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Turning a Corner

Laying the Groundwork for Charity
Regulatory Reform in Canada

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Enabling
Environment

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As the national umbrella organization for charities and nonprofits, Imagine Canada believes governments and charities must work together to solve today's complex social and environmental challenges. Mowat NFP's Enabling Environment series is a timely contribution to the wide-ranging discussion about the policies, issues, regulatory systems, and administrative relationships that form the basis of how the government and sector work together. Imagine Canada is pleased to contribute to the series. Our intention is to utilize the papers to support public policy discussion and development in the sector. Stay up to date with these activities by signing up for our Early Alert at imaginecanada.ca/earlyalert.



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This paper is the second in a series that Mowat NFP is producing focused on helping the federal government and nonprofit and charitable sector develop a modern federal policy framework. This framework will focus on enabling the sector and strengthening its ability to improve quality of life in Canada and abroad. The series will explore the several dimensions of an enabling environment, including the relationship between the sector and government, regulation, financing, data, and research and development. The papers will evaluate policy options and offer a future-oriented perspective on how the government and sector can work together.

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A modernized and future-oriented regulatory framework lays the groundwork for an enabling environment for charities - one that safeguards public interest, supports the sustainability of the sector, and optimizes the policy landscape for experimentation.

1 INTRODUCTION

Canada's charitable sector is at a crossroads. Heavy demand for services is already straining capacity. If, as seems likely, charities face a future of slow revenue growth, the gap between demand and capacity may degrade the quality of supports for the most vulnerable people in our communities.¹

In response to that reality, the charitable sector is pressing for regulatory reform. The political activity audits,² recently suspended but still fresh in the sector's mind, supply just one example of where the regulatory regime must modernize if charities are to better serve their constituents. A well-drawn regulatory regime will augment the ability of charities to meet ever-growing expectations.

This paper seeks to help the sector and the architects of the federal regulatory regime – developed by the Department of Finance and administered by the Canada Revenue Agency's Charities Directorate – create a more enabling regulatory environment. In an enabling environment, the government invests in the growth and success of the sector and consults key stakeholders on their priorities and needs. It safeguards public interest, supports the sustainability of charities and nonprofits, while optimizing the policy landscape for innovation

and experimentation.”³ This paper outlines how today's rules sometimes interfere with that vision, and offers high-level recommendations to begin a process of re-alignment.

The federal government made a commitment to explore broader opportunities to reform the regulatory regime governing charities in its mandate letters.⁴ In 2016, it launched the political activities review⁵ which resulted in the *Report of the Consultation Panel on the Political Activities of Charities*.⁶ While it focused on political activities, it urged the federal government to “modernize the rules governing the charitable sector through the development of a new legislative framework.” As the Panel noted, a new framework would permit the federal government and the sector to address

1 Emmett, B. (2016). *Charities, Sustainable Funding and Smart Growth*. Retrieved from Imagine Canada: http://www.imaginecanada.ca/sites/default/files/imaginecanada_charities_sustainability_smart_growth_2016_10_18.pdf.

2 In 2012, the federal government allocated money to spend on political activities audits. The issue highlighted the need for a better understanding of the regulatory regime. It also emphasized that the regulatory regime should allow charities more space to engage in the public policy process.

3 Lalande, L. and Cave, J. (2017). *Charting A Path Forward: Strengthening and Enabling the Charitable Sector in Canada*. Retrieved from the Mowat Centre: <https://mowatcentre.ca/charting-a-path-forward/>.

4 Office of the Prime Minister (2015). Minister of National Revenue Mandate Letter. Retrieved from <http://pm.gc.ca/eng/minister-national-revenue-mandate-letter>; Office of the Prime Minister. (2015). Minister of Finance Mandate Letter. Retrieved from <http://pm.gc.ca/eng/minister-finance-mandate-letter>.

5 Canada Revenue Agency (2017). *Clarifying the Rules Governing Charities' Political Activities: Consultation Process 2016 to 2017*. Retrieved from <http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/pltbl-ctvts/cnsltn-prcss16-17-eng.html>.

6 Consultation Panel on the Political Activities of Charities (2017). *Report of the Consultation Panel on the Political Activities of Charities*. Retrieved from the Canada Revenue Agency: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/pltbl-ctvts/pnlrprt-eng.pdf>.

long-standing problems, such as the static list of charitable purposes and the tight restrictions on social enterprise.

We agree with the Panel's recommendation, and aim to set the stage for the design of a new framework in this paper. This paper will address the following:

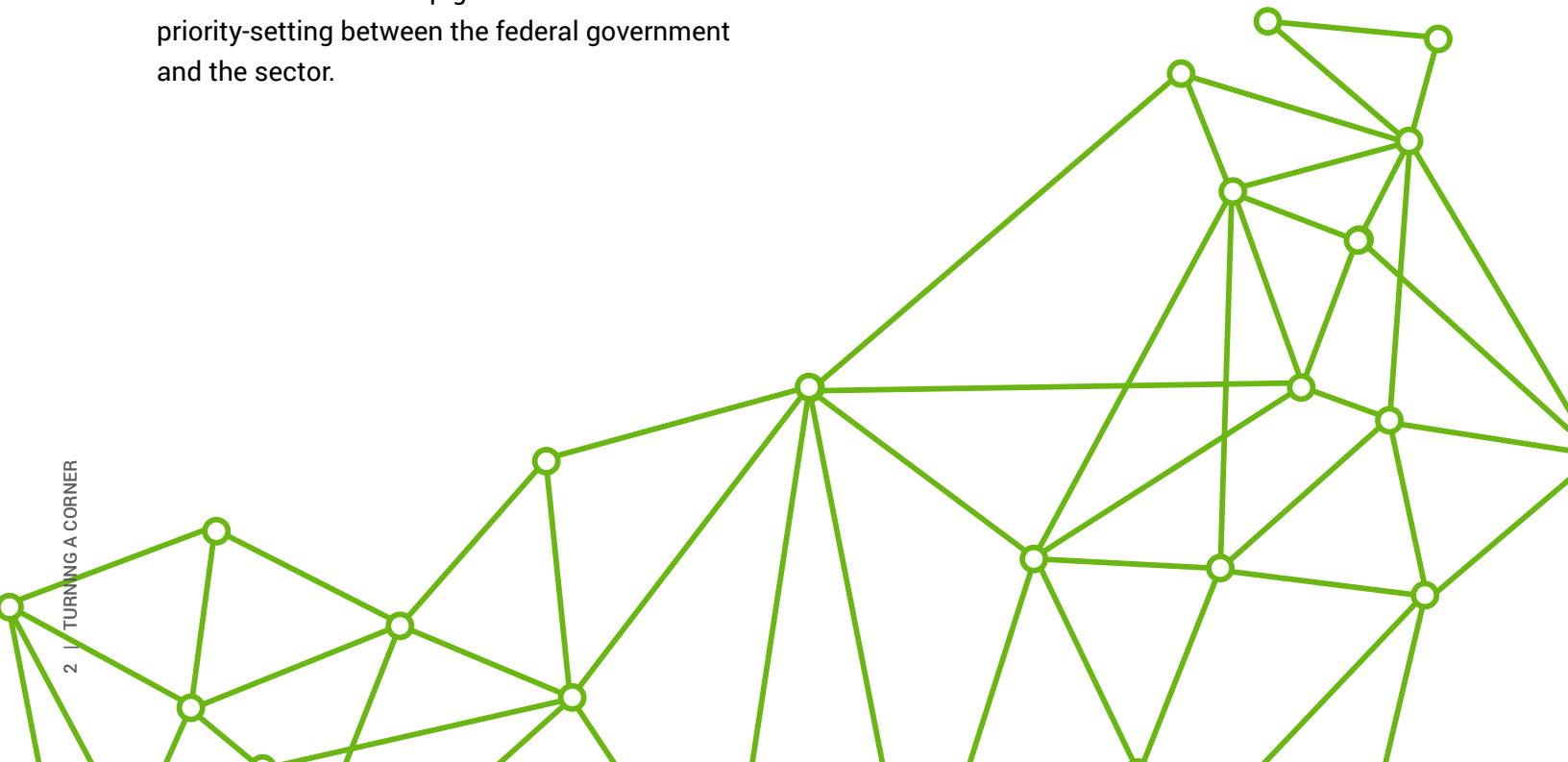
- » Review the federal charities regulatory regime.
- » Discuss the limitations of the regime as designed and administered today.
- » Summarize past reform efforts and international lessons.
- » Recommend high-level changes by which the federal government and the sector can begin to build a more responsive regulatory framework.

This paper is part of Mowat NFP's *Enabling Environment* series. The series intends to help the federal government and the sector develop a modern policy framework that strengthens the sector and enables it to improve the quality of life of people in Canada and around the world. Papers in the series aim to help guide discussions and priority-setting between the federal government and the sector.

Research approach

This paper draws upon a review of Canadian literature review, a scan of international regulatory models and interviews with key informants from charities, law firms and academic institutions (please see Appendix A for a list of key informants).

It is important to note that the regulation and oversight of nonprofits in Canada is different from that of charities. This paper will speak only to registered charities. An examination of the regulatory frameworks that apply to nonprofits would require further work.



2 CONTEXT

The *Constitution Act*, 1867 assigns exclusive jurisdiction over charities to the provinces.⁷ Most of the provinces, however, do not much exercise that jurisdiction. Ontario, the most prominent exception, supervises charities through its Office of the Public Guardian and Trustee.⁸ Alberta's *Charity Fund-Raising Act* sets rules on how charities can fundraise.⁹ Trust legislation in all provinces except Québec instructs charity trustees on investing charitable property, among other topics (Québec regulates charitable investments through its civil code).¹⁰

But the provinces supply neither comprehensive regulation nor energetic enforcement.¹¹ The provinces' limited participation has shone a spotlight on the federal government's role, and in particular that of the Charities Directorate. The federal government's jurisdiction derives from the tax privileges accorded charities under the *Income Tax Act*. Charities rely on those tax privileges, so much so that access to the privileges has, in practice, come to define what counts as charity. The Directorate's decisions and policies, therefore, carry great weight.

How does the Charities Directorate regulate charities?

The Directorate does not invent its own rules. It interprets and applies the common law and the *Income Tax Act*. To guide charities, the Directorate publishes policies that explain how it interprets the law. Many of those policies define in narrow terms what qualifies as charitable and how charities can work. On the regulatory spectrum between encouraging creativity and preventing harm, the Directorate has leaned toward preventing harm.¹²

To explain that approach, some point to the Directorate's position in the Canada Revenue Agency. The CRA exists to administer the tax system, especially the *Income Tax Act*. It invests significant resources in identifying attempts to thwart the Act – for example, attempts to abuse the donation tax credit.¹³

⁷ *Constitution Act*, 1867, 30 & 31 Victoria, c. 3. (U.K.), s. 92(7). The *Constitution Act* may imply federal jurisdiction over interprovincial charities. To date, that argument has not seen judicial comment.

⁸ Ontario Ministry of the Attorney General (2015). *Charities*. Retrieved from <https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/charities/> 9 R.S.A. 2000, c. C-9.

¹⁰ Hunter, W.L. et al. (2012). *Mission Investing for Foundations: The Legal Considerations*. Retrieved from Philanthropic Foundations Canada: <http://pfc.ca/wp-content/uploads/pfc-mif-legal-oct2012-en.pdf>

¹¹ Aptowitz, A. (2009). *Bringing the Provinces Back In: Creating a Federated Canadian Charities Council*. Retrieved from C.D. Howe: https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed//commentary_300.pdf; de March, T. (2017). "The Prevention of Harm Regulator." In McGregor-Lowndes, M. and Wyatt, B. (eds). *Regulating Charities* (pp. 119-137). New York, New York: Routledge.

¹² de March, T. (2017). "The Prevention of Harm Regulator." In McGregor-Lowndes, M. and Wyatt, B. (eds.). *Regulating Charities* (pp. 119-137). New York, New York: Routledge.

¹³ See, for example, *Berg v. the Queen*, 2012 TCC 406.

Some observers say the CRA's priorities lead the Directorate to concentrate first on protecting tax revenue.¹⁴

The Directorate's current risk-averse approach may compromise the sector's capacity to adapt and respond to evolving demands.

For example, a Canadian charity will sometimes transfer money to a not-for-profit, for-profit or foreign charity that is better placed to carry out the charity's purpose. International development charities in particular frequently rely on partners.¹⁵ The Directorate has interpreted the *Income Tax Act* to say that a charity may only transfer money to a non-qualified donee (which includes not-for-profits, for-profits and foreign charities) if the Canadian charity keeps direction and control over its money. Direction and control is a demanding standard. To meet it, the Directorate recommends a charity lay down a detailed plan for the money's use, supervise and instruct the recipient throughout execution of that plan, and keep careful receipts and records on transactions perhaps half a world away.¹⁶

Direction and control costs charities time and money and sometimes thwarts useful work altogether.¹⁷ It imposes a more stringent regime than the UK or the US¹⁸ and it does not proceed as a matter of necessity from the *Income Tax Act*. The *Income Tax Act* does not contain the words 'direction and control'. The *Income Tax Act*, according to the National Charities and Not-for-Profit Law Section of the Canadian Bar Association, permits a far less onerous interpretation of the necessary connection between a charity and a non-qualified donee.¹⁹ The Directorate's stringent direction and control rules suggest a belief that only exacting rules can guarantee that charitable resources will be devoted to charitable purposes.

What regulatory problems do charities encounter most often?

1] The rules constrain charities' voice, purposes, revenue and partnerships

Through our literature review, interviews and conversations in the sector, we heard four key problems in the substance of the rules: (1) limitations on political activities, (2) an outdated list of charitable purposes, (3) restrictions on earned revenue and (4) burdens on partnership with non-charities. Together, these regulatory issues contribute to a constraining environment for Canadian charities.

14 Panel on Accountability and Governance in the Voluntary Sector. (1999). *Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector*. Retrieved from Imagine Canada: <http://sectorsource.ca/resource/file/building-strength-improving-governance-and-accountability-canadas-voluntary-sector>; Drache, A.B.C. and Hunter, W.L. (1999). "A Canadian Charity Tribunal: A Proposal for Implementation." *International Journal of Not-for-Profit Law*, 2(2). Retrieved from: http://www.icnl.org/research/journal/vol2iss2/art_6.htm.

15 Lorinc, J. (2015). "The Problems with Direction and Control." *The Philanthropist*. Retrieved from <http://thephilanthropist.ca/2015/04/international-series-the-problems-with-direction-and-control/>.

16 Canada Revenue Agency (2010). *Canadian Registered Charities Carrying Out Activities Outside Canada*. Retrieved from <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html>; Canada Revenue Agency (2011). *Using an intermediary to carry out a charity's activities within Canada*. Retrieved from <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/ntrmdry-eng.html>.

17 Lorinc, J. (2015). "The Problems with Direction and Control." *The Philanthropist*. Retrieved from <http://thephilanthropist.ca/2015/04/international-series-the-problems-with-direction-and-control/>;

Valentine, A. (2016). "Foreign Activities by Canadian Registered Charities: Challenges and Options for Reform." *The Philanthropist*. Retrieved from <http://thephilanthropist.ca/2016/11/foreign-activities-by-canadian-registered-charities-challenges-and-options-for-reform/>.

18 Valentine, A. (2016). "Foreign Activities by Canadian Registered Charities: Challenges and Options for Reform." *The Philanthropist*. Retrieved from <http://thephilanthropist.ca/2016/11/foreign-activities-by-canadian-registered-charities-challenges-and-options-for-reform/>.

19 National Charities and Not-for-Profit Law Section of the Canadian Bar Association (2009). *CRA Proposed Guidance on Activities Outside of Canada for Canadian Registered Charities*. Retrieved from the Canadian Bar Association: <http://www.cba.org/CMSPages/GetFile.aspx?guid=0b9634ff-dd22-4161-ac21-71fef0f28a04>.

Rule	Description	Problem
POLITICAL ACTIVITIES	The <i>Income Tax Act</i> says a charity may devote resources to political activities only if it spends substantially all of its resources of charitable activities or purposes. The Directorate has interpreted those words to mean a charity may not spend more than 10% of its resources on public advocacy. ²⁰	Some charities see political change as the most promising route to progress on their charitable missions. These charities believe that the rules should not prohibit the most effective (and perhaps the only) strategies by which they can fulfill their purposes. Others do not understand the Directorate's definition of political activities (for example, some charities believe privately advising governments counts as a political activity). Some struggle to correctly classify activities and to calculate resources spent on political activities.
CHARITABLE PURPOSES	The <i>Income Tax Act</i> does not define charitable purpose, instead adopting the common law definition. ²¹ The common law definition takes its classification scheme from <i>Pemsel</i> ²² , an 1891 English case. That classification scheme reflects the mores of an earlier time. While the courts have occasionally added to the scheme, they pass rarely on charity questions. In <i>Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue</i> , the Supreme Court of Canada said Parliament, rather than the courts, should amend the definition of charity if it requires an amendment. ²³	Some charities or applicants for charitable status want to move beyond the <i>Pemsel</i> scheme, or at least expand its interpretation. Some charities, for example, want to prevent poverty, rather than just alleviate it (<i>Pemsel</i> speaks only to alleviating poverty). As of <i>Vancouver Society</i> , these charities have nowhere to which to appeal except Parliament. To date, Parliament has not shown great interest in studying the limits of the current definition and the costs and benefits of change.
EARNED REVENUE	The <i>Income Tax Act</i> says a charitable organization or a public foundation may only run a business if the business qualifies as a related business (a private foundation cannot run a business of any sort). The <i>Income Tax Act</i> says a business 90 per cent run by volunteers is one type of related business. The Directorate says the only other type of related business is a business linked and subordinate to the charity's purpose. ²⁴	Sales of goods and services comprised more than 45% of charity and nonprofit revenue in 2008, the last time Statistics Canada counted. ²⁵ Many charities want to increase that percentage to bridge the gap between grants and donations and demand for services. Sizable businesses cannot run on 90% volunteer labour. The Directorate's linked and subordinate standard restricts business activities to small projects.
PARTNERSHIP WITH NON-CHARITIES	The <i>Income Tax Act</i> says a charity may only spend its resources on gifts to qualified donees or on its own charitable activities. The Directorate has interpreted those words to mean a charity must maintain direction and control over resources given to a non-qualified donee (a category that includes nonprofits, for-profits and foreign charities). ²⁶	Some charities see great opportunity in collaboration across legal forms. Many charities, especially foundations and international development organizations, would rather help an entity or consortium on the ground than carry out activities itself. The direction and control rules impose high administrative costs on such arrangements. The rules require charities to supervise and instruct the recipients of charitable resources. The rules undercut the reason for partnership.

20 Canada Revenue Agency (2003). *Political Activities*. Retrieved from <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>.

21 A purpose is charitable under the common law if it fits within one of four categories: relief of poverty, advancement of education, advancement of religion, or certain other purposes beneficial to the community in a way the law regards as charitable (such as health promotion or environmental protection). Canada Revenue Agency (2013). *How to Draft Purposes for Charitable Registration*. Retrieved from <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/drftprps-eng.html#fn4>.


22 Commissioners for Special Purposes of the Income Tax v. *Pemsel* [1891] A.C. 531 (H.L.).

23 [1999] 1 S.C.R. 10.

24 Canada Revenue Agency (2003). What is a Related Business? Retrieved from <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-019-eng.html>.

25 Statistics Canada (2017). CANSIM 388-0001 Production, Income and Outlay Accounts of Nonprofit Institution and Volunteering. Retrieved from <http://www5.statcan.gc.ca/cansim/a26>.

26 Canada Revenue Agency (2010). Canadian Registered Charities Carrying Out Activities Outside Canada. Retrieved from <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html>; Canada Revenue Agency (2011). Using an intermediary to carry out a charity's activities within Canada. Retrieved from <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/ntrmdry-eng.html>.



“There is an underlying issue with the premise of the current regulatory framework. It was created from a worldview that saw sectors as separate and not often working together. It doesn’t consider the murky world of less defined innovative frontiers of the sector precisely where new societal value is created.”

*Tim Draimin
Executive Director, Social Innovation
Generation*

2] The Directorate's approach to regulation privileges detail over principle

The Directorate leans towards technical compliance rather than an approach that balances the risks of wrongdoing with the benefits of flexibility. For example, the *Income Tax Act* says a charity may carry on political activities when it dedicates 'substantially all' of its resources to charitable purposes or activities.²⁷ The Directorate interprets 'substantially all' to mean that the charity must spend 90 per cent of its resources on charitable activities, leaving 10 per cent for political activities.²⁸ An organization may face revocation if it crosses over to 11 per cent (a calculation that appears difficult to make, especially for a large organization pursuing many projects).²⁹

The 10 per cent rule and others like it (such as the detailed and very limited definition of related business)³⁰ seem to arise out of a desire to clarify the rules.³¹ On its own, of course, clarity is a virtue. But as Carl Juneau explains, the drive for clarity "often deprives charities of necessary flexibility, it raises more questions than provides answers, and its intricacy and perceived rigidity compel charities to be overcautious".³² The

27 *Income Tax Act*, R.S.C. 1985, c.1, ss. 149.1(6.1) and (6.2).
28 Canada Revenue Agency (2003). *Political Activities*. Retrieved from <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>.

29 Canada Revenue Agency (2003). *Political Activities*. Retrieved from <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>.

30 Canada Revenue Agency (2003). *What Is a Related Business?* Retrieved from <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-019-eng.html>.

31 See Juneau, C. (2016). *The Canadian Income Tax Act and the Concepts of Charitable Purposes and Activities*. Retrieved from the Pemsel Case Foundation: <http://www.pemselfoundation.org/wp-content/uploads/2016/10/Occasional-Paper-The-Canadian-Income-Tax-Act-and-the-Concepts-of-Charitable-Purposes-and-Activities-Final.pdf>.

32 Juneau, C. (2016). *The Canadian Income Tax Act and the Concepts of Charitable Purposes and Activities*. Retrieved from the Pemsel Case Foundation: <http://www.pemselfoundation.org/wp-content/uploads/2016/10/Occasional-Paper-The-Canadian-Income-Tax-Act-and-the-Concepts-of-Charitable-Purposes-and-Activities-Final.pdf>.

Directorate's fixation on clarity has led it into long battles over technical compliance instead of the reasons the rules exist in the first place.³³

As the federal government and the sector review today's regulatory regime and imagine a regime that will better enable the sector, they should start at principles rather than details. Reform conversations too easily descend into the minutiae of operational rules. A principles conversation will shape a shared understanding of why regulate, and thereby suggest more creative, more collaborative ways forward.

3] The regulatory system permits too little transparency on how decisions are made

The common law relies on written reasons to spell out the application of principles. Those subject to a law learn its limits by comparing their facts to the facts in the cases. Charities have very few cases to which to compare. The *Income Tax Act* does not permit the Directorate to publish its letters to a charity unless the Directorate has revoked or annulled the charity's status, suspended the charity, or assessed a tax or penalty against the charity. The Directorate cannot release letters written to an applicant for charitable status.³⁴ Drawing on the Directorate's letters to learn how it interprets the law reveals only what charities are forbidden to do, not the limits of what charities are allowed to do.

33 For example, the Directorate and Habitat for Humanity debated for years whether Habitat's ReStores, which sell donated construction materials, count as a related business under the volunteer category or the linked and subordinate category. Doyle, S. and Carnegie, T. (2014). *Mobilizing Private Capital for Public Good: Priorities for Canada*. Retrieved from MaRS Centre for Impact Investing: <http://impactinvesting.marsdd.com/resource/mobilizing-private-capital-public-good-priorities-canada/>.

34 Canada Revenue Agency (2011). *Confidentiality – Public Information*. Retrieved from <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/cnfdntl-eng.html>.

In another system, the courts might supply the insight the Directorate cannot. But, as many have complained³⁵, the first judicial appeal for a charity refused or deprived of charitable status lies to the Federal Court of Appeal.³⁶ Appealing to the Federal Court of Appeal takes a long time and costs a lot of money. The Federal Court of Appeal heard nine cases on the definition of charity between 2001 and 2009, and the Supreme Court of Canada heard one case.³⁷ Such a small number of cases on such a sweeping diversity of organizations, purposes and activities cannot keep the law precise and current.

The Directorate may feel that it must write very specific policy guidance to compensate for the dearth of charity cases. The Directorate deserves credit for writing guidance in response to sector-identified gaps – the related business policy filled such a gap³⁸ – and for opening the guidance process to greater feedback.³⁹ But when guidance is supposed to lay down the rules all alone, it may tend to technical details no matter how much it involves the sector.

The federal regulatory system values transparency, as stated in and exemplified by the Directorate's first annual report.⁴⁰ At least two avenues would permit the federal government to strengthen that value: publishing the Directorate's letters and easing the path to appeal. For further detail on these options, see the table in Appendix B.

Today's fractured understanding of how the Directorate makes decisions contributes to the disputes among experts about whether the charity regulatory system requires fundamental reform. If the sector could better understand why the Directorate decides cases as it does or at least where the law of charity sits, it can talk to the Directorate. It can approach with confidence the conversation on how the law might evolve. And, with more cases, both the Directorate and the sector might gain a clearer understanding of how the burden of the rules balance against the risks they are supposed to avoid.

35 See, for example, Phillips, S.D. (2001). "From Charity to Clarity: Reinventing Federal Government-Voluntary Sector Relationships." *The Philanthropist*, 16(4), 240-62. Retrieved from <https://thephilanthropist.ca/original-pdfs/Philanthropist-16-4-249.pdf>.

36 Canada Revenue Agency (2015). *Objections and Appeals: Registered Charities, Registered Canadian Amateur Athletic Associations (RCAAs), and Other Listed Qualified Donees*. Retrieved from <http://www.cra-arc.gc.ca/gncy/cmplntsdsp/chrts-eng.html>.

37 Wyatt, B. (2009). "Overview from Canada: Modernising Charity Law." *The Philanthropist*, 22(2), 59-74. Retrieved from <http://thephilanthropist.ca/2009/12/overview-from-canada-modernising-charity-law/>.

38 For a sector invocation of the related business gap, see Panel on Accountability and Governance in the Voluntary Sector. (1999). *Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector*. Retrieved from Imagine Canada: <http://sectorsource.ca/resource/file/building-strength-improving-governance-and-accountability-canadas-voluntary-sector>.

39 Wyatt, B. (2009). "Overview from Canada: Modernising Charity Law." *The Philanthropist*, 22(2), 59-74. Retrieved from <http://thephilanthropist.ca/2009/12/overview-from-canada-modernising-charity-law/>.

40 Canada Revenue Agency (2017). *Report on the Charities Program 2015-2016*. Retrieved from <http://www.cra-arc.gc.ca/chrts-gvng/chrts/bt/nlprprt/2015/rprt-eng.html>.

3 ALTERNATIVE REGULATORY MODELS

Canadian sector leaders and working groups have long debated the virtues of shifting some or all of the federal government's regulatory authority to a body other than the Directorate.

The Broadbent report recommended a Voluntary Sector Commission that would, among other duties, advise the Directorate on registration.⁴¹ Arthur Drache and Laird Hunter proposed a Charity Tribunal to decide registration.⁴² The Joint Regulatory Table of the Voluntary Sector Initiative discussed a commission either to take over all of the Directorate's functions or to register charities and write policy guidance but leave supervision and audits to the Directorate.⁴³ The Table also described an independent agency to advise the Directorate on policy and, beyond its role in regulation, champion the sector within government and to the public.⁴⁴ For a summary of the Table's four regulatory models, see Appendix C.

None of the models studied by the Voluntary Sector Initiative were adopted, perhaps due to overly ambitious objectives, misunderstanding between sector and government representatives, lack of a unified sector voice and lack of political will.⁴⁵ The federal government instead took the path of incremental change, launching the Charities Regulatory Reform Initiative in 2004 and passing a new *Non-Profit Corporations Act* in 2009.⁴⁶

Should some or all regulatory powers shift to a body other than the Directorate?

The decision on where within a government the regulator should sit is one of the most consequential and complex in charity regulation. Does the institutional home of Canada's charity regulator matter and to what degree does it matter? An argument can be made that the Directorate's location within a tax collector renders it more conservative in interpreting the definition of charity and in enabling new models of work and collaboration.

41 Panel on Accountability and Governance in the Voluntary Sector (1999). *Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector*. Retrieved from Imagine Canada: <http://sectorsource.ca/resource/file/building-strength-improving-governance-and-accountability-canadas-voluntary-sector>.

42 Drache, A.B.C. and Hunter, W.L. (1999). "A Canadian Charity Tribunal: A Proposal for Implementation." *International Journal of Not-for-Profit Law*, 2(2). Retrieved from: http://www.icnl.org/research/journal/vol2iss2/art_6.htm.

43 Joint Regulatory Table (2003). *Strengthening Canada's Charitable Sector: Regulatory Reform*. Retrieved from the Voluntary Sector Initiative: http://www.vsi-isbc.org/eng/regulations/pdf/final_report_full.pdf.

44 Joint Regulatory Table (2003). *Strengthening Canada's Charitable Sector: Regulatory Reform*. Retrieved from the Voluntary Sector Initiative: http://www.vsi-isbc.org/eng/regulations/pdf/final_report_full.pdf.

45 See Johnston, P. (2013). "A Retrospective Look at the Voluntary Sector Initiative (VSI): What Lessons Did We Learn?" *The Philanthropist*, 25(1), 21-31. Retrieved from <https://thephilanthropist.ca/original-pdfs/Philanthropist-25-1-512.pdf>.

46 Human Resources and Skills Development Canada (2009). *Voluntary Sector Initiative Impact Evaluation: Lessons Learned from the Voluntary Sector Initiative (2000-2005)*. Retrieved from https://www.canada.ca/content/dam/esdc-edsc/migration/documents/eng/publications/evaluations/social_development/2009/sp_946_04_10_eng.pdf.

On the other hand, the Directorate's institutional home may not define how it sees the world. Some argue that today's problems stem from the vague and outdated laws the regulator must interpret. Based on this view, charity regulation will not much change as long as the rules, both in the *Income Tax Act* and the common law, stay the same.

Even those who see advantages in a different regulator recognize the challenge in designing a new body and removing some or all of the CRA's well-established authority. The benefit of a new structure may not justify the cost in time, effort and especially political will.

The intuitive argument that a tax collector will tilt toward a narrow interpretation may be too simple. The Joint Regulatory Table of the Voluntary Sector Initiative found no evidence to suggest the Directorate decides registration cases any differently than independent regulators.⁴⁷ On the other hand, new regulators, like those in Australia and Scotland, appear to inject new energy into charity regulation. That new energy may break old logjams that an old regulator, whether or not part of a tax collector, cannot seem to budge.

An example of an independent charity regulator

The Australian Charities and Not-For-Profits Commission is a compelling example of how a regulatory body can support an enabling environment for charities. Established in 2012, one of the Commission's objects is to "support and sustain a robust, vibrant, independent and innovative not-for-profit sector".⁴⁸

That goal is reflected in the Commission's efforts to reduce reporting burdens (by, for example, sharing information across government departments), and to harmonize regulatory requirements across national and sub-national jurisdictions.⁴⁹ As well as their commitment to digital education, engagement and information management.⁵⁰ (For additional information on Australia and other international regulators, see Appendix D.)

48 Australian Charities and Not-for-profits Commission (2012). *ACNC's Role*. Retrieved from http://www.acnc.gov.au/ACNC/About_ACNC/ACNC_role/ACNC/Edu/ACNC_role.aspx.

49 Australian Charities and Not-for-profits Commission (2017). *Red Tape Reduction*. Retrieved from http://www.acnc.gov.au/ACNC/About_ACNC/Redtape_redu/ACNC/Report/Red_tape.aspx?hkey=02c36842-0881-4e67-98ad-0533e728658a.

50 Pascoe, S. (2017). "The Digital Regulator." In McGregor-Lowndes, M. and Wyatt, B. (eds.). *Regulating Charities* (pp. 211-232). New York, New York: Routledge.

47 Joint Regulatory Table (2003). *Strengthening Canada's Charitable Sector: Regulatory Reform*. Retrieved from the Voluntary Sector Initiative: http://www.vsi-isbc.org/eng/regulations/pdf/final_report_full.pdf.

4 LESSONS FROM ABROAD

The federal government and the sector can learn from the recent reforms of international regulatory regimes. Four were selected for the purposes of this paper - Scotland, USA, Ireland and Australia. See Appendix D for summaries of these international regimes. While the study of international regulators reveals a wide array of insights, we drew two lessons common among new regimes, recognized as key to successful regulation and relevant to the Canadian experience.

Effective regulators regularly engage the sector

The Australian Charities and Not-for-Profits Commission and the Scottish Charity Regulator fulfill their education functions not just through online guidance but through roadshows and other in-person interactions.⁵¹ Recent remarks from Tony Manconi, the Canadian Directorate's head, suggest that the Directorate plans to engage the sector more often, both to educate and to listen.⁵² Regular contact promises both higher compliance rates and more empathy between the Directorate and the sector.

Effective regulators operate free of political influence

The most effective charitable regulatory bodies operate free of political influence. Statutory independence is a core component of the relatively new Australian, Scottish and Irish regimes. While the Canadian Directorate decides on its own which charities to audit,⁵³ the government can wield influence by allocating money to pay for enforcement of specific rules (the political activities saga touched off when the government allocated money for political activities audits).⁵⁴ While complete independence – including on its budget – may not be possible or desirable, the international trend toward greater autonomy may hold ideas to strengthen the Directorate.

51 Pascoe, S. (2017). "The Digital Regulator." In McGregor-Lowndes, M. and Wyatt, B. (eds.). *Regulating Charities* (pp. 211-232). New York, New York: Routledge; Crawford, L., et al. (2009). An Exploration of Scottish Charities' Governance and Accountability. Retrieved from the Institute of Chartered Accountants of Scotland: https://www.icas.com/_data/assets/pdf_file/0016/10618/101-An-Exploration-of-Scottish-Charities-Governance-and-Accountability-ICAS.pdf.

52 Mr. Manconi delivered the remarks at Carleton's PhilanthroTHINK conference on April 28, 2017.

53 Hawara, C. (2014). *The Importance of an Independent and Effective Charities Regulator in Canada*. Retrieved from the Canada Revenue Agency: http://www.cra-arc.gc.ca/chrts-gvng/chrts/bt/2014-lwsympsm-eng.html?utm_source=charities&utm_medium=eml.

54 de March, T. (2017). "The Prevention of Harm Regulator." In McGregor-Lowndes, M. and Wyatt, B. (eds.). *Regulating Charities* (pp. 119-137). New York, New York: Routledge.

5 RECOMMENDATIONS

The federal government and the sector should write a statement of principles from which to draw a broader reform agenda.

Change begins with a statement describing the regulator that the federal government and the sector want. Starting with details, as conversations on charity regulation tend to do, will most likely reproduce the technical nature of today's regime. Agreement on the basic elements of a good regulator — one focused more on enabling than constraining — should form the base from which to design a new approach and draw specific rules.

The Joint Regulatory Table of the Voluntary Sector Initiative proposed four values to guide regulatory design: integrity, openness, service excellence, and knowledge and innovation.⁵⁵ Those high-level principles stake the starting place, but the sector has yet to convert them into operational principles that could guide policy. The sector may wish to reiterate the ideals of a regulatory system, but we suggest the principles right for this moment are those one step more particular. For example, from 'knowledge and innovation' might derive the principle that if a rule restricts an activity that a charity can show will advance its purposes, the burden is on the rule-maker to prove that its benefits outweigh its costs.⁵⁶ The principles must, if adopted by the sector and the federal government, translate into policy consequences.

The success to date of the political activities campaign suggests that the sector has overcome some of the organizing problems of past reform efforts. The organizing infrastructure built in that campaign should not be allowed to dissipate. It should be turned and widened to focus on the principles of a new regulatory framework. By reusing tools already developed, the sector might compose the unified voice sometimes missing,⁵⁷ and compose it before the window to substantial change closes.

55 Joint Regulatory Table (2003). *Strengthening Canada's Charitable Sector: Regulatory Reform*. Retrieved from the Voluntary Sector Initiative: http://www.vsi-isbc.org/eng/regulations/pdf/final_report_full.pdf.

56 This principle draws closely on Juneau, C. (2016). *The Canadian Income Tax Act and the Concepts of Charitable Purposes and Activities*. Retrieved from the Pemsel Case Foundation: <http://www.pemselfoundation.org/wp-content/uploads/2016/10/Occasional-Paper-The-Canadian-Income-Tax-Act-and-the-Concepts-of-Charitable-Purposes-and-Activities-Final.pdf>.

57 Johnston, P. (2013). "A Retrospective Look at the Voluntary Sector Initiative (VSI): What Lessons Did We Learn?" *The Philanthropist*, 25(1), 21-31. Retrieved from <https://thephilanthropist.ca/original-pdfs/Philanthropist-25-1-512.pdf>.

The federal government should shift the first appeal court from the Federal Court of Appeal to a lower court. It may also explore publishing some Directorate registration letters.

The experts, including the Voluntary Sector Initiative's Joint Regulatory Table on which government representatives sat, have concluded that the federal government should switch the first appeal court. The Consultation Panel on the Political Activities of Charities recommended the same measure.⁵⁸ As a result, further consultation is likely not necessary. On the other hand, the federal government should consult closely with charity lawyers before permitting or requiring the Directorate to publish registration letters (see Appendix B for considerations)

Experimentation within the Canada Revenue Agency

Currently, every department within the federal government has an experimentation mandate. For CRA, a regulatory sandbox could be an effective tool to test new ideas and solutions - an approach that can lay a path for a more enabled environment for the sector. In a regulatory sandbox, the regulator applies a different set of rules to a small number of actors for a limited period. The regulator observes its sample and learns by live experience how the regulated use the new rules.⁵⁹ A regulatory sandbox would let the federal government test loosened business rules, for example, without risking difficult-to-reverse, sector-wide changes. Regulatory sandboxes and other innovation tools will be further explored in the social innovation paper in Mowat NFP's Enabling Environment series.

59 Heales, C. (March 10, 2017). *Innovating for Innovation: The Rise of the Regulatory Sandbox*. Retrieved from <https://youngfoundation.org/social-innovation-investment/innovating-innovation-rise-regulatory-sandbox/>.

58 Consultation Panel on the Political Activities of Charities (2017). *Report of the Consultation Panel on the Political Activities of Charities*. Retrieved from the Canada Revenue Agency: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/pltcl-ctvts/pnlrprt-eng.pdf>.

6 THE WAY FORWARD

The Charities Directorate has played an essential role in fostering a vibrant and growing charitable sector. But in interpreting the common law and the Income Tax Act, the Directorate has favoured the narrow stance and the detailed, rigid rule over an approach that balances the risks of wrongdoing with the benefits of flexibility.

Those rules do not work as well as they used to. Charities are attempting to meet the needs of their communities in challenging times by devising new methods to accomplish their missions. New methods might mean influencing policy, partnering across legal forms and earning money through business activities. As they experiment, charities must manage a regulatory regime that does not offer much room for creativity.

The Directorate is already talking about the issues facing the sector. The Directorate's growing transparency and its will to learn more about the sector's priorities will only benefit the relationship between the federal government and the sector. The Directorate should continue with that approach. It should also begin to bring in other parts of the federal government, especially the Department of Finance, that also take an interest in charitable affairs.

The Consultation Panel on the Political Activities of Charities' recommendation offers an opportunity to move the reform agenda forward. We suggest that the federal government and the sector take that opportunity.

A modernized and future-oriented regulatory framework will put the sector on a footing to thrive. It lays the groundwork for an enabling environment for charities - one that safeguards public interest, supports the sustainability of the sector, and optimizes the policy landscape for experimentation.

Why is this important? The charitable sector is an important part of the social fabric, civic life and economy in Canada.⁶⁰ They have and will continue to play a lead role in the provision of health, education, social services, and poverty relief. An enabled charitable sector can support the federal government's efforts in achieving better social and economic outcomes for Canadians. It could position Canada as a world leader in its work with charities to address today's complex social and environmental challenges.

60 Emmett, B. (2016). *Charities, Sustainable Funding and Smart Growth*. Retrieved from Imagine Canada: http://www.imaginecanada.ca/sites/default/files/imaginecanada_charities_sustainability_smart_growth_2016_10_18.pdf.

“The world is more connected and complex than ever before. The current rules define too narrowly how charities can do their work. If things don’t change, charities will not be able to adapt to meet the growing needs of Canadians. Regulation should start from a place of enabling success rather than from limiting risk. Starting with principles, the rules can be shaped by an understanding of what we are trying to achieve together - to improve quality of life and support vulnerable populations and environments at home and abroad.”

Bruce MacDonald

President & CEO, Imagine Canada

APPENDIX A

Key Informants

We interviewed the following people to inform this paper. While our interviewees offered different perspectives, we of course did not cover all opinions on charity regulation in Canada.

Susan Phillips, Carleton University

Bob Wyatt, Muttart Foundation

Adam Aptowitzer, Drache Aptowitzer LLP

Myles McGregor-Lowndes, Queensland University of Technology

Peter Elson, University of Victoria

Onagh Breen, University College Dublin

Allan Northcott, Max Bell Foundation

Adam Parachin, Western University

François Brouard, Carleton University

Laird Hunter, McGee Richard Toogood LLP

The following individuals provided guidance on the project and/or edited early drafts of the paper:

Sandy Houston, President and CEO, Metcalf Foundation

Michelynn Lafleche, Vice President, Strategy, Research and Policy, United Way Toronto and York Region

Hilary Pearson, President, Philanthropic Foundations Canada

Elizabeth McIsaac, President, Maytree Foundation

Cathy Taylor, Executive Director, Ontario Not-for-Profit Network

Lynn Eakin, Policy Advisor, Ontario Not-for-Profit Network

Brittany Fritsch, Manager, Public Policy, Imagine Canada

Bill Schaper, Director, Public Policy, Imagine Canada

APPENDIX B

Options to Increase Transparency

Avenue	Argument For	Argument Against
<p>PUBLISH DIRECTORATE LETTERS</p>	<p>The <i>Income Tax Act</i> could permit the Directorate to release more of its reasons. It could allow (or force) the Directorate to release letters written to applicants for charitable status in which the Directorate explains why it accepted or rejected an application.⁶¹ The Directorate almost certainly does not write a detailed letter in every case, but it may write detailed letters to applicants right on the edge of the rules. Letters on the edge can give a great deal of guidance.</p>	<p>The federal government must weigh the privacy concerns of applicants (especially those rejected), though the Directorate might anonymize the letters. The federal government must also consider the extra time the Directorate may take to decide on registration if it will release its letters. One expert stressed the already long wait before the Directorate decides on registration. While the expert saw virtue in a larger body of reasons, he warned against more delay.</p>
<p>EASE THE PATH TO APPEAL</p>	<p>The federal government could switch the first judicial appeal to the Federal Court or the Tax Court. A switch away from the Federal Court of Appeal has garnered more expert support than perhaps any other single regulatory change.⁶²</p> <p>A lower court process:</p> <ul style="list-style-type: none"> • Would avoid some of the cost and delay built into the formality of the Federal Court of Appeal. • May induce more charities to appeal the Directorate's decisions, generating more decisions on a wider array of facts. • May ask the Directorate to defend its positions more often, revealing how it interprets the law. 	<p>Relying on charities to appeal will collect cases more slowly than releasing letters and may skew the case law if only particular types of charities or charities with particular problems appeal. But, overall, a switch to a lower court stirs very few protests.</p>

61 Joint Regulatory Table (2003). *Strengthening Canada's Charitable Sector: Regulatory Reform*. Retrieved from the Voluntary Sector Initiative: http://www.vsi-isbc.org/eng/regulations/pdf/final_report_full.pdf.

62 See, for example, Joint Regulatory Table (2003). *Strengthening Canada's Charitable Sector: Regulatory Reform*. Retrieved from the Voluntary Sector Initiative: http://www.vsi-isbc.org/eng/regulations/pdf/final_report_full.pdf; Panel on Accountability and Governance in the Voluntary Sector. (1999). *Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector*. Retrieved from Imagine Canada: <http://sectorsource.ca/resource/file/building-strength-improving-governance-and-accountability-canadas-voluntary-sector>; Drache, A.B.C. and Hunter, W.L. (1999). "A Canadian Charity Tribunal: A Proposal for Implementation." *International Journal of Not-for-Profit Law*, 2(2). Retrieved from: http://www.icnl.org/research/journal/vol2iss2/art_6.htm.

APPENDIX C

The Voluntary Sector Initiative's Regulatory Models

The Voluntary Sector Initiative's Strengthening Canada's Charitable Sector: Regulatory Reform drew the table below.⁶³

	Description
MODEL 1	Existing CRA, with improvements to the appeals process and compliance measures and increased transparency of the regulatory process
MODEL 2	An enhanced CRA with an advisory agency as recommended in 1999 by the Broadbent Panel on Accountability and Governance in the Voluntary Sector and similar to the "agency" described in <i>Working Together</i>
MODEL 3	A combination of Model 1 and 4 that would leave administrative functions to the CRA but create a Charity Commission to handle the adjudicative responsibilities involved in registering and deregistering charities
MODEL 4	A Charity Commission that would assume all regulatory functions currently performed by the CRA

	MODEL 1	MODEL 2	MODEL 3	MODEL 4
Description	Enhanced CRA	Enhanced CRA and Voluntary Sector Agency	Enhanced CRA and Charity Commission	Charity Commission
REGISTRATION/SANCTIONS	CRA (with advice from sector)	CRA (with advice from Voluntary Sector Agency)	Commission (deregistration on application by CRA)	Commission (with advice from sector)
COMPLIANCE MONITORING (T3010S)	CRA	CRA	CRA	Commission
AUDIT	CRA	CRA	CRA	Commission
ADMINISTRATIVE POLICY	CRA (with advice from ministerial advisory group)	CRA (with advice from Voluntary Sector Agency)	Commission (with advice from CRA and ministerial advisory group)	Commission (with advice from CRA and ministerial advisory group)
EDUCATION AND TRAINING ON INCOME TAX ACT REGISTRATION/COMPLIANCE	CRA	Voluntary Sector Agency	Commission	Commission
EDUCATION AND TRAINING ON OTHER ISSUES	Voluntary sector umbrella groups	Voluntary Sector Agency	Voluntary sector umbrella groups	Voluntary sector umbrella groups
PUBLIC INFORMATION	CRA	CRA or Agency for specific charities; Agency for sector	CRA or Commission for specific charities; Commission for sector	Commission
ADVISORY COMMITTEE	Yes to the Minister of National Revenue	Voluntary Sector Agency performs this role	Yes to Commission	Yes to Commission
REPORTS TO	Minister of National Revenue	CRA to Minister of National Revenue; Agency to MNR, another Minister or Parliament	CRA to MNR; Commission to MNR, another Minister or Parliament	MNR or another Minister or Parliament

63 Joint Regulatory Table (2003). *Strengthening Canada's Charitable Sector: Regulatory Reform*. Retrieved from the Voluntary Sector Initiative: http://www.vsi-isbc.org/eng/regulations/pdf/final_report_full.pdf.

APPENDIX D

Select International Regimes

Internal Revenue Service (IRS) (United States)

The Tax Exempt and Government Entities Division of the IRS applies federal tax law to charities and private foundations.⁶⁴ The Division educates organizations on compliance, writes advance rulings, investigates non-compliance, and administers charity and private foundation filings.⁶⁵

Like the Directorate, the Division cannot not enforce the fiduciary duties of charity directors or trustees. That power, and many others to control the inner workings of charities, belongs to state Attorneys General.⁶⁶ The Division can only exercise powers connected to tax privileges. Yet the state Attorneys General have taken little interest in regulating charities.⁶⁷ In response, the Division, like the Directorate, has attempted a more comprehensive regulation than its limited jurisdiction might suggest.⁶⁸ For example, in one dramatic case, the IRS threatened to withdraw a charity's tax exemption unless the charity's trustees resigned.⁶⁹

The Division's similarities to the Directorate do not mean it decides every policy in the same way as the Directorate. For example, the Division has taken a different tack on the conditions under which charities can transfer money to non-charities. The Division lets a private foundation grant to a non-charity under much less exacting terms than direction and control. In essence, the foundation must give the grant conditional on an agreement that ties the money to a charitable purpose.⁷⁰ The foundation must report to the IRS on compliance with that agreement.⁷¹

Australian Charities and Not-for-Profits Commission

The Australian Charities and Not-for-Profit Commission is Australia's national charities regulator. Only a few years old, the Commission has won broad support in the charitable sector.⁷² The Commission was created to protect public trust in charities, build a vibrant and independent charities sector and reduce regulatory burdens on charities.⁷³ The government appoints the Commissioner for a term up to five years and may remove the Commissioner only for cause.⁷⁴ The Commissioner draws on the support and advice of an Advisory Board.⁷⁵

64 IRS (2016). About Us. Retrieved from <https://www.irs.gov/charities-non-profits/about-irs-exempt-organizations>.

65 IRS (2017). *Tax Exempt & Government Entities Division At-a-Glance*. Retrieved from <https://www.irs.gov/government-entities/tax-exempt-government-entities-division-at-a-glance>.

66 Helge, T.L. (2009). "Policing the Good Guys: Regulation of the Charitable Sector through a Federal Charity Oversight Board." *Cornell Journal of Law and Public Policy*, 19(1), 1-82. Retrieved from <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1299&context=cjlp>.

67 Breen, O.B. (2016). "Guardians of the Charitable Realm: Charitable Trust Supervision Practice and Procedure in the Common Law World." *European Review of Private Law*. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2811073.

68 Breen, O.B. (2016). "Guardians of the Charitable Realm: Charitable Trust Supervision Practice and Procedure in the Common Law World." *European Review of Private Law*. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2811073.

69 Bordy, E. (1999). "A Taxing Time for the Bishop Estate: What is the I.R.S. Role in Charity Governance." *University of Hawaii Law Review*, 21, 537-591. Retrieved from http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1111&context=fac_schol.

70 IRS (2016). *Terms of Grants – Private Foundation Expenditure Responsibility*. Retrieved from <https://www.irs.gov/charities-non-profits/private-foundations/terms-of-grants-private-foundation-expenditure-responsibility>.

71 IRS (2016). *Reports to the Internal Revenue Service – Expenditure Responsibility*. Retrieved from <https://www.irs.gov/charities-non-profits/private-foundations/reports-to-the-internal-revenue-service-expenditure-responsibility>.

72 McGregor-Lowndes, M. (2015). "Australia – Two Political Narratives and One Charity Regulator Caught in the Middle." *Chicago-Kent Law Review*, 91(3), 1021-1045. Retrieved from <http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=4136&context=cklawreview> (1040, 1043).

73 *Australian Charities and Not-for-profits Commission Act 2012* (Cth), s. 15-5(1).

74 *Australian Charities and Not-for-profits Commission Act 2012* (Cth), s. 115-5, 10.

75 Australian Charities and Not-for-Profits Commission (2016). *ACNC Annual Report 2015-2016*. Retrieved from http://www.acnc.gov.au/ACNC/About_ACNC/Corporate_info/Annual_Reports/ACNC/Publications/ARlanding.aspx.

The Commission registers charities, investigates concerns, publishes a charities database, advises charities on compliance and educates the public about charities' work.⁷⁶ It does not, however, approve charities for tax privileges. While a charity must register with the Commission to claim tax privileges, the Australian Taxation Office decides if the charity will receive those privileges.⁷⁷

Scottish Charity Regulator

The Scottish Charity Regulator is an independent body tasked with registering charities, publishing a charities register, encouraging compliance and investigating misconduct. The Regulator reports directly to the Scottish Parliament. An eight-member board appointed by the government leads the Regulator.⁷⁸ While the government sets the Regulator's budget, the Regulator may allocate that budget with minimal oversight. The Framework Agreement between the Scottish Government and the Scottish Charity Regulator emphasizes that the Regulator "is not part of the Scottish Government."⁷⁹

Similar to Australian charities and their Commission, Scottish charities welcomed the Regulator's birth in 2005. The Regulator, well-known within the sector, clarifies compliance and advises charities on the rules. As seemingly under every regulatory system, however, Scottish charities still complain about the amount of paperwork.⁸⁰

Charities Regulator (Ireland)

Ireland's Charities Regulator is an independent authority created in 2014.⁸¹ Among other aims, the Regulator seeks to enhance public trust and confidence in charities, enforce regulatory compliance by charities and promote effective use of charitable property.⁸² The Charities Act 2009 establishes the Regulator's independence and lists the limited instances in which the Minister may direct the Regulator's actions.

All organizations that qualify as charities must register with the Regulator.⁸³ That requirement only began with the birth of the Regulation in 2014. The Regulator has struggled to complete the register, perhaps because, unlike other new regulators, it has not prioritized outreach to the sector.⁸⁴ Registering with the Regulator does not earn a charity tax privileges. A charity must apply to the Office of the Revenue Commissioners for tax privileges.⁸⁵

76 Australian Charities and Not-for-Profits Commission (n.d.). *ACNC's Role*. Retrieved from http://www.acnc.gov.au/ACNC/About_ACNC/ACNC_role/ACNC/Edu/ACNC_role.aspx?hkey=88635892-3c89-421b-896d-d01add82f4fe.

77 Australian Charities and Not-for-Profits Commission (n.d.). *Why Register*. Retrieved from http://www.acnc.gov.au/ACNC/Register_my_charity/Why_register/ACNC/Edu/Why_reg.aspx?hkey=f1345f59-0774-41b7-82ff-833fe79ed207.

78 Scottish Charity Regulator (2014). *Corporate Plan 2014-2017*. Retrieved from <http://www.oscr.org.uk/media/1507/corporate-plan-2014-17.pdf>.

79 Scottish Charity Regulator (2014). *Framework Agreement between the Scottish Government and the Scottish Charity Regulator*. Retrieved from <http://www.oscr.org.uk/media/1684/2014-11-11-oscr-framework-agreement-with-scottish-government.pdf>.

80 Crawford, L., et al. (2009). *An Exploration of Scottish Charities' Governance and Accountability*. Retrieved from the Institute of Chartered Accountants of Scotland: https://www.icas.com/__data/assets/pdf_file/0016/10618/101-An-Exploration-of-Scottish-Charities-Governance-and-Accountability-ICAS.pdf/

81 Charities Regulator (n.d.). *About Us*. Retrieved from <http://www.charitiesregulatoryauthority.ie/en/cra/pages/wp16000059>.

82 Charities Regulator (n.d.). *Objectives*. Retrieved from <http://www.charitiesregulatoryauthority.ie/en/cra/pages/objectives>.

83 Charities Regulator (2017). *FAQs*. Retrieved from <http://www.charitiesregulatoryauthority.ie/en/cra/pages/faqs>.

84 Breen, O.B. (2016). "Guardians of the Charitable Realm: Charitable Trust Supervision Practice and Procedure in the Common Law World." *European Review of Private Law*. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2811073.

85 The Office of the Revenue Commissioner (n.d.). *Frequently Asked Questions – Charities*. Retrieved from <http://www.revenue.ie/en/business/faqs-charities.html#section5>.

