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Charity and Law in Canada

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Donald J. Bourgeois – Canada’s Legal Framework for Charity and Charities

Abstract:

The legal framework for charity and charities in Canada is based on what a “charity” is and how it has evolved. Consisting of a mix of trust law, common law, statutory law and private sector initiatives, the legal framework functions through the exercise of the jurisdictional roles of both Parliament and the provincial and territorial legislatures, and the *parens patriae* responsibility of the Crown.

The principal purpose of the legal framework is to protect charitable assets and to ensure they are used solely for charitable activities undertaken in keeping with the charitable purposes of the charity. Those assets are held by the charity for a particular charitable purpose, meaning that they must be used to carry out charitable activities that achieve public benefits. The legal framework requires demonstration of the (charitable) public benefit.

Rather than a unified comprehensive legal framework, however, there exist in Canada intersecting frameworks grounded in distinct sources. We can trace developments in common law and, over the past four centuries, in the law of equity and trusts. Those elements are incorporated into federal and provincial/territorial law according to constitutional division of powers.

The most explicit framework for charity and charities is that put in place at the federal level pursuant to constitutional authority over taxation and administered by the Canada Revenue Agency charged with protecting the integrity of the income tax system. Yet another framework comes in the form of incorporation legislation. Parliament and many provinces/territories have enacted modern incorporation statutes that provide a legal structure comparable to that in place for business corporations and thus focused primarily on governance and membership rights. Finally, we find pertinent legislation and regulation in specific sectors, such as education and childcare.

There has been little academic or legislative attention given to the legal framework for charity and charities in Canada. This paper provides a map of what is currently in place, an

account of how the framework has evolved largely from the perspectives of tax system integrity and protection of charity assets, and an overview of the co-existence of the elements and sources of this multi-dimensional framework.

Joanne Cave – Seizing the Opportunity: A Path to Meaningful and Future-Focused Funding Reform for Canada’s Charitable Sector

Abstract:

Funding has been described as the “most urgent capacity challenge” facing Canada’s charitable sector. In the early 2000s, funding reform was a prominent theme in federal policy conversations about how the non-profit and charitable sector should be effectively resourced. The Government of Canada’s Voluntary Sector Initiative, Code of Good Practice on Funding, and Blue Ribbon Panel on Grants and Contributions Programs identified significant opportunities to modernize and streamline how the federal government administers funding to the non-profit and charitable sector.

Twenty years later, not much has changed. Charities continue to experience significant administrative challenges completing the required reporting and evaluation requirements to sustain multiple funding sources. This challenging funding environment has been further exacerbated by economic volatility, rising inflation and cost of living pressures, increased demand for services and other lasting social and economic effects of the COVID-19 pandemic. These challenges are explored through several case studies of charities across Canada, who provide concrete examples of how the current funding environment affects their operations.

This paper will explore promising funding practices, both within Canada and across other jurisdictions, and opportunities for policy and law reform. Some promising practices that will be explored include Australia’s National Standard Chart of Accounts to centralize data related to charitable funding, the United States *Streamlining Federal Grants Act*, the use of backbone/system planner organizations to coordinate funding at a local level (commonly used in the housing and homelessness sector), unrestricted funding pilot projects as a result of the COVID-19 pandemic and regulatory sandboxes to allow for experimentation with innovative funding models. The paper will conclude with a discussion of the importance of funding reform for the Canadian charitable sector and the consequences of inaction.

Kathryn Chan – Discretionary Decision-Making under the Registered Charity Regime

Abstract:

Canada’s *de facto* charities regulator – the Canada Revenue Agency Charities Directorate – enjoys extensive discretionary decision-making powers. Because the exercise of these

powers can significantly affect (i) the *operation* of charitable projects; (ii) the *reputation* of the organizations and individuals that carry out charitable projects; and (iii) *public trust* in the charitable sector at large, it is crucial that the scope of the Directorate's discretion be appropriately circumscribed.

This paper identifies specific features of the *Income Tax Act* registered charity regime that expand the scope for discretionary decision-making in Canadian charity regulation. A discussion of the benefits and risks of the extensive discretion enjoyed by the Directorate is followed by the exploration of the potential tools to limit or structure its exercise.

Helge Dedek – *Agape, Caritas, Love: The Roots of “Charity” in the Western Legal Tradition*

Abstract:

The concept of “charity,” understood as providing aid to those in need, is intricately connected in Western culture with the Judaeo-Christian religious tradition. The term “charity” itself reflects this connection, as it derives from the Latin *caritas*, which translates the Greek *agape* to denote a particular Christian notion of selfless “love.” Since late Antiquity, “charitable” institutions in Europe, such as hospitals and orphanages, have been primarily associated with Church-related foundations “*piae causae*” (i.e., dedicated to pious purposes). The legal status of these institutions is discussed as early as in Justinian's Codex.

The Western legal tradition has developed an understanding of “charity” as an extralegal phenomenon. Robert Joseph Pothier, for instance, opens his influential 1806 *Treatise on Obligations* by distinguishing between “perfect” and “imperfect” obligations – a dichotomy deeply ingrained in the Western tradition – and explaining that the duties of charity and gratitude are imperfect obligations “for which we are accountable to God only”. Charitable giving, therefore, is framed as an obligation beyond the reach of the law. Indeed, private law exhibits an outright skepticism toward “charity.” While religious or ethical traditions might extol the virtue of giving, private law principles often caution against transferring wealth without receiving something of value in return.

“Charity” can be regulated by the law, whether in its institutional dimensions or as an act of giving between private individuals. However, it does not function as a foundational principle that informs or underpins the law, even if the concept of *caritas* clearly has significant implications for core legal concepts such as property, contract, and torts—implications that have been explored by thinkers in canon law, moral theology, and moral philosophy from the Middle Ages onward.

This paper aims to trace the historical process through which charity has come to be regarded as an extralegal phenomenon rather than a value intrinsic to the law, with a focus on the civil law tradition as one of the major legal traditions in Canada. It will also examine the consequences of this development for contemporary legal theory and practice.

Anver Emon – Whither Canadian Humanitarianism: Canada’s War on Terror Financing...and Humanitarian Charities?

Abstract available soon.

Marc Lemieux – Canadian Humanitarian Assistance to Beneficiaries in High-Risk Countries: Finding the Right Balance between the Expression of Foreign Policy, the Repression of Crime and the Facilitation of Charity

Abstract:

This paper considers the interaction between law and charity from the perspective of the international humanitarian assistance provided by Canada and Canadians to beneficiaries in high-risk countries.

The qualifier “high-risk” is used in this paper to designate countries that are at war, countries that are the object of economic sanctions and countries that are known for a high risk of financial crime, money laundering or terrorist activities.

Canadian economic sanctions prohibit the provision of goods, services and financial assistance to beneficiaries in a number of countries. Sanctions are expressions of Canadian foreign policy in response to various international issues. The conflict between indiscriminate sanctions and international humanitarian assistance is well-documented.

In addition, Canada’s anti-money laundering and anti-terrorism legislation requires financial institutions to detect and deter transactions that facilitate the customers’ illegal activities. Concern with compliance leads to so-called de-risking practices by financial institutions that restrict the ability of funds to move through high-risk countries. The conflict between overbroad risk management by financial institutions and the delivery of international humanitarian assistance is also well-documented.

The central question in this paper is: Do Canadian laws establish an appropriate balance between the expression of foreign policy, the repression of crime and the facilitation of international humanitarian assistance?

Part 1 of the paper maps international humanitarian assistance by Canada and Canadians. Three broad types are identified and measured: public assistance by governments and governmental agencies, assistance by registered charities and diaspora assistance by Canadian immigrants to families and communities in their countries of origin. The paper

argues that it would be in the public interest for the Canadian government to collect detailed statistics of all types of international humanitarian assistance by Canadians, not solely public assistance.

Part 2 of the paper considers and evaluates the Canadian government's recent amendment of the terrorist activities offence in the *Criminal Code* to facilitate the provision of international humanitarian assistance. The amendment provides for a general humanitarian activities exception and allows applications for ministerial authorizations to conduct otherwise prohibited activities in specific cases.

Part 3 of the paper turns to economic sanctions and anti-money-laundering and anti-terrorist financing, where an appropriate balance has not been reached. Sanctions regarding different countries may contain different exceptions, the applicability of which to international humanitarian assistance is not always as clear as it could be. In addition, the effectiveness of the exceptions has limited impact on the compliance concerns of financial institutions. Other mechanisms are proposed, including an immunity for providers of financial services related to the delivery of international humanitarian assistance, and the creation of a new government-owned special purpose bank that would be mandated to facilitate the provision of Canadian international humanitarian assistance.

Benjamin Miller and Manish Oza – Advocacy and the Best Interests of Charitable Corporations: Legal and Economic Dimensions of Fiduciary Duties

Abstract:

Following intense pressure from the charitable sector, in 2018, the *Income Tax Act* was amended to clarify that registered charities can engage in unlimited public policy dialogue and delivery activities in furtherance of their charitable purposes. One of the leading rationales for this change was that the Canada Revenue Agency's (CRA) so-called "10% limit" on political activities had silenced charitable voices. However, in the years since this amendment we have not seen a marked increase in advocacy. This paper seeks to consider what, if any, further reforms would be justified and effective in inducing greater public policy participation by charities.

It does so first by revisiting the rationales offered in case law for the "political purposes doctrine", which grounded restrictions on charities engaging in political activities. By reassessing this case law in light of the distinction between "public benefit" pursued by charities and "public policy" as articulated by legislators, it identifies charities as distinct from other actors in the democratic arena but not in a way which justifies exemption from rules governing participation in political discourse.

Second, it looks at the data from the Canada Revenue Agency, Elections Canada, Canada Lobbyist Registry, and from a recent survey on charity advocacy to determine the extent of the impact of the 2018 changes. Based on this data, it finds that there has been some increase, but that resource-intensive advocacy by charities remains extremely rare (<1%). Paradoxically, however, there is significant agreement among charities that advocacy is important. There is also confusion among a significant segment of charities about the relationship of advocacy to their mission.

Third, the paper interrogates why charities have not allocated more resources to advocacy, despite acknowledging that it is important to achieving charitable purposes. It explores whether there is ever a fiduciary duty for charities to advocate. It concludes that sometimes there is, where it is determined to be necessary to accomplish the charity's mission. The paper further considers what the fiduciary duties of charitable directors require where advocacy may threaten their relationships with funders, and suggests that these duties may require both adequate cost allocation and reasonable risk taking.

Fourth, the paper considers the role of charitable advocacy in a democratic society. It considers different justifications for treating charities as having a significant role to play in democracy, as well as concerns about the potential distorting effect of private power on the public sphere. It suggests that elections law can address these concerns.

Sarah Morales (*Su-taxwiye*) – Muhw stem tsu' thu' thaam u tu suleluhwst, ts'i ts'uwatul ch: The Obligation to Help One Another in the Coast Salish Legal Tradition

Abstract:

Within the Hul'q'umi'num language, a language spoken by the Coast Salish peoples of southeast Vancouver Island, there is a teaching – *ts'i'ts'uwatul'*. This teaching roughly translates in English to “help one another”; however, its meaning is much more nuanced and brings insight to Coast Salish ways of relating and our obligations to one another.

The Coast Salish ethos of relations recognizes the strength of being connected. The practice of establishing positive, strong, and widespread connections, with both our human and more than human relations, is guided by the meta principles of sharing and respect. *Ts'i'ts'uwatul'* teaches that what we have is not as important as what we share and how we selflessly reach out to help others within our community. This is because when we help one another, we help ourselves.

This is somewhat related to the concept of philanthropy in charity law. Philanthropy is fundamentally about the spirit of giving and the desire to improve the lives of others without expectation of reward. Driven by altruism and public benefit, it is thought that philanthropy helps build strong communities – similar to the understanding of *ts'i'ts'uwatul'*. However,

despite their apparent similarities, the legal effects of these concepts differ within their respective legal traditions. Where the teaching of *ts'i'ts'uwatul'* helps to govern our legal obligations to one another such that breaches can lead to the imposition of remedies, charity law is primarily concerned with conferring benefits on organizations who can establish that they operate exclusively for charitable purposes and activities.

This paper will examine the Coast Salish legal concept of *ts'i'ts'uwatul'*, the obligation to support one another, and discuss its similarities and differences to the concepts of philanthropy and public benefit in Canadian charity law. Exploring both the private and public nature of these obligations, it will bring insight into how Indigenous law, like the Coast Salish legal tradition, can help inform how we understand our obligations to help one another and the benefits of those obligations for our entire society.

Peter C. Oliver – Charity and Law in Canada: A Sustainable Past, Present and Future

Abstract:

This paper operates from the assumption that neither law nor charity is self-sustaining. If the projects of law and charity are to succeed, attention must be paid not only to what law and charity *are* (in conceptual terms) but to what it is that contributes to their ongoing vitality. As set out in the framing of the Law Commission of Canada's work, law is not just a "compilation of formal rules"; it is an "intersection" in the sense that it "explicitly conjures up active engagement with, resistance to, and participation in the making and sustaining of law". Charity is also at an intersection, where engagement is very much at issue.

The first part of this paper sets out a framework for a sustainable approach to both law and law reform. The most important aspect of this approach is that all law, including the law of charity, is not just the words on formal pieces of paper. If law, in this case charity law, is to fulfil its purposes, we must turn our mind not only to the content of the law but to the conditions that ensure its sustainability.

In the case of charity, this means that even as we reaffirm the importance of some of the traditional categories of charity that relate to tangible, material criteria – relief of poverty, advancement of education and purposes beneficial to the community – we should be careful not to ignore other factors that provide less tangible, less material, less obviously direct benefits to both the receivers and the providers of charitable endeavours. So, for example, both the more spiritual aspects of religion, as well as the seemingly less direct (e.g. rehabilitative) or narrower purposes that assist only small groups of people, may in turn have a vital role in supporting the very individuals on whom we are counting to do significant amounts of the challenging work that eventually benefits the community in more tangible ways.

How do organizations and institutions promote the connections and support systems that make real-world charitable endeavours possible? This paper uses insights from the United Kingdom studies at the turn of the century to consider the direction and values that should be borne in mind in considering the future of Canadian charity law. In that endeavour the current state of Canadian charity law, and current statistical information regarding charitable giving and volunteering is relevant. CanadaHelps 2024 reports that “for the eleventh year running, the number of Canadians making charitable donations has declined”, even as “the number of people seeking help from charities has soared: one in five Canadians [is] using charitable services to meet essential needs”. Their data also points to “a clear correlation between social connections and philanthropy” and a need to “the deep connections between our social ties and our willingness to give”. These findings support the goal of this paper to identify a sustainable approach to both law and charity.

Benjamin Perrin – Charity and the *Charter*: Aligning Charity Law with Constitutional Values, Rights, and Freedoms

Abstract available soon.

Donn Short, Michelle Gallant & Darcy L. MacPherson – Reconceptualizing Charity as Public Benefit in Canadian Tax Law

Abstract

Since its inception, Canadian income tax law has incentivized charitable giving as a means of supporting activities deemed to advance the public good. Yet what qualifies as a “charitable purpose” is not defined in the *Income Tax Act*. Instead, designation of charitable status is determined according to a common law framework grounded in the *Pemsel* classification, named after the 1891 UK House of Lords decision in which it was developed. Although this framework presents as doctrinally neutral, its historical foundations embed inherited, culturally contingent assumptions about social value.

In practice, this inherited framework continues to privilege organizations aligned with historically dominant norms and institutional forms, while disadvantaging or excluding initiatives associated with marginalized communities and alternative ways of pursuing public purposes. Such exclusions are not incidental. Since charitable status functions as a public subsidy, designation decisions carry significant fiscal consequences and shape how public resources are allocated through private intermediaries.

This paper adopts a tax-policy perspective that treats charitable tax incentives as public expenditures warranting democratic accountability and equal treatment. From this foundation, it argues for a recalibration of Canada’s approach to charitable status. It proposes a shift away from inherited common law definitions toward a statutory

conception of charity centred on public benefit. Such reform would better reflect the values of a pluralistic society, make visible the public nature of tax expenditures for charity, and encourage sustained political and public deliberation about which activities merit collective financial support.

Part I traces the historical development of the charitable framework in Canadian law and examines its exclusionary effects. Part II outlines a proposed statutory model of public benefit, together with reporting and oversight mechanisms aimed at enhancing transparency and accountability in the use of public funds. The paper also acknowledges the limits and risks of statutory reform and emphasizes the need for ongoing democratic engagement rather than definitive closure.

Jennifer Sigafos – A Brief History of the Notion and Practice of “Charity” in the Common Law

Abstract:

In this paper I will discuss the rise of the concept of “charity” in the common law tradition. I note that “charity” is the concrete or tangible expression of the goodwill of people toward others, and that therefore its history and development is strongly linked to historical developments affecting how people live in societies.

Charitable gifts have long enjoyed a particularly favoured status at law, which has persisted for centuries. Originally closely tied to the Roman Catholic Church’s teachings, the Protestant Reformation led to a shift toward more secular purposes. This coincided with the rise of a bourgeoisie class, with the means to make these gifts.

Early legal treatments of charity were broadly designed to describe what existed as charitable, rather than to direct donors toward particular purposes. This changed in the 18th and 19th centuries, with an expansion of what was regarded as charitable. This was often at the expense of donor intentions, but had the effect of channelling charitable or philanthropic intentions into a delimited taxonomy of purposes.

In the 20th century, the important requirement of public benefit was developed, in addition to these purposes. To be in the public benefit, a purpose must be both capable of benefiting the public and actually to benefit a sufficiently large (or remote from the donor) segment of the public.

In terms of the principal mechanisms by which charity is carried out, over this long history we have seen a shift from the mechanism of the charitable trust to incorporated entities, though local, grass-roots micro-entities, often informal in nature, remain very important both in number and in upholding the spirit of charity.

Samuel Singer – The Canada Revenue Agency as Canada’s Charity Regulator

Abstract:

The Canada Revenue Agency (CRA) plays a central role in the regulation of charities in Canada. This paper explores the evolution of the CRA’s role as a charity regulator, its current functions, and the advantages and disadvantages of this regulatory model in light of alternative regulatory models in other jurisdictions.

The historical development of the CRA’s regulatory role reveals a shift from a tax administration perspective to a more specialized regulatory function, particularly through the Charities Directorate, which possesses unique expertise in assessing charitable purposes and activities. However, the CRA’s dual function as both tax administrator and charity regulator has drawn criticism. Critics argue that the CRA’s primary function as a tax authority creates an inherent conflict in its regulatory approach, potentially prioritizing revenue protection over the development of a supportive regulatory environment for charities. Charity sector representatives have also argued the CRA lacks sufficient non-profit and charity sector representation and expertise.

Comparative analysis of alternative regulatory frameworks in the United Kingdom, Australia, and New Zealand reveals different approaches to charity oversight. These jurisdictions have established independent charity commissions or regulators, such as the Charity Commission for England and Wales, the Australian Charities and Not-for-profits Commission (ACNC), and Charities Services in New Zealand. These bodies are designed to focus exclusively on the needs of the charitable sector, with a mandate extending beyond tax law enforcement to include sector support, public accountability, and proactive guidance on compliance. Proponents of this model argue that such independent commissions provide greater transparency and a more supportive regulatory environment concerned about the long-term health of the charity sector. However, these models also present challenges, including a decrease in integrated tax expertise, increased regulatory costs, and potential politicization.

Policy recommendations to reform the regulation of charities in Canada include calls for enhancing transparency in its decision-making process and improving engagement with the charitable sector. Others call for broader reforms, highlighting the limits of the CRA’s regulatory function and suggesting that Canada consider establishing an independent charities commission similar to those found in other jurisdictions. Some proposals advocate for a hybrid model in which the CRA retains responsibility for tax-related compliance while an independent body handles governance, education, and sectoral development. Finally, some argue that the Charities Directorate is best-placed to regulate

the Canadian charity sector going forward, while advocating for some minor regulatory reforms.

This paper summarizes the various positions in the debate over the appropriate regulatory model for the Canadian charity sector, outlining the advantages and disadvantages of maintaining the CRA as the primary regulator versus transitioning to an independent or hybrid regulatory model. This analysis highlights the complexities of charity regulation in Canada and assesses multiple pathways for reform to better serve the sector's evolving needs.

Lionel Smith – The Varieties of Public Trusts

Abstract:

In the modern law of trusts, it is generally taken for granted that the terms 'charitable trust' and 'public trust' are synonymous. This has not always been true, however, and it is arguable that it is not true today. Nineteenth-century English courts recognized public trusts that were not charitable on any modern definition, and such trusts, though rarer, still exist today.

There are several reasons why this history and this distinction should not be forgotten. One is that the Canadian case law on charities has arguably taken a wrong turn precisely due to a misreading of history. Another is that it provides useful analytical tools for a modern world in which trust law is increasingly being modified by legislation. Just as 'charitable trust' and 'public trust' are typically treated as synonymous, so too are 'private purpose trust' and 'non-charitable purpose trust'. This is a mistake if there exist non-charitable public purpose trusts.

Deina Warren and Derek B.M. Ross – An Independent Charitable Sector: The Need for a Coherent Framework to Prevent Undue Political Interference in the Charitable Sector

Abstract:

A long-standing principle of charity law is that charities must abstain from partisan politics. Charities can engage in political activities but only in pursuit of other charitable purposes, and to the exclusion of partisan political activities. The rationale for this principle has not always been clearly articulated, but one that will be explored in this paper is that charities must exist for the public benefit and advance purposes that transcend the immediate and ideological priorities of any political party or government of the day.

While other rationales for the "political purposes" doctrine have generated critique, this principle can better withstand such scrutiny if it is seen in light of a larger "theory of charity", one that conceives of the charitable sector as an *independent* element of civic

society that is purposefully *distinct* from the state. As a result of this independence, the charitable sector can augment the role and work of the state in diverse, meaningful ways while also holding it accountable to its proper role and obligations, ensuring that the government neither overlooks nor compounds the needs of its citizenry. This framework necessarily adopts a more holistic approach to the “political purposes” doctrine by recognizing its dual dimensions: just as charitable organizations must abstain from interfering with partisan politics, partisan politics must abstain from interfering with charities.

This paper will examine some recent initiatives, legislative and otherwise, that have generated concerns about potential violations of this principle. These initiatives allegedly favour or burden organizations based on the alignment of their work with certain partisan goals. While the introduction and passage of laws generally reflect the ideological vision of the government of the day, there exists the possibility that legislative initiatives constitute improper political interference.

This paper identifies guidelines for legislators, regulators, and decisionmakers with respect to appropriate boundaries, exploring ways to respect and reconcile three additional principles of charity law: (1) charities must not advance purposes contrary to public policy, (2) charities may advocate to retain, and oppose, or change a law, policy, or decision, of any level of government in Canada, and (3) the government must remain institutionally neutral in matters of religion and transcendent truths in order to respect pluralism’s requirements of diversity and equality. In doing so, the paper fills an important gap in the literature by laying a foundation for a more coherent doctrinal framework to prevent improper partisan interference with the charitable sector.

Lynne Westerhof and Heather Keachie – Is the Canada Not-for-Profit Corporations Act Ripe for Reform?

Abstract:

When the *Canada Not-for-Profit Corporations Act* (“CNCA”) came into effect in October 2011, it was generally welcomed by the charitable and not-for-profit sector in Canada as a modern statute, better suited to meet the current needs of the sector than its predecessor legislation (Part II of the *Canada Corporations Act*). However, some features of the CNCA reflect ideas that were poorly transposed from the *Canada Business Corporations Act* (“CBCA”) into the non-share capital context. Nearly 15 years later, these conceptual ghosts have haunted the CNCA for too long.

Many of the problems with the CNCA come from the fact it was closely modelled after the CBCA, despite the fundamental differences in how corporations under each piece of

legislation are structured. A CBCA corporation is controlled by its shareholders. By way of contrast, a CNCA corporation is controlled by its members who do not hold shares in the corporation and who rarely have a significant financial interest in the corporation. The application of shareholder concepts to members and member rights in the CNCA has led to several provisions that fit awkwardly in the not-for-profit context, and should be reconsidered. For example, the distinction between soliciting and non-soliciting corporations and the protections afforded non-voting members could be adapted to better fit the functional needs of not-for-profit corporations.

There are also other, more technical concerns with the CNCA that have become evident to both the sector and legal practitioners after more than a decade of working with the legislation. While some existing concepts in the CNCA should be amended or removed, other concepts should be added to the CNCA to permit better governance of not-for-profit corporations. For example, the CNCA could permit a functional distinction between charitable and non-charitable corporations and tailor specific governance requirements based on this distinction. Other jurisdictions, both in Canada and internationally, have adopted not-for-profit corporate legislation which provide inspiration for future legislative reform of the CNCA. Examples include the Ontario *Not-for-Profit Corporations Act, 2010*, that allows for ex-officio directors, legislation in the United Kingdom that allows corporations to have only directors and no members in certain circumstances, and United States model legislation allowing for dual-board structures for corporations that wish to have a formal board of advisors with non-directors.

Not-for-profit corporations serve a different purpose and are governed differently than for-profit corporations. For this reason, not-for-profit corporations should have legislation that reflects those differences rather than relying on concepts that are better suited to shareholders and the for-profit context. This paper demonstrates how conceptual ghosts from the for-profit context should be removed and replaced with more innovative provisions better suited to governance in the not-for-profit sector.