Overview

This project invites nonprofit leaders, scholars, and students, to reimagine civil society's relationship with governments and citizens. It offers the idea of an enabling environment as a broad platform on which we can help civil society organizations (CSOs) not only to function, but to thrive.

This is the right moment in Canada to re-engage public policy, to modernize the legal and policy framework, and to consider the high-level principles that should guide the work.

The project has three components.

- **Convening community**: Panels and Roundtable: *Enabling Civil Society: Democracy and Dissent*
- **Public Lecture**: International Perspectives on the State of Civil Society
- **Media and Public Awareness**: Social media platforms to disseminate original content to build awareness of the challenges facing civil society

What is an "enabling environment"?

Since the 1990s, the international search for 'what works' for CSOs in the development context has been influenced by an idea called the 'enabling environment.' It recognizes that policies and programs can fail for reasons other than the merit or capacity of the organizations responsible for delivering them.[1] External factors such as legal and policy frameworks, social attitudes, and political priorities can play important roles in determining success. The concept of an "enabling

---

[1] Brinkerhoff, D. W. and A. A. Goldsmith "Promoting the Sustainability of Development Institutions: A Framework for Strategy" (1992) World Development 20(3) 369.

environment" has emerged as an inclusive platform from which we can identify and assess the factors that actively help civil society to thrive.[2]

The idea of the enabling environment has historically been based on three pillars: (i) funding frameworks, (ii) participation in the development of public policy and (iii) dialogue with government. This project aims to integrate human rights-based approaches, with an eye to identifying what is in the public good. An enabling environment is also grounded in sustainable development, thus reducing uncertainty, increasing financial viability, and improving the capacity of CSOs to build solidarity and partnerships.

Project background

This project began in 2013, when a coalition of CSOs met in Montreal to take stock of what appeared to be a disturbing if not unprecedented trend of narrowing spaces for civil society in Canada. The meeting took place at a workshop at the Faculty of Law, McGill University. This new forum for civil society leaders and practitioners, together with academia, theorized emerging challenges to civil society in Canada, and sought to understand these challenges in a global context. The meeting was among the first in Canada to convene international actors from the UN and international NGOs with Canadian human rights defenders, immigration and settlement organizations, environmental organizations, women's groups, unions and lawyers, as well as community-based groups, to better understand the connections among them on these issues. The group also engaged with francophone and Quebec organizations that are not always involved in broader Canadian discussions.

Individual feedback from participants at the 2013 meeting indicated that the event was a watershed moment; it allowed participants working with very different organizational missions to see the common trends in their broader policy environment that were affecting the entire sector. The threats to civil society as a result of the constricting space available to CSOs were understood not only a phenomenon occurring in other countries, but one that was emerging in Canada as well.

The results of the meeting and the particular concerns raised in the Canadian context were noted in a 2014 report by the outgoing UN Special Rapporteur on the rights to freedom of association and peaceful assembly, Maina Kiai, who had attended the meeting and heard first-hand from CSOs the experiences and impacts of a "disenabling" environment.[3] The conference generated a video series featuring interviews from civil society leaders, union members, and activists (see www.voices-voix.ca) and a report, Civil Society: Dissent, Democracy, & the Law that was

---

[2] See *State of Civil Society 2013: Creating an Enabling Environment*, CIVICUS World Alliance for Citizen Participation (2013) [CIVICUS], online at http://socs. civicus.org

[3] United Nations, 2015. *2014: The Year in Assembly and Association Rights,* United Nations Special Rapporteur On the rights to freedom of peaceful assembly and of association. Geneva. *http://www.freeassembly.net*

published in 2014. A national research network was launched that undertook the role of the systematically documenting case studies on civil society and the enabling environment.

Context

The election of a new federal government in October 2015 marked an important shift in the policy environment. The new government committed itself to a more constructive dialogue with civil society, with specific assurances in mandate letters to allow charities to "do their work on behalf of Canadians free from political harassment, and to modernize the rules governing the charitable and not-for-profit sectors."[4] Meanwhile, research institutes and foundations in Canada have been examining the charitable sector, advocacy, and the enabling environment.[5]

On March 31, 2017, the federal government met one of its commitments by releasing the Report of the Consultation Panel on the Political Activities of Charities. The Consultation Panel noted that:

> .. we need a regulatory environment that respects and encourages their participation in public policy dialogue and development. This is not currently the case. The legislative framework for regulating charities in Canada is outdated and overly restrictive. It is, in the words of one submission, "antiquated, subjective, arbitrary and confusing – denying Canadians the right to have their voices heard through the charities they support."[6]

The Panel recommended the elimination of the "political activities" restrictions on charities under the *Income Tax Act.* Several consultees noted the need for broader reforms to the charitable sector.

Although the legislative agenda of the government is not yet clear beyond the political activities issue, potentially significant reforms to the Canadian regulatory environment appear likely to take place in the medium term, and the opportunity to engage with the reform process is an important one for CSOs to have themselves, along with apex charities and foundations. Although the current government has been much more positive and proactive in its relationship with civil society, the 2006-2016 decade demonstrated that the rights of CSOs are vulnerable and fragile and that strong institutions and rights-based approaches are critical for enabling civil society.

Additional challenges and perspectives that have come to the fore in recent years include:

- The criminalization of dissent and the deployment of national security measures to control the work of nonprofit organizations. In the Canadian context, CSOs continue to raise concerns about surveillance measures and their impact on democratic rights and privacy.

---

[4] Minister's Mandate Letters, November 2015. See, e.g. the Letter for the Minister of National Revenue, Online: Canada <http://pm.gc.ca/eng/minister-national-revenue-mandate-letter>/
[5] Notably the Broadbent Institute, the Mowat Centre and the Muttart Foundation.
[6] Canada, 2017. Report of the Consultation Panel on the Political Activities of Charities, executive summary.

- The challenge of developing open spaces for dissent and dialogue while facilitating respectful sharing of different perspectives on contentious public issues.
- The exploration of alternatives for institutional accountability for civil society organizations, including alternatives to our current oversight of the charitable sector in Canada.

In conclusion, many of the concerns about narrowing spaces that are available to civil society that were flagged in 2013 remain significant in 2017. In his final report, outgoing Special Rapporteur Maina Kiai has noted that:

> civil society's role in changing societies for the better is deeply contested. The space for civil society globally is closing rapidly. In established democracies as well as autocratic regimes and states in transition, laws and practices constraining freedoms of association and of peaceful assembly are flourishing.[7]

We are also at a crossroads in developing new policy frameworks with Indigenous peoples in Canada. Some Indigenous organizations in Canada are set up as non-profit corporations and some have charitable status under the *Income Tax Act*. Others —whether they are organized as First Nations governments, social justice organizations or community service providers —are seen as a distinct subset of organizations and arguably transcend the definitions of "civil society organizations", if they are seen at all. Their status and their missions derive from unique political, economic, and social structures, including treaties and modern land claims agreements, and from Indigenous cultures, spiritual traditions, histories, and philosophies, especially with respect to rights to their lands, territories, and resources. The United Nations Declaration on the Rights of Indigenous Peoples states that governments must respect and promote these rights. What are the implications for the legal structures and fundamental rights of organizations and non-profits serving Indigenous peoples? What is the responsibility, if any, for the federal government in enabling these organizations to function?

The confluence of these events and developments in Canada and internationally, and the need for innovative approaches, offer a unique opportunity to seize the moment and to examine options for the future of an enabling environment for civil society in Canada.

Project objectives

The project actively explores the content and contours of an enabling environment and what it means for the way in which CSOs operate. The project is interdisciplinary and intersectoral, and aims to theorize the enabling environment for CSOs, explore its normative underpinnings, and articulate its practical implications.

---

[7] United Nations, 2017. Human Rights Council: "Imagining a World without Participation: Mapping the Achievements of Civil Society" (A/HRC/35/28). (Advance unedited version)
http://freeassembly.net/reports/civil-society/

We would like to broaden the conversation to include smaller organizations, as well as francophone and Quebec organizations that are often not directly engaged in these discussions in the rest of Canada. Similarly, voices from organized labour are often absent from these discussions, and the project seeks to engage these perspectives.

The project partners are interested in taking a uniquely Canadian approach to enabling CSOs, engaging not only with current environmental and sustainable development concerns, but also drawing on civil law as well as common law to craft new regulatory frameworks. We are also exploring the possibility of bringing in speakers from other countries who can discuss alternative institutions and accountability mechanisms for civil society.

Finally, the project aims to stimulate more interest and engagement from the academic community, recognizing the importance of theorizing the idea of an enabling environment and connecting it more strongly to human rights norms in order to protect civil society leaders, human rights defenders and the labour movement.

Project components

The project comprises three main components:

1. Convening community: **Conference:** *Enabling Civil Society: Democracy and Dissent*

The first component is a conference including a series of panels and expert workshops, bringing together approximately 50 individuals from civil society organizations, labour and government, as well as students. The conference builds on the 2013 workshop noted earlier to examine how CSOs are faring now, identifying obstacles and opportunities to advance advocacy and activism, and identifying key principles and concrete strategies to improve the policy and regulatory environment. The event will offer pedagogical opportunities to students to understand the connections between law, civil society and the policy environment.

2. Public lecture: International Perspectives on Civil Society

A public lecture following the conference features civil society leaders and an outgoing UN Special Rapporteur who will share their perspective on the challenges facing civil society, with a focus on fundamental freedoms, the human rights of migrants and women's rights.

3. Knowledge Dissemination

We will encourage media coverage of this event to get the subject matter of enabling civil society out to a pan-Canadian audience and launch a wider conversation about how we enable civil society and rethink 'charity'. We plan to use social media, including live tweeting, to facilitate real-time engagement with the conference.

Finally, our web site will contain research papers, and possibly videos and other resources on the idea of an enabling environment and conference outcomes.

***

The Events will be hosted at the Faculty of Law at McGill University, co-convened by the partners to encourage new research and dialogue nationally and internationally.

Date: October 20 2017

Location: Faculty of Law, McGill University. The Centre for Human Rights and Legal Pluralism, which is hosting the event, draws from scholars in several disciplines. The conference will actively engage human rights activists and scholars, sociologists, historians, as well as students and representatives of public administration and government, and the voluntary sector.

Partners and Conference Steering Committee Members

- **Canadian Council for International Co-operation**: CCIC is a coalition of Canadian voluntary sector organizations working globally to achieve sustainable human development. CCIC seeks to end global poverty and to promote social justice and human dignity for all. http://www.ccic.ca

- **McGill Centre for Human Rights and Legal Pluralism, McGill University**: The Centre builds upon the human rights legacy of, and the enormous scholarly engagement with, the Universal Declaration of Human Rights. A key objective of the CHRLP is to deepen transdisciplinary collaboration on the complex social, ethical, political and philosophical dimensions of human rights.

- **International Civil Liberties Monitoring Group:** The ICLMG is a national coalition of Canadian civil society organizations that was established in the aftermath of the September 2001 terrorist attacks in the United States. The coalition brings together some 43 NGOs and advocates. In the context of the so-called 'war on terror', the mandate of the ICLMG is to defend the civil liberties and human rights set out in the Canadian Charter of Rights and Freedoms, federal and provincial laws, and international human rights instruments.

- **Mowat Centre NFP.** The Mowat Centre is an independent public policy think tank located at the School of Public Policy & Governance at the University of Toronto, and Ontario's non-partisan, evidence-based voice on public policy. In 2012, Mowat established a research hub to provide evidence-based research and analysis on systemic issues facing the charitable and not-for-profit (NFP) sector in Canada, with a particular focus on Ontario. Mowat NFP brings a balanced perspective through which to examine the challenges facing today's sector and to support its future direction.

- **Human Rights Research and Education Centre (University of Ottawa)** The Centre strives to bring together educators, researchers and students from other disciplines based on the need to approach issues regarding human rights from a multidisciplinary and interdisciplinary perspective, both in order to respect such rights and to explore that which they require in a complex, interconnected world. The HRREC benefits from a bilingual and

bijuridical environment. The Centre privileges research, teaching and outreach partnerships, with academic units, governmental and civil society organizations.

- **Voices-Voix Coalition:** Voices-Voix was created in 2010 as a non-partisan coalition of Canadians and 247 Canadian organizations supporting a strong enabling environment for civil society organizations in Canada, robust democratic traditions, and Canadians' collective and individual rights to debate and dissent. Voices-Voix is stewarded by a small group of volunteers including human rights lawyers and representatives of the organizations in the coalition. At present, the organizations in the strategy group include Amnesty International Canada, the Canadian Council for International Co-operation, Environmental Defence, and Equiterre.

WE GRATEFULLY ACKNOWLEDGE THE GENEROUS SUPPORT OF THE FOLLOWING ORGANIZATIONS:

CHAMPIONS

CUPE·SCFP *Canadian Union of Public Employees*
Syndicat canadien de la fonction publique

PSAC · AFPC
Public Service Alliance of Canada
Alliance de la Fonction publique du Canada

CCIC · CCCI

McGill Centre for Human Rights and Legal Pluralism
Centre sur les droits de la personne et le pluralisme juridique de McGill

voices-voix

SUPPORTERS

Ken and Debbie Rubin Public Interest Advocacy Fund   **An anonymous private foundation**

Law Office of Pearl Eliadis   **Law Teaching Network**

FRIENDS

Katharine A. Pearson Chair in Civil Society and Public Policy

OXFAM Canada

CHAIRE HANS ET TAMAR OPPENHEIMER
EN DROIT INTERNATIONAL PUBLIC

HANS & TAMAR OPPENHEIMER CHAIR
IN PUBLIC INTERNATIONAL LAW

Centre
de recherche
et d'enseignement
sur les droits
de la personne

Human Rights
Research
and
Education
Centre

AMNESTY INTERNATIONAL

Dean's Office, Faculty of Law, McGill University