

**“HOW THE LAW OF CHARITIES AND
ADVOCACY CAN BE CHANGED TO BETTER
SERVE IMMIGRANTS AND REFUGEES”**

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**ONTARIO COUNCIL OF AGENCIES SERVING
IMMIGRANTS SEPTEMBER 2001**

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INTRODUCTION

Who we are:

The Ontario Council of Agencies Serving Immigrants (OCASI) is a non-profit, charitable organisation. Our major objective is to break down barriers for immigrants and refugees in the integration and settlement process. Furthermore, we have over 150 member agencies under our umbrella whose mission is also to provide a wide range of social support and community programs for immigrants and refugees.

As part of our commitment to research and policy analysis, we spearhead public discussions and debates on immigration and settlement services. In addition, we respond to and influence government policy initiatives. As a result, we agreed to participate in this project as we saw this as an opportunity to assist our community member agencies by making the government aware of the issues affecting them.

Purpose of the Report

The objective behind this assignment is to recommend ways in which, “ The law on charity and advocacy can be improved to better serve immigrants and refugees.” The plan for achieving this objective involves; firstly, determining the law of charities and advocacy as it is now and secondly, outlining options and recommendations.

Scope

The OCASI agencies, in their capacity as non-profit charity organisations, rely on funds from donations for their sustenance. It is the desire of every agency to obtain registered charitable status, because this enables them to issue tax receipts, which in turn, acts as an incentive to funders. The Revenue Canada Charity Division (RCCD) ¹administers this process under the Income Tax Act (ITA).²

During this assignment, we interviewed **10%** of the executive directors and senior staff (Ocas member agencies) of the refugee and immigrant serving agencies in the Greater Toronto Area. An overwhelming majority of **90%** admitted that they are dissatisfied with the current functions of the ITA and the RCCD:

- **All** the participants agreed that the law is rigid and encroaches on their ability to raise funds and provide significant services to their clients.
- **All** agreed that the funder-base is shrinking leading to an increase in competition for funds. The agencies with charitable status are in a better position to secure funding than those without.

¹ Revenue Canada Charitable Division administers Canada’s charitable system

² Income Tax Act 149 1 (1)

- 50% of participants (from the small and medium size agencies) have had to forego activities involving advocacy for fear of loss of charitable status.
- 30% of the smaller agencies have opted to operate without the charitable status to avoid the limitations prescribed by the law of charity

Limitations of project

The following are the factors that impeded the investigations in the project:

- Insufficient time
Due to the inadequate time and the timing of the project (summer), 10% of the Ontario based agency's executive directors were interviewed
- Condition of anonymity
90% of the participants spoke on condition of anonymity as they did not want to be quoted by name or to implicate their agencies' boards, but this does not affect the validity or reliability of the report
- Scepticism
5% of the participants were sceptical. They doubted the effectiveness of the exercise and the impact of their contributions, but again this does not affect the validity or reliability of the report.

Methodology

- Interviews
The tele-interviews were conducted on a one-to-one basis. Specifically, the process involved giving the participants a list of questions³ a week before the interviews giving them ample time to study and prepare for the interview. In particular, the questions focused on the participants' experience with:
 - the law of charity according to the ITA
 - the issue of advocacy
 - their recommendations were based on the:
 - (i) Model A of a revised "Revenue Canada Charities Division"
 - (ii) Model B of "the Voluntary Sector Commission"
 - (iii) Model C of "The Quasi - Judicial Commission"
- Literature Survey
The survey, in particular, investigated various options for the participants to consider. As a result, three specific options, in the form of models (mentioned above), were identified. Detailed descriptions of the models together with their advantages and disadvantages are provided in the report

³ see appendix 1

- Sample Classification

A group of 15 agencies was selected for the study. The group was made up of the executive directors of the agencies. Due to the random nature of the sample, the agencies were classified according to their annual income:

A.	<u>LARGE</u>	\$1. 500,000,00	to	\$3. 000 ,000,00 (annual income)
B.	<u>MEDIUM</u>	\$ 300,000,00	to	\$1. 500, 000,00
C.	<u>SMALL</u>	\$ 50,000,00	to	\$ 300, 000,00

Large - 5 ; Medium – 4 ; Small – 6 Total – 15 participants

- Data Analysis:

Simple quantitative analysis was used to analyze the data collected.

Historical background

The English Charitable Uses Act⁴ provides the backbone to the ITA. It was enacted as a means to provide systematic administration and regulation of the charitable trusts in England. In particular, its inception was due to the wide spread increase in poverty in the last decade of the 16th century in England.

The ITA does not expressly define the term ‘charity’. We therefore rely on the interpretation provided by the *Income Tax Act v. Pemsel* case⁵, where “charity” is defined under four heads:

- “the relief of poverty”
- “the advancement of education”
- “the advancement of religion”
- other purposes beneficial the community not falling under the above heads

In Canada, the courts and the government personnel in the RCCD, when determining who gets the status and who keeps it, still refer back to the 400 year old act and the 100 year old interpretation for guidance⁶. Unlike Canada’s governmental counterparts, such as the United Kingdom⁷ and the United States⁸, Canada has not made any significant strides towards upgrading the law of charity. Consequently, there is a clamor by the agencies for the policy makers to “update” the law to ensure relevance and effectiveness.

⁴ Statue of Uses Act 1601

⁵ [1891] A.C.53 (H.L.)

⁶ supra

⁷ see Arthur B. Drache in “The Charities, Public, Benefit and the Canadian Income Tax System”, A Proposal for Reform :- www.qsilver.queensu.ca.sps/Drache

⁸ through legislation passed in 1976 and the 1990 Internal Revenue Service the United States of America widened the parameters within which the charity organizations can operate in Statement about the Importance of Policy Advocacy in the USA . Issued by the Alliance for Justice Independent Sector 1998

Report Lay-Out

Chapter One: The law of Charity and Advocacy

Chapter Two: The Effects of the Law on the Agencies

Chapter Three: Options and Recommendations

Conclusion

One

THE LAW OF CHARITY OF AND ADVOCACY

The Canadian ITA is based on the Charitable Uses act of 1601. The 16th century commissioners of that day, had the notion that as long as the poor benefited then it was within the acceptable equity of the Act. Its major purpose was to provide the systematic administration and regulation of the charitable trusts in England.

The Common Law

The Canadian ITA, does not define the term “charity”. Therefore, one has to start by looking at the interpretation provided in the *Pemsel* case.

“Charity in its legal sense comprises four principal divisions; trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community not falling under the preceding heads”

- In determining whether an organization deserves charitable status, the RCCD or the courts look at the objects of the organization. If any of the stated objects do not fall under the four heads or are deemed uncharitable, then, the organization does not get charitable status.
- Our courts do not consider organizations created for the purpose of advocating or lobbying for changes in the law, charitable. Accordingly, this is the case despite the fact that the public benefits result from advocacy efforts.⁹
- Under “the advancement of education”, the charitable activities must involve, “the formal training of the mind” or “the improvement of a useful branch of human knowledge”¹⁰

In the case of *Positive Action Against Pornography v. M.N.R.*¹¹ Justice Iacobucci expanded the meaning of education to say:

“...so long as information and training is provided in a structured manner and for genuinely educational purpose – that is to advance the knowledge of the recipients – and not solely promote a particular view or political orientation, it may properly be viewed as falling within the advancement of education”

To date, this summarizes our common law interpretation of what constitutes “charity”. When determining whether an organization should get the status, the officials in the RCCD look at whether the listed activities fall under the four heads.

⁹ N.D.G. Neighbourhood Association v. M.N.R. [1988] 2 C. T.C. 14, 88

¹⁰ Briapatch Incorporated v. Her Majesty the Queen [1996] 2 C.T.C. 94

¹¹ [1988] 1 C.T.C. 232, 88

The Income Tax Act

As there is no specific definition for charity in the ITA , the point of reference for clarification is sections 149.1.(1) and 248(1) of the ITA. Both sections define the “charitable organization” and “registered charity” respectfully as follows:

149.1(1) “charitable organization” means an organization, whether or not incorporated that devotes

- (a) all the resources of which are devoted to charitable activities carried on by the organization itself*
- (b) no part of the income of which is payable or is otherwise for , the personal benefit of any proprietor, member, share holder, trustee or settler thereof*
- (c) more than 50% of the directors , trustees , officers or like officials which deal with each other and of the other directors, trustees, officers or like officials at arm ‘s length and*
- (d) where it has been designated as a private foundation or public foundation ...or has applied for registration under the definition ”registered charity”.. not more than 50% of the capital of which has been contributed or otherwise paid into the organization by one person or members of a group of persons who do not deal with each other at arms length and, for purposes of this paragraph, a reference to any person or to members of a group does not include a reference to Her Majesty in right of Canada or a province, a municipality , another registered charity that is not a private foundation, or any club or association described in paragraph 149(1) (1).*

248(1) “registered charity” at any time means

- (a) a charitable organization , private foundation or public foundation, within the meanings assigned by subsection 149.1(1), that is resident in Canada and was either created or established in Canada, or*
- (b) a branch, section, parish, congregation or other division or and organization or foundation described in paragraph (a) , that is resident in Canada and it was either created or established in Canada and that receives donations on its own behalf*

has applied to the Minister in the prescribed form for registration and that is at that time registered as a charitable organization , private foundation or public foundation.

Our observations

- 11 of the agencies interviewed find the ITA vague and complicated. Furthermore, they are not certain of what falls under the, “advancement of education” or, “relief of poverty”.
- 6 of the *large* agencies, who have adequate financial resources engage the services of lawyers and or accountants to submit their applications or annual returns.
- 2 of the *small* agencies find the whole process (application for registration or submission of annual returns) tedious and complicated mostly because, they lack the resources to engage services of experts, as a result, most of them have after the first or second trial(to gain or regain status) given up. It is not surprising therefore, that without the charitable status, they are struggling to keep their heads above water. In particular, they have inadequate office space and furniture, and also they need to employ more trained staff, but without extra income it is impossible.
- 5 of the small to medium agencies have had to :--
 - change their names (as the names were considered to be either ethno-specific or gender specific) or
 - change their objectives (as they were considered to be outside the permissible realm) as a pre-condition of registration by the RCCD.

The Act and the issue of Advocacy

The issue of advocacy appears under the ITA 149.1(6)2. It states that where an organization directs 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 opposition to, any political party or candidates for public office,

then the organization is deemed devoting that part of its resources charitable activities .

- The section is an improvement to the Act in that it:
 - expressly excludes partisan politics from charitable activities
 - clearly states that some political activities are not considered charitable

The Revenue Canada Charities Division

Functions

- Administers Canada’s charitable system
- Ensures the tax exemptions and other matters are properly carried out

The difficulties encountered by the division is summarized by one charity law critic Blake Bromley ¹²when he says ,

¹² Blake Bromley Answering the Broadbent Question : The Case of a common Law Definition of Charity
<http://qsilver.queensu.ca.sps/Drache/bromley>

“..one of the most difficult challenges for an applicant for charitable registration as well as for an examiner at the Revenue Canada Charities Division is to understand the extent to which the test of being charitable is to be determined by the organization’s standard purpose or to be determined its intended activities. This problem exists every where else but is more acute in Canada...”

The Information Circular 87-1: Registered Charities – Ancillary and Incidental Political Activities (1987)

The Information Circular 87-1 is an attempt by the division, to regulate its activities, and minimize the uncertainty and confusion surrounding its functions.

(1) The Circular starts by clearly excluding “partisan politics” from charitable activities.

(2) It indicates the following activities, which even though they are political in nature are permissible. This includes: -

- (a) *‘Oral and written presentation to the relevant elected representatives (Members of Parliament, Members of Legislative Assembly, Municipal councilor, the involved Minister of the Crown) or a public servant*
- (b) *oral and written representations or briefs containing factual information and recommendations to the relevant government bodies, commissions or committees, and*
- (c) *the provision of information and the expression of non- partisan views to the media,*

to fall within the general ambit of charitable activities as long as the devotion of resources to such activity is reasonable in the circumstances

All the resources used directly to prepare or substantiate the representations or presentations to (a) and(c) above (such as the cost of the research) will be treated as resources devoted to charitable activities... ”

This category, while it permits a certain amount of advocacy a charity can engage in, it is not explicit on how one arrives at what is acceptable. From the decision in *the Human life International*¹³, the court showed its support for the RCCD’s decision that political activities include even those : - “designed to sway public opinion on a controversial social issue,” . While this move has given greater latitude to the determination process, it is still silent on how “controversial” the topic or activities should be.

The Ten Percent Rule

The RCCD, in the circular 87-1 outlines the limits on the resources to be expended on political activities. It does this by, narrowing the requirement in the ITA s.;149.1(16.2) stating that “substantially all” means “ 90 percent or more” Thus, this means that, an organization cannot direct more than 10% of its resources on permitted political activities. In sum, this act as a counter sanction to whatever amount of advocacy activities an organization can engage in.

Our observations

¹³ [1998] 3 C.T.C. 126.

- **13** of the registered charities find the **10 %** rule unrealistic, rigid and authoritarian and they wonder how the figure was arrived at.
- **4** of the small to medium sized agencies - have since foregone the idea of engaging in progressive advocacy activities for fear of loss of status. The absence of a clear legal definition of what constitutes permissible advocacy makes the process impractical.
- **4** of the large and more established agencies - have been able to engage in some advocacy activities because of their long-standing relationships with some strategically placed government personnel.
- **7** participants understand the current appeal system, they claimed that making application in the Court of Appeal is a costly exercise as one needs to engage the services of an attorney. So far, none of them have taken this route.
- **5** participants feel there is a lack of transparency, (because all files due to tax implication(s)) are treated as private and confidential. Thus, there is no system of precedence governing the RCCD 's decisions. The whole procedure is executed on *an ad hoc* basis.
- **3** medium to large agencies, by taking a firm stand on the issue of advocacy have resorted to registering second / sister agencies. They claim that, although the route is circuitous, expensive and time consuming the pay off is that they have not had to abandon their advocacy activities entirely.

Conclusion

Charities registered under the Income Tax Act possess assets worth \$109 billion and employ over 1.3 million people.¹⁴ It is further stated that there are over 5 million tax payers currently claiming relief in excess of almost \$4 billion in donations towards the 75 000 charities in Canada.¹⁵ This confirms that the sector is a force to reckon with and has since earned the right to a more systematic, well-defined and progressive set of rules. It is absurd to expect a harmonious working relationship between a vibrant \$109 billion industry and an archaic outdated 400-year common law (assisted by an equally aging 100-year court interpretation).

The current abundant literature comprising research reports, studies by experts in charity law, and court judgements show beyond doubt that the current legal framework on charitable organizations has outlived its purpose. Whether through some deliberate orchestrated stance or not, Canada has not made any significant changes despite that the United Kingdom from where the piece of legislation hailed have since put in place measures enhancing its relevance and effectiveness.

In summary we noted that:

¹⁴ MP's Report Canada's Charities: A Need for Reform. John Bryden, MP Hamilton Wentworth October 1995 www.qsilver.queensu.ca/sps.Drache/bryden

1. Neither the legislators nor the courts have been willing to provide a practical determination process, hence, it is always difficult to foretell whether a proposed activity will be regarded charitable or not.
2. Agencies have to engage the services of legal experts and or accountants to assist and guide them in the application process and in the submission of annual returns.
3. Despite the efforts by the RCCD in publishing the Circular 87, the participants still feel that the regulation of charities is not performed in an orderly and consistent manner.
4. The law, as it is, impedes the agency's capacity to serve refugees and the immigrants in a more effective way. It encroaches on the agencies' ability to:
 - Launch public education and advocacy activities aimed at removing barriers
 - Participate in the public policy making process
 - Secure enough funds to ensure the efficient running of offices

Two

HOW THE LAW AFFECTS AGENCIES

The United Nations Economic and Social Council defined *integration* as

“the gradual process by which new residents become active participants in the economic, social, civil, cultural, spiritual affairs of a new homeland....”¹⁶

We at OCASI view *settlement* as: a long term dynamic, two way process, through which ideally , immigrants and refugees achieve full equality and freedom of participation in society, and society gains access to the full human potential in its immigrant communities. It is the intention of our member agencies to break down barriers, which often prevent immigrants from; reaching their full, potential as participants and contributors to Canada's prosperity and economic growth.

¹⁶ OCASI Update February 4, 1996 p6

In Ontario there are about 150 agencies serving immigrants and refugees. Overall they provide community and social programs for the newcomer. Located throughout Ontario, OCASI agencies provide a wide range of essential community services to assist close to 500,000 newcomers in the settlement process annually. These innovative, culturally sensitive and cost effective services includes official language and skills training, employment and career counseling, interpretation and translation, individual and family counseling, healthcare services, advocacy, legal assistance, and public education.

OCASI member agencies, through their work with refugees and immigrants, play a central role in assisting the government in augmenting its commitment to the newcomer. Canada, as a signatory to the United Nations General Conventions of 1951 has an “international commitment” towards refugees and immigrants. Furthermore, the government has reaffirmed its commitment towards upholding the Charter of Rights and Freedoms. In particular, over the years, through its immigration policies and other policies, there has been an increase in the number of newcomers to Canada. The purpose of this research was to investigate from the agencies themselves, the difficulties they were encountering in the execution of their obligations within their given mandates. Although we referred to a lot of literature, we tried to give recommendations as per the information gathered during the interviews. Our recommendations in the report, are based on the information and indications from the interviews.

The Impact of the law on Fund-raising

The participants agree that due to inadequate funding from the federal government, they have had no alternative but to look for private funding. However, this is not easy. Not only are agencies competing for funds amongst themselves, but the government itself has since joined in the scramble for funds for projects.¹⁷ Over the years, the latter has also resorted to looking at the private sector for direct funds and/or partnerships. As a result, while the funder-base has decreased, demand for funds remains high.

The members of Staff

The agencies over the years have changed their outlook, they have acquired a professional veneer that is at par with the private sector. While it used to be the norm to associate a few semi-trained volunteers with charity organizations, nowadays this cannot be much further from the truth. The refugee and immigrant serving agencies now employ college and university graduates, who are in charge of key areas in the organizations. However, the sentiment echoed by **12** of the interviewees is that, having personnel with superior skills and qualifications has its advantages and disadvantages.

While the new class of professionals brings lots of innovation and skills resulting in highly imaginative ideas for projects, these professionals usually find the limits and confines of the current charity law frustrating. The most pressing of issues is agencies, similar to the private sector, are expected to provide staff with incentives to stay e.g. comfortable working conditions and competitive salaries.

Office Space

This problem affects **50%** of the smaller agencies. According to the agencies, the influx of newcomers into the country has resulted in more clients, and this of course, calls for more office

¹⁷ Broadbent Panel Report: Building On Strength: Improving Governance and Accountability in Canada’s Voluntary Sector p6

space and office furniture. The irony is that, in actual fact **20%** of these agencies are operating without the charitable status. Therefore, this means that not only do they have to raise funds but they also have to compete with organizations with the charitable status who are able to issue tax receipts.

Need for training

All the participants admitted the need for on going training programs for their members, staff and volunteers. This ensures program effectiveness in that the programs and services offered matches client needs. Furthermore, the diverse of the nature of newcomer needs, has forced agencies to reassess their programs and introduce unique, tailor made services to suit their clients needs. Realistically, agencies are now servicing individuals whose needs go beyond trying to learn the English language, but who are highly qualified, skilled and are facing barriers penetrating the Canadian job market. Of course, this calls for a lot of innovation and problem solving skills and ability on the part of the caseworker at the agency, hence training and orientation inevitably becomes a necessity.

The Impact of the law on Advocacy

The Unfair Tax System

Our analysis of the ITA shows that it has unfair tax implications, because it gives tax relief to private companies involved in direct lobbying and in the criticism of government policy. Yet, for charitable organizations, seeking to enforce the same right through advocacy, the end result can be quite tragic.¹⁸

The Charter of Rights and Freedoms

While the ability to advocate freely remains an obstacle in the charitable sector, the private sector enjoys this privilege as shown in the recent case of *RJR –Macdonald Inc. v. Canada*¹⁹. In this case commercial advertising was declared to be on the same level as augmenting one freedom of expression. Needless to say, the ability by agencies to engage in public debate on issues affecting their clients remains gagged.

The Element of Fear

There are a number of issues raised by **14** of our participants. In particular, these are issues they feel they have been forced to neglect out of fear of losing their charitable status. Specifically, because of the current law, agencies feel public debate has been weakened and the voice of the “voiceless”, has been silenced. There are issues, which they feel have suffered neglect these include:

- Refugee women’s and children’s interests
- Family reunification
- Improvements to the refugee determination process
- Increased detention of refugee claimants
- Refugees access to student loans

In conclusion, the inability by the agencies to express themselves is tantamount to a breach of a fundamental right. In this case, for agencies, the current tax laws encroach on their ability to fully

¹⁸ The Law of Advocacy by Charitable Organization: The Case for Change

Richard Bridge p16

¹⁹ [1995]3.S.C.R. 134

execute their duties within their communities. They feel that their position as the voice of the voiceless make them the most informed body to speak on and behalf of refugees and immigrants. Furthermore for as long as the law remains unchanged, then it means that their activities and function still remain limited.

THREE

OPTIONS AND RECOMMENDATIONS

A week before the interviews, the interviewees were given the following tables to consider. We wanted them to study, analyze and choose from the models the one most effective and appropriate to them. Naturally, while we welcome the adoption of our recommendations by the policy-makers, we feel the move should coincide with the introduction of a new legal framework with well-defined outlines and definitions. Hence, clearer, specific and appropriate terms (that can be easily defined and/or interpreted) should be introduced, especially for the following terms:

- “education”
- “poverty”
- “political activities”
- “advocacy activities”

- A.** Model “X” represents an improved version of the current RCCD role in the administration process. Specifically it shows that, the status quo is maintained. The only change is, in the appointment of an advisory committee made up of charity law experts. The committee would be expected to make recommendations but not decisions.

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NAME	FUNCTIONS	ADVANTAGES	DISADVANTAGES
<p>MODEL ‘X’ Revenue Canada Charities Division (RCCD)</p>	<ul style="list-style-type: none"> • It retains all its powers. • is assisted by an advisory committee of experts on charities and the law • an appointed Committee will make recommendations on difficult cases • All reviews would be within the existing Revenue Canada regulations 	<ul style="list-style-type: none"> • The process is more transparent • Confidentiality and restrictions around the registration process would be relaxed. • Committee would have the expertise, resources to develop policy, educate and communicate. • Visible effort on improving knowledge on compliance 	<ul style="list-style-type: none"> • Status quo is maintained • The committee plays the advisory role only • The committee not an independent body so can easily be ignored • Changes not practical as there is bound to be clashes with other parts of the departments e.g. on confidentiality • Continued conflicting role of being the tax collector and an “adjudicator without jurisdiction”

This version got the least number of votes (actually only 1 participant voted for it.) Realistically, this would be the least expensive alternative of all the models to implement. Unfortunately, this was considered by the other 14 participants as “too little – too late”.

B The following Model “Y” , “The Voluntary Sector Commission” is based on the recommendations in the Broadbent Panel Report. After going through the report, we streamlined the advantages and disadvantages:

NAME	FUNCTIONS	ADVANTAGES	DISADVANTAGES
<p>MODEL ‘Y’ Voluntary Sector Commission</p>	<ul style="list-style-type: none"> • It plays a complementary role to the Revenue Canada.. • Make recommendations on new applications and difficult cases • Assist agency’s comply with regulations • Nurture and support charities and voluntary organizations • Provide best practice guidelines • Provide information to the public 	<ul style="list-style-type: none"> • It has greater potential for provincial involvement • Transparency in the registration and de-registration process • The appeals process is smoother • Charity organizations are assured of an over-seer 	<ul style="list-style-type: none"> • It gives no real power to the commission • Charity division keeps all the power in the registration and de-registration process • It is highly unlikely that the Revenue Canada will look up to the committee for guidance on the “common Law” instead of the courts. • This will create another layer of bureaucracy without improving the system • Lack of clearly defined limits as to what it might

			achieve and might not
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This was a popular choice especially amongst small to medium agencies. 5 participants voted in favor of the model. Naturally, the commission's role in assisting the agencies through "nurturing and supporting" them was appealing to the participants. As a result, the proponents for this model, felt its advantages outweighed its disadvantages.

C. The following model "Z", "The Quasi-Judicial Commission" was the most popular. It is based on the English Charity Commission. In summary, the English Charity acts as functional bridge between the charity community and the Inland Revenue Division of the government. Its decisions, whether to grant an organization the charitable status are based on a given criteria. In contrast, the Canadian tax officials consider an application guided by "revenue loss or gain" perspective. The English Commission operates independently from the Inland Revenue.

NAME	FUNCTIONS	ADVANTAGES	DISADVANTAGES
<p>MODEL 'Z' The Quasi-Judicial Commission (Comprising the Registrar's Division and the Tribunal)</p>	<p>First focuses on these 3 areas:-</p> <ul style="list-style-type: none"> • Adjudication • Policy making • Rulemaking • Takes over the current role of the Revenue Canada in the above 3 factors • Develops criteria for identifying qualifying organization • Develops guidelines on issues such as "advocacy" and related business whether or not there is a change in the legal framework • Provides authoritative advice to the Voluntary Sector • Has support function like that in Model "Y" • Identifies problem areas and encourage research • Conducts investigations • Prosecutes 	<ul style="list-style-type: none"> • It has been tried and tested in England and it works efficiently • It is in a position to interpret the law (as does the English Commission) and any legislative initiatives from an independent perspective rather from within a framework that give priority to the collection of taxes • Smooth transition process • It ensures user friendly guidelines on registration and de-registration process • Appeals process reformed • Richer accumulation of expert advice • Confidentiality restrictions around registration will done away with • Has mandate to develop policy, educate and communicate • Assist organizations with relevant information to ensure compliance • Improved public information, knowledge and trust. 	<ul style="list-style-type: none"> • Slow gradual process • Structures have to be put in place to accommodate provincial governments input • Audit function will remain with Revenue Canada • Revenue Canada maintains role in administration compliance within all aspects of tax law • The Tribunal will have a lot of work in first few years of operation • Its design will depend a lot on what changes are made to the Income Tax Act

This was the most popular of all the models with 9 of the participants voting in its favor. Apart from its court function, the English Commission has and continues to modify the definition of

terms and judicial decisions based on what is acceptable at the point in time in the society. In other words, the interpretation of what is charitable or not depends entirely on what the society expects from the charitable organizations. Thus, the interpretations and definitions are not static but continue to shift according to the society's values and considerations. Hence, it is not surprising that this was the most popular model as it best represents the interests of the agencies.

CONCLUSION

The gap between the goals and objectives of the agencies serving immigrants and refugees, and the requirements of the current law of charity and advocacy is wide and the need for an overhaul can no longer be overlooked. The law of Charity should be redefined to ensure relevance and effectiveness. By expanding the advocacy realm, it means that Canada can live up to its Charter of Rights and Freedoms and the agencies can attend to their societal obligations without reservations.

Firstly, by looking at the size of the voluntary organizations and how it can now be equated to any other big industry, and secondly, by analyzing the limitations of the current law, it is quite clear that there is a mismatch. Therefore, the law of charity and advocacy should be re-written to suit the changes and the complexities present in the voluntary sector. In particular, the agencies serving immigrants and refugees need the charitable status for them to secure funds. Naturally, the ability to issue tax receipts increases their chances of attracting donations. The refugees and immigrants finding their way into Canada have diverse needs and (at times quite sophisticated too), the agencies through their commitment are compelled to provide effective assistance. Likewise, apart from meeting their clients' demands, the agencies are also under pressure to offer competitive salaries and conducive working environments for them to engage and retain skilled staff. The answer to all this, lies in the introduction of a relevant, viable and user friendly legal framework.

The personnel employed by the agencies are professional, dedicated and committed to their work. They are looking forward to working in an environment where their innovation and problem solving skills are acknowledged, accepted and not treated with suspicion. The participants in the project expressed the frustration and fear within which they operate. To top it all, they believe agencies have a constitutional right to speak and be heard for and on behalf of the client, otherwise, their existence remains purposeless.

The model "Z", "the Quasi Judicial Commission" was the most popular of the three. It specifically represents an ideal body (of experts), which prioritizes the charity organizations' interests. The organizations want the Canadian policy makers to consider adopting it. While it might take years to implement, the fact that it is considered as the ultimate goal suffices.

Accordingly, Models “X” and “Y” respectfully should only be considered in the interim until the final implementation of Model “Z”.

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APPENDIX 1

A Guideline of questions to the Participants

Charity and Charitable Organizations and the Legal Requirements (Income Tax Act)

1. What is your interpretation of the term, “Charity and Charitable organizations”?
2. What is your understanding of the current legal requirements on the registration process, and the other legal obligations that come with the Income Tax Act?
3. What are your recommendations on how the legal requirements could be changed to make them more user-friendly?
4. Has your agency had any problems with the Charities Division in the past, or have you ever appealed against its decision? Please feel free to inform me.

Advocacy

1. What is your understanding of “advocacy”?
2. What are its legal implications with regards to your work as an agency that works with refugees and immigrants?.
3. How do you work around its given parameters in fulfilling your agency’s goals and objectives? Have you ever foregone a project because of its “political” nature?
4. Have you ever foregone a project because of its “political” nature?
5. In order to make changes which stakeholders do you think should be consulted?
6. In line with your objectives what kind of reforms do you propose?

The following table indicates three “proposed reforms”:

- Model X “**Revenue Canada Charities Division**” - an improved version of the current system
- Model Y “**The Voluntary Sector Commission**” - as proposed by the popular Broadbent Commission.
- Model Z “**The Quasi-Judicial Commission**” - which is similar to the English Charity Commission.

NAME	FUNCTIONS	ADVANTAGES	DISADVANTAGES
<p>MODEL ‘X’ Revenue Canada Charities Division (RCCD)</p>	<ul style="list-style-type: none"> • It retains all its powers. • To be assisted by an advisory committee of experts on charities and the law • Committee will make recommendations on difficult cases • All reviews would be within the existing Revenue Canada regulations 	<ul style="list-style-type: none"> • The process is more transparent • Confidentiality and restrictions around the registration process would be relaxed. • Committee would have the expertise, resources to develop policy, educate and communicate. • Visible effort on improving knowledge on compliance 	<ul style="list-style-type: none"> • Status quo is maintained • The committee plays the advisory role only • The committee not an independent body so can easily be ignored • Changes not practical as there is bound to be clashes with other parts of the departments e.g. on confidentiality • Continued conflicting role of being the tax collector and an “adjudicator without jurisdiction”
<p>MODEL ‘Y’ Voluntary Sector Commission</p>	<ul style="list-style-type: none"> • It plays a complementary role to the Revenue Canada.. • Make recommendations on new applications and difficult cases • Assist agency’s comply with regulations • Nurture and support charities and voluntary organizations • Provide best practice guidelines • Provide information to the public 	<ul style="list-style-type: none"> • It has greater potential for provincial involvement • Transparency in the registration and de- registration process • The appeals process is smoother • Charity organizations are assured of an over-seer 	<ul style="list-style-type: none"> • It gives no real power to the commission • Charity division keeps all the power in the registration and de-registration process • It is highly unlikely that the Revenue Canada will look up to the committee for guidance on the “common Law” instead of the courts. • This will create another layer of bureaucracy without improving the system • Lack of clearly defined limits as to what it might achieve and might not
<p>MODEL ‘Z’ The Quasi-Judicial Commission (Comprising the Registrar’s Division and the Tribunal)</p>	<p>First focuses on these 3 areas:-</p> <ul style="list-style-type: none"> • Adjudication • Policy making • Rulemaking • Takes over the current role of the Revenue Canada in the above 3 factors • Develops criteria for identifying qualifying organization • Develops guidelines on issues such as “advocacy” and related business whether or not there is a change in the legal framework • Provides authoritative advice to the 	<ul style="list-style-type: none"> • It has been tried and tested in England and it works efficiently • It is in a position to interpret the law (as does the English Commission) and any legislative initiatives from an independent perspective rather from within a framework that give priority to the collection of taxes • Smooth transition process • It ensures user friendly guidelines on registration and 	<ul style="list-style-type: none"> • Slow gradual process • Structures will have to be put in place to accommodate provincial governments input • Audit function will remain with Revenue Canada • Revenue Canada maintains role in administration compliance within all aspects of tax law • The Tribunal will have a lot of work in first few years of operation

	<p>Voluntary Sector</p> <ul style="list-style-type: none"> • Has support function like that in Model “Y” • Identifies problem areas and encourage research • Conducts investigations • Prosecutes 	<p>de-registration process</p> <ul style="list-style-type: none"> • Appeals process reformed • Richer accumulation of expert advice • Confidentiality restrictions around registration will done away with • Has mandate to develop policy, educate and communicate • Assist organizations with relevant information to ensure compliance • Improved public information, knowledge and trust. 	<ul style="list-style-type: none"> • Its design will depend a lot on what changes are made to the Income Tax Act
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