

Background Briefing

Fact Sheet: Foreign Interference

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The Pemsel Case
FOUNDATION

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"The law of charity is a moving subject"
– Lord Wilberforce

About Us

Named after the 1891 House of Lords decision, *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531, which established the four principal common law heads of charity used in Canada and elsewhere, The Pemsel Case Foundation is mandated to undertake research, education and litigation interventions to help clarify and develop the law related to Canadian charities. The Pemsel Case Foundation is incorporated under the Alberta *Societies Act* and is a registered charity.



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Fact Sheet: Foreign Interference

1. Issue

The media and the public have shown an interest in foreign donations to Canadian charities. This fact sheet provides information that will help readers understand the issues.

2. Comments

1. Canadian charities can receive donations from foreign sources. These donors can be individual donors, organizations, or states themselves.
2. There is no limit on the amount of foreign donations a given charity can receive. A 2019 study concluded the evidence didn't support concerns about egregious foreign funding of charities. Charities receiving foreign funding were rare; and, if present, typically constituted a fraction of the charity's budget.¹
3. Whether any donation comes from a foreign or domestic source—and regardless of a donor's underlying intent—a charity must still use its funds only for its stated charitable purposes. The *Income Tax Act* prohibits charities from using foreign or domestic funds for partisan political activities.
4. The Annual Information Return (Form T3010) that charities file with the Canada Revenue Agency requires them to report the total amount of foreign funding they receive. In the case of foreign donations of \$10,000 or more, the charity must declare on Schedule 4, the identity of the foreign donor, the amount of the gift, and whether the donor is an individual, organization, or government body.²
5. While the public can get most of a charity's Annual Information Return, Schedule 4 is confidential and not publicly available. The information therein is for internal use and may be shared with other government departments and agencies as authorized by law.
6. The Canadian government makes donations to charities in other countries.³
7. While the practice of directing a donation through a Canadian intermediary is unacceptable, it is conceivable that some donors may attempt to conceal their identity by providing money in this way.

¹ Muttart Foundation, Submission to the Public Inquiry into Anti-Alberta Energy Campaigns, November 2019. In 2016, 3,006 charities across Canada (3.56% of the reporting charities) reported receipt of any foreign funding. The total revenue from foreign sources was slightly more than \$2.2 billion. This represented 4.67% of the total revenue reported by these charities, or 0.85% of the total \$261.8 billion revenue reported by all Canadian charities. The median amount of foreign funding reported by those receiving any was \$13,630. More than one-half of the foreign funding reported was received by 10 charities. In that list are four post-secondary institutions, four international-development organizations, a Toronto-based health network, and Ducks Unlimited, a conservation group.

² Form T3010, Registered Charity Information Return. See Question C10, and Schedule 4; also, lines 3900, 4571 and 4575.

³ See s. 149.1(26) of the *Income Tax Act*, as well as the list of foreign charities to which the Canadian government has made a gift, at <https://www.canada.ca/en/revenue-agency/services/charities-giving/other-organizations-that-issue-donation-receipts-qualified-donees/other-qualified-donees-listings/list-foreign-charities-that-have-received-a-gift-majesty-right-canada.html>

8. Similarly, some foreign funding from multiple foundations or sources for time-limited initiatives may end up appearing concealed when it is pooled through donor-advised funds to avoid the prohibitive cost of setting up a standalone charity.
9. Even with careful due diligence, charities could still unknowingly receive covert donations. Moreover, these charities are likely poorly placed to assess the gift's nature, underlying motivation, or the true donor's identity.
10. A charity receiving large cash transactions from abroad may have to report it to FINTRAC (Financial Transactions and Reports Analysis Centre of Canada) if the transaction appears suspicious or meets one of several criteria set out in anti-terrorism legislation.
11. The Canada Revenue Agency has guidance for registered charities.
 - a. Its policy on returning gifts to donors is at:
<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/receiving-gifts/returning-a-gift-a-donor.html>
 - b. See also: "Who is the True Donor of this Gift?"
<https://www.canada.ca/en/revenue-agency/news/cra-multimedia-library/charities-video-gallery/true-donor-gift.html>

3. The Pemsel Case Foundation:

- fosters knowledge and better understanding by the Canadian public and voluntary sector organizations of charity law and regulation;
- carries out its charitable purpose through research, education, and litigation; and
- doesn't receive any foreign funding.



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