

Canada's non-profit maze:

A scan of legislation and regulation impacting revenue generation in the non-profit sector

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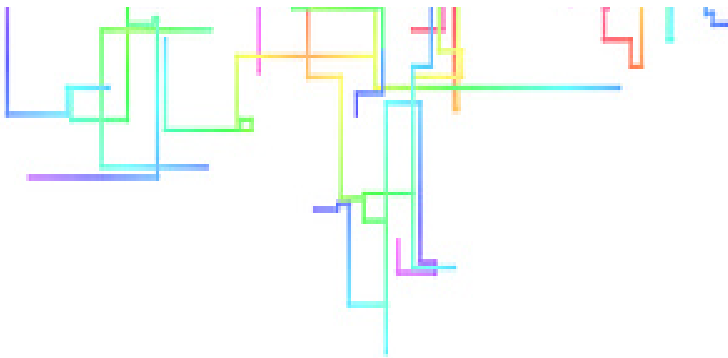


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Related Document:

*A Policy Perspective on Canada's Non-Profit Labyrinth of Regulatory and
Legislative Barriers*

Findings at a Glance

In 2007, groundbreaking research for the Wellesley Institute by Lynn Eakin and Associates confirmed that Canada's third sector (the vital web of non-profit, charitable, and voluntary organizations that provides valuable programs and services and knits together communities) was facing deep troubles. The report *We Can't Afford to Do Business This Way* (available at the Wellesley Institute website at www.wellesleyinstitute.com) noted that non-profits were facing growing administrative and financial burdens. As the economic recession began to take hold one year later, the Wellesley Institute asked Lynn Eakin and Associates to do a detailed scan of the sector, and speak with experts, including charity law lawyers and sector leaders and thinkers from across the non-profit and charitable spectrum of organizations.

Here's what we heard:

- The 32 survey respondents identified **significant difficulties with the current legislative and regulatory framework** for non-profits and charities. As non-profits struggle with the ever-greater challenges of the economic downturn, they reported significant funding concerns.
- The sector's primary sources of revenue are charitable donations, government funding, and earned income. Recent trend data for core non-profit organizations (without hospitals, colleges, and universities) show that the main source of non-profit funding is shifting. Government and charitable funding is declining as a percentage of sector income and earned revenue is increasing. Increasingly, **non-profit organizations are seeking revenue from all three sources.**
- Each of the revenue sources has significant legislative and regulatory constraints on its own, and **when all three sources of income come together in a single organization, the difficulties are compounded and are much more complex.** Sector regulation was never designed for organizations obtaining revenue from all three sources.
- **Funding challenges and regulatory entanglements amount to a veritable maze** that adds a huge administrative burden to already over-burdened organizations. Management resources are diverted from the primary mission of the organization to the complex challenge of navigating an ever-expanding maze of regulation.
- Government accountability measures remain overwhelming and focused on fiscal management to the detriment of programs and services. Not only do third sector organizations suffer, but the many millions of Canadians who rely on their programs and services also suffer. Proper accountability for public and charitable funds is important, but the **stranglehold of regulation that has emerged in recent years is reducing the operating efficiency of non-profit groups.**



- **Charitable regulation prevents many formal charities from earning income.** Charitable foundations have a unique set of issues not well understood by people working in the sector, not to mention government policy-makers or the general public.
- Non-profit organizations looking to operate a social enterprise find themselves **cut out of access to charitable funds and also cut out from revenue sources available to for-profit business.** In addition, they do not have specific non-profit social enterprise legislation.
- Traditionally, the sector has quietly changed regulations or has devised creative ways of working around the disabling regulation and rules. Increasingly, however, the legislative and regulatory barriers are proving too great to surmount, and whole parts of the sector are not operating as they should. **“Making do” is no longer an option for too many in the sector.**
- The scan of who is doing what in the sector (Appendix B) has identified **some newly active groups beginning to involve themselves in regulatory issues.** SiG National, SiG MaRS, CAUSEWAY, and the Ontario Nonprofit Network are all relative newcomers with a focus on broad operating conditions for the field. They join **other, more established groups, who are increasing their focus and involvement in regulatory issues and the changes needed to enable the sector to undertake its work.** The Muttart Foundation, Imagine Canada, and the Community Foundations of Canada all have initiatives underway.
- The striking gap uncovered in this scan is the **absence of government engagement** with the sector in the reform process. As the largest funders of the sector and, as regulators, all three levels of government have many reasons to work with the sector to develop enabling operating conditions. Where government has engaged in a reform process, the results have been promising.

A separate policy brief that accompanies this report provides an overall analysis and sets out some pragmatic and practical solutions designed to loosen the tangle. The starting point is for Canada (along with provincial and local governments) to recognize the critical importance of the third sector and set in place the process to start to unravel the choking maze of regulatory and financial overload. This is already happening in the United Kingdom (which has a national Cabinet-level Office of the Third Sector), the United States (where President Barack Obama has created the White House Office of Social Innovation and Civic Participation), and a few Canadian jurisdictions (such as Newfoundland and Labrador, which has a Minister Responsible for the Volunteer and Non-Profit Sector).

Summary of Survey Results

I. Charities

Key Regulatory and Legislative Charity Issues	Percentage of Respondents Rating Issue as "More or Most Significant"
All of a charity's activities must be charitable	63%
Charities are prohibited from owning more than 10% of a business	54%
Disbursement quota (80% of expenditures must be charitable)	54%
Line between policy development and advocacy (<10% on advocacy)	54%
Obtaining charitable status	51%
Lobbyist registrations (confusion about when and how)	30%
Technical issues regarding charitable gifts (tax shelters, flow-through shares, valuing life insurance policies)	24%
3.5% enduring property annual distribution requirement	21%
	33% don't know

II. Charitable Foundations

Key Charitable Foundation Issues	Percentage of Respondents Rating Issue as "More or Most Significant"
Can only fund charities (drives non-profits to become charitable)	48%
	22% don't know
Prohibited from carrying on business (e.g., social purpose business)	22%
	33% don't know
Passive investor status (2% holding limit; >50% requires public trustee oversight)	12%
	62% don't know
Restricted ownership of non-arm's length company holdings for private foundations	4%
	52% don't know



III. Government Funding

Key Government Funding Issues	Percentage of Respondents Rating Issue as “More or Most Significant”
Lengthy applications for short-term funding and small grants	88%
Ever-complex reporting	88%
Line-by-line restrictions on using funds	72%
Impact of government auditor requirements	66%
Multiple oversight, split jurisdictions	65%
Restrictions in contract on advocacy/public policy participation	53%
Conflicting legislative obligations (e.g., employment, health and safety, and terms of grant)	45%
NAFTA (need to retain services in public domain, once for-profit can't go back)	18%

IV. Earned Income

Key Earned Income Issues	Percentage of Respondents Rating Issue as “More or Most Significant”
Lack of access to capital	75%
Lack of access to foundations for funding (grants and/or social purpose investing)	66%
Must be a secondary activity for charities (prohibits social enterprise)	60%
“Related business” restrictions on charities	54%
Lack of community interest companies legislation (similar to UK)	39% 32% don't know

Introduction

The non-profit and charitable sector in Canada is a significant economic force. It accounts for \$90 billion in GDP and is six times the size of the automobile industry. Using data from Statistics Canada, the Wellesley Institute estimates that the core non-profit sector (excluding universities and hospitals) is three times the size of the automobile industry. We also estimate that the sector accounts for \$12 billion in volunteer unpaid labour.

In Ontario, there are 45,000 organizations with annual revenues of \$48 billion and just under 1 million paid staff (or \$29 billion and 600,000 jobs when hospitals, colleges, and universities are excluded). Volunteer time amounts to the equivalent of another 412,000 full-time jobs. Moreover, the non-profit sector is the service delivery agent of choice for government services. The non-profit and charitable sector is clearly an important part of the Canadian economy and an enormous contributor to the quality of life in Canadian communities. Despite this, most Canadians would be hard pressed to describe this sector, much less appreciate its challenges.

Organizations in the third sector share key characteristics: they are dedicated to their work and pragmatic in their approach to working around the obstacles they face in pursuing their missions. For many years the pragmatic approach worked, and the non-profit and charitable sector grew and thrived. In the past 15 years, however, the pace of change in the sector has accelerated and, with it, the complexity of the obstacles it faces. It is time to take a closer look at the legislative and regulatory environment in which the non-profit and charitable sector works.

To this end, the Wellesley Institute commissioned Lynn Eakin and Associates to engage thought- and practice leaders in the third sector to tell us about the impact of the legislative and regulatory environment on revenue generation and to identify who is doing what on the key issues.

“Making Do” Is No Longer Working for Third Sector Groups

The non-profit sector in Ontario does not have an overview of the legislative and regulatory reforms required to support its public benefit work. Such an overview is needed to develop the strategic focus needed to modernize the legislative and regulatory regime governing charities and non-profits.

Until recently, regulatory reform has not been a priority for the non-profit sector or for government. The sector has a long practice of “making do,” of finding a way around obstacles, but there are indications that we may be reaching a tipping point with regard to legislative and



regulatory barriers. “Making do” is no longer working for an increasing number of charitable and non-profit organizations.

In the past year, both the Ontario and federal governments have sought to update corporate legislation for non-profit organizations. In Ontario, existing legislation was over 50 years old; at the federal level, it was close to 100 years old. Other legislation and regulations are equally out of date, and the proliferation of regulations and regulatory processes often seems designed to compensate for the lack of a modern legislative and regulatory regime. As a result, Canada has an enormously complex legislative and regulatory regime that few in the sector understand. While the third sector has boldly moved into the 21st century, it is being governed by 19th and 20th century structures.

The inadequacies of this legislative and regulatory regime have become even more evident as we have watched other industrial nations embark on a significant modernization of their charitable and non-profit frameworks.¹

In Ontario, groups have begun to undertake research to document the need for change. This scan of the sector is one of those initiatives and is designed to pull together information on key regulatory issues, on work that is being done in this area, and on any gaps. It is the first step in building understanding on the non-profit sector's legislative and regulatory challenges and how it is dealing with them, as well as sorting out the most effective way forward. The scan of organizations is presented in Appendix B.

Understanding the Legislative and Regulatory Environment: The Third Sector in the 21st Century

Sector Revenue Trends

Many of the regulatory barriers to revenue generation for charities and non-profit organizations are directly linked to the changing context in which the sector works. The past 15 years have seen significant shifts in the funding profile of the sector. The percentage of income from the different revenue streams has changed, as has the way the sector approaches financing its work. This is important because the existing legislative and regulatory regime was designed in a

¹ These industrial nations are the United Kingdom, New Zealand, the United States, and, most recently, Australia.

different era, one in which charitable and non-profit organizations did not depend on multiple types of funding from multiple sources.

The charitable and non-profit sector now relies on three main sources of revenue: government funding, charitable donations, and earned income. Federal government expenditures, as a percentage of the GDP, have decreased from 21.5% in 1992 to 17.1% in 2007.² This has meant reductions in government funding for services and activities in the sector. Charitable donations as a percentage of core sector revenues declined between 1994 and 2004. The trend is toward fewer donors making larger gifts. Results of the *2004 Canada Survey of Giving, Volunteering and Participating* show that 9% of donors are responsible for 62% of charitable donations.³ Larger charities (hospitals and universities) are better positioned to attract these larger gifts, and had increased their share of charitable funding from 6.2% in 2000 to 9.6% in 2004.⁴ Of the three sources of revenue, the only source that has grown as a percentage of total sector revenue is earned income.⁵ More and more charities and non-profit organizations are generating more of their own income.

The data in Figure 1 reflect total sector revenues from 1994 to 2004 and show the shift in sources of revenue flowing into the sector. The data include hospitals, colleges, and universities. Even in these heavily government-funded institutions, government's share of revenue has declined.

In addition to these current trends, we can anticipate that the economic downturn and the increase in the government debt will present additional challenges for the sector.

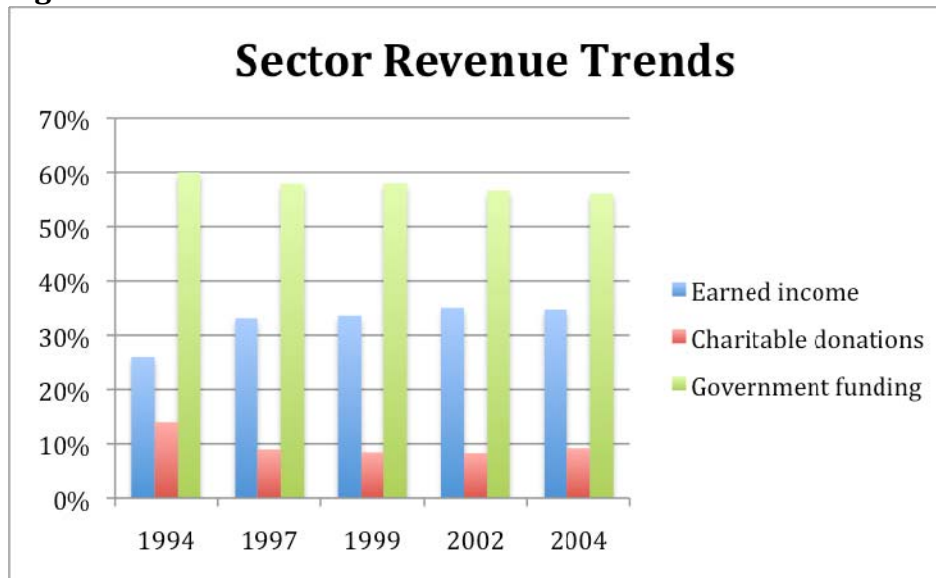
² <http://www.admfincs.forces.gc.ca/fp-pf/msd-add/2007-2008/fg-gf-eng.asp>.

³ Statistics Canada. 2006. *2004 Canada survey of giving, volunteering and participating*. Cat. no. 71-542-XIE. Ottawa: Statistics Canada. http://www.givingandvolunteering.ca/pdf/CSGVP_Highlights_2004_en.pdf.

⁴ Statistics Canada. 2007. *Satellite account of nonprofit institutions and volunteering, 1997–2004*. Cat. no. 13-015-XIE. Ottawa: Statistics Canada. http://dsp-psd.pwgsc.gc.ca/collection_2007/statcan/13-015-X/13-015-XIE2007000.pdf.

⁵ Ibid.

Figure 1

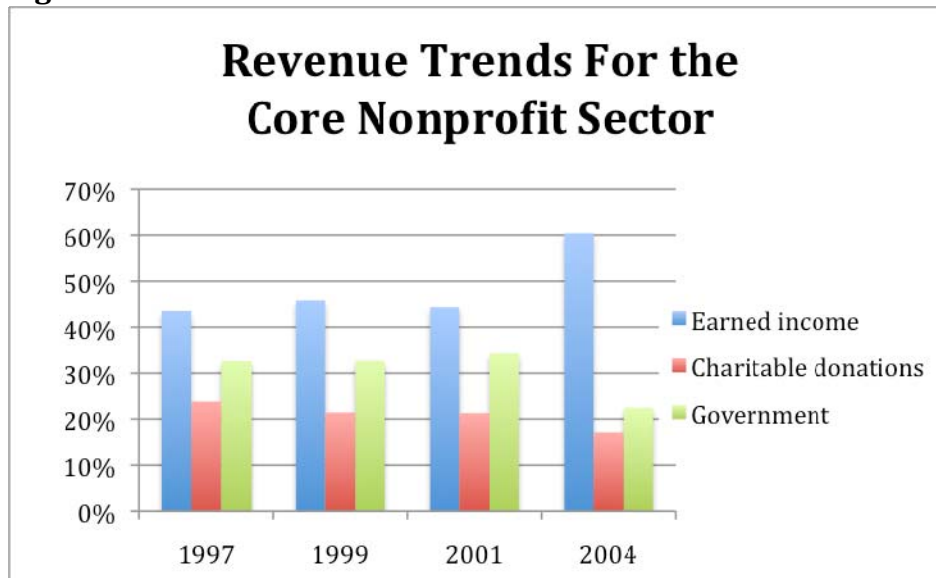


Source: Data for 1994 come from Hall, Michael, and Laura MacPherson. 1997. A provincial portrait of Canadian charities. *Research Bulletin 4* (2 & 3). The data for 1997–2004 come from Statistics Canada. 2007. *Satellite account of nonprofit institutions and volunteering, 1997–2004*. Cat. no. 13-015-XIE. Ottawa: Statistics Canada. http://dsp-psd.pwgsc.gc.ca/collection_2007/statcan/13-015-X/13-015-XIE2007000.pdf.

By using income data from the Statistics Canada's *Satellite Account of Nonprofit Institutions and Volunteering, 1997–2004* for the “core” sector (that is, all charitable and non-profit organization *minus* hospitals and universities) and by removing business and professional associations, we were able to obtain a fairly accurate profile of funding going to the non-profit sector working for the public good.⁶ The data in Figure 2 demonstrate how important earned income (such as revenue from the sale of goods and services, membership fees, and investment income) is for the sector, and how government funding and charitable donations are decreasing as a percentage of the sector's total revenues.

⁶ Most of the organizations in the core non-profit sector are organizations serving the public good. The largest group that is not are business and professional associations. If they are removed from the data, the data become more reflective of the non-profit sectors providing public benefit.

Figure 2:



Source: Data for 1994 come from Hall, Michael, and Laura MacPherson. 1997. A provincial portrait of Canadian charities. *Research Bulletin 4* (2 & 3). The data for 1997–2004 come from Statistics Canada. 2007. *Satellite account of nonprofit institutions and volunteering, 1997–2004*. Cat. no. 13-015-XIE. Ottawa: Statistics Canada. http://dsp-psd.pwgsc.gc.ca/collection_2007/statcan/13-015-X/13-015-XIE2007000.pdf.

Breaking Down Revenue Profiles

There is no standard profile for the funding of core non-profit organizations providing public benefit. The best that can be said is most organizations cobble together a mixture of government revenue, earned income, and charitable donations as best they can.

Overall revenue for core non-profit organizations in Canada can be broken down as follows: 36% comes from government, 43% from earned income, 17% from gifts and donations, and 4% from other sources.⁷ The pattern becomes more variable and nuanced the closer one looks at individual organizations.

Each province has a unique funding profile. Non-profit organizations in Ontario, for example, receive only 29% of their revenues from government; this figure compares with a national average of 36%.

Funding also varies according to type of organization. For example, sports and recreation organizations receive 56% of their income from fees and memberships and only 7% from

⁷ Hall, Michael, et al. 2004. *Cornerstones of community: Highlights of the national survey of nonprofit and voluntary organizations*. Cat. no. 61-533-XWE. Ottawa: Statistics Canada.

government, while social service organizations receive 68% of their revenues from government and 21% from earned income. Religious organizations receive 70% of their revenues from charitable donations; this figure compares with 36% for sports and recreation organizations and 8% for social service organizations.

There are also large differences in the revenue profiles of similar organizations. For example, one might expect Boys and Girls Clubs across the country to have similar revenue profiles. Instead, there is tremendous variation. Some receive considerable government funding while others receive little or none; some raise significant funds through charitable donations, while others bring in significant amounts of earned revenues.⁸

There is no standard funding profile for non-profit organizations providing public benefit. Organizations range from being funded exclusively by charitable donations to being funded exclusively by government to being funded exclusively through social enterprise: many rely on more than one revenue stream. Given recent funding trends, more and more organizations have mixed revenue streams—often relying on all three major sources.

Scan Methodology

We developed an open-ended survey for key respondents that asked about legislative and regulatory challenges, and pre-tested the survey with a small group. The feedback we received told us that an open-ended survey would yield little information as these issues are not top of mind for even the most involved key respondents. To obtain better information, we would have to ask more directly about potential challenges.

The survey was overhauled. Instead of asking open-ended questions, we listed issues that have been identified by sector leaders and charity law lawyers in various documents and forums as potential barriers to income generation. Survey participants were asked to rank the significance of these barriers. The survey was sent to 85 senior contacts in government and the non-profit sector and to charity law lawyers who were known to have an interest in these issues and who were leaders in their respective communities.

We had a 41% response rate, for a total of 32 completed surveys. Three additional people indicated that they did not have enough knowledge of the subject matter to complete the survey. Respondents included 5 lawyers, 8 funders, and 21 non-profit organizations. Government is not represented. One government contact who was sent the survey wrote to explain that clearance would be needed to participate in the survey and that this would be difficult to obtain within the survey's timeframe. We suspect similar difficulties may have prevented other government invitees from participating.

⁸ Data available at <http://www.charitycan.ca>.

Survey respondents had a wide and far-ranging knowledge of the sector. This expertise is reflected in their thoughtful responses.

The Survey

In the survey, we asked questions in three sections: one on charities, including questions about constraints on charitable foundations; one on government funding; and one on earned income. We also asked for information on work being undertaken in the areas covered by the survey.

The survey was targeted at a knowledgeable audience, so it did not spell out the details and implications of legislation and regulation. The issues are complicated, and it would have been difficult, if not impossible, to write a primer on navigating the complexity of non-profit sector legislation and regulation.

Most survey questions asked respondents to rank issues on a scale of one to five, with one being “least significant” and five “most significant.” There was provision for written comments, and respondents were generous in providing these. At least half of respondents commented on key questions. Each question also had a “don’t know” response option.

Full survey results of the ranked questions are presented in the graphs in Appendix B, available for download on the Wellesley Institute website. In this report, we provide results on the top two rating categories “more significant” and “most significant,” which we have combined in the tables below as “more or most significant.”

Each table is followed by concerns raised by respondents and a sampling of their written comments.

Survey Results

I. Charities

Key Regulatory and Legislative Charity Issues	Percentage of Respondents Rating Issue as “More or Most Significant”
All of a charity’s activities must be charitable	63%
Charities are prohibited from owning more than 10% of a business	54%
Disbursement quota (80% of expenditures must be charitable)	54%
Line between policy development and advocacy (<10% on advocacy)	54%
Obtaining charitable status	51%
Lobbyist registrations (confusion about when and how)	30%
Technical issues regarding charitable gifts (tax shelters, flow-through shares, valuing life insurance policies)	24%
3.5% enduring property annual distribution requirement	21%
	33% don’t know

The most significant charitable issue (selected by 63% of respondents) was the requirement that “all of a charity’s activities must be charitable.” Several respondents commented that this requirement is at odds with funder expectations that charities be sustainable and entrepreneurial.

- “What can a charity do and not do in terms of social enterprise?... There is massive confusion.”
- “Canadian legislation is clearly outdated and is now significantly hampering changes in the sector that must drive toward more entrepreneurial financing as a result of government funding withdrawal.”
- “The limitations on social enterprise (in particular the Ontario law regarding business ownership) are an outmoded and paternalistic restriction on the ability of charities to be self-sustaining.”



- “The inability to mix charitable and non-charitable activities severely limits the role and sustainability of charities.”

Over half (54%) of respondents identified that “Charities are prohibited from owning more than 10% of a business,” (which applies only in Ontario) as more or most significant.

- “The organizations I act for are small and have little in the way of administrative costs, no endowments, and don’t engage in advocacy. Their major issues are not losing charitable status due to business activity and inability to use corporate and other structures—these are Ontario law issues as well as CRA-related.”

Canada Revenue Agency’s (CRA) requirement that 80% of charitable revenue received be disbursed within the subsequent year on charitable activities was also identified by 54% of respondents.

- Meeting CRA disbursement requirements for charitable funding is a very serious problem, but for only those charities that have little income from other sources. An organization’s administration, fundraising and related business expenses are not considered charitable activities by CRA.

The “line between policy development and advocacy” was identified by 54% of respondents. This issue is far from clear and, depending on the organization, may or may not be a problem.

- One respondent from a large organization commented that being limited to 10% advocacy was not a problem, whereas a small association undertaking social policy and advocacy found the limit problematic and inappropriate.
- “Political activity is the (10% rule) but when permissible advocacy campaigns (public policy) include a portion of political activity ... then the whole campaign counts as political.”

“Obtaining charitable status” ranked slightly lower, identified as more or most significant by 51% of participants overall. However, it was ranked very highly among lawyers and foundation respondents. Perhaps they, more than the other respondents, are the ones who most often come in contact with new and emerging groups wanting charitable status.

- “Not all funders require a charitable registration (i.e., government), but agencies increasingly need a charitable number as fundraising is a larger part of agency budgets. We have also seen an increase in agencies establishing foundations.”

“Lobbyist registrations” and “Technical issues regarding charitable gifts” did not rank as high, and were identified as significant barriers by 30% and 24% of respondents, respectively.

The new regulation requiring charities to disburse 3.5% of enduring property (land, buildings, and investments) that comes into force this year was poorly understood.

- 33% of respondents did not know about the new regulation.
- In one lawyer's opinion, the new regulation will be problematic. "Obtaining charitable status and restrictions on advocacy are widely thought to be more of a problem than they are in fact, but the enduring property distribution rules will probably become more problematic over time."

II. Charitable Foundations

Key Charitable Foundation Issues	Percentage of Respondents Rating Issue as "More or Most Significant"
Can only fund charities (drives non-profits to become charitable)	48% 22% don't know
Prohibited from carrying on business (e.g., social purpose business)	22% 33% don't know
Passive investor status (2% holding limit; >50% requires public trustee oversight)	12% 62% don't know
Restricted ownership of non-arm's length company holdings for private foundations	4% 52% don't know

Many respondents were not familiar with legislative and regulatory issues for charitable foundations. "Don't know" was by far the largest response category. The one issue that scored significantly high was *the restriction on foundations that allows them to fund only charities (and not non-profit organizations)*, which was identified as more or most significant by 48% of respondents. This restriction makes it hard to provide start-up support to new public good initiatives or support social enterprise.

Respondent opinions on charitable foundation regulation were divided:

- "I think changing the rules on who foundations can fund will create infinitely more problems than it would solve."
- "Limitations on foundations' operations are limiting their effectiveness by reducing flexibility to generate income and to meet non-profit organizations' funding needs."



- “Very little flexibility for foundations to provide start-up capital for social enterprises or other businesses with a social purpose because of the rules referred to above as well as concern over ‘prudent investor’ test.”
- “Social enterprises are best run by those with direct client contact—service delivery agents. Foundations should not be able to fund business associations therefore the charities only rule seems reasonable.”

III. Government Funding

Key Government Funding Issues	Percentage of Respondents Rating Issue as “More or Most Significant”
Lengthy applications for short-term funding and small grants	88%
Ever-complex reporting	88%
Line-by-line restrictions on using funds	72%
Impact of government auditor requirements	66%
Multiple oversight, split jurisdictions	65%
Restrictions in contract on advocacy/public policy participation	53%
Conflicting legislative obligations (e.g., employment, health and safety, and terms of grant)	45%
NAFTA (need to retain services in public domain, once for-profit can't go back)	18%

Problems with government regulatory and accountability requirements and processes have been identified in a number of studies over several years. The issues are therefore well understood but remain unresolved.

Respondents indicated high concern over the administrative burden (88% identified “lengthy applications for short-term funding and small grants” and “ever-complex reporting” as significant issues) as well as “line-by-line restrictions on using funds” (identified by 72% of respondents).



- “Funding is a problem. Anything that shifts balance back to ensuring autonomy for the agency to pursue its mission rather than greater accountability to funders would be very valuable.”
- “The ‘mire of red tape’ is hamstringing what little investment the federal government provides and some provinces, notably Ontario, seem headed in the same direction despite documentation of problems. Governments very much need to reform practices within an overarching framework of funding program design to ensure (1) reasonable cost disbursement, (2) good relationships, (3) adequate knowledge to make good decisions, and (4) appropriate risk management.”
- “It seems it should be so much simpler to streamline applications online—do it once and then just update it—like [a] common CV for CIHR or SSHRC. Would like to see research on how forcing people to spend 50% of time filling in applications and then reporting on what they have done actually leads to more accountability. Biggest problem [is] not enough time for service delivery and time to think (re: doing things better or for greater impact).”
- “Need explicit policy of government to encourage the social economy as its preferred business model as in Quebec. Resources should follow that policy.”
- “Government funding applications, monitoring, and reporting requirements are becoming more complex and time consuming. They are more detached from actually providing real information about the effectiveness of the work.”

IV. Earned Income

Key Earned Income Issues	Percentage of Respondents Rating Issue as “More or Most Significant”
Lack of access to capital	75%
Lack of access to foundations for funding (grants and/or social purpose investing)	66%
Must be a secondary activity for charities (prohibits social enterprise)	60%
“Related business” restrictions on charities	54%
Lack of community interest companies legislation (similar to UK)	39% 32% don't know



While investment income and membership fees are components of earned income, business activities and social enterprise are the key challenges in this income category. Three-quarters (75%) of respondents identified “lack of access to capital” as more or most significant; two-thirds (66%) identified “lack of access to foundations for funding (grants and/or social purpose investing),” and nearly two-thirds (60%) identified the requirement that social enterprise for charities be a secondary, not primary activity.

- “There is a lack of clarity about what social enterprise is and what you can do as a non-profit and a charity.... There is a need for an overall enabling environment and policy platform ... this is coming ... but slowly.”
- “Business/charity issue is a difficult one—line between a social purpose business and a business which is social needs to be much clearer.”
- “My sector runs businesses, with multiple earned income streams (usually from strong established organizations). Lack of access to capital is key.”
- “Would like to learn more about potential for social business but also want to know how that would play out in terms of undermining or complementing public service infrastructure.”
- “As the non-profit sector becomes more entrepreneurial, new forms of capital must open up in the hybrid space between the market and social mission.” Given the current recession, there is probably little time for this to happen before the capacity of the sector is to mitigate/buffer the economic downturn compromised.
- “Access to capital is a major challenge as are operating funds and funds for expansion. We need a social venture fund for those engaged in social purpose work.”
- “Lack of access to capital can hinder a charity from scaling up a successful revenue-generating activity that may be providing a significant social service or contribute to a charity’s sustainability.”
- “I am ambivalent about allowing unrelated business activity by charities but strongly support mission-focused social enterprise. I would prefer to see more flexibility in the income tax act about what charities can do.”
- “All of the above [key earned income issues] add hurdles to charities moving into self-sufficient social business.”
- “In the UK, besides having CICs [community investment companies], they encourage foundations to do mission-based investing and PRIs [program-related investments], which provide more capital.”

Additional Issues

Two additional issues were raised in discussion by respondents. One was charity related, and the other was government related.

Charity-Related Issue

Regulation of international granting and service organizations is impeding the ability of third sector organizations to undertake their missions.

- “CRA reporting requirements for international work go against best practice in the sector and impose a tremendous burden on organizations. Anti-terrorism regulation is severely impacting the capacity of charities to undertake international development work.”
- “For Canadian foundations wanting to do international funding, the fact they can only give to a very limited list of qualified donees or have an agency agreement limits their ability to make grants overseas—too complicated and too risky.”

Government-Related Issue

Regional governments lack the willingness to facilitate and support non-commercial “social space” in communities.

- “Regional government regards religious charities as ‘for-profits’; whenever they adapt their property, they are charged development server charges. The question is whether property tax exemption is only applied to ‘worship’ function or all charitable activities.”
- “Banks do not lend to religious charities. Faith groups are being told to enter into partnerships with for-profits. This also happens with voluntary sector organizations—we have to work with housing developers to create social space for the sector. Government is completely unable to plan for good cities—just adjudicate housing permits.”

Open-Ended Question

We also asked one open-ended question. From the comments on the survey, it is clear that parts of the sector still function and go about their missions relatively unhindered. However, significant other parts of the sector have difficulty operating. Almost 70% of respondents think some legislative and regulatory reform is needed.

Recurring themes underlying the specific regulatory issues are as follows:

- Limits placed on charities impede their ability to undertake activities necessary for long-term sustainability.
- There is a lack of access to capital and grants for social enterprises.

- Frustration with government funding processes and accountability requirements continues.

The open-ended question we asked on the survey: “Are regulatory and legislative issues presenting serious challenges to the capacity of the sector to generate revenues? Please explain and give examples.”

The key respondents were generous with their comments, and reading through the comments after grouping them into YES, NO, and MAYBE categories with respect to regulatory reform makes it clear that legislation and regulation are problems for much of the sector. The related issues are many and varied depending on the vantage point of the key respondents in the sector. The responses show wide agreement that the sector has challenges; however, consensus on what to do about the issues and what are the priorities for the sector are not nearly as clear.

YES—68% (17 of 25 respondents)

- “Absolutely. Outdated legislation and regulation is hamstringing our existing charitable structures and foundations. At the same time governments—especially the Feds—are creating ‘firewalls’ between themselves and the knowledge developed in the sector in the form of advocacy restrictions and lobby legislation. One of the biggest issues is, I think, that neither governments nor Canadians can adequately ‘see’ the sector and so do not appreciate the tremendous buffering it offers to economic downturn and civil unrest. Without an ability to ‘see’ what we are doing, we are at risk of dismantling a key support for Canadians through inaction.”
- “Lack of understanding for social enterprise, lack of understanding of social and economic development as intersecting for a vibrant community.”
- “Lack of clarity about charities doing social enterprise ... as non-profit it is fairly clear.”
- “There is a chill in the sector that prohibits revenue-generating activity.”
- “One example where lack of access to capital may have hindered growth is one agency that had had to relocate and was investigating purchasing a property, but was unable to obtain financing at an affordable rate.”
- “I think reporting requirements are becoming more and more onerous. One example is the new fundraising policy. Another is the lobbyist legislation that people now have to watch out for. This doesn’t affect revenue generation, but it does affect how much they need and affects their ability to raise funds from people who are fixated on percentage spent on charitable programs.”



- “CRA restrictions on carrying on a business limit what a charity can do to become self-supporting. The 10% ownership restriction is also a hindrance.”
- “We need more mechanisms in the sector to generate revenues—many examples in Quebec and East Coast we can be inspired by.”
- “Administrative requirements of multiple jurisdictions producing administrative overload and cost of complying reduces margin to zero.”
- “Yes. I think you have identified most of them implicitly in your questions. In US and UK both have tax credits and have encouraged the creation of capacity building and funding intermediaries in recognition of the value of social purpose business/social enterprise neither of which we have done here.”

NO—24% (6 of 25 respondents)

- “I don't think so. Canada has one of the most generous donation schemes in the world. It might be there are too many charities for the size of population. Also increasingly philanthropy seems to be tax rather than mission driven.”
- “We are charities. Our major earned income streams include ticket sales and concession and bar sales—donation revenues include auction and other event income in addition to grants and donations—and a surprising number of companies still get revenues from bingo and lotteries. We don't feel unduly restrained and regulated.”
- “No, and our budget is 65% fee for service.”
- “The far more serious barriers are lack of an entrepreneurial mindset, lack of business acumen, and lack of access to capital.”
- “Not if people know how to set them up. The problem is that people want private sector benefits but charitable donations.”

MAYBE—8% (2 of 25 respondents)

- “Not sure. I think more serious issue is government commitment to funding our sector. Regulatory problems are secondary in my opinion.”

Who Is Doing What for Regulatory Reform?

Respondents were asked to identify groups working for regulatory reform. A separate document, *Scan of Organizations Involved in Non-Profit Sector Regulatory Issues, 2009*, contains a list of organizations with contact information (see Appendix).

The survey identified considerable energy and lobby activity to establish legislation and financing for social enterprise and social purpose business. The BC Centre for Social Enterprise, Social Innovation Generation (SiG) National, CAUSEWAY, SiG@MaRS, the Canadian Community Economic Development Network (CCEDNet), and the Centre for Social Innovation (CSI) are all putting effort into developing new legislation and financing opportunities to enable social enterprise. This focused activity is new for the sector.

However, other key revenue streams do not have the same momentum and resources behind them. It is clear from the survey responses that there exist significant barriers for charities wishing to earn income particularly through social enterprises. Unless this issue is addressed, existing charities risk being left behind with an unsustainable funding model especially if, as expected, their traditional sources of support, government funding, and charitable grants continue to fall short.

Government funding was identified almost universally in the survey as being very problematic, yet few resources are being directed toward this area. Imagine Canada is tracking the implementation of the federal blue ribbon panel report that promises to lessen federal red tape for grants and contributions. Marilyn Struthers of the Ontario Trillium Foundation is working on research that identifies best practices in funding. A group of social service providers and unions have been trying to mount a campaign to raise awareness of the financing difficulties faced by non-profit service providers. A multi-faith coalition is working with regional government to be able to secure the conditions to allow them to provide affordable social/community space in new housing developments. All efforts to date are rearguard actions that have not yet attracted widespread commitment from government to take funding reform seriously. The City of Toronto is an exception. The community services program undertook a joint review with its agencies and is implementing a multi-year funding stream with annual cost-of-living increments. This new funding strategy is expected to reduce time needed for administration and provide agencies with increased stability and the ability to plan.

In the area of charity regulation, long-standing groups such as the Muttart Foundation, Imagine Canada, the Canadian Council of Christian Charities, and the Community Foundation of Canada have ongoing initiatives to influence CRA regulation and practice to better address the needs of the sector. New and existing CRA initiatives, however, such as fundraising guidelines,



international grant-making audit requirements, the narrowing of charitable objects for charitable approvals, and other CRA and Ontario government regulations and interpretations continue to complicate and frustrate the operations of a significant number of charities and foundations.

Considerable fresh energy in the sector is being poured into the area of social enterprise. Currently, pure social enterprise (i.e., social enterprises without government funding and charitable donations) is still a relatively small sector. Some organizations are calling for new legislation for a hybrid corporation that has the capacity to raise capital while limiting private returns and requiring social purpose investing. Others are also urging government to enhance the ability of non-profit corporations, including charities, to have access to working capital through bonds or debentures.

Conclusion

This survey provides an important snapshot and helps kick-start a long-overdue assessment of the impact that legislation and regulation have had on the non-profit and charitable sector. An ongoing evaluation of the way legislation and regulation is hindering the sector and impeding its work is required, especially as the recession bites deeper and some of the third sector advocacy work begins to take hold.

What is clear from this survey is that sector regulation and legislation are so complex that even senior third sector leaders do not understand it well (apart from a handful of charity law lawyers). Senior third sector leaders may be familiar with certain regulatory issues, but not the whole picture. This is a problem, since most of the sector does not have access to specialized charity law lawyers.

The work and methods of financing the sector are shifting, but regulation has not kept pace with the pressures and new developments in the sector. Moreover, in recent years more regulation, not less, has been required of the sector. Every level of government regulates, but no level of government is in charge of overseeing the welfare of the non-profit sector. No one is in charge of simplifying and improving the labyrinth of regulation that entraps the sector.

The profile that emerges is of a sector struggling to obtain financing from government, through charitable donations and by earning income. Any one of these funding sources comes with considerable regulation and constraints, and when organizations try to use all three funding sources, they are too often thwarted by the regulatory maze.

Government needs to acknowledge the need for legislative and regulatory reform. It needs to engage with the sector on a regulatory reform agenda that seeks to support and enable the sector to undertake its work. The ability of charities and non-profit organizations to respond to changing circumstances and adapt to new demands is seriously impeded by outdated regulation and legislation. These constraints on the sector's ability to adapt are about to become even more critical as the economy worsens and Canadians turn to their local charities and non-profit organizations for help.

This report provides a starting point for a larger engagement of the sector, government, and the legal community in the size, scope, and priorities for legislative and regulatory reform. The *Scan of Organizations Involved in Non-Profit Sector Regulatory Issues, 2009* (Appendix) has been produced as a networking tool so that organizations in the sector can better collaborate and coordinate their efforts.

Appendix: Scan of Organizations Involved in Non-Profit Sector Regulatory Issues, 2009

The following list of organizations and their areas of interest was derived from key respondents. It is not exhaustive, but it is intended to provide a starting point for networking among and between organizations interested in improving the legislative and regulatory framework for the non-profit sector.

Focus	Contact Information	Description
Focus on charities Focus on government	The Arts Advocate www.artsadvocate.com Micheline Mckay mmckay@michelinemckay.ca 416-389-9629	The Arts Advocate helps increase the involvement of the Arts in public policy.
Focus on earned income	The Canadian Community Economic Development Network (CCEDNet) www.ccednet-rcdec.ca info@ccednet.ca 1 877-202-2268	CCEDNet works to promote community economic development. It supports the development of new legal structures for social enterprise.
Focus on charities Focus on government	Canadian Council for International Cooperation (CCIC) www.ccic.ca Info@ccic.ca 613-241-7007	The CCIC shares information with NGOs and foundations regarding legislative and regulatory challenges. It monitors the impact of CIDA regulations on their members.
Focus on charities	Canadian Council of Christian Charities (CCCC) www.cccc.org mail@ccc.org	CCCC provides advice and support to Christian charities regarding a variety of issues, including difficulties they may be having with the Canada Revenue Agency



	519-669-5137	<p>(CRA). The council educates and intervenes/mediates when necessary with the CRA. It has a legal defence fund.</p> <p>The CCCC works with the CRA at several levels (mainly the pre-policy discussion and technical issues groups). The council collaborates on issues with other national partners, such as Imagine Canada.</p>
<p>Focus on earned income</p>	<p>CAUSEWAY http://pages.socialfinance.ca</p> <p>CAUSEWAY is a national collaboration hosted at MaRS and animated by SiG and the members of its steering committee. It is also a founding contributor to http://socialfinance.ca.</p> <p>Tim Draimin, Chair tim@sigeneration.ca 416-673-8171</p> <p>Joanna Reynolds, Program Coordinator joanna.reynolds@socialfinance.ca 416-673-8172</p>	<p>CAUSEWAY is a three-year national collaboration to fast-track Canada's adoption of social finance. Its objective is to ensure that there is a healthy social finance marketplace supported by mainstream financial institutions serving a national constituency of social enterprises, social economy entities, community economic development institutions, cooperatives, and social purpose businesses.</p> <p>CAUSEWAY promotes the legislative adoption by both federal and provincial governments of new forms of corporate structure that permit the creation of "hybrid enterprises." It is also proposing changes to Canadian tax regulation that will enable foundations to use their capital base to invest in social enterprise activity.</p> <p>Apart from its coalition-building and public-policy advocacy work, CAUSEWAY also provides leadership to the non-profit sector, supporting capacity building and knowledge sharing related to social</p>



		<p>enterprise and social finance.</p> <p>A focus on Ontario is underway with support from the Future Fund, Ontario Trillium Foundation and the Carleton Centre for Community Innovation.</p> <p>CAUSEWAY is supported in its policy advocacy and leadership work by the SiG Initiative (a collaboration of the J.W. McConnell Family Foundation), the MaRS Discovery District, the PLAN Institute of Vancouver, and the University of Waterloo.</p>
<p>Focus on Earned Income</p>	<p>Centre for Social Innovation www.socialinnovation.ca</p> <p>Tonya Surman, CEO tonya@socialinnovation.ca</p>	<p>The Centre for Social Innovation launched an Enterprising Nonprofit Fund, a collaboration of 12 funders that awarded 16 grants totalling \$100,000.</p>
<p>Focus on Charities</p> <p>Focus on Earned Income</p>	<p>Community Foundations of Canada (CFC) www.cfc-fcc.ca</p> <p>Betsy Martin Betsy.martin@sympatico.ca 613 236-1621</p>	<p>CFC is in the second year of a pilot project to increase mission-based investing assets at community foundations and the adoption of MBI policies. It focuses on the following:</p> <ul style="list-style-type: none"> • Providing board and investment committee education • Actively supporting MBI policy development at participating community foundations • Increasing awareness and use of proxy voting • Increasing capacity for community investing by publishing a legal analysis and case examples of community investing by Canadian foundations



<p>Focus on government</p>	<p>Community Social Services Campaign http://socialplanningtoronto.org/cssc</p> <p>Protect Ontario Communities www.protectontariocommunities.ca</p> <p>John Campey (Community Social Planning council—Toronto), Co-Chair with Faduma Mohamed (Labour Community Services) jcampey@cspc.toronto.on.ca 416-351-0095, ext. 260</p>	<p>The Community Social Services Campaign is a coordinated campaign for change. It considers that Ontario's community social service agencies are losing ground in their objective to bring people from the margins to the mainstream. The campaign has identified the following needs:</p> <ul style="list-style-type: none"> • Coordinated funding practices across all ministries, including standard cost-of-living increases • An accord between the Ontario government and the community social services sector to move forward on improved service planning and social infrastructure for less advantaged Ontarians. <p>Campaign goals:</p> <ul style="list-style-type: none"> • Build political momentum for change among the public, politicians, policy decision-makers and funders. • Increase core, stable and fair funding for community service agencies. • Support continuing efforts to have all governments implement the Code of Good Funding Practices. • Build a unified voice for change.
<p>Focus on charities</p> <p>Focus on government</p> <p>Focus on earned income</p>	<p>Imagine Canada www.imaginecanada.ca</p> <p>info@imaginecanada.ca 1 800-263-1178</p>	<p>Imagine Canada is rebuilding its capacity to become a more effective voice and a meeting place for the broad pan-Canadian voluntary sector. It provides research and disseminates knowledge on broad issues affecting the sector (e.g., giving, fundraising, volunteerism, the</p>



		<p>health of the sector). It is active on CRA fundraising guidelines. It tracks the implementation of blue ribbon panel recommendations.</p> <ul style="list-style-type: none"> - Social enterprise - Beginning involvement in creating better regulatory environment. - Active -Canadian Nonprofit Corporations Act - Active -Accounting Standards for Nonprofits
Focus on charities	<p>The Muttart Foundation www.muttart.org</p> <p>Bob Wyatt bwyatt@muttart.org 1 877-788-5437</p>	<p>The Muttart Foundation's activities include policy research and public awareness research. It plays a convening role on the regulation of charities. It holds seminars and workshops on key issues and concerns affecting charities as well as special projects.</p> <p>The foundation undertakes regular surveys of public attitudes toward charities and hosts consultations with the CRA and the sector on the regulation of charities.</p>
Focus on charities	<p>Ontario Bar Association Charity and Not For Profit Law Section www.oba.org</p> <p>Cliff Goldfarb cgoldfarb@gardiner-roberts.com 416-865-6616</p>	<p>The Ontario Bar Association currently has a standing committee that looks at Ontario charity and non-profit laws and makes suggestions for reform and new legislation. It also has committees reviewing tax and corporate law issues in response to various federal and provincial initiatives. All developments are reported regularly in the section's newsletter.</p>
<p>Focus on charities</p> <p>Focus on government</p>	<p>Ontario Nonprofit Network (ONN) www.ontariononprofitnetwork.ca</p> <p>Constance Exley, Executive Director info@ontariononprofitnetwork.ca</p>	<p>ONN is a network of networks that helps to build communication and coordination among non-profit organizations working for the public benefit in Ontario. ONN works with</p>



<p>Focus on earned income</p>	<p>416- 642-5786</p>	<p>interested sector members on issues of cross sector relevance. ONN is active in the following areas:</p> <ul style="list-style-type: none"> • CRA Fundraising guidelines • Canadian Non-Profit Corporations Act (with Imagine Canada) • Ontario Non-Profit Corporations Act • Accounting standards for non-profits (with Imagine Canada) <p>Constellations on social finance and social enterprise (in collaboration with other groups, MaRS, OSER, CSI)</p>
<p>Focus on earned income</p>	<p>Ontario Social Economy Round Table (OSER)</p> <p>c/o Paul Chamberlain, CCEDNet pchamberlain@ccednet-rcdec.ca 416-760-2554</p>	<p>OSER provides strategic planning and coordination regarding social economic development.</p>
<p>Focus on charities (foundations)</p>	<p>Philanthropic Foundations Canada (PFC) www.pfc.ca</p> <p>general@pfc.ca 514-866-5446</p>	<p>PFC is active on federal excess business holdings regime rules.</p>
<p>Focus on earned income</p>	<p>SiG@MaRS www.marsdd.com</p> <p>Allyson Hewitt ahewitt@marsdd.com 416-673-8100</p>	<p>SiG@MaRS is actively developing programs to support the launch and growth of <i>social ventures</i>, enhancing the skills and networks of <i>social entrepreneurs</i>, exploring new instruments of <i>social finance</i>, fostering opportunities for <i>technology platforms</i> to help scale <i>social ventures</i>, and building the social enterprise community.</p>



		<p>SiG@MaRS is involved in the following:</p> <ul style="list-style-type: none"> • Business plans and white papers for the Social Venture Fund • A working paper on social enterprise and procurement to be released for discussion • A major project on social impact metrics (in development) <p>Case examples have been developed by SiG@Waterloo, the organization's research node.</p> <p>As announced in the Ontario Poverty Reduction Strategy, it is working to bring the Social Investment Exchange to Ontario. It is also working to bring the School for Social Entrepreneurs to Ontario.</p>
<p>Focus on government</p> <p>Focus on earned income</p>	<p>Social Economy Centre, OISE http://socialeconomy.utoronto.ca/</p> <p>Laurie Mook, Director lmook@oise.utoronto.ca</p> <p>Jack Quarter, Director jquarter@oise.utoronto.ca</p>	<p>The Social Economy Centre undertakes research related to social economy.</p> <p>Areas of study:</p> <ul style="list-style-type: none"> • Mapping of Southern Ontario's social economy • The impact of social economy organizations • Policy development • The impact of social economy <p>Policy studies:</p> <ul style="list-style-type: none"> • Project 21: To analyze the relationship between the Ontario government and SEOs • Project 33: A comparison of policy frameworks for social enterprises and non-profits in



		<p>Ontario and Quebec</p> <ul style="list-style-type: none">• Project 34: An overview of the different policy frameworks for the support and development of co-operatives in Quebec and Ontario
Focus on government	<p>Trillium Foundation www.trilliumfoundation.org</p> <p>Marilyn Struthers MStruthe@trilliumfoundation.org 416-963-7914</p>	<p>The Trillium Foundation undertakes research in funding practice reform.</p>

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