

Presentation by Lynn Eakin, Policy Advisor, Ontario Nonprofit Network
to the Senate Special Committee on the Charitable Sector

19 November 2018

Chair, Members of the Senate, Thank you for inviting me to present to you today.

And thank you so much for your concern for the well-being of Canada's charitable and nonprofit sector. This review is very timely and much needed. Thank you so much for your leadership.

As you know I am currently a Policy Advisor with the Ontario Nonprofit Network. I have spent many years in the sector, first as an Executive Director, then as a consultant turning around nonprofit organizations that were in trouble. This led me to an awareness of the difficult funding, legislative and regulatory context in which the sector did its work. I began to research and document these difficulties and I now bring those many perspectives to my work with ONN.

You have asked me here today to speak to a 2009 study I co-led called The Nonprofit Maze, a survey of key leaders in the nonprofit and charitable sector about the legislative and regulatory challenges that were impeding their work. But that was 10 years ago and the world is a different place as we approach 2019. Tonight I am going to update you on those challenges and some key legislative and regulatory priorities in the context of current day realities for the sector.

First some important changes in how we now understand the sector

We at ONN and others now talk specifically about the public benefit sector. This is a refinement in thinking on the nonprofit sector. The public benefit sector includes those organizations who operate for the public good - charities, non-profit organizations and nonprofit coops who have as their missions a broader (public) good. This definition does not include trade and professional associations, private clubs and condominiums which, while nonprofit in structure, we have found to have different purposes and interests. Not being able to distinguish these two groups in law and policy is getting in the way of developing enabling policy for organizations serving the public good. ONN is asking that not-for-profit organizations be divided in law into member-focused organizations and public benefit organizations.

Key barriers for public benefit work remain

It is astounding that in 2018, charities are prohibited from collaborating to do their work. CRA guidance on “direction and control” specifies that charities must undertake their own activities. They can’t fund a trusted nonprofit partner and divide up who does what as the charity has to remain in direct control. We are the only country to do this. Other countries use an expenditure responsibility test which holds the charity accountable for their funding decisions and their monitoring of outcomes without requiring the charity to do it all themselves. You may have heard about the Public Television Association of Quebec that lost its charitable status because it collaborated with its creative partner in Vermont. It was found not to have direction and control of the shows’ production. International charities have a particularly difficult time with this outdated and narrow CRA regulatory approach as they need to work with partners on the ground in far away countries.

Charities are still constrained by the “related business” limitations. Charities find it impossible to judge what a “related business” might be. You are likely familiar with the Habitat ReStores. They sell salvaged housing materials and the proceeds go to building affordable housing. CRA found the resale stores was not a related business. At Toronto East General the old hospital building could not be owned by the hospital and renovated into doctors’ offices to generate revenue for the hospital not to mention the synergies of the offices being so close to the hospital. How does the sector move forward and become financially sustainable with these types of restrictions?

Public benefit nonprofits are even more constrained than charities. Many are forced to choose between complying with CRA regulation or continuing to operate. They can’t do both. CRA guidance for the nonprofit organizations defines “not for purpose of profit” as having each activity costed at breakeven. As the nonprofits audited by CRA’s Non-Profit Organization Risk Identification Project explained to the CRA auditors, they were not sustainable at break even – they required contingency funds, funds to expand their programs, and programs that made money so they could operate programs in areas that did not. By the auditor’s own estimate 40-46% of audited nonprofits were offside this rule. The sector needs to be able to operate sustainably and a destination test and asset lock- where any revenue earned goes back into the organization would provide sufficient proof of not-for-profit purpose.

The stakes are high to get regulation of the sector right

The challenges facing the world, Canada and our public benefit sector are enormous. Around the world and within Canada we are seeing a rise in populism and the politics of division, a crisis of income inequality, disruption due to climate change and loss of trust in public institutions.

Across Canada, private capital’s role in building and operating community infrastructure is placing those assets at risk of sale for private capital gain and raising costs for taxpayers. The sector is key to developing new ways to fund, build and operate facilities that retain community wealth in communities.

There is an emerging literature on a new vision of how we can develop inclusive local economies and strengthen social relationships and our young people are clamouring for it. They intuitively know the current economic system is broken and in transition. Nonprofits alongside cooperatives, anchor institutions and other structures are creating new local economic ecosystems.

Highly skilled staff and millions of volunteers ensure a vibrant public benefit sector in every community providing arts, sports, immigrant settlement services, disability supports, community enterprises, and more. They are there in good times and bad to meet community needs whether it is reacting to fentanyl overdoses, helping devastated communities get back on their feet or running everyday summer camps or soccer clubs. There is so much that needs to be done. Canada needs its nonprofit public benefit sector to be as strong and nimble as possible.

Recommendation summary

1. Create two classes of not-for-profit organizations - a *public benefit organization* and a *member-focused organization*.
2. Allow the sector to collaborate. Modify “direction and control” guidance to accept an *expenditure responsibility* test instead of requiring direct control by the charity.
3. Support sustainability and innovation. Convert the “related business test” for charities to a *destination of funds* test.
4. Allow public benefit nonprofits to earn revenues to reinvest in their work. Change the definition of “not-for-purpose of profit” for public benefit nonprofit organizations to a *destination of funds test* and an *asset lock*.
5. Support the development of new ways to fund community infrastructure so public and community assets and services remain community assets and build community wealth.

The public benefit sector needs an enabling legislative, and regulatory environment and it needs it soon.

Thank you very much.

Resources and Supporting Documentation

Describing the Public Benefit Sector

theonncanada.ca/our-work/our-regulatory-environment/public-benefit-nonprofits/

Recommendations creating member-focused and public benefit classes for nonprofit organizations.

theonncanada.ca/our-work/our-regulatory-environment/public-benefit-nonprofits/income-tax-act/

Describing difficulties and options for reform of “direction and control”

thephilanthropist.ca/2016/11/foreign-activities-by-canadian-registered-charities-challenges-and-options-for-reform/

Describes the confusion surrounding “related business” and the clarity a destination test would provide.

thephilanthropist.ca/2004/12/related-business-whats-okay-and-whats-not/

Recommendations for reforming “not for purpose of profit.” and disclosure provisions for Public Benefit Nonprofits

theonncanada.ca/our-work/our-regulatory-environment/public-benefit-nonprofits/income-tax-act/

Not for Sale - A description of the dangers of private ownership of public benefit infrastructure and services

theonncanada.ca/our-work/our-financing/public-lands-civic-spaces/not-for-sale/

A new way forward - New thinking on reform of our economic system and the role of public benefit organizations

nonprofitquarterly.org/2018/07/18/rebuilding-a-more-equitable-economy-an-npq-acceleration-series/

locality.org.uk/wp-content/uploads/2018/03/Locality-Places-and-spaces-report-final.pdf

thephilanthropist.ca/2017/12/how-social-service-agencies-can-help-build-a-collaborative-and-caring-economy/

Government Audit of Nonprofit Organizations

The Non-Profit Organization Risk Identification Project (NPORIP) Report was prepared by the Specialty Audit Division of the Small and Medium Enterprises Directorate. It provides the NPORIP results used to evaluate the risk associated with entities claiming an exemption under paragraph 149(1)(1) of the Income Tax Act (the "Act").