Redefining "Charities" in the Income Tax Act

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In Canada today, some hold the view that charitable organizations can serve their charitable goals best when they "serve" their constituents and "advocate" improvements in public policy and institutional behaviour which will affect their work. When they seek to discharge this advocacy responsibility, however, Canadian charities face problems arising out of the obsolete definition of "charitable" embodied in the collective decisions of the common law. The law is obsolete because it has failed to keep pace with the community's standards, because its definition of "charitable objects" is inadequate, and because it provokes uncertainty regarding what constitutes "charitable activities".

Readers may recall the furor which erupted in the House of Commons over an attempt by Revenue Canada to clarify the meaning of "charitable objects and activities" through publication of Information Circular (78-3) early in 1978. After the Parliamentary discussion of May 1978, the Prime Minister "withdrew" the offending circular but since then Revenue Canada has continued to behave as if the circular were still operative. Indeed it is difficult to appreciate what withdrawal can do to an opinion about the definition of charitable activities which presumably came about as a result of the work of the government's legal advisors. The then Minister of Revenue Canada, Senator Guay, promised in a Senate debate to replace the circular with another statement, but in the four intervening years none has come forth.

The common law definition of "charity" is rooted in a long-since-repealed statute of 1601. Since that time, the *Pemsel* case has identified four general charitable objects: relief of poverty, advancement of religion, advancement of education, and other purposes beneficial to the community. However, beyond those broad categories there has been only *ad hoc* consideration of the status of individual organizations. There has been no comprehensive judicial definition of "charitable objects".

Of particular concern is the charitable object of "other purposes beneficial to the community". Its meaning has never been defined. As a result, it is uncertain under common law whether the objects of a good portion of the registered charities of Canada are indeed "charitable". This is a matter of substantial concern not only to those charities and to other organizations which may be contemplating applications for registration, but to the giving public.

Canadians are not alone in expressing this concern regarding the uncertainty of the current common law. The Goodman Committee on Charity Law and Voluntary Organizations in the United Kingdom expressed a similar view in 1976:

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> "We have also given particular consideration to the question whether a greater degree of certainty can be introduced in relation to the categories of objects which should qualify as charitable. The preamble to the Act of 1601 is written in language inappropriate to contemporary concepts and it has led, and will lead, to mental gymnastics if it is to encompass within its terms the many forms of human endeavour now or hereafter deserving to fall within the scope of charity, while excluding those which should lie outside."

What is needed, and needed urgently, is an adequate definition of "charitable objects" which will be appropriate to present and future Canadian needs. This definition must lie in statute rather than regulations in order to supercede the common law and to place it reasonably beyond the whim of governments. The current government appears to have recognized the problem and has undertaken to address it. In correspondence with the author, Allan J. MacEachen, then Minister of Finance, stated:

> "I understand that there is concern among the membership of the National Voluntary Organizations regarding the kinds of political activities which a charity registered for tax purposes may engage in. This area of concern is one that I share. On the one hand, many charitable organizations in the legitimate pursuit of their charitable objects must come in contact with governments. On the other hand, it is clearly inappropriate for example, to have charities giving funds to political parties. Evidently a line defining allowable political activity must be drawn somewhere."

The problem is one of how to determine allowable activities of charities. There appear to be three approaches available. One is to list exhaustively the allowable or prohibited activities (as attempted by Revenue Canada in 1978). A second approach is to allow all activities in furtherance of charitable objects and prohibit specified activities. The third approach is to seek to limit the percentage of a charity's activity which is political in nature. This latter approach is being developed for application in the United States of America. It will be obvious that the third approach still requires elements of the first.

Let us be clear. The common law meaning of "political" is extremely broad in scope. It includes seeking to influence either an executive or legislative branch of government at any level and also seeking to influence public opinion. This is a far cry from the Minister of Finance's comment regarding giving money to a political party.

The Coalition of National Voluntary Organizations has opted for the second approach—allowing activities in furtherance of charitable objects and prohibiting specified activtities—and is advocating that government incorporate the following clause in the Income Tax Act:

1 (a) For the purposes of this Act charitable objects include:
   (i) assistance to a disadvantaged person or group of persons;
   (ii) advancement of religion;

(iii) advancement of education;
(iv) advancement of health;
(v) conservation of natural environment; and
(vi) other purposes beneficial to the community including cultural or social development or improvement of the physical or mental well-being of the community.

(b) In this section: the meaning of "disadvantaged" includes, but is not limited to, a lack of opportunity to participate fully in the life of the community due to geographical, environmental, economical, racial, health, sex, age or disability factors.

2. Charitable activities mean all activities carried on in Canada or the international community by a charitable organization in furtherance of its charitable objects except those activities set out in Section 3.

3. The following activities shall not be considered charitable:
   a. incitement to sedition or violence;
   b. the support or opposition, financial or otherwise, of a political party or candidate at any level of government; or
   c. the acquisition or expenditure of money or anything of value for the benefit of any member of the charity.

Enactment of these sections would take the commonsense approach that all activities undertaken in furtherance of charitable objects should be considered charitable activities. As a result, directors of organizations, not government officials are left to decide how best to achieve their charitable goals – a stance consistent with the federal government's policies towards deregulation. Organizations would be precluded from engaging in any "political" activities which did not actually further their charitable objects. It would remain the responsibility of Revenue Canada to withdraw the charitable status of an organization which engaged in activities, political or otherwise, that did not further the specific charitable objects for which it was registered.

This proposal should not be misconstrued as opening the doors so a larger number of organizations would qualify as "charitable". Instead it would have the effect of putting existing charitable organizations on a more confident footing as they seek to become advocates for their charitable causes. It would define a set of rules, reduce the arbitrary nature of current decisions, and allow organizations to go about their charitable work with greater confidence. Members of the government appear to be looking for ways to respond. I commend the proposed Income Tax Act amendment for their sympathetic consideration.