

Bill 1:

Problems for Alberta's Voluntary Sector

**A joint submission to the
Standing Committee on Government Services**

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EXECUTIVE SUMMARY

The government's Bill 1, the Lobbyists Act, seeks to increase government transparency – clearly a goal worthy of support. But the nature of the bill has the potential to create significant difficulties for Alberta's voluntary sector.

The voluntary sector serves Albertans in every community of the province. It is a foundation for citizen engagement and grassroots democracy – a goal equally worthy of support.

At a time when the sector is already facing issues in terms of staffing and funding, the administrative burdens caused by broad definitions of “public officials” and missing definitions to narrow the definition of “lobbying” will result in time and money being used for purposes other than serving the community.

The attached report from the Legal Resource Centre of Alberta outlines the potential impact of the Lobbyists Act on Alberta's voluntary sector, and offers suggestions for ways in which those impacts could be moderated.

This submission is presented on behalf of a number of voluntary-sector organizations who adopt the finding and recommendations of the Legal Resource Centre. The submission asks the government to make significant changes to the bill to reduce or eliminate its application to voluntary-sector organizations. These changes reflect the significant difference between organizations serving the community and organizations serving shareholders.

INTRODUCTION

No one will argue against government transparency. It is clearly a public good, and it is a goal to which governments at all levels should aspire.

Equally, no one will argue against the importance of community involvement and grassroots democracy. These are goals of every civilized society.

The issue facing the Alberta Legislature is what action to take when these important goals come into conflict, as they do in Bill 1, the proposed Lobbyists Act.

The bill, as drafted, is likely to have significant negative impacts on Alberta's voluntary sector. Its provisions are likely to add to the problem of recruiting persons to boards of directors. It imposes an impossible administrative burden on those whose whole purpose is to serve the community.

While the regulations to be enacted may ease some of the issues, they cannot overcome some of the major problems that are likely to lead either to significant non-compliance or an inappropriate redirection of resources by community-serving organizations.

The signatories to this submission call on the province to re-examine this bill carefully, so as to avoid an unnecessary and burdensome conflict between two worthy goals.

TERMINOLOGY

There is a tendency to use the terms “charitable sector,” “voluntary sector” and “not-for-profit sector” interchangeably. However, the terms incorporate different types of organizations.

The smallest grouping is the “charitable sector.” This is made up of organizations that have been registered as charities under the *Income Tax Act (Canada)*. Registration is granted by the Canada Revenue Agency after an application that demonstrates that an organization’s objects are charitable at law, based on 200 years of jurisprudence. Charities may be incorporated under provincial or federal law or, in some cases, may not be incorporated at all. Their purposes range from religion to recreation, from education to environment. As a condition of registration, organizations must prove that they provide benefit to the general community or to an appreciably significant segment of the community.

Charities are subject to supervision by the Canada Revenue Agency and must comply with the provisions of the *Income Tax Act (Canada)* as well as a variety of policies issued by the Agency. Among the legislative and policy requirements are rules related to political activity by charities. Charities are exempt from the payment of income taxes and are able to issue receipts to donors that allow donors to obtain a tax credit for donations.

The “voluntary sector” generally refers to not-for-profit organizations that serve the community. Charities fall within this category, as do a number of other organizations which either do not qualify for registration as a charity, or choose not to apply for such registration. Many are active in the same fields as charities and, like charities, they are exempt from the payment of income tax. However, only charities may issue tax-credit receipts to donors.

The “not-for-profit sector” or “non-profit sector” is the largest of all three categories. It includes the entire voluntary sector, but includes a number of other types of organizations that do not necessarily provide benefit to the broader community. Professional organizations are usually established as not-for-profit organizations, as are labour unions.

DEMOGRAPHICS

It is useful to examine some facts about community-based organizations in Alberta:

- As of July 31, 2007, there were 8,754 registered charities in Alberta.¹
- Canada Revenue Agency reports that information returns for the 2004 fiscal year of Alberta charities (n=8,297) showed 40% had total annual revenue of less than \$50,000, 54% had total annual revenue of less than \$100,000 and almost three-quarters had total annual revenue of less than \$250,000.
- Statistics Canada reports that there were approximately 19,000 nonprofit and voluntary organizations in Alberta at the time the 2003 National Survey of Nonprofit and Voluntary Organizations was conducted.
- Among those nonprofit and voluntary sector organizations, 43% had annual revenue of less than \$30,000 and 65% had annual revenue of less than \$100,000.
- Almost 60% of nonprofit and voluntary sector organizations are unstaffed.
- Over 78% of paid staff work for large organizations – the 10% of organizations with annual revenue of more than \$1 million. By contrast, the 43% of organizations with annual revenues of less than \$30,000 account for just 2% of total employment.

¹ . Internet search of Charities Directorate listing of charities, August 1, 2007.

REVIEW OF BILL 1

The Muttart Foundation, based in Edmonton, provided a grant to the Legal Resource Centre of Alberta, to carry out a review of Bill 1 and to examine its implications on the voluntary sector. A copy of that report is appended to this submission.

This review outlines the significant problems that could result if this Act is applied to the voluntary sector. The consequences are serious, and go to the heart of the operation of community-based organizations. The signatories to this submission adopt the conclusions and recommendations of the Legal Resource Centre's report.

The values which underpin voluntary-sector organizations will make organizations want to comply, even without the threat of penalties that exceed the annual revenue of most Alberta voluntary-sector organizations.

Yet to comply, these organizations – many of which are already stretched far too thin because of labour and funding shortages – will have to take time away from their core mission.

The organizations are likely to face additional problems in attracting directors, given the degree of intrusion that will be required as voluntary-sector organizations try to ensure that no director's professional lives (or the professional lives of the director's family) inadvertently puts the organization offside.

As noted in the report, the scope of this bill goes beyond most similar legislation in Canada. Virtually any contact with a government employee (or the employees of potentially a huge number of prescribed entities) on a topic that does not directly relate to an organization will constitute lobbying and need to be reported. And once on the "treadmill" of reporting, there appears to be no way of getting off.

Those voluntary-sector organizations which are also registered charities now face the prospect of competing definitions of what constitutes advocacy or lobbying, and different rules depending on the level of government with which they need to interact. The results will vary from inadvertent non-compliance with some legislation or policy, to a withdrawal from being engaged in policy activities. The latter possibility is retrograde: voluntary-sector organizations have come to recognize that many of the issues they deal with are created by policy decisions. They have come to understand that applying first aid is no longer enough; they must help be part of the cure by suggesting changes in policies.

The extension of the definition of lobbying to policies, directives and guidelines creates an extraordinarily broad spectrum of issues that could affect voluntary sector organizations, including on issues that may not be at all controversial.

The prohibition of simultaneous lobbying and providing advice for compensation to government could lead to absurd results if, for example, a funding agreement between government and a voluntary-sector organization is interpreted as also being a contract for paid advice.

PUBLIC PERCEPTION OF CHARITIES

Public-opinion research indicates that Albertans think highly of charities and expect them to be involved in advocacy related to their missions. According to *Talking About Charities 2006*, a poll undertaken by Ipsos Reid for The Muttart Foundation:

- 84% of Albertans say they trust charities somewhat or a lot
- 77% of Albertans say they trust leaders of charities somewhat or a lot – behind only nurses (96%) and doctors (95%) and above business leaders (73%), government employees (76%), lawyers (62%), provincial politicians (47%) and federal politicians (43%)
- 93% of Albertans say charities are important to Canadians, while 87% say charities generally improve our quality of life
- 76% of Albertans say that charities are better than government at understanding the needs of Canadians and 69% say charities are better than government at meeting the needs of Canadians
- More than two-thirds of Albertans believe that advocacy laws should be changed to permit charities to advocate more freely for their causes

Talking About Charities 2006 was a study involving interviews with almost 4,000 Canadians, including more than 400 Albertans. Results for Alberta are considered accurate within 4.9%, 19 times out of 20.

WHAT COULD HAPPEN?

In this section, we provide just a few examples of situations that could arise if the bill is enacted in its present form. These situations are completely realistic; they reflect the collaborative nature of the voluntary sector and the types of board members that organizations seek to recruit. We do not believe any of these situations are the type of activity the bill is intended to – or should – capture.

Who's Doing What?

ABC is a voluntary-sector organization that offers health-care services in the inner city. It is finding an increasing number of its patients testing positive for tuberculosis. Its senior staff feels the province should expand its tuberculosis program and schedules this for Board consideration.

One of the Board members is a physician on the faculty of the local university. A university, for the purposes of the Act, appears to be a prescribed entity. A debate ensues as to whether that Board member can be present, or whether such a discussion would constitute lobbying. Once that issue is resolved, and the Board has its discussion and instructs staff to raise the concern with government officials.

After reading the act, the senior staff concludes it can't do that immediately. First, it must write to each Director and find out whether any Director, or a family member related to a Director or staff member, or any organization on which that Director or staff member or family member sits as a Director, is, in any way, engaged in providing paid advice to the government on the same topic.

One of ABC's Directors is a lawyer. The lawyer is unable to confirm or deny that he is acting for someone who may be engaged in providing advice to government about tuberculosis. Another of ABC's Directors is someone engaged in issues related to poverty and health, and has a grant from a provincial entity to undertake some related research.

ABC may well be prohibited from even suggesting to the province that more attention needs to be paid to tuberculosis – a concern that goes directly to the well-being of the very people the organization was formed to help.

No Good Deed Goes Unpunished

A group of funding organizations meets regularly to exchange information and talk about possibilities of joint initiatives. One area under discussion relates to a legislative change in the Societies Act that would allow for an investigator or arbitrator to be appointed to resolve issues within a Society.

Before it can approach someone at even an intermediate level within government, someone from the group of funders must:

- identify every person and organization that is associated with any of the funding organizations
- determine whether any one of those persons or organizations is a public official himself or herself
- ask each person and organization whether s/he or it has any contract to give advice to government
- ask each person and organization whether any family member or other associated person or organization has any contract to give advice to government on a related matter

Assuming that there are the people available to gather this information, and that all of the answers can actually be obtained, the group can then decide whether it is able to go forward with a proposal for a minor legislative amendment.

The Casual Conversation

For years, John and Mary have had season's tickets to the theatre.

They used to work together at XYZ Community Services. Recently, Mary accepted an offer to work for government, where she could earn significantly more money. John continues to work at XYZ. Mary's new job, as a planner, involves her in designing programs that relate to XYZ's clientele.

While waiting for the play to begin, John turns to Mary. “Did you see today’s paper? Your program really took a hit in that column. You guys really need to look at increasing the funding and cutting the paperwork.”

Under the terms of the proposed Act, John now must report this conversation as lobbying.

Does Service Include Advice?

A number of voluntary-sector organizations have funding agreements with government. These organizations may be involved in the fields of health, social services, education, culture or any number of other endeavours.

It’s possible that at least some people responsible for the funding decisions expect that their support of an organization includes getting advice from the organization on how to improve services of whatever kind. If that’s the case, then the organization is prohibited from any lobbying of any kind. This could be a form of muzzling which is entirely inconsistent with stated desires for democratic reform and an increased role for grassroots voices.

Even if government doesn’t interpret funding agreements that way, would the Registrar under the Act conclude that they should be interpreted that way? If he does, then he has the authority to impose an administrative penalty of up to \$25,000 – an incredibly heavy fine for any organization in the voluntary sector.

THE QUESTION OF REGULATIONS

In meetings that have been held about the bill, it has been suggested that some of the voluntary sector's concerns about the Bill will be addressed through regulations. For example, it is suggested that by regulation or interpretation, a "threshold" test could be introduced that would limit the impact of the Bill on voluntary-sector organizations.

While the signatories to this submission are delighted by that prospect, it is difficult to withdraw our concerns without having seen the proposed regulations. All we are able to comment upon at the moment is the Bill itself. We would be pleased to review our submission if government wishes to make public the proposed regulations. Indeed, as the report suggests, we would be even more delighted if we were invited to work with government on the regulations to ensure that they take account of the special place in society that is held by voluntary-sector organizations.

PROPOSED SOLUTIONS

A number of changes could reduce the concern of the voluntary sector about Bill 1. Many of these changes are referred to in the report of the Legal Resource Centre and should be considered even beyond their implications for the voluntary sector.

The signatories adopt the recommended suggestions for moderating the impact of Bill 1 as set out on page 4 of the report from the Legal Resource Centre.

The signatories to this submission suggest that the best solution to the current situation would be to amend the bill so that it does not apply to voluntary-sector organizations unless they employ a consultant lobbyist.

If that option is ruled out by the committee, then, at the least, registered charities should be exempted from the Act, given that their advocacy activities are already regulated. In that case, the committee should also make the following changes to the bill:

- (a) establish a separate set of rules for voluntary-sector organizations, removing some of the more burdensome aspects and narrowing the definition of what constitutes lobbying;
- (b) write a threshold into the legislation (rather than seeking to do it by regulation or interpretation bulleting) providing that voluntary-sector organizations would be subject to the Act only if they are engaged in lobbying to an extent equal to 20% of the time of a full-time employee;
- (c) clarify in the legislation that members of the Board of Directors (or like officials) of a voluntary-sector organization are not covered by the legislation unless they receive some compensation specifically for lobbying on behalf of the organization; and
- (d) eliminate for voluntary-sector organizations any fees payable under the Act.

In common with some others who have commented on the legislation, the signatories are concerned about the provision of the bill that removes from the definition of lobbying any activities that are initiated at the request of a public office holder. For the purposes of this submission, we do not want to see the voluntary sector divided into those who have influence (those approached by public office holders) and those who do not.

The concept of different treatment for the voluntary sector has a precedent. In the Personal Information Protection Act, the government exempted voluntary-sector organizations from most of the provisions, except those related to commercial activities that such organizations might undertake. There is even more reason to provide different treatment in the proposed Lobbyists Act.

CONCLUSION

The signatories to this submission are not aware that there has been any public demand to regulate the relationship between voluntary-sector organizations and government. Indeed, we would go so far as to suggest that when the word “lobbying” is mentioned to Albertans, most would not even consider voluntary-sector organizations as doing anything resembling lobbying. The concerns that have been expressed publicly seem primarily to deal with for-profit entities that are seeking special treatment from the province. Indeed, some research indicates that Albertans expect voluntary-sector organizations to speak out on issues related to their mission.

In the absence of a public concern about the actions of voluntary-sector organizations as it relates to their interaction with governments, there can be no justification for imposition of a burden that will be overwhelming, will strike at the very heart of the voluntary sector in terms of promoting grassroots democracy, and will increase problems already facing the sector.

The signatories to this submission ask that the committee recommend substantial changes to this bill insofar as it affects the voluntary sector.

The voluntary sector is a critical partner with government in the provision of services in communities all across the province. The voluntary sector is one of the strongest platforms for the expression of democracy and civic engagement that our country and province offers its constituents. The sector is highly regarded and trusted. Overall, its current functioning and relationship with government, including its advocacy activities, do not warrant the extreme measures proposed in Bill 1 – measures that may, in and of themselves, jeopardize the sector.

ENDORSEMENTS

This submission is made on behalf of the following voluntary-sector organizations:

ABC Headstart, Edmonton
AISH Network of Alberta Society
Alberta Committee of Citizens with Disabilities
Alberta Computers for Schools
Alberta Council of Disability Services
Alberta Council of Women's Shelters
Alberta Fencing Association
The Alberta Library
Alberta Museums Association
Alberta Shock Trauma Air Rescue Society (STARS)
Alberta Shock Trauma Air Rescue Service Foundation (STARS Foundation)
The Arthritis Society, Alberta and NWT Division
The Arusha Centre, Calgary
Athletics Alberta
Big Brothers Big Sisters of Edmonton and Area
Bow Riverkeeper
Boyle Street Community Services, Edmonton
Boys and Girls Clubs of Alberta
Calgary Apartment Association
Calgary Block Watch Council
Calgary Chamber of Voluntary Organizations
Calgary Communities Against Sexual Abuse
Calgary Inter-Faith Food Bank
Calgary Military Museums Society
Calgary SCOPE Society
Calgary Sport Council
Canada West Foundation
Canadian Cancer Society, Alberta/N.W.T.
Canadian Outcomes Research Institute, Calgary
Canadian Parks and Wilderness Society - Northern Alberta Chapter
Canadian Sport Centre Calgary
Central Alberta AIDS Network Society
Cerebral Palsy Association in Alberta
Chrysalis
Developmental Disabilities Resource Council of Calgary
Dickinsfield Amity House, Edmonton
Disability Action Hall, Calgary
Edmonton Apartment Association
Edmonton Arts Council
Edmonton Brain Injury Relearning Society

Edmonton Chamber of Voluntary Organizations
 Edmonton Community Foundation
 Edmonton Social Planning Council
 Edmonton Sport Council
 Edmonton's Food Bank/Edmonton Gleaners Association
 Enviros Wilderness School Association, Calgary
 The Federation of Calgary Communities
 Friends of the Federation of Calgary Communities
 Greenwood Chamber Singers Society
 Healthy Families Healthy Futures Society
 The HERA Society – Therapeutic Programming for Adolescent Girls at Risk
 Hinton Food Bank Association
 iHuman Youth Society, Edmonton
 Jewish Family Services, Edmonton
 John Howard Society of Alberta
 La Salle Women's Housing Society
 Library Association of Alberta
 Max Bell Foundation, Calgary
 Multiple Sclerosis Society of Canada, Alberta Division
 Multiple Sclerosis Society of Canada, Calgary Chapter
 Multiple Sclerosis Society of Canada, Lloydminster Chapter
 Multiple Sclerosis Society of Canada, Southeastern Alberta Chapter
 The Muttart Foundation, Edmonton
 Northern Alberta Brain Injury Society, Edmonton
 Olds Neighbourhood Place
 Operation Eyesight Universal, Calgary
 Peace River Regional Women's Shelter
 Personal Community Support Association of Alberta
 Prostitution Awareness and Action Foundation of Edmonton
 Public Interest Alberta
 Rocky View Regional Handibus Society
 St. Michael's Health Group, Edmonton
 Seniors for Kids Society, Cochrane
 Seniors Outreach Network Society, Edmonton
 Skate Canada: Alberta - NWT/Nunavut
 Sport Alberta
 Strathcona County Library Board
 Under The Sleeping Buffalo (UTSB) Research, Banff
 United Way of Calgary and Area
 Universal Rehabilitation Society Agency, Calgary
 Volunteer Alberta
 Volunteer Calgary
 Young Alberta Book Society
 YWCA Lethbridge and District
 YWCA of Edmonton