



May 9, 2018

Via email: cssb@sen.parl.gc.ca

The Honourable Terry M. Mercer: terry.mercer@sen.parl.gc.ca
The Honourable Ratna Omidvar: Ratna.Omidvar@sen.parl.gc.ca
Special Senate Committee on the Charitable Sector
The Senate of Canada
Ottawa (Ontario) K1A 0A4

Dear Senators Mercer and Omidvar:

**Re: Study of Law and Policies Governing Charities, Non-profit Organizations,
Foundations and Other Groups**

I am writing on behalf of the Charities and Not-for-Profit Law Section of the Canadian Bar Association (CBA Section) to applaud the Senate for appointing a Special Committee on the Charitable Sector and offer our assistance in this important work.

The CBA is a national association representing over 36,000 jurists, including lawyers, notaries, law teachers and law students across Canada. The CBA's mandate includes seeking improvements in the law and the administration of justice. The CBA Section has members across Canada practising in all areas of charities and not-for-profit law and in every size of practice, from large national firms to small and solo practitioners. We are dedicated to the evolution of a fair and efficient system reflecting principles of natural justice and Canadian interests.¹

Charities and their legal advisers wish to follow the applicable rules governing this sector, but often find that those rules are arcane and difficult to understand. This absorbs additional time and resources that could more fruitfully be used to advance and promote the charitable causes of the charities. We support your Committee's efforts to consider modernizing the current rules.

¹ For recent examples of the CBA Section's law reform efforts, see: Voluntary Disclosures by Canadian Registered Charities (Ottawa: CBA, 2017) [online \(https://bit.ly/2K9Ersh\)](https://bit.ly/2K9Ersh); Report of the Consultation Panel on the Political Activities of Charities (Ottawa: CBA, 2017) [online \(https://bit.ly/2FXOONf\)](https://bit.ly/2FXOONf); Canada's National Security Framework (Ottawa: CBA, 2017) [online \(https://bit.ly/2IuaeXC\)](https://bit.ly/2IuaeXC); National Security Green Paper, 2016 (Ottawa: CBA, 2016) [online \(https://bit.ly/2K5oqDM\)](https://bit.ly/2K5oqDM); Political Activities for Charities (Ottawa: CBA, 2016) [online \(https://bit.ly/2KNMcp1\)](https://bit.ly/2KNMcp1); Regulation of Charitable and Not-for-Profit Sectors (Ottawa: CBA, 2016) [online \(https://bit.ly/2KQHZ3E\)](https://bit.ly/2KQHZ3E).

The stated purpose of the Committee is to “examine the impact of federal and provincial laws and policies governing charities, non-profit organizations, foundations, and other similar groups; and to examine the impact of the voluntary sector in Canada”. Given the breadth of this objective and the timeline requiring a report by December 31, 2018, we offer the following observations and suggestions:

- The rules that regulate charities (that is, charitable organizations, and public and private foundations) are different from those that regulate non-profit organizations. In addition, there is no single set of rules that govern provincial/territorial entities. As a result, there is a patchwork of rules and regulations between the federal rules and those of the various jurisdictions. There is also significant confusion in the applicable terminology, adding to uncertainty and misunderstanding. For example, the terms ‘charitable purposes’ and ‘charitable activities’ are fundamental concepts with distinct meanings, but they are sometimes used interchangeably. This adds to confusion in the area.
- Given the complexities and breadth of the proposed review, we suggest that it may be most effective to focus in particular on modernizing the federal income tax rules for regulating charities. This would involve a review of the effectiveness of such rules on the manner in which charities can carry out their activities to achieve their purposes, both locally and abroad, fundraising and volunteerism.
- The Canadian rules for carrying out activities either in Canada or elsewhere are markedly different from those of other jurisdictions, including the US, the UK and Australia. Broadly, the focus of those jurisdictions is on ensuring that the purposes of the charities are promoted, while the Canadian rules focus on the activities of Canadian charities, such as on direction and control by charities of their own activities. As a result, Canadian charities must expend considerable time and resources on compliance rather than on accomplishing their charitable mission, resulting in less effectiveness and inefficiency. Modernization and clarification of the Canadian rules would significantly help charities to focus on doing good work, rather than interpreting and applying overly complex rules.

We would be pleased to elaborate in greater detail these challenges for the charitable sector and our proposals as to how the rules could be clarified and simplified. Thank you for considering the CBA Section’s views.

Yours truly,

(original letter signed by Gaylene Schellenberg for Linda J. Godel)

Linda J. Godel
Chair, CBA Charities and Not-for-Profit Law Section