

CREATING BETTER PUBLIC POLICY: THE ROLES OF CANADIAN CHARITIES

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FEW CANADIANS THINK ABOUT PUBLIC POLICY, THOUGH IT TOUCHES OUR lives in innumerable ways every day. Taken together, the policy choices made by Canadian governments over time have created a range of societal features most of us simply take for granted. But, of course, our collective safety and security, well-being, and prosperity do not appear out of thin air. They are, in large measure, the intended outcomes of a vigorous public policy process.

Civil society organizations – nonprofits and charities – have a long history of playing important roles in that policy process. Laws against drunk driving, regulation of tobacco products, removal of bisphenol-A from baby bottles, and the effective provision in Ontario of mental health services to youth are all public policy choices that have been importantly shaped by the work of Canadian charities. So are the establishment of a Registered Disability Savings Plan, increases to Alberta's Assured Income for the Severely Handicapped, and the development and delivery of programs across the country providing high quality early childhood care. The Boreal Forest Agreement, the measures that eliminated acid rain, and the emergent green economy all reflect the public policy efforts of Canadian charities.

The list could go on and on, and it is as varied as the concerns Canadians have for their society and the hopes they have for its future.

This special issue of *The Philanthropist* takes stock of the roles Canadian charities play in the development of public policy.¹ While the list of successes is long and should be celebrated, there is an even longer list of false starts, blind alleys, and clear failures in the space between policy decision makers in government and policy advocates in the charitable sector. No policy advocate can expect success all the time, but as a sector, and as a society, we can do better. And given the complexity of many of the challenges before us – both at home and in our relations with the globalized world – there is good reason to try.

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To introduce this special issue, I will give what I hope is some useful background to the set of excellent articles the authors have prepared. I want to summarize:

- the case for improving the relationships between public policy advocates in the charitable sector and Canadian governments at all levels;
- the evolution of federal regulation of charities undertaking political activities;
- the capacity of the sector to improve the status quo.

WHY SHOULD CANADIAN CHARITIES PARTICIPATE IN THE POLICY PROCESS?

There are at least three arguments in favour of Canadian charities engaging with governments in the public policy process. The first invokes deeply held Canadian democratic values. As Alison Loat's article points out, the quality of a democracy depends on considerably more than citizens turning out to vote in elections. The extent to which votes are informed and motivated by citizens engaging with each other around public issues is an indicator of the overall health of our political system. Many Canadian nonprofits and charities are elemental expressions of citizen aspirations to participate in collectively caring for each other and governing ourselves. As such, they are an important platform for engagement between citizens and the elected officials and public servants who act on their behalf.

The second argument is that charities often have good policy advice to give. It is expressed very well in Canada Revenue Agency's *Policy Statement on Political Activities* (CPS-022):²

Through their dedicated delivery of essential programs, many charities have acquired a wealth of knowledge about how government policies affect people's lives. Charities are well placed to study, assess, and comment on those government policies. Canadians benefit from the efforts of charities and the practical, innovative ways they use to resolve complex issues related to delivering social services. Beyond service delivery, their expertise is also a vital source of information for governments to help guide policy decisions. It is therefore essential that charities continue to offer their direct knowledge of social issues to public policy debates.

The third argument is that governments need good advice. Much has been written about the diminishing capacity of governments in Canada, whether municipal, provincial, or federal, to do the kind of policy development necessary to respond to the challenges they face. At the same time as their resources are shrinking, governments are facing heightened scrutiny and expectations from an electorate that itself is increasingly diverse.³ Canadian charities can help in a range of ways, including bringing front line knowledge to bear, convening stakeholders, facilitating and informing dialogue, delivering and assessing demonstrations and pilots, and providing neutral spaces for engagement.

A SOMETIMES ROCKY RELATIONSHIP

Good public policy improves the lives of Canadians, and contributions from charities can significantly improve the public policy that governments make. Despite the benefits of working well together – to both sides, and to Canadians overall – relationships between the sector and governments are not without challenges.

The Broder, Cullity, and Hayhoe articles in this special issue address regulatory limitations on the political activities charities undertake. As this issue goes to press in February 2014, many within the sector are concerned about a number of audits of charities being conducted by Canada Revenue Agency that are focused on the issue of political activities. On February 6, 2014, CBC reporter Evan Solomon published an online story⁴ and aired a segment on the television program *Power and Politics*⁵ about these audits. The news story raises the question of the appropriateness of limitations on charities' political activities, especially with reference to environmental charities.

This question is anything but new. Almost exactly 36 years ago, in February of 1978, the Trudeau government issued *Information Circular 78-3*. It warned charities that any political objects or activities would be understood as contravening the Income Tax Act and could result in the revocation of an organization's charitable status. The document took a broad view on what constituted political activities and clarified that none of a charity's resources could be devoted to them. Charities, the federal opposition parties, and the press reacted strongly to *Information Circular 78-3*, arguing it contravened the right of free speech, unduly constrained charities in their pursuit of improving society, and ran against the democratic values of Canadians. An editorial in the *Toronto Star* from April 18, 1978, captures the tone of the response, calling it "outrageous" for the Trudeau government to "muzzle charities" with guidelines that "take the narrow view that while charities can directly aid the needy, for example, they can't advocate changes in public policy that might benefit the needy [because] this is considered political activity."

The Trudeau government defended its actions by claiming the information circular was not a shift in policy, but rather was only a reflection of the imperfect case law according to which purposes and activities of charities must be interpreted. Under ongoing pressure, the Trudeau government eventually suspended the circular.

The challenges presented by imperfect case law on charities persist today, as the Cullity and Broder articles in this issue show. Canadian charities have infrequently used the courts to achieve policy objectives, whether those objectives are related to regulation of charities per se (as in the case of political activities) or to policy pertaining to a charity's mission. The US example provides valuable lessons in this regard: Marcus Owens' article in this issue traces the development of litigation in the US as a tool for charities to achieve policy objectives.

In 1987, the Mulroney government released *Information Circular 87-1*, which advanced the now familiar approach of allowing charities to undertake ancillary

and incidental political activities that are not partisan and limited to expenditures of ten percent of a charity's resources. The 1987 policy statement also required that charities report on both exempt and political activities in their annual information returns.

The mid-1990s to early 2000s saw an unprecedented amount of activity oriented to improving the relationship between the federal government and the charitable sector. A number of large sector organizations launched The Voluntary Sector Roundtable in 1995, and that coalition established the Broadbent Panel in 1997. For its part, the Privy Council Office of Jean Chrétien established the Voluntary Sector Task Force in June 1998. In June of 2000, the Chrétien government announced the Voluntary Sector Initiative (VSI), a five-year joint initiative between the sector and the government set up to improve their working relationship. Among the many outcomes of the VSI was a *Code of Good Practice on Policy Dialogue* (2002),⁶ which makes explicit why and how the federal government and the sector should work together on public policy.

In 2003, based in large measure on the work described above, and after open consultation with the sector, the Charities Directorate of Canada Revenue Agency updated its guidance on political activities with the release of CPS-022, which is still in effect today. It is substantially the same as *Information Circular 87-1* but is more explicit and makes greater use of examples than previous guidance. Robert Hayhoe's "What's the Law" column in this issue covers CPS-022 in more detail. A close reading of the guidance reveals that Canada Revenue Agency permits more latitude in terms of political activities than many in the sector appear to believe. It would seem that at least some of the purported "advocacy chill" often cited in the sector flows from charities themselves not fully understanding the range of activities permitted by the regulator.

THE CAPACITY OF CANADIAN CHARITIES TO DO PUBLIC POLICY ADVOCACY

Of course, the regulatory freedom to do something and the capacity to do it are two very different things. Assessing the collective capacity of Canadian charities to do policy advocacy is a difficult challenge. We know that roughly four in ten of Canada's charities report doing some "political activity" as defined by the Canada Revenue Agency, and in most cases that means the relatively simple acts of encouraging citizens to contact their elected representative or making a statement in the media about the need for a policy change.⁷ While helpful, this is an imperfect measure of policy advocacy within the sector. Having done any of the activities that Canada Revenue Agency considers to be "political activity" does not necessarily mean a charity has done anything in the way of effective public policy advocacy.

Indeed, one of the capacity shortfalls in the sector is the frequent conflation of political activity with a policy advocacy strategy. As Liz Mulholland points out in a 2011 article in this journal,⁸ good and potentially effective policy advice to governments means:

sound fiscal, tax, regulatory, programmatic, and other policy advice that governments can feasibly implement without unwarranted political risk and with reasonable confidence that it may yield the desired end goal. While this may seem quite straightforward, it is in fact a tall order and difficult to achieve. (p. 481)

We have little hard data about the amount or nature of public policy advocacy in the sector, and by extension about the capacity of the sector to do policy advocacy. Both Brenda Eaton's and Dave Secord's articles shore up the data with descriptive accounts of that capacity based on their experiences. Eaton goes on to describe a number of professional development initiatives underway across the country that aim to improve the capacity of sector organizations to do good policy advocacy. Secord illustrates a number of strategic and somewhat unexpected considerations critical to developing and supporting effective policy strategies from the perspective of a funder.

In a 2011 article in this journal, Don Bourgeois and Bob Wyatt considered the proposition that the voluntary sector does not understand the public policy process, and identified "the difficulty ... of capacity and competence. The sector, frankly, has neither when it comes to public policy. Or, if it does, it is not generally available."⁹ The absence of good data makes this conclusion hard to refute. At Max Bell Foundation, since 1998 we have made more than 200 grants supporting charities contributing to public policy advocacy. The Public Policy Training Institute the Foundation offers, discussed in Eaton's article, has provided professional development to more than 100 individuals working in charities. Based on that experience, I would agree with the second half of Bourgeois and Wyatt's conclusion. The public policy capacity and competence that exists in the sector is not generally available.

However, as the Loat, Secord, and Eaton, articles illustrate, there are islands of policy advocacy excellence across the sector, and their number has grown over time. Further, the sector is served by a handful of excellent umbrella organizations that have, in recent years, developed and executed sophisticated and effective public policy strategies on behalf of the sector as a whole. Some of them are now also turning their attention to the broader question of how to link those islands of excellence and continue to build the capacity of the sector to keep up its end of the public policy conversation.¹⁰ On behalf of the authors whose work appears in to this special issue, we hope that it will contribute in some measure to that larger effort.

NOTES

1. It builds on and extends an earlier special issue of this journal (*Volume 23(4)*, 2011) about the same set of issues.
2. <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>
3. See Lenihan, Don. (2012). *Rescuing policy: The case for public engagement*. Ottawa: Public Policy Forum.
4. <http://www.cbc.ca/news/politics/7-environmental-charities-face-canada-revenue-agency-audits-1.2526330>
5. <http://www.cbc.ca/player/News/Politics/Power+%26+Politics/ID/2435302486/>
6. http://www.vsi-isbc.org/eng/policy/policy_code.cfm
7. Imagine Canada. (2011). Factsheet 2: Public awareness policy activity. In *Sector Monitor*, 1(3), (1-2). Toronto, ON: Imagine Canada.
8. Mulholland, Liz. (2011). Method matters: How to avoid common policy traps. *The Philanthropist*, 23(4), p. 481.
9. Bourgeois, D., & Wyatt, B. (2011). Resolved: The voluntary sector has not caught up with the way public policy is now made. *The Philanthropist*, 23(4), p. 553.
10. Mulholland, Liz. (2010). New ways to keep up our end of the policy conversation. *The Philanthropist*, 23(2), pp. 140-145.