

Universities in Canada's Voluntary Charitable Sector: Do They Belong?

ROBIN H. FARQUHAR

*Professor of Public Policy and Administration, Carleton University,
Ottawa*

In the recent Government of Canada/Voluntary Sector Joint Initiative's report, the Table on Improving the Regulatory Framework posed the question: "Should hospitals and universities be regulated as charities?" (*Working Together*, p. 48). While the Table chose not to address this question (leaving it instead for possible future consideration by a proposed "Implementation Group"), the fact that it was raised at all indicates an element of concern about the appropriateness of treating these large, multitasked institutions (with annual operating budgets in the hundreds of millions of dollars) according to the same regulatory regime as applies to the almost 80,000 other registered charities in Canada, (two-thirds of which have annual revenues of less than \$100,000 (Panel, p. 13)). Underlying this concern may be some suspicion that hospitals and universities do not fully comply with the applicable federal regulations and/or that their compliance is not monitored as seriously as that of other charities, along with a sense that the former engage in unfair competition with the latter: "The voluntary sector has long felt the impact of massive fundraising campaigns by the large institutional charities – hospitals and universities – that may scoop up millions of dollars from a community in a single campaign, earning them the reputation as fundraising 'trawlers' among a fleet of dinghies" (Panel, p. 49).

Both of these attitudes signal some doubt regarding the applicability to hospitals and universities of two phenomena that are crucial to the voluntary sector – trust and accountability. The suspicion that they do not comply with regulations under the federal *Income Tax Act* (whose benefits they enjoy through the authority to issue tax receipts for donations) indicates a lack of trust that could damage the reputations on which they rely for support of much of their work, and the view that their compliance is not monitored raises questions about their accountability for obeying the laws that should apply to them. The concern about distortions in philanthropy caused by their massive fundraising campaigns is unlikely to subside because the frequency and goals of such ventures will probably increase as government grants fail to keep pace with growing public expectations and inflation, and as limitations are reached in the ability of clients to fill the funding gap through fees and charges (or in the perceived acceptability of requiring them to do so). The issue thus becomes development of measures that will hold large institutions accountable for conducting their fundraising activities in ways that are ethical, responsible and efficient, while

displaying reasonable sensitivity to the needs and concerns of smaller participants in the crowded fundraising market.

Doubts about trust and accountability are serious and it is important – not least to the institutions themselves – that they be examined as openly and factually as possible. This article represents a step in that direction, with particular reference to universities since they comprise the arena with which the author is most familiar (after devoting 30 years to their management, half of that time as president of two of them in different parts of the country). Three issues relevant to the title's question of whether universities belong in the voluntary sector's charitable domain will be briefly reviewed: the suitability of their inclusion, the extent of their accountability, and the nature of their contribution.

Inclusion

Notwithstanding the lack of a precise definition of charity in Canada, "advancement of education" remains as one of the four categories of charitable activity recognized in the extant jurisprudence (Panel, p. 51). Thus, because this activity is typically mentioned as a principal *raison d'être* in the statutes establishing Canadian universities as nonprofit corporations, their inclusion in the sector seems to be *ipso facto* justified. Moreover, the Panel on Accountability and Governance in the Voluntary Sector recognized universities as meeting the criteria which determined its focus: "organizations whose work depends on serving a public benefit; on volunteers, at least for their governance; on financial support from individuals; and on limited direct influence by governments, other than in relation to any tax benefits accruing to the organization" (Panel, p. 8). In the last respect, despite their obvious linkages with provincial governments, universities are "first and foremost self-governing" (Panel, p. 22), operating with an autonomy that is statutorily established. Consequently, there seems to be no basis for arguing that it is unsuitable to include them among the charitable organizations in the voluntary sector and they are therefore registered as such, and thereby enjoy the benefits of exemption from income taxes and permission to provide donation receipts that can be claimed as tax credits.

There is, of course, a *quid pro quo* to being awarded this status: "In exchange for these privileges, there are strict reporting requirements and accountability rules, including limits on political activity and requirements to disburse on charitable purposes a large proportion of their donated revenues" (Panel, p. 50). More specifically, one can examine the degree to which universities meet the four explicit obligations identified by the Panel (pp. 67–8) as being imposed upon charities by the Canada Customs and Revenue Agency (CCRA):

Meet the Disbursement Quota (i.e., spend at least 80 per cent of the previous year's receipted donations, excluding government grants or investment income, on charitable purposes, e.g., not on administrative, fundraising and other non-charitable matters).

Through the use of fund accounting, in which distinct budgets for basic operations, research endeavours, capital projects, ancillary enterprises, fundraising and other activities, along with any interfund transfers, are clearly and publicly displayed, universities have no difficulty in demonstrating their compliance with this obligation. The vast bulk of the funds they raise are solicited expressly for, and spent verifiably on, specific purchases (facilities, furnishings, scholarships, laboratory equipment, library collections, faculty chairs, etc.) – either as one-time expenditures or as restricted endowments – and all such transactions are identified in public reports at least annually.

Refrain from Engaging in Unrelated Business (i.e., commercial activity that is not directly related to, and does not advance, the charity's goals).

Universities' business endeavours typically are of two types. One encompasses such revenue-producing ancillary enterprises as student residences, food services, book stores, athletic events, parking lots, facility rentals, etc., most of which are obviously related to the institutions' goals and all of which are operated on a self-supporting, nonprofit basis. The other comprises spin-off companies created for technology-transfer purposes intended to produce profits, which are established as distinct corporate entities and are not registered as charities. While the successful ones may make donations back to their "parent" universities in accordance with intellectual property agreements, they pay taxes like any other private-sector business. Beyond this, universities avoid engaging in unrelated business ventures both because they can ill afford the risk of failure and because they need the moral and financial support of private-sector interests which might deem such activities to represent unfair competition, their compliance with this obligation is thus naturally motivated.

Limit Political Activities (i.e., practice only that advocacy which helps the charity achieve its goals, consumes no more than 10 per cent of all its resources, and is nonpartisan in nature.)

While individual faculty members and students' associations may become involved in political activities (under the protection of academic freedom and freedom of expression), universities as institutions certainly cannot afford to devote anywhere near 10 per cent of their resources to such efforts, nor do they have a reason to engage in any advocacy that does not help to achieve their goals. Moreover, because of their fundamental dependence on government funding for the operation of their core teaching and research functions, and because governments are subject to periodic change, universities would be foolish to take institutional sides in political debates because their major paymasters could represent different parties from time to time and from one government level to another. This does not mean that they refrain from criticizing governments but it does dissuade them from partisan advocacy. While their presidents may be invited to occasional events in support of political parties, they tend to accept either no such invitations or (if they can

justify it financially to their many vigilant stakeholders) all of them. In either case, nonpartisanship is the order of the day. Hence, their compliance with this obligation is logically dictated.

File Annual Reports (i.e., complete and submit the federal T3010 form each year.) Universities recognize their obligation to comply with this requirement in exchange for the tax benefits that they enjoy, they have the capacity to satisfy it quite easily, and they do so – commonly including in the submission their yearly reports from external auditors, reconciled to the T3010. They must also file several detailed annual reports with provincial governments.

It can be concluded, then, that the inclusion of universities in the charitable sector is suitable both in terms of definition and with reference to compliance. This should not be taken as an endorsement of the CCRA regulations, legitimate complaints about which have been voiced by both the Accountability Panel and the Joint Tables; but it is an argument for including universities in any consultations aimed at improving them.

It must be acknowledged, however, that CCRA seldom monitors or audits universities' compliance with its regulations. While this may be viewed as unfair by those organizations subjected to closer scrutiny, it can be justified – partly due to the immense expenditure of resources that would be consumed in efforts to analyze the behaviour of these large and complex institutions, possibly in response to the above observations, and perhaps because of sensitivity to the exclusive provincial jurisdiction over education in Canada – but mainly in light of the elaborate accountability regimes imposed upon universities by other authorities.

Accountability

The Accountability Panel defined its subject as “the requirement to explain and accept responsibility for carrying out an assigned mandate in light of agreed upon expectations” (p. 11), interpreted it “broadly to include mechanisms of stewardship by boards of directors, self-accreditation by organizations, self-regulation by the sector, and external regulation” (p. iv), and identified its minimum forms as:

- establishing an appropriate mission and/or policy priorities and ensuring their relevance;
- sound management of funds received from donors and governments and of expenditures;
- effective organizational governance (including structures and processes for managing human resources); and
- the outcomes, quality and range of their programs and services (p. 11).

As large and durable institutions with relatively stable sources of operating revenue from government grants and tuition fees, plus substantial annual fundraising programs, universities have developed a strong and sustainable capacity to maintain these and other forms of accountability. Moreover, they are subject to constant forces – both external and internal – which ensure that they do so.

Exogenous pressures for accountability emanate from governments, employers, donors, professional bodies, prospective clients, the media and the general public, among others. Universities must, of course, abide by the organizational laws and regulations concerning corporations: finance, employment, environment, human rights, access to information and protection of privacy, to mention a few. In addition, they must follow the more focused rules of the government departments to which they relate (especially, but not exclusively, provincial Ministries of Education), the research-granting and contracting agencies that support some of their activities, the certification and accreditation bodies that monitor their programs, the national and international associations to which they belong, the donor agencies that fund their projects, the local communities in which they reside, and others. Institutions of higher education also endure critical scrutiny by parents of their students and employers of their graduates, by the editorial and news media (both in general because of their societal significance and high visibility, and in particular through the compilation and publication of various “league tables” and ranking exercises), and by taxpayers concerned with accessibility, quality and “value for money”.

There is, moreover, a kind of market discipline to which universities must respond. They are in competition with one another for good students, able scholars, research grants, academic stature, corporate supporters, international partners and other resources on which their survival depends. The extent to which their needs for these “goods” are met depends upon the degree to which they can demonstrate responsible stewardship of their affairs, excellence in their academic endeavours, and productivity consistent with their missions – as interpreted by countless external “judges”, often in the form of unforgiving peer reviews, relentless program appraisals, and performance-based funding.

These external forces are supplemented by internal pressures toward accountability in institutions of higher education. Universities are intensely democratic in procedure and open to debate, with all major constituencies (faculty, staff, and students) insistent on participating actively in the management of their affairs (and statutorily enabled to do so). But these groups (and elements within them) are frequently in conflict or competition with one another for scarce resources or organizational influence and they share a healthy skepticism about managerial motives. The result is that universities are full of individuals and coalitions (including managers) who are constantly questioning one another’s ideas and rigorously scrutinizing one another’s actions – not so much out of mutual mistrust as because of a determination that institutional decisions be

made correctly and well (and be seen to be so made). Under these circumstances, inadequate stewardship of institutional affairs is soon detected and promptly exposed.

In response to these external forces and internal pressures, universities have developed robust mechanisms of accountability. Central to these are their boards of governors which operate as policy bodies. Reminded at annual orientation sessions of their fiduciary responsibilities, limited liability, and duties of care and loyalty, board members are regulated procedurally by explicit bylaws that include avoiding conflicts of interest. They are typically comprised of about 30 volunteers – a few of whom may be appointed by their respective provincial governments, several of whom represent key institutional constituencies (faculty, staff, students, and alumni), and the majority of whom are recruited from off campus to provide relevant professional expertise (e.g., lawyers, engineers, accountants, etc.) and adequate representation from such stakeholder groups as corporate executives, sympathetic philanthropists, and community leaders. They are proposed for board membership by nominating committees that seek evidence of commitment to the organization's mission, possession of pertinent qualifications, and willingness to work hard in the institution's interest; merit is thus the principal criterion.

Most university boards meet monthly to conduct the organization's business, and most members serve on one or more board committees that analyze current issues and present policy recommendations (in such areas as finance, audit, fundraising, facilities, communications, and personnel – as well as an executive committee authorized to act independently between board meetings and in crisis situations). The principle of merit is reflected in the board's delegation of authority for making or recommending academic policy to the university's Senate, (or, in unicameral systems, an Academic Affairs committee of the board), which is comprised primarily of faculty members elected from the institution's various academic units along with several representatives of the student body and the wider community, including alumni. A delicate balance of powers exists between the Board and Senate, which serves to strengthen the accountability of both bodies.

This governance structure places a premium on frequent and open communication, as those involved demand full and accurate information to ensure that their various interests are met and their fiduciary duties are discharged. Most universities have established institutional research units to compile and analyze the data required to meet this requirement and total transparency is an expectation rather than an aspiration. To satisfy this expectation, as well as to meet external needs to know (by prospective students, curious publics, regulatory agencies, donors, employers, parents, and the media), universities employ countless devices to foster effective communication – periodic releases, annual reports, financial statements, campus visits, news conferences, public meetings, information tours, house organs, student newspapers, alumni magazines,

bearpit sessions, elaborate websites, focus groups, consultation exercises, television and radio stations, etc.

The most important content in these communications is, of course, related to performance but outcome-based assessment, while desirable, has some limitations (Panel, pp. 36–41) and it is devilishly difficult in universities. Each of their three major functions presents problems in this regard: the results of *teaching* are influenced by numerous personal and situational variables outside of the classroom; the products of basic *research* may not become known for decades; and the impacts of community *service* are determined as much by clients as by consultants (for a fuller discussion of these difficulties see Farquhar, pp. 239–42). There are, however, some proxies that can be employed as indicative (if not determinative) of success; three of these that are commonly used by universities will be mentioned.

At the most simplistic level are various performance indicators, some of which are currently used by provincial governments and granting agencies to determine university funding levels (a practice that is now widespread in the United Kingdom and Australia, for example, but that was frowned upon by Canada's Voluntary Sector Accountability Panel [pp. 36–7]). Thus, one can compare institutions on such factors as admission averages of applicants, employment success of graduates, time to completion of degrees, success in obtaining grants, refereed publications per capita, frequency of scholarly citations, number of library holdings, satisfaction of students with programs, rankings in various disciplines, major faculty awards received, competitive scholarships won, number of patents registered, relative value of gifts, proportion of alumni donors, and various measures of internationalization. Unreliable and distorted as such indicators are for external evaluation purposes, they have some formative value for internal uses and can be helpful when applied in benchmarking exercises.

Secondly, one can examine the qualifications of those responsible for delivering the outcomes. Professors belong to learned societies in their respective disciplines, they are bound by the academic norms of those bodies, and the extent to which they are chosen to contribute to the deliberation of those bodies can be indicative of their competence – as can the number of scholarly articles they write which are accepted for publication in peer-reviewed journals, the number of expert bodies to which they are named, the number of students seeking to work with them, etc. Similarly, management staff typically hold membership in relevant associations which conduct research, disseminate information, and provide professional development opportunities to upgrade skills and knowledge, to establish and maintain standards (sometimes enforced by sanctions), and to learn from best practices. These include fundraising executives, who normally abide by the Canadian Centre for Philanthropy's Ethical Fundraising and Financial Accountability Code and adhere to the National Society of Fundraising Executives' Code of Conduct. There are even

national organizations of board chairs, governance secretaries and university solicitors, likewise devoted to improving the competence of their members.

Finally, one encounters a variety of procedural devices by which these self-governing, mission-driven institutions endeavour to achieve high-quality outcomes. Sound management of resources must be attested to annually by qualified external auditors. Student applicants must meet certain academic standards for admission. Deans conduct yearly reviews of each faculty member's performance and may withhold salary increments if it is deemed unsatisfactory. Committees of colleagues thoroughly examine the scholarly productivity of candidates for tenure or promotion, soliciting the appraisals of external experts and considering the results of student evaluations. Senates oversee periodic assessments of all academic programs (usually on a seven-year cycle) which involve both substantial self-evaluations by the units concerned and rigorous examinations by visiting experts. Proposals for new programs are adjudicated by teams of outside scholars according to such criteria as societal need, institutional capability, and mission centrality. Peer review is applied to grant applications, journal submissions, and career progressions. Senior administrative appointments are recommended by broadly representative search committees (often aided by professional "head hunters") and are normally made for limited terms of office. And, as implied previously, accreditation agencies and certification bodies periodically send in teams of experts (armed with the sanction of deregistration) to evaluate professional programs and prescribe desirable changes in them.

The above sampling of the external and internal forces, governing boards, transparency mechanisms, responsibility structures, personnel qualifications, and assessment procedures that characterize universities provides testimony of significant accountability. Because these institutions' compliance with CCRA regulations is as subject to these systems as are all other requirements of university governance, it seems sufficient to confirm that such arrangements are in place and operational and then to allow both federal government and higher education authorities to get on with other business.

Contribution

Before concluding, it is worthwhile remembering that universities are not only fortunate beneficiaries of membership in the charitable voluntary sector; they are also important contributors to its success. For instance:

- Universities serve as valuable partners with other voluntary organizations in various projects to foster community development, capacity building, and civil society – domestically and abroad – often providing leadership in convening coalitions for such purposes.

- Universities are increasingly engaged in training personnel for other voluntary organizations, especially those preparing for managerial responsibilities.
- Universities are producers of knowledge and repositories of expertise for the advancement of other voluntary organizations (e.g., through the Centre for Voluntary Sector Research and Development at Carleton).
- Universities not only conduct their own fundraising campaigns but they also contribute to those of other voluntary organizations, through providing access for workplace solicitations (e.g., United Ways), sponsoring special events (e.g., Charity Balls), accommodating *ad hoc* appeals (e.g., disaster relief), and providing “loaned representatives” for others’ campaign support.
- Universities are fertile sources of volunteers, especially students, for other voluntary organizations on campus, (e.g., through on-campus Volunteer Centres).
- Universities nurture numerous other voluntary organizations (e.g., religious, ethnic, feminist, artistic, recreational, and international students’ associations).

This short list illustrates that mutual benefits result from the relationships between institutions of higher education and their companions in the voluntary sector, although it must be admitted that the former are occasionally ungracious in failing to acknowledge the contributions to their work, especially in support for research, by other charities that raise some of the funds awarded.

To conclude by summarizing, some understandable concerns have been raised about the inclusion of universities in the charitable component of Canada’s voluntary sector. However, universities do meet the legal definition of charities to the extent that one exists, and their mission as autonomous organizations that are self-governed by volunteer boards and serve a public benefit with the help of donations from individuals, evidently qualifies them for inclusion. Thus, they should be eligible to enjoy the benefits of charitable status and expected therefore to assume the obligations that accompany it. They apparently meet all of the regulations that are applicable to charities and, even though this compliance is not commonly monitored or audited by federal authorities, their governance and operations are characterized by comprehensive accountability regimes which, when confirmed to be operational and applicable to their fundraising activities, should satisfy any concerns about compliance. Finally, higher education institutions give as well as receive in their association with other charities.

The answer is then that yes, universities *do* belong in Canada’s voluntary sector. They should be welcome there.

REFERENCES

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