

**SUSTAINING RECOVERY FOR ALL:
CHARITIES AND THE RECOVERY**

**A brief to the
Standing Committee of Finance
of the House of Commons
by
The Muttart Foundation
Edmonton, Alberta**

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EXECUTIVE SUMMARY

Throughout Canada, charities exist to serve the needs of Canadians and to improve the quality of life of all of us. During the economic turmoil of recent years, they have experienced their own challenges, since in such times, the demands for their services increase. Sustaining a recovery – nationally and locally – requires that the needs of charities, too, are identified and addressed. To that end, The Muttart Foundation recommends that the federal government:

- (a) introduce a “stretch tax credit” for an initial five-year period, to attract new donors and to encourage current donors to increase the amounts of their donations;
- (b) extend to charities the services of government departments and programs that provide assistance to the business sector; and
- (c) designate the Tax Court of Canada as the first level of court to review decisions to refuse registration of a charity or to revoke the registration of an existing charity.

INTRODUCTION

The Muttart Foundation is a registered charity, but as a private foundation, it neither engages in fundraising nor does it receive government funding. The Foundation works with hundreds of charities; as a result, it has the ability to observe trends and commonalities among different types of charities.

It is not difficult to discern trends these days. Charities are hurting. They are as affected by the global financial turmoil as any other type of organization, no matter what sector that organization is in. Many charities are disproportionately affected: in times of financial crisis, the demand for services offered by charities often increases. Accompanying this increased demand is often a decline in donations as supporters – governments, businesses, foundations and individuals – all deal with their own problems resulting from the downturn.

Charities exist in virtually every city, town and village in this country. They do not exist for their own sake. They exist to serve Canadians and to improve the quality of life of all of us. To assist charities is to assist Canadians. Indeed, the contribution of Canada’s voluntary sector to the gross domestic product of the country exceeds that of agriculture, automobile manufacturing or the retail trade.

In many cases, charities are the vehicles through which governments choose to deliver programs. If some of these charities cease to exist because of funding crises, governments will have to find alternative delivery mechanisms, or return to delivering the programs themselves. This would not only likely result in increased costs, but would also serve to remove the community shaping of those programs and the grassroots information government officials

receive from charities who are meeting with clients. Both of these likely results would be harmful to governments and to the communities they seek to serve.

The Muttart Foundation suggests that the Finance Committee recommend three ways in which the Government of Canada could assist charities and, through them, ensure continuation and improvement of services to Canadians.

Recommendation 1 – “Stretch” Tax Credit

The percentage of Canadians claiming the charitable tax credit has been decreasing. Equally important, the significant percentage of older Canadians who are giving substantial sums is a cause for concern: if those donors are not replaced by new donors, Canadians will suffer because the charities that serve them will not have the funds they need. This gap in donors will happen just at the time when those older Canadians no longer able to contribute are most likely to face increasing needs for services usually delivered by charities.

Over the last decade, the federal government has taken a number of steps to increase the attractiveness of charitable giving by higher-income Canadians. This has been an important and welcome step. But the benefits have not been felt across the whole sector: significant gifts of public securities, for example, have tended to benefit large institutional charities. The proposed “stretch” tax credit, by contrast, would appeal to donors who are making important but more modest donations, and is more likely to result in benefit to charities of all sizes and types. We thus endorse the proposal of Imagine Canada that such a credit be introduced. The incentive would encourage more taxpayers to give and to increase their giving.

Under our proposal, 2011 would be established as a base year for a taxpayer’s charitable donation. If a taxpayer exceeded the donations made in the base year, the tax credit on the increased amount would be 10% higher than the existing tax rates – 25% for the first \$200 and 39% for any amount over \$200. The increased amount would then become the taxpayer’s base for the following year, and so on. The incentive would be applied only to an increase of up to \$10,000 over the base year. The incentive should be introduced for a five-year trial, following which it would be evaluated by government and the charitable sector. This would be consistent with the measures that accompanied the introduction of rules related to gifts of public securities.

The Parliamentary Budget Officer has already studied the financial impact of a similar proposal.¹ In his report, the PBO estimated that the variation it reviewed would result in foregone revenue of between \$10 million and \$40 million per year after a three-year implementation period. However, it must be borne in mind that the importance of such a credit is in the leveraging effect: it comes into play only if Canadians make the donations. The PBO’s report suggests that between 30% and 45% of the foregone revenue would be as a result of donations that would otherwise not be made. This is an incredibly strong leveraging effect.

¹ . The PBO’s study dealt only with contributions greater than \$200.

The Foundation is aware that the Finance Committee will be studying a private member's motion that calls for an examination of many types of support for charitable giving. The Stretch Tax Credit concept has already been studied, and the need to attract new donors and encourage existing donors to increase their giving is immediate.

The Muttart Foundation encourages the Standing Committee on Finance to recommend that the Government of Canada introduce a “stretch tax credit” for an initial five-year period, to attract new donors and to encourage current donors to increase the amounts of their donations.

Recommendation 2 – Extending services already available to business

A variety of government services are available to the business community, especially those that qualify as small and medium-sized enterprises. Departments and agencies such as Industry Canada, the Service Canada Business Centres and the Business Development Bank can supply important advice and expertise to these enterprises. Whether through planning services, advice and support for technology, identification of potential financial assistance, analytical tools or employment incentives such as that available through the Industrial Research Assistance Program, the government is providing important support.

In many ways, charities are in exactly the same position as business enterprises, and often have need of the same type of assistance. These 170,000 organizations employ 7.2% of Canada's total paid work force, and have a total annual payroll approaching \$22 billion.

In most cases, there appears to be nothing in the mandates of these departments and agencies that specifically excludes assisting charities, but neither has there been any emphasis on promoting such services to the charitable sector.

The Muttart Foundation encourages the Standing Committee on Finance to recommend that the government direct those departments with programs aimed at small and medium-sized businesses to extend (and actively promote) those same services to small and medium-sized charities.

Recommendation 3 – Tax Court of Canada

For more than 150 years – and as recently as the last two years – courts in Canada and elsewhere have said that the law of charities ought to evolve to reflect current community needs. This evolution can take place through parliamentary action, and it can take place through judicial examination of potential charities.

Currently, an organization that is refused charitable status must take their first appeal to the Federal Court of Appeal. This is a cumbersome and expensive process that is not appropriate for an organization that seeks to serve the public interest. Similarly, an organization which faces

revocation of its charitable registration must go to the Federal Court of Appeal. These appeals are heard on the basis of documentation alone; there is no opportunity to present evidence.

Courts, including the Federal Court of Appeal and the Supreme Court of Canada, have suggested that there needs to be a different type of appeal structure, one where witnesses can be heard and cross-examined before a decision is reached. That is exactly what the Tax Court of Canada does in other cases that come before it.

The Income Tax Act appropriately treats every person and corporation as a taxpayer, unless there is a specific exemption. But potential charities are amongst a very small group of taxpayers who do not have access to the Tax Court of Canada and thus lose access to the more informal approach and the fact that the Tax Court sits in more locations across the country than does the Federal Court of Appeal. These organizations refused charitable status thus lack recourse to accessible and affordable avenues of appeal.

The most oft-cited reason for not extending the Tax Court's jurisdiction to issues affecting charities goes to the specialized knowledge of the Tax Court. The argument is that while charity law relies on examination of the common law, the Tax Court's specialty is in interpreting statute law: the Income Tax Act.

Such an argument does not withstand scrutiny or do justice to the qualifications of the judges of the Tax Court. Judges are appointed to courts across the country each year after specializing in a particular area of law. Once on the bench, they are expected to deal with whatever cases come before them. While it is true that judges of the Tax Court might need to do additional research around specific issues of charity law, this positions them exactly the same as any other judge or administrative tribunal.

Such an argument also ignores the fact that Parliament has already decided that appeals of intermediate sanctions imposed on charities will be heard, in the first instance, by the Tax Court of Canada. It is not clear why this type of appeal is appropriate for the Tax Court and the more substantive appeals are not.

Officials of the Tax Court have previously stated that given the anticipated number of appeals, few if any additional resources would be required to deal with charity appeals. Thus, the government could provide appropriate recourse to judicial consideration of charity-law decisions at almost no cost.

The Muttart Foundation encourages the Standing Committee on Finance to recommend an amendment to the Income Tax Act so that appeals related to refusal to register a charity or revocation of a charity's registration be heard, in the first instance, by the Tax Court of Canada.

CONCLUSION

The Muttart Foundation welcomes the opportunity to offer proposals for consideration of the Committee.

Many Committee members have had years of experience as volunteers with charities of various kinds. As a result, they know full well the reliance that people place on charities, in good times and in bad.

Many charities are hurting. Many are reporting increases in demand and decreases in donations. This is a combination that bodes ill for Canadians, putting at risk everything from recreational programming to disaster services, from the provision of child care to services for the elderly, from scientific research to services that provide mentors to children, from food banks to the arts.

Governments have recognized the need to provide targeted assistance to various parts of the economy. They have been proactive in investing in infrastructure and business. Thus far, there has not been a significant recognition of the needs of charities despite the role they play in the economy. The time for that recognition is now.

The Muttart Foundation encourages the Standing Committee on Finance to include each of these recommendations in its report.