Breaking the Inertia
Repositioning the Government-Sector Partnership
BY JOANNE CAVE & LISA LALANDE
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This research series from Mowat NFP explores different dimensions of an enabling environment in the relationship between the charitable and non-profit sector and government. The series is in partnership with Imagine Canada and intended to help the federal government and the charitable and NFP sector develop a modern federal policy framework that enables the sector and strengthens its ability to improve the quality of life of Canadians and people around the world.

Mowat NFP undertakes collaborative applied policy research on the not-for-profit sector. As part of an independent think tank with strong partnerships with government and the sector, Mowat NFP brings a balanced perspective to examine the challenges facing today's sector and to support its future direction. Mowat NFP works in partnership with umbrella organizations to ensure our research and policy recommendations are timely and relevant to the sector and reflect its values.

The Mowat Centre is an independent public policy think tank located at the Munk School of Global Affairs and Public Policy at the University of Toronto. The Mowat Centre is Ontario's non-partisan, evidence-based voice on public policy. It undertakes collaborative applied policy research, proposes innovative research-driven recommendations, and engages in public dialogue on Canada's most important national issues.
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“The Government of Canada has an opportunity to reform how it works with, and enables the social sector. By doing so, it will realize the potential of its recent investment in social finance; and form meaningful collaborations between the government and the social sector that will have lasting impacts on the lives of Canadians.”

Stephen Huddart, President and CEO, McConnell Foundation
INTRODUCTION

The evidence suggests that charities and non-profits are operating in an increasingly complex, fragmented and constrained environment. A key challenge is that Canada’s federalist system has resulted in a fragmented legislative and regulatory framework for the sector. As a result, charities and non-profits struggle with a confusing and onerous patchwork of policy regimes, rules and regulations across the country.1

While the social sector is resilient and embraces innovative approaches, there are significant barriers that must be addressed at a systemic level. The sector is facing a sustainability challenge that, if left unchanged, will manifest as unmet needs in the community.2 It has been difficult to communicate the urgency of these issues to Canadians and develop public support for reform efforts.

The issue of modernizing the legislative and regulatory frameworks3 between the federal government and the social sector has been extensively discussed and studied by the sector. Yet, the frameworks have remained largely the same for decades despite significant changes in how the sector operates. The need for comprehensive review and modernization of the frameworks at a federal level and greater harmonization with the provinces remains urgent.

However, a strict focus on regulatory reform alone is insufficient to address the pressures and challenges experienced by the sector. An enabling environment is needed – one where the government safeguards public interest, supports the sustainability of non-profits and charities, optimizes the policy landscape for innovation.

FIGURE 1

Federal Government Barriers to Sector Impact

3 Specifically, modernizing the Income Tax Act and Canada Not-for-Profit Corporations Act.
and experimentation⁴, and coordinates effectively across government boundaries and structures to achieve the best possible outcomes for Canadians.

Creating an enabling environment requires a shift in how the government views the sector – not as a constituency, stakeholder group or service delivery partner, but as a strategic partner on mutual initiatives (e.g. addressing homelessness) to improve economic and social outcomes for Canadians; and a driver of economic growth and innovation.⁵

Currently, there is no minister, department or agency with responsibility for social sector issues. The federal government interacts with charitable organizations primarily in a regulatory capacity (through the Canada Revenue Agency’s Charities Directorate). This approach focuses on mitigating risks and ensuring compliance. While governments are seeking ways to solve complex problems through horizontal collaboration⁶, little attention is paid by governments to the role of the social sector in these efforts. There are few examples of ministries or departments that work directly with sector stakeholders to maximize their impact. Consequently, charities and non-profits are caught up in complex organizational structures and systems within the federal government that constrain rather than enable their work. With no one assigned responsibility for enabling the social sector, the situation is unlikely to change.

⁷ In Figure 2, “improved wellbeing” refers to improved material living conditions (housing, income, jobs) and improved quality of life (community, education, environment, governance, health, life satisfaction, safety and work-life balance). The measurement of wellbeing focuses on the experiences of individuals, households and communities. The definition is used by United Nations Statistics Division (UNSD) and developed by the Organization for Economic Cooperation and Development (OECD), see OECD (2011). “How’s Life?: Measuring well-being.” OECD Publishing.
What does an enabling environment look like in practice? Enabling the sector involves:

» Creating enabling structures and governance bodies, including a regulator that listens and responds to the sector’s needs.

» Mechanisms for effective collaboration with provincial, municipal and Indigenous governments.

» Integrated funding models that promote an outcomes-based focus and support innovative approaches (e.g. earned income, social finance).

» Support for a healthy, dynamic labour force (e.g. decent work, recruitment and retention of early-career staff, retirement security).

» Shared data infrastructure and data matching legislation to understand and improve on outcomes for Canadians.

» Active leadership within the sector through umbrella organizations and networks and the capacity to self-regulate, where appropriate.

The Government of Canada faces complex social, economic and environmental challenges that cut across government structures and sector boundaries. The social sector can be an ally in tackling these issues if the environment it operates in supports, rather than detracts from their efforts.

A key question remains – given Canada’s federalist system, what role should the federal government play in enabling the social sector and where should this responsibility rest?

This paper draws on international examples and prior Canadian initiatives to identify how the federal government could facilitate a more enabling environment for the social sector. Specifically, it:

» Summarizes the current legislative and regulatory environment.

» Summarizes key functions to address sector issues.

» Presents optional organizational models/mechanisms for creating an enabling environment.

» Discusses lessons learned from international models.

» Provides recommendations to focus, and integrate, how the federal government currently works with the social sector.

The recommendations in this paper have been designed to describe how the government can work better with the social sector to achieve the best outcomes for Canadians. Breaking the inertia on reform of the federal government’s relationship with the social sector will have immeasurable impact on some of the most complex issues facing Canada today.
Research Approach

This paper serves as the culmination of the Mowat Centre’s Enabling Environment series. This research draws upon interviews with key informants and academic and non-academic literature on modernizing the social sector, both in Canada and abroad. International examples and case studies were incorporated to provide a comparative perspective. While provinces retain jurisdiction over some policy issues affecting the social sector, this paper focuses on reform at the federal level. Where appropriate, models for intergovernmental collaboration on sector-level issues will be discussed.

The recommendations in this paper are meant to inform the work of the Special Senate Committee on the Charitable Sector. The Committee was established in November 2017 and is currently undertaking a study of issues facing the not-for-profit and charitable sector in Canada. We used input from sector leaders at the 2018 Ontario Nonprofit Network conference, Nonprofit Driven 2018, and from witnesses who appeared before the Committee, to shape our recommendations. The Mowat Centre also presented preliminary findings and recommendations to the Committee on October 22, 2018, and incorporated feedback and comments from Senators to shape the final recommendations presented in this paper.

This paper is intended to be a preliminary review of some of the possible models or mechanisms for reform of the federal government relationship with the social sector and their impact. A full feasibility study would be required to assess benefits, risks, costs and anticipated timelines. The paper is not intended to be a comprehensive review of the social sector’s role in creating or supporting an enabling environment. A paper on this topic would be beneficial and is recommended for further research.

A Note on Terms

The language used in this paper is meant to be broad and inclusive. This paper uses the term “social sector” to include not-for-profit organizations, registered charities, social enterprises, and other social purpose organizations (such as hybrid organizations) that may exist in other legal forms, including cross-sector organizations and initiatives. This language is helpful for conceptualizing the social sector based on contributions, rather than legal forms.

The non-profit and charitable sector may be referenced throughout the paper to refer to existing legislative and regulatory frameworks, but the objective of the paper is to explore how an enabling environment might support the social sector more broadly.
Canada’s social sector forms an essential part of Canada’s social fabric, civic life and economy. It is a significant driver of social and economic growth and innovation. It accounts for 8 per cent of Canada’s Gross Domestic Product (GDP) and 2 million jobs. The social sector contributions to Canada’s GDP exceeded the contributions of the mining, oil and gas extraction industry and the retail trade industry. Non-profit and charitable organizations are also vital for supporting unmet community needs that governments cannot address directly.

Yet, social sector organizations are operating in an increasingly complex and constrained environment which can ultimately impact the sector’s ability to partner with government to meet the social, economic and environmental needs of their communities.

Trends Impacting Sector

Social issues are more entrenched and multifaceted than ever

There is greater recognition that, in the pursuit of long-term social change, the social sector must address the root causes of social issues.

Some social sector organizations are applying a systems-lens to the concept of impact, recognizing that the social and environmental issues they are working to address are highly interconnected. They are shifting towards a model of practice that focuses on how governments, organizations and communities can work together across different systems (e.g. justice, health, education, social services, etc.) to transform the lives of the people they support.

This approach recognizes that elevated risk factors cannot be addressed by a single entity alone. However, most funding agreements and impact measurement approaches lag behind systems-lens approaches.\textsuperscript{15} There are also gaps in legislation that permit data sharing across systems, drawing upon both government administrative data and data collected by charitable organizations and service providers in the community.\textsuperscript{16}

There are growing fiscal pressures for governments

With a projected 2018-2019 budget deficit of $18B,\textsuperscript{17} the federal government is increasingly constrained in its ability to invest in sector infrastructure. Governments are under greater scrutiny about how funds are spent and what outcomes they are achieving.


Different organizational models in the sector are being developed and traditional sector boundaries are increasingly blurred

A 2016 survey reported that there were more than 7,000 non-profit social enterprises in Canada (not including Quebec) which provided services to more than 5 million individuals.\(^{18}\) Hybrid organizations have emerged in some provinces and there is greater interest in social finance and impact investing.

Service provision is increasingly downloaded to social sector organizations

The social sector is increasingly relied upon for service delivery amidst growing demand.\(^{19}\) An ageing population, increased immigration, growing labour force and changing family structures have all been attributed as reasons why social sector organizations are facing increased pressure to meet the needs of their local communities.\(^{20}\)

Funding has shifted from a core funding model to an increasingly targeted, project-based approach

The reluctance to fund organizational administrative costs contributes to increased precarity, as organizations often rely on piecemeal, project-based grant funding to sustain their work.

There is limited coordination among funders and within governments and ministries particularly regarding funding

Many organizations report significant duplication in funding/procurement processes, creating an additional administrative burden in their work to fulfill their missions.

Volunteerism and charitable donations are declining

The proportion of Canadian tax-filers claiming charitable donations has steadily declined since 1990 and the total donations claimed has stagnated since 2007.\(^{21}\) Volunteering is becoming more short-term, individualized and skills-based. Volunteers often have their own goals, which may or may not be aligned with what non-profit organizations need.\(^{22}\)

Social sector umbrella organizations lack the capacity to address sector needs and issues in a comprehensive way

Umbrella organizations operate within a precarious funding environment in which governments have been increasingly reticent to invest in their core operations and programs. Some sub-sector umbrella organizations have been completely defunded, relying on membership fees or reducing the scope of their activities as a result.\(^{23}\)

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No ‘One-stop Shop’ Within the Federal Government

Notably, there is no “one-stop shop” for social sector organizations to work collaboratively with government. A high degree of institutional fragmentation has led to considerable confusion and uncertainty in the sector about how to engage with government officials in a meaningful way. This is particularly relevant given the Minister of Finance’s recent commitment of over $800 million over the next ten years to establish a Social Finance Fund and an Investment and Readiness stream; and the $4.6M in new funding for a permanent Advisory Committee on the Charitable Sector led by the Canada Revenue Agency. Without a centralized, coordinated approach with the social sector, can the government fully realize the potential of these investments in the sector?

Constitutional Context

Canada’s federalist system has resulted in a fragmented legislative and regulatory framework for the sector. Under section 92(7) of the Constitution Act, 1867, provincial governments maintain authority for the establishment, maintenance and management of charities “in and for the province.” However, other than for directing taxation for provincial purposes, issues related to income tax remain in the federal jurisdiction.

Further, other activities pursued by charities are either regulated federally or provincially (based on where they have chosen to incorporate, and if they seek charitable status or if they are a health or education charity, for example). As a result, the provinces and territories have established their own legislative and regulatory frameworks which apply for various specific purposes and there is considerable lack of harmonization of approaches. However, where it relates to the direct regulation of charities (on charitable issues), most of the provinces provide neither comprehensive regulation nor energetic enforcement.

As a consequence, the Canada Revenue Agency Charities Directorate has emerged as the primary regulator of charities under its taxing jurisdiction, the Income Tax Act; and its scope has broadened further to monitor the definition of charitable purposes, political advocacy activities and charitable fundraising. It has become increasingly difficult for a tax-based regulator — with a narrow focus on legislative and regulatory compliance — to assume a broader, principles-based mandate for the sector overall.

“Although provincial abdication of the charity sphere led to the current federal regulation, inertia itself is now a disincentive for the provinces to assert their jurisdiction.”

Modernization in Canada’s federalist context will inevitably require input and involvement from provincial governments, given the federal and provincial patchwork of legislation that currently governs the sector. The federal government does retain constitutional authority for charities that operate inter-provincially. While this affects a smaller proportion of charities, it does provide the constitutional justification to experiment with improving the enabling relationship for charities that operate on a national level.

How does Australia navigate these issues in a federalist system?

Australia’s federalist system is much like Canada’s - the regulation of charities and non-profit organizations largely rests with state and territory governments, while taxation issues remain a federal government responsibility. The constitutionality of the Australian Charities and Not-for-profits Commission (ACNC) was questioned from its inception and remains an ongoing political question. The Australian Government has justified the constitutionality of the ACNC Act by stating that the Commission derives its power from the federal jurisdiction for taxation, corporation, external affairs, territories and communications powers. A cooperative regulatory scheme with state-level governments has been suggested as one way to overcome potential constitutional barriers.

Current Federal Regulatory Approach

“We must be clear: it is not the mandate of the Charities Directorate to nurture charities, to strengthen their governance, or to improve their effectiveness or efficiency.”

The Canada Revenue Agency Charities Directorate currently operates from a “prevention of harm” approach, focusing on preventing abuses and mitigating risk under the Income Tax Act. The Charities Directorate has a reputation for safeguarding its activities, reflected in concerns from some sector organizations that little information is shared with charities under investigation until the audit is completed.

While the Charities Directorate has improved by being more consultative and transparent in its decision-making with the sector (e.g. sharing open data about charities through T3010 returns), sector leaders have noted that its level of engagement has been dependent on who is in charge at any given point.

Further, there is still a significant disconnect between government bodies that are involved in the sector’s regulation. The Department of Finance oversees the Income Tax Act and sets broad tax policy, while the Charities Directorate implements its provisions and provides guidance to charities based on judicial decisions. Although they do collaborate it is often difficult to believe that they talk, as the decisions of one seem different from the commentary of the other.

The Charities Directorate is not the only point of interaction between the federal government and the social sector. Individual departments liaise with the sector for funding/procurement, service delivery partnerships and input on new policy initiatives. This relationship is more active at the sub-sector level, with few platforms for the sector as a whole to collaborate on issues of mutual concern with the federal government. Many sector leaders also report that government consultations are frequently very “close-ended,” with few opportunities to inform the design and development of programs and policies, rather than just their implementation.37

As a funder, the federal government frequently engages with the sector in a top-down “buyer-seller” relationship. Funding contracts are often evaluated based on program outputs rather than community or system-level outcomes, with few funding opportunities available for innovative or collaborative approaches.38

Drawing on Lessons from Other Sectors

Other sectors have undertaken reform efforts in previous decades, often with significant collaboration between governments and key stakeholders. What can the social sector learn from these efforts?

Labour Mobility

The Forum of Labour Market Ministers, established in 1983, is a forum of federal and provincial ministers, with the Government of Canada and a rotating lead province acting as conveners. The Forum sets shared targets, launches special initiatives and has the capacity to host nationwide consultations on key labour mobility issues. One of the Forum’s Working Groups is very active in informing and monitoring the Canadian Free Trade Agreement on an ongoing basis, with assistance from Labour Mobility Coordinators in each province.39

Public Budgeting and Forecasting

The role of the Parliamentary Budget Officer was established in 2006 to provide independent budget expertise at the federal level. The Office is intended to be independent, objective and non-partisan, with the ability to address issues of underestimations and the potential for political interference in the Department of Finance.40

Canadian Heritage and Official Languages

The Office of the Commissioner of Official Languages and the Department of Canadian Heritage (also known as “Canadian Heritage”) supports Canada’s Anglophone and Francophone communities. The Commissioner of Official Languages,41 supported by the Office, enforces the Official Languages Act (OLA) to ensure that Canada’s official languages are equally recognized and administered within federal institutions and that English and French are promoted within Canadian society. The Department of Canadian Heritage, established in 1995 by an Act of Parliament, is mandated to pursue language equality and develop minority linguistic communities. Both the Office and the Department report directly to Parliament.

The Office performs a greater regulatory function by overseeing the implementation of the OLA. In contrast, the Department performs a greater enabling function by liaising with sector organizations and administering funding programs.

41 The Official Languages Act established the role of the Commissioner of Official Languages. The first Commissioner was appointed in 1970.
Previous Social Sector Reform Efforts

There is an important legacy of government-sector collaboration at the federal level. While the institutional models and approaches have changed in the last several decades, many of the emerging issues and policy priorities have remained the same. The Voluntary Sector Roundtable (1995) was the first example of how a nationwide initiative could represent the sector’s interests as a whole. The Panel on Accountability and Governance in the Voluntary Sector’s (also known as the “Broadbent Panel”) 1999 final report identified many issues that continue to resonate with sector leaders, including the need for organizational capacity-building, sustainable funding and a relationship based on mutual trust and clear expectations.42

The Voluntary Sector Initiative (VSI) 43 expanded upon many of the Broadbent Panel’s recommendations, providing a robust framework for modernizing the government-sector relationship. The Accord Between the Government of Canada and the voluntary sector and the Codes of Good Practice on Funding and Policy Dialogue were important tools to articulate shared principles and priorities. While the VSI made some impact on the federal policy landscape, it fell short of its potential in addressing structural, legislative and regulatory barriers impacting the sector. A challenge was that the VSI lacked an overarching, unifying narrative within and across the sector. It also demonstrated that policy agendas that are too broad and ambitious lack focus and direction, which can lead to inaction.44

Since the VSI concluded in 2005, federal initiatives to modernize the government-sector relationship have been limited and narrow in scope. The Report of the Consultation Panel on the Political Activities of Charities (2017) and the Social Innovation and Social Finance Strategy (2018) are two recent examples of federal initiatives that have reiterated, and expanded upon, the early calls for reform from the VSI over a decade ago.

“Fundamental legislative change is needed and new policy or other administrative measures, however helpfully and clearly drafted, would simply not be enough.”

Report of the Consultation Panel on the Political Activities of Charities

At the provincial level, most governments have explored an institutional structure to advance charitable and non-profit sector issues. Between 2004 and 2010, 8 of Canada's ten provinces developed a non-profit sector policy agenda.45 By 2011, 6 of 10 provinces appointed a minister or deputy minister to be responsible for non-profit sector issues and three provinces had established bilateral government-sector policy networks.46 Many of these initiatives emerged after the federal VSI concluded and worked in close partnership with provincial umbrella organizations. Unfortunately, there are few examples of government models that have withstood significant political changes.

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43 The VSI was a five-year joint partnership between the Government of Canada and the voluntary sector that started in 2000 and ended in 2005.


Example: New Brunswick Community Non-Profit Organizations Secretariat and Deputy Minister

The Secretariat was established in 2007 and had four key functions:

» Acting as an additional point of contact between government and the sector.
» Leading the review and development of related government policies.
» Assisting with policy coordination relevant to sector issues.
» Providing services specific to the sector’s needs.\(^{47}\)

The Secretariat was situated within the centre of government with a dedicated deputy minister, small staff team and an annual operating budget of $400,000. The Secretariat would frequently liaise with other government departments on shared policy priorities and advocate on the sector’s behalf. While the Secretariat ended in 2010, it had great potential to transform the government-sector relationship. The Secretariat was successful in promoting multi-year funding programs across government, developing an interdepartmental committee on sector issues and delivering professional development programs for sector leaders.\(^ {48}\)

However, the Secretariat’s embedded role within government made it very vulnerable to changing political priorities and funding cuts. As a liaison unit, the Secretariat was not able to formally advance a standalone policy agenda or hold departments accountable for their commitments. It was established and closed within a three year period.


The Agenda for Action

“We need federal regulation and law that encourages rather than deters legitimate and productive partnerships between charities, foundations, businesses and governments. There hasn’t been a comprehensive review of the Income Tax Act with respect to charities in fifty years. Many of the provisions were introduced piecemeal and are inconsistent with each other. This is no way to regulate an important sector that contributes so much to Canada’s economy and society in the 21st century.”

Hilary Pearson, President & CEO, Philanthropic Foundations Canada

The sector’s issues, needs and priorities related to the federal government’s relationship with the sector are well-understood after decades of research, debate and community organizing. They include (but are not limited to):49

- Defining “charitable purposes” in the Income Tax Act.50
- Reforming the provisions that define “related businesses” so registered charities and non-profits can expand their earned revenue activities.
- Revising the “direction and control” provisions in the Income Tax Act to allow registered charities to engage in more robust partnerships across sectors.52

- Allowing registered charities to appeal CRA decisions to a lower court (e.g. an independent charity tribunal or the Tax Court of Canada) to allow for full fact-finding trials to be conducted, rather than appealing to the Federal Court of Appeal.53

- Integrating and streamlining government funding processes to remove reporting redundancies and shift the focus from outputs to outcomes.54

- Creating a more integrated data ecosystem, including improved access to government data55 as well as increased legislative alignment regarding charities’ use of data (there is significant overlap between provincial, federal and Indigenous jurisdictions).

- Improving the collection of sector labour market data, and supporting a skills development strategy.

However, the solutions to these challenges cannot be fixed in an ad-hoc, incremental way. Governments and social sector organizations have asked for a more integrated and transformative approach to modernization.

49 For a more extensive discussion of these issues and potential solutions, see Appendix B.
In Canada, the role of the federal government in social sector issues has shifted election to election.
In Canada, the role of the federal government in social sector issues has shifted election to election (within the scope of the existing constitutional framework). Moving forward, there is a significant opportunity for the federal government to define its role in the following way:

» Enhancing its oversight and enabling activities.

» Modernizing its regulatory approach.

» Inviting provincial/territorial governments to work collaboratively on areas of mutual concern.

» Empowering the sector, where possible, to contribute by self-regulating.

Figure 3 is a list of core functions to address sector issues. They could occur within or outside the federal government, and do not have to exist independently of each other.
### FIGURE 3

#### A Summary of Key Functions

<table>
<thead>
<tr>
<th>Function</th>
<th>Description</th>
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| **Regulating** | » Maintaining a record of registered charities  
» Registering and deregistering charities  
» Interpreting and applying common law and relevant legislation (e.g. Income Tax Act)  
» Publishing guidance and advice on complying with legislation  
» Investigating potential non-compliance through audits and implementing penalties in appropriate circumstances  
» Educating organizations on compliance issues  
» Coordinating with provincial regulators |
| **Adjudicating** | » Providing judicial review of CRA decisions  
» Conducting full fact-finding trials of regulatory disputes for charities |
| **Enabling** | » Proposing legislative and regulatory changes to address issues identified by sector  
» Promoting intergovernmental and cross-ministerial collaboration on shared policy issues  
» Promoting accountability within the public service for commitments to sector  
» Building capacity in emergent sectors and supporting cross-sector partnerships (e.g. social innovation/social finance)  
» Promoting innovation and experimentation within government  
» Ensuring policies and decisions are not subject to undue political interference  
» Convening to share best practices and lessons learned  
» Liaising with umbrella organizations |
| **Leading** | » Advocating for regulatory or policy reform when required  
» Educating organizations on various issues (e.g. effective advocacy)  
» Researching and collecting data on relevant sector issues  
» Consulting and engaging sector on priorities and challenges  
» Promoting self-regulation  
» Promoting and educating public on issues relating to the sector |
Government Options for Organizational Models/ Mechanisms

There are numerous options for the federal government to consider for reform. The options vary significantly in scope and required resources, but they have the capacity to address numerous functions – regulating, enabling, adjudicating and promoting sector leadership from the bottom up. For a detailed table of models and mechanisms under each of these functions, and the pros and cons, see Appendix D.

Other countries have approached institutional reform for decades, with varying degrees of success. They have taken different approaches to defining government’s role in regulating and enabling the social sector, with many embracing combined approaches where sector umbrella organizations also set self-regulation standards. For example, in Australia, multiple functions are integrated into one institutional entity - the Australian Charities and Not-for-profits Commission (ACNC). It handles regulatory/compliance issues for the sector and promotes education, capacity-building and sector-government consultation activities.

The following section draws on key reform efforts in the United Kingdom, Australia, New Zealand, Ireland, Germany and the United States to identify lessons learned for the Canadian context.

A ministerial portfolio for the sector?

The idea of a ministerial portfolio for social sector issues has been floated for decades. The feedback we received from sector leaders indicated that a minister may not be particularly effective for the following reasons:

» A ministerial portfolio may serve to “silo” sector issues, rather than integrate them across policy portfolios (and under the portfolios of other Cabinet Ministers). Integration is key to enable the sector to address issues from a systems-lens.

» Ministerial portfolios may be more symbolic than substantive, and they would require the supporting policy capacity to move key proposals forward.

» Ministerial portfolios are particularly vulnerable to changes in Cabinet structures and governments (in other jurisdictions, like Newfoundland and Labrador; and New Zealand, the ministerial appointments were subject to subsequent changes in political direction).
Simply put, governments have trouble solving big complex problems in large part because governments have been organized into collections of narrowly focused vertical silos. While adept at solving problems that fall neatly within these silos, governments are not well-designed for tackling problems that spillover across multiple silos.
Canada is fortunate to have a wealth of research and best practices to draw upon. There have been significant shifts in how countries regulate, and enable, their social sector - everything from new policy instruments, definitions and legislation to the creation of new regulatory agencies and legal forms for organizations. While these approaches can be context-specific — and grounded in unique attributes, like a federalist structure — there are useful lessons for Canada.

Many countries are increasingly shifting away from a tax body acting as the regulator for charitable registration and compliance issues. Australia, Ireland and the United Kingdom rely on an independent regulatory body (the “commission” model) to monitor regulation and compliance issues for the sector. It has proven difficult for tax-based regulatory bodies to adopt broader functions (education, advocacy, capacity-building) that are needed for the sector to thrive.

Both Australia and the United Kingdom have overcome challenges with the “political muzzling” of charitable organizations. In 2007, the UK Charity Commission implemented new regulations for monitoring political activities that eliminated the concept of “ancillary activities,” allowing charities to engage in political activities in any way that furthered their charitable purpose provided that they did not support political parties and the political activities were not the sole reason for their existence. In Australia, “gag clauses” were inserted into government funding contracts since the 1990s to prevent non-profit and charitable organizations from criticizing government policies while receiving funding. These clauses were eliminated through the 2013 *Not-For-Profit Sector Freedom to Advocate Bill*.

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The UK model of sector modernization is commonly heralded as the international “gold standard.” While this model continues to evolve, it has proven to be very successful at advancing a cohesive agenda for legislative and regulatory reform and responding to the sector's needs and changing circumstances.

The current iteration of the UK model is structured as follows:

» An independent Charity Commission (empowered by the Charities Act) registers and regulates charities as a non-ministerial government department accountable directly to Parliament. The Chair and Commission are appointed by the Minister of Digital, Culture, Media and Sport. The Commission's 2016-2017 annual budget was £22.9M in operating revenue and £2.9M in capital revenue, with 290 staff.59

» An Office for Civil Society sits within the Department for Digital, Culture, Media and Sport (and formerly within Cabinet Office) and serves many “enabling” functions (e.g. educating and consulting with organizations, promoting volunteerism). The Office recently released a Civil Society Strategy, which includes principles for consulting and funding the sector.

» A Charity Tribunal hears appeals of Charity Commission registration decisions. Charity Tribunal decisions can be further appealed to the UK High Court.

» The Compact is a statement of principles for the government-sector relationship that was first implemented in 1998, and later renewed in 2010.60 Compact Voice is a sector-led organization that focuses on the implementation of the Compact. The UK Government also introduced a government entity, the Compact Commission, to oversee the implementation of the Compact and its Codes of Good Practice from 2008 to 2011.

» Umbrella organizations situated outside of government (e.g. the National Council for Voluntary Organisations, or NCVO) contribute to sector advocacy and agenda setting, and collaborate with the Office for Civil Society.

While the UK model has proven to be very successful, it is difficult to draw parallels to Canada's federalist system. The Australian example is often more useful to draw key lessons about how to incorporate provincial/state-level governments in the modernization process. Many Australian state-level governments have partnership committees, in which senior officials meet on a regular basis to address systemic sector issues.

In the United States, Attorney Generals at the state level frequently liaise on sector oversight issues through national associations despite significant differences in regulatory frameworks.61 Attorney Generals meet at annual conferences and collaborate on shared initiatives, such as a single portal for non-profit organization filing procedures. Independent Sector, an independent, non-governmental advocacy organization, is also invited to the table to assist in lobbying the federal government for regulatory reform at the national level.

61 In the United States, the IRS provides federal-level oversight on tax-exempt status, while the state-level Attorney Generals have the authority to follow through with criminal prosecution.
Key Insights

This section identifies key insights on regulating, adjudicating, enabling and promoting bottom-up leadership in the sector by drawing upon lessons learned in the Canadian and international context.

Regulating

Separating the regulating and enabling functions can prevent conflicts of interest

In the UK, the Charity Commission has faced some criticism for potential conflicts of interest that may occur when trying to both champion the charitable sector and enforce regulatory/compliance issues. Concerns about the potential for “regulatory capture” were raised, and the Commission has since shifted its mandate from enabling and championing the charitable sector to ensuring public confidence and trust in the work of charities. However, some regulatory bodies have been able to successfully adopt a broader mandate, such as the Australian Charities and Not-for-profits Commission (ACNC).

Tax-based regulators require specialized expertise to be effective

It has proven difficult for tax-based regulators to apply a principles-based approach in how they regulate the social sector. The ACNC emerged from numerous calls for a “fit for purpose” regulator, recognizing that the Australian Taxation Office did not have sufficient expertise, interest or capacity to address sector-specific issues. Once created as a standalone regulator, the ACNC could dedicate more resources to education, advice and consultation with key stakeholders.

Reforming regulatory functions is best achieved through statute, not policy

The institutions/regulatory bodies that have had the most lasting impact derive their powers from statute, not policy. A legislative mandate insulates their work from political interference, changes in government or significant budget cuts. Australia, New Zealand and the UK enshrined the role of their regulator in a Charities Act that outlined the scope of its functions and expectations for accountability. This approach ensures continuity of the regulator across political terms, unless the legislation itself is repealed.

In Germany, the principle of “subsidiarity” (in which the unit closest to the individual, such as the family, local non-profit organization or municipality, bears the responsibility for caring for their needs) was embedded in the Social Assistance Act in 1961. The Act requires government bodies to collaborate with religious organizations and charities in a way that respects their independence and expertise in service delivery.

Regulators require sufficient multi-year funding to provide stability for the sector

Many regulatory bodies have faced persistent issues with funding precarity and remain chronically under-resourced. The New Zealand Charities Commission, which operated under a $4.8M budget from 2005-2012, was disestablished as a government cost-cutting measure and its functions were absorbed into the Department of Internal Affairs. The UK Charity Commission has also experienced significant funding cuts in the last decade, with their operating budget and staff cut in half between 2007 and 2016.

Adjudicating
Judicial review of regulatory decisions must be accessible for organizations
The UK introduced a Charity Tribunal to provide a cheaper, faster and simpler process to appeal decisions of the Charity Commission. While the UK is one of a few examples where a specialized tribunal has been established, there are numerous other jurisdictions that have addressed issues with charitable appeal processes. In New Zealand, the Charities Bill was revised to allow charities to appeal all decisions of the Commission (not just registration decisions) and for the High Court to be the first forum for appeals, with subsequent appeals allowed.

Enabling
Enabling the sector requires taking risks and thinking outside the box
The Voluntary Sector Initiative (VSI) was bold and ambitious in scope, but later criticized for being “timid” about addressing significant institutional reform and avoiding politically contentious issues (e.g. advocacy, funding). At the provincial level, the Government of Ontario’s Partnership Project was one example of effective risk-taking and thinking beyond the conventional scope of government-sector policy priorities. While the Project has since ended, it was effective in broadening the definition of the sector by establishing an Office of Social Enterprise, investing in the MaRS Solutions Lab, hosting a Social Innovation Summit and establishing Centres of Excellence.

Horizontal problem solving is needed for the sector to thrive
Many public servants recognize that tackling big, complex issues requires a horizontal approach. The question is how best to go about doing it? 

Simply put, governments have trouble solving big complex problems in large part because governments have been organized into collections of narrowly focused vertical silos. While adept at solving problems that fall neatly within these silos, governments are not well-designed for tackling problems that spill over across multiple silos.

Enabling bodies that are centrally situated within government (e.g. the UK Office of Civil Society, which was originally situated within the Cabinet Office) appear to be most effective at coordinating cross-ministerial policies and promoting a horizontal or “whole-of-government” shift towards sector reform. Some countries have integrated and digitized government data for individual organizations so they have a single profile for data collection, funding applications and regulatory issues (e.g. Australia’s Charity Passport to reduce red tape).

The Australian Charities and Not-for-profits Commission is one example of a more centralized regulating and enabling body, functioning as a “one-stop shop” for the social sector. The Commission registers organizations, collaborates with other levels of government on a streamlined reporting framework, educates the public on the

sector’s impact and contribution, and educates charities and non-profit organizations on their regulatory obligations. The Australian Tax Office is responsible for assessing charities’ eligibility for tax exemptions, but all other functions are managed by the Commission.

Collaborating with the sector requires clear outcomes, processes and principles

One of the greatest strengths of the VSI was that it was process-driven; it established very clear platforms and feedback mechanisms that allowed sector representatives to participate in a meaningful, ongoing way.73 The Alberta Non-Profit and Voluntary Sector Initiative (ANVSI) is another example of a clear process-driven approach, with designated seats for sector umbrella organizations, deputy ministers and other stakeholders in a Leaders Council and Stewardship Forum model.74

The Accord, published in 2001, has been the clearest articulation to date of the principles that should inform the government-sector relationship. The principles of independence, transparency, ongoing dialogue, collaboration and accountability to Canadians continue to resonate with the sector and align closely with successful international approaches, such as the UK Government Compact.75

The enabling mandate requires cross-party support to sustain momentum across political terms and government restructuring

Changes of government have resulted in significant sustainability issues for sector initiatives. In 2006, the newly elected government cancelled the Canadian Volunteer Initiative and numerous ministerial advisory committees that had been established from the groundwork of the VSI.76 Newfoundland’s Minister Responsible for the Volunteer and Nonprofit Sector and New Brunswick’s Community Non-Profit Organizations Secretariat and deputy minister were similarly short-lived initiatives due to changes in political priorities.77

Leading from the Bottom Up

Sustainable funding is vital for sector umbrella organizations

Funding pressures have persisted on both sides — federal and provincial governments have largely underfunded the social sector portfolio, and organizations remain reticent to embrace membership fees to strengthen the capacity of provincial and national umbrella organizations that advocate on their behalf.78 While the VSI included a $94.6M funding commitment, few organizations directly benefited from those resources and the funding was intended to be short-term in nature.79
Sector self-regulation can complement government-led regulatory efforts. Imagine Canada currently promotes sector self-regulation through its Standards Program, which provides accreditation for registered charities that meet five operational standards. In the United States, Independent Sector (a non-governmental advocacy organization for the sector) has published 33 “principles for good governance and ethical practice” to promote increased self-regulation. These principles are intended to supplement government regulatory oversight, allowing the sector to establish “industry norms” where there are legislative gaps or regulatory weaknesses. Self-regulation can be a useful complement to the government regulatory regime by promoting public trust and cohesion within the sector as a whole.

Umbrella organizations and governments can leverage technology to facilitate ongoing communication and collaboration. Consultation approaches that include sending organizational representatives for annual or biennial in-person conferences or summits may become less relevant in the future, as technology allows for ongoing, real-time engagement that is more efficient and cost-effective. In 2013, the Government of Alberta used an online wiki to engage Albertans in the development of the province's Social Policy Framework. 31,000 Albertans provided submissions or edited drafts of the Framework online and the Government of Alberta consolidated this information into a crowdsourced, co-created policy document. The federal government could explore similar approaches, in partnership with umbrella organizations, to identify policy issues or prioritize reform options with direct input from the sector.

Considerations for Selecting Models

What should the federal government consider when selecting new models/mechanisms? The following questions and considerations emerged in our research:

» Is the entity meant to be temporary or permanent? What would its mandate be?

» How would the sector provide leadership and input on its direction? Would there be a joint leadership structure?

» Does this approach duplicate, or build upon, a previous approach (e.g. the Voluntary Sector Initiative)? Does it serve to move the conversation forward?

» Is the entity’s mandate constitutionally valid? How would it work with provincial governments?

» What would be the most cost-effective approach over the long term?

» What type of entity would be best insulated from political interference or changes in government?

» How would the entity fit within existing government machinery and work across government? Does it risk being siloed?

» Are there opportunities to align with other proposed frameworks such as those outlined in the recommendations from the Social Innovation and Social Finance Strategy Co-Creation Steering Group?

There is an innovation that is often called entrepreneurship, which is the big innovation. What we don’t recognize as being as important as entrepreneur innovation (setting the big details and pictures) is carry-through innovation. We need at some point the advocates, but we also need well-inspired grinders, who work every day with the details, because the devil is in the details. So is the salvation.
There is an innovation that is often called entrepreneurship, which is the big innovation. What we don’t recognize as being as important as entrepreneur innovation (setting the big details and pictures) is carry-through innovation. We need at some point the advocates, but we also need well-inspired grinders, who work every day with the details, because the devil is in the details. So is the salvation.  

The recommendations that follow emphasize the need to fully realize the potential of Canada’s social sector. They propose a significant shift in how the federal government currently regulates and enables the sector.

<table>
<thead>
<tr>
<th>Current State</th>
<th>Future State</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Regulating</strong></td>
<td><strong>Future State</strong></td>
</tr>
<tr>
<td>Canada Revenue Agency Charities Directorate</td>
<td>Canada Revenue Agency Charities Directorate with a narrowed mandate - regulatory functions only</td>
</tr>
<tr>
<td><strong>Adjudicating</strong></td>
<td><strong>Adjudicating</strong></td>
</tr>
<tr>
<td>Internal Canada Revenue Agency appeals process, followed by Federal Court of Appeal</td>
<td>Internal Canada Revenue Agency appeals process, followed by Tax Court of Canada</td>
</tr>
<tr>
<td><strong>Enabling/Facilitating</strong></td>
<td><strong>Enabling/Facilitating</strong></td>
</tr>
<tr>
<td>Individual government departments engage with sector on ad-hoc basis</td>
<td>Centralized office/unit within Privy Council aligned with Social Innovation/Social Finance recommendations</td>
</tr>
<tr>
<td><strong>Leading</strong></td>
<td><strong>Leading</strong></td>
</tr>
<tr>
<td>Imagine Canada and other sector umbrella organizations</td>
<td>Imagine Canada and other sector umbrella organizations, with increased resources/scope</td>
</tr>
</tbody>
</table>

This approach recognizes the urgent need to create a model within the federal government focused on the goal (shared outcomes in partnership with the sector) rather than on legal structure.

By implementing the changes in all four functional areas – regulating, adjudicating, enabling and leading – the government can create a more supportive, effective and efficient system within which the sector operates. This can transform the environment from one that is constrained to one that is enabled.

**FIGURE 5**

Transforming the Environment - From Constrained to Enabled

By taking a long-term, whole-of-government approach, the federal government can effectively break the inertia on reform of its relationship with social sector, more effectively engage in horizontal problem solving with the sector, and move forward with several promising opportunities for legislative and regulatory reform. Focusing on *enabling* the sector’s potential, rather than just regulating its risks, will yield significant social and economic dividends for decades to come.
Establishing a standalone Social Sector Office in a central agency would create a centralized, forward-looking enabling body for the sector as a whole.
6 RECOMMENDATIONS

Designate the Tax Court of Canada as the first point of appeal for CRA decisions, rather than the Federal Court of Appeal

This would make judicial review for CRA decisions more affordable, accessible and rigorous for charities by allowing full fact-finding trials. Improving access to the justice system will have a positive impact on the sector overall because it would result in more extensive judicial direction on interpreting the Income Tax Act. This, in turn, would improve the Charities Directorate’s ability to ensure compliance and publish guidance for charities.

Use regulatory ‘sandboxes’ to explore new regulatory models

In a regulatory sandbox, the regulator applies a different set of rules to a small number of actors for a limited period. The regulator observes its sample and learns by live experience how the regulated actors use the new rules. A regulatory sandbox would let the federal government test new regulatory approaches (e.g. the destination of funds test) without risking difficult-to-reverse, sector-wide changes.

Create a Standing Joint Committee for the Social Sector with members from both the House of Commons and the Senate

There is currently no regular remit for the sector’s legislative/regulatory frameworks to be reviewed at the legislative level. A Standing Joint Committee for the Social Sector, with members from both the House of Commons and the Senate, would provide a permanent means of reviewing and amending legislation and conducting studies on issues of relevance to the sector. Sector leaders have proposed that this type of regular review should occur approximately once every five years, allowing the Committee to identify and proactively address issues and gaps as they emerge. The legislative branch has a regular remit to review other statutes, such as the Bank Act.

Retain the CRA Charities Directorate’s role in granting and revoking tax-exempt status for charities, but narrow its mandate exclusively to regulatory functions

The Charities Directorate retains an important role in implementing the Income Tax Act as the regulator of registered charities. However, the Charities Directorate has increasingly been pressured to subsume the “charities portfolio” for the federal government, shifting into more enabling functions (see Figure 3). The Directorate currently lists sector engagement, policy development and education as part of its mandate.88 We recommend that the Directorate narrow its mandate exclusively to the regulatory functions, with a separate body to assume the enabling functions including sector engagement, policy development and education.

While details are still unknown, the recently announced permanent Advisory Committee on the Charitable Sector89 will be an important vehicle for meaningful dialogue with the sector on regulatory issues.90 However, it is unlikely that it is going to be able to support the enabling functions needed (as defined in Figure 3) given its location within (and mandate of) the tax regulator.

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Establish a Social Sector Office as a permanent unit within a central agency to support the enabling/facilitating function\(^1\)

Establishing a standalone Social Sector Office in a central agency would create a centralized, forward-looking enabling body for the sector as a whole. Locating the Office within a central agency would allow for policy coordination across departments and meaningful consultation and engagement with other sectors.

There are clear parallels between the mandate for this Office and the Office for Social Innovation that was proposed in the National Social Finance and Social Innovation Strategy.\(^2\) Where possible, it would be particularly prudent to align these mandates and establish clear institutional links. A newly formed office, for example, could investigate the parameters and governance model of the recently announced Social Finance Fund and Impact Readiness Stream.

**FIGURE 6**

Clarifying Roles for the Regulator and Enabler

<table>
<thead>
<tr>
<th>Charities Directorate (Regulator)</th>
<th>Office within Central Agency (Enabler)</th>
</tr>
</thead>
<tbody>
<tr>
<td>» Maintaining a record of registered charities.</td>
<td>» Consulting with sector on priorities, challenges and proposals for legislative/regulatory reform.</td>
</tr>
<tr>
<td>» Publishing policies and guidance on the process for becoming a registered charity.</td>
<td>» Advancing legislative/regulatory reform (e.g. Income Tax Act, Canada Not-for-Profit Corporations Act).</td>
</tr>
<tr>
<td>» Advising charities on compliance-related issues.</td>
<td>» Advancing sector policy initiatives (e.g. data infrastructure, funding and procurement reform)</td>
</tr>
<tr>
<td>» Providing an internal review process as the first point of appeal for registration decisions.</td>
<td>» Coordinating cross-departmental policy initiatives related to sector.</td>
</tr>
<tr>
<td>» Soliciting input from sector representatives on issues specific to charity regulation through advisory committee.</td>
<td>» Overseeing implementation of Social Innovation and Social Finance Strategy with sector’s input (including the recently announced Social Finance Fund and Impact Readiness Stream).</td>
</tr>
<tr>
<td>» Coordinating with provincial regulators.</td>
<td>» Liaising with umbrella organizations.</td>
</tr>
<tr>
<td>» Auditing charities for compliance with the Income Tax Act and enforcing through the use of education letters, compliance agreements, intermediate sanctions or revocations.</td>
<td>» Coordinating federal-provincial government functions/activities as appropriate (i.e. problem solving and agenda setting).</td>
</tr>
<tr>
<td></td>
<td>» Disseminating best practices.</td>
</tr>
</tbody>
</table>

Figure 6 demonstrates how the role of the regulator and enabler would differ. We identified the Privy Council Office (in alignment with the existing Impact and Innovation Unit) to be a promising option because it would allow for policy coordination across government. Embedding the Office here would help to advance an outcomes-driven, rather than an issues-driven, approach by positioning the sector as a partner rather than a stakeholder/recipient of funding.

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Pros and Cons of Different Locations in Government

Figure 7 summarizes the pros and cons of placing the Social Sector Office in various locations across the federal government. Our research suggests that there is likely to be no consensus on the ideal location and its success will be predicated on its political influence, its leadership capabilities, and the interests of the government of the day.

### FIGURE 7

<table>
<thead>
<tr>
<th>Department/Agency</th>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Privy Council Office</td>
<td>- Centralized function. Could assist with policy coordination</td>
<td>- Very broad mandate; potential for competing priorities</td>
</tr>
<tr>
<td>Treasury Board Secretariat</td>
<td>- Ability to marshal resources across government</td>
<td>- May lack a broader service delivery perspective (emphasis on fiscal implications)</td>
</tr>
<tr>
<td>Finance Canada</td>
<td>- Existing expertise with Charities Directorate</td>
<td>- Too closely aligned with regulatory function (CRA)</td>
</tr>
<tr>
<td>Employment and Social Development Canada</td>
<td>- Existing social innovation/social finance infrastructure</td>
<td>- Narrow scope of mandate.</td>
</tr>
<tr>
<td></td>
<td>- Embedded within existing government structure; potential for it to be more sustainable</td>
<td>- May have limited policy coordination across departments if situated within one ministry</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Large ministry with significant responsibility; sector issues may be eclipsed by other policy priorities</td>
</tr>
<tr>
<td>Innovation, Science and Economic Development Canada</td>
<td>- Federal lead for innovation and economic development</td>
<td>- May lack a broader service delivery perspective</td>
</tr>
<tr>
<td></td>
<td>- Embedded within existing government structure; potential for it to be more sustainable</td>
<td>- May have limited policy coordination across departments if situated within one ministry</td>
</tr>
<tr>
<td>Canadian Heritage</td>
<td>- Mandate aligns with traditional views of sector</td>
<td>- May narrow scope to arts/culture/heritage issues</td>
</tr>
<tr>
<td></td>
<td>- Embedded within existing government structure; potential for it to be more sustainable</td>
<td>- May have limited policy coordination across departments if situated within one ministry</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- May fragment approaches to social innovation efforts</td>
</tr>
</tbody>
</table>
Expand the scope of the recommended Social Innovation Council to include enabling the social sector

The Social Innovation and Social Finance Co-Creation Steering Group Report recommended a permanent cross-sector Social Innovation Council to advise on how federal policies and programs can facilitate social innovation. This role, expanded to focus on enabling the social sector more broadly, would provide a useful advisory function to the Social Sector Office. The Council’s role would be connected, but distinct, from the reinstated advisory committee for the Charities Directorate noted above as the Council would focus on guiding and supporting the enabling functions.

Anchor a commitment to long-term policy action by embedding the Office, Council and associated funding structures in legislation

Embedding the institutional structure, funding model and guiding principles proposed in these recommendations in legislation can help to create some permanency (similar to the UK’s Charities Act or Australia’s Charities and Not-for-profits Commission Act). The legislation would have to be amended or repealed to change the approach, rather than leaving the decision to be executed with less visibility and scrutiny. Creating a statutory framework would also make the federal government’s approach more visible and less vulnerable to changes in political priorities. In doing so, it will also recognize and enable the sector as a strategic partner in building thriving communities, improving wellbeing, and driving economic growth and innovation.

Example of UK Charities Act: The Potential for Consolidation

The UK Charities Act includes the following provisions:

» A definition of charity and charitable purposes
» The Charity Commission’s scope and functions
» The process of registering and deregistering charities
» The process for granting tax-exempt status, and associated requirements
» Structure of charitable boards
» Parameters for “charitable companies” and “charitable incorporated organizations”
» Process of appealing to the Charity Tribunal

Invest in the social sector infrastructure

Social sector infrastructure is required to undertake sector-related research, cross-party relationship building, policy engagement and coordination, sector capacity-building and self-regulation. Governments, other funders and sector organizations all play an important role in ensuring strong social sector infrastructure. Umbrella organizations would benefit from longer five-year funding cycles to effectively build their own capacity and gain trust and credibility with key stakeholders. Longer funding cycles would also insulate umbrella organizations from political pressure, allowing them to further establish reputations and contribute meaningfully to the policy process.
APPENDICES

APPENDIX A:
SUMMARY OF PREVIOUS CANADIAN INITIATIVES

Imagine Canada National Summit (2011)

» 500 sector representatives met in Ottawa to inform the development of a National Engagement Strategy.

» Key recommendations included improving working conditions, diversified and sustainable funding, a clearer narrative of the sector’s contribution and impact and increased support for volunteer management and talent recruitment.93

Independent Blue Ribbon Panel on Grants (2006)

» Treasury-Board-commissioned Panel to make recommendations to improve the delivery and accountability of grant and contribution programs.

» The Panel recommended appointing a federal minister responsible for grants and contributions, aligning grants and contributions policies against a set of common principles, ensuring better alignment between funding instruments and the programs they support, providing clearly defined and reasonable objectives for grantees and promoting horizontal coordination of program administration across departments for a “single client” approach.94

Accord Between Government and the Voluntary Sector (2001)

» Developed by the Joint Accord Table through the Voluntary Sector Initiative (VSI), the Accord (modeled after the Compact in the UK) was a framework agreement signed between the Government of Canada and the voluntary sector in 2001 that articulated a vision and principles for working together.95

» The Accord committed the Government of Canada to “consider the implications of legislation, policies and programs on the sector and engage the sector in open, informed and sustained dialogue” and committed the sector to “identify important or emerging issues and trends and bring them to the Government of Canada’s attention and call upon the full depth and diversity of voluntary organizations when at the table.”96

» The Code of Good Practice on Policy Dialogue and the Code of Good Practice on Funding were created to provide concrete guidance on implementing the Accord in both Government and voluntary sector organizations.97


» A five-year joint initiative between the Government of Canada and the voluntary sector focused on strengthening their working relationship and enhancing the capacity of the voluntary sector.98

» Working through seven joint tables, the VSI tasked 77 voluntary sector representatives and approximately the same number of federal officials with giving effect to recommendations contained in the 1999 Working Together report.99

» The VSI led to the establishment of the Accord and the creation of two Codes of Good Practice.

Panel on Accountability and Governance in the Voluntary Sector (1999)

» Established in 1997 by the Voluntary Sector Roundtable, the Panel on Accountability and Governance in the Voluntary Sector (also known as the Broadbent Panel) was given a mandate to explore wide-ranging issues, including fundraising practices and fiscal management, government regulation of the sector, and accountability practices.100

» The Panel’s final report, Building on Strength, put forward 41 recommendations targeted towards the voluntary sector and governments, which included creating a good practice guide, creating a Voluntary Sector Commission, Parliamentary review of the definition of charity, and developing a framework agreement between the sector and governments like the Compact in the UK.101

» Significant factor in the creation of the Voluntary Sector Initiative.102

APPENDIX B: SUMMARY OF KEY LEGISLATIVE/REGULATORY REFORM ISSUES

Figure 8 is an adaptation of the table included in *Turning a Corner: Laying the Groundwork for Charity Regulatory Reform in Canada*. Some additions were made to incorporate sector feedback and the recommendations from the Report of the Consultation Panel on the Political Activities of Charities.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Description</th>
<th>Problem</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Political Activities</strong></td>
<td>The Income Tax Act says a charity may devote resources to political activities only if it spends substantially all of its resources on charitable activities or purposes. The Directorate has interpreted those words to mean a charity may not spend more than 10% of its resources on public advocacy. Some charities see political change as the most promising route to progress on their charitable missions. These charities believe that the rules should not prohibit the most effective (and perhaps the only) strategies by which they can fulfill their purposes. Others do not understand the Directorate’s definition of political activities (for example, some charities believe privately advising governments counts as a political activity). Some struggle to correctly classify activities and to calculate resources spent on political activities.</td>
<td></td>
</tr>
<tr>
<td><strong>Definition of Charity and Charitable Purposes</strong></td>
<td>The Income Tax Act does not define charitable purpose, instead adopting the common law definition. The common law definition takes its classification scheme from <em>Pemsel</em>, an 1891 English case. That classification scheme reflects the mores of an earlier time. While the courts have occasionally added to the scheme, they pass rarely on charity questions. In <em>Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue</em>, the Supreme Court of Canada said Parliament, rather than the courts, should amend the definition of charity if it requires an amendment. Some charities or applicants for charitable status want to move beyond the Pemsel scheme, or at least expand its interpretation. Some charities, for example, want to prevent poverty, rather than just alleviate it (Pemsel speaks only to alleviating poverty). As of <em>Vancouver Society</em>, these charities have nowhere to which to appeal except Parliament. To date, Parliament has not shown great interest in studying the limits of the current definition and the costs and benefits of change.</td>
<td></td>
</tr>
</tbody>
</table>

105 A purpose is charitable under the common law if it fits within one of four categories: relief of poverty, advancement of education, advancement of religion, or certain other purposes beneficial to the community in a way the law regards as charitable (such as health promotion or environmental protection). See Canada Revenue Agency. (2013). “How to draft purposes for charitable registration”. Available at: http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/driftppss-eng.html#fn4
| **Earned Revenue** | The Income Tax Act says a charitable organization or a public foundation may only run a business if the business qualifies as a related business (a private foundation cannot run a business of any sort). The Income Tax Act says a business 90% run by volunteers is one type of related business. The Directorate says the only other type of related business is a business linked and subordinate to the charity’s purpose.  
| **Partnerships with Non-Charities** | The Income Tax Act says a charity may only spend its resources on gifts to qualified donees or on its own charitable activities. The Directorate has interpreted those words to mean a charity must maintain direction and control over resources given to a non-qualified donee (a category that includes not-for-profits, for-profits and foreign charities).  
| **Process for Judicial Review** | Charities must appeal Canada Revenue Agency decisions at the Federal Court of Appeal, rather than the Tax Court of Canada or a more specialized administrative tribunal (as is the case in other jurisdictions).  |

Sales of goods and services comprised more than 45% of charity and not-for-profit revenue in 2008, the last time Statistics Canada counted.  

Many charities want to increase that percentage to bridge the gap between grants and donations and demand for services. Sizable businesses cannot run on 90% volunteer labour. The Directorate’s linked and subordinate standard restricts business activities to small projects.  

Some charities see great opportunity in collaboration across legal forms. Many charities, especially foundations and international development organizations, would rather help an entity or consortium on the ground than carry out activities itself. The direction and control rules impose high administrative costs on such arrangements. The rules require charities to supervise and instruct the recipients of charitable resources. The rules undercut the reason for partnership.  

Appealing to the Federal Court of Appeal is an expensive and time-intensive process, resulting in few decisions for the Canada Revenue Agency and organizations to use to inform good practice for the future.  

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## APPENDIX C:
SUMMARY OF INTERNATIONAL MODELS

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Regulatory Body</th>
<th>Enabling Body</th>
<th>Oversight Body</th>
<th>Adjudicative Body</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Canada (current state)</strong></td>
<td>Canada Revenue Agency Charities Directorate</td>
<td>N/A</td>
<td>Minister of National Revenue</td>
<td>Federal Court of Appeal</td>
</tr>
<tr>
<td><strong>UK</strong></td>
<td>Charity Commission</td>
<td>Office of Civil Society</td>
<td>Parliament</td>
<td>Charity Tribunal</td>
</tr>
<tr>
<td><strong>Australia</strong></td>
<td>Australian Charities and Not-for-Profits Commission</td>
<td>Australian Charities and Not-for-Profits Commission</td>
<td>Parliament</td>
<td>Administrative Appeals Tribunal</td>
</tr>
<tr>
<td><strong>New Zealand</strong></td>
<td>Charities Services (formerly Charity Commission)</td>
<td>N/A</td>
<td>Department of Internal Affairs</td>
<td>Charities Registration Board</td>
</tr>
<tr>
<td><strong>United States</strong></td>
<td>IRS</td>
<td>Independent Sector</td>
<td>IRS</td>
<td>IRS Appeals Office, U.S. Tax Court, U.S. Court of Federal Claims or U.S. District Court for District of Columbia</td>
</tr>
<tr>
<td><strong>Ireland</strong></td>
<td>Irish Charities Regulator</td>
<td>Charities Institute Ireland</td>
<td>Minister for Rural, Community and Gaeltacht Affairs</td>
<td>Charity Appeals Tribunal</td>
</tr>
</tbody>
</table>
## APPENDIX D: OPTIONS FOR MODELS/MECHANISMS

<table>
<thead>
<tr>
<th>Model</th>
<th>Description</th>
<th>Function</th>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Judicial Branch</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Tax Court as Appeal Court</strong></td>
<td>Change first appeal court for CRA decisions to Tax Court of Canada, followed by Federal Court of Appeal for a subsequent appeal</td>
<td>Adjudicative</td>
<td>» Ability to introduce new evidence in fact-finding trials. More streamlined and accessible alternative to Federal Court of Appeal</td>
<td>» Resource-intensive process</td>
</tr>
<tr>
<td><strong>Charities Tribunal</strong></td>
<td>New administrative tribunal to adjudicate disputes about regulatory decisions for charities; could replace or supplement current internal administrative-level review within CRA</td>
<td>Adjudicative</td>
<td>» More streamlined and accessible alternative to Federal Court of Appeal</td>
<td>» Resource-intensive process » Limited scope to promote policy development and institutional reform within CRA; emphasis on adjudicating decisions</td>
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<td><strong>Legislative Branch</strong></td>
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<tr>
<td><strong>Standing Senate Committee on Civil Society</strong></td>
<td>Permanent committee of Senators to identify legislative gaps, commission studies, call expert witnesses</td>
<td>Enabling</td>
<td>» Permanent body within Senate to monitor progress on key priorities. Can provide direction across ministries. Less susceptible to political interference</td>
<td>» Limited accountability mechanisms to ensure recommendations are implemented</td>
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<tr>
<td><strong>Parliamentary Committee on Civil Society</strong></td>
<td>Permanent multi-party committee of Members of Parliament to identify legislative gaps</td>
<td>Enabling</td>
<td>» Permanent body within House of Commons to monitor progress on key priorities. Can provide direction across ministries</td>
<td>» May be susceptible to political interference</td>
</tr>
<tr>
<td><strong>Civil Society Commission</strong></td>
<td>Commission would be an agent of Parliament (Commissioner appointed by Parliament but an arms-length entity); similar to current Commissioner for Lobbying</td>
<td>Enabling/Regulatory</td>
<td>» Direct reporting relationship to Parliament and/or just Senate. Existence empowered by statute but arms-length</td>
<td>» Constitutionally challenging » Resource-and-cost intensive process » Mandate may become diluted (compliance oriented vs nurturing) if Commission is expected to lead entire portfolio » Less direct ministerial links » Unlikely to be supported by current bureaucracy</td>
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<tr>
<td>Model</td>
<td>Description</td>
<td>Function</td>
<td>Pros</td>
<td>Cons</td>
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<tr>
<td><strong>Executive Branch</strong></td>
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<td><strong>Cabinet Committee</strong></td>
<td>Ministerial Committee to report to Cabinet on policy priorities and legislative gaps</td>
<td>Enabling</td>
<td>» Supports a cross-ministerial &quot;whole-of-government&quot; approach. Provides high-level oversight of policy priorities</td>
<td>» May be susceptible to political interference</td>
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<tr>
<td><strong>Department of Civil Society</strong></td>
<td>Department with a Minister appointed to oversee and implement civil society sector portfolio; would typically be aligned with one ministry with opportunities for cross-ministerial collaboration</td>
<td>Enabling</td>
<td>» Provides visibility/profile to sector issues</td>
<td>» May silo sector issues if situated within one ministry</td>
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<td>» Clear point of contact for sector-government collaboration</td>
<td>» Limited capacity to promote institutional reform; emphasis on policy development</td>
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<td>» May be vulnerable to changes in political priorities</td>
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<tr>
<td><strong>Coordinating Committee of Deputy Ministers</strong></td>
<td>Committee of Deputy Ministers to oversee and implement civil society sector portfolio across ministries</td>
<td>Enabling</td>
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<td><strong>Dedicated Assistant Deputy Minister (ADM)</strong></td>
<td>ADM (potentially within Innovation, Science and Economic Development or Employment and Social Development) appointed to apply a &quot;sector lens&quot; to policies across government</td>
<td>Enabling</td>
<td>» Embedded within existing government structure. Potential for it to be more sustainable</td>
<td>» May be difficult to institutionalize as part of policy development process across government</td>
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<td>» May become siloed to issues within specific department</td>
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<td><strong>Office for Civil Society</strong></td>
<td>A standalone office situated within Privy Council Office/a central agency or a specific ministry (similar to UK Office of Civil Society), could have a non-governmental advisory body</td>
<td>Enabling</td>
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<td><strong>Canada Revenue Agency Charities Directorate (current model)</strong></td>
<td>Charities Directorate administers provisions of Income Tax Act and performs registration/deregistration functions for charities</td>
<td>Regulatory</td>
<td>» Existing regulatory infrastructure; effective at executing provisions of existing legislation</td>
<td>» Limited ability to support sector outside of regulatory scope</td>
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<tr>
<td><strong>Embedded within proposed Office for Social Innovation</strong></td>
<td>Incorporate civil society issues (charities and non-profit sector, volunteerism) in proposed Office for Social Innovation; Office may be situated in various ministries/departments with cross-government staff appointments</td>
<td>Enabling</td>
<td>» Supports a cross-ministerial &quot;whole-of-government&quot; approach. Provides centralized entity to advance policy priorities</td>
<td>» May silo sector issues if situated within one ministry</td>
</tr>
<tr>
<td><strong>Joint Table</strong></td>
<td>Committee of government and sector representatives, typically linked to a specific ministry (e.g. proposed Social Innovation Council)</td>
<td>Enabling</td>
<td>» Model of equal sector-government partnership</td>
<td>Typically a short-term structure; would need clear accountability mechanisms within government</td>
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</tbody>
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