Charity in Canada: A Governance and Historical
Institutional Lens on Charitable Registration

by

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Abstract

The dissertation compares the impact of charitable registration on recently registered charities and on a comparable group of organizations that are not registered. Eligibility for charitable status is important to the changing relationship between Canada's voluntary sector and the federal government. This relationship is more vital today given the changing nature of governance where the government works with a variety of 'new' actors including voluntary organizations. Framed within the context of this new governance, the research examines whether having charitable status builds capacity for voluntary organizations to work with government.

The results reveal that while charitable status has an important impact on funding and legitimacy, it may not matter as much to being consulted by the government and being part of networks. In terms of advocacy, charitable registration had little impact on those charities that are more geared towards service delivery. For those charities that develop public policy however, it had a negative impact on their ability to advocate since charities are limited in the amount of advocacy that can be performed.

Eligibility is a public policy issue because charitable status matters to the financial capacity and legitimacy of voluntary organizations. While other common law countries have initiated reform, Canada has lagged behind. To understand why change has been slow in Canada, the research relies on historical institutionalism. Although change has been marginal in Canada, to the extent it has occurred, it has come through incremental, informal, and endogenous measure – through layering and conversion rather than exogenous shocks.

Through an examination of the institutional machinery that supports the charitable registration, we see how the voluntary sector pushed for change and how the regulator, the Canada Revenue Agency, made deliberately incremental change. While these changes are important, they do not represent a major policy shift because they are largely administrative and regulatory. For major policy change to occur, the Department of Finance must act. This dissertation argues that Finance has used its power to resist change for four reasons: political considerations, anticipated financial considerations, divided jurisdiction and a perceived lack of consensus within the voluntary sector as to whether a problem actually exists.

Acknowledgements

My interest in charitable registration stems from my days working in Winnipeg's voluntary sector where I would routinely meet organizations that expressed frustration about their inability to secure charitable status. I carried this topic through my Masters of Public Administration degree to my PhD studies culminating into this dissertation.

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Chapter 1

Introduction

Canada's voluntary sector has long been an integral part of the mixed welfare state, particularly since the end of World War II when governments provided significant funding for organizations to deliver programs and services (Hall et al., 2005: 30). As the world's second largest voluntary sector proportional to the "economically active population", Canada's diverse sector comprises approximately 160,000 voluntary organizations, contributes \$75.9 billion to the national economy or 8.5% of GDP, and employs a workforce of over 2 million full-time equivalent workers (Hall et al., 2005: 7-9). Canada's voluntary sector is divided into two main types -- registered charities and non-profit organizations. In Canada, only those organizations recognized as "charitable" by the federal government can provide tax receipts for donations. By recognizing these organizations as charities, the federal government confers certain benefits such as indirect funding and recognition. With these benefits, the issue of which organizations are eligible for charitable status and the impacts of charitable status on organizations become important questions for public policy.

Despite its formidable size and importance, the Canadian voluntary sector is facing considerable pressures including government downloading of services, funding cuts and increasing competition for resources (Hall et al., 2003). These pressures may affect the ability of voluntary organizations to do what they do best: represent identities; provide opportunities for citizen engagement; deliver programs and services; and, bring different perspectives to public policy development (Phillips, 2000; Warren, 2001). This may mean that charitable registration is more important today than ever before.

Although civil society¹ actors have long been advocates and participants in the public policy process, as well as deliverers of service, the literature suggests that changes to the process of governing that have occurred since the late 1990s have provided new opportunities for participation as policy actors (Rhodes, 1996; Salamon, 2002; Stoker, 1998). In particular, the notion of horizontal (or distributed or collaborative) “governance”, which stresses the idea of collaborative partnerships, calls upon governments to involve non-governmental actors to play a greater role in policy development as well as in service delivery (Stoker, 1998). The focus for governance is not *government*, but the *diverse actors such as business, media, other government departments and other levels of government partnering with government* (Salamon, 2002: 8). With its emphasis on diverse actors collaborating with government, governance presumably suggests that voluntary organizations would have a greater role to play in developing, advocating for, and implementing public policy. Under a governance model, the development of a suitable operating environment to support a vibrant and sufficiently autonomous voluntary sector becomes particularly important. In governance, actors grow increasingly interdependent since problems such as poverty and environmental degradation, may require the expertise and resources of multiple actors working together since no single actor can independently solve such complex problems (Webb, 2005).

¹ Civil society is a contested concept and an important debate within the literature concerns what is included in civil society. Foley and Edwards (1996: 38) ask: “Does [civil society], for instance, include business...or does the market constitute a separate ‘private sphere’? If we exclude the market, should we nevertheless include economic associations – trade groups, professional organizations, labour unions and the like? What about political organizations?” Walzer (1995: 7) provides a useful answer defining civil society that “names the space of uncoerced human association and also the set of relational networks – formed for the sake of family, faith, interest and ideology – that fill their space”. This would include the voluntary sector. Walzer’s use of the word ‘uncoerced’ allows for different actors to be involved in civil society to include private associations, political associations and voluntary organizations. Also, ‘uncoerced’ implies that these civil society actors are ‘relatively autonomous’ from the state and market with some civil society actors enjoying greater autonomy than others. Thus, the voluntary sector is part of civil society, but civil society is a broader concept that also includes other actors as well. For the purposes of this analysis, emphasis is placed on the voluntary sector.

Besides collaborative partnering, another central feature of the new governance approach is the expansion of policy instruments which means there is a greater array of policy instruments available to actors (Salamon, 2002). Although the range of policy instruments may be greater, Howlett (2000) argues that we can still categorize instruments into two major types -- substantive and procedural. Substantive instruments, such as public enterprises, tax expenditures, subsidies and exhortation, directly influence the delivery of public goods. Comparatively, procedural instruments such as funding, recognition and information are “designed to indirectly affect outcomes through the manipulation of the policy process” and influence state-societal relationships than the delivery of public goods (Howlett, 2000: 413). My examination involves both substantive (tax expenditure) and procedural (charitable registration) aspects. Charitable status allows organizations to issue tax receipts for donations, but as this dissertation will illustrate, it does much more than this.

Charitable status is an incentive and reward to motivate Canadians to donate to those organizations registered with the federal government through the provision of a tax receipt for donations. Charitable status also contributes to the capacity of the organization by providing financial² and legitimacy³ benefits. As governance partners, voluntary

² The financial benefits of charitable status are threefold: 1) exemption from the payment of income taxes; 2) the ability to receipt donations and thus potentially secure more indirect funding as logic follows that donors will prefer to donate to a charity than a non-profit organization in favour of a tax receipt; 3) preferential treatment of the Goods and Services Tax (Drache, 2002a; Webb, 2000). Additionally, some funders, such as foundations and United Ways, are registered under the *Income Tax Act*, must disperse funding to organizations that are registered with the Charities Directorate thus providing a financial advantage since new sources of funding are open only to these types of organizations. These financial benefits are outlined in chapter five.

³ Charitable registration may confer state-sanctioned legitimacy to charities. As voluntary sector leader Patrick Johnston (quoted in Reevely, 2004: B2) explains, “[charitable] status has influence...many Canadians look at the status and see that a charity is registered with [CRA] and it’s like a Good Housekeeping seal of approval. They say, ‘OK, this group must be alright’”. Carl Juneau, a former public servant in the Charities Directorate of the CRA, states, “we often have organizations applying to us for registered status that don’t even need it. They want it because they can say on receipts ‘this is a registered

organizations need capacity in order to participate in the development and implementation of robust public policy. Capacity is a broad concept, but a basic definition is “the human and financial resources, technology, skills, knowledge and understanding required to permit organizations to do their work and fulfill what is expected of them by stakeholders” (Federal Government of Canada / Voluntary Sector Joint Initiative, 1999).

All prospective organizations desiring charitable status must apply to the Charities Directorate of the Canada Revenue Agency (CRA) for a registered charitable number. The CRA, through the Charities Directorate, is the federal agency that oversees the charitable registration process and makes determinations about charitable status. To secure charitable status, organizations must have charitable objects as per the common law. In addition, organizations must have charitable activities which significantly limit the ability of organizations to engage in advocacy or unrelated business. Organizations must also report their activities to the CRA and comply with the rules set forth.

Given the increasingly difficult operating environment, charitable status may be “an asset in the ability to tap...alternate sources of funds” by providing benefits to charities over organizations without charitable status (Luther, 2001). As such, the decision of the federal government to confer charitable status may have an impact on the survival of voluntary organizations and their ability to deliver services, engage citizens, and participate as active and collaborative partners in governing. It may also be possible, however, that organizations without charitable status can develop diversified sources of funding and thus possibly become more stable.

charity’ and give a number” (as cited in Webb, 2000: 14). This legitimacy benefit is discussed in chapter five.

The dissertation explores whether charitable status matters to the capacity and ability of organizations to participate in public policy decision making. The research compares the impact of charitable status on recently registered charities and on a comparable group of organizations that are not registered, either because they have chosen not to seek charitable status or have been denied charitable status. The results outlined in chapter five are somewhat mixed. On one hand, charitable status matters because it delivers real benefits, particularly funding opportunities and heightened credibility that may be important to the development of collaborative partnerships. On the other hand, while charitable status nurtures financial capacity, charities may be limited in their ability to act as advocates and thereby have limited input into public policy.

While charitable status is one way for organizations to develop capacity, Webb (2000: 9-11) argues that Canada employs an arbitrary decision-making processes when determining which organizations should receive charitable status. For instance, he illustrates how an anti-pornography group, with a strong emphasis on advocacy, was denied charitable status whereas an anti-smoking group, which also emphasizes advocacy, received charitable status. Other commentators suggest the notion of charity is narrowly or conservatively interpreted in Canada meaning that certain groups may be excluded from receiving charitable status that would be recognized in many other countries (Boyle, 1997; Bridge, 2000; 2002; Broder, 2001; Drache with Hunter, 2000; Drache 2002a; 2002b; Panel on Accountability and Governance in the Voluntary Sector, 1999; S. Phillips, 2001⁴). Like other common law jurisdictions, Canada relies on court decisions, which have drawn on legislation and case law notably the preamble of the

⁴ Jim Phillips and Susan Phillips published separate articles in the same year (2001) that are used in this dissertation. To avoid confusion, their first initial is used to differentiate them.

1601 *Statute of Charitable Uses* and the subsequent *Pemsel* case of the late 1800s, to determine charitable status. *Pemsel* is most often cited in court decisions and establishes four headings of charity (Bridge, 2000; Webb, 2000):

- 1) poverty relief;
- 2) advancement of education;
- 3) advancement of religion; and,
- 4) other purposes beneficial to the community.

The Charities Directorate reviews an organization's application for charitable status to determine if the objects (the purpose or ends, for example) are charitable under the 1601 *Statute of Charitable Uses*, the *Pemsel* test, subsequent court decisions and CRA guidelines. If the Directorate determines that the objects and activities of an organization are charitable under the common law and comply with the tax laws, then the organization is registered as a charity. If the objects and activities are not deemed charitable under the common law and tax laws so that charitable registration is denied, the organization has the opportunity to appeal the decision through the courts.

Common law has the ability to evolve over time either through both legislation and judicial decisions. This evolution has been rather limited in Canada however (Bridge, 2000; J. Phillips, 2001). Commentators argue that the definition of charity used in Canada is narrower than other common law countries and this prevents certain organizations from securing charitable status (Broder, 2001; see also Drache with Hunter, 2000; Drache, 2002a, 2002b; Federal Government of Canada / Voluntary Sector Joint Initiative, 1999; Panel on Accountability and Governance in the Voluntary Sector, 1999; Phillips, 2000-2001). In particular, multicultural and ethnic cultural groups, umbrella organizations, and community broadcasting organizations have been recognized as charitable in other common law countries, but not always in Canada (Broder, 2001). In this view, the public

policy issue related to charitable registration concerns eligibility because the eligibility criteria may not support how civil society and governments work in the context of more collaborative governance.

Charities in Canada are also restricted in their advocacy activities. Advocacy is defined as “the act of speaking or of disseminating information intended to influence individual behaviour or opinion, corporate conduct, or public policy and law” (Federal Government of Canada / Voluntary Sector Joint Initiative, 1999: 50). A charity must devote “substantially all of its resources to charitable activities” such that its engagement in advocacy is “ancillary and incidental” (*Income Tax Act*, s. 149.1 (6.2)). The issues associated with this law are two-fold. First, organizations that advocate at levels above the legal limits are excluded from accessing the taxation system as charities. These organizations may face a difficult trade-off: reduce or eliminate advocacy in order to secure charitable status, *or* continue to advocate at levels higher than the legal limit without charitable status. Second, organizations with charitable status are restricted in their ability to fully participate in the public policy process since charities that exceed the advocacy limits may face deregistration.

The limitation on advocacy, it is argued, forces charities to treat the symptoms of a social problem, but not the root cause (IMPACS, 2002). For instance, charities must deal with the symptoms or the effects of smoking, but are limited in their ability to respond to the root causes of the problem and advocate for changes to the law (Broder, 2001). The recent attempts of the voluntary sector to frame advocacy as an issue suggest

that the sector thinks this is an important matter.⁵ The counter argument justifies this restriction to prevent the use of taxpayer's dollars to advance policy positions that may be held by only a small segment of the population, as represented by the charity.

To date, there haven't been major policy changes to the charitable registration system in Canada. Yet, other countries, notably the UK, have initiated significant change related to the charitable registration process and this raises an important question: why has policy change been slow in Canada? This dissertation explores this question through the institutional literature. While there are several approaches to studying institutions including rational choice and sociological institutionalism, this dissertation draws on historical institutionalism. By using an historical institutionalist perspective, the dissertation details and analyzes how change has occurred and how it was resisted. It argues that some resistance to major policy change regarding charitable registration has occurred from the Department of Finance, which, as a powerful central agency with sole responsibility for reforming the *Income Tax Act (ITA)*, may explain why Canada has experienced a slower pace of change.

The dissertation concludes that the rationale for such resistance relates to financial concerns. The concern is that a major policy change related to the meaning of charity will allow more organizations to be designated as charities, which, in turn will generate more tax expenditures and thus erode the tax base. In addition to financial concerns, there is a lack of political will to initiate major policy change in Canada in relation to the amount of advocacy that charities may perform, unlike the UK experience in which former Prime Minister Tony Blair spearheaded legal and regulatory reforms for the voluntary sector.

⁵ As discussed in chapter six, initiatives such as the Broadbent Report, the Working Together process and the Voluntary Sector Initiative are sources of evidence to suggest that the voluntary sector thinks the advocacy issue is important.

Additionally, there is the possible perception that a lack of policy consensus exists within the voluntary sector about whether major policy change related to the meaning of charity is actually needed. Divided jurisdiction may also hinder reform because federal involvement with charities is limited to the provision of charitable tax deductions and the regulation of charities is a provincial responsibility, but few provinces extensively exercise this power. When compared to the other explanations, however, federal-provincial relations do not pose as big a challenge to updating the meaning of charity.

Historical institutionalism provides a means of understanding how policy change occurs or does not occur and encourages comparisons of Canada with other Anglo-American countries. Historical institutionalism has largely relied on the path dependency thesis to explain change. In this approach, past events and choices have an impact on the choices that can be made today. History matters because the past produces dependency on a certain path such that the ability to deviate from that path is limited (Hall, 1986; Pierson, 2001; Skocpol, 1986). Change that does occur is largely incremental and works to promote dependency on the established path. As a result, this approach is better suited to explain continuity and the absence of change.

A new approach, referred to here as the path-shifting approach, seeks to provide a more satisfying explanation for institutional change. Rejecting the dominant model that emphasizes continuity, this new approach examines smaller, informal, endogenous changes (Crouch, 2005; Crouch and Keune, 2005; Streeck and Thelen, 2005). At first, these changes may appear to support incremental path-maintenance, but they may actually support a shift in the path. The role of agency is important in this approach as political actors can take advantage of these smaller changes to alter or shape current

paths. Applying this new approach to the charitable registration process, other Anglo-American countries have employed path-shifting strategies that have resulted in more liberalized interpretations of charity. There is both radical (for example, Barbados) and continuous change (for example, the United Kingdom). Some common law countries have developed mechanisms to allow for reviews of what is charitable to occur that are more accessible⁶ than Canada's and thus used more frequently. Others have chosen not to rely on the common law as a sole source for determining charitable status and have partially codified through legislation which kinds of organizations can have access to the tax system. For example, Barbados passed legislation for a new a definition for charitable objects in 1980 and the UK is updating its legal and regulatory framework through a new legislated definition of charity centred upon a 'public benefit test' with thirteen, not four heads of charity as outlined in the *Pemsel* test. This codification of the notion of charity is expected to bring sports clubs and human rights groups under the charitable umbrella for the first time in the UK (Kelly, 2005). With regard to the ability to engage in policy advocacy, other common law countries provide charities more room to advocate than Canada. For example, the legal and regulatory changes in the UK are expected to provide "greater freedom" for charities to advocate (Shifrin, 2003).

Canada's institutional machinery responsible for charitable registration includes the Department of Finance, the courts and the Charities Directorate of the CRA. Finance is the most powerful of the three because, as noted above, it has sole authority to change the tax laws in Canada. The CRA administers the tax laws, but has no power to make substantial policy change. The CRA can, however, issue policy statements and bulletins

⁶ As discussed in later chapters, much of Canada's institutional configuration explains why common law has slowly evolved as it relates to the meaning of charity, particularly the fact that the court of first instance is an expensive resource mechanism, and therefore largely inaccessible, for non-profits to pursue an appeal.

in an attempt to modify the meaning of charity. These policy statements and bulletins can influence the courts in determining whether an appellant should receive charitable status. The CRA attempts to influence Finance through these papers, but also attempts to influence Finance through consultation and dialogue. While the policy statements and bulletins published by the CRA can have an impact on eligibility for charitable status, they do not carry the same impact as the common law and the *ITA* (Bridge, 2000: 10). The CRA has been supportive of policy change, but with little power to invoke major policy change, it has deliberately initiated incremental change. While the courts have been reluctant to make policy based on common law, they have modified the meaning of charity in certain instances. The institutional analysis concludes that while these incremental changes resulting from the CRA and the courts are important and may alter the future relationship between the federal government and the voluntary sector, taken together they do not displace the need for major policy change.

Methodology

Does charitable status matter?

This dissertation examines two research questions. First, it explores whether charitable status matters by examining the impacts of charitable registration and non-registration on voluntary organizations. It seeks to understand the *direct* impact of this instrument on the organization's ability to survive as an organization and strengthen its relationship with government and other organizations. It also measures the *indirect* impact of charitable status on other forms of capacity for voluntary organizations. Charitable status interacts with other forms of capacity (for example, government funding) used by these

organizations. The dissertation seeks to understand how one policy instrument, charitable registration, influences the availability of other forms of capacity for organizations. As a result, we can determine whether these other forms of capacity can act as substitutes for a lack of charitable status or whether they complement charitable status. As no research projects have empirically illustrated the impact of charitable registration and the denial of registration on organizations in a systematic way, this dissertation is exploratory in its approach and analysis.

Charitable registration is treated as an independent variable and the ability of the organization to survive as an organization, build relationships with the state and build relationships with other organizations are framed as part of the dependent variable as illustrated in Figure 1.1. The research assesses the impact on the dependent variable as a result of receiving or not securing charitable registration. The dotted line in Figure 1.1 suggests there is an effect, but that having charitable status alone will not directly produce these outcomes. Rather, charitable registration has an impact on other forms of capacity including funding and legitimacy resources that in turn produce these outcomes. The analysis therefore seeks to determine the influence of charitable registration on other forms of capacity and their impact on the dependent variable. These other forms of capacity include government resources, non-government resources and legitimacy resources. The dissertation does not, however, aim to measure the impact of charitable registration and non-registration on the ability of organizations to achieve their mission (for example, their objects).

Figure 1.1: Model

To investigate the impacts, structured interviews were conducted with senior staff and volunteers from 18 voluntary organizations across Canada. In addition to these interviews, primary information about the organizations, such as annual reports and Registered Charity Information Returns (T3010A form), was collected and analyzed to determine changes in such things as budget size and nature of operations. The dissertation compares the impact of charitable status on recently registered charities with the impact on comparable organizations without charitable status. The organizations were selected from three clusters: environment, human rights and prevention of poverty. These clusters were identified because they represent contentious areas for charity law as some organizations in these clusters have experienced difficulty securing charitable status in Canada even though other common law countries routinely register such types of

organizations. In addition, the organizations were also selected based on the size of their budgets to ensure the results were not skewed by extremely small or large organizations. In such research, there is often a trade-off between size of the sample and richness of the information collected. This research chose the path of a small sample size so as to enable greater depth of focus on the organizations and thus a more detailed exploration of the impacts of having charitable status.

Nine of the eighteen organizations recently received charitable status. The CRA allows public access to part of the files of organizations that have received status and when this status was granted. As a result, the CRA provided me with a list of all newly registered charities over a two-year period. Interviews with the leaders of these organizations provided insight as to what having charitable status has enabled them to do that they could not do before.

The remaining nine organizations have been denied charitable status or have not submitted an application because they believe the application would be denied. Interviewing these groups provided an understanding as to whether alternative resources and different forms of capacity compensate for the lack of charitable status or whether they are worse off because they lack charitable status. The CRA does not allow public access to the files of organizations that were denied charitable registration. Consequently, the research project relied on a snowball sampling technique in which voluntary sector leaders were asked to provide referrals of groups that have recently been denied charitable status or groups that desire registration but have not applied as they assume they will not be granted status.

In addition to the interviews with these 18 organizations, primary documents (for example, annual reports) were reviewed and other interviews were conducted with voluntary sector leaders and key federal public servants. As an initial pilot study, the results cannot be generalized to other organizations in the voluntary sector because the sector is so diverse in terms of sizes and types of organizations. That said, there is some transferability of the results.

Why has policy change been slow in Canada?

The second research question this dissertation examines is why Canada has been slow to undertake policy change. To explore the reasons why Canada has been slow at policy change compared to other common law countries, 13 structured interviews were conducted with leaders in the voluntary sector and key public servants in the federal government. Of these 13 interviews, eight were conducted with voluntary sector leaders and five with federal public servants, all of whom have considerable experience related to charitable registration. Besides understanding the reasons why policy change has been slow, these interviews provided insight regarding charitable registration as a public policy issue and how the institutional machinery, consisting of Finance, the CRA and the courts, supports this policy instrument.

To understand whether having charitable status has any impact on how federal public servants deal with voluntary organizations concerning funding, an additional five interviews were conducted with public servants from Canadian Heritage, Health, and Human Resources and Social Development Canada (HRSDC). These public servants, all of whom who have experience in allocating government funding, provided insight as to

whether organizations with charitable status receive some type of preferential treatment for funding.

Organization of dissertation

The second chapter provides the theoretical framework encompassing historical institutionalism and the model of collaborative governance. With its emphasis on collaboration, governance underplays the important role that institutions play in influencing governing. By incorporating historical institutionalism, a theoretical framework is constructed to provide insight as to why certain governance patterns emerge, but not others. Institutions provide the machinery for policy instruments, but some institutions may use instruments that detract from collaborative governance whereas other institutions may use the instruments to accommodate governance. Instruments have impacts on actors and if the impacts are negative, the actors *may* not have the capacity to participate as a partner in a governance approach. This may mean that the state has fewer partners with whom to work. This chapter also draws on the historical institutional literature to understand how and why policy change occurs.

The third chapter offers a historical overview of charity law in Canada. Additionally, the chapter reviews the public policy issue posed by charitable registration with an emphasis on eligibility and specifically on: *charitable objects*, the overall purposes or ends of a charity, and *charitable activities*, the initiatives undertaken by the charity to achieve the objects. The public policy issue regarding eligibility for charitable registration centres upon the potential limitation of the common law for determining charitable objects and the tax laws for determining charitable activities (specifically,

advocacy). The chapter also examines how other common law countries are reforming their institutions, legislative and administrative practices regarding the interpretation of charity. Canada, the chapter concludes, lags behind the reform initiatives of its fellow common law countries regarding the meaning of charity.

The fourth chapter uses the theoretical framework as the foundation to examine charitable registration and understand how institutions and political factors work to shape the interpretation of charity in Canada. It examines the role of the organization responsible for administering charitable registration, the Charities Directorate of the CRA. In addition, this chapter explores the Department of Finance and the courts since they also have responsibilities for the instrument. Non-governmental organizations also play a role in shaping the operating environment for registered charities such as establishing codes of ethical behaviour that may support the charitable registration process. Chapter four concludes that the courts have made limited change in the definition of charity. Also, the Department of Finance is somewhat resistance to an update of the meaning of charity. In comparison to Finance, the CRA has worked to update the meaning of charity. The CRA, however, does not have the power to amend the tax laws so the changes initiated by this institution are more administrative changes. While these administrative changes are qualitatively important, there is still a need for substantial change related to the meaning of charity.

The fifth chapter reports the empirical research, describing and assessing the impacts of charitable registration and non-registration on organizations in Canada. The results are somewhat mixed. On the one hand, charitable registration has a positive impact on the ability to generate financial resources and enhance legitimacy. On the

other, charitable registration confers negative benefits because it constrains the ability of those organizations with charitable status to access the state as an advocate. Non-registration has a negative impact on those organizations unable to access the taxation system despite having a legitimate claim. While most organizations develop alternate resources to cushion the lack of charitable status, these alternate resources do not adequately substitute the lack of status. Besides exploring the impacts of charitable registration and non-registration, chapter five assesses whether charitable status has an impact on how public servants deal with charities and organizations without charitable status. This chapter concludes that while charitable status is not a pre-requisite for government funding, status may influence how public servants deal with voluntary organizations. Specifically, public servants report that having charitable status may be seen as producing a more reliable and legitimate recipient of government funding.

Chapter six provides insight into the actors supporting policy change, namely the voluntary sector and the Charities Directorate of the CRA, and the key actor that has been somewhat resistant to policy change, the Department of Finance. The chapter reveals that a difficult relationship exists in that Finance successfully resists the attempts of the CRA for change on certain issues. The chapter examines the reasons why the most powerful institution involved with this policy instrument, the Department of Finance, is somewhat resistant to a review of the notion of charity. The most important reasons include financial concerns, lack of political will because of a fear of voter backlash or inadvertently registering unscrupulous organizations as charities, and lack of policy cohesion on the part of the voluntary sector.

The last chapter relates these empirical findings to governance concluding that charitable registration matters in some ways. It also offers an assessment of the strengths and limitations of this research in addition to recommendations to updating notions of charity in Canada. In short, this chapter concludes that Canada needs a stronger voluntary sector and more suitable operating environment to govern it in light of a collaborative governance approach.

Chapter 2

Governance, Institutions and Charitable Registration

The concept of governance helps us understand the changing relationship between the federal government and the voluntary sector in Canada. Governance emphasizes the involvement of non-governmental actors, including the voluntary sector, as collaborative partners in the development and implementation of public policy (Rhodes, 2000; Salamon, 2002; Stoker, 1998). This involvement in public policy would, presumably, recognize advocacy as a public policy input. Besides emphasizing collaborative partnerships, governance also implies the use of a wide range of policy instruments. Procedural policy instruments, designed to influence the number and ability of policy actors to participate in the policy process, are important because they have an impact on which actors evolve into governance partners with whom the state chooses to work (Howlett, 2000). The choice of particular instruments and how they are used however are dependent on the institutions that support them.

This dissertation explores whether charitable registration contributes to the capacity of voluntary organizations to evolve into partners in governing. Charitable status, as a form of indirect funding, is a procedural policy instrument, which, as this dissertation will demonstrate, shapes the opportunity and capacity for voluntary organizations to participate in policy decision-making. The analysis draws on historical institutionalism not only to understand how governance is implemented in particular contexts, but also to illuminate the two key research questions in this dissertation: Does charitable status matter? Why has Canada been slow to adopt policy change as it relates to the meaning of charity? Historical institutionalism defines institutions as the formal and informal rules, procedures, and routines that shape the interests of actors and

structure the relationship between the various actors (Hall, 1986; Hall and Taylor, 1996; Thelen and Steinmo, 1982: 2). Central to historical institutionalism is the idea that institutions shape policy outcomes by structuring the behaviour and relationships of policy actors. While institutions shape policy actors, these policy actors also seek to shape and reshape institutions (Atkinson, 1993: 5). The importance of institutions in a governance framework is clear: institutions, through their use and support of policy instruments, have impacts on the ability of non-governmental actors to participate in governing. Some institutions may use and support policy instruments in such a way that detract from the development of partners with whom the state can work. Others may use and support policy instruments so as to enable the development of capacity among non-governmental organizations in ways that create the potential to serve as partners in governing.

As charitable status is one way of generating capacity for voluntary organizations, the basis for determining eligibility for registered status is an important public policy matter. Yet, academics and charity lawyers have argued that the criteria for eligibility are outdated and that Canada has been slower to change the meaning of charity compared to other Anglo-American countries (Boyle, 1997; Bridge, 2000; 2002; Broder, 2001; Drache with Hunter, 2000; Drache 2002a; 2002b; Panel on Accountability and Governance in the Voluntary Sector, 1999; S. Phillips, 2001; Webb, 2000). Historical institutionalism, and in particular its path dependency thesis, provides a useful explanation to why Canada has been slower to adopt policy change than have other jurisdictions. The literature assumes that significant change occurs exogenously, but this only happens occasionally so historical institutionalism is not well equipped to explain institutional change. Rather, the

path dependency thesis suggests that past choices limit future choices, and that institutions generally display inertia such that it is difficult to make adjustments once a path has already been carved out by history. Adjustments that may occur are viewed as change that merely reinforces the already established path. Recently, however, there has been new work related to institutions and change that focuses on smaller endogenous, more informal changes (Crouch, 2005; Crouch and Keune, 2005; Streeck and Thelen, 2005). This new work emphasizes that these small, apparently incremental changes may actually support path-shifting strategies and thus contributes to fundamentally altering future paths. Such changes, however small, should not be overlooked because they show how actors make choices within established paths in order to shift the path for future gain.

This chapter begins with an outline of the core components of a governance approach: collaborative partnerships, networks and policy instruments. This is followed by a discussion as to whether governance is actually operational in Canada. Such a discussion is important given that the “existence and operation of this new model of governance has been asserted more than they have been tested” (Phillips, 2004: 2). This study treats governance as a descriptive approach and provides examples that illustrate the operationalization of some aspects of governance in Canada. The chapter then explores institutions and how they influence both policy outcomes and the nature of change. It then outlines the main premise of historical institutionalism in order to understand how institutions support policy instruments and influence the nature of policy change. The chapter ends with the implications of governance and historical institutionalism for both government and voluntary sector actors, and concludes that both

would need to work differently if a governance model is to succeed at providing better public policy.

Governing, government and governance

Governance is a contested term,⁷ but one with a common conceptual core. Given that the term is used in many different ways, the first task is to define what we mean by the term. Governance cannot be defined without a discussion of two other important concepts: governing and government. Governing is a familiar concept defined by Lemieux (2000: 120) as including “all those activities of social, political and administrative actors that can be seen as purposeful efforts to guide, steer, control or manage (sectors or facets of) societies”. As forms of governing, government refers to governing through political representatives and their institutions whereas governance refers to a system in which both governmental and non-governmental actors steer society and public policy (Lemieux, 2000).

Stoker (1998: 93) argues that governance “involves working across boundaries within the public sector or between the public sector and private or voluntary sector. It focuses attention on a set of actors that are drawn from, but also beyond, the formal institutions of government”. Not to be treated as a synonym with government,

⁷ Governance is a concept that generates significant imprecision and runs the risk of being ill defined within the literature. The definition presented here differs from other approaches found within the governance literature. As Rhodes (1996) suggest, there are five other approaches that can be found for this concept. First, governance is used to promote a minimalist state based on ideological preferences. Second, governance is used to promote better corporate governance (for example, transparency, accountability, etc) among private, for-profit firms. Third, governance is used within public administration and refers to new management practices, notably ‘new public management’ practices (see Aucoin, 1995; 2007 for Canadian perspective). Fourth, the ‘good governance’ approach can be found within the economic development literature. The fifth approach refers to a socio-cybernetic form of governance where no central actor claims complete authority over other actors (see Kooiman, 2000).

governmental actors actively participate in the development and delivery of public policy governance signifies a change in the role of government. Under governance, non-or what Rhodes (2000: 54) refers to as the “pluralization of policy making”. By tapping into the knowledge and information of diverse actors, governments learn about the public policy goals needed to overcome complex problems and how they should be achieved (Paquet, 1999: 7). This distributed governance emphasizes a horizontal governing process that involves many actors, some of whom are familiar to the government and others unfamiliar (Jessop, 1998; Paquet, 1999). There is debate as to whether such a shift towards the governance model has occurred in Canada. The question of how descriptive the governance model is in relation to the voluntary sector in Canada is explored later in this chapter and it is part of the empirical work of the dissertation.

Despite the differences between these two modes of governing -- governance and government -- both work to “[create] the conditions for ordered rule and collective action” (Stoker, 1998: 17). Governance, “unlike...the narrower term ‘government’...cover[s] the whole range of...relationships involved in the process of governing” (Pierre and Peters, 2000: 1). This emphasis on diverse relationships is an important reason for the rise in popularity of this concept argues Pierre and Peters (2000: 1). As a new mode of governing, the concept of governance focuses on four core elements that are discussed below: networks, collaborative partnerships, instruments and institutions.

Networks

For Rhodes, “governance is about managing networks” (1996: 658). Networks can be distinguished from two other types of coordinating mechanisms: hierarchy and markets

(Williamson, 1991; 1996). Government has traditionally focussed on hierarchy or more recently on markets under the neo-liberal NPM approach. In contrast, governance focuses on networks (Rhodes, 1996; Salamon, 2002). Peters' (1998) overview of these guiding mechanisms reveals that the hierarchical approach to coordination is rooted in the power and authority of the public sector to centralize the coordination process in a top-down fashion. Conversely, markets do not view coordination as resulting from power, but from the bargaining that occurs between buyers and sellers with currency as the medium for bargaining according to Peters (1998). Like markets, networks are rooted in bargaining, but unlike markets, there are no buyers, sellers or currency. Instead, networks consist of patterns of regular interaction among interdependent actors and "evolve structures consisting of sets of values, norms and rules" (de Bruijn and ten Heuvelhof, 1995: 161. See also Klijn, 1997).⁸ Networks, argues Ansell (2000: 303), operate horizontally among interdependent actors "to achieve coordination through mutual adjustment rather than through command". These interdependent actors can include governments, industry groups, non-governmental organizations, foreign governments, consultants, academics, think tanks, corporations, individuals, First Nations and political parties (Howlett, 2002: 255). Linked together by a specific public policy problem, these networked actors work through networks to "influence government policy", but not to form government per se (Stoker, 1998: 23).

A network's structure matters to policy outcomes (Howlett, 2002; van Bueren, Klijn and Koopenjan, 2003). Through an examination of policy changes in four sectors -- transportation, banking, education and trade -- between 1990-2000, Howlett (2002)

⁸ A hierarchy of actors may exist within networks that are able to exert more power during interactions with other actors.

concludes that a correlation exists between types of networks and specific changes to policy. He provides a typology of networks based on: 1) openness to new actors; 2) openness to ideas; and, 3) level of cohesiveness among network actors. Closed networks are not receptive to new ideas or actors and result in policy changes to instrument components and program specifications only. Open networks, conversely, are receptive to new ideas and actors; and generally result in changes to policy instrument types, policy goals and instrument components. The remaining two types of networks -- resistant and contested networks -- fall in between the polar opposites of closed and open networks. This is important to note because government institutions may have a role in determining the degree of openness in a network.

For the government, participation in networks offers the possibility of gaining allies to respond to persistent and complex public policy problems. In the process, however, the government may lose its central steering function (Klijn, 1997: 33; Salamon, 2002: 11). That said, government institutions may still have a critical role in the management and restructuring of networks (de Bruijn and ten Heuvelhof, 1995: 167; van Bueren, Klijn and Koppenjan, 2003). More broadly, a network perspective allows for the possibility that government institutions can create favourable and unfavourable environments in which actors must work (de Bruijn and ten Heuvelhof, 1995: 167; van Bueren, Klijn and Koppenjan, 2003). Government institutions may alter relationships with actors by strengthening the ability of favoured actors or by changing the number of actors involved in the network (de Bruijn and ten Heuvelhof, 1995: 167). Institutions can affect network dynamics to favour certain interests and perspectives in addressing public

policy concerns. Government institutions, then, influence the structure of networks and as discussed above, the structure of a network matters to policy change.

Phillips (2004) details two implications of governance via networks for the voluntary sector. First, she argues that although the governance literature has done a good job thinking through the implications of working through networks as conceptual and analytical lenses, much work remains to be done on what is required to form and maintain an effective network in a governance context. How do certain actors, voluntary organizations for example, operate as a network? What makes networked partners effective? What type of institutional machinery is needed to nurture the work of networks? What are the limitations of various partners working through networks and how can these limitations be mitigated? Government institutions play an important role in network management and restructuring so it is essential to understand how they can enable certain networks in light of a governance approach.

Second, Phillips argues that further thinking is needed in terms of the impact of governance on networks since the structure of a network has an impact on policy outcomes. Governance suggests greater interdependence among actors working together within a partnership. The concern for partners, particularly for civil society actors like the voluntary sector, is the possible erosion of their distinctive characteristics that reduces their ability to make representation outside the networked partnership (Phillips, 2004; Laforest, 2002). The central concern for civil society actors involved in a governance network “is how to balance working on the inside as a partner with maintaining a policy voice as a representative of and advocate for its various constituencies” (Phillips, 2004: 18). Governance is not just about the coordinated activity undertaken by networks

however. Governance also involves the use of collaborative partnerships that entail joint decision-making (Stoker, 1998: 23).

Collaborative partnerships

Partnerships⁹ have long been part of public sector management and thus are not new to the literature. They do, however, take on a greater significance under a governance approach, particularly collaborative partnerships that involve an element of shared decision-making (Salamon, 2002; Stoker, 1998). As Rodal and Mulder (1993: 36-37) note, these collaborative or decision-making partnerships “encourage joint decision-making with regard to policy development, strategic planning and program/service design, delivery, evaluation and adjustment.” If collaboration is the central feature of a partnership, it may be difficult for some partners to be critical of government actions or policy decisions, although Webb (2005) argues that even with collaboration, there still remains some friction or “creative tension” amongst partners. Governments support actors as partners, but they also support actors to be critical of a government’s approach to a particular public policy problem. Webb (2005: 243) suggests that the latter is done to create “rivalrous check-and-balance initiatives” between actors. This is done, he argues, to promote more sustainable public policy approaches over the long term.

⁹ Phillips (1991) outlines four models of partnerships (see also Kernaghan, 1993). *Consultative or advisory partnerships* consist of public sector organizations seeking the advice of non-state actors. *Contributory partnerships* are based on the provision of funding (for example, corporate sponsorship, in-kind services or grant funding from a public sector organization) to support the delivery of a good or activity, which would otherwise not be delivered without this support. *Community development partnerships* are those in which “financial and human resources [are generated] at the grassroots level so that local communities can develop and deliver government policy” (1991: 208). Rodal and Mulder (1993) use a similar typology of partnerships. For a critique of partnerships, see Torjman, 1998.

Despite its prominence, collaboration remains conceptually underdeveloped according to Phillips (2004) and Walters (2004) because of the reluctance in the governance literature to closely examine the need for appropriate institutional machinery to support the collaborative process. Institutions matter because they affect which actors can participate in a governance approach and they influence the nature of policy change. This requires researchers to think about the relationship between institutions and collaborative partnering, addressing such questions as: How do institutions support (or not support) the process of collaborative partnering? How does institutional change occur and how does it relate to collaboration? What characteristics are required for institutions to nurture this process? How can institutions change or be changed to better reflect these defining characteristics and support the work of collaborative partners? The literature on institutionalism has grappled with such questions and, as we will see, institutionalism helps us understand policy change.

Policy instruments

Governance has a specific emphasis on policy instruments (Salamon, 2002; Stoker, 1998). Instruments have long been part of the public policy process¹⁰ and much of the early literature on instruments focused on developing theories on how instruments are selected to respond to public policy problems. The governance literature has brought a renewed interest in policy instruments in several respects. First, the governance perspective acknowledges that policy instruments are reliant on non-state actors, not just state actors, for the pursuit of public goods. Salamon (2002: 2) explains that many of

these instruments are indirect in the sense that they “rely heavily on a wide assortment of ‘third parties’ – commercial banks, private hospitals, social service agencies, industrial corporations, universities, day-care centres, other level of government, financiers, and construction firms – to deliver publicly financed services and pursue publicly authorized purposes”.

Second, Salamon (2002: 1-2) notes that the involvement of greater numbers and types of actors of both direct and indirect policy instruments culminates into a larger array and greater variety of instruments such as loans, loan guarantees, grants, contracts, economic regulation, social regulation, insurance, tax expenditures, and vouchers. Many of these instruments, however, are not entirely new to the public policy process. For example, governments have long used some of these instruments, such as tax expenditures, in the public policy process.¹¹ Older instruments are thus still used, but the array of instruments has been widened because governance does not ideologically favour certain policy instruments (Eliadis, Hill and Howlett, 2005). This is in comparison to limited instrument choice under other models such as the neo-liberal mode of governing and its NPM strategy that relied heavily on market-based instruments (including deregulation, privatization and contracting).

These numerous instruments, coupled with the new partners involved with these instruments, have important implications for the governing process. One that has received some attention is the management, legitimacy and accountability challenge associated

¹⁰ This literature has been focused on instrument choice which is differentiated from the governance literature. For details on instrument choice, see Bemelmans-Videc, Rist and Vedung, 1998; Hood, 1986; Linder and Peters, 1984; 1989; Peters and van Nispen, 1998; Trebilcock et al., 1982.

¹¹ Tax expenditures for charitable donations, for example, began in Canada in 1917. Other authors have contributed to the examination of new instruments. For a discussion on voluntary codes, see Webb, 2005. See Boismenu and Graefe, 2004 for a discussion of four new instruments used at the federal level in Canada: new money, accountability, creation of expertise and structuring investments.

with the expanding number of instruments and new partners (Salamon, 2002). When non-governmental partners become involved in the formulation and implementation of policy, democratic accountability may be undermined since the non-elected individuals and organizations involved in the creation of public policy responses are not directly accountable to the electorate (Desautels, 1999: 26-27; Salamon, 2002: 38). Vertical accountability is defined as accountability to a superior such that “public servants are accountable to their superiors who are accountable to their superiors and so on, thereby effectively structuring accountability in a vertical manner towards the minister and Parliament” (Levasseur and Phillips, 2004: 215; see also Aucoin and Jarvis, 2005; Considine, 2002). Vertical accountability for the government mandate is thus important for democratic governance, but vertical accountability is also important for non-governmental actors. While non-governmental actors are not directly accountable to voters, they are accountable and responsible to their broad stakeholders (funders, members, users, investors, community members and citizens, for example) (Frumkin, 2002). Self-regulatory frameworks that promote vertical accountability to these stakeholders thus become important for government and non-governmental organizations under a governance model. Vertical accountability is not the only consideration however. A close working relationship between partners suggests the need for horizontal accountability. Horizontal accountability is defined by Aucoin and Jarvis (2005: 36) as “parties involved [in] shared authority and responsibility...[considered]...accountable to one another for the discharge of their respective responsibilities in the collective undertaking”. Each partner thus becomes responsible for establishing appropriate vertical accountability mechanisms to their stakeholders, but also for nurturing horizontal

accountability to all partners. Promoting horizontal accountability extends to how policy instrument are supported and used.

Howlett (2000: 420) differentiates instruments operating under a governance model. Some instruments are *substantive*, which have an impact on the type and quantity of public goods, such as tax expenditures, loans, regulations, user charges, licences and public enterprises. Others are *procedural* instruments such as funding, recognition and information. Procedural instruments relate more to state-societal relationships than the delivery of public goods and “are used to manipulate the number of actors or nature of actors arrayed in the policy subsystems that policy-makers face” (Howlett, 2000: 420). The case study for this dissertation involves both substantive (tax expenditure) and procedural (charitable registration) instruments.

While the literature on instruments is quite rich, Howlett argues much of it has been centred on substantive instruments, but less so on the instruments that influence the public policy process. Given governance’s central premise that partners work collaboratively through networks, procedural instruments, and their ability to manage and restructure the relationships between partners, are critical components. Procedural instruments, such as charitable registration, may support governance by imparting certain benefits such as the ability to participate in networks, ability to advocate and general capacity to support activities like policy research. With access to these benefits, recipients may be able to evolve into governance partners. Procedural instruments may also undermine governance by excluding legitimate recipients from the benefits that flow from the instrument. This may reduce the chances of becoming a partner with whom state institutions can work. Besides having a direct impact on recipients, procedural

instruments may also impact other procedural instruments. For example, chapter five details how charitable status affects other procedural instruments such as philanthropic financing. Some procedural instruments may be ‘complemented’ or ‘substituted’ by other procedural instruments. A procedural instrument that complements other procedural instruments may generate added benefits for recipients. For those denied access to a procedural instrument, the impact of such a denial may be partially dependent on whether that procedural instrument can be substituted by another similar instrument. If no similar procedural instrument exists, then the denial may have significant implications for partnered relationships. In sum, the two most important aspects of this discussion for this analysis include: 1) the direct impact of a procedural instrument on non-governmental actors; 2) the indirect impact of a procedural instrument on other procedural instruments, notably whether such an instrument can be complemented or substituted by other procedural instruments. These two aspects are important for understanding how procedural instruments, and how they are supported, nurture the development of partners with whom the state can work.

Governance: Descriptive versus normative model

With governance comprising collaborative partnerships, networks and instruments, there exists an important debate as to whether governance is fully operational. Understanding the descriptive / normative debate concerning governance is important because the literature has made inferences about the existence of governance in practice that is drawn from theory without much empirical testing (Phillips, 2005). Governance, when viewed from a normative perspective, is assumed to be a fully operational model of governing

(Rhodes, 2000; Salamon, 2002) and beneficial since the governance literature suggests that partners complement and build upon the strengths of other partners. Salamon notes, (2002: 14),

the state enjoys access to resources that are often critically needed by private, non-profit groups. For their part, non-profit groups are often already actively involved in fields that government is newly entering. By combining the actions of the two, utilizing the state for what it does best – raising resources and setting broad societal directions – while using non-profit organizations to do what they do best – delivering services at a human scale and innovating in new fields - important advantages can be gained.

Given that under a governance framework, multiple and diverse actors work together to resolve complex public policy problems, governance implies that public policy solutions will be more effective than other forms of governing. The governance process allows more perspectives, expertise and information to be introduced into the public policy process thus producing more effective prescriptive solutions to increasingly complex policy problems.

While governance has become trendy, is it fully operational in practice as some scholars suggest? This study treats governance as a descriptive model rather than a normative model. The empirical research conducted by Hill and Lynn (2005) indicates that much of the governance-based literature still relies on government action through state institutions to explain complex issues. By analyzing over 800 governance-related articles published in over 70 academic journals between 1990 and 2001 from varying disciplines and fields, Hill and Lynn conclude that this hierarchical orientation does not necessarily mean that governance is not occurring. They infer, instead, that these forms of governance have been embedded within a hierarchical system of constitutional authority

(2005: 189). Kettl's (2002: 128) earlier work reflects this idea of layering. He notes, "It is not so much that horizontal relationships have supplanted the vertical ones, but rather that the horizontal links have been added to the vertical ones."

Phillips (2004) tests the concept of collaborative governance to determine if it is operational in Canada by examining the Voluntary Sector Initiative (VSI). While more details of the VSI are outlined below and in later chapters, briefly, the VSI was a five-year federal government initiative beginning in 2000 to build a framework for future relationships with the voluntary sector. Her analysis of this case study concludes that the "rhetoric and assumptions of horizontal governance have outpaced the realities or practice" (2004: 2). That said, she also notes that certain elements of governance have emerged from the VSI, namely that there is an improved mutual understanding of the other actors and a stronger relationship between the federal government and voluntary sector.

The answer to whether the governance model is operational may depend on different institutional configurations across countries. For example, Tony Blair's government has more readily adopted the use of partnerships. Clarke and Glendinning (2002: 36) note that "partnerships are a pervasive feature of New Labour policy... [particularly] in relation to health and social science." Balloch and Taylor (2001) similarly provide several policy areas (for example, children's policies, neighbourhood renewal policies and policies related to the voluntary sector), in which the UK government has promoted joint working relationships with non-state actors. With partnerships at the forefront of UK public policy process, the logical question to ask is whether governance is operational in Canada.

Evans and Shields (2002: 143-144) inform us that the expansion of the Keynesian welfare state from the 1940 to the 1970s did not suffocate the voluntary sector (see also Mahon, 2001). Instead, the expansion of the state nurtured the growth of the voluntary sector. As such, Canada had a mixed welfare state in which “social services have come to be delivered through a mixture of state and privately run and administered initiatives...with public sector involvement or support in conjunction with the participation of non-governmental actors (usually non-profits and charities)” (Evans and Shields, 2002: 144). With this mixed welfare state, a general trend reveals however that the creation of important programs and services in the post WWII era had somewhat more to do with government than governance (Banting, 1987; Guest, 1997; Pierre and Peters, 2000: 2). As Rice and Prince (2000: 55) contend, the welfare state had an important role for government in “financ[ing], organiz[ing] and deliver[ing] varying levels and forms of health care, housing, education, income support and social services” such as the *Family Allowance Act* (1941), *Old Age Security Act* (1951), the *Canada / Quebec Pension Plan* (1965) and the *Unemployment Insurance Act* (1971).

The 1970s and 1980s was an era characterized by the growth of neo-conservative governments lead by Reagan, Thatcher and Mulroney. A reduction in the welfare state was seen as desirable to allow the market to steer public policy. One neo-liberal strategy, NPM, became the dominant model that favoured contracting-out, the use of market-based policy instruments and the construction of a much leaner government in the 1980s and 1990s (Aucoin, 1995; Kettl, 2000; Panet and Trebilcock, 1998; Trebilcock, 1995). Part of this included the “shifting of the delivery of public goods and services to the [voluntary] sector” (Evans and Shields, 2002: 147). A fundamental feature of NPM involves non-

governmental actors viewed as mechanisms of delivery service as opposed to shapers of public policy (Graham and Phillips, 1997).

In some developed countries, including Canada, a shift in state–civil society relations has occurred since the 1990s.¹² Although government continues to play an important role, the nature of that role and its relationship to other actors has shifted. With calls from civil society actors in the late 1990s for a more meaningful role in the policy process than just service delivery, the federal government in Canada recognized that collaborative partnerships, through the use of networks, might be another way of getting things done. Thus, in the 1999 Speech from the Throne, it noted,

To seize the opportunities and meet the challenges of a new global economy, we must work together in the Canadian way and concentrate on what matters most to Canadians. We must take bold steps today to make Canada even stronger in the next century. This requires national will, national strategies and partnerships across the country. Citizens and governments must collaboratively build an even stronger and more united Canada, a Canada that remains an example to the world (Canada, 1999).

Indicators that governance is operational in Canada would include collaboration, the use of a wide array of instruments, presence of networks and horizontal management within government. When compared to these indicators, several initiatives illustrate that some

¹² Rice and Prince (2000) detail two explanations for such a change: globalization and the effects of pluralization. Global economic liberalization, coupled with technological advances, places pressure on governments that may weaken their redistributive capacity and perhaps their ability to rule thus allowing new actors to participate in governing. Pluralization refers to the increasing division between citizens based on gender, ethnicity, sexual orientation, age, religion or relationship to the labour market leading to the development of new identities and empowerment. They suggest that pluralization pressures the state to opt for smaller and smaller initiatives reflective of a more particularistic fragmented society, which demand a voice in the public policy process. Pluralization encompasses the politics of ‘big’ versus ‘little’ in new social policy initiatives. ‘Big’ policies, such as day care initiatives that require significant amounts of investment, are not as likely to be supported as ‘little’ policies, such as AIDS research which is less costly, but delivers benefits to targeted constituencies. In addition to globalization and pluralization, Taylor (2003) suggests the breakdown of political legitimacy, and increasing uncertainty are key factors explaining the potential possible change within the state.

aspects of the governance process are somewhat embedded in practice: the VSI, the Vancouver Agreement, the *Canada Forest Accord* and the Forest Stewardship Council.

Beginning in 2000, the VSI was an opportunity for the federal government to build a relationship “[in which] the Canadian government and the voluntary sector...reach[ed] beyond the departmental-organizational level of interaction to engage at the strategic level” (Brock, 2000-2001: 211). The VSI was a \$95 million initiative by the Chrétien Liberals to build a better working relationship between the federal government and the voluntary sector, improve capacity and achieve some regulatory reform (Joint Regulatory Table, 2003; VSI, 2004b). The process was explicitly collaborative. Seven joint tables, which consisted of representatives of the voluntary sector and government, were created to examine various issues including awareness of the voluntary sector, volunteerism, regulations, information technology, capacity and the creation of an *Accord* (a framework agreement). One representative from the federal government and one representative from the voluntary sector jointly chaired each of these tables. This also led to new joint policy instruments, notably the *Accord Between the Government of Canada and the Voluntary Sector* which was signed in 2001 by both the federal government and voluntary sector. The Accord outlines the roles and responsibilities of both the federal government and the voluntary sector and serves as a guide for future collaboration.

Besides these collaborative tables and the Accord, all of which worked to address specific issues and build a collaborative relationship, an important part of the VSI mandate included policy development to build networks and collaboration. The Sectoral Involvement in Departmental Policy Development (SIDPD) program of the VSI, with a

budget of \$28.5 million, aimed to create projects that enhanced opportunities for voluntary organizations to genuinely collaborate with the federal government to develop policy at the departmental level. At its conceptual core, the SIDPD program aimed to promote collaboration between federal departments and the voluntary sector, but also to strengthen the policy capacity of voluntary organizations. While the VSI attempted to promote collaboration, several roadblocks to meaningful collaboration were encountered. For example, SIDPD was designed for policy collaboration, but the evaluation of the VSI notes there were mixed results of this program's ability to overcome institutional resistance to collaboration: some departments clearly preferred to consult, but not collaborate (Canada, Social Development Canada, 2003). Also, although the work of the VSI was to be achieved in a joint manner, the federal government limited the scope of topics that could be addressed jointly (Phillips, 2004). Topics such as the meaning of charity and advocacy were excluded from the mandate. Thus, while the VSI was an ambitious initiative to improve the relationship between the federal government and the voluntary sector, several factors have impeded the full operationalization of a governance model.

The VSI is now over, but another example of governance embedded in practice is the Vancouver Agreement and the needs of cities to govern effectively. The assessment conducted by Bakvis and Juillet (2004) about the management of collaborative arrangements reveals that the Vancouver Agreement, which involved 15 government departments (twelve federal and three provincial) and municipal agencies, is one of the more successful attempts of horizontal management. The Vancouver Agreement, initiated in March 2000, "is regarded as a prime example of effective horizontal management

within and between governments in an area of pressing public concern—urban poverty and decay” (2004: 40). Working collaboratively, an administrative structure, consisting of a policy committee, management committee and processes, was designed to support the objectives of the Vancouver Agreement. A small secretariat was formed to coordinate the policy and management committees. While the Vancouver Agreement experienced some problems, Juillet and Bakvis conclude that some of the improvements to the Downtown Eastside may be attributed to the coordinated efforts of the collaborative partners.

The *Canada Forest Accord* is another example. This Accord is a formal commitment signed by diverse actors including the federal government through Natural Resources Canada – Canadian Forest Division, provincial governments, corporations, non-profits, research institutions, and professional associations, to respond to the challenges faced by Canadian forests (National Forest Strategy Coalition, 2006). The Accord, through its emphasis on cooperation and the use of networks, provides the basis for how signatories should work collaboratively and is a useful example of governance in action in Canada. Another example from this policy field is the Forest Stewardship Council (FSC), which is an “international, membership-based, non-profit organization that supports environmentally appropriate, socially beneficial, and economically viable management of the world's forests” (FSC, no date). Unlike the VSI, Vancouver Agreement, and the *Canada Forest Accord*, in which government plays a significant role, the FSC is a collaborative governance model that was developed without government involvement and “spearheaded by environmental non-governmental organizations...[to promote] the value of its on-product eco-label” (Rhone et al., 2004: 249). In this example,

governance can and does occur without government. Born out of frustration by the lack of government involvement to ensure sustainable forestry practices, these environmental non-governmental organizations formed the FSC to become an influential international entity through offering outreach, education and a forestry certification program – all without government actors at the table (Rhone et al., 2004).

Governance, as a conceptual model, is constructed as a changing relationship among actors based on collaboration. Empirically, there exists some evidence, such as the VSI, to suggest that certain elements of such a model are operative at the federal level in Canada. While the VSI experienced some limitations, it is an example of governance occurring in Canada because it represents a change in favour of collaboration between the federal state and the voluntary sector. With some evidence to suggest that certain elements of governance are operational in Canada, understanding the important role that institutions play in the governance process becomes an important task.

Institutionalism

The history of institutionalism is quite rich. For much of the late 19th and the first half of the 20th centuries, institutionalism was the basis for political inquiries (Peters, 1999: 6). This older version of institutionalism was primarily concerned with the role of law in governing and generally assumed that the structure determined behaviour, leaving actors unable to influence state institutions (Peters, 1999). Institutions were formal or material structures and largely included government institutions such as constitutions, cabinets, bureaucracies and the courts. With an emphasis on formal-legal scholarship, ‘old’ institutionalism was criticized for being overly descriptive at the expense of building

theory (Lecours, 2005). With these criticisms, institutionalism faded into the background as the behavioural revolution emerged in the 1950s and 1960s which anchored its political analysis on individual behaviour as opposed to an emphasis on the role of structures as found within the old institutionalism (Peters, 1999).

Peters (1999: 15) notes that old institutionalism and the behavioural revolution served as the background for the emergence of 'new' institutionalism. With calls for greater attention to the state, institutionalism had returned, but in a somewhat different form. Whereas old institutionalism concentrated on formal structures to identify and define institutions, the new institutionalism concentrated on both formal and informal structures such as values and ideas (Lecours, 2005; see also Peters, 1999). New institutionalism also emphasizes that institutions display stability over time, have shared values amongst the members of the institution and shape and constrain individual behaviour (Peters, 1999: 18).

Within this renewed focus on institutions, several distinct variations emerged. Hall and Taylor (1996) outline three branches or varieties of new institutionalism: rational choice, sociological, and historical. Rational choice institutionalism developed out of rational choice theory. Defining an institution is a difficult task given that there are differing versions of rational choice institutionalism. Peters (1999: 47-52) outlines five different sub-approaches to rational choice institutionalism. One sub-approach defines institutions as the rules followed by individuals. "Institutions as rules", which is associated with the work of Elinor Ostrom (1999), conceptualizes institutions as rules that offer opportunities and constraints to the actors working within the institution (Peters, 1999). Actors within the institution abide by these formal rules in exchange for

certain benefits they can accrue such that individual behaviour is constrained by the rules of the institution and thus behaviour, in this version, becomes predictable (Peters, 1999).

Another sub-approach is 'decision rules'. Rules may not always generate the preferred outcome for actors or maximize collective utility and thus it is the role of the institution to ensure the actors agree upon the rules so actors know and understand the rules prior to joining the institution (Peters, 1999). The 'individuals within organizations' approach emphasizes the rational actor who attempts to maximize his / her personal utility (Peters, 1999). In the 'principal-agent model' approach, there exists incomplete or asymmetrical information between the principal and agent such that the principal does not know whether the agent has completed the assigned tasks (Peters, 1999). As such, this model is concerned with developing strategies to ensure that the agent meets the demands of the principal. 'Game theory' emphasizes the games played between actors whereby actors make strategic decisions based on the decisions of the opponent in order to maximize possible returns (Peters, 1999). A "good" institution, in the rational choice variant, is one that "performs...tasks well and efficiently, usually while maintaining commitment to other powerful norms such as democracy" (Peters, 1999: 59). Institutional change occurs when the institution fails to provide proper results or has become dysfunctional (Lecours, 2005). Peters (1999: 56) argues that change is discrete rather than ongoing and that change is consciously undertaken by actors to remodel the institution.

In comparison, sociological institutionalism, born out of organization theory, emphasizes culture and generally defines institutions more broadly (Lecours, 2005). This approach defines institutions as norms, culture and cognitive frames (Peters, 1999: 105). Scott (1994: 56) argues that this emphasis on "symbolic systems, cognitive scripts and

normative codes” is important because it does not “[give] primacy to materialist forces shaping organizations” as other theoretical approaches have done. Hall and Taylor (1996: 947) suggest that these norms, values, culture and cognitive frames “provide ‘frames of meaning’ guiding human action”. As “frames of meaning”, institutions shape the organizational culture and individual behaviour (Hall and Taylor, 1996: 947). Uniformity is assumed to permeate within institutions because, as March and Olsen (1984) argue, the “logic of appropriateness” constrains individual behaviour. In this approach, culture is an important element with a strong emphasis on understanding the relationship between cultural values and formal structures.

Two important sub-approaches to sociological institutionalism include the population ecology model and institutional isomorphism. The population ecology model is rooted in the belief that “organizations (or institutions) and their behaviour can be understood in part through an analogy with populations of biological organisms” (Peters, 1999: 101). Such an approach focuses on the activities of individuals in the environment within the organization or institution operates. A good institution within the population ecology model is one that adapts to the surrounding environment and as such, the environment forces the institution to change (Peters, 1999: 109). Institutional isomorphism emphasizes how the important features of organizations converge over time (DiMaggio and Powell, 1991). DiMaggio and Powell argue that greater uncertainty leads to greater emphasis on efficiency and rationalization. As such, organizations tend to adopt similar structures and procedures to cope with these uncertainties and thus there is greater homogeneity amongst organizations. While a good institution in the population ecology approach is one that adapts to environmental change, a good institution in this

approach is one that adapts to the cultural changes in favour of homogeneity (Peters, 1999: 109). Institutional change occurs in the form of convergence of structures and procedures to the demands of the environment (Lecours, 2005).

While the other institutionalisms have important insights to offer, this dissertation draws on historical institutionalism to understand how institutions influence governance through their support of policy instruments and how they influence policy change. As noted above, a broad theoretical shift occurred in the policy sciences in the 1980s and 1990s moving away from a society-centred perspective towards one that brought the state back into analysis (Evans, Rueschemeyer and Skocpol, 1985). In response to the society-centric approach, historical institutionalism implies that the state is not merely a neutral arbitrator. Theda Skocpol (1986), drawing upon Max Weber, argues that the authority of the state must be recognized in shaping relations *with* societal groups and shaping relations *between* societal groups. The state, in her estimation, is “much more than a mere arena in which social groups make demands and engage political struggles or compromises” (1986: 8). Historical institutionalism assumes that institutions are shaped primarily by history. Institutions are defined as the formal / informal rules that shape the interests of actors and structure the relationship between actors (Hall, 1986; Hall and Taylor, 1996; Thelen and Steinmo, 1982: 2). Through their ability to shape the behaviour of actors and their relationships, institutions provide the structure in which political struggles occur. By structuring the playing field, institutions influence the policy outcomes, but are not the “sole ‘cause’ of outcomes” (Thelen and Steinmo, 1982). Institutions, quite simply, influence the outcomes through their ability to structure the behaviour of policy actors and how they interact with other policy actors.

Institutions matter because they influence the roles that actors play within a governance approach (Pierre and Peters, 2000: 13). Institutions are not neutrally constructed; rather, they limit the access of actors to the decision-making process and thereby exclude certain interests and options (Atkinson, 1993: 25). Institutions, in effect, influence public policy outcomes by facilitating or impeding the formation of certain partners and coalitions. Institutions shape coalition formation and the development of partners in a variety of ways. As an example, institutions influence the capacity of partners and coalitions to participate in the public policy process. Capacity is a broad concept, but, as described later in this chapter, it comprises the various abilities of an organization to execute its objects. Atkinson (1999: 24) notes, “potential coalition partners may never organize because they lack the capacity to meet institutionally imposed requirements of participation”. Instruments are not designed to exist in a vacuum, but are reliant on institutions that give shape to them. Instruments are supported by the host (that is, the primary government department responsible for developing and implementing the instrument) and others that have some responsibility for the instrument in question. These various institutions intersect with one another in the design and ongoing support of these instruments. This conceptualization of the institutional machinery supporting policy instruments is illustrated in Figure 2.1:

Figure 2.1: Conceptualization of how the institutional machinery supports policy instruments

Some institutions¹³ may shape instrument use in such a way that the instrument inadvertently undermines collaboration and networks. This may be done in three ways: reducing the number of partners with whom the state can work; introducing competition instead of collaboration as the defining feature of partnering; or, limiting access to networks for some partners. Conversely, other institutions may deploy instruments so as to nurture the development of governance partners. Instruments, as supported by the institutional machinery, have impacts on the recipients in terms of their financial capacity, ability to participate in networks, ability to be consulted by government, and access to the state as advocates – all of which are critical elements for recipients to participate as a partner in governance. This framework, which emphasizes how the institutional machinery supports policy instruments to influence the development of some

¹³ Institutions, in a broad sense, are the conventions (i.e. the Constitution), but in a narrower sense, they are viewed as being organizations. Organizations are political entities (a regulatory agency, for example) that are comprised of individuals who are bonded together to achieve a certain outcome (North, 1990: 3-5). Organizations are influenced by the larger institutional framework in which institutions set the rules for political life. This dissertation is positioned in the middle of these two extremes with its interpretation of institutions as material structures coupled with formal and informal rules that support policy instruments. For example, the Charities Directorate of the CRA is an organization within an institution that supports the charitable registration instrument.

governance partners to emerge for collaboration with the state but not others, helps us understand whether a procedural instrument like charitable registration matters in light of a governance approach.

The Charities Directorate of the CRA and the Department of Finance are the primary units of analysis for this study of how the institutional machinery influences governance. Graham Allison's (1971) study of organizational theory provides two useful models for this dissertation. His second model, the organizational process model, outlines that the "actor is not a monolithic 'nation' or 'government', but rather a constellation of loosely allied organizations on top of which government leaders sit" (1971: 79-80). These organizations, which would include the CRA and Finance, concentrate on "factored problems" meaning that only one organization has the responsibility to resolve a specific set of problems. With differing areas of responsibility comes "fractionated power". As relatively autonomous organizations, they follow prescribed rules through standard operating procedures that, according to Allison (1971: 83), are rooted in the "norms of the organizations or the basic attitudes and operating style of its members". The Department of Finance, with its own legal framework, is responsible for *developing* tax laws and thus retains significant power to change the tax laws whereas the CRA is responsible for *administering* the tax laws with little power to actually change the laws. The CRA can invoke administrative changes, but not major policy change. Government is not the only entity that has organizations working for the public interest. Individual voluntary organizations are themselves entities that are distinct from state, market and family institutions and "commonly [embrace] a diversity of spaces, actors and

institutional forms, varying in their degree of formality, autonomy and power” (London School of Economics, n.d.).¹⁴

Allison’s third model, governmental (bureaucratic) politics model, puts organizations into action whereby they interact and make decisions through negotiation and bargaining. Actors, including organizations,¹⁵ are players in a highly competitive political game defined as “bargaining along regularized circuits among players positioned hierarchically within the government” (1971: 144). Government decisions are not understood by the actions of a single organization. Instead, decisions are the results of bargaining games played by organizations. Official papers released by an organization represent a “coherent calculated move of a unitary actor” and that the actions undertaken by individuals in the organizations serve as “coherent strategies and tactics in a single plan” (1971: 165). This interaction is especially helpful for understanding how the Charities Directorate of the CRA and the Department of Finance interact over the meaning of charity as outlined in chapter four.

In addition to influencing the ability of actors to participate in governance, institutions are important for understanding how and why policy change occurs, under what conditions this change occurs and whether the change is marginal or potentially transformative (Campbell, 2004; see also Phillips, 2005). We begin with an outline of the process for change followed by a discussion about the sources of change.

¹⁴ Civil society actors, according to Dobrowolsky and Saint-Martin (2005), can lead to institutional change. As we will see in later chapters, civil society actors in Canada have pushed for changes regarding how charity is interpreted and administered.

Institutions and policy change

The dominant model for explaining change within historical institutionalism is the ‘punctuated equilibrium model’ that relies on the path dependency thesis (Hall, 1993; Krasner, 1984). Path dependency, Campbell (1994: 65) notes, is a “process whereby contingent events or decisions result in the establishment of institutions that persist over long periods of time and constrain the range of actors’ future options, including those that may be more efficient or effective in the long run.” Past events and decisions are powerful forces that limit current and future choices and as such institutions display remarkable stability. As Skocpol and Pierson (2002) note, it is a challenge to change course once set on a certain path and the number of available paths become significantly reduced over time. When change does occur, it is viewed as incremental change that merely supports and reinforces an established path.

Yet, the possibilities for the altering of current paths and the construction of new paths exist (Crouch, 2005; Schneiberg, 2007; Streek and Thelen, 2005). With these possibilities, an impasse results within the new institutionalism as Schneiberg (2007: 50) argues, “It is hard to explain fundamental change and the rise of new paths using arguments about path dependence and the constraining power of context that were originally crafted to explain stability within...fields, systems or nation states.” As a result, scholars have constructed a new path-shifting approach with analytical strategies to overcome this dilemma. Historical institutionalism thus appears to be entering into a new stage of inquiry that emphasizes smaller, informal, endogenous changes that, when accumulated, can produce transformative results (Campbell, 2004; Crouch 2005; 2007;

¹⁵ Allison’s text treats players as men, but his footnote on page 165 stipulates, “For some purposes, organizations and groups can be treated as players”.

Streeck and Thelen, 2005). Incremental change may not support the well-established path, but may actually result in the shifting of new paths. Agency is important within this new approach, especially the ability of actors to take advantage of these smaller changes to alter or shape current paths. Actors acknowledge the constraints imposed on them by various institutions, but they do not just merely accept these constraints. Instead, they are innovative and entrepreneurial in their pursuit to reshape these institutions and modify these constraints (Campbell, 2007). This new stage, given its emphasis on the role of agency within institutionalism to understand social change, can be referred to as actor-centred institutionalism and prevents scholars from having to “[throw] out the valuable institutionalist baby along with the deterministic bath water (Crouch, 2007: 527).

For analytical purposes, Streeck and Thelen (2005) offer several broad modes of gradual, path-reshaping strategies. Layering and conversion are the two path-reshaping strategies of greatest relevance to this study. Layering involves the addition of new policies to old policies without jeopardizing or dismantling the old policies. The layering process generates support for the new policies at the expense of the old policies. This creates tension between the old and new policies, but eventually, the new policies will gradually defeat the old policies. Conversion is a model of change that centres upon the redirection and reinterpretation of old institutions. The redirection of old institutions can occur “as a result of new environmental challenges...[or] changes in power relations, such that actors who were not involved in the original design of an institution and whose participation in it may not have been reckoned with, take it over and turn it to new ends” (Streeck and Thelen, 2005: 26). As we will see in later chapters, the changes made by the Charities Directorate can be viewed as part of the layering and conversion process to

generate incremental change. While these changes do not constitute major policy change at any point in time, they are potentially transformative over the longer run.

Turning to the sources of change in the punctuated equilibrium model, institutional change is explained by long periods of relative stability with occasional periods of instability. This instability is caused by major exogenous factors such as war, major economic events and shifts in the operating environment. These exogenous factors require institutions to make significant changes and adapt to the changing circumstances for self-preservation (Peters, 1999; Streeck and Thelen, 2005). These exogenous shocks realign ideas, interests and actors and as a result of this realignment, dramatic institutional change occurs (see Peters, 1999; Phillips, 2005). Exogenous factors rarely occur however so the model is better equipped to explain institutional stability and path dependent change rather than institutional change. While this punctuated equilibrium model provides insight as to how and why institutions remain the same over time, this model is not entirely satisfying for understanding change (Mahon, 2005).

Streeck and Thelen (2005: 8) do not adhere to the punctuated equilibrium model as a rule and argue,

Sometimes institutional change *is* abrupt and sharp...However, it is not at all clear that this exhausts the possibilities, nor even that it captures the most important ways in which institutions evolve over time...we must avoid being caught in a conceptual schema that provides for either incremental change supporting institutional continuity through reproductive adaptation, or disruptive change causing institutional breakdown and innovation and thereby resulting in discontinuity.

While political debate can assist with the introduction of layering and conversion processes, it must be noted that layering and conversion processes can also occur within the bureaucracy. This can occur through the introduction of new senior management

personnel who redirects the bureaucracy or developing new policy statements that are layered onto existing legislation. Later chapters show how the Charities Directorate has created such endogenous change.

Not all change is necessarily endogenous however. The analysis of children's policies in England and Canada by Dobrowolsky and Saint-Martin (2005) outlines several sources for change. First, the building of collective mobilization strategies involving diverse actors such as women's organizations, anti-poverty organizations, charities/non-profits, and labour has been an important source for change by building awareness through the monitoring of government performance, education and advocacy. These collective mobilization strategies have politicized the issue of children's poverty and formed a new agenda in response to this issue.

Mahon and Phillips (2002) also argue that politics can and do matter to institutional change. Similar to Dobrowolsky and Saint-Martin (2005), Mahon and Phillips reject the path-dependency thesis that welfare states are impervious to change. Their examination of Canada's child care policy, as part of a liberal welfare regime, concludes that this policy field has shifted somewhat over time resulting in a deviation to Canada's liberal mode of welfare. This deviation is largely the result of politics, specifically the growth of second-wave feminism, in which citizen groups in the 1960s and 1970s received public support in order to form a thriving democracy. They (2002: 196) illustrate how policy actors such as the women's movement, labour organizations and grassroots child care "played an important part in advancing the demand for universal child care" during the 1960s and 1970s. For four decades, these policy actors

sought to reshape Canada's path as it related to child care by promoting an accessible, affordable and regulated national child care system.

Experts and ideas can also instigate change. Dobrowolsky and Saint-Martin illustrate how the Caledon Institute, a think-tank located in Ottawa, pushed for changes to Canada's welfare system by voicing its ideas on the matter. Palier's (2000) examination of the French welfare state also concludes that recent changes are the result of the role of ideas infiltrating the public policy process. Personal connections or relationships are also important sources of change. Dobrowolsky and Saint-Martin show how connections to political leaders have helped raise children's issues in Canada. They note (2005: 22-23),

In sum, a range of initiatives, from media campaigns to the publication of academic and polemical articles and books on child poverty and children's well-being, as well as community-based and national grassroots campaigns had influence. At the very least, civil society actors helped to put issues onto the political agenda. At most, they have played a crucial role when it comes to creating an environment that is conducive to policy innovations and have influenced the child-centred welfare reform policies and development.

The work of civil society actors, such as think tanks, intellectuals, charities, advocacy groups and social movements, have created important changes in the state and public policy argue Dobrowolsky and Saint-Martin (2005).

Historical institutionalism emphasizes "macro-historical research" that involves comparative analysis (Thelen, 1999). This approach locates the individual within the broader set of social-political relations to understand how institutions shape outcomes by structuring the behaviour and relationships of policy actors (Thelen, 1999). The starting point for an historical institutionalist is to group similar countries for comparative analysis to occur. The issue of charitable registration requires an historical institutionalist

to locate Canada among other Anglo-American democracies, such as the United Kingdom, the United States, Australia and New Zealand that also rely on the common law to determine charitable status.¹⁶ While Anglo-American countries use the same common law to determine charitable status, there are important differences that must be noted. Some Anglo-American countries have employed path-shifting strategies such that the interpretation of charity is broader than Canada's interpretation. Historical institutionalism, with its emphasis on how institutions influence the nature of policy, helps us understand why policy change has been slow in Canada.

Governance and the voluntary sector in Canada

If governance has taken hold, we would expect to see several changes related to the voluntary sector. These implications for the voluntary sector are explored as part of the research questions in the following chapters. A good definition for Canada's voluntary sector includes those "self-governing organizations that exist to serve a public benefit, generate social capital but do not distribute private profit to members, depend to a meaningful degree on volunteers, involve participation on a voluntary basis, and are independent or institutionally distinct from the formal structures of government and the profit sector" (VSI, 2004a).¹⁷ Since the mid-1990s, the leadership of this sector in

¹⁶ Canada is commonly compared with Anglo-American democracies for comparative analysis. For example, Mahon and Phillips (2002) locate Canada's welfare regime as a 'liberal' welfare regime. Liberal welfare regimes, including those found in Canada, the United States, the United Kingdom and Australia, are the starting point for comparative analysis.

¹⁷ A wide array of terms describes the constellation of organizations that operate outside the state and economy: the third sector, voluntary sector, non-profit sector, independent sector, and the social economy. Hirshhorn (1997: 5) argues that the term 'non-profit' is preferred by economists whereas political scientists favour the pluralistic notion of the 'third sector' and sociologists opt for the 'voluntary sector' to emphasize the noncoercive characteristic of the sector. The French interpretation of 'social economy' is unique as it encompasses traditional aspects of a voluntary sector, but also includes mutual insurance companies, financial and agricultural cooperatives which "are not normally included as part of the voluntary sector in

English Canada has tended to describe itself as the voluntary sector, although the terminology of non-profit sector is frequently used as well.¹⁸ Using the term voluntary sector to describe those organizations operating outside the market and state, it is necessary to further refine this sector into its subsets. Two categories in the *ITA* determine the regulatory responsibilities for the voluntary sector: non-profit organizations and registered charities. There are many ways to divide the voluntary sector, but this method is used because the dissertation looks at the meaning of charity within a legal and regulatory framework. The non-profit classification is conceptually broader than the registered charities classification because it includes organizations that, while not seeking a profit, confer a private benefit as opposed to a public benefit.

The *ITA* differentiates three types of registered charities: charitable organizations, public foundations and private foundations.¹⁹ A charitable organization, according to the *ITA* (s. 149.1 (1)), is an organization that devotes its resources to charitable activities; does not pay income to a “proprietor, member, shareholder, trustee” and has “more than 50% of the directors, trustees, officers or like officials of which deal with each other and with each of the other directors, trustees, officers or officials at arm’s length”. In Canada, roughly 80,000 organizations are registered with the federal government.

the United States or the...UK” (Salamon and Anheier, 1996: 3). These terms are not consistently used and may differ from one country to another or may even differ within one country.

¹⁸ In Québec, the term ‘secteur communautaire’ has been used for some time now. Gordon Floyd (2003) argues that English Canada needs to reconsider this use of the term ‘voluntary sector’ as research suggests that many Canadians are confused by this term because it is confused with strictly ‘volunteer’ activity. For evidence of English Canada’s use of the term ‘voluntary sector’ to describe itself, see Voluntary Sector Roundtable, 1997; VSI, 2004b; and Panel on Accountability and Governance in the Voluntary Sector, 1999.

¹⁹ Foundations, both private and public, are involved in funding charitable organizations. This examination excludes foundations in order to concentrate on charitable organizations that serve the public.

As a financing instrument,²⁰ charitable status indirectly responds to the need for capacity, including policy and networking capacity, legitimacy and access to the state in order for charities to serve a public benefit. Capacity, for the voluntary sector, is a multi-dimensional concept encompassing the various abilities of a voluntary organization to fulfill its objects. A recent qualitative research study on the capacity challenges facing Canada's voluntary sector distinguishes between three types of capacity (Hall et al., 2003):

- *Financial capacity* is the ability to acquire and allocate the revenues and assets of the organizations;
- *Human resources capacity* is the ability to recruit, retain and deploy paid staff and volunteers within the organization;
- *Structural capacity* is the ability to nurture relationships and networks; infrastructure and processes; and, programs. Structural capacity also includes the ability of the organization to engage in research and policy development.

An implication of governance for voluntary organizations is the ability to partner collaboratively. Voluntary organizations need to generate various forms of capacity including the ability to participate in networks (for example, be sought by new partners and gain entry into networks), finances, legitimacy and access to government. Voluntary organizations need to secure funding from many different sources so as not to become reliant on, and possibly vulnerable to one large funder. Indeed, the argument could be made that voluntary organizations that are not dependent on government funding may be more sustainable in the long run. Charitable registration may be important as it may assist in building capacity through a variety of other policy instruments including grants, contracts, contribution agreements and regulations. With reductions to core funding,

²⁰ During interviews, senior public servants, notably one from the Department of Finance, acknowledged that the Department of Finance understands that charitable status is an 'indirect' financing instrument that is important to the voluntary sector. Interviews conducted with other public servants from the CRA confirmed that the government perceives charitable status as an indirect financing instrument.

increased accountability requirements for federal government funding and increased demands for services (Hall et al., 2003; Phillips and Levasseur, 2004; Scott, 2003), the benefits of charitable registration may make this an important public policy issue.

Another implication for the voluntary sector is the ability to develop policy capacity. Non-political voluntary organizations have an important role to play in generating social capital, promoting trust and connecting members within society (Putnam, 2000). Political voluntary organizations nurture democracy by creating awareness of public policy issues and holding government accountable (Almond and Verba, 1989). Creating awareness of public policy issues and holding the government accountable, however, requires capacity, particularly policy capacity and advocacy expertise. While government may have a role to play in developing the policy capacity of voluntary organizations, these organizations will also need to commit to the development of policy capacity to move beyond just a service delivery role (Phillips, 2004).

There are also implications for state institutions in relation to the voluntary sector. Rather than emphasizing the size of the state or its strong/weak status, governance has implications for the role and functions of state institutions. Given that state institutions would work through networks with multiple partners, some of whom are familiar and others unfamiliar, state institutions would have to transform themselves, becoming more flexible and better connected to these partners (Phillips, 2004; 2006). State institutions would also have to understand its partners regarding their objects, capacity, strengths and limitations. This also involves the design of appropriate legal and regulatory frameworks (Phillips, 2005; 2006). Becoming a collaborative partner necessarily involves a favourable legal and regulatory framework in which voluntary organizations must

operate. Salamon and Toepler (2000) hypothesize that a more favourable legal framework (for example, laws determining tax credits/deductions for donations to charities, general tax laws for nonprofits) facilitates more voluntary action. Conversely, a rigid or unfavourable framework would inhibit voluntary action. Through an empirical analysis of 13 countries to test this hypothesis, Salamon and Toepler conclude the regulatory framework is one important factor that influences the ability of the voluntary sector to rise to action.²¹ Ensuring a favourable regulatory framework for voluntary organizations becomes an important consideration under a governance model.

Perhaps the single most important implication stemming from the historical institutional approach concerns the design of institutions and how change occurs. Adaptability is especially important given that the institutional framework has an impact on the relationships and networks that emerge within a governance approach (Klijn and Koopenjan, 2004). Peters (1999) indicates that the historical institutionalist literature, while being more descriptive than prescriptive, suggests that a good institution is one that is adaptable. Thus, when the political environment changes, “the successful institution will have to change” and this makes adaptation essential (Peters, 1999: 73). Besides the design of institutions, another resulting implication involves understanding how institutions influence the nature of policy change. Rather than just examining institutional change based on the path dependency thesis, emphasis must also be placed on the smaller, informal changes that can be used to support path-shifting strategies. For the

²¹ They offer two cautionary notes. First, law is quite complex and thus subject to different interpretations. Second, there is no generally accepted definition of what constitutes ‘favourable or unfavourable frameworks’. What appears to be favourable in one country may be viewed as unfavourable. The authors also stress the importance of differentiating the actual presence or absence of laws and the implementation of the laws. Thus, laws may be quite favourable but if they are poorly implemented then the overall framework will be less favourable (and vice-versa).

voluntary sector, it would need to actively pursue these smaller, informal changes. In addition, historical institutionalism would encourage comparative research of the experiences of the voluntary sector in Canada with the experiences of voluntary sectors in other Anglo-American countries.

Another important consideration involves the training and empowering of staff members within institutions to “engage partners arrayed horizontally in networks [and to] bring multiple stakeholders together for a common end in a situation of interdependence” (Salamon, 2002: 16). Rather than just concentrating on management skills, institutions must be designed to promote and support these enabling skills to staff in light of a governance approach. Also, being adaptable in light of governance means institutions would need to be transformed to become more open and transparent in order to work with partners through networks. This also requires institutions to be more responsive to the needs of partners, which relates to the growing importance of the regulatory function of the state and the design of state institutions to adapt to the needs of the regulated (Doern and Johnson, 2006; Phillips, 2006). On the one hand, state institutions must fulfil the duty to enforce regulations to maintain public trust. On the other hand, under a governance approach, state institutions must also enable and educate the regulated to meet the prescribed regulations (Phillips, 2006). Besides enabling and educating the regulated, however, state institutions must develop regulations that respond to the capacity of the regulated (Phillips, 2005; 2006).

The expansion in the number of policy instruments under a governance model would see the state using different instruments when appropriate as opposed to only using traditional instruments or ideologically preferred instruments. The implication of more

instruments is greater choice of instruments coupled with the ability of the state to use complementary and substitute instruments. More choice can be beneficial because it allows the state to experiment with a variety of instruments as opposed to solely relying on traditional or ideological instrument choices. Related to this is the implication that institutions must be designed to support policy instruments in light of a governance approach.

Concerning government funding of Canada's voluntary sector, there are relatively few financial instruments currently available when compared to other types of instruments (for example, regulation, self regulation, co-production). Indeed, a paper submitted to the Blue Ribbon Panel on Grants and Contributions on behalf of voluntary organizations in Canada argues that there is limited choice regarding financing instruments and calls for the development of a sectoral investment strategy in which the federal government incorporates and/or establishes other financing instruments to further complement the current array of financing instruments such as charitable registration (Imagine Canada, 2006). While governance implies the availability of more policy instruments, there are few financing instruments used by the federal government to support Canada's voluntary sector. This makes the meaning of charity important within public policy.

Conclusion

This chapter provided a framework for understanding governance, institutions and the expanding number of policy instruments. By using historical institutionalism, the dissertation provides a basis for understanding how institutions use and shape

instruments, how change occurs, and what this means for a governance approach. Under a governance approach, state and civil society actors need to work differently with an emphasis on collaborative partnerships. The state would need to ensure that its institutions are more open, flexible and, perhaps most importantly, responsive to the needs of its partners. Designing institutions to support partners and networks is not an easy task, but it is critical given the important role that institutions play in structuring action.

Chapter four applies this theoretical framework to illustrate how the institutional machinery supports the policy instrument of charitable registration in Canada. The application of this theoretical framework to charitable registration contributes to the literature in two other important ways. First, the dissertation is intended to contribute to the small, but growing literature on the voluntary sector and its role in the development and delivery of public policy. Second, in an applied sense, it is also meant to inform the ongoing public policy debate related to the meaning of charity in Canada. Before applying this theoretical framework, it is necessary to gain a deeper understanding of the issues related to charitable registration.

Chapter 3

Charitable Registration and Regulation: The Issue

In order to examine the impacts of charitable registration and regulations on voluntary organizations, we first need to understand the policies used by the Charities Directorate of the CRA to guide decisions about which non-profit organizations are deemed eligible for charitable status. In addition to understanding the policies underpinning the registration process, we need to critically examine which organizations are excluded from the charitable umbrella and why pressures exist for policy change in this area.

This chapter examines the policies and guides used by the federal government to make determinations about charitable status. It begins with a discussion of the issue associated with charitable registration, which is the question of eligibility, in terms of the objects and activities of an organization. The chapter then considers those segments of society that experience difficulty being registered as charities in Canada. Consideration is also given to the policy statements published by the Charities Directorate that attempt to clarify and explicate the meaning of charity. It concludes with a discussion as to how other common law jurisdictions deal with the eligibility issue and illustrates how things could be done differently regarding the determination of charitable status.

The basis for differentiating between the *objects* and *activities* of a charity is rooted not in legislation, but in the common law. Charities undertake activities to fulfil their overall object or purpose. For organizations to become registered charities in Canada, both the objects and the activities must be deemed charitable.

Eligible charitable objects

No definition of charity exists within Canadian legislation so government officials must rely on common law for guidance when determining which objects should be deemed charitable. Charitable objects are rooted in the common law of the English *Preamble of the Statute of Charitable Uses*, 1601. This *Statute* did not, as its primary purpose, set out to define charity per se, but to prevent the misuse of charitable resources and refocus charitable donations to support secular causes (Bourgeois, 1995: 11; Webb, 2000: 26).²²

The *Preamble* outlined those legitimate charitable objects including (in modern prose):

Some for relief of the aged, impotent and poor people, some for the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars in universities, some for the repair of bridges...churches...and highways; some for education and preferment of orphans; some for or towards the relief, stock or maintenance of houses of correction; some for marriages of poor maids; some for supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; and others for the relief or redemption of prisoners, captives; (Webb, 2000: 124).

While the *Preamble* was used by the courts to guide determinations of charitable status, “some attempts were made to classify the listed items [in the *Preamble*] into categories” (Boyle, 1997: Section F1a). Despite the various attempts to categorize the numerous items contained in the *Preamble*, Webb (2000: 128) explains that it was not until the *Pemsel* decision in 1891 that an “authoritative interpretation of the meaning of charitable purposes in the context of income tax legislation was provided by the courts” – one that is

²² Bromley (1999: 18) provides a good rationale for the *Statute* suggesting that the inherent jurisdiction of the courts over government protects charities from the wrongdoings of government. Bromley cites the case of *Nanaimo Community Bingo Association v. Attorney General of British Columbia* as evidence for the important role of the courts over government stemming from the *Statute*. In 1998, the British Columbia Supreme Court held the provincial government guilty of violating the *Criminal Code* by “wrongfully appropriating hundreds of millions of dollars which charities generated through bingo games” (Bromley, 1999: 18). See *Nanaimo Community Bingo Association v. Attorney General of British Columbia* (1998), 52 BCLR 284 (BCSC).

still used today to guide decisions regarding charitable status. The *Preamble* was interpreted in an English court decision of the *Commissioners for Special Purposes of the Income Tax v. Pemsel*, or simply known as the *Pemsel* case. In this case, Lord Macnaghten outlined four heads of charity: the relief of poverty, the advancement of education, the advancement of religion and other purposes beneficial to the community. The *Pemsel* decision is the “most often cited case in the evolution of charity law in the Commonwealth” when determining charitable objects (Bridge, 2002: 5; See also Webb, 2000: 27).

The relief of poverty category is interpreted today as including those objects aimed at the alleviation of poverty through the provision of the necessities of life such as clothing, shelter and food as examples, but it also encompasses access to quality of life services (Canada, CRA, 2004c). The advancement of education category is interpreted as including training the mind; advancing the knowledge or abilities of the recipient; raising artistic awareness; and improving human knowledge through research with such examples including public education, employment education, literacy training and cross-cultural education (Canada, CRA, 2004c). Advancing education must be rooted in the provision of a balanced perspective as opposed to providing only one perspective on various issues. The provision of a one-sided perspective runs the risk of appearing less as advancing education and more like advancing a cause in a political sense, which is not charitable as the CRA notes,

The courts have ruled that an activity which advances education should involve a full and fair presentation of the facts so people can draw their own conclusions. If an organization intends to influence the opinion or actions of the public toward one side of a controversial issue, it is not advancing education in the charitable sense. For this

reason, an advocacy group would not qualify as a charity (Canada, CRA, 2004d).

The advancement of religion category includes “the promotion of spiritual teachings of the religion concerned and the maintenance of the spirit of the doctrines and observances on which it rests” whereas the pursuit of secular objects is not acceptable (Canada, CRA, 2004c).²³ The last category, other purposes beneficial to the community, includes those objects that do not fall under the other categories but still provide a direct benefit to the whole community (Canada, CRA, 2004c). This category is interpreted as including the following objects:

- providing immediate relief to victims of natural disasters or sudden catastrophes
- relieving suffering or disability caused by old age, which includes providing facilities for the care, maintenance, and rehabilitation of the elderly;
- preventing and relieving sickness and disability, both physical and mental
- providing rental housing and related facilities for people with special needs
- preserving the environment;
- protecting the welfare of children
- providing counselling services for people in distress;
- rehabilitating victims of substance abuse and preventing substance abuse;
- providing certain public amenities to benefit the community;
- establishing safety rescue operations or a volunteer fire department; and
- establishing humane societies, animal shelters, and similar institutions to prevent cruelty to animals (Canada, CRA, 2004d).

The notion of providing a public benefit is the foundation of defining charity and all charities must confer a public benefit “to either the public-at-large or to a sufficiently

²³ Several respondents note the difficulty associated with defining acceptable religions and that to date, the interpretation of religion has favoured mainstream religions at the expense of non-mainstream religions. The definition for religion used by CRA is as follows: “This category refers to promoting the spiritual teachings of a religious body, and maintaining the doctrines and spiritual observances on which those teachings are based. There has to be an element of theistic worship, which means the worship of a deity or deities in the spiritual sense. To foster a belief in proper morals or ethics alone is not enough to qualify as a charity under this category. A religious body is considered charitable when its activities serve religious purposes for the public good. The beliefs and practices cannot be what the courts consider subversive or immoral. Other activities that advance religion include: 1. organizing and providing religious instruction, and performing pastoral and missionary work; and, 2. establishing and maintaining buildings for worship and other religious use” (Canada, CRA, 2004d).

sizeable portion of the community” (Broder, 2001: 26). Thus, in addition to falling under one of the four heads outlined by Lord Macnaghten, charities must confer a public benefit.

Qualified donees and national art service organizations

Over the years, the federal government recognized the advantages of allowing access to the tax system without qualifying organizations as registered charities under the common law. The result was the creation of categories equivalent to charitable status, notably the quasi-charitable status for sports and the arts.

In the early 1970s, the federal government added a new category to the *ITA* s. 110.1 (a)(ii) introducing the Registered Canadian Amateur Athletic Association (RCAAA). As noted in chapter four, RCAAs, which are non-profit organizations that primarily promote amateur athletics on a nation-wide basis, are labelled as qualified donees.²⁴ They are not labelled as charities, but these non-profit organizations can “give receipts for donations and are subject to similar administrative treatment for annual returns, revocation and other matters. However, there are no disbursement quota²⁵ requirements applicable to registered Canadian amateur athletic associations” (Boyle, 1997: Section D3a). Only those organizations promoting amateur sport on a nation-wide basis are eligible for this quasi-charitable status.

²⁴ RCAAs are not the only qualified donee. The *ITA* s. 110.1 (a) lists other eligible organizations deemed as qualified donees: RCAAs; a corporation resident in Canada and described in paragraph 149(l)(i); a municipality in Canada; the United Nations or an agency thereof; a university outside Canada that is prescribed to be a university the student body of which ordinarily includes students from Canada; a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift in the year or in the 12-month preceding the year; Her Majesty in right of Canada or a province.

²⁵ Disbursement quotas limit the amount of resources allocated to non-charitable purposes.

The category known as national art service organizations (NASO) permits quasi-charitable status to recognize the contributions of these organizations to Canadian society. Added to the *ITA* in 1991, NASOs are defined under the *ITA* s. 149.1 (6.4) as organizations promoting the arts on a nation-wide basis. Organizations desiring NASO status must first apply to the Minister of Canadian Heritage and, if approved, the organization must then receive approval by the Minister of National Revenue. In addition to creating these deemed charity categories, the CRA recently implemented a policy statement allowing the object of promoting racial harmony to be charitable. The creation of these categories illustrates that the government, from time to time, has been willing to codify categories to supplement the common law.

Court challenges

Three court challenges have also modified the legal interpretation of charitable objects in Canada throughout the years.²⁶ The first court challenge came in 1986 (*Native Communications Society v. Minister of National Revenue*) in which the Federal Court of Appeal overturned Revenue Canada's refusal to register the Native Communications Society as a charity on the grounds that the objects were not entirely charitable (Webb, 2000: 51). The central object of this organization focused on nurturing the well-being of Aboriginal Peoples in British Columbia through the development of a non-profit communication program (such as radio, television and newspaper); the provision of training for Aboriginals in mass communications; and the promotion of a positive image of Aboriginal Peoples (J. Phillips, 2001: 225; Webb, 2000: 51).

²⁶ There have been other court challenges, but these three specific court challenges have significantly modified the interpretation of charity in Canada and as such are detailed in this section. For a discussion about the meaning of charity under the Charter, see Moran, 2001.

The Federal Court of Appeal reiterated the *Preamble to the Statute of Charitable Uses*, 1601 and the four heads of charity as outlined in *Pemsel* thus clearly positioning these two legal documents as being central in guiding a discussion regarding charitable objects. The Federal Court's analysis centred on the fourth head of charity, other purposes beneficial to the community, as it dismissed the possibility of the objects of this organization falling under the other three heads of charity (relief of poverty; advancement of education; advancement of religion) (Webb, 2000: 52). While the Court anchored its analysis in the *Preamble* and the *Pemsel* test, it noted that the concept of charity is also a moving subject meaning that as time passes and societal conditions change, so too must the interpretation of charity. The result was a decision in favour of Native Communications Society and this decision, according to one legal commentator, effectively "placed the common law definition of charity within a twentieth century Canadian context" (Zweibel, 1987: 4).

Webb (2000: 54) suggests there are two noteworthy aspects of this decision. First, the court's decision departed from the generally accepted understanding of charity as benefiting the entire community or a significant portion of it so as to prevent the possibility of a private or member-only benefit. Approving charitable status for Native Communications Society implies that charitable purposes can include member-only constituencies and small segments of a community. Second, the court acknowledged the special legal and constitutional position of Aboriginal Peoples in Canada and took this into consideration, thereby suggesting, "Charter or constitutional groups might be in a preferred position to obtain charitable status when compared with other groups" (Webb,

2000: 54).²⁷ With this decision linking the well-being of Aboriginal Peoples to the objects outlined in the *Statute* and *Pemsel*, Aboriginal broadcasting organizations are now deemed as charitable purposes under common law in Canada.

In 1991, the Federal Court of Appeal further expanded the notion of charity to include objects promoting access to abortions for women as a benefit to the community overall. The then Revenue Canada denied charitable status to Everywoman's Health Centre Society because in the absence of public policy, coupled with the significant controversy generated by abortions, the object of this organization could not be beneficial to the community at large (Boyle, 1997; Webb, 2000: 63). The Federal Court, however, dismissed Revenue Canada's argument that a controversial object could not benefit the community. With this dismissal, the court effectively refused to link charitable status with public opinion. The Court held, "the determination of the charit[y]...should not become a battle between pollsters. Courts are asked to decide whether there is an advantage for the public, not whether the public agrees that there is such an advantage" (*Everywoman's Health Centre Society v. Canada (MNR)*, paragraph 16). Instead, the Court opted to link the provision of legal abortion services with the health care services offered by hospitals that under common law hold charitable objects. This decision expanded the list of legitimate charitable objects to now include the provision of abortion services.

In 1996, the Federal Court of Appeal held the development and operation of a computer network providing free access to information on the internet as a legitimate charitable object. Revenue Canada refused charitable status to the Vancouver Regional

²⁷ In the judgement, Justice Stone noted the special place that Aboriginals hold within Canadian society and the legal protection afforded to this group while also acknowledging that an Australian court awarded charitable status to Aborigines under the fourth heading of the *Pemsel* test (Webb, 2000: 53).

FreeNet Association indicating that the provision of a computer network for internet purposes in the Lower Mainland of British Columbia was not a charitable object. Disagreeing, the Federal Court analogized the provision of free access via the information highway to the literal highways outlined in the *Preamble of the Statute of Charitable Uses*, 1601. Justice Hugessen notes,

the preamble...speaks of the repair of bridges, ports, causeways and highways. These were, of course, at the time the essential means of communication. With the passage of time they have been considered so essential to the public welfare that they have been almost entirely taken over by public authorities...there is absolutely no doubt in my mind that the provision of free access to information and to a means by which citizens can communicate with one another on whatever subject they may please is a type of purpose similar to those which have been held to be charitable; it is within the spirit and intendment of the preamble to the Statute of Elizabeth (*Vancouver Regional FreeNet Association v. Minister of National Revenue*, 1996: paragraphs 16 and 17)

With the provision of free access to the information highway, the provision of abortions and the promotion of the well being of Aboriginal Peoples now deemed charitable objects, coupled with the deemed charity categories (qualified donees), change has clearly occurred as to what constitutes legitimate charitable objects in Canada. These cases illustrate the importance of regular judicial review in keeping the common law fresh. Despite these changes, however, there are still some concerns regarding the interpretation of charitable objects in Canada as evidenced by the decision rendered in *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue*. That decision is examined in the following chapter.

Charitable objects: The issue

By relying on case law and court decisions, the definition of 'charity' has evolved with social change to reflect the values of Canadians.

Pat Breton, spokesperson for Finance Minister Ralph Goodale
quoted in Reevely 2004, B2.

The [ITA] does not provide a useful definition of 'charity' or 'charitable' so that the Courts of necessity are thrown back to an obscure and not always consistent corner of the law of England. Judging from the number of times that the Court has been called upon in recent years to apply that ancient law to the circumstances of life on the eve of the third millennium, I may be forgiven for expressing the wish that this is an area where some creative legislative intervention would not be out of order.

Mr. Justice James Hugessen in *Vancouver Regional FreeNet Association v. Minister of National Revenue*

The public policy literature reminds us that problem identification is often a political struggle undertaken by many actors holding differing perspectives as to whether a problem exists and if so, the exact nature of the problem (Stone, 2001). The public policy debate about the legal definition of charity centres upon which organizations should be deemed charitable and why. As a public policy issue, it is not immune to this struggle.

Three views towards charitable objects need to be differentiated. The first view asserts that no public policy issue exists regarding charitable status and therefore no prescriptive policy action is required.²⁸ The second view suggests the common law categories have served Canada well with the courts shaping and evolving this notion of charity over time, but that improvements to the appeals and review process are required to truly allow the common law to evolve.²⁹ In this view, the categories are capable of evolving and being updated through the interpretations of the courts. In Canada, when an

²⁸ This view was raised during interviews with federal public servants.

²⁹ Monahan with Roth (2000) argue the common law is sufficient with no legislated definition needed, but also suggest that administrative and technical reforms are needed to truly allow the common law to evolve in Canada. See Bromley, 1999; Ontario Law Reform Commission, 1996; Monahan with Roth, 2000.

organization is denied charitable registration (or has its registration revoked), the organization must appeal the decision to the Federal Court of Appeal and then onto the Supreme Court if a leave is permitted. The ability of the courts in Canada to sufficiently update the common law has been called into question. As noted in chapter four, the court of first instance, the Federal Court of Appeal, is not very accessible to voluntary organizations. The issue is not, in this view, the common law itself, but the institutions involved with this policy instrument. This implies the need for institutional reform so the common law may be updated and remain as the guiding point for making charitable determinations. Common law has flexibility to evolve, but only with appropriate institutional design to keep it fresh. Thus, reconfigured institutional arrangements while keeping the common law could be one solution to overcoming the current public policy issue associated with charitable objects in this country (for example, making the initial appeals process more accessible and providing more policy papers to guide decisions by CRA officers). The third view holds that charitable registration is a political question and should be embedded in legislation and not in the common law (for example, passing legislation that is separate from the *ITA*).

Within these views are beliefs as to whether the charitable objects should be expanded or narrowed. Former Liberal MP John Bryden was a strong advocate for a review of charity in the 1990s in order to narrow its meaning. Bryden argued that charitable status should be preserved only for those organizations that provide a direct benefit to Canadians in need. In his view, it is unfair that quasi non-governmental organizations that receive significant amounts of government funding have the same charitable status as much poorer groups (Bryden, 1996; see also Bryden's comments in

Reeveley, 2004: B2). Additionally, Bryden (2002) suggested that the interpretation of charity should be restricted to those organizations providing direct service with no involvement in the development of public policy.

Others argue that charity needs to be expanded given that the current interpretation of the common law is narrow and conservative (Broder, 2001; Drache with Hunter, 2000; Drache, 2002a, 2002b; Federal Government of Canada / Voluntary Sector Joint Initiative, 1999; Panel on Accountability and Governance in the Voluntary Sector, 1999; Phillips, 2000-2001). In this view, the 400-year-old statute and subsequent cases are no longer applicable to issues confronting society today. Some of the troubling problems facing society today were not even conceived as public issues in Elizabethan times. For instance, common law focuses on providing a 'hand out' in the form of shelter or food to individuals to relieve poverty. While this is an important method of helping individuals, society has acknowledged that another way to help individuals may be through a 'hand up' vis-à-vis job creation, skill development and job-search assistance. A hand up approach to charity is more active in the sense that it attempts to provide long-term relief of poverty through the market and job creation for marginalized citizens. Such an approach though may not be considered charitable as evidenced by the *Vancouver Society* case however.

Consistency of application

Consistency of application, that is, whether groups within the same category are treated the same under the common law, is a concern as well (Webb, 2000). With the lack of court decisions to guide government officials when making determinations, there appears

to be some discretion on the part of government officials to slightly expand or contract the meaning of charity according to several respondents. The result, Webb (2000) asserts, is the inequitable tax treatment of organizations. This, he argues, is acutely felt by organizations involved in public policy development in which some organizations have secured charitable status (for example, abortion rights groups) while other organizations advocating a different perspective have lost their charitable status (for example, anti-abortion groups).

The experience of Volunteer Grand Forks in British Columbia is a good example.³⁰ As a volunteer centre, Volunteer Grand Forks applied for charitable status with the CRA in the late 1990s. Along with over 200 volunteer centres across the country, this organization promotes volunteerism in its local community by referring volunteers, providing information and offering training to other organizations on topics such as board governance, fundraising and volunteer management.³¹ Volunteer centres, prior to Volunteer Grand Fork's application for status, did not experience difficulty being registered as charities. Volunteer Grand Fork's application for status was originally denied by the CRA because some of its resources were allocated to helping organizations without charitable status. Volunteer centres work for the entire community and do not discriminate between charities and organizations without charitable status; their object, quite simply, is to promote volunteerism regardless of whether that occurs at a charitable organization or at an organization without charitable status. The concern for the CRA rested with the fact that Volunteer Grand Forks may refer a volunteer to an organization without charitable status thereby making its activities not entirely charitable. After much

³⁰ Respondents provided this example.

³¹ See Volunteer Canada's website for a more thorough description of the activities of volunteer centres at <http://www.volunteer.ca>

lobbying, the CRA granted charitable status to this organization. The important point here is that Volunteer Grand Forks is just like any other volunteer centre in Canada. While other volunteer centres received charitable status, this organization had to fight for recognition and may indicate that there are concerns related to the consistency of applying the common law and tax laws.

Contentious areas within charity law

As noted, the common law is capable of evolving, but the ability of the Canadian courts to facilitate such an evolution is somewhat limited meaning that some groups may not be able to secure charitable status.³² This section considers the most contentious areas within the charity law literature in Canada including multicultural and ethnic cultural groups, umbrella organizations, community economic development, community broadcasting organizations, amateur sport and recreation, and national art service organizations.

Multicultural and ethnic cultural groups

Multicultural and ethnic cultural groups have difficulty being registered as charities because of the public benefit requirement that purposes must be beneficial to the public and not to a specific group (Boyle, 1997; Broder, 2001). Broder (2001: 57-61) argues the legal definition of charity, born from a society that was largely white, male and Christian, may not adequately encompass newer groups practicing different methods of offering and receiving support.

The Charities Directorate released the results of a review of all applications for charitable status between January 4, 1999 and June 30, 1999. When the files were

³² This is further discussed in the next chapter.

examined by the type of organization and central objects, only 12% of those applicants promoting racial tolerance were successful in obtaining charitable registration and 15% of those applicants focussing on ethnicity were successful (Canada, CRA, no date). The *Vancouver Society* case against the federal government, explored in chapter four, illustrates that multicultural and ethnic cultural groups experience difficulty being registered as charities.

How support and assistance is nurtured within multicultural and ethnic cultural groups may be at odds with Canada's notion of charity. Joseph's *Donors of Colour* (1993) outlines three stages of donating within minority communities. Stage one involves support funnelled back to the country of origin with specific assistance to family, clan or a close group. The second stage is the expansion of donating to intermediate institutions that have a direct impact on the donor. The last stage, which begins once the needs of the family are satisfied, involves the provision of donations to broader and more mainstream organizations such as the United Way. This practice of restricting support and activities to members within a specific group reduces the chances of being registered as charity in Canada because the public benefit test stipulates that the conferring of benefits to the public at large, not to specific members of a group, is required for charitable status. In an increasingly diverse society such as Canada,³³ there is a need to balance the needs of different ethnocultural groups within mainstream society under the charity umbrella as Boyle (1997: G4) argues,

an emerging issue is how to categorize a group which attempts to respond to the diversity of society by focusing on a specific group, frequently in an attempt to rectify

³³ Approximately 225,000 individuals immigrated to Canada each year between 2002-2004. Canada's immigration rate is roughly twice that of the United States of America. See Canada, Statistics Canada, 2003-2004.

imbalances or level the playing field. Does enabling or educating certain members of the society provide a benefit to the community as a whole or does it merely fulfil the needs of an 'interest group'?

Without a clear definition of what constitutes a public benefit in either legislation or regulations, confusion may abound. The CRA has acknowledged the lack of clarity regarding the concept of public benefit and in March 2006, it released new *Guidelines for Registering a Charity: Meeting the Public Benefit Test*. These *Guidelines* clarify the public benefit requirements so applicants understand the criteria used to determine whether the public benefit test has been met. While these *Guidelines* are helpful in clarifying the Charities Directorate's position, organizations that want to restrict access to programs and services to a particular group will still have a difficult time showing that they serve a public benefit.³⁴

Another policy statement regarding ethnocultural communities has been released by the CRA with the hopes of "developing clearer charitable registration guidelines [so as to] promote better understanding of what types of organizations may be registered within the parameters defined by charity law and the [ITA]" (Canada, CRA, 2004a: 14). Likewise, a policy statement concerning organizations promoting racial equality was released in 2003 providing organizations that promote racial harmony with charitable status for the first time (Canada, CRA 2003e).

Umbrella organizations

Umbrella organizations nurture and coordinate (sometimes formally, sometimes informally) the activities of other, usually regional, provincial and smaller federated

³⁴ This point was raised by a senior public servant from the CRA.

organizations. Broder's (2001: 66-71) research concludes that umbrella organizations experience difficulty being registered as charities in Canada. Umbrella organizations, he suggests, may be denied access to the taxation system because they either do not have a perceived charitable object or because they provide services to organizations without charitable status. Indeed, one organization interviewed for this research project was denied charitable status on the grounds that it provided support to organizations that are not registered charities. Yet, as policy issues become internationalized (for example, environmental degradation), there may be a heightened need for umbrella groups to foster domestic responses and enter the international stage to share/receive research, programming ideas and perspectives with international actors. These umbrella groups are critical interfaces in the sharing of knowledge among domestic and international networks. Additionally, given the vast differences within the Canadian socio-economic landscape, an umbrella group may offer programs or support to ensure, albeit not perfectly, a degree of consistency in programming or in representation. Umbrella organizations can also offer assistance in the areas of board development, transitioning, public relations or other areas to help their member organizations grow and flourish. Umbrella organizations are part of our understanding of what it means to be charitable in new millennium – they assist local, provincial and regional organizations to better respond to the needs of citizens. Of course, those umbrella groups that are strictly advocacy organizations do not fall into the notion of charity.

The CRA released a new policy statement in 2008 related to the registering of umbrella organizations. This policy statement was designed to clarify which umbrella organizations could be registered as charities. Specifically, the new policy differentiates

between umbrella organizations that are designed to assist other registered charities and those umbrella organizations that promote a charitable object. For the former, at least 90% of the beneficiaries must be other registered charities in order for the umbrella organization to be registered as a charity. For the latter, “the beneficiaries of this type of [u]mbrella [o]rganization must be the public-at-large, or a sufficient segment thereof. As such, to qualify, the purpose and activities of the Umbrella Organizations must be clearly and specifically focused on providing a direct benefit to the public *and not to members*” (Canada, CRA, 2008b).

Drache (2005) notes that this policy statement is an improvement given that the CRA did not generally register umbrella organizations that provided support to organizations without charitable status. This new policy means that umbrella organizations that assist other organizations can secure charitable status and still provide support to 10% of its organizations that do not have charitable status. While Drache (2005) refers to this policy as an important step, it remains unclear exactly how the 90% rule will be calculated. The Ontario Council of Agencies Serving Immigrants (OCASI) and the Alternative Planning Group (AGP) (2004: 7) raised the point that “this [90% rule] creates an added disadvantage for umbrella organizations whose membership is largely constituted by communities and organizations that face barriers in obtaining charitable status.” Thus, while the policy statement is helpful, it may not go far enough to help all umbrella organizations to the same degree as indicated by OCASI and AGP.

Community economic development

Community economic development (CED) is a unique approach to preventing poverty. It stresses the creation of economic opportunities for disadvantaged individuals such as the creation of a fair-trade coop employing disadvantaged individuals as opposed to providing a hand out in the form of shelter or food for example. These types of organizations, until 1999, experienced difficulty being registered as charitable entities in Canada.³⁵ The denial of charitable status to these organizations resulted from the blurring of the line between being a non-profit and a for-profit entity.

In response to the denials for charitable registration, the Muttart Foundation organized a meeting between community economic development leaders and members from the Charities Directorate of the CRA in 1997.³⁶ The goals of this meeting were twofold: first, to clarify the organizational structure of community economic development agencies and second, to discuss which community economic development organizations could be registered as charitable under the common law.

A key result of this meeting organized by the Muttart Foundation included new guidelines published in 1999 by the then Canada Customs and Revenue Agency (CCRA) that served to explain which types of community economic development organizations could be deemed charitable.³⁷ Objects viewed as charitable in these new guidelines include job search assistance, assistance claiming benefits, training, training businesses,

³⁵ Two respondents provided this information.

³⁶ Two respondents provided this information.

³⁷ On December 12, 2003, the Canada Customs and Revenue Agency (CCRA) was split into two departments: the CRA which administers the tax laws and the new Canada Border Services Agency (CBSA) which encompasses the customs program.

individual development accounts,³⁸ micro-enterprises, community loans, relieving poverty by operating of stores, social businesses and promoting industry/trade (Canada, CRA, 1999).

While these guidelines mark an important step in the CRA's attempt to be proactive and provide clarification, Broder's (2001: 72) research suggests "that CRA's interpretation of applications is sometimes at odds with these guidelines, or – in the most generous reading – construes them very narrowly". One example Broder offers concerns those organizations that operate commercial stores to sell products made by the poor which, according to these guidelines, is not charitable activity in Canada. It can be deemed charitable, however, if these organizations work in developing nations to reduce extreme poverty. The difficulty centres on the lack of legislation and regulations defining extreme poverty and which countries are deemed developing nations he argues.

Another issue regarding the charitable registration of CED organizations involves the testing of a private benefit (Broder, 2001). Given the approach of CED organizations to combat poverty, they may generate a private benefit to commercial retailers as an externality in the goal of producing a much larger public benefit. Broder cites one case where a CED organization, operating a commercial enterprise in Canada, was refused charitable status. The CRA's letter to this group "acknowledged that promotion of a type of industry was permissible if there was a benefit to the general public, it stated that any private benefit to individuals retailers precluded qualification as a charity" (Broder, 2001:

³⁸ The CRA defines individual development accounts in the 1999 guidelines as, "restricted savings accounts for low-income individuals, families, or groups. In contrast to loans, which must be repaid, charities involved in these accounts provide matching grants at a ratio determined by the charity (e.g., 2:1) to help these people develop savings over a one- to three-year period. To be charitable, these funds must be restricted in use to purposes that help to relieve the poverty of the recipients (e.g., funding post-secondary education)." See Canada, CRA, 1999.

73). Broder further suggests that this testing of private versus public benefit is not consistent between small and large organizations whereby “it is inconsistent and unfair to hold small application organizations to a different standard than that applied to large institutions” (2001: 74). Although the guidelines represent an important development in what is considered charitable in Canada for these organizations, Broder’s research illustrates that they may still face barriers to accessing the taxation system vis-à-vis charitable registration.

Community broadcasting organizations

Community broadcasting organizations may be denied charitable registration on two grounds: their purposes and activities are not viewed as falling under any of the four classifications of charity as outlined in the *Pemsel* test or their programs and services confer a private or member benefit at the expense of a public benefit (Broder, 2001: 77). As noted above, Canadian case law exists in the matter of *Native Communications Society of BC v. Minister of National Revenue* (1986) in which the court overturned the then Revenue Canada’s decision to refuse charitable registration to an Aboriginal community broadcasting organization operating in British Columbia. Webb (2000: 54) notes that this decision considered the “special recognition of the constitutional affiliations underlying the group” suggesting that Charter or constitutional groups might receive preferential treatment related to charitable status. The government does not seem to follow this precedent when dealing with non-commercial community broadcasters to non-native communities, but this still has yet to be litigated and constitutes, according to Broder (2001: 77), “a striking example of the...narrow interpretation of case law”.

Qualified donees

When amateur sport is used to serve a charitable object, sport is generally viewed as charitable. For instance, the promotion of sports to assist individuals with disabilities would generally be viewed as charitable since sport is merely the means to a charitable end, that being the assistance to individuals with disabilities. Another example would be the housing of sport in an educational institution in which the promotion of education is a classification of the *Pemsel* test so the use of sport serving to advance education is deemed charitable (Broder, 2001: 80). Regarding recreation, both England and Canada view recreational organizations that offer sports facilities (arenas and swimming pools, for example) as charitable. Broder (2001: 82) argues, however, that the Canadian notion of recreational organizations viewed as charitable is “somewhat narrower” than the interpretation in England and Wales. Yet sport by itself and most notably amateur sport is not recognized as charitable for two reasons; first, sport is a difficult purpose to be brought within the four headings of charity (sport does not relieve poverty, advance religion or education and does not easily fall under the fourth head of charity because sports teams do not encompass the entire community), and second, most sports organizations primarily generate a member benefit, but not necessarily a public benefit (Broder, 2001: 80).

As noted earlier, only those organizations that promote amateur sport on a nationwide basis, RCAAAs, are eligible for the quasi-charitable status. This leaves local and provincial organizations unable to access the tax system. Drache (2002b: 9) argues the addition of RCAAAs to the qualified donee section was done to nurture the development of Canadian athletes competing in the 1976 Olympics in Montreal without actually

calling these organizations charities. Drache (1999: 68-69) further argues that changing common law is a difficult task, but one mechanism of allowing organizations that do not easily fit into the *Pemsel* categories to enjoy the benefits of charitable status, at least in the short term, is to classify them as qualified donees to circumvent the narrow interpretation of the *Pemsel* categories.

When NASOs were added to the *ITA* as qualified donees, it was done in a similar manner to sports. When successful, this designation allows organizations to receive the benefits of charitable status while being subject to the regulatory framework set out by the CRA. These organizations are not charities, but they receive the benefits of charitable status. While this designation is an attempt to expand the notion of charity to include such organizations, it appears to have fallen short of meeting its objective to assist arts organizations. One respondent, a federal public servant, remarked that the creation of this category was anticipated to assist a couple of hundred groups across the country, but because of a narrow interpretation of what constitutes a national arts service organization, only 18 have to date been designated as NASOs. Broder (2001: 68) echoes this remark in his analysis whereby “anecdotal evidence suggests that the category has been narrowly interpreted by the CRA and that far fewer NASOs than were originally anticipated have actually been registered”. François (2004: 40) further argues that one segment of society that has been hit especially hard by this narrow interpretation of NASOs includes diverse and culturally based arts organizations.

Summary remarks: Contentious areas within charity law in Canada

This section has shown that there has been some evolution and movement on the notion of charity. With this evolution and movement, there is the legitimate question as to whether this is really an issue at all. Despite these recent changes, there are segments of Canadian society that are still excluded from receiving charitable status. With an increasingly difficult funding environment, there may be greater need to access the taxation system for indirect financial support, but also to access the legitimacy benefits flowing from charitable status. For some organizations, however, their ability to access a charitable registration number is tempered by the Canadian government's interpretation of the four heads of charity. This raises the question as to whether this is the case in other common law countries as well.

The experiences of other common law jurisdictions

Given that Canada's notion of charity is rooted in common law, it is not the only country facing this public policy issue. Other countries with a common law foundation are also working through this issue of "legal inertia" regarding charitable objects (O'Halloran, 2002: 4). Comparisons with other common law countries reveal that things can be done differently when it comes to charitable registration.³⁹ What separates Canada from its fellow common law countries is its unwillingness to initiate meaningful debate regarding the heart of the issue: What does it mean to be charitable in a modern and diverse society? Other common law countries have acknowledged this need and have initiated dialogue about the meaning of charity as part of a larger regulatory and legal framework

³⁹ Comparative studies are fraught with difficulty. This is not intended to be an in-depth review of how other common law countries have approached the issues related to charitable registration. It is intended as a highlight to illustrate that things can, and have, been done differently.

review. These common law reviews, argues O'Halloran (2002: 2), indicate a common theme whereby,

The reports tend to focus, albeit with varying emphasis, on definitional matters. What exactly is the legal definition of charity in a modern world? How can it be legally differentiated from other forms of not-for-profit activity particularly from the activities of government bodies?...What should be the 'public benefit' test that determines charitable status? These issues recur in all reviews. The commonality of a concern for definition transcends differences in cultural contexts.

Another common theme from these reviews, O'Halloran (2002) suggests, is the desire for a new legislated definition of charity as a prescriptive policy solution. While some countries were not successful in adopting a new definition of charity (for example, Australia and New Zealand), the fact that political will existed to debate the issue is an important step - a step that is sorely missing in Canada. A brief description of the attempts of other common law countries dealing with this public policy issue is outlined below although it does not offer normative analysis regarding the worthiness of the reviews or the prescriptive solutions. This outline is not intended as an in-depth analysis of each country. Instead, it offers a snapshot as to where each of these countries stand in regards to the meaning of charity and the regulation of advocacy.⁴⁰ The next section provides insight into the approaches of the charitable registration issue in other common law countries based on degrees of experimentation within their approaches. Given the various degrees of experimentation, models have been constructed concerning charitable

⁴⁰ For thorough descriptions of the charity law in various countries please see the *Australian Report of the Inquiry into the Definition of Charities and Related Organisations, Appendix E: Overseas Definitions* available online: <http://www.cdi.gov.au/report/rtf/AppendixE.rtf> and the *Irish Charity Law Review: Report to the Department of Community, Rural and Gaeltacht Affairs* by Arthur Cox and Centre for Voluntary Action Studies available online: <http://www.pobail.ie/en/CharitiesRegulation/arthurcox.doc>

objects and advocacy. The models for charitable objects are described below while the models concerning advocacy are discussed later in this chapter.

Comparative analysis using models: Charitable objects

At one extreme is the *full codification of charitable objects*. In 1980, Barbados opted to legislate a definition for charitable objects in light of a British independent committee chaired by Lord Goodman charged with the task of analyzing the regulatory framework of charities.⁴¹ Borrowing heavily from the Goodman recommendations, the *Charities Act* contains a list of 26 main charitable objects with 14 sub-headings with special reference paid to the arts, sports, recreation and minority groups in addition to a safety-net heading which allows organizations to be deemed charitable if they are “within the spirit of, and analogous to” the outlined list of purposes (Barbados, *The Laws of Barbados*, 1989).⁴²

At the other extreme is the *regular review of charitable objects*. One jurisdiction committed to updating its regulatory and legal framework for its voluntary sector is England and Wales. Indeed, it is fair to say that England and Wales is farther ahead than most common law countries because of its institutional, legislative and administrative reforms. Prime Minister Tony Blair has clearly associated himself with changing the

⁴¹ The Goodman Report (1976) concluded that the case law should stand, but that new clearer categories of charity were needed.

⁴² Australia also attempted a codification of charitable objects on a lesser scale. In 2000, Prime Minister John Howard created an independent inquiry to examine definitional issues related to the meaning of charity. The final report, released in 2001, contained 27 recommendations, which included the development of a legislated definition for charity. The Australian government then released a draft Bill in July 2003 containing a provision to legislate a new definition of charity. The Australian government charged its Board of Taxation with the responsibility to consult with the voluntary sector and the public regarding the draft Bill. The Board of Taxation recommended that the “draft legislation [did] not achieve the level of clarity and certainty that was intended to be brought to the...sector” (Australia, Treasurer of the Commonwealth, 2004). As a result, the Bill was withdrawn. In 2004, the Australian government extended the common law to include “non-profit child care available to the public, self-help groups with open and non-discriminatory membership, and closed or contemplative religious orders that offer prayerful intervention to the public” (Australia, Treasurer of the Commonwealth, 2004).

meaning of charity as part of the Third Way project (Giddens, 1998: 79). Blair requested the Strategy Unit to examine how the current legal and regulatory frameworks affect the voluntary sector with a specific emphasis placed on the legal definition of charity. In his opening remarks to the Strategy Unit's final report titled *Private Action, Public Benefit: A Review of Charities and the Wider Not-For-Profit Sector* in September 2002, Blair agrees with the report's findings that current laws and regulations fail to reflect a modern and diverse society:

The comprehensive analysis underlying this report shows that the law and regulation have not kept pace with developments. Charitable purposes, for instance, were set out in a statute over 400 years ago. The current law is unclear, has not evolved in a way which best meets the needs of contemporary communities and does not reflect the diversity of organisations which operate for a public benefit (United Kingdom, Strategy Unit, 2002: 5-6).

With its 61 recommendations, *Private Action, Public Benefit* concluded that a need existed for a legislated definition of charity with the concept of public benefit being at the heart of this new definition. The government's response to this report, *Charities and Not-for-Profits: A Modern Legal Framework*, followed the next year in July 2003, which accepted most of the recommendations. The next step consisted of a draft Charities Bill introduced in May 2004 to articulate the recommendations flowing from *Private Action, Public Benefit*. The draft Charities Bill received Royal Assent on November 8, 2006 and became law. The *Charity Act 2006* expands the current four heads of charity to thirteen heads⁴³:

- the prevention or relief of poverty
- the advancement of education

⁴³ Within the new definition of charity, there is no presumption of public benefit. This suggests that even if an organization falls under one of these thirteen heads, it must still prove that it provides a public benefit.

- the advancement of religion
- the advancement of health or the saving of lives
- the advancement of citizenship or community development
- the advancement of the arts, culture, heritage or science
- the advancement of amateur sport
- the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
- the advancement of environmental protection or improvement
- the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage
- the advancement of animal welfare
- the promotion of the efficiency of the armed forces of the Crown; or the efficiency of the police, fire and rescue services or ambulance services, and;
- any other purposes charitable in law.

Besides this new *Act*, the United Kingdom has long had the institutional machinery, notably the Charity Commission of England and Wales as discussed later in this chapter, to allow for more reviews of the meaning of charity.

This full-steam ahead approach regarding the meaning of charity may have some consequences for Canada. Drache (2003: 81-82) suggests two implications for Canadian charity law. First, Canada is now the only major Commonwealth country not to initiate a public dialogue on the meaning of charity. On the international scene, Canada may be viewed as lagging since the other Commonwealth countries have identified the meaning of charity as an issue worth discussion. Second, England and Wales may no longer be a “source of any jurisprudence that Canadians can rely upon for definition fights. Canadian law will have been frozen into looking only at cases decided on the basis of the 400 year old statute, cases which even Britain will, in effect, turn away” (2003: 81-82). Charitable objects are thus problematic in Canada, but so too are charitable activities, notably advocacy.

Advocacy: The issue

Everyone has a right to promote his or her point of view -- but not through charities at the expense of the general taxpayer who has to pick up part or all of the tab.

Former Liberal MP John Bryden, 2002.

Canadians expect charities to speak out on issues such as the environment, poverty or health care, and they also say that charities should be able to place ads in the media to advance their issues.

Gordon Floyd cited in Picard 2003, A9.

Charities in Canada are significantly restricted in the amount of advocacy they may initiate. This restriction is potentially problematic for those organizations that wish to secure charitable status, but are committed to undertaking advocacy activities. In order to receive charitable status, organizations would need to reduce their advocacy activities *or* maintain their advocacy activities and operate without charitable status. As such, the law governing advocacy excludes some organizations from securing charitable status. The other issue associated with the law on advocacy is that it restricts the ability of charities to participate in public policy development in meaningful ways. With little ability to approach the state as advocates, charities may be left to treat the symptoms of public policy problems instead of advocate for changes to the root causes (IMPACS, 2002). While charities are restricted in terms of their ability to access the state as advocates, businesses are not subjected to the same restriction, but are allowed to write-off their lobbying expenses thereby creating an unequal playing field for charities (Webb, 2000).

Differing perspectives exist regarding the amount of advocacy that charities should be allowed to perform. In its report on charities, the Ontario Law Reform Commission (1996: 3-6) cites three reasons why advocacy should not be considered charitable and thus must continue to be limited. First, the courts are not an appropriate

mechanism for deciding whether the end result of an advocacy campaign constitutes a public benefit. Second, the courts should not diminish the power of legislators by deciding what should be law. Last, governments should not subsidize advocacy, especially when directed at government. Related to this argument, Harvie (2002: iii-iv) suggests that the government is concerned about losing control over groups with extremist views and is “worried about the potential loss of tax revenue if more groups are granted registered status” if the advocacy rules were liberalized. Another potential reason rests with the argument that Canadians may not want their charitable dollars earmarked for advocacy at the expense of providing direct assistance to citizens (Harvie, 2002).

Another perspective suggests that Canadians expect charities to take an important role in engaging policy makers in public policy areas that are important to them (Phillips, 2000-2001: 187-188). In this perspective, it is argued that Canadians rely more heavily on charities to defend their interests given their disillusionment with government (Brock and Banting, 2001: 1). A recent survey by the Muttart Foundation (2006), which examines Canadians’ opinions of charities, supports this argument. According to this survey, 76% of Canadians think that charities have a better understanding about the needs of Canadians than government⁴⁴ while 94% think that charities should speak out on important policy issues including the environment, poverty and health care⁴⁵ (2006: 7 and 10). Given the trust in charities, 73% of Canadians think that the law governing advocacy

⁴⁴ The question was worded as follows: Please tell me if you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with each of the following statements: charities understand the needs of Canadians better than government does.

⁴⁵ The question was worded as follows: There are many ways that charities can speak out about their cause and try to get things changed. For each of the following, please tell me if you think, in general, it is very acceptable, somewhat acceptable, somewhat unacceptable or a very unacceptable thing for charities to: speak out on issues like environment, poverty and healthcare.

should be changed to allow charities to speak out on important social issues⁴⁶ (2006: 10). This relates to governance in an important way: how can a charity be a governance partner if it is restricted in terms of advocacy?

Legitimate charitable activities

The activities of a charity can be referred to as the means to achieve its overall objective. To achieve its objectives, a charity can undertake several activities including business-related activities, disbursement activities and political activities. This dissertation focuses its analysis on the political activities, or advocacy, undertaken by charities. It does so because of the significant impact that advocacy plays in the determination process for charitable status.

Prior to delving into the acceptable and unacceptable political activities of a charity, it must be noted that a charity is prohibited from having *political purposes* (both partisan and non-partisan), even if it is eligible for charitable status by also having charitable objects. As illustrated in Table 3.1, not only are charities prohibited from having political purposes, they cannot engage in *partisan activities* (for example, contributing to political campaigns) and this is not contested by the sector.

When advocacy (or consultation) is government-related and invited by government in the form of a presentation to a committee for example, it is considered charitable and not subject to limitation (Harvie, 2002: Section 3.5). Non-government

⁴⁶ The question was worded as follows: Some people would like to change the laws that limit the extent that to which the charities can speak out and represent their causes to governments and other organizations. Do you agree or disagree that the laws should be changed to permit charities to advocate more freely for the causes in which they are involved? Is that strongly or somewhat?

Table 3.1 – Acceptability of various objects and activities

	Type of Object		Type of Activity	
	Partisan	Political, non-partisan	Partisan	Political, non-partisan
Acceptability	Prohibited	Prohibited	Prohibited	Allowed, but must be incidental and varies according to size of budget (between 10% - 20%).

related or uninvited advocacy, however, is not considered charitable, but deemed to be a political activity and is allowed so long as it remains “incidental and ancillary” such that the charity allocates “substantially all” of its resources to charitable activities (*ITA* s. 149.1(6.2)). The difference between ‘charitable’ and ‘political’ activity is nicely summed up by Harvie (2002: 13),

government-related activity is distinguished from political activity by determining whether the charity’s intention was to inform people, (which is charitable), or whether it was to persuade people, (which is political). The test is not whether government or public opinion was actually influenced by the presentation of facts and knowledge but what the intention was.

Advocacy is contentious, but it is an important issue from the voluntary sector’s perspective as it wants to be more involved in public policy. It is this type of political activity, herein referred to as ‘advocacy’, that is the analytical focus of this research project. Advocacy is performed by charities as a means of achieving their purposes by targeting the root causes of problems as opposed to just treating the symptoms. The current guidelines from the CRA limit the amount of advocacy that can be performed by a registered charity based on a sliding scale that is discussed below.

The history of charities and the regulation of advocacy are well documented within the literature.⁴⁷ Webb (2000: 26) notes that the *Preamble to the Statute of Charitable Uses* 1601 outlined legitimate charitable objects. The *Preamble* did not, however, outline legitimate charitable activities. Since activities are undertaken to achieve the objectives, the fact that the *Preamble* did not stipulate which activities are charitable suggests that no limitations on political activity were instituted, asserts Webb. He argues (2000: 26), “on a reading of the preamble, a charity devoted solely to the elimination of poverty through legal reform could validly fulfill a charitable ‘relief of poverty’ use as would a charity operating a food bank”. Indeed, the nineteenth century courts permitted organizations dedicated to such causes as animal welfare, temperance, relief of poverty, abolition of slavery, penal reform and observance of the Lord’s Day to be deemed charitable even though they relied on the use of political activities to achieve their purpose (Webb, 2000: 27). This early development is important to note as a single court decision in the beginning of the twentieth century ultimately reversed this development.

The English Court of Appeal, in the case of *Bowman v. Secular Society*⁴⁸ in 1917, concluded that organizations with political objects could not be deemed charitable despite the historical record suggesting otherwise. Not only did the House of Lords conclude that political objects cannot be charitable, it argued that such purposes were never recognized as charitable. On behalf of the majority, Lord Parker held that political objects, while not illegal, were not charitable because “everyone is at liberty to advocate

⁴⁷ See also Drassinower (1999), Michell (1995) and Webb (2000) for thorough historical examinations of this issue.

⁴⁸ Webb cites that the Secular Society “was a society established to promote the principle that human conduct should be based upon natural knowledge and not upon supernatural belief, and that human welfare in this world is the proper end of all thoughts and action” (2000: 132).

or promote by any lawful means a change in the law, but because the court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift”.

Several legal commentators have criticized this decision on several grounds. First, Webb (2000: 132) argues that the decision made an inaccurate claim, which resulted from a misinterpretation of nineteenth century case law, that political objects have always been deemed invalid though the earlier discussion illustrates the acceptance of these initiatives by the courts. Second, Webb (2000: 132-133) stresses that the choice of words “change in the law” is problematic for current day interpretations of this decision. This phrase suggests those groups advocating the status quo would have acceptable charitable objects, but those groups advocating change would not have acceptable charitable objects. Third, both Michell (1995: 6) and Webb (2000: 134) suggest that the argument regarding the court’s inability to determine whether the proposed change in law constitutes a public benefit is suspect. Michell refers to this argument as being inconsistent “with [the] courts’ general assertion of their ability, indeed of their duty, to assess public benefit in the law of charities” (1995: 6).

Despite these well-argued criticisms suggesting that no legal reason exists for such a prohibition, the long-term impact resulting from this single decision for organizations seeking charitable status in Canada has been significant. Indeed, Harvie (2002: 12) refers to this decision as being the “touchstone of the modern prohibition against political [objects]”. Boyle (1997) similarly notes, “it has been taken for granted in British and Canadian court decisions, dating to Lord Parker’s decision in the 1917 *Bowman* case that political objects cannot be charitable”. Indeed, this stance is evidenced

by the 1978 administrative policy released by the then Revenue Canada known as Information Circular 78-3, "Registered Charities: Political Objects and Activities", which was the first attempt at developing policy guidelines regarding the advocacy work performed by charities. This information circular confirmed that organizations holding political objects would not be deemed charitable. It also prohibited the allocation of any resources to political activities. This Circular effectively undermined the ability of registered charities to hold political purposes or engage in any advocacy. Four months after its release, this Circular was withdrawn "following vigorous protest from charities, as well as criticism from Members of Parliament and the media" (Webb, 2000: 36. See also Ontario Law Reform Commission, 1996: 308).

While the *Bowman* decision remains intact within Canadian charity law, the withdrawal of the Information Circular resulted in a gap as to the amount of advocacy that could be undertaken by charities. To fill this gap, an amendment was added to the *ITA* in 1986. Section 149.1 (6.2) outlines when advocacy is considered permissible for registered charities as an activity:

- For the purposes of the definition "charitable organization" in subsection 149.1(1), where an organization devotes substantially all of its resources to charitable activities carried on by it and
- (a) it devotes part of its resources to political activities,
 - (b) those political activities are ancillary and incidental to its charitable activities, and
 - (c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office, the organization shall be considered to be devoting that part of its resources to charitable activities carried on by it.

This section of the *ITA*, while offering some guidance in this area, is sufficiently vague by not offering a clearer definition of important concepts including 'political activities'

and ‘ancillary and incidental’ (Bridge, 2000: 9). In an attempt to offer some clarification regarding this amendment, Revenue Canada published an administrative policy in 1987 that outlined its interpretation of section 149.1 (6.2) (Canada, CRA, 1987). While administrative policies do not carry “the same legal weight or consequences as the common law and the *[ITA]*”, they have a significant impact in determining eligibility for charitable status (Bridge, 2000: 10).

The 1987 Information Circular 87-1 entitled “Registered Charities – Ancillary and Incidental Political Activities” quantified the amount of advocacy deemed acceptable for registered charities. The term “substantially all” under s. 149.1 (6.2) of the *ITA* was interpreted that a registered charity must spend at least 90% of its combined financial, human and physical resources on charitable activities thus allowing the remaining 10% to be spent on advocacy normally calculated over the fiscal year. Dubbed the ‘10% rule’ by many within the voluntary sector, this rule gave shape to the vague “substantially all” term used in the *ITA*, but confusion still arose as to what activities were deemed advocacy. Despite the addition of several examples within the Information Circular distinguishing those activities deemed educational (considered charitable and not subject to limits) from those activities deemed to be advocacy (considered non-charitable and subject to the 10% rule), understanding when the 10% rule kicked in was difficult for many voluntary sector organizations (Bridge, 2002: 7). The Information Circular was not exhaustive in describing every advocacy initiative, and nor could it have been, thereby producing a scenario in which the CRA judged each situation on a case-by-case basis.

In September 2003, the CRA published new advocacy guidelines contained in “Policy Statement: Political Activities CPS-022” to replace the 1987 Information Circular

(Canada, CRA, 2003a). Several changes, including some improvements, occurred with the introduction of these new advocacy guidelines. First, the new guidelines provide clearer examples to help charities understand what constitutes advocacy. Second, the guidelines reduce the restrictions on public awareness campaigns thus narrowing the scope of what is considered advocacy. Third, the guidelines create a sliding scale of acceptable levels of political activities based on budget size in an attempt to help smaller charities. The CRA adopted a sliding scale allowing charities with budgets less than \$50,000 to allocate up to 20% of their resources to advocacy; charities with budgets between \$50,000 and \$100,000 to allocate up to 15% of their resources; and, charities with an annual income between \$100,000 and \$200,000 to devote up to 12% of their resources. Charities with budgets larger than \$200,000 can only spend 10% of their budget on political activities. The voluntary sector wanted to go further with the advocacy limitations, but was resisted (see chapter six for details). Fourth, the CRA now allows charities to average their political activity expenses over three years instead of one. While these new guidelines make a concerted effort to expand the ability of charities to participate in the public policy process as advocates, the guidelines did not entirely meet the expectations of those in the voluntary sector.

Sector's response to changes in advocacy

The approach undertaken by the Canadian government to regulate advocacy, which departs somewhat from the experiences of other common law countries, is a concern for many proponents of a liberalization of advocacy laws. An *Issue Alert* published by the Canadian Centre for Philanthropy (2003) argues that the Canada strictly regulates both

charitable objects and charitable activities, but other common law countries including England, Scotland, Australia and New Zealand regulate both, but with a greater emphasis placed on regulating charitable objects than charitable activities. It should be noted however that engaging in too much advocacy in these other countries will render an organization's purposes as political and therefore not eligible for charitable status. With a greater emphasis on regulating charitable objects however, "this approach leaves a charity's governing Board complete scope to decide which activities will best achieve the charity's purposes. Therefore, there has been no need for other countries to attempt to make legal distinctions between different types of activities, as Canada's federal government does (without defining the distinction) in section 149.1 of the [ITA]" (Canadian Centre for Philanthropy, 2003: 1-2).

Despite the improvements in the new advocacy guidelines in 2003, four criticisms emerged from the Voluntary Sector Forum (2004a). First, the clarification provided by various examples within the new guidelines are helpful, but the actual quantification of advocacy remains a subjective decision, leaving many within the sector unsure where advocacy truly begins and ends. Second, this limitation undermines *The Accord Between the Government of Canada and the Voluntary Sector*, a document signed on December 5, 2001 by both the federal government and the voluntary sector. The *Accord* outlines the values, principles and the commitment of both parties to work in a more transparent and collaborative relationship (VSI, 2004b). Advocacy is highlighted in the *Accord* as a legitimate role for charities. Of the two *Codes* flowing from the *Accord*,⁴⁹ the *Code of Good Practice on Policy Dialogue* seems especially at odds with the restrictions placed

⁴⁹ The two *Codes* are the instruments for implementing the *Accord*. The other is the *Code of Good Practice on Funding*.

on the ability of charities to advocate. The *Code* commits both the federal government and the voluntary sector to engage in public policy; allocate resources to policy activities; improve policy capacity; and, transfer knowledge to the other partner (VSI, 2004b) but this limitation suggests this commitment occurs largely at the request of the state for involvement in the public policy process.

Third, the new guidelines will not dramatically change the restrictions on advocacy activities by charities since the ITA requires that “substantially all” resources be used for charitable activities thus not likely granting status to new groups that have been denied in the past due to higher levels of advocacy. Fourth, the new guidelines do not address, nor could they address, the inequity between businesses and registered charities regarding advocacy. The advocacy activities of businesses are in effect subsidized by taxpayers as businesses are allowed to write-off their lobbying expenses as business expenses thereby reducing their profits and tax payable.

Advocacy was a topic discussed through the VSI process, of particular concern for the voluntary sector while the federal government tried to avoid the topic (see chapter six for details). As part of the VSI, a sector-only advocacy group was established and pressed the federal government on this concern. It is important to remember that the VSI had a number of joint tables with representatives equally drawn from both the federal government and the voluntary sector to examine a number of issues to strengthen the relationship between the two (for example, a joint table for regulations and another for awareness). The federal government would not allow a joint table to be constructed in relation to the advocacy issue under the VSI process despite calls for such a table by the voluntary sector. Instead, an Advocacy Working Group was formed under the VSI with

no representation from the federal government. Despite the lack of a joint process to review advocacy, the voluntary sector, through the Advocacy Working Group, pressed the government on this concern with limited success particularly when compared to other countries. The Voluntary Sector Forum⁵⁰ argued that other countries are much more relaxed about the advocacy work of charities. It is not just the Forum that would argue this – many respondents in this study indicated that Canada is in last place when compared to the approaches of other countries dealing with the ability of charities to advocate. England and Scotland follow the same common law tradition as Canada, but are less restrictive about the limit placed on advocacy while other countries including Spain, Japan, Germany, France and The Netherlands do not limit advocacy (Voluntary Sector Forum, 2004a). Despite the attempts by the CRA to expand the amount of advocacy performed by charities, is still a contentious area. Furthermore, it is an area in which Canada is more restrictive than most other common law countries.

The experiences of other common law jurisdictions concerning advocacy

Two models, quantification and education, exist within common law countries. The *quantification model*, that is, the existence of a pre-determined level of acceptable advocacy activities based on budget revenues, is exemplified by the experiences of the United States of America. Regarding advocacy, the Internal Revenue Code contains a provision outlining that “no substantial part” of the organization’s work can be devoted to advocacy initiatives. The key phrase, “no substantial part”, is similar to the constraints placed on charities in Canada and England where the phrase ‘ancillary and incidental’ is

⁵⁰ The Voluntary Sector Forum is no longer in existence. It served as a follow-up to the Voluntary Sector Roundtable and to move the VSI forward.

used (Webb, 2000: 98). This provision in the Code, enacted in 1934, did not adequately define when activities constituted advocacy. In an attempt to provide some clarification for this provision, Congress passed legislation in 1976 (Section 1307 of Public Law 94-455) that clarified and liberalized the ability of tax-exempt organizations to involve themselves in advocacy (Smucker, 1999). The Internal Revenue followed up some 14 years later with final regulations under the 1976 advocacy law that respected the expanded ability of these organizations to advocate without jeopardizing their tax-exempt status. As in Canada, advocacy is quantified in that the expenditure of money is used as the basis to gauge the extent of advocacy performed by an organization. Canadian and American advocacy laws differ in other important ways. In the United States, the 1976 law outlines two types of advocacy that are allowed: direct and grassroots. The former includes “visiting a congressperson about a bill and being in touch with the organization’s members and urging them to contact their legislators” whereas the later includes “attempt[s] to affect the opinion of the general public” (Smucker, 1999: 51). The spending limits are much higher in the United States than in Canada as evidenced in Table 3.2.

Comparing the American and Canadian experiences towards advocacy, Harvie (2002: 21) argues, “the fundamentals [in the States] are not markedly different from Canadian regulation but overall are more flexible and accommodating of advocacy”. Boyle (1997: G9) similarly argues,

Even though excessive political activity will, as in Canada, prevent an organization from being charitable, there is considerable latitude within the American charitable sector. Many activities which in Canada might be considered political, including "promotion of social welfare... lessen[ing] neighbourhood tensions;...eliminat[ing]

prejudice or discrimination;... defend[ing] human and civil rights... combat[ing] community deterioration..." have been expressly approved by the regulatory authorities.

Organizations have been creative in finding ways around the rules. One respondent for this research project, an environmental organization that was denied charitable status in Canada for performing too much advocacy, opted to create a sister organization in the United States. Although the organization thought the chances of receiving charitable status in the United States were low, it was surprised to learn that its application for status was approved despite its advocacy work. The American organization now operates as a registered charity in the United States to support its Canadian counterpart.

Table 3.2: Spending limits for advocacy in the United States and Canada

United States of America		Canada	
Budget	Allowable Lobbying Expenditures	Budget	Allowable Lobbying Expenditures
Up to \$500,000	20% (or \$100,000)	Up to \$50,000	20% (or \$10,000)
\$500,000 - \$1 million	\$100,000 + 15% of excess over \$500,000	Between \$50,000-\$100,00	15% (\$10,000 - \$15,000)
\$1 million - \$1.5 million	\$175,000 + 10% of excess over \$1 million	Between \$100,000-\$200,000	12% (\$12,000 - \$24,000)
\$1.5 million - \$17 million	\$225,000 + 5% of excess over \$1.5 million	Over \$200,000	10%
Over \$17 million	\$1 million		

Source: Smucker, 1999: 55

In comparison, the *education model* provides government officials with discretion to make determinations about acceptable levels of advocacy initiatives. The experiences of England and Wales regarding the advocacy activities of charities exemplify this model. Regarding advocacy, English and Welsh charities may engage in non-partisan

advocacy so long as it constitutes ‘ancillary and incidental’ activities subordinate to charitable activities (United Kingdom, Charity Commission of England and Wales, 1999). This notion of having advocacy activities as ‘ancillary and incidental’ is similar to the Canadian context, but an important distinction between these two countries rests with the English and Welsh decision not to require an “additional test...[for] ...charities to devote substantially all of their resources to charity” thus providing fewer restrictions for charities (Harvie, 2002: 21). In 1995, the regulator of charities, the Charity Commission of England and Wales (CCEW), published guidelines known as the CC9 - Political Activities and Campaigning by Charities that spells out the boundaries of political activity for registered charities and defines political activity as “any activity which is directed at securing, or opposing, any change in the law or in the policy or decisions of central government or local authorities, whether in this country or abroad” (United Kingdom, CCEW, 1999). Salamon et al. (1997: 337) posits, “charities may properly campaign to inform and mobilize public opinion and influence government policy and decisions of public bodies, provided the issues concerned are relevant to their purposes and that the means by which they do so are within their powers and consistent with the guidelines”. Harvie (2002: 21) likens the English and Welsh scenario as one that provides fewer restrictions and more certainty given that the regulator, the CCEW, also has an important role as an educator. What is unique about the approach of England and Wales regarding charities was its establishment of the CCEW sometime ago, which was made separate from the taxation authority, Inland Revenue. Unlike Canada, England and Wales removed the task of supervising charities from the taxation arm of government to create an independent mechanism to undertake this role. Charities can approach the

CCEW to discuss their concerns or ask questions regarding advocacy thus creating a helpful, well guided and more transparent approach to advocacy in England and Wales than in Canada given that the CRA's primarily role is that of a regulator, not an educator (Harvie, 2002). Such institutional reform has been considered as a possible solution to how Canada may resolve the advocacy issue for registered charities, but has been rejected by government.⁵¹

Conclusion

This consideration of charitable registration, including both the objects and activities, raises the following question: How does this relate to governance? Within a governance model, voluntary organizations are partners working with the government to contribute to the coordination of social life, but the legal definition of charity and the advocacy limitation may undermine this notion of partnering in two ways. First, the legal definition of charitable *objects* denies certain segments of Canadian society from accessing charitable status that may be necessary for organizations to build the requisite capacity to become a partner in the first place. The significant changes in the funding regime over the last decade may have heightened the need for access to charitable registration. Reductions in core funding in favour of short-term project funding coupled with increasing accountability requirements and increased demands for services may make charitable registration an important mechanism for building capacity in all its forms to effectively become a governance partner (Hall et al., 2003; Phillips and Levasseur, 2004; Scott, 2003). Without access to registration, some possible partnerships between the state

⁵¹ See Drache with Hunter, 2000; Panel on Accountability and Governance in the Voluntary Sector, 1999 as they both argued for a CCEW-like institution in Canada.

and segments of society may not blossom and thus limit certain perspectives, expertise and constituents from becoming involved in public policy development. Second, for those organizations with charitable status, the ability of those charities to engage in advocacy is limited and may undermine the notion of partnership and subordinating the voluntary sector to the state (Phillips, 2000-2001: 188). Charities are restricted in the amount of advocacy they may initiate depending on the size of their budgets. Charities that exceed the maximum levels for advocacy, as prescribed by the federal government, risk jeopardizing their charitable registration status. Moreover, the voluntary sector is subordinate to businesses that enjoy tax write-offs for their engagement in lobbying without being subject to a limit on these activities. The federal government's desire for a partnership with the voluntary sector appears to be set on its terms by choosing when to invite the sector to voice its expertise while reducing the ability of the sector to act when it is not invited to the public policy table. At times, the federal government is keen on consulting with the sector and has made an effort to reach out to organizations for their advice and expertise, but 'consultation' does not equal 'partnering' according to Brock (2004).⁵² During consultations, Brock (2004) asserts, government often controls the agenda and solicits feedback; partnering is a more dynamic process where empowered partners exert control on the policy agenda in addition to providing feedback.

This discussion raises another important question: How does this relate to historical institutionalism. As noted in the previous chapter, historical institutionalism emphasizes comparative analysis (Thelen, 1999). By locating the Canadian experience of charitable registration with the experiences of other Anglo-American democracies, we see that while Anglo-American countries use the common law to determine status, there

⁵² This may be less accurate under the current Harper government.

are important differences. As evidenced in this chapter, other Anglo-American countries, especially the England and Wales, have employed strategies that have resulted in a broader interpretation of what it means to be a charity in a modern and diverse society. By examining how institutions influence policy, we gain insight into the possibilities for policy change. While this chapter sought to understand the eligibility issue associated with charitable registration, the next chapter attempts to understand how the Charities Directorate of the CRA and the Department of Finance bargain over the meaning of charity.

Chapter 4

Charitable Registration and the Institutional Machinery Used to Support It

Charitable registration is a policy instrument that is used and supported by several different entities, notably the Department of Finance, the Charities Directorate of the CRA, and the courts. Taken together, they constitute the ‘institutional machinery’ that support the charitable registration policy instrument in Canada. This chapter begins with a brief historical examination of charitable registration and discusses three key aspects of regulation: jurisdiction, the tax incentive and regulatory oversight. It then analyzes the Department of Finance, the Charities Directorate of the CRA, and the courts, which have oversight responsibilities for this policy instrument, and how they work towards achieving the goals of maintaining the integrity of the taxation system, regulating charities in a fair and consistent manner, and updating the meaning of charity.

Evolution of charitable registration in Canada

Jurisdiction

The *Constitution Act* of 1867, s. 92(7) gives exclusive regulatory powers over charities to the provinces in such matters including the meaning of charity, incorporation and fundraising legislation. Charitable registration, as it relates to the taxation system in the form of charitable tax credits for donations, falls under the jurisdiction of the federal government.⁵³ S. 91(3) of the *Constitution Act* gives the federal government exclusive

⁵³ Provinces have jurisdiction over certain taxation issues for charities such as the payment of taxes by charities, but also the provision of provincial tax incentives to donors.

powers to implement and enforce a taxation regime that includes charities because they issue income tax receipts for donations.

Provinces retain jurisdiction over charities in such areas as wills, trusts and fundraising, but few provinces actively exercise their full jurisdictional powers in relation to charities. As a result, the federal government's jurisdiction dominates: the tax incentive that flows from the federal determination of charity has prompted an upward delegation of the meaning of charity to the federal system (PAGVS, 1999). This delegation of the determination of charity implies the meaning of charity is harmonized between the national and provincial levels and across the provinces, including Quebec, which operates its own taxation system.⁵⁴ Whereas other policy instruments may encounter jurisdictional wrangling, this instrument, and the charities it serves, benefits from this harmonized registration process and the consistency of the meaning of charity that is applied throughout the country. This benefit is identified by the Panel on Accountability and Governance in the Voluntary Sector (1999: 54) in its report,

Maintaining an integrated system of registration is important because geography matters less and less to how voluntary organizations operate and, in particular, to how they raise funds... The internet and direct mail fundraising permit a charity incorporated in Manitoba for example, to easily solicit funds and public support in British Columbia or New Brunswick. Thus it would be confusing to the public, administratively inefficient and ineffective in terms of enforcement to have separate legislation defining what constitutes a charity.

Given that the federal government's involvement with charities is limited to the taxation

⁵⁴ Fontaine and Tougas (2005) note, "only charities registered with the [CRA] and with the Ministère du Revenu du Québec ("MRQ") are authorized to issue receipts that entitle Québec donors to these tax benefits...[but that] It should be noted that the registration of a charity with the MRQ is practically automatic following presentation and approval of its registration application with the CRA".

system and that few provinces actively regulate charities, the federal government has become the “*de facto* regulator” at least in determining the eligibility for charitable status (S. Phillips, 2001: 158). Confusion may arise, however, because the federal government may have granted charitable status to an organization that may be seen in the eyes of Canadians as being a ‘good’ organization. Yet, the federal government does not have the power to regulate the areas that make an organization ‘good’ such as ethical fundraising and effective board governance as these matters are under the purview of the provinces.

The upward delegation to the federal level for the determination of charitable status is not without the occasional dispute, however (Drache, 2002a: 43). The Laidlaw Foundation appeal in 1984 is an example of the difficulty of defining charity among different governments. As a foundation disbursing funds to organizations registered with the Charities Directorate, Laidlaw allocated funding to several amateur sports organizations. Some of these organizations fell under the RCAA section of the *ITA* that deems them ‘qualified donees’ meaning they enjoy the ability to provide receipts for donations but are not themselves ‘registered charities’. The Public Trustee of Ontario objected to the granting of funding to qualified donees because they were not charities in the province of Ontario. The provincial court disagreed and concluded that organizations falling under the RCAA section of the *ITA* were indeed charitable in the province of Ontario. The Divisional Court judge also held that it was not necessary to refer to the *1601 Statute of Charitable Uses* because the provincial *Charities Accounting Act* provides a more liberal definition of charity (Boyle, 1997; Webb, 2000: 50). This example illustrates that, on rare occasion, differing interpretations of what is charitable exist within Canada. While some provincial systems oversee charities and the

determination of charity, the primary concern rests with the federal system because of the importance of the tax credit thus forming the central focus of this research project.

The incentive

Although charities have a long history in Canada, the linking of charitable status to the taxation system only began in 1917 to provide indirect assistance to those organizations dedicated to the war effort (Duff, 2001: 408). The income of these war charities was tax exempt and provisions were made to allow tax deductions for those individuals making donations to these causes (Webb, 2000: 28). In 1920, the provision for providing tax deductions for donations to war charities was repealed though these causes remained exempt from taxation (Webb, 2000: 28). In 1930, the federal government established a provision in the *Income War Tax Act* to allow a more general tax deduction that allowed Canadians to deduct donations to any qualifying charity up to 10% of their income (Duff, 2001: 408; Webb, 2000: 28). The Second World War prompted the introduction of special tax treatment for war charities with corporate donations becoming receiptable for the first time in 1941 (Webb, 2000: 28).

In 1948, the *Income War Tax Act* was replaced by the *ITA*, which required charities to apply to the federal government for recognition of their status (Webb, 2000: 29). Two years later, the federal government amended the *ITA* and required charities to disburse 90% of annual income out of concern that charities were not allocating enough resources to charitable activities (Domingue, 1996: 5-6). An optional standard deduction for charitable donations was implemented in 1957 allowing taxpayers the option to deduct \$100 from their taxes without submitting receipts. The rationale was to reduce the

administrative work for both government employees and taxpayers, but this deduction may have diminished the incentive to donate to a charity according to Duff (2001: 408) and was later repealed in 1984.

The modern system of charitable registration and reporting was introduced in 1967 within the then Department of National Revenue (now, the CRA). Its functions included registration matters, such as the receiving and reviewing of all applications for charitable status, and reporting, including the examination of annual returns, auditing, and investigating (Webb, 2000: 29). Its primary role was that of a watchdog over charities, although it had no authority to help charities meet the regulatory requirements or assist those organizations desiring to become charities. This regulatory system was introduced for two reasons: first, the federal government was not able to generate a comprehensive list of charities capable of receipting donations prior to the introduction of this system; second, there were concerns (whether real or perceived) about the fraudulent activities of charities (Ontario Law Reform Commission, 1996: 298). This centralization of registration and reporting processes within one federal body set the foundation for our current regulatory system (Ontario Law Reform Commission, 1996: 35; see also Domingue, 1996).

Ten years after the creation of this federal body to oversee charities, several new provisions were added to the *ITA* (s. 149.1) as a result of the recommendation for greater accountability of charities made by the Department of Finance's 1975 Green Paper (Canada, Department of Finance, 1975; Ontario Law Reform Commission, 1996: 35). These new provisions required charities "to spend at least a minimum amount on their charitable activities and to file public information returns, while the concepts of qualified

investments, private foundations, public foundations and charitable organizations were introduced” (Domingue, 1996: 6). The next significant piece of legislation for charities was introduced in 1984 outlining disbursement quotas for foundations, creating penalty taxes for charities and taxpayers, and allowing the Minister of National Revenue to determine the status of an organization as a charity, private foundation or public foundation (Ontario Law Reform Commission, 1996: 341).

In 1988, the policy instrument changed from a tax deduction to a two-tier non-refundable⁵⁵ tax credit for individuals donating directly to charities, although corporations continued to receive a tax deduction for their charitable donations (Brown and Guillemette, 2003). This shift from a deduction to a credit is important to note as tax deductions and tax credits impact the obligations of taxpayers differently. Deductions reduce taxable income notably for higher income taxpayers whereas credits reduce tax liability generally producing a greater benefit for the average taxpayer (Howard, 2002: 414).

The first-tier of the charitable tax credit provided a federal tax credit of 16% on the first \$250 of donations while the second-tier provided a tax credit of 29% for donations over \$250.⁵⁶ The 1994 federal budget, however, lowered the amount of donations needed for the second-tier tax credit to take effect from \$250 to \$200. As of 2008, taxpayers receive a federal tax credit of 15% for donations up to \$200 and, for donations above this amount, they may receive a federal tax credit of 29%.⁵⁷ This rise is

⁵⁵ A non-refundable tax credit for donations to charities means those individuals too poor to pay taxes do not benefit from making a charitable donation. See Duff (2001) for a review of the arguments for and against this shift from a deduction to a credit.

⁵⁶ Additional tax credits are available from the provinces.

⁵⁷ See CRA website that details how the tax saving are calculated: <http://www.cra-arc.gc.ca/tx/chrts/dnrs/svngs/2-eng.html>

the tax credit is estimated by the Department of Finance to cost, surprisingly little, \$15 million per year in forgone taxes (Domingue, 1996).

For the 2007 fiscal year, the Department of Finance estimates a total of \$2.0 billion in forgone tax revenues arising from charitable status (Canada, Department of Finance, 2007). Compared to other tax credits such as the age credit and the RRSP credit, which produce an estimated loss to the treasury of \$1.7 and \$10 billion respectively, the impact on the treasury from the charitable tax credit is relatively small (Canada, Department of Finance, 2007).

Besides making a direct financial donation to a charity, rules have been instituted over the years to allow for other methods of donating, including the donation of RRSP/RRIFs, art, cultural property, bequests, annuities, life insurance and capital property. Indeed, throughout the 1990s, the federal government worked steadily to make charitable giving more attractive to taxpayers by offering more and different tax incentives. After 2006, more incentives were offered in the federal budget related to the elimination of capital gains for publicly traded securities and ecological gifts donated to charities. An apparent anomaly appears to exist: the rules for giving are liberal, but the rules for charitable registration are more restrictive. As discussed below, the latter appears to be tied to the former.

Regulatory oversight

Webb (2003: 1) notes that non-profit organizations are categorized in different ways in Canada as per the *ITA*: the non-profit organization category, the registered charity category and the registered arts promotion and amateur athletics promotion category.

The *ITA* s. 149.1 (1) defines a non-profit organization as:

a club, society or association that, in the opinion of the Minister, was not a charity within the meaning assigned by subsection 149.1(1) and that was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder was a club, society or association the primary purpose and function of which was the promotion of amateur athletics in Canada.

Groups must apply for non-profit designation, but since this category does not generate a loss to the treasury in terms of receipting donations, non-profits are not regulated to the same extent as registered charities or organizations that promote the arts and amateur athletics. Non-profits only file an information return with the CRA if it received taxable dividends, interest, rentals, or royalties in excess of \$10,000 in the fiscal period; has assets greater than \$200,000; or was required to complete an information return for the previous fiscal period.⁵⁸ The primary benefit of being a non-profit organization is the exemption from the payment of income taxes. Approximately 161,000 non-profit organizations and charities exist in Canada of which nearly half are registered charities. These organizations are diverse in terms of their size, geographic location and scope, membership, services, ability to provide representation and citizenship opportunities (Canada, Statistics Canada, 2004b: 7). As examples, non-profits include fraternal societies, athletic associations, advocacy groups working to protect certain social and political interests (for example, the environment, human rights, public safety) and those associations that work to promote the interests of business, professionals and labour (Domingue, 1996: 14; Canada, Statistics Canada, 2004b: 13). Non-profit organizations

⁵⁸ See CRA's *Income Tax Guide to the Non-Profit Organization (NPO) Information Return*.

must apply for charitable status and if approved, these newly minted charities are allowed to provide tax receipts for donations. The registered charities classification is thus a smaller one than that of the non-profit classification encompassing 82,243 charities in Canada as of December 2005 (Canada, CRA, 2006).

The institutional machinery supporting charitable registration

Having examined the evolution of charitable registration, we now turn our attention to the institutional machinery responsible for shaping the meaning of charity in Canada. The Department of Finance, the Charities Directorate and the courts are the central entities that support this instrument and the meaning of charity as diagrammed in Figure 4.1.⁵⁹

Figure 4.1: The Institutional Machinery of Charitable Registration Regarding the Meaning of Charity

⁵⁹ To understand the institutional machinery of charitable registration, interviews were conducted with senior public servants and voluntary sector leaders. Between February and August 2004, 16 requests for an interview were made to eight public servants and eight leaders within Canada's voluntary sector. These individuals were chosen because of their position or knowledge regarding this issue. Three public servants declined to be interviewed for a total sample of 13.

An institutional perspective, which highlights the critical role of institutions, explains the recent modifications to the meaning of charity. These modifications can be seen as a process of change in which there are two levels of explanation. First, there are different institutions achieving different goals. In this scenario, two organizations, the Charities Directorate and the Department of Finance, appear to be working at cross-purposes at times. Recalling Allison's (1971) model, government policy cannot be understood by the actions of one organization. Instead, Allison suggests that we must examine the interaction or bargaining that occurs between organizations. The Charities Directorate has undertaken a somewhat more activist role in this area whereas the Department of Finance has remained somewhat resistant to change. With each organization having differing power bases and resources, they intersect with one another to use and shape this policy instrument.

Second, we can view the recent modifications to the meaning of charity as a process of deliberate incremental change rather than as major policy shifts. This explanation is more fully developed in later chapters. Briefly, however, the Charities Directorate has been somewhat active in this area and recent changes can be viewed as part of the layering process through new administrative practices and policy guidelines in an attempt to modify the meaning of charity, but major policy change would require Finance to act. The conversion process at the Charities Directorate started with the introduction of a new senior public servant who was responsible for redirecting that organization.

There are non-governmental institutions that support the operating environment of charities in Canada as well. For example, Imagine Canada's *Ethical Fundraising and*

Financial Accountability Code promotes self-regulation in how charities raise money. Charities that comply with the Code may run into fewer problems with the CRA or courts in terms of responding to queries or complaints. As such, the Code is an example of how a non-governmental entity indirectly supports charitable registration. Other non-profits have been active advocates for change. One leader was the Institute for Media, Policy and Civil Society (IMPACS) that pressed for changes related to the limitation placed on the ability of charities to advocate. As discussed in chapter six, there were also many other advocates for change.

The Courts

The beauty – and the limitation – of the common law is that it remains as current as the last judicial interpretation. With regular judicial review, the common law could be highly flexible and adaptive to changing societal values and conditions, but in the absence of regular review, it risks getting out of step with contemporary society.

S. Phillips, 2001: 156-7.

The courts are allotted a significant role in supporting the meaning of charity with its jurisdiction to qualify organizations as charities under the common law.⁶⁰ The ability of the courts to regularly render judicial decisions that update the legal meaning has been called into question however. As stipulated in the *ITA* s. 172(3)(a), the court of first instance for charitable organizations is the Federal Court of Appeal.⁶¹ The Federal Court

⁶⁰ O'Halloran (2002) notes that while the common law is flexible in meeting the changes in societal values, certain characteristics of the common law render it somewhat ineffective in meeting the "stresses typical of modern societies" through the use of analogy to the objects outlined in the *Statute* and *Pemsel* (for example, the requirement of analogizing the provision of free internet access to the building of physical infrastructure such as roads, highways).

⁶¹ The fact that appeals concerning charitable status are sent to the Federal Court of Appeal is important to note. Only the decisions stemming from the Charities Directorate and the Registered Plans Directorate (for example, registered pension plans) are appealed to the Federal Court whereas all other tax related appeals are sent to the Tax Court of Canada (JRT, 2003: 70).

is an expensive and lengthy recourse mechanism⁶² that requires representation by counsel and since it bases its decision on recorded evidence, appellants must prepare “significant documentation” without an opportunity to introduce new evidence (Monahan, 2002: 16). The onus is therefore placed on the organization, not the government to demonstrate and defend its decision not to register the organization. The next and last court of appeal is the Supreme Court of Canada from which a leave is required before an appeal is heard. Like the Federal Court, the costs of appealing to the Supreme Court are considerable. Given that launching an appeal is a financially daunting task for many voluntary organizations, it is no surprise that few appeals have actually been undertaken related to the meaning of charity. Between 1993 and 2007, 19 appeals went before the Federal Court of Appeal and two before the Supreme Court.⁶³

The financial burden is not the only possible explanation as to why so few judicial decisions have been rendered on the meaning of charity. Broder (2001: 19) and a legal expert, interviewed as part of this study, suggest the tactical concessions of the government play a role sometimes. The cases that would have gone to court with a decent chance of winning may never actually go to court as the government will yield to the organization by granting charitable status to prevent the court from setting a binding precedent.

Financial and tactical concessions are two explanations for the rendering of so few decisions on the legal meaning of charity. Yet, even with the opportunities that have

⁶² Estimating the costs associated with launching an appeal to the Federal Court is challenging since the facts in the case determine the legal case, but a reasonable starting point according to several respondents is \$25,000.

⁶³ The Joint Regulatory Table, 2003, notes that 15 appeals went before the Federal Court of Appeal between 1993 – 2002. To determine the number of appeals before the Federal Court of Appeal and Supreme Court between 1993 – 2007, a search was done using newsletters from the CRA in addition to reviewing e-newsletters from charity lawyers (i.e. Carters.ca) and court cases.

been presented to the court to update the meaning of charity, the courts have demonstrated their unwillingness to do so, thus implicating them as an ill-equipped mechanism for updating charity. Of the decisions rendered, most have been victories for the government. Jim Phillips' (2001: 219) technical analysis of the decisions rendered by the Federal Court suggests that it remains conservative in its review of what constitutes charity and thus fails to become a cutting edge institution for updating the common law. Phillips came to two conclusions. First, the Federal Court places too much emphasis on the activities of the appellant than the general purposes. Second, in all but one appeal (*Native Communications Society v. Minister of National Revenue*) the Federal Court adheres to the *traditional* interpretation of the common law and is unwilling to search for a *Canadian* interpretation of the common law. Charity lawyer Arthur Drache (2002a: 7) clearly echoes Jim Phillips' argument,

Many thought the answer lay with the courts and there was, despite the costs, a spate of appeals to the Federal Court of Canada. A few had success, including an aboriginal broadcast group [Native Communications Society], a hospital which offered abortions [Everywoman's Health Centre Society] and an organization which offered free access to the internet [Vancouver Regional FreeNet Association]. But in fact the vast majority of appeals were lost, including promoting better relations between Canada and the USSR, a legal aid clinic, an organization promoting Canadian unity, an organization against pornography, an organization against violence and a neighbourhood self-help association.

The Supreme Court ruled on the meaning of charity in an appeal by the Vancouver Society for Immigrant and Visible Minority Women (Vancouver Society).⁶⁴ The primary object of the Vancouver Society is the full integration of immigrant and visible minority women into Canadian society by offering a Job Skills Directory and a

referral service, soliciting job opportunities, assisting with accreditation of credentials and the providing workshops.⁶⁵ It applied for charitable status, but was denied by the CRA, the agency responsible for interpreting and administering the *ITA*. Upon denial of charitable status by the CRA in 1992, the Supreme Court of Canada reviewed the case in 1999 and concluded that Vancouver Society was ineligible for status for two key reasons.⁶⁶ The Supreme Court held that the provision of programs and services to assist clients to find employment is not charitable, and that immigrants arriving into Canada under the point system are not objects of charity (*Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*, 1999). Controversy arose over this decision as both the United States and the United Kingdom register organizations whose objects include assisting immigrants in areas of social, cultural and economic integration.⁶⁷

While the Supreme Court held that the Vancouver Society was ineligible for charitable status, it made some minor modifications to the second head of charity, advancement of education. The category of ‘advancement of education’ has long been interpreted by the CRA to encompass more formal, structured types of education to include schools and universities providing balanced information (Monahan with Roth,

⁶⁴ In October 2007, the Supreme Court ruled that an Ontario soccer association could not register as a charity. It held that the promotion of sport is not charitable.

⁶⁵ These workshops cover topics such as starting a small business, employment equity, human rights and violence against women.

⁶⁶ The Vancouver Society appealed the decision of the CRA to deny charitable status to the court of first instance, the Federal Court of Appeal. The Federal Court rejected the appeal declaring the activities of the organization were not entirely educational or beneficial to the community and therefore not charitable. Vancouver Society then received a leave to appeal to the Supreme Court.

⁶⁷ Writing for the minority in the Vancouver Society decision, Justice Gonthier provides examples to support the registering of Vancouver Society as a charity. He cites in the United States, organizations that assist immigrants in overcoming social, cultural, and economic barriers are charitable under s. 501 (c) (3) of the *Internal Revenue Code* following a ruling in 1976 (Rev. Rul. 76-205 in *Internal Revenue Cumulative Bulletin* 1976-1, at p. 154). Additionally, Justice Gonthier cites that the Charity Commission

2000: 41). The Vancouver Society argued that providing workshops constituted education and the Supreme Court agreed with the appellant on this point. The majority Justices wrote,

To limit the notion of “training of the mind” to structured, systematic instruction or traditional academic subject reflects an outmoded and under inclusive understanding of education, which is of little use in modern Canadian society. So long as information or training is provided in a structured manner and for a genuinely educational purpose – that is, to advance the knowledge or abilities of the recipients – and not solely to promote a particular view or political orientation, it may properly be viewed as falling within the advancement of education.

The result was the broadening of the interpretation of education and such a broadening, it is hypothesized, may allow more nonprofits to secure charitable status in Canada if they offer less structured methods of education.

While gains were made in the area of education, the majority Justices held that some activities such as maintaining a job directory, providing assistance for the accreditation of credentials and networking are not charitable because they are not beneficial to the community at large and the provision of support to immigrants does not fall under the fourth head of charity, other purposes beneficial to community (Moran and Phillips, 2001: 345). The Court held that not all immigrants, particularly those entering Canada under the point system, are in need of charity despite the complexities involved in integrating into a new society (for example, finding a network to assist with a job search) (Moran and Phillips, 2001: 362). This decision effectively reinforced the narrow interpretation of charity and illustrated how difficult it is for organizations that represent minorities to be recognized under the charity umbrella. In addition, this decision indicates

of England and Wales registered a charity, Ethnic Minority Training and Employment Project, which

the highest court's refusal to initiate change to the common law meaning of charity. The Court did, however, call upon Parliament to legislate change with Mr. Justice Frank Iacobucci asserting, "I reiterate that, even though some substantial change in the law of charity would be desirable and welcome at this time, any such change must be left to Parliament." The Court accepted the argument for updating charity on a much larger scale, but refused to accept the need for updating charity for this specific segment of society in this case.⁶⁸ The unwillingness of the courts to exact change is the primary reason, according to several respondents, why recommendations for changing the appeals process were put forth in a recent report issued by the Joint Regulatory Table (JRT) of the VSI. The VSI was a collaborative process noted in chapter two as an example of governance in action.⁶⁹

One of the recommendations in this report that was adopted in the 2004 budget was the creation of an internal appeals mechanism within the CRA. This suggestion advocating for changes to the appeals process originally stemmed from the voluntary sector.⁷⁰ Prior to this announcement, the only recourse for an organization to challenge the CRA's decision of either a misdesignation⁷¹ or a denial / revocation of charitable status was the court system. Given the recent introduction of the new internal appeals mechanism within the CRA, respondents acknowledged that it remains to be seen whether this more open appeals process and the opportunity created for case law to develop in Canada by a more robust review of the common law will occur.

offered assistance to immigrants, refugees and migrants to overcome social and economic barriers.

⁶⁸ This idea stemmed from an interview with a legal expert.

⁶⁹ The JRT report is more fully discussed in chapter six.

⁷⁰ It stemmed from the voluntary sector, first from the Broadbent Report and then the JRT.

⁷¹ For example, a misdesignation would occur if CRA designates an organization as a charitable organization when the organization sees itself as a public foundation.

Both the JRT and an earlier report by an independent panel (the Broadbent report) recommended a change in the court of first instance from the current Federal Court of Appeal to the Tax Court of Canada. According to several respondents, this was resisted by the Department of Finance on the basis that such a change may have financial considerations for the treasury. While the 2004 federal budget did change the court of first instance from the Federal Court of Appeal to the Tax Court of Canada, the change only applies to *appeals of sanctions*. Appealing the *determination of charitable status* remains with the Federal Court of Appeal presumably to limit access as Hayhoe (2004a) laments,

The [2004] budget also provides that all intermediate sanction appeals will then go to the Tax Court of Canada. However, the budget leaves registration appeals with the Federal Court of Appeal. Given that the Tax Court of Canada is a much cheaper and more accessible litigation forum than the Federal Court of Appeal, and given its much greater tax expertise, the budget's approach to appeals is an improvement but still a disappointment.

This disappointment arises because the institutional design of the courts are important to keeping the common law fresh, but this resistance to changing the court of first instance regarding charitable determination may hinder the review of charity. As it stands, the ability of the courts to regularly review the meaning of charity appears to be somewhat limited.

The Department of Finance

As a powerful central agency, the Department of Finance co-ordinates departmental initiatives and provides the Minister of Finance with analysis and advice regarding the tax laws. Its mandate includes “preparing the federal budget, developing tax and tariff

policy and legislation, managing federal borrowing on financial markets, administering major transfers of federal funds to the provinces and territories, developing regulatory policy for the country's financial sector, and representing Canada within international financial institutions” (Canada, Treasury Board, 2006). Whereas the Charities Directorate of the CRA is responsible for interpreting and administering the *ITA* in relation to registering charities, tax policy and amendments to the *ITA* remain the sole responsibility of the Department of Finance. As a tax expenditure instrument, its use is very much shaped by Finance according to one senior public servant:

This is a tax policy issue and in process terms it is driven by the Department of Finance. In Ottawa, non-tax policy issues (for example, health) go through a process at PCO and are examined by all key players across differing departments in an effort to convince all Ministers about the need for such a policy. Tax policy issues do not go through the PCO so it has a different process. One would think that it would be easier to target one Minister, but it isn't an easy task when it is the Minister of Finance.

With this significant role, how exactly has the Department of Finance approached the regulation of charities? Seven respondents identified a lack of movement by Finance related to advocacy and the meaning of charity. Examples that illustrate this lack of movement are detailed in chapter six.

The Charities Directorate

The *Canada Revenue Agency Act* outlines a four-fold mandate for this Agency. First, it provides administrative and enforcement support related to the collection of revenue. Second, it implements agreements between the federal government and provincial governments or public bodies to administer a tax or program. Third, it implements

agreements between itself and other federal government departments or agencies to administer a program. Last, the CRA implements agreements between the federal government and Aboriginal governments to administer taxes.

The CRA is the administrator of the *ITA*, which means it has a significant administrative role regarding charitable registration, but does not have the power to actually amend the *ITA* itself. While the CRA cannot change the *ITA*, it can issue policy statements and guides that incrementally change the meaning of charity. As noted, the current Charities Directorate of the CRA was established in January 1967 via amendments to the *ITA*, amidst fears of possible abuses committed by charities because no centralized registration or reporting system was in place to regulate them.

Since 1967, the Charities Directorate has undergone some growth over the years. The Charities Directorate is a small unit housed in the taxation agency. In 2000, it had 130 full-time employees (Monahan with Roth, 2000: 9) and by 2008, the Directorate staff had been increased to 223 (Canada, CRA, 2008a). Much of this growth can be attributed to its changing role over the past few years. The 2004 federal budget assigned more auditors to the Charities Directorate to improve the regulation of charities given that there were only 15 auditors prior to this increased budget (CBC, 2005). The Charities Directorate has four administrative roles regarding charities described below: processing registrations, monitoring, auditing and policy/communications/outreach.

The total number of approved applications for charitable status has remained steady averaging around 2,900 between 1995 and 2005 (see Table 4.1). Between 1995 and 2005, there was a 13% increase in the total number of charities for a total of 82,243 registered charities in 2005 (Canada, CRA, 2006). Each year between 1999 and 2005, the

Directorate audited approximately 1% of registered charities. This may increase in future years given that the 2004 budget assigned more auditors to the Directorate.

The process of registration

Before applying for charitable status, organizations must be legally established by governing documents such as letters patent, articles of incorporation, trust deeds, or constitutions. Upon certification, these governing documents legally establish the organization while outlining the objects of the organization (for example, its purposes or the ends) and its structure. With governing documents in place, an organization may apply for charitable status by completing Form T2050, *Application to Register a Charity Under the ITA* using an instruction guide (Form T4063) prepared by the Charities Directorate.⁷² The 15-page application form requires information concerning the identity of the applicant, a list of directors / trustees, the organizational structure of the applicant, detailed information of the activities (for example, the means undertaken to achieve the overall object including political and fundraising activities), financial information including receipts, disbursements, assets and liabilities, and confidential information such as the physical location of books and records and personal information about directors/trustees. This process of readying the organization to apply for charitable status suggests that organizations may require a significant level of administrative and organizational capacity to do so.

⁷² The Charities Directorate will release a new *Application to Register a Charity Under the Income Tax Act* (Form T2050), and companion Guide T4063, *Registering a Charity for Income Tax Purposes* in 2008/2009. "Form T2050 is being revised in accordance with certain legislative amendments, and to address the form's general ease of use. Guide T4063 is being revised to put need-to-know information about the advantages, requirements, and obligations of registered charities front and centre, in order to facilitate the process of applying for charitable registration under the *Income Tax Act*" (Canada, CRA, 2008c).

Table 4.1 – Change in the number of charities and applications for status⁷³

	1995	1999	2002	2003	2004	2005
Number of approved applications for charitable status	3300 (85%)	3285 (78%)	2281 (67%)	2774 (84%)	2592 (84%)	3117 (87%)
Number of letters sent to applicants advising them they would not likely qualify	-	885 (21%)	1,054 (31%)	515 (16%)	482 (16%)	433 (12%)
Number of applications denied	600 (15%)	37 (1%)	56 (2%)	33 (1%)	19 (1%)	35 (1%)
Total number of revocations of status⁷⁴	-	2742 (4%)	2364 (3%)	1921 (2%)	1978 (2%)	1412 (2%)
• at request of the charity ⁷⁵ ;	-	-	800 (34%)	788 (41%)	709 (36%)	438 (31%)
• did not file annual information return;	-	-	1559 (66%)	1127 (59%)	1261 (64%)	963 (68%)
• for cause (i.e. activities no longer in compliance with the <i>ITA</i>)	-	-	5 (<1%)	6 (<1%)	8 (<1%)	11 (<1%)
Number of audits⁷⁶	-	419 (1%)	455 (1%)	356 (<1%)	367 (1%)	596 (1%)
Total Number of charities	71,823	77,432	79,276	80,563	80,914	82,243

Note: In 2006/2007, the Charities Directorate changed how it reported the number of charities and applications for status in its newsletters. In 2006/2007, a total of 3,601 organizations applied for charitable status. Of these 3,601 organizations, 2,469 were registered as charities and 326 were denied charitable status (see Canada, CRA, 2007).

⁷³ This chart was compiled by the author using different sources of data. The work of Monahan with Roth, 2000: 11-12 provide information for the year 1995. Information for years 1999 - 2005 stems from the Charities Directorate newsletters. See Canada, CRA – Charities Directorate, 2001; 2003b; 2004a; 2004b; 2005a; 2005b, and; 2006.

⁷⁴ The percentage was determined by dividing the number of revocations by the total number of charities for that year.

⁷⁵ These percentages for the three items in this category are based on the total number of revocations for each year.

⁷⁶ The percentage is determined by dividing the number of audits by the total number of charities.

When the completed application form is submitted to the Charities Directorate, an examiner reviews the application and either approves the application, requests more information from the applicant or sends an Administrative Fairness Letter explaining the problems associated with the application and why the application is unlikely to be approved for charitable status (JRT, 2003: chap. 2). An Administrative Fairness Letter allows the organization to respond to the CRA and present more information to support its case for charitable status after which the application will either be formally approved or denied.

Monitoring

Once registered, charities are required to show compliance with the federal tax laws as they are bound by regulations in the areas of disbursement quotas,⁷⁷ as well as limits on their advocacy and commercial activities to name a few examples. To show compliance, charities must complete and return an annual information return to the Charities Directorate (Form T3010A – *Registered Charity Information Return*) within six-months after their fiscal year-end. The Charities Directorate recently redesigned the T3010⁷⁸ after charities indicated the form was too lengthy and cumbersome.⁷⁹ The new T3010 has been simplified, coming in at 4 pages compared to the old version of 13 pages that required information regarding directors/trustees, the activities of the organization, compensation of staff, financial information and a certification statement. The form also requires confidential information such as details pertaining to the physical location of the

⁷⁷ Disbursement quotas limit the amount of resources allocated to non-charitable purposes such as salaries, administration, etc.

⁷⁸ The form was redesigned with the assistance of the JRT.

⁷⁹ A respondent, a federal public servant, provided this information.

charity's books and records, the name and contact information of the person completing the return and personal information of directors/trustees (for example, date of birth and home address). The non-confidential parts of the form are made available to the public on the CRA's website which houses the CRA's T3010 data on all registered charities.

Failure to file the completed annual information return on time generally leads to involuntary revocation of charitable status. As outlined above in Table 4.1, the number of revocations of charitable status due to a failure to complete the T3010 on time is a frequent reason for revocation. Of the 1,412 revocations of charitable status in 2005, 963 or 68% were the result of a failure to complete the annual information return; 438 or 31% of revocations stem from organizations requesting that their charitable status be revoked; and the remaining 11 or <1% revocations were for 'cause' indicating the objects and/or activities were no longer in compliance with the common law and tax laws.⁸⁰

These results suggest two things. First, the CRA does not often revoke charitable status. Until recently, the only form of sanction available to the CRA was revocation of charitable status even for minor issues of non-compliance. The low numbers of revocations 'for cause' indicates the CRA primarily uses this sanction for the most serious cases of non-compliance. Second, most revocations (on average, two-thirds of revocations) are due to a failure to complete and return the annual information return. It may be that the organizations unable to complete the annual information return are small with few human and financial resources to ensure compliance with the tax laws.⁸¹ This

⁸⁰ Charities may have their status revoked because the objects were no longer viewed as charitable or their advocacy activities were deemed to surpass the maximum ceiling limit imposed by the federal government. For example, Human Life International in Canada, an organization dedicated to the protection of born and unborn individuals, had its charitable status revoked because the Federal Court of Appeal held the organization dedicated too many resources to its advocacy activities to be a charity.

⁸¹ This point was raised during an interview with a federal public servant.

may necessitate the need for information resources and support to establish and maintain adequate compliance processes for smaller organizations.

Another interesting observation from Table 4.1 is the decline in the number of denials for charitable status. In 1995, 600 applications were denied, whereas in 2004 that number fell to 19. One interpretation of this decline implies that no public policy issue exists in Canada concerning the meaning of charity. That is to say, with so few denials, perhaps the legal concept of charity is broad enough to meet the needs of applicants. Another interpretation, however, holds that non-profits are obtaining legal advice and conducting research on past decisions related to charitable registration made by the CRA to ensure their applications are not denied. When seeking legal advice and conducting research, some non-profits may come to the conclusion that their applications have little chance of being approved so they do not bother to submit applications. In this scenario, we would anticipate a drop in the number of applications which appears to be the case (see Table 4.1). While the number of denied application is falling, it is not a good measure for determining whether a public policy issue exists regarding the meaning of charity. It is possible that those non-profits, despite having a legitimate claim for charitable status, may not apply as they know their chances of approval are small. Based on the interviews with charities and non-profits undertaken for this dissertation, it appears that the latter is a more accurate explanation as to why fewer applications for charitable status are being denied.

Auditing

Regarding audits, the Compliance and Intelligence Division of the Charities Directorate selects the registered charities for review and auditing purposes to ensure voluntary compliance and to protect the taxation system (Canada, CRA, 2002). Some charities are randomly selected for an audit while others are selected for an audit “to review specific legal obligations under the Act; to review or follow up on significant non-compliance; as a result of information gathered from other files, audits or outside sources, including tips; to confirm assets have been distributed after revocation; and to understand the purposes and activities of an organization that is applying for registered status” (Canada, CRA, 2002).⁸²

Upon completion of an audit, the Charities Directorate either: issues a letter to the organization citing the organization is in compliance with the rules and regulations; issues a letter educating the organization of minor problems; or, issues an Administrative Fairness Letter citing serious non-compliance with the possibility of sanctions. Prior to the 2004 federal budget, the only possible sanction for failure to comply with the tax laws was revocation of charitable status which was seen as an extreme measure for common compliance problems. The 2004 budget, however, introduced a number of intermediate sanctions to promote greater compliance and “give the CRA a better alternative for dealing with minor infractions of already existing compliance requirements” (Carter, 2004). These intermediate sanctions range from fines, temporary suspension of receipting privileges, and partial loss of the tax-exempt status. The complete revocation of charitable tax status still remains as the most severe sanction available to the CRA.

⁸² Some respondents noted that the CRA initiated a series of audits that examined the advocacy activities of charities based on complaints from the public several years ago.

In 2006-2007, the Charities Directorate doubled its number of audits from 2004 as a result of “additional staff, new risk management practices, and the use of auditors in the tax services offices” (Canada, CRA 2007). Of the charities audited in 2006-2007, one-fifth (22%) were in compliance and required no changes; half (52%) were in non-compliance, but for relatively minor issues and received educational letters to assist them in meeting the requirements; another one-fifth (20%) were in non-compliance and required the negotiation of a compliance agreement for corrective action; only three percent were in serious non-compliance and had their charitable status revoked (Canada, CRA, 2007).

Policy/Communications/Outreach

The Charities Directorate recently initiated some activities related to improving communications and outreach with charities and Canadians in general. In addition to its outreach and communications role, the Directorate has committed itself to reviewing and updating regulatory policies where needed. As noted earlier, the CRA cannot amend the *ITA*, but it can issue policy statements and guides that may incrementally change the application of the policy. This emphasis on regulatory review is critical for Canada’s voluntary organizations because regulations should weigh the needs of voluntary organizations to help them thrive and serve a public benefit *and* to maintain public trust in the taxation system (Phillips, 2005; 2006). As Phillips (2005: 4) notes, “because the voluntary sector fundamentally depends on the maintenance of public trust for its viability, the regulatory regime must facilitate a rather delicate balance.” Besides registering, monitoring and auditing charities, the Charities Directorate is striving to

relate better to charities by conducting roadshow information sessions across the country,⁸³ preparing and communicating policy updates and necessary forms, maintaining an on-line database of registered charities, consulting with interested parties on various issues, preparing newsletters and providing training regarding the completion of the annual information return.

History of the Charities Directorate

The Charities Directorate of the CRA, as the lead organization for this policy instrument, is a story of change according to most respondents. Prior to 2001, the Charities Directorate of the CRA was largely viewed as overly narrow in which “the system would rather deny charitable status than make an error” according to one respondent, a federal public servant. The Charities Directorate, at that time in its history, was an under-staffed bureaucracy with few financial resources. Additionally, the Charities Directorate was not seen as a priority within the much larger department so no impetus for change existed internally according to respondents.

This led to a situation in which academics and lawyers began to call for the demise of the Charities Directorate in favour of a new organization. The Broadbent report is a good indicator of how people in the sector viewed the Charities Directorate.

The Report notes,

as the boundaries between public, voluntary and private sectors become more blurred, overlapping in many respects, it is also essential that there be a public window on the sector that promotes greater knowledge and transparency...such support requires more than the auditing

⁸³ In 2005, the Charities Directorate conducted 69 sessions across Canada with 3,618 participants (Canada, CRA, 2006).

expertise of Revenue Canada...it is time for a new kind of institution (PAGVS, 1999: 57).

In briefs to the PAGVS, some charities echoed this position. For instance, Centraide/United Way Mauricie, Trois-Rivières suggests, “Revenue Canada...should be endowed with a greater flexibility, a capacity to adapt to the conditions of different regions and provinces; a greater potential to change with the organizations, and compatibly with their needs and present situation” (PAGVS, 1999: 64).

Today, however, the Charities Directorate of the CRA appears to be a different bureaucracy with one respondent suggesting, “there is willingness to change as much as can be changed administratively...to undertake policy discussions on the criteria [for charity] and, where possible, make adjustments to be more inclusive.” While the changes occurring within the Charities Directorate are elaborated below, briefly, the Directorate improved its organizational and administrative processes, improved transparency by making changes to its website, reviewed numerous policy statements and created an advisory committee consisting of voluntary sector people to provide feedback. The majority of respondents see the reformed CRA as being more receptive, proactive and transparent when dealing with the voluntary sector.⁸⁴

Given this shift in attitude, how exactly does the Charities Directorate use and support the policy instrument of charitable registration? The Charities Directorate has

⁸⁴ Regarding the specific work of the JRT of the VSI, respondents cite the CRA was dedicated to hearing the viewpoints of the voluntary sector in an attempt to initiate change within the Directorate. The recommendations flowing from the final report of the JRT span four key areas related to an *enhanced regulator* (educating the charitable sector and the public about the regulatory process for charities, public consultations and establishment of an advisory committee to provide feedback), *accessibility and transparency* (improved accessibility for the public and sector to documents), *appeals* (internal review mechanism within the CRA on determinations of charitable status, change in the court of first instance from Federal Court of Appeal to the Tax Court of Canada, establishment of an appeal fund), *intermediate sanctions* (giving charities the means to meet legal obligations, remedial agreements, introduction of new penalties).

evolved into a more flexible and open organization that works to expand the meaning of charity. As the administrator of charitable registration, the Charities Directorate has made several changes by stretching the meaning of charity as far it can go without violating the common law and tax law.

The changes to the Charities Directorate are numerous, though the ones highlighted here are based on the remarks from respondents as being the dimensions of greatest significance. One change involves a heightened awareness of the need for the Charities Directorate to work horizontally across federal government departments.⁸⁵ The Charities Directorate now works with other federal government departments whereas it only previously worked with the Department of Finance. The example of a voluntary organization dedicated to the provision of alternative medicine illustrates how the Charities Directorate works more horizontally.⁸⁶ Rather than working solely with Finance to determine whether this emerging form of healthcare constitutes a charity, the Charities Directorate now consults with the Department of Health and other specialists. This is done to diversify the knowledge base of the Charities Directorate in order to make informed decision as to whether this voluntary organization should be deemed charitable. Besides working horizontally with other government departments, the Charities Directorate is opening itself up more and more to hear the voices of those from the voluntary sector regarding the meaning of charity. In November 2003, for example, the Charities Directorate met with members of the voluntary sector to discuss sport as a charitable object in a meeting sponsored by the Muttart Foundation.⁸⁷

⁸⁵ Public servants who were interviewed from the CRA raised this point.

⁸⁶ This example was provided from a senior public servant from the CRA – Charities Directorate.

⁸⁷ This fact was revealed during interviews with a senior public servant and a voluntary sector leader.

Another positive change concerns the improved organizational and administrative processes of the Charities Directorate when applying for charitable status. An important result from this change, according to many respondents, relates to reduced wait times for a response from the Directorate. Prior to these changes, it was not unheard of for applicants to wait upwards of 9-12 months for a response to their application, according to one public servant from the CRA. One respondent comments, “the result has been that a number of applications are being processed more expeditiously sometimes within a few weeks or months, but the CRA still grapples with the hard decisions”.

Besides working with others and improving its organizational and administrative processes, the Charities Directorate has posted approximately 245 policy documents on its website since 2002 (Canada, CRA, 2003c). While these policy documents represent an attempt to improve the transparency of the Directorate’s position on certain issues, some represent a genuine attempt to expand the notion of charity. Several of these policy statements are representative of the layering process to invoke change because they became supplements to the current common law and tax law. To date, the Directorate has initiated the drafting of policy statements in the areas of human rights, umbrella organizations, ethnocultural communities, racial equality, advocacy and public benefit in the hopes that “developing clearer charitable registration guidelines, [will] promote a better understanding of what types of organizations may be registered within the parameters defined by charity law and the *ITA*.” (Canada, CRA, 2004a).⁸⁸

Respondents note the policy statement concerning organizations that are dedicated to eradicating racial discrimination is particularly important. These types of

⁸⁸ See chapter three for more details.

organizations will now finally be recognized as charitable after the proposed policy statement was adopted in September 2003. Racial harmony has been long valued as evidenced by the racial equity clauses in the *Charter*, the *Canadian Human Rights Act*, the *Canadian Multiculturalism Act* and the ratifying of the *International Convention on the Elimination of All Forms of Racial Discrimination* in 1970. Yet, only now will these organizations be deemed charitable with the introduction of this new policy statement. Another equally important proposed policy statement currently undergoing consultation with the voluntary sector concerns the registering of organizations dedicated to ethnocultural communities as charities. While many welcome the Directorate's decision to review this contentious area of charity law, one charity lawyer warns that the policy statement is still restrictive and ambiguous,

[the Directorate] take[s] the position that in order to qualify, organizations must meet the common laws tests of what is a charitable activity. The end result is that while the paper offers considerable guidance as to what will be acceptable, it is far from a foregone conclusion that all or even most existing ethnic organizations will be able to meet the tests (Drache, 2004).

Citing concern that some ethnocultural groups may not pass the public benefit test, Drache also notes that the concept of poverty may not adequately reflect a more diverse interpretation,

Our experience has been that with many ethnic groups, the term "necessities" may be broader than described. What about private religious school tuition? What about special foods? What about mandatory religious pilgrimages? What about dowries for brides? We have run into all such situations in the past and have had the expenditures rejected by CRA auditors. Our own view is that in assessing "needs", the mores and culture of the relevant community or group has to be taken into account (Drache, 2004).

The policy statement on advocacy represents incremental change rather than a substantial policy shift. As noted in the previous chapter, the new guideline narrows the scope of what is considered advocacy, creates a sliding scale to allow smaller charities to engage in more advocacy, and allows charities to average their advocacy expenses over three years. Respondents were mixed about whether this policy statement would sufficiently open up the meaning of charity to allow more groups to fall under the umbrella of charity. Some felt that the changes were marginal, at best, and thus would prevent few new organizations to be deemed charitable. Some lamented that while the policy statement on registering organizations promoting racial harmony is important, the inability to further stretch the allowable advocacy limits may undermine this advancement. If an organization engaged in racial harmony still engages in too much advocacy work, it may not be registered as a charity. Others suggest that the advocacy debate is a moot one given that an advocacy surplus exists in which charities do not even engage in advocacy or very little of it.⁸⁹ These respondents proposed the clarification and slight expansion of allowable advocacy is sufficient. Despite differing perspectives regarding the effectiveness of the new advocacy guidelines, most respondents acknowledge the solid work of the CRA in this area to extend advocacy as far as possible within the confines of the *ITA*.

Conclusion

The central goal of this chapter was to describe and assess the institutional machinery

⁸⁹ This relates to Berry's (2005) point that registered 501(c)(3) organizations in the United States of America are afraid to advocate because they do not understand what is allowable and what is not.

supporting this policy instrument. It did so by examining how the Charities Directorate of the CRA, the Department of Finance and the courts intersect with each other in supporting this instrument in terms of eligibility for charitable status. It concludes that the courts have been rather limited in effecting policy change in this country. The CRA, which has no power to amend the *ITA*, has worked to expand and update the notion of charity through a layering process. The CRA, it appears, tries to influence Finance through direct communication or through their bulletins and discussion papers. While the CRA converses with Finance to effect policy change, Finance's continued ability to resist real path shifting changes is notable.

Change can occur through administrative processes or legislative reform. These new policy statements can be seen as layers that have been introduced alongside the established meaning of charity. With many policy statements initiated by the Charities Directorate, the question must be raised whether these changes overcome the eligibility issues associated with the meaning of charity. This dissertation argues that the policy statements cannot overcome the central issue concerning eligibility. Even a senior public servant from the Charities Directorate doubted the new policies would go far enough to assist a group like the *Vancouver Society*. The Charities Directorate simply does not have the power to evoke substantial change such as an amendment to the *ITA* or new legislation that is needed to overcome this issue. That said, the extent of these administrative changes should not be underestimated. While their impact is somewhat limited in the area of eligibility, these administrative changes restore credibility to the Charities Directorate and represent an attempt at creative problem-solving (Phillips, 2005). More importantly, these policy statements, coupled with the continued

mobilization of the voluntary sector, may reshape future paths and strategies that might otherwise go unnoticed by the path dependency thesis.

Despite some changes, Canada has retained a somewhat narrow definition of charity. The next chapter explores the question of whether this has actually made a difference. Chapter six then provides insight as to why and how the voluntary sector has pressured the federal state to make substantial changes to the meaning of charity and advocacy issue. That chapter also explores why there is resistance to reviewing these issues.

Chapter 5

The Impact of Charitable Registration on Organizations in Canada

The previous chapters argue that, despite some changes, Canada has retained a somewhat narrow definition of charity for tax purposes. This chapter asks: what impact has this had on voluntary organizations? It seeks to understand the impact of charitable registration, both acquiring or being denied status as a registered charity, has on Canada's voluntary organizations. It examines this empirically by comparing the experiences of registered charities against the experiences of organizations without charitable status.

The chapter begins with a brief review of the existing literature related to the impacts of charitable registration on voluntary organizations. It then outlines the methodology used to collect data from selected organizations. This is followed by a discussion that analyzes the impacts of registration on those organizations that have recently received charitable status. Finally, the impacts of non-registration⁹⁰ are examined and the question of whether alternate forms of resources can substitute for a lack of charitable status.

Literature review

Comparable research

A search for similar empirical research yielded one smaller study. In 2001, Tendai Musodzi Marowa conducted 15 interviews with agencies that are members of the Ontario Council of Agencies Serving Immigrants. The sample consists of relatively larger

⁹⁰ This term refers to organizations that have chosen not to seek charitable status or have been denied status.

organizations with incomes ranging from \$50,000 to \$3,000,000,⁹¹ all with charitable status, and all from the province of Ontario. Comparatively, my sample consists of mid-sized organizations with and without charitable status from across Canada. The purpose of Marowa's study is to "recommend ways in which [charity law] and advocacy can be improved to better serve immigrants and refugees" (2001: 2), but Marowa's study does not compare changes in capacity before and after charitable status was awarded which is an important aspect of this study.

Marowa's research reveals that the charity law has an impact on fundraising and advocacy. In terms of the impact of the law on fundraising, Marowa notes that "due to inadequate funding from the federal government, [the organizations] have had no alternative but to look for private funding" (2001: 13). Marowa does not go into detail on to what extent this shift towards private sector funding is due to charitable status or the overall funding regime, however. Securing private sector funding, Marowa suggests, is challenging given the increased competition for private sector funding in recent years with the federal government also looking to the private sector for funding of certain projects (2001: 13). To attract private sector funding, the organizations have had to "[acquire] a professional veneer" by hiring professional staff (2001: 13).

Concerning the impact of the law on advocacy, almost all of the organizations (14) note, "they have been forced to neglect" their advocacy role in order to protect their charitable status (2001: 14). The issues that have been neglected include refugee issues, family reunification, improvements to the refugee determination process, increased

⁹¹ These interviews were conducted with agencies of various levels of annual income: five interviews were conducted with large agencies with annual incomes between \$1,500,000 - \$3,000,000; four interviews were conducted with medium agencies with annual incomes between \$300,000 - \$1,500,000; and, six interviews were conducted with small agencies with annual incomes between \$50,000 - \$300,000.

detention of refugee claimants and refugee access to student loans. Comparatively, four organizations interviewed as part of my study similarly indicated that their advocacy initiatives have been negatively impacted by charitable status. As a buffer mechanism, Marowa found that three of the large agencies had to register a 'second' or 'sister' organization in order to get around the advocacy restriction. The second or sister organization, likely without charitable status but still engaged in fundraising, executes the advocacy activities for the organization while the primary organization undertakes charitable activities. This research study similarly found that two organizations also created second or sister organizations to legally get around the advocacy constraint.

Despite some commonalities with Marowa's work, this study is not a direct comparison. Marowa's work provides an understanding that the eligibility for charitable status requires organizations to make difficult choices in order to achieve their goals (for example, reduce the amount of advocacy). It also provides insight as to how the law is forcing organizations to increasingly turn to private sector funding, but it does not help us understand whether private sector funding can act as a substitute for a lack of charitable status or whether charitable status complements private sector funding. In short, it does not examine the impacts of charitable status on organizations. By comparison, this dissertation attempts to understand whether charitable status complements other policy instruments. It also strives to understand whether other policy instruments can effectively substitute for a lack of charitable status.

Consideration of the factors in the assessment of the impact of charitable status

Our understanding about the capacity of voluntary organizations in Canada, and what builds capacity within these types of organizations, has been expanded considerably in recent years (Hall et al., 2003; Scott, 2003). Capacity, as defined in chapter one, involves the necessary resources for a voluntary organization to achieve its objects (Federal Government of Canada / Voluntary Sector Joint Initiative, 1999). An assessment of the literature indicates that the following factors are important aspects of capacity for voluntary organizations: financial resources, human resources, technology, policy capabilities, network capabilities, planning and development capabilities, a favourable political environment and public trust (Hall et al., 2003).

Regarding financial resources, there are several types of funding available to voluntary organizations. The *National Survey of Non-profit and Voluntary Organizations* delineates three main sources of funding: earned income from non-governmental sources; government funding; and, gifts and donations (Canada, Statistics Canada, 2004b). Earned income includes such revenue generation activities as membership fees, user fees and investment income. For voluntary organizations in Canada, earned income accounts for 35% of total revenues (Canada, Statistics Canada, 2004b: 23). Government funding includes federal, provincial, and municipal sources in the form of grants and contributions or payment for goods and services. Almost half (49%) of all revenue generated by voluntary organizations in Canada come from governments: provincial governments account for the largest share with 40% with federal government sources at 7%, and municipal governments at 2% (Canada, Statistics Canada, 2004b: 23).⁹² Gifts and donations include donations from individuals, foundations and corporations and

⁹² These figures include government funding provided to hospitals, universities and colleges.

account for 13% of total revenues generated by voluntary organizations (Canada, Statistics Canada, 2004b: 23).

While our understanding of the funding issues facing voluntary organizations has increased in recent years (Scott, 2003), the Canadian literature provides little additional understanding of the impact of charitable registration on the different kinds of funding or legitimacy resources. For example, it would naturally be anticipated that charitable status has a positive impact on gifts and donations because of the added tax receipt, but also because of the possible heightened legitimacy that may be associated with charitable status. Conversely, charitable status may have a lesser impact on government funding or earned income.

An important consideration is the need for appropriate legal and regulatory frameworks for funding instruments that are responsive and “compatible with contemporary views of the voluntary sector” (Phillips, 2006: 129). Scott and Pike’s (2005) examination of current funding instruments reveals two things. First, new financial instruments are needed because there are not enough of them to meet the needs of certain voluntary organizations. Second, changes to address the issues associated with “redefining charity within the tax code...re-examining the limit on advocacy” are required, which are inherently linked to the regulatory framework in this country (2005: 13). Such changes to the regulatory framework, they argue, will improve the financial and organizational capacity of voluntary organizations.

Outside of Canada, there have also been calls for regulatory reform. The Better Regulation Task Force, established by the UK government, also echoes this idea that appropriate regulatory frameworks are essential for voluntary organizations to build

different forms of capacity. This independent Task Force reviewed the regulatory environment amidst the fear that excessive red tape negatively harmed voluntary organizations. Even with recent changes stemming from the Charity Commission of England and Wales (CCEW) and the legislation of a new definition of charity, concern still exists that more regulatory reform is required (Better Regulation Task Force, 2005: 3),

We want regulation to help the voluntary and community sector continue to be a dynamic, flexible and informed force for good in society. It should not be tied up in red tape. Many public services we now take for granted, such as hospitals for those in need, originated as social innovations from the voluntary and community sector. Good regulation must encourage the creativity of the sector in designing and delivering more imaginative and effective approaches to society's problems. Regulation should not try to co-opt, organize or homogenize this intrinsically non-conformist activity simply to make it easier for the regulators.

Eleven recommendations were outlined in the Better Regulation for Civil Society report (Better Regulation Task Force, 2005). While the recommendations cover a broad range of issues,⁹³ some specifically relate to the oversight provided by the CCEW. These include recommending that the CCEW “provide greater clarity to charities as to which parts of its advice are legally binding and which parts are best practice suggestions” (2005: 6). The UK approach to public policy making is now largely based on collaborative governance (Sullivan and Skelcher, 2002). As such, voluntary organizations may be benefiting from regulatory reform that is occurring under the governance model.

Even in the United States, which allows for a more generous interpretation of allowable advocacy activities for 501 (c) (3) organizations, there are calls for regulatory

⁹³ For example, the recommendations pertain to such areas as the regulation of corporate sponsorship, endowed trusts and tax liabilities.

reform. Berry, with Arons, (2005) contends that the advocacy restrictions placed on American voluntary organizations generate negative consequences because the regulatory framework is confusing and complex. As a result, their research reveals that voluntary sector leaders do not understand that they have the right to engage in advocacy and to develop policy capacity. Such misunderstandings resulting from a complex regulatory framework, they argue (2005: 4), “harms the most vulnerable populations, who are denied effective representation in the political system.”

In sum, the literature deals with issues related to funding and regulation. While we know about the funding of charities in Canada and the need for regulatory change, there is no comparative research that specifically examines the impact of charitable status on other forms of capacity such as funding for example. This empirical research aims to fill this gap by exploring the impact of status on government funding, non-government funding and legitimacy resources.

Methodology

The goal of this research is to explore the impacts of charitable registration and non-registration on voluntary organizations. This is tested by comparing the experiences and resources of organizations that have charitable status with those that do not have charitable status. Organizations from three different segments or clusters were selected to illustrate the impacts of being registered as a charity. These clusters were chosen because they have been identified within the literature as being problematic and contentious areas. Some organizations in these clusters have experienced difficulty securing charitable status in Canada even though other common law countries routinely register such

organizations. These three segments or clusters include: environment, human rights, and prevention of poverty. Environmental and human rights organizations are generally eligible for charitable status because having objects that protect and serve the environment and human rights are normally charitable. However, environmental and human rights organizations that engage in too much advocacy are not generally eligible for such status. Thus, for these clusters, it is the advocacy activity that makes it problematic within charity law. The relief of poverty is a charitable object, but the prevention of poverty through the provision of job employment assistance, for example, is not necessarily charitable as indicated in the *Vancouver Society* decision (Moran and Phillips, 2001: 345). In addition, organizations that work to prevent poverty may not pass the public benefit test if services and programs are limited to a specific population instead of to the public or community at large (Broder, 2001: 26). In addition, such organizations may be denied charitable status if they perform too much advocacy.

The interviews were conducted in-person or via telephone with the most senior staff person (for example, the Executive Director) or volunteer member (for example, the President or Vice-President of the organization) between January and September 2004.⁹⁴ The total sample is 18 with six organizations drawn from each of the three clusters. Two categories were established within each cluster. Half of the interviews (three) within each

⁹⁴ The Carleton University Research Ethics Committee approved this research project on January 22, 2004. For those selected organizations located in or near Ottawa, an in-person interview was conducted whereas a telephone interview was arranged for those organizations located outside of Ottawa. There was a preference to speak with the senior staff member given that they would have a better understanding and access to financial information. If no staff member was available, then the interview was conducted with a senior volunteer. Of the 18 interviews, 10 were conducted with Executive Directors and 8 were conducted with a senior volunteer. The Executive Directors were able to provide more precise financial information whereas senior volunteers provided estimates about financial information. Publicly available financial information (for example, T3010's) was also reviewed to confirm the financial information from all respondents. Senior volunteer members were able to provide a better historical overview of the organization's attempts to secure charitable status. Interviews ranged from 30 – 60 minutes in length.

cluster were with organizations that recently received charitable status as illustrated in Table 5.1.⁹⁵ To select these organizations, the CRA provided a list of those organizations that had recently been granted charitable status between a two-year period.

Interviews with representatives of these groups provided insight as to what having charitable status has enabled them to do that they could not do prior to having this status. The two year time frame was an attempt to ensure that the environment had not changed dramatically following registration. Besides the interview, other primary information was also collected for these organizations including their budgets and annual information returns (T3010).

Table 5.1: Distribution of Sample (N=18)

	Human Rights	Environment	Prevention of Poverty
Organizations that recently received charitable status within a 2 year time period of the interview	3	3	3
Organizations that have applied for charitable status, but were denied or did not bother to apply as they believed they would be denied.	3	3	3

Two criteria were used to select organizations that recently received charitable status: their objects and size. First, the organization had to have objects that related to human rights, the environment or the prevention of poverty. Second, the organizations selected as the sample have similar size of budgets in order to avoid skewing the results. Organizations with budgets less than \$30,000 or more than \$250,000 were excluded from the sample. One-third (33%) of the population has budgets between \$30,000 and

⁹⁵ This sampling does not include public or private foundations, only charitable organizations.

\$250,000.⁹⁶ Accessing the full benefits of charitable status requires a certain amount of administrative capability that might not be present in those organizations with budgets less than \$30,000. In contrast, for larger organizations with budgets over \$250,000, their administrative capabilities in leveraging the benefits of charitable status may be so sophisticated that the results may not reflect the experiences of most organizations. Information from the most recent T3010 form provided specific details related to the overall budget of a recent charity. In instances where a T3010 was not available, annual reports were used to determine the budget of a recent charity. As illustrated in Table 5.2, information regarding the objects, budget, and the scope of the nine organizations are provided. To protect the confidentiality of the organizations, no real names have been used.

Organizations in the human rights, prevention of poverty and environment clusters were randomly selected from a list of recently appointed charities provided by the CRA. Research was then conducted to determine if their budgets were between \$30,000 and \$250,000. If the budget of the randomly selected organization was between \$30,000 and \$250,000, a letter was mailed to the senior staff or volunteer person requesting an interview. Given the small sample size and exploratory nature of this research, caution must be exercised because the findings are not widely generalizable. When compared to the population, this sample contains organizations with very specific objects. Therefore, the sample is not reflective of other objects found in the population

⁹⁶ These figures are related to the distribution of charities and non-profits, as per the *2004 National Survey of Nonprofit and Voluntary Organizations* (NSNVO) published by Statistics Canada. The *Survey* finds 42% of organizations have annual revenues of less than \$30,000 whereas approximately 25% of organizations have annual revenues of more than \$250,000 (see Canada, Statistics Canada, 2004b: 22).

Table 5.2: Description of nine organizations in the sample that have recently been granted charitable status

	Organization*	Object	Budget**	Scope
Human Rights	Human Rights For All	Educate citizens about human rights	\$75,000	Provincial
	Youth and Their Human Rights	Offer programs to protect the rights of disadvantaged youth	\$200,000	Provincial
	A Racism-free Society	Organize anti-racism programs	\$225,000	Local
Prevention of Poverty	Housing For All Generations	Promote affordable housing to low-income individuals and families	\$225,000	Local
	Office for Youth Services	Assist disadvantaged youth by offering programs and services	\$140,000	Local
	Society for Family Support	Offer support to families and children with disabilities	\$40,000	Local
Environment	A Greener Tomorrow	Promote environmentalism	\$60,000	Provincial
	Centre for Environmental Awareness	Educate citizens about the environment	\$150,000	National
	Eliminating Pollution and Waste	Protect the environment by offering programs and services	\$110,000	Local

* These are pseudonyms. Each pseudonym was searched on the CRA listing of charities to ensure the name was not used by another organization.

** All budgets have been rounded and in some cases an average budget is provided here if there was significant budgetary variance from year to year.

Source: Annual Reports, T3010 Reports and funding documents.

such as the promotion of religion, education or art for example. Similarly, this sample does not reflect the range of budgets found within the population.

Interviews with these organizations were conducted to determine the effects of charitable registration, by comparing primary data (size and budget) and by asking respondents to reflect on the changes since registration. One way of testing the impact is to compare organizations of similar capacity, with and without charitable status, and involved in the same fields. The comparison sample consists of organizations, again selected from the fields of human rights, environmental protection and prevention of poverty, that have been denied charitable status in the last 3 years *or* organizations that

desire status, but have never applied because they believed their application would be denied. Interviewing these groups provided insight as to whether alternate instruments, such as other funding instruments or other resources like volunteers, can effectively compensate for the lack of status or whether they are worse off because they do not have status. At the time of this research, the CRA did not allow public access to the files of organizations that applied for charitable status but were denied. The rationale provided by the CRA concerns the need to protect the privacy of the applicant. To identify this hidden population, a snowball sampling technique was employed in which voluntary sector leaders were asked to provide referrals of organizations that they knew had recently been denied charitable status or organizations that desire status, but have not applied as they believe their application would be denied. Given the use of a snowball sampling technique coupled with a very small sample size and the use of qualitative research methods, these results are not representative of the population (Babbie, 2007). As such, the findings presented here are not generalizable to other organizations that would like charitable status, but do not currently have it. Additionally, the findings should not be interpreted as representing the population of organizations that do not want charitable status since organizations that do not want charitable status were excluded from this sample. Despite this inability to generalize, this exploratory approach is still beneficial because it provides a richer understanding of the impacts of charitable registration and non-registration on organizations.

The organizations without charitable status were selected using three criteria. First, the selected organizations had objects and activities that were close to qualifying as charitable. The variable, charitable status could be considered exogenous to a voluntary

organization in that the government confers such status on organizations. However, there exist certain endogenous factors, such as the objects and activities of the organization, and whether the organization desires charitable status.⁹⁷ These endogenous factors shape the decision of the organization to pursue charitable status and influence the government's decision to confer status. Those organizations operating at the extremes in terms of objectives and activities are not included in the sample in order to minimize variance. For example, if the organization could be registered in another common law country, but not in Canada, then its objects and activities would be deemed as being close to charitable. Likewise, if the organization could not be registered as a charity in any common law country, even those with more liberal interpretations of charity, then the organization would not have objects and activities that would be deemed close to being charitable. Such organizations are excluded from the sample.⁹⁸

Second, organizations were selected based on their size using the same budgetary parameters discussed above. Wherever possible, organizations with budgets between \$30,000 - \$250,000 were included.⁹⁹ This information was gathered from a search of annual reports or other financial documents that were available. Third, the organizations were selected knowing that they desire charitable status. This information was gathered prior to the start of the interview as a filter question.¹⁰⁰

It became obvious from the outset that strict confidentiality was required for these groups to participate in this research. Some of these groups that lack status are working

⁹⁷ For example, some groups may prefer to remain small or prefer not to be constrained by the advocacy rules.

⁹⁸ This excludes religious groups as this is a problematic common law heading of charity. Those religious groups denied status are generally viewed as being 'fringe' groups that operate outside of the mainstream and thus their chances of gaining status are nil.

⁹⁹ As discussed later in this chapter, two organizations without charitable status fall outside of this budgetary range.

¹⁰⁰ None of the organizations were excluded after the interview for this reason.

to gain charitable status either through the appeals process or preparing another application for status after resolving the problem(s) identified by the CRA. This raised two important considerations for the presentation of the results, notably the need to use pseudonyms and the inappropriateness of attributing direct quotes from participants.

Other interviews were conducted with leaders of Canada's voluntary sector and key informants in the federal government. In total, eight voluntary sector leaders and five government officials were interviewed. These interviews provided insight into the public policy issues regarding charitable registration and how the institutional machinery supports charitable registration.

An additional five interviews were conducted with public servants who have an understanding of whether having charitable status has any impact on how they deal with voluntary organizations. These five interviews were conducted with public servants who have experience in allocating government funding. These additional interviews were conducted with public servants from relevant funding departments including Health Canada, Canadian Heritage and Social Development Canada.¹⁰¹

Impacts resulting from the application process for charitable registration

Although this research focuses largely on the impacts of charitable status once it has been granted or denied to organizations, the analysis also considers organizational impacts resulting from the application process for registration. During the application stage, organizations 'ready' themselves in the hopes of improving their chances of receiving

¹⁰¹ Eight requests for interviews were made, but only five agreed to be interviewed.

charitable status. This may involve such actions as changing the objects, the activities or the name of the organization.

Of the nine organizations in the sample that have recently received charitable status, five had to undertake significant, sometimes costly, changes during the application phase. As a pre-condition for charitable registration, one organization was required to significantly change its activities – specifically a reduction in advocacy. Three organizations were required to change their objects in order to receive charitable status. In addition, one organization in the sample changed the name of the organization to facilitate the application for charitable status and ensure the new name was suitable to the CRA. The remaining four organizations did not require additional action to be taken to receive a charitable registration number (see Table 5.3).

Changing objects and activities

Three organizations were required to change their objects in order to secure charitable status. Two environmental organizations, Eliminating Pollution and Waste and the Centre for Environmental Awareness, had to change their objects with the assistance of legal expertise. Both organizations were created in the early 1990s and set their objectives without realizing that they would need to apply for charitable status in the future. Both organizations initially relied on federal government funding that was cancelled in the mid- to late-1990s. After the funding was cancelled, both organizations found it necessary to hire lawyers to change their objects in order to qualify for charitable status. Both organizations are now registered charities.

Table 5.3: Overview of organizations in sample* that have recently received charitable status

	Human Rights			Prevention of Poverty			Environment		
	Human Rights For All	Youth and Human Rights	A Racism-free Society	Housing For All Generations	Office for Youth Services	A Society for Family Support	A Greener Tomorrow	Centre for Environmental Awareness	Eliminating Pollution and Waste
Objective	Educate citizens about human rights.	Offer programs to protect the rights and safety of disadvantaged youth.	Organize anti-racism programs	Promote affordable housing to low-income individuals and families.	Assist disadvantaged youth by offering programs and services.	Offer support to families with children with disabilities	Promote environmentalism	Educate children about the environment.	To protect the environment by offering programs and services.
Actions required as a precondition for charitable status	Change name of organization	Change objectives of the organization (specifically reduce advocacy)	No additional action required	Change objectives of organization	No additional action required	No additional action required	No additional action required	Change objectives of the organization	Change objectives of the organization
Net increase in revenue since receiving charitable status	\$26,000	\$100,000	\$114,000	\$200,000	\$80,000	\$30,000	\$35,000	\$130,000	\$3,000

*These are pseudonyms.

Housing For All Generations was also required to change its objects in order to receive charitable status. In early 2001, the organization realized it needed to reach beyond its usual donors for financial support if affordable housing was to become a reality. In preparation of its application for charitable status, the organization consulted other charities to learn from their experiences. It also carefully followed the guidelines published by the CRA and hired a lawyer to review its application. The application was later submitted to the CRA in the summer of 2001.

Shortly after submitting its application to the CRA, the organization was unexpectedly approached by a government department to participate in a new program. This new program would require the organization to disburse money to low-income individuals and families in the form of a down-payment for housing. The goal of providing individuals and families with repayable down-payments clearly resonated with the objects of the organization. As a result, the organization had a strong interest in participating in the program.

Its participation in the program became jeopardized, however, when the CRA informed the organization that one of its objects was not considered charitable. The provision of direct financial assistance to individuals and families to purchase housing is not a charitable object according to the CRA. Charities cannot allocate money to individuals/families as it negates the public benefit test. According to the CRA, such activities confer a private benefit at the expense of a public benefit and thus the organization could not be registered as a charity.

The organization faced a difficult choice. It could remove the offending object from its governing documents, but this would effectively change its unique approach to

reducing homelessness. This option would make the organization ineligible to participate in the program, but it would be able to receive charitable status. Or, the organization could keep the object, participate in the program, but operate without charitable status. Opting in favour of the former for long-term viability, the organization spent more money to hire another lawyer to remove the offending object from its governing documents – a task that also consumed the time of staff and volunteers that resulted in a diversion of human resources away from the objects. The organization declined to participate in the project of providing repayable down-payments as it would jeopardize its application for charitable status. Housing For All Generations is now a registered charity located in an urban centre that is dedicated to assisting low-income individuals and families secure affordable housing. This example reinforces the argument proposed in this dissertation that the notion of charity is interpreted somewhat narrowly.

Registered charities are restricted not only in their objects, but their activities as well, notably advocacy. To become eligible for charitable status, one organization had to reduce its advocacy activities. The organization Youth and Human Rights received notification from the CRA that its application for charitable status would only be approved if it deleted the word ‘advocacy’ from the supporting documents. Deciding to forego advocacy entirely, the board instructed the staff to remove this activity from its application for charitable status and supporting documents. Fortunately, this organization, did not incur added expense, as a volunteer provided pro bono legal assistance. Once complete, the reapplication process for charitable status was relatively smooth and quick.

Need for legal expertise

A common finding across the entire sample, including those organizations with and without charitable status, is the need for legal assistance when preparing applications for charitable registration. Two-thirds of the entire sample (12 of 18) felt the need to access legal assistance in the preparation of their application. Of these twelve respondents, eight organizations hired a lawyer while the remaining four organizations had access to free legal assistance.

Impacts of charitable registration

Funding and heightened legitimacy

Respondents were asked to indicate the cumulative benefits since receiving charitable registration in the previous two years. Figure 5.1 reveals the impact of charitable registration on funding. A primary benefit indicated by all nine respondents, which have recently received charitable status, is the ability to expand and diversify funding opportunities. The nine respondents note that charitable status has had a significant impact on funding from funders who, by choice or by law, require a charitable registration number as a pre-requisite for funding. Several funders, such as United Ways, require applicants to have a charitable registration number in order to receive funding. This distribution of funding to charities, known as the disbursement quota, is a CRA requirement. Other funders, such as corporations, may have internal policies that require corporate dollars to only be allocated to registered charities.

In such instances, charitable status guarantees the ability to apply for new funding in which charities only compete with other charities. While charitable status opens the

door to new sources of funding, all nine respondents indicate that whether the organization successfully receives funding is partially dependent on other important forms of internal capacity. These include having qualified volunteers and staff to write strong funding applications and ensure the organization has adequate accounting, programming, human resources and evaluation processes.

Figure 5.1: Degree of impact on funding as a result of charitable status

N = 9 organizations with charitable status. Respondents were asked the following question: Could you please outline the top three benefits of receiving charitable registration and discuss any shortcomings with these benefits? Using the following scale, can you please indicate what kind of impact this benefit has had on your organization? No impact, somewhat of an impact, a moderate impact or a significant impact.

Besides providing new sources for funding available only to charities, respondents note that charitable status has a significant impact on other fundraising methods and outcomes (for example, mail campaigns, telephone solicitations, special fundraising sales/events, soliciting corporate sponsorship). Charities advertise their charitable registration number when employing these types of fundraising techniques. Respondents suggest that a charitable registration number sends two messages to potential donors: first, an income tax receipt is available for donations and second, charitable status provides legitimacy to the organization and therefore a perception that the organization is worthy of support. Five of the nine respondents suggest that charitable status has had a significant impact on

the credibility or legitimacy of their organization while two respondents indicate that the impact has been moderate (see Figure 5.2). One respondent suggests there has been somewhat of an impact while another respondent believes it is too early to know how its recent charitable status affects the organizations credibility or legitimacy.

Figure 5.2: Degree of impact on credibility or legitimacy as a result of charitable status

N = 9 organizations with charitable status. Respondents were asked the following question: Could you please outline the top three benefits of receiving charitable registration and discuss any shortcomings with these benefits? Using the following scale, can you please indicate what kind of impact this benefit has had on your organization? No impact, somewhat of an impact, a moderate impact or a significant impact.

The granting of charitable status indicates that charities have been reviewed by an outside body and as a result of the government's approval (rightly or wrongly) reinforces the public perception that the values of the charity must be worthy of support. Indeed, recent concerns about terrorist activities (for example, the bad press of some charities and the *Anti-Terrorist Act*) may put even greater pressure on charities to prove their legitimacy. Respondents note this is especially critical for leveraging other resources, especially financial and physical resources, for which donors may want the added security of knowing the organization is not a 'fly by night' operation.

Impact of charitable status on revenues

All organizations report increases in their revenue after receiving charitable status for a combined total of \$718,000. The average increase is \$79,778 with considerable variation as the lowest and highest reported increases were \$3,000 and \$200,000 respectively for all sources of revenue (including government and non-government funding such as donors and foundation funding). These figures were obtained through interviews and the use of 'hard' budget numbers (for example, T3010 and annual reports). As discussed in the following section, charitable registration has different impacts on the various funding sources including government funding (core and project funding, service contracts/fees) and non-government funding (United Way funding, corporate and lottery funding). The impacts of charitable status on various funding sources for these nine organizations are illustrated in Table 5.4. Regarding government funding, charitable registration had no impact on core funding or service contracts/fees for any of these nine organizations. Charitable status had a slight impact on project funding (less than a 10% increase in revenue for this type of funding). In terms of non-government funding, respondents indicate that charitable status is directly attributable for the increases in United Way funding, foundation funding and corporate funding. As Table 5.4 reveals, charitable registration accounts for a significant increase in foundation dollars. Almost half (46%) of the increases in revenue after receiving charitable registration stem from this type of funding followed by corporate funding (23%), lottery funding (11%) and United Way funding (11%).

Table 5.4: Impacts of charitable status on various funding sources

	Source of funding	Per cent of average increase in revenue (\$79,788) after receiving charitable status
GOVERNMENT FUNDING	Core	\$0
	Project	8% (\$60,000)
	Service contracts/fees	\$0
NON-GOVERNMENT FUNDING	United Ways	11% (\$78,000)
	Foundations	46% (\$332,400)
	Corporate dollars	23% (\$167,600)
	Lottery dollars	11% (\$80,000)

Government funding

Governments, including the federal, provincial/territorial, and municipal levels, provide 36% of funding to voluntary organizations excluding hospitals, universities and colleges (Canada, Statistics Canada, 2004b: 22). If hospitals, universities and colleges are included, then the amount of funding from governments to voluntary organizations increases to 49% (Canada, Statistics Canada, 2004b: 22). Much of this support is provided through grants, contributions or contracts. Grants are “unconditional transfer payments” made to voluntary organizations (Canada, Treasury Board, 1995). A common finding indicates that charitable status may have little ability to assist organizations in securing core operational funding through grants. All respondents note that grant funding is in short supply. One Executive Director laments, “since the federal government withdrew its grant funding, it is not that easily replaceable and charitable status does not help us here very much.” Another respondent notes, “government cutbacks to the core and increased competition cannot be outdone by the benefit of [charitable] status.” None of the nine respondents experienced an increase to their core funding levels stemming

from grants after receiving charitable status, but this is not surprising given that grant funding is not readily available.

While grants provide unconditional funding, contribution agreements and the use of contracts are conditional sources of funding. A contribution is “a conditional transfer made when there is or may be a need to ensure that payments have been used in accordance with legislative or program requirements” (Canada, Treasury Board, 1995: 6). A contribution agreement, also referred to as project funding, is a conditional transfer normally provided to support the organization’s projects. Comparatively, a contract “is used to obtain goods or services. It is an agreement between a federal government contracting authority and an outside party to purchase goods, provide a service or lease real property. Most often, the outside party is chosen through a competitive selection process” (Canada, Treasury Board, 1995: 6). Defined by government through a request for proposal process, contributions and contracts are similar funding instruments. The distinction between these two funding instruments is somewhat blurry as Phillips and Levasseur (2004: 454) attest,

Money that used to flow as grants with no conditions attached has been almost entirely converted to contribution agreements which, like contracts, require the pre-specification and production of concrete deliverables. In practice then, project funding became barely indistinguishable from contracting and an analysis of the contracting culture appropriately includes contribution agreements as well as contracts.

Two human rights organizations received government funding in the form of contributions after receiving charitable status that they did not receive before having status (see Figure 5.3). One organization experienced a modest increase of \$9,000 in contributions while the other organization received a significant increase of \$51,000.

Both organizations indicate the increases in revenue resulting from project funding are somewhat attributable to having charitable status as they had never received such funding prior to having charitable status. It is also possible that these two organizations would have received the funding even if they had not received charitable status since charitable status is not a requirement for funding. Or, it may be possible that public servants treat organizations with charitable status differently than those organizations without charitable status. To explore how public servants view charitable status when reviewing funding applications, interviews were conducted with federal public servants. The results, which are outlined later in this chapter, indicate that while there is no official policy that differentiates between charities and organizations without charitable status, some public servants may see charitable status as a stamp of approval. As a stamp of approval, charitable status may add some legitimacy to the funding application.

An environmental organization in receipt of government contributions and contracts prior to receiving charitable status experienced stable levels in this type of funding after receiving a charitable registration number. This may indicate that charitable status was not a factor in receiving this type of funding in the first place. Another human rights organization, which also received government funding prior to securing charitable status, saw a small decrease in this type of funding after receiving status. The senior staff person at this human rights organization does not attribute this decrease in government funding to receiving status. Instead, this decrease may have been the result of other factors such as increased competition for funding dollars or a change in funding priorities for the government.

Figure 5.3: Impacts of charitable status on project funding by cluster

N = 2 organizations with charitable status. Respondents were asked the following question: Thinking about other forms of funding, please indicate how much change has occurred for each type of funding, the possible factors that can explain this change and the portion of change due to having charitable status.

What do these results tell us as to the relationship between charitable status and these types of funding? There appears to be some positive impact on government funding after receiving a charitable registration number two of the organizations, but for others, funding levels remained the same or dropped slightly.

Non-Government Funding: United Way Funding

United Way funding, provided to social service organizations, is an important source of non-government funding for many charities. Started in Canada circa 1917 in Montreal and Toronto, the United Way is also known as the Community Chest, the Red Feather and the United Appeal in other countries. Today, there are 122 United Ways across Canada that have the unique advantage of fundraising through the workplace each year (United Way of Canada website, n.d.). Total monies raised in 2003 was nearly \$373 million, providing “direct financial support to more than 7,000 funded agencies and...funding to an additional 10,000 organizations through donor directed giving” (United Way of Canada website, n.d.).

The impact of charitable registration on United Way funding is noteworthy because a charitable registration number is a pre-requisite for this source of funding. The United Way is a registered charity and is able to receipt donations, but is designated as a public foundation by the CRA. A public foundation operates exclusively for charitable purposes and gives at least 50% of its annual income to other registered charities and qualified donees. As a public foundation, the United Way focuses on raising funds to support other social service charitable organizations in local communities.

None of the organizations from the environment and human rights clusters are eligible for United Way funding in their local communities (Figure 5.4). Despite having charitable status, these environmental and human rights organizations were unable to secure this type of funding because United Way funding is generally allocated to social service organizations. One organization in the prevention of poverty cluster is currently applying for funding. Another poverty organization recently received \$78,000 from its local United Way. The senior staff person from the latter organization notes that United Way money has had a positive impact on his organization because it is funding that can be used as core operational funding as opposed to funding tied to a project or service. United Way dollars constitute the most sustainable and flexible core funding available for this organization. United Way funding is not automatic or guaranteed funding, but depends on the objects of the charity. As such, not all registered charities are eligible for United Way funding. In this case, the charities dedicated to the prevention of poverty were successful because they meet the United Way funding requirements.

Figure 5.4: Impact of charitable status on United Way funding by cluster

N = 1 organization with charitable status. Respondents were asked the following question: Thinking about other forms of funding, please indicate how much change has occurred for each type of funding, the possible factors that can explain this change and the portion of change due to having charitable status.

Non-Government funding: Lottery Funding

Voluntary organizations can access lottery dollars to fund their programs and services. With the steady revenues stemming from diverse gambling activities (for instance, bingos, lottery tickets, VLTs, casinos, slots and race tracks), gambling has become “an entrenched part of the charitable sector” argues Azmier (1999: 2). Lottery dollars that support Canada’s voluntary organizations consist of two types of grants: *gaming grants* and *charitable gaming*.

Gaming grants, generated by gambling profits, are distributed by the provinces to support voluntary organizations. The provinces often allocate these gaming grants through public foundations such as the Ontario Trillium Foundation that receives \$100 million annually from the province’s charity casino initiative. These foundations receive applications from non-profit organizations for funding and allocate funding through a grant decision-making process. A survey conducted by the Canada West Foundation of 406 organizations in Alberta, Saskatchewan and Ontario that received gaming grants

between 1995 and 1998, sheds some insight into the importance of gaming grants on annual revenues (Berdahl with Azmier, 1999). Almost half of the survey respondents (46%) note that gaming grants represent a small portion of their 1998 budget (between 1-10%). One-fifth of the respondents note that gaming grants constitute half of their budget. These results indicate there is significant variability related to lottery funding.

Charitable gaming, according to Azmier (1999: 2), is the operation of games of chance for prizes that are operated by charities to include Nevada/pull tickets, bingos, raffles (and sometimes casinos). Charities thus generate their own gaming revenues. Because of restrictions in the *Criminal Code*,¹⁰² only organizations that are deemed charities by the provinces are able to directly participate in these gaming activities (Azmier, 1999; Canada, Statistics Canada, 2004b: 23). The ability of the provinces to determine which organizations are eligible for charitable gaming licenses is important to note as they have discretion to interpret charity differently than their federal counterparts. Indeed, the Alberta Gaming and Liquor Commission explicitly notes in its definition of a charitable organization that the “Commission is not bound by the definition of charity used by other authorities or jurisdictions” (2003: 2). One provincial officer responsible for charitable gaming indicates that this discretion is a necessity given that not all groups are eligible for status at the federal level or are not ready to apply for registered charitable status through the CRA. Some groups applying for charitable gaming licenses are simply too small to apply to become a registered charitable organization at the federal level, but

¹⁰² Gambling is prohibited as per the *Criminal Code* s. 206 except when managed by the provinces (s. 207 a) or for charities and religious organizations “pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme in that province if the proceeds from the lottery scheme are used for a charitable or religious object or purpose” (s. 207 b). Section 207 of the *Criminal Code* lists those permitted to engage in gambling.

they still require a license even if they are raffling off a small prize (a homemade quilt, for example). To strictly follow the federal approach to determine a charity would exclude many groups from the benefits of charitable gaming. While the determination of organizations deemed as charities in order to receive a charitable gaming licence will vary from province to province, one provincial officer responsible for charitable gaming notes that her Commission uses the following criteria:

- Examination of group's mandate;
- Whether the group is incorporated;
- Review of minutes from board meetings and AGMs; and,
- Review of financial statements.

Additionally, the group must confer a public benefit to the community at-large as opposed to conferring private benefits to the members of the group. This implies there is some difference between the provincial and federal levels as the provinces have their own processes for gaming commissions to determine the meaning of charity.

Charitable gaming revenues constitute a small percentage of total annual revenues for smaller and medium-sized organizations. For smaller organizations with budgets less than \$100,000, charitable gaming represents approximately 8% of total revenues (Canada, Statistics Canada, 2004b). Approximately 5% of the total budget of medium-sized organizations with budgets between \$100,000-\$249,999 originates from charitable gaming (Canada, Statistics Canada, 2004b).

Of the respondents in this study considering lottery dollars, a human rights charity organization recently received \$80,000 from a gaming grant in which charitable status was not a pre-requisite for funding. Since charitable status is not a prerequisite for lottery funding, this charity may have received said funding even if it did not have status and thus may suggest a spurious finding. Another organization dedicated to promoting

affordable housing is currently preparing its application for a charitable gaming license, which requires the organization be deemed a charity by the provincial gaming authority. The majority of respondents (seven) have not yet applied for lottery dollars with most citing ethical concerns about the relationship between gambling and social decay.¹⁰³

Non-Government funding: Foundations and Corporate Dollars

Changes in revenue after receiving charitable status are largely the result of corporate and foundation funding with respondents directly attributing these changes to having a charitable registration number. Six of the nine organizations in the sample targeted corporate dollars after receiving charitable status and all six organizations have experienced increases in their revenues from this source of funding. These six respondents note that the corporations they solicited required charitable status.¹⁰⁴ Each of the three environmental organizations received a small amount of corporate funding ranging from \$3,000 to \$5,000. Two organizations dedicated to the prevention of poverty received significant corporate funding in the amounts of \$50,000 and \$103,600. Only one human rights organization received corporate funding in the amount of \$2,500 (see Figure 5.5). These figures indicate that charitable status was important for leveraging corporate dollars for these six charities. The remaining three organizations have not yet applied for corporate support. These three organizations opted to pursue other types of

¹⁰³ For the ethical implications of gambling for the sector see Azmier with Roach, 2000.

¹⁰⁴ Gambling is prohibited as per the *Criminal Code* s. 206 except when managed by the provinces (s. 207 a) or for charities and religious organizations “pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme in that province if the proceeds from the lottery scheme are used for a charitable or religious object or purpose” (s. 207 b). Section 207 of the *Criminal Code* lists those permitted to engage in gambling.

funding, namely foundation funding, as they believe they would have more success with foundation funding than corporate funding at this time.

Figure 5.5: Impacts of charitable status on corporate dollars by cluster

N = 6 organizations with charitable status. Respondents were asked the following question: Thinking about other forms of funding, please indicate how much change has occurred for each type of funding, the possible factors that can explain this change and the portion of change due to having charitable status.

Being registered with the Charities Directorate is mandatory in order to directly receive funding from private and public foundations since these foundations must meet their disbursement quotas per the *ITA*. The use of a fiscal agent allows foundations to provide funding to organizations without charitable status is discussed later in this chapter. Five of the organizations in the sample experienced increases in private and public foundation funding after receiving charitable status (see Figure 5.6). Indeed, private and public funding accounts for almost half (46% or \$332,400) of the total increases in revenue for these organizations after they received charitable status (see Table 5.4). These results may suggest that organizations are turning more to private and public foundation funding once they receive charitable status than other funding sources. The comments of one respondent confirm that her organization is now dependent on private and public foundation funding, “Once we received charitable status, our funding

has largely been from charitable foundations [and much of] our budget now comes from charitable foundations”.

Figure 5.6: Impacts of charitable status on foundation dollars by cluster

N = 5 organizations with charitable status. Respondents were asked the following question: Thinking about other forms of funding, please indicate how much change has occurred for each type of funding, the possible factors that can explain this change and the portion of change due to having charitable status.

Two environmental organizations received foundation support in the amounts of \$35,000 and \$130,000 while two human rights organizations received \$26,000 and \$111,400. Only one organization dedicated to the prevention of poverty received this source of funding in the amount of \$30,000. The other four organizations have not yet applied for foundation funding at the time of the interview.

Being part of networks

Charitable status has an impact on the ability to be part of networks for some charities in two key ways. Charitable status may be necessary to penetrate some sector networks that prefer to work with other registered charities; and, charitable registration may provide increased capacity for organizations to maintain and advance their position within the network.

For some sector networks that are largely comprised of charities, charitable registration may be initially important for organizations to penetrate these types of networks. An Executive Director from an environmental organization suggests there was a significant impact on the ability of her organization to penetrate a sector network as a result of having charitable status (see Figure 5.7). She notes that the organization had some involvement with sector networks, but its involvement increased significantly after receiving status. She notes that this impact is entirely due to having charitable status in that they “now work with other groups like [our]selves” who are also charities.

Two organizations suggest their ability to be part of a network was somewhat impacted by having charitable status. One Executive Director states that there are some sector networks that prefer to work with other charities so having charitable status is important in those instances. A senior Board member of the other organization states that while charitable status has partially impacted the ability of the organization to become part of a network, she feels this has more to do with having a good reputation for doing good work than just having charitable status. Four organizations felt that charitable status had no impact on their ability to be part of a network. The remaining two organizations were unable to answer this question, as they do not participate in networks.

One respondent notes that the ability of his organization to actively participate in a network largely depends on what his organization can offer. Maintaining and advancing one’s position in a network requires resources such as qualified staff, dedicated volunteers backed an effective volunteer management program, organizational and administrative processes, research and policy analyses capabilities, legitimacy, a good

Figure 5.7: Degree of impact on being part of networks as a result of charitable status

N = 9 organizations with charitable status. Respondents were asked the following question: For each of the following areas, please indicate how each area has changed over this time period and cite possible factors accounting for this change. Please outline what portion of this change is due to receiving charitable status.

reputation and the ability to work collaboratively. Certain resources such as budgets and access to personnel are especially important as Klijn and Koppenjan (2000: 144) argue:

Actors recognize / acknowledge that certain resources are relevant or even necessary to the realization of policy outcomes. These resources provide actors with veto power. The resources enable them to veto interaction processes and they thus acquire a privileged position in the network and in the games within that network. The greater the veto power of an actor, the more indispensable the actor is to the policy games. The success of policy games is thus partially determined by the degree to which indispensable resources, and the actors who own them, are involved.

Charitable registration generates capacity (for example, through expanded and diversified funding, but also through heightened legitimacy as discussed above) for organizations to support these critical aspects of participating in networks. Increased capacity may translate into the ability to offer more to network partners, but also the opportunity to change the power relations dynamic (for example, move into the inner network circle of actors involved in day-to-day policy matters) within the network and change the way the

network operates. This indirect relationship between charitable registration and the ability to become part of networks is important to note since networks are an important mode of collaboration under governance.

Being consulted by government

Five of the organizations did not experience increases in being consulted by the government as illustrated in Figure 5.8. This may suggest that consultations are not formally linked to charitable status. That said, the experiences of two organizations might indicate that charitable status may have qualitative and indirect impacts on being consulted by the government.

Figure 5.8: Degree of impact on being consulted by government as a result of charitable status

N = 9 organizations with charitable status. Respondents were asked the following question: For each of the following areas, please indicate how each area has changed over this time period and cite possible factors accounting for this change. Please outline what portion of this change is due to receiving charitable status.

An organization dedicated to the prevention of poverty experienced a significant change in being consulted by government since receiving charitable status. This change, however, is not a quantitative change. Quantitative change refers to the number of times that an organization is sought by the state for consultation before and after charitable

status is awarded. Instead, this is a qualitative change because the organization is now “taken more seriously during consultations”. The Executive Director attributes this qualitative change to having charitable status and the recognition of legitimacy that is attached to that status.

Another respondent also notes that his poverty organization experienced a moderate increase in being consulted by government since receiving charitable status. The Executive Director notes, however, the relationship between status and being consulted by government is rather indirect and cites other possible factors accounting for this change,

The growth in the demand for services is one other factor to consider. The other is the growth in the organization and the kinds of networks and relationships we cultivate with government. Only staff [members have] the time to nurture these relationships and their positions are funded by core funding via the United Way. Our ability to be consulted by government is dependent on our capacity, which is dependent on having status.

Overall, it appears that charitable status may not matter to consultation. Lindquist’s (2005) review of the consultations organized by the then HRDC on social security reform in 1994 reveals that this mega-consultation used a wide array of instruments such as MP town hall forums, workbooks and public seminars. A total of 637 interest groups and 20,000 citizens were consulted, which may indicate that charitable status did not appear to matter to this mega-consultation.

Access to the government as an advocate

The impact of charitable registration on the ability of organizations to be advocates appears to vary as illustrated in Figure 5.9. For five of the nine organizations, charitable

status has had no impact on their ability to advocate. None of these five organizations engage in advocacy activities either because they prefer to concentrate on service delivery or they feel that they do not have the adequate capacity to take on an advocacy role. With little interest in being advocates in the public policy process, it is not surprising that there was no ‘trade-off’ between securing charitable status and reducing advocacy for these organizations.

Figure 5.9: Degree of impact on advocacy as a result of charitable status

N = 9 organizations with charitable status. Respondents were asked the following question: For each of the following areas, please indicate how each area has changed over this time period and cite possible factors accounting for this change. Please outline what portion of this change is due to receiving charitable status.

Four organizations in the sample indicate that charitable status has had a negative impact of charitable status on their ability to advocate both now and in the future. Two respondents suggest there has been ‘somewhat’ of a negative impact. For one of these organizations, charitable status has not had an immediate impact, but it potentially jeopardizes the organization’s future ability to advocate once it cultivates enough capacity to engage in advocacy. While this organization has not engaged in a lot of advocacy activities, it concedes that its future ability to engage in advocacy will be constrained because of securing charitable status.

Two organizations suggest the impact has been moderate. As one senior Board member notes, “charitable status moderately impacts us in a negative manner in the sense that we now shy away from public policy development and that is entirely due to having charitable status”. Although this charity would prefer to have maintained its involvement in public policy development, it changed its governing documents to reflect its decision to completely “forego advocacy [altogether] in the sense of participating in public policy development”. This decision to forego advocacy was made to ensure that the application for charitable status was approved without delay. As a result of this decision, this charity was unable to enter into the same-sex marriage debate even though it related to its object to promote equality. These organizations indicate there was a ‘trade-off’ between securing status and reducing / foregoing advocacy. One Executive Director notes, “there was a trade-off and we had a long debate about it, but settled on charitable status for sheer survival.”

Regarding the awareness of the former 10% rule, seven of the nine respondents stated they were aware of the rule compared to two respondents who were unaware. When asked to indicate whether they were familiar with the new advocacy guidelines prepared by the CRA effective September 2, 2003, which create a sliding scale of acceptable levels of advocacy for smaller charities, only one respondent was familiar with this new development. The remaining respondents were unaware of the details surrounding the new policy statement regarding advocacy.¹⁰³ This suggests that the CRA needs to continue its communication efforts regarding the new guidelines particularly to

¹⁰³ Berry’s (2005) study of American charities found that many groups do not know the rules regarding advocacy.

smaller organizations with an emphasis on those organizations located in rural and remote areas of Canada.

In short, the impact of charitable status on advocacy appears to vary for these nine organizations. For five organizations, there was no impact resulting from receiving charitable status. These organizations, however, have never been involved in advocacy either because they prefer to concentrate on the delivery of goods and services or because they do not have sufficient resources. For four organizations, however, there was a negative impact meaning the organizations had to make a difficult choice: reduce their advocacy activities in order to secure charitable status or maintain their advocacy activities and operate without charitable status. They chose charitable status over advocacy.

Impact of charitable registration on how government officials deal with voluntary organizations

This research attempts to understand how charitable registration impacts voluntary organizations. An equally interesting and legitimate question to ask is whether charitable status has any impact on how government officials deal with funding requests from voluntary organizations. Five key themes arose from discussions with government officials responsible in relevant funding departments.

First, all five public servants note that making generalized conclusions about public sector funding and its relationship to charitable registration is a difficult task given the many levels of public sector funding (federal, provincial, municipal and other levels).

Even with a focus on federal funding, making generalizations is still difficult given the numerous funding departments within the federal government.

Second, all five public servants note that charitable status is not a pre-requisite for federal funding within their programs or departments. In theory, having charitable status has no impact on how these government officials deal with voluntary organizations. One official from Canadian Heritage notes, "In my experience, I have not seen any explicit policy to this effect in any department. Most of the Terms and Conditions...[allow]...both types of organizations [to be] eligible."

Third, while all the public servants note that charities and organizations without charitable status are eligible for government funding, two suggest that the ability to attract other funds may be an important consideration. Since the 1990s, the federal government has stressed the importance for voluntary organizations to become self-sufficient and diversify their funding bases. Given that all nine respondents suggest that charitable status has had a significant impact on funding, charitable status may make it easier to expand and diversify funding opportunities. "Self-sufficiency", a Canadian Heritage official notes, "is not a real determinant in the decision to recommend a project [and consequently funding], but it can influence the assessment of the organization".

Fourth, two public servants, one from Canadian Heritage and the other from (then) Social Development Canada, note that charitable status may be perceived as a seal of approval. The public servant from the latter department suggests,

When reviewing proposals from non-governmental organizations, some officers and programs will give more credibility to charitable status organizations. I think [this is] largely due to the assumption that meeting the [Canada Revenue Agency] conditions makes them somewhat more legitimate than other non-profits. In the wake of the grants and

contributions scandal, a much stronger emphasis has been placed on accountability. This is a tricky game because most of the instruments we have do not measure effectiveness very well. We tend to track financial activity very closely, but it doesn't tell us with any precision whether the organization is doing what it intends to do. Under the circumstances, we search for any possible indications of an organization's reliability. Having achieved charitable status is one of those indicators.

The comments made by the other public servant reflect this possibility,

It has been recognized by a number of program officers that having charitable status is seen as having a type of seal of approval. Since they are registered and regulated by the Canada Revenue Agency, then they are seen as having some organizational capacity and competence. I have to admit that this does have an impact on an officer's perception of the group, but most times, the decision to recommend a project comes from the project itself and the ability of the group to meet all of the bureaucratic requirements.

Fifth, public servants may view organizations with charitable status as having better administrative capacity. According to one program officer from Health Canada who is responsible for allocating contributions and contracts, working with charities makes for a smoother process overall because they tend to have better administrative processes. Applications for public sector funding are assessed on many criteria such as the strength of the application, organizational capacity (for example, can the group execute the project), board governance, by-laws and good reporting processes. She notes that the funding applications from charities are generally more sophisticated, partially because of charitable status, but also sometimes because of the size of the charity. Charities, she asserts, have better financial reporting processes partly because of the reporting requirements to the CRA. Another project manager from Health Canada, also responsible for allocating public sector funding, notes that having charitable status never

harms an organization's application for funding and may make it easier for a charity to collect public sector dollars because they tend to have greater capacity.

While charitable status does not appear to be a pre-requisite for federal government funding according to these five public servants, it may have an impact as to how public servants perceive voluntary organizations. Rightly or wrongly, having charitable status may be seen as producing a reliable recipient of government funding according to these public servants.

Impacts of non-registration

Nine organizations, all of which lack status, provided insight as to whether they were able to secure alternate forms of resources to buffer the lack of status. Of the nine, seven organizations do not have status because their advocacy activities exceed the maximum ceiling limits imposed by the government. The remaining two organizations lack status because their objects were not viewed as entirely charitable by the CRA (see Table 5.5). Readers will notice that two of the budgets of these organizations fall outside of the range of \$30,000 - \$250,000 that was established as the parameter for sample selection amongst organizations that recently received charitable status. With no public list of organizations lacking status made available by the Charities Directorate, this research relied on a snowball sampling technique. Despite many contacts with other academics, voluntary sector leaders and charity lawyers, the list of eligible organizations was very small and thus it was decided that there could be more flexibility with the budget since this section

Table 5.5: Overview of organizations lacking charitable status* either denied status or have never applied for status as they believe the application would be denied.

	Human Rights			Prevention of Poverty			Environment		
	Building a Dialogue of Rights	Human Rights Awareness	Support for Human Rights	Poverty for No One	The Education Centre	Families in Crisis Society	The Friendly Environmentalists	The Green Society	An Eco-Friendly Canada
Objective	To protect and advance democratic principles in Canada and abroad	To protect the rights of citizens in Canada and abroad through programs and services	To protect and advance human rights in Canada	To eradicate poverty through programs and advocacy	To promote education as a way of preventing poverty	To support those families in need of support during a crisis	To promote sustainable development throughout the world.	To promote better environmental choices among Canadians	To protect the environment through programs and services.
Budget range**	\$30,000 - \$50,000	\$30,000 - \$50,000	\$50,000 - \$75,000	\$30,000 - \$50,000	\$50,000 - \$75,000	\$125,000 - \$150,000	\$125,000 - \$150,000	\$10,000 - \$30,000	\$10,000 - \$30,000
Scope	National / International	National	National	Provincial	Provincial	Provincial	National / International	National	Local
Reason given by the CRA for denying charitable status	Performs too much advocacy	Performs too much advocacy	Performs too much advocacy	Performs too much advocacy	Performs too much advocacy	Objects not seen as entirely charitable	Objects not seen as entirely charitable	Performs too much advocacy	Performs too much advocacy

* These are pseudonyms.

**In some cases, verifiable information such as an annual report was not available so these figures are presented in a range and rely on the information provided by the respondent and website searches.

does not involve direct comparisons of budgetary information. Instead, this section is more exploratory in nature to understand the potential substitutes for a lack of status.

Respondents note their uneasiness associated with making a decision to either change their objects and activities so as to secure charitable status *or* to operate without charitable status keeping the objects and activities intact. One respondent argues,

I'm really not sure that we would be willing to change who we are and how we do things, just to get charitable status. Our members had extensive, often difficult discussions about 'selling out' for funding. We did make some changes, and there were mixed feelings about those changes, so it is unlikely we would go any further to ensure that our application is accepted.

For these nine organizations without charitable status, developing alternate forms of resources to buffer the denial of charitable status is an important task.

Alternate forms of resources to buffer the denial of charitable status

There are several ways in which organizations can compensate for the lack of charitable status in order to build capacity. Respondents were asked an open-ended question as to whether alternate forms of resources (for example, the use of volunteers) have been able to compensate for the lack of charitable status. Respondents were then asked to identify each alternate form of resource and explain exactly how and how much they compensate for a lack of status.

Volunteers

Of the organizations without charitable status, four cite the use of volunteers as a means of cushioning the impact of a denial of charitable status. Organizations dedicated to program and service delivery appear to rely on volunteers more than those organizations

that are slightly more advocacy oriented. The remaining five organizations have not developed their volunteer resources because recruiting and retaining volunteers is difficult and these organizations opted to “raise cash to survive by other means than volunteers” according to one environmental organization. Two of these four organizations use volunteers to deliver programs and services while one organization uses volunteers to raise money. Another organization uses volunteers to both raise funds and deliver programs and services. Maintaining a successful volunteer program, however, requires capacity to do so, given the necessary components of an effective volunteer management program including record keeping, job design, recruitment, interviewing / screening, training, retention and recognition. While these organizations opt to concentrate on the development of volunteers, they note the need for adequate capacity to hire a staff person to coordinate the volunteers. They also note the difficulty in increasing capacity to operate an effective volunteer program. Thus while relying on volunteers is one mechanism for organizations to buffer the lack of charitable status, its overall effectiveness appears somewhat in question as one respondent notes,

We rely on volunteers for much of our work right now, but they cannot compensate for lack of charitable status. Our activities require at least two full-time staff as well as some part-time staff. The problem with relying on volunteers is that you cannot force them to show up, so while they are of great help in getting some of our work done, we need staff to ensure that our research and other projects get completed.

Fiscal agents

Two organizations cite the use of a fiscal agent relationship to buffer the lack of charitable status. One other organization is currently considering the use of a fiscal agent. The remaining six organizations have not considered this option.

Legally, the fiscal agent relationship occurs when an agent is appointed by a principal to perform specific tasks as outlined by the principal (Hunter, 2002-2003: 53). Fiscal agents are commonly used by Canadian charities that operate overseas because they often have the need to contract with local individuals or organizations to get the work done.¹⁰⁴ For example, a Canadian charity dedicated to providing food and clothing to individuals in developing countries may need agents to distribute the supplies (Canada, CRA, 2000). In this scenario, the charity is the principal and the foreign associate is the agent that follows the instructions of the charity. Agents must execute the charity's work "consistent with the charity's charitable purposes" (Hunter 2002-2003: 55). The CRA has a policy statement concerning the use of fiscal agents, but is aimed at the foreign activities of registered charities outside of Canada. The rules aimed at the use of such agents on the international scene remain the same for domestic charities wishing to use an agent to carry on charitable activities here in Canada.¹⁰⁵

The use of the fiscal relationship involves three parties: the funder who is required to allocate dollars only to registered charities, the organization without charitable status wishing to receive said funding and a charitable organization. The charitable organization agrees to receive the grant from the funder and sub-contracts the organization without charitable status to act as its representative in delivering services and programs. The charity does not pass along the funds in the form of a grant, but sub-contracts the organization without charitable status to complete certain tasks. In order to

¹⁰⁴ The CRA "requires that the Canadian charity have a written agency agreement with its foreign associates" (Hunter 2002-2003: 54).

¹⁰⁵ This information was provided by a respondent, a voluntary sector leader.

use the fiscal agent relationship, the mandates of the registered charity and the organization without charitable status must be compatible as outlined in a signed formal agreement. The registered charity must accept responsibility for the funding dollars and ensure the dollars directed to the project are used in the way it was intended by the funder. Financial responsibility rests with the registered charity and the charity must be able to show it has control over the direction of the programs and services in addition to control over the use of resources.

One Executive Director relays her experience with the use of a fiscal agent. Her organization submitted an application for a charitable registration number to the Charities Directorate. Confident about securing charitable status, she also simultaneously submitted an application to a public foundation in which charitable status was a prerequisite for funding. Several months later, the organization received confirmation of funding from the public foundation, but also received word from the Charities Directorate that its application for charitable status was denied as the objects were not entirely charitable. The funder, still wishing to see the money allocated to this organization, worked with a registered charity to establish a fiscal agent relationship. The registered charity and this organization without charitable status shared a similar mandate. When the charity received funding from the public foundation, it then hired the organization without charitable status to perform certain tasks within the community. Most of the money was transferred from the charity to the organization without charitable status minus an administration fee estimated at 10-20% of the total grant.

On the one hand, the use of a fiscal agent offers opportunities for funders to allocate their charitable dollars to worthy organizations without charitable status, albeit

indirectly. One funder described the use of a fiscal agent as a useful mechanism to allocate funding dollars to small grass-roots community organizations in which charitable registration is not likely an option. Some small organizations have no intention of becoming formal and professional. This may mean that charitable status is not an option because these types of organizations are not in a position to handle the administrative load associated with having a charitable registration number.

On the other hand, an arising question from the use of a fiscal agent relationship concerns the power relations dynamic between the funder and the registered charity and whether the registered charity feels as though it is in a position to say 'no' to a funder's request to act as an agent. While it appears to have been somewhat successful in providing support to organizations without charitable status organizations without charitable status, these arrangements are a rather convoluted way of securing resources requiring increased paperwork and possible legal fees to prepare an agreement among the parties.

Membership fees

Another means of building capacity is the use of membership fees. Only one environmental organization of the nine organizations in the sample instituted membership fees while also attempting to raise money through the sale of items such as a calendar. While it experienced some success, the amount of money raised overall fell significantly short of the amount needed to operate the core of the organization because its membership base is quite small. According to the 2003 survey of non-profit and voluntary organizations in Canada, membership fees generally account for only 11% of

total revenues so it is unlikely that there will be major expansion in this revenue source (Canada, Statistics Canada, 2004b: 24). Membership fees are an important source of revenue for certain types of organizations that can more easily draw on constituents as members including business/professional associations, environmental groups, sports organizations, and legal/advocacy groups (Canada, Statistics Canada, 2004b).

'Sister' or 'second' organizations

Another option is to alter the institutional configuration of the organizations to get around the restrictions on charitable status, in effect to have it both ways. Two organizations - one human rights organization and one environmental organization - opted to split the organization into separate organizations thus hiving off all the charitable activities to one organization, which should receive charitable status, and the non-charitable activities (i.e. advocacy) to the other organization. Given the considerable paperwork involved in pursuing this option, the remaining seven organizations have not contemplated this option.

We can consider the experience of one environmental group as it attempted to compensate for the lack of charitable status by splitting the organization. This organization was denied charitable status in Canada because it was deemed to perform too much advocacy. In response, three organizations were created: a registered charity in the USA; a registered charity in Canada; and a non-registered charity in Canada.

It first established an identical sister-organization in the USA, which applied for charitable status under section 501 (c) (3) of the *Internal Revenue Code* and was granted status. The most telling aspect of this story concerns the fundamentals of non-partisan

advocacy in the United States, which are “not markedly different from Canadian regulations” (Harvie, 2002). Overall, however, Americans are more accommodating of advocacy. So even though excessive non-partisan advocacy will, as in Canada, prevent an organization from being registered under section 501(c)(3), there is considerable latitude within the American voluntary sector. This organization pursued this opportunity since the American sister-organization can raise funds for self-sufficiency while also lobbying the Canadian government without restrictions.

After establishing a new American sister-organization, it then split the Canadian organization into two separate organizations: a charity solely dedicated to research and a non-profit solely dedicated to advocacy. The new organization dedicated to research received charitable status and is financially self-sufficient whereas the new advocacy organization has difficulty raising funds. In sum, three new organizations were formed in response to the denial of charitable status: a sister-organization registered as a 501(c)(3) in the US, a Canadian research organization with charitable status and a Canadian advocacy organization without charitable status and struggling to survive.

Although this option has helped the organization continue its work, it has also created significant negative impacts. The paperwork has become an administrative nightmare according to the Executive Director. The organization relies heavily on the advice of paid lawyers meaning that resources are used to support this survival mechanism. The paperwork is complex, indeed, self-described as being onerous for its small staff. Even a relatively simple task like receipting a credit card donation is complex. There are three different credit card accounts for each of the three organizations so receipting a simple credit card donation requires more time, more paperwork and more

training for the staff. Also, three sets of financial statements and three sets of Boards are required. The board members are confused by the situation while trying to swim in all the paper in an attempt to provide due diligence. The Executive Director expressed concern about the potential difficulties that may arise in trying to recruit board members given the confusing nature of these three organizations and how they relate to each other. In addition, this buffer mechanism has increased the administrative duties for this organization. The Executive Director spent nearly three months working full-time in the first nine months of the 2004 on administrative tasks to establish this buffer mechanism thus allowing less time for her to work on programs and services that directly relate to the object of the organization. While splitting the organization generates some benefits for the organization, these benefits come with both short- and long-term negative impacts.

Conclusion

This was a small exploratory study of nine organizations with charitable status and nine organizations that lack status. As such, the results cannot be generalized across the diverse population of Canadian voluntary organizations, but this study is the first of its kind and there is a degree of transferability in the results.

The results suggest that charitable registration has had a significant impact on the ability of these nine charities to generate financial resources. Charitable registration is also seen as positively benefiting the legitimacy of eight of the nine organizations. Although charitable registration generates positive impacts related to financial resources and legitimacy, these results also suggest that it has a negative impact in relation to the ability of charities to advocate for four of the nine organizations. This procedural

instrument delivers real benefits, especially diversified funding opportunities and heightened credibility, which help develop the capacity of governance partners. While this procedural instrument improves the capacity of charities, it also limits their ability to advocate, which is also an important consideration in light of governance.

Organizations without charitable status experienced negative impacts from the inability to register. While these organizations were able to access the government as an advocate without constraints, respondents relayed multiple examples of frustrating experiences when trying to develop alternate resources to cushion the lack of charitable status. For example, using volunteers as a means to buffer a lack of status still requires qualified staff to manage the volunteers. Securing financial resources to effectively manage volunteers or even core operations appears to be a difficult task. The old adage that ‘volunteers are free’ is sorely misleading – a strong operational core is an important requisite for this alternate resource.

Other attempts, such as the use of a fiscal agent or splitting an organization, appear to have some success. This success, however, is tempered by both direct and indirect costs associated with such buffer mechanisms. The direct costs include legal fees and the time spent by staff and volunteers to complete increased paperwork. The indirect costs include reduced time for staff and volunteers to focus on the objects of the organization because they are involved in extra paperwork and securing buffer mechanisms. It may also be difficult for these organizations to retain and recruit staff and volunteers given the complex paper systems and focused energy on securing buffer mechanisms at the expense of serving the objects. This also compromises transparency and accountability. The need to develop alternate forms of resources to buffer a lack of

charitable status may make it difficult for some organizations to transform into governance partners and thus reduce the number of partners available for partnering.

This is not to suggest that organizations without charitable status are unable to survive without charitable status. The chapter merely highlights that both charitable registration and non-registration have positive and negative impacts. Based on this analysis, it concludes that while the results presented in this chapter are somewhat mixed, charitable status matters under a governance framework because it can assist in the development of governance partners. An expansion in the meaning of charity means that organizations may have an opportunity to diversify funding opportunities and possibly experience heightened legitimacy. In addition, some organizations may be able to penetrate networks or more easily gain allies as a result of status.

An expansion in the meaning of charity, coupled with a liberalization of the advocacy rules, would mean that organizations will have greater room to access the government as advocates. Such an expansion may have an impact on the treasury however. The next chapter outlines the concerns associated with an expansion of the meaning of charity.

Chapter 6

Support and Resistance: Public Policy Change

Attempts to achieve change in the legislation, policies and practices that guide the determination of charitable status has had support from both the sector and within the federal government, but has also met with some resistance. Specifically, Canada's voluntary sector and the Charities Directorate, both of which played important roles on the JRT of the VSI, have pushed for policy changes with some moderate success. Overall, however, the changes fall somewhat short of overcoming the public policy issue associated with charitable registration.

This chapter analyzes the support for, and resistance to policy change. It begins with an overview of the historical events that transformed charitable registration into a public policy issue. The chapter then examines how the leaders in the voluntary sector united and worked with the federal government to respond to public policy issues facing the voluntary sector. An examination of the two key federal entities responsible for the policy instrument of charitable registration reveals that a difficult relationship exists between the Charities Directorate and Finance. The former is in support of policy change, but has little power to do so whereas the latter is somewhat resistant to policy change, but has significant power. The chapter concludes with four explanations why there is some resistance to policy change in relation to the meaning of charity and advocacy.

Institutionalism and understanding resistance and change

From an institutional perspective, institutions shape policies and establish the conditions under which actors must operate. They also "routinize their activities" and create "forces of inertia" against change (Peters, 1999: 64). By doing so, the path dependency thesis

suggests that institutions and organizations follow paths of behaviour and display continuity once a chosen path is selected based on powerful historical events. Institutionalism has largely explained change as the result of exogenous factors or punctuated equilibriums (war, for example) that produce instability (Krasner, 1984). When existing paths or approaches become destabilized due to the impact of exogenous forces, realignment among ideas, interests and actors often occurs to produce significant change. Such large-scale change is rare however. As such, the institutional literature suggests there are long periods of relative stability with only occasional changes (Pierson, 2001) meaning that institutionalism is “better suited to explain the persistence of patterns than to explain how those patterns might change” (Peters 1999: 68). Within this view, policy actors such as voluntary organizations would not likely experience success in changing policy or the conditions imposed on them by the institutions.

A new approach to understanding change within institutionalism, referred to here as the path-shifting approach, is unfolding however. This approach examines smaller, endogenous forces that work to make changes in the conditions and constraints established by institutions. Actors with differing ideas and interests, such as voluntary organizations, work to influence institutions and press for change in the conditions and under the constraints in which they must operate (Crouch, 2005; Dobrowolsky and Saint-Martin, 2005; Streek and Thelen, 2005). The entrenched view of path dependency and ability for change to occur is challenged in this approach. Changes are not large like the exogenous forces described above, but tend to be smaller changes (Streek and Thelen, 2005). To those actors who are impacted by the institutions, however, these subtle

changes can generate important improvements in the conditions, constraints and future opportunities.

As described below, the Department of Finance has been somewhat resistant to policy change whereas the voluntary sector and the Charities Directorate have been more supportive of policy change. Despite the resistance, change did occur and some of this change was endogenous and intentionally incremental. Such changes are qualitatively significant because they can alter current paths that may lead to future change. To understand how paths have been altered through endogenous, incremental change, we must carefully examine both the support of and resistance to policy change related to charitable registration in Canada.

Support for public policy change

While charitable registration has been part of Canada's tax system since 1917, it has only emerged as a public policy issue in the early- to mid-1990s. Two specific events catapulted the issue of charitable registration onto the public policy scene according to Drache (2002a). The first event was the introduction of the Goods and Services Tax (GST) under former Prime Minister Brian Mulroney. The GST, as a regressive consumption tax, would have had a negative impact on charities. In response to concerns raised by charities, the federal government offered GST rebates to offset the negative impact on their finances and their ability to offer programs and services. This event, he argues, led to an increase in the number of applications for charitable registration since GST rebates required a charitable registration number. According to Drache (2002a: 44), however, "many of the applicants found, to their surprise, that their worthy activities did

not fit within the traditional common law definition of 'charity' as determined by the then Revenue Canada".

The second event concerns the significant reduction of government funding to voluntary organizations in an attempt to reduce the deficit (Drache, 2002a; 2002b). Particularly hard-hit were groups that engaged in advocacy. At the same time, these groups also faced increased demand for their services as the government reduced its own involvement in the delivery of programs and services to Canadians thus shifting greater burden of social programming to voluntary organizations (Hall and Reed, 1998).

Charitable registration, therefore, had not always been a public policy issue because stable government funding was available prior to the mid-1990s.¹⁰⁶ When government funding was reduced, Drache (2002b) suggests that groups applied for charitable registration as a means of buffering the withdrawal of government funding, but were denied status.¹⁰⁷ Given that the current capacity issues of voluntary organizations are limited, the public policy issue of charitable registration has gained significant importance in the last decade.

The need for change did not rely solely on practical financing concerns. Rather, the voluntary sector advocated for change based on principle as well. In the 1980s, there was frustration with the inconsistencies of granting charitable status, but there was also frustration because other countries were re-organizing their legal and regulatory frameworks differently as they pertained to the meaning of charity (Ontario Law Reform

¹⁰⁶ Two organizations that were interviewed for this study indicate that they largely relied on federal government funding. When the federal government funding was reduced, these organizations turned to charitable status as a means to buffer the withdrawal of federal government funding.

¹⁰⁷ Drache (2002b) does not provide evidence in his text, but instead makes this argument as to how organizations would approach a sudden withdrawal of funding.

Commission, 1996).¹⁰⁸ It was this frustration that led to voluntary organizations working together in the early- to mid-1990s to evoke change.

Uniting the voluntary sector: Early- to mid-1990s

The emergence of the public policy issue concerning charitable registration coincided with the political mobilization of the voluntary sector in Canada. Prior to 1994, the voluntary sector in Canada was largely invisible. It was comprised of many different sub-sectors such as the arts, environmental and health, but was not seen as a unified sector (Floyd, 2004). The Voluntary Sector Roundtable (VSR) was established in 1995 as an unincorporated group of 13 representative umbrella organizations.¹⁰⁹ Its priorities were fourfold: improvement of charitable tax credits for donors, the definition of charity, building a dialogue with the federal government and issues of accountability (VSR, 1997). The work of the VSR in the area of improving charitable tax credits proved successful as the 1996¹¹⁰ and 1997¹¹¹ Federal Budgets contained provisions to expand charitable tax incentives.¹¹²

¹⁰⁸ For example, the CCEW was already established in the 1980s and had some independence from the Minister of National Revenue. Two leaders in Canada's voluntary sector note this frustration during their interviews.

¹⁰⁹ These include Canadian Centre for Ethics and Sport, Canadian Centre for Philanthropy, Canadian Conference of the Arts, Canadian Council for International Cooperation, Canadian Council on Social Development, Canadian Environmental Network, Canadian Parks/Recreation Association, Community Foundation of Canada, Representative from the Faith Communities, Health Charities Council of Canada, The Coalition of National Voluntary Organizations, United Way, and Volunteer Canada.

¹¹⁰ The 1996 Federal Budget increased the annual ceiling on eligible donations to 50% of net income or 100% of net income in the case of a bequest.

¹¹¹ The 1997 Federal Budget increased the allowable amount of donations for which the charitable tax credit can be claimed to 75% of income. To increase the donation of capital to charities, this Budget also reduced the capital gains taxes resulting from donated capital from 75% to 37.5%.

¹¹² Changes after 2006 have also made the charitable tax credit more generous (for example, elimination of capital gains tax on listed securities that are donated to charities the provision of and tax credits for ecological gifts such as land donated to charities).

The voluntary sector and the federal government working together: Late 1990s to 2007

Panel on Accountability and Governance in the Voluntary Sector

The VSR created the PAGVS, an independent panel chaired by the former leader of the federal New Democratic Party, Ed Broadbent. The Panel's mandate was to consult, research and make recommendations on how to improve accountability in the sector and to improve the relationship between the government and the voluntary sector (PAGVS, 1999). The final report, released in February 1999, contained 41 recommendations, in which two of the top four priorities centred on the issue of charitable registration. Specifically, the Panel recommended the creation of a Task Force, comprising both federal government and voluntary sector representatives, "to begin the process of establishing a democratically-determined, legislated definition of which organizations should qualify for access to the benefits of the federal tax system" (PAGVS, 1999: viii). It also recommended the creation of a new organization modelled after the CCEW to "support and enable the sector in improving its governance and accountability practices, to promote transparency, and to help ensure compliance with federal rules governing their conduct" (PAGVS, 1999: 58). Other recommendations included the creation of a more transparent process on the part of the Charities Directorate, with a call for public access to the reasons why an organization was denied charitable status. The Panel also recommended the appeals process should be changed: the Federal Court of Appeal should be replaced by the Tax Court of Canada as the court of first instance. Such a move would reduce the financial burden for groups appealing the Charities Directorate's decisions regarding charitable status. Additionally, it recommended, "the rules governing advocacy activity need to be clarified in ways that can be better understood, that militate against

arbitrary application and that cohere with the values of a healthy civil society” (PAGVS 1999: 91). The PAGVS intended to promote action for both the voluntary sector and the federal government through its recommendations, but it also sought to unite the voluntary sector (Canada, Social Development Canada, 2004).

Working Together

The legacy of the Broadbent Panel cannot be underestimated. As Floyd (2004: 4) suggests, it “set off a chain of events that have radically transformed Canada’s voluntary sector – its leadership structure, its working relationship with government and its regulatory framework”. Indeed, the timing of the Broadbent Report was ideal as the Liberal 1997 electoral policy Red Book acknowledged the important role of the sector and promised to build a stronger relationship with it. Given the sudden interest in the sector on the part of the Chrétien Liberals, it is logical to ask why this occurred so rapidly. Susan Phillips (2001: 150) suggests three potential, though not mutually exclusive, explanations. First, several individuals within the PMO and PCO were sensitive to the needs of the voluntary sector and recognized its critical role in both the delivery of goods and the enhancement of democracy. Second, the Chrétien government recognized the need to partner with the sector as government could no longer solve public problems in isolation. Last, the federal government was strategically (not ideologically) influenced, by Tony Blair’s Third Way project, which saw the voluntary sector as a critical actor in the public policy process and sought to strengthen the relationship between the sector and the UK government. The Chrétien version of Blair’s Third Way project was a more pragmatic approach to engage “citizens and communities through the

support for voluntary action” (S. Phillips, 2001: 150). These reasons explain why the Liberals made such an election promise.

To meet its election promise, the federal government’s approach took a slightly different path. The government created a federal interdepartmental committee that resulted in failure because it was chaired by an agency that did not ‘own’ the process – the CRA (Canada, Social Development Canada, 2004). Shortly after this failed attempt, the Voluntary Sector Task Force (VSTF) was created within the PCO. At this point, the PAGVS shared its recommendations for proceeding in a joint manner such that the next initiative was influenced by its findings. Following the creation of the VSTF, three Joint Tables consisting of an equal number of representatives from both the federal government and the voluntary sector were established in spring 1999, because the VSTF knew that it couldn’t do it alone. The costs for establishing and managing these three Tables were paid by the government. These tables constituted a “novel experiment in government-voluntary sector collaboration” with the end result being a report titled *Working Together* that contained 26 recommendations (S. Phillips, 2001: 151). These tables were responsible for generating recommendations in three areas: regulatory reform, increasing capacity and building a relationship. The issue concerning charitable registration was housed under the regulatory reform table.

The recommendations flowing from the *Working Together* report are similar to the recommendations made in the Broadbent Report. The recommendations include institutional change to strengthen the relationship between the sector and government, the creation of intermediate sanctions, redefining allowable business activities, changing the reporting requirements and director’s liability. The *Working Together* report also makes

recommendations concerning the advocacy issue, but it goes much further on advocacy than the Broadbent Panel. The report states, “there is a widely shared view that the act of advocacy, as a form of free speech, is an essential part of democracy and therefore intrinsically beneficial to the public” and called for an increase in the 10% ceiling so long as advocacy does not become the dominant activity of the charity (Federal Government of Canada / Voluntary Sector Joint Initiative, 1999: 50). Regarding the definition of charity, the table recommended that a list of deemed charities be added to the *ITA* that would allow these deemed charities access to the tax system. These deemed charities would include those organizations that:

- “promote tolerance and understanding within the community of groups enumerated in the Canadian Human Rights Code;
- promote the provisions of international conventions to which Canada has subscribed;
- promote tolerance and understanding between peoples of various nations;
- promote the culture, language and heritage of Canadians with origins in other countries;
- disseminate information about environmental issues and promote sustainable development;
- promote volunteerism and philanthropy” (1999: 52).

The *Working Together* Joint Tables shaped the next step of building a relationship between the government and the voluntary sector: the VSI. With its emphasis on collaboration, the participants considered the Working Together process a success, but lessons learned throughout that process were brought forward to the VSI (Canada, Social Development Canada, 2004). These lessons learned included “having broad participation of government and the voluntary sector, and the value of the Joint Table model as a means for facilitating genuine dialogue” (Canada, Social Development Canada, 2004: Chapter 2).

The Voluntary Sector Initiative

Shortly following the release of the *Working Together* report, the federal government's Speech from the Throne emphasized a commitment to develop an Accord and support volunteerism. While the February 2000 budget did not allocate funding to these initiatives, the federal government later established a Reference Group of Ministers (Canada, Social Development Canada, 2004). This Reference Group of Ministers could provide more "initiative hands-on political leadership and attention" than a Cabinet Committee (Canada, Social Development Canada, 2004: Chapter 2). This Reference Group was led by then President of the Treasury Board Lucienne Robillard. Following the TBS process and the associated Memorandum to Cabinet and consultation phase with the members of the *Working Together* process, Robillard announced the commitment of \$94.6 million to the five-year, two phase VSI in June 2000 (Canada, Social Development Canada, 2004: Chapter 2). Money was earmarked to build a relationship with the voluntary sector and did not provide direct funding to voluntary organizations.

The first phase (June 2000 – October 2002) created similar Joint Tables as in the *Working Together* process. Seven collaborative tables were formed under the VSI with equal numbers of representatives from the voluntary sector and the federal government with each table co-chaired by one representative from the sector and one from the federal government. A table was established to examine six specific issues with the seventh table acting as a coordinating table:

1. Joint Accord Table (JAT)
2. Awareness Joint Table (AJT)
3. Capacity Joint Table (CJT)
4. Information Management/Information Technology (IM/IT)
5. National Volunteerism Initiative Joint Table (NVI)

6. Joint Regulatory Table (JRT)¹¹³

Despite the number of areas under examination, the three most important issues facing the sector, definition of charity, advocacy and funding, were “deliberately sidestepped by the VSI” argues Susan Phillips (2001: 155; see also Brock, 2000-2001: 217; Drache, 2002b: 12). The government did, however, undertake research on issues concerning funding that culminated into a report known as the *Federal Funding Study*. While these issues—definition of charity, advocacy and funding—were not tackled in a joint manner, the voluntary sector worked on these issues without representation from the federal government by forming the Advocacy Working Group and the Working Group on Financing.

The Joint Table most pertinent for this discussion regarding eligibility for charitable status is the JRT. This Table, however, nearly collapsed over the restriction in its mandate, which was apparently included contained in a Memorandum to Cabinet (MC), according to the VSI Process Evaluation. The secrecy that is associated with the MC meant that only government members on the JRT could view the MC that contained the Table’s mandate and this means that voluntary sector members may have never actually viewed the JRT’s mandate (Canada, Social Development Canada, 2004: Chapter 4). At the outset of the VSI, the mandate was broadly interpreted by the sector to include the meaning of charity and advocacy largely because these issues were addressed in the *Working Together* process and final report (Canada, Social Development Canada, 2004:

¹¹³ Three other mechanisms were created to deal with specific issues including Nonprofit Law and Directors’ Liability, the creation of a Satellite Account maintained by Statistics Canada, and the Canada Survey on Giving, Volunteering and Participating. Also, two Reference Groups were created and known as the Aboriginal and a Visible Minority Reference Groups.

Chapter 4). The introduction of a new representative from Finance caused significant friction related to the mandate as the process evaluation of the VSI reveals,

When a new representative of the Department of Finance joined the table some eight months into the process, the table had already begun to work on matters that were technically beyond its mandate, as specified in the MC. To this point, however, it had not been prevented from doing so nor had the mandate been held up as constraining in any serious way...Not surprisingly, the corrective action attempted by the Department of Finance met with some resistance in large part because the original document could not be presented and used in a constructive manner. Although the participants had differing views about whether the government should have been flexible on the mandate and whether Finance was 'selective' in choosing when limits were applied, the crisis could probably have been averted had a means been found to make the mandate public and accessible at the beginning, for example in separate, written terms of reference or a mandate briefing meeting (Canada, Social Development Canada, 2004: Chapter 4).

The JRT, therefore, was not allowed to engage in a dialogue about the meaning of charity because it was not in the mandate and not because Finance didn't want it. The JRT could, however, discuss other issues related to the regulatory issues of charity including transparency, appeals, sanctions and regulatory institutional models (Canada, Social Development Canada, 2004).

Despite the fact that the JRT was not permitted to review and report on the actual meaning of charity, the JRT had some achievements. One important achievement includes the administrative changes to the Registered Charity Information Return (T3010 form). The T3010 form must be completed by registered charities each year to demonstrate compliance with the tax laws. The new T3010 form is significantly shorter than its predecessor thereby making it easier for charities to complete and return to the

Charities Directorate.¹¹⁴ Changes to the T3010, however, were driven by the Charities Directorate and according to the VSI process evaluation, too much time was spent on this initiative (Canada, Social Development Canada, 2004: Chapter 4). Concern has been expressed that the Charities Directorate does not review the information collected from the T3010 forms other than put the information on the website for Canadians to peruse.¹¹⁵ With little review of the information collected in the T3010 forms, meaningful accountability may be at risk.

The Charities Directorate also undertook a number of administrative changes as a result of the JRT that included the provision of an enhanced website providing more detailed information, an electronic mailing list, and improved client service (for example, extended phone service hours and a toll-free number). These changes are important steps to building a more modern regulatory machinery to oversee charities, but these changes do not deal with registration per se, but compliance of the regulations.

The final report prepared by the JRT contained 75 recommendations in four key areas: intermediate sanctions, appeals, transparency and the regulatory framework. Of these 75 recommendations, 60 were fully accepted in the 2004 federal budget with 9 recommendations partially accepted leading to changes in the Charities Directorate policies and changes to the *ITA*. The 2004 federal budget allowed for a \$12 million, five year regulatory reform initiative. With this infusion of funding and political support, the Charities Directorate embarked on a reform initiative to improve the legislative and

¹¹⁴ The Charities Directorate anticipates that it will release a new for (Form T3010B) in 2009. See Canada, CRA, 2008c for details.

¹¹⁵ Adam Aptowitzer, a charity lawyer with the Ottawa based legal firm Drache LLP, notes in an audio interview (March 19, 2007) that the Charities Directorate does not appear to do very much with the information collected from the T3010 until an audit is conducted. He further notes that the Charities Directorate is unsure why it collects all that information in the T3010 form. The audio interview is available on the Charity Village website: <http://www.charityvillage.com/cv/research/rlegalpod4.html>

regulatory environment for the charitable sector in five areas: service improvements; public awareness and sector outreach; monitoring and sanctions; establishing an internal appeals process; and collaboration among federal, provincial, and territorial governments.

The JRT also recommended that a Charities Advisory Committee should be established and this was adopted in the 2004 federal budget. The creation of such a committee was viewed as an important mechanism to provide expert, technical advice to the Charities Directorate. Three central roles determined the work of this 12-member Committee (JRT, 2003).¹¹⁶ First, the Committee relayed trends and issues to the Charities Directorate to ensure the regulators were aware of the types of regulatory problems incurred by charities. Second, the Committee acted as a sounding board regarding future regulations placed upon the sector. In this role, the Charities Directorate consulted with the Committee on certain issues and tested new regulations before full implementation. This indicates a two-way street of communication between the Committee and the Charities Directorate. Last, the Committee was charged with the responsibility of overseeing the implementation of changes stemming from the 2004 federal budget (for example, overseeing the implementation of intermediate sanctions which may need to be tweaked in a year or two). As part of the Harper government's decision to reduce program expenditures, however, all advisory committees, including the Charities Advisory Committee, were eliminated effective September 25, 2006.¹¹⁷ The elimination

¹¹⁶ This section is also supplemented with the comments made by a respondent who was a member of the Charities Advisory Committee.

¹¹⁷ These expenditure reductions were quite surgical (for example, funding to the Status of Women was reduced while funding for the Court Challenges Program was eliminated).

of this Committee illustrates the vulnerability of the voluntary sector in the current public policy environment whereas a more autonomous process may reduce this vulnerability.

Explaining change within the Charities Directorate

The Charities Directorate's shift in attitude can be explained in terms of the impact of the Future Directions program, the VSI and an injection of new leadership.¹¹⁸ The Future Directions project, launched in 2001 by the then Minister of National Revenue, Elinor Caplan, identified the necessary requisites for fair revenue administration. It specifically highlighted four priority client groups: charities, individuals, small and medium-sized enterprises, and large businesses. For the Charities Directorate, four strategic directions were adopted including expanding electronic services, increasing transparency, better targeting compliance and improving cooperation with the voluntary sector. The Future Directions program gave much needed political support to the Charities Directorate to initiate administrative changes. This initiative was internally driven, but the political support did result in some administrative changes particularly related to the expansion of electronic services.

The VSI also played a role in generating changes within the Charities Directorate. In general, respondents note that the VSI created a higher awareness across key government departments that the voluntary sector could no longer be ignored and the process finally gave the voluntary sector a seat at the table on issues pertaining to regulations. As a senior public servant from the Charities Directorate argues, "the VSI has put charities on the CRA radar and without the VSI the sector would still be ignored. In the absence of the VSI, there would be inertia".

¹¹⁸ These explanations were raised by public servants during interviews.

The Future Directions program and the VSI were two mechanisms to nurture meaningful change, but strong leadership was needed within the Charities Directorate to harness these mechanisms effectively. Five respondents cite Maureen Kidd as an important source for change within the Charities Directorate and the support that she received from her superior, Bill McCloskey. At the same time the VSI was initiated, a new Director General was selected for the Charities Directorate, Maureen Kidd. Part of her responsibilities included the role of Co-Chair of the JRT. Maureen Kidd had been with the CRA prior to accepting the position of Director General of the Charities Directorate, but she came into the position with little exposure to the voluntary sector. One respondent notes that as a result, she was a “tabula rasa with no preconceptions of the sector and was willing to hear the voices of the voluntary sector”. The mechanisms of the Future Directions program and the VSI could only stimulate change if strong, committed leadership within the Charities Directorate nurtured it to occur. Her desire to work with the voluntary sector is credited for the positive changes within the Charities Directorate according to these five respondents.

These three explanations -- Future Directions, VSI and leadership -- illustrate why the Charities Directorate has become more responsive and transparent when dealing with the voluntary sector. All three are valid and reasonable explanations, but the desire and ability of Maureen Kidd (with the support of her superiors) to harness such important changes from the VSI and Future Directions program in a short amount of time can only be described as remarkable, especially given her lack of relative exposure to the sector.

Using these explanations, one might forge the standard explanation of change stemming from the path dependency literature: external factors changed the environment,

realigned interests and actors, and produced change. Much of the changes initiated by the CRA, in part a response to these external forces, are incremental changes to practices rather than major shifts in policy direction. Reflecting on the institutional literature on change, however, these examples show how the layering and conversion process can occur endogenously and exogenously. The introduction of Maureen Kidd to the Charities Directorate illustrates how the conversion model can occur within the bureaucracy. As noted in chapter two, conversion is the redirection of old institutions (Streek and Thelen, 2005). As the most senior public servant within the Charities Directorate, Maureen Kidd was able to build off of the mobilization efforts of the voluntary sector through the VSI to reform the Directorate into a more responsive organization. Under her leadership, improvements were made to business practices, information technology, and human resources training (Canada, CRA - Charities Directorate, 2001). With her leadership, the Charities Directorate developed a series of new policy statements in order to clarify, and at times, slightly expand the meaning of charity (Canada, CRA - Charities Directorate, 2001). These policy statements, discussed in chapter four, are intended to provide guidance as to what types of organizations can be registered as charitable. Perhaps the most important policy statement concerns racial equality since organizations that work to eliminate racial discrimination will now be registered as charities with the adoption of the policy statement in 2003. Other policy statements related to human rights, umbrella organizations, ethnocultural communities, advocacy and public benefit have also been created. These new policy statements co-exist with the common law and tax law which can be viewed as part of the layering process of change. Since the Charities Directorate does not have the power to amend the ITA, it can only make administrative changes

through these policy statements. These policy statements, which are not law, can be the beginning of conversations with other actors and can influence the courts, charities, and possibly the Department of Finance. These policy statements represent important qualitative change as opposed to a substantive policy shift.¹¹⁹

Exogenously, the collaborative nature of the VSI also resulted in some important changes, particularly the regulatory changes that were recommended by the JRT and subsequently adopted in the 2004 federal budget. These changes may have important transformative impacts to slightly alter or reshape the current path imposed on the voluntary sector by the institutional context. That said, these changes are limited to administrative and regulatory change and as such do not have the potential to incite a major policy change as it relates to the meaning of charity or the advocacy issue. Major policy change either requires an improved appeals system or legislative change and both options would require action by the Department of Finance.

Understanding how resistance occurs

This section examines how resistance occurred whereas the following section details the reasons why the federal government has been resistant to policy change as it relates to the meaning of charity. The Charities Directorate was initially resistant to policy change for a long time and only recently has it opted in favour of change related to the meaning of charity according to several respondents. While the Charities Directorate has attempted to institute change related to the meaning of charity, it met with some resistance from the

¹¹⁹ Ms. Kidd left her position as Director General of the Charities Directorate in 2004 for a new position with the International Monetary Fund in Washington, D.C.

Department of Finance over these issues according to seven respondents.¹²⁰ These respondents suggest that while Finance sets policy, it does not have a relationship with the voluntary sector as the Charities Directorate. Finance has different policy instruments, but using these different instruments would require legislative change to the *ITA*, regulations or institutions (for example, the Federal Court of Appeal). In effect, Finance does not have the option to engage in a layering process the same way that the Charities Directorate does. Finance has no constituency for such types of changes related to charitable registration and was not pressured to do so because there is no official lobby group for the voluntary sector. Understanding the reasons why there is some resistance to such legislative, regulatory or institutional change is discussed below.

The reluctance of Finance is best evidenced by its role in the JRT of the VSI.¹²¹ The power exerted by this Department on the JRT was an eye-opener for individuals in the voluntary sector according to the VSI process evaluation (Canada, Social Development Canada, 2004). The VSI process provided insight for voluntary sector leaders about the power of the Department of Finance,

In particular, several voluntary sector participants commented that the most important thing that they learned was the power of the Department of Finance and its protective stance on its Minister's sole authority to make or recommend changes to the *[ITA]*. This also made it more difficult for Finance officials than for other public servants to participate as individuals, rather than as representatives of their Minister, and created a perception in some tables that the Department was preemptive of certain discussions (Canada, Social Development Canada, 2004: Chapter 5).

¹²⁰ Seven respondents (two public servants and five voluntary sector leaders) note this resistance by the Department on issues related to the meaning of charity.

¹²¹ Both Department of Finance and Charities Directorate representatives were members of the JRT.

One respondent notes that Finance's role in the VSI was a barrier to progress for the JRT and that the collaborative model of the VSI did not work well when the Department of Finance blocked the discussion of issues related to the tax laws. A senior public servant within the CRA acknowledges that on some issues, such as the reform initiative of the Charities Directorate, the Department of Finance has been supportive of such changes, but not on other issues such as advocacy and the meaning of charity. It must be noted, however, that Finance was following the mandate as set out in the MC discussed above. So, Finance may have resisted such discussions related to advocacy and the meaning of charity because they fell outside the purview of the MC and not because they did not want to discuss such items.

Although the mandate of the JRT did not formally include issues related to advocacy, financing or the meaning of charity, the advocacy issue was handled by an alternate mechanism that was formed by voluntary sector representatives only. Once in process, the members of the alternate mechanism worked in a systematic way to provide guidance on the issue in general, but especially to the draft guidelines concerning the advocacy activities of registered charities that were later released as a policy statement in fall 2003. Why was this non-joint mechanism undertaken as opposed to working jointly through the advocacy issue vis-à-vis the JRT? Given that advocacy is a politically sensitive issue for politicians and senior public servants according to respondents, it is not surprising that this issue could not be resolved jointly.¹²²

Another example of Finance's reluctance concerns the recommendation for a change in the court of first instance from the Federal Court of Appeal to the Tax Court of Canada on issues related to the determination of charitable status. While all 75

¹²² This idea that advocacy is a politically sensitive issue is more fully discussed later in this chapter.

recommendations of the JRT, including the ones related to the appeals process, were signed off by every Table member, one voluntary sector leader notes that “the Department of Finance was not entirely comfortable with the appeals recommendation.” In the end, the 2004 Federal Budget adopted 69 of these 75 recommendations which seems like a success. However, the recommendation related to the appeals process was not adopted.¹²³ Changing the court of first instance was an important recommendation because it would have provided those organizations denied charitable status with a less expensive recourse mechanism and may have provided more judicial review of the meaning of charity. Therefore, while 69 of the 75 recommendations were adopted, one of the most important recommendations related to the appeals process of the meaning of charity was not accepted.

The recent changes to the disbursement quota rules also provide a good illustration of the potentially difficult relationship between the Charities Directorate and Finance. In the 2004 federal budget, proposed new rules for the disbursement quota – a calculated amount of charitable dollars that must be allocated to support charitable activities – were suddenly announced by Finance and sprung upon the voluntary sector and Charities Directorate without warning or collaboration according to two respondents.¹²⁴

Of the proposed changes, two have been identified as potentially causing negative impacts for the sector. The first proposed change concerns a reduction in the disbursement quota of assets from 4.5% to 3.5% for foundations. This 1% decrease is beneficial to foundations in the sense that their “assets will be protected, because

¹²³ See Canada, Department of Finance, 2004 for budget details.

¹²⁴ Two respondents, both voluntary sector leaders, cite the changes to the disbursement quota as an example of the difficult relationship between Finance and the Charities Directorate.

foundations will not be required to spend 4.5% of their assets during a year when investments are yielding only 3 or 4%. The net result of this is likely to be a larger asset base in the longer-term” (Voluntary Sector Forum, 2004b). While foundation assets are protected, however, this decrease also means that less foundation funding will be available for charitable organizations, which amounts to \$65 million for the largest 50 foundations (Voluntary Sector Forum, 2004b).

The second proposed change would apply the reduced quota described above to endowments for charities. All registered charities have to spend 80% of their charitable-receipted dollars on charitable goods and activities, but they must now also spend 3.5% of their assets on charitable goods and activities. Since charities must already allocate 80% of their dollars to charitable goods and activities, “the new disbursement quota”, according to the Voluntary Sector Forum (2004b), “will have no practical effect (except extra paperwork) on most organizations. However, charities that have sizable endowments and limited fundraising revenue (for which receipts are issued) may now find that they have to increase their annual spending on charitable activity”.

It is not just the voluntary sector that has voiced concerns over the new disbursement quotas. Legal commentator Manwaring (2004) notes the heightened complexity associated with the calculating of the disbursement quota for charities and foundations. Hayhoe (2004b) similarly argues, “it appears to us that some of the new disbursement quota rules (designed to assist charities) may have unintended negative consequences for some charities.”

One respondent, a voluntary sector leader, suggests that Finance was genuinely interested in assisting the voluntary sector and opted to use its position to make changes

to the disbursement quota. How Finance set out to make this change was problematic however. The respondent notes that Finance made changes without consulting the voluntary sector or the Charities Directorate. In sum, the new disbursement quota changes initiated by Finance, and sprung upon the sector and the Charities Directorate, may indicate that a difficult relationship exists between the Charities Directorate and Finance. In this particular example, it may be the voluntary sector that shoulders the consequences of this difficult relationship.

Understanding why resistance occurs

Given this reluctance to address the central concerns of the voluntary sector begs the question: why does this resistance exist? Four non-mutually exclusive reasons explain this resistance: financial considerations, political considerations, lack of consensus and divided jurisdiction.

Financial considerations

The need to protect the tax base from an expansion in the meaning of charity is an important explanation according to eight of thirteen respondents. One respondent argues, “Finance is always reluctant to open up the [ITA] because there exists an inbred conservatism in which no one wants to fool around with tax laws”. Two differing views emerge regarding the impact of an expansion of charity on the tax base. One view holds that more organizations designated as charities will generate more tax expenditures. In this view, Canadians who currently donate to an organization without charitable status will soon find themselves able to receive tax receipts once the organization receives status under an expansion of the notion of charity. With these new tax receipts, logic

follows that Canadians will apply them against their taxes that will then produce a loss to the tax base. Reinforcing this view is Canada's generous tax credit system for charitable donations. With this generosity, one public servant from the Department of Finance suggests, comes the responsibility to "to be careful who is awarded the credit. If the credit was decreased then the loss to undeserving groups is smaller so there wouldn't be a need to be as careful. Careful is the word of the day under a generous tax credit system". The other view holds that the tax base would not be at risk of erosion with an expansion of charity. This view holds that if more groups were to receive charitable status, we would not see much erosion of the tax base as donors have a finite amount of money to allocate to worthy organizations. Instead, donors would simply redirect their tax dollars.¹²⁵

Given these diverging viewpoints, what does research inform us as to the impact of an expansion of charity on the tax base? To date, there has been no comprehensive research undertaken about the effect of the tax base stemming from a change in the meaning of charity. Two separate attempts were made by the federal government to quantify the impact on the tax base resulting from a change in the meaning of charity. The first attempt occurred during the *Working Together* process. Comprised of three joint tables, the regulatory reform table was charged with the responsibility of examining issues related to charitable registration. In an effort to understand the impacts on the tax base, a task force was created and led by John Walker, a public servant from TBS. Despite the initial completed work, the federal government abandoned the examination because the task was too complex given the timeframe. The second attempt, also led by

¹²⁵ A respondent, who is a voluntary sector leader, cites this idea that donors would simply reallocate their charitable dollars under an expansion of the meaning of charity.

John Walker, occurred during the VSI. During the early stages of the VSI, the federal government did not have a good sense of the financial flows stemming from charitable status so it did not know the impacts of an expanded charitable definition on the tax base. Without such data, the government claimed, the meaning of charity could not initially be part of the VSI's mandate. With its need for research, the federal government established a paper led by a public servant, but was then abandoned as impossible according to one respondent.¹²⁶

Some insights can be gleaned from Broder's (2001) research that assesses the extent of the fiscal impact resulting from an expanded definition of charity. First, he identified those causes within society that are generally excluded from accessing the taxation system as a registered charity (for example, self help groups, environmental groups, advocacy groups and international organizations promoting peace and human rights). Then, he used the 1997 National Survey on Giving, Volunteering and Participating statistics to determine the total amount of money donated to all these excluded causes. With a final figure, Broder then multiplied it by the average federal tax rate of 27%, which provides a rough, but relatively sound, extent of the impact. If all the organizations in the disputed categories were able to register, the expected cost to the federal government is slightly less than \$40 million. This is relatively minor when one considers that the 2003-2004 total budgetary revenues of the federal government hovered at \$186 billion (Canada, Department of Finance, 2004). The expenses associated with an

¹²⁶ The funding paper was completed by John Walker, but without this particular aspect (see Canada, Treasury Board Secretariat, 2003). His study later morphed into the Code of Good Practice on Funding. The Accord Between the Government of Canada and the Voluntary Sector, signed on December 5, 2001 by both the voluntary sector and the federal government, stipulates that codes would be developed to guide the relationship. The Code of Good Practice on Funding guides the relationship between voluntary sector and the federal government in regard to funding.

expanded definition of charity would therefore have to be incurred by the federal government according to Broder's research, but the impact would not be particularly large.

Political considerations

A review and redefinition of charity is a political quagmire for politicians according to six of thirteen respondents. As one senior public servant notes, "a redefinition of charity produces winners and losers and the government hates policy that alienates losers...so the status quo is a comfortable place." Respondents explain that a specific fear exists in terms of the potential backlash from religious voters who will retaliate if religious organizations are deregistered as charities under a redefinition. One respondent shared a recent discussion with a former Cabinet Minister. The former Cabinet Minister revealed how deep this fear is within the government, specifically amongst Cabinet and the central agencies, where any mention of charity inevitably raises the issue of the relationship between church and state. This is a political fact of life, according to the former Cabinet Minister, in which politicians avoid the state/church question altogether. That said, a change in the meaning of charity that excludes religious organizations is not likely to occur.

The federal government may also fear allowing too many advocacy groups to be deemed charitable according to four respondents. Understanding this fear is best reflected in the words of one voluntary sector leader, "the federal government expects the worst of the worst to come out and be 'shit disturbers' and do not want them to rock the boat come election time". Related to this is the possibility of diminished roles for MPs

following an expansion of charity and advocacy. “If you expand charities and their ability to advocate and talk about the issues”, argues one respondent, “then this reduces the need for MPs. This is the John Bryden¹²⁷ argument in which MPs do not want an expansion in the ability of charities to advocate”. This also relates to the idea of minimal government and concern about the tax liability of individual taxpayers (Harvie, 2002). Allowing advocacy groups to become registered charities may result in taxpayers subsidizing viewpoints with which they may not agree. From this perspective, charities should focus more on the delivery of programs and services to Canadians and less on advocacy initiatives. Advocacy, in this perspective, is a privilege and not a right according to a senior public servant from the Department of Finance,

Regarding advocacy, the proper terminology is ‘tolerance level’ as opposed to saying ‘being allowed up to 10%’. The common law states that advocacy is not allowed. Period. So, in theory, the tolerance level is 0%, but in reality the tolerance level is 10% and the new guidelines clarify what type of activities are charitable and now there isn’t much that falls in the 10% so at this time the government will wait to see how the guidelines work.

In a similar vein, a senior public servant from the Charities Directorate notes this concern,

Canadians and charities do not want increased advocacy and they want a more direct link to helping people. These groups can be non-profits with a different benefit status and their activities are still worthwhile... free speech cannot be subsidized because it is divisive since the charity is only representing a portion of the population and not everyone. Charities should be wholly charitable and use tax dollars for the benefit of the public at large and not just some of the public.

Comparatively, businesses receive a “de facto public subsidy” for their lobbying activities without being subject to a maximum limit (Phillips, 2000-2001: 187. See also Webb, 2000: 13). There is also public support to consider. A recent survey by the Muttart

¹²⁷ John Bryden, former Member of Parliament, was often critical of charities and their ability to advocate.

Foundation (2006: 49) reveals that seven of ten Canadians (73%) agree strongly or somewhat that the law should be changed to allow charities to advocate with greater freedom.¹²⁸

Lack of consensus

A lack of policy consensus within the voluntary sector about the desirability for policy change is cited by four of the five public servants as a reason not to change the meaning of charity. The central issues are, first, whether charitable registration is a pressing public policy issue and second, for those within the voluntary sector that believe this is a pressing issue, there is little consensus on how to update the notion of charity.

A senior public servant suggests that the voluntary sector in Canada is fragmented as to whether or not charitable registration is a public policy problem. This public servant explains,

In my experience with the sector, some thought charitable registration was the number one issue, while others thought information and technology was the number one issue, while others thought it was the management of volunteers or service delivery. Such fragmentation in the identification of a public policy problem makes it difficult for the government to realize action is needed.

Another high-ranking public servant from Finance similarly echoes, “the statement that the voluntary sector has a problem with the law regarding charitable registration needs to be substantiated. Where is the proof? Some charities do not feel this is a problem at all”. The difficulty with asking charities whether they perceive a problem related to the meaning of charity is that they may desire the status quo since they benefit from the

¹²⁸ The question posed to respondents was read as follows: Some people would like to change the laws that limit the extent to which the charities can speak out and represent their causes to governments and other organizations. Do you agree or disagree that the laws should be changed to permit charities to advocate more freely for the causes in which they are involved? Is that strongly or somewhat?

current interpretation of charity. As such, it would be important to obtain the views of organizations lacking charitable status for a more balanced perspective. That said, even if there is a lack of consensus, one voluntary sector leader notes that this explanation is insufficient to explain a lack of government action,

Public support and voluntary sector support is just not there. This is a fact. Yet, this is a huge issue for the sector, but only about two-dozen people in Canada really know this issue because of its esoteric nature. Perhaps the sector isn't concerned about it because they don't want increased competition. Regardless, this need for full consensus isn't a good basis to formulate policy.

This relates to the fragmentation of the voluntary sector as one senior public servant explains,

The voluntary sector is too fragmented to tell the government what is needed in a redefined notion of charity. Some argue that religious organizations should be deregistered while others argue in favour of a grandfathering clause to prevent any current charity from being deregistered. What the government hears is quite unclear and ultimately the fragmented nature of the voluntary sector with its limited leadership can't penetrate the voting community for support on this issue.

The fragmentation within the voluntary sector prevents, according to some, a review of charity from occurring as the federal government does not see unity within the most affected group, that being the voluntary sector, as to whether action is needed.

While some respondents suggest a fragmentation on the part of the voluntary sector, several sources of evidence suggest the existence of considerable unity. The Voluntary Sector Forum, launched in October 2002, comprised 19 members that represent broad constituencies and umbrella organizations to provide leadership on issues pertinent to the sector. Having identified three of the most pressing issues facing the

sector (funding of the sector, advocacy and liability/risk management), these voluntary sector leaders coordinated the sector's response and presented a united front when liaising with the federal government on these issues.

The *Let Charities Speak* consultation also illustrates the voluntary sector as united on the advocacy front. The cross-Canada consultation led by IMPACS and the former Canadian Centre for Philanthropy (CCP) on the subject of advocacy took place in 2001. The consultation process included visits to 14 cities with 704 participants "most of whom were voluntary sector representatives from a mix of large and small, urban and rural, charitable and non-profit organizations" (IMPACS and CCP, 2002: 2). Of these 704 participants, 490 completed a written survey in an attempt to quantify their views on the subject. Nearly 91% of survey respondents agree that the current tax laws governing the advocacy activities of registered charities are unacceptable. Further, 87% of them believe a legislative change is the best option for government to redefine the meaning of charity.

Besides the Forum and the *Let Charities Speak* consultations, the consultation coordinated by CPRN also illustrates the support amongst voluntary sector representatives for regulatory changes (Goldenberg, 2004). Approximately 40 participants, most drawn from the sector to participate in a roundtable discussion on social innovation, identified "modernizing and expanding the definition of charity" as a priority regulatory reform (Goldenberg, 2004). As noted earlier, public opinion also appears to favour the sector's perspective on the advocacy issue (Muttart Foundation, 2006).

Divided jurisdiction

The relationship between the federal and provincial governments concerning charities is an impediment to public policy change according to three respondents. “Charities”, according to one voluntary sector leader, “and more importantly the meaning of charity, have fallen through the constitutional cracks”. The federal government has a narrow role to play in charitable registration; a role that involves the registering of charities in accordance with the taxation system. The regulation of charities falls under the jurisdiction of the provinces. Despite this jurisdictional power, few provinces execute this power so the Charities Directorate attempts to provide some oversight by instituting regulations (for example, disbursement quotas for charities). One senior public servant argues that how we define charity goes hand-in-hand with other regulatory issues, but the provinces need to be more proactive in their jurisdiction. Given the limited provincial oversight of charities, the federal government has no constitutional authority over charities except as applied to the taxation system, but this does not allow for appropriate oversight. The federal government is fearful of exposing itself to more scandals if more and more charities are registered with little provincial oversight. A related fear is that if the federal government redefines charity, some provinces may disagree with the redefinition thereby inciting the need for negotiations with the provinces.

In sum, these explanations provide insight as to why the federal government is reluctant to enter into a meaningful debate concerning charitable objects and activities. Of all these explanations, the financial considerations associated with a review of the meaning of charity is most important because of the difficulty of establishing models to predict future impacts to the tax base as a result of an expansion of charity. There does

not appear to be much interest on the part of the federal government to engage in such research anytime soon. Of lesser importance is the explanation related to divided jurisdiction. Yet despite this reluctance, the Charities Directorate has been working steadily to ameliorate this situation within the confines of being the administrator of the tax laws.

Conclusion

The chapter began with an overview of the voluntary sector in Canada and its attempt to support public policy change followed by a discussion explaining why the Department of Finance resists policy change. The CRA made intentionally incremental changes, which can be viewed as part of the conversion and layering processes, because they were easy ways to make some change since it does not have the power to invoke a major policy shift. Comparatively, Finance would require political support to make legislative change regarding the policy instrument of charitable registration. The changes outlined in this chapter represent both endogenous and exogenous change meaning that change can occur internally to realign interests and actors. This is in comparison to the path dependency thesis that suggests change is externally driven.

With the support from the voluntary sector, coupled with the advances made by the Charities Directorate and JRT (as realized in the 2004 federal budget), the question was posed: Are these changes sufficient to overcome the public policy issue related to charitable registration, that being the meaning of charity and advocacy? These changes represent qualitative and potentially transformative changes in the conditions under which charities must operate. These qualitative changes may alter or shape the current

path for future improvements. That said, however, these changes are primarily administrative and regulatory changes and as such, there is still a need for major policy change since administrative and regulatory changes can only go so far. What is needed is either a legislated definition of charity that explicitly details which groups can access the taxation system, or changes to the appeals system. While the 2004 federal budget made some changes, these changes do not go far enough nor do they include one of the most important recommendations of the JRT: replacing the Federal Court of Appeal with the Tax Court of Canada as the court of first instance. Such a change may be a more affordable option for organizations wishing to appeal decisions regarding charitable status. This, in turn, may result in more robust court decisions to guide the common law in future cases.

Chapter 7

Conclusion

This dissertation explored the impacts of charitable registration and non-registration on the capacity of voluntary organizations to serve a public benefit. It also highlighted why Canada has been slow to adopt policy change and explored why there is resistance on the part of the federal government to policy change in relation to the meaning of charity. By relating the research findings to the theoretical framework, this final chapter concludes that while the results are somewhat mixed, charitable registration matters in some important ways in light of a governance approach. The possibilities for change are also explored in this concluding chapter in addition to an examination of the implications for public policy as a result of these findings.

Does charitable status matter?

The first step was to consider the effects of getting charitable registration. The impacts of charitable registration are five-fold and the results appear to be somewhat mixed. First, charitable registration had a significant impact on the ability of all the charities to expand and diversify funding opportunities. Having charitable status opens new funding doors that are only available to charities (United Way funding, for example). Charitable registration also assists with other fundraising activities such as telephone and mail fundraising campaigns because potential donors realize they can receive a tax credit for their donation. Donors may also see charitable registration as an indicator of a worthy organization. This relates to the second impact – legitimacy. Most of the charities experienced heightened legitimacy after receiving charitable status to varying degrees, and this too appears to assist with other fundraising activities.

Every charity interviewed for this dissertation experienced increases in revenues and this was largely attributable to having charitable status as measured both by percentages changes in the overall budget and by perceptions. While charitable registration resulted in increased revenues for these charities, charitable status had different impacts on different sources of funding. In terms of state funding, charitable status had no impact on core funding or service contracts/fees. That is, organizations with charitable status were no more likely to get core funding through grants because it is in short supply. Charitable status had a small impact on project funding, but interviews conducted with federal public servants reveal that charitable status may add some legitimacy to a funding application even though there is no official policy that differentiates between charities and organizations without charitable status. This legitimacy may mean that charitable status may secure more project funding for the organization.

Charitable status had a significant impact on non-state funding such as United Way funding, foundation funding, corporate funding and lottery funding. The increases in total revenue after receiving charitable status are largely explained by corporate and private/public foundation funding. Having a charitable registration number is mandatory for private and public foundations as they must meet the disbursement quotas outlined in the *ITA*. Additionally, some corporations may require a tax receipt for donations which means the organizations applying for funding must be registered with the CRA. The magnitude of the increases in non-state funding after receiving charitable status is rather large (92%). As such, charitable status appears to complement non-state funding sources.

Greater likelihood of being consulted by the state after receiving charitable status may be another impact. For one charity, it experienced an increase in being consulted by the state after receiving status while another charity indicated that it is taken much more seriously during a consultation because of the legitimacy attached to having charitable status. Given that five charities experienced little or no impact, charitable status may not necessarily matter to consultation.

The fourth impact of charitable registration relates to the ability to be part of networks and be sought by other partners. The impact of charitable status on this particular aspect appears to vary. For some charities, there was no impact at all, but for others, there was a positive impact. Charitable status may have an impact on the ability to be part of networks in two key ways. First, charitable status may be necessary to penetrate some networks that are comprised solely of charities. Whether charitable status has an impact on the ability of an organization to penetrate a network depends on whether the network prefers to be comprised of charities. Second, charitable registration may provide increased capacity for organizations to maintain and advance their position within the network. The relationship between charitable status and the ability to be part of networks and be sought by other partners is indirect in this instance. Charitable status improves capacity of the organization and this allows charities to hire capable staff to work in networks and seek new partners.

Last, charitable status has an impact on the ability of some charities to access the state as advocates. Registered charities in Canada are restricted in the amount of advocacy they may perform. Charities may jeopardize their charitable status by surpassing the maximum ceiling of allowable advocacy initiatives. Some charities

experienced no impact on their ability to advocate as a result of securing charitable status. These charities are largely dedicated to the delivery of programs and services and did not experience a limitation on their ability to advocate because advocacy is not a central focus of their work. As such, these charities did not experience a trade-off between securing charitable status and reducing their advocacy activities. Comparatively, other charities that are dedicated to service delivery and public policy development, experienced negative impacts after securing charitable status. These charities have deliberately avoided or reduced the number of public policy development initiatives solely because of having a charitable registration number. For these charities, there was a trade-off between securing status and reducing / foregoing advocacy.

This dissertation also examined whether the lack of charitable status also had effects on organizations. On the one hand, organizations without charitable status are not restricted in their ability to access the state as an advocate and this can be viewed as a positive impact in light of a governance framework. On the other hand, the lack of status creates some predominately negative impacts. Organizations without charitable status experienced financial difficulties in greater magnitude than the charities in this study. This is not due to endogenous factors, but to a lack of access to funding opportunities. The advantage of charitable status is that it enables both public and private foundation money, in addition to some corporate money, to flow to those organizations that are registered with the Charities Directorate. In an attempt to improve their financial situation, organizations without charitable status in this study invested resources, both human and financial resources, into developing alternative forms of resources to buffer the lack of charitable status. Alternate forms of resources have been used to compensate

for the lack of charitable status including making greater use of volunteers, serving as fiscal agents, increasing membership fees and splitting the organization so that a spin-off can be registered as a charity and its expanded funding used to cross-subsidize the parent. Developing these alternate forms of resources to compensate for the lack of charitable status is often insufficient however. In some cases, developing alternative resources imposes both direct and indirect costs in terms of financial and human resources. This includes the time and energy that staff and volunteers who develop these buffer mechanisms to compensate for a lack of charitable status at the expense of serving the objects. For organizations without charitable status, the ability to develop alternative forms of resources to compensate for a lack of charitable status may be insufficient and may make it difficult for these organizations to transform into governance partners. Despite an arguably legitimate claim for charitable status coupled with the fact these organizations would be registered as charities in other common law countries, they may experience difficulty surviving as an organization much let alone participating in a governance model.

These findings reveal that charitable status matters in some ways, but perhaps not in others. Nevertheless, charitable registration is an important procedural instrument for building capacity, particularly financial capacity, for charities to participate in a governance model. While charitable status matters, especially in light of a governance model, voluntary sector leaders and academics argue that Canada's interpretation of charity is outdated (Broder, 2001; Drache, 2002; PAGVS, 1999; S. Phillips, 2001) and arbitrarily applied (Webb, 2000) meaning that certain segments of Canadian society are not eligible for status. As such, charitable registration does not appear to assist in the

development of a vibrant and autonomous voluntary sector in Canada. While charitable status is important, there has been resistance to updating the idea of charity in Canada even though other jurisdictions, most notably the UK, have initiated reviews of what it means to be a charity. Given the importance of this policy instrument, we must understand why change has been slow to occur in Canada.

Why has policy change been slow in Canada?

Governance is framed as a horizontal process of governing that involves state and non-state actors in the development of public policy (Rhodes, 2000; Stoker, 1998). In this more collaborative form of governing, both the process by which collaboration occurs and the influence of the various institutions involved are important factors in understanding how such co-dependence unfolds. One way that institutions influence outcomes is through their use and support of policy instruments. Under governance, procedural instruments are used to shape state-societal relationships and they are important because they reduce or expand the number of partners working within networks. Procedural instruments allow the state to structure and restructure relationships between partners and therefore influence policy outcomes (Howlett, 2000). This dissertation examined how institutions intersect to use and support charitable registration as a procedural instrument that is used to nurture some actors available for partnering, but not others.

Canada's institutional machinery responsible for charitable registration includes the courts, the Charities Directorate and the Department of Finance. Regarding the role of the courts, the court of first appeal for a denial of charitable registration is the Federal

Court of Appeal, but this is an expensive and lengthy recourse mechanism for voluntary organizations. Given the expenses associated with launching an appeal, few appeals regarding the meaning of charity have been filed (JRT, 2003). With few appeals, the ability of the courts to regularly review the meaning of charity to keep it fresh has been limited (Drache, 2002a; JRT, 2003; S. Phillips, 2001).

The CRA administers the *ITA* and the Charities Directorate is responsible for processing applications for charitable status, monitoring and auditing charities, and developing policy/communications. The Charities Directorate has transformed itself in recent years and is now dedicated to working with the voluntary sector in meaningful ways. The Charities Directorate has made important changes by stretching the meaning of charity as far it can go without violating common law and tax law. These changes include working horizontally with other federal government departments to determine charitable status on difficult cases, improved organizational and administrative processes and the development of several important policy statements.

Some of these deliberately incremental changes were endogenously driven through the introduction of new personnel at the Charities Directorate who introduced new ideas as to how this organization should operate.¹²⁹ With the introduction of new personnel, which is reflective of the conversion process of change, the subsequent changes can be viewed as part of a layering process of change. The Charities Directorate created new policy statements that co-exist alongside the common law and tax law and can be highly influential on other actors, notably Finance. While these policy statements attempted to clarify which objects and activities could be registered as charitable, they

¹²⁹ Not all the changes were created endogenously, however. There are some important regulatory changes that were created exogenously by the collaborative JRT process of the VSI.

also represent an attempt to slightly expand the meaning of charity. The resulting question is whether all these changes adequately grapple with the public policy issue related to the meaning of charity. While these changes are qualitatively important, they do not represent a major policy shift. Instead, these changes are largely administrative and regulatory changes. The Charities Directorate has worked to stretch the notion of charity largely through the development of policy statements, but does not have the power to institute major policy change vis-à-vis changes to the *ITA*. Such a major policy change would require the Department of Finance to act.

That said, these exogenous and endogenous changes were intentionally incremental and potentially transformative. These types of changes reinforce new ideas as to how the government should interact and support the voluntary sector. Such changes and new ideas may impact the evolving relationship between the government and the voluntary sector. These changes have slightly altered the future path of the voluntary sector and its relationship with the federal state. This altered path may be the beginning of more substantial changes in the future.

Historical institutionalism helps us understand how and why policy change occurs. Rather than relying on the dominant punctuated equilibrium model that emphasizes large-scale exogenous change and the path dependency thesis that emphasizes stability, the emerging process of institutional change highlights the importance of smaller, endogenous changes that may produce transformative results. In this examination, institutionalism illustrates how small, endogenous change was deliberately undertaken by the Charities Directorate in order to stretch the meaning of charity. The Charities Directorate's use of its mandate to create change has been met with

the continued ability of the Department of Finance to block real path shifting changes. Understanding the reasons for this resistance is another important aspect of this research.

Resistance to policy change

If charitable registration matters so much under a governance framework, why is there resistance on the part of the federal government to policy change regarding the meaning of charity? There are four non-mutually exclusive explanations provided by voluntary sector leaders and public servants who were interviewed for this dissertation: financial considerations, political considerations, lack of consensus and divided jurisdiction.

From a financial perspective, there is a need to protect the tax base from erosion. The concern is that the tax base may be eroded under a liberalization of charity. In this view, more charities may mean more donations. With more donations, there may be more tax receipts provided to donors and this may further erode the tax base. Another view suggests that a different scenario would unfold under an expansion of the meaning of charity. With more voluntary organizations registered as charities, the tax base would not be eroded extensively because donors have a finite amount of money to donate. With more charities, donors would not increase the amount of money they donate, but instead merely redirect their donations to other causes. This important debate illustrates that there is a trade-off. While some erosion will occur as a result of an expansion of charity, the actual impact is not large. Indeed, Broder (2001) estimates that the loss to the treasury would only be about 2 percent of annual tax revenues.

Besides financial considerations, there are political considerations as well. A redefinition of charity may have implications for politicians at the ballot box if certain

charities become registered or deregistered. Another political consideration concerns advocacy organizations being registered as charities under a redefinition in which taxpayers are indirectly subsidizing viewpoints with which they may not agree. What this line of thinking fails to recognize however is that the current interpretation already produces winners and losers. Also, it fails to recognize that other common law countries are actively discussing the meaning of charity and have realized that the categories for the four heads of charity are no longer adequate and some countries are more accepting of advocacy.

The lack of policy consensus within the voluntary sector is another explanation why the government is resistant to policy change. The government is not convinced that the voluntary sector sees charitable registration as a public policy issue. However, when the government hears from those individuals within the voluntary sector who believe that charitable registration is a public policy issue, it hears different prescriptive policy solutions. It interprets this to mean that there is a lack of consensus within the voluntary sector as to how to update the notion of charity. This perceived lack of consensus continues on the part of government despite several sources of evidence to suggest that there is some unity amongst the voluntary sector on this issue.

Divided jurisdiction also explains why there is resistance to reviewing the meaning of charity in Canada, but to a lesser degree than the above explanations. Federal involvement with charities is isolated to the provision of charitable tax deductions since the regulation of charities is a provincial matter. Few provinces, however, actively exercise this jurisdictional power. The meaning of charity is linked to other regulatory issues under provincial jurisdiction. Given the limited provincial oversight of charities,

the federal government is concerned that unscrupulous organizations may become registered charities if the meaning of charity is changed.

These explanations help us understand why the government is reluctant to enter into a meaningful debate about the meaning of charity. The impacts of an expansion of charity on the tax base is perhaps most important given the uncertainty associated with predicting the exact impacts. More research in this area is needed, but there is little interest on the part of the federal government to undertake such research in the near future.¹³⁰

Strengths and limitations

An important strength of this dissertation rests with its theoretical contribution to the governance literature by highlighting the important role of institutions within governance and how they influence governance. Governance, as a process, explains how partnerships work to resolve public policy problems. Since institutions shape relationships and outcomes, however, the addition of institutions to a governance framework helps explain why certain partnerships form, but not others.

This dissertation also makes an empirical contribution with its examination of the impacts that flow from charitable registration and non-registration. To date, much of the literature has focussed on Canada's interpretation of charity and its limitations.¹³¹ There is no comparable research project that explores both the impacts of charitable registration as well as of the denial or inability to obtain such registration. When thinking about

¹³⁰ This comment is based on interviews with federal public servants.

¹³¹ See Broder, 2001; Drache, 2002; PAGVS, 1999; J. Phillips, 2001; S. Phillips, 2001; Webb, 2000 and Federal Government of Canada / Voluntary Sector Joint Initiative, 1999.

charitable registration, there is the natural assumption that the key impact flowing from charitable status is a financial benefit. This research project sought to confirm this assumption. It also sought to determine the impact of status on non-financial areas that are also important to the governing process. These non-financial areas include legitimacy, participation in networks, being consulted by state and access to the state as an advocate.

The public policy literature has not adequately incorporated the voluntary sector into analysis particularly in relation to the meaning of charity. This dissertation attempts to contribute to this gap within the public policy literature by specifically framing charitable registration as a public policy issue. The dissertation highlights the public policy issue associated with charitable registration, which impacts the development of governance partners with whom the state can work. By doing so, it highlights the important role of the voluntary sector within the governing process.

This dissertation was intended as a small, exploratory study in order to gain a richer understanding of how charitable status impacts an organization, both financially and non-financially. The small scale meant that the organizational impacts could be explored in some detail through both interviews and primary documents. Given the small scale coupled with the aim of the study to build theory rather than test theory, these results cannot be applied as generalizations across the entire voluntary sector.

Implications for public policy

There are two resulting implications for public policy. First, charitable registration matters in contemporary processes of governing. Charitable status becomes important in a governance model where collaboration is vital. Despite the mixed results presented in

chapter 5, charitable registration is an important procedural instrument in the development of governance partners with whom the state can work. This means there must be regular reviews of the meaning of charity. Despite the importance of regularly reviewing the meaning of charity, the federal government has resisted such a review even though other common law countries have initiated debate on the meaning of charity as part of a larger regulatory and legal framework review. Debate about the meaning of charity is needed in this country and to date, Canada is the only major common law country that has not reviewed the meaning of charity (Drache, 2003: 81-82).

Two options exist to overcome the current public policy issue associated with the meaning of charity in this country: institutional reform and legislated definition of charity. The first option involves reconfiguring the institutional machinery while keeping the common law. This option is premised on the idea that the common law is flexible, but only with appropriate institutional machinery to keep it fresh. An example of institutional reform could involve changing the court of first instance. Currently, the court of first instance, the Federal Court of Appeal, is not very accessible to voluntary organizations that may wish to appeal a denial or revocation of charitable status. By changing the court of first instance to a court that is more accessible to voluntary organizations (for example, the Tax Court of Canada), more regular review of the meaning of charity may occur and thus the meaning of charity may be able to keep up with changing societal conditions.

The other option concerns a legislated definition of the meaning of charity as opposed to continued reliance on the common law tradition. Such a legislative approach may work within a Canadian context. By passing legislation regarding charitable objects, there may be greater certainty with a legislative definition although one senior civil

servant at the Charities Directorate doubted whether legislation, particularly vague legislation, would ease the difficulty in determining which organizations should receive status. Under the common law system, regulators take a court decision, which reviewed one very specific case, and have to apply that court decision to thousands of groups which can be a difficult task. Passing legislation concerning charitable objects means that the notion of charity becomes a political issue at the debate stage rather than an administrative and legal issue. Framing charity as a political issue allows politicians to change the meaning of charity. The concern raised by framing charity as a political issue is that the meaning of charity may constantly change with the newly elected politicians and newly formed governments to ensure charity reflects their personal ideology. The concern is that incoming politicians may change the definition of charity to serve ideological values. While this risk is a possibility, extreme changes to the notion of charity that obviously serve ideological values may incite backlash.

The logical question to ask here is whether a legislated definition of charity can be so easily changed. In theory, politicians could regularly change the meaning of charity. In reality, however, politicians must also address other pressing public policy issues that might take priority over the meaning of charity. Also, politicians must also contend with various interests related to the meaning of charity that may resist regular changes for a variety of reasons. One reason could be the sheer confusion created by regular changes to the meaning of charity for both organizations and the public. Ultimately, the experience of the UK will be able to indicate whether a legislated definition of charity can be easily changed.

Both prescriptive policy solutions are legitimate, but lofty. For a sector that is so close to the hearts and lives of Canadians, it is one that attracts very little attention in terms of public policy. What is missing in Canada is a groundswell of support for a review of the meaning of charity. Though, the recent changes in the UK with the new *Charities Act*, which legislates a new definition of charity with 13 heads of charity, may be a source of future change in Canada through policy transfer.

There is another resulting implication. Canada's voluntary sector leaders have united on the issue of charitable registration and have worked collaboratively with the state to address this, and other pressing issues facing the voluntary sector.¹³² Working collaboratively may mean that non-state partners feel they are unable to apply pressure on the state from outside the collaborative network (Phillips, 2004). Non-state actors may not want to advocate outside of the collaborative network for fear of jeopardizing or undermining the collaborative relationship. There is also the concern of vulnerability on the part of the voluntary sector in the current public policy environment. The Harper government has undertaken a similar view towards advocacy as the former Liberal government. Also, the follow-up to the now concluded VSI is not conducted in a joint manner and there have been major funding cuts without consulting the sector.¹³³ The goal of this research has not been to demonstrate whether governance is working on the ground. Instead, it illustrates the resistance to changing eligibility for charitable status,

¹³² There is evidence to suggest that voluntary sector leaders are united on this issue. While there is some evidence to suggest that this is an issue for some voluntary organizations (see chapter six), there is no quantitative evidence of the entire sector. Thus, there is certainly room for more quantitative research on the views of voluntary organizations.

¹³³ On Sept. 25, 2006, the Harper government eliminated the Canadian Volunteerism Initiative and the Court Challenges Program. Funding cuts to literacy, tourism and museum programs were also announced.

and these other recent developments raise serious questions for the future role of the voluntary sector in Canada in relationship to public policy development.

Future research

The dissertation highlighted the important role that institutions play within a governance model through the development of governance partners. More research is needed to understand the institutional characteristics required to support a governance process. For example, we need to understand: How does institutional change occur and how does it relate to collaboration and networks? What characteristics are required for institutions to nurture collaboration and networks? Under governance, appropriate institutional machinery is required to support the governance process, but more research is needed to understand how institutions should be designed to support governance.

More research into procedural instruments is necessary within the public policy literature. This dissertation framed charitable registration as a procedural instrument to understand how this instrument manipulates the governance process. More research into how other procedural instruments (for example, recognition or the provision of information) affect the voluntary sector is needed as well.

Regarding charitable registration, lessons can be learned from the experiences of other countries as they attempt to update their legal and regulatory frameworks including the meaning of charity. As noted, an important reason that explains the resistance to policy change centres upon the possible erosion to the tax base from an expansion of charity. The federal government attempted two studies on the impacts on the tax base resulting from an expansion of charity without success. The UK experience, with its legislated definition of charity, may be an important case study for understanding the

impacts of a liberalization of charity on the tax base.¹³⁴ The financial impact on the tax base due to a change in the meaning of charity is an important consideration, but equally, if not more important, are the social implications. Future research must consider the social implications associated with the meaning of charity and the role of the voluntary sector in the public policy literature.

¹³⁴ That said, the UK does not have the same form of tax credits for personal donations. UK donors may Gift Aid their donations to allow charities to increase the value of donations. Under Gift Aid, taxpayers do not receive tax relief by making a donation to a charity. Instead, the charity is allowed to claim the tax relief. This important difference will need to be carefully considered by researchers trying to glean lessons learned from the UK experience.

Bibliography

- Alberta. Alberta Gaming and Liquor Commission. 2003. "General Information of Charitable Gaming Licences". St. Albert, AB: Alberta Gaming and Liquor Commission. Available on-line:
http://www.aglc.gov.ab.ca/pdf/gaming/gaming_forms/5478.pdf
- Allison, Graham. 1971. *Essence of Decision: Explaining the Cuban Missile Crisis*. Glenview, Il: Scott, Foresman and Company.
- Almond, Gabriel and Verba, Sidney. 1989. *The Civic Culture: Political Attitudes and Democracy in Five Nations*. London: Sage.
- Ansell, Chris. 2000. "The Networked Polity in Regional Development in Western Europe." *Governance* 13, 2: 303-333.
- Atkinson, Michael. 1993. *Governing Canada: Institutions and Public Policy*. Toronto: Harcourt Brace.
- Aucoin, Peter. 2007. "Public Governance and Accountability of Canadian Crown Corporations: Reformation or Transformation." A paper presented to the Canadian Political Science Association 2007 Annual Conference at the University of Saskatchewan.
- Aucoin, Peter and Mark Jarvis. 2005. *Accountability in Canadian Governance: Complexity, Confusion and Conundrums*. Ottawa: Canada School of Public Service.
- Aucoin, Peter. 1995. *The New Public Management: Canada in Comparative Perspective*. Montreal: Institute for Research on Public Policy.
- Australia. Treasurer of the Commonwealth. 2004. *Final Response to the Charities Definition Inquiry*. Canberra: Treasurer of the Commonwealth. Available online:
<http://www.treasurer.gov.au/tsr/content/pressreleases/2004/031.asp>
- Azmier, Jason and Robert Roach. 2000. *The Ethics of Charitable Gaming: A Survey – Gambling in Canada Research Report No. 10*. Calgary: Canada West Foundation.
- Azmier, Jason. 1999. *Gaming and the Non-Profit Sector: Is It A Gamble?* Calgary: Canada West Foundation.
- Babbie, Earl. 2007. *The Practice of Social Research, 11th Edition*. Belmont, CA: Thomson Wadsworth.

- Bakvis, Herman and Luc Juillet. 2004. *The Horizontal Challenge: Line Departments, Central Agencies and Leadership*. Ottawa: Canada School of Public Service.
- Balloch, Susan and Marilyn Taylor. 2001. *Partnerships Working: Policy and Practice*. Bristol: The Policy Press.
- Banting, Keith. 1987. *The Welfare State and Canadian Federalism*, 2nd edition. Montreal-Kingston: McGill-Queen's University Press.
- Barbados. The Laws of Barbados. 1989. Volume VIII, Title XVIII, Chapter 243, LRO.
- Bemelmans-Videc, Marie-Louise, Ray C. Rist, Evert Vedung (Eds). 1998. *Carrots, Sticks and Sermons: Policy Instruments and their Evaluation*. New Brunswick, NJ: Transaction Publishers.
- Berdahl, Loleen Youngman with Jason Azmier. 1999. *Summary Report – The Impact of Gaming upon Canadian Non-Profits: A 1999 Survey of Gaming Grant Recipients*. Calgary: Canada West Foundation.
- Berry, J. 2005. "Ensuring Non-profit Passivity." A paper presented to the 2004 American Political Science Association Annual Conference, Washington, D.C.
- Berry, J. with D. Arons. 2005. *A Voice for Nonprofits*. Washington, DC: The Brookings Institute Press.
- Better Regulation Task Force. 2005. *Better Regulations for Civil Society: Making Life Easier For Those Who Help Others*. London, England.
- Boismenu, Gérard and Peter Graefe. 2004. "The New Federal Tool Belt: Attempts to Rebuild Social Policy." *Canadian Public Policy* 30, 1: 71-89.
- Bourgeois, Donald. 1995. *The Law of Charitable and Non-Profit Organizations*, 2nd Edition. Markham, ON: Butterworths Canada Ltd.
- Boyle, Francis. 1997. 'Charitable Activity' Under the Canadian Income Tax Act: *Definition, Process And Problems*. Ottawa: Voluntary Sector Roundtable.
- Bridge, Richard. 2000. *The Law of Advocacy by Charitable Organizations: The Case for Change*. Vancouver: IMPACS.
- Bridge, Richard. 2002. "The Law governing Advocacy by Charitable Organizations: The Case for Change." *The Philanthropist* 17, 2: 2-33.

- Brock, Kathy. 2004. "Citizen Involvement in Policy Making." A paper presented to the 2004 Canadian Political Science Association Annual Conference, Winnipeg, MB.
- Brock, Kathy. 2000-2001. "State, Society and the Third Sector: Changing to Meet New Challenges." *Journal of Canadian Studies* 35, 4: 203-220.
- Brock, Kathy and Keith Banting. 2001. "The Nonprofit Sector and Government in a New Century: An Introduction." In *The Nonprofit Sector and Government in a New Century*, eds. Kathy Brock and Keith Banting. Montreal-Kingston: McGill-Queen's University Press.
- Broder, Peter. 2001. *The Legal Definition of Charity and Canada Customs and Revenue Agency Charitable Registration Process*. Toronto: Canadian Centre for Philanthropy.
- Bromley, Blake. 1999. "Viewpoint: A Response to "Helping Canadians Help Canadians: Improving Governance in the Voluntary Sector." *The Philanthropist* 14, 4: 17-25.
- Brooks, Neil. 2001. "The Tax Credit for Charitable Contributions: Giving Credit Where None Is Due." In *Between State and Market: Essays on Charities Law and Policy in Canada*, eds. Jim Phillips, Bruce Chapman and David Stevens. Montreal-Kingston: McGill-Queen's University Press.
- Brown, Robert and Yvan Guillemette. 2003. "Tax Treatment of Charitable Donations: How Much Is Enough?" Backgrounder, no. 70. Toronto: C.D. Howe Institute.
- Bryden, John. 1996. "Canada's Charities: A Need for Reform." Ontario.
- Bryden, John. 2002. "Memo to Charities: Pipe Down and Get Back to Work." Ontario.
- Campbell, John. 2004. *Institutional Change and Globalization*. Princeton, NJ: Princeton University Press.
- Canada. Canada Revenue Agency - Charities Directorate. No date. "Applicants that are not registered." Background report prepared for the Joint Regulatory Table of the Voluntary Sector Initiative. Ottawa: CRA.
- Canada. Canada Revenue Agency - Charities Directorate. 1987. Informational Circular 87-1 "Registered Charities – Ancillary and Incidental Political Activities." Ottawa: CRA.
- Canada. Canada Revenue Agency – Charities Directorate. 1999. "Registered Charities: Community Economic Development Programs, RC4143(E)." Ottawa: CRA.

- Canada. Canada Revenue Agency - Charities Directorate. 2000. "Registered Charities: Operating Outside Canada." Ottawa: CRA.
- Canada. Canada Revenue Agency - Charities Directorate. 2001. "Registered Charities Newsletter, No. 11." Ottawa: CRA.
- Canada. Canada Revenue Agency - Charities Directorate. 2002. "Registered Charities Newsletter, No. 13." Ottawa: CRA.
- Canada. Canada Revenue Agency- Charities Directorate. 2003a. Policy Statement, Political Activities, Reference Number, CPS – 022, Effective date September 2, 2003. Ottawa: CRA.
- Canada. Canada Revenue Agency - Charities Directorate. 2003b. "Registered Charities Newsletter, No. 15." Ottawa: CRA.
- Canada. Canada Revenue Agency - Charities Directorate. 2003c. "Registered Charities Newsletter, No. 17." Ottawa: CRA.
- Canada. Canada Revenue Agency – Charities Directorate. 2003d. "What is a Related Business?" Reference number: CPS-019, effective March 31, 2003. Ottawa: CRA.
- Canada. Canada Revenue Agency – Charities Directorate. 2003e. "Registering Charities that Promote Racial Equality." Reference number: CPS – 021, effective September 2, 2003. Ottawa: CRA.
- Canada. Canada Revenue Agency – Charities Directorate. 2004a. "Registered Charities Newsletter, No. 19." Ottawa: CRA.
- Canada. Canada Revenue Agency - Charities Directorate. 2004b. "Registered Charities Newsletter, No. 18." Ottawa: CRA.
- Canada. Canada Revenue Agency - Charities Directorate. 2004c. Consultation on Proposed Policy: Applicants Assisting Ethnocultural Communities. Ottawa: CRA.
- Canada. Canada Revenue Agency- Charities Directorate. 2004d. Registering a Charity for Income Tax Purposes T4063(E) Rev. 01. Ottawa: CRA.
- Canada. Canada Revenue Agency – Charities Directorate. 2005a. "Registered Charities Newsletter, No. 22." Ottawa: CRA.
- Canada. Canada Revenue Agency – Charities Directorate. 2005b. "Registered Charities Newsletter, No. 23." Ottawa: CRA.

- Canada. Canada Revenue Agency – Charities Directorate. 2006. “Registered Charities Newsletter, No. 27.” Ottawa: CRA.
- Canada. Canada Revenue Agency – Charities Directorate. 2007. “Registered Charities Newsletter, No. 28.” Ottawa: CRA.
- Canada. Canada Revenue Agency – Charities Directorate. 2008a. “Registered Charities Newsletter, No. 29.” Ottawa: CRA.
- Canada. Canada Revenue Agency – Charities Directorate. 2008b. “Guidelines for the Registration of Umbrella Organizations and Title Holding Organizations.” Ottawa: CRA.
- Canada. Canada Revenue Agency – Charities Directorate. 2008c. “Registered Charities Newsletter, No. 30.” Ottawa: CRA.
- Canada. Department of Finance. 2007. “Tax Expenditures and Evaluations”. Ottawa: Department of Finance.
- Canada. Department of Finance. 2005. “Tax Expenditures and Evaluations”. Ottawa: Department of Finance.
- Canada. Department of Finance. 2004. Federal Budget. Ottawa: Department of Finance.
- Canada. Department of Finance. 1975. *The Tax Treatment of Charities (Discussion Paper)*. Ottawa: June.
- Canada. *Income Tax Act*, R.S.C. 1985 c. 1 (5th Supp.).
- Canada. Social Development Canada. 2003. An Evaluation of the Sectoral Involvement in Departmental Policy Development (SIDPD). Ottawa: Social Development Canada.
- Canada. Social Development Canada. 2004. The Voluntary Sector Initiative Process Evaluation. Ottawa. Available on-line: Ottawa: Social Development Canada.
- Canada. 1999. Speech from the Throne. Ottawa. Available online: http://www.pco-bcp.gc.ca/default.asp?Language=E&Page=sftddt&doc=sftddt1999_e.htm
- Canada. Statistics Canada. 2003-2004. *Report on the Demographic Situation in Canada*. Ottawa: Statistics Canada. Available online: <http://www.statcan.ca/english/ads/91-209-XPE/index.htm>

- Canada. Statistics Canada. 2004a. *Canadian Survey of Giving, Volunteering and Participation*. Ottawa: Statistics Canada. Available online: http://www.givingandvolunteering.ca/pdf/CSGVP_Highlights_2004_en.pdf
- Canada. Statistics Canada. 2004b. *Cornerstones of Community: Highlights from the National Survey of Non-profit and Voluntary Organizations*. Ottawa: Statistics Canada. Available on-line: http://www.nonprofitscan.ca/pdf/NSNVO_Report_English.pdf
- Canada. Standing Senate Committee on Banking, Trade and Commerce. 2004. "The Public Goods and Private Funds: The Federal Tax Treatment of Charitable Giving by Individuals and Corporations." Ottawa. Available online: <http://www.parl.gc.ca/38/1/parlbus/commbus/senate/com-e/bank-e/rep-e/rep04dec04-e.htm>
- Canada. Treasury Board. 2006. *2007-2008 Reports on Plans and Priorities – Department of Finance Canada*. Available online: http://www.tbs-sct.gc.ca/rpp/0708/Fin-Fin/Fin-Fin_e.asp
- Canada. Treasury Board. 1995. *Guide on Financial Arrangements and Funding Options*. Ottawa: Treasury Board. Available on-line: http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/tbm_133/arral_e.asp
- Canada. Treasury Board Secretariat. 2003. *Federal Funding Practices and Policies: A Treasury Board Secretariat Study*. Ottawa: Treasury Board. Available on-line: http://www.vsi-isbc.ca/eng/funding/doc/tbs_final_report.doc
- Canadian Centre for Philanthropy. 2003. "Issue Alert RE: Proposed New Advocacy Rules." Toronto: Canadian Centre for Philanthropy.
- Carter, Tom. 2004. "Directorate Announces Reforms to the Charitable Regulatory Environment." *Charity Law Bulletin* No. 47. Toronto: Carters and Associates. Available online: <http://www.carters.ca/pub/bulletin/charity/2004/chylb47.htm>
- CBC. 2005. "How Charities Spend." January 5. Available online: http://www.cbc.ca/news/background/asia_earthquake/how-charities-spend.html
- Clarke, John and Carol Glendinning. 2002. "Partnerships and the Remaking of Welfare Governance." In *Partnerships, New Labour and the Governance of Welfare*, eds. Caroline Glendinning, Martin A. Powell, Kirstein Rummery. Bristol: Policy Press.
- Considine, Mark. 2002. "The End of the Line? Accountable Governance in the Age of Networks, Partnerships and Joined up Services." *Governance: An International Journal of Policy, Administration and Institutions* 15, 1: 21-40.

- Crouch, Colin. 2007. "How to 'do' Post-deterministic Institutional Analysis" *Socio-Economic Review* 5, 3: 527-567.
- Crouch, Colin. 2005. *Capitalist Diversity and Change: Recombinant Governance and Institutional Entrepreneurs*. Oxford: Oxford University Press.
- Crouch, Colin and Maarten Keune. 2005. "Rapid Change by Endogenous Actors: The Utility of Institutional Incongruence." In *Beyond Continuity: Institutional Change in Advanced Political Economies*, eds. W. Streeck and K. Thelen. Oxford and New York: Oxford University Press.
- de Bruijn, Johan and Ernst ten Heuvelhof. 1995. "Policy Networks and Governance." In *Institutional Design*, ed. David Weimar. Boston: Kluwer Publishers.
- Desautels, L. Dennis. 1999. "Accountability for Alternative Service Delivery Arrangements in the Federal Government: Some Consequences of Sharing the Business of Government." In *Collaborative Government: Is There a Canadian Way?* eds. Susan Delacourt and Donald Lenihan. Toronto: IPAC.
- DiMaggio, P. and W. Powell, eds. 1991. *The New Institutionalism in Organizational Analysis*. Chicago: University of Chicago Press.
- Dobrowolsky, Alexandra and Denis Saint-Martin. 2005. "Agency, Actors and Change in a Child-focused Future: 'Path Dependency' Problematized." *Commonwealth & Comparative Politics* 43, 1: 1-33.
- Doern, G. Bruce and Robert Johnson. 2006. "Multilevel Regulatory Governance: Concepts, Context, and Key Issues." In *Rules, Rules, Rules: Multilevel Regulatory Governance*, eds. Bruce Doern and Robert Johnson. Toronto: University of Toronto.
- Dominigue, Richard. 1996. "The Charitable 'Industry' and Its Tax Treatment." (BP-401E) Ottawa: Library of Parliament.
- Drache, Arthur (Ed.). 1999. "Expanding the List." *Canadian Not-For-Profit News* 7, 9: 68-69.
- Drache, Arthur. 2002a. "Hostage to History: The Canadian Struggle to Modernize the Meaning of Charity." *Third Sector Review: Charity Law and the Pacific Rim* 8, 1: 39-65.
- Drache, Arthur. 2002b. "A Charity Tribunal for Canada?" In *Improving Connections Between Governments and Non-profit and Voluntary Organizations*, ed. Kathy Brock. Montreal and Kingston: McGill-Queen's University Press.

- Drache, Arthur (Ed.). 2003. "The Brits Propose to Rewrite Charity Law." *Canadian Not-For-Profit News* 10, 11: 81-82.
- Drache, Arthur. 2004. "CRA Consulting on Ethnocultural Community Organizations." *Charities and Not-For-Profit Newsletter – September edition*. Toronto: Miller Thomson LLP.
- Drache, Arthur. 2005. "CRA's position on umbrella organizations." *Charities and Not-For-Profit Newsletter – September edition*. Toronto: Miller Thomson LLP.
- Drache, Arthur with Laird Hunter. 2000. "A Canadian Charity Tribunal: A Proposal for Implementation." *The International Journal of Not-for-Profit Law* 2, 2.
- Drassinower, Abraham. 1999. "The Doctrine of Political Purposes in the Law of Charities: A Conceptual Analysis." In *Between State and Market: Essays on Charities Law and Policy in Canada*, eds. Jim Phillips, Bruce Chapman and David Stevens. Montreal-Kingston: McGill-Queen's University Press.
- Duff, David. 2001. "Charitable Contributions and the Personal Income Tax: Evaluating the Canadian Credit." In *Between State and Market: Essays on Charities Law and Policy in Canada*, eds. Jim Phillips, Bruce Chapman and David Stevens. Montreal-Kingston: McGill-Queen's University Press.
- Eliadis, F. Pearl, Margaret Hill and Michael Howlett. 2005. "Introduction". In *Designing Government: From Instruments to Governance*, eds. Pearl Eliadis, Margaret Hill and Michael Howlett. Montreal & Kingston: McGill-Queen's University Press.
- Esping-Andersen, Gosta. 1990. *The Three Worlds of Welfare Capitalism*. Cambridge, UK: Polity Press.
- Evans, B. Mitchell and John Shields. 2002. "The Third Sector: Neo-liberal Restructuring, Governance and the Remaking of State-Civil Society Relationships." In *The Handbook of Canadian Public Administration*, ed. C. Dunn. Don Mills, ON: Oxford University Press.
- Evans, P., D. Rueschemeyer and T. Skocpol, Eds. 1985. *Bringing the State Back In*. Cambridge: Cambridge University Press.
- Everywoman's Health Centre Society v. Minister of National Revenue* [1991] 136 NR 380.

- Federal Government of Canada / Voluntary Sector Joint Initiative. 1999. *Working Together: Report of the Joint Tables*. Ottawa.
- Floyd, Gordon. 2003. "What's In A Name...Again." *Front & Centre* 10, 6: 5.
- Floyd, Gordon. 2004. "Looking Back, Moving Forward: Where the Past 10 Years Have Taken Us." *Front & Centre* 11, 1: 4-5.
- Foley, Michael and Bob Edwards. 1996. "The Paradox of Civil Society." *Journal of Democracy* 7, 3: 38-52.
- Fontaine, Richard and Lysane Tougas. 2005. "Registration of Charities in Québec." *Charities and Not-For-Profit Newsletter – January edition*. Toronto: Miller Thomson LLP.
- Forest Stewardship Council. No date. "About Us." Available online: www.fsccanada.org/ Accessed August 19, 2007.
- François, Marie Katia. 2004. "On the Other Side of the Fence: Tale of the Public Sector from a Different Perspective." In *Policy Internships and Fellowships Program – Final Report*. Ottawa: Centre for Voluntary Sector Research and Development and the University of Victoria.
- Frumkin, Peter. 2002. *On Being Nonprofit: A Conceptual and Policy Primer*. Cambridge, Mass: Harvard University Press.
- Giddens, Anthony. 1998. *The Third Way: The Renewal of Social Democracy*. Cambridge, UK: Polity Press.
- Goldenberg, Mark. 2004. *The Future of Social Innovation in Canada: Report on a Roundtable Organized by CPRN*. Ottawa: Canadian Policy Research Networks.
- Graham, K. and S. Phillips. 1997. "Citizen Engagement: Beyond the Customer Revolution." *Canadian Public Administration* 40, 2: 255-273.
- Guest, Dennis. 1997. *The Emergence of Social Security in Canada*, Third Edition. Vancouver: University of British Columbia Press.
- Hall, Michael, C. Barr, M. Easwaramoorthy, S. Sokolowski and L. Salamon. 2005. *The Canadian Nonprofit and Voluntary Sector in Comparative Perspective*. Toronto: Imagine Canada.
- Hall, Michael, Alison Andrukow, Cathy Barr, Kathy Brock, Margaret de Wit, Don Embuldeniya, Louis Jolin, David Lasby, Benoît Lévesque, Eli Malinsky, Susan Stowe and Yves Vaillancourt. 2003. *A Capacity to Serve: A Qualitative Study of the Challenges Facing Canada's Nonprofit and Voluntary Organizations*. Toronto: Canadian Centre for Philanthropy.

- Hall, Michael and Paul Reed. 1998. "Shifting the Burden: How Much Can Government Download to the Non-profit Sector?" *Canadian Public Administration* 41, 1: 1-20.
- Hall, Peter. 1993. "Policy Paradigms, Social Learning and the State." *Comparative Politics* 25: 275-296.
- Hall, Peter. 1986. *Governing the Economy: The Politics of State Intervention in Britain and France*. New York: Oxford University Press.
- Hall, Peter and Rosemary Taylor. 1996. "Political Science and the Three New Institutionalisms." *Political Studies* 44: 936-957.
- Harvie, Betsy. 2002. "Regulation of Advocacy in the Voluntary Sector: Current Challenges and Some Responses." Ottawa: Voluntary Sector Initiative.
- Hayhoe, Robert B. 2004a. "Canadian Federal Budget Increases Transparency for Charities." *International Journal of Not-for-profit Law* 6, 3 (June).
- Hayhoe, Robert B. 2004b. "Budget Legislation Released." *Charities and Not-For-Profit Newsletter – September edition*. Toronto: Miller Thomson LLP.
- Hill, Carolyn J. and Laurence E. Lynn. 2005. "Is Hierarchical Governance in Decline? Evidence From Empirical Research." *Journal of Public Administration Research and Theory* 15, 2: 173-196.
- Hirshhorn, Ronald. 1997. *The Emerging Sector: In Search of a Framework*. Ottawa: Canadian Policy Research Networks.
- Hood, Christopher. 1986. *The Tools of Government*. New Jersey: Chatham House.
- Howard, Christopher. 2002. "Tax Expenditures." In *The Tools of Government: A Guide to the New Governance*, ed. Lester M. Salamon. Oxford: Oxford University Press.
- Howlett, Michael. 2000. "Managing the "Hollow State": Procedural Policy Instruments and Modern Governance." *Canadian Public Administration* 43, 4: 412-431.
- Howlett, Michael. 2002. "Do Networks Matter? Linking Policy Network Structure to Policy Outcomes: Evidence from Four Canadian Policy Sectors 1990-2000." *Canadian Journal of Political Science* 35, 2: 235-267.

Hunter, Laird. 2002-2003. "I'm a Fiscal Agent, Can I Borrow your Charitable Number?" *Law Now*, December 2002-January 2003: 53-56.

Imagine Canada. 2006. "Investing in Citizens and Communities: A Submission to the Blue Ribbon Panel on Grants and Contributions Under the Federal Accountability Action Plan." Toronto: Imagine Canada.

Institute for Media, Policy and Civil Society in association with the Canadian Centre for Philanthropy. 2002. *Let Charities Speak: Report of the Charities and Advocacy Dialogue*. Vancouver, BC: IMPACS –CCP.

Jessop, Bob. 1998. "The Rise of Governance and the Risks of Failure: The Case of Economic Development." *International Social Science Journal* 50, 155: 29-45.

Joint Regulatory Table. 2003. *Strengthening Canada's Charitable Sector: Regulatory Reform*. Ottawa.

Joseph, James. 1993. *Donors of Colour: A Promising New Frontier for Community Foundations*. Washington, DC: Council on Federations.

Bakvis, H and L. Juillet. 2004. *The Horizontal Challenge: Line Departments, Central Agencies and Leadership*. Ottawa: Canada School of Public Service.

Kelly, Annie. 2005. "Charity Reform: The Issue Explained." *The Society Guardian*, March 1.

Kernaghan, K. 1993. "Partnership and Public Administration: Conceptual and Practical Considerations." *Canadian Public Administration* 36, 1: 57-76.

Kettl, D. G. 2002. *The Transformation of Governance: Public Administration for the Twenty-first Century*. Baltimore, MD: Johns Hopkins University Press.

Kettl, D. G. 2000. *The Global Public Management Revolution: A Report on the Transformation of Governance*. Washington, D.C.: Brookings Institute.

Kooiman, Jan. 2000. "Societal Governance: Levels, Modes and Orders of Social-political Interaction." In *Debating Governance: Authority, Steering and Democracy*, ed. Jon Pierre. Oxford: Oxford University Press.

Klijn, E.-H. 1997. "Policy Networks: An Overview." In *Managing Complex Networks*, eds. W. Kickert, E.-H. Klijn and J. Koppenjan. London: Sage.

- Klijn, E.-H. and J. Koppenjan. 2004. "Institutional Design In Networks: Elaborating and analysing strategies for institutional design." Paper for the Eighth International Research Symposium on Public Management (IRSPM VIII), 31 March-2 April 2004, Budapest University of Economics and Public Administration, Hungary.
- Klijn, E.H., and J.F.M. Koppenjan. 2000. Public Management and Policy Networks: Foundations of a Network Approach to Governance." *Public Management* 2, 2: 135-158.
- Krasner, Steven. 1988. "Sovereignty: An Institutional Perspective". *Comparative Political Studies* 21, 1: 66 – 94.
- Krasner, Steven. 1984. "Approaches to the State: Alternative Conceptions and Historical Dynamics". *Comparative Politics* 16, 2: 223-246.
- Laforest, Rachel. 2002. "Rethinking the Contours of Advocacy." A paper presented to the 2002 Canadian Political Science Association Annual Conference, Toronto, ON.
- Lecours, Andre (ed). 2005. *New Institutionalism: Theory and Analysis*. Toronto: University of Toronto Press.
- Lemieux, Vincent. 2000. "Government Roles in Governance Processes." In *Modernizing Governance: A Preliminary Exploration*. Ottawa: Canadian Centre for Management and Development.
- Levasseur, Karine and Susan Phillips. 2005. "Square Pegs in Round Holes: Vertical and Horizontal Accountability in Voluntary Sector Contracting." *The Philanthropist* 19, 3: 211-231.
- Linder, Stephen H. and B. Guy Peters. 1984. "From Social Theory to Policy Design." *Journal of Public Policy* 4, 3: 237-259.
- Linder, Stephen H. and B. Guy Peters. 1989. "Instruments of Government: Perceptions and Contexts." *Journal of Public Policy* 9, 1: 35-58.
- Lindquist, E. 2005. "Organizing for Mega-consultations: HRDC and the Social Security Reforms." *Canadian Public Administration* 48, 3: 348-385.
- London School of Economics. No date. "What is Civil Society?" London, England
- Luther, Rashmi. 2001. *Ethnocultural / Ethnoracial Advocacy Groups, State Funding, and Charitable Tax Status*. Ottawa: Carleton University.

- Mahon, Rianne and Susan Phillips. 2002. "Dual-earner Families Caught in a Liberal Welfare Regime? The Politics of Child Care Policy in Canada." In *Child Care Policy at the Crossroads: Gender and Welfare State Restructuring*, eds. Sonya Michel and Rianne Mahon. New York: Routledge.
- Mahon, Rianne. 2001. "School-aged Children Across Canada: A Patch Work of Public Policies." Ottawa: CPRN.
- Mahon, Rianne. 2005. "Rescaling Social Reproduction: Childcare in Toronto/Canada and Stockholm/Sweden." *International Journal of Urban and Regional Research* 29 (2): 341–357.
- Manwaring, Susan. 2004. "The Mechanics of the New Disbursement Quota." *Charities and Not-For-Profit Newsletter – December edition*. Toronto: Miller Thomson LLP.
- March, J. and J. Olsen. 1984. "The New Institutionalism: Organizational Factors in Political Life." *American Political Science Review* 78 (3): 734-749.
- Marowa, Tendai Musodzi. 2001. "How the Law of Charities and Advocacy Can Be Changed to Better Serve Immigrants and Refugees." Prepared on behalf of Ontario Council of Agencies Serving Immigrants.
- Michell, Paul. 1995. "The Political Purposes Doctrine in Canadian Charities Law." *The Philanthropist* 12, 4: 3-32.
- Monahan, Patrick. 2002. "Redesigning the Regulatory Framework." In *Improving Connections Between Governments and Non-profit and Voluntary Organizations*, ed. Kathy Brock. Montreal and Kingston: McGill-Queen's University Press.
- Monahan, Patrick with Elie Roth. 2000. *Federal Regulation of Charities: A Critical Assessment of Recent Proposals for Legislative and Regulatory Reform*. A project of the Kahonoff Foundation.
- Moran, Mayo. 2001. "Rethinking Public Benefit: The Definition of Charity in the Era of the Charter." In *Between State and the Economy: Essays on Charities Law and Policy in Canada*, eds. Jim Phillips, Bruce Chapman and David Stevens. Montreal-Kingston: McGill-Queen's University Press.
- Moran, Mayo and Jim Phillips. 2001. "Charity and the Income Tax Act: The Supreme Court Speaks." In *Between State and the Economy: Essays on Charities Law and Policy in Canada*, eds. Jim Phillips, Bruce Chapman and David Stevens. Montreal-Kingston: McGill-Queen's University Press.

- Muttart Foundation. 2006. *Talking About Charities: Tracking Canadians Opinions' on Charities and Issues Affecting Charities*. Edmonton: Muttart Foundation.
Available on-line: <http://www.muttart.org/surveys.htm>
- Nanaimo Community Bingo Association v. Attorney General of British Columbia* (1998), 52 BCLR 284 (BCSC).
- National Forest Strategy Coalition. 2006. *Canada Forest Accord*. Available online: <http://nfsc.forest.ca/accords/accord3.html>
- Native Communications Society of BC v. Minister of National Revenue* (1986).
- North, Douglass. 1990. *Institutions, Institutional change, and Economic Performance*. Cambridge; New York: Cambridge University Press.
- O'Halloran, Kerry. 2002. "Charities, Muting of dissent to Advocates for Social Change: The Particular Experience in Northern Ireland and the General Lessons from Common Law Charity Law Reviews." A Paper Presented to the International Society for Third-sector Research (ISTR), 2002, Cape Town, South Africa.
- Ontario Council of Agencies Serving Immigrants and Alternative Planning Group. 2004. "Canada Revenue Agency Consultation on Proposed Policy: Applicants Assisting Ethnocultural Communities." Toronto: OCASI.
- Ontario Law Reform Commission. 1996. *Report on the Law of Charities*. Toronto: Ontario Law Reform Commission. Available on-line: <http://www.mtroyal.ab.ca/nonprofit/lawofcharities.pdf>
- Ostrom, Elinor. 1999. "Institutional Rational Choice: An Assessment of the Institutional Analysis and Development Framework." In *Theories of the Policy Process*, ed. Paul A. Sabatier. Boulder, CO: Westview Press.
- Palier, Bruno. 2000. "Defrosting the French Welfare State." *Western European Politics* 23, 2: 113-136.
- Panet, Phillip and Michael Trebilcock. 1998. "Contracting-out social services." *Canadian Public Administration* 41, 1: 25-50.
- Panel on Accountability and Governance in the Voluntary Sector (PAGVS). 1999. *Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector*. Ottawa: Voluntary Sector Roundtable.
- Paquet, Gilles. 1999. *Governance Through Social Learning*. Ottawa: University of Ottawa Press.

- Peters, B. Guy and Frans K.M. van Nispen (Eds.). 1998. *Public Policy Instruments: Evaluating the Tools of Public Administration*. Cheltenham, UK: Edward Elgar.
- Peters, B. Guy. 1999. *Institutional Theory in Political Science: The New Institutionalism*. London: Pinter.
- Peters, B. Guy. 1998. *Managing Horizontal Government: The Politics of Coordination, Research Paper No. 21*. Ottawa: Canadian Centre for Management Development.
- Phillips, Jim. 2001. "The Federal Court of Appeal and the Legal Meaning of Charity: Review and Critique." In *Between State and the Economy: Essays on Charities Law and Policy in Canada*, 219-250. Eds. Jim Phillips, Bruce Chapman and David Stevens. Montreal-Kingston: McGill-Queen's University Press.
- Phillips, Susan D. 1991. "How Ottawa Blends: Shifting Government Relationships with Interest Groups." In *How Ottawa Spends, 1991-1992: The Politics of Fragmentation*, ed. Frances Abele, Ottawa: Carleton University Press.
- Phillips, Susan D. 2000. "Redefining Government Relationships with the Voluntary Sector: On Great Expectations and Sense and Sensibility." Ottawa: Voluntary Sector Roundtable.
- Phillips, Susan D. 2000-2001. "More Than Stakeholders: Reforming State-Voluntary Sector Relations." *Journal of Canadian Studies* 35, 4: 182-202.
- Phillips, Susan D. 2001. "From Charity to Clarity: Reinventing Federal Government – Voluntary Sector Relationships." In *How Ottawa Spends 2001-2002: Power in Transition*, ed. Leslie A. Pal. Don Mills: Oxford University Press.
- Phillips, Susan D. 2004. "Testing the Limits of Horizontal Governance: Voluntary Sector-Government Collaboration in Canada." Paper presented to the International Research Symposium on Public Management (IRSPM8) in Budapest, Hungary.
- Phillips, Susan D. 2005. "Governance, Regulation and the Third Sector: Responsive Regulation and Regulatory Responses." A paper presented at the Annual Meeting of the Canadian Political Science Association. London, Ontario.
- Phillips, Susan D. 2006. "Balancing Acts: Multilevel Regulation of Canada's Voluntary Sector." In *Rules, Rules, Rules, Rules: Multilevel Regulatory Governance*, ed. Bruce Doern. Toronto: University of Toronto Press.

- Phillips, Susan D. and Karine Levasseur. 2004. "The Snakes and Ladders of Accountability: Contradictions between Contracting and Collaboration for Canada's Voluntary Sector." *Canadian Public Administration* 47, 4 (Winter): 451-474.
- Picard, André. 2003. "Charities Blast Ottawa Over Rules on Advocacy." *Globe and Mail*, October 7: A9.
- Pierre, Jon and B. Guy Peters. 2000. *Governance, Politics and the State*. New York: St. Martin's Press.
- Pierson, Paul. 2001. *The New Politics of the Welfare State*. Oxford: Oxford University Press.
- Putnam, Robert. 2000. *Bowling Alone: The Collapse and Revival of American Community*. New York: Simon & Schuster.
- Reevely, David. 2004. "Charity's Legal Morass." *Ottawa Citizen*, February 28: B1-2.
- Rice, James and Michael Prince. 2000. *Changing Politics of Canadian Social Policy*. Toronto: University of Toronto Press.
- Rhodes, R.A.W. 1996. "The New Governance: Governing without Government." *Political Studies* 44, 4: 652-667.
- Rhodes, R.A.W. 2000. "Governance and Public Administration." In *Debating Governance: Authority, Steering and Democracy*, ed. Jon Pierre. Oxford: Oxford University Press.
- Rhone, G., D. Clarke, K. Webb. 2004. "Two Voluntary Approaches to Sustainable Forestry Practices." In *Voluntary Codes: Private Governance, the Public Interest and Innovation*, K. Webb (Ed.) Ottawa: Carleton University – CRUISE.
- Rodal, Alti and Nick Mulder. 1993. "Partnerships, Devolution and Power-sharing: Issues and Implications for Management." *Optimum: The Journal of Public Sector Management* 24, 3: 27-45.
- Salamon, Lester M. 2002. "The New Governance and the Tools of Public Action: An Introduction." In *The Tools of Government: A Guide to the New Governance*, ed, Lester M. Salamon. Oxford: Oxford University Press.
- Salamon, Lester, with the assistance of Stefan Toepler and associates. 1997. *International Guide to Nonprofit Law*. New York: John Wiley & Sons.

- Salamon, Lester M. and Stefan Toepler. 2000. "The Influence of the Legal Environment on the Development of the Nonprofit Sector." *Working Papers of the Johns Hopkins Comparative Nonprofit Project*, no. 17. Baltimore: The Johns Hopkins Center for Civil Society Studies.
- Salamon, Lester and H. Anheier. 1996. *The Emerging Nonprofit Sector: An Overview*. Manchester: Manchester University Press.
- Schneiberg, M. 2007. "What's on the Path? Path Dependence, Organizational Diversity and the Problem of Institutional Change in the US Economy, 1900-1950." *Socio Economic Review* 5 (1): 47-90
- Scott, Katherine. 2003. *Funding Matters: The Impact of Canada's New Funding Regime on Nonprofit and Voluntary Sector Organizations*. Ottawa: Canadian Council on Social Development.
- Scott, Katherine and Deborah Pike. 2005. *Funding Matters...For Our Communities*. Ottawa: Canadian Council on Social Development.
- Scott, W. Richard. 1994. "Institutions and Organizations." In *Institutional Environments and Organizations*, ed. W. Richard Scott, John Meyer and Associates. Thousand Oaks: Sage Publishers.
- Shifrin, Tash. 2003. "Charities Urge Speedy Shakeup." *The Society Guardian*, July 16. Available on-line: <http://society.guardian.co.uk/charityreform/story/0,11494,999166,00.html>
- Skocpol, Theda. 1986. "Rediscovering the State: Strategies of Analysis in Current Research." In *Bringing the State Back In*, eds. Peter B. Evans et al. Cambridge: Cambridge University Press.
- Skocpol, Theda and Paul Pierson. 2002. "Historical Institutionalism in Contemporary Political Science." In *Political Science: State of the Discipline*, eds. Ira Katznelson and Helen V. Milner. New York: W.W. Norton.
- Smucker, Bob. 1999. *The Nonprofit Lobbying Guide, Second Ed.* Independent Sector. Available on-line: www.independentsector.org
- Stoker, Gerry. 1998. "Governance As Theory: Five Propositions." *International Social Science Journal* 50, 155: 17-28.
- Stone, Deborah. 2001. *Policy Paradox: The Art of Decision-Making*. New York: Norton.

- Streeck, W. and K. Thelen. 2005. "Introduction: Institutional Change in Advanced Political Economies." In *Beyond Continuity: Institutional Change in Advanced Political Economies*, eds. W. Streeck and K. Thelen. Oxford and New York: Oxford University Press.
- Sullivan, Helen and Chris Skelcher. 2001. *Working Across Boundaries: Collaboration in Public Services*. London: Palgrave Publishers.
- Taylor, Marilyn. 2003. *Public Policy in the Community*. London: Palgrave Macmillan.
- Thelen, Kathleen and Sven Steinmo. 1982. "Historical Institutionalism in Comparative Politics." In *Structuring Politics: Historical Institutionalism in Comparative Analysis*, eds. Sven Steinmo, Kathleen Thelen, and Frank Longstreth. New York: Cambridge University Press.
- Thelen, Kathleen. 1999. "Historical Institutionalism In Comparative Politics." *Annual Review of Political Science* 2, 1: 369- 404.
- Torjman, Sherri. 1998. *Partnerships: The Good, the Bad and the Uncertain*. Ottawa: Caledon Institute.
- Trebilcock, M 1995. "Can Government be Reinvented?" In *The State Under Contract*, ed. Jonathan Boston. Wellington, New Zealand: Bridget Williams Books.
- Trebilcock, M., D. Hartle, J. Prichard and D. Dewees. 1982. *The Choice of Governing Instrument*. Ottawa: Economic Council of Canada.
- United Kingdom. Strategy Unit. 2002. *Private Action, Public Benefit: A Review of Charities and the Wider Not-For- Profit Sector*. Available on-line: <http://www.number-10.gov.uk/su/voluntary/report/downloads/strat-data.pdf>
- United Kingdom. Charity Commission of England and Wales. 1999. "CC9 – Political Activities and Campaigning by Charities" London, England.
- United Way of Canada. No date. Website available at www.unitedway.ca
- van Bueren, E., E-H. Klijn and J. Koppenjan. 2003. "Dealing with Wicked Problems in Networks: Analyzing an Environmental Debate from a Network Perspective." *Journal of Public Administration Research and Theory* 13, 2: 193-212.
- Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue* [1999] 1 S.C.R. 10.

- Vancouver Regional FreeNet Association v. Minister of National Revenue* [1996] 3 CTC 102.
- Voluntary Sector Forum. 2004a. "Advocacy: A Presentation from the Voluntary Sector Forum." Ottawa: Voluntary Sector Forum.
- Voluntary Sector Forum. 2004b. "Federal Budget 2004 - A Synopsis from the Perspective of the Voluntary Sector." Ottawa: Voluntary Sector Forum.
- Voluntary Sector Initiative (VSI). 2004a. "Frequently Asked Questions." Available online: <http://www.vsi-isbc.ca/eng/faqs.cfm>
- Voluntary Sector Initiative (VSI). 2004b. "Government-Sector Relationship." Available online: <http://www.vsi-isbc.ca/eng/relationship/accord.cfm>
- Voluntary Sector Roundtable. 1997. "VSR Update Newsletter." Ottawa: Voluntary Sector Roundtable.
- Walters, William. 2004. "Some Critical Notes on 'Governance'." *Studies in Political Economy* 73 (Spring/Summer): 27-46.
- Walzer, Michael. 1995. "The Idea of Civil Society." In *Toward a Global Civil Society*, ed. Michael Walzer. Providence, Rhode Island: Barhanan Books.
- Warren, Mark E. 2001. *Democracy and Association*, New Jersey: Princeton University Press.
- Webb, Kernaghan. 2005. "Sustainable Governance in the Twenty-First Century: Moving Beyond Instrument Choice." In *Designing Government: From Instruments to Governance*, eds. Pearl Eliadis, Margaret Hill and Michael Howlett. Montreal & Kingston: McGill-Queen's University Press.
- Webb, Kernaghan. 2003. "Toward a More Modern and Systematic Approach to Tax Treatment of Non-profit Organizations Engaging in Public Policy Development in Canada: Moving Beyond Cinderella's Slippers". Draft paper prepared for the School of Public Policy and Administration – Luncheon Speaker's Series on Voluntary Sector. Available online: http://www.cvsrd.org/eng/discussion_papers/kernaghan_webb.pdf
- Webb, Kernaghan. 2000. *Cinderella's Slippers? The Role of Charitable Tax Status in Financing Canadian Interest Groups*. Vancouver: SFU-UBC Centre for the Study of Government and Business.
- Williamson, Oliver E. 1996. *The Mechanisms of Governance*. New York: Oxford University Press.

- Williamson, Oliver E. 1991. "Comparative economic organization: the analysis of discrete structural alternatives." *Administrative Science Quarterly* 36.
- Zweibel, E. 1987. "A Truly Canadian Definition of Charity and a Lesson in Drafting Charitable Purposes." *The Philanthropist* 7, 1.

Key Acronyms

APG	Alternative Planning Group
CCEW	Charity Commission of England and Wales
CCRA	Canada Customs and Revenue Agency
CED	Community economic development
CRA	Canada Revenue Agency
FSC	Forest Stewardship Council
HRSDC	Human Resources and Social Development Canada
IMPACS	Institute for Media, Policy and Civil Society
<i>ITA</i>	<i>Income Tax Act</i>
JRT	Joint Regulatory Table
NASO	National Arts Service Organization
NGO	Non-governmental organization
NPM	New Public Management
OCASI	Ontario Council of Agencies Serving Immigrants
PAGVS	Panel of Accountability and Governance in the Voluntary Sector
RCAAA	Registered Canadian Amateur Athletics Association
SIDPD	Sectoral Involvement in Departmental Policy Development
Vancouver Society	Vancouver Society of Immigrant and Visible Minority Women
VSI	Voluntary Sector Initiative

Appendix A

Interview Schedule: Voluntary Organizations Without Charitable Registration

Participant Name:

Organization Name:

Position within organization:

Interviewer:

Date:

Phone:

In Person:

Informed consent form attached and signed? Yes No

Introduction:

Thank you for agreeing to do this interview. Over the next hour, I will seek your insights regarding charitable registration in Canada. At any point, please feel free to elaborate on any question. Also, for any question, please feel free to indicate that you don't know or have no opinion. Of course, you can decline to answer any question or withdraw from the interview completely at any time. Your responses will be kept strictly confidential and your responses will not be shared with anyone. I will take hand-written notes in order to compile a written record of our discussion today.

Do you have any questions before we proceed? Please sign the attached consent form which reaffirms that you are aware that the research and all of the information you give me will be treated in a confidential manner.

1. What is the central mandate of your organization?
2. If applicable, can you tell me about the history of this organization's attempt to receive charitable status?
3. If applicable, what was CCRA's reason for denying the application?
4. What do you see as being the top three benefits of receiving charitable registration? Are there any shortcomings with these benefits?

Benefit #1: _____

Using the following scale, can you please indicate what kind of impact you would expect this benefit to have on your organization if you could become a registered charity?

___ no impact ___ little impact ___ a moderate impact ___ a positive impact

Benefit #2: _____

Using the following scale, can you please indicate what kind of impact you would expect this benefit to have on your organization if you could become a registered charity?

___ no impact ___ little impact ___ a moderate impact ___ a positive impact

Benefit #3: _____

Using the following scale, can you please indicate what kind of impact you would expect this benefit to have on your organization if you could become a registered charity?

___ no impact ___ little impact ___ a moderate impact ___ a positive impact

5. For each of the following areas, could you indicate how you might expect them to change if you were to receive charitable status tomorrow? Please also discuss other influencing factors besides just charitable status on these areas that may help account for such a change. (Note: Interviewer will read out these to the subject)

Area	Expected changed as a result of receiving status?	Other possible factors?
being consulted by government	1 = not at all 2 = somewhat 3 = moderately 4 = significantly	
being an advocate	1 = not at all 2 = somewhat 3 = moderately 4 = significantly	
being part of networks (i.e. having allies and being sought by others)	1 = not at all 2 = somewhat 3 = moderately 4 = significantly	
being seen as a credible organization	1 = not at all 2 = somewhat 3 = moderately 4 = significantly	
Other:	1 = not at all 2 = somewhat	

	3 = moderately 4 = significantly	
--	-------------------------------------	--

6. Would you be able to indicate the anticipated changes in the revenue and sources if you were to receive status tomorrow?

7. Thinking about the specific types of funding, please indicate exactly how and how much change you would expect to occur if you were to receive status tomorrow (i.e. in dollar amount or percentages).

Type of funding	% or \$ change over this time period
Core funding	
Project funding	
service	
contracts/fees	
United Ways	
Foundations	
Corporate dollars	
lottery money	

7 b) What else accounts for these changes?

8. Have alternate forms of resources (i.e. the use of volunteers) been able to compensate for the lack of charitable status. Could you please identify these alternate forms of resources and explain exactly how and how much they compensate for a lack of status?

9. Are you familiar with the "10% rule" regarding non-partisan advocacy initiatives?

10. Do you perceive a trade-off for your organization between obtaining charitable status and the amount of advocacy you may perform?

11. Are you familiar with the new guidelines regarding non-partisan advocacy? If so, have the guidelines had any impact on your organization in terms of receiving charitable status?

12. What recommendations would you give regarding the criteria for charitable registration and the registration process?

13. If you were to apply for status again, what would you do differently?

14. Is there anything that you think I have missed, that you would like to emphasize as being important, or that you want to ensure that I understand and capture in the Dissertation?

Thank You

Thank you for your time and insights. As I mentioned at the beginning, all of the information that you have given me will be treated in a confidential manner. I plan to finish the Dissertation by December 2004 and hope to have some publications stemming from this research. I will be sure to send a copy of any publications to you regarding this research.

If you think of anything that you would like to add or clarify, please email me or phone me. If there is anything that is not clear, may I contact you for a quick clarification?

Thank you again.

Interview end time _____

Appendix B

Interview Schedule: Voluntary Organizations With Charitable Registration

Participant Name:

Organization Name:

Position within organization:

Interviewer:

Date:

Phone:

In Person:

Informed consent form attached and signed? Yes No

Introduction:

Thank you for agreeing to do this interview. Over the next hour, I will seek your insights regarding charitable registration in Canada. At any point, please feel free to elaborate on any question. Also, for any question, please feel free to indicate that you don't know or have no opinion. Of course, you can decline to answer any question or withdraw from the interview completely at any time. Your responses will be kept strictly confidential and your responses will not be shared with anyone. I will take hand-written notes in order to compile a written record of our discussion today.

Do you have any questions before we proceed? Please sign the attached consent form which reaffirms that you are aware that the research and all of the information you give me will be treated in a confidential manner.

1. What is the central mandate of your organization?
2. Can you tell me the history of how your organization got charitable status?
3. To receive charitable registration, did you have to:
 - a) change the name of the organization ____
 - b) change your objectives as a pre-condition for registration? ____
 - c) forgo advocacy? ____
 - d) other: please explain

4. Could you please outline the top three benefits of receiving charitable registration and discuss any shortcomings with these benefits?

Benefit #1: _____

Using the following scale, can you please indicate what kind of impact this benefit has had on your organization?

___ no impact ___ little impact ___ a moderate impact ___ a positive impact

Benefit #2: _____

Using the following scale, can you please indicate what kind of impact this benefit has had on your organization?

___ no impact ___ little impact ___ a moderate impact ___ a positive impact

Benefit #3: _____

Using the following scale, can you please indicate what kind of impact this benefit has had on your organization?

___ no impact ___ little impact ___ a moderate impact ___ a positive impact

5. For each of the following areas, could you indicate how they have changed over this time period and cite possible factors accounting for this change. Please outline what portion of this change is due to receiving charitable status? (Note: Interviewer will read these to the interviewee)

Area	How changed?	Possible factors?	Portion due to having status?
being consulted by government	1 = not at all 2 = somewhat 3 = moderately 4 = significantly		
being an advocate	1 = not at all 2 = somewhat 3 = moderately 4 = significantly		
being part of networks (i.e.	1 = not at all 2 = somewhat		

having allies and being sought by others)	3 = moderately 4 = significantly		
being seen as a credible organization	1 = not at all 2 = somewhat 3 = moderately 4 = significantly		
Other:	1 = not at all 2 = somewhat 3 = moderately 4 = significantly		

6. Would you be able to indicate the changes in the revenue and sources over this period of time? Please give an amount if possible.

7. Could you list the factors that help account for the changes within your organization (i.e. revenue, being seen as credible, etc) over this time period?

8. What portion of these changes are due to having charitable status? (in per cent or dollar amount)

9. Thinking about other forms of funding, please indicate how much change has occurred for each type of funding, the possible factors that can explain this change and the portion of change due to having charitable status. See chart on next page.

Type of funding	% or \$ change over this time period	Do other factors exist to explain this change?	What portion of change is due to having charitable status?
Core funding			
Project funding			
service contracts/fees			
United Ways			
Foundations			
Corporate dollars			
lottery money			

10. Are you familiar with the "10% rule" regarding non-partisan advocacy initiatives?

11. What impact has charitable status had on the organization's ability to advocate?

___ no impact ___ little impact ___ a moderate impact ___ a positive impact

12. Was there a trade-off for your organization between charitable status and advocacy?

13. Are you familiar with the new guidelines regarding non-partisan advocacy? If so, have the guidelines had any impact on your organization?
 14. What recommendations would you give regarding the criteria for charitable registration and the registration process?
 15. If you were doing this again, what would you do differently?
 16. Is there anything that you think I have missed, that you would like to emphasize as being important, or that you want to ensure that I understand and capture in the Dissertation?
-

Thank You

Thank you for your time and insights. As I mentioned at the beginning, all of the information that you have given me will be treated in a confidential manner. I plan to finish the Dissertation by December 2004 and hope to have some publications stemming from this research. I will be sure to send a copy of any publications to you regarding this research. If you think of anything that you would like to add or clarify, please email me or phone me.

If there is anything that is not clear, may I contact you for a quick clarification?

Thank you again.

Interview end time _____