these rules and guidance policies be revised to allow charities greater freedom to work with partner organizations, while ensuring that charitable dollars are spent on charitable purposes. The committee also makes recommendations to help ensure that the legal meaning of the term “charity” corresponds with public expectations. In making such recommendations, the committee acknowledges the important role that the Canada Revenue Agency and its Advisory Committee can play in addressing some of the legal and regulatory barriers regularly encountered by charities and non-profits in this country and hopes that its recommendations will help to guide the federal government and all of its departments and agencies in shaping the agenda for the sector going forward.

The committee believes that there is no single strategy or quick fix that would ensure the sector can continue to thrive and play its vital role at the heart of Canadian communities. Key to the sector’s continued success is a strong relationship between the sector and the

federal government. This relationship cannot be limited to one between the regulator (the Canada Revenue Agency) and the sector. To support the development of a renewed relationship with the sector, the committee recommends that the Minister of Innovation, Science and Technology be tasked with creating a regular venue for the facets of the federal government to interact and collaborate with this diverse sector. Supported by a secretariat on the charitable and non-profit sector, the Minister should be expected to report annually on the state of the sector and the efforts undertaken in tandem with federal and provincial/territorial ministers, departments and agencies.

Committee members complete this study impressed and inspired in equal measure. Impressed by the unstinting commitment of those who work tirelessly to serve their communities locally, nationally and internationally; inspired by the deep reservoir of talent and tenacity that runs through our country. Every day, hundreds of thousands of Canadians make the choice to share, making Canada a better place to live. These unsung heroes are essential to the well-being of our nation, reaching beyond the traditional spheres of activity of the public and private sectors to enrich our lives in an infinite variety of ways.

To continue its good work, the sector needs meaningful law and policy reform, as well as a renewed relationship with the federal government. This report is a roadmap to ensure that genuine change is delivered so that the sector can reach from great to exceptional. The committee trusts that the federal government, together with the Advisory Committee on the Charitable Sector, will work swiftly to implement its recommendations.

## Recommendations

### **Recommendation 1 (p. 29)**

That the Government of Canada, through its departments and agencies, develop and implement a national volunteer strategy to encourage volunteerism by all Canadians in their communities, recognizing that the needs of northern, rural and urban communities are unique.

### **Recommendation 2 (p. 30)**

That the Government of Canada, through the Treasury Board of Canada Secretariat and the agencies and departments funding charitable and non-profit organizations, include in contribution agreements costs associated with the recruitment and retention of volunteers needed to deliver funded events and/or services.

### **Recommendation 3 (p. 31)**

That the Government of Canada, through the Public Safety Minister, work with provincial and territorial counterparts and the Canadian Association of Chiefs of Police to seek ways to alleviate a financial burden on low-budget organizations for needed police checks on volunteers.

### **Recommendation 4 (p. 32)**

That the Government of Canada encourage federal departments and agencies to develop and administer recognition programs for volunteers who assist in the delivery of their government services.

### **Recommendation 5 (p. 36)**

That the Government of Canada, through the Minister of Finance and federal-provincial-territorial meetings of Ministers of Finance, support the development of pensions for the charitable and non-profit sectors that are portable across provincial and territorial jurisdictions.

### **Recommendation 6 (p. 37)**

That the Government of Canada, through Labour Canada, work with the charitable and non-profit sector to develop and implement a human resources renewal plan to ensure the long-term sustainability of the sector workforce, recognizing that the needs of northern, rural and urban communities are unique.

### **Recommendation 7 (p. 37)**

That the Government of Canada, in consultation with the charitable and non-profit sector, reinstate the Human Resources Council for the Voluntary Sector, or a similar body by which the sector can collaborate with government to fulfill aspects of the human resources renewal plan.

### **Recommendation 8 (p. 39)**

That the Government of Canada, through the Canada Revenue Agency, include questions on both the T3010 (for registered charities) and the T1044 (for federally incorporated not-for-profit corporations) on diversity representation on boards of directors based on existing Employment Equity guidelines.

### **Recommendation 9 (p. 44)**

That the Government of Canada, through the Minister of Revenue and the Commissioner of the Canada Revenue Agency, direct the Advisory Committee on the Charitable Sector to review existing tax measures available to individual donors in order to strengthen the culture of giving among new and current charitable donors.

### **Recommendation 10 (p. 45)**

That the Government of Canada, through the Treasury Board of Canada Secretariat, develop policies that require departments and agencies to compensate full administrative costs associated with delivering the services being funded in transfers to charitable and non-profit organizations.

### **Recommendation 11 (p. 46)**

That Government of Canada initiatives that support the sustainability of for-profit sectors, particularly with respect to overhead and infrastructure costs, be extended to the charitable and non-profit sector.



## **Recommendation 12 (p. 47)**

That the Government of Canada, through Treasury Board of Canada, ensure that grants and contribution agreements cover a minimum of two years, renewable as appropriate; and that the level of information required for both application and reporting on these agreements be commensurate with the level of funding, minimizing complexity for smaller amounts.

## **Recommendation 13 (p. 49)**

That the Government of Canada develop and implement a standardized set of reporting categories and an on-line tool for charitable and non-profit organizations to submit financial reports based on these categories. The Treasury Board of Canada should be tasked with working with federal departments and agencies and federal/provincial/territorial working groups.

## **Recommendation 14 (p. 51)**

That the Government of Canada, through Employment and Social Development Canada, support innovation across charitable and non-profit organizations, including through the advisory group managing the Social Finance Fund.

## **Recommendation 15 (p. 52)**

That the Government of Canada's procurement strategy be further modified to remove barriers to the participation of charitable and non-profit organizations, with a particular focus on suppliers with smaller staff complements.

## **Recommendation 16 (p. 55)**

That the Government of Canada prioritize data about the charitable and non-profit sector in all Statistics Canada economic surveys, including the Satellite Account of Nonprofit Institutions and the General Social Survey on Giving, Volunteering and Participating; and that the Government of Canada support collaboration between Statistics Canada and the charitable and non-profit sector to determine what additional data could be collected and disseminated in a timely and consistent manner to support the evidence base for decisions by organizations in the sector.

## **Recommendation 17 (p. 56)**

That the Government of Canada, through the Canada Revenue Agency, seek the advice of the Advisory Committee on the Charitable Sector on what additional information could be included in the Agency's T3010 form that would support the work of the sector.

## **Recommendation 18 (p. 57)**

That the Government of Canada establish a funding stream for projects to incent organizations to develop shared technologies to manage their administrative requirements.

## **Recommendation 19 (p. 58)**

That the Government of Canada through the Minister of National Revenue seek the advice of the Advisory Committee on the Charitable Sector with respect to modifying CRA restrictions on accessing other forms of capital by charitable and non-profit organizations; and

that all federally funded initiatives with respect to innovation that are available to for-profit organizations be available to and promoted among charitable and non-profit organizations.

## **Recommendation 20 (p. 60)**

That the Government of Canada direct the Canada Revenue Agency (CRA) to take the following steps to improve its relationship with charitable and non-profit organizations:

- communicate more clearly CRA's decisions with respect to rejections of applications, revocation of registered charitable status, and results of internal appeals;
- reduce wait times for responses on applications for status and other requests for information; and
- increase collaboration with provincial and territorial counterparts with a view to reduce the reporting burden on charitable and non-profit organizations.

### **Recommendation 21 (p. 61)**

That the Government of Canada, through the Minister of National Revenue and the Commissioner of CRA, direct the Advisory Committee on the Charitable Sector to include a wide range of organizations on its working groups. This should include, but not be limited to, smaller organizations, organizations in rural and remote communities, organizations representing and serving newcomers to Canada and organizations supporting and serving Indigenous communities.

### **Recommendation 22 (p. 62)**

That the Government of Canada, through the Minister of Innovation, Science and Economic Development, create a secretariat on the charitable and non-profit sector to:

- establish and convene regular meetings of an interdepartmental working group, with representation from Finance Canada, the Treasury Board of Canada Secretariat, the Canada Revenue Agency, Employment and Social Development Canada and other departments with direct connections to these organizations;
- convene meetings of appropriate groups of federal/provincial and territorial ministers with responsibility for various aspects of regulating and relating to the charitable and non-profit sectors; and
- publish an annual report on the state of the charitable and non-profit sector. This report should include changes related to the sector by federal, provincial and territorial governments along with a more general overview of the economic and social health of the sector.

### **Recommendation 23 (p. 77)**

That the Government of Canada propose amendments to the *Income Tax Act* to provide that all appeals from decisions of the Charities Directorate of the Canada Revenue Agency proceed to the Tax Court of Canada for a hearing de novo, following consideration by the Canada Revenue Agency's Tax and Charities Appeals Directorate; and

a right to appeal to the Tax Court of Canada for cases where the Canada Revenue Agency's Tax and Charities Appeals Directorate (the Directorate) has not rendered a decision on an appeal by an organization that has had its application for registered charity status refused, or an existing charity that has had its registration revoked, within six months of it having been referred to the Directorate.

### **Recommendation 24 (p. 77)**

That, recognizing the importance of enabling the development of the common law definition of charity, the Government of Canada consider measures to assist organizations that have had their application for registered charity status refused, or existing charities that have had their registration revoked, in appealing decisions from the Canada Revenue Agency's Charities Directorate.

### **Recommendation 25 (p. 78)**

That the Government of Canada, through the Advisory Committee on the Charitable Sector, review the common law meaning of charity to determine whether Canada should follow the approach of other jurisdictions, such as Australia and England, and enact legislation to broaden the legal meaning of charity.

### **Recommendation 26 (p. 80)**

That the Government of Canada, through the Advisory Committee on the Charitable Sector, review the policy considerations relating to qualified donee and tax preferred status. This review should be conducted with a view to establishing a principle-based framework for new categories of qualified donee and other tax preferred entities.

### **Recommendation 27 (p. 84)**

That the Government of Canada replace the current categories of registered charity with two new categories: public charity and private charity.

### **Recommendation 28 (p. 92)**

That the Government of Canada direct the Canada Revenue Agency to develop and implement a pilot project to assess the viability of granting registered charities greater latitude in undertaking revenue-generating activities (provided the proceeds are used to further charitable purposes) through the implementation of a "destination of funds" test.

### **Recommendation 29 (p. 92)**

That the Government of Canada direct the Canada Revenue Agency to update policy statement CPS-019 (What is a related business) to provide greater clarity on permissible revenue generation activities for registered charities, particularly with regard to revenue generating opportunities arising from new technologies.

### **Recommendation 30 (p. 97)**

That the Government of Canada direct the Canada Revenue Agency to revise Guidance CG-002 “Canadian registered charities carrying out activities outside Canada.” The revised guidance should demonstrate a shift in focus from “direction and control” to careful monitoring through the implementation of an “expenditure responsibility test.”

### **Recommendation 31 (p. 99)**

That the Government of Canada direct the Canada Revenue Agency to develop, implement and evaluate a pilot project to allow registered charities to make gifts to non-qualified donees in certain limited circumstances, namely where the gifted funds are subject to careful monitoring and used for exclusively charitable purposes, in order to facilitate cooperation between registered charities and non-charities.

### **Recommendation 32 (p. 100)**

That the Government of Canada review the *Income Tax Act* provisions governing registered charities every five years, beginning no later than next fiscal year.

### **Recommendation 33 (p. 100)**

That the Government of Canada consider which activities registered charities should not be allowed to carry out and proscribe them through precisely defined statutory prohibitions.

### **Recommendation 34 (p. 108)**

That the Government of Canada, through the Canada Revenue Agency, develop, implement and evaluate a pilot project on the impact on the charitable sector of exempting donations of private shares from capital gains tax.

### **Recommendation 35 (p. 108)**

That the Government of Canada, through the Canada Revenue Agency, study the extent to which the donation of non-environmental real estate could be incentivized without undermining the Ecological Gifts Program.

### **Recommendation 36 (p. 113)**

That the Government of Canada direct the Advisory Committee on the Charitable Sector to examine the advantages and disadvantages of amending the disbursement quota for registered charities; and

the advantages and disadvantages of setting the disbursement quota in regulation, rather than statute.

### **Recommendation 37 (p. 113)**

That the Government of Canada instruct the Advisory Committee on the Charitable Sector to consider means of ensuring that donations do not languish in donor-advised funds, but are instead used to fund charitable activities in a timely fashion.

### **Recommendation 38 (p. 118)**

That the Government of Canada direct the Canada Revenue Agency to revise its interpretation of the “not-for-profit purpose rule” to provide greater clarity and certainty for non-profit organizations (NPOs) regarding the extent to which it is permissible for them to hold surplus income; and

to reflect the language of the *Income Tax Act*, which focuses on the purposes of the organization.

### **Recommendation 39 (p. 120)**

That the Government of Canada direct the Canada Revenue Agency to assess the merits of amending section 241 of the *Income Tax Act* to allow the Canada Revenue Agency to publicly disclose the information contained on the T1044 Non-Profit Organization Information Return.

### **Recommendation 40 (p. 121)**

That the Government of Canada direct the Advisory Committee on the Charitable Sector to review the treatment and regulation of non-profit organizations, including whether the *Income Tax Act* should distinguish between public benefit and member benefit non-profit organizations.

### **Recommendation 41 (p. 123)**

That the Government of Canada instruct the Advisory Committee on the Charitable Sector to review the impact of Canada's anti-spam legislation on charities and charity-like organizations.

### **Recommendation 42 (p. 125)**

That the Government of Canada review the "ineligible individual" provisions set out in section 149.1(1) of the *Income Tax Act* as part of a comprehensive review of the *Income Tax Act* provisions governing registered charities, other qualified donees and non-profit organizations.



## Foreword

Since receiving a mandate from the Senate to study the impact of federal and provincial laws on the charitable and non-profit sector in Canada in June 2018, the Special Senate Committee on the Charitable Sector has heard 160 witnesses, received briefs from more than 90 individuals and organizations, and has reviewed the results of a survey that drew almost 700 responses from charitable and non-profit organizations of all sizes, from every province and territory and across sectors.

This report offers a summary of the current state of the sector and the changes recommended by witnesses and supported by the committee based on the full range of information received. With sections on the funding and the people in the sector, the policy supports that would strengthen the sector, and the specific changes recommended to modernize the legislative and regulatory framework of the sector, this report offers a roadmap to a stronger and brighter future for the sector.

What is not always captured is the enormous contribution charitable and non-profit organizations make to their communities, regions and the country as a whole. From the volunteer fire fighter in British Columbia to the community support organization, itself a victim of the Fort McMurray fires while seeking to support other victims at the same time, to the environmental organization seeking to work in reconciliation with Indigenous organizations to protect the Arctic ecosystem, to the small organization in New Brunswick working with drug users to support their healthy recovery, remarkable volunteers and paid staff are responding to crises and seeking to prevent them across Canada.

Still other organizations are retrieving and promoting the history of groups of Canadians who might otherwise be forgotten, are finding ways to improve retirement income security for people who work for charitable and non-profit organizations and are supporting the work of other organizations in recruiting and managing the volunteers who are the lifeblood of these organizations and of Canadian communities. Health care, education, the arts, sports and recreation, the environment, social supports, criminal justice, emergency response – all are underpinned by the volunteer effort of millions of Canadians, managed by a dedicated staff operating with inadequate and unpredictable funding to create miracles in their communities every day.

As these organizations seek sustainable funding models, they are expanding to new areas of revenue generation, sometime pushing the limits permitted under existing legal and regulatory constraints. Finding new forms of operation and drawing on innovative and often young volunteers and staff, these social enterprises are breaking new ground and finding ways to do good while doing well financially.

## Catalyst for Change: A Roadmap to a Stronger Charitable Sector

Throughout the hearings, the committee has been inspired and informed by lawyers, professors, local activists, social entrepreneurs and others who have argued that the charitable and non-profit sector must better reflect the communities they serve, must have a sustainable funding base to ground their efforts and must create room for improvement through innovation. As described by one witness, they are looking to government to “roll out the red carpet and not the red tape.”<sup>1</sup>

The committee also heard from government officials who work with volunteers to deliver government services, who seek and benefit from the experience and wisdom to be found in charitable and non-profit organizations, who are finding ways to make grants and contributions less cumbersome, to improve access to government procurement processes, and who understand their double responsibility to ensure accountability and to maximize public benefit in their work with these organizations. Their progress often appears slow to those seeking to minimize their compliance costs and provide the best possible services to their communities.

This report provides recommendations to the federal government that allow them to ensure accountability, while reducing the administrative burden. If enacted, the red carpet will not be far behind.

The committee thanks all of those who participated in this study – witnesses, those who submitted briefs and those who completed our survey – and looks forward to the government response to this report.



The Honourable  
Terry M. Mercer  
Chair



The Honourable  
Ratna Omidvar  
Deputy Chair

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<sup>1</sup> Special Senate Committee on the Charitable Sector (CSSB), *Evidence*, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, Jacline Nyman, Former President and Chief Executive Officer, United Way of Canada, as an individual, 1 October 2018.



# PART 1 Strengthening the Sector







*The culture of giving and volunteerism is a core Canadian value. It's important that all of us work hard in our own communities and regions in this country to make it successful, smart and caring.<sup>2</sup>*

The Right Honourable David L. Johnston  
Chair, Rideau Hall Foundation

Charitable and non-profit organizations rely on three groups of people: volunteers, staff, and boards of directors and associated committees. As will be discussed in the section on supporting the sector, the demographics of all three groups is of importance, in terms of both attracting younger people, especially as volunteers and staff, and reflecting the general population and the populations being served.

As described by one witness,

While the fundraising environment is becoming increasingly competitive, so is the competition for the time and talent of individuals with the training and experience to govern and lead within the NPO sector. Not-for-profit organizations are at an immediate disadvantage in economies that have a talent shortage. The wages they can offer are not competitive, their boards are unpaid, and they do not have the financial resources to invest in the training and development that will prepare emerging talents for senior leadership or board director positions.<sup>3</sup>

This chapter focusses on recruiting and retaining individuals who work for the sector, both paid and unpaid. It provides an overview of current data, a synthesis of key points made by witnesses and in briefs, and a series of recommendations.

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<sup>2</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (David L. Johnston, Chair, Rideau Hall Foundation and former Governor General of Canada).

<sup>3</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Taralee Turner, Chief Operating Officer, Canada's Royal Winnipeg Ballet).

## Volunteering

In broad terms, volunteering is defined as “a form of civic engagement through which individuals can make meaningful contributions to their own vision of societal well-being.”<sup>4</sup> It can take many forms, “involving a variety of activities and benefiting a diverse range of organizations and groups,”<sup>5</sup> although it does not generally apply to activities benefiting close relatives.<sup>6</sup> Volunteering “can be episodic, meaning participation in one or two events over the course of the year, or ... [ongoing] ... such as a weekly commitment to a specific cause.”<sup>7</sup>

Volunteering can be further classified into one of two categories: formal volunteering, where an organization mediates the relationship between the volunteer and the beneficiaries; and informal volunteering, such as helping a neighbour or friend.<sup>8</sup>

Witnesses noted that most Statistics Canada data measure only formal volunteering,<sup>9</sup> whereas informal volunteering is becoming more common, particularly among young people.<sup>10</sup> However, Statistics Canada has also gathered information on informal volunteering, referred to as “direct helping activities.” The 2013 General Social Survey [GSS] reported that 82% of Canadians aged 15 years and older reported helping people directly, without the involvement of an organization or group and that “direct helpers tend to be relatively young, university educated, active in the labour force and with a high household income.”<sup>11</sup>

## Recruitment and retention

Statistics Canada witnesses noted that 44% of Canadians volunteered in the formal sense in 2013 (the last year for which data are available), providing almost two billion hours of volunteer time, described as the equivalent of one million full-time, full-year jobs.<sup>12</sup> As indicated in the infographic provided by Statistics Canada, older volunteers are a greater

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<sup>4</sup> Anne Miller et al, [Understanding the role of volunteerism in creating social inclusion](#), September 2011, p. 8.

<sup>5</sup> Marie Sinha, (Statistics Canada), Spotlight on Canadians: Results from the General Social Survey, [Volunteering in Canada, 2004 to 2013](#), 18 June 2015, p. 4.

<sup>6</sup> Miller et al., p. 8.

<sup>7</sup> Sinha (2015), p. 4.

<sup>8</sup> Nevbahar Ertas, “Millennials and volunteering: sector differences and implications for public service motivation theory,” *Public Administration Quarterly*, Vol. 40, No. 3 (Fall 2016).

<sup>9</sup> CSSB, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 June 2018 (Femida Handy, Professor, University of Pennsylvania, as an individual).

<sup>10</sup> See, for example, CSSB, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 April 2018 (Rachel Laforest, Assistant Professor and Director, Public Administration Program, School of Policy Studies, Queen’s University, as in individual).

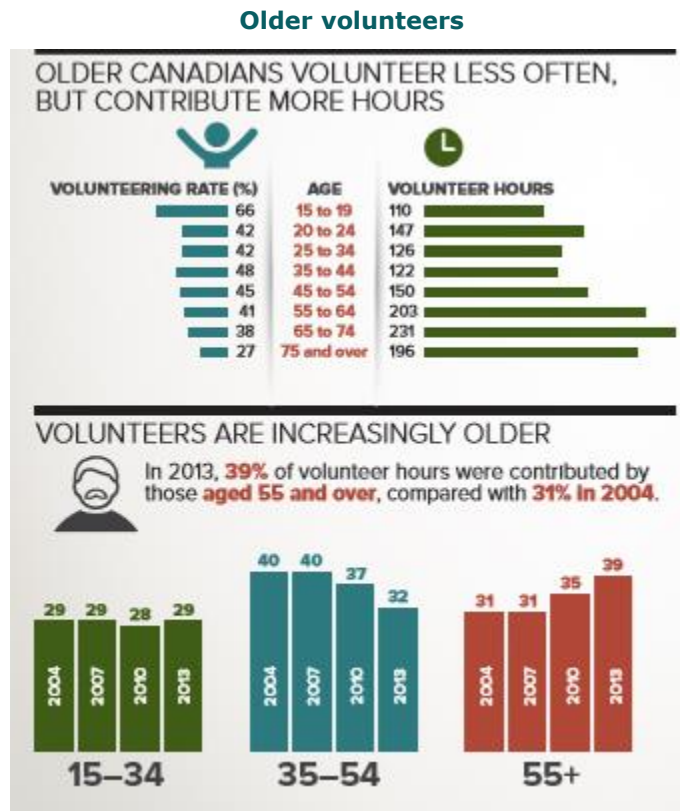
<sup>11</sup> Sinha (2015), p. 6.

<sup>12</sup> CSSB, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 June 2018 (Pamela Best, Assistant Director, Social and Aboriginal Statistics Division, Statistics Canada).

# Catalyst for Change: A Roadmap to a Stronger Charitable Sector

proportion of those volunteering (and of the population) and provide more volunteer hours than their younger counterparts.<sup>13</sup> Witnesses noted the challenges associated with recruiting and retaining volunteers, especially in rural communities<sup>14</sup> and notably in attracting younger volunteers.<sup>15</sup>

The committee also heard that people are often involved in informal volunteering, that is, providing direct assistance to a neighbour or relative outside of any organizational structure.<sup>16</sup> As noted above, these volunteers are not always reflected in data published by Statistics Canada but will be when new data are released later in 2019.<sup>17</sup>



Source: Statistics Canada, *The Faces of Volunteers in Canada, 2015*

<sup>13</sup> Ibid.

<sup>14</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 15 October 2018 (Laura Ryser, Research Manager, Rural and Small Town Studies Program, University of Northern British Columbia, as an individual).

<sup>15</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Mustafa Alio, Co-Founder and Development Director, Jumpstart - Refugee Talent).

<sup>16</sup> CSSB, *Evidence*, 4 June 2018 (Handy).

<sup>17</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 8 April 2019 (Paula Speevak, President and Chief Executive Officer, Volunteer Canada).

Given the demographic changes, the challenges ahead in recruiting and retaining volunteers in charitable organizations, and the gaps in counting and recognizing those volunteering outside formal structures, the committee recognizes the call by witnesses for an overall, coordinated approach by the federal government to the promotion and recognition of volunteering. Paula Speevak (Volunteer Canada) told the committee that “Quebec has a great voluntary action strategy they developed over the last couple of years, and I think that’s an excellent model.”<sup>18</sup> Therefore, the committee recommends,

### **Recommendation 1**

**That the Government of Canada, through its departments and agencies, develop and implement a national volunteer strategy to encourage volunteerism by all Canadians in their communities, recognizing that the needs of northern, rural and urban communities are unique.**

Witnesses told the committee that volunteers may volunteer for different reasons at different ages, with youth often seeking and finding work experience in a field that interests them.<sup>19</sup> Witnesses described innovative approaches to engaging youth, even in fundraising, including developing fundraising opportunities based on the talents of the youth involved:

We give each member an opportunity to use their talents to fundraise ... for example, one of our members is very good at playing the piano. He’s been doing that since he was a young kid. Since he enjoys playing the piano, we hosted a fundraising charity concert with him last year, using his talents to give back to the community and to make a difference.<sup>20</sup>

Another witness described the importance of showing young volunteers the results of their efforts noting that “when young people are doing something and see the impact out of their work, then they get interested.”<sup>21</sup>

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<sup>18</sup> CSSB, *Evidence*, 4 June 2018 (Speevak).

<sup>19</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 24 September 2018 (Marilyne Fournier, Director General, Réseau de l’action bénévole du Québec) and *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 15 October 2018 (Wendy Cukier, Founder and Director, Diversity Institute, Ryerson University, as an individual).

<sup>20</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Arthur Chan, Founder and President, D2D Destiny Foundation).

<sup>21</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Mustafa Alio, Co-Founder and Development Director, Jumpstart - Refugee Talent).



Other witnesses noted that people may face different obstacles to volunteering at different ages;<sup>22</sup> for example, a Statistics Canada official explained:

Barriers to volunteering change over time. Among people under the age of 55, lack of time was by far the biggest barrier to volunteering, being cited by three quarters of non-volunteers in this age group. People over 55 were less likely to report lack of time but were more likely to report health problems or that they preferred to give money rather than time.<sup>23</sup>

Other witnesses noted that efforts to be more inclusive in recruiting volunteers sometimes means targeting people who are not able to afford the costs – lost work time, transportation and child care, for example – that could be incurred in participating as volunteers.<sup>24</sup> In such cases, witnesses noted, reimbursement for expenses can remove the cost barrier.<sup>25</sup>

Citing research by Volunteer Canada, one witness told the committee that “volunteers and organizations both noted emerging issues of growing gaps between what volunteers look for and what opportunities the organizations offer.”<sup>26</sup> This gap, or mismatch between the goals of volunteers and organizations, was flagged by some witnesses as evidence of the importance of effective volunteer management in narrowing that gap in recruiting volunteers.<sup>27</sup> Therefore, the committee recommends,

### **Recommendation 2**

**That the Government of Canada, through the Treasury Board of Canada Secretariat and the agencies and departments funding charitable and non-profit organizations, include in contribution agreements costs associated with the recruitment and retention of volunteers needed to deliver funded events and/or services.**

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<sup>22</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019 (Mike Power, Vice-President, Programming and Operations, Canada World Youth).

<sup>23</sup> CSSB, *Evidence*, 4 June 2018 (Best).

<sup>24</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Kevin McCort, President and Chief Executive Officer, Vancouver Foundation) and *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 8 April 2019 (Jeff Boucher, Coordinator Canadian Adaptive Snowsports, CADS-NCD Edelweiss, Canadian Association for Disabled Skiing - National Capital Division).

<sup>25</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 June 2018 (Alan Bulley, Director General, Labour Market and Social Development Program Operations, Service Canada) and *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Heidi Jakop, President, Administrators of Volunteer Resources British Columbia).

<sup>26</sup> CSSB, *Evidence*, 25 February 2019 (Alio).

<sup>27</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019 (W. Matthew Chater, National President and Chief Executive Officer, Big Brothers Big Sisters of Canada) and *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 8 April 2019 (Dan Clement, Acting President and Chief Executive Officer, United Way Canada).

Witnesses also described the challenges to organizations imposed by legal requirements or best practice recommendations to obtain criminal record checks for volunteers.<sup>28</sup> In Quebec, for example, the committee heard that the provincial police force had, at one time, provided these checks at no cost to charitable and non-profit organizations, but that fees are now being charged.<sup>29</sup> As described by one witness,

Screening is an issue, as you may have heard. There are 10 steps of screening, one of which involves vulnerable sector checks and police record checks. They are expensive, take a lot of time, are inconsistent around the country and are very important in certain cases. We need to figure out a way to make it more consistent and accessible.<sup>30</sup>

This 10-step procedure is outlined in a Public Safety Canada publication, which notes the costs that may be associated with the checks, while outlining when and how screening should be done.<sup>31</sup> Therefore, the committee recommends,

### **Recommendation 3**

**That the Government of Canada, though the Public Safety Minister, work with provincial and territorial counterparts and the Canadian Association of Chiefs of Police to seek ways to alleviate a financial burden on low-budget organizations for needed police checks on volunteers.**

## Recognition and Compensation

The committee heard from federal departments and agencies that deliver government services through volunteers, either as individuals or as organizations. For example, a Correctional Service Canada (CSC) official described how 6,000 volunteers provide more than 550,000 hours of volunteer service annually, making an important contribution to the CSC and to public safety:

Volunteers help bridge the gap between our correctional institutions and the Canadian communities, and their positive presence at CSC allows us to successfully fulfill our mandate and help offenders safely reintegrate into the community.<sup>32</sup>

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<sup>28</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Robert Cielen, Troop Section Scouter & Group Treasurer, 1st Langley Meadows) and *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019 (Suzanne Parisé, Director General, Centre d'action bénévole Léonie-Bélanger).

<sup>29</sup> CSSB, *Evidence*, 24 September 2018 (Fournier).

<sup>30</sup> CSSB, *Evidence*, 4 June 2018, (Speevak).

<sup>31</sup> Public Safety Canada, *Best Practice Guidelines for Screening Volunteers*, 2008.

<sup>32</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 11 June 2018 (Amy Jarrette, Acting Assistant Commissioner, Communications and Engagement, Correctional Service Canada).

While this official reported that volunteers provide services to offenders, e.g., tutoring and mentoring, and support the families of offenders in communities across the country, their contribution is rarely recognized.

The committee asked witnesses how more volunteers could be recruited to work with charitable and non-profit organizations. One challenge, the committee was told, is that people may not be asked to volunteer and may not be aware of opportunities to do so.<sup>33</sup> In addition to greater promotion of these opportunities, witnesses, including those federal officials who rely on volunteers in delivering their services, highlighted the importance of recognizing the contribution of volunteers.<sup>34</sup> Some witnesses called for federal involvement in the promotion of volunteering, including recognition of those who volunteer.<sup>35</sup> Therefore, the committee recommends,

### **Recommendation 4**

**That the Government of Canada encourage federal departments and agencies to develop and administer recognition programs for volunteers who assist in the delivery of their government services.**

The committee also heard that results of a survey of more than 900 private-sector companies showed that employers encourage volunteering by their employees, often on their own time.<sup>36</sup> The survey also explored the benefits and challenges companies associated with employee volunteerism. While half of the businesses surveyed said that they did not face any challenges, a quarter said that covering workload while employees volunteered was a challenge. Only 3% of companies raised cost as a barrier. The most commonly cited benefits were an improved corporate public image, improved employee morale and improved relations with the surrounding community.<sup>37</sup>

There was no consensus among witnesses or the research they cited on the effectiveness and administrative feasibility of offering a tax credit to volunteers.<sup>38</sup> For example, the President and CEO of the Vancouver Foundation urged the committee to “explore tax credits for volunteers,” to offset the costs associated with volunteering that can prevent volunteering in the first place;<sup>39</sup> similarly, the President and CEO of the Rideau Hall

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<sup>33</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 8 April 2019 (Terry Anne Boyles, Co-Chair, Board Voice Society of BC).

<sup>34</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 11 June 2018 (Patrice Miron, Director, Citizen Engagement, Correctional Service Canada) and *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Scott Decksheimer, Chair, Association of Fundraising Professionals).

<sup>35</sup> See, for example, CSSB, *Evidence*, 8 April 2019 (Boyles).

<sup>36</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 June 2018 (Debra Basil, Professor, Marketing, University of Lethbridge, as an individual).

<sup>37</sup> Debra Basil et al. “Company Support for Employee Volunteering: A National Survey of Companies in Canada” in *Journal of Business Ethics*, 2009, p. 388.

<sup>38</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Clifford L. Spyker, Associate Professor, Accounting, Mount Royal University, as an individual, and Cielen).

<sup>39</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (McCort).

Foundation described such a credit as “really understanding giving to be time, talent and treasure.”<sup>40</sup>

Another witness had researched whether people substituted volunteering for donating, i.e., if they volunteered more, would they be more likely to give less?<sup>41</sup> The results, he reported, are mixed, although the most recent research he cited suggested that people give more when they volunteer less. He concluded that a tax incentive for volunteers might not increase volunteer time.<sup>42</sup> Another noted that “there is difficulty for the small group down at that volunteer level regarding tracking because it’s difficult to administer.”<sup>43</sup>

One witness proposed offering a post-secondary education credit towards degree requirements for individuals who volunteer in the charitable and non-profit sector.<sup>44</sup>

## Staffing

The committee heard from several witnesses that the charitable and non-profit sector employs approximately two million people.<sup>45</sup> Statistics Canada officials told the committee that non-profit organizations can be divided into three groups: government-based groups, such as hospitals and universities; business-based groups, such as professional associations and condominium boards, and community-based groups, providing social and related services.<sup>46</sup> The first group has the largest number of employees, 7.3% of all employment in Canada; the last group accounts for 3.3% of total employment in Canada.<sup>47</sup>

Researchers and witnesses from these community-based organizations described the greatest challenges with respect to staffing, which are described in greater detail below.

As noted by Imagine Canada,

The vast majority of charities and nonprofits in Canada are smaller community-based organizations. For many of these organizations, it is a significant challenge to recruit and retain staff due to the lower salaries and fewer benefits (including pension plans) they can offer

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<sup>40</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 24 September 2018 (Teresa Marques, President and Chief Executive Officer, Rideau Hall Foundation).

<sup>41</sup> CSSB, *Evidence*, 25 February 2015 (Spyker).

<sup>42</sup> Ibid.

<sup>43</sup> CSSB, *Evidence*, 25 February 2019 (Cielen).

<sup>44</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Chris Pot, Program Director, Hidden Acres Mennonite Camp and Retreat Centre).

<sup>45</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Tracey Wallace, Executive Director, Northern Council for Global Cooperation).

<sup>46</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 7 May 2018 (Catherine Van Rompaey, Director, National Economic Accounts Division, Statistics Canada).

<sup>47</sup> Ibid.

given their limited financial resources. If there is an issue that needs to be addressed, it is the need to provide more appropriate compensation to those working in the many small and/or community-based organizations.<sup>48</sup>

A 2015 report on employment in the non-profit sector noted that,

Though many organizations in the NFP [not-for-profit] sector are focused on providing employment services, alleviating poverty and promoting community health and well-being, little attention is paid to the sector's role as an employer in promoting these same goals.<sup>49</sup>

As described in a 2009 government evaluation of the Voluntary Sector Initiative,

The Sector's capacity to attract paid human resources is a function of several factors including: the ability to offer competitive wages; increased awareness of the important role the Sector has in Canadian society; and the ability to communicate the unique opportunities available to those who join its ranks.<sup>50</sup>

The section of this report on funding the sector discusses testimony the committee heard about the impact of funding regimes on organizations' ability "to hire good employees, to offer them good remuneration, to be able to offer them stable job conditions."<sup>51</sup>

One witness noted, "a recent report says that flatlined and project-based versus core funding has led to lower and non-competitive wages and job instability and a decline in permanent full-time jobs."<sup>52</sup> Another witness testified that staffing poses a particular problem for non-profit organizations that are not eligible for charitable status and are not considered qualified donees, and therefore cannot issue charitable receipts to donors:

The result is that we consistently struggle to move beyond subsistence existence, wherein our core permanent staff must make unacceptable choices such as delaying paycheques or reducing hours in order to take outside employment to keep our doors open.<sup>53</sup>

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<sup>48</sup> Imagine Canada, *Statement on Employee Compensation in the Charitable and Nonprofit Sector*, 28 February 2012, p. 2.

<sup>49</sup> Jamie Van Ymeren and Lisa Lalande, *CHANGE WORK: Valuing decent work in the not-for-profit sector*, Ontario Nonprofit Network, Toronto Neighbourhood Centres and Mowat NFP, November 2015, p. 1.

<sup>50</sup> Employment and Social Development Canada (ESDC), *Voluntary Sector: Initiative Impact Evaluation: Lessons Learned from the Voluntary Sector Initiative (2000-2005)*, August 2009.

<sup>51</sup> CSSB, *Evidence*, 16 April 2018 (Laforest).

<sup>52</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1 October 2018 (Raksha Manaktala Bhayana, Chief Executive Officer, Bhayana Family Foundation).

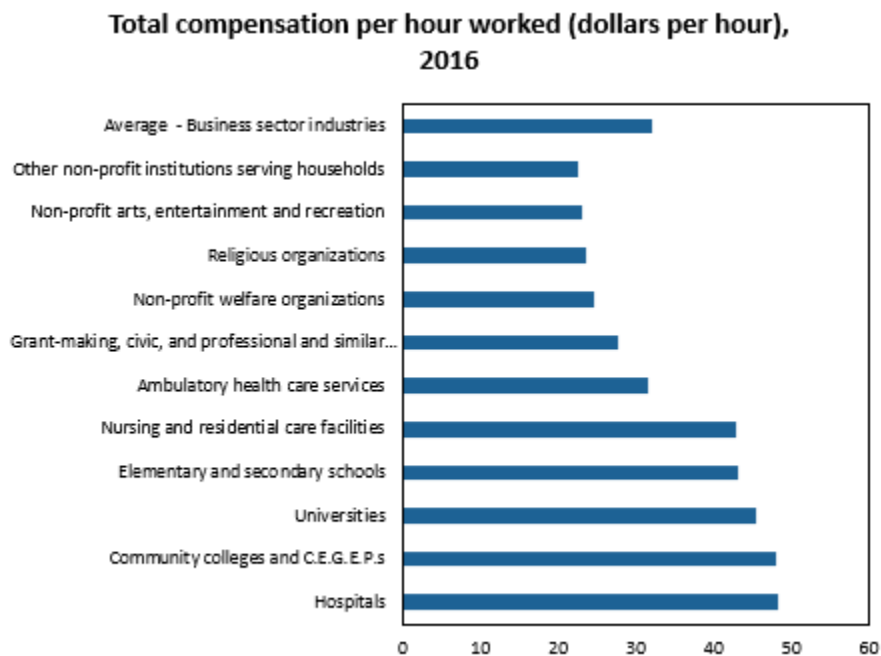
<sup>53</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February, 2019 (Ryan Fukunaga, Executive Director, Free Geek Toronto).

# Catalyst for Change: A Roadmap to a Stronger Charitable Sector

Throughout the committee's hearings, witnesses described the barriers to recruiting and retaining qualified staff, particularly among individuals who are new to the charitable and non-profit sector.<sup>54</sup> Included among these barriers are short-term funding arrangements from governments, including the federal government, which are discussed earlier in this report. Other barriers include low wages and inadequate or non-existent retirement income security plans. As a result, the committee heard, "the sector is advancing a decent work agenda that includes precarious work, compensation, pensions and benefits."<sup>55</sup>

A presentation by Statistics Canada to the committee highlighted the significantly lower compensation levels in community-based organizations compared not only to the for-profit sector, but also to other parts of the non-profit sector. While these figures represent total compensation within each sector, not an average, the overall differential was described by a Statistics Canada official who told the committee that "the community-based organizations actually have wages below the economy-wide average. The hospitals and government-based piece are actually above the economy-wide average."<sup>56</sup>

## Compensation in non-profit organizations by sector and sub-sector



Source: Statistics Canada, *The Charitable and Non-Profit sector in Canada's Economy*, presented to CSSB, 7 May 2018

<sup>54</sup> For example, see CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Arlene MacDonald, Executive Director, Community Sector Council of Nova Scotia).

<sup>55</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 April 2018 (Susan Phillips, Professor and Graduate Supervisor, Philanthropy and Non-profit Leadership, School of Public Policy and Administration, Carleton University, as an individual).

<sup>56</sup> CSSB, *Evidence*, 7 May 2018 (Van Rompaey).

Several witnesses spoke of the sector's (and their organizations') inability to compete with other organizations in terms of attracting and retaining staff, particularly for people with technological and other competencies that are in high demand, in part because of low wages.<sup>57</sup> Another factor, also discussed elsewhere in this report, is the public perception that charitable organizations can be assessed by how low their administrative costs are; these costs include salaries for employees.

The committee heard that many charitable and non-profit organizations, especially smaller ones, rely more on provincial funding agreements than on federal grants or contribution agreements.<sup>58</sup> However, one witness called for federal support for provincial initiatives to provide "decent" employment, including decent pensions.<sup>59</sup> As defined by one witness,

Decent work is opportunities to obtain decent and productive work in conditions of freedom, equity, security and human dignity. It is a lens to think about fair, equitable and stable work, not just about meeting minimum requirements, but also about creating a work environment in which diverse people can thrive.<sup>60</sup>

This witness also called for federal leadership in recognizing the need for decent compensation and working conditions in its own funding arrangements with these organizations.<sup>61</sup> Therefore, the committee recommends,

### **Recommendation 5**

**That the Government of Canada, through the Minister of Finance and federal-provincial-territorial meetings of Ministers of Finance, support the development of pensions for the charitable and non-profit sectors that are portable across provincial and territorial jurisdictions.**

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<sup>57</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1 October 2018 (Jacline Nyman, Former President and Chief Executive Officer, United Way of Canada, as an individual) and *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019 (Ted Garrard, Chief Executive Officer, SickKids Foundation).

<sup>58</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 April 2018 (Peter Elson, Adjunct Assistant Professor, University of Victoria, as an individual).

<sup>59</sup> CSSB, *Evidence*, 1 October 2018 (Bhayana).

<sup>60</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1 October 2018 (Cathy Taylor, Executive Director, Ontario Nonprofit Network).

<sup>61</sup> *Ibid.*



As witnesses described precarity of jobs, they also described a lack of sustainability in charitable and non-profit organizations that cannot attract and keep the staff they need to deliver high-quality services.<sup>62</sup> Therefore, the committee recommends,

### **Recommendation 6**

**That the Government of Canada, through Labour Canada, work with the charitable and non-profit sector to develop and implement a human resources renewal plan to ensure the long-term sustainability of the sector workforce, recognizing that the needs of northern, rural and urban communities are unique.**

The committee also heard testimony about shortages of labour market data that would allow the sector and associated post-secondary education programs to plan more effectively. Witnesses referred to data provided in the past by the Human Resources Sector Council for the charitable and non-profit sector<sup>63</sup> and proposed its reinstatement.<sup>64</sup> The Council had provided both survey data and resources to support the development and retention of existing staff and succession and other human resources planning.<sup>65</sup> Therefore, the committee recommends,

### **Recommendation 7**

**That the Government of Canada, in consultation with the charitable and non-profit sector, reinstate the Human Resources Council for the Voluntary Sector, or a similar body by which the sector can collaborate with government to fulfill aspects of the human resources renewal plan.**

The committee heard testimony on various aspects of what such a plan would look like.<sup>66</sup> It could consist of but not be limited to succession planning and efforts to attract new and diverse talent to the sector, including those who identify with an Employment Equity Group; replacing precarious employment opportunities in the sector with more permanent positions with access to pension products and medical benefits wherever possible; and potential supports in education, professional development and training for staff and board members.

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<sup>62</sup> See, for example, CSSB, *Evidence*, 1 October 2018 (Nyman).

<sup>63</sup> CSSB, *Evidence*, 1 October 2018 (Taylor).

<sup>64</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 8 April 2019 (Bob Wyatt, Executive Director, Muttart Foundation).

<sup>65</sup> More information about this organization can be found [on-line](#).

<sup>66</sup> See, for example, CSSB, *Evidence*, 1 October 2018 (Taylor) and *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Arlene MacDonald, Executive Director, Community Sector Council of Nova Scotia).



## Governing

As described by one witness, “boards of governance have the power to effect change, to set the agenda, to influence policy and to allocate funds, to make decisions that affect the people who live, work and play in our country.”<sup>67</sup> Witnesses also highlighted the importance of strong governance models for charitable and non-profit organizations, often with a focus on adequate supports for the volunteer boards of directors of these organizations.<sup>68</sup>

Diversity on boards of directors was highlighted by several witnesses; one described the issue: “There are over 170,000 charitable and non-profit organizations and hundreds of public sector agencies across Canada largely governed by boards of directors that do not represent the diversity of our nation’s communities.”<sup>69</sup> Another witness described the operational importance of diversity on boards (and among staff):

...first, to ensure that these activities of leading and governing, that is, the identification of needs, the setting of priorities, the making of decisions and the deploying of resources are undertaken by those who are legitimately reflective of their organization’s constituents and their communities; and, second, to ensure that the interests of communities and constituents are understood intimately.<sup>70</sup>

The committee also heard that when boards of directors reflect the diversity of the communities their organizations serve, they are more effective and that diverse voices also bring new approaches to governance challenges.<sup>71</sup>

The results of the e-consultation conducted in connection with this study, while not statistically representative of the sector, showed that more than half of organizations responding to questions about diversity showed that more than half did not collect data on diversity among employees or boards of directors.<sup>72</sup>

As discussed in more detail in the section of this report focussed on data needs to support charitable and non-profit organizations, witnesses highlighted the need for data as a starting point to achieving diversity goals.

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<sup>67</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1 October 2018 (Cathy Winter, Program Manager, DiverseCity onBoard, Ryerson University, as an individual).

<sup>68</sup> See, for example, CSSB, *Evidence*, 25 February 2019 (Turner).

<sup>69</sup> CSSB, *Evidence*, 1 October 2018 (Winter).

<sup>70</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 15 October 2018 (Christopher Fredette, Associate Professor, Odette School of Business, University of Windsor, as an individual).

<sup>71</sup> Ibid., and *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019 (Susan Ramsundarsingh, Course Instructor and Research Project Coordinator, Factor-Inwentash Faculty of Social Work, University of Toronto, as an individual).

<sup>72</sup> See Appendix A for more detail on these survey results.

Therefore, the committee recommends,

**Recommendation 8**

**That the Government of Canada, through Canada Revenue Agency, include questions on both the T3010 (for registered charities) and the T1044 (for federally incorporated not-for-profit corporations) on diversity representation on boards of directors based on existing Employment Equity guidelines.**



Charities rely on tax benefits, including those to encourage charitable donations, other funds from governments, and earned revenues in order to carry out their operations. While non-profit organizations cannot offer receipts to reduce taxes for donors, they benefit from some reductions in taxes, and rely as well on government funding and earned revenues. This section provides information on these sources of funding, including the experiences brought to the committee's attention, and recommendations to enhance existing programs and benefits. It should be noted that legal constraints related to both tax benefits and earned revenue are addressed in other sections of this report.

## Tax Treatment of charitable and non-profit organizations

Statistics Canada reports that more than 24 million Canadians made charitable donations in 2013 (the most recent date for which data are available)<sup>73</sup>, totalling \$12.8 billion,<sup>74</sup> of which \$8.6 billion were claimed for credits by tax filers.<sup>75</sup>

In 2017, charitable donations for which tax filers claimed the charitable tax credit amounted to \$9.6 billion.<sup>76</sup> While this amount was higher than in previous years, the number of tax filers claiming the credit declined by almost 50,000 from the previous year.<sup>77</sup> Witnesses noted the increasing reliance on older donors, as demonstrated in the chart below, which reports that seniors represented 30% of all donors in 2017, up from 24% a decade earlier.<sup>78</sup>

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<sup>73</sup> The data needs of the sector are discussed in greater detail in the "supporting the sector" section of the report.

<sup>74</sup> Statistics Canada, *Charitable Giving in Canada*, 16 December 2015.

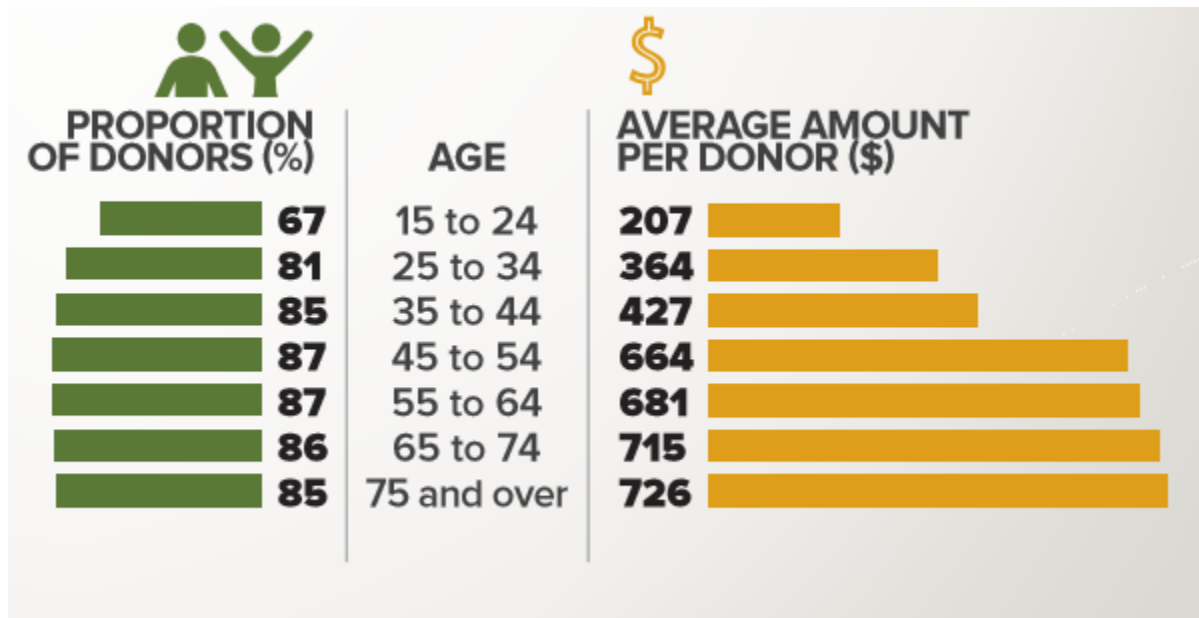
<sup>75</sup> Statistics Canada, "[Total Charitable Donations of Tax Filers, 1997 to 2017](#)," *The Daily*, 8 February 2019.

<sup>76</sup> Statistics Canada, "[Charitable Donors, 2017](#)," *The Daily*, 8 February 2019.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

Amount and proportion of donors to charities, by age group (2013)



Source: Statistics Canada, *Charitable Giving in Canada, 2013*, 15 December 2015

Witnesses were not optimistic about the future of charitable donations,<sup>79</sup> as described by an Imagine Canada representative:

The percentage of tax filers claiming charitable donations is on a downward trend, from a high of almost 30 per cent in 1990, to fewer than 21 per cent in 2014. A smaller number of people are giving ever more. Indeed, Canadians 70 years and older now account for more than 30 per cent of donations today. We simply don't know what will happen as those donors disappear, especially when the numbers show that each generation is less generous — at least in terms of traditional giving — than the one before.<sup>80</sup>

Witnesses highlighted that while many younger Canadians may have limited income, they are contributing financially outside formal charitable giving.<sup>81</sup> The committee also heard

<sup>79</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 April 2018 (Rachel Laforest, Associate Professor and Director, Public Administration Program, School of Policy Studies, Queen's University, as an individual).

<sup>80</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Bill Schaper, Director, Public Policy, Imagine Canada).

<sup>81</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 28 May 2018 (Kayla Smith, Student, Faculty of Law, University of Windsor, as an individual) and *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 8 April 2019 (Andrew Chunilall, Chief Executive Officer, Community Foundations of Canada).

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that more affluent youth would give more financially if they were more confident about the cause and the organization seeking to address it.<sup>82</sup>

A challenge for charitable organizations seeking to raise charitable donations is the public assessment of an organization's trustworthiness based on the proportion of funds raised that go directly to clients and beneficiaries. As described by one witness,

One of the key beliefs affecting the charitable sector is that all its resources should go to the mission and as little as possible should go to the cost of running the organization. Over the years, this belief has led to a culture of underinvestment throughout the sector, and an expectation of low costs by donors.<sup>83</sup>

More discussion of the contributors to and ramifications of this underinvestment by the sector is included in other sections of this report.

The federal government offers tax credits for donations to registered charities.<sup>84</sup> For the 2017 tax year, the amount of the charitable donation tax credit was 15% of the value of the donation up to \$200 and 29% for amounts over \$200.<sup>85</sup> In addition, every provincial and territorial government offers a similar credit, ranging, in 2017, from a low rate of 4% in Nunavut to a high of 20% in Quebec on the first \$200; for amounts over \$200, the provincial and territorial credits ranged in 2017 from a low of 11.16% in Ontario to a high of 24% in Quebec.<sup>86</sup>

In addition, tax reduction in the form of deductions is available to corporations for direct financial contributions to charities, or for donations of ecologically sensitive lands, cultural property or gifts to the Crown (i.e., government). As described by CRA,

A deduction may be claimed on donations totalling up to 75% of a corporation's taxable income. The limit is increased by 25% of the amount of taxable capital gains arising from donations of appreciated capital property and 25% of any capital cost allowance recapture arising from donations of depreciable capital property. The net income restriction does not apply to certain gifts of cultural property or ecologically sensitive land.<sup>87</sup>

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<sup>82</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 28 May 2018 (Shachi Kurl, Executive Director, Angus Reid Institute).

<sup>83</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Kevin McCort, President and Chief Executive Officer, Vancouver Foundation).

<sup>84</sup> This tax credit is non-refundable.

<sup>85</sup> Canada Revenue Agency, *Charitable donation tax credit rates*.

<sup>86</sup> Ibid. A complete list for all provinces and territories is provided.

<sup>87</sup> Department of Finance, *Report on Federal Tax Expenditures – Concepts, Estimates and Evaluations 2018*.

Although these credits and deductions are not outlays of funds by governments, they do represent foregone revenue, also called tax expenditures. The federal tax expenditure for the charitable donation tax credit is projected to be \$2,815 million for 2018 and \$2,885 million for 2019 in lost personal income tax payments.<sup>88</sup> For deductions for gifts to charities by corporations, the tax expenditure with respect to reductions in corporate income tax paid was at a high of \$500 million in 2014, and is projected to be \$465 million in 2018 and \$490 million in 2019.<sup>89</sup> Statistics Canada officials told the committee that approximately 20% of Canadians claim such a credit, and that this proportion has remained relatively stable over time.<sup>90</sup> Among tax-filers with federal tax payable, 35% claim such a credit, a proportion that has also been relatively stable over the past 20 years.<sup>91</sup>

Several witnesses noted that Canada has one of the most generous tax benefit regimes for charitable donations compared to other countries.<sup>92</sup> However, differing views on the importance of these credits were offered by witnesses and in briefs submitted to the committee. While some witnesses stated that charitable donation tax credits do not seem to be a significant factor in people's decisions to donate to charities,<sup>93</sup> one researcher noted that the credit is a statistically significant incentive for donors, and particularly for donors whose contribution is more than \$200 and who therefore receive the higher credit.<sup>94</sup>

Recent short-lived changes to the federal tax benefits for donors to registered charities included the first-time donor's super credit and the stretch tax credit. In 2013, the federal government introduced a "first-time donor's super credit" which supplemented the value of the charitable donations tax credit by 25% on donations made by a first-time donor. The program expired at the end of the 2017 tax year.<sup>95</sup> This credit was found to have had little impact,<sup>96</sup> though several witnesses noted that the change was neither well-known nor well-established, making it difficult to assess what impact it might have had.<sup>97</sup> In particular, one

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<sup>88</sup> Department of Finance, *Report on Federal Tax Expenditures – Concepts, Estimates and Evaluations 2018*.

<sup>89</sup> Ibid.

<sup>90</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 23 April 2018 (Pierre Leblanc, Director General, Personal Income Tax Division, Tax Policy Branch, Department of Finance Canada).

<sup>91</sup> CSSB, *Brief*, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, 1 May 2019 (circulated to Committee members by Department of Finance, citing *Tax Expenditures and Evaluations 2014*, p. 39).

<sup>92</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session 42<sup>nd</sup> Parliament, 17 September 2018 (Malcolm Burrows, Philanthropic Advisor, Scotia Wealth Management) and *Brief*, 14 September 2018 (Bill Schaper, Public Policy, Imagine Canada).

<sup>93</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (John Hallward, Chief Executive Officer, GIV3).

<sup>94</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 28 May 2018 (Laura Lamb, Associate Professor, School of Business and Economics, Thompson Rivers University, as an individual).

<sup>95</sup> Government of Canada, *Take advantage of the new first-time donor's super credit*, 16 December 2013.

<sup>96</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Malcolm Burrows, Philanthropic Advisor, Scotia Wealth Management).

<sup>97</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 October 2018 (Bob Wyatt, Executive Director, Muttart Foundation).

witness recommended its reinstatement as a mechanism to encourage giving to smaller charities.<sup>98</sup>

A couple of witnesses suggested that the amount of the federal charitable donation tax credit could be varied to provide greater tax relief for priorities established by the government,<sup>99</sup> noting in one case that it would be more complex but economically effective, and in the other that it was worth exploring.<sup>100</sup> In addition, the committee heard that raising the credit to a flat 33% for all charitable donations would be beneficial.<sup>101</sup> Therefore, the committee recommends,

## **Recommendation 9**

**That the Government of Canada, through the Minister of Revenue and the Commissioner of the Canada Revenue Agency, direct the Advisory Committee on the Charitable Sector to review existing tax measures available to individual donors in order to strengthen the culture of giving among new and current charitable donors.**

Several witnesses also proposed the exemption of capital gains tax on donations of real estate and private securities, as is currently available to donors of publicly traded securities and environmentally significant property. This particular proposal is addressed in Part 2 of this report, in the context of changes to the *Income Tax Act*.

Non-profit organizations are exempt from taxation on income, resulting in additional tax expenditures for governments. Foregone federal revenue from both personal and corporate income taxes for these organizations was reported at \$105 million in 2014, was lower in the following three years and is projected to be \$120 million in 2018 and \$145 million in 2019.<sup>102</sup>

## **Grants and contributions**

Many charitable and non-profit organizations receive grants and/or have contribution agreements with the federal government. Grants are unconditional transfers, while contributions are conditional on meeting pre-determined terms and conditions. The *Public Accounts of Canada* reports that of more than \$163 billion of federal grants, contributions

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<sup>98</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Jung-Suk (JS) Ryu, Chief Executive Officer, Indefinite Arts Centre).

<sup>99</sup> CSSB, *Ibid.* and *Evidence*, 17 September 2018 (McCort).

<sup>100</sup> *Ibid.*

<sup>101</sup> CSSB, *Brief*, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, 9 May 2018 (Cindy Amerongen, Executive Director, Northern Lights Health Foundation).

<sup>102</sup> Department of Finance, *Report on Federal Tax Expenditures – Concepts, Estimates and Evaluations 2018*.



and other transfers in 2017-2018, approximately \$15 billion was transferred to non-profit institutions and organizations.<sup>103</sup>

### The “real” costs

Funding for the overall operation of charitable and non-profit organizations, described as “core funding” was historically in the form of grants until the 1990s; at that time, funding shifted to “contributions,” which are not only less stable, but rarely adequately cover the costs of even administering the projects being funded.

Witnesses emphasized to the committee the challenge for these organizations of covering the costs of administering these agreements while delivering their services; as a result, they said, organizations have few or no resources to support their volunteers,<sup>104</sup> pay staff a living wage,<sup>105</sup> train and support their board members,<sup>106</sup> find and take opportunities for collaboration with other organizations,<sup>107</sup> update their technology,<sup>108</sup> or to develop and implement more innovative services to their members and clients.<sup>109</sup> Therefore, the committee recommends,

#### **Recommendation 10**

**That the Government of Canada, through the Treasury Board of Canada Secretariat, develop policies that require departments and agencies to compensate full administrative costs associated with delivering the services being funded in transfers to charitable and non-profit organizations.**

### Duration of agreements

Federal contribution agreements with charitable and non-profit organizations can be for periods as short as one year.<sup>110</sup>

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<sup>103</sup> “[Transfer Payments](#)” 2017-2018 Public Accounts of Canada, Volume III, Section 6.

<sup>104</sup> CSSB, *Evidence*, 8 April 2019 (Wyatt).

<sup>105</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1 October 2018 (Raksha Manaktala Bhayana, Chief Executive Officer, Bhayana Family Foundation).

<sup>106</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 8 April 2019 (Terry Anne Boyles, Co-chair of the Board, Voice Society of BC).

<sup>107</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Latha Sukumar, Executive Director, MCIS Language Solutions).

<sup>108</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 April 2018 (Susan Phillips, Professor and Graduate Supervisor, Philanthropy and Non-profit Leadership, School of Public Policy and Administration, Carleton University, as an individual).

<sup>109</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Ryan Fukunaga, Executive Director, Free Geek Toronto).

<sup>110</sup> Katherine Scott, *Funding Matters: The Impact of Canada's New Funding Regime on Nonprofit and Voluntary Organizations*, Canadian Council on Social Development, 2003.

While these short-term contribution agreements rarely cover administrative costs, the committee was told that they perversely contribute to increased demands for administration, for annual application processes and results reporting, even for projects that are not completed within a short time frame.<sup>111</sup> Similarly, while the newer arrangements between federal departments and agencies with charitable and non-profit organizations have called for increased results reporting, “loss of core funding has actually diminished the capacity of recipient organizations in this sector to fulfil the new accountability requirements of the government.”<sup>112</sup>

A document prepared by the Treasury Board of Canada Secretariat in 2002 indicated that improved funding processes between the federal government and the voluntary sector would require a return to multi-year funding and that funding arrangements needed to take into account the real costs associated with delivery, including funding for organizational administration.<sup>113</sup>

One witness made the more general observation that government policies and regulations often seek approaches that support the health and sustainability of for-profit sectors of the economy, providing what might be useful models that can be applied to the charitable and non-profit sector.<sup>114</sup> Other witnesses and briefs emphasized the importance of ensuring that charitable and non-profit organizations have the same access to government programs as the for-profit sector.<sup>115</sup> Therefore, the committee recommends,

### **Recommendation 11**

**That Government of Canada initiatives that support the sustainability of for-profit sectors, particularly with respect to overhead and infrastructure costs, be extended to the charitable and non-profit sector.**

Despite some evidence of improvement,<sup>116</sup> most witnesses before the committee and briefs reported that their funding has not evolved in this way,<sup>117</sup> resulting in onerous

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<sup>111</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1 October 2018 (Jacline Nyman, Former President and Chief Executive Officer, United Way of Canada, as an individual) and *Evidence*, 1 April 2019 (John Shields, Professor, Department of Politics and Public Administration, Ryerson University, as an individual).

<sup>112</sup> CSSB, *Brief*, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, 12 September 2018 (Ian D. Clark, Co-chair of the Independent Blue Ribbon Panel on Grants and Contributions).

<sup>113</sup> Treasury Board Secretariat and Voluntary Sector Project Office, *Guide to Improving Funding Practices between the Government of Canada and the Voluntary Sector*, 31 January 2002, p.13.

<sup>114</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Debby Warren, Executive Director, Ensemble Services Greater-Grand Moncton Inc.).

<sup>115</sup> See, for example, CSSB, *Brief*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, submitted by McConnell Foundation, p.3, received 13 September 2018 and *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Tonya Surman, Chief Executive Officer, Centre for Social Innovation).

<sup>116</sup> See, for example, CSSB, *Evidence*, 1 April 2019 (Shields).

<sup>117</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Norman Ragetlie, Chief Executive Officer, Rural Ontario Institute) and *Evidence*, 8 April 2019 (Wyatt).

requirements, especially for smaller organizations. One witness from a smaller organization detailed the requirements associated with contribution agreement funding:

Reporting for a contribution agreement is very detailed: cash flow projections annually, two financial reports during the year, general ledger line-by-line expenditures, budget reallocation forms, progress report, performance measurement and evaluation reports, assets declaration, declaration of income from other sources, materials produced declaration, national and regional reports, under-spending report, and finally our annual financial statements.<sup>118</sup>

Therefore, the committee recommends,

### **Recommendation 12**

**That the Government of Canada, through Treasury Board of Canada, ensure that grants and contribution agreements cover a minimum of two years, renewable as appropriate; and**

**that the level of information required for both application and reporting on these agreements be commensurate with the level of funding, minimizing complexity for smaller amounts.**

## Application and reporting requirements

Witnesses described the lack of capacity of smaller organizations to even apply for federal funding.<sup>119</sup> As one witness told the committee,

Many small ethno-specific organizations of racialized communities don't even bother to apply [for charitable status] anymore because the application process consumes time and resources that they cannot afford and because of the well-founded perception that the application will be denied.<sup>120</sup>

The committee also heard that the short-term nature of government funding to the charitable and non-profit sector makes sector employment equally short-term, with little job security.<sup>121</sup> These impacts are discussed in greater detail in the previous section on staffing in the charitable and non-profit sector.

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<sup>118</sup> CSSB, *Evidence*, 25 February 2019 (Warren).

<sup>119</sup> See, for example, CSSB, *Evidence*, 25 February 2019 (Craig Scott, Executive Director, Ecology North) and (Chris Pot, Program Director, Hidden Acres Mennonite Camp and Retreat Centre).

<sup>120</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Debbie Douglas, Executive Director, Ontario Council of Agencies Serving Immigrants).

<sup>121</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1 April 2019 (Peter Clutterbuck, Senior Community Planning Consultant, Social Planning Network of Ontario).

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In addition, witnesses told the committee that these short-term funding arrangements are an obstacle to innovation in charitable and non-profit organizations:

[C]harities and non-profits want to spend more time testing out new ideas to meet their missions than on burdensome applications and reporting processes, and they want longer-term funding arrangements that recognize the time and resources required for innovation to occur and its benefits to be realized.<sup>122</sup>

A 2006 report from the Blue-Ribbon Panel on Grants and Contributions Programs appointed to review the federal government's grants and contributions programs recommended broad reforms, summarized as respecting recipients, simplifying application and reporting processes, and organizing information "so that it serves recipients and program managers alike."<sup>123</sup> Government reports since have indicated that many of the panel's recommendations have been implemented.<sup>124</sup> Examples of some of the changes implemented are standardized application and reporting forms and on-line application options.<sup>125</sup>

At the same time, briefs and testimony by witnesses suggested that the anticipated changes remain elusive. For example, while the 2006 report on grants and contribution recommended that the Treasury Board of Canada Secretariat "seek to harmonize federal, provincial and municipal information, reporting and audit requirements for grants and contributions,"<sup>126</sup> witnesses described application and reporting requirements as varying by agency. Particularly for smaller and newer organizations, the application and reporting processes often prevent applications from being submitted at all.<sup>127</sup>

The committee heard evidence about the Australian National Standard Chart of Accounts, a "free data entry tool and data dictionary for charities and other not-for-profit organisations." Its listed categories of reporting have been accepted by all Australian governments, including the Commonwealth and all state and territorial governments, for use in providing information required by governments of charitable and non-profit

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<sup>122</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Tania Carnegie, Chief Impact Officer, Leader, Impact Ventures and Former Member, Social Innovation and Social Finance Steering Group, KPMG).

<sup>123</sup> Frances Lankin and Ian Clark, *From Red Tape to Clear Results: Report of the Blue-Ribbon Panel on Grants and Contributions Programs*, December 2006, p. viii.

<sup>124</sup> Auditor General of Canada, "Chapter 2 – Grant and Contribution Program Reforms," *2012 Fall Report of the Auditor General of Canada*, and Canadian Heritage, *Audit of Grants & Contributions Modernization*, April 2016.

<sup>125</sup> Employment and Social Development Canada, *Modernization of grants and contributions*.

<sup>126</sup> Frances Lankin and Ian Clark, *From Red Tape to Clear Results: Report of the Blue-Ribbon Panel on Grants and Contributions Programs*, December 2006, p. 52.

<sup>127</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Jung-Suk (JS) Ryu, Chief Executive Officer, Indefinite Arts Centre and Melanie Hurley, Chief Executive Officer, Outside Looking In).

organizations.<sup>128</sup> Witnesses proposed that such a system would reduce the administrative burden for charities and non-profit organizations.<sup>129</sup> Therefore, the committee recommends,

### **Recommendation 13**

**That the Government of Canada develop and implement a standardized set of reporting categories and to develop and implement an on-line tool for charitable and non-profit organizations to submit financial reports based on these categories. The Treasury Board of Canada should be tasked with working with federal departments and agencies and federal/provincial/territorial working groups.**

## **Earned income, social enterprise and social finance, and procurement**

As noted above, a number of reviews of funding relationships between government and voluntary-sector organizations have suggested that contribution agreements and contracts prevent organizations from innovating and responding to new circumstances. Some stakeholder have called for new funding arrangements to address these issues.<sup>130</sup>

### *Earned income*

As described above, charitable and non-profit organizations are relying and are expected to rely even more on earned revenue, i.e. the sale of goods and services.<sup>131</sup> As described by the Chief Economist for the sector (Imagine Canada),

[W]ith constraints emerging and demand increasing, charities are going to need to be able to explore every funding opportunity available to them. Out of government funding, philanthropy and earned income, only the last one offers any prospect of long-term growth, and it's a constrained alternative.<sup>132</sup>

These constraints, and others, on charities and non-profit organizations have led many organizations and other individuals and groups interested in providing public benefit to explore new ways of attracting and using other revenue streams. Witnesses told the

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<sup>128</sup> Australian Government, *National Standard Chart of Accounts* and CSSB, *Evidence*, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, 18 March 2019 (The Honourable Gary Johns, Commissioner, Australian Charities and Not-for-profits Commission).

<sup>129</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 8 April 2019 (Hilary Pearson, President, Philanthropic Foundations Canada).

<sup>130</sup> See, for example, Karine Levasseur and Susan D. Phillips, "[Square Pegs in Round Holes: Vertical and Horizontal Accountability in Voluntary Sector Contracting](#)," *The Philanthropist*, 1 October 2004.

<sup>131</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 7 May 2018 (Catherine Van Rompaey, Director, National Economic Accounts Division, Statistics Canada).

<sup>132</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1 April 2019 (Brian Emmett, Chief Economist, Imagine Canada).

committee that such organizations, often referred to as social enterprises, provide opportunities that organizations relying on tax exemptions and receipts for donations cannot access.<sup>133</sup>

Specific recommendations with respect to these constraints are included in the more detailed discussion in the section on the legal and regulatory framework.

### *Social enterprise and social finance*

Government officials told the committee of several initiatives intended to support the innovative capacity of charitable and non-profit organizations. For example, an official from the Treasury Board of Canada Secretariat described a “a five-year pilot that commenced in 2017-18, called ‘generic terms and conditions’ ... [which] ... allows departments to use microfunding, prizes and challenges, and incentive-based funding to promote innovation in transfer payments in communities across Canada, including the charitable sector.”<sup>134</sup>

Testimony and briefs received by the committee identified the desire by charitable and non-profit organizations across Canada of various sizes and areas of work to find and implement innovative approaches to the services they provide and to the larger issues that provide the context for their work.

The federal government has been engaging with civil society and the private sector for several years, investigating whether and how the government could support social finance initiatives. The Fall Economic Statement in 2018 announced funding for this initiative, committing more than \$750 million over 10 years, to:

- support innovative solutions on a broad range of social challenges through a competitive, transparent and merit-based process;
- attract new private sector investment to the social finance sector. It is expected that the Fund would achieve matching funding from other investors;
- share both risks and rewards with private investors on any investments;
- only support investments that are not yet viable in the commercial market; and
- help create a self-sustaining social finance market over time that would not require ongoing government support.<sup>135</sup>

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<sup>133</sup> See, for example, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Wayne Chiu, Co-Founder, Trico Foundation and Susan McIsaac, Director, Strategic Philanthropy, RBC Wealth Management) and *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Craig Scott, Executive Director, Ecology North).

<sup>134</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, Michael Lionais, Executive Director, Costing Centre of Expertise, Office of the Comptroller General of Canada, Treasury Board of Canada Secretariat, 18 September 2018.

<sup>135</sup> Government of Canada, *Fall Economic Statement 2018*, [Chapter 2](#).

An additional commitment of “\$50 million over two years in an Investment and Readiness stream, for social purpose organizations to improve their ability to successfully participate in the social finance market” was made in the statement.<sup>136</sup>

The 2019 Budget Plan provided more detail on this Social Finance fund, specifying that it “will help charitable, non-profit and other social purpose organizations access financing for projects that will have a positive social impact, such as reducing poverty, expanding employment opportunities for persons with disabilities, or building more affordable housing.”<sup>137</sup> Of this fund, \$50 million is targeted to a new Indigenous Growth Fund and \$100 million “will be allocated towards projects that support greater gender equality,”<sup>138</sup>

Prior to the announcements, witnesses expressed support for the recommendations of the government’s Social Innovation and Social Finance Strategy Co-Creation Steering Group,<sup>139</sup> calling for the creation of such a fund, identifying this approach as critical to the sustainability of the “public-benefit” sector.<sup>140</sup> Several witnesses identified the need to provide designated funds to build capacity and resources for innovation within individual organizations and across the sector.<sup>141</sup> Therefore, the committee recommends,

### **Recommendation 14**

**That the Government of Canada, through Employment and Social Development Canada, support innovation across charitable and non-profit organizations, including through the advisory group managing the Social Finance Fund.**

### *Procurement*

Unlike transfer payments,

A procurement contract is used to obtain goods or services. It is an agreement between a federal government contracting authority and an outside party to purchase goods, provide a service or lease

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<sup>136</sup> Ibid.

<sup>137</sup> Minister of Finance, *Budget 2019*, p. 164.

<sup>138</sup> Ibid., p. 165.

<sup>139</sup> Employment and Social Development Canada, *Inclusive Innovation: New Ideas and New Partnerships for Stronger Communities*, pp. 46-67, 2018.

<sup>140</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, Stephen Huddart, President and Chief Executive Officer, McConnell Foundation, and Patrick Johnston, Principal, Borealis Advisors and Former Co-Chair, Voluntary Sector Initiative, as an individual, 18 September 2018.

<sup>141</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, Latha Sukumar, Executive Director, MCIS Language Solution and Jung-Suk (JS) Ryu, Chief Executive Officer, Indefinite Arts Center, 25 February 2019.



real property. Most often, the outside party is chosen through a competitive selection process.<sup>142</sup>

There is no publicly available information on how many charities and non-profit organizations compete for or have such contracts or on the value of those contracts.

While federal officials told the committee about programs to support businesses owned by women, Indigenous-led business, and small and medium-sized enterprises in seeking government contracts,<sup>143</sup> witnesses noted that similar initiatives are needed to make it possible for charitable and other non-profit organizations to compete in the government procurement process.<sup>144</sup> In this vein, the officials described new pilot projects intended to focus on the “social procurement goals” of Public Services and Procurement Canada.<sup>145</sup>

Several witnesses highlighted the importance of providing the same access to government programs for the charitable and non-profit sector as are available to other sectors of the economy, including with respect to procurement.<sup>146</sup> In particular, a former member of the government’s Social Innovation and Social Finance Strategy Co-Creation Steering Group (the steering group) noted that it had recommended that “that the government incorporate social procurement guidelines, tools and training opportunities into its focus on procurement modernization, building on existing pilots and supplier diversity initiatives.”<sup>147</sup> Therefore, the committee recommends,

### **Recommendation 15**

**That the Government of Canada’s procurement strategy be further modified to remove barriers to the participation of charitable and non-profit organizations, with a particular focus on suppliers with smaller staff complements.**

Federal officials said that the government’s procurement strategy for temporary help services has been developed and implemented with a view to increasing the diversity of its suppliers; one witness proposed that procurement processes could also be used to create

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<sup>142</sup> Treasury Board Secretariat, *Guide on Grants, Contributions and Other Transfer Payments*.

<sup>143</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Carolyn Blain, Director General, Strategic Policy Sector, Public Services and Procurement Canada).

<sup>144</sup> See, for example, CSSB, *Brief*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, submitted by Patrick Johnston, Principal, Borealis Advisors and Former Co-Chair, Voluntary Sector Initiative, as an individual, 17 September 2018 and Brian Emmett, *Unfair or Unwanted? Competition Between Charities and For-profit Businesses in Canada*, Imagine Canada, January 2019, p. 5.

<sup>145</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Blain).

<sup>146</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 10 December 2018 (Sean Moore, Principal, Advocacy School).

<sup>147</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Carnegie).

an incentive to charitable and non-profit organizations to achieve greater diversity in governance and staff, by giving preference to more diverse organizations.<sup>148</sup>

The committee heard testimony on various aspects of what changes could be made in procurement.<sup>149</sup> For example, consideration could also be given to suppliers who report greater diversity within their governing bodies or paid staff.

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<sup>148</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 15 October 2018 (Queenie Choo, Chief Executive Officer, S.U.C.C.E.S.S.).

<sup>149</sup> See, for example, *Evidence*, (Choo).



As discussed in other parts of this report, witnesses identified multiple initiatives that the federal government could expand upon or undertake to support the sector’s contribution to Canadian communities and economies. Initiatives relating to regulatory and legislative changes, the people – volunteers, staff and board members – and the funding of the sector are addressed in other parts of the report. However, three additional areas of support were identified by a wide range of witnesses and briefs: data collection and dissemination, the capacity of the sector to respond to a changing environment and growing demand, and the federal government’s relationship with the sector.

## Data

Data about the sector, its operations and its contribution to the social and economic status of Canada and Canadians come from two primary sources: Statistics Canada surveys and the information reported by registered charities as part of their reporting to the Canada Revenue Agency (CRA). Yet, witnesses identified data gaps on sector issues as wide-ranging as diversity among staff, volunteers and Boards of Directors<sup>150</sup>, existing and anticipated staffing levels,<sup>151</sup> donors to charities<sup>152</sup> and information about what other organizations, even within the same community or in a far-distant country, might be doing that overlaps or complements the plans for a new organization or even a new program.<sup>153</sup>

Although Statistics Canada surveys of the for-profit sector do not always include or publish data on the charitable and non-profit sector,<sup>154</sup> witnesses told the committee that existing

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<sup>150</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Krishan Mehta, Assistant Vice President, Engagement, Ryerson University, as an individual) and *Evidence*, 15 October 2018 (Queenie Choo, Chief Executive Officer, S.U.C.C.E.S.S.).

<sup>151</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1 October 2018 (Cathy Taylor, Executive Director, Ontario Nonprofit Network) and *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1 April 2019 (Peter Clutterbuck, Senior Community Planning Consultant, Social Planning Network of Ontario).

<sup>152</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019 (Juniper Lociento, Vice-President, Public Affairs, Association of Fundraising Professionals, Greater Toronto Chapter).

<sup>153</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Latha Sukumar, Executive Director, MCIS Language Solutions) and *Evidence*, 18 March 2019 (Zaid Al-Rawni, Chief Executive Officer, Islamic Relief Canada).

<sup>154</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 7 May 2018 (Catherine Van Rompaey, Director, National Economic Accounts Division, Statistics Canada).

surveys of non-profit organizations provide useful data for planning across the sector and increasing awareness of the sector's role in the economy.<sup>155</sup> In March 2019, the Satellite Account of Nonprofit Institutions and Volunteering, which draws on "a wide range of data sources, including administrative files (tax records), Statistics Canada surveys and public accounts information,"<sup>156</sup> was conducted for the first time since 2010.<sup>157</sup> Witnesses who appeared after that release date flagged the importance of this survey, along with the inclusion in the General Social Survey of the Giving, Volunteering and Participating in the sector every five years. Statistics Canada witnesses told the committee that survey was conducted in 2018 and will report in the fall of 2019.<sup>158</sup>

Witnesses also called for more detailed data on the sector, by region or service area,<sup>159</sup> and data that would provide evidence for the economic and social impact of the sector more broadly.<sup>160</sup> Others wanted better data to inform fundraising; for example, one witness called for "comprehensive data that will support evidence-based decision-making about donor behaviours."<sup>161</sup>

Therefore, given the importance of these data, the committee recommends,

### **Recommendation 16**

**That the Government of Canada prioritize data about the charitable and non-profit sector in all Statistics Canada economic surveys, including the Satellite Account of Nonprofit Institutions and the General Social Survey on Giving, Volunteering and Participating; and**

**that the Government of Canada support collaboration between Statistics Canada and the charitable and non-profit sector to determine what additional data could be collected and disseminated in a timely and consistent manner to support the evidence base for decisions by organizations in the sector.**

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<sup>155</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1 October 2018 (Cathy Taylor, Executive Director, Ontario Nonprofit Network).

<sup>156</sup> Statistics Canada, *Satellite Account of Nonprofit Institutions and Volunteering*.

<sup>157</sup> Statistics Canada, "[Non-profit institutions and volunteering: Economic contribution, 2007 to 2017](#)," *The Daily*, 3 March 2019.

<sup>158</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 June 2018 (Pamela Best, Assistant Director, Social and Aboriginal Statistics Division, Statistics Canada).

<sup>159</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Norman Ragetlie, Chief Executive Officer, Rural Ontario Institute).

<sup>160</sup> For example, see CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 19 November 2018 (Gordon Floyd, as an individual) and *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019 (Christina Franc, Executive Director, Canadian Association of Fairs and Exhibitions).

<sup>161</sup> CSSB, *Evidence*, 18 March 2019 (Locilento).

The committee also heard of the challenges in completing the T3010 form required for the annual reporting to CRA by all registered charities.<sup>162</sup> However, other witnesses called for additions to the form, particularly with respect to information on diversity of staff and Boards of Directors, to provide a more complete picture of the sector and progress made toward it becoming more representative of the Canadian population and, more specifically, of the clients served by these organizations.<sup>163</sup> Therefore, the committee recommends,

### **Recommendation 17**

**That the Government of Canada, through the Canada Revenue Agency, seek the advice of the Advisory Committee on the Charitable Sector on what additional information could be included in the Agency's T3010 form that would support the work of the sector.**

## Capacity

The most urgent capacity challenge – the capacity to “keep the lights on” – is addressed in chapters of this report focussed on funding the sector and people in the sector. In addition, witnesses noted the challenge of meeting the anticipated increase in demand for services, technological capacity and capacity to innovate.

### Capacity to meet demand for services

Many witnesses described forces contributing to current and anticipated growing demand for their programs and services, including an aging population and related pressure on government funding, and expressed concern about how the already-stretched sector will be able to meet that demand.<sup>164</sup> Brian Emmett, Chief Economist for Canada's Charitable and Nonprofit Sector, Imagine Canada, described and quantified an expected “social deficit”:

If demand for charities continues to grow as rapidly as it has in the past 15 to 20 years and if economic growth slows down ... we have come up with a number of about \$26 billion social deficit in the year 2026 ... it will be a deficit that shows up in longer waiting lines at food banks, longer waiting lines for health care, congestion, overstress on staff, and charities trying to do too much with too little.<sup>165</sup>

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<sup>162</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 November 2018 (King Wan, President, Chinese Canadian Military Museum Society).

<sup>163</sup> See, for example, CSSB, *Evidence*, 17 September 2018 (Mehta).

<sup>164</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Andrea McManus, Association of Fundraising Professionals) and *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019 (Cindy Amerongen, Executive Director, Northern Lights Health Foundation).

<sup>165</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 7 May 2018 (Brian Emmett, Chief Economist for Canada's Charitable, and Nonprofit Sector, Imagine Canada).

## Technological capacity

Capacity allowing the sector to respond to demand, witnesses told the committee, will rely not only on increased revenue and a full complement of volunteers and staff, but also on better and more technology,<sup>166</sup> more meaningful impact assessment,<sup>167</sup> continuous learning opportunities for staff and volunteers,<sup>168</sup> more and better collaboration with other sectors and other organizations,<sup>169</sup> and adequate supports for organizations that are smaller<sup>170</sup> and/or are located outside urban centres.<sup>171</sup>

Technological improvements, the committee heard, are needed to support a model of shared services among sector organizations, particularly with respect to managing human resources and shared technologies.<sup>172</sup> Therefore, the committee recommends,

### **Recommendation 18**

**That the Government of Canada establish a funding stream for projects to incent organizations to develop shared technologies to manage their administrative requirements.**

## Capacity to innovate

Obstacles to innovation, some described in other sections of this report, include the risk-aversion of funders,<sup>173</sup> lack of support by funding officers within the federal government,<sup>174</sup> lack of funding stability,<sup>175</sup> CRA restrictions on surpluses for non-profit organizations

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<sup>166</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1 October 2018 (Raksha Manaktala Bhayana, Chief Executive Officer, Bhayana Family Foundation).

<sup>167</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Arlene MacDonald, Executive Director, Community Sector Council of Nova Scotia).

<sup>168</sup> CSSB, *Evidence*, 1<sup>st</sup> Session 42<sup>nd</sup> Parliament, 25 February 2019 (Taralee Turner, Chief Operating Officer, Canada's Royal Winnipeg Ballet).

<sup>169</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 15 October 2018 (Laura Ryser, Research Manager, Rural and Small Town Studies Program, University of Northern British Columbia, as an individual).

<sup>170</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Jung-Suk (JS) Ryu, Chief Executive Officer, Indefinite Arts Centre).

<sup>171</sup> CSSB, *Evidence*, 18 September 2018 (Ragetlie).

<sup>172</sup> CSSB, *Evidence*, 1 October 2018 (Manaktala Bhayana).

<sup>173</sup> CSSB, *Evidence*, 25 February 2019 (Ryu).

<sup>174</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (David Lau, Executive Director, Victoria Immigrant and Refugee Centre Society).

<sup>175</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Ryan Fukunaga, Executive Director, Free Geek Toronto).

(discussed elsewhere in this report),<sup>176</sup> and the focus on low overhead costs for charities.<sup>177</sup>

Many proposals for increased capacity for innovation went beyond the technological capacity described above and focussed on access to social financing and mechanisms to build the capacity of charitable and non-profit organizations to access and exploit such funding. For example, one wealth advisor told the committee that:

The sector needs access to funds such as are available to the private sector, including debt financing, loan guarantees, venture capital, equity investments, insurance products, start-up funding for social enterprises, early stage support for research and testing of new and creative approaches.<sup>178</sup>

She recommended “that government support the capacity building of the not-for-profit sector to partake in these revenue channels,” referring to innovation hubs often publicly supported for for-profit start-ups as a useful model.<sup>179</sup> The model of innovation hubs was supported by testimony from other witnesses as well.<sup>180</sup>

Therefore, in addition to recommendations specific to the Social Finance Fund and its advisory committee contained in the funding section of this report, the committee recommends,

### **Recommendation 19**

**That the Government of Canada through the Minister of National Revenue seek the advice of the Advisory Committee on the Charitable Sector with respect to modifying CRA restrictions on accessing other forms of capital by charitable and non-profit organizations; and that all federally funded initiatives with respect to innovation that are available to for-profit organizations be available to and promoted among charitable and non-profit organizations.**

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<sup>176</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Latha Sukumar, Executive Director, MCIS Language Solutions).

<sup>177</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 April 2018 (Susan Phillips, Professor and Graduate Supervisor, Philanthropy and Non-profit Leadership, School of Public Policy and Administration, Carleton University, as an individual).

<sup>178</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Susan McIsaac, Managing Director, Strategic Philanthropy, RBC Wealth Management).

<sup>179</sup> Ibid.

<sup>180</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 April 2018 (Peter Elson, Adjunct Assistant Professor, University of Victoria) and *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 10 December 2018 (Sean Moore, Advocacy School).



## The relationship with the federal government

Officials from federal departments and agencies appearing before the committee described the importance of volunteers in delivering services and the substantive contribution charitable and non-profit organizations make in the development of policies and new programs. As discussed in other sections of this report, several departments have a more substantive relationship with the sector, including the Treasury Board of Canada Secretariat in its role setting policy with respect to grants and contributions and Finance Canada for its role in setting fiscal policy including changes to the *Income Tax Act*.

The sector's relationship with CRA is critical to the financial and regulatory environment for the sector; in addition, CRA is also the federal government organization with which most charitable and non-profit organizations have a relationship. As many witnesses expressed some concerns about this relationship, this section addresses first the relationship, then the potential in the newly appointed Advisory Committee on the charitable sector to the Minister of Revenue and finally the potential for an additional "home for the sector."

### Canada Revenue Agency

As the regulator of the sector, CRA is responsible for implementing policies and programs created by Finance Canada.<sup>181</sup> As noted in the section focussed on funding the sector, several witnesses flagged improvements in their relationship with CRA, particularly with respect to the provision of information related to compliance with CRA regulations and guidance, and to meeting filing requirements. In particular, witnesses flagged the value of the "road show" initiatives which provide for CRA staff to travel to communities across Canada to meet with sector organizations and provide information and advice.

However, while witnesses recognized the initiatives by CRA, many also highlighted some potential conflicts of interest between CRA as a tax-collector and as a supporter of the sector on broader, non-tax-related challenges.

In addition, the committee heard of persistent concerns with CRA's communication, timeliness of decisions, and collaboration efforts.<sup>182</sup>

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<sup>181</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 23 April 2018 (Antonio Manconi, Director General, Charities Directorate, Legislative Policy and Regulatory Affairs Branch, Canada Revenue Agency).

<sup>182</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Debbie Douglas, Executive Director, Ontario Council of Agencies Serving Immigrants) and (Ragetlie).

Therefore, the committee recommends,

## **Recommendation 20**

**That the Government of Canada direct the Canada Revenue Agency to take the following steps to improve its relationship with charitable and non-profit organizations:**

- **communicate more clearly CRA’s decisions with respect to rejections of applications, revocation of registered charitable status, and results of internal appeals;**
- **reduce wait times for responses on applications for status and other requests for information; and**
- **increase collaboration with provincial and territorial counterparts with a view to reduce the reporting burden on charitable and non-profit organizations.**

## **Advisory Committee on the Charitable Sector**

The March 2019 announcement of the creation of the Advisory Committee on the Charitable Sector, which will provide recommendations to the Minister of National Revenue and the Commissioner of the CRA, “on important and emerging issues facing the sector,”<sup>183</sup> came late in the committee’s work, with only a small proportion of witnesses able to comment on its role and possible contributions.

In meetings before and after that date, witnesses expressed support for the creation of such an advisory committee,<sup>184</sup> one calling for special attention to ensuring representation of smaller organizations<sup>185</sup> and another for representation of university and post-secondary education sector,<sup>186</sup> as additional representatives of the charitable and non-profit sector are added.

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<sup>183</sup> Canada Revenue Agency, *The Government of Canada delivers on its commitment to modernize the rules governing the charitable sector*, 7 March 2019.

<sup>184</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 October 2018 (Joanne Cave, Social Policy Researcher, Mowat Centre) and CSSB, *Evidence*, 18 March 2019 (Amerongen) and CSSB, *Brief*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, submitted by King Wan, Chinese Canadian Military Museum Society, 5 November 2018.

<sup>185</sup> CSSB, *Evidence*, 1 April 2019 (Clutterbuck).

<sup>186</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Philip Landon, Vice President, Universities Canada).

Therefore, the committee recommends,

## **Recommendation 21**

**That the Government of Canada, through the Minister of National Revenue and the Commissioner of CRA, direct the Advisory Committee on the Charitable Sector to include a wide range of organizations on its working groups. This should include, but not be limited to, smaller organizations, organizations in rural and remote communities, organizations representing and serving newcomers to Canada and organizations supporting and serving Indigenous communities.**

Some witnesses, while welcoming the creation of the advisory committee and the appointment of two sector co-chairs, indicated that it could not act as the only “home for the sector” at the federal level.<sup>187</sup> However, as noted in various sections of this report, witnesses did suggest that some matters be referred to this advisory committee for further research and consideration, as supported in some of the committee’s recommendations.

## **A “home” for the sector**

Let’s make a home for the sector and not just a regulator, as we have with CRA, and that will signal to everyone that Canadians seek to preserve the social equilibrium necessary to protect our environment and our democracy and bequeath a liveable future to our children.<sup>188</sup>

Many witnesses described the importance of a federal focus on the sector outside CRA.<sup>189</sup> There were several different models proposed, including:

- a joint Parliamentary committee focussed on the sector;<sup>190</sup>
- a designated minister responsible for the sector;<sup>191</sup>

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<sup>187</sup> CSSB, *Evidence*, 1, 8 April 2019 (McManus).

<sup>188</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Kevin McCort, President and Chief Executive Officer, Vancouver Foundation).

<sup>189</sup> For examples, see CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (John Hallward, Chief Executive Officer, GIV3) and *Evidence*, 25 February 2019 (Landon).

<sup>190</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Lisa Lalonde, Executive Lead, Not-for-Profit Research Hub, The Mowat Centre).

<sup>191</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 June 2018 (Femida Handy, Professor, University of Pennsylvania, as an individual) and *Evidence*, 18 September 2018 (Ian D. Clark, Co-Chair, Independent Blue Ribbon Panel on Grants and Contributions).

- dedicated staff for the sector within the Privy Council Office;<sup>192</sup>
- a senior public servant, Assistant Deputy Minister level or higher, who is responsible for the sector;<sup>193</sup> and
- a more broadly dispersed focus on the sector, so that the impact on charitable and non-profit organizations would be considered in all federal government decisions.<sup>194</sup>

Therefore, based on such proposals, the committee recommends,

### **Recommendation 22**

**That the Government of Canada, through the Minister of Innovation, Science and Economic Development, create a secretariat on the charitable and non-profit sector to:**

- **establish and convene regular meetings of an interdepartmental working group, with representation from Finance Canada, the Treasury Board of Canada Secretariat, the Canada Revenue Agency, Employment and Social Development Canada and other departments with direct connections to these organizations;**
- **convene meetings of appropriate groups of federal/provincial and territorial ministers with responsibility for various aspects of regulating and relating to the charitable and non-profit sectors; and**
- **publish an annual report on the state of the charitable and non-profit sector. This report should include changes related to the sector by federal, provincial and territorial governments along with a more general overview of the economic and social health of the sector.**

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<sup>192</sup> CSSB, *Evidence*, 25 February 2019 (Lalande).

<sup>193</sup> CSSB, *Evidence*, 25 February 2019 (Lau).

<sup>194</sup> CSSB, *Brief*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 11 October 2018 (Muttart Foundation), p. 2.





# PART 2 Modernizing the Legal and Regulatory Framework Governing Charities and Non-Profit Organizations



## Overview

As part of its mandate, the committee was tasked with examining the impact of federal laws governing registered charities and non-profit organizations (NPOs). The primary statute through which the federal government regulates registered charities and NPOs is the *Income Tax Act* (ITA).<sup>195</sup> The ITA provisions governing charities and NPOs have not been reviewed in over 50 years and have been called “outdated, convoluted” and ill-equipped to deal with the complex public policy challenges of the 21<sup>st</sup> century.<sup>196</sup> The purpose of this part of the report is to examine key ITA provisions governing charities and NPOs and make recommendations for reform.

There is much work to be done. The pressing need for regulatory reform is clear, but so too is the need to proceed in a diligent and thoughtful fashion. A reformed regulatory framework must take into consideration the huge diversity within the sector: the needs of large organizations may be different from the needs of small organizations, just as the needs of charities may differ from those of NPOs. Reform must also give consideration to the constitutional division of powers; the principles underpinning statutory requirements; and, the need to foster innovation while protecting against risk.

On some matters, the committee is confident that it has heard sufficient evidence to recommend immediate reform; in other areas, a recommendation for further study offers the more prudent approach. This balanced approach will allow the federal government to respond quickly to areas of pressing need, while also ensuring that adequate resources are directed towards the development of a cohesive regulatory framework that supports the sector and instills public trust.

Before beginning the analysis of the legal and regulatory challenges faced by the sector, brief consideration is given to jurisdiction and terminology.

## Jurisdiction

The *Constitution Act, 1867*<sup>197</sup> allocates primary responsibility for charities to the provinces, although Parliament has responsibility for matters relating to the tax treatment of charities and non-profit organizations.<sup>198</sup> The ITA is, therefore, the federal government’s primary lever for regulating the sector. Moreover, the federal government has become, “by

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<sup>195</sup> *Income Tax Act* [ITA], R.S.C. 1985, c. 1.

<sup>196</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019 (Donald J. Bourgeois, Lawyer, Fogler Rubinoff LLP, as an individual). See also CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Hilary Pearson, President, Philanthropic Foundations Canada).

<sup>197</sup> *Constitution Act, 1867*, 30 and 31 Victoria, c. 3 (U.K.), section 92(7).

<sup>198</sup> For a full discussion of the constitutional context, see Donald J. Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 4<sup>th</sup> ed., Butterworths, 2012, pp. 8–17.



default,” the principal regulator for the sector,<sup>199</sup> as, with limited exceptions, the provinces have chosen not to exercise their jurisdiction in relation to charities.<sup>200</sup>

In addition, the *Constitution Act, 1867* grants the provinces authority over property and civil rights.<sup>201</sup> As is discussed below, witnesses at times reminded the committee of the need for the federal regulatory framework to co-exist with provincial law (for example, with regard to the definition of charity employed for federal taxation purposes and the definition of charity for provincially regulated matters such as wills and trusts), and of the need to respect the constitutional limits of the federal government (for example, with regard to business activities).

### Definitions

Charities and NPOs both operate on a “not-for-profit” basis, insofar as “neither may distribute profits to their members.”<sup>202</sup> However, despite this and other commonalities, charities and NPOs are legally distinct organizations.

Understanding the distinction between charities and NPOs is important, as charities receive greater preferential treatment under the ITA. In broad terms, while both NPOs and registered charities are exempt from paying tax on their taxable income,<sup>203</sup> only registered charities (and qualified donees)<sup>204</sup> can issue official income tax receipts to donors. As donors can claim tax credits for their donations, the authority to issue tax-deductible receipts operates as a potential incentive to giving.<sup>205</sup> Charitable status is also thought to confer legitimacy on an organization, as registered charities are subject to regulatory oversight by the CRA.<sup>206</sup>

### *What Is a Charity?*

As noted by Donald J. Bourgeois (Fogler Rubinoff LLP), “what is ‘charitable’ in a legal context is not easily articulated or understood.”<sup>207</sup> While the ITA provides rules relating to the obligations and tax treatment of registered charities, it does not define the term “charitable”. Instead, in determining whether an organization qualifies as a “charitable organization”, both the courts and the CRA rely on case law. In order to be charitable at common law, an organization must meet two fundamental requirements:

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<sup>199</sup> Bourgeois (2012), p. 9.

<sup>200</sup> Patrick J. Monahan and Elie S. Roth, *Federal Regulation of Charities: A Critical Assessment of Recent Proposals for Legislative and Regulatory Reform*, York University, Toronto, 2000, p. 7.

<sup>201</sup> *Constitution Act, 1867*, 30 and 31 Victoria, c. 3 (U.K.), section 92(13).

<sup>202</sup> Donald J. Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 3<sup>rd</sup> ed., Butterworths, 2002, p. 3. [Excerpt](#) available online.

<sup>203</sup> ITA, section 149(1)(f) and (l).

<sup>204</sup> For further discussion, see Part 1, Section 1, B: Qualified Donees and other tax preferred entities.

<sup>205</sup> Susan D. Philips, “More than stakeholders: Reforming state-voluntary sector relations” *Journal of Canadian Studies* Vol. 35, Issue 4 (2001).

<sup>206</sup> *Ibid.*

<sup>207</sup> Bourgeois (2012) p. 393.



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- its purposes must be exclusively and legally charitable; and
- it must be established for the benefit of the public or a sufficient segment of the public.<sup>208</sup>

With regard to the first requirement, an organization's purposes are considered legally charitable if they fall under one of four categories of charitable purpose set out in the 1891 House of Lords decision *Commissioners of Income Tax v. Pemsel (Pemsel)*.<sup>209</sup>

The *Pemsel* categories are:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; and
- other purposes beneficial to the community in a way the law regards as charitable.

As witnesses told the committee, the *Pemsel* categories were shaped by the list of "good, godly and charitable" purposes set out in the preamble to the *Statute of Elizabeth* (also known as the *Charitable Uses Act, 1601* or the *Statue of Uses*).<sup>210</sup> The preamble to the *Statute of Elizabeth* remains relevant today. In seeking registration under the fourth *Pemsel* category, an organization must demonstrate that its purposes are "beneficial to the community in a way which the law regards as charitable by coming within the "spirit and intendment" of the preamble to the *Statute of Elizabeth*."<sup>211</sup>

The second requirement, public benefit, is established using a two-part test. The first part of the test generally requires that the organization's purposes confer a "tangible benefit ... directly or indirectly," while the second part requires that the benefit must be "directed to the public or a sufficient section of the public."<sup>212</sup>

### *What Is a Non-profit Organization?*

As explained by Karen Cooper (Drache Aptowitzer), the "terms non-profit and not-for-profit" are often used interchangeably and generally refer to organizations whose profits are not passed on to their members. However, as Ms. Cooper noted, the terms have legally precise meanings:

When you use non-profit, you are referring to the organizations that are exempt under 149(1)(l) and have to fit within this set of criteria in order to benefit from the tax exemption. If it's a not-for-profit, we

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<sup>208</sup> *Guidelines for registering a charity: meeting the public benefit test*, 2006.

<sup>209</sup> House of Lords, 20 July 1891.

<sup>210</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Bill Schaper, Director, Public Policy, Imagine Canada). See also Kathryn Chan and Josh Vander Vies, "The Evolution of the Legal Definition of Charity in Canada" in Susan Phillips and Bob Wyatt (eds) *The Canadian Text on the nonprofit sector*, 1<sup>st</sup> edition (forthcoming), pp. 2-4.

<sup>211</sup> *Native Communication Society of BC v. Minister of National Revenue (1986) 69 N.R. 146 (FCA)*, para 7.

<sup>212</sup> CRA, *Guidelines for registering a charity: meeting the public benefit test*, 2006.

tend to be referring to the corporate status. They are usually incorporated under a not-for-profit corporation statute. I say this because that highlights the complexity that the sector faces. Charities are not-for-profit corporations, but they are not non-profit organizations from a tax perspective.<sup>213</sup>

Section 5 of this part of the report discusses the regulation of non-profit organizations under section 149(1)(l) of the ITA.

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<sup>213</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019 (Karen Cooper, Legal Counsel, Drache Aptowitz LLP).



## SECTION 1 MODERNIZING THE LEGAL DEFINITION OF CHARITY

### Statute versus common law

Laird Hunter (the Pemsel Foundation) reminded the committee of Lord Wilberforce's famous dictum: "the law of charity is a moving subject."<sup>214</sup> In other words, as many witnesses noted, charity law must evolve in order to keep up with changing social needs and values.<sup>215</sup>

In Canada, evolution in the legal meaning of charity occurs through the common law. Simply put, the common law approach "entails relying on reasoning by analogy to develop the meaning of charity in a way that keeps pace with changing times."<sup>216</sup> For example, in the 1996 case *Vancouver Regional FreeNet Association v. Minister of National Revenue*, the Federal Court of Appeal drew an analogy between the modern-day electronic information highway (the Internet) and conventional highways (roads) referenced in the preamble to the *Statute of Elizabeth* (discussed above).<sup>217</sup>

However, in recent years, certain judicial rulings have led sector stakeholders to question whether the common law is truly an effective means of allowing the law to adapt to the needs of the society it serves. For example, in a brief submitted to the committee, Kathryn Chan (University of Victoria) highlighted the decisions in *Credit Counselling Services of Atlantic Canada Inc v. Canada (National Revenue)* and *News to You Canada v. Canada (National Revenue)*.<sup>218</sup>

In *Credit Counselling Services of Atlantic Canada*, the Federal Court of Appeal considered whether activities related to the "prevention of poverty" are charitable activities for the

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<sup>214</sup> *Scottish Burial Reform and Cremation Society Ltd. v. Glasgow Corporation*, [1968] A.C. 138 at p. 154 cited in CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, (Laird Hunter, President, The Pemsel Foundation), 22 October 2018.

<sup>215</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 November 2018, (Don McRae, Charity Researcher, as an individual).

<sup>216</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 November 2018, (Peter Broder, Executive Director, The Pemsel Case Foundation).

<sup>217</sup> *Vancouver Regional FreeNet Association v. Minister of National Revenue* [1996] F.C.J. No. 914

<sup>218</sup> CSSB, *Brief*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 October 2018 (Kathryn Chan, Assistant Professor, Faculty of Law, University of Victoria, as an individual).

purposes of the *Income Tax Act*.<sup>219</sup> The court noted that “to satisfy the requirement that a purpose is for the relief of poverty, the person receiving the assistance must be a person who is then in poverty.”<sup>220</sup> In the court’s view, the appellant organization’s services were available to “many consumers” who were not living in poverty and, for this and other reasons, found that the organization’s purposes related to the prevention of poverty, rather than the relief of poverty. The court went on to note that the prevention of poverty is not a charitable purpose and that an act of Parliament would be required to effect such a change.<sup>221</sup>

In *News to You Canada*, a news organization operating on a not-for-profit basis sought status as a registered charity. The court found that while “the production and dissemination of in-depth news and public affairs programs may improve awareness of current affairs”, these purposes did not meet the “special benefit required of a charitable organization.”<sup>222</sup>

In more general terms, Don McRae (Researcher), pointed out that “the core of the Canadian definition of charity ... was created in Victorian England and was a product of its time.” That is to say, it is the product of a “homogenous, white male-dominated society.”<sup>223</sup>

## Challenges identified by witnesses

### Overview

Among other responsibilities, the Canada Revenue Agency’s Charities Directorate assesses applications from organizations wishing to register as charities.<sup>224</sup> Where an applicant is unsuccessful, it may, in the first instance challenge the decision through the CRA’s internal appeal process. Existing registered charities may also use the CRA’s internal appeal process to challenge a decision to revoke their status.

Sharmila Khare (Charities Directorate) told the committee that, during the appeal process, “a separate part of the agency reviews the work that has been done in the Charities Directorate.”<sup>225</sup> She clarified that the appeal process provides organizations with the

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<sup>219</sup> [\*Credit Counselling Services of Atlantic Canada Inc. and Minister of National Revenue\*](#), 2016 FCA 193, at para. 1.

<sup>220</sup> *Ibid*, at para. 16.

<sup>221</sup> *Ibid*, at para 18. For detailed consideration, see Jacqueline M. Demczur and Terrance S. Carter, “[FCA holds that prevention of poverty is not a charitable purpose](#)” in *Charity and NFP Law Bulletin* No. 390, 25 August 2016.

<sup>222</sup> [\*News to you Canada v. Canada \(National Revenue\)\*](#) 2011 FCA 192, at para 30.

<sup>223</sup> CSSB, [Evidence](#), 5 November 2018, (McRae).

<sup>224</sup> Government of Canada, [Charities Program Update -2013](#).

<sup>225</sup> CSSB, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1 April 2019 (Sharmila Khare, Director, Policy, Planning and Legislation Division, Charities Directorate, Canada Revenue Agency).

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“opportunity to be in dialogue with the appeals directorate and to provide additional information.”<sup>226</sup> Stressing that the appeal process does not exist merely to “rubber stamp” decisions made by the Charities Directorate, Ms. Khare informed the committee that the appeal division overturns approximately one third of contested decisions relating to registration.<sup>227</sup>

Notwithstanding the important role played by the CRA’s internal appeal process, the results it delivers will not satisfy all users on all occasions. In such instances, an organization that has had its application for registered charity status refused, or an existing charity that has had its registration revoked, may appeal the decision of the Charities Directorate to the Federal Court of Appeal.<sup>228</sup>

In theory:

This procedure provides an opportunity for a superior court of record to incrementally develop the meaning of the statutory terms “charitable purpose” and “charitable activity” by reference to the common law.<sup>229</sup>

However, as witnesses including Mr. Bourgeois and Dr. Chan explained to the committee, organizations seeking to rely on this approach have had very little success at the Federal Court of Appeal.<sup>230</sup> Indeed, “no not-for-profit organization has won a charitable registration appeal in Canada in over 20 years.”<sup>231</sup>

In Dr. Chan’s view, the sector has become “worn down” by the long list of losses and has stopped appealing decisions from the Charities Directorate. The result, she argued, has been the “near eradication in Canada of the common law method of developing the legal definition of charity by judicial analogy.”<sup>232</sup> The reluctance of organizations to appeal Charities Directorate decisions has consequences not only for individual organizations, but also for the sector as a whole. As Susan Manwaring (Miller Thomson LLP) noted:

A long-standing feature of the common law of charity is that the notions of charity must evolve with society’s views. There is not an originalist position that it should be like it always was.<sup>233</sup>

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<sup>226</sup> Ibid.

<sup>227</sup> Ibid.

<sup>228</sup> ITA, section 172(3).

<sup>229</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 October 2018 (Kathryn Chan, Assistant Professor, Faculty of Law, University of Victoria, as an individual).

<sup>230</sup> Ibid and CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019 (Donald J. Bourgeois, Lawyer, Fogler Rubinoff LLP, as an individual).

<sup>231</sup> CSSB, *Evidence*, 22 October 2018 (Chan).

<sup>232</sup> Ibid.

<sup>233</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 10 December 2018, (Susan Manwaring, Partner and Leader, Social Impact Group, Miller Thomson LLP, as an individual).

However, the common law cannot evolve in the absence of cases. As witnesses noted, “cases are the lifeblood of the common law;”<sup>234</sup> without them “stagnation” sets in.<sup>235</sup> For many witnesses, there is little doubt that stagnation has already taken hold in Canada.

### Why do these challenges arise and why do they matter?

In the course of the committee’s hearings, witnesses explored why the Federal Court of Appeal has had limited success in moving forward the definition of charity. Among other reasons, witnesses mentioned cost and the rules governing the appeal process.

#### *Cost*

A brief prepared by the Muttart Foundation highlighted the prohibitive cost of appealing a decision from the Charities Directorate:

A number of years ago, the cost of an appeal in a charity-law case was estimated to be in the order of \$50,000. That number may well have doubled now.<sup>236</sup>

In more general terms, Joanna Cave (the Mowatt Centre) described the appeal process as “quite resource-intensive, time-intensive and complex.”<sup>237</sup>

Several witnesses formulated their concerns about cost in terms of access to justice. For example, one witness noted that the cost of appeals means that charities and applicants have “no practical legal recourse under the current system,”<sup>238</sup> while another described the concept of an appeal mechanism in charity law as “illusory.”<sup>239</sup>

#### *Rules*

According to witnesses, including Dr. Chan, one of the reasons that the definition of charity has failed to develop in the Federal Court of Appeal is that registered charity appeals are governed by “administrative law review, not judicial appellate review principles.”<sup>240</sup> In simple terms, this means that the court does not ask whether the Charities Directorate

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<sup>234</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 November 2018 (Adam Parachin, Associate Professor, Osgoode Hall Law School, York University, as an individual).

<sup>235</sup> CSSB, *Evidence*, 22 October 2018, (Hunter).

<sup>236</sup> Muttart Foundation, *Submission to the Special Committee of the Senate on the Charitable Sector*, October 2018, p. 11. The recommendations set out in this submission were submitted as a *Brief* to the committee.

<sup>237</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 October 2018 (Joanne Cave, Social Policy Researcher, the Mowatt Centre).

<sup>238</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018, (Malcolm Burrows, Philanthropic Advisor, Scotia Wealth Management).

<sup>239</sup> Muttart Foundation (2018), p. 11.

<sup>240</sup> CSSB, *Evidence*, 22 October 2018 (Chan).

reached the “right” answer, but whether the answer it reached was “a reasonable conclusion based on the facts.”<sup>241</sup>

This approach is considered problematic because it does not allow the court to examine evidence. As was explained to the committee:

Exchanges of correspondence are placed before the court. There is no cross-examination of witnesses. There is usually no room for expert testimony about societal changes. Evidence is untested.<sup>242</sup>

The committee heard that, in following this approach, Canada is out of step with other jurisdictions, which increasingly allow appeals *de novo*.<sup>243</sup> Simply put, appeals *de novo* allow the appeal tribunal to examine evidence, rather than merely accepting the facts as established on the record with the regulator.

Professor Parachin argued that allowing the appeal court to examine evidence “translates to a more robust hearing of the facts, a more contextual analysis and more opportunities to move the law forward than what we see in Canada.”<sup>244</sup> In his view, “our direct appeal to the Federal Court of Appeal based on the record of correspondence established with a regulator might be one of the reasons the cases are so resoundingly decided against charities.”<sup>245</sup>

### Consequences

High costs combined with dismal prospects of success have resulted in fewer cases in this area being heard by the Federal Court of Appeal. As a result, instead of regular court pronouncements invigorating the law’s understanding of charity, the CRA has “de facto, defined charity law through the administrative process.”<sup>246</sup> As noted by witnesses, this reliance on the administrative process places an unfair burden on the CRA and raises questions as to where law reform should originate.

In applying the law, administrative bodies must inevitably interpret it. However, although witnesses argued that the CRA should be “encouraged to develop its interpretation of the law in keeping with shifting societal norms and values,”<sup>247</sup> they also recognized that it cannot usurp the role of the law maker. For example, as Mr. Hunter explained to the committee, “it is not the role nor the mandate of the regulator to decide administratively” whether new charitable purposes should be recognized in law.<sup>248</sup> In other words, as noted

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<sup>241</sup> CSSB, *Evidence*, 10 December 2018, (Manwaring).

<sup>242</sup> Muttart Foundation (2018), p. 12.

<sup>243</sup> CSSB, *Evidence*, 5 November 2018 (Parachin).

<sup>244</sup> Ibid.

<sup>245</sup> Ibid.

<sup>246</sup> CSSB, *Evidence*, 17 September 2018, (Burrows).

<sup>247</sup> CSSB, *Evidence*, 5 November 2018, (Broder).

<sup>248</sup> CSSB, *Evidence*, 22 October 2018 (Hunter).



by Professor Parachin, the inability of the Federal Court of Appeal to move the law forward places the CRA in a difficult position:

My concern is that we ask too much of the CRA right now without judicial intervention. The CRA has to address questions in the absence of an evolving common law while being criticized, in some quarters, for moving too quickly, in others for not moving quickly enough. More cases would help that.<sup>249</sup>

### Possible solutions

The legal meaning of charity can evolve by one of two means: the development of the common law or the enactment of a new statutory definition of charity. However, as discussed above, Canada has neither a statutory definition nor a strong record of developing the legal definition of charity by common law. Having established the extent of the problem facing the sector, witnesses went on to discuss the advantages and disadvantages of the main pathways for change.

### Enacting a statutory definition

Dr. Chan informed the committee that many countries, including England, Wales, Scotland, Ireland, Australia and New Zealand, have developed a statutory definition of charity in Parliament. She further noted that such an approach allows for public debate on what should be considered charitable and stated that this may “perhaps” be the best way forward for Canada.<sup>250</sup> For his part, Mr. McRae recommended that Canada examine comparable charitable jurisdictions and introduce a codified definition of “charity.”<sup>251</sup>

However, while recognizing the value of public debate, several witnesses were not persuaded that a statutory definition would be of assistance. Among other concerns, the Muttart Foundation argued that any list of charitable purposes enshrined in statute “would be static and could only be changed through legislative amendments.” Consequently, were legislative review not a government priority, keeping legislation current could prove difficult.<sup>252</sup> In terms of counterarguments, Dr. Chan noted that several jurisdictions include a residuary category in their statutory definition that allows the court to maintain a role in developing the law by analogy.<sup>253</sup>

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<sup>249</sup> CSSB, *Evidence*, 5 November 2018 (Parachin).

<sup>250</sup> CSSB, *Evidence*, 22 October 2018 (Chan).

<sup>251</sup> CSSB, *Evidence*, 5 November 2018 (McRae).

<sup>252</sup> Muttart Foundation (2018), p. 31.

<sup>253</sup> CSSB, *Evidence*, 22 October 2018 (Chan).

Opponents of a statutory definition of charity contended that embedding a definition in a statute “opens the matter up to the vagaries of politics.”<sup>254</sup> Concern was expressed that, if the definition of charity became politicized and subject to amendment with changes in government, the ensuing “regulatory uncertainty could undermine organizational effectiveness.”<sup>255</sup> In addition, another lawyer noted that if new categories of charitable purposes were added, or existing ones removed, a “culture war” could disrupt the sector.<sup>256</sup>

The distribution of powers was also advanced as an argument against codification. As the *Constitution Act, 1867* grants the provinces power over property and civil rights, the federal government cannot dictate the law on these matters to the provinces. Consequently, even if Parliament were to enact a statutory definition of charity for the purposes of income tax law, there is no guarantee that the provinces would adopt the same definition for provincial purposes. As a result, Canada would have a “differentiated meaning of charity, one for the purposes of income tax law and one for the purposes of provincial law,” including matters such as estate planning and planned giving.<sup>257</sup>

Finally, witnesses questioned whether it is possible to trace a bright line between an approach based on statute and one based on the common law. In his submission to the committee, Professor Parachin noted that “to the extent that international jurisdictions are codified, they are heavily tethered to the common law in any event.”<sup>258</sup>

### Tax Court of Canada

The majority of witnesses who appeared before the committee argued that the best way to ensure the continued evolution of the common law would be to grant the Tax Court of Canada (Tax Court) jurisdiction over charity law cases. This point was made repeatedly, both by members of the legal community and by sector stakeholders more generally.

The arguments advanced in support of this recommendation broadly centred on four themes: consistency, cost, clarity and quality.

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<sup>254</sup> Muttart Foundation (2018), p. 31.

<sup>255</sup> CSSB, *Evidence*, 5 November 2018, (Broder).

<sup>256</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 19 November 2018, (Mark Blumberg, as an individual). The committee received very limited testimony on what should be contained in any future list of statutory categories of charity; however, the British Columbia Humanist Association submitted that the advancement of religion should be omitted or “expanded to include (i) a religion that involves belief in more than one god and (ii) a religion that does not involve belief in a god” (CSSB, *Brief*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018, p. 3).

<sup>257</sup> CSSB, *Evidence*, 5 November 2018 (Parachin).

<sup>258</sup> *Ibid.*

## Consistency

Witnesses including Lisa Lalande (the Mowat Centre) pointed out that other tax-related appeals are within the jurisdiction of the Tax Court.<sup>259</sup> For example, both individual taxpayers and corporate taxpayers may file an appeal to the Tax Court if they are dissatisfied with the outcome of the CRA's internal review process.<sup>260</sup> In the view of Ms. Lalande and other witnesses, it would be "appropriate" for charity appeals to be addressed in a similar manner.

## Cost

As previously discussed, cost acts as a significant impediment to bringing a charity case to the Federal Court of Appeal. During the committee's hearings, several witnesses argued that granting the Tax Court jurisdiction to dispose of charity law cases would provide charities with a more affordable and accessible pathway to justice. However, support for the cost-saving argument was not unanimous. For example, Professor Parachin said he could not assert that the proposed mechanism would necessarily be cheaper,<sup>261</sup> while Dr. Chan stated that she had "never been completely convinced" that the proposal would solve the "access to-justice problem." In particular, she stressed that, when evidence is introduced, as would be the case if appeals were referred to the Tax Court for *de novo* hearings, legal fees "can go way up."<sup>262</sup>

That said, Professor Parachin also recognized that the existing system is not without costs for charitable organizations.<sup>263</sup> In addition, he noted that neither reform option, "one being codification and one being an alternative and more efficient route to a judicial review...[would]...be particularly accessible to small charities." For example, he explained, lobbying the federal government on any proposed statutory definition is unlikely to be "within the means of small charities."<sup>264</sup> Finally, he argued that, even if the Tax Court were not any more affordable than the Federal Court of Appeal, an appeal *de novo* would still have the benefit of allowing new evidence to be introduced.<sup>265</sup>

Witnesses also discussed the cost of the proposed reform from the federal government's perspective. According to the Muttart Foundation, the proposed change could be accomplished with "minimal new resources":

The Tax Court, in the 2016-17 fiscal year, dealt with more than 6,300 cases. It is unlikely that the number of charity appeal cases would represent anything more than perhaps a 1% increase in that caseload. We acknowledge that an increased caseload might require some redeployment of resources in the Department of Justice, which

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<sup>259</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Lisa Lalande, Executive Lead, Not-for-Profit Research Hub, the Mowat Centre).

<sup>260</sup> CRA, [File an appeal to the Court](#).

<sup>261</sup> CSSB, *Evidence*, 5 November 2018 (Parachin).

<sup>262</sup> CSSB, *Evidence*, 22 October 2018 (Chan).

<sup>263</sup> CSSB, *Evidence*, 5 November 2018 (Parachin).

<sup>264</sup> Ibid.

<sup>265</sup> Ibid.

represents the CRA before the Tax Court, but we think such resources can be justified in the name of fairness.<sup>266</sup>

### Clarity

Karen Cooper (Drache Aptowitzer LLP) argued that enabling organizations to challenge decisions in an “economically viable way” would result in more judicial pronouncements and, in turn, greater legal clarity.<sup>267</sup> As Bob Wyatt (Muttart Foundation) reminded the committee, the CRA does not list applications that have been refused. Therefore, “it is only through appeals that we find out what organizations have been denied charitable status and the reasons for those denials.”<sup>268</sup> An increase in transparency and legal clarity would be of assistance not only to lawyers, but also to the CRA by providing it with more “guidance” for its work in registering charities and monitoring compliance.<sup>269</sup>

### Quality

According to witness testimony, the ability of the Tax Court to hear evidence is of paramount importance. In discussing the decision in *Credit Counselling Services of Atlantic Canada Inc.* (discussed above), Ms. Manwaring contended that “not having a proper hearing has led to bad law.”<sup>270</sup> In addition, one witness characterized the current system, whereby the Federal Court of Appeal proceeds only on the basis of the CRA’s written record, as “profoundly disrespectful” to sector organizations.<sup>271</sup>

Witnesses nonetheless acknowledged that the Tax Court would not be a panacea, particularly with regard to affordability. In considering means of promoting access to justice, witnesses discussed the possibility of a “charities challenges program” to help small organizations proceed with appeals. Asked whether he would support such a program, Professor Pacharin replied that his “instinctive answer” was to support any measure that would bring more cases to court. He did, however, caution that it would be important to ensure the independence of any such program.<sup>272</sup>

Similarly, the Muttart Foundation argued in favour of a litigation fund akin to the Court Challenges Program to allow “appropriate cases to find their way to the court system”.<sup>273</sup> The Muttart Foundation envisaged the fund as a “fall-back position” should the government not grant the Tax Court jurisdiction over charity law cases.

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<sup>266</sup> Muttart Foundation (2018), p. 14.

<sup>267</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019, (Karen Cooper, Legal Counsel, Drache Aptowitzer LLP).

<sup>268</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 October 2018 (Bob Wyatt, Executive Director, Muttart Foundation).

<sup>269</sup> CSSB, *Evidence*, 22 October 2018 (Cave).

<sup>270</sup> CSSB, *Evidence*, 10 December 2018 (Manwaring).

<sup>271</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 19 November 2018, (Gordon Floyd, as an individual).

<sup>272</sup> CSSB, *Evidence*, 5 November 2018 (Parachin).

<sup>273</sup> Muttart Foundation (2018), p. 32.

The committee notes the importance of ensuring that the definition of charity keeps pace with evolving societal needs. In the committee's view, the arguments advanced in favour of granting jurisdiction over charity law to the Tax Court of Canada carry considerable force. Therefore, the committee recommends,

### **Recommendation 23**

**That the Government of Canada propose amendments to the *Income Tax Act* to provide that all appeals from decisions of the Charities Directorate of the Canada Revenue Agency proceed to the Tax Court of Canada for a hearing *de novo*, following consideration by the Canada Revenue Agency's Tax and Charities Appeals Directorate; and,**

**a right to appeal to the Tax Court of Canada for cases where the Canada Revenue Agency's Tax and Charities Appeals Directorate (the Directorate) has not rendered a decision on an appeal by an organization that has had its application for registered charity status refused, or an existing charity that has had its registration revoked, within six months of it having been referred to the Directorate.**

### **Recommendation 24**

**That, recognizing the importance of enabling the development of the common law definition of charity, the Government of Canada consider measures to assist organizations that have had their application for registered charity status refused, or existing charities that have had their registration revoked, in appealing decisions from the Canada Revenue Agency's Charities Directorate.**

While the committee believes that granting the Tax Court jurisdiction over charity law cases will remove a significant barrier to the development of the common law, it also notes that implementing this proposal would not preclude further review of the common law meaning of charity to determine whether legislation is needed to broaden the meaning of the term. Any review of the matter should be conducted in consultation with sector stakeholders to ensure diverse views are considered on this important public policy question.

Therefore, the committee recommends,

## **Recommendation 25**

**That the Government of Canada, through the Advisory Committee on the Charitable Sector, review the common law meaning of charity to determine whether Canada should follow the approach of other jurisdictions, such as Australia and England, and enact legislation to broaden the legal meaning of charity.**

## **Qualified donees and other tax preferred entities**

The discussion on how best to enable the definition of charity to evolve was part of a broader discussion on what types of organization should be awarded preferential tax treatment. In the course of these discussions, witnesses reflected on the need to address emerging groups, such as non-profit journalism organizations and social enterprises, and to consider whether all tax preferred entities should be treated equally.

Dr. Chan pointed out that Canada has a very “flat system” of tax assistance for charities and explained that different jurisdictions provide different tax advantages to different categories of charity.<sup>274</sup> In a similar vein, Mark Blumberg (Blumberg Segal LLP) suggested that the federal government consider implementing a system in which “the ability to issue tax receipts is not based on being a “registered charity” but rather ... [on] ... a narrower category of deductible gift recipients.”<sup>275</sup> For his part, Sidney Ribaux (Équiterre) reminded the committee that Canada has a bijural legal system and suggested that the federal government also consider models for supporting tax preferred entities used in civil law jurisdictions, such as France.<sup>276</sup>

Mr. Hunter argued that, before studying the merits of different models for conferring tax advantages on public benefit organizations, consideration should be given to the public policy rationale for distinguishing between different types of organization:

As Dr. Chan said, depending on the full panoply of tax-preferred entities, one possibility is that some would have different tax rates. But that means there are lines, and you have to first decide what the line is between charities, non-profits, social benefit organizations, newspapers that seek non-profit status to receive some preference.<sup>277</sup>

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<sup>274</sup> CSSB, *Evidence*, 22 October 2018 (Chan).

<sup>275</sup> CSSB, *Brief*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 19 November 2018, (Mark Blumberg, Blumberg Segal LLP, as an individual).

<sup>276</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019, (Sidney Ribaux, Co-founder and General Manager, Équiterre).

<sup>277</sup> CSSB, *Evidence*, 22 October 2018 (Hunter).

In the course of the debate on how different types of organizations should be treated, witnesses paid particular attention to qualified donees. The term “qualified donees” is “defined in the *Income Tax Act* (ITA) to include various types of entities, the largest group of which are registered charities.”<sup>278</sup> Qualified donees can issue official donation receipts for gifts they receive from individuals and corporations, enabling the donor to claim tax credits or deductions for their gifts. In addition, qualified donees can receive gifts from registered charities. In short, “the qualified donee designation provides a flexible means for tax-subsidizing and monitoring conduct traditionally not within the realm of Canadian charity.”<sup>279</sup>

The CRA recognizes the following organizations as qualified donees:

- a registered charity (including a registered national arts service organization);
- a registered Canadian amateur athletic association;
- a registered housing corporation resident in Canada constituted exclusively to provide low-cost housing for the aged;
- a registered Canadian municipality;
- a registered municipal or public body performing a function of government in Canada;
- a registered university outside Canada, the student body of which ordinarily includes students from Canada;
- a registered charitable organization outside Canada to which Her Majesty in right of Canada has made a gift;
- Her Majesty in right of Canada, a province, or a territory; and
- the United Nations and its agencies.<sup>280</sup>

The committee notes that Bill C-97, an Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures, proposes amending the definition of qualified donee in the ITA to add “registered journalism organization.”<sup>281</sup> The proposed measure is one of three tax measures addressing Canadian journalism organizations producing original news. The committee did not hear evidence on Bill C-97.

The Pemsel Case Foundation contended that additional classifications of qualified donees could potentially operate as an alternative to expanding the meaning of charity through legislation.<sup>282</sup> However, it cautioned that, unlike the United States, which has chosen to “develop multiple classifications for exempt organizations,” Canada does not currently have

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<sup>278</sup> Terrance S. Carter et al. [Charity Law 2011- Year in Review](#), *Charity Law Bulletin*, No. 275, 25 January 2012.

<sup>279</sup> CSSB, [Brief](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, October 2018, (the Pemsel Foundation), p. 12.

<sup>280</sup> CRA, Guidance CG-010, [Qualified donees](#).

<sup>281</sup> [Bill C-97, an Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures](#).

<sup>282</sup> CSSB, [Brief](#), October 2018, (the Pemsel Foundation), p. 13.



an over-arching policy framework to guide the development of new sub-categories of qualified donee.<sup>283</sup> The Pemsel Case Foundation therefore recommended that a study of policy considerations related to qualified donee status be undertaken to explore the rationale underpinning the designation and to consider whether additional classifications of qualified donee ought to be established.<sup>284</sup>

The committee is sensitive to the need to consider the appropriate tax treatment for emerging groups, such as non-profit social enterprises, and to ensure that existing categories of qualified donee continue to reflect the needs of Canadian society. It also recognizes the importance of considering how the concept of “qualified donee” should fit within the overall regulatory scheme, as well as exploring whether different types of qualified donees should be treated differently under the ITA. This consideration is an important undertaking that would require a period of significant reflection and consultation to allow Canada to develop a principled regulatory framework to support the sector.

Therefore, the committee recommends,

### **Recommendation 26**

**That the Government of Canada, through the Advisory Committee on the Charitable Sector, review the policy considerations relating to qualified donee and tax preferred status. This review should be conducted with a view to establishing a principle-based framework for new categories of qualified donee and other tax preferred entities.**

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<sup>283</sup> Ibid.

<sup>284</sup> Ibid.



As registered charities benefit from significant tax expenditure, they are subject to a number of rules governing the use of their funds. In broad terms, the *Income Tax Act* (ITA) rules provide that charities are permitted to spend funds only on certain activities, or on gifts to other qualified donees.<sup>285</sup> Ensuring that these rules are clear – and fit for purpose – emerged as a priority for all sector stakeholders. As the committee heard:

The ITA rules for charities are key and central. They are not a competing priority or an independent concern. They are the framework on which all else relies.<sup>286</sup>

However, witnesses, including Hilary Pearson (Philanthropic Foundations Canada), noted that these rules have been developed in a piecemeal fashion, resulting in a regime that they is deemed complex and inconsistent, as well as frequently outdated.<sup>287</sup> Moreover, witnesses told the committee that the ITA rules governing registered charities are poorly understood by both the regulator and charities.<sup>288</sup> At an individual level, this lack of understanding is problematic for charities who have their registered charity status denied or revoked as the result of a misunderstanding or misapplication of the rules. At a societal level, communities lose out as the ITA provisions “unnecessarily limit innovative approaches to address contemporary social, economic and cultural issues.”<sup>289</sup>

Consequently, comprehensive review and reform of the ITA provisions governing the behaviour of registered charities was identified as a priority by many witnesses, including Ms. Pearson.<sup>290</sup> More specifically, witnesses highlighted five key areas for reform: categories of registered charity; political activities; business activities; the direction and control/own activities rules; and, the “no gift to non-qualified donees” rule.

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<sup>285</sup> Susan Manwaring and Andrew Valentine, “Canadian structural options for social enterprise,” *The Philanthropist*, Vol. 23, 2010.

<sup>286</sup> CSSB, *Brief*, October 2018 (the Pemsel Foundation) p. 4.

<sup>287</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Hilary Pearson, President, Philanthropic Foundations Canada).

<sup>288</sup> See, for example, CSSB, *Brief*, October 2018 (the Pemsel Foundation), p. 4.

<sup>289</sup> *Ibid*, p. 2.

<sup>290</sup> See, for example, CSSB, *Evidence*, 17 September 2018 (Pearson).

Each of these issues raises distinct challenges for charities, the majority of which relate, to some extent, to the references to “charitable activities” in the ITA. As was noted by many witnesses, the common law registers and regulates charities by reference to charitable purposes, saying very little about the activities charities can carry on. In broad terms, “at common law, an activity is a charitable activity if it furthers a charitable purpose.”<sup>291</sup> In other words:

It is through the enforcement of the requirement for exclusively charitable purposes that the common law of charity indirectly regulates the activities of charities.<sup>292</sup>

However, the introduction of references to “charitable activities” to the ITA has reportedly led to a sustained emphasis on activities at the expense of purposes.<sup>293</sup>

Throughout the hearings, witnesses expressed frustration about the confusion generated by the tension between the common law focus on “charitable purposes” and the ITA focus on “charitable activities.” While several witnesses argued in favour of removing references to the term “charitable activities” from the ITA,<sup>294</sup> they nonetheless recognized the importance of prohibiting certain activities or conduct. In Professor Parachin’s view, when Parliament intervenes legislatively “to rein in certain activities where the common law is too enabling ... [it should do so] ... surgically.”<sup>295</sup> In a similar vein, the Pemsel Case Foundation held that:

Provisions addressing activities should be rare and enacted only where they can be justified for explicit tax policy reasons ... Provisions considering activities should recognize that, with limited exceptions – for example, a prohibition of partisan political conduct – the common law allows wide scope in what a charity can do. Activity prohibitions must, therefore, be precise, and clear.<sup>296</sup>

## Categories of registered charity

The ITA recognizes three categories of registered charity: charitable organizations, public foundations and private foundations. These terms are defined in section 149.1(1) of the

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<sup>291</sup> CSSB, *Evidence*, 5 November 2018 (Parachin).

<sup>292</sup> Reconsidering *Bob Jones*: The Problem with Public Policy, the Challenge Finding A Better Solution, p.30, paper presented by Adam Parachin at New York University School of Law, National Center on Philanthropy at the Law, “REVISITING BOB JONES UNIVERSITY: Seeking Clarity on Fundamental Public Policy After 35 Years” October 25 and 26, 2018.

<sup>293</sup> For a historical overview of “charitable activities” in the ITA, see Carl Juneau, “[Charitable Activities under the Income Tax Act: An historical perspective](#),” 2015.

<sup>294</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 3 December 2018 (Karen Cooper, Member, CBA Charities and Not for Profit Section, Canadian Bar Association).

<sup>295</sup> CSSB, *Evidence*, 5 November 2018 (Parachin).

<sup>296</sup> CSSB, *Brief*, (the Pemsel Foundation), October 2018, p. 9.

ITA. The definition of “charitable organization” contains several elements, including the requirement that the organization:

- be constituted and operated for exclusively charitable purposes; and,
- devote all of its resources “to charitable activities carried on by the organization itself.”

In contrast, while maintaining the requirement to be constituted and operated exclusively for charitable purposes, the definition of “charitable foundation” makes no reference to charitable activities.

### Challenges identified by witnesses

Witnesses informed the committee that the distinction between charities and foundations was originally developed to distinguish between the “doers” and the “funders.”<sup>297</sup> However, according to Professor Parachin, the provisions create a false dichotomy:

We have two fundamentals, charitable foundations, which need to be established and operated for charitable purposes; and charitable organizations, which have to devote their resources to charitable activities. That sounds like two distinct things, but given the way that the common law characterizes activities with reference to their purposes, it actually turns out there are two distinct ways of saying the same thing.<sup>298</sup>

As many witnesses told the committee, the wording of these provisions has generated confusion and caused both the courts and the CRA to fixate on activities:

In the context of the last 30 years, we’ve seen that create inordinate confusion with reference to any number of activities, including political activities, business activities, direction and control activities. All of those big picture problems morph out of this one distinction.<sup>299</sup>

### Proposed solutions

The Pemsel Case Foundation recommended that the three existing categories of registered charity in the ITA be replaced with two new categories: public charities and private charities. In the organization’s view, “public and private charities ought to be subject to the same basic regulatory measures, with additional regulation of private charities to prevent clandestine mischief and self-dealing.”<sup>300</sup>

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<sup>297</sup> CSSB, *Evidence*, 5 November 2018 (Parachin).

<sup>298</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 8 April 2019 (Adam Parachin, Associate Professor, Osgoode Hall Law School, York University, as an individual).

<sup>299</sup> Ibid. See also CSSB, *Evidence*, 17 September 2018 (Pearson).

<sup>300</sup> The Pemsel Foundation, *Brief*, October 2018, p. 8.

This recommendation was endorsed by witnesses, including Karen Cooper (Drache Aptowitzer LLP), who noted that she could not envisage a single situation that would justify the retention of the current categories.<sup>301</sup> Witnesses did not propose statutory wording for the new categories, although several have expressed support for omitting any reference to charitable activities in the definition.<sup>302</sup>

The committee is persuaded by the arguments advanced in favour of making changes to the existing categories of registered charity. Therefore, the committee recommends,

### **Recommendation 27**

**That the Government of Canada replace the current categories of registered charity with two new categories: public charity and private charity.**

## **Political activities**

In the course of its hearings, the committee heard testimony on the political activities of charities. As is discussed below, the federal government introduced reforms to this area of the law during the course of the committee's study. The committee makes no recommendations for further reform on this topic at this juncture.

Prior to the recent reforms, the legislative framework governing the political activities of charities was set out in sections 149.1(6.1) and 149.1(6.2) of the ITA. In broad terms, these sections provided that charities had to devote 'substantially all' of their resources to their charitable purposes or activities, but could "carry out a limited amount of non-partisan political activities in support of their charitable purposes."<sup>303</sup> The CRA interpreted the references to "substantially all" as allowing a maximum of 10% of resources to be spent on political activities.<sup>304</sup> According to witness testimony, these rules were unclear and confusing, and served to discourage charities from participating in public debate. For example, Susan Philips argued that the rules "dampened[ed] an enormous amount of

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<sup>301</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 8 April 2019 (Karen Cooper, Legal Counsel, Drache Aptowitzer LLP).

<sup>302</sup> See, for example, CSSB, *Evidence*, 3 December 2018 (Cooper). For her part, Ms. Pearson noted that the question of whether activities should be removed from the ITA could be addressed as part of a broader review of the ITA provisions on charities (CSSB, *Evidence*, 17 September 2018 (Pearson)).

<sup>303</sup> Consultation Panel on the Political Activities of Charities, [Report of the Consultation Panel on the Political Activities of Charities](#), 31 March 2017.

<sup>304</sup> CRA, [Political activities: Policy statement](#).

expertise and knowledge,” as charities chose not to engage in debate for fear of punitive measures, such as loss of their charitable status.<sup>305</sup>

Amendments to the ITA rules on political activities were already being contemplated at the time the committee began its study. In November 2015, the Prime Minister asked the Minister of National Revenue to work with the Minister of Finance to modernize the legislation governing the charitable sector.<sup>306</sup> On 27 September 2016, the Minister of National Revenue “announced consultations with charities to clarify the rules for their participation in political activities.”<sup>307</sup> In March 2017, the Consultation Panel on the Political Activities of Charities tabled its final report recommending, among other measures, that the ITA be amended to allow charities to “fully engage ... in non-partisan public policy dialogue and development, provided that it is subordinate to and furthers their charitable purpose.”<sup>308</sup>

Momentum for change intensified when, in July 2018, the Ontario Superior Court of Justice handed down its ruling in *Canada Without Poverty v. Attorney General of Canada*.<sup>309</sup>

Canada Without Poverty (CWP) is a registered charity under the ITA. Its stated charitable purpose is the relief of poverty, an end it pursues through “public advocacy for policy and attitudinal change.”<sup>310</sup> Following an audit in 2011, the CRA held that CWP was not in compliance with the ITA rules on political activities, since “virtually all” of its activities involved political engagement.<sup>311</sup> CWP challenged the CRA’s approach, contending that the CRA’s interpretation and enforcement of the “substantially all” requirement “as applied to public policy advocacy by registered charities, infringes freedom of expression under section 2(b) of the *Canadian Charter of Rights and Freedoms*.”<sup>312</sup> It also argued that there is no “valid distinction” between “political expression (with the exception of partisan political involvement) and charitable activities.”<sup>313</sup>

As CWP told the committee:

We argued the restrictions on non-partisan political activities restricted our ability to engage with our members and the public in pursuing our charitable purpose of relieving poverty. We argued the provisions stifled the voices of people living in poverty to share their experiences, identify the causes of poverty and publicize recommendations for

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<sup>305</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 April 2008 (Susan Philips, Professor and Graduate Supervisor, Philanthropy and Non-profit Leadership, School of Public Policy and Administration, Carleton University, as an individual). See also CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 26 November 2018 (Terrance Carter, as an individual).

<sup>306</sup> Prime Minister of Canada, *Minister of National Revenue Mandate Letter*, 12 November 2015.

<sup>307</sup> CRA, *Clarifying the rules governing charities’ political activities: consultation process 2016 to 2017*.

<sup>308</sup> Consultation Panel on the Political Activities of Charities (2017).

<sup>309</sup> *Canada Without Poverty v. AG Canada*, 2018 ONSC 4147.

<sup>310</sup> *Ibid*, at para. 11.

<sup>311</sup> *Ibid*, at para. 19.

<sup>312</sup> *Ibid*, at para. 8.

<sup>313</sup> *Ibid*.

necessary changes to laws, policies and programs to relieve poverty. Justice Morgan agreed and said in his judgment that unlike old models of almshouses and soup kitchens, CWP's work to relieve poverty by sharing ideas, achieving attitudinal changes and engaging in public policy dialogue was necessary for the achievement of our purpose.<sup>314</sup>

In its ruling, the Court declared that the 10% limit on political expression infringed, without justification, the right to freedom of expression under section 2(b) of the Charter. Consequently, the court declared sections 149.1(6.2)(a) and 149.1(6.2)(b) to have no force and effect.<sup>315</sup>

On 29 October 2018, the federal government tabled Bill C-86, a second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures.<sup>316</sup> Among other measures, the bill enables a charity to be involved in "public policy dialogue and development activities" without limitation, so long as the activities further the organization's stated charitable purpose.<sup>317</sup> The bill also maintains the prohibition on charities providing "direct or indirect support of, or opposition to, any political party or candidate for public office."<sup>318</sup> Bill C-86 received Royal Assent on 13 December 2018.

On 21 January 2019, the CRA issued draft administrative guidance on Public Policy dialogue and development activities by charities.<sup>319</sup> In its guidance, the CRA interprets the ITA, as amended by Bill C-86, to allow "a charity to fully engage without limitation in [public policy dialogue and development activities] that further its stated charitable purposes, provided they never directly or indirectly support or oppose a political party or candidate for public office." The draft guidance also addresses the meaning of "direct or indirect support."<sup>320</sup>

### Reaction to the reforms

The majority of witnesses were generally supportive of the changes introduced by Bill C-86. Terrance Carter (Carters Professional Corporation) described the measures as a "very

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<sup>314</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 3 December 2018 (Michèle Bliss, Legal Education and Outreach Coordinator, Canada Without Poverty).

<sup>315</sup> *Canada Without Poverty v. AG Canada*, 2018 ONSC 4147 at para. 72.

<sup>316</sup> [Bill C-86, a second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures.](#)

<sup>317</sup> Section 149.1(1) of the ITA, as amended by Bill C-86, defines charitable activities to include "public policy dialogue and development activities carried on in furtherance of a charitable purpose." For further discussion, see CSSB, *Evidence*, 26 November 2018 (Carter).

<sup>318</sup> ITA, section 6.1 and section 6.2.

<sup>319</sup> CRA, CG-027, "[Public policy dialogue and development activities by charities](#)," (Furthering a stated charitable purpose), 21 January 2019.

<sup>320</sup> *Ibid.*



positive step forward for the charitable sector,<sup>321</sup> while Mr. Shimon Fogel (Centre for Israel and Jewish Affairs) argued that the bill offered “a reasonable and balanced approach, especially as it is clear many charities would simply not be able to achieve their stated goals without engaging in public policy dialogue.”<sup>322</sup>

However, some witnesses expressed reservations, emphasizing the need for caution. For example, Mr. Blumberg argued that the changes would not “empower your average charity to be involved in political activities,” but would instead help “a few wealthy people or large companies essentially dominate the discourse in our country.”<sup>323</sup> In a similar vein, Gail Picco (Charity Strategist) argued that “allowing charities to spend an unlimited amount of money on political activity ... has profound and negative implications for the country.”<sup>324</sup> Witnesses, including Mr. Carter, disputed this analysis.<sup>325</sup>

In response to concerns that the new provisions would provide an opening for foreign involvement in Canadian elections, the committee heard that electoral interference is “a matter for electoral law, not charity law.”<sup>326</sup> The committee is also aware of concerns that foreign funded non-profit organizations and charitable foundations have been engaged in overtly political campaigns targeting certain Canadian economic sectors and Canadian workers.

For his part, while recognizing that charities can enrich the discussion and development of public policy, Professor Parachin expressed concern that Bill C-86 went “too far,” potentially blurring the distinction between charity and lobbying.<sup>327</sup> In response, witnesses including the Pemsel Case Foundation, argued that the common law offers sufficient safeguards to prevent the registration of single-issue groups that would devote all their resources to political efforts.<sup>328</sup>

Other witnesses discussed the ITA’s prohibition on “partisan” political activities, specifically the reference to “direct or indirect support.” For example, while acknowledging that the CRA has “done a pretty good job” in providing guidance on its interpretation of direct and indirect support, Mr. Carter said his preference would be not to have a reference to “direct or indirect” support.<sup>329</sup>

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<sup>321</sup> CSSB, *Evidence*, 26 November 2018 (Carter).

<sup>322</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019 (Mr. Shimon Fogel, Chief Executive Officer, Centre for Israel and Jewish Affairs).

<sup>323</sup> CSSB, *Evidence*, 19 November 2018, (Blumberg). For further discussion of *Citizens United*, see CSSB, *Brief*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, October 2018 (Gail Picco, Charity Strategist and writer).

<sup>324</sup> *Ibid* (Picco).

<sup>325</sup> CSSB, *Evidence*, 26 November 2018 (Carter).

<sup>326</sup> CSSB, *Evidence*, 22 October 2018 (Wyatt).

<sup>327</sup> CSSB, *Evidence*, 5 November 2018 (Parachin).

<sup>328</sup> CSSB, *Brief*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, November 2018 (the Pemsel Case Foundation) p.9.

<sup>329</sup> CSSB, *Evidence*, 26 November 2018 (Carter). See also CSSB, *Brief*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 October 2018, (Réseau Québécois de l’action communautaire), which comprises the organization’s 2016 submission to the CRA detailing, among other issues, the conflict between the CRA’s approach to partisan political activities and that used by the Government of Quebec.

While noting the Canadian Bar Association’s support for the “overall approach” of Bill C-86, Ms. Cooper expressed disappointment that the bill retained a reference to charitable activities in the definition of charitable organizations:

In my experience, that is one of the most overused and misunderstood phrases in the statute with respect to the regulation of charities. This language has created considerable uncertainty in the past and perpetuates unnecessary confusion about the distinction between a purpose and an activity that plagues much of the discourse surrounding the compliance obligations of charities.<sup>330</sup>

Finally, while the majority of the discussion focussed on the political activities of charities, it was pointed out that the ITA does not restrict the political activities of non-profit organizations:

If you want to do unlimited political activities, it is so easy. Just set up a non-profit, which is tax-exempt, and you can do unlimited partisan or non-partisan political activities and no one will bug you.<sup>331</sup>

The committee observes that reforms to the rules governing political activities have recently been enacted. The committee makes no recommendation for further change to these rules, although it encourages the Government of Canada to monitor the impact of these rules through regular statutory review.

## Business activities

### Challenges identified by witnesses

Charities are restricted as to the forms of business-like activities they may undertake to generate revenue for use in charitable activities. The rules surrounding permissible activities are complex and have evolved over the years. Legal interpretation of the current case law and CRA policy holds that, to be permissible, “business activity must... play a clearly minor role, in terms of both resources and attention, in comparison to the charity’s charitable purpose.”<sup>332</sup>

These provisions are widely held to be outdated:

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

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<sup>330</sup> CSSB, *Evidence*, 3 December 2018 (Cooper).

<sup>331</sup> CSSB, *Evidence*, 19 November 2018 (Blumberg).

<sup>332</sup> Manwaring and Valentine (2010), p. 400–401.

some of those who were involved in drafting the existing rules related to business activities by charities, those provisions were meant to cover things like hospital auxiliaries running gift shops. They certainly did not foresee situations where charities would be landlords or even developers, when they would operate state-of-the-art fitness facilities or provide endorsements for a fee.<sup>333</sup>

Witnesses, including Brian Emmett (Imagine Canada), argued that reform is sorely needed, particularly in light of the context in which charities operate. By his estimate, Canada's social deficit gap will stand at approximately \$26 billion in 2026, placing increasing pressure on charities. In order to meet growing demand, witnesses, including Mr. Emmett, told the committee that charities will need to explore every funding opportunity available to them. In Mr. Emmett's view, a declining donor base, coupled with challenges in accessing government funding, means that earned income is the only option that offers "any prospect of long-term growth" for funding the sector.<sup>334</sup>

### Proposed solutions

Many witnesses argued that adopting a "destination of funds" test is key to helping charities raise much needed revenue.<sup>335</sup> As one witness observed:

It's time to permit a charity to carry on any type of revenue-generating activity so long as the proceeds are used to further its charitable purpose. This would mean the focus would be on the use to which the funds are put, not on how it raises the money.<sup>336</sup>

Witnesses, including Tonya Surman (Centre for Social Innovation), noted that the destination of funds test had been successfully adopted in Australia, following a High Court decision in the *World Investments* case.<sup>337</sup> For his part, Gordon Floyd argued that Canada should follow the example of other common law jurisdictions and allow charities to earn revenue "that can help fund their vital core costs."<sup>338</sup>

In their exposition of the destination of funds test, witnesses explored some of its potential drawbacks. These potential drawbacks include mission drift, venture failure, jurisdictional conflict and unfair competition with the private sector.

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<sup>333</sup> Muttart Foundation (2018), p. 28.

<sup>334</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1 April 2019 (Brian Emmett, Chief Economist, Imagine Canada).

<sup>335</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Tonya Surman, Chief Executive Officer, Centre for Social Innovation) and the Muttart Foundation (2018), p. 29.

<sup>336</sup> CSSB, *Evidence*, 10 December 2018, (Manwaring).

<sup>337</sup> CSSB, *Evidence*, 18 September 2018 (Surman).

<sup>338</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 19 November 2018 (Gordon Floyd, as an individual).

## *Mission drift*

Professor Parachin noted that charities are intrinsically different from businesses and argued that their distinctive character should be preserved:

I think that part of what we're investing in with charities is a culture of giving ... I think there's something profound in us collectively validating, celebrating and recognizing the choice to share and that choice to share through a donation is itself intrinsically important, independently of the goods and services supplied by charities. I think we should worry about preserving that. Market transactions with charities may fund charitable goods and services, but it's not the same thing as the choice to share. I worry about us crowding that out as a defining feature of the sector.<sup>339</sup>

## *Venture failure*

Witnesses recognized the risk inherent in business, acknowledging that some charities' business ventures would fail. However, while recognizing not all charities would have the expertise to undertake revenue generating activities, witnesses maintained that charities, in consultation with their professional advisors, should be free to make this decision for themselves.<sup>340</sup>

For his part, Professor Parachin posited that a struggling business venture may exacerbate mission drift:

For-profits already debate whether to pay dividends or reinvest in the business. Charities would be balancing incommensurable things. Do we relieve poverty or invest in the business?<sup>341</sup>

## *Unfair competition with the private sector*

An argument commonly advanced in opposition to the destination of funds test is that it would give charities an unfair advantage in the marketplace. However, this view has been refuted by a number of sector stakeholders. According to a recent Imagine Canada report, legal academics and economists who have studied competition between for-profit businesses and NPOs generally agree that "unfair competition in the form of predatory pricing or predatory market expansion is simply not a serious policy concern."<sup>342</sup> Indeed, Imagine Canada contends that for-profit businesses are growing more rapidly than

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<sup>339</sup> CSSB, *Evidence*, 8 April 2019 (Parachin).

<sup>340</sup> The Muttart Foundation (2018), p. 29.

<sup>341</sup> CSSB, *Evidence*, 8 April 2019 (Parachin).

<sup>342</sup> Brian Emmett, *Unfair or unwanted? Competition between charities and for-profit businesses in Canada*, Discussion Paper, Imagine Canada, January 2019.

charities in key markets to the extent that charities “may even face extinction in a number of important areas.”<sup>343</sup>

### *Jurisdiction*

While generally supportive of the concept of a destination of funds test, Mr. Aptowitz (Drache Aptowitz) reminded the committee that jurisdictional issues may arise. In his view, the ITA rules on business activities are arguably unconstitutional because they do not have “a direct bearing on the collection of an income tax.”<sup>344</sup>

Overall, although recognizing that difficulties could arise with the implementation of a destination of funds test, witnesses believed that these challenges are not insurmountable. In terms of strategies to mitigate any negative effects, the Muttart Foundation suggested that the CRA should develop “additional guidance” in consultation with charities. Joanna Cave (Mowat Centre) also pointed out that a destination of funds test could be tested in a “regulatory sandbox” prior to implementing a sector-wide change.<sup>345</sup>

Lastly, in the absence of regulatory change, Ms. Manwaring noted that “the sector would benefit from clarity and modernization around the rules for when a business activity that directly furthers a charitable purpose will be considered related.”<sup>346</sup> In her view, technological change has delivered opportunities for revenue generation that have not yet been contemplated by the current administrative guidance on permissible related business.<sup>347</sup>

The committee is acutely sensitive to the need to explore innovative means of ensuring adequate funding for the sector, while simultaneously protecting against undue risk. The committee also understands the need for clear guidance to help charities confidently navigate the rules with which they must comply.

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<sup>343</sup> Ibid.

<sup>344</sup> CSSB, *Evidence*, 8 April 2019 (Aptowitz).

<sup>345</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 October 2018 (Joanne Cave, Social Policy Researcher, the Mowat Centre). In evidence given to the committee, Stephen Huddart defined “regulatory sandboxes” as “specific time-bound experiments and exemptions to allow development and assessment of new regulatory models.” CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Stephen Huddart, President and Chief Executive Officer, The McConnell Foundation).

<sup>346</sup> CSSB, *Brief*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Susan Manwaring).

<sup>347</sup> Ibid.

Therefore, the committee recommends,

### **Recommendation 28**

**That the Government of Canada direct the Canada Revenue Agency to develop and implement a pilot project to assess the viability of granting registered charities greater latitude in undertaking revenue-generating activities (provided the proceeds are used to further charitable purposes) through the implementation of a “destination of funds” test.**

### **Recommendation 29**

**That the Government of Canada direct the Canada Revenue Agency to update policy statement CPS-019 (What is a related business) to provide greater clarity on permissible revenue generation activities for registered charities, particularly with regard to revenue generating opportunities arising from new technologies.**

## **Direction and control/Own activities**

During its study, the committee heard from charities, including Farm Radio International and Islamic Relief Canada, that carry out activities in other countries. Among other issues, these witnesses expressed concern about the ITA’s “own activities” requirements, also referred to as the “direction and control” requirements.

As mentioned above, part of the definition of “charitable organization” in section 149.1(1) of the ITA requires that all of the resources of a charitable organization be “devoted to charitable activities carried on by the organization itself.” Furthermore, the ITA stipulates that a charity can have its status revoked if it makes a gift to a non-qualified donee.<sup>348</sup> These rules have been interpreted by the CRA to mean that “registered charities are only permitted to spend their resources in one of two ways: on grants to qualified donees or on their “own” charitable activities.”<sup>349</sup>

As most of the overseas organizations that are partnering with Canadian charities are not qualified donees, the Canadian charities’ activities must be carried out by the organizations themselves. This requirement is often problematic since many charities are not in a position to carry out foreign charitable activities directly.<sup>350</sup> To overcome this problem, a charity that does not operate through its own staff and volunteers, can enter into an

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<sup>348</sup> ITA, section 149.1(2).

<sup>349</sup> Andrew Valentine, “[Foreign Activities by Canadian Registered Charities: Challenges and Options for reform](#),” *The Philanthropist*, 21 November 2016.

<sup>350</sup> *Ibid.*

arrangement with an intermediary organization which conducts “local activities on the Canadian charity’s behalf.” Among other requirements, the arrangement must provide for “direction and control” on the part of the Canadian charity.<sup>351</sup> According to stakeholders, demonstrating “direction and control” in such partnerships involves “complex written agreements” and “onerous reporting requirements,” which engender “unnecessary” administrative costs.<sup>352</sup>

While stakeholders recognize that the CRA must work within the “own activities” rule set out in the ITA, many believe that the CRA’s “insistence on a Canadian charity’s direction and control over a foreign intermediary goes further than necessary” to satisfy the ITA requirement.<sup>353</sup> In the view of the Canadian Bar Association, the CRA’s guidance on direction and control could be relaxed without falling foul of the statutory requirements.<sup>354</sup>

### Challenges identified by witnesses

Witnesses told the committee that the “own activities/direction and control” requirement presents a number of challenges. In particular, witnesses focused their comments on practical obstacles, compliance costs, inconsistency with contemporary values and uncertainty.

#### *Practical obstacles*

It has been noted that the Canadian rules are “particularly problematic for charities that operate as part of an international network of affiliated charities.”<sup>355</sup> In particular, problems arise when a Canadian charity is not the dominant partner within an international network and cannot exert the direction and control that the CRA requires.<sup>356</sup> Indeed, as Mr. Aptowitz noted, it would be “a bit of a farce” to suggest a Canadian charity with a minor role in a project *should* have control over the project.<sup>357</sup>

#### *Cost*

Witnesses informed the committee that charities incur significant costs trying to prove direction and control, “with little evidence of any harm being prevented.”<sup>358</sup> Witnesses including Mr. Al-Rawni (Islamic Relief Canada) explained the consequences of compliance costs in terms of lost opportunity:

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<sup>351</sup> Ibid.

<sup>352</sup> Canadian Bar Association, *CRA Proposed Guidance on Activities Outside of Canada for Canadian Registered Charities*, October 2009.

<sup>353</sup> Ibid.

<sup>354</sup> Ibid.

<sup>355</sup> Valentine (2016).

<sup>356</sup> Ibid.

<sup>357</sup> CSSB, *Evidence*, 8 April 2019 (Aptowitz).

<sup>358</sup> See, for example, CSSB, *Evidence*, 10 December 2018, (Manwaring).



Managing the types of onerous requirements to demonstrate direction and control can be quite expensive. So we shy away from funding programs and projects, less so in Canada but specifically overseas, which are small amounts. Anything less than a quarter of a million dollars is not a huge amount when you are thinking of good works in Canada, but it's a massive amount if you are thinking of a village in Niger or a community in Nepal. For a community in Nepal and a group of female-headed households, a quarter of a million Canadian dollars would literally change their lives forever. But you couldn't engage in projects smaller than that because the cost of ensuring direction and control from a Canadian perspective is quite high. That's a real challenge for us.<sup>359</sup>

Ms. Cooper further noted that, as charities in other jurisdictions are not subject to direction and control requirements, Canadian charities face higher compliance costs than these charities and cannot operate as efficiently as charities in other jurisdictions.<sup>360</sup>

### *Inconsistency with contemporary values*

Many witnesses told the committee that the direction and control requirements sit uneasily with contemporary international development values, and potentially undermine the success of a given project.

Gordon Floyd described "direction and control" as a "condescending approach" that had been shown to undermine success and sustainability,<sup>361</sup> while Kevin Perkins (Farm Radio International) argued that the rules prevent local organizations from strengthening their own capacity:

Our ultimate success depends on helping local development partners to become more effective and sustainable. If these [local] organizations function only as intermediary service providers, their critical role in effective development may be diminished, which could undermine the long-term goal of self-reliance.<sup>362</sup>

In addition, witnesses suggested that the direction and control requirements contradict Canadian international development policy, which expects non-governmental organizations "to follow partnership principles of local ownership, participation and inclusive decision-making."<sup>363</sup> In a similar vein, the Canadian Council for International Co-operation (CCIC) characterized the requirements as "a challenge to the goal of equal partnership with local communities and civil society." In particular, the CCIC noted that the requirements run counter to the federal government's Feminist International Assistance Policy, as well as

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<sup>359</sup> CSSB, *Evidence*, 1<sup>st</sup> Session 42<sup>nd</sup> Parliament, 18 March 2019 (Zaid Al-Rawni, Chief Executive Officer, Islamic Relief Canada).

<sup>360</sup> See, for example, CSSB, *Evidence*, 3 December 2018 (Cooper). See also CBA, *CRA Proposed Guidance on Activities Outside of Canada for Canadian Registered Charities*, October 2009.

<sup>361</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 19 November 2018 (Gordon Floyd, as an individual).

<sup>362</sup> CSSB, *Evidence*, 1<sup>st</sup> Session 42<sup>nd</sup> Parliament, 18 March 2019 (Kevin Perkins, Executive Director, Farm Radio International).

<sup>363</sup> *Ibid.*

“Canada’s commitment through the Grand Bargain of the World Humanitarian Summit, the 2030 Agenda for Sustainable Development, and the Busan Partnership for Effective Development Cooperation.”<sup>364</sup>

While the “own activities/direction and control” requirement poses particular difficulties for Canadian charities carrying out activities abroad, witnesses noted that challenges also arise in the Canadian context.<sup>365</sup> For example, Ms. Manwaring explained that charities also encounter challenges when working with Indigenous groups that are not qualified donees. To illustrate her point, she provided the example of a registered charity helping a First Nation group with farming and food sustainability:

In ... [this] ... example, the current rules would require the First Nation to accept the charity’s support only if the charity had direction and control over how the funds are spent. Can you imagine today a Canadian charity saying to an Indigenous organization, “We can give you the funding, but only if you let us direct and control how that is spent?”<sup>366</sup>

### *Uncertainty*

Although the CRA has published some guidance on its specific requirements with regard to direction and control, charities have noted that there is a “lack of certainty as to where the compliance “line” falls in different situations.”<sup>367</sup> This challenge was raised by witnesses including Mr. Al-Rawni, who noted that his organization always erred on the side of caution.<sup>368</sup>

### **Possible solutions**

Several witnesses identified the rules surrounding “own activities/direction and control” as a priority for reform. Witnesses, including Professor Parachin, pointed out that the problem originates in “an ill-conceived reference” to charitable activities in the ITA.<sup>369</sup> In Ms. Manwaring’s view, addressing the purposes/activities conundrum in the definition of “charitable organization” and “charitable foundation” would partially mitigate the problem.<sup>370</sup>

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<sup>364</sup> CSSB, *Brief*, 1<sup>st</sup> Session 42<sup>nd</sup> Parliament, 22 March 2019, Canadian Council for International Co-operation.

<sup>365</sup> CRA Guidance CG-002 ([Canadian registered charities carrying out activities outside Canada](#) “assumes that a charity working with an intermediary is doing so in order to carry on charitable activities abroad.” However, it is specifically stated that the guidance also applies to “all charitable activities carried out within Canada.”)

<sup>366</sup> CSSB, *Evidence*, 10 December 2018, (Manwaring).

<sup>367</sup> Valentine (2016).

<sup>368</sup> CSSB, *Evidence*, 18 March 2019 (Al-Rawni).

<sup>369</sup> CSSB, *Evidence*, 8 April 2019 (Parachin).

<sup>370</sup> *Ibid* (Manwaring).

## Catalyst for Change: A Roadmap to a Stronger Charitable Sector

In discussing potential solutions to the “own activities/direction and control” problem, organizations stressed that they sought not to reduce oversight, but to increase flexibility. For example, Mr. Perkins suggested that an ideal system would put more emphasis on due diligence and monitoring, while offering greater flexibility to allow partner organizations to make decisions about priorities for their community.<sup>371</sup>

For many witnesses, adopting an “expenditure responsibility test” offers the best way forward. In essence, an expenditure responsibility test is a means of ensuring that charities are held accountable for how funds are spent. As Ms. Cooper explained to the committee, the test would not reduce oversight, but would free charities from having to “prove a fiction,” namely that the activities being reported were their own.<sup>372</sup> In Ms. Pearson’s view, this change could be made “without abandoning the principle that charitable funds be used for charitable purposes.”<sup>373</sup>

Witnesses noted that such a test has been implemented successfully in other jurisdictions, including the United States.<sup>374</sup>

In response to concern that the rule would allow charities to fund organizations involved in nefarious activities, Ms. Manwaring noted that the risk with an expenditure responsibility test is no greater than the risk inherent in the current system:

My experience with the way it works is that it is not any more likely going to happen without the current rules than it would if under the current rules. If somebody in Canada or elsewhere wants to take the money and do something inappropriate with it, they could do it today, even the direction and control, because it’s so hard to find.<sup>375</sup>

With respect to concern about terrorist financing, Ms. Cooper explained that much of that risk is already managed through the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and other financial regulation systems.<sup>376</sup>

Finally, Mr. Aptowitzer pointed out that Canada would not necessarily have to adopt a one-size-fits-all expenditure responsibility test:

I would suggest that there’s probably a range of options for control and direction, depending on nature of the activity undertaken by the charity. Under further thought, we may say that the nature of the control necessary on the distribution of alms for the poor in some part of the world is different from the nature of the control and direction we

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<sup>371</sup> CSSB, *Evidence*, 18 March 2019 (Perkins).

<sup>372</sup> CSSB, *Evidence*, 8 April 2019 (Cooper).

<sup>373</sup> CSSB, *Evidence*, 17 September 2018 (Pearson).

<sup>374</sup> See, for example, CSSB, *Evidence*, 10 December 2018 (Manwaring).

<sup>375</sup> *Ibid.*

<sup>376</sup> CSSB, *Evidence*, 8 April 2019 (Cooper).

would expect or a large multinational organization, engaging in some other activity elsewhere in the world.<sup>377</sup>

The committee understands the importance of the work that Canadian charities carry out abroad and recognizes the need to support charities in their quest to help others. The committee also recognizes the vital role of partnerships between charities and non-charities and believes that, while Canadian charities must be held accountable for their expenditure, contemporary values such as inclusion and local decision-making must also be respected.

Therefore, the committee recommends,

### **Recommendation 30**

**That the Government of Canada direct the Canada Revenue Agency to revise Guidance CG-002 “Canadian registered charities carrying out activities outside Canada.” The revised guidance should demonstrate a shift in focus from “direction and control” to careful monitoring through the implementation of an “expenditure responsibility test.”**

## **The no gifts to non-qualified donees rule**

As explained by Imagine Canada:

A charity can provide money, goods, or services to others as a means of fulfilling its charitable objects ... In addition to directly supporting its objects, a charity can also provide a gift of money or goods to another organization so that the other organization can fulfil its objects, but only if the other organization is ... a qualified donee.<sup>378</sup>

A transfer of funds to a non-qualified donee is cause for revocation of charitable status.<sup>379</sup>

In the view of some commentators, the “no gifts to non-qualified donees rule” inhibits collaboration in the sector. As Lynn Eakin (Ontario Nonprofit Network), explained to the committee, this rule means that charities “can’t fund a trusted non-profit partner to divide up who does what.” In her view, this is problematic, since:

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<sup>377</sup> CSSB, *Evidence*, 8 April 2019 (Aptowitz).

<sup>378</sup> Imagine Canada, *Giving gifts to others*.

<sup>379</sup> Susan Ramsundarsingh and Loren Falkenberg, “An exploration of Charity/Non-Charity Partnerships in Canada,” *Canadian Journal of Nonprofit and Social Economy Research*, Volume 8, No. 1, 2017.

In today's world, it is essential that charities can collaborate to get their work done, especially when you have multiple organizations coming together to try to achieve something.<sup>380</sup>

## Challenges identified by witnesses

As discussed above (direction and control/own activities), the restrictions on gifts to non-qualified donees (combined with the direction and control requirement) raise issues for charities seeking to partner with Indigenous communities. Paulette Senior (Canadian Women's Foundation) explained the problem in the following terms:

The rules governing eligibility are particularly problematic for Indigenous bands that won't apply for qualified donee status. We've heard that bands may disagree with the reporting requirements because the requirements don't respect principles of Indigenous autonomy and self-governance. The result is that they are required to jump through extra hoops, like having fiscal sponsors. Ultimately, this creates another barrier to secure the support that they need.<sup>381</sup>

Susan Ramsundarsingh (University of Toronto) discussed the issue from the perspective of lost opportunities. She informed the committee that partnerships between not-for-profit organizations and registered charities allow charities to "provide mentorship to groups working toward charitable registration."<sup>382</sup> In her view, such partnerships allow charities to increase the capacity and responsiveness of the sector:

The example I'd like to offer is in Calgary when we had floods. In one of the communities that was most impacted by the flood, the community association was the first on the ground, and the trust and relationships they had with community members allowed them to serve the people very quickly in a way that the city and the Red Cross were unable to. As a funder, being able to invest in them directly allowed us to respond in a timely and effective manner.<sup>383</sup>

Finally, she noted that partnerships between charities and other organizations can be used to enhance inclusivity by partnering with leaders from marginalized groups.<sup>384</sup>

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<sup>380</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 19 November 2018 (Lynn Eakin, Policy Advisor, Ontario Nonprofit Network).

<sup>381</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Paulette Senior, President and Chief Executive Officer, Canadian Women's Foundation).

<sup>382</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019 (Susan Ramsundarsingh, Course Instructor and Research Project Coordinator, Factor-Inwentash Faculty of Social Work, University of Toronto, as an individual).

<sup>383</sup> Ibid.

<sup>384</sup> Ibid.

## Proposed solutions

The majority of witnesses expressed support for finding a means to allow charities to work with non-charities, provided adequate safeguards are implemented to ensure that funds are used for exclusively charitable purposes and careful monitoring is established. Nevertheless, some concerns were expressed:

Calls for allowing charities and foundations to give charitable assets to non-qualified donees ignores the fact that these entities or individuals do not have any regulatory oversight to ensure their purposes are charitable (i.e. have a public benefit). Registered charities are the only entity that has this oversight; Non Profit Organizations notably do not. Allowing charitable funds to be flowed through to non-qualified donees without reasonable direction and control essentially eliminates regulatory oversight of registered charities.<sup>385</sup>

As stated above (direction and control/own activities), the committee recognizes the vital role of partnerships between charities and non-charities. While the committee believes that safeguards must be in place to ensure that charitable dollars are spent in furtherance of charitable purposes, it also recognizes that charitable purposes are, at times, best achieved through collaboration with non-charities. Therefore, the committee recommends,

### **Recommendation 31**

**That the Government of Canada direct the Canada Revenue Agency to develop, implement and evaluate a pilot project to allow registered charities to make gifts to non-qualified donees in certain limited circumstances, namely where the gifted funds are subject to careful monitoring and used for exclusively charitable purposes, in order to facilitate cooperation between registered charities and non-charities.**

## Review of Income Tax Act provisions relating to charities

This section of the report has addressed key rules regulating the behaviour and endeavours of charities. Thus far, the committee has identified four areas where broad consensus exists as to the need for change and made five recommendations for immediate reform.

However, the committee also notes that there has been no review of the ITA provisions on charities since they were first introduced 50 years ago and does not believe that the five

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<sup>385</sup>CSSB, *Brief*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 October 2018 (David Oyler, Oyler Consulting).

recommendations set out above constitute the final word on the need for reform. A comprehensive review of the ITA provisions governing charities is long overdue. Such a review will require adequate time and must be undertaken in collaboration with sector stakeholders. The committee also believes that the ITA provisions governing charities require regular scrutiny to ensure they provide adequate oversight while allowing the sector to flourish. Therefore, the committee recommends,

### **Recommendation 32**

**That the Government of Canada review the *Income Tax Act* provisions governing registered charities every five years, beginning no later than next fiscal year.**

As part of its review, the committee recommends,

### **Recommendation 33**

**That the Government of Canada consider which activities registered charities should not be allowed to carry out and proscribe them through precisely defined statutory prohibitions.**





Ensuring adequate and stable funding for the sector is a pressing concern for all stakeholders. As previously discussed, there are three sources of sector funding: government grants and contributions, revenue-generating activities and private donations.<sup>386</sup>

As Pierre Leblanc (Department of Finance) explained to the committee, the Charitable Donation Tax Credit<sup>387</sup> is the main tax incentive used to encourage individuals to donate. However, the federal government offers additional incentives to encourage the donation of certain types of capital property, namely publicly listed securities, ecologically sensitive land and certified cultural property.<sup>388</sup> In Budget 2015, the government proposed extending the exemption from capital gains tax available for donations of publicly listed securities to donations involving private shares and real estate.<sup>389</sup> This proposal was never enacted.

Witnesses told the committee that Canada's donation tax incentive regime is arguably the most generous in the world.<sup>390</sup> However, according to Malcolm Burrows (Scotia Wealth Management):

These incentives have increased the value of gifts, but not the number of donors. Meanwhile, we have witnessed an increase in crowdfunding, which is benevolence generally, not charity, that provides no tax benefits to the donor. Generally, I believe Canada has placed too much emphasis on the donation tax credit to incent ordinary, everyday donations, and frankly they're not needed to the same degree, anyway.<sup>391</sup>

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<sup>386</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1 April 2019 (Brian Emmett, Chief Economist, Imagine Canada).

<sup>387</sup> For further information on the charitable donation tax credit, see CRA, "[Charitable donation tax credit rates](#)."

<sup>388</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 23 April 2018 (Pierre Leblanc, Director General, Personal Income Tax Division, Tax Policy Branch, Department of Finance Canada).

<sup>389</sup> Government of Canada, *Strong leadership: a balanced-budget, low-tax plan for jobs, growth and security* (Budget 2015), p. 20.

<sup>390</sup> See, for example, CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Malcolm Burrows, Philanthropic Advisor, Scotia Wealth Management).

<sup>391</sup> *Ibid.*

This view was echoed by John Hallward (GIV3) who contended that there is “no correlation between tax credits and giving levels across Canada.”<sup>392</sup> Instead, Mr. Hallward argued, “giving levels hinge on donor values.”<sup>393</sup>

That said, while some witnesses contested the value of tax credits as a means of incentivizing “ordinary” donations, many witnesses expressed support for “strategic asset-based giving vehicles.”<sup>394</sup> Witnesses, including Taralee Turner (Royal Winnipeg Ballet) and Philip Landon (Universities Canada), argued in favour of removing the capital gains tax on gifts of private company shares and real estate,<sup>395</sup> noting that they were the last two asset classes to be incentivized.<sup>395</sup>

### **Potential advantages and disadvantages of eliminating the capital gains tax on charitable donations of private company shares and real estate**

In the course of the hearings, several witnesses proposed eliminating the capital gains tax on charitable donations of private company shares and real estate (the proposal). In support of this proposal, witnesses argued that it would increase much-needed funding for the sector and promote equity among entrepreneurs. Nevertheless, witnesses also recognized that the proposal is not without cost and is unlikely to benefit all sectors of society equally. Each of these points is discussed in turn below.

#### *Increased funding for the sector*

According to Donald K. Johnson, removing the capital gains tax on charitable donations of private company shares and real estate would “stimulate an additional \$200 million per annum on charitable donations.”<sup>396</sup> In his view, implementing this exemption would be the “single most important and tax-effective measure the government could introduce to significantly increase charitable donations every year going forward.”<sup>397</sup> For her part, Ruth MacKenzie (Canadian Association of Gift Planners) noted that the elimination of capital gains tax on gifts of listed securities has been “enormously successful, resulting in billions of dollars in shares being donated to charities every year.”<sup>398</sup>

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<sup>392</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (John Hallward, Chief Executive Officer, GIV3).

<sup>393</sup> Ibid.

<sup>394</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Ruth MacKenzie, Chief Executive Officer, Canadian Association of Gift Planners).

<sup>395</sup> Ibid and CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Philip Landon, Vice President, Universities Canada).

<sup>396</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Donald K. Johnson, Board Member, Four Not-for-Profit Organizations in Healthcare, Education, Social Services and Arts and Culture, as an individual).

<sup>397</sup> Ibid.

<sup>398</sup> CSSB, *Evidence*, 17 September 2018 (Mackenzie).

However, other witnesses were less certain that the situation was as clear-cut. For example, Mr. Leblanc remarked that there are “questions about the extent to which ... [the measure] ... would be effective in encouraging incremental donations.”<sup>399</sup> Witnesses, including Susan Manwaring (Miller Thomson LLP) and Professor Madoff (Boston College), said that the measure would *likely* increase funding for the sector, although they were not categorical in their position:<sup>400</sup>

I would not suggest that just because it’s a different source it is not additional. It might be more, though, because the cost of a donation when you don’t have to pay tax on the capital gain goes down ... I would think that it has some impact, but it’s not necessarily that it’s all in addition to what are otherwise cash donations.<sup>401</sup>

### *Equity among entrepreneurs*

Witnesses, including Mr. Johnson, pointed out that the proposal would address “an inequity in the tax system between entrepreneurs who take their company public and donate shares to a charity and those who keep their company private and want to donate shares.”<sup>402</sup>

### *Equity among charities*

Witnesses were divided as to which types of charitable organizations would benefit from the implementation of this proposal. On the one hand, Mr. Johnson refuted the contention that only “large, elitist organizations” would benefit, arguing that “all charities, large and small, and the people they serve will benefit from this measure.”<sup>403</sup>

For his part, Scott Decksheimer (Association of Fundraising Professionals) expressed the view that “hospitals and universities will receive a significant share of any major tax incentive,” but believed that there would nonetheless be “spinoff” benefits for smaller organizations.<sup>404</sup>

Ms. Senior (Canadian Women’s Foundation) and Ms. Douglas (Ontario Council of Agencies Serving Immigrants) were less convinced. Ms. Senior stated that the proposed measure would “not make a significant difference” to her organization,<sup>405</sup> while Ms. Douglas said

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<sup>399</sup> CSSB, *Evidence*, 23 April 2018 (Leblanc).

<sup>400</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 24 September 2018 (Ray Madoff, Professor, Law School, Boston College, as an individual).

<sup>401</sup> CSSB, *Evidence*, 8 April 2019 (Manwaring).

<sup>402</sup> CSSB, *Evidence*, 17 September 2018 (Johnson).

<sup>403</sup> Ibid.

<sup>404</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Scott Decksheimer, Chair, Association of Fundraising Professionals).

<sup>405</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Paulette Senior, President and Chief Executive Officer, Canadian Women’s Foundation).

that funding of that nature did not “trickle down” to the majority of agencies that work with immigrants and refugees:

When I looked across Ontario at my member agencies, I think out of the 234, there’s probably one organization that would benefit from capital gains tax increases. For the rest of the organizations, even organizations that are considered to be large settlement organizations in Canada, they don’t attract those donations.<sup>406</sup>

Finally, in a brief submitted to the committee, the Department of Finance provided the following information on the recipients of gifts of publicly listed securities:

In 2015, approximately two-thirds of the value of these gifts was received by charities with annual revenue exceeding \$10 million. Moreover, the median donation received by charities of this size was eight times larger than the overall median. By comparison, charities with revenue no greater than \$250,000 received roughly 1% of the value of gifts of [Publicly Listed Shares].<sup>407</sup>

### *Taxpayer equity*

Mr. Johnson recognized that the proposed measure may be “viewed as a tax break for the rich.” In his view, the measure would be more accurately characterized as removing a barrier to giving and “enable[ing] individuals with these appreciated assets to give back to their communities.”<sup>408</sup> Viewed from an alternative perspective, Adam Aptowitzer (Drache Aptowitzer LLP) and Mr. Burrows pointed out that nothing prevents individuals from donating shares of their corporations or real estate to charity<sup>409</sup>: such gifts are simply not incentivised by the tax system.<sup>409</sup>

For his part, Professor Parachin accepted that the incentive would disproportionately benefit wealthy donors, but held that this fact was not in itself reason to dismiss the proposal:

There is a long-standing argument against this kind of donation incentive that it’s inequitable, it will disproportionately benefit wealthy donors, and we need to acknowledge that’s true. But I don’t think that’s a reason not to back the measure ... The people who have more are going to share more. They have more to share and I don’t think we should frustrate voluntary wealth redistribution ... on the premise that it’s disproportionately the wealthy doing it. I don’t think that is a fatal objection.<sup>410</sup>

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<sup>406</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Debbie Douglas, Executive Director, Ontario Council of Agencies Serving Immigrants).

<sup>407</sup> CSSB, *Brief*, 30 April 2019 (Department of Finance), p. 303.

<sup>408</sup> CSSB, *Evidence*, 17 September 2018 (Johnson).

<sup>409</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Adam Aptowitzer, Lawyer, Charities and Not-for-Profits, Drache Aptowitzer LLP) and CSSB, *Evidence*, 17 September 2018 (Burrows).

<sup>410</sup> CSSB, *Evidence*, 8 April 2019.

## *Cost to the federal government*

The committee heard diverging views as to how much the implementation of the proposed measure would cost the federal government. According to Mr. Johnson, the foregone capital gains tax on these donations would be \$50-65 million per annum.<sup>411</sup> In addition, the estimated cost of the charitable donation tax credit granted to those making donations is approximately \$65-70 million, for a total cost of around \$125-130 million to the federal government.<sup>412</sup> However, since the exemption is expected to generate \$200 million for charities, Mr. Johnson argued that it is more tax effective than direct government spending.<sup>413</sup>

In contrast, the Parliamentary Budget Officer estimates that eliminating the capital gains tax for donations of real property would cost the federal government \$42-101 million, while eliminating the capital gains tax on donations of shares in private companies would cost \$61-169 million.<sup>414</sup>

Witnesses, including Mr. Aptowitzer, told the committee that, if there are concerns about the cost of the proposal, the capital gains tax rate could be set “at some amount less than it is but greater than zero,” as was done when the exemption for publicly listed securities was first introduced.<sup>415</sup> The Department of Finance informed the committee that “the proportion of capital gains subject to taxation on donated securities was cut in half in 1997 and completely eliminated in 2006.”<sup>416</sup>

## **Practical challenges related to eliminating the capital gains tax on charitable donations of private company shares and real estate**

Although many witnesses recognized that the proposal was unlikely to benefit all charities and all taxpayers equally, the majority nonetheless believed that it could be beneficial for the sector, provided certain safeguards are implemented. In particular, witnesses highlighted the need to address risks related to in-kind donations and to protect the Ecological Gifts Program (EGP).

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<sup>411</sup> CSSB, *Brief*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 27 April 2018 (Don Johnson).

<sup>412</sup> CSSB, *Evidence*, 17 September 2018 (Johnson).

<sup>413</sup> Ibid.

<sup>414</sup> Office of the Parliamentary Budget Officer, *Cost Estimates of Proposed Tax Measures to Encourage Charitable Donations of Assets*, 18 May 2012 (p. ii (estimated static cost) and p. iii (estimated dynamic cost)).

<sup>415</sup> CSSB, *Evidence*, 17 September 2018 (Aptowitzer).

<sup>416</sup> CSSB, *Brief*, 30 April 2019 (Department of Finance), p. 287.

## *In-kind donations*

Mr. Burrows advocated for the donation of private shares and real estate to be incentivized, but “only in certain circumstances.” Noting that “in-kind donations” of these two asset classes raises certain challenges, he recommended that any tax incentive be “tied to donating cash to one or more charities within 30-days of a sale of private shares or real estate.”<sup>417</sup> In his view, this requirement would eliminate all valuation issues and save charities from having to manage the legal and liability issues arising from in-kind donations of property. Mr. Burrows noted that his recommendations were included in the Budget 2015 legislative proposal.<sup>418</sup>

For her part, Professor Madoff urged Canada to learn from the experience of the United States, and ensure that any tax benefits are tied to the amount of cash made available to the charity.<sup>419</sup>

From an alternative perspective, Mr. Aptowitzer noted a requirement to sell the shares and donate the cash within 30 days may raise some unintended consequences:

The difficulty is that a lot of small businesses have a five-year arrangements for the payment of the total funds of the sale. On a practical level, people don’t necessarily have the money available to donate within 30 days and will not be able to take advantage of the incentive program and therefore not be able to donate. They are related questions.<sup>420</sup>

## *Ecological Gifts Program*

Participants in the committee’s study, including the Nature Conservancy of Canada (NCC), expressed concern about the potential impact of the proposed measure on the Ecological Gifts Program (EGP). As a representative of the Nature Conservancy of Canada explained to the committee:

The Ecological Gifts Program provides a way for Canadians with ecologically sensitive land to protect nature and leave a legacy for future generations ... Recipients ensure that the land’s biodiversity and environmental heritage are conserved in perpetuity. Between the inception of the EGP in 1995 and October 31, 2016, 1,260 ecological gifts valued at over \$807 million have been donated, protecting more than 180,000 hectares of wildlife habitat. Many of these ecological gifts contain areas designated as being of national or provincial significance, and many are home to some of Canada’s most at-risk species.<sup>421</sup>

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<sup>417</sup> CSSB, *Brief*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Malcolm Burrows).

<sup>418</sup> Ibid.

<sup>419</sup> CSSB, *Evidence*, 24 September 2018.

<sup>420</sup> CSSB, *Evidence*, 8 April 2019 (Aptowitzer).

<sup>421</sup> CSSB, *Brief*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1 April 2019 (Nature Conservancy of Canada (NCC)).



Witnesses urged the committee to remember that the EGP was “developed not as a tax policy designed to encourage philanthropy, but out of environmental policy, as a lever to encourage protection of privately-owned land.”<sup>422</sup> In the NCC’s view, this approach “to realizing biodiversity through policy and tax mechanisms has made us the envy of other countries” around the world.<sup>423</sup>

Witnesses expressed concern that exempting all gifts of real estate from capital gains tax could have unintended consequences for the EGP:

If all gifts of land are rendered equal by changes to the capital gains tax provisions, then it is reasonable to assume that many of these ecologically sensitive lands will be donated to non-conservation charities, where donors may have a pre-existing affinity. Those lands may be held as open spaces by the charity, but more likely, in order to maximize the value of their gifts, charities will sell lands for the highest market value-use, which is undoubtedly, development.<sup>424</sup>

Mr. Aptowitz observed that the risk of undermining the EGP could be mitigated in one of two ways:

One way would be to enhance the environmental gifts program to make donations of environmental property that much more enticing, or one may consider a program for the donation of regular real estate that would be less rich than providing the same tax credits as is received on the donation of environmental property.<sup>425</sup>

However, Mr. Aptowitz further noted that “there is currently no good answer for what such a program could look like.” In his view, a detailed study would be required in order to develop a program that encourages the donation of non-environmental real estate while avoiding undermining the EGP.<sup>426</sup>

The committee is conscious that eliminating the capital gains tax on charitable donations of private company shares and real estate has the potential to unlock significant funding for the sector. However, it is also aware that there remain questions as to the cost of the proposal; the differentiated way in which the benefits of the proposal will accrue to different groups of society; and, the potential for unintended consequences, with particular regard to the EGP.

Therefore, with a view to balancing innovation with measured risk, the committee recommends,

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<sup>422</sup> Ibid and CSSB, *Evidence*, 18 March 2019, (Cooper).

<sup>423</sup> Ibid (NCC).

<sup>424</sup> Ibid.

<sup>425</sup> CSSB, *Evidence*, 17 September 2018 (Aptowitz).

<sup>426</sup> Ibid.



**Recommendation 34**

**That the Government of Canada, through the Canada Revenue Agency, develop and implement a pilot project to evaluate the impact on the charitable sector of exempting donations of private shares from capital gains tax.**

**Recommendation 35**

**That the Government of Canada, through the Canada Revenue Agency, study the extent to which the donation of non-environmental real estate could be incentivized without undermining the Ecological Gifts Program.**



As explained by Keith Sjogren (Strategic Insight):

A donor-advised fund is an account within an existing public or private foundation. To establish an account, the donor makes an irrevocable gift to the foundation, and in exchange receives a tax receipt along with administrative and investment services ... The funds are granted, often overtime, by the sponsoring foundation to qualified donees on the advice of the account holder.<sup>427</sup>

Mr. Sjogren further noted that the annual disbursement quota for foundations is applicable across the foundation as a whole, not at the donor-advised fund level.<sup>428</sup> In other words, there is no disbursement quota for each individual donor-advised fund. The current disbursement quota for foundations stands at 3.5%.

Donor-advised funds are reportedly the “fastest-growing destination for charitable giving in Canada and the U.S.”<sup>429</sup> In 2016, it is estimated that there were some 10,000 donor-advised fund accounts in Canada, with total assets of approximately \$3.2 billion.<sup>430</sup>

### **Advantages of donor-advised funds**

Mr. Sjogren provided the committee with an overview of the perceived advantages of donor-advised funds:

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<sup>427</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018, (Keith Sjögren, Managing Director, Consulting Services, Strategic Insight, as an individual).

<sup>428</sup> Ibid. A disbursement quota is the “minimum amount a charity is required to spend either on its own charitable activities or on gifts to qualified donees or other registered charities.”

<sup>429</sup> CSSB, *Evidence*, 16 April 2018 (Philips).

<sup>430</sup> CSSB, *Evidence*, 17 September 2018, (Sjögren).

There are a number of benefits to donor-advised funds: they embrace a wide range of donors, it's often possible to open an account and work through a current financial adviser, they are relatively easy to establish and relatively straightforward from an administration perspective, they are lower in cost than some of the alternatives, and it enables individuals to separate their tax planning event from philanthropic action. In addition, people suggest that it simplifies estate planning, it engages young adults in philanthropy, and it provides, if need be, anonymity of donors.<sup>431</sup>

Some of these advantages were echoed by other witnesses, including Shimon Fogel (Centre for Israel and Jewish Affairs), who spoke of the importance of donor-advised funds for his organization and other charities. He described donor-advised funds as "a valuable means for givers to establish legacy funds to advance a philanthropic goal without the logistical challenges and the costs associated with setting up with a discrete or stand-alone foundation."<sup>432</sup>

### Challenges associated with donor-advised funds

Other witnesses – although not necessarily opposed to donor-advised funds - raised a number of concerns that they believe the federal government should address. The primary concerns identified were the delay in benefits being distributed to charities; a perceived lack of transparency; further concentration of assets in the hands of large charities; and the potential for conflict of interest.

#### *Delay in distribution of benefits to charities*

Professor Madoff highlighted what she perceives as a disconnect between the way in which donor-advised funds are structured, and the way in which they operate in practice:

Legally, a transfer to a donor-advised fund is structured the same as any outright transfer to any registered charity. The donor legally gives up all control over the donated property, including the ability to direct charitable transfers from the fund. This is what enables donors to get current tax benefits for their transfer. But despite these legal agreements, the reason people create donor-advised funds is because the charity, in a non-legally binding way, gives the donor effective ongoing control over the charitable disposition, and sometimes investment, of the donated assets.<sup>433</sup>

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<sup>431</sup> Ibid.

<sup>432</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019 (Shimon Fogel, Chief Executive Officer, Centre for Israel and Jewish Affairs).

<sup>433</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 24 September 2018 (Ray Madoff, Professor, Law School, Boston College, as an individual).

According to Professor Madoff (Boston College), while donor-advised funds “feel like private foundations ... [they] ...are not subject to payout, disclosure and oversight rules otherwise applicable to private foundations.”<sup>434</sup> As witnesses told the committee, this can result in money remaining unspent, earning donor-advised funds a reputation as “charitable parking lots.”<sup>435</sup>

Many witnesses expressed concern about the delay between when monies from these funds are granted to a charitable organization and when the corresponding donation is made, particularly because the donor receives the tax benefit at the time the gift is made. Professor Madoff’s told the committee that the “failure to require payout means that donor-advised funds have effectively severed the ties between charitable tax benefits and benefits to charities.” For his part, Kevin McCort (Vancouver Foundation) pointed out that a “giving circle” can be established if funds from a donor-advised fund are simply given to another foundation. In his view, such a cycle “effectively breaks the link between tax benefits given and social benefit conferred.”<sup>436</sup>

That said, while recognising the potential for problems to arise, several witnesses argued that most funds are managed appropriately. According to Mr. Sjogren:

The average distribution, if you look at donor-advised funds, is probably in the range of 12 per cent, so overall, donor-advised funds are distributing three times what is required of a private foundation.<sup>437</sup>

In a similar vein, Mr. Blumberg said that most funds are managed responsibly and fund managers “encourage people to push out 3.5 or 5 per cent or more per year.” Nevertheless, he told the committee that “there are stories of some people who put money in and who have been assured they will never have to spend any of the money because there isn’t a disbursement requirement on each of the funds.”<sup>438</sup>

### *Lack of transparency*

Witnesses including Mr. Sjogren and Mr. Blumberg spoke about the lack of transparency surrounding donor-advised funds:

One of the challenges we have found as researchers is the lack of information about donor-advised funds, that the sponsoring foundations are not required to provide any information on the breakdown of those accounts at all.<sup>439</sup>

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<sup>434</sup> Ibid.

<sup>435</sup> CSSB, *Evidence*, 16 April 2018 (Philips).

<sup>436</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 September 2018 (Kevin McCort, President and Chief Executive Officer, Vancouver Foundation). See also CSSB, *Evidence*, 19 November 2018, (Mark Blumberg, as an individual).

<sup>437</sup> CSSB, *Evidence*, 17 September 2018, (Sjögren).

<sup>438</sup> CSSB, *Evidence*, 19 November 2018, (Blumberg).

<sup>439</sup> CSSB, *Evidence*, 17 September 2018, (Sjögren).

## *Concentration of assets*

In evidence given to the committee, Mr. Blumberg noted that, although the charitable sector has significant assets, almost all are held by a very small number of charities.<sup>440</sup> In Mr. Blumberg's view, the lack of regulation surrounding donor-advised funds could "result in another 20 or 30 charities accumulating huge wealth instead of it going to operating charities and being spent on actual charitable activities."<sup>441</sup>

## *Conflict of interest*

According to Ted Garrard (SickKids Foundation), the largest donor-advised funds in Canada are held by banks "where customers can get both wealth management advice and ... advice on how they should channel their charitable giving."<sup>442</sup> For some witnesses, the involvement of the financial services industry has the potential to create a conflict of interest:

The bigger problem in the United States is that the financial services industry has gotten involved in donor-advised funds because what they have realized is that they get the financial service. If you are a personal financial adviser of someone, Fidelity Charitable pays you a management fee. They have created an army of people marketing these to their clients. Because if you give to the Red Cross, you are not going to get a management fee, but if you give to a donor-advised funds, you, as a financial adviser, get a management fee.<sup>443</sup>

## **Potential solutions**

Witnesses agreed about the importance of ensuring that charitable organizations benefit from donations made to donor-advised funds. Proposed solutions included introducing a disbursement quota for each individual donor-advised fund,<sup>444</sup> imposing a "reasonable payout term" (e.g., 5 or 10 years),<sup>445</sup> and delaying some of the tax incentives available to donors until the funds are distributed to a charity.<sup>446</sup> For example, Professor Madoff suggested giving capital gains relief for money going into a donor-advised fund, but deferring any other tax benefits until the money has been spent by a charity.<sup>447</sup>

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<sup>440</sup> CSSB, *Evidence*, 19 November 2018, (Blumberg).

<sup>441</sup> Ibid.

<sup>442</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019 (Ted Garrard, Chief Executive Officer, SickKids Foundation).

<sup>443</sup> CSSB, *Evidence*, 24 September 2018 (Madoff).

<sup>444</sup> CSSB, *Evidence*, 19 November 2018, (Blumberg).

<sup>445</sup> CSSB, *Evidence*, 24 September 2018 (Madoff), see also CSSB, *Evidence*, 19 November 2018, (Blumberg).

<sup>446</sup> CSSB, *Evidence*, 24 September 2018 (Madoff).

<sup>447</sup> Ibid.

In the context of discussions on donor-advised funds, witnesses also discussed whether the disbursement quota for foundations should be raised and whether the prescribed disbursement rate should be set out in regulation, rather than statute.<sup>448</sup> While some witnesses, including Susan McIsaac (RBC Wealth Management), support increasing the disbursement quota, others felt that further consideration was required.<sup>449</sup> For example, Ms. Manwaring argued that establishing an appropriate disbursement quota is a complex question that “requires careful review.” In addition, she noted that the matter gives rise to constitutional issues, given provincial jurisdiction over property and civil rights.<sup>450</sup> For her part, Ms. Cooper described the topic as a “rabbit hole” that would require extensive study.<sup>451</sup>

The committee is cognizant of the benefits donor-advised funds offer donors and charities; however, it is also aware of the need to protect the integrity of the sector by ensuring that donations reach charitable organizations actively serving communities. Given the complexity of the subject and of the need to base any recommendations on robust information, the committee believes that a period of further study, in consultation with the sector, is required. Therefore, the committee recommends,

### **Recommendation 36**

**That the Government of Canada direct the Advisory Committee on the Charitable Sector to study the advantages and disadvantages of amending the disbursement quota for registered charities; and**

**the advantages and disadvantages of setting the disbursement quota in regulation, rather than statute.**

### **Recommendation 37**

**That the Government of Canada instruct the Advisory Committee on the Charitable Sector to consider means of ensuring that donations do not languish in donor-advised funds, but are instead used to fund charitable activities in a timely fashion.**

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<sup>448</sup> CSSB, *Evidence*, 8 April 2019 (Manwaring).

<sup>449</sup> CSSB, *Evidence*, 1<sup>st</sup> Session 42<sup>nd</sup> Parliament, 18 September 2018, (Susan McIsaac, Managing Director, Strategic Philanthropy, RBC Wealth Management); see also, CSSB, *Evidence*, 19 November 2018, (Blumberg).

<sup>450</sup> CSSB, *Evidence*, 8 April 2019 (Manwaring).

<sup>451</sup> CSSB, *Evidence*, 8 April 2019 (Cooper).



The committee’s mandate also required it to examine the impact of laws and policies governing non-profit organizations (NPOs).

Section 149(1)(l) of the *Income Tax Act* (ITA) defines an NPO as a club, society, or association that is not a charity and that is organized and operated solely for:

- social welfare;
- civic improvement;
- pleasure or recreation; or
- any other purpose except profit.<sup>452</sup>

To be considered an NPO, the ITA also requires that:

No part of the income of such an organization can be payable or available for the personal benefit of any proprietor, member or shareholder, unless the proprietor, member or shareholder is a club, society, or association whose primary purpose and function is to promote amateur athletics in Canada.<sup>453</sup>

There are believed to be approximately 85,000 NPOs in Canada;<sup>454</sup> however, as witnesses told the committee, obtaining reliable data on the number of NPOs is no easy task:

The greatest number of those non-profit organizations exist in the form of a voluntary association, meaning they are not incorporated. If they are not incorporated, it’s even less likely that we count them. If they are incorporated there is an obligation to file a tax return as a corporation. We can count them because they have to file their tax return but if they are small and organized as a voluntary association, they are just not on the radar unless they are of a certain size.<sup>455</sup>

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<sup>452</sup> CRA, [\*Income Tax Guide to the Non-Profit Organization \(NPO\) Information Return\*](#).

<sup>453</sup> CRA, [\*Income Tax Guide to the Non-Profit Organization \(NPO\) Information Return\*](#).

<sup>454</sup> Imagine Canada, [\*Sector Impact\*](#).

<sup>455</sup> CSSB, [\*Evidence\*](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019 (Karen Cooper, Legal Counsel, Drache Aptowitz LLP).



In the course of the study, witnesses made reference to several challenges relating to NPOs, including the lack of reliable and transparent data about such organizations. In addition, witnesses highlighted the CRA's treatment of surpluses held by NPOs; the *Canada Not-for-Profit Corporations Act*; and, the distinction between public and member benefit NPOs. Each of these issues is examined in turn below.

### Treatment of Surpluses Held by Nonprofit Organizations

As a general rule, the income of NPOs is not taxable at the federal or provincial level.<sup>456</sup> Section 149(1)(l) of the ITA provides a definition of "non-profit organizations" and the CRA uses "several indicators ... [to interpret this definition and assess] ... whether an organization is operated exclusively for not-for-profit purposes or is carrying on a trade or business."<sup>457</sup>

In recent years, the CRA has published several technical interpretations that reportedly demonstrate "a narrowing of their view on what is required to demonstrate eligibility for NPO status."<sup>458</sup> As Mr. Bourgeois notes:

[T]hese Technical Interpretations establish a higher standard or benchmark for not-for-profit organizations to meet to avoid taxation on any surplus of income over expenditure. Essentially, it would appear that CRA now views any profit as being problematic unless the profit or surplus was incidental and not intended."<sup>459</sup>

The CRA's reported tendency to "read the not-for-profit purpose rule as a prohibition against profit-making" has been characterized as legally flawed.<sup>460</sup> In evidence given to the committee, Karen Cooper (Drache Aptowitz LLP) argued that the correct test is one of intention.<sup>461</sup> Ms. Cooper's view appears to be supported by other commentators:

The case law...does not wholly support CRA's views. The judicial decisions in this area do recognize a fundamental distinction between a purpose test and a prohibition test. They do not treat all intentional profit-making as conclusive proof of a for-profit purpose. They do not endorse the view that the intended use of the profits, the destination of the funds, is always irrelevant.<sup>462</sup>

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<sup>456</sup> Donald J. Bourgeois, *The Law of Charitable and Not-for-Profit Organizations* (4<sup>th</sup> edition), 2012, LexisNexis, p. 322.

<sup>457</sup> Ibid.

<sup>458</sup> David P. Stevens and Faye Kravetz, "[Current developments in the application of paragraph 149\(1\)\(l\) of the Income Tax Act](#)," *Philanthropist*, 18 December 2013, p. 174.

<sup>459</sup> Bourgeois (2012), p. 322.

<sup>460</sup> Stevens and Kravetz (2013), p. 166 and p. 186.

<sup>461</sup> CSSB, *Evidence*, 18 March 2019 (Cooper).

<sup>462</sup> Stevens and Kravetz (2013), p. 166.

The committee learned of other difficulties associated with the CRA's interpretation of the not-for profit purpose rule. For example, Lynn Eakin (Ontario Nonprofit Network) told the committee that the CRA's interpretation of the rule requires NPOs to ensure that *each* activity breaks even, rather than the combined activities of the organization as a whole.<sup>463</sup> According to some commentators, the legitimacy of this approach is open to question as a matter of law.<sup>464</sup> Finally, it has been noted that the CRA also tends to take the view that NPOs must be run on a break-even basis over the taxation year in question. Some commentators have contended that this requirement is not supported by the wording of the ITA.<sup>465</sup>

### Challenges identified by witnesses

Ms. Eakin told the committee that the CRA's interpretation of the not-for profit purpose rule poses problems for a significant number of NPOs. Indeed, she informed the committee that many public benefit NPOs are "forced to choose between complying with CRA regulation or continuing to operate ... [as] ... they can't do both."<sup>466</sup>

Other witnesses also expressed concern about the CRA's approach to surplus income held by NPOs. According to Susan Manwaring (Miller Thomson LLP), the CRA's rigid approach to surplus income means that "NPOs end up being restricted in how they feel they can generate revenue."<sup>467</sup> For his part, Craig Kielburger (WE Charity) noted the importance of surpluses in enabling NPOs to "build unassigned reserves, the equivalent of capital, to seek loans, for example, from banks to further our mission."<sup>468</sup>

Detailed information on this subject was also provided by Latha Sukumar (MCIS Language Solutions). In a brief submitted to the committee, Ms. Sukumar described MCIS Language Solutions as "a non-profit that has evolved into a social enterprise."<sup>469</sup> Ms. Sukumar told the committee that, as her organization grew, she became increasingly concerned as to whether her organization would be considered to have breached the not-for profit purpose rule.<sup>470</sup> To her mind, greater clarity is essential if the sector is to flourish:

It would be very helpful if CRA had clearer guidelines which acknowledge the range of non-profits that exist, on the use of surplus

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<sup>463</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 19 November 2018 (Lynn Eakin, Policy Advisor, Ontario Nonprofit Network).

<sup>464</sup> Stevens and Kravetz (2013), p. 186.

<sup>465</sup> Stevens and Kravetz (2013), p. 165.

<sup>466</sup> CSSB, *Evidence*, 19 November 2018 (Eakin).

<sup>467</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018 (Ms. Susan Manwaring, Partner, Miller Thomson LLP).

<sup>468</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 24 September 2018 (Craig Kielburger, Co-founder, WE Charity).

<sup>469</sup> CSSB, *Brief*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019, (Latha Sukumar, MCIS Language Solutions), p. 3.

<sup>470</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019, (Latha Sukumar, MCIS Language Solutions).

that they earn. If they took some of the guesswork out, organisations would be more confident pursuing revenue generating activities which would help them innovate.<sup>471</sup>

For her part, Ms. Manwaring spoke of the way, in her view, in which the rules stifle the development of the social enterprise sector:

Public benefit non-profit organizations typically exempted from tax under s.149(1)(l) of the Act are seriously constrained by the provisions of the *Income Tax Act* in their pursuit of surpluses and this inhibits their qualification as social enterprises. This is the case notwithstanding that such surpluses are used to fund the non-profit activity. The lack of any form of regulation or transparency for tax exempt non-profit organizations undermines the ability of Canadians to use this corporate form for public benefit activities.<sup>472</sup>

### Proposed solutions

The statutory scheme governing surplus income has been described variously as “meagre,” “old” and “deficient.”<sup>473</sup> Witnesses, including Ms. Manwaring, argued that regulatory reform is warranted, with some, including Mr. Aptowitz arguing that “a deeper review” of the topic should first be undertaken.<sup>474</sup>

Various reform options were considered in the course of discussions. Adam Aptowitz (Drache Aptowitz LLP) suggested that consideration could be given to a “destination of funds” approach,<sup>475</sup> while other stakeholders have suggested that an approach “that is substantially the same as the approach that is currently applied to the business activities of charitable organizations and public foundations” would be of assistance.<sup>476</sup> For her part, Ms. Sukumar stressed the importance of ensuring that any reform recognize the diversity of today’s NPOs.<sup>477</sup>

The committee understands that non-profit organizations need to be able to plan and save for future costs with confidence. While the committee recognizes that the CRA must apply the law as enacted, it accepts the view that the statutory wording of the *Income Tax Act* is less restrictive than the CRA guidance suggests. Therefore, the committee recommends,

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<sup>471</sup> CSSB, *Brief*, (MCIS Language Solutions), p. 8.

<sup>472</sup> CSSB, *Brief*, 18 September 2018, p. 4.

<sup>473</sup> Stevens and Kravetz (2013), p. 166.

<sup>474</sup> CSSB, *Brief*, 18 September 2018, p. 4 and CSSB, *Evidence*, 8 April 2019 (Aptowitz).

<sup>475</sup> Ibid (Aptowitz).

<sup>476</sup> Stevens and Kravetz (2013), p. 175.

<sup>477</sup> CSSB, *Brief*, 25 February 2019, (MCIS Language Solutions), p. 8.

## Recommendation 38

**That the Government of Canada direct the Canada Revenue Agency to revise its interpretation of the “not-for profit purpose rule” to provide greater clarity and certainty for non-profit organizations (NPOs) regarding the extent to which it is permissible for them to hold surplus income; and to reflect the language of the *Income Tax Act*, which focuses on the purposes of the organization.**

## Member-Benefit Versus Public-Benefit Nonprofit Organizations

As has been noted, the ITA “draws no distinction between public benefit and member benefit NPOs or between closely-held and widely-held NPOs.”<sup>478</sup> However, some witnesses have contended that such a distinction is needed to allow the sector to thrive:

We at [the Ontario Nonprofit Network] now talk about the public benefit sector ... The public benefit sector includes those organizations that operate for the public good ... This definition does not include trade and professional associations ... which, while non-profit in structure, have different purposes and interests. Not being able to distinguish between these two groups is getting in the way of developing public policy for organizations serving the public good. ONN is asking that not-for-profit organizations be divided into member-focused organizations and public benefit organizations in the Income Tax Act.<sup>479</sup>

That said, Ms. Cooper argued that implementing a measure that would distinguish between member-benefit and public-benefit organizations would not be without difficulty, since the line between private and public benefit is not always evident. By way of example, she discussed the Canadian Pharmacists Association, whose work involves both private benefit activities, such as marketing and promotion, and public benefit activities, such as producing the *Compendium of Pharmaceuticals and Specialties*. In her view, while many organizations seem to be private benefit organizations, they “all contribute in some way, if not to the health and safety of Canadians then to better regulation of a particular industry.”<sup>480</sup>

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<sup>478</sup>The Pemsel Case Foundation, [\*Written response to the Senate Special Committee on the Charitable Sector\*](#), 17 October 2018.

<sup>479</sup>CSSB, [\*Evidence\*](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 19 November 2018 (Lynn Eakin, Policy Advisor, Ontario Nonprofit Network).

<sup>480</sup>CSSB, [\*Evidence\*](#), 8 April 2019 (Cooper).

## ***Canada Not-for-profit Corporations Act***

In evidence given to the committee, Cliff Goldfarb discussed the *Canada Not-for-profit Corporations Act* (CNCA) and recommended that certain changes be made when the Act is reviewed in 2020.<sup>481</sup> For her part, Ms. Cooper agreed that changes to the CNCA are essential, and noted that the Canadian Bar Association (CBA) is currently preparing recommendations for change that it will submit directly to Corporations Canada.<sup>482</sup> Ms. Manwaring expressed the view that Corporations Canada should be encouraged to look closely at the CBA's submissions.<sup>483</sup> While Mr. Aptowitz welcomed the upcoming review of the CNCA, he argued that there are "far more fundamental issues" that merit the committee's attention.<sup>484</sup>

The committee observes that section 299(1) of the *Canada Not-for-profit Corporations Act* provides for a review of the Act within 10 years of it coming into force. The committee understands that preparation for this review is underway and does not believe that additional recommendations are necessary at this stage.

## **Transparency**

Several witnesses discussed the lack of information and transparency regarding NPOs. For example, the committee heard that the ITA imposes only "minimal" reporting requirements on NPOs and requires "no transparency for what is reported."<sup>485</sup>

The absence of oversight was also raised by Mr. Blumberg, who reminded the committee that, despite the lack of transparency surrounding their activities, NPOs still receive significant tax benefits. In his view, the Non-Profit Organization Information Return, known as the T1044, should be made public. The T1044 is reportedly filed by 20,000 – 30,000 of Canada's larger NPOs and stored on a CRA database. According to Roxane Brazeau-Leblond (CRA), section 241 of the ITA would need to be amended to allow the CRA to make T1044s publicly available.<sup>486</sup>

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<sup>481</sup> Special Senate Committee on the Charitable Sector [CSSB], *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 19 November 2018 (Cliff Goldfarb, as an individual).

<sup>482</sup> CSSB, *Evidence*, 8 April 2019 (Cooper).

<sup>483</sup> CSSB, *Evidence*, 8 April 2019 (Manwaring).

<sup>484</sup> CSSB, *Evidence*, 8 April 2019 (Aptowitz).

<sup>485</sup> The Pemsel Foundation, *Brief*, October 2018, p. 7.

<sup>486</sup> CSSB, *Evidence*, (Roxane Brazeau-Leblond, Director, Income Tax Rulings Directorate, Legislative Policy and Regulatory Affairs), Branch, Canada Revenue Agency.

Ms. Franc (Canadian Association of Fairs and Exhibitions) said that the members of her organization, who are NPOs, would be unlikely to object to such a recommendation since they already make the information contained in the T1044 publicly available through other channels.<sup>487</sup>

In terms of general data on the sector, Ms. Franc noted that her organization's first recommendation would be to provide Statistics Canada with funding "to evaluate the social and economic impact of charities and non-profits, including sub-categories for agricultural societies on a regular and consistent basis."<sup>488</sup> Other witnesses, including Cathy Taylor (Ontario Nonprofit Network), pointed out that the sector wants more open data on issues such as labour market trends and diversity.<sup>489</sup>

The committee recognizes the capital importance of reliable and accessible data on NPOs, both as a means of instilling public trust in the sector and as a tool to better understand and support the needs of NPOs. Therefore, the committee recommends,

### **Recommendation 39**

**That the Government of Canada direct the Canada Revenue Agency to assess the merits of amending section 241 of the *Income Tax Act* to allow the Canada Revenue Agency to publicly disclose the information contained on the T1044 Non-Profit Organization Information Return.**

## **Review of Income Tax Act provisions relating to non-profit organizations**

The committee has heard the sector's call for timely action on certain matters relating to NPOs, notably the CRA's interpretation of the not-for profit purpose rule and the need for greater transparency and more reliable data. However, the committee also understands that the overall regulatory framework governing the treatment and regulation NPOs requires thorough review. A comprehensive review would allow the government to address a wide range of matters, including whether there is a need to create a statutory distinction between public benefit and member benefit NPOs.

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<sup>487</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 March 2019 (Christina Franc, Executive Director, Canadian Association of Fairs and Exhibitions).

<sup>488</sup> Ibid.

<sup>489</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1 October 2018 (Cathy Taylor, Executive Director, Ontario Nonprofit Network).

Therefore, in addition to its recommendations on the not-for-profit purpose rule and transparency, the committee recommends,

### **Recommendation 40**

**That the Government of Canada direct the Advisory Committee on the Charitable Sector to review the treatment and regulation of non-profit organizations, including whether the *Income Tax Act* should be amended to distinguish between public benefit and member benefit non-profit organizations.**





## SECTION 6 OTHER LEGAL ISSUES

The mandate of the committee is deliberately broad: the sector is diverse and review is long overdue. However, the time constraints of the study were such that it was not possible to examine all legal issues relating to charities and NPOs in detail. In addition to the legal and regulatory issues discussed above, the committee heard testimony on two further issues: director eligibility and Canada's anti-spam legislation. These two issues are considered in turn below.

### Canada's anti-spam legislation

Introduced in 2014, *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, Canada's anti-spam legislation (CASL), requires that senders of commercial electronic messages have the express or implied consent of any recipients. CASL contains several exemptions designed to help charities and nonprofits.<sup>490</sup> However, some measures apply only to "registered charities," as defined in 248(1) of the *Income Tax Act* (ITA).<sup>491</sup>

One respondent to the committee's electronic consultation pointed out that this definition does not cover charity-like organizations, such as "agent[s] of the crown and qualified donee[s]." In the respondent's view, this situation means that such organizations are "very restricted" in their ability to communicate by email. The respondent recommended that the "definition of charity under CASL be expanded to include" a broader range of organizations.

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<sup>490</sup> For further discussion, see David Young, "[Canada's New Anti-Spam Law – Compliance Primer for Charities and Nonprofits](#)," April 2014.

<sup>491</sup> *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, section 10(13).

In more general terms, a representative of Colleges and Institutes Canada expressed concern about what it sees as the uncertainty caused by CASL:

Institutions require the ability to reach out, promote education and skills development opportunities, share their accomplishments and create opportunities for community members and organizations to support their research and partnerships ... Under the current regulatory regime, colleges and institutes face uncertainty regarding potential fines and penalties when they try maintaining contact with alumni. To address these concerns, there is a need for a dialogue between regulators and representatives from alumni and fundraising organizations, to clarify the intent of the legislation and ensure there is a common understanding of the requirements.<sup>492</sup>

For its part, Universities Canada recommended exempting charitable organizations from CASL to ensure that “universities are able to share important information with students, alumni, donors and local community partners.” According to Universities Canada, CASL places an “undue burden” on charities, and post-secondary institutions in particular.<sup>493</sup>

The committee understands that charities and charity-like organizations need to be able to communicate with potential donors. While the committee has not heard sufficient evidence on Canada’s anti-spam legislation to allow it to make a recommendation for reform, it nevertheless notes the importance of further review. Therefore, the committee recommends,

### **Recommendation 41**

**That the Government of Canada instruct the Advisory Committee on the Charitable Sector to review the impact of Canada’s anti-spam legislation on charities and charity-like organizations.**

## **Director Eligibility**

In evidence given to the committee, Mr. Wyatt (Muttart Foundation) discussed the ITA provisions relating to individuals who are ineligible to serve as a director or manager of a registered charity or registered Canadian amateur athletic association.<sup>494</sup> According to the Muttart Foundation, the provisions were originally introduced in response to concerns about abusive tax-shelter schemes:

We have been told that CRA had identified a problem because tax-shelter promoters who had been caught acting inappropriately were simply turning around and seeking to register a new tax shelter, and

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<sup>492</sup> CSSB, *Brief*, Colleges and Institutes Canada, 1 March 2019, p.3.

<sup>493</sup> CSSB, *Evidence*, 25 February 2019 (Landon).

<sup>494</sup> *Income Tax Act*, section 149.1(1).

that CRA had no legislative authority to refuse such registrations. They asked for a change that would give them that authority. Instead, we got this piece of legislation which focuses far more on charities and RCAAAs than on tax-shelter promoters.<sup>495</sup>

The ITA sets out five situations where a person is – or may be – defined as an “ineligible individual,” including

- where a person was convicted of a relevant criminal offence for which a pardon or record suspension has not been obtained; and,
- where a person was a promoter of a tax shelter that was involved with a charity that had its registration revoked in the previous five years.<sup>496</sup>

In the Muttart Foundation’s view, these rules have the potential to create some surprising outcomes:

An 18-year-old who stole a chocolate bar and was caught can never, for life, serve as a director or a senior manager of a charity without getting a pardon or record suspension. Somebody who operated a tax shelter and led to some of the billions of dollars in lost revenue and the hundreds of thousands of audits the CRA had to conduct of taxpayers is banned for a maximum of five years. Somewhere, we’ve gotten things backwards.<sup>497</sup>

The Muttart Foundation acknowledged that a person is not ineligible unless declared to be so by the Minister of National Revenue; however, it maintained that the provisions create uncertainty and recommended that the scope of the provision be narrowed.

The committee recognizes the importance of ensuring that charities are led by individuals whose integrity is beyond reproach. However, the committee also understands that the rules concerning ineligible individuals have the potential to create unjust results in some instances. While the committee has not heard sufficient evidence on the ITA rules governing ineligible individuals to allow it to make a recommendation for reform, it nevertheless notes the importance of further review.

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<sup>495</sup> Muttart Foundation (2018), p. 37.

<sup>496</sup> Ibid, p.36-37.

<sup>497</sup> CSSB, *Evidence*, 22 October 2018 (Wyatt).

Therefore, the committee recommends,

**Recommendation 42**

**That the Government of Canada review the “ineligible individual” provisions set out in section 149.1(1) of the *Income Tax Act* as part of a comprehensive review of the *Income Tax Act* provisions governing registered charities, other qualified donees and non-profit organizations.**



It has been close to 20 years since there was a comprehensive federal focus on the charitable, non-profit and voluntary sector (the Voluntary Sector Initiative) and over 50 years since the *Income Tax Act* provisions relating to charities were reviewed. The Voluntary Sector Initiative, a five-year process bringing together sector and government, focused primarily on regulation and the relationship between government and the sector. The committee began its study knowing much had changed; the committee has learned much about those changes, but also about what has stayed the same.

The sector continues to be diverse, defying a single definition and any “one-size-fits-all” solutions. Many of the sector’s challenges, however, are new. Demographic shifts may be a harbinger of a substantial reduction in volunteers in long-standing and emerging organizations in the sector, and in charitable donations; both are part of the foundation upon which these organizations are built and operate. At the same time, these shifts include a new generation of creative and passionate youth committed to making their communities and the world better places, newcomers and their families who enrich our communities and the sector with new ideas and new energy, and a healthy and prosperous group of older adults, many of whom have the time and money to devote to both their causes and their families.

The sector also continues to respond to natural disasters, gaps in services, the need for opportunities for creative expression, students and other youth looking for role models and mentors, people with mental health and physical challenges, and those with insufficient incomes and inadequate homes. New groups of Canadians, often refugees fleeing difficult situations, seek to integrate without losing their own culture, while Indigenous peoples seek reconciliation and renewal. Outmigration from rural communities, growing knowledge of and attention to the physical environment, and emerging health challenges have sparked new initiatives by volunteers, staff of charitable and non-profit organizations and social entrepreneurs.

Observing that these people and their efforts are critical to their communities and to the whole country, the committee also learned how some federal laws, policies and programs create barriers to the best possible outcomes. Examples are constraints imposed by some sections of the *Income Tax Act* and some administrative requirements of the federal

government's grants and contributions programs. The evolution of what is considered charitable has been largely stagnant. The inadequacy of information about the sector prevents evidence-based decisions needed to ensure the sustainability of individual organizations and the sector as a whole.

Above all, the overall lack of respect for the enormous economic and social contributions of these organizations, their volunteers and their staff undermine its potential. Taken together, these impediments bar the road to finding better answers to complex problems and richer communities for all Canadians, in all regions of the country.

Our recommendations are directed to the Government of Canada and its relevant departments and agencies. We urge the government to pay heed and to work with the Advisory Committee on the Charitable Sector to provide the sector with the support it needs in order to continue its remarkable work. As the Right Honourable David L. Johnston, former Governor General of Canada, remarked, the "culture of giving and volunteerism is a core value in Canada."<sup>498</sup> This shared value is a thread of fixity running through the fabric of our nation, knitting communities together. While strong, this thread is not unbreakable. Demographic change, financial constraints, red tape, outdated rules and a lack of recognition combine to stifle the sector and jeopardize the spirit of giving and volunteerism that we hold so dear. The sector stands ready to weave a brighter future for our nation; it behooves the federal government to ensure that it receives the support it needs to do so. We look forward to the government response, and to seeing the innovative, effective outcomes this sector can achieve in coming years.

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<sup>498</sup> CSSB, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 February 2019 (Right Honourable David L. Johnston, Chair, Rideau Hall Foundation)

# Appendix A: Electronic Consultation Findings

## Introduction

The charitable and nonprofit sector is extremely diverse: it comprises both very large and very small organizations and spans a vast range of public benefit activities locally, nationally and internationally. From the outset of its study, the committee was determined to hear from as many stakeholders – and as many types of organizations – as was possible. Conscious that not all charities and non-profits could afford the time to travel to Ottawa to participate in hearings, the committee developed an electronic consultation (e-consultation) to increase the reach of its study. The e-consultation was launched on 5 October 2018 and closed on 16 November 2018. In total, 695 valid submissions were received.<sup>499</sup>

The committee is tremendously grateful to each of the individuals who took the time to participate in the e-consultation exercise.

## Methodology

The e-consultation was developed as an outreach tool to allow the committee to hear from organizations that might not otherwise participate in the committee's study. In particular, the committee hoped to reach small charities and non-profit organizations (NPOs). The e-consultation relied on three main means of recruiting participants: posting the e-consultation on the committee's public website; drawing on the networks of individual senators; and, sending targeted emails. The nature of the recruitment means that results of the e-consultation cannot provide any statistical information relating to the prevalence of particular views or experiences across the sector as a whole.

## Highlights

The findings of the e-consultation are analyzed in detail below; however, the following high-level observations may be of interest:

- 38% of respondents were from Ontario;
- the majority of respondents completed the e-consultation in English;

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<sup>499</sup> A total of 699 responses to the e-consultation were recorded. However, on closer examination, it was discovered that three of the entries were duplicates, perhaps created by respondents hitting "submit" twice. Another organization noted in the "additional comments box" (question 18) that it was not an NPO or a charity, but an ally of the sector, and suggested that its responses not be included in the results. This entry was removed. In total, four submissions were discarded.



- there were often discernible differences between the responses provided by representatives of organizations with no employees and those provided by representatives of organizations with employees;
- funding was the issue most commonly described as “very concerning” by respondents;
- concern about working conditions and employee retention was evident; and
- many of the responses to the open-ended questions displayed a desire for recognition and frustration with the administrative burden faced by the sector.

### **Analysis**

The e-consultation comprised 18 questions. The questions can be classified as belonging to one of two broad categories: “biographical” questions, designed to provide information about the respondent; and “attitudinal” questions, developed to elicit information on what the various respondents perceived to be the main challenges (and opportunities) faced by the sector. The e-consultation questions are reproduced in Appendix B (electronic consultation questions).

### **Biographical questions (Questions 1–7)**

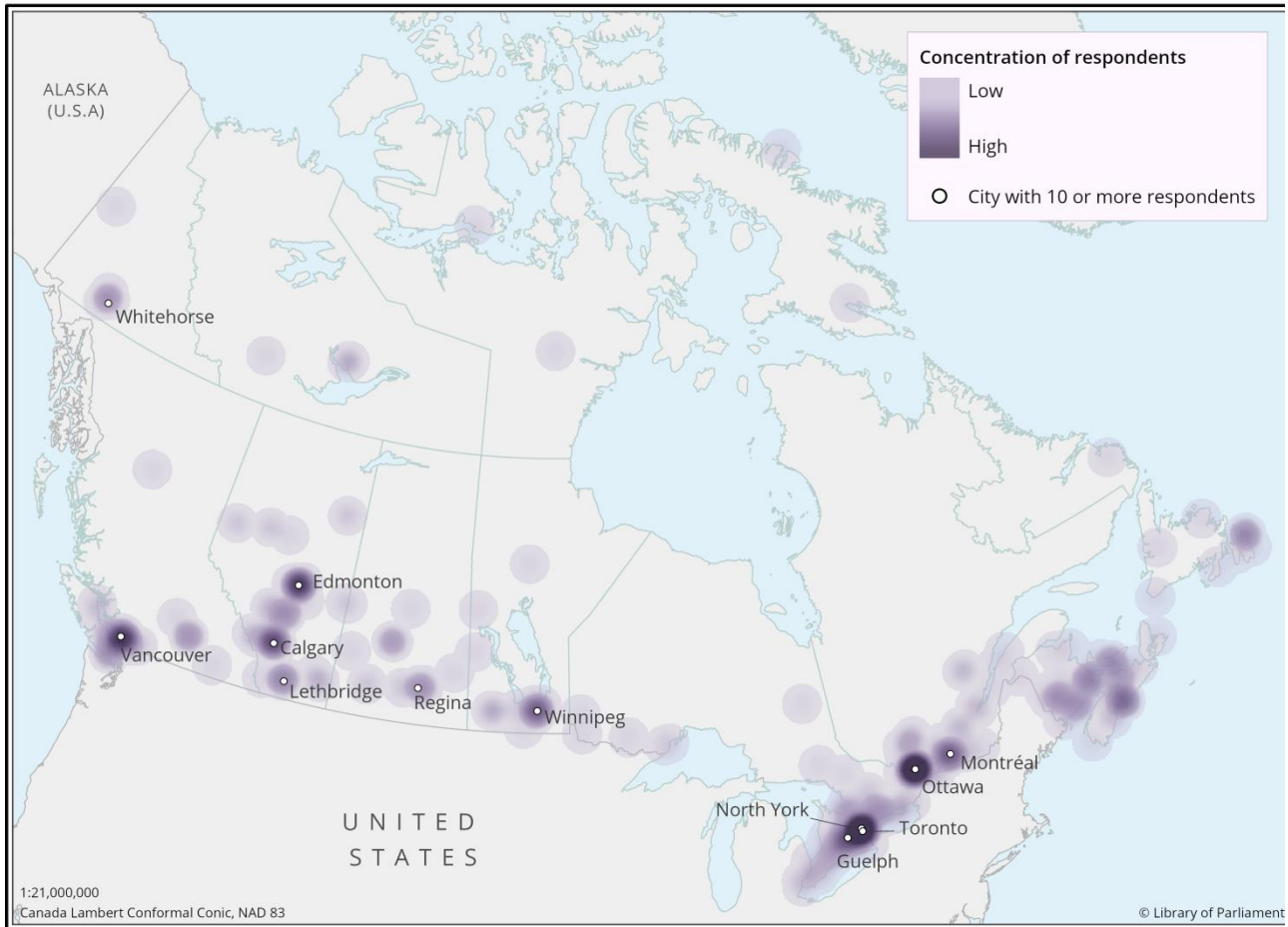
#### **Identifying Information (Questions 1 and 2)**

Question one asked for the name of the respondent’s organization, while question two asked for the individual respondent’s name. As was indicated on the e-consultation portal, this information is confidential and cannot be made publicly available.

#### **Geographical Data (Questions 3 and 4)**

Respondents from all of Canada’s 10 provinces and three territories were represented in the e-consultation. The majority of the respondents were from Ontario (38%), Alberta (17%) and British-Columbia (11%). Figure 1 illustrates the geographic distribution of e-consultation respondents.

**Figure 1: Geographic Distribution of E-Consultation Respondents**



**Source: Map prepared by the Library of Parliament using data obtained from the e-consultation**

## Organization Size and Employment Type (Question 5)

### *Background*

The committee members were particularly interested in learning more about small charities and NPOs. The size of a charity is commonly measured by reference to either annual revenue<sup>500</sup> or number of employees. As it was hoped that respondents would be able to complete the e-consultation in under 10 minutes, and without having to verify financial statements, the e-consultation opted to measure organization size by number of employees.

<sup>500</sup> For example, for the purposes of the CRA's [Small and Rural Charities Initiative](#), small charities were defined as registered charities with total annual revenues under \$100,000.

According to a 2010 study carried out by the HR Council for the Nonprofit Sector (the HR Council), “small organizations comprise three quarters of Canadian nonprofits and employ approximately 168,000 people.”<sup>501</sup> In addition, the HR Council found that more than half of all small nonprofits are registered charities. For the purposes of its study into compensation for full-time employees in small charities, the HR Council defined small nonprofits as having 10 or fewer employees.<sup>502</sup>

In a similar vein, data from Statistics Canada’s 2003 National Survey of Non-profit and Voluntary Organizations (the 2003 National Survey) revealed that 54% of nonprofit and voluntary organizations in Canada had no paid staff, with a further 26% having between one and four paid staff.<sup>503</sup> The 2003 survey also revealed that 56% of paid staff in “non-profit and voluntary organizations” are full-time employees, while 44% are part-time.<sup>504</sup>

Finally, although using a different metric (total annual revenue rather than number of employees), the CRA found that small charities accounted for 54% of all registered charities in Canada, while 14% of registered charities were both small and rural.<sup>505</sup>

### *Who We Heard From*

#### *Organization size*

Approximately 65% of respondents reported that their organization had 10 or fewer employees, with the largest group (228 respondents or 33%) representing organizations with between one and five employees. 19% of respondents reported that their organization had no paid employees. Figure 2 shows the distribution of respondents in terms of the size of the organization they represent.

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<sup>501</sup> HR Council for the Nonprofit Sector, *Compensation for Full-Time Employees in Small Charities in Canada (2010)*, January 2013, p. 3.

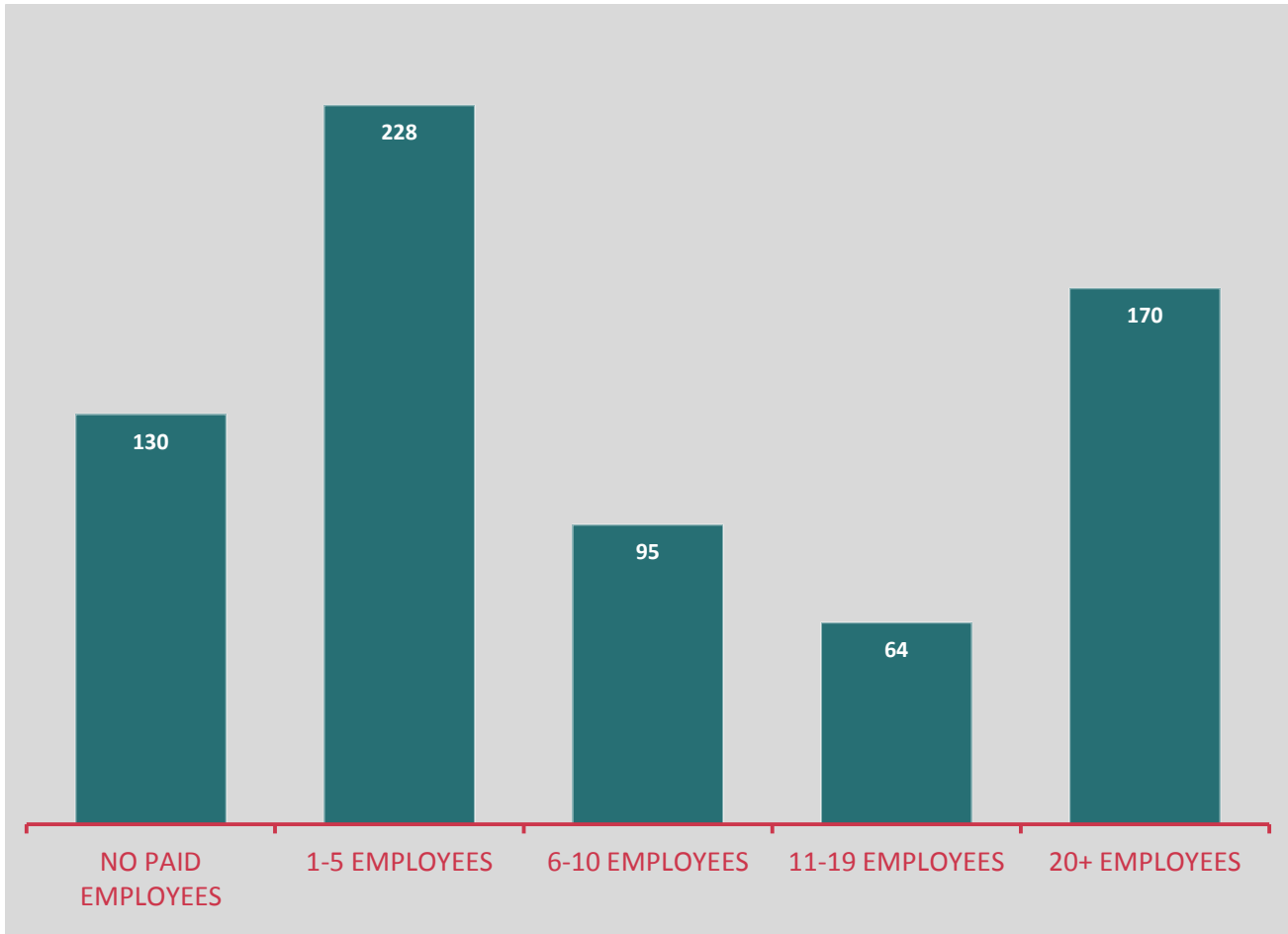
<sup>502</sup> Ibid.

<sup>503</sup> Statistics Canada, *Cornerstones of Community: Highlights of the National Survey of Nonprofit and Voluntary Organizations*, Catalogue No. 61-533-XPE, 2003, p. 36.

<sup>504</sup> Ibid, p. 37.

<sup>505</sup> CRA, *Small and Rural Charities Initiative*, 2 August 2013.

**Figure 2: Number of Respondents by Organization Size, 2018, (n=695)**



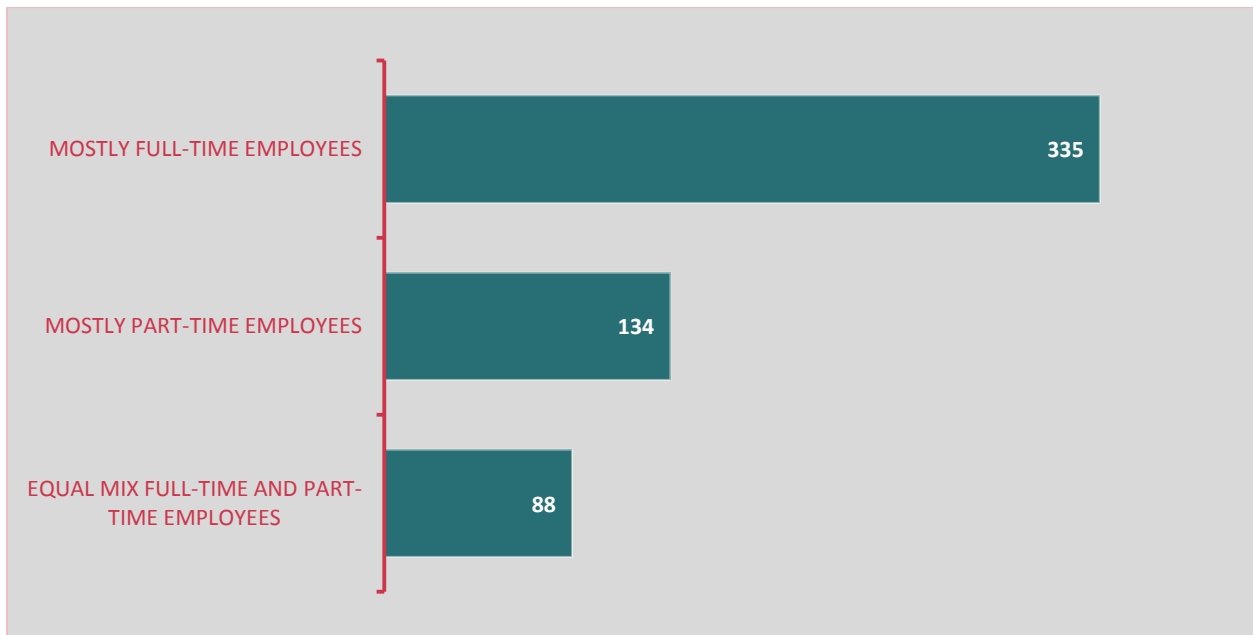
**Note: 8 respondents reported an "unknown number of employees"**

**Source: Figure prepared by the Library of Parliament using data obtained from the e-consultation**

### *Type of employment for paid employees*

The e-consultation also asked respondents whether the majority of their organization's paid employees work for the organization on a full-time basis (more than 30 hours per week). Figure 3 shows that the majority of employees in organizations with paid staff work full-time.

**Figure 3: Type of Employment for Paid Employees, Charities and Non-Profit Organizations, 2018, (n=557\*)**



**Note: 138 respondents are excluded, as they reported "Unpaid employees" (130) and "Unknown number of employees" (8)**

**Source: Figure prepared by the Library of Parliament using data obtained from the e-consultation**

## Diversity (Question 6)

Question 6 (a) asked whether the respondent's organization collects data on employee diversity, while question 6 (b) asked whether the organization collects data on the diversity of its board of directors.

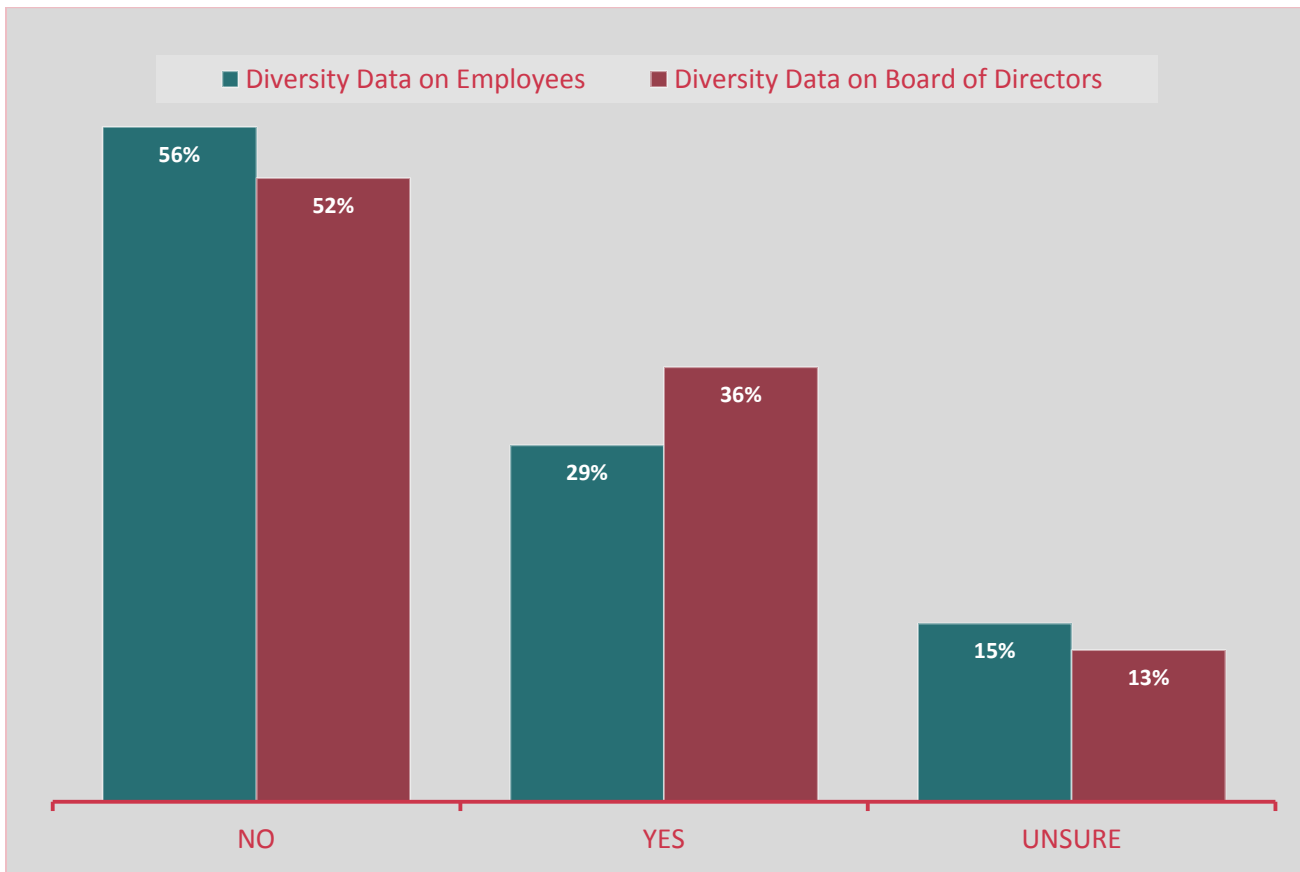
The majority of respondents with employees reported that their organization does not gather data on employee diversity.<sup>506</sup> Similarly, the majority of respondents to whom question 6 (b) applied reported that their organization does not collect data on director diversity.<sup>507</sup> Figure 4 illustrates the responses to these two questions.

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<sup>506</sup> Note that, although 130 respondents previously indicated that their organization had no paid employees, only 125 respondents indicated that the question on employee diversity did not apply to their organization. This discrepancy may reflect respondent confusion as to whether "not sure" or "not applicable" was the more appropriate response.

<sup>507</sup> Eighty-eight respondents stated that the question on director diversity did not apply to their organization, presumably because their organization does not have a board of directors.

**Figure 4: Availability of Data on the Diversity of Employees and Board of Directors, 2018, Among Charities and Non-Profit Organizations that Considered the Question Applicable to their Organization (%)**

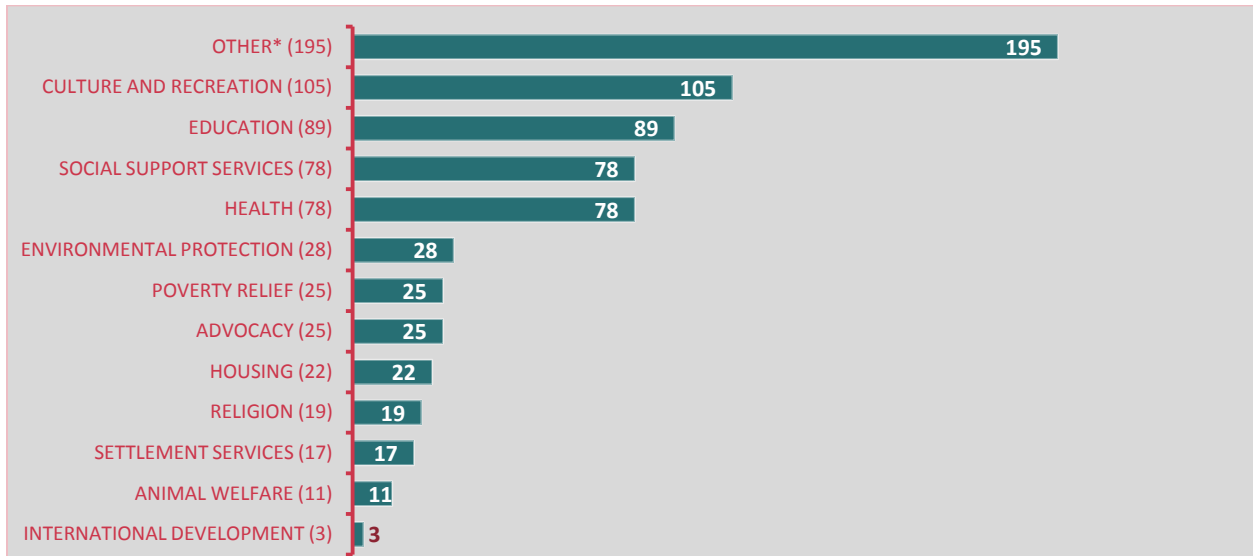


**Source:** Figure prepared by the Library of Parliament using data obtained from the e-consultation. Organizations who indicated that this was not applicable for their employees (n=125) or board of directors (n=88) are excluded from this chart

## Area of Activity (Question 7)

Question 7 asked respondents to identify the main area in which their organizations operate from a pre-populated list of options. Figure 5 shows the distribution of respondents across the various areas of activity identified in the e-consultation.

**Figure 5: Areas of Activity, Charities and Non-Profit Organizations, 2018, (n=695)**



**Source: Figure prepared by the Library of Parliament using data obtained from the e-consultation**

A text box was provided for respondents who did not feel that their organization's area of activity was adequately reflected in the list. Some respondents used this box to note that their organization was active in more than one area; for example, one organization indicated that it was active in "sport, recreation, entertainment, agriculture and hospitality." In addition, many of the respondents who selected "other" could have chosen an option from the list but preferred to provide more detail. For example, rather than selecting "social support services," one organization noted that it delivered monthly food baskets to low-income individuals.

The diverse organizations represented in the "other" category include an organization "providing fire protection and medical response assistance to paramedics," an organization providing "integrated speech-language and social services for persons with communicative impairment due to acquired brain injury or degenerative neurological conditions" and an organization seeking to "preserve and strengthen the quality of Jewish life and engagement in Montreal, Israel and the world." Also of note, over 20 organizations described themselves as primarily supporting the sector, for example, through grant preparation, consultancy services or research.



## Attitudinal questions (Questions 8–17)

The second set of questions, the attitudinal questions, sought to understand the experiences, frustrations and hopes of people in the sector. Question 8 opened the set of attitudinal questions by seeking to elicit high-level information about the challenges and opportunities facing Canada’s charities and NPOs, while questions 9 to 16 allowed participants to provide more detailed information on particular concerns. Question 17 closed the series of questions by inviting respondents to identify their priorities for the future.

### Overarching Challenges (Question 8)

Question 8 presented respondents with a list of eight challenges faced by the sector that had been raised by witnesses during committee hearings. Respondents were asked to indicate how concerning each of the challenges was for their organizations. Figure 6 lists the eight challenges and shows, for each one, the percentage of respondents who considered the challenge to be “very concerning.”<sup>508</sup>

**Figure 6: Overarching Challenges Faced by Charities and Non-Profit Organizations, 2018, (%)**



**Source: Figure prepared by the Library of Parliament using data obtained from the e-consultation**

<sup>508</sup> Note that because of the volume of data, comparative bar graphs have not been prepared for participants who responded “somewhat concerning,” “not a concern,” or “not applicable.” It was decided to focus on the “very concerning” responses on the assumption that this option was selected to indicate respondents’ priorities. As one respondent noted, “all challenges are of concern but we selected ‘very concerning’ for our current priorities.” The same approach was adopted when reporting the findings of question 9 and 10.

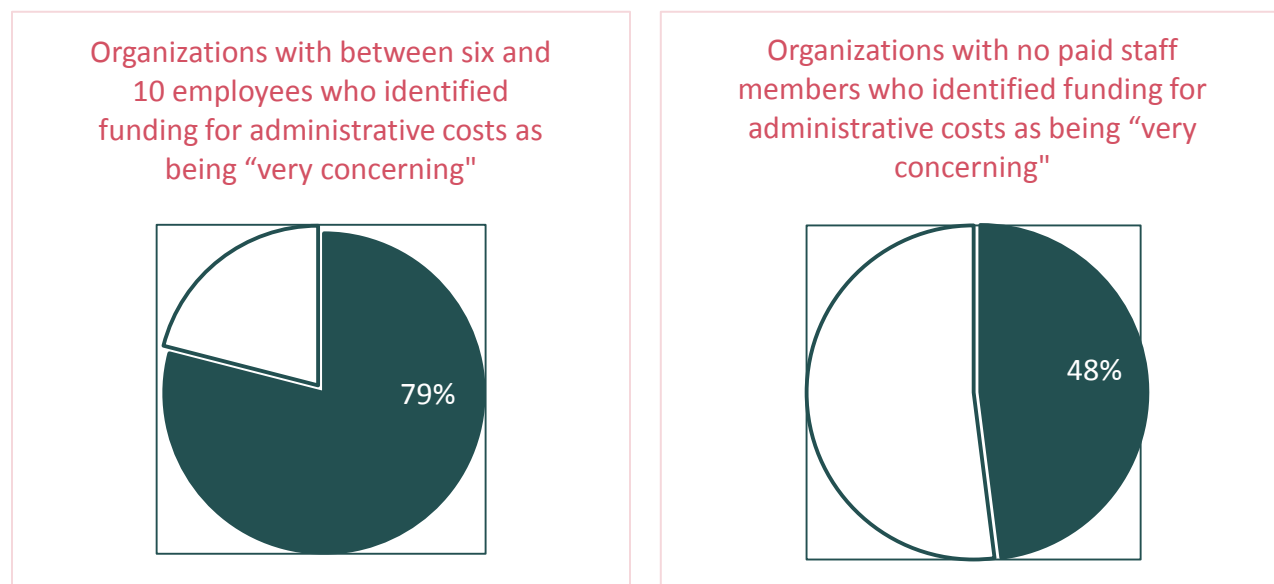
## Catalyst for Change: A Roadmap to a Stronger Charitable Sector

Overall, funding was the challenge most regularly described as “very concerning” by respondents. Broadly speaking, respondents were equally concerned about funding for administrative costs and funding for projects and other charitable work: 66% of respondents indicated that ensuring funding for their organization’s administrative costs is “very concerning,” while 62% identified ensuring funding for their projects and other charitable work as “very concerning.”

At the other end of the spectrum, management of online and social media presence was identified by only 26% of respondents as “very concerning.”

Among the cohort of respondents participating in the e-consultation, the tendency of an organization to identify a challenge as “very concerning” often varied with the size of the organization. For example, while 79% of respondents whose organization has between six and 10 employees identified funding for administrative costs as being “very concerning,” only 48% of organizations with no paid staff members identified this challenge as “very concerning.” Across organizations of all sizes, the figure stood at 66%. Figure 7 illustrates these findings.

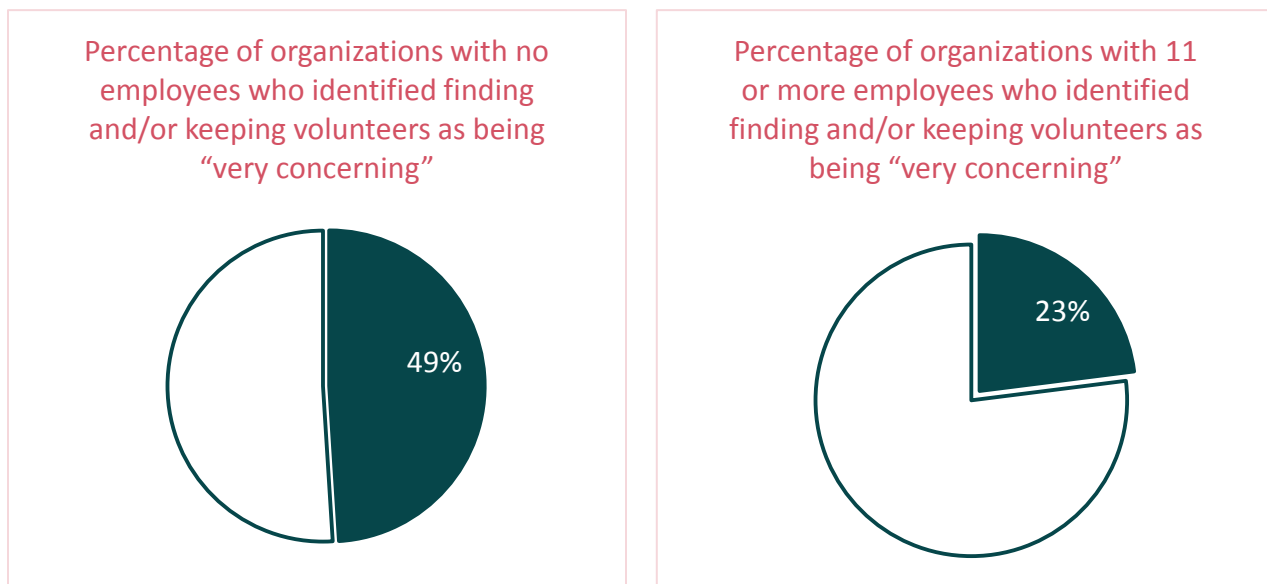
**Figure 7: Attitudinal Differences Between Respondent Organizations With No Paid Staff and Respondent Organizations With Between Six and 10 Employees With Regard to Funding for Administrative Costs**



**Source:** Figure prepared by the Library of Parliament using data obtained from the e-consultation

In a similar vein, only 35% of respondents identified finding and/or keeping volunteers as being “very concerning”; however, this proportion rose to almost 50% for organizations with no employees. Indeed, finding or keeping volunteers was the challenge most commonly described as “very concerning” by respondents from organizations with no employees. Figure 8 illustrates the attitudinal differences between organizations with no employees and organizations with 11 or more employees with regard to finding and keeping volunteers.

**Figure 8: Attitudinal Differences Between Organizations With No Employees and Organizations With 10 or More Employees With regard to Finding and Keeping Volunteers**



**Source: Figure prepared by the Library of Parliament using data obtained from the e-consultation**

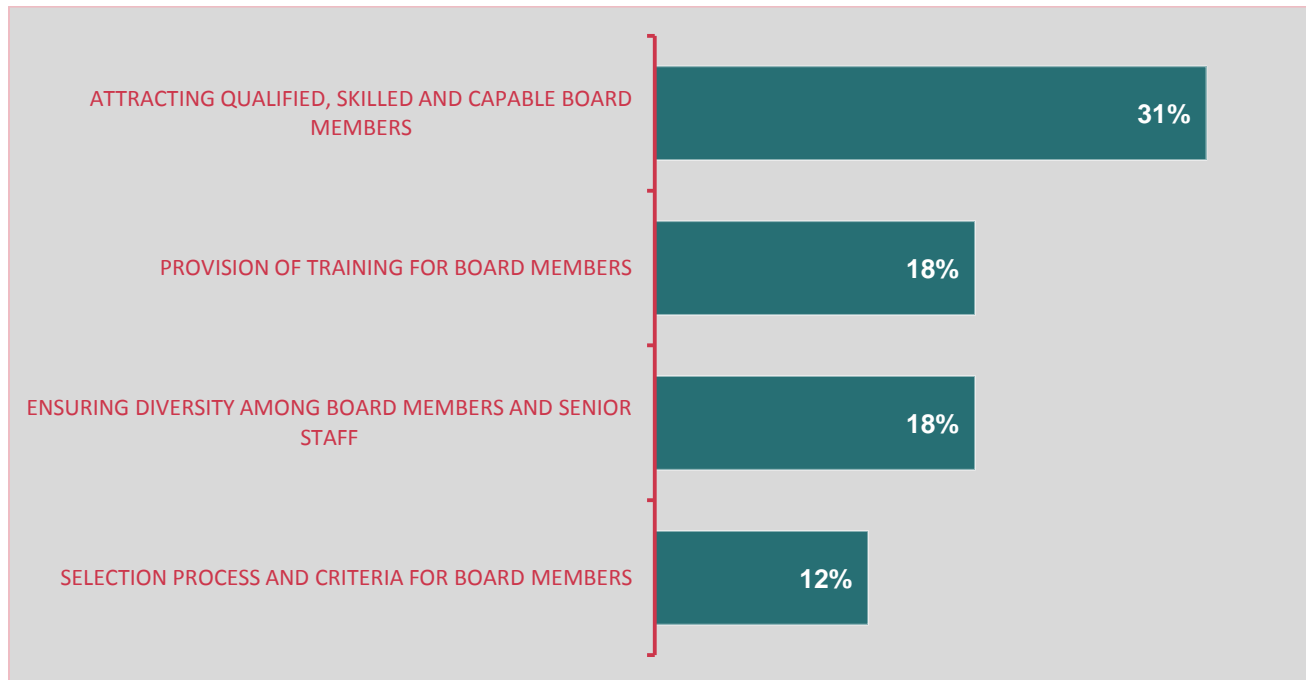
Divergence between the views of organizations with paid employees and those without was not uncommon in the e-consultation responses. While the nature of the recruitment means that no statistically valid conclusion about the sector can be extrapolated from these findings, they nonetheless echo Statistics Canada’s finding that there are “clear differences” between organizations that rely mainly on volunteers to achieve their missions and those that rely on paid staff.<sup>509</sup>

<sup>509</sup> Statistics Canada, *Cornerstones of Community: Highlights of the National Survey of Nonprofit and Voluntary Organizations*, Catalogue No. 61-533-XPE, 2003, p. 10.

## Governance-related Challenges (Question 9)

Question 9 addressed board governance, asking respondents to indicate how concerning four different governance-related challenges are for their organization. Figure 9 lists the four challenges and shows, for each one, the percentage of respondents who considered the challenge to be “very concerning.”

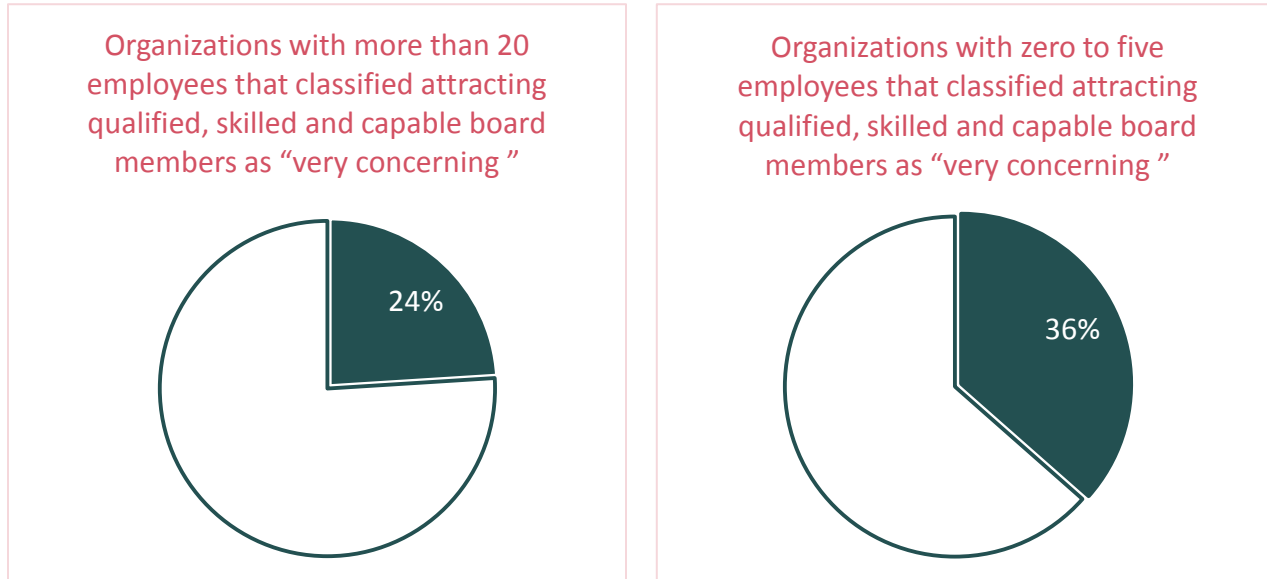
**Figure 9: Governance-Related Challenges Faced by Charities and Non-profit Organizations**



**Source: Figure prepared by the Library of Parliament using data obtained from the e-consultation**

Among the listed governance-related challenges, respondents appeared most concerned about attracting qualified, skilled and capable board members, with 31% of all respondents indicating that this challenge is “very concerning” to them. Concern about attracting qualified, skilled and capable board members is particularly high among respondents representing small organizations (33% of organizations with no employees and 39% of organizations with one to five employees categorized this challenge as “very concerning”), and of markedly less concern among respondents whose organizations have more than 20 employees (24% of this group classified this challenge as “very concerning”). Figure 10 illustrates the attitudinal differences between organizations with fewer than five employees and organizations with 20 or more employees with regard to attracting qualified, skilled and capable board members.

**Figure 10: Attitudinal Differences Between Respondent Organizations With Fewer Than Five Employees and Respondent Organizations with 20 or More Employees With Regard to Attracting Qualified, Skilled and Capable Board Members**



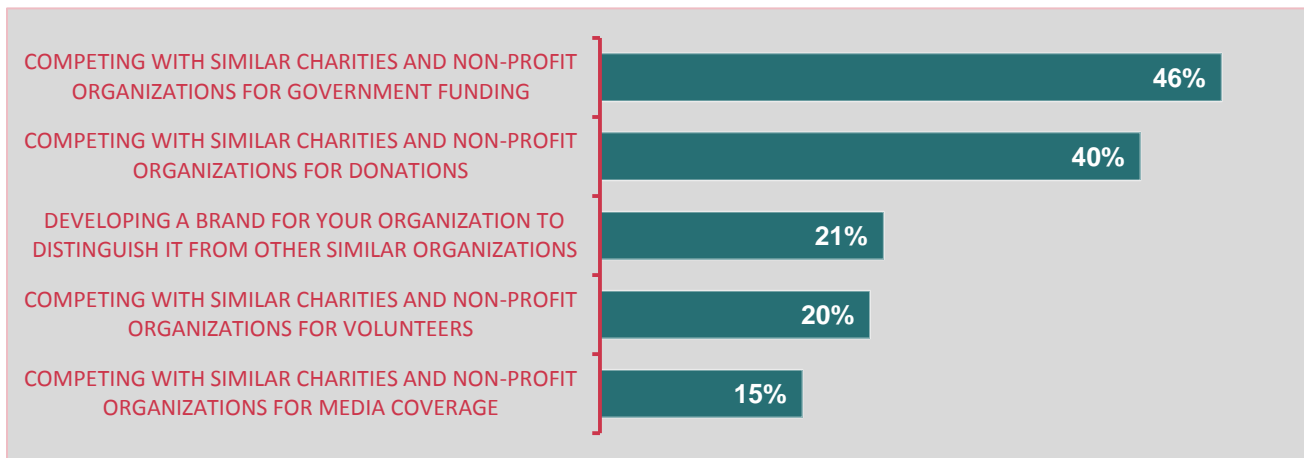
**Source: Figure prepared by the Library of Parliament using data obtained from the e-consultation**

Also of note, 27% of respondents representing organizations with between 11 and 19 employees indicated that provision of training for board members is of concern to them, compared to only 13% of respondents from organizations with more than 20 employees. While not statistically valid, these findings are not entirely unsurprising in that larger organizations might be expected to have the resources to provide training whereas smaller ones may not.

## Competition and Collaboration with Other Charities (Question 10)

Question 10 comprised four parts: a) sought to better understand the nature of the challenges charities and NPOs face as regards competing and collaborating with other charities; b) asked how regularly charities and NPOs cooperate with each other; c) asked for examples of this cooperation; and, d) asked whether the respondent’s organization would consider merging with another charity or NPO. Figure 11 lists the five challenges listed in question 10 and shows, for each one, the percentage of respondents who considered the challenge to be “very concerning.”

**Figure 11: Challenges Relating to Competition and Collaboration with Other Charities and Non-Profit Organizations, 2018, (%)**

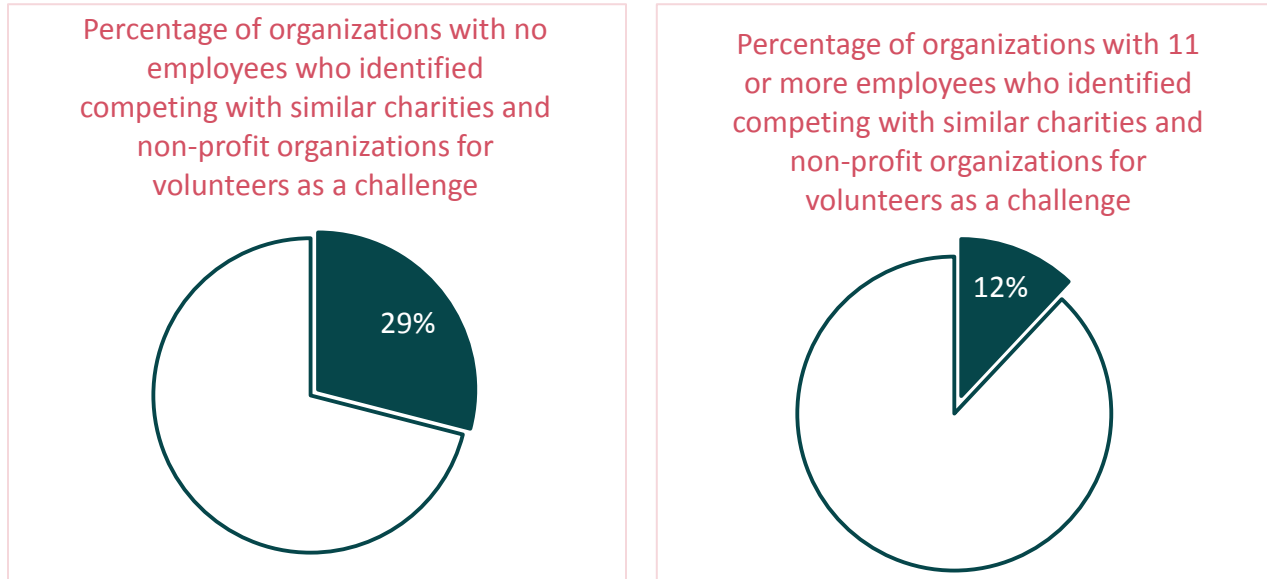


**Source: Figure prepared by the Library of Parliament using data obtained from the e-consultation**

Respondents appeared to be particularly concerned about competing with similar charities and NPOs for money: 46% indicated that they are very concerned about competing with similar charities and NPOs for government funding, while 40% indicated that they are very concerned about competing with other organizations for donations.

In contrast, only 20% of respondents stated that they are “very concerned” about competing with similar charities and non-profit organizations for volunteers. However, once again, differences emerged depending on the size of the organization. Of particular note, competing with similar charities and NPOs for volunteers appears to be of particular concern for organizations with no employees for whom this challenge appeared equally as important as funding-related challenges. Figure 12 illustrates the attitudinal differences between organizations with no employees and organizations with 11 or more employees with regard to competing with similar charities and non-profit organizations for volunteers.

**Figure 12: Attitudinal Differences Between Respondent Organizations With Fewer Than Five Employees and Respondent Organizations With 11 or More Employees With Regard to Competing With Similar Charities and Non-Profit Organizations for Volunteers**

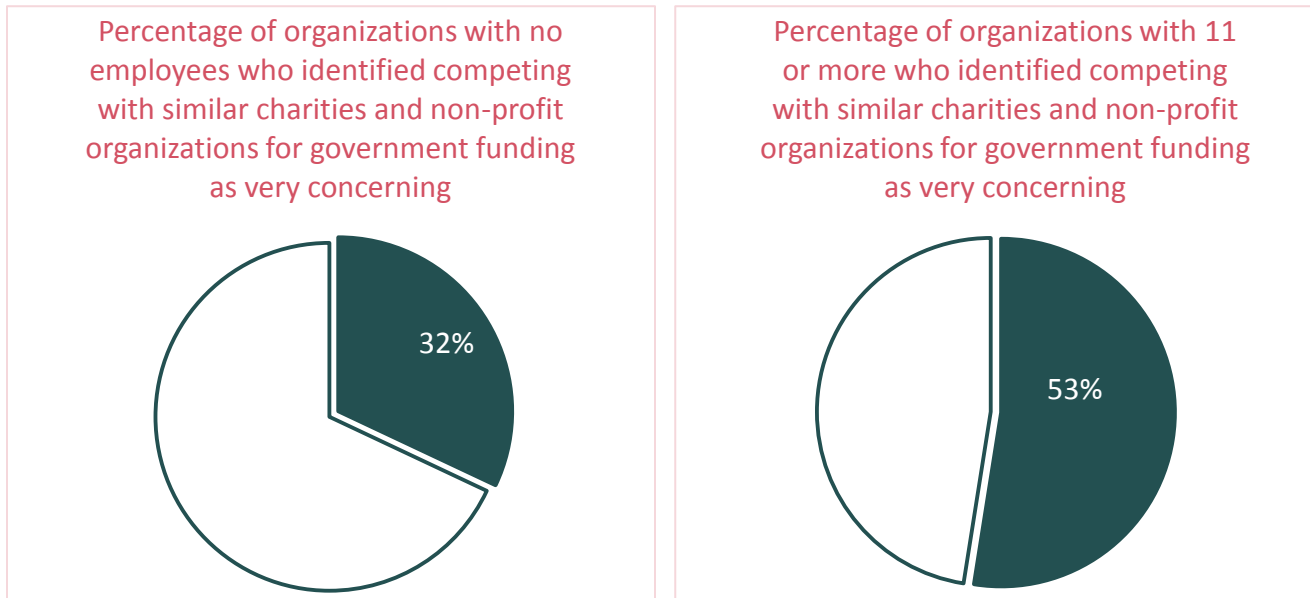


**Source:** Figure prepared by the Library of Parliament using data obtained from the e-consultation

Figure 13 illustrates the attitudinal differences between organizations with no employees and organizations with 11 or more employees with regard to competing with similar charities and non-profit organizations for government funding.



**Figure 13: Attitudinal Differences Between Respondent Organizations With No Employees and Respondent Organizations With 11 or More Employees With Regard to Concern About Competing With Similar Charities and Non-Profit Organizations for Government Funding**



**Source:** Figure prepared by the Library of Parliament using data obtained from the e-consultation

While these findings are not statistically valid, they are unsurprising in the context of previous Statistics Canada findings. Specifically, the 2003 National Survey found that the 13% of organizations with revenues over \$500,000 received 41% of all volunteer hours.<sup>510</sup> With more volunteers at their disposal, these larger organizations may be understandably less concerned about competing with other organizations for volunteers. Similarly, the 2003 National Survey revealed that larger organizations (defined in terms of annual revenue) are more dependent on government funding than small organizations, perhaps explaining why organizations with no employees were less likely to report competing with similar charities and NPOs for government funding as being very concerning.<sup>511</sup>

In terms of collaboration with other charities, 43% of respondents reported that their organizations regularly collaborate with other charities. More than 50% of charities with more than six employees reported collaborating “very regularly” with other organizations, compared to only 21% of those with no employees. Figure 14 illustrates the e-consultation findings regarding how regularly organizations of different sizes collaborate with other charities and NPOs (question 10 (b)).

<sup>510</sup> Statistics Canada (2003), p. 11.

<sup>511</sup> Ibid.

**Figure 14: Frequency of Collaboration Between Sector Organizations, 2018 (%)**

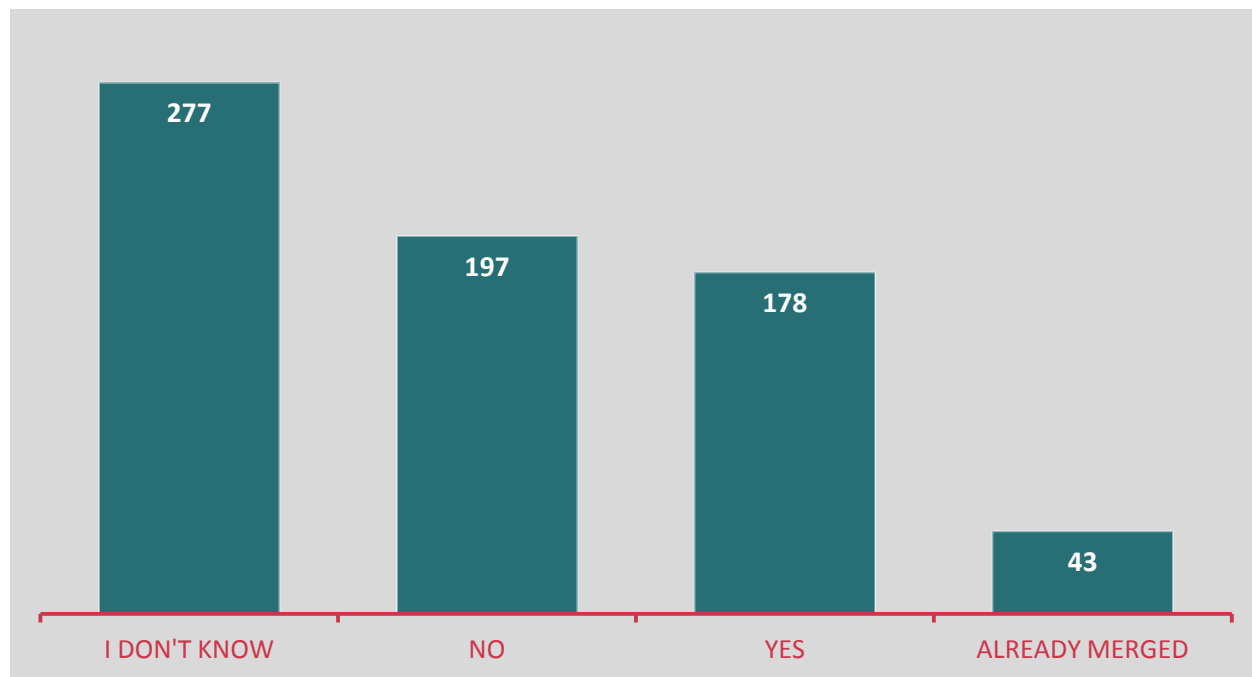


**Source: Figure prepared by the Library of Parliament using data obtained from the e-consultation**

Examples of collaboration among charities include very community-oriented activities, such as organizing Easter egg hunts, training and knowledge sharing, and coordinated petition and letter writing.

Regarding permanent mergers between organizations, 43 respondents reported that their organizations had merged with other organizations within the past 10 years, while a further 178 said that their organizations would consider doing so. Figure 15 shows respondents' attitudes to merging with other charities and NPOs.

**Figure 15: Attitudes Towards Merging with Other Charities and Non-Profit Organizations, 2018, (%)**



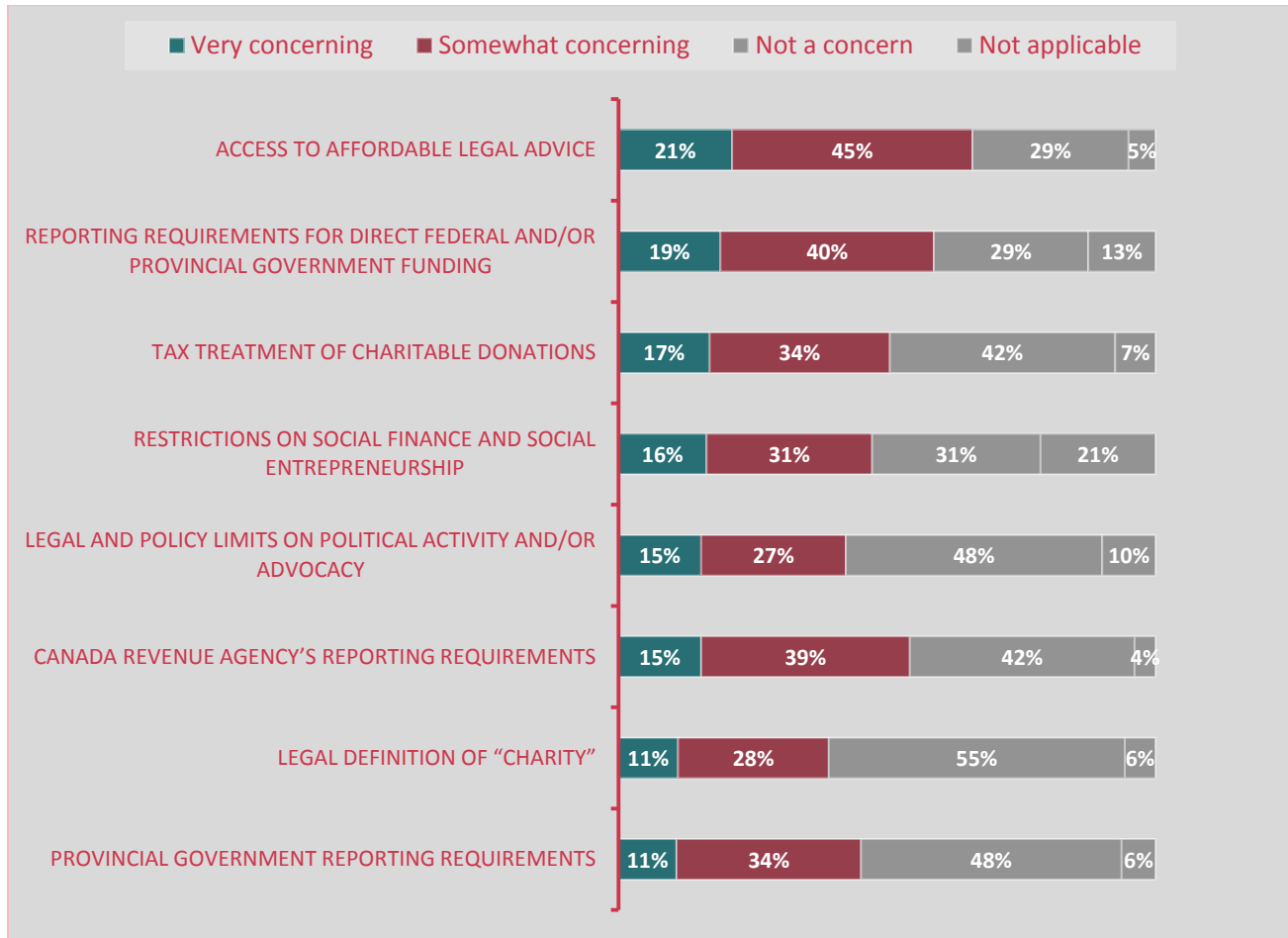
**Source:** Figure prepared by the Library of Parliament using data obtained from the e-consultation

## Regulation-related Challenges (Question 11)

Question 11 asked respondents to indicate how concerning a series of regulation-related challenges are for them. Figure 16 displays the results.

# Catalyst for Change: A Roadmap to a Stronger Charitable Sector

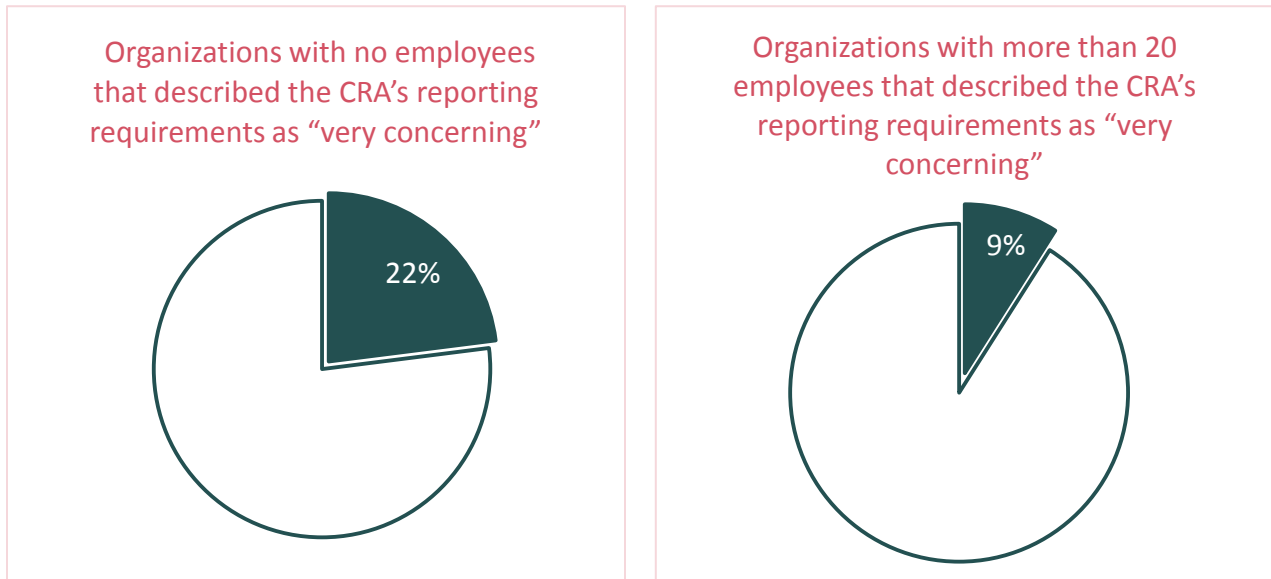
**Figure 16: Regulation-Related Challenges Faced by Charities and Non-Profit Organizations, 2018, (%)**



**Source: Figure prepared by the Library of Parliament using data obtained from the e-consultation**

As is illustrated in Figure 16, no one regulatory challenge stood out as being particularly problematic for all respondents. Overall, each of the regulation challenges was said to be “very concerning” by between approximately 10% to 20% of participants. However, differences can be noted when the data set is disaggregated according to the size of the organization. For example, the CRA’s reporting requirements were described as “very concerning” by 22% of representatives of organizations with no employees, compared to 9% of organizations with more than 20 employees. Figure 17 illustrates the attitudinal differences between respondent organizations with no employees and respondent organizations with more than 20 employees regarding levels of concern about the CRA’s reporting requirements.

**Figure 17: Attitudinal Differences Between Respondent Organizations With No Employees and Respondent Organizations With More Than 20 Employees Regarding Levels of Concern About the CRA's Reporting Requirements**



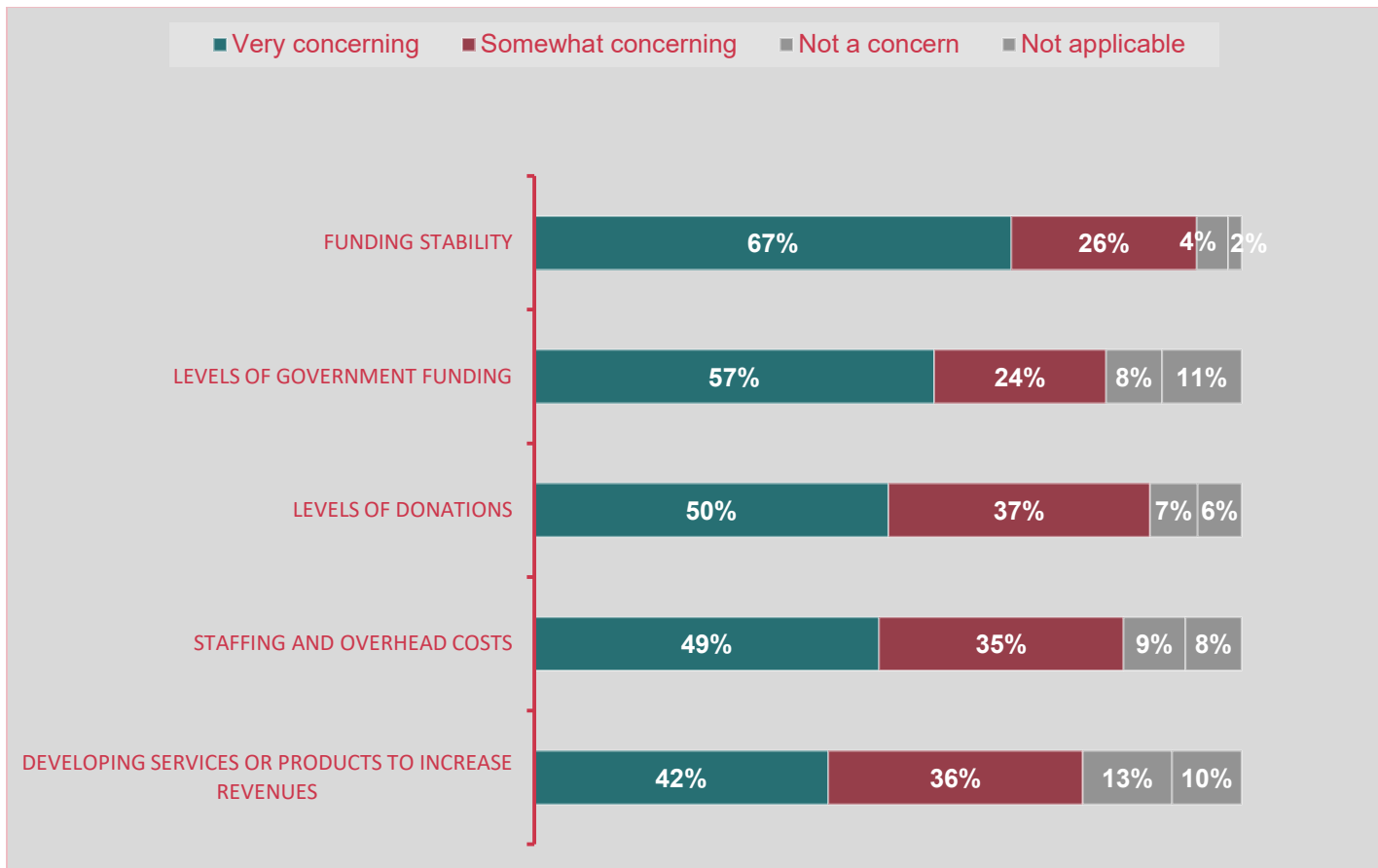
**Source:** Figure prepared by the Library of Parliament using data obtained from the e-consultation

Also of note, access to affordable legal advice is very concerning to 33% of organizations with 11 to 19 employees compared to 15% of organizations with no employees and 16% of organizations with more than 20 employees.

## Funding-related Challenges (Question 12)

Question 12 attempted to understand which types of funding-related challenges are particularly concerning for respondents. As is indicated in Figure 18, funding stability appears to be the most concerning funding-related challenge for participants, with 68% of respondents indicating that funding stability is "very concerning." In turn, 57% of participants described "levels of government funding" as "very concerning."

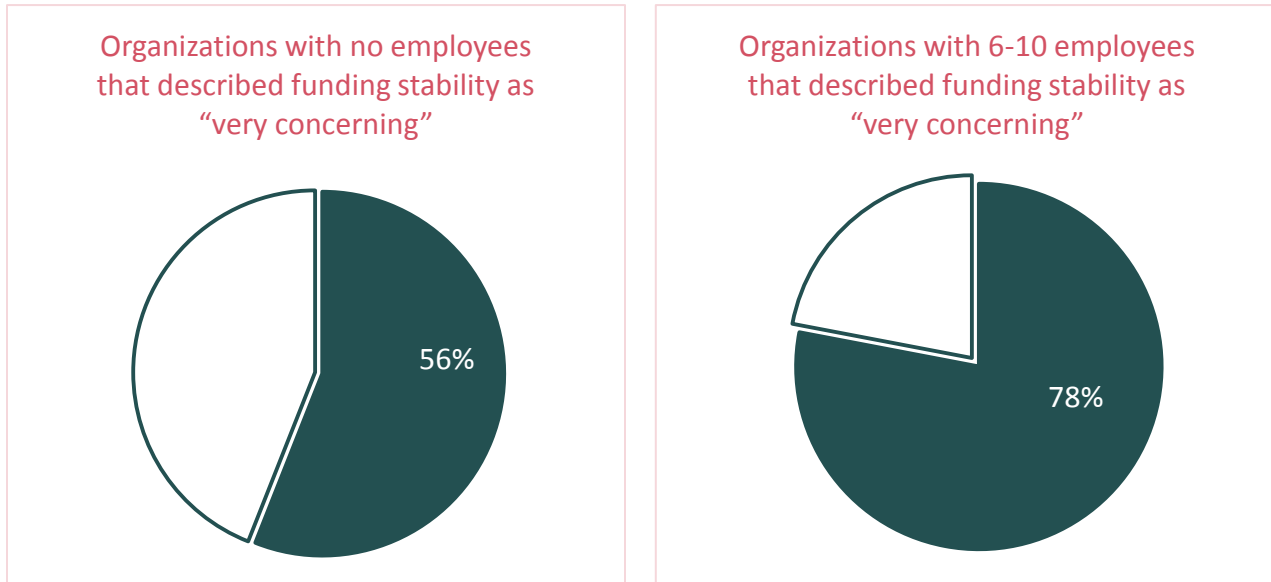
**Figure 18: Funding-related Challenges faced by Charities and Non-profit Organizations, 2018, (%)**



**Source:** Figure prepared by the Library of Parliament using data obtained from the e-consultation

While funding stability was the funding-related challenge most commonly described as “very concerning” by organizations of all sizes, there are nonetheless important differences between the responses from organizations with no employees and organizations with paid employees. For example, while 56% of organizations with no employees described funding stability as “very concerning,” this figure rose to 78% for organizations with between 6 and 10 employees. Figure 19 illustrates the attitudinal differences between respondent organizations with no employees and respondent organizations with 6 to 10 employees with regard to funding stability.

**Figure 19: Attitudinal Differences Between Respondent Organizations With No Employees and Respondent Organizations With 6 to 10 Employees With Regard to Funding Stability**

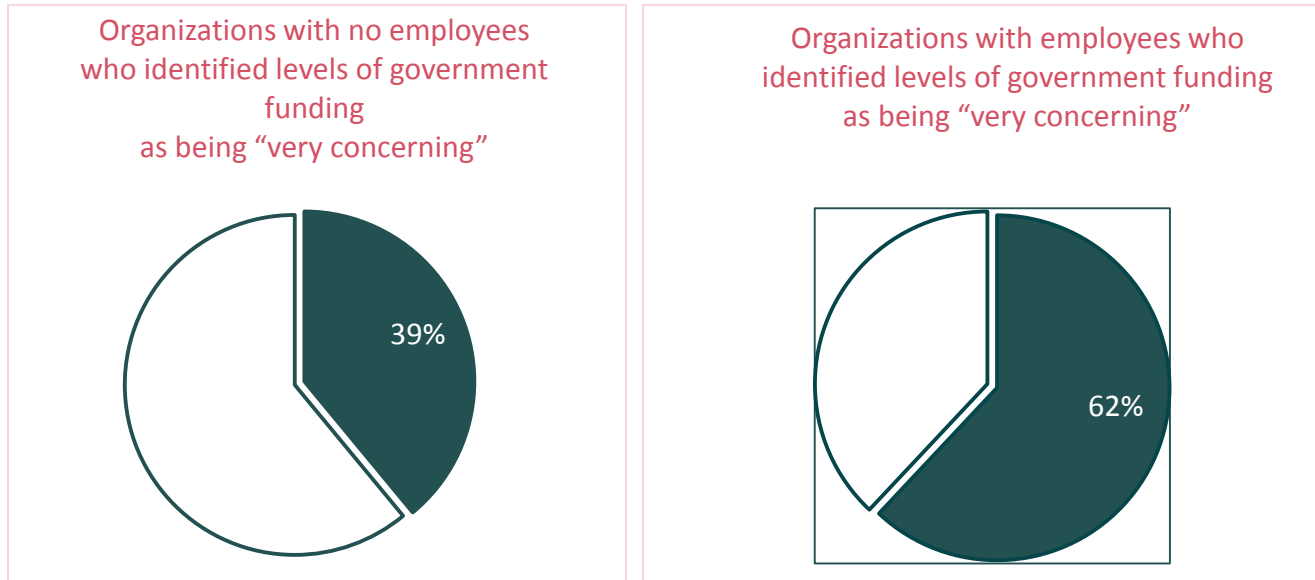


**Source:** Figure prepared by the Library of Parliament using data obtained from the e-consultation

In a similar vein, responses differed between organizations with no employees and organizations with employees regarding both levels of government funding and levels of donation. Only 39% of representatives of organizations with no employees described levels of government funding as very concerning, compared to over 60% of representatives of all organizations with more than six employees. Indeed, organizations with no employees were slightly more likely to describe levels of donation as very concerning than they were to describe levels of government funding as very concerning. Figure 20 illustrates the attitudinal differences between respondent organizations with no employees and respondent organizations with employees with regard to concern about government funding.



**Figure 20: Attitudinal Differences Between Respondent Organizations With No Employees and Respondent Organizations With employees With Regard to Concern About Government Funding**



**Source: Figure prepared by the Library of Parliament using data obtained from the e-consultation**

In turn, while representatives of organizations with one to five employees were slightly more likely to describe "levels of government funding" than "levels of donation" as "very concerning," the difference was not very marked (57% versus 54%). In short, small organizations, that is to say those with no employees or fewer than five employees, appear to be equally concerned about levels of donations and levels of government funding, whereas larger organizations are markedly less concerned about donations than government funding.

In its 2003 National Survey, Statistics Canada noted that:

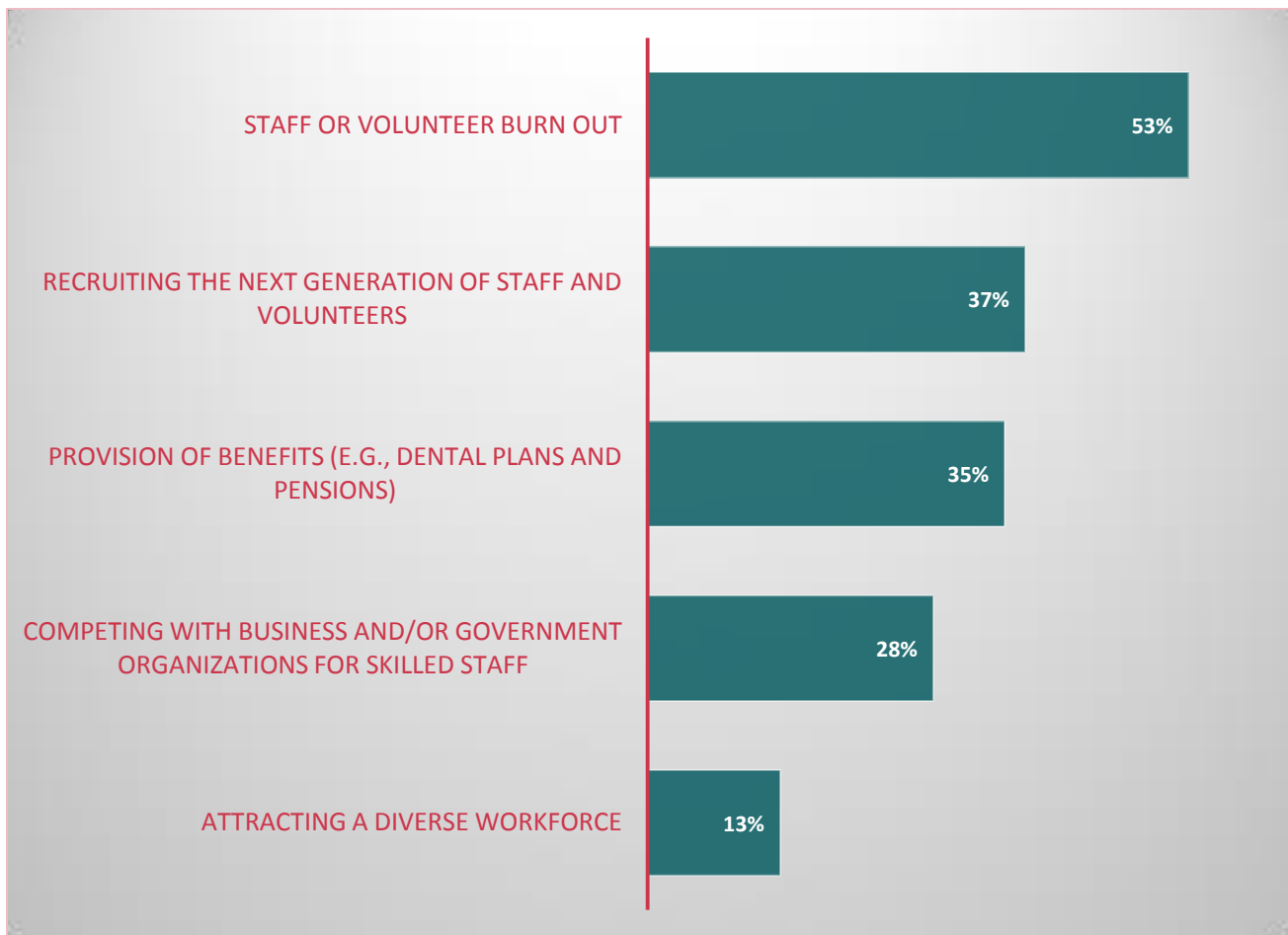
Organizations with larger revenues are generally more likely than others to depend on government funding ... [whereas] ... those with relatively smaller annual revenues depend more on earned income from non-governmental sources and gifts and donations.

While the findings echo Statistics Canada findings, it must be remembered that the e-consultation was an outreach tool and its findings are not statistically valid.

## Challenges Related to Paid Employees and Volunteers (Question 13)

Question 13 addressed challenges related to staffing and recruitment. As is shown in Figure 21, staff and volunteer burnout was the challenge related to paid employees and volunteers most likely to be described as “very concerning” by respondents.<sup>512</sup>

**Figure 21: Challenges Faced by Charities and Non-profit Organizations Relating to Paid Employees and Volunteers**



**Source: Figure prepared by the Library of Parliament using data obtained from the e-consultation**

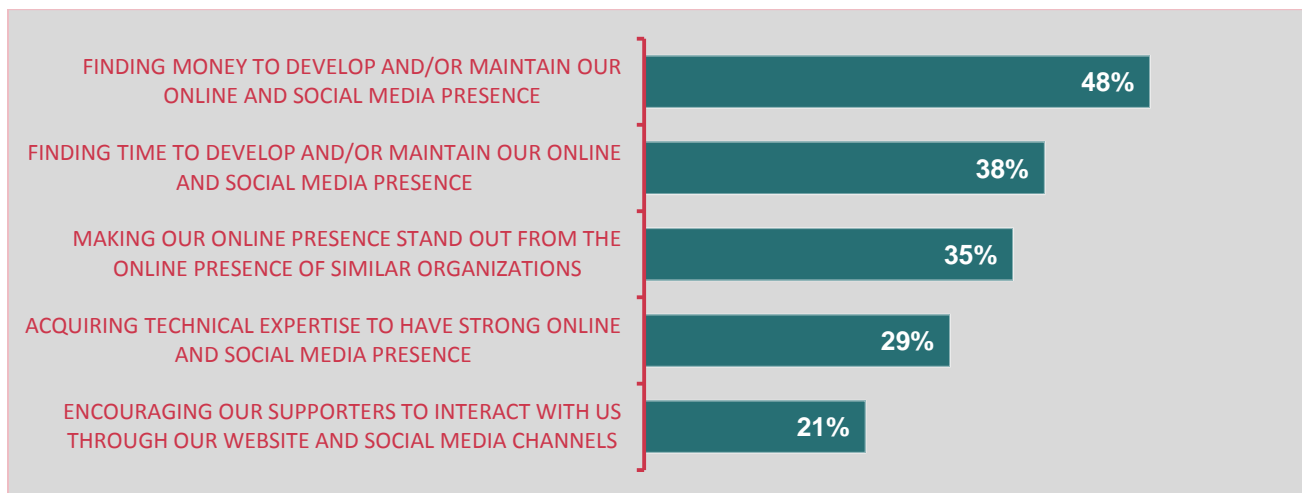
<sup>512</sup> Note that because of the volume of data, comparative bar charts have not been prepared for participants who responded “somewhat concerning,” “not a concern,” or “not applicable.” It was decided to focus on the “very concerning” responses on the assumption that this option was selected to indicate priorities. As one respondent noted, “all challenges are of concern but we selected ‘very concerning’ for our current priorities.”

Although staff and volunteer burnout was the challenge most commonly described as “very concerning,” respondents, particularly those from larger organizations, are also concerned with recruitment and retention. Concern about recruitment and retention also emerged as an important topic in question 18, where respondents could discuss additional concerns in their own words.

## Challenges Related to Managing Online and Social Media Presence (Question 14)

The committee heard testimony about the increasing importance of having an online presence in the charitable and non-profit sector. Question 14 explored the barriers that prevent charities and NPOs from having a strong online and social media presence. Figure 22 lists the five challenges and shows, for each one, the percentage of respondents who considered the challenge to be “very concerning.”

**Figure 22: Challenges Faced by Charities and Non-profit Organizations Relating to Managing Online and Social Media Presence (Question 14)**

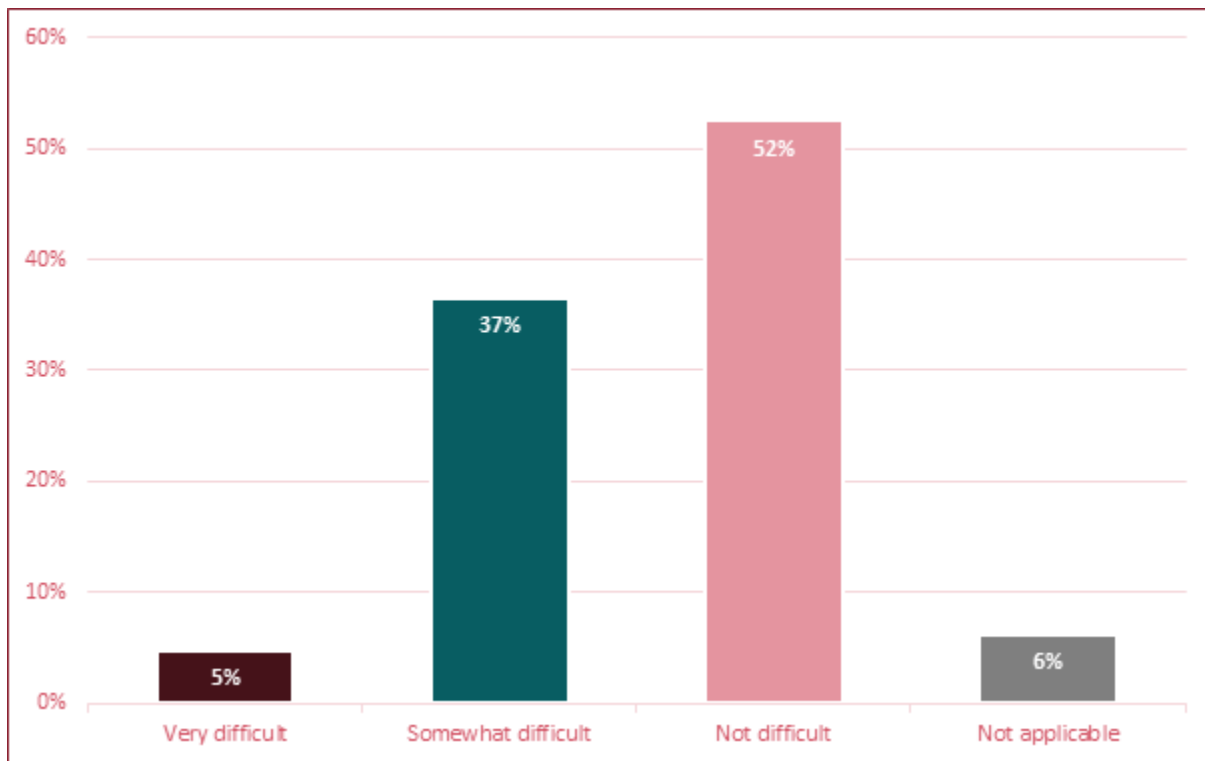


**Source:** Figure prepared by the Library of Parliament using data obtained from the e-consultation

## Challenges Related to the Shared Federal and Provincial Responsibility for Regulating the Charitable and Non-profit Sector (Questions 15 and 16)

Question 15 asked how difficult it is for charities and NPOs to meet federal and provincial regulatory requirements. The results are displayed in Figure 23.

**Figure 23: Degree of Difficulty Experienced by Charities and Non-Profit Organizations in Complying with Federal and Provincial Regulatory Requirements**



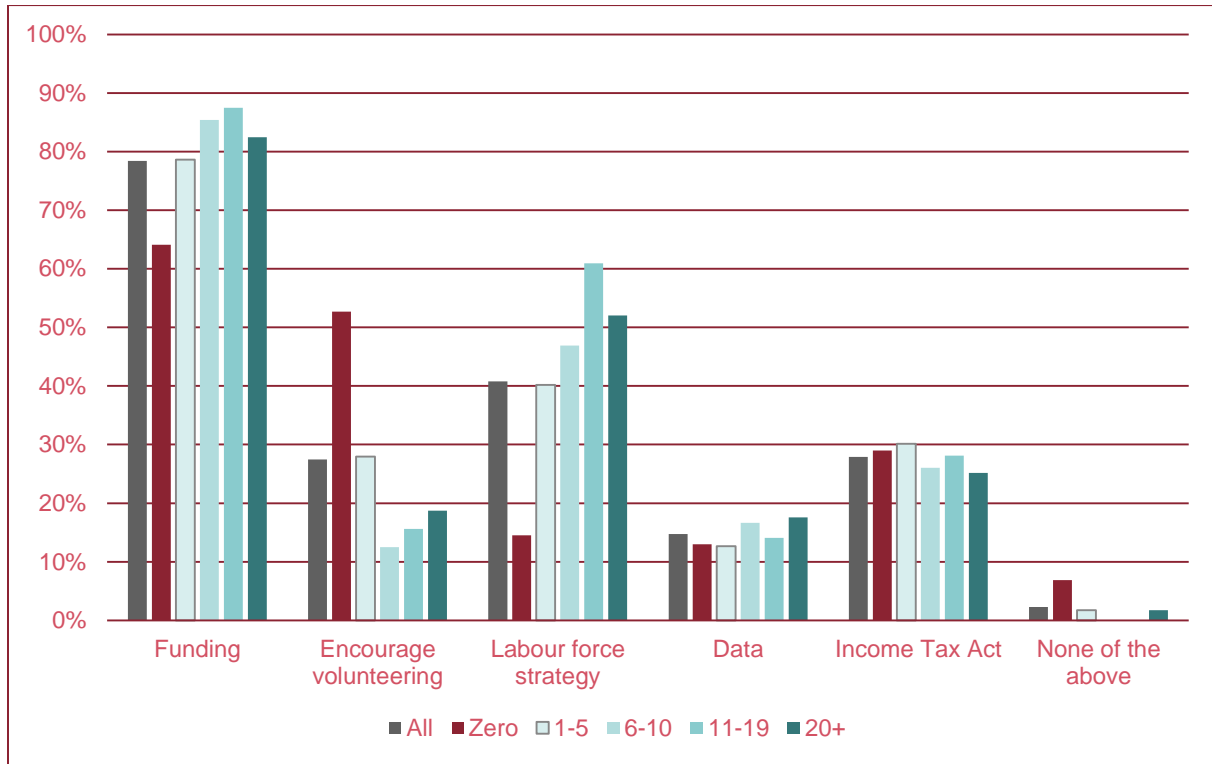
**Source:** Figure prepared by the Library of Parliament using data obtained from the e-consultation

In the course of the study, concern has been expressed about organizations being required to submit the same information to both the federal and provincial governments. In response to question 16, 13% of respondents said that they are very regularly asked to submit information to the federal government that they have already submitted to the provincial government, or vice versa.

## Priorities for the Future (Question 17)

To close the series of attitudinal questions, participants were asked to look to the future and identify up to two priority areas for reform. There was a high level of consistency in the responses across organizations, with funding being selected as a reform priority by the majority of respondents across organizations of all sizes. In keeping with earlier findings, measures to encourage volunteering emerged as a priority for organizations with no employees, while developing a labour force strategy is a priority for larger organizations. Figure 24 illustrates the findings to question 17.

**Figure 24: Priorities Identified by E-consultation Respondents for Federal Government Action by Number of Employees**



Source: Figure prepared by the Library of Parliament using data obtained from the e-consultation

## Other comments (question 18)

In total, 262 respondents provided additional comments in response to question 18. In analyzing the responses, nine broad categories were identified: funding (general); funding (overhead); staff retention; regulatory burden and compliance; volunteering; legal issues; collaboration and mergers; digital development; and social enterprise and social funding.

The nine topics are listed in order of the number of comments received on the subject. Note that, while general funding was the most discussed issue among the respondents in this consultation, the nature of the recruitment means that it cannot be concluded that the same priorities would emerge across the sector as a whole.

## Funding (General)

In total, over 55 respondents provided additional comments on funding-related matters, excluding overhead (discussed separately below). The large majority of these comments related to accessing government funding, although other topics were also broached, including access to donations. Several opinions on access to federal and provincial government funding were expressed on more than one occasion, including the view that:

- completing application forms for government funding is time consuming and costly;
- reporting requirements for grants are onerous and vary from funder to funder (for example, one organization indicated that it had reported to 25 different funders in one year), and from year to year, generating extra work;
- reporting requirements should focus on qualitative not quantitative outcomes;
- year-on-year funding is required;
- small organizations struggle to compete with large organizations for government funding (and donations);
- making an organization's programming "fit" with granting guidelines is challenging;
- funding should be indexed to inflation;
- funding is not released quickly enough after approval; and
- the large amount of work required to complete a funding application can deter organizations from applying for a grant, particularly when they feel their chances of success are slim.

Opinions expressed by one respondent included the view that:

- government grants disbursed overseas are inadequately monitored;
- no recourse is available when a grant application is denied (and no reason is provided for the refusal);
- funders favour well-established organizations over new organizations;
- people view organizations that do not get government funding as not as worthy or effective as those that do;
- art museums have access to operating funds and matching grants, whereas history and heritage museums do not;
- while matching federal funding encourages private sector investment, fundraising can be difficult when the level of the federal contribution is unknown; and
- a mechanism should be introduced to provide federal or provincial funding for small charities that "demonstrate effectiveness and impact."

As is evidenced in Part 1, Section 2 of this report, many of the above-mentioned concerns were shared by witnesses who submitted briefs and/or appeared before the committee. The committee believes that recommendations 11 and 12 will mitigate many of the

funding-related challenges that e-consultation participants (and other witnesses) brought to its attention.

### Funding (Overhead)

In addition to the many comments received on funding in general terms, 32 participants made specific reference to challenges relating to overhead costs/administrative costs and/or core funding. Broadly speaking, their comments focussed on:

- the difficulty of accessing funding for administrative costs;
- the non-eligibility of administrative costs for grant funding;
- the link between core funding and the ability to provide high-quality service;
- the need to change the public perception that effective charities have low overhead costs; and
- constantly rising overhead costs.

In terms of concrete recommendations, one respondent noted that “government grants and contribution agreements should have a built-in component to cover overhead,” while another argued that funding should recognize that investments in people, technology and other “administrative categories is needed in order to deliver services of high quality.” With regard to public demand for organizations with low overhead costs, one respondent suggested “a national campaign to educate individuals and all groups around the impact the charitable sector has on life in Canada and how this impact would only grow if this societal belief of ‘low overhead = effective charity myth’ were changed.”

Recommendation 10, set out in Part 1, Section 2 of the report, addresses concerns related to overhead costs.

### Employee Retention

Thirty-one respondents specifically mentioned challenges related to employee retention, including:

- ensuring that funding levels allow organizations to pay competitive salaries and provide benefits and pensions;
- recruiting and retaining qualified staff;
- reducing the “stigma” of being well paid when working for a charity;
- competing with government and other charities for staff;
- providing staff training and development opportunities;
- offering executive directors a competitive salary; and
- staff burnout.



Several respondents also included concrete recommendations as to how these challenges could be met. For example, one respondent suggested that the first \$20,000 of earned income for employees in the charitable sector could be tax exempt to allow organizations to compete with the private sector. In a similar vein, another respondent suggested that the government introduce a tax credit for “underpaid employees” in charitable organizations. A third respondent expressed the view that discussions should be held to allow charities and NPOs to prepare for provincially mandated increases in minimum wage.

Some of the most compelling testimony the committee heard related to staffing challenges. The sector thrives thanks to the unstinting efforts of its dedicated staff (and volunteers), many of whom feel undervalued and concerned about their future. Witness concerns were echoed by e-consultation respondents, for whom the topic was clearly very emotive. In the words of one e-consultation respondent:

Many grants fund programs, not operating costs, and won't pay my paltry salary (\$43k/year, no benefits, no pension). We're understaffed, with risk of burnout for me and volunteers. I've hired 4 temporary seniors until Christmas. I average 60 hours/week and can only fund 1 part-time assistance (min. wage) until Christmas.<sup>513</sup>

Recommendations 5, 6 and 7 are designed to address some of the most pressing staffing related concerns faced by the sector, including pensions and burnout.

### Regulatory and Compliance Burden

Regulation and compliance generated 31 comments. While one respondent observed that the current regulatory burden was manageable, the majority of respondents who commented on this topic expressed frustration with federal and provincial regulatory requirements. In particular, they noted:

- the cost of financial reviews/audits;
- the cost and complexity of the process to become a registered charity;
- long delays in getting responses to queries from CRA;
- compliance difficulties where an organization has both a national and local presence;
- overly complicated and bureaucratic reporting requirements for registered charities;
- the lack of access to affordable legal advice;
- the need to better define charitable purposes;
- advocacy restrictions; and
- sports organizations' ineligibility for charitable status.

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<sup>513</sup> Response provided in e-consultation.

In terms of solutions, respondents proposed:

- requiring the CRA to provide more free tutorials and assistance;
- requiring the CRA to use more electronic communications;
- requiring the CRA to provide guidelines for artists working for charitable organizations;
- requiring the CRA to have an FAQ webpage explaining the process for becoming a qualified donee (there was a perception expressed that some organizations achieve status as a qualified donee faster than others);
- improving communication between provincial regulators and the Charities Directorate to avoid duplication;
- housing the Charities Directorate outside the CRA (e.g., a separate ministry or within the Department of Innovation, Science and Economic Development);
- establishing a “federal watchdog” to monitor the CRA;
- establishing an ombudsperson for the sector so that complaints could be made about “illegal charities”; and
- updating the legal definition of charity.

Many of the concerns raised under this heading relate to the relationship between the sector and the federal government. Recommendation 20 sets out detailed steps that could be implemented to improve the relationship between the CRA and the sector, while recommendation 22 addresses the need for a “home” for the sector in government. Questions relating to the definition of charity and qualified donees are addressed in recommendations 23 to 26.

### Volunteering

Twenty-eight of the respondents used the additional comments box to share their thoughts on the state of volunteering in Canada. The problems and suggestions raised were similar to those raised in committee hearings; for example, respondents discussed:

- difficulties in recruiting and retaining volunteers;
- the need for a tax incentive for volunteers;
- difficulties in finding police forces willing to do volunteer background checks; and
- shifting demographics (aging volunteers, struggle to recruit young volunteers).

Throughout the course of its study, the committee had the privilege of hearing from many volunteers. The passion, drive and commitment of all of the volunteers was clear; however, their work is not without challenges. Recommendations 1 to 3 are designed to address some volunteering-related challenges, such as recruitment and retention and costs related to background police checks. Recommendation 4 speaks to recognition - while the committee understands that volunteers are not driven by a desire for reward, it also believes that the important role of volunteers should be recognized.

## Other Areas of Legal Reform

Legal issues such as updating the legal definition of charity and amending the rules on political advocacy would necessarily require legal reform; however, these suggestions have been discussed previously in the wider context of regulatory compliance. This section focuses on other areas of legal reform identified by e-consultation respondents. In total, 13 respondents made specific suggestions relating to other areas of legal reform, the majority of which related to taxation. In these instances, respondents did not identify particular problems that need to be addressed, although it can be inferred that they believe these measures will encourage donation and strengthen the sector. Among other measures, respondents suggested governments should:

- increase the tax credit for individual donations;
- allow NPOs to issue receipts for tax credits;
- provide a tax credit for athletes (or parents of athletes);
- exempt sports equipment from sales tax;
- return the payout ratio to 5% from 3.5%;
- eliminate the capital gains tax on charitable gifts of private company shares and real estate;
- introduce legislation to force banks to lower fees for charities, especially smaller ones;
- amend the definition of charity used in Canada's federal anti-spam legislation;<sup>514</sup>
- make the tax system competitive with the United States tax system regarding charities and NPOs; and
- increase the HST rebate for charities to 100%.

The disbursement quota for registered charities, the proposal to eliminate capital gains tax on gifts of private shares and real estate and challenges relating to Canada's anti-spam legislation are addressed in recommendations 34, 35, 36 and 41. Recommendation 9

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<sup>514</sup> Introduced in 2014, [An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act](#), Canada's anti-spam legislation (CASL), requires that senders of commercial electronic messages have the express or implied consent of any recipients. Some exceptions were introduced to help charities and non-profits. However, the legislation appears to define "registered charity" only in reference section 248(1) of the *Income Tax Act*. One respondent pointed out that this definition did not cover her charity, which is "an agent of the crown and a qualified donee." This means that her organization is "very restricted" in its ability to communicate by email. She would like to see the definition of charity under CASL expanded to include her type of organization.

exhorts the Government of Canada to review existing tax measures to strengthen the culture of giving in Canada.

### Collaboration and Mergers

Several respondents made reference to the challenges faced by small organizations, particularly with regard to competing for funding, while a small number also expressed concern about the number of organizations attempting to provide similar services to similar populations. Perhaps in responses to these concerns, 13 respondents raised the issue of collaboration and mergers. A small number of these respondents expressed concern about collaboration and cooperation, highlighting fears about larger organizations “poaching” the ideas of smaller organizations and concerns about losing personal interaction with clients when organizations become too large. Other respondents expressed support for collaboration and mergers, calling upon governments to:

- fund a non-profit hub to enhance collaboration and increase community presence;
- encourage the development of regional networks, such as the Ontario Non Profit Network;
- provide incentives for charities and NPOs working in the same field to merge;
- provide support for the merger process, as small organizations lack the necessary time and resources;
- introduce restrictions on registering new charities in areas that are already well served by the sector; and
- fund collective impact initiatives.<sup>515</sup>

One respondent also suggested that the sector should unionize to strengthen its position.

The committee is very sensitive to the challenges faced by smaller organizations and notes that witnesses who appeared before the committee expressed similar concerns to those raised by e-consultation respondents. Ensuring that the voice of smaller organizations is heard of capital importance to the committee, which is why recommendation 21 urges the Government of Canada to encourage the Advisory Committee on the Charitable Sector to include representatives from smaller organizations in its working groups.

### Social Finance and Social Funding

Eleven respondents provided comments on social finance and innovative means of funding. They did not highlight specific challenges faced by the sector, other than the general need

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<sup>515</sup> According to the Government of Canada, “collective impact is a collaborative, multi-partner approach that brings together a group of collaborating organizations from different sectors to commit to a common agenda designed to produce significant changes in their community.” Government of Canada, [\*New Horizons for Seniors Program – Collective Impact approach\*](#).

to find new and innovative means of funding. Broadly speaking, they encouraged governments to:

- support social enterprise and social innovation;
- implement a social finance strategy;
- support new sources of revenue; and
- reduce restrictions on non-related business activities.

One respondent observed that social finance tools are not readily applicable in smaller provinces with fewer investors.

The committee's recommendations in relation to social finance are set out in recommendations 14 and 15. Recommendations 28 and 29 address non-related business activities.

### Digital Development

Six respondents discussed the importance of ensuring that the sector can keep pace with technological change. Among their suggestions, they asked governments to:

- fund IT and website development;
- provide free IT training (perhaps through public libraries);
- keep pace with technological development through legislation and policy on matters such as crypto-currencies, non-traditional means of giving such as GoFundMe pages, etc.; and
- funding for digital skills.

The committee is conscious of many ways in which technological change is shaping the sector. Recommendation 18 proposes the establishment of a funding stream to allow organizations to develop shared technologies.

## Miscellaneous

A small number of the comments made in response to question 18 did not fit under the categories identified above. Among the issues raised, respondents highlighted:

- the role of gender in low wages in the sector;
- barriers faced by young people seeking to establish charities;
- concern about the end of operating agreements for social housing;
- concern that large arts bodies get the lion's share of arts funding; and
- organizational capacity and governance in rural regions.

In terms of proposed solutions to the problems faced by the sector, respondents suggested that governments:

- develop a data strategy;
- support work that has already been done (e.g., implement the recommendations of the Voluntary Sector Initiative);
- establish a federal-provincial roundtable for the sector;
- provide board members with more education about the resources available to them; and
- ensure better cooperation between various levels of government.

Some of these recommendations, including the need for greater cooperation between different levels of government and the need to develop a data strategy are addressed in recommendations set out in the report (recommendation 22 and recommendation 16, respectively). Other matters, such as the role of gender in low wages in the sector, were beyond the scope of this study. However, the committee views its study as the first step in a renewed relationship with the sector and trusts that future opportunities will exist for some of these concerns to be explored more fully.

## Conclusion

Like the witnesses who have appeared before the committee or submitted written briefs, the individuals who responded to the e-consultation expressed only their personal views, or those of their organization, and their responses are not indicative of the views of the sector as a whole. That said, there was considerable commonality in the concerns expressed by the e-consultation respondents and witnesses who have appeared before the committee and the studies they have cited.

The committee's analysis of the e-consultation responses has focussed on areas where concrete recommendations for improvement can be made. That said, the committee also wishes to acknowledge the power of the very human stories that were evident in the e-consultation responses: participants shared their frustrations and struggles and the way in which their work at times leaves them feeling undervalued. Underpinning many comments on matters such as regulatory compliance and funding was a call – explicit or implicit – for recognition. This call for recognition was made not for the individual, but for the sector as a whole and the important contribution it makes to Canadian society.

The committee is grateful to each respondent who took the time to complete the e-consultation. Your input greatly enriched the committee's understanding of the challenges faced by the sector and galvanized our resolve to see real progress made. Your voice matters and it was heard. This study is not the final word on the future of the sector, and senators look forward to further opportunities to hear from sector stakeholders in other forums in the future.



## Appendix B: Electronic Consultation Questions

### A. Respondent Identification

1. Name of organization \*
2. Your name \*  
[First Name Last Name]
3. Postal code \*  
[without spaces: A1A1A1]
4. Province/Territory\*

### B. About Your Organization

5. (a) How many paid employees does your organization have?\*
5. (b) Does the majority of your organization's paid employees work for your organization on a full-time basis?\*(  
(A full-time employee is one who works 30 hours or more per week.)
  - Yes, the majority works full-time
  - No, the majority works part-time
  - There is an equal mix of part-time and full-time employees
  - We do not have any paid employees
6. (a) Does your organization collect data on employee diversity?\*(  
(e.g., data on the four designated groups under the Employment Equity Act - women, Aboriginal peoples, persons with disabilities and visible minorities)
  - Yes
  - No
  - I don't know
  - Not applicable to my organization

6. (b) Does your organization collect data about the diversity of its board of directors?\*
- (e.g., data on the four designated groups under the Employment Equity Act - women, Aboriginal peoples, persons with disabilities and visible minorities).
- Yes
  - No
  - I don't know
  - Not applicable to my organization
7. Which of the following best describes the main area in which your organization operates?\*
- Advocacy
  - Animal welfare
  - Culture and recreation
  - Education
  - Environmental protection
  - Health
  - Housing
  - International development
  - Poverty relief
  - Religion
  - Settlement services (for new immigrants, refugees)
  - Social support services (e.g., meals on wheels, literacy training)
  - Other

### C. Challenges Faced by the Sector

8. How concerning are the following issues for your organization?

#### **Board governance\***

For example, finding qualified board members, ensuring diversity among board members, providing board members with ongoing training.

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

### **Competing and collaborating with other charities and non-profit organizations\***

For example, for donations, government funding, media coverage, volunteers, etc.

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

### **Complying with federal and provincial rules and regulations\***

For example, rules and regulations regarding taxation, political advocacy and registration.

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

### **Ensuring funding for our organization's administrative costs\***

Non-project-specific costs (for example, renting office space, fundraising for the organization as a whole).

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

### **Ensuring funding for our projects and other charitable work\***

Costs related to direct service delivery (for example, salaries of staff working on a specific project).

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

## **Finding and/or keeping paid employees\***

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

## **Finding and/or keeping volunteers\***

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

## **Managing our online and social media presence\***

For example, building and maintaining a website, accepting online donations, posting updates on social media.

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

### **D. Governance-Related Challenges**

9. How concerning are the following issues to your organization?

#### **Attracting qualified, skilled and capable board members**

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

#### **Ensuring diversity among board members and senior staff**

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

**Provision of training for board members**

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

**Selection process and criteria for board members**

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

**E. Challenges Related to Competition and Collaboration with Other Charities**

10. (a) How concerning are the following issues to your organization?

**Competing with similar charities and non-profit organizations for donations**

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

**Competing with similar charities and non-profit organizations for government funding**

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

**Competing with similar charities and non-profit organizations for media coverage**

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

## **Competing with similar charities and non-profit organizations for volunteers**

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

## **Developing a brand for your organization to distinguish it from other similar organizations**

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

10. (b) How regularly do you collaborate with other charities and non-profit organizations?

For example, carrying out joint projects, holding joint events, sharing office space

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

10. (c) If applicable, please provide examples of the ways in which you collaborate with other charities and non-profit organizations (maximum 50 words)

10. (d) Would you consider joining forces permanently with a similar organization (or organizations) to create a larger charity or non-profit organization?

- Yes
- No
- I don't know
- Our organization has already merged with another organization or organizations within the past 10 years.

## F. Regulation-Related Challenges

11. How concerning are the following regulation-related challenges for your organization?

Access to affordable legal advice

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

Canada Revenue Agency's reporting requirements

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

Legal and policy limits on political activity and/or advocacy

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

Legal definition of "charity"

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

Provincial government reporting requirements

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization



Reporting requirements for direct federal and/or provincial government funding

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

Restrictions on social finance and social entrepreneurship

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

Tax treatment of charitable donations

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

### **G. Funding-Related Challenges**

12. How concerning are the following funding-related challenges for your organization?

Developing services or products to increase revenues

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

Funding stability

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

### Levels of donations

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

### Levels of government funding

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

### Staffing and overhead costs

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

## H. Challenges Related to Paid Employees and Volunteers

13. How concerning are the following staffing-related challenges to your organization?

### Attracting a diverse workforce

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

### Competing with business and/or government organizations for skilled staff

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

Provision of benefits (e.g., dental plans and pensions)

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

Recruiting the next generation of staff and volunteers

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

Staff or volunteer burn out

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

## I. **Challenges Related to Managing Online and Social Media Presence**

14. How concerning are the following issues for your organization?

Acquiring technical expertise to have strong online and social media presence

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

Encouraging our supporters to interact with us through our website and social media channels

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

Finding time to develop and/or maintain our online and social media presence

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

Finding money to develop and/or maintain our online and social media presence

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

Making our online presence stand out from the online presence of similar organizations

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

### **J. Challenges Related to the Shared Federal and Provincial Responsibility for Regulating the Charitable Sector**

15. How difficult is it for your organization to meet federal and provincial regulatory requirements governing the charitable and non-profit sector?

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

16. How regularly is your organization required to provide information to a federal government body that was already provided to a provincial government body, or vice versa?

- Not a concern
- Somewhat concerning
- Very concerning
- Not applicable to our organization

### **K. Priorities for Federal Government Action**

17. In your opinion, which areas of federal government policy and/or practice should be prioritized to help charities and non-profit organizations fulfill their goals?

Please select up to two options. \*

- Funding levels and funding stability
- Measures to encourage volunteering
- Development of a labour force strategy for charities and non-profits to address future labour shortages and promote decent work and professional development in the sector
- Collection of more accurate data about charities and non-profits
- Examine the Income Tax Act and the regulation of charities and non-profits (ex., charitable purposes and activities, the list of qualified donees, restrictions on non-partisan public policy advocacy, etc.)
- None of the above

### **L. Additional Comments**

18. Please use this box to highlight any other issue that you would like to bring to the committee's attention. You may also submit a written brief, via the committee's clerk, if you would like to provide the committee with more detailed information than is possible in the space provided here (maximum 100 words).

## Appendix C : Witnesses

DATE OF APPEARANCE	NAME, TITLE	ORGANIZATION
Monday, April 8, 2019	Susan Manwaring, Partner and Leader, Social Impact Group, Miller Thomson LLP	As individuals
	Adam Parachin, Associate Professor, Osgoode Hall Law School, York University	
	Kayla Smith, Student, Faculty of Law, University of Windsor	
	Andrea McManus	Association of Fundraising Professionals
	W. Matthew Chater, National President and Chief Executive Officer	Big Brothers Big Sisters of Canada
	Karine Pomilia Gauthier, National Youth Mentoring Advisory Council Member	
	Terry Anne Boyles, Co-Chair	Board Voice Society of BC
	Jeff Boucher, Coordinator, Canadian Adaptive Snowsports, CADS-NCD Edelweiss	Canadian Association for Disabled Skiing - National Capital Division
	Andrew Chunilall, Chief Executive Officer	Community Foundations of Canada
	Adam Aptowitz, Lawyer, Charities and Not-for-Profits	Drache Aptowitz LLP
	Karen Cooper, Legal Counsel	
	Sylvie Allard, Vice-President, Customer Experience	Héma-Québec
	Miville Mercier, President of the Provincial Association of Blood Donation Volunteers	
	Bruce MacDonald, President and Chief Executive Officer	Imagine Canada
	Bob Wyatt, Executive Director	Muttart Foundation
Hilary Pearson, President	Philanthropic Foundations Canada	
Michael Maidment, Chief Executive Officer	Ottawa Food Bank	

## Catalyst for Change: A Roadmap to a Stronger Charitable Sector

	David Oyler	Oyler Consulting
	Marilyne Fournier, Director General Irène Langlais, Volunteer, Canadian Red Cross	Réseau de l'action bénévole du Québec
	Dan Clement, Acting President and Chief Executive Officer	United Way Canada
	Paula Speevak, President and Chief Executive Officer	Volunteer Canada
Monday, April 1, 2019	John Shields, Professor, Department of Politics and Public Administration, Ryerson University	As an individual
	Antonio Manconi, Director General, Charities Directorate  Sharmila Khare, Director, Policy, Planning and Legislation Division, Charities Directorate  Roxane Brazeau-Leblond, Director, Business and Employment Income Division, Income Tax Rulings Directorate	Canada Revenue Agency
	Alex Mazer, Founding Partner	CommonWealth Retirement
	Pierre Leblanc, Director General, Personal Income Tax Division, Tax Policy Branch  Blaine Langdon, Director, Charities, Personal Income Tax Division, Tax Policy Branch	Department of Finance Canada
	Catherine Scott, Director General, Community Development and Homelessness Partnerships Directorate  Jocelyne Voisin, Director General, Youth and Skills Innovation Directorate	Employment and Social Development Canada
	Brian Emmett, Chief Economist	Imagine Canada
	Mark Schaan, Director General, Marketplace Framework Policy Branch  Darryl Patterson, Director, Corporate, Insolvency and Competition Directorate	Innovation, Science and Economic Development Canada

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Monday, March 18, 2019	Lorenzo Ieraci, Director General, Acquisitions Program	Public Services and Procurement Canada
	Peter Clutterbuck, Senior Community Planning Consultant	Social Planning Network of Ontario
	Michael Lionais, Executive Director, Costing Centre of Expertise, Office of the Comptroller General of Canada	Treasury Board of Canada Secretariat
	Donald J. Bourgeois, Lawyer, Fogler Rubinoff LLP	As individuals
	Susan Ramsundarsingh, Course Instructor and Research Project Coordinator, Factor-Inwentash Faculty of Social Work, University of Toronto	
	Myles McGregor-Lowndes, Professor Emeritus, Australian Centre for Philanthropy and Non-profit Studies, Queensland University of Technology	
	Juniper Locilento, Vice-President, Public Affairs	Association of Fundraising Professionals, Greater Toronto Chapter
	The Honourable Gary Johns, Commissioner	Australian Charities and Not-for- profits Commission
	W. Matthew Chater, National President and Chief Executive Officer	Big Brothers Big Sisters of Canada
	Mike Power, Vice-President, Programming and Operations	Canada World Youth
	Christina Franc, Executive Director	Canadian Association of Fairs and Exhibitions
	John Pellowe, Chief Executive Officer	Canadian Council of Christian Charities
	Suzanne Parisé, Director General	Centre d'action bénévole Léonie- Bélanger
	Shimon Fogel, Chief Executive Officer	Centre for Israel and Jewish Affairs
	Karen Cooper, Legal Counsel	Drache Aptowitz LLP
	Sidney Ribaux, Co-founder and General Manager	Équiterre
Kevin Perkins, Executive Director	Farm Radio International	
Zaid Al-Rawni, Chief Executive Officer	Islamic Relief Canada	
Cindy Amerongen, Executive Director	Northern Lights Health Foundation	
Éric Hébert-Daly, Vice-President	Now and Forever Wild Fund	



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Monday, February 25, 2019	Ted Garrard, Chief Executive Officer	SickKids Foundation
	Heidi Jakob, President	Administrators of Volunteer Resources British Columbia
	Clifford L. Spyker, Associate Professor - Accounting, Mount Royal University	As individuals
	LoriAnn Girvan, Chief Operating Officer	Artscape
	Taralee Turner, Chief Operating Officer	Canada's Royal Winnipeg Ballet
	Arlene MacDonald, Executive Director	Community Sector Council of Nova Scotia
	Arthur Chan, Founder and President	D2D Destiny Foundation
	Craig Scott, Executive Director	Ecology North
	Debby Warren, Executive Director	Ensemble Services Greater-Grand Moncton Inc.
	Ryan Fukunaga, Executive Director	Free Geek Toronto
	Connie Côté, Chief Executive Officer	Health Charities Coalition of Canada
	Chris Pot, Program Director	Hidden Acres Mennonite Camp and Retreat Centre
	Jung-Suk (JS) Ryu, Chief Executive Officer	Indefinite Arts Centre
	Mustafa Alio, Co-Founder and Development Director	Jumpstart - Refugee Talent
	David Sutherland, Firefighter, Training Officer and Vice Chair of the Board of Directors	Lapland and District Fire Department
	Vincent van Schendel, President	Le Réseau québécois en innovation sociale
	Latha Sukumar, Executive Director	MCIS Language Solutions
	Melanie Hurley, Chief Executive Officer	Outside Looking In
	The Right Honourable David L. Johnston, Chair	Rideau Hall Foundation
	Jill Clark, Manager, Communications	
Nayaelah Siddiqui, Intern		
Robert Cielen, Troop Section Scouter and Group Treasurer, 1st Langley Meadows	Scouts Canada	
Lisa Lalonde, Executive Lead, Not-for-Profit Research Hub	The Mowat Centre	

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	David Lau, Executive Director	The Victoria Immigrant and Refugee Centre Society
	Philip Landon, Vice President	Universities Canada
Monday, December 10, 2018	Sean Moore, Principal	Advocacy School
	Susan Manwaring, Partner and Leader, Social Impact Group	As an individual
Monday, December 3, 2018	Robert Hayhoe	As an individual
	Harriett McLachlan, Deputy Director	Canada Without Poverty
	Michèle Biss, Legal Education and Outreach Coordinator	
	Karen Cooper, Member, Charities and Not-for-Profit Section	Canadian Bar Association
	Gaylene Schellenberg, Lawyer, Legislation and Law Reform	
Hilary Pearson, President	Philanthropic Foundations Canada	
Monday, November 26, 2018	Terrance Carter, Managing Partner, Carters Professional Corporation	As individuals
	Gloria DeSantis, Assistant Professor, Founder/Facilitator, Voluntary Sector Studies Network, University of Regina	
Monday, November 19, 2018	Gordon Floyd	As individuals
	Mark Blumberg, Partner, Blumberg Segal LLP	
	Cliff Goldfarb	
	Lynn Eakin, Policy Advisor	Ontario Nonprofit Network
Monday, November 5, 2018	Don McRae, Charity Researcher	As individuals
	Adam Parachin, Associate Professor, Osgoode Hall Law School, York University	
	King Wan, Executive Director	Chinese Canadian Military Museum Society
	Peter Broder, Executive Director	The Pemsel Case Foundation
Monday, October 22, 2018	Kathryn Chan, Assistant Professor, Faculty of Law, University of Victoria	As an individual
	Bob Wyatt, Executive Director	Muttart Foundation

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	<p>Lisa Lalande, Executive Lead, Not-for-Profit Research Hub</p> <p>Joanne Cave, Social Policy Researcher</p>	The Mowat Centre
	Laird Hunter, President	The Pemsel Foundation
Monday, October 15, 2018	<p>Christopher Fredette, Associate Professor, Odette School of Business, University of Windsor</p> <p>Bruce Miller, Senior Philanthropic, Social Inclusion and Reconciliation Strategist, Creaddo Group</p> <p>Laura Ryser, Research Manager, Rural and Small Town Studies Program, University of Northern British Columbia</p> <p>Wendy Cukier, Founder and Director, Diversity Institute, Ryerson University</p>	As individuals
	Queenie Choo, Chief Executive Officer	S.U.C.C.E.S.S.
Monday, October 1, 2018	<p>Cathy Winter, Program Manager, DiverseCity onBoard, Ryerson University</p> <p>Jacline Nyman, Former President and Chief Executive Officer, United Way Canada</p>	As individuals
	Raksha Manaktala Bhayana, Chief Executive Officer	Bhayana Family Foundation
	Cathy Taylor, Executive Director	Ontario Nonprofit Network
Monday, September 24, 2018	<p>Ray Madoff, Professor, Law School, Boston College</p> <p>Catherine Leviten-Reid, Associate Professor, Community Economic Development, Cape Breton University</p>	As individuals
	Marilyne Fournier, Director General	Réseau de l'action bénévole du Québec
	Teresa Marques, President and Chief Executive Officer	Rideau Hall Foundation
	Craig Kielburger, Co-Founder	WE Charity

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Tuesday, September 18, 2018	The Honourable Senator Frances Lankin, P.C.	As individuals
	Ian D. Clark, Co-Chair, Independent Blue Ribbon Panel on Grants and Contributions	
	Patrick Johnston, Principal, Borealis Advisors and Former Co-Chair, Voluntary Sector Initiative	
	Paulette Senior, President and Chief Executive Officer	Canadian Women's Foundation
	Tonya Surman, Chief Executive Officer	Centre for Social Innovation
	Catherine Scott, Director General, Community Development and Homelessness Partnerships Directorate	Employment and Social Development Canada
	Tania Carnegie, Chief Impact Officer, Leader, Impact Ventures and Former Member, Social Innovation and Social Finance Steering Group	KPMG
	Susan Manwaring, Partner and Leader, Social Impact	Miller Thomson LLP
	Tracey Wallace, Executive Director	Northern Council for Global Cooperation
	Debbie Douglas, Executive Director	Ontario Council of Agencies Serving Immigrants
	Carolyn Blain, Director General, Strategic Policy Sector	Public Services and Procurement Canada
	Susan McIsaac, Managing Director, Strategic Philanthropy	RBC Wealth Management
	Norman Ragetlie, Chief Executive Officer	Rural Ontario Institute
	Stephen Huddart, President and Chief Executive Officer	The McConnell Foundation
Michael Lionais, Executive Director, Costing Centre of Expertise, Office of the Comptroller General of Canada	Treasury Board of Canada Secretariat	
Wayne Chiu, Co-Founder	Trico Foundation	
Monday, September 17, 2018	Krishan Mehta, Assistant Vice President, Engagement, Ryerson University	As individuals
	Donald K. Johnson, Board Member, Four Not-for-Profit Organizations in Healthcare, Education, Social Services and Arts and Culture	

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	Keith Sjögren, Managing Director, Consulting Services, Strategic Insight	
	Scott Decksheimer, Chair	Association of Fundraising Professionals
	Andrea McManus	
	Ruth MacKenzie, Chief Executive Officer	Canadian Association of Gift Planners
	Andrew Chunilall, Chief Executive Officer	Community Foundations of Canada
	Adam Aptowitzer, Lawyer, Charities and Not-for-Profits	Drache Aptowitzer LLP
	John Hallward, Chief Executive Officer	GIV3
	Philip Cho, Chair	Korean Canadian Scholarship Foundation
	Bill Schaper, Director, Public Policy	Imagine Canada
	Hilary Pearson, President	Philanthropic Foundations Canada
	James Temple, Chief Corporate Responsibility Officer	PricewaterhouseCoopers LLP, Canada
	Malcolm Burrows, Philanthropic Advisor	Scotia Wealth Management
	Kevin McCort, President and Chief Executive Officer	Vancouver Foundation
Monday, June 11, 2018	Michel Tremblay, Senior Vice President, Policy and Research	Canada Mortgage and Housing Corporation
	Amy Jarrette, Acting Assistant Commissioner, Communications and Engagement	Correctional Service Canada
	Patrice Miron, Director, Citizen Engagement	
	Heather Sheehy, Associate Assistant Deputy Minister, Strategic and Service Policy Branch	Employment and Social Development Canada
	Karen Hall, Director General, Social Policy, Strategic and Service Policy Branch	
	Blair McMurren, Director, Social Innovation, Income Security and Social Development Branch	
Dave Metcalfe, Director General, International Assistance Operations	Global Affairs Canada	

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	Joshua Tabah, Director General, Inclusive Growth and Governance and Innovation	
Monday, June 4, 2018	Debra Basil, Professor, Marketing, University of Lethbridge	As individuals
	Femida Handy, Professor, University of Pennsylvania	
	Alan Bulley, Director General, Labour Market and Social Development Program Operations	Service Canada
	Brent Bauer, Director, Canada Service Corps	
	Pamela Best, Assistant Director, Social and Aboriginal Statistics Division	Statistics Canada
	Patric Fournier-Savard, Survey Manager and Analyst, Social and Aboriginal Statistics Division	
	Paula Speevak, President and Chief Executive Officer	Volunteer Canada
Monday, May 28, 2018	Shachi Kurl, Executive Director	Angus Reid Institute
	Kayla Smith, Student, Faculty of Law, University of Windsor	As individuals
	Laura Lamb, Associate Professor, School of Business and Economics, Thompson Rivers University	
	Pamela Best, Assistant Director, Social and Aboriginal Statistics Division	Statistics Canada
	Patric Fournier-Savard, Survey Manager and Analyst, Social and Aboriginal Statistics Division	
	Martin Turcotte, Senior Analyst, Social and Aboriginal Statistics Division	
Monday, May 7, 2018	Brian Emmett, Chief Economist for Canada's Charitable and Nonprofit Sector	Imagine Canada
	Catherine Van Rompaey, Director, National Economic Accounts Division	Statistics Canada

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	Matthew MacDonald, Assistant Director, National Economic Accounts Division	
Monday, April 23, 2018	Antonio Manconi, Director General, Charities Directorate, Legislative Policy and Regulatory Affairs Branch  Sharmila Khare, Director, Charities Directorate, Legislative Policy and Regulatory Affairs Branch  Roxane Brazeau-Leblond, Director, Income Tax Rulings Directorate, Legislative Policy and Regulatory Affairs Branch	Canada Revenue Agency
	Blaine Langdon, Director, Charities, Personal Income Tax Division, Tax Policy Branch  Pierre Leblanc, Director General, Personal Income Tax Division, Tax Policy Branch	Department of Finance Canada
Monday, April 16, 2018	Susan Phillips, Professor and Graduate Supervisor, Philanthropy and Non-profit Leadership, School of Public Policy and Administration, Carleton University  Rachel Laforest, Associate Professor and Director, Public Administration Program, School of Policy Studies, Queen's University  Peter Elson, Adjunct Assistant Professor, University of Victoria	As individuals

## Appendix D: Written Submissions Received By The Committee

ORGANIZATION	SUBMITTER
Administrators of Volunteer Resources British Columbia	Heidi Jakop
As Individuals	Mark Blumberg
	Terrance Carter
	Kathryn Chan
	Don Chapman
	Ian D. Clark
	Wendy Cukier
	Les Frayne
	Donald K. Johnson
	Patrick Johnston
	Ray Madoff
	Don McRae
	Adam Parachin
	Gail Picco
Susan Ramsundarsingh	
Keith Sjögren	
Association of Fundraising Professionals, Greater Toronto Chapter	Juniper Locilento
Big Brothers Big Sisters of Canada	Organization Only
B'Nai Brith Canada	Brian Herman
British Columbia Humanist Association	Ian Bushfield



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Calgary Chamber of Voluntary Organizations	David Mitchell
Canada Revenue Agency	Antonio Manconi
Canadian Bar Association	Linda J. Godel Gaylene Schellenberg
Canadian Cancer Society	Andrea Seale
Canadian Council for the Advancement of Education	Organization Only
Canadian Council of Christian Charities	John Pellowe
Canadian Council for International Co-operation	Gavin Charles
Cardus	Milton Friesen
Centre d'action bénévole Léonie-Bélanger	Suzanne Parisé
Change Her World	Linda Willis
Charity Law Interest Group	Benjamin Miller Katrina Kairys
Chinese Canadian Military Museum Society	King Wan
Christian Legal Fellowship	Organization Only
Colleges and Institutes Canada	Organization Only
CommonWealth Retirement	Alex Mazer
Community Foundations of Canada	Andrew Chunilall
Community Sector Council of Nova Scotia	Arlene MacDonald
Crossroads Christian Communications Inc.	Lorna Dueck
Department of Finance Canada	Pierre Leblanc
Faith & the Common Good	Lucy Cumming
Fédération des communautés francophones et acadienne du Canada	Organization Only
Federation of Canadian Municipalities	Vicki-May Hamm
GIV3	John Hallward

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Imagine Canada	Brian Emmett Bill Schaper
Impact Canada	Michael Powell
Indefinite Arts Centre	Jung-Suk (JS) Ryu
Lapland and District Fire Department	David Sutherland
Mastercard Foundation	Organization Only
MCIS Language Solutions	Latha Sukumar
Miller Thomson LLP	Susan Manwaring
Muslim Association of Newfoundland and Labrador	Haseen Khan
Muttart Foundation	Bob Wyatt
National Campus and Community Radio Association Inc.	Barry Rooke Luke Smith
National Trust for Canada	Natalie Bull
Nature Conservancy of Canada	Organization Only
Northern Lights Health Foundation	Cindy Amerongen
Ontario Council of Agencies Serving Immigrants	Debbie Douglas
Ontario Nonprofit Network	Lynn Eakin
Osgoode Charity Law Association	Kristopher Kinsinger
Oyler Consulting	David Oyler
Philanthropic Foundations Canada	Hilary Pearson
PricewaterhouseCoopers LLP, Canada	James Temple
Public Services and Procurement Canada	Carolyne Blain
Relate Social Capital	Samantha Rogers
Réseau de l'action bénévole du Québec	Marilyne Fournier
Réseau québécois de l'action communautaire autonome	Organization Only

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Scotia Wealth Management	Malcolm Burrows
Social Planning Network of Ontario	Peter Clutterbuck
Statistics Canada	Pamela Best Martin Turcotte Catherine Van Rompaey
The Capital Hill Group	Nancy Cruz
The Evangelical Fellowship of Canada	Organization Only
The McConnell Foundation	Stephen Huddart
The Mowat Centre	Lisa Lalande
The Pemsel Case Foundation	Peter Broder
The Pemsel Foundation	Laird Hunter
Treasury Board of Canada Secretariat	Michael Lionais
Universities Canada	Organization Only
University of Manitoba	Erin Crawford
YMCA Canada	Organization Only



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