

Report of the Special Senate Committee on the Charitable Sector

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By Donald Carr

The Report from this Committee came down on June 20, 2019.

It was appointed by the Senate at the end of January 2018, tasked with delivering its report by the end of the year. In November, that target was extended to September of this year.

Contrary to its name, the Committee, in addition to addressing issues relating to registered charities, also dealt with the not-for-profit sector.

Calling for a new “roadmap” for the well-being of the sector, the Report commented that the sector has suffered from benign neglect for too long, that rules have been reformed piecemeal, and various task force recommendations have gone unheeded.

Recognizing that there is no “quick” fix available to ensure that the sector can continue to thrive, there is a welcome comment that the relationship between the sector and the government cannot be limited to one between the regulator (the CRA) and the sector.

The recommendations are directed at a large panoply of various groupings which fall under “the Government of Canada.” They include the recently formed (but hardly yet active) Advisory Committee on the Charitable Sector, the Canada Revenue Agency, The Treasury Board Secretariat, Public Safety Minister, Minister of Finance, Labour Canada, the Commissioner of the Canada Revenue Agency, Employment and Social Development Canada, Statistics Canada, Minister of National Revenue and the Minister of Innovation, Science and Economic Development.

In dealing with the Committee’s 42 recommendations, one has to ask how they are to be addressed without numerous participants falling over each other. Perhaps one Charities Commission, as is established in several other jurisdictions such as the United Kingdom and Australia, might have been part of the answer.

A broad recommendation is that the government review the *Income Tax Act* provisions relating to registered charities every five years, commencing no later than the next fiscal year.

Some welcome recommendations include:

- Specific steps to improve the CRA’s relationship with the sector, including communicating more clearly its decisions relating to the rejection of applications, revocations and internal appeals, reducing wait times for responses and increasing cooperation with provincial “counterparts”, to reduce the reporting burden on charitable and not-for-profit organizations;
- Appeals from decisions of the Charities Directorate of the CRA should proceed to the Tax Court for a trial de novo, instead of the current appeal process to the Federal Court of Appeal;
- A review of the common law meaning of “charity” to determine whether it should be broadened;
- The cumbersome “direction and control” requirements of the CRA for activities overseas should be revised through the implementation of an “expenditure responsibility” test;

- Donor advised funds should be reviewed with a view to preventing donations from “languishing” there, instead of being used in a timely fashion; and
- The difficult current requirements which prevent many not-for-profit organizations from holding surplus income should be revised to provide greater clarity and certainty.

The Committee gave short shrift to the issues of registered charities supporting what would otherwise be regarded as forbidden, unlimited political activities (even after the recent amendments to the ITA) and funding/supporting terrorist organizations. It was noted that to conduct unlimited political activities, all that a charity has to do is incorporate a not-for-profit corporation, which would be tax-exempt. (Currently, ensuring that there is no apparent relationship between that entity and the charity permits the conduct any kind of unlimited political campaigns, which, it should be noted, could include partisan activities, as well as activities such as BDS, which one well-known charity has done).

As for terrorist financing, the Report quoted one witness, who stated that much of the risk is managed through the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and other financial regulation systems. For those who have investigated various registered charities’ activities, there are a multitude of extremely suspicious and very substantial disbursements by several charities, none of which have been caught by FINTRAC or other systems.

There is no doubt that the Committee - comprising seven Senators (with some 15 additional Senators, described as “having participated from time to time in the study”) - undertook a monumental task, receiving briefs from 90 sources, listening to 160 witnesses in 24 public hearings, as well as holding electronic consultations with 695 respondents!

With some 86,000 registered charities and an estimate of 85,000 unregistered not-for-profit organizations engaged in myriad activities, it is a huge scene to be reviewed.

We now wait to see what concrete steps will be taken by the government to examine the Report and take steps to implement its recommendations.

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