An Exploration of Charity/Non-Charity Partnerships in Canada

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ABSTRACT

While charities and non-charities both work toward the betterment of society, only registered charities are able to access charitable funding. This difference in access, combined with trends in the voluntary sector including challenges to the definition of what is charitable, a lengthy registration process, lack of capacity within the sector, and citizen engagement through community development, have contributed to charity/non-charity partnerships as an emerging practice. This study provides an exploration of charity/non-charity partnerships with a focus on understanding the practice and the policies governing them. Interviews with practitioners provide important context and a framework for understanding the different models of practice. Legal interviews provide guidance on applicable policies. The study highlights the gaps between policy and practice and provides recommendations for both.

RÉSUMÉ

Bien que de nombreux organismes se consacrent à créer une meilleure société, seuls les organismes de charité enregistrés peuvent accéder aux subventions caritatives. Cette différence d'accès, jointe à des tendances dans le secteur bénévole telles qu'un questionnement de la définition de ce qui est caritatif, un très long processus d'enregistrement, un manque de ressources et l'implication de citoyens dans le développement communautaire, a contribué à l'émergence de partenariats entre organismes de charité enregistrés et leurs compléments non enregistrés. Cette étude explore ces partenariats en se focalisant sur les pratiques et politiques qui les gouvernent. Des entretiens avec des participants offrent un contexte et cadre importants pour comprendre les divers modèles adoptés. Des entretiens sur le droit d'autre part mettent en lumière les politiques pertinentes. Cette étude souligne les écarts entre politique et pratique et fournit des recommandations pour les deux.

KEYWORDS / MOTS CLÉS Fiscal sponsorship; Voluntary sector; Nonprofits; Charitable organizations; Partnership / Parrainage fiscal; Secteur bénévole; Organismes sans but lucrative; Association caritative; Partenariat

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INTRODUCTION

As a result of economic trends and neoliberal government policies, Canada's voluntary sector is increasingly being asked to do more with less. A common response to this request has been collaboration. Working together should reduce duplication, create economies of scale, and increase reach. Much has been written about the benefits of collaboration with the voluntary sector (Phillips & Levasseur, 2004), the focus has been, however, on cross-sector partnerships between the voluntary sector, government, and private sector companies. This homogenizes the sector and ignores the benefits and complexities of collaboration within the sector.

A growing form of partnership within the sector is collaborations between organizations with charitable status and those without this status (i.e., non-charity). Charitable status occurs when an organization is registered as a charity with the Canada Revenue Agency (CRA). This creates eligibility for charitable funding, the issuing of tax receipts for funds collected directly from individuals, exemption from income tax, reduced goods and service tax (GST), and the perceived legitimacy of being approved by the government (Canada Revenue Agency, 2008b). Non-charities are organizations or groups engaged in charitable work but not registered as a charity (this definition does not include for-profit companies).

Charities and non-charities may provide similar services with the key difference being the ability to access charitable funding. A charity/non-charity partnership is formed when a charity partners with a non-charity in such a way that extends charitable status to it. This enables the non-charity to enjoy the charitable benefits outlined earlier, particularly access to charitable funding. Although this sounds relatively simple, it is the source of the complexity of charity/non-charity partnerships

These partnerships are partially a result of informal citizen-led groups seeking charitable funding to address local social issues (Ramsundarsingh, 2009), the desire to focus resources on mission work rather than administration (Wright, 2010), and the increased complexity, cost, and time required to obtain charitable registration (Eakin & Graham, 2009). While charity/non-charity partnerships are actively practiced in Canada, little is known about how they are practiced or the guidelines governing them (Ramsundarsingh, 2009; Stevens & Mason, 2010).

This exploratory study addresses this gap by investigating how Canadian organizations are practicing charity/non-charity partnerships and how current Canadian policy governing charitable organizations can be applied to this practice. This study provides a description of the practice of charity/non-charity partnerships (i.e., the types of group setting up partnerships) in Canada as well as the policies (i.e., legal and tax) governing them. The article concludes with recommendations for both policy and practice to best mitigate the risks and maximize the benefit of charity/non-charity partnerships.

RELEVANT LITERATURE

A literature search was conducted in both the academic and grey documents, with only 15 sources identified. Most of these 15 documents were from American grey literature and written from the perspective of a charity. They provide information on the trends influencing the structure of not-for-profits, variation in terms used to label this type of relationship, the types of practices followed, and the potential risks associated with partnership.

TRENDS IN THE VOLUNTARY SECTOR

The voluntary sector in Canada is composed of over 161,000 charitable and nonprofit organizations providing services to children, families, seniors, and communities in the areas of health, education, recreation, housing, and economic development (Employment and Social Development Canada, 2015). The sector as a whole accounted for $106.4 billion in economic activity, which is 7.1 percent of the nation's economic activity (Statistics Canada, 2010). Of this, the core nonprofit sector (excluding health or educational institutions) accounted for 2.4 percent of Canada's gross domestic product (GDP) in 2008 (Statistics Canada, 2010). Excluding universities and hospitals, the voluntary sector is three times the size of the automobile industry (Eakin & Graham, 2009). Within the voluntary sector there are a number of trends that have contributed to the development of charity/non-charity partnerships as a practice, including decreased funding for the sector, a need for increased responsiveness, a high number of charitable organizations being deregistered, and increased community engagement.

> Despite its size and important contribution to society, the voluntary sector has faced significant reductions in funding (Goar, 2012; Imagine Canada, 2009). As a partial response to the need to reduce costs, partnerships between charities and non-charities emerged, organizations that "thought they were stable and independent are looking at sharing offices, accounting, fundraising, etc. in order to cut costs and increase their chances of surviving." (Goldberg, Kamoji, Orton, & Williamson, 2009, p. 21)

A second trend is the responsiveness of the sector. Projects that have short timeframes or are responding to immediate needs often do not have the time to engage in the charitable registration process. Charity/non-charity partnerships enable non-charities to begin receiving charitable contributions and implementing their programming sooner, "from the moment the [charity] agrees to accept the project" (National Network of Fiscal Sponsors, 2009, p. 1). If a group or individual applies for charitable status separately, its ability to respond is delayed by the "bureaucratic red-tape associated with incorporating and filing federal and state applications for tax exemptions" (National Network of Fiscal Sponsors, 2009, p. 1). In the case of short-term or time-sensitive projects, the 12-month wait for approval from the CRA renders the project impossible.

The third trend highlights the concerns of the CRA. The CRA struggles with a large number of applications for charitable registration, while at the same time has recognized a troubling trend of deregistration among charitable organizations. The CRA (2008a) estimates that in the 2008 tax year, it received 4,500 applications for charitable registration, and 2,200 charities lost their registered charity status by either asking for it to be revoked or failing to file their annual return. This number does not account for the many charities that have had their registered charitable status revoked due to compliance issues. The CRA (2008a) posits that the high rates of deregistration may be related to: organizations set up for short-term objectives, a lack of capacity to operate effectively, a failure to anticipate the competition for donations and volunteers, the duplication of programs, and that for some organizations, charitable registration was simply not necessary.

The corollary to the CRA's challenge is that despite the large number of applications for charitable registration, a growing group of organizations believe that the benefits of charitable registration are outweighed by the administrative cost of obtaining charitable registration. In a survey of voluntary sector organizations, 51 percent of respondents identified difficulty obtaining charitable status as their primary concern (Eakin & Graham, 2009). Groups that struggle under the weight of regulations and reporting requirements, or lack the capacity to maintain charitable status, believe they can be better served through charity/non-charity partnerships. In these partnerships they are relieved of administrative duties and allowed to focus on their service duties.

The final trend is the voluntary sector's focus on engaging in community development efforts via small local groups (e.g., neighbourhood-based poverty initiatives). Community-based programming encourages community members to "take action to achieve better outcomes for children, families, and neighbourhoods" (Ahsan, 2009, p. 4). The use of community engagement strategies requires funding models that enable charities to invest directly in community members. An example of this is neighbourhood small grants that are offered across Canada. Funders that want to fund local residents to take the lead in improving their communities often initiate these grants. Using charity/non-charity partnerships, funders are able to provide funds to residents while ensuring proper stewardship.

LABELLING THESE PARTNERSHIPS

Multiple terms are used to describe charity/non-charity partnerships, creating a lack of clarity around the practice. A commonly used American term, and the one used in the initial literature search is "fiscal sponsorship." Fiscal sponsorship in the United States is a "well-documented practice of a registered charity [which holds tax exempt status] choosing to support a non-[tax] exempt project financially" (Colvin, 2005, p. 3). The U.S. has established clear legal guidelines and a national network dedicated to the practice.

In addition to the absence of clear language, the literature discussed the importance of clarifying the correct language for fiscal sponsorship. Pele Bauch and Veronica Newton (2006) stated that the terms umbrella organizations, fiscal agents, and fiscal conduits are synonymous with fiscal sponsorship. In the Canadian literature, Tides Canada suggested the terms charitable venture organizations or shared platform organizations (Jurbala, 2012). Similarly, the Rose Foundation (2008) suggested the term charitable umbrella. In an announcement about the implications of a legal case that it was involved in, Imagine Canada (2015) used the terminology registered charity and non-charity partner.

The only terms used consistently throughout the literature were fiscal sponsor and fiscal agent; however, three sources address the use of the term fiscal agent as problematic. In the legal brief *Fiscal Agency Versus Fiscal Sponsorship*, Jane C. Nober (2004) explains the shift from the term fiscal agent to fiscal sponsor. The term fiscal agent is associated with the practice of earmarking, which is defined as "any oral or written understanding that a grant will be spent in a particular fashion" (p. 56). When earmarking takes place, the charity is considered a conduit because it does not "exercise discretion or control" (p. 56) over those contributions, and this is considered unacceptable under current charitable regulations.

Laird Hunter (2002) offers a rationale for not using the term fiscal agent, which is rooted in the legal interpretation of what it means to act as an agent. In legal terms, an agent is a person appointed by someone else with the power to do some specified thing for the person making the appointment, the principal. Or an agent can be appointed with general powers. In both cases the agent operates on instructions from the principal (Hunter, 2002). In the language of fiscal sponsorship, the relationship has been inverted. The charitable organization is referred to as the agent, implying that the sponsored group controls the charitable group (Colvin, 2005). An arrangement of this type would place the charitable organization at risk of losing its charitable status because it violates the legal requirement that "the charity must maintain control so that their charitable purposes – and only those purposes – are the objects of spending" (Hunter, 2002, p. 56). The literature therefore offers no clarity on the use of language to describe these partnerships. The rationale for the use of the language of charity/non-charity partnerships is provided in the findings.

Regardless of the term applied, the description of charity/non-charity partnerships was consistent throughout the literature. The defining features of a charity/non-charity partnership are that it is a partnership between a charity

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and a non-charity and that it involves a transfer or sharing of resources, such as funding, access to legal counsel, administrative support, employee benefit plans, office space, publicity, fundraising assistance, and training (Krivkovich, Kauffman, & D'Oliva, 2003).

In *Fiscal Sponsorship: 6 Ways of Doing It Right*, Gregory Colvin (2005) provides an example of charity/non-charity partnerships involving a community church that is approached by a group of congregation members and individuals with AIDS wanting to establish an AIDS hospice. The church agrees to support the project by allowing the group to use its space for patients, undertake fundraising by providing tax receipts for donations to the hospice, and apply for charitable funding using the name and charitable number of the church. In this example the church is the charity, and the group of congregation members and persons with AIDS are the non-charity.

This example illustrates many of the benefits of charity/non-charity partnerships. By partnering with congregation members, the church empowers them to address a need within the community. This is important because the community group lacks the capacity to register for charitable status alone. With assistance from the church, the community group is able to immediately access the benefits of charitable registration without having to wait months for approval from the regulatory agency. The community group also benefits from the use of the church's financial and administrative structure and staff, meaning that it does not have to hire its own staff or develop any of its own policies. Reducing administrative expenses leaves more funds available for direct services, thereby creating financial efficiency. Moreover the church benefits from this arrangement because it gains a partner to help fulfill its mandate of supporting community needs. Most importantly, the community benefits by having a genuine need satisfied.

RISKS OF CHARITY/NON-CHARITY PARTNERSHIP

This idyllic description of a church and its members creating a hospice for persons with AIDS belies the legal and financial risks created by this arrangement. By engaging in this partnership, the charity assumes the risks of financial penalties or deregistration if the CRA deems the practice unacceptable due to lack of appropriate documentation and oversight.

When an organization applies for charitable status it is required to submit a governing document that includes a statement of formal purpose accompanied by a detailed outline of activities that will be undertaken to achieve the stated purpose. This is commonly known as an organization's charitable objects and activities. Once approved, a charity is expected to devote its resources to the stated charitable objects and activities (Canada Revenue Agency, 2011). A charity can do this by choosing to carry on its own charitable activities or by funding certain organizations identified as qualified donees to carry out its charitable work. A qualified donee (Canada Revenue Agency, 2015) is:

- A registered Canadian charity;
- A registered Canadian amateur athletic association;
- A tax-exempt housing corporation resident in Canada that only provides low-cost housing for seniors;
- A registered Canadian municipality;
- A registered municipal or public body performing a function of government in Canada;
- The United Nations and its related agencies;
- A prescribed university outside Canada;

- A charitable organization outside Canada to which the Government of Canada has made a donation in the current tax year or the previous tax year; or
- The Government of Canada, a province, or a territory.

This is critical to charity/non-charity partnerships and the root of their complexity because the defining feature of non-charities is that they are not qualified donees. When a charity partners with a non-charity and there is a financial relationship, it is considered a transfer of funds to a non-qualified donee, which, unless accompanied by the appropriate documentation and oversight, is cause for revocation of charitable status. The transfer of funds to non-qualified donees is one of the top ten compliance issues identified by the CRA (de Marche, 2007), which it has addressed through a series of compliance workshops, as well as the introduction of a new penalty specific to charitable organizations that transfer funds to non-qualified donees (Canadian Revenue Agency, 2009).

From the government perspective, the rationale for this narrow list of qualified donees is the risk to donors and taxpayers of having charitable dollars mis-managed by groups given access to charitable dollars through charity/non-charity partnerships. Moreover the practice of charity/non-charity partnerships calls into question the definition of "charitable" by allowing charitable organizations to determine which groups they extend their charitable status to. Whether or not an organization is deemed charitable is dependent upon the common-law definition of what is charitable. In the guidelines for registering a charity for income tax purposes, the Canada Revenue Agency (2008**b**) clearly states that the organization "must first be a charity under common law" (p. 4). The current definition of charity was updated in the late 1800s and classified into four categories of charitable purposes.

> Charity in its legal sense comprises of four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community and not falling under any of the preceding heads. (Canada Revenue Agency, 2006)

Actions that disqualify an organization from being charitable under the law include personal benefit, private benevolence, political purposes, and activities that are illegal or contrary to public policy.

The current definition of charitable activities has been contested by nonprofit organizations for over 20 years. Some argue that the definition of what is charitable is overly restrictive. They believe that broadening the definition of charity will benefit Canadians because it allows for innovative groups to engage in charitable work, better meeting the needs of the community. Kernaghan Webb (cited in Levasseur, 2009) suggests that Canada employs an arbitrary decision-making process when determining which organizations receive charitable status. He provides the example of an anti-pornography group with a strong emphasis on advocacy that was denied charitable registration, and an anti-smoking group that also emphasized advocacy receiving charitable registration.

Organizations and groups that recognize a need within the community but are denied charitable registration are left unable to access charitable funding without the help of a charity/non-charity partnership. While some groups continue to challenge the definition of what is charitable, through lengthy and expensive court cases, others are simply seeking partnerships with charitable organizations that have similar values. Lynn Eakin and Heather Graham (2009) suggest this is one of many creative ways the sector has devised of working around the disabling regulations and rules. They view charity/non-charity partnerships as a creative solution that emerged in response to unchanging regulations around the definition of what is charitable. Meanwhile opponents of

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charity/non-charity partnerships contend that charities should not be trusted to determine what is charitable, since it usurps government authority and presents opportunities for conflicts of interest.

Of the limited sources on this topic, only five documents focused on Canada. The Canadian literature was consistent in its support for the practice and its perceived benefits, such as the ability to foster social innovation (Jarula, 2012) and the increased capacity of the sector through the mentorship of non-charities by charities (Stevens & Mason, 2010). Existing studies were limited to local practices and often focused on a single form of charity/non-charity partnership (Ramsundarsingh, 2009; Stevens & Mason, 2010). The literature also identified the need for the clarification of policy guidelines and consistent and legally compliant terms (Hunter, 2002; Ramsundarsingh, 2009; Wright, 2010).

Acknowledging fully the risks involved in charity/non-charity partnerships, the literature provides consistent support for the continued growth of the practice. However gaps in the current literature limit the way forward for potential partners, donors, and regulators. These include the absence of consistent language, the lack of a conceptual framework outlining different types of relationships, evidence on contextual factors supporting when these relationships create value, and a clear understanding of the policy environment to help mitigate risks.

METHODOLOGY

To understand the practice of charity/non-charity partnerships and address the gaps identified in the literature, this study uses constructivist grounded theory to explore the following research questions:

1) How is fiscal sponsorship practiced in Canada?
2) How does the current policy context apply to fiscal sponsorship practice?
3) What are appropriate guidelines of practice?
4) What policy recommendations should be implemented to ensure compliant fiscal sponsorship practice?

The qualitative methodology was based on constructivist grounded theory. This allowed for the iterative analysis of inductive data toward the development of theory or models (Charmaz, 2014). It also takes into account environmental factors, such as the local funding environment, existing networks, and power dynamics.

Data collection

To answer the first research question, individual interviews were conducted with both charities and non-charities engaged in charity/non-charity partnerships. Participants were asked to speak about their partnership experiences. There were 24 interviews conducted, 18 with charities and 6 with non-charities.

To answer the second research question, individual interviews were conducted with legal professionals. Legal professionals were asked to identify and interpret current policy related to charity/non-charity partnerships in order to determine requirements for compliance as well as potential areas for policy change. Four interviews were conducted with legal professionals.

To answer the third and fourth research questions, roundtable discussions were held. Roundtable discussions allowed for debate about components of practice and policy and in-depth discussion about challenges or areas of uncertainty. Having multiple perspectives at each roundtable also ensured that the recommendations were representative of diverse experiences with charity/non-charity partnerships and different stakeholders. During the roundtable discussions, findings related to policy were shared with those participating in the practice

roundtables in order to inform their discussion, similarly, practice findings were shared with the legal roundtables to inform their discussion. The Department of Human Resources and Skills Development Canada (HRSDC) in Edmonton, Calgary, Vancouver, and Toronto hosted the roundtables. There were seven roundtables in total, four focused on the topic of fiscal sponsorship and shared services, and three focused on understanding the legal context for fiscal sponsorship in Canada. The Law Foundations of Ontario and British Columbia co-hosted the legal roundtables.

The sample

Because charitable organizations are governed federally, it was important to include cities from different locations across Canada so that when policy and practice were compared to develop recommendations, the practice would be representative of multiple Canadian cities rather than a single local context. Collecting data in different cities allowed the researcher to capture a larger variety of practice models as well as regional differences. Calgary, Edmonton, Vancouver, and Toronto were identified through the literature review and chosen because they had existing groups organizing around charity/non-charity partnerships.

Initial interview participants were identified through an internet search. Following the initial interviews, snowball sampling and the roundtables were used to identify potential participants. Participants were then selected using theoretical sampling. The hosts, HRSDC and the Law Foundations, identified the roundtable participants. Invitations to participate were sent broadly to members of the Law Foundations and the voluntary sector with the hopes of capturing diverse perspectives and experiences with charity/non-charity partnerships. Participants from individual interviews were also invited to attend.

Analysis

Detailed notes were taken at all of the roundtables, and research interviews were recorded and transcribed. In accordance with grounded theory, data analysis was conducted concurrently with interviews and used to inform theoretical sampling. Data analysis was conducted in three stages common to grounded theory: open coding, axial coding, and selective coding. Legal data was analyzed separately from data about the practice. In the analysis of the practice, data saturation was reached at 14 interviews; however, additional interviews were conducted in order to validate the findings with participants from different service areas. The coding yielded two models: 1) stages of establishing a charity/non-charity partnership and 2) models of practice. The legal interviews were analyzed with the notes from the legal roundtables. The legal interviews identified relevant policy documents and provided interpretation of the policies to the practice. The interviews demonstrated complete consensus on the interpretation and application of the policies. When the policy data was compared with practice models, the following gaps were identified: administrative fees, organizational policies, employment, governance, oversight, advocacy, and intake.

To ensure trustworthiness, the researcher sustained engagement in the field for two years; conducted triangulation between different data types as well as between the different roles of the research participants; practiced reflexivity; conducted member checking throughout data collection and analysis; and conducted peer editing, which involved a review of the findings by legal professionals and voluntary sector experts.

Limitations

The limitations of this study include the use of snowball sampling and the use of the term fiscal sponsorship in recruitment. Using snowball sampling to recruit participants resulted in a sample of participants connected to each other in some manner and the exclusion of individuals not connected to these networks. The use of fiscal sponsorship created a barrier to participation because potential participants who were unfamiliar with this term, or

who identify the practice with another term, may not have participated. Although this is the largest study on this topic to date with the greatest geographical coverage, there remain parts of Canada that are not represented and therefore it cannot be considered representative. The majority of respondents were charities; therefore, the findings are biased from the perspective of a charity.

FINDINGS FROM THE VOLUNTARY SECTOR

The sample indicated that charity/non-charity partnerships are being practiced throughout the voluntary sector. Partnerships existed between charities and a variety of non-charities, including unincorporated groups and individuals, societies, not-for-profits, and part nine corporations. A part nine corporation is a form of informal incorporation that allows nonprofits to engage in business activities. These groups often include ethno-cultural-, youth-, and community-based groups as well as community associations. In addition, participants represented a diverse number of service areas as outlined in Table 1.

Table 1: Participants by service area

Service Area	Participants
Capacity building	2
Immigrants	3
Youth	4
Community development	4
Children & Youth	2
Justice	2
Homelessness	1
Community economic development	1
Women	2
Counselling	1
Aboriginal	1
Disabilities	1

Table 1 shows that participants supported projects in 12 different service areas, including all ages, from infants to seniors. The diversity of service areas among charities and non-charities suggests that both the demand and perceived utility of charity/non-charity partnerships cuts across all areas of human services.

Charity/non-charity partnerships were used to support a variety of different activities within the sector. Table 2 outlines these activities.

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Table 2: Activities supported by charity/non-charity partnerships

Type of Activity	Description	Example
Fundraising	A charity is established specifically to raise funds for the charitable activities of a nonprofit that engages in both charitable and non-charitable activities.	A nonprofit established to advocate for policy change also provides counselling and employment supports to women. It establishes a charity to raise funds for its counselling and employment programs.
Advocacy	A charity establishes a separate nonprofit or part nine company to focus on policy research and non-partisan political activities.	A women's shelter establishes a part nine company to conduct research and policy advocacy.
Citizen engagement	A charity works in partnership with community associations, citizen groups, or ethno-cultural or religious groups to improve the local community. This often includes short-term and time-sensitive projects as well as small grant programs.	A neighbourhood-based organization provides small grants to citizens for community-building activities, such as block parties or after school programming for children.
Capacity building	A charity provides administrative support and mentorship to a non-charity that is in the process of applying for charitable status or chooses to remain without status so that it can focus on its charitable mission without having to devote attention to administration.	A charity provides financial management, reporting, and human resources support to a nonprofit either allowing it to focus on its charitable work, or develop its own systems and policies as it mentors the nonprofit's leadership model.
Short-term/time-sensitive projects	A charity partners with a non-charity to respond to an emerging need, such as emergency disaster relief or critical programming to address youth violence.	A charity partners with a local community group to provide emergency supplies following an ice storm. The charity's reach is increased through the network of the local group, enabling it to reach more people in need in a short time.
Collaboration	Project are initiated by a mix of non-charities and charities, of which one charity is appointed to act as a backbone organization providing administrative support and accepting responsibility for the funding.	An early childhood development collaboration includes daycares, schools, preschools, community-based children's programs, and a charity providing parenting programs. The charity applies for charitable funding and manages the funds and administration.

Understanding what activities charity/non-charity partnerships support provided insight into what motivates organizations to engage in these partnerships. Both charities and non-charities were consistent in their support for the practice and the perceived benefits for themselves and society as a whole. Charities understood charity/non-charity partnerships as a form of service to the voluntary sector. One participant (Participant 28) believed charity/non-charity partnerships were a critical solution to the challenges of the sector and devoted their entire resources to charity/non-charity partnerships. Non-charities were primarily motivated by being able to access charitable funding to support their charitable work. Both were passionate about the benefits of charity/non-charity partnerships, which are summarized in Table 3.

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Table 3: Benefits of charity/non-charity partnerships

Benefits for charities
• Activities of the non-charity represent new services available to service users.
• Information sharing provides access to the knowledge of the non-charity.
• Relationships and networks are gained through connecting to the non-charity's network. This can be particularly valuable if the non-charity is connected to individuals from a marginalized or hard-to-reach group. For example, a non-charity run by youth may be better able to engage youth.
• Funds received through administrative fees have no restrictions on how they can be spent.
• Opportunity to practice service leadership through increasing the capacity of the sector as a whole.

Benefits for non-charities
• Access to charitable benefits (community discounts, tax exempt status, ability to provide tax receipts, access to charitable funding).
• Administrative support and cost saving (e.g., lower rates for benefits and insurance through economies of scale and access to legal counsel, accounting, and human resources supports).
• Mentorship, including access to governance advice, training in completing funding proposals, planning projects, and conducting evaluations.
• Increased ability to focus on community work instead of administrative tasks.
• Perceived legitimacy through association with a larger organization.
• Access to the network of the charity.

Benefits for society
• Engages community groups that are traditionally marginalized and have struggled to establish themselves within the voluntary sector, such as ethno-cultural groups, youth groups, and community-based groups.
• Allows a project to emerge in response to a need quickly without establishing a full infrastructure while also allowing it to come to an end when the need has changed.
• Supports innovation.
• Ability to support community-based initiatives (e.g., small community grants).
• Provides oversight and support to groups as they work toward charitable registration.
• Reduced costs and increased efficiency through shared services.
• Reduced cost through fewer applications for charitable registration and less deregistrations due to oversight, mentorship, and capacity building provided by charities to their non-charity partners.

Similar to benefits, challenges identified were unanimous across both charities and non-charities. The lack of clarity of legal guidelines was highlighted as the primary challenge and the role of funders as the second. Charities expressed concern that, due to the lack of clarity, they may unknowingly be placing their charitable status at risk. Non-charities felt that the lack of clarity hindered their ability to advocate for themselves and increased the risk of being taken advantage of by their charity partner.

Specific areas of uncertainty included:

- What services and supports do charities provide to non-charities?
- Do charities charge a fee for their services? If so what is an acceptable fee?
- Who provides insurance for the activities of the partnership?
- Who employs the staff of the partnership?
- How are decisions made?
- What documentation is needed for expenses?
- Can the non-charity engage in advocacy activities?
- Who is responsible for reporting to funders?

The uncertainty about the processes of charity/non-charity partnerships highlights the gap between current policy guidance and practice. This gap exists in part because practitioners are largely unaware of policy guidance, and in part because policy guidance does not provide many details, leaving charity/non-charity partnerships without access to legal counsel struggling to interpret its applications.

The role of funders was also identified as a challenge. It was common for funders such as private and public foundations, community foundations, corporate foundations, and government to consider requests for funding from non-charities and then require the non-charity to engage in a charity/non-charity partnership as a condition of their funding in order to ensure oversight and accountability for the funds. Often unfamiliar with the CRA requirements for charity/non-charity partnerships, funders would request charities to accept funding on behalf of a non-charity without providing any guidance on the risks and requirements for compliant partnerships. Such requests place charities in the precarious position of choosing between the risk of engaging in a charity/non-charity partnership and the risk of damaging their relationship with their funder by declining to participate. Charities often agreed to the funder's request but were unaware that the responsibility for oversight and reporting belonged to them. As a result charity/non-charity partnerships that were initiated by a funder were often least compliant. One charity explained "I felt that they [the funder] had faith in this other group to even be giving them the money but that they would also ensure that it was reported on" (Participant 10). This highlighted funder-initiated partnerships as a source of risk and reinforced that the desire of funders to provide funding to non-charities—and the need to have those funds properly managed—contributes to the need for charity/non-charity partnerships. It was recommended that funders need to be educated about the practice and that they be required to educate charities about their responsibility if they ask them to engage in a charity/non-charity partnerships.

The results indicated that charity/non-charity partnerships varied according to: services provided by the charity, level of oversight, and motivation for the partnership. Based on these variables multiple models of charity/non-charity partnership have emerged. The models include the conduit, technical assistance, platform, and subsidiary models. Table 4 outlines the characteristics of each model.

Table 4: Models of charity/non-charity partnerships

Models of partnership				
	Conduit	Technical assistance	Platform	Subsidiary
Services provided by charity	None	Offering accounting along with additional services, such as space and mentoring.	Offering accounting, additional services, and organizational services, such as benefits, office supplies, technology, and legal counsel.	Offering accounting, additional services, and organizational services, such as benefits, office supplies, technology, and legal counsel.
Oversight	None	Providing guidance in addition to requiring the non-charity to report back.	Providing guidance in addition to requiring the non-charity to report back.	Working collaboratively and actively participating on oversight committees and retaining the right to final decisions.
Motivation	Funder	Benefit to the sector.	Future intentions of expanding their role as fiscal sponsors, establishing fiscal sponsorship as their primary purpose.	Extension of their charitable mandate.

The conduit model is one in which there was almost no interaction between the charity and the non-charity, there were no services provided and no oversight. In most cases funders initiated these partnerships. The technical assistance model is one where the charity provides services and oversight to the non-charity because it believes that the work of the non-charity will benefit the sector. In the technical assistance model, the charity and non-charity remain separate entities; therefore, this model of partnership is used only when both the charity and non-charity are legal entities. In the platform model, the charity provides services and oversight to multiple non-charities. When partnering with non-charities that are legal entities they remain separate entities, and when partnering with non-charities that do not have legal status they integrate the non-charity into their organization. An example of this is employment: when a funder partners with a non-charity that is not a legal entity, any employees hired are employed by the platform. Participants that adopted the platform model had intentionally established processes within their organization to support charity/non-charity partnerships and understood charity/non-charity partnerships as their primary purpose. In the subsidiary model—similar to in the platform model—the charity partners with non-charities that are both legal entities and not legal entities. In this model the charity completely integrates the non-charity. This may include providing services such as accounting, technology, and legal counsel, providing oversight using the charity's own internal systems, and hiring employees as employees of the charity complete with employee benefits. The key difference between the platform model and the subsidiary model is that in the subsidiary model, the charity does not partner with multiple non-charities.

The models illustrate a spectrum of integration between the charity and the non-charity, ranging from no interaction to complete integration. Factors affecting the level of integration are the motivation of the charity and the needs of the non-charity. High levels of motivation and high levels of need result in higher levels of integration. These models highlight the diversity of practices and provide an important framework for understanding key elements of charity/non-charity partnerships.

The study found that in Vancouver and Toronto the dominant model of charity/non-charity partnership was the platform model due to the presence of Tides Canada Initiatives. In Edmonton the technical assistance model was most common and in Calgary the subsidiary model was most common. In both cases this was due to the influence of the funder. The regional differences highlight how, in the absence of clear guidance, individual organizations can have a strong influence on practice.

Findings from the voluntary sector were shared at the roundtable discussions, which provided an opportunity for legal professionals to respond to the identified challenges and also identify concerns with current practice. This is discussed below in Application of Policy to Practice.

FINDINGS FROM THE LEGAL AND POLICY ANALYSIS

From the interviews with legal professionals, a clear understanding of which policies govern charity/non-charity partnerships emerged. When asked to identify relevant policies and guidance there was complete consensus. Relevant policies included: 1) the common-law definition of what is charitable, 2) guidelines for the political activity of charities, 3) transfers to non-qualified donees, and 4) CRA (2011) guidance CG-004: Using an Intermediary to Carry Out a Charity's Activities Within Canada. The common-law definition of what is charitable and transfers to non-qualified donees were discussed earlier in the literature review, as they are sources of risk for charity/non-charity partnerships. Political activities are discussed in the following section.

The focus of discussion in legal interviews was CRA (2011) guidance CG-004: Using an Intermediary to Carry Out a Charity's Activities Within Canada. This guidance speaks specifically to partnerships between a charity

and a non-qualified donee. The guidance provides four types of relationships that are permissible, as well as the requirement for documentation and oversight. Table 5 describes these relationships.

Table 5: Forms of charity/non-charity partnerships

Type	Description
Agent	A registered charity can appoint an agent to act as its representative in carrying out specifically identified tasks on behalf of the charity.
Contractors	A registered charity can carry out its charitable activities by contracting with an organization or individual in another country to provide needed goods and services.
Joint Ventures	A registered charity and other entities that may not be qualified donees can decide to pool their resources to establish and operate a charitable program.
Cooperative Partnerships	Sometimes a registered charity works side by side with other organizations and with the people it is trying to assist to achieve a particular project. The various organizations do not necessarily pool their resources to carry out the project, as in joint ventures, but instead each of the partners takes responsibility for a particular aspect of the project.

The guidance also provides strict requirements for charity/non-charity partnerships. The requirements are designed to ensure that charitable funds are used solely for approved charitable activities. From the CRA's perspective, in charity/non-charity partnerships the work of the non-charity that is funded by charitable funding becomes the work of the charity; therefore, the charity must maintain direction and control over the project to ensure that the activities are in alignment with its charitable mandate. This represents a significant gap in perspective between the CRA and practitioners. CRA guidance clearly places ownership, legal, and financial responsibility solely on the charity, whereas practitioners view charity/non-charity partnerships as a shared responsibility.

The CRA (2011) describes direction and control as:

- Create a written agreement, and implement its terms and provisions.
- Communicate a clear, complete, and detailed description of the activity to the intermediary.
- Monitor and supervise the activity.
- Provide clear, complete, and detailed instructions to the intermediary on an ongoing basis.
- Arrange for the intermediary to keep the charity's funds separate from its own, and to keep separate books and records.
- Make periodic transfers of resources, based on demonstrated performance.

The following section clarifies the application of this guidance to practice, shares participant recommendations, and summarizes the findings of the roundtable discussions.

APPLICATION OF POLICY TO PRACTICE

The roundtable discussions were able to address the areas of uncertainty identified in the voluntary sector individual interviews, including administrative fees, advocacy, services and supports, insurance, staff, decision-making, documentation, and reporting. It also provides comments on the models of practice derived from the voluntary sector interviews, language, and recommendations from participants.

In most cases, the administrative fee charged was ten percent. For some, ten percent was considered minimal in comparison to the services received, however, for others who were receiving no support or services from the charity, ten percent was considered an unjustified cost. To illustrate this, consider the following two agencies, both of which pay a ten percent administrative fee:

> They do all the HR so all the payroll and benefits that is all done for the project. They make any payments that I need to make. It includes access to supplies such as paper pens, etc etc, And it includes my telephone. I do have a Blackberry, which I love and I am part of their network, which means that I get a screaming deal that I love so there are some huge benefits of being part of an organization like that gives me access to things that as a two person pilot project I couldn't. (Participant 22)

> All our [charity partner] does is take $5600 off of our amount that we get of funding and we are left with $51000. And they just take it and they write us a cheque. (Participant 19)

This illustration of the discrepancy between fees charged and services rendered highlights the need to protect non-charities from excessive fees charged by charities.

From a legal perspective the language of administrative fee is unacceptable because it implies that the non-charity is paying the charity. Legally this is incorrect because the charity owns and is responsible for the funds. The preferred language is an allocation toward administrative expenses. This language clarifies that the responsibility and ownership of the funds lies with the charity.

Advocacy by charitable organizations is subject to CRA (2003) policy statement CPS-022: Political Activities, which limits the amount of resources that charitable organizations can use to support non-partisan political activities to ten percent. When a charity engages in a charity/non-charity partnership to support advocacy, any resources invested in advocacy through the partnership, even if the activities are carried out by the non-charity, are counted towards the ten percent of the charitable organization. Therefore it is important that the charitable organization exercises direction and control over the types of political activities and the amount of resources invested.

Services provided, staff, and insurance are not covered by the guidance. They relate to the legal status of the non-charity. When a charity partners with a legal entity, such as a nonprofit or part nine company, the risk of the partnership can be shared because a legal entity can access liability insurance and employ its own employees. With an informal group that is not a legal entity, the charity assumes greater risk because it is required to provide insurance for the activities of the partnership, maintain sole responsibility for the appropriate use of the funds, and it becomes the employer for any staff. When used for citizen engagement activities, charity/non-charity partnerships often require that citizens become volunteers of the charity so that their activities are covered by their insurance and they establish strict oversight to ensure funds are spent appropriately and in accordance with their charitable mandate. Similarly, services provided by either party are determined based on the model of practice, needs of the non-charity, and the capacity of the charity. Organizations without legal status may require greater support through services than a non-charity with legal status.

CRA guidance CG-004: Using an Intermediary to Carry out a Charity's Activities Within Canada, discussed in the findings, clearly outlines what is required in terms of documentation and reporting. According to the CRA the charity has the right to all final decisions regarding how the funds are spent. The charity is considered the

owners of the funds and is responsible for ensuring that they are spent in accordance with the guidelines of the charitable organization and in alignment with the charitable activities that it has been approved to conduct.

This creates a power imbalance that favours the charity and is a point of tension for non-charities. The focus on the charity maintaining direction and control over the non-charity's activities provides no recourse for non-charities that are treated unfairly. The control mechanisms that charities can legitimately apply need to be clarified. Participants recommended that the CRA work closely with charities and non-charities to ensure that guidelines "ensure compliance but [are not] so compliance focused that we lose the opportunity to be innovative and push the boundaries" (Participant 28). Supporters of charity/non-charity partnerships have argued that the expectations of the CRA in terms of direction and control are, "too onerous and beyond what [is] legally necessary" (Imagine Canada, 2015). A group of pro bono lawyers together with Imagine Canada intervened in a proceeding before the Federal Court of Appeal on behalf of an organization that had its charitable status revoked as a result of inadequate direction and control over the activities of a non-charity it partnered with. However, the decision was upheld. Imagine Canada (2015) maintains that such decisions "stifle attempts by Canadian registered charities to develop more equitable and balanced relationships with non-charity partners."

In comparing the four types of partnership outlined by the CRA with the four models of practice that emerged from the voluntary sector interviews, it is clear that the conduit model is not compliant with CRA requirements. The remaining practice models may be considered compliant, depending on the level of oversight provided by the charity. Therefore any charities engaged in a charity/non-charity partnership using the conduit model risk being fined by the CRA or having their charitable status revoked.

The lack of clear and consistent language apparent in the literature review was also present in the interview data. The terms used by practitioners included shared charitable infrastructure, charitable host/home, charitable sponsorship, parent-child relationship, administrative sponsor, and shared services. The terms that emerged from the interviews were different than the terms that emerged from the literature review, and both are different than the language used in the CRA guidance. This illustrates a significant gap in the development of the practice. The lack of common language is indicative of inconsistent and unclear practice. Establishment of consistent language is essential for clarifying and communicating acceptable practices. This will in turn guide decision-making, mitigate risk, and establish compliant practice. Consistent language is also required to for future research.

This study proposes the term charity/non-charity partnership. Consistent in all of the definitions is that they describe a form of partnership between a charity and non-charity. The language differs in how it describes the number of partners and the roles of the various partners. The rationale for using the language charity/non-charity partnership is that it uses the most consistent element of the partnerships, it aligns with the legal language, and it highlights the root of the legal complexity. This language is also the language used most recently by Imagine Canada (2015) and a team of pro bono lawyers in a federal court case; therefore, it has been established in the legal context.

DISCUSSION AND CONCLUSION

The practice of charity/non-charity partnerships challenges many aspects of the voluntary sector and its governance. It questions the effectiveness of the charitable registration process, the relevance of the common-law definition of charitable, who can be engaged in charitable work, who can access charitable funds, how the voluntary sector works together, and the role of funders in ensuring CRA compliance.

The lengthy and complex charitable registration process, and the common-law definition of charitable have contributed to the growth of this practice. Rather than engage in the registration process, organizations and groups are choosing charity/non-charity partnerships. A specific consideration relating to the definition of charitable is the legitimacy of charity/non-charity partnerships as a charitable purpose. Five participants expressed an interest in establishing charity/non-charity partnerships as their primary purpose or significantly growing the practice within their organization. Participants suggested that the oversight provided by charities is greater than what a small organization might have in place if it were operating independently; therefore, charity/non-charity partnerships increase the capacity and compliance of the voluntary sector. This provides a valuable incentive for the CRA to consider facilitating charity/non-charity partnerships as a charitable mandate.

This study highlights an important shift in the voluntary sector. Charity/non-charity partnerships require a change from the mindset of "empire building" to one of collaboration that significantly differs from the "mindset that we have created for a decade [that] says that the pinnacle of success is to establish your own registered charity" (Participant 28). There is a willingness to collaborate and change in the nature of collaboration. The platform and subsidiary models indicate openness to greater integration among partners. This openness extends to the inclusion of non-charities as important partners. Charity/non-charity partnerships with community-based groups and individuals in particular demonstrate a move away from professionalization and recognize the importance of engaged citizens and the value they bring.

The findings raise questions about the effectiveness of the CRA in communicating guidelines for practice. Unanimous across all voluntary sector interviews was a sense of uncertainty and confusion about the guidelines governing this practice. This, coupled with the transfer of funds to non-qualified donees, identified as the one of the top ten compliance issues (de Marche, 2007), which suggests that this is an important gap that needs to be addressed. The findings also highlight that funders play an important role in ensuring CRA compliance. While they are not responsible for enforcing compliance, they are stewards of charitable funds and have direct influence over the organizations and projects that they fund. It is essential that they are made aware of CRA guidelines to ensure that they are not encouraging practices that place charitable organizations at risk.

This exploratory study provides an important foundation for the further study of charity/non-charity partnerships. The findings present charity/non-charity partnerships as an important element of voluntary sector work in Canada with significant benefits. However there is no research evaluating the actual impact of charity/non-charity partnerships. An important question for future research is to measure and quantify the benefits of this practice in order to determine the true public benefit. From a compliance perspective it would also be prudent to explore whether the activities being supported are considered charitable. This would be an important step in determining if the practice creates benefits as found in this study, or if it is the risk that the CRA deems it to be.

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