

THE MUTTART FOUNDATION

Consultation on Transparency

*29 October – 1 November 2019
Banff, Alberta*

A Summary of the Discussion

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This report is a summary of one of a series of periodic discussions convened by the Muttart Foundation on voluntary sector regulatory issues. The session was held to promote an exchange of ideas and to develop a fuller understanding of the concerns of both sector groups and government regulators. Any remarks included in the report are intended to reflect the discussions. No undertakings or commitments from either regulators or sector participants are expected or made, notwithstanding any of the wording in the Report.

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A Summary of the Discussion

DAY 1

INTRODUCTIONS

The facilitator welcomed participants to the consultation to discuss transparency as it affects the relationship between government and the voluntary sector. Demands for greater accountability are directed at governments, registered charities and not-for-profits. The question posed then was “Is the status quo the best we can do, or are there reasons to consider changing what currently exists?” Four areas explored during the consultation were:

- **Applications for charitable status:** No information is currently available about which organizations applying for registrations are denied charitable status. Should such information be available and, if so, what level of detail should be included? Are there other types of information – rulings, precedents and similar documents – that should also be accessible to the public?
- **Compliance issues involving registered charities:** The confidentiality provisions of the *Income Tax Act* allow for release of information only if and when a charity’s registration has been revoked, or when an intermediate sanction has been imposed. What are the implications of changing those provisions to allow for the release of information indicating that a charity is being audited or that CRA proposes to revoke a registration or impose a sanction?
- **Not-for-profit organizations that are not registered charities:** Only some NPOs are required to file a return with Revenue Canada and all of these returns are considered to be confidential. Should that change, given that the returns from charities are considered to be public information?
- **Endowments and Donor-advised funds:** Donors and charities have in recent years moved away from straight giving of significant assets to be held in perpetuity with income used for activities. Donors are more interested in directing how and where funds are spent. This occurs at both the donor advised fund level and when charities create special endowments for certain programs.

Currently the T3010 does not require detailed reporting about these types of funds; the reporting is done only on an aggregate basis. Should there be changes to require information about such funds within the organization?

Once the purpose of the meeting was outlined, the facilitator reviewed the logistics and ground rules for the consultation. Participants were encouraged to be open and to make comments freely under Chatham House Rules. (These rules allow participants to share the gist of the discussions, without identifying comments made by specific individuals). Participants were invited to introduce themselves and to share what went through their minds when they received their invitation to participate in a consultation on transparency.

The following remarks were made as part of the introductions:

- There are many views and concerns regarding transparency.
- Transparency is the biggest issue of our day given the technological expectations from society. The role of technology in decision-making is changing public and donor expectations.
- There are some contradictions in transparency, privacy, confidentiality norms, and *Freedom of Information and Protection of Privacy* (FOIP) and the *Privacy Act* legislation.
- Transparency is core to civil society values. It always needs to be purposeful.
- Transparency is taken for granted in the financial space but less so in other spaces. Organizations need to be transparent about their performance.
- This is a positive attempt by the Charities Directorate to be accountable to the public. Transparency is needed on both sides: government and the charitable sector, and should extend to both acknowledging successes and deficiencies.
- The ground has shifted a lot. Tension exists between transparency and privacy, with respect to donor-assisted funds and in the rapid financial growth of NPOs (for example, condo corporations).
- Good governance equals transparency. Privacy is an equally important principle.
- Public trust and confidence is impacted when there is a lack of transparency.
- The Charities Directorate has a mandate to be more accountable and transparent. It is looking for a more modern approach to balancing privacy and transparency within the context of the *Income Tax Act*.
- Transparency is a core value of many grassroots charities. The meaning and interpretations made by the public can create a risk for the sector.
- We need good quality information, especially around NPOs, in order to develop good public policies.
- Transparency does not equal legitimacy; it simply opens the door. How coordinated does the sector and the regulator need to be?
- We need to understand the cost of increasing transparency on charities and those costs must always be proportional.
- Striking the right balance between transparency, accountability and privacy is difficult, and as well transparency and the organization's context are often disconnected and as a result the term has become somewhat of a cliché.
- Narratives that are not contextualized, or are negative or inaccurate are harmful to the sector.
- The US has legal minimum standards of disclosure. It was recommended that charities concerned with transparency should always know their audience with respect to public disclosure.

- Would users pay for good quality information? It may be case of “garbage in equals garbage out”. Any disclosures need to clearly distinguish between structural problems and individuals behaving badly. It’s important to find ways to influence behavior through greater sharing of information.

A DISCUSSION ON TRANSPARENCY

The facilitator called upon one of the participants to start the discussion on how transparency might be best defined and what over-arching principles would be important to highlight.

- **Transparency refers to the availability and accessibility of relevant information for users in a timely manner. Its application involves the combination of: 1) regulated information (disclosed to the public about groups) 2) voluntary disclosure by organizations and 3) regulatory transparency (about its processes and decisions).**
- Factors that come into play in accessing and evaluating whether information is “good” include availability, incentives to provide it, quality, relevance and utility. In order to change behaviours it needs to be doubly embedded in both charities and the public audiences.
- Mandatory disclosure of financial information is intended to demonstrate that charities are using their funds for charitable purposes, and to prevent fraud. In the United States the regulator (IRS) also requires reporting on governance and management practices in the belief that good governance enhances compliance. The Charity Commission for England and Wales mandates inclusion of public benefit outcomes in their trustees’ annual reports.
- There has been a rise of third party intermediaries that help donors identify well-managed charities. These intermediaries rely on voluntary disclosure of information and some have developed their own standards to independently rate charities.
- Self-regulation promotes learning and self-improvement in the charitable sector. It also builds public confidence that standards are being met. These self-regulating standards often include governance as well as financial management.
- Open data, which is free and accessible to everyone, is likely to be the next development in charity transparency. This will put pressure on the regulator to release accurate data that is available to all. It will also enable new definitions of what is relevant information as new uses for data are identified. Since owning and controlling information can no longer be assumed by government or charities, the importance of context becomes even greater.

The following questions emerged from the discussion:

1. What do we need transparency to be about? What are we trying to achieve with greater transparency and in what particular context?

2. Under what circumstances should transparency be mandatory and when should it be voluntary? When and how can these elements best be combined?
3. What tradeoffs are acceptable with respect to the quality and the value of the information versus the costs to provide it, e.g. financial, political, time, reputational, etc. and under what circumstances should transparency be mandatory?
4. How do we achieve fairness in the application of transparency requirements across a diverse field, i.e. charities, NPOs, for profits, regulators and governments?

TRANSPARENCY WITH RESPECT TO APPLICATIONS FOR CHARITABLE STATUS

The discussion began with facilitator inviting a participant who had been involved with the Joint Regulatory Table (JRT) to provide some background and the recommendations relating to Applications and to Compliance Actions.

- The Joint Regulatory Table (JRT) made the following recommendations regarding the charity registration process:
 1. The identity of applicant organizations should remain confidential until the regulator either accepts or denies the application.
 2. The regulator should publish on its website reasons for all of its decisions on applications.
 3. The same documents that the *Income Tax Act* allows to be disclosed for registered charities should also be available on request for organizations denied registered status, plus the letter setting out the reasons for the denial.
 4. The regulator should establish a policy of denying applications where applicants do not respond within 90 days to communications from the regulator.
- The CRA receives approximately 4,000 applications annually for charitable status. Currently no information is available about what organizations have been denied charitable status when they apply for registration. It was suggested that the number of applications denied alone does not help identify patterns for denial which might involve possible systemic bias.

See Appendix A for “CRA Registration Applications”, and summary of information related to applications in 2018-2019.

TRANSPARENCY WITH RESPECT TO COMPLIANCE ISSUES INVOLVING REGISTERED CHARITIES

- As stated previously the confidentiality provisions of the *Income Tax Act* allow for release of information only if and when a charity’s registration has been revoked, or when an intermediate sanction has been imposed.
- What are the implications of changing those provisions to allow for the release of information indicating that a charity is being audited, or allow release at the time CRA indicates it proposes to revoke a registration or impose a sanction?

- Many of the participants in the JRT consultations expressed concern that the general public views the word “audit” negatively and indicates the existence of probable wrongdoing. It was also noted that there is little public understanding about what a CRA audit of a registered charity is and why it takes place.
- The JRT members were in strong agreement that information about conducting an audit of a charity should not be released to the public because of the harm that might result to the charity’s reputation, especially given the length of time it takes to complete some audits.
- The opinions were more varied about what information should be available after an audit is completed. Some argued that donors have a right to know about an organization’s compliance status and would be reassured by evidence of the regulator’s compliance work. Some called for less information being released, i.e., from no information being released to having the regulator report in detail on the audit program in its annual report without identifying any individual organizations.
- The recommendations proposed by the JRT with respect to compliance issues were:
 1. No organization-specific information about compliance audits should be released, including acknowledging whether an organization is or is not under audit, unless it is in connection with the imposition of a sanction.
 2. The regulator should provide more education to the sector and the public about the audit function.
 3. The regulator should provide an account in its annual report of its compliance audits, including the number conducted and the length of time taken to complete audits.
 4. The questions of transparency in the audit function should be reviewed by the ministerial advisory group in two years.
 5. The regulator should finalize audits more promptly.
- A comment was offered that the regulator was subject to criticism that it had appeared to be biased during the 2012-16 audits of political activities. However, at the conclusion of the project there was only one group that lost its status due to impermissible political activities. In response it was suggested that the regulator has now adopted a risk-based model for conducting audits and is targeting organizations where good intelligence on the organization or the nature of work it is doing suggests that an audit would be appropriate. The CRA is informing the sector through its website about strategic themes of audits it is planning to undertake in the upcoming year.
- It was suggested that the Administrative Fairness Letter be released to the public at the same time it is given to the charity.
- The word “audit” continues to strike fear and it was suggested that concerted effort be made to find different wording. The sector perceives a CRA audit very differently than an accounting firm audit. A comment was made that the word ‘audit’ would lose potency if audits were made public. There was recognition that going from a closed system of information sharing to one of openness and transparency would require a significant public education effort.

INTERNATIONAL PERSPECTIVES

The international participants were then invited by the facilitator to comment on how similar compliance issues are handled in their jurisdictions.

Australia

- The responsible regulatory body is the Australian Charities and Not-for-profits Commission (ACNC). A Charity Register is published on the Web setting out details of each Registered Charity including a description of its purposes and activities, financial information, constituent documents and compliance history. There is provision for withholding of information from the Register for matters such as personal safety, likelihood of confusion or misleading information, offensive material, commercial prejudice or identification of donors to certain donor advised funds. There is no disclosure regarding investigations but outcomes may be published such as warnings, directions, undertakings, injunctions suspensions and removals. However, a review of the ACNC Act recommended that the Commission:
 1. Be given discretion to disclose information about regulatory activities (including investigations) when it is necessary to protect public trust and confidence in the sector, and,
 2. Be authorized to collect the personal details of responsible persons involved in unlawful activity.
- It was noted that in Australia the charity may seek to argue against decisions of the regulator through an internal objection consideration, an application to an independent administrative tribunal or an appeal to the Federal Court.

England & Wales

- The responsible regulatory body is the Charity Commission for England and Wales. The Charity Commission has a duty to encourage best regulatory practices and transparency is one such practice. Although not required to do so, the Charity Commission will advise the public when a statutory inquiry (which the Commission has the authority to undertake) is initiated. The Charity Commission can also publicly seek information from the community in its investigations.
- The charity can appeal the Commission's decision. There are approximately 100 such inquiries per year.
- The Charity Commission publishes the inquiry report and other issues for the wider sector. It will prepare press releases and provide updates for high profile cases such as a recent inquiry dealing with Oxfam GB. The Charity Commission is encouraged to apply its discretion judiciously and to focus on the known or possible 'bad actors'.

DAY 2

The participants were welcomed back to day two of the consultation. The discussion continued with the international perspectives on sanctions.

United States

- The responsible regulatory body is the Internal Revenue Service (IRS). Under the Internal Revenue Code there is a 'cone of silence' with respect to sharing of information regarding charities and exempt organizations. However, the applicant has an obligation to disclose its application, and respond to public requests if it is successfully registered.
- Audits are not made public, either while they are underway, or after completion.

- A charity can appeal an adverse action taken by the IRS. New issues cannot be added during the appeals process.
- The actions taken are documented and certain identifying information is redacted prior to being published. Published information includes the letter of appeal and the report issued by the IRS including information it based its decision upon.
- The names of tax-exempt organizations are listed on the IRS website and are considered public information.

General Discussion on Compliance Issues

- It was noted that during the appeals process in Canada you can drop or change issues but you cannot add new ones. If the adverse action is upheld, the charity is informed by letter. If the charity is revoked, the public is advised of the “de-registered” status of the charity.
- The state administers the ITA on behalf of the public and therefore protects public interest. It was suggested that individual transactions should be viewed from this larger framework.
- It was proposed that the default position should be disclosure unless it is thought that harm may be done. The question then is: does public interest outweigh the principle of ‘innocent until proven guilty’?
- CRA is looking at, in some circumstances, asking charities to post compliance agreements on their website as a means of letting their donors know what is going on. This idea triggered questions. Is this considered appropriate? What if CRA is wrong in its interpretation of a perceived wrongdoing? It was suggested that perhaps some additional oversight is required where this is being considered, such as a third party review through the courts.
- Transparency is considered to be a public good. In light of this, the charitable sector may need to take it upon itself to address the misuse of information and potential harm it can cause. A comment was offered that charities are often fearful of greater transparency.
- It was suggested that a decision tree regarding transparency would be helpful. Such an approach could help deal with a number of issues. If the regulator is awaiting evidence, it may be premature to publicize anything. In audit findings the nature of the offences needs to be looked at, particularly with a view to how the public may potentially be impacted. What effect should a potential appeal have on disclosure.
- There are situations where charities are very guarded about the results of an audit. In Australia the ACNC and the charity agree upon a one-page synopsis of the audit findings in simple language. It was suggested that perhaps this approach should be adopted in Canada.

- There is a need to normalize transparency by being more open regarding compliance audits. In this regard, it was suggested that a list of the charities being audited along with the audit findings should be published annually.
- It was suggested that audits should be completed more expeditiously. A further recommendation was made that CRA encourage more interaction with the charity before a review is initiated. For its part CRA is now doing more upfront education regarding compliance issues.

TRANSPARENCY WITH RESPECT TO NOT-FOR-PROFIT ORGANIZATIONS THAT ARE NOT REGISTERED CHARITIES

- This topic began with a presentation by a participant from the Charities Directorate. A copy of this presentation can be found in Appendix B.
- As stated at the beginning of this report, only some NPOs are required to file any return at all with the government, and none of those returns are public. When determining what should be made public, it was suggested that public interest should be the primary driver.
- It is difficult to know how many NPOs there are since many don't self-identify as an NPO. In addition, many are unaware of the rules that apply to them. About one third of NPOs described under 149(1)(l) file an annual return. The regulator commented that it would be quite an administrative burden on the CRA if all NPOs were required to file.
- An observation was made that the general public's understanding of an NPO is quite different from the definition used by the regulator.
- Issues of transparency with NPOs include consideration of tax concessions; This suggests the need for more filings regardless of whether they are made public and also points to the difficulty for government making good policy decisions in the absence of good information.
- There is a disparity in treatment between NPOs and charities and among the different types of NPOs. In Canada, the purpose and mandate of NPOs varies greatly making it very challenging to regulate them.
- The 1917 definition of an NPO is problematic in 2019. There is a need to distinguish public benefit from member benefit. Data is needed, even if it is on an aggregate basis. It was suggested that perhaps mandatory filing, similar to the US model, where every exempt organization must file, might be a good start.
- The public interest is in the potential for lost revenue. This is an area that has perhaps been neglected over time. Potentially, there is risk of revenue leakage from organizations that pose as NPOs but should actually be paying tax.
- It was suggested that, in the current context, a proposal that information from the T1044 be disclosed would likely draw strong criticism. Perhaps then the first

stage would be to pursue the need for filing and deal with disclosure at a later time. It was also suggested that data from the T1044 could only be disclosed in aggregate.

- A concern was expressed that a looming risk is that we will see charitable funds going into social finance, social enterprise and for-profit organizations. Given the strong political interest in social finance and social enterprise activities, there is a danger that policy in this area will not be determined by evidence. We need to advocate the need for more data before any law reform is recommended.

THE INTERNATIONAL PERSPECTIVES

The facilitator then invited the international participants to discuss NPOs in their jurisdiction.

Australia

- There are 38 categories of NPOs. Some are subject to regulatory bodies that may require returns and some of these NPO filings are made public, e.g., information from fundraising regulators. It is estimated that there are 600,000 NPOs in Australia of which 60,000 are charities. Based on GST filings approximately 240,000 NPOs can be considered “kitchen table” organizations.
- Currently there is a proposal being considered by the government to bring some NPOs under the ACNC for disclosure purposes. It was suggested that initially this expansion concentrate on those organizations that have more than \$45 million in revenue – about 500 NPOs. For the moment, small organizations would be left alone.

United States

- There are 29 different types of NPOs, known as exempt organizations, and all must advise the IRS of their existence. For some, it's through a simple letter while for others it is through an application process. All must file an annual return of some sort.
- In 1950 Congress made the Form 990 a public document. This was intended as a low cost check on the entity. There are very some limited exceptions to the 990 filing requirement; e.g. railroad organizations and electrical cooperatives.
- There is a penalty for failure to file and if the organization fails to file for three consecutive years it is disqualified as an exempt entity.

England & Wales

- The term not-for-profit is not a term that is used a lot in this jurisdiction. The issue with these non-registered entities is that no one knows how many there are; there is no central register or information return required.
- Mutual trading status is one mechanism available that means many mutual trading organizations don't pay tax on membership subscriptions.

TRANSPARENCY WITH RESPECT TO DONOR-ADVISED FUNDS (DAFs)

Recently there has been a trend where, donors and charities have moved away from straight giving of significant assets to be held in perpetuity with income used for activities to donors. Donors are more interested in directing how and where funds are spent and having charities create special endowments for certain programs. The T3010 requirements are for aggregate reporting rather than detailed reporting about these types of funds within the organization. The following comments were offered during the discussion:

- Donor-advised funds are used by community foundations and by financial institutions. These types of funds get people to put money aside and give the donor the ability to provide input into how the money is to be used. A comment was made that major donors are motivated by engagement and aren't interested in a "black box".
- There is an issue with DAFs with respect to private benefit from the investment side. It was noted that there is pressure from financial institutions to pay out more. Fees paid to the financial institution are not considered to be a private benefit unless they are thought to be excessive and outside market rates.
- Charities offering DAFs have an obligation to meet their overall disbursement quota but this requirement does not apply to individual DAF accounts. With aggregate reporting it is not possible to see who the donors are and what is being funded. A charity can also pass a DAF to another charity.
- Is there also an issue with DAFs with respect to the origin of the funds and should there be greater transparency here as well? There is no law in Canada on what constitutes an endowment and accountants often seek legal advice on what is considered a permanent endowment.
- An important question for financial institutions engaged with DAFs is how are the funds invested, can the donor influence how the funds are invested and what happens to the funds in an economic downturn?
- The research indicates that DAFs are growing more quickly in the United States than in Canada. Most DAFs in Canada are held either by a community foundation or a financial institution. The view was expressed that community foundations are very careful regarding opportunities for undue private benefit.
- There is room for greater transparency with DAFs, especially those associated with financial institutions. Public foundations are not going to accept DAFs that will put the foundation at risk. What happens to a DAF held in a financial institution when the donor dies? Do the funds come back to the donor's community or remain in the corporate head office of the financial institution?
- In recent years, DAFs have really encouraged philanthropic giving, but at this early stage is this the time to limit abuse? If the issue is transparency there may be a need to look at exceptions with respect to reporting and disclosure.

- It was pointed out that CRA could analyze the T3010s to determine if there is undue private benefit. However there was concern that this fear may be more of a perception issue with the public than a legitimate problem.
- Perhaps it is a question of context and opportunity. For example, the donor recently sold the family farm, or a business, and simply put the proceeds into a DAF to allow time to figure out what to do with it at a later date.
- A suggestion offered was that DAF donor names should be published, unless there is a specific request for anonymity. It was noted that less than 10% of donors request anonymity.

INTERNATIONAL PERSPECTIVES

England & Wales

- In England and Wales the source and destination of each DAF transaction is known and tracked. The donor is known to the charity or foundation but it is not made known to the recipient.
- There has been a 33% increase in DAFs although this is starting from a very low base. In practice, large transactions are generally highly visible, although many other donors chose to disclose their funds.
- The Charity Commission guidance on DAFs includes principles, application and case studies.

United States

- There are different types of DAFs and sponsors in the United States. Community foundations are considered pretty safe. The financial institution private benefit issue has not been addressed at all.
- The problem is that when the DAF is tied to a financial institution – sometimes known as the “eternal maternal embrace” –, since the institution is not a charity it is hard to ascertain what fees are charged. Some shenanigans in this regard are starting to surface.
- Once the property has passed, the new owner should be subject to the same rules with respect to the fund as the old owners was. Commercial DAFs may require different rules.

DAY 3

The participants were welcomed back to the last day of the consultation. The following questions regarding DAFs were posted on a flip chart as a stimulus for further discussion.

- What transparency measures are required to monitor whether DAFs managed by financial institutions are receiving a private benefit through inappropriate

management fees, or whether DAF donors are receiving a private benefit through reduced management fees due to the inflated size of their portfolio?

- How can more transparency ensure that the functioning of DAFs respects the legal requirements for the existence of a gift?
- What transparency criteria would ensure that decision-making by a DAF charity after a donor's death results in a public benefit and not a private benefit?
- As there is apparently high potential for abuse financial institutions creating DAF charities, and the practice of doing so is common because it avoids the costs of creating a private foundation – how is this best managed? There is oversight at the provincial level through securities commissions, to ensure that all investments are prudent, but is this sufficient?
- There is a line item on the T3010 regarding management fees. It was suggested that having either a percentage or range for management fees as an element of this reporting would be helpful to both the regulator and the sector. As well CRA could ask questions at the time of registration of a DAF, for example, who benefits? what are the contents of the agreement?, etc. It was also proposed that the CRA publish its criteria for setting up DAFs.
- The CRA has observed some DAFs are offside with respect to private benefit and inappropriate control. A suggestion was made that the remedy for long-term mischief is transparency, stewardship and reviews.
- A suggestion was made to separate the issue of private benefit from the issue of control by the donor. The dilemma is that it is not known if individual accounts in a charity ever pay out to meet charitable purposes.
- The common law definition of a gift is the voluntary transfer of property without conditions. Once the transfer of property to the charity has occurred then the charity can do what it wishes with the property. So, for DAFs, is CRA giving a tax preference where it's not warranted?
- When is the appropriate time for recognition that a charity now has full control? At the time the gift is made how much ownership does the donor really maintain, and if the donor maintains significant control is it really a gift? It is difficult to distinguish when advice becomes control.
- Transparency around the policy under which the DAF is administered would be helpful to the regulator. Are the trustees exercising independent judgment or are they under the control of the donor?
- With individual DAFs the donor is anonymous and there is lack of transparency while private foundations are transparent through the filing of the T3010. It was suggested that perhaps all DAFs should file a T3010. Another suggestion was to have a different disbursement quota apply to such funds.

- There is oversight at the provincial level, e.g. the securities commission, to ensure prudent investments. However, it was noted that all provinces have a reactive regulatory model, rather than being resourced to monitor things like DAFs.
- More facts are required before it is possible to make any suggestions regarding DAFs. What are the risks with investments and non-qualified securities? A core issue is financial institutions being allowed to setup parallel charities.

REPORT ON THE CHARITIES PROGRAM 2015-2016

The regulator was interested in soliciting feedback on the section ***The Regulatory Process***. The facilitator walked through the document asking participants what they liked and what other improvements they would want incorporated in future reports. The following comments were offered:

- The information provided in the 2015-2016 report was very helpful and this particular report was preferred over the 2016-2018 report because it contained more information.
- Part of the report's success is its simplicity. Information graphics make it easy to share with others and it is a helpful guide in educating board members.
- Suggestions to make the information more robust included the following:
 - information regarding the performance of the Directorate
 - a comparative analysis year over year
 - offer charity information by province and/or heads of charity
 - include some definitions, e.g. What is a Compliance Agreement? What is a charity?
 - add percentages as well as numbers
 - provide more information on audits, including the full program plan for audits and an indication of the length of time to conduct an audit, such as average number of days
 - provide information on private benefit issues
 - contextualize the data in order to demystify the audit process

SUMMARY OF CONSULTATION DISCUSSIONS

Following the input to the report, the facilitator asked one of the participants to summarize the discussion of the four areas that were explored during the past three days. Following are the summary points offered:

Transparency and Applications

- The rationale for transparency at the application stage is that it protects the credibility of the regulator where there may be perceived or real systemic bias. It also leads to better applications and compliance.
- There are tradeoffs with issues created downstream for either the organization or the public. There is a concern that it might tarnish the reputation of the organization. If

an organization is denied registration, can it continue to operate? There is a public concern if an NPO is denied charitable status but continues to present itself as a charity.

- Some solutions for consideration include:
 - 1) CRA providing greater information during the application process. This can be done with e-filing and a more active Charities Directorate staff. The benefit is that it results in better applications. This does not, however, address the potential bias of the regulator regarding the downstream concerns.
 - 2) CRA providing an aggregate report of the registrations denied. This would address the potential bias of the regulator but it would depend on the quality of the information. This does not address the downstream concerns.
 - 3) CRA providing fuller reasons for the denial but with the identification of organization redacted. This is the model used in the United States. The discretion used by the regulator may not help with concerns of potential bias. This solution does not address the downstream concerns.

CRA disclosing the name of the organization and the reason for denial. The organization would know in advance that denial would be made public. This approach deals with the regulator's credibility but it raises the concern of harm to the charity. It does not address the issue of organizations that continue to operate. The issue of fairness still remains. Why treat transparency regarding registration for charitable status different from transparency regarding revocation of charitable status? Why are charities treated differently than other organizations?

Audits and Revocation

- The state's interest is to protect public interest and identify high stakes frauds. Revealing information too early could tarnish the reputation of the charity and lead to a loss in donors. As well, the timing of revealing potentially damaging information might enable bad public policy decision-making.
- The two points of view being expressed during the consultation were:
 - Transparency should be initiated at the same time as the audit. There is a need to normalize audits and to be timely in conducting them and this can best be achieved through transparency. The charity would be allowed to respond to the regulator's assessment.
 - In a high-risk audit context, public transparency would come later. In these situations there is a case for the regulator to withhold the names of the organizations in order to protect the organizations' reputations.

Non-profit Organizations

- There is very little disclosure required by NPOs. The principle of transparency should apply to all tax-exempt organizations since public transparency is a

presumption. Greater transparency would help in creating sound tax policy recommendations. It would also help shine a light for potential tax evasion and terrorist activities. E-filing would be a good method for collecting information on these organizations.

- There is enormous business diversity in the sector and there is no desire to overburden small organizations. Given the lack of information on NPOs, public disclosure was not recommended at this time. Research is needed on e-filing, issues of tax evasion and questions arising around social enterprise. Complexity, however, is not a reason to not do anything.

Donor-Assisted Funds

- Lack of information creates lack of public confidence and knowledge, and concerns exist over the advice being provided by the donor. Also is the trustee under the control of the donor?
- There are also concerns regarding whether there is a private benefit resulting from investments. These concerns may be addressed with greater transparency or the regulator may close a few glaring loopholes, e.g. the use of nonqualified securities.
- The question was raised but not resolved on whether there should be a price, such as required payouts, on ease of use or anonymity of DAFs. There is a big need for much more data!

FINAL REFLECTIONS

At the end of the consultation the facilitator offered the participants an opportunity to share their personal reflections. Following are some the comments offered:

- Thank you to the Muttart Foundation for the invitation to attend this consultation. I appreciated meeting everyone.
- I appreciated the depth of discussions. It helped me solidify the values of transparency and recognize that it comes with some costs.
- I enjoyed the national and international points of view. It was comforting to know that I am not alone in my confusion regarding NPOs and charities.
- Relationships within the sector and with the regulator are so important. I appreciated the legal crash course on DAFs. I would have liked for us to have identified some principles regarding transparency, especially regarding the concept of proportionality.
- The setting, social time, and opportunity to make connections have a very positive effect on the quality of the consultation. Thank you to the Muttart Foundation.
- The Muttart Consultations are a very important driver of policy design. This process is a godsend!
- The Board of the Muttart Foundation has made the investment in these consultations for a long time. The secret sauce is being able to hear the perspectives of the

government and international participants. We tilted more towards transparency even though we don't know how to quite get there. That is heartening and we also know it's going to be hard to do.

- In a world that is becoming more and more polarized, three days of civil discourse is indeed very special. The level of discussion was quite extraordinary. These conversations are beneficial to both the sector and the regulator and lead to a stronger sector. The openness and willingness of the regulator to engage is really appreciated.
- There is a different world-view as we look to the future and we need to ask questions in a more nuanced way. Congratulations to the regulator for listening and sharing.
- This consultation was very useful. You can't make sound policy decisions if you lack good data.
- Unlike other consultations, this consultation had four topics with different sets of questions. It was very helpful to have one of the participants sum up the discussion for each of the four topics.
- I learned far more than I could contribute. This consultation has better prepared us to have conversations regarding transparency.
- It was nice to hear thoughts from the sector on the topic of transparency.
- Transparency is a good thing but in order to make good decisions we need to mitigate the risks of harm. We need to incentivize good behaviour and promote non-regulatory approaches to transparency. As well find ways to talk about transparency.
- The article on Regulation-by-Transparency in the pre-reading was excellent.
- Thank you to the facilitators for their great contributions.

A representative from the Muttart Foundation brought the consultation on transparency to a close and thanked the participants on behalf of the Foundation for their excellent contributions and wished everyone safe travels home.

Appendix A

Applications for Charitable Registration

2018-2019

- Number of applications received.... 3,427
- Decisions on applications
 1. Incompletes..... 1,093
 2. Registrations..... 1,781
 3. Final Turn down..... 32
 4. Abandoned 463
 5. Withdrawals 185
 6. Draft applications..... 2 (We no longer accept draft applications.)

Reasons for denial:

from: April 1, 2018	
to: March 31, 2019	
(ftd-06) Private Benevolence	1
(ftd-09) Does not relieve disabilities	1
(ftd-10) Promotion of sport/elitism	6
(ftd-11) Provision of information	1
(ftd-19) Business activities	1
(ftd-22) Conduit/channel funds (foreign)	4
(ftd-23) Resources to non-QD	2
(ftd-26) Umbrella organization	1
(ftd-29) Non-charitable activities	4
(ftd-33) Lack of information	7
(ftd-34) Ineligible Individual	4
Total	<u>32</u>

Applications for Charitable Status Registration Refusal Report

Reporting Period: April 1, 2018 to March 31, 2019

Main Reason for denial	Total
<p>(FTD-06) Private Benevolence: Organizations that are established for the benefit of a particular individual or a private group are considered to be established for private benevolence and fail to meet the public benefit requirements for charitable registration.</p>	1
<p>(FTD-09) Does not relieve disabilities: Organizations applying for charitable registration under this category must demonstrate how the activities/programs carried on relieve distress and suffering, or alleviate conditions associated with disabilities.</p>	1
<p>(FTD-10) Promotion of sport/elitism: Organizations whose purpose is to promote sports cannot be registered as a charity. For an organization with sports activities to be registered, the sport activities must relate to, and support an exclusively charitable purpose, such as relief of poverty, or removing barriers to participation (persons with disabilities often face these barriers). The promotion of excellence through competition for athletes is not a charitable purpose and would not qualify for registration.</p>	6
<p>(FTD-11) Provision of information: Simply providing information to the public or attempting to raise public awareness is not a purpose that advances education.</p>	1
<p>(FTD-19) Business activities: An organization that carries on an unrelated business will not qualify for charitable registration. The legislation, however, allows a charity to carry on a related business. There are two kinds of related businesses: businesses that are run substantially by volunteers; and businesses that are linked to a charity's purpose and subordinate to that purpose.</p>	1
<p>(FTD-22) Conduit/channel funds (foreign): When a Canadian charity financially supports the activities/programs of an organization that is not a qualified donee, it must demonstrate direction and control of its activities. A Canadian charity that merely transfers funds to a non-qualified donee to operate the non-qualified donee's programs would be considered a conduit to funnel funds, which precludes charitable registration.</p>	4
<p>(FTD-23) Resources to non-QD: Registered charities can carry out their own activities, or they can gift their charitable resources to a qualified donee. A registered charity that transfers its resources to non-qualified donees without the appropriate direction and control would be operating in contravention of the Act.</p>	2
<p>(FTD-26) Umbrella organization: A charitable umbrella organization is one that works to achieve a charitable goal by supporting, improving, and enhancing the work of groups involved in the delivery of charitable programs. While an umbrella organization may work with and through non-charitable entities (i.e. non-profit organizations), they are not allowed to provide funding for, or to otherwise confer benefits on, organizations that are not qualified donees.</p>	1

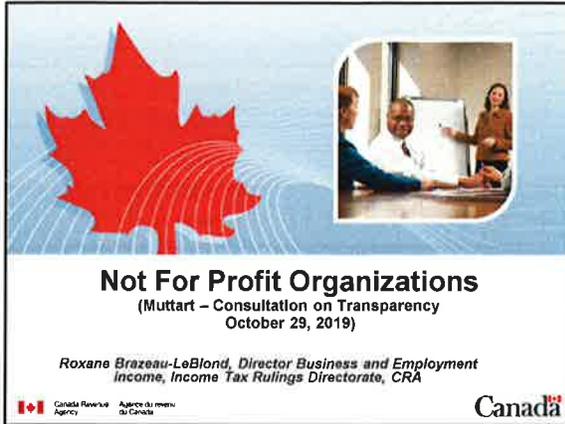
<p>(FTD-29) Non-charitable activities: To qualify for charitable registration, an organization's purposes must be exclusively charitable; that is, they must fall within one of the four categories of charity: relief of poverty; the advancement of education; the advancement of religion, or; other purposes beneficial to the community that the courts have identified as charitable. It must then carry on activities in furtherance of these stated charitable purposes. If an organization devotes resources to activities that are not in furtherance of charitable purposes, this is grounds to deny registration.</p>	<p>4</p>
<p>(FTD-33) Lack of information: An organization applying for charitable registration must provide a detailed description of its programs as they relate to each of its purposes. Failure to provide sufficient information is grounds to deny registration.</p>	<p>7</p>
<p>(FTD-34) Ineligible Individual: An ineligible individual's position in an organization may threaten the registration of an organization. Generally, an individual is ineligible if he or she has been convicted of an offence related to financial dishonesty, or relevant to the operation of the organization; or was connected to an organization whose registration was revoked for a serious breach of the requirements for registration. The connection was as a director, trustee, officer, or like official; an individual in a position of management or control; a promoter of a tax shelter, and participating in that tax shelter caused the revocation of an organization's registration.</p>	<p>4</p>
<p style="text-align: center;">Total</p>	<p>32</p>

Application for Charitable Status Registration Refusal Report

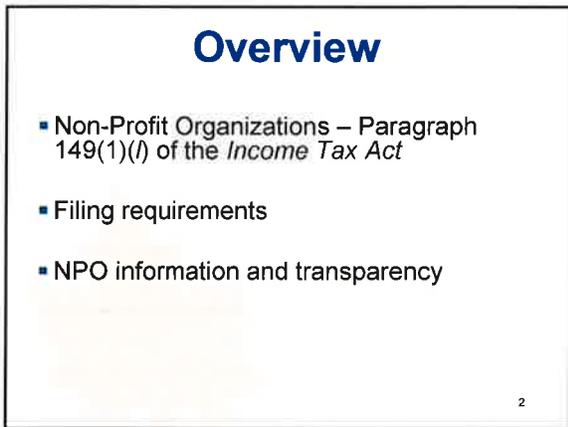
Reporting Period: April 1, 2019 to October 21, 2019

Main Reason for denial	Total
<p>(FTD-07) Fraternal Organization/Service Club: Service clubs and fraternal societies do not usually qualify for charitable registration. This is because they are typically established with a mix of charitable and non-charitable purposes, or because they carry on activities that do not further a charitable purpose. Examples of these organizations include social societies, lodges, legion branches, orders, and other similar organizations.</p>	2
<p>(FTD-17) Predominance of social activities: Social activities, in and of themselves, are not charitable at law. An organization that is established for exclusively charitable purposes can devote some of its resources to social activities provided these activities are ancillary and incidental to its charitable purposes.</p>	1
<p>(FTD-22) Conduit/channel funds (foreign): When a Canadian charity financially supports the activities/programs of an organization that is not a qualified donee, it must demonstrate direction and control of its activities. A Canadian charity that merely transfers funds to a non-qualified donee to operate the non-qualified donee's programs would be considered a conduit to funnel funds, which precludes charitable registration.</p>	2
<p>(FTD-29) Non-charitable activities: To qualify for charitable registration, an organization's purposes must be exclusively charitable; that is, they must fall within one of the four categories of charity: relief of poverty; the advancement of education; the advancement of religion, or; other purposes beneficial to the community that the courts have identified as charitable. It must then carry on activities in furtherance of these stated charitable purposes. If an organization devotes resources to activities that are not in furtherance of charitable purposes, this is grounds to deny registration.</p>	2
<p>(FTD-33) Lack of information: An organization applying for charitable registration must provide a detailed description of its programs as they relate to each of its purposes. Failure to provide sufficient information is grounds to deny registration.</p>	1
<p>(FTD-34) Ineligible Individual: An ineligible individual's position in an organization may threaten the registration of an organization. Generally, an individual is ineligible if he or she has been convicted of an offence related to financial dishonesty, or relevant to the operation of the organization; or was connected to an organization whose registration was revoked for a serious breach of the requirements for registration. The connection was as a director, trustee, officer, or like official; an individual in a position of management or control; a promoter of a tax shelter, and participating in that tax shelter caused the revocation of an organization's registration.</p>	1
Total	10

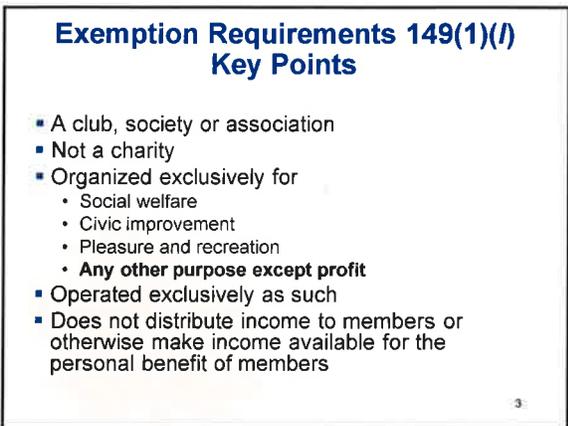
Appendix B



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Any Purpose Except Profit

- An NPO must be operated “**exclusively**” for any other purpose except profit
- Incidental and unanticipated profits from activities that are directly related to the organization’s non-profit objectives are allowed
- Limited fundraising activities are allowed.
- Profit means difference between the receipts in a period and the expenditure laid out to earn those receipts
- Capital expenditures must be funded with member contributions, gifts or grants. Cannot increase capital through operations.

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Types of 149(1)(f) Entities

- An unincorporated club or association
- A corporation, with or without share capital
- Few restrictions on operations – not limited to benevolent or social purposes
- NPOs currently claiming a tax exemption – large range of purposes

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Dining, Recreation and Sporting

- Deeming rule 149(5)
 - When main purpose sporting, dining or recreation
 - Inter vivos trust
 - Income from property
- Property income
 - Rents, dividends and interest
 - Capital gains on disposition
- T3 filing requirement

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Filing Requirements

- T2 corporation return if incorporated
- T3 trust return if the main purpose is to provide dining, recreational, or sporting facilities to its members
- T1044 information return where:
 - received certain income in excess of \$10,000
 - has assets over \$200,000, or
 - was required to file a T1044 previously

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Other exempt organizations

- 149(1)(d) – corporations owned by the crown
- 149(1)(d.5)-corporations owned by municipalities or public bodies performing a function of government (example: Indian Bands)
- 149(1)(f) –registered charities
- 149(1)(e) -agriculture organizations
- 149(1)(i) –certain housing corporations
- 149(1)(k) –labour organizations
- 149(1)(n) – limited dividend housing companies

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NPO Information Return

- The CRA receives approximately 25,000 to 30,000 NPO Information Returns a year
- All information from the return is captured

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NPO Information and Transparency

Confidentiality provisions of the *Income Tax Act* prevent the T1044 Annual Information Return from being made public

Compliance burden if all NPOs were required to file

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NPOs – Considerations

- No registration requirement and the lack of a purpose test risks NPOs being used for improper purposes.
- Many NPOs have a personal-benefit element (for example, private golf courses qualify as NPOs).
- Competition with taxable entities.
- Many social-purpose NPOs would like to raise money for themselves or affiliated charities through social enterprise. However, the legislation (“exclusively” not-for-profit) and the widely differing purposes of existing NPOs may prevent them from being exempt.

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Other Issues for Discussion Concerning Transparency

- How would the public benefit from making this information public from all NPOs? For only some (which ones)?
- What information should be made public?
 - The financial statements
 - The salaries or remuneration of management
 - Gifts or Grants
- Is the cost of compliance for the NPOs worth the benefit for the public?

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More Information

- CRA website www.cra.gc.ca
 - IT-496R "Non-Profit Organizations"
 - IT-83R3 "Non-profit organizations – Taxation of income from property"
- Copies of previously issued interpretations - CRA
 - tax subscription services
 - itrulingsdirector@arc.gc.ca

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Thank you

Roxane Brazeau-LeBlond, CPA-CA

Business and Employment Division
Income Tax Rulings Directorate
Legislative Policy and Regulatory Affairs Branch

Canada Revenue Agency

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