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Disruption in US, UK and Australian Philanthropy and its Impact on Canada

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Introduction

- Legal information not legal advice
- Views expressed are my own
- Questions during and at end
- Logistics and timing

Overview

- Trends and Constant Change
- Disruption with Focus on the Canada, US, UK and Australia
- Trump, UK Media, US tax changes, US charity regulation changes, Attacks on Charities, Attacks on Charity Regulation, Canada and Political Activities

Disruption

- “disturbance or problems that interrupt an event, activity, or process.”
- Winners and losers
- Change is a constant but significant disruption is different
- Being close to the US we feel like we are being disrupted but we have not seen almost anything yet

Trends in the Non-Profit and Charity Sector

- 1) Governance and board education**
- 2) Corporate acts**
- 3) Structures and vehicles**
- 4) Transparency, T3010, data**
- 5) Government relations**
- 6) More scrutiny of political activities**
- 7) International philanthropy**
- 8) Social enterprise / business activities**
- 9) Fundraising costs and practices**

- 10) Restrictions on gifts**
- 11) Endowments, Donor Advised Funds and Scrutiny**
- 12) Planned giving and bequests**
- 13) Crackdown on abusive gifting tax shelters**
- 14) Limits on tax incentives**
- 15) Due diligence, ratings, impact**
- 16) Obtaining appropriate advice**
- 17) Self regulation**
- 18) Weak and captured sector organizations**

- 19) Media scrutiny**
- 20) Human resources**
- 21) Technology**
- 22) Reputation and standards**
- 23) Poor sector information and understanding**
- 24) Limited financial management capacity**
- 25) Unregulated competitors – crowd funding**
- 26) Investing and impact investing**
- 27) Government funding**

1. Trump

- Master manipulator of media
- Negatives – very long list – xenophobic, racist, huge tax cuts for the wealthy, slashing programs that help most marginalized, disrespects veterans and people with disabilities, encourage despots around the world to be more despotic, ...
- Positives – good for media rating and revenue, has not invaded a country yet
- Difficult to ignore

2. US and Tax Changes

- Recent tax reform in the US – cut taxes and will increase deficits
- US is close to Canada and has impact on Canada
- US has doubled deductions - standard deduction now for a couple is USD24,000
- Unless you have USD\$24,000 in expenses like charitable donations, mortgage deductions, medical etc. you don't need to “itemize”

US and Tax Changes

- 95% of Americans do not need to itemize now and therefore giving to charity will not save them taxes
- US charities will have to change some messaging
- Is the “apocalypse” this year? Or will it be next year? Or worse there is no apocalypse and perhaps tax incentives are not as important as seem people suggest
- Opportunity for foreign charities

US and Tax Changes

- Increase gap – wealthy get tax breaks but not middle class
- Will not affect wealthy putting money in Donor Advised Funds or endowments
- Is charity in some ways increasing disparities in society?
- If the US is not giving tax breaks to 95% of their citizens how is Canada going to respond over the next few years?

3. US and Charity Regulatory changes

- IRS “Scandal” and Tea Party charities
- Reducing IRS regulation of charities
- Trump wants elimination of the Johnson Amendment
- Trumps wants US charities to be able to be involved in partisan activities ie. Free speech
- Isn't less regulation and simple charity application process a good thing –yes if you don't mind white power charities, etc.
- US has large number of state regulators – if you are a national charity in the US you might have to register in about 40 jurisdictions.

US

- 400,000 charities deregistered in one year because of non-filing of Form 990
- many religious institutions don't even have to apply for status or file an annual return
- 99+% of charity applications accepted by IRS
- “voluntary standards”

4. UK and Media

- A number of scandals over the last few years:
 - Cup Trust
 - Kids Company and Camila Batmanghelidjh
 - Chuggers
 - Olive Cooke
 - Privacy concerns and use of donor data
 - Oxfam UK scandal

UK and Media

- UK has Conservative government
- Big Society - "integrating the free market with a theory of social solidarity based on hierarchy and voluntarism".
 - Less government, more volunteers and charities
- Some charities are progressive – so when scandals media and government pile on.
- Decline in public trust of charities – makes work of charities harder
- Will media in Canada become more aggressive in coverage of charity sector?

5. Canada and Political Activities

- Old rules - 10% of resources on non-partisan political activities
- Canada Without Poverty case (July 16, 2018)
- Finance proposals – “ancillary and incidental” (Sep. 14, 2018)
- CRA guidance (October 2, 2018)
- New Finance proposals (October 25, 2018)

Dept. of Finance Amendments re Political Activities

- On October 25, 2018 the Department of Finance posted Legislative Proposals Notice of Ways and Means Motions and Explanatory Notes which among other things change the rules for Canadian charities carrying out political activities.
- Essentially the Income Tax Act is amended to deem that "charitable activities includes public policy dialogue and development activities carried on in furtherance of a charitable purpose;" and
- that "public policy dialogue and development activities carried on by an organization, corporation or trust in support of its stated purposes shall be considered to be carried on in furtherance of those purposes and not for any other purpose."

Charities and Political Activities

- No CRA guidance yet
- Has to be related to your objects
- New government can change rules
- Other governments like provincial governments may impose additional restrictions
- Lobbying and Third party election advertising rules
- Many CRA rules (Top 20) still need to be complied with
- Will open door to cash for political activities result in more “dark money” and reduce public confidence in the sector which will have impact on fundraising

6. Oppressive regulation of NGOs in some countries

- Some countries restricting establishment and activities of NPOs.
- Others restricting in-flow (international fundraising) and outflow of funds (foreign activities)
- The International Center for Not-for-Profit Law (ICNL)

Overview - ICNL

“Legal barriers to the formation and operation of eligible nonprofit beneficiaries include, among others:

- high minimum thresholds for members or assets;
- burdensome registration procedures;
- excessive government discretion in registration and termination decisions;
- prohibitions on areas of activity;
- invasive supervisory oversight; and
- barriers to cross-border communication.”

Overview - ICNL

“Donor country, or “outflow,” constraints include:

- significant limitations on foreign grantmaking by tax-exempt entities;
- advance governmental approval for cross-border giving;
- limited, or no, tax incentives for international philanthropy;
- burdensome procedural requirements for foreign grants;
- counter-terrorism measures; and
- restrictions on financial transactions with sanctioned countries.”

Overview - ICNL

“Recipient country, or “inflow,” constraints include:

- advance government approval to receive foreign funding;
- restrictions on the types of activities that can be supported with foreign funding;
- mandatory routing of foreign funding through government channels;
- post-receipt procedural burdens, such as burdensome notification and reporting requirements;
- the taxation of global philanthropy; and
- foreign exchange requirements.”

7. Regulation of Charities under attack

- Already discussed US IRS
- Charity Commission of England and Wales
- Australian Charities and Not-for-profits Commission (ACNC)
- New Zealand
- Canada

Form of Regulator - England

- Charity Commission of England and Wales
- was **gold standard**
- non-ministerial government department (civil servants and independent)
- statutory definition of charity
- great transparency on their website
- superb guidances to assist charities
- same regulator - but different environment (scandals in sector) -more compliance emphasis – eg. Fundraising and terrorism etc., political activities crackdown, problematic political direction, less service
- lost 50% of its budget

Form of Regulator – England (continued)

- UK Cup Trust - £176m from donations during its first two years but has distributed just £55,000.
- Canada has had about 30 “Cup Trusts” and we are half the size of UK - I guess Canadians are more tolerant of corruption and charity abuse.
- Biggest difference between Canada and the UK is media - in the UK there is persistent coverage – often very unfair.

Australia

- The Australian Charities and Not-for-profits Commission (ACNC) is the independent national regulator of charities.
- The Australian Taxation Office (ATO) responsible for deciding eligibility for charity tax concessions.
- deductible gift recipients (DGR) – administered by ATO – not tied to charity but 49 DGR categories –only gifts to DGR get tax benefits.
- Not all listed charities (56,499) get DGR status

Australia (continued)

- each state requires duplicative reporting – recently NSW allows only reporting to ACNC
- after spending years establishing the ACNC new government decided it should be abolished - talk of abolition is on hold for now.
- churches are not deductible gift recipients and do not get to issue tax receipts.
- foreign activities required Australian government approval (AUSAID) and focused on only international development not other international philanthropy.

New Zealand

- had successful Charity Commission – disestablished
- now under Department of Internal Affairs (Service Delivery and Operations Branch)
- disestablishment has not seemed to have much impact but other changes have undermined regulator

Regulation of Registered Charities

- Why are we regulating registered charities?
- Do we have too much charity regulation?
- Are there good and bad charities?
- How well do you know your charity sector?

Regulation of Registered Charities (continued)

- Donors to registered charities – receive 45-65% tax benefit when they donate
- How much regulation is necessary if tax benefits removed?
- Federal government, 10 provincial and 3 territorial governments, municipal governments

Propositions

1. Canada has one de facto regulator and it is the CRA – we basically backed into this situation and it seems to be working. Those involved with securities regulation would die to have one regulator!
2. Ideas – tax regulator, charity commission or voluntary standards

Whether it is a charity tax regulator or a charity commission makes little difference compared to other factors. – form is far less important than the content and strategy.

Good Regulator?

- Regulation – internationally – ICNL – tremendous restrictions on work of charities and non-profits.
- Regulator – will depend on what is regulated.
- for some – best regulator is no regulator, don't want nanny state, overbearing government.
- irony – we generally want freedom for ourselves but often worry about others.

Good Regulation

- good rules (enabling)
- attitude of regulator (fair, realize diversity, helpful, empathetic)
- strategy of regulator/regulatory approach
- staff knowledge (technical expertise)
- prepared to listen (consultations)
- willingness to change
- timeliness
- regulatory burden vs. benefit (e.g. whether tax incentives)
- concern with public interest vs. business/political parties

Good Regulation (continued)

- educating charities about rules (communication and capacity building)
- transparency as to rules and rule of law (guidance)
- well managed up to date list of charities with relevant information on each charity
- collaborate with sector when appropriate
- predictability/certainty/consistency
- one regulator versus many overlapping or contradictory regulators
- strength/resources of regulator to handle real bad apples
- stakeholder fairness (charities, government, donors, beneficiaries, etc)

Questions

- Is regulator strong enough – resist inappropriate pressure from government, charities, public etc. ?
- Can the regulator stand up to religious cults, partisan political groups, and prevent registration?
- How do we maintain public trust in charities?

Canada

- Senate committee looking at the charity sector
- Dramatic changes to allowable political activities
- If charities can spend 100% of their budgets on political activities that are non-partisan will it have an impact on the reputation of the sector and the ability to fundraise?

Ideas on how to deal with disruption

- Plan for it
- Take advantage of any positives that may spring up, even if many negatives.
- Be aware of what you are (structure, objects)
- Consider having multiple entities
- Don't be complacent with current funders and donors
- Be honest with your donors about change and need to be reflected in gift agreements and having greater flexibility

If disruption = Hard Times

- 'A recession is when your neighbour loses his job, a depression is when you lose your job.'
- High level - bring in more revenue, spend less, build reserves
- Be careful of cash flow, and may have to sell assets
- Diversification between types of revenues and sources of revenues

Short Term Ideas When Lose Major Funder

- Close programs
- Cut costs including people, deferring purchases
- Using reserves
- Using self-restricted endowments
- Selling Assets
- Using lines of credit or get loan
- Asking supporters for increased unrestricted support
- Merge
- Close charity

Other Ideas

- Have good communication with stakeholders
- Be aware of cash flow and adequacy of cash reserves
- Budgeting – zero based vs. incremental
- Prepare for the worst, hope for the best
- Time matters – if you have little time cuts will be deeper, impact greater and more risk to charity.
- Evaluate programs – effectiveness, cost
- Should you be charging or charging more for services and effect
- Can costs be trimmed?

Other Ideas

- Are you using volunteers effectively?
- Are you investing adequately in new technology? Is technology being utilized effectively? Is more training needed
- Collaboration and alliances, sharing assets, space and equipment
- Outsourcing
- Analyzing costs and cost recovery
- Insurance – have appropriate coverage
- Good internal controls –prevent mistakes, fraud, theft.

Some ideas

- Less pain if you fix problems sooner
- Know what you can control, what you cannot control and focus on what you can control
- You may be unique, but you are not uniquely unique
- Can other sources of funding be found
- Improve systems
- Clean up issues now, no time when dealing with funding cuts, including governance, legal, policies etc.

Thank you!

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