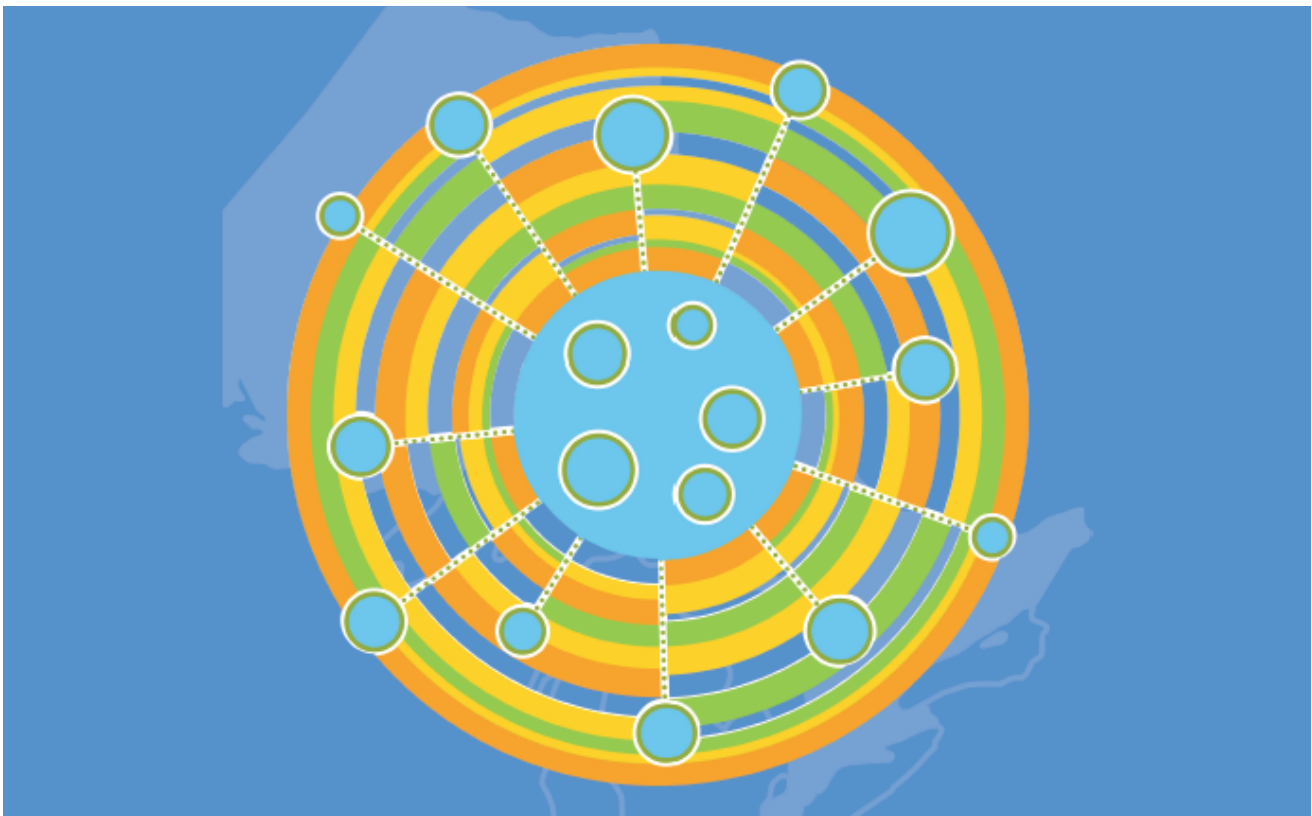# Shared Platforms: Towards an enabling policy and regulatory environment in Canada

GROWING INNOVATION. AMPLIFYING COMMUNITY ASSETS AND EXPERTISE.

November 2017 | Ontario Nonprofit Network

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ABOUT ONN

ONN is the independent nonprofit network, with a reach of over 20,000, for the 55,000 nonprofits and charities in Ontario, focused on policy, advocacy, and services to strengthen Ontario's nonprofit sector as a key pillar of our society and economy.

ONN works to create a public policy environment that allows nonprofits and charities to thrive. We engage our network of diverse nonprofit organizations across Ontario to work together on issues affecting the sector and channel the voices of our network to government, funders, and other stakeholders.

OUR VISION

A Strong and Resilient Nonprofit Sector. Thriving Communities. A Dynamic Province.

OUR MISSION

To engage, advocate, and lead with—and for—nonprofit and charitable organizations that work for the public benefit in Ontario.

OUR VALUES

Courage to take risks and do things differently. Diversity of perspectives, creativity and expertise to get stuff done. Optimism and determination. Solutions created by the sector, with the sector, for the sector. Celebrating our successes and learning from our experiences. Strength that comes from working together.

ACKNOWLEDGEMENTS

Executive Summary

The shared platform model offers an alternative organizational structure for groups undertaking charitable activities that is more accessible, timely, less costly, and often times a preferred alternative to incorporating and obtaining charitable registration independently.

Shared platforms effectively use existing community expertise and capacity to build the sector's ability to respond to community needs. The shared platform has demonstrated significant benefits to volunteers, funders, governments and communities as it has been developed and perfected over the past ten years. This paper makes three recommendations that would create an enabling policy and regulatory environment in Canada for charities to use shared platforms as they build and innovate for stronger communities.

Our policy recommendations for the federal government:

1. Provide a modernized legislative framework for charities to support their work
2. Create a Guidance on demonstrating direction and control that supports modern methods of undertaking work
3. Provide formal recognition of shared platforms

Note to reader: This paper focuses on policy issues specific to charities that act as shared platforms, as they face unique challenges.

Introduction

The shared platform is an innovative model for emerging projects that fosters collaboration and reduces administrative barriers, allowing projects to focus on their community work, while at the same time ensuring regulatory compliance.

WHAT IS A SHARED PLATFORM?

"An organization "adopts" and provides a legal home for a project or initiative that is unincorporated and does not have its own legal status. The host organization provides administrative support and oversight, assuming all legal and financial responsibility for the activities of the project. These programs and responsibilities are additional to the host organization's day-to-day programming and community development responsibilities.

The provision of a shared platform is therefore an intentional decision to extend and leverage the host organization's administrative infrastructure (comprehensive financial, human resources, risk and grant management) to support one or more projects. While each project might have its own 'brand' and each operates independently of other projects within the shared platform, all projects become an integral part of the host organization as a legal entity – not unlike the way in which a division or department might operate within an organization."

– ONN's *Shared Platform Guidebook,* 2016

The shared platform is one of many solutions developed by the charitable and nonprofit sector in Canada to support innovation and meet community needs.

In operational terms, shared platforms include one or all of the following types of activities:

- Internally generated projects performed by the legal host organization's employees or contractors
- Externally generated projects "adopted" as the organization's projects and performed by their employees or contractors
- The housing of community collaborations and associated staff or contractors

In all these cases, the project is an integral part of the organization. The organization provides administrative support and oversight, assuming all legal and financial responsibility for the activities of the project, while the project leaders are responsible for the day-to-day programming of the project.

WHY SHARED PLATFORMS?

The shared platform model offers an alternative for groups undertaking charitable activities that is more accessible, and more timely and cost effective than incorporating and registering a new charity. It allows innovative projects to achieve extraordinary impacts in communities across Canada. Working with our communities and adapting to meet changing needs is essential for the renewal of our sector.

There are five primary reasons to enable and support charities to provide shared platforms. Shared platforms:

1. Maximize community efforts and donor impact, and lower risk for funders
2. Maximize time and money by building on existing sector expertise
3. Support innovation and experimentation for public benefit
4. Reduce the pressure on regulators and save them time
5. Increase opportunities for equity and inclusion

With 42% of the nonprofit sector having annual budgets under $30,000,[1] a shared platform would alleviate the pressure on smaller initiatives to manage their own organization by allowing them to have a long-term relationship with their shared platforms so they can focus on their project while benefiting from the strong administrative support of the shared platform.

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[1] Statistics Canada catalogue No. 61-533-X1E, Cornerstones of Community: Highlights of the National Survey of Nonprofit and Voluntary Organizations pg. 40
http://www5.statcan.gc.ca/olc-cel/olc.action?objId=61-533-X&objType=2&lang=en&limit=0

WHERE ARE WE NOW?

For almost a decade, practitioners, funders and policy and legal advisors have been working to develop common language and good practices for shared platforms to ensure both regulatory compliance and good organizational practices. *For a timeline and description of these activities, see Appendix A.*

Although there has been much effort to develop shared platform practice over these years, this same period has seen an uncertain regulatory environment for shared platforms. Charities are required by law to demonstrate that their resources are used for their "own charitable activities", which has in turn been interpreted to require that charities demonstrate "direction and control" over their activities. However, the enforcement of these requirements by regulators has been at times restrictive, leading boards and senior leaders to uncertainty as to whether they must micromanage the day-to-day decisions of projects in order to be compliant. This hierarchical approach to management hinders the potential of shared platforms to foster new leadership at the project level and is out of sync with modern management practice and legal decisions regarding responsible corporate oversight.[2]

Even with the release of ONN's *Shared Platform Guidebook*, a legal caution was included, describing the risks of improper implementation and strongly encouraging organizations to obtain legal advice. The focus on risk and uncertainty has hindered how many organizations are acting as shared platforms and how they carry out this practice, limiting the potential of shared platforms within the charitable sector.

WHERE DO WE WANT TO BE?

As McIsaac and Moody point out: "There is an opportunity for the not-for-profit sector to organize around mission and ideas rather than corporate and administrative functions. Creating a landscape that provides alternative options in governance and organizational support could allow community and creative leaders to spend time fulfilling and realizing their vision rather than focusing time and resources on governance and administration."[3]

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[2] Valentine, A. (2016). Foreign Activities by Canadian Registered Charities: Challenges and Options for Reform. *The Philanthropist*. Retrieved from:
http://thephilanthropist.ca/2016/11/foreign-activities-by-canadian-registered-charitieschallenges- and-options-for-reform/
[3] McIsaac, E. & Moody, C. (2013). A Platform For Change. *Mowat NFP, Sector Signals Series*. Retrieved from:
http://mowatcentre.ca/a-platform-for-change/

We need an enabling policy and regulatory environment that advances and supports shared platforms. This would include Canada Revenue Agency (CRA) formally recognizing the model, thereby allowing it to grow and operate across Canada in a way that is informed, compliant, and supportive of modern management practices. The result would be more sector innovation, new leadership, stronger governance, and a healthier nonprofit sector overall.

The Way Forward

In order to create an enabling policy and regulatory environment that supports the growth and development of shared platforms, the sector needs three things:

- A modernized legislative framework in which to operate
- Guidance on demonstrating direction and control that supports modern methods of undertaking work
- Formal recognition of shared platforms

1. A modernized legislative framework in which to operate

There is an opportunity to include shared platforms within the broader federal government discussions to modernize the legislative framework governing the charitable sector. The current state of the Income Tax Act and the way it is administered by the CRA makes compliance challenging and cumbersome for the organization acting as a shared platform, constraining the ability of the sector to support the communities it serves.

The Report of the Consultation Panel on the Political Activities of Charities proposes the following long-term legislative change: "Modernize the legislative framework governing the charitable sector (Income Tax Act) to ensure a focus on charitable purposes rather than activities, and adopt an inclusive list of acceptable charitable purposes to reflect current social and environmental issues and approaches."

A modernized legislative framework that focuses on a charity's purpose rather than activities would provide greater clarity for charities that provide a shared platform. Emerging and collaborative initiatives seeking to be part of a shared platform are often innovations of existing activities or extensions of them. The charity would be held accountable to ensure projects were consistent with its

charitable purposes, while being permitted to innovate and extend its activities to further these purposes.

In other jurisdictions, charities are held responsible for the project's purpose and financial accountability but are not expected to manage in detail their activities.[4] This approach to accountability for charitable organizations supports collaboration and networking and their ability to nurture sector innovation and leadership. Enabling charities to engage in these effective and modern methods of doing their work will enhance their effectiveness and still ensure accountability for the regulator for the expenditure of charitable funds.

2. Guidance on demonstrating direction and control that supports modern methods of undertaking work

In Andrew Valentine's 2016 article in *The Philanthropist*, he notes that, "the [Income Tax] Act says nothing about 'direction and control.' It states simply that a charitable organization must devote its resources to charitable activities carried out 'by the organization itself.' The requirement to show 'direction and control' has been effectively read into the Act by CRA and the courts, and has in fact been made the primary determinant of whether charities meet the 'own activities' requirement. CRA's interpretation of the 'own activities' requirement focuses more on the presence or absence of direction and control than on the nature of the formal legal relationship between the charity and its intermediary. CRA states that it will recognize various forms of intermediary relationship – agents, joint ventures, contractors, etc. – as meeting this requirement *provided that there is direction and control*."

In a shared platform, organizations "adopt" and provide a legal home for a project or initiative that does not have its own legal status. Therefore, charities must be seen as carrying out their "own activities" through these projects or initiatives. This has been interpreted by CRA to mean that the charity must provide direction and control to its projects; while at the same time, organizations want to foster and support leadership at the project level. It is not clear CRA recognizes that delegation of responsibilities does not equate with a lack of control by the organization.

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[4] See Appendix B for descriptions of how Australia and USA manage shared platform-type relationships.

At this time, the current case law and Canada Revenue Agency Guidances are quite restrictive and could be read to suggest that the charity is quite limited in what decisions can be delegated to project leadership, rather than the charity's management and board. This interpretation has led to caution and uncertainty in the sector, and at times organizations have felt the need to demonstrate levels of "top-down" day-to-day management that are unnecessary and unhelpful to the success of shared platform projects and the organization overall.

CRA's existing guidance on the requirements for direction and control in the context of charities working through intermediaries[5] recognizes that a charity may delegate day-to-day decisions to an intermediary, while still meeting the requirements for direction and control. The guidance recognizes that an organization "that carries out the work in the field is often in a better position to make day-to-day operational decisions".[6] The same principle applies to the project leaders working in the context of a shared platform. The charity's board and senior management should be permitted to delegate operational decisions regarding a project to a project team, while maintaining appropriate accountability and direction.

Guidance that clarifies for charities what is required to demonstrate that it is performing its own activities, while respecting the delegation of certain decisions at the project level would ensure charities minimize risk and at the same time supporting the knowledge and expertise of project leaders.The sector's history of policy and development on shared platforms described in Appendix A provides a solid foundation to proactively seek a guidance from the Canada Revenue Agency that

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[5] CRA Guidance CG-004 *Using an intermediary to carry out a charity's activities within Canada* (June 20, 2011) Retrieved from:https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/using-intermediary-carry-a-charitys-activities-within-canada.html#toc17; and Guidance CG-002 *Canadian registered charities carrying out activities outside Canada* (July 8, 2010) Retrieved from: https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html.
[6] CG-004, section 5.

specifically addresses shared platforms. This would address the current uncertainty, lack of clarity and misperceptions that currently exist within the sector, and in turn support the growth and development of shared platforms as a formally accepted practice.

The objectives of such a guidance include:
- Reducing unnecessary regulatory obligations: Balancing regulation with the ability to work in community
- Ensuring substantive abuse of model does not take place: Focusing on learning and clarity, while providing consistent enforcement where necessary
- Enabling the sector to do its work efficiently and in tune with modern ways of working: Supporting collaboration, co-creating and less hierarchical approaches which require new ways of keeping projects true to purpose. Hierarchical approaches that focus on control do not work in communities

The guidance should also recognize the following:
- That an employer as a matter of law has direction and control over its employees and CRA will not attempt to look behind an employment relationship or try to determine whether the chain of supervisory command creates "direction and control"
- That a contractor hired pursuant to a written fee-for-service contract is under the direction and control of the entity which engaged the contractor

This guidance may need to be modified if changes are made to the overall regulation of charities as per recommendation 1.

3. Formal recognition of shared platforms

To date, Canada Revenue Agency has not provided any formal direction or guidance regarding the shared platform model. It is difficult terrain for organizations that want to provide a shared platform to support grassroots or collaborative projects while at the same time ensuring compliance with the Act. Acknowledgement of shared platforms by Canada Revenue Agency including clear enabling guidelines would give organizations the clarity and confidence to provide shared platforms for initiatives that further their mission.[7]

Education and awareness

Education and awareness in the development of shared platforms requires ongoing effort with all parties – regulators and policymakers, the sector and practitioners, legal counsel, and funders.

Education includes continuing to develop shared language and understanding. Consistent use of the *Shared Platform Guidebook* by organizations will ensure consistency in the application of good practices and demonstrate to regulators and policymakers the sector's rigour in providing shared platforms.

The sector has tested various language to describe the model over the years. Most recently, sector leaders have commonly used the term shared platform. Shared language has helped the sector advance shared platform practice by creating resources, and some funders have adopted the term to clarify their funding guidelines for projects. CRA has not formally recognized a term to describe the shared platform model. If a common term were used, the government and sector could work together to ensure shared understanding and clear and consistent use of the model.

ONN's *Shared Platform Guidebook* could inform the guidance, demonstrating that the sector is ready and able to support and implement good practices. The guidebook was developed in consultation with legal counsel, providing a solid foundation for informing the implementation of shared platforms moving forward, rooted in an understanding that projects of a shared platform are activities of the host organization and in keeping with the organization's charitable purposes. The guidebook could be easily updated to reflect CRA recognition and guidance as it develops.

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[7] Stevens, D. (2017). Shared Platform panel - Current discussions [presentation]. 2017 Canadian Bar Association Charity Symposium, Toronto, Ontario.

Conclusion

After ten years of research, writing and the development of shared platforms in Canada, the public benefit nonprofit sector now has a strong understanding of what is required to create a more enabling policy and regulatory environment for shared platforms. And the sector is ready to partner with the government to continue to develop and shape the model for the benefit of our communities.

WE WANT TO HEAR FROM YOU

We want to hear from you. Give us your feedback on these policy recommendations:
info@theonn.ca

For more information, visit:
http://theonn.ca/our-work/our-structures/shared-platforms

APPENDIX A: SHARED PLATFORM POLICY AND DEVELOPMENT TIMELINE IN CANADA

In 2008, with funding support from the Law Foundations in Ontario and British Columbia, Tides Canada began a project to develop a comprehensive legal and regulatory analysis on the Tides Canada shared platform model published in *The Philanthropist*. In consultation with legal practitioners and leaders in the charitable sector, Tides Canada initiated this project to advance the development of the Canadian legal and regulatory framework to support and promote the work of shared platforms (not the language at the time). The [paper](#) was authored by Margaret Mason and David Stevens.

In 2009, Laidlaw Foundation began to engage youth, funders, and academics to explore the types of infrastructure require to support youth-led efforts. The subsequent research and writing has identified the opportunity of shared platforms to support youth-led action.

In 2011, Ontario Trillium Foundation provided funding to Tides Canada to grow the shared platform approach in Ontario. This included a funder table which developed and shared good practices and lessons learned.

In 2011, a shared platform community of practice was created, which developed into the Shared Platforms Constellation at the ONN. This group of practitioners from across the nonprofit sector in Ontario was focused on the development of shared platform practice.

In 2013 Metcalf Foundation published a report by Jane Marsland entitled, *[Shared Platforms and Charitable Venture Organizations: A Powerful Possibility for a More Resilient Arts Sector.](#)*

In 2013, Mowat NFP published a paper entitled *[A Platform for Change](#)* that looked at the emergence of shared platforms as an organizational option for the sector. The objective of the report was to highlight the model and to act as a catalyst for a more strategic conversation among funders, policy makers, practitioners, and researchers about how to continue the evolution of this model of governance.

In 2016, ONN, through funding from Laidlaw Foundation, published a good practices resource called the *[Shared Platform Guidebook](#)*.

APPENDIX B: WHAT DOES THE WORK OF OTHERS TELL US?

There are a few jurisdictions outside of Canada where organizations support mission-related, unincorporated initiatives. In the two examples highlighted below, these jurisdictions have shared language and resources for organizations to use to ensure compliance with relevant regulations.

In Australia, the term auspicing is used to describe a relationship where the auspicee carries out a project 'under the auspices of' the incorporated organization – the auspicor. Government funders, such as the New South Wales Department of the Arts, Sports and Recreation, provide guidelines, such as an Auspicing Fact Sheet to potential grantees. Justice Connect, an organization that provides legal information and advice to nonprofits across Australia has created a guide to auspicing to describe how to auspice effectively, including sample agreements and resources.

The Arts Law Centre of Australia provides additional resources specifically for auspicing relationships in the arts.

The Australian Charities and Not-for-profits Commission (ACNC) is a relatively new body established in 2012 under ACNC Act. The ACNC is the independent national regulator of charities, operating separately from the Australian Taxation Office, which remains responsible for deciding eligibility for charity tax concessions and other Commonwealth exemptions and benefits.

To date, no policy guidance has been released on auspicing, however the ACNC has as one of its objects the "reduction of unnecessary regulatory obligations on the sector."

In the United States, the term fiscal sponsorship is used when a nonprofit organization (the "fiscal sponsor") provides administrative services and oversight to the activities of groups or individuals engaged in work that furthers the fiscal sponsor's mission. Fiscal sponsorship does not refer to a relationship that is defined by the law (Bradick, 2015). There are several forms but the most similar to shared platforms in Canada is comprehensive fiscal sponsorship, where a sponsored project becomes an internal program of the fiscal sponsor.

In keeping with Internal Revenue Service rules, fiscal sponsors must retain control over how funds will be used and be able to demonstrate the funds were used for charitable 501(c)(3) tax-exempt purposes. This practice is widely recognized within the nonprofit sector with hundreds of organizations acting as dedicated fiscal sponsors. The American Bar Association provides information

to the legal community on legal advice on setting up the relationship (Bradrick, 2015) and the National Network of Fiscal Sponsors provides resources and support to fiscal sponsors across the country and the Fiscal Sponsor Directory connects community projects with fiscal sponsors.

While recognizing the different legal contexts, the fiscal sponsorship in the US has long been a reference point for the practice and framing of shared platforms in Canada going back to the 2010 paper by Margaret Mason and David Stevens.

It is worth noting that in both examples, although the jurisdictions do not have specific regulatory guidances informing these practices, both are supported and advised by the legal community. In addition, the regulatory environment in which they operate offers important contexts:
- In Australia they formally recognize auspicing as a practice
- In the US, there is a government focus on demonstrating how the charitable funds (purposes) were used vs. activities, direction and control

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