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REMARKS TO

THE STANDING COMMITTEE ON ALBERTA'S ECONOMIC FUTURE

Alberta's Legislative Assembly

DURING ITS STATUTORY REVIEW OF THE LOBBYISTS ACT

February 23, 2022

Mr. Chairman, and members of the committee:

Thank you so much for the invitation to be with you today, as you consider your recommendations to the Assembly. I am joined today by my colleague, Geoff Braun, our Director of Policy.

I'd like to begin with an anecdote that is told by Ken Boosenkool. Some of you will know him, or know of him. He's held a variety of political-staffer positions, operated his own government-relations firm, and is currently teaching. Mr. Boosenkool tells of acting on behalf of a client. Government was considering certain changes that would affect the client, and others in the same industry. Mr. Boosenkool kept the theme for his client very simple. The client was told to deliver this message over and over:

> *If it ain't broke, don't fix it.*
> *It ain't broke. Don't fix it.*
> *If you fix it, you will break it.*
> *If you break it, you will need to fix it.*

I am here today to tell you that the Lobbyists Act, at least as it relates to charities and public-benefit nonprofits, ain't broke. And if you try to fix it, as successive commissioners have unsuccessfully recommended at every review, you are going to break something important. You will cause harm, and I don't think any of you want to do that.

Let me pause for a moment to introduce The Muttart Foundation.

I have the distinct honour of representing one of western Canada's oldest private foundations. Founded in 1953, we exist to support charities. We do this through grants, through technical support, through research, and through advocacy on behalf of charities of all types, whether we fund them or not. We do no fundraising. Our grants and operating costs come from income we earn on the endowment Gladys and Merrill Muttart left to the Foundation after their successful business careers.

For much of the last quarter-century, we have paid particular attention to the regulation of charities. As one of our Directors is fond of saying: "It should not be hard to do good."

We advocate on behalf of reasonable regulation, reasonably applied. We work with governments to help identify issues and their solutions. We believe that people of good will, when fully informed, can develop solutions that allow charities to do what they are meant to do – provide benefit to Canadians and to those we serve outside of our country. It is in this spirit that we come to you today to talk about the Lobbyists Act.

When the Act was first introduced, it was drafted very broadly. Throughout the province, charities and nonprofits met with individual MLAs and explained the administrative burden they would face if they were covered by the Act. They explained how their organizations interacted with government all the time, on any number of issues. Sometimes the issue related only to their

organizations, but as often as not, they were meeting with elected members and officials to discuss systemic changes that would make life better for Albertans. When the matter came before the government caucus of the day, members asked all sorts of questions as a result of the meetings they had had with nonprofits in their constituencies.

And then something extraordinary happened. The then-premier said it was never his intention that the Act should include charities.

And so the amendment – the current section 3(1)(i) – was introduced. It exempted all charities and it exempted other nonprofits that exist for a public benefit, and not for the benefit of private interests.

Before I go on, let me clarify some terminology, because it is something that often gets in the way.

All charities are nonprofits, but not all nonprofits are charities. Nonprofits are, as the name suggests, established for any purpose other than profit. Within that limitation, there can – and do – exist all types of organizations, from a book club to a service club to the Canadian Medical Association and the Alberta Motor Association. But one subset of this group – charities – must, by law, exist for a public benefit as established by law. And so charities fall automatically within the exemption contained in section 3(1)(i) of the Act, because they cannot, by law, provide any undue private benefit. They are subject to significant regulation by the Canada Revenue Agency, and are required to file annual returns – the only entities in Canada whose full tax returns are posted online.

When the exemption was being drafted, the question arose about what to do about certain other groups – some community leagues, sports teams, and so on – that exist for a public benefit but are not charities. And so the government of the day adopted the exemption, using language from the Quebec legislation. It was considered, at the time, to be an "elegant" solution. It recognized that the Act was meant to capture those people and organizations that were seeking some sort of private benefit from government.

The amendment recognized that when governments are dealing with charities, and *vice versa*, there is a different dynamic. The nonprofit is not trying to get some personal gain, but rather, is working with government in the public interest and for a public benefit. The nonprofits are akin to some of the other entities that are exempted under section 3(1).

The message that I want to leave with you today is that the system works, and it has worked ever since the legislation was enacted. The two reviews that have taken place found that the current system works and there was no reason to make any changes. Our position is that there is still no reason. In other words: "It ain't broke, don't fix it."

Although there are some suggestions in the Commissioner's submission that I want to address, my main point is that none of the arguments that are made are new. They were made in

2012 and they were made in 2017. And your predecessors saw no reason to recommend any change. We believe you should come to the same conclusion.

It is our view that no good reason has been shown to remove the exemption. No good reason exists to divert time and attention from the important work charities and nonprofits are doing in your constituencies and elsewhere. It is not a good enough reason to say they should register and report so that they can say they are working for the betterment of the community. You already know that. You tell them that when you show up at their fundraisers. You reinforce it when you send gifts for them to sell at their silent auctions. You sing their praises in your letters to them to attach to their bids for grants or the notes you send when one of their volunteers is recognized for outstanding service.

You also know that almost all of them are working with way fewer staff than they would like to have. You know they all want to do more and better and make more lives better – whether that's through the arts, social services, or sports and recreation. You know the challenges they have faced over the last two years. You know that some of them are in incredibly precarious positions. And I suspect you know how much poorer your community would be if they didn't exist.

Back in 2007, we encouraged these organizations to meet individually with their MLAs to explain exactly what would happen if the exemption were not granted. If it would be helpful, we can encourage them to do that again. You will certainly have a much greater appreciation, I suggest, of the strain under which most charities are now working. And yet, they <u>are</u> working. Indeed, it would have been a very sad state if charities and nonprofits hadn't been there to serve their communities over the last two years.

It is ironic, I suggest, that we are talking about changing the law to require charities to register under the Lobbyists Act at the same time government is consulting about removing the burden of registering under the Charitable Fundraising Act. Some would say it is even more ironic that we are having this conversation during Red Tape Reduction Awareness Week.

How much more good could be accomplished if, instead, we spent our time thinking about how charities and government can work together even more closely. Many government programs are delivered by charities and nonprofits. Other programs are delivered to the same people that are served by charities and nonprofits. Just think how wonderful it would be if government and these organizations co-created policies and programs, combining government priorities and data with the broad experience of those closest to the ground.

I do want to comment on one aspect of the Commissioner's submission, one I believe is very dangerous. At page 18 of the Commissioner's brief, she suggests a new definition of what organizations should benefit from the exemption in section 3(1)(i).

It is bad enough that we already have so many differing definitions of what constitutes a charity or a charitable purpose for provincial purposes. Creating another one is unnecessary,

unwise, and entirely inconsistent with the stated desire to reduce red tape. But even more than that, adoption of the Commissioner's recommendation would create a situation in which some charities and nonprofits are considered more worthy than others. That may be a decision that is appropriate when talking about the awarding of grants; it is not appropriate when talking about who should be regulated.

First, I would note that adoption of the recommendation would likely remove the exemption for all places of worship. Few of them spend at least 75% of their annual budget on the types of services of which the Commissioner seems to approve.

Second, and more distressing, the Commissioner specifically would remove the exemption for research and policy institutes, but without any explanation of why or how that would apply to such institutes at universities.

And, without even mentioning them, the Commissioner's recommendation would remove the exemption for environmental organizations.

I would remind the committee that the Allan Inquiry found that the charities and nonprofits it examined broke no laws, federal or provincial. This is not a place to punish them for something they have been found not to have done.

But turning from the practical to the philosophical, I want to raise the question of whether we are going to impose or remove regulatory burdens depending on the extent to which the government of the day agrees with positions taken by individual organizations. As we suggested in our submission to the Allan Inquiry, that comes dangerously close to regulating expression. Imposing a regulatory burden by failing to specifically mention one kind of charity seems, with respect, to be a road we should not be going down in a free and democratic society.

The courts, up to and including the Supreme Court of Canada, have clearly set out what is charitable in law. The charitable sector should not be divided, with some cherry-picked for extra regulation, based on what those charities do. That recommendation should, we suggest, be clearly and quickly refused.

Mr. Chairman, members of the committee, I return to where I started. The existing system works, and has worked for 15 years. There is no need to fix it, at least as it relates to the exemption for public-benefit nonprofits.

We urge the committee to let charities do what they do best – serve our communities and those around the world – without an unnecessary and imprudent regulatory change.