Political activities of registered charities

Brief submitted to the Canada Revenue Agency

by the

Réseau québécois de l’action communautaire autonome

December 1, 2016
The Réseau québécois de l’action communautaire autonome (RQ-ACA) is the government’s primary interlocutor for independent community action. It represents 56 national groups and organizations of ACA members, involving more than 4 000 ACA organizations throughout Quebec fighting for greater social justice.
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1. Background to the consultation

During its most recent election campaign, the Liberal Party of Canada made a commitment 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.” This clarification of the rules governing political activity should take into account the fact “that charities make an important contribution to public debate and public policy. A new legislative framework to strengthen the sector will emerge from this process.”\(^1\)

The Prime Minister’s mandate letters to the Minister of Finance\(^2\) and the Minister of National Revenue\(^3\) are evidence of this commitment.

As a result, the Canada Revenue Agency (CRA), in cooperation with the Department of Finance, launched a consultation on September 27, 2016 aimed at clarifying the rules surrounding the involvement of charities in political activities.

The Réseau québécois de l’action communautaire autonome (RQ-ACA) has been involved in this area for a number of years. Of the approximately 4 000 independent community action organizations (ACA) involved in the RQ-ACA through its 56 member groups, many are registered as charities. The RQ-ACA has been asked on several occasions to support such organizations in registering for charitable status or responding to a CRA audit.

The RQ-ACA has therefore been able to observe the climate of concern and uncertainty among independent community action organizations when they are required to justify their charitable status. This results in particular in self-censorship of their freedom of expression. We are also concerned about the ongoing audits of independent community action organizations that could result in the revocation of their charitable status. This situation seems to be inconsistent with citizen participation and freedom of expression.

We have already had the opportunity to express these concerns to the office of the Minister of Revenue at a meeting on April 28, 2016. We therefore welcome the consultation, but disagree with the decision to focus solely on clarifying the rules, when consideration should actually be given to amending them.

In addition, we regret that the consultation is not taking place within the standard framework of a parliamentary committee, and that so little time is being allocated for it. The RQ-ACA has already pointed out to the Minister that six months would be necessary for the government consultation in order to ensure that the perspectives all those involved in the movement can be heard. We regret that this request was not accepted, because a consultation of a few weeks will only limit the democratic process.

Despite such a short time frame, the RQ-ACA is still able to identify some problems with the current legislation and recommend the adoption of a new legislative framework to ensure the right to freedom of expression, allow full citizen participation in societal debates, clarify the notions of political activity and partisanship and broaden the interpretation of the purposes that are considered charitable.

\(^1\) [https://www.liberal.ca/realchange/canada-revenue-agency/](https://www.liberal.ca/realchange/canada-revenue-agency/)
\(^2\) [https://pm.gc.ca/eng/minister-finance-mandate-letter](https://pm.gc.ca/eng/minister-finance-mandate-letter)
\(^3\) [https://pm.gc.ca/eng/minister-national-revenue-mandate-letter](https://pm.gc.ca/eng/minister-national-revenue-mandate-letter)
2. Political activity by independent community action organizations: a practice recognized by the Government of Quebec

For more than 50 years, community organizations have been helping to develop social programs and legislation to eliminate poverty in Quebec and build a society founded on equality, solidarity, inclusion and social justice. In the early 2000s, the Government of Quebec recognized this contribution by implementing a government policy providing independent community action organizations with funding to carry out their overall mission, which includes social transformation.

Non-partisan political activities are at the heart of the work of independent community action organizations in Quebec. Indeed, under the Community Action Recognition and Support policy adopted in 2001, the Quebec government:

- acknowledges the activities related to non-partisan political action under the term “rights advocacy,” which consists of the analysis of government policy or draft legislation by organizations and coalitions. It also acknowledges the mobilization and lobbying activities aimed at making the government aware of these analyses and of the circumstances of certain segments of the population.5

With this policy, the Quebec government recognizes the essential contribution of independent community action organizations to citizen participation and democracy. It also acknowledges the importance of their political role in identifying social problems, their citizen education and mobilization among target populations and the influence they must exert on policy makers to address these problems affecting people’s living conditions.

The current rules that severely limit organizations’ public policy activities, however, counteract this recognition by the Quebec government and cause serious problems for organizations trying to both play their political role and respect the CRA’s restrictive criteria for charitable status.

The specific case of organizations in collective defence of rights

Of the independent community action organizations in Quebec, there are just over 300 whose primary mission is the collective defence of rights. Through their citizen education, public policy analysis, social mobilization and lobbying of political decision-makers, these organizations work in several sectors and participate in public debates dealing with a multitude of rights: gender equality, right to housing, right to a decent income, workers’ rights, right to education, right to health, right to a democratic, non-violent, non-discriminatory society, right to a healthy environment, etc.

The Government of Quebec recognizes that the collective defence of rights is an essential part of the:

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5 Ibid. p. 28.
intervention approach aiming for the full recognition and application of human rights (fundamental rights and freedoms, equality rights, political rights, economic rights, social rights, as well as the right to a healthy environment and to environmentally sustainable development). It includes promoting rights that are not yet recognized, as well as actions to encourage the full exercise of existing rights. These include the rights of both the general population and those segments of the population living with a particular problem, particularly a situation of inequality, discrimination, vulnerability, distress, exclusion or oppression.6 [Translation]

The essential role played by collective rights organizations in democratic life and in social debates, as well as in the fight against poverty and social exclusion, is recognized and funded by the Government of Quebec through the Community Action Recognition and Support policy.

Although these organizations work mainly to help people experiencing poverty to collectively improve their living conditions, the majority cannot register as charities because of their predominantly political work, which considerably limits access to numerous sources of income.

Those organizations that do have charitable status, meanwhile, must constantly seek a balance between the CRA’s political activity restrictions and the requirements of their status as an organization in collective defence of rights, which allows them access to funding for their general operations.

**Collective defence of rights: a cross-cutting approach to independent community action**

Although the case of collective rights organizations is unique because of the predominance of political work in their mission, it should be noted that all 4 000 independent community action organizations are also involved, to varying degrees, in the collective defence of rights. Indeed, the social transformation mission of independent community action means that organizations offering services to the public – in the fields of health or education for example – will analyze the consequences of public policies on the rights and living conditions of the people they support, or engage in citizen education with a view to mobilizing people who are victims of injustice into acting collectively to improve their living conditions. These same organizations also intervene publicly to criticize or support public policies.

This incompatibility between the provincial policy of recognizing community action and the Canadian government’s rules regarding charitable organizations thus negatively impacts on any efforts to defend the rights of the entire population of Quebec.

3. **Political activity: a restrictive and arbitrary definition**

According to CRA policy documents, an activity is of a political nature if the organization:

- Explicitly communicates to the public that a law, policy or decision of any level of government in Canada or a foreign country should be retained, opposed or changed.

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• Calls for political action. It must directly encourage people to undertake actions that exert pressure to retain, oppose or change a law, policy or decision of any level of government (in Canada or a foreign country).

We have identified several problems related to this definition, in particular with regard to its arbitrary nature, but also in terms of democracy, citizen participation and the autonomy of independent community action organizations with charitable status.

**Guidelines that allow free rein for interpretation**

The main problem with the application of the rules governing charities results from the vagueness of several provisions of the *Income Tax Act* (ITA) and common law rules applicable to charities that give the CRA broad power of interpretation.

Subsections 149.1 (6.1) and (6.2) of the ITA state that a charity must devote “substantially all” of its resources to charitable purposes, but that it can devote its remaining resources to political activities to the extent that they are non-partisan and incidental to the organization’s mission. In the absence of further clarification, the CRA has defined “substantially all” as meaning “90% or more,” leaving a charity with less than 10% of its resources available for “political” activities.7

The nature and proportion of allowable political activities, evaluated at about 10%, is in part left to CRA officials’ interpretation, which raises a number of questions and implies that value judgments may be made about certain activities and organizations. What exactly are we allowed to do? Will our proposed action be considered charitable or political? Could we be accused of spending too much money on our public policy interventions? We would point out that this risk prevents numerous organizations from expressing their views in the public arena.

Due to the discretion left to the CRA and the restrictions imposed by the definitions, organizations are uncertain as to the application of these rules, and consequently limit their public comments on issues affecting public policy for fear of losing their charitable registration. It should be noted that the loss of charitable status would have serious consequences for the operations of these organizations, given that it entitles them to tax benefits allowing them access to sources of financing to which they would otherwise not have access.

**An obstacle to freedom of expression**

This discretionary power also opens the door to political and administrative harassment, and creates obstacles to freedom of expression and the right of association. For example, according to a survey by Imagine Canada, nearly half of the organizations that report having experienced the negative effects of CRA audits under the previous government have decreased or considered decreasing their activities out of fear that they would be described as “political,” and have also self-censored.8

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We have also observed this climate of fear within the independent community action movement. To avoid exposing themselves to a negative CRA assessment and thereby losing their charitable status, some organizations have considered changing their mission or elements of their action plan. This trend is exacerbated when these organizations are under political pressure. We are thinking in particular of organizations that defend collective rights, which must constantly engage in a variety of actions relating to public policies in order to defend the interests of the population they serve.

A limit to democracy

Living in a democratic society also means that everyone should be equal before the law (for example, every person, rich or poor, has the right to vote). Economic situation or level of education should therefore not prevent an individual from exercising the right to vote, to participate in decisions and to influence political decision-makers. This implies that the State must create certain favourable conditions to support the exercise of this power. It must first guarantee fundamental rights (the right to freedom of opinion, expression and association, the right to education, including education in citizenship, etc.). It must also promote access to information not only from the State itself, but also about different points of view. Lastly, it must promote public participation in decisions between elections. In short, even within a representative democracy, a government must ensure that it hears the voice of the entire population between elections.

Independent community action organizations are one means created by the citizens of Quebec for promoting the exercise of democracy among marginalized and disadvantaged people. We therefore believe that the restrictions imposed by the CRA on political activity, not only in terms of the allowable proportion of only 10%, but also on the very nature of the activities permitted, limit the role of independent community action organizations with charitable status in the exercise of democracy.

A barrier to citizen participation

It should be mentioned that independent community action organizations are created at the initiative of the people in the community. This means that when social, economic or political problems were identified in their area, people grouped together in associations to try to address them. Independent community action organizations therefore represent a form of organized citizen participation that allows people to come together to enforce their rights and fight discrimination.

This form of citizen participation helps expand participation in public and political life and gives voice to a segment of the population that tends to be excluded from public debate. Moreover, the Government of Quebec, through its Community Action Recognition and Support policy, has the general objective to “[a]cknowledge, promote and support community action in the broad sense, that is, in its entirety, by taking into account its contribution to the elimination of poverty and exclusion, social development, and the development of active citizenship.” Thus, in limiting the political interventions of independent community action organizations, the CRA is undermining citizen participation in public debates.

An attack on the autonomy of independent community action organizations

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The Canada Revenue Agency’s current guidelines for the political activities of charities infringe on the autonomy of organizations, yet this autonomy is formally recognized in Quebec’s Community Action Recognition and Support policy. The Quebec government’s objective in adopting this policy is to “ensures that community action organizations can fully play their rightful role, while respecting their independence, mission, goals, modus operandi, approaches and management methods.”

In addition, to be recognized as an ACA organization and to receive the government funding that goes with it, organizations must demonstrate that they are independent and that they belong to this broad-based social change and social participation movement that is an initiative of civil society.

However, the vague rules favouring a broad interpretive power for the CRA leave organizations with two contradictory choices. They must meet ACA criteria requiring them to speak publicly about issues affecting public policy, but at the same time, they must limit their public interventions to a minimum in order to meet the interpretation of the criteria associated with charitable organization.

4. Partisanship: a definition that goes too far

Even when they engage in political activities, independent community action organizations have an obligation to be non-partisan. To clearly demonstrate what the Government of Quebec means by non-partisan, we refer to the definition of non-partisan political action taken from the Cadre de référence en matière d’action communautaire (framework for community action):

Non-partisan political action is action unrelated to political parties. It is necessary to refer here to the meaning of non-partisan political action, which is political action that is exercised outside political parties recognized as such. It is important to clarify this, because the word political often has a connotation that automatically associates it with political parties.”

In this document, the government also recognizes that different types of action strategies are required to carry out our political activity:

As the text of the government policy indicates, non-partisan political action includes activities that consist of “the analysis of government policy and draft legislation.” As practised by collective rights organizations, non-partisan political action implicitly includes not only the process of appropriating the elements of a problem; it also covers all the follow-up strategies deemed relevant. These generally include citizen education activities aimed at encouraging the target population to become involved with such problem situations, as well as lobbying the government.”

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10 Ibid., p. 16
11 Ibid., p. 21
13 Ibid.
However, the CRA’s definition of “partisan” political activities, i.e., activity that “involves direct or indirect support of, or opposition to, any political party or candidate for public office,” differs from that of the Government of Quebec and limits the scope of our activities. From this perspective, if we were to criticize or support the elements of a bill or even a political platform, such activities would be considered partisan even though they are not aimed at the election or defeat of a political party or candidate, but rather advancing the common good and improving the living conditions of the population.

For example, as we understand it, an organization that criticizes the austerity measures of the current Quebec government or that has publicly supported or criticizes legislation introduced by the same government might be accused of partisanship. Such a prospect would be tantamount to gagging thousands of organizations, which would no longer be able to speak out on public policies. This would constitute a significant obstacle to the work of independent community action organizations, and their mission of social transformation.

5. A new legislative framework to be developed

Rather than limiting the so-called non-partisan political action of organizations, the Act should encourage and facilitate the work of organizations with regard to public policies. Charities are key actors in society and their work is to promote the interests of individuals and families in Canada. As Prime Minister Justin Trudeau so aptly put it, “charities make an important contribution to public debate and public policy." The actions of this sector must therefore be strengthened, and not restricted.

We encourage the Minister of National Revenue to take this opportunity to stop seeing our work as charity, and consider it instead to be the defence of the interests of Canadians, such as the protection of human, social and global rights.

Charitable purposes to be updated

For the time being, the charitable purposes, which have not been updated for more than a century, are restricted to the relief of poverty, the advancement of education, the advancement of religion and any other purposes useful to the community and recognized as a charitable purpose by the courts. The CRA itself admits that “the language used to describe the classes is far from clear, particularly as it relates to the fourth category, the interpretation of which has been the subject of substantial litigation.”

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17 Ibid.
This restricted categorization has, for example, led to the exclusion of many organizations fighting poverty in Quebec. We find this ridiculous: if the relief of poverty is a recognized public benefit in terms of charitable purposes, then fighting the causes of poverty should also be recognized as such.

The restrictive interpretation of charitable purposes, combined with the use of activity reviews, also penalizes a large number of organizations that are not able to obtain charitable status. It should be remembered that not only does this status represent a tax benefit for donors, it is also the key to obtaining funding from public and private foundations, including the United Way, which is a major funder of several community organizations.

It is therefore urgent that the purposes considered charitable be extended to the promotion of citizenship and democratic participation and freedom of thought, association and expression.

Faced with all these problems caused by outdated common-law legislation and rules that fail to respect organizations working for the well-being of Canadians, the RQ-ACA rejects a simple cosmetic reform of the guidelines surrounding charities and recommends the development of a new legislative framework.

6. **Suspend the audits**

Since the previous government provided **$13 million** to the Canada Revenue Agency (CRA) to conduct a **series of audits** of charities, numerous independent community action organizations have expressed their concern about the results of the audits.

These audits, which have affected between 800 and 900 organizations,¹⁸ have been severely criticized and described as political harassment. Some have resulted in the revocation of the charitable status of the groups involved. Several groups are still being audited, despite the change of government.

Revocation of charitable status can result in the cessation of an organization’s activities. This situation seems unacceptable to us from the perspective of citizen participation and freedom of expression.

In its report on Canada, the UN Human Rights Committee stated in 2015 that it was concerned about the recurrence of political audits and the impact of section 149.1 of the ITA on charities that defend political and social causes.¹⁹

We therefore believe that in the context of the current consultations, it is inappropriate to continue these audits when the public money involved could be put to better use.

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¹⁸ This information was provided to us on May 5, 2016 by Ms. Anne Ellefsen-Gauthier, Special Assistant and Caucus Liaison in the Office of the Minister of National Revenue.

7. **RQ-ACA recommendations**

1. The RQ-ACA recommends an amendment to the provisions of the *Income Tax Act* concerning charities and the adoption of a new legislative framework governing these organizations, as proposed in the mandate letters of the Minister of National Revenue and the Minister of Finance.

   **This new framework should be consistent with the following principles:**

   **1.1** Ensure full freedom of expression for charities. An organization should have the right to speak out publicly on any matter it considers relevant based on its mission, without limits to how it does so or the amount of resources it devotes to that purpose.

   **1.2** Remove all restrictions on non-partisan political activity by charities. Use the model of the Government of Quebec's Community Action Recognition and Support policy to extend the notion of non-partisan political activity to the analysis of public policies and draft legislation, as well as citizen education, social mobilization and lobbying activities aimed at making government aware of these analyses and of the circumstances of certain segments of the population.

   **1.3** Expand the purposes considered charitable to include the promotion and defence of citizenship, social solidarity, democratic participation, and freedom of thought, association and expression.

2. The RQ-ACA recommends that any ongoing audits be terminated and that the Canada Revenue Agency's power to revoke charitable status following an audit be suspended immediately and not be reinstated until such time as the new legislative framework has been adopted.

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21 [https://pm.gc.ca/eng/minister-finance-mandate-letter](https://pm.gc.ca/eng/minister-finance-mandate-letter)
Appendix 1

Independent Community Action: Working for the People

There are more than 4,000 organizations in Quebec involved in independent community action (ACA). These organizations are recognized by the Quebec government in its policy entitled “Community action: A crucial contribution to the exercise of citizenship and the social development of Quebec,” which was adopted in July 2001. To be recognized, a community organization must meet the following eight criteria:

- be non-profit;
- be community-based;
- be associative and democratic;
- be free to determine its mission, approaches, practices and orientations;
- be created through a community initiative;
- pursue a social mission that is specific to it and that promotes social change;
- use active citizen practices and broad-based approaches rooted in a comprehensive view of the issues at stake;
- be governed by a board of directors independent from the public network.

For the purposes of clarifying these criteria, a Cadre de référence en matière d'action communautaire (community action reference framework) was produced by the Quebec government in 2004. Please see: http://www.mess.gouv.qc.ca/sacais/action-communautaire/cadre-reference.asp

These independent community action organizations are active in a wide variety of areas in Quebec, notably:

Appendix 2
List of members of the
Réseau québécois de l'action communautaire autonome (RQ-ACA)
Updated November 22, 2016

National groups and organizations that are members of the RQ-ACA

01 Alliance des maisons d'hébergement de 2e étape pour femmes et enfants victimes de violence conjugale

02 Alliance québécoise des regroupements régionaux pour l’intégration des personnes handicapées (AQRIPH)

03 Association des grands-parents du Québec

04 Association des groupes d’intervention en défense des droits en santé mentale du Québec (AGIDD-SMQ)

05 Association des haltes-garderies communautaires du Québec (AHGCQ)

06 Association des médias écrits communautaires du Québec (AMECQ)

07 Association des radiodiffuseurs communautaires du Québec (ARCQ)

08 Association féminine d’éducation et d’action sociale (AFEAS)

09 Association québécoise des organismes de coopération internationale (AQOCI)

10 Association québécoise pour la défense des droits des personnes retraitées et pré-retraitées (AQDR)

11 Centre de documentation sur l’éducation des adultes et la condition féminine (CDEACF)

12 Coalition des associations de consommateurs du Québec (CACQ)

13 Coalition des organismes communautaires autonomes de formation (COCAF)

14 Coalition des organismes communautaires québécois de lutte contre le SIDA (COCQ-SIDA)

15 Coalition des tables régionales d’organismes communautaires (CTROC)

16 Confédération des organismes de personnes handicapées du Québec (COPHAN)

17 Confédération des organismes familiaux du Québec (COFAQ)

18 Conseil d’intervention pour l’accès des femmes au travail (CIAFT)

19 Conseil national des chômeurs et chômeuses (CNC)

20 Conseil québécois LGBT (CQLGBT)

21 Conseil québécois du loisir (CQL – Quebec Leisure Council)

22 Fédération des associations de familles monoparentales et recomposées du Québec (FAFMRQ)
23 Fédération des centres d’action bénévole du Québec (FCABQ)
24 Fédération des familles et amis de la personne atteinte de maladie mentale (FFAPAMM)
25 Fédération des femmes du Québec (FFQ)
26 Fédération des locataires d’habitations à loyer modique du Québec (FLHLMQ)
27 Fédération québécoise des centres communautaires de loisir (FQCCCL)
28 Fédération québécoise des organismes communautaires famille (FQOCF)
29 Fédération québécoise du canot et du kayak (FQCK)
30 Front commun des personnes assistées sociales du Québec (FCPASQ)
31 Jeunesse ouvrière chrétienne nationale du Québec (JOC)
32 Ligue des droits et libertés (LDL)
33 L’R des centres de femmes du Québec
34 Mouvement autonome et solidaire des sans-emploi (MASSE)
35 Mouvement d’éducation populaire et d’action communautaire du Québec (MÉPACQ)
36 Mouvement Démocratie Nouvelle (MDN)
37 Mouvement québécois des vacances familiales (MQVF)
38 Regroupement des Auberges du coeur du Québec
39 Regroupement des comités logement et associations de locataires du Québec (RCLALQ)
40 Regroupement des Cuisines Collectives du Québec (RCCQ)
41 Regroupement des groupes populaires en alphabétisation du Québec (RGPAQ)
42 Regroupement des maisons des jeunes du Québec (RMJQ)
43 Regroupement des organismes communautaires autonomes jeunesse du Québec (ROCAJQ)
44 Regroupement des organismes communautaires québécois de lutte au décrochage (ROCLD)
45 Regroupement des organismes Espace du Québec (ROEQ)
46 Regroupement des ressources alternatives en santé mentale du Québec (RRASMQ)
47 Regroupement provincial des maisons d’hébergement et de transition pour femmes victimes de violence conjugale
48 Relais-Femmes
49 Réseau des tables régionales de groupes de femmes du Québec
50 Réseau québécois des groupes écologistes (RQGE)
51 Réseau québécois des OSBL d'habitation
52 Table de concertation des organismes au service des personnes réfugiées et immigrantes (TCRI)
53 Table des regroupements provinciaux d’organismes communautaires et bénévoles (TRPOCB)
54 Table nationale des corporations de développement communautaire (TNCDC)
55 Transport 2000 Québec
56 Union des consommateurs
The Honourable Diane Lebouthillier  
Minister of National Revenue  
House of Commons  
Ottawa, Ontario  
K1A 0A6

By email: Diane.Lebouthillier@parl.gc.ca

Re: Report of the Consultation Panel on the Political Activities of Charities

Dear Minister:

The Réseau québécois de l’action communautaire autonome (RQ-ACA), which includes 58 groups and national organizations and involves more than 4,000 independent community action organizations in Quebec, welcomes the report of the Consultation Panel on the Political Activities of Charities. This report takes into account the recommendations made during last winter’s consultations by all organizations, which are to replace the vague and obsolete laws governing charities with a new legislative framework that ensures them full freedom of expression.

In our brief, we demonstrated among other things the importance of updating the concept of political activity, which currently limits the work of charities, and broadening charitable purposes to allow organizations to participate fully in the development of public policy. As noted in the report of the consultation panel, several organizations supported the position of the RQ-ACA to provide a legislative framework that guarantees the full freedom of charitable organizations, which is not currently the case.

Together with the consultation panel and several organizations, the RQ-ACA invites you, Minister, as well as your colleague Bill Morneau, the Minister of Finance, to introduce a bill very soon to implement the recommendations made in the report.

We also welcome your decision to respond positively to one of the recommendations of the consultation, which we share, to immediately suspend all Canada Revenue Agency activity related to the political audit program that was launched in 2012 by the previous government.

We thank you for your serious attention to this matter, and offer you our fullest cooperation for the next steps.

Claudette Cyr  
President  
Réseau québécois de l’action communautaire autonome

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