Special Report: The Senate Wades into Charity Policy

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Just months after Ottawa set up an advisory body to look at the future of Canadian charities, a Senate committee this week released a 190-page report with a sweeping range of legal and policy reforms that, its members say, are necessary to ensure the health of a sector that generates 7% of Canada's economic activity.

The report is the latest sign that the federal government has begun to focus its attention on a sprawling tax-exempt sector that still operates under a regulatory regime last overhauled the year before Justin Trudeau's father first became prime minister.

In the past two years, the federal Liberals have earmarked hundreds of millions in matching funds for environmental causes and relaxed rules governing how much charities can spend on political advocacy campaigns.

While the 42 recommendations in the Senate report address everything from the promotion of volunteerism to better use of tax courts, the capstone of the study is a call for the federal government to take charity policy out of the hands of the Canada Revenue Agency (CRA), which administers the Income Tax Act and has served as the sector's *de facto* oversight body for many decades.

"There are so many issues that need to be dealt with," says Terry Mercer, a Nova Scotia Liberal who chaired the committee and had a lengthy career in the charitable sector before being named to the Senate. "CRA is not the right place."

That's a message that sector lobbyists have been pushing for several years. "What the report provides is really a road map of policy options going forwards," says Bruce MacDonald, president of Imagine Canada and one of the sector delegates to the government's advisory committee.

Anita Khanna, the United Way's national director of public policy and government relations, adds that the committee did a thorough canvas over the 17 months since it was established, drawing on witnesses from a diverse range of organizations. "There was really good representation," she comments. Highlights, she says, include the committee's call for better data on the sector and a recommendation that the federal government update the Elizabethan-era definition of charity that's still used in the existing legislation governing the sector.

But the report stops short of proposing specific solutions for some of the most pressing questions facing the sector, which involve tapping into new revenue sources to compensate for stagnating donations from individuals. These include social enterprise income, gifts of private shares, the use of non-profit surpluses, and the disbursements from the rapidly growing number of donor-advised funds (DAFs) that have been established in recent years, many through wealth advisors or community foundations.

The report quotes at length from experts who appeared before the committee, noting that DAFs represent the fastest-growing destination for charitable giving in both Canada and the United States. As of 2016, there were about 10,000 DAFs in Canada, with combined assets of $3.2 billion.

Unlike private foundations, which are required by law to disburse at least 3.5% of assets annually, there's no similar requirement of DAFs, although the report notes that average disbursement levels tend to be significantly higher (more than 12%).

The report also highlights concerns that have circulated in the charitable sector for some time – that wealth advisors urge their clients to set up DAFs that allow them to claim the tax deduction while retaining significant control over the timing and destination of donations. Other witnesses told the committee about the potential conflict of interest associated with such instruments.

"The experience of the US is instructive," says Senator Ratna Omidvar, a member of the committee and former CEO of the Maytree Foundation, as well as the former executive director of Skills for Change, a settlement agency. "The government should be looking very carefully at this."

Financial institutions "have created an army of people marketing [DAFs] to their clients," testified Boston College estate planning expert Ray Madoff. "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 fund, you, as a financial adviser, get a management fee."

MacDonald, for his part, is comfortable with the report's cautious approach. "It doesn't pre-judge the outcome." He adds that the sector's various national umbrella organizations have to study the dozen recommendations focusing on freeing up revenues for the charitable sector and figure out which ones to prioritize.

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Other issues the senators tackled:

Administrative costs associated with charities delivering social programs and volunteer recruitment. The reports says charities should have two-year funding windows for public sector contracts to improve certainty and relieve pressure on staff. Other recommendations focus on helping charities with volunteer expenses – everything from police background checks to expense chits. Mercer cites the case of a Vancouver charity that had trouble recruiting volunteers because the steep cost of downtown parking. “The charity wanted to find a way to subsidize them but they were having trouble making a case for that [with CRA].”

Shifting appeals of CRA denials and de-registrations from federal court to tax court. Lawyers who appeared before the committee argued that the expense and complexity of federal court appeals deters smaller charities from appealing CRA decisions, meaning that there’s a dearth of recent common law on the books. Omidvar notes that the report also recommends the creation of an appeals fund.

Relaxing the language governing the activities of charities with international operations. The report urges Ottawa to replace the phrase “direction and control” from the accountability provisions governing offshore activities. International aid groups have long chafed at these requirements, which add administrative costs and prevent them from easily merging overseas projects with other organizations.

Working conditions in the sector. Khanna points out that the report calls on the government to re-establish a human resources council for the sector. The committee also urged a relaxation on rules limiting how much an NGO can spend on salaries and overhead as opposed to program costs. Working conditions at charities, Omidvar adds, are a top priority. “Precarious funding has created precarious work.”