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INDIANA UNIVERSITY
Lilly Family School of Philanthropy

The 2022 Global Philanthropy Environment Index Canada

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QUICK FACTS

Legal forms of philanthropic organizations included in the law: Association, Benefit Corporation, Company Limited by Guarantee, Cooperative, Corporation, Foundation, Society, Trust, Charitable Organization, Foreign University, Municipality, Native Group

Five main social issues addressed by these organizations: Early Childhood Education through High School, Higher Education, Religion

Average time established by law to register a philanthropic organization: 0-30 days

The incorporation of a philanthropic organization (PO) takes 0-30 days, while its qualification for tax status usually takes more than 90 days

Average cost for registering a philanthropic organization: USD 4,000

The average cost for registering a PO is USD 4,000 including all legal fees.

Government levels primarily regulating the incorporation of philanthropic organizations: Central/Federal Government

Philanthropic Environment Scores:

Year	Ease of Operating a PO	Tax Incentives	Cross-Border Philanthropic Flows	Political Environment	Economic Environment	Socio-Cultural Environment	Overall Score
2022 GPEI	3.67	5.00	4.00	4.50	5.00	4.50	4.44
2018 GPEI	4.67	4.50	3.50	4.25	N.A.	5.00	4.38

Source: Indiana University Lilly Family School of Philanthropy, 2022 *Global Philanthropy Environment Index*

Key Findings

I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three indicator questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration; (B) operations; and (C) dissolution.

Question One: To what extent can individuals form and incorporate the organizations defined?

Score: 4.0

Most organizations in Canada are corporations without share capital. These entities are set up either provincially or under federal jurisdiction. By and large, there are no restrictions on individuals incorporating these entities, but in order to qualify for charitable status (i.e., to receive tax credits and deductions) they must be incorporated with charitable purposes and then registered as a charity with the Canada Revenue Agency (the CRA). The CRA registers these organizations based on their likelihood to conform with charity law. This includes the judgement as to whether their purposes are charitable according to the common law, and whether the organization's activities will generally conform with the rules regarding charitable entities. Nonprofit organizations are distinct from charities and can generally undertake those purposes and activities which are forbidden to charitable organizations (with the major exception of pursuing profit). However, donations to these groups do not qualify for special tax treatment. On the other hand, nonprofit organizations do not require CRA preapproval and can begin operation immediately. It bears mentioning that entities can also be created by way of trust, or as an unincorporated entity.

Question Two: To what extent are POs free to operate without excessive government interference?

Score: 3.0

Organizations that are set up as corporations either federally or provincially (which is the vast majority) are subject to the corporate rules under which they are created. The laws in these areas are being updated across the country and provide strict governance rules regarding the rights of members and directors. While these rules are thought to be intended for better governance, they in fact provide great restriction on what the entity may or may not do internally. In the modern era, these seem to be acceptable limitations, but they are severe. Generally speaking, the federal Income Tax Act is the main body of rules and regulations which apply to charities. While the Act itself may contain only sparse regulations, the CRA has developed an extensive body of guidance and interpretation by which they will interpret the law and apply to charities. Constitutionally there is some difficulty in federal government passing laws relating to charities, but as the provinces have shown an unwillingness to do so the CRA has assumed the rule as regulator of charities in the public interest. For this reason, the CRA has found ways to revoke an organization's charitable status if it contravenes laws which are not, strictly speaking, statutorily enacted. Effectively then the CRA's administrative guidance has become the primary source of regulatory authority for how a charity may operate. These rules can be severe and are not nuanced for various subsectors. Nonprofits on the other hand are given wide latitude to operate so long as they are not organized to pursue profit, and do not provide for distributions of income to individuals who are non-arm's-length from the nonprofit.

Question Three: To what extent is there government discretion in shutting down POs?

Score: 4.0

Charities are able to voluntarily give up their charitable status at any point and dissolve the corporation or entity. The CRA is equally able to revoke the organization's charitable status if the organization contravenes the Income Tax Act. However, as stated in an earlier question, the CRA's interpretation of the law in fact forms the main body of regulatory authority in Canada. The CRA has determined for itself a series of guidelines as to when it will pursue the most serious disciplinary action as opposed to simply providing individual guidance towards the charity so that they can better comply. If an organization is deregistered it may seek recourse to the Federal Court of Appeal. Unfortunately, the system is designed so that there is no testing of the evidence provided by the CRA for its position, and the Federal Court of Appeal simply reviews the matter from an administrative law perspective to determine whether or not the law was correct rather than see whether or not the evidence is even correct.

II. Domestic Tax and Fiscal Issues

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

Question Four: To what extent is the tax system favorable to making charitable donations?

Score: 5.0

Individuals that make donations to charitable entities are entitled to a tax credit which, at a certain point (and in most provinces), offsets the full amount of tax otherwise owed on a dollar of income, and is double the amount of tax payable on the donation of capital. Corporations that donate to registered charities receive a deduction equal to the amount of the donation (effectively offsetting the tax owing on the income of that dollar). Donations to nonprofits are not entitled to special tax treatment. The existence of the donation tax credit is well known in Canada, although the technical understanding of its impact on an individual's tax return is not.

Question Five: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 5.0

Neither registered charities nor nonprofits in Canada are taxed on their revenue (with minor exceptions). This includes both donations and revenue earned from other sources. However, there are significant, but different, limitations on both from engaging in profit-making activities.

III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

Question Six: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Score: 3.0

Despite Canada’s existence as a leading G7 country in the provision of aid, the rules required of charitable organizations engaged in such activities are extremely onerous and require significant resources in order to stay onside. Fundamentally, the Canadian government takes the position that the Canadian charitable organization must engage in its “own activities” at all times. This means that it must maintain control and direction over the spending of its funds abroad. For this reason, Canadian organizations cannot simply cut a cheque to foreign entities and cannot act as a conduit of funds from donors. Rather, it must control the spending of the funds abroad and must ensure that the undertaking is, in fact, its own project. When acting with foreign partners in the conduct of a joint operation the Canadian organization must again ensure that it has appropriate control over the spending of its funds. Practically, this means that a Canadian organization is often a junior (or inappropriate) partner in funding development or charity activities abroad. There is a push to change these laws to bring Canada more aligned to international operations.

Question Seven: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

Score: 5.0

Contrary to the restrictions on spending funds abroad, Canada is very open to receiving donations from outside of Canada. However, most of Canada’s international tax treaties do not allow for the use of the donation tax credit mechanism to offset any taxes owed in the home country. Rather, the donation tax credit can only be used to offset taxes owed from income from Canadian sources.

IV. Political Environment

The four indicator questions in the next three sections concern the political context, economic conditions, and socio-cultural characteristics that influence the environment for philanthropy.

Question Eight: To what extent is the political environment favorable for philanthropy?

Score: 5.0

Both the charitable and the nonprofit sector in Canada are so varied, with so many subsectors, there is not one global answer that can be given to the question. However, by and large, these organizations act well with various levels of government in working cooperatively to provide services in Canada and abroad. Conflicts sometimes occur where government policy may run contrary to what the charity feels is appropriate in a particular sector. One famous example in Canada occurred where one national charity believed that the redistribution of wealth using the tax system is the key to preventing poverty. Clearly this is a legal solution to a charitable problem and requires political advocacy to affect the solution. However, charities at the time were restricted in such political activities. The relevant section of the Income Tax Act (where the vast majority of laws relating to the regulation of charities are codified) was changed to allow charities to engage in political advocacy that are relevant for the pursuit of their charitable objects (although not partisan activities). At times, Canadian charities are responsible for the distribution of government aid to other organizations in

order to accomplish government objectives. This occurs usually without controversy, but recently became a political issue in Canada because of close connections between the Prime Minister and the organization that was tapped for overseeing close to CAD 1 billion (about USD 802 million). However, this seems to be particular to that situation, and it is not a larger problem in Canada.

Question Nine: To what extent are public policies and practices favorable for philanthropy?

Score: 4.0

By and large, the Canadian government does not spend a great deal of time considering issues relevant for the sector as a whole. As stated earlier, the responsibility for regulating charities falls constitutionally to the provinces, but as the provinces have basically abandoned their jurisdiction in this area, the federal government (through the CRA) has undertaken to become the regulator of charities in the public interest. There is one department within the CRA called the Charities Directorate that is responsible for the charity sector. The organization is effectively a small appendage to the larger revenue collection body and is woefully understaffed to govern the more than 85,000 organizations in the country. We understand that approximately 1 percent of all organizations are audited every year. The general approach is to set the basic rules for the organization and to allow it to function without overly significant government interference—except when audited. The rules are quite generous generally and so Canadian organizations have managed to develop significant strength. While there is a lack of consistent government support for organizations, the existence of a rich donation tax credit, combined with a strong economy, has created an environment where charities are able to operate quite effectively. The government is largely unaware of the extent of the nonprofit (as opposed to the charity) sector, and the rules for nonprofits are even more lax than for charities. There is a distinct lack of government pressure on the sector and conversely a lack of government support. Nevertheless, many groups are able to operate as nonprofits and do so with significant success.

V. Economic Environment

Question Ten: To what extent is the economic context favorable for philanthropy?

Score: 5.0

Both charities and nonprofits are largely exempt from taxation. Reasonable limits are placed on their ability to compete with tax-paying organizations when charities/nonprofits enter the business marketplace. Canadian tax rules favor donations to registered charities as opposed to nonprofits, and this system works well, particularly in situations where individuals are able to accumulate large capital gains. This has benefitted charities and nonprofits tremendously, for as the economy improves, the incentive for the donation of capital gains has improved as well. Moreover, the strong economy has benefitted charitable endowments, which in turn has strengthened the entire ecosystem as the foundations controlling these endowments have greater distribution requirements. Over the past 20+ years, the benefits of donating certain types of capital have been made richer, and as a result of strong gains in the stock market, charities were able to benefit enormously from the economic climate and the rich credits given to donors for donating this type of capital.

Charities and nonprofits also benefit from the favorable economic situation in Canada.

VI. Socio-Cultural Environment

Question Eleven: To what extent are socio-cultural values and practices favorable for philanthropy?

Score: 4.5

Many of Canada's organizations were founded on a religious basis, and as Canadian society has become more secular, donations in general have fallen. While there is still a strong sense of community contribution, the data suggests that donations by younger people and secular people are lower than for older and more religious people. More research is necessary to fully understand the effect of changing societal values on philanthropy. However, large donations still exist to hospitals and universities, while donations to churches and other religious groups are clearly on the decline. These sociological changes are exacerbated by the stagnation in the legal definition of 'charity' in Canada. For example, whereas in previous generations the pursuit of social good was tied to religious mores, in current generations that connection is diluted. Nevertheless, creating organizations to pursue social good when it is not connected to religion can be difficult. Consequently, even if an individual intends to support social good, they may or may not have an avenue to do so through a charitable entity. Although they are open to do so through nonprofit entities, this is often stymied by the lack of tax benefits that are related to gifts to nonprofit entities as opposed to charities.

VII. Future of Philanthropy

These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.

Current state of the philanthropic sector

Philanthropy is generally institutional and well-organized in Canada. The sector, however, is stymied by the fact that the entities responsible for proper regulation of the area, namely the provinces, have abdicated their jurisdiction. Consequently, the federal Parliament passes laws which are within its very limited jurisdiction to legislate. In fact, it is arguably true that some of the laws passed by the federal Parliament are in fact unconstitutional. The charity world is nuanced and varied, from small churches in little villages to large multinational entities that engage in varied activities around the world. The same rules that may regulate multinational organizations are inappropriate for small churches, and so the sector cannot properly grow without proper regulation. The difficulties are magnified by the fact that the court system designed to both grow the definition of charity and to ensure that CRA is properly regulating the sector is not generally a court that hears appeals on the evidence. So, fundamentally, this denies charities many of the basic rights of justice which are open to other organizations when facing governmental regulation.

Three major recent events affecting the philanthropic landscape between January 2018 and December 2020

- 1) COVID-19 pandemic
- 2) The change in law to allow charities to pursue political advocacy when done in pursuit of their charitable objectives
- 3) No 2020 federal budget

Future development trends in the philanthropic landscape

Given Canada's alignment with the United States, the philanthropic issues here are the same seen in the United States. The impact of blockchain technologies, crowdfunding, and various corporate hybrids are still being explored. Amongst these, the federal government has committed most heavily to developing tools of social finance and social bonds, both of which have appeared more than once in federal budgets. All of the issues raised above are likely to affect the philanthropic sector, but it is still too early to tell.

Three key recommendations to improve the environment for philanthropy

- The court system for adjudicating disputes must be changed. Charities must have an opportunity to argue at a court which allows for the testing of evidence. This court must also be empowered with the ability to expand the definition of charity. Canada relies on the courts to analogize, and if the courts have also decided not to do so, then there will be no further development of the law of charity.
- The provinces must engage in regulation of the sector. They must do so as a group to ensure that there is a uniform set of rules across the country. In doing this, the federal Parliament must remove itself from the area and must engage only with respect to the imposition of an income tax.
- The rules applicable to the philanthropic sector must be examined so that there is a set of rules that govern subsectors differently to ensure not only the proper regulation but the proper growth of service to the country.

VIII. Philanthropic Response to COVID-19

These questions are used to provide a general picture of the philanthropic response to the COVID-19 pandemic in this country and recommendations for improving cross-sectoral collaboration.

Areas where the nonprofit sector and philanthropy are playing a role in responding to COVID-19

Several of Canada's largest foundations have actually stepped up their distributions during the pandemic to health organizations in order that they can be better funded to fight COVID-19. This is useful as many smaller donations have dried up.

Innovation and new trends in the nonprofit sector and philanthropy related to COVID-19 responses

None really except for the increase in the distribution by certain foundations to the sector.

Impact of COVID-19 on the philanthropic environment

Canadian foundations are required to distribute a certain amount of their endowment every year. Many organizations have found that their usual projects have been stalled by the crisis, and so they have been unable to meet their usual quota by supporting their usual projects. Instead, these groups have sought out different projects in which to spend their funds. The COVID-19 crisis hit quickly and then, of course, the focus was on better understanding the obstacles to overcome. The sector is still considering its response in the environment for philanthropy, and resolutions are becoming clearer but have not yet solidified.

Anticipated impact of COVID-19 on the philanthropic environment in 2021

The major change would seem to be a potential push for change to the disbursement quota. Many charitable foundations are sitting on large piles of cash which could be distributed out to health organizations and other groups that need it. One expects that there will be a change to the disbursement quota as a result of consultations announced in the federal budget of 2021. Indeed, there may be rules put in place to prefer the distribution of those funds to charitable organizations on the ground that function in the health or poverty sectors.

References

Government of Canada. (2022). *Home*. Available at: www.canada.gc.ca

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