

Where is the Voice of Canada's Voluntary Sector?

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Abstract

Voluntary organizations in general and charities in particular have consistently contended that government regulations and fear of contractual reprisals constrain their capacity to advocate for progressive social policies. This article focuses on the regulatory and institutional side of this equation and contends that advocacy constraints exhibited by charities may be less attributable to limits externally imposed by the federal government than they are to limitations on the institutional structure by which charities choose to organize. The Canada Revenue Agency was chosen because it has the widest influence on what is considered permissible political activities by charities across Canada. This study explored changes across three iterations of Canada Revenue Agency regulations concerning permissible political activities and resource allocation limits by registered charities. Between the release of Information Circular 78-3 in 1978, which was viewed by the voluntary sector as punitive and restrictive, and Political Activities CPS-022 in 2003, permissible political activities have been clarified and expanded. This study goes on to analyze the institutional structure which characterized the voluntary sector and government when substantive policy dialogue developments took place across this twenty-five year period. This study concludes that the non-formal institutional structure characteristic of voluntary sector representation and reporting has influenced both the lack of legislative change and the nature and impact of sectoral advocacy. The voluntary sector in Canada would be well served by increasing its institutional structure formality and charities should work together to take full advantage of the potential new advocacy capacity available through Political Activities CPS-022.

Résumé

Les organismes bénévoles en général, et plus particulièrement les organismes de bienfaisance, ont toujours prétendu que les règlements gouvernementaux et la crainte de représailles contractuelles limitent leur capacité à militer pour des politiques sociales progressistes. L'article, qui s'attarde à l'aspect réglementaire et institutionnel de cette équation, avance que les contraintes liées au militantisme présentées par les organismes de bienfaisance pourraient être davantage attribuables aux limites de la structure institutionnelle sous laquelle ces organismes choisissent d'exercer leurs activités qu'aux limites imposées par le gouvernement fédéral. L'auteur a choisi de se pencher sur l'Agence du revenu du Canada parce qu'elle exerce l'influence la plus importante sur la définition des activités politiques admissibles des organismes caritatifs au Canada. L'étude a examiné les modifications apportées lors de trois présentations successives des règlements de l'Agence du revenu du Canada relativement aux activités politiques admissibles et aux limites d'allocation de ressources des organismes de bienfaisance. Entre le lancement de la Circulaire d'information 78-3 en 1978, jugée punitive et restrictive par le secteur bénévole et communautaire, et celui de l'énoncé de politique Activités politiques CPS-022 en 2003, les activités politiques admissibles ont été clarifiées et étendues. L'étude propose ensuite une analyse de la structure institutionnelle qui a caractérisé la relation entre le secteur bénévole et le gouvernement lorsque des développements importants du dialogue relatif aux politiques sont survenus durant cette période de 25 ans. L'auteur conclut que la structure institutionnelle informelle propre à la représentation et à la production de rapports du secteur bénévole a exercé une influence tant sur le manque de changements d'ordre législatif que sur la nature et l'impact du militantisme de ce secteur. Le secteur bénévole du Canada bénéficierait d'une formalisation de sa structure institutionnelle, et les organismes caritatifs devraient unir leurs efforts afin de profiter au maximum des nouvelles possibilités de militantisme offertes par l'énoncé de politique Activités politiques CPS-022.

Introduction

Voluntary organizations have consistently contended that government regulations and fear of contractual reprisals constrain their capacity to advocate for progressive social policies (Brooks, 2001; Pross & Webb, 2003; Scott, 2003). This is particularly true for charities as their advocacy activities are centrally regulated by the Canada Revenue Agency (Canada Revenue Agency, 2003). This article focuses on the regulatory and institutional side of this equation and contends that advocacy constraints exhibited by charities may be less attributable to limits externally imposed by the governments than they are to the institutional structure by which charities choose to advocate. I will argue that between 1987 and 2003, permissible political activities have been clarified and charity regulations have been expanded

in such a way that they provide more opportunity and scope for charities to engage in political activities. I propose that there has been an incremental yet notable institutional change in the regulation of political activity by the Canada Revenue Agency and that the lack of collective advocacy by the voluntary sector is a consequence of a non-formal institutional structure which permeates the voluntary sector.

The federal government is not the only nor often the most important voluntary sector advocacy target. Yet, the Charities Directorate of the Canada Revenue Agency exerts considerable influence due to its regulation of the political activities of all charities in Canada. Because charities are often the organizations with the closest ties to those in need in communities, they are also in the best position to speak to the policies and programs that should be in place. According to the National Survey of Nonprofit and Voluntary Organizations, fifty-six percent of all voluntary and nonprofit organizations are registered charities. Of these, the majority of non-faith charities are affiliates associated with health and community human services which support individuals and families (Hall, et al., 2005). The constraints on advocacy and service provision by certain funders, particularly governments or their agencies, are not to be minimized (Hall, et al., 2005; Scott, 2003). Neither should the benefits of consistent and organized collective action be underestimated. The emergent Ontario Nonprofit Network and the formal institutional structure developed since 1996 by Le Chantier de l'économie sociale in Quebec have both addressed policy issues which impact nonprofit and charities alike (Eakin, 2006, 2007; Mendell & Neamtan, 2009 (forthcoming); Neamtan, 2009). Such inclusive organizations appear to have mitigated the advocacy chill and resource limitations previously experienced by organizations when they advocate in isolation from each other. It is the nature of such collective action and the institutional structure this collective action represents which forms the basis of this study.

Institutional Structure

This research takes the view that there are considerable insights to be gained by examining the comparative institutional structures associated with government (federal in this case) and the voluntary sector during critical policy junctures. Wolfgang Streeck and Kathleen Thelen (2005) define institutions as "*building-blocks of social order*: they represent socially sanctioned, that is, collectively enforced, expectations with respect to the behaviour of specific categories of actors or to the performance of certain activities" (p. 9). An institution is not necessarily a formal organization. Voting, for example, is a formal institution but it is not an organization. An institutional structure is thus determined by rules and sanctions which stipulate expected behaviour. The institutional structure is legitimized or formalized by the extent to which these expectations are reinforced by the society in which it operates (Streeck & Thelen, 2005).

The institutional structures profiled in Table 1 are an extension of an accepted differentiation between formal and informal institutional structures (Lawson, 1993; Streeck & Thelen, 2005). Political economies are governed by politics and controlled by formalized norms and sanctions, whereas mores and customs are considered informal (Streeck & Thelen, 2005). In this study, institutional structure formality is a reflection of the degree to which representational norms and sanctions are both formalized and reinforced over time and circumstance (Elson, 2008).

Table 1
Institutional Structure Type

Structure Type	Features	Example
Formal	Well established and sanctioned representational and reporting protocol which is transferable across time and issues.	A government department enforces clear reporting protocols for their representatives which are consistent from issue to issue.
Non-formal	Transitory representational and reporting protocol which is non-transferable across time and issues.	A group of voluntary sector representatives make deputations to government on an issue, but there is no consistency in representation or reporting across issues.
Informal	Ad hoc representational and reporting protocol which is non-transferable across time and issues.	Independent representation by voluntary sector organizations to government committees where there is no co-ordination of representation

The purpose of this institutional structure typology is to capture the influence of policy deliberations between different or similar institutional structures on policy outcomes, particularly during critical junctures (Pierson, 2000, 2004). These three institutional structures are not absolutely distinct from each other and could be portrayed on a continuum. Based on an analysis of voluntary sector and government representations to a wide variety of policy deliberation forums, this typology represents the three most common institutional structures.

Information Circular 87-1

During the 1980s and 1990s, the Canadian voluntary sector was collectively caught in the undertow of four successive waves of government policy reform: 1) a desire

for smaller government; 2) an era of fiscal constraint; 3) the growing popularity of direct citizen engagement; and 4) the division of constitutional responsibilities between the federal and provincial/territorial governments (S. Carter, Broder, Easwaramoorthy, Schramm, & de Witt, 2004; Jenson & Phillips, 2001; Phillips, 2006b). This dynamic created a voluntary sector/government relationship which deteriorated in the late 1980s and varied from mutual isolation and suspicion to outright antagonism (Phillips, 2002).

In 1978, the release of the legal interpretation of "political activity" in *Information Circular 78-3* by Revenue Canada was seen as an affront to voluntary organizations who viewed advocacy as a legitimate means to accomplish their mission. Information Circulars are the common means by which tax regulation changes are released by the Canada Revenue Agency. Churches in particular felt that they had an inherent right to teach and exercise their social doctrine and viewed such restrictions as an attempt to thwart their right to practise their religion (Brooks, 1983; "Ottawa intimidates charities, MPs say," 1978; "Stay out of politics Ottawa tells charity," 1978). Opposition Conservative Party politicians saw the circular as a reflection of the government's disenchantment with participatory democracy and the media championed the right of charities to speak for those in need (*House of Commons Debates*, 1978; "Stupid, to put it charitably," 1978).

The issue of permissible political activities by charities was kept alive in the 1980s by a coalition of very active women's groups and key cabinet ministers, particularly those affiliated with the National Action Committee on the Status of Women and the Opposition Conservative Party. Under Prime Minister Brian Mulroney, the Conservatives followed through with a commitment made by Finance Minister John Crosbie seven years earlier, and issued *Information Circular 87-1*.

Both the political status of the voluntary sector and the tenor of the circular shifted from *Information Circular 78-3*, which had been punitive in tone and prohibited any form of political activity. In *Information Circular 87-1* an explicit limit of ten percent of a charity's resources to permissible political activities was introduced. Still holding to existing case law, and ever-mindful of foregone tax revenue implications, the Conservative government was not about to either redefine charity or significantly liberalize allowable political activities. *Information Circular 87-1* was nevertheless a clear step forward in favour of advocacy by charities.

Information Circular 87-1 was a step forward for charities for four reasons: it 1) increased the allocation for permissible political activities from zero to ten percent of a charity's resources; 2) broadened the type of political activities in which a charity could engage; 3) defined oral and written representations to government or media as charitable, not political; and 4) allowed political activity expenses to be allocated over several years.

The fact that the changes outlined in *Information Circular 87-1* went largely unnoticed by both the media and the voluntary sector underlies the incremental

change in the circular in comparison to what the voluntary sector saw as their 'right' to engage in unencumbered legitimate political activity. The federal government, however, was ever mindful that charities benefit directly from donations which would otherwise become government revenue and they weren't about to have their hand bitten by the mouth they fed (Pal, 1993). The next push for change, when it did come, occurred during the 2000-2005 Voluntary Sector Initiative¹.

The Liberals Come to Town

For the majority of its first term in office, the Liberal government, under Prime Minister Jean Chrétien, followed the neo-conservative pattern of cost cutting and labelling public policy advocates as 'special interest groups', thus continuing a strategy initiated by the previous Mulroney government. While the voice of the Coalition of National Voluntary Organizations was weak, the loss of institutional or representative voice for all voluntary interest groups started in earnest in 1990 when the Citizen's Forum on Canada's Future chose to hear from individual Canadians as *individuals* rather than as representative members of interest groups (Jenson & Phillips, 1996). This approach became the norm for national consultations and was reinforced politically by the derisive reference to "special interest groups". Voluntary sector leaders are still explicitly and consistently told that they are only to act as an individual voice on any federal task force or committee, regardless of whom they may otherwise represent.

This lack of voice for the voluntary sector in general, and of the Coalition of National Voluntary Organizations in particular, weakened the capacity of the sector to mitigate the devastating series of cuts to voluntary sector programs and organizations, which took place in the mid-1990s by Finance Minister Paul Martin under his Program Review scheme. This lack of voice was also an on-going reflection of the voluntary sector's dependence on government for funding, professional collegialism with government officials, and its non-formal representational and reporting institutional structure (see Table 1).

Between 2000 and 2003, four initiatives combined to bring the issue of advocacy to the attention of both the government and the sector-at-large.

First, a seven-member voluntary sector Advocacy Table established during the Voluntary Sector Initiative commissioned an in-depth analysis report, held country-wide consultations, and developed a position paper on advocacy (Harvey, 2002; Rector, 2002). In fact, two independent working groups (advocacy and financing) were established by the voluntary sector.

The federal government, particularly the central agencies Finance and Treasury Board, flatly refused to make tax issues (including the definition of charity, political activities, and funding) a matter for discussion during the Voluntary Sector Initiative.

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These two powerful federal departments had no intention of either yielding ground to outside groups or setting a policy-making precedent. Politically, the government wanted to avoid any contentious policy areas such as advocacy or financing, preferring to focus on achieving a political "deliverable" (e.g., the Voluntary Sector Accord) by the end of the International Year of Volunteers in 2001 (Brock, 2004; Phillips, 2003, 2004).

Second, the Institute for Media, Policy and Civil Society (IMPACS) commissioned its own legal case for regulatory changes and then combined forces with the Canadian Centre for Philanthropy to conduct a cross-Canada consultation with voluntary sector leaders about advocacy and possible regulatory changes (Bridge, 2000; IMPACS & Canadian Centre for Philanthropy, 2002).

Third, the Joint Accord Table², in a direct follow-up to the signing of the Voluntary Sector Accord in 2001, developed a *Code of Good Practice on Policy Dialogue* (Voluntary Sector Initiative, 2002a, 2002b). The Code was entirely process-focused and provided no defensible or accountable criteria which could be used to hold either the voluntary sector or the government to account. Politically, it provided a way to 'report progress' on funding and advocacy when considerable discord had developed during the deliberations of the Regulatory Joint Table.

Fourth, based on their own comprehensive survey of charities and strong internal leadership (Phillips, 2006a), the Charities Directorate made a commitment in April, 2001 with its *Future Directions* strategy to enhance electronic services, ensure transparency, target compliance activities, and improve co-operation with the voluntary sector (Canada Revenue Agency, 2001). The development of *Political Activities CPS-022* was one facet this new direction.

Political Activities CPS-022

Following a designated consultation period, *Political Activities CPS-022* was released in September 2003, replacing the earlier *Information Circular 87-1* (Canada Revenue Agency, 2003). These guidelines are clearer and much more specific than the previous two circulars.

The purpose of *Political Activities CPS-022* is outlined in the policy statement as follows:

This policy statement replaces Information Circular 87-1, *Registered Charities-Ancillary and Incidental Political Activities*, and provides information for registered charities on political activities and allowable limits under the *Income Tax Act* (the Act). It also provides a framework that explains how we distinguish between political and charitable activities. In addition, it seeks to clarify the extent to which charities can usefully contribute to the development of public policy under the existing law (p. 1).

In contrast to any of the previous Information Circulars, *Political Activities CPS-022* explicitly contextualizes its regulations within the Voluntary Sector Initiative consultation process and the *Code of Good Practice on Policy Dialogue*.³ *Political Activities CPS-022* provides substantive details and examples (eighteen explicit scenarios are detailed), and addresses some of the nuances that the Charities Directorate has to contend with (Canada Revenue Agency, 2003). For example, *Political Activities CPS-022* contains the following statement with respect to unstated purposes and excessive political expenditures:

Unstated purposes and devoting more than the allowable maximum of a charity's total resources to political activities

When a charity focuses substantially on one particular charitable activity so that it is no longer subordinate to one of its stated purposes, we may question the legitimacy of the activity at law. This is because when an activity is no longer subordinate to a charity's purposes, it may indicate that the charity is engaging in an activity outside its stated objects, or pursuing an unstated collateral political purpose; or non-charitable purpose; or charitable purpose.

In such circumstances, rather than just considering the explicit purpose of the activity in question, we will consider all the facts and determine whether it is reasonable to conclude that the charity is focusing substantially on a particular activity for an unstated political purpose.

In addition, when a charity's purposes are clearly charitable, but it devotes more than the allowable maximum of its resources to political activities, we may consider that the charity is operating to achieve a political objective that is not stated in its governing documents, and it will consequently risk revocation (pp. 3-4).

Political Activities CPS-022 continues the permissive tone set in *Information Circular 87-1*, such as indicating that individual circumstances will be taken into consideration, but also outlines, as it does above, the factors within those individual circumstances which will be considered. *Political Activities CPS-022* draws the same lines in the political-activity sand as did the previous two Information Circulars. One exception is the resources which can be allocated toward political activities.

Resources for political activities

Political Activities CPS-022 recognized the perspective that the ten percent rule created a substantial barrier to political activity for small and medium charities, a perspective which had been clearly articulated by voluntary sector representatives

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during the Voluntary Sector Initiative. The Canada Revenue Agency decided to exercise its discretion and indicated that it would not revoke the registration of smaller charities for the excessive use of their resources on political activities, as long as they met the following administrative guidelines over a maximum of a three-year period:

Registered charities with **less than \$50,000** [emphasis in original] annual income in the previous year can devote up to 20% of their resources to political activities in the current year.

Registered charities whose annual income in the previous year was **between \$50,000 and \$100,000** [emphasis in original] can devote up to 15% of their resources to political activities in the current year.

Registered charities whose annual income in the previous year was between **\$100,000 and \$200,000** [emphasis in original] can devote up to 12% of their resources to political activities in the current year (p. 9).

The potential impact of these guidelines on political activities has been significantly underestimated by the voluntary sector. There may not have been a shift to increase the allocation that large charities could allocate to political activities, but the overall impact is a collective \$113.5 million annual increase in the permissible allocation to political activities by charities with revenues of less than \$200,000 and an overall increase to \$5.7 billion, not counting large hospitals or educational institutions (see Table 2 on the next page).

What has been lost in the discourse concerning CPS-022 is that even at ten percent, charities could collectively allocate \$5.6 billion annually to political activity. With the release of CPS-022, this figure, based on 2005 tax return data from the Canada Revenue Agency, has increased to \$5.7 billion. Even a one percent allocation to political activities by all charities would be almost \$573 million.

This analysis reveals that the lack of advocacy activity by charities, rather than being limited by overly restrictive or ambiguous regulations, is more likely due to the absence of concerted and collective representation. The Voluntary Sector Forum, which operated between 2002 and 2005, operated with the same non-formal institutional structure as the former Coalition of National Voluntary Organizations and the representative Joint Tables during the Voluntary Sector Initiative (Social Development Canada, 2004; Voluntary Sector Forum, 2006).

Yet there has been no public and little voluntary sector reaction to *Political Activities CPS-022*. The most significant response has been from legal commentators who, as representatives of large charities, see little progress beyond the ten percent rule (T. S. Carter & White, 2003; Gilbert, 2004; Taking another look, 2005). This view is also held because the expectation was created by the proponents of change that a limited but concerted appeal to redefine charity legislation

Table 2
Political Activities CPS-022: Resource Allocation

Income (2005 tax data)	Total Income in millions of dollars (number of charities)	Total Income less hospitals and educational institutions (number of charities)	Resources available at 10 percent of total revenue by income category (percent allocation) — millions of dollars (<i>Information Circular 87-1</i>)	Resources available at 10, 12, 15, and 20 percent of total revenue by income category (percent allocation) — millions of dollars (<i>CPS-022</i>)
> \$200,001	139,036 (21,821)	53,485 (18,639)	5,348 (10%)	5,348 (10%)
\$100,001–\$200,000	1,477 (10,234)	1,463 (10,217)	146 (10%)	175.5 (12%)
\$50,001–\$100,000	732 (10,234)	732 (10,234)	73 (10%)	110 (15%)
< \$50,000	471 (26,421)	471 (26,421)	47 (10%)	94 (20%)
Total	141,716 (68,710)	56,151 (65,511)	5,614	5,727.5
Net Change				113.5

Source: Canada Revenue Agency data (February, 2007): Financial allocation by revenue (line 4700). Nationwide with charities with income less than 50,000; between 50,000 & 100,000; between 100,000 & 200,000; & more than 200,000 (data for year 2005).

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in the *Income Tax Act* and liberalize political activities would be enough to make it happen (Drache & Boyle, 1999; Harvey, 2002; IMPACS & Canadian Centre for Philanthropy, 2002; Rector, 2002). I contend that the regulatory regime has shifted, and because the voluntary sector is unaware of its implications and is unable to take advantage this progressive change, it will be some time before the full impact of *Political Activities CPS-022* on the voluntary sector can be assessed. This shift, which has been in development since 1987 when *Information Circular 87-1* was released, holds important insights and implications for the nature of voluntary sector/government relations.

Findings and Analysis

While some argue that the voluntary sector is constrained politically by these advocacy regulations (Webb, 2000), another factor which should be considered is the influence of institutional structure on the status of this policy. The voluntary sector's inconsistent and transitory representation on advocacy policy reflects a non-formal institutional structure. This collective lack of capacity to engage in sustained and meaningful policy dialogue with a formal institutional structure (e.g., the federal government) has meant that there have been few political consequences for the federal government's inaction.

Table 3 (below) profiles the relative formality of these two institutional structures in relation to the Voluntary Sector Initiative and *Political Activities CPS-022*. The nature of the relationship between the voluntary sector and government was also examined from 1978 to 2003 to determine if there was significant variance across this period in the non-formal voluntary sector and the formal government institutional structures.

The federal government's formal institutional structure and the voluntary sector's non-formal institutional structure operated throughout the Joint Regulatory

Table 3
Institutional Structure (Regulation of Political Activity)

Structure Type	Features	Example
Formal	Well established and sanctioned representational and reporting protocols which are transferable across time and issues.	Government representation concerning CPS-022 and the Voluntary Sector Initiative
Non-formal	Transitory representational and reporting protocols which are non-transferable across time and issues.	Voluntary Sector representation concerning CPS-022 and the Voluntary Sector Initiative

Table discussions (1999 to 2003). Starting with the Broadbent Panel (1999), the non-formal voluntary sector pushed throughout the process for a 'modernized' definition of charity, a less bureaucratic regulatory structure, and the liberalization of advocacy regulations (IMPACS & Canadian Centre for Philanthropy, 2002; Panel on Accountability and Governance in the Voluntary Sector, 1999). This non-formal institutional structure was evident in both the lack of formal reporting structures and the inexperience of sectoral representatives in formal policy engagement (Social Development Canada, 2004).

The difference in the two institutional structures is reflected in comments made by government representatives during a process evaluation of the Voluntary Sector Initiative. A number of government representatives reported that the voluntary sector was naïve to think that civil servants could speak freely as individuals rather than departmental representatives (Social Development Canada, 2004). Here is a summary comment by one government representative about the voluntary sector representation which appears in *The Voluntary Sector Initiative Process Evaluation: Final Evaluation Report*:

It wasn't realistic: they [the voluntary sector] wanted us to agree on everything. Their expectations were too high. In certain cases, it's possible for a public servant to have a personal opinion that differs from that of his Minister, but in a context like this one and the subject of the recommendations that we were making, we are accountable to our Ministers for any substantial changes that are made (p.52).

The Canada Revenue Agency, in concert with the Department of Finance, reflecting its formal institutional structure, was very clear that any legislative changes were political, not bureaucratic decisions. The two departments made it equally clear to voluntary sector representatives that they only took direction from their political masters (Phillips, 2003). At the same time as the operational details associated with the Voluntary Sector Initiative overwhelmed many of the inexperienced voluntary sector representatives, bureaucratic protocols prevented a parallel political campaign from being mounted (Phillips, 2006b).

The non-formal institutional structure and lack of policy infrastructure within the voluntary sector during the Joint Table process was such that the voluntary sector was forced to defer the use of its political capital to deal with a succession of lower-level policy deliberations (Phillips, 2003). The lack of a formal and broad sectoral representative and reporting structure or media profile also gave the sector very little capacity to resist or modify the position taken on these issues by the powerful central agencies.

This policy dialogue relationship reflects a non-formal/formal institutional structure dynamic. Few of the voluntary sector proponents recognized 1) the degree

to which political activity and the definition of charity were not only politically and legally institutionalized, but also inextricably linked with general tax policy and the Department of Finance's hold on foregone tax revenues; 2) that there needed to be some proposed benefit to the government to embark on such an institutional shift, and government representatives perceived few tangible benefits; and 3) the degree to which the proposed changes to the regulatory regime, enforcement regulations, and regulatory definitions were interconnected and posed a serious challenge to the established and institutionalized regulatory structure within the Canada Revenue Agency.

Institutional change

The changes in permitted political activities which took place between 1987 and 2003 are no less significant for the incremental manner in which they took place. Pierson (2003) points out in his study of social processes that when a long time-horizon is used to study [policy] outcomes, it provides important insights which are missed if the analysis focuses on narrower contemporary issues. Examined independently, the impact of the three versions of the regulation of political activity in *Information Circular 78-3*, *Information circular 87-1* and *Political Activities CPS-022* have been consistently minimized by the voluntary sector. Collectively, they represent a significant institutional shift in permissible political activity within the existing legislative framework. Rather than creating an advocacy 'chill effect' (Webb, 2000, p. 40), the Canada Revenue Agency has been clear that permissible advocacy activities are circumstantially determined and that as long as public policy evolves, so will decisions regarding permissible political activities (Charities Directorate, 2003).

The changes introduced by each of the information circulars were layered on top of existing Canada Revenue Agency regulations. Each version effectively reinforced and institutionalized legislative regulations regarding the definition of charity and political activities. The information circulars consistently reinforced common law rulings that charities cannot be established for political purposes and that any political activities must be both ancillary and incidental to their charitable purpose (Charities Directorate, 2003; Revenue Canada, 1978, 1987).

What has been forgotten in this long-standing debate is that charities have considerable untouched capacity to participate in political debates to the full extent of their allowable expense limit (see Table 2). I suggest that while there may be valid reasons for the existence of an advocacy 'chill effect', such as perceived or real repercussions to advocacy activities on contract renewals or access to policy deliberations, the *Income Tax Act* is not the culprit. Given the number of registered charities and their collective resources, evidence from the Charities Directorate indicates that the political expense limit has rarely been reached. I

conclude that it is more likely that charities are under-spending their potential political activity allocation and underestimating the impact of collectively advocating for a common cause.

The release of *Information Circular 87-1* in 1987 was the point at which permissible political activities by registered charities started to shift from a punitive to a permissive regulation. *Information Circular 87-1* extended both the type and amount of permissible political activity. Pressure had been applied by the voluntary sector and the opposition political parties to have these regulations changed since 1978 when *Information Circular 78-3* was released by the Liberal government. While the Liberals were reluctant to extend the regulations for permissible political activity, the opposition Conservatives saw it as a reflection of their populist roots and as an opportunity to support voluntary (non-government) action at a community level.

When the Conservative government under Brian Mulroney came into power, a more positive climate for permissible political activity by charities ensued. The result was the release of *Information Circular 87-1*, which did extend the regulations on political activities but also restricted the charitable resources which could be allocated to such a purpose to ten percent. Permissible political activity by charities in Canada was expanded further with the release of *Political Activities CPS-022* in 2003. This latest iteration had its foundation in *Information Circular 87-1* and was institutionally layered onto existing regulations enforced by the Charities Directorate. These regulations have been reinforced, primarily through reactive enforcement measures and special monitoring of activities during elections. Interviews with both government and voluntary sector leaders are consistent in concluding that the current regulations permitted by existing legislation have reached their limit.

Throughout the period from 1978 to 1987 and continuing through 2003, the voluntary sector in Canada maintained its non-formal institutional structure. The consensus and optional opting-in style of governance of the Coalition of National Voluntary Organizations prevented support for one campaign (e.g., tax incentives) being translated into equal support for other policy initiatives (e.g., permissible political activities). While an average of one hundred organizations were members of the Coalition of National Voluntary Organizations, only a fraction of these organizations actively participated in policy advocacy for the Coalition. Further, a position taken by the Coalition of National Voluntary Organizations would not necessarily be embraced by other major national umbrella organizations; this resulted in the government receiving either a mixed or diluted message.

At the same time, the government was becoming leery of voluntary organizations, particularly when they advocated for policy positions in opposition to government policy. The underlying resentment by politicians that tax money could be used to criticize government consistently overruled support for citizen participation. This government position was consistently reinforced through changes and

cuts in program funding, a general discrediting of the voluntary organizations as representative of 'special interests', and the marginalization of the role of representative organizations in policy dialogue.

While few opportunities for formal policy consultation took place over the period before or following the release of *Information Circular 87-1*, the Voluntary Sector Initiative provides a contemporary example of formal and non-formal institutional structures. Within government the representation and reporting protocols remained formal, operating for the most part within parameters prescribed by the Department of Finance. Within the voluntary sector, representatives to the Regulatory Table struggled to put advocacy on the policy agenda with no discernable impact. While consultations with the broader voluntary sector across Canada took place during the Voluntary Sector Initiative, no mechanism was created to formalize this input or to bridge sectoral input from one consultation process to another.

The Joint Table process of the Voluntary Sector Initiative matched the non-formal collective voice of the sector. The amount of attention the issue of permissible political activity garnered through the Voluntary Sector Initiative and complementary advocacy work by the Canadian Centre for Philanthropy and IMPACS did have some residual benefit (IMPACS & Canadian Centre for Philanthropy, 2002). A *Code of Good Practice on Policy Dialogue* was published and the Canada Revenue Agency worked to extend the regulations for permissible political activities. However, the lack of an established and sanctioned representational and reporting protocol grounded in the broader voluntary sector diluted both the policy outcome and available reinforcement mechanisms.

Political Activities CPS-022, released by the Charities Directorate of the Canada Revenue Agency in 2003, is a further institutional layering of permissible political activities in both regulatory and fiscal terms. Permissible political activities are now broader and charities with annual revenues of less than \$200,000 are permitted to allocate a higher proportion of their resources to political activities. These changes could be of significant benefit to charities if they chose to use their new found freedom to engage in concerted advocacy activities.

The statutory definition of charity and regulations concerning permissible political activities have, from the perspective of interviewees from both government and the voluntary sector, reached their limits in the absence of major statutory reforms. If the voluntary sector continues to operate as a non-formal institutional structure, it is likely that any future policy changes would be defined by and for the benefit of government, not the voluntary sector.

Conclusion

Each successive version of *Information Circular 78-3* has: 1) increased the opportunity to engage in political activities; 2) worked to clarify as much ambiguity as

possible concerning political activities; and 3) stayed clear of any re-definition of either charity or political activity. Any change in this direction will be politically determined, and will not be confined to the departmental interests of Canada Revenue Agency or the Department of Finance. Current governments and the courts have kept the tax implications of charity regulation in their view as much as Parliament did in May, 1930 when an amendment to the *Income War Tax Act* first recognized the purpose and value of charities in Canada (Supreme Court of Canada, 2007).

The fact that the Canada Revenue Agency has, in Susan Phillips's words, worked to "reinvent itself from within" (2005, p. 12) is significant and has resulted in a more dynamic, transparent, and responsive regulator (Kidd, 2002). Traditionally sensitive to complaints, the institutional shift that has occurred in the Canada Revenue Agency is a consequence of the desire by the Canada Revenue Agency in general, and the Charities Directorate in particular, to increase its relevance to the general public (Canada Revenue Agency, 1998, 2001). The engagement of the Canada Revenue Agency in the Voluntary Sector Initiative informed its perspective of the voluntary sector and the issues facing charities; however, the Charities Directorate was also informed by its own independent service surveys and its experience as the lead charity regulator.

This reform agenda is being implemented in a climate where advocacy is regarded with disdain and new and exhaustive lobbying regulations are being applied to all organizations, including registered charities. The institutionalization of this reform will likely continue but its success will depend as much on the nature of the reinforcement that the reforms receive from citizens and the voluntary sector as it will from political forces within government. The non-formal voluntary sector has intermittently pushed over the last ten years to have the restraints on political activity lifted, and some important results have been achieved (IMPACS & Canadian Centre for Philanthropy, 2002; Social Development Canada, 2004). The non-formal nature of voluntary sector representation has prevented the full context of the voluntary sector from being acknowledged and represented, and this non-formal institutional structure continues to hamper substantive legislative changes from being seriously considered.

The challenges this analysis of political activity presents to voluntary sector organizations at national, provincial and local levels across Canada are twofold: 1) the voluntary sector would benefit from increasing its political credibility and institutional structure formality; and 2) the voluntary sector could start to take advantage of the potential new capacity and resources available through *Political Activities CPS-022*. In my view, the non-informal institutional structure, which continues to characterize many representative organizations, thwarts the development of sustained opportunities for participation by small and medium sized organizations with limited resources and the subsequent collective action which is

needed to address policy change. This study points to the need for a broad and fundamental change in the way the voluntary sector in Canada sees itself and how it organizes itself to take collective action. Only then will the voluntary sector find its voice.

Author's Note: The author would like to express his sincere appreciation to the two anonymous reviewers for their insightful comments. This research was initially undertaken with the support of a Social Science and Humanities Research Council of Canada (SSHRC) Canada Doctoral Graduate Scholarship. All of the usual caveats apply.

Notes

- 1 The Voluntary Sector Initiative (VSI) was a five-year, \$95 million initiative to engage the voluntary sector and federal government departments. The VSI was a consequence of earlier joint policy discussions which had taken place between leading voluntary sector organizations and foundations (the Voluntary Sector Roundtable) and was called 'Working Together'.
- 2 The Joint Accord Table was one of seven joint voluntary sector/government tables established during the Voluntary Sector Initiative to address common issues. Because advocacy and financing would not be discussed by the government, separate voluntary sector tables were set up to solicit sectoral input in these two areas.
- 3 The *Code of Good Practice on Policy Dialogue* was one product of Voluntary Sector Initiative and was a follow-up to the signing of the Voluntary Sector Accord in December of 2001.

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