



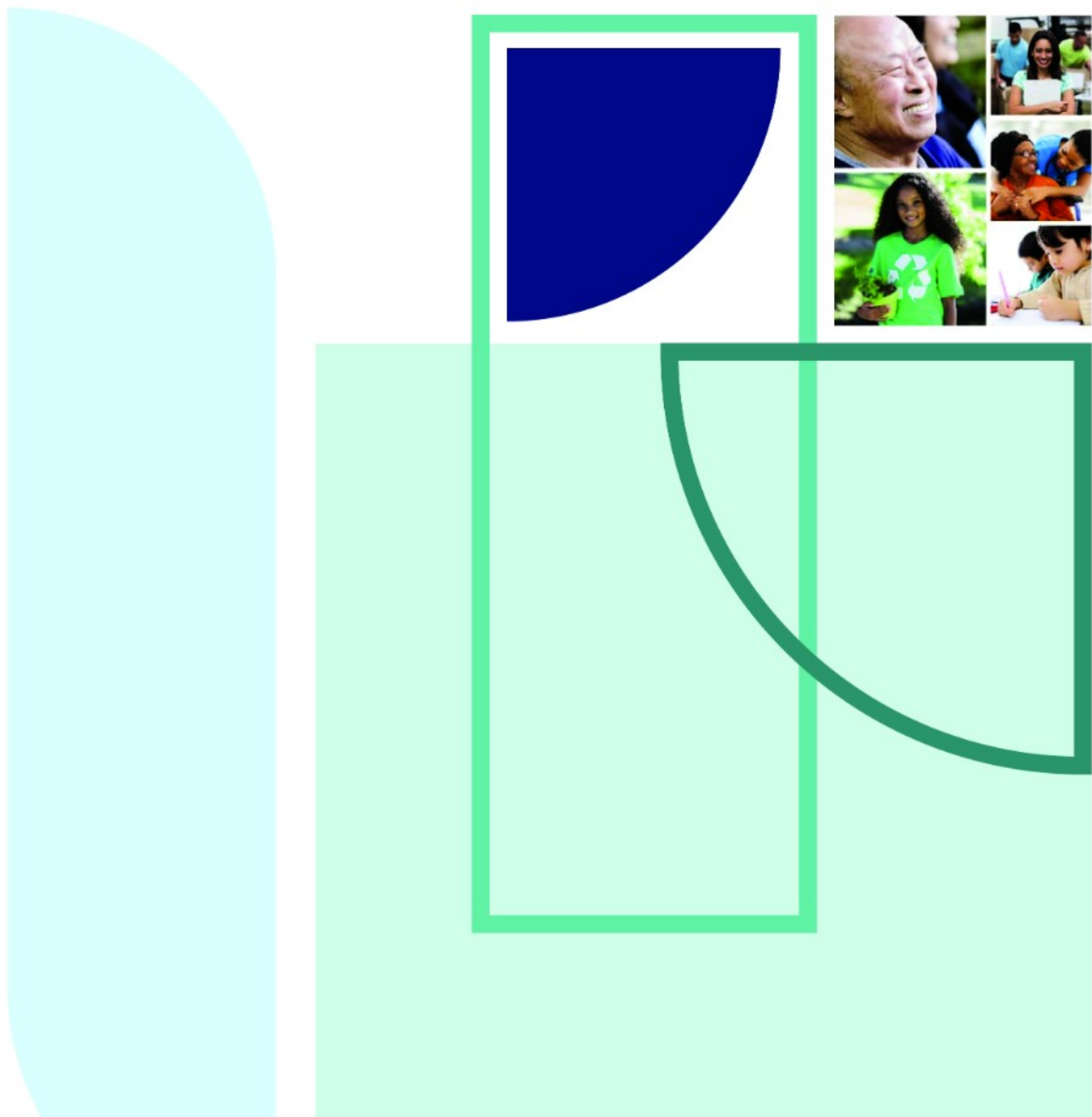
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# Report #1 of the Advisory Committee on the Charitable Sector – January 2021

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## Report #1 of the Advisory Committee on the Charitable Sector

Towards a federal regulatory environment that enables and strengthens the charitable and nonprofit sector

January 2021

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## Preface

The Honourable Diane Lebouthillier  
Minister of National Revenue

Bob Hamilton  
Commissioner of the CRA (Canada Revenue Agency)

January 29, 2021

Dear Minister Lebouthillier and Commissioner Hamilton,

This report is presented to you on behalf of the 14 sector members of the Advisory Committee on the Charitable Sector. We thank you for your interest in ensuring an enabling regulatory environment for charities and nonprofits, one that empowers them as they carry out their work for the benefit of Canadians.

The sector co-chairs, Bruce MacDonald and Hilary Pearson, would be pleased to provide you with any additional information you may require.

Signed,

**Bruce MacDonald**

President & CEO (Chief Executive Officer), Imagine Canada

**Andrea McManus**

Chair and Founding Partner of ViTreo Group

**Arlene MacDonald**

Former executive Director of Community Sector Council of Nova Scotia

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# Introduction

## The Mandate of the ACCS (Advisory Committee on the Charitable Sector)

The Advisory Committee on the Charitable Sector (the ACCS) was established in 2019 as a new consultative forum for promoting meaningful dialogue between the charitable sector and the Government of Canada, in particular the Canada Revenue Agency (the CRA) and the Department of Finance. The objectives of the ACCS (Advisory Committee on the Charitable Sector) are to advance emerging issues relating to charities, and to ensure that the regulatory environment supports the important work that charities do.

The ACCS (Advisory Committee on the Charitable Sector) is a key mechanism through which the Minister of National Revenue can fulfill an important element of her December 2019 mandate letter:

“It is also your responsibility to substantively engage with Canadians, civil society and stakeholders, including businesses of all sizes, organized labour, the broader public sector and the not-for-profit and charitable sectors. You must be proactive in ensuring that a broad array of voices provides you with advice, in both official languages, from every region of the country.”

## Three Areas of Focus

At its first full meeting in December 2019, the ACCS (Advisory Committee on the Charitable Sector) agreed on three broad areas within which it intended to pursue its exploration of issues and the development of its advice and recommendations:

- Evolving the institutional framework to effectively advance public purposes and to maximize sector impact.
- Ensuring financial sustainability within the charitable sector.
- Establishing modern governance for the charitable sector.

The ACCS (Advisory Committee on the Charitable Sector) chose these areas because the federal Government’s institutional framework (including law and regulations) shapes the work and operations of charities in important ways. The federal Income Tax Act (ITA) and CRA (Canada Revenue Agency) policy guidance define the activities of charities and govern their ability to raise funds, work with non-charities and deploy their resources. A well-functioning framework is fundamental to the sector’s sustainability and to its effectiveness.

Across the charitable sector, there is wide and longstanding agreement that this framework needs to be reviewed and updated. The broad consultations and analysis conducted by the Senate Special Committee on the Charitable Sector (the Senate Committee), summarized in its 2019 Report, **Catalyst for Change: A Roadmap to a Stronger Charitable Sector**<sup>1</sup>, provide the

evidence and the case for a reconsideration of the institutional framework. The Senate Committee identified directions for improvements to the framework, to the rules governing financial flows within and to the sector, and to the governance of the sector. A number of the Senate Committee's recommendations were addressed directly to the ACCS (Advisory Committee on the Charitable Sector) for its consideration. The choice of priorities for the first year of work was thus based on the important work by many sector leaders and advisors that preceded the creation of the ACCS (Advisory Committee on the Charitable Sector).

## **A New Context**

The context for the work of the ACCS (Advisory Committee on the Charitable Sector), and the conditions facing the charitable and the broader nonprofit sector, changed radically with the onset of the COVID (Coronavirus disease)-19 pandemic in March 2020. The ACCS (Advisory Committee on the Charitable Sector) turned its attention immediately to the urgent and challenging ways in which the crisis was affecting charities. The ACCS (Advisory Committee on the Charitable Sector) held two meetings in April and May of 2020 to discuss the impact of the health emergency and the ways in which charities and the Canadians and communities that they serve were being affected. Even at this early stage of the pandemic it was clear that many charities were facing a difficult double hit: decreasing revenues from donations and earned income, but increasing demand for services, particularly social and health services. Employees and volunteers alike were being dramatically affected by school closures, need to work from home, lack of childcare and need for protective equipment in delivering services.

The pandemic put a spotlight on the consequences of the financial fragility of many charities, including lack of reserve funds, insufficient investments in technology and digital infrastructure, dependence on older volunteers and lack of data capacity. Charities serving vulnerable populations such as marginalized youth, victims of domestic violence, Indigenous communities, and communities of people of colour are being particularly hard-hit. This is a gendered crisis. The workforce of the charitable sector is up to 80 percent female. Women have been particularly disadvantaged by the pandemic through lack of childcare, school closures, and layoffs of contract or part-time workers.

## **A Constrained Ecosystem**

The financial strain continued to grow through late 2020. Event-based revenue as well as major donations decreased. Funders were asked to deploy funding more flexibly, quickly and unconditionally to meet urgent needs and support for core operations. Offsetting earned and philanthropic revenue declines, many charities benefited from federal emergency support for wages and rent, and dedicated funding through the Community Emergency Support Fund for specific organizations such as domestic violence shelters, community food centres and organizations working with particularly vulnerable populations. But the rules governing access to

federal emergency relief funding and wage supports have not taken into account factors specific to the charitable sector such as large variations in annual revenue, engagement of employees internationally, and significant dependence on volunteer workers. Charities that own their own space have not been able to take advantage of the federal rent subsidies and are struggling with mortgages. The ITA (Income Tax Act) and regulations set limits on philanthropic funding of community organizations that do not meet the requirements of charities or qualified donees. Nor does the ITA (Income Tax Act) permit flexible approaches to earning non-philanthropic revenue. In general, the federal Government has difficulty in designing horizontal policies and programs that work to support productivity and growth of the charitable and nonprofit sector (such as access to financial capital, investments in digital capacity, timely and comprehensive data and human resource supports). This is at least in part because the sector is not “seen” outside of the CRA (Canada Revenue Agency) and Charities Directorate. There is no central federal policy unit or cross-cutting ministerial mandate for the charitable and nonprofit sector.

### **ACCS (Advisory Committee on the Charitable Sector) Working Groups**

At the June 2020 meeting, in light of the issues highlighted by the pandemic, the ACCS (Advisory Committee on the Charitable Sector) decided to accelerate its work by organizing itself into five working groups focusing on the following priorities:

1. Examining the regulatory approach to charitable purposes and activities, including its impact on charities working with non-qualified donees, and charities engaging in revenue-earning activities;
2. Modernizing the regulatory framework in Government as it relates to the charitable sector;
3. Supporting the work of charities serving vulnerable populations;
4. Exploring charity-related regulatory and legislative issues faced by Indigenous Peoples and organizations; and
5. Improving data collection and analysis related to the charitable sector.

All of these priorities were considered equally important. Each of the working groups was asked to review the issues and make recommendations to the full ACCS (Advisory Committee on the Charitable Sector) where appropriate and when ready. The working groups met frequently over the course of the summer and fall of 2020. The two groups focusing on vulnerable and Indigenous populations agreed that it was important to take the time to consult with organizations and individuals who are close to the issues and experiences of these populations and of the charities and nonprofits working with them. The working group on data also wanted to undertake extensive consultations with data experts in and outside the federal government, and with leaders in the charitable and nonprofit sector working on data infrastructure and strategies. The two working groups focusing specifically on the regulatory and legal framework

for charities held some consultations but were able to draw on the previous work of many advisors, analysts and legal experts as well as the evidence presented in 2019 to the Senate Committee.

## **Progress and Recommendations**

At the end of October 2020, the full ACCS (Advisory Committee on the Charitable Sector) met to review the progress of the working groups. The Minister of National Revenue, the Honourable Diane Lebouthillier, attended this meeting and spoke to the importance of the work of the charitable and nonprofit sector in meeting the needs of so many Canadians severely affected by the pandemic.

At its meeting of December 1, 2020, the ACCS (Advisory Committee on the Charitable Sector) reviewed the conclusions reached by each of the five working groups. The ACCS (Advisory Committee on the Charitable Sector) decided to make three recommendations for immediate consideration by the Minister of Revenue and her colleagues, particularly the Minister of Finance. These recommendations and their rationale are detailed in the Report that follows. Two of the recommendations are for statutory changes and one relates to the organization of government itself. In the view of the ACCS (Advisory Committee on the Charitable Sector), these three recommendations are all achievable in the short to medium term, and will lead to an improved and enabling regulatory and policy environment for charities. Charities will be able to respond more flexibly and quickly to opportunities for partnership and collaboration on projects for public benefit. The legal understanding of charities will evolve more rapidly in a 21st century context for charitable purpose. And a home in government will lead to greater respect, recognition and effectiveness in the relationship between charities and the federal government. These changes will help to address some of the issues highlighted by the pandemic including the need for recognition and encouragement of more flexible and innovative cross and inter sectoral work on behalf of Canadian and global communities.

The ACCS (Advisory Committee on the Charitable Sector) recognizes and appreciates the strong support provided by the CRA (Canada Revenue Agency) and the Charities Directorate to the charitable sector over the course of 2020. The CRA (Canada Revenue Agency) kept its information lines open, offered and renewed its guidance and policy advice and worked with the ACCS (Advisory Committee on the Charitable Sector) itself to identify and explore issues ranging from service delivery through regulatory implementation. The CRA (Canada Revenue Agency) plays a key role for the whole of government in managing and delivering the emergency support payments essential to Canadians and to the charitable sector. In turn, the ACCS (Advisory Committee on the Charitable Sector) believes that the CRA (Canada Revenue Agency) can and should play an important role within and across government in identifying solutions to the challenges in the federal relationship with the charitable sector. The pandemic has added



urgency and clarity to the need for change. The Minister of National Revenue has a unique window into the charitable sector through the information and advice provided by the ACCS (Advisory Committee on the Charitable Sector). The ACCS (Advisory Committee on the Charitable Sector) urges the Minister to bring this information to the policy debates at the Cabinet table.

The ACCS (Advisory Committee on the Charitable Sector) intends to continue its consultations and to develop further recommendations. The consequences of the pandemic will continue to shape and direct its work. The goal of the ACCS (Advisory Committee on the Charitable Sector) is to support the charitable sector through its recovery and beyond. We will continue to pursue this work and come forward when ready to give advice to the federal government in the coming year. We invite the Minister of National Revenue to consider these recommendations with urgency, to work with her colleague the Minister of Finance towards their early implementation, and to proactively engage other Ministerial colleagues in a cross-government dialogue with the charitable and nonprofit sector on building a more enabling and productive regulatory relationship with the sector.

## Recommendations

The sector members of the ACCS (Advisory Committee on the Charitable Sector) join together in presenting the following three recommendations to the Minister of National Revenue for her consideration. The ACCS (Advisory Committee on the Charitable Sector) sector members expect to make additional recommendations in a second Report expected in spring 2021.

**The ACCS (Advisory Committee on the Charitable Sector) recommends that the Minister of National Revenue work with the Minister of Finance to remove the “own activities” test from the ITA (Income Tax Act), and require through this amendment a focus on resource accountability. This amendment will provide:**

- that the original regime and “own activity” test in the ITA (Income Tax Act) that requires registered charities to devote all of their resources to charitable activities carried on by themselves be replaced with a regime that permits registered charities to operate in furtherance of their charitable purpose; and
- the administrative requirements around direction and control be replaced with a requirement for registered charities to establish reasonable and practical parameters for ensuring resource accountability when working to achieve a charitable purpose through a third party that is not a qualified donee.

**The ACCS (Advisory Committee on the Charitable Sector) recommends that the Minister of National Revenue formally request the Minister of Finance amend the ITA (Income Tax Act), to implement recommendation 23 from the Senate Special Committee Report, *Catalyst for Change: A Roadmap to a Stronger Charitable Sector*. This amendment will provide:**

- that all appeals from decisions of the Charities Directorate of the Canada Revenue Agency proceed to the Tax Court of Canada for a hearing de novo, following consideration by the CRA (Canada Revenue Agency)'s Tax and Charities Appeals Branch (the Appeals Branch); and
- a right to appeal to the Tax Court of Canada for cases where the Appeals Branch has not rendered a decision on an appeal by an organization that has had its application for registered charity status refused, or an existing charity that has had its registration revoked, within six months of it having been referred to the Appeals Branch.

**The ACCS (Advisory Committee on the Charitable Sector) recommends to the Minister of National Revenue that she work with Cabinet colleagues to create a permanent “home in government” for Canada’s charities and nonprofits, outside of the CRA (Canada Revenue Agency). This home will:**

- provide a place within government for comprehensive policy development which will strengthen the relationship to ensure a more productive and effective partnership ; and
- advocate on behalf of this sector when broader government policies and programs are being considered, acting as a connector and communicator with other government departments.

## Summary of recommendations

What we heard	How it matters	Recommendation	Outcome
<b>1</b> The “direction and control” rules are hierarchical, intrusive, and onerous for charities.	Charities can't partner equally or respond quickly or flexibly to needs of non-charities serving communities.	Amend the Income Tax Act to remove the “own activities” test and allow for “resource accountability”.	An accountability framework for charities that enables partnership and innovation and ensures that resources are used for public good.
<b>2</b> The federal appeal process for charities is time consuming and expensive.	Little evolution in the definition of “charitable purpose” beyond a 19 <sup>th</sup> century idea of public benefit.	Amend the Income Tax Act to allow all appeals to go to the Tax Court of Canada.	More rapid evolution of the legal definition of charitable purpose.
<b>3</b> Federal policy frameworks for the sector are missing or uncoordinated.	Insufficient federal investment in data, IT, finance, and labour market policies for the sector.	Create a permanent policy “home in government” for the charitable and nonprofit sector.	A more effective and productive sector, enabled by coordinated federal policies and programs.

► Image description

## Update on the ACCS (Advisory Committee on the Charitable Sector) priorities

The next section of the report provides more detailed updates, context, and analysis on the work that the ACCS (Advisory Committee on the Charitable Sector) has undertaken since it established its five priorities and working groups on June 22, 2020. The rationale for the three recommendations made in this report is set out below in the updates from the two working groups on Purposes and Activities, and the Regulatory Framework.

### 1. Examining the regulatory approach to charitable purposes and activities

The ACCS (Advisory Committee on the Charitable Sector) tasked the Purposes and Activities Working Group (P&AWG) to review the ways Canadian registered charities are required to function under the ITA (Income Tax Act), including the ways in which charities work with non-qualified donees, and the engagement of charities in revenue-earning activities.

#### The activities of charities working with non-qualified donees: “direction and control”

The P&AWG (Purposes and Activities Working Group) focused its examination on the so-called “direction and control” requirements developed by the CRA (Canada Revenue Agency) to regulate the activities of Canadian charities working with other organizations or platforms that

are not themselves qualified donees.

The ITA (Income Tax Act) defines charitable organizations as organizations “all the resources of which are devoted to charitable activities carried on by the organization itself” (subsection 149.1(1)). The Act does not mention “direction and control”. The requirement to show “direction and control” has been effectively read into the Act by the CRA (Canada Revenue Agency) and the courts.

Charities further their charitable purpose(s) either directly through activities conducted by their own staff and programs or by transferring resources (gifts, grants, or otherwise) to qualified donees,<sup>2</sup> which are other Canadian charities or organizations registered by the CRA (Canada Revenue Agency). If the charity wants to carry on its own activities in Canada or abroad but needs to do so with or through a third party that is not a qualified donee, the rules require that the charity demonstrate that it has direction and control over all the activities.

This rule means that charities working in communities where there are few Canadian qualified donees (either domestically or internationally) must spend money and time working with contractors or intermediaries. In Canada, these communities could be Indigenous communities, rural communities, and marginalized neighbourhoods in cities; outside of Canada, any country in the Global South where there are development or humanitarian needs.

### **Impact on the sector**

The P&AWG (Purposes and Activities Working Group) heard widespread concerns from charity leaders, board members, and legal advisors that the direction and control requirements are paternalistic and intrusive, and contrary to current strategies and policies that favour partnership and collaboration, particularly with Indigenous Peoples and Indigenous-led organizations in Canada and with local communities around the world. These requirements create barriers, generate distrust, and can lead to unanticipated liabilities for charitable organizations seeking to achieve their charitable purpose.

Canadian charities have onerous paperwork requirements to prove that they are maintaining direction and control. They need to gather budgets, receipts, activity plans, and quarterly reports. They have to impose specific activity plans on organizations acting as intermediaries or contractors, making it impossible to treat these organizations as partners or to empower them to determine their own actions and timelines, or to enable them to respond on the ground and in ways that they know best. If a Canadian charity wants to donate to a non-charity in an emergency, it can't do so rapidly because of the time it takes to prepare the documentation and the controls. Canadian charities cannot pool funds with others in multi-organization partnerships

that are not registered as charities or that include non-qualified donees without attempting to impose controls that are very difficult in practice. Examples of the obstacles presented by direction and control are provided in the accompanying box.

These concerns were echoed by witnesses appearing before the Senate Committee in 2019. Many of these witnesses pointed out that the problem originates in “an ill-conceived reference” to charitable activities in the ITA (Income Tax Act). Some of the witnesses suggested that rather than agency agreements, the CRA (Canada Revenue Agency) could rely on expenditure responsibility agreements or other approaches that focus on due diligence measures and financial accountability and **not** on operational controls. This approach is practiced in the US (United States) and Australia with no greater measurable leakage of charitable funds to non-public benefit purposes. Witnesses also agreed that the federal government had many statutory and regulatory tools available to it outside of the ITA (Income Tax Act) and CRA (Canada Revenue Agency) requirements to ensure that public funds are not diverted by charities to non-charitable purposes and activities.

The Senate Committee in its final report recognized “the vital role of partnerships between charities and non-charities” and stated that it “believes that, while Canadian charities must be held accountable for their expenditure, contemporary values such as inclusion and local decision-making must also be respected.”<sup>3</sup> The Senate Committee recommended that the CRA (Canada Revenue Agency) shift its approach to “direction and control” away from operational controls and towards expenditure responsibility.

### **Next steps**

The P&AWG (Purposes and Activities Working Group) concluded after examining the testimony before the Senate Committee, the advice offered by the legal community and a review of the ITA (Income Tax Act) provisions, that revisions and clarifications to the CRA (Canada Revenue Agency)'s policy guidance on direction and control and activities conducted with intermediaries<sup>4</sup> would not be sufficient to ensure that the needed shift to an approach to financial rather than operational accountability occurred. As long as the definition in the ITA (Income Tax Act) continues to refer to all of the resources being devoted to charitable activities carried on by the organization itself, the CRA (Canada Revenue Agency) will deem it necessary to specify rules governing the carrying out of these activities.

While recent changes to the CRA (Canada Revenue Agency)'s policy guidance on direction and control and activities conducted with intermediaries have clarified and also created slightly more flexibility for smaller charities, the fundamental problems remain. The requirements create overly intrusive and hierarchical relationships that cannot be described as partnerships and that create administrative headaches. In the context of the current pandemic, the rules have

particularly constrained the ability of charities to respond flexibly and quickly to urgent funding needs particularly from the smaller, grassroots community organizations serving disadvantaged populations, where the need is greatest. The P&AWG (Purposes and Activities Working Group) and the ACCS (Advisory Committee on the Charitable Sector) concluded that it was necessary to recommend that an amendment to the ITA (Income Tax Act) be considered to remove the reference in the definition of a charitable organization carrying on its own activities.

The ACCS (Advisory Committee on the Charitable Sector) therefore recommends to the Minister of National Revenue that she work with the Minister of Finance to amend the ITA (Income Tax Act). This will lead to corresponding revisions to CRA (Canada Revenue Agency) administrative policy guidance. The focus of legislation and regulation should be on whether a charity uses, in a responsible manner, its resources to further its charitable purposes, not how it carries on those charitable “activities”, whether they be its own or otherwise. In making this recommendation, the ACCS (Advisory Committee on the Charitable Sector) does not suggest that accountability for the use of charitable resources should in any way be weakened. Rather, the controls and accountability measures should be appropriately sized and not counterproductive to collaboration.

As the P&AWG (Purposes and Activities Working Group) continues its examination of the frameworks that regulate how charities work to pursue their charitable purposes, it will review other possible recommendations to bring about more effective regulation.

Why is direction and control a barrier to charitable work? The following examples provide specific illustrations of the intrusive impact of the rules

- Donating to a renowned non-profit hospital outside of Canada to support a specialized type of surgical procedure. The Canadian charity would have to show that it is exercising actual control over the use of the funds – for example, leasing the operating room, paying surgeons, and so on, even though it had no staff present at the hospital.
- Donating to a platform created to support arts organizations (some who are non-charities or nonprofits) who are looking to share back office or training costs. The Canadian charity would have to carve out some portion of this platform as its own project and separate out administration, salary and rental costs.
- Donating directly to a non-profit platform for shared expertise and consultancy to community organizations using social innovation approaches. The Canadian charity would have to give to another charity that was willing to house the social innovation centre as its own project or carve out and manage certain activities of the platform itself.
- Donating to a shared platform for youth organizations which have no resources or experience to apply for charitable status but who can manage with delegated

operational authority. The charity would still have to show that it controlled the youth groups or that they conducted projects that it controlled.

- Donating to an Indigenous organization without charitable status for a project on reserve to support Indigenous food security. The Canadian charity would have to instruct the Indigenous organization in how to plan and carry out its activities, even though the charity staff did not live in the community.

## 2. Modernizing the regulatory framework in Government as it relates to the charitable sector

The ACCS (Advisory Committee on the Charitable Sector) tasked the Regulatory Framework Working Group (RFWG) to review the broader regulatory and administrative policy environment in which charities operate. The RFWG (Regulatory Framework Working Group) identified four immediate issues:

- Charity appeals and the Tax Court of Canada
- Home in government
- Data on diversity in the sector
- CRA (Canada Revenue Agency) regulation of earned income

Each of these four issues is discussed in more detail, below.

The RFWG (Regulatory Framework Working Group) also identified two other issues for consideration at a later date:

- Education and enforcement approaches to charitable regulation
- The legal definition of charitable purpose

### Charity Appeals and the Tax Court of Canada

Case law on what constitutes a charitable purpose has not evolved much in Canada over time. This is in part because any appeal by a charity of decisions made by the CRA (Canada Revenue Agency) on registration or revocations are required to be heard at the first instance by the Federal Court of Appeal (FCA). As the Muttart Foundation of Edmonton noted in its presentation to the Senate Committee in 2019, “when the Supreme Court of Canada heard the case of the Vancouver Society of Immigrant and Visible Women in 1999, it was the first charity-law case that had arrived before the court in almost 30 years. The common law cannot evolve if cases are not brought before the courts.” <sup>5</sup>

Simply put, the law needs to evolve, and it needs to do so in a manner that is fair to all parties. In all other aspects of Canadian life, the law is fully tested, discussed, debated, and ultimately evolved to reflect the needs of society, but not as it relates to charities. Bringing appeals to the

FCA (Federal Court of Appeal) is time-consuming, costly and in almost all cases does not allow for a reconsideration of the question of charitable purposes, and the legal definition of what is charitable. A straightforward and widely supported solution to this difficulty is to allow appeals to be heard by the Tax Court rather than the FCA (Federal Court of Appeal).

The RFWG (Regulatory Framework Working Group) reviewed the many submissions that were previously made on this issue, dating back to 2005 and to the efforts of the sector-government Joint Regulatory Table. The RFWG (Regulatory Framework Working Group) also reviewed the extensive arguments and testimony on this question at the Senate Committee in 2019. It concluded after this review that there is a persuasive and widely supported rationale for creating an easier avenue for appeals of registration and revocation decisions. It therefore endorsed the recommendation made by the Senate Committee in its Final Report that appeals from CRA (Canada Revenue Agency) decisions should proceed to the Tax Court for a hearing de novo. Further rationale for this recommendation is found in Appendix 1.

### **A Home in Government**

The RFWG (Regulatory Framework Working Group) discussed the need for a federal policy “home” for the charitable and nonprofit sector which would exist outside of the Charities Directorate of the CRA (Canada Revenue Agency). The lack of such a “home” means the absence of a place for comprehensive and coordinated policy development within the federal government. While there are federal departments and/or ministries that align with various specific mission or cause areas and provide mechanisms for proactive policy development and sub-sectoral funding programs, there is no capacity for a cross-departmental policy view. The Senate Committee addressed this question during its hearings in 2019 with multiple witnesses.

There is broad agreement in the sector that a broader policy perspective afforded by such a policy unit or secretariat would help to ensure a more productive and effective partnership between the charitable and nonprofit sector and the federal government across a range of infrastructural issues such as data collection, financing, and digital connectivity and tools. In the context of the current pandemic, a cross-government policy unit would be able to identify major gaps in the capacity of the sector to respond to community needs and would be able to advocate for policies that create more resilience and more response capacity for sector organizations over the longer term.

Given this context, and the previous discussion at the Senate, as well as wide support expressed across the charitable sector, the RFWG (Regulatory Framework Working Group) decided to make a general recommendation to the Minister on a home in government that will act as a convener and coordinator of other federal departments and, as needed, provincial authorities with responsibilities for the sector. This general recommendation also serves the purpose of



assessing the appetite of the Government for the change prior to a subsequent and more specific recommendation. The RFWG (Regulatory Framework Working Group) has included some considerations around design of such a home in Appendix 2.

### **Data on Diversity**

The RFWG (Regulatory Framework Working Group) considered the question of the need for more data collection on the diversity of human resources in the sector. The RFWG (Regulatory Framework Working Group) noted efforts by leaders such as Senator Ratna Omidvar to encourage charities and nonprofits to collect data on diversity as a strategy to break down barriers for racialized Canadians. As a result of her advocacy, Statistics Canada conducted a crowdsourced voluntary survey in December 2020 to better understand who serves on nonprofit boards in Canada. The RFWG (Regulatory Framework Working Group) is considering the question of how to identify diversity categories, such as, for example, whether to limit the identification categories to those specified under the Employment Equity guidelines or whether they should be expanded to include Gender Based Analysis Plus + categories. The RFWG (Regulatory Framework Working Group) is also determining if the T3010 reporting form for charities and the T1044 reporting forms for nonprofits are the right mechanisms for asking these questions or if there is another more appropriate one. It will continue to investigate this issue in collaboration with the Charitable Sector Data Working Group.

### **CRA (Canada Revenue Agency) Regulation of Earned Income and Business Activity**

During their deliberations, the RFWG (Regulatory Framework Working Group) and P&AWG (Purposes and Activities Working Group) both considered the question of regulation of earned income and business activity. Members of the RFWG (Regulatory Framework Working Group) discussed the need to balance transparency and risk mitigation when a charity creates a separate entity for its business activities. The RFWG (Regulatory Framework Working Group) also noted that Imagine Canada has prepared a report on the readiness of charities to participate in social enterprise activities.<sup>6</sup> Going forward, as this is an issue that relates to the legal definition and the CRA (Canada Revenue Agency)'s regulation of activities by charities, the ACCS (Advisory Committee on the Charitable Sector) members have determined that this issue is best addressed by the P&AWG (Purposes and Activities Working Group).

### **3. Supporting the work of charities serving vulnerable populations**

The ACCS (Advisory Committee on the Charitable Sector) tasked the Vulnerable Populations Working Group (VPWG) to discuss and identify the particular challenges facing charities delivering services to vulnerable populations across the sector.

To this end, the VPWG (Vulnerable Populations Working Group) engaged in ensuring that its discussions are informed by feedback gathered from key sector leaders and front-line charities. This feedback will help the VPWG (Vulnerable Populations Working Group) make recommendations that will be reflective of, and aligned with, the realities of charities serving vulnerable populations throughout Canada.

### **Challenges faced by charities serving vulnerable populations**

Charities serving vulnerable populations have themselves for many years endured the persistent challenge of insufficient resources to meet the growing and changing needs of those they serve. Many are in flux from one fundraiser, one funder, or one grant to the next as they work to sustainably provide food, shelter, safety, and social inclusion in rural, remote, and urban communities. Their work is essential to build and maintain the critical social safety net necessary to save lives. Like the populations they serve, these charities operate at the very grass roots where the risks are greatest and the financial and human resources are stretched. In the midst of a disrupting global pandemic, these charities are confronted with an existential threat: how can they do more to meet increased and expanding needs in their communities while not knowing how long they'll be able to keep their doors open?

The CRA (Canada Revenue Agency) has opportunities to explore the challenges faced by charities serving vulnerable populations. The CRA (Canada Revenue Agency) has direct contact with these charities through its client services, registration process, external relations activities, and education and compliance activities. With feedback, the Charities Directorate can gather insights on charities facing difficulties completing their annual reporting obligations; applying for charitable registration; or in understanding or even locating CRA (Canada Revenue Agency) educational resources.

The information contained in the T3010 annual report may also provide valuable insights on issues facing charities serving vulnerable populations. Admittedly this would not inform immediate pandemic-related issues, given that there is a considerable time lag between when charities submit information and when the information is available for analysis.

### **Surveys and round tables**

In conducting its preliminary work and discussions, the VPWG (Vulnerable Populations Working Group) has drafted, tested, and received feedback on survey questions with key respondents who lead charities and/or are heads of membership organizations of these charities. With this feedback, the VPWG (Vulnerable Populations Working Group) reviewed and identified key areas for a broader survey to charities serving sub-sectors within vulnerable populations.

As the VPWG (Vulnerable Populations Working Group) continues its work, it plans to conduct virtual round table sessions and online surveys to identify the most pressing challenges facing charities serving vulnerable populations. It will review feedback from these sessions and determine if there are solutions that fall within the CRA (Canada Revenue Agency)'s mandate. It will also use this information to inform recommendations from the VPWG (Vulnerable Populations Working Group) for Report #2.

#### **4. Exploring charity-related regulatory and legislative issues faced by Indigenous Peoples and organizations**

The ACCS (Advisory Committee on the Charitable Sector) tasked the Indigenous Peoples Working Group (IPWG) to explore the relationship and interactions between the regulatory framework for charities and Indigenous Peoples and organizations.

In pursuing this work, IPWG (Indigenous Peoples Working Group) members were heartened to read the commitment by the Prime Minister made in the 2019 mandate letter of the Minister of National Revenue:

There remains no more important relationship to me and to Canada than the one with Indigenous Peoples. We made significant progress in our last mandate on supporting self-determination, improving service delivery and advancing reconciliation. I am directing every single Minister to determine what they can do in their specific portfolio to accelerate and build on the progress we have made with First Nations, Inuit and Métis Peoples.

The IPWG (Indigenous Peoples Working Group) has been actively working to identify how the CRA (Canada Revenue Agency)'s Charities Directorate can exemplify this direction.

The IPWG (Indigenous Peoples Working Group) has sought to listen before speaking, reaching out to eleven national and regional organizations to hear first-hand about the experiences of Indigenous Peoples and organizations in working within the charitable sector and with the Charities Directorate and the CRA (Canada Revenue Agency). The IPWG (Indigenous Peoples Working Group) has heard how the policy of “direction and control” perpetuates colonial power structures. The IPWG (Indigenous Peoples Working Group) has also spent time to learn about qualified donee status, particularly Municipal and Public Bodies (MPB) performing the function of government. A number of themes are emerging.

#### **Recognition of Indigenous Context and History**

- Need to recognize and accommodate Indigenous ways of acting with reciprocity when Indigenous communities work with registered charities and MPB (Municipal and Public Bodies)s
- Need for more cultural competency training for the Charities Directorate staff

- Need for more effective alignment of regulatory policies with the reconciliation commitments of Government

### **Indigenous-Specific Education and Outreach to Improve Accessibility**

- Need to remove inequitable administrative barriers for Indigenous organizations who choose to apply for registered charity or MPB (Municipal and Public Bodies) status
- Need to increase Indigenous awareness of and access to the Charities Directorate or CRA (Canada Revenue Agency) services, programs and policies
- Need to increase the Charities Directorate and CRA (Canada Revenue Agency)'s outreach to Indigenous communities via Indigenous intermediaries (e.g. (for example) The Circle on Philanthropy and Aboriginal Peoples in Canada, Indigenous Friendship Centres)

The consultations suggest that the CRA (Canada Revenue Agency) has opportunities to work with Indigenous intermediary organizations to lead and support:

- Increased Indigenous understanding of the charity-related regulatory and legislative framework
- On-going education and outreach to Indigenous Peoples and organizations
- More understanding of how Indigenous organizations can access funding from registered charities.
- Increased understanding in Indigenous communities about registered charities, Indigenous community foundations and the advantages of considering charity or MPB (Municipal and Public Bodies) status

The IPWG (Indigenous Peoples Working Group) expects that clarity around potential recommendations will begin to form as engagements and consultations continue with more Indigenous Peoples and organizations. The IPWG (Indigenous Peoples Working Group) looks forward to developing formal recommendations to help achieve the aspirations and commitments set out in the Minister's mandate letter.

## **5. Improving data collection and analysis related to the charitable sector**

The ACCS (Advisory Committee on the Charitable Sector) tasked the Charitable Sector Data Working Group (CSDWG) with how best to enhance and organize the available data about the charitable sector. To that end, the CSDWG (Charitable Sector Data Working Group) has sought to understand the status of data infrastructure needs and gaps in Canada's charitable sector.

Good data is essential in enabling good policy making, implementation, and evaluation. The federal Government made a commitment, expressed in the Prime Minister's mandate letters to the Ministers, "to evidence-based decision-making that takes into consideration the impacts of policies on all Canadians." Data on the economic and human resource profile of the Canadian

charitable sector is fundamental to good policy making for the sector. And data that provides clarity on outcomes and the impact of the work of the sector in communities is critical to better public policy and program design.

The CSDWG (Charitable Sector Data Working Group) has been conducting consultations with data users and experts to identify how the Charities Directorate and the CRA (Canada Revenue Agency) can work with the sector more effectively to strengthen evidence-based policy and decision making. The consultation process has confirmed that data is essential not only to support the effective regulation of the sector, but fundamental for understanding the sector, its needs, and its impact and contributions to Canada's well being and to the Canadian economy.

Certain themes have surfaced during the consultation process that speak to the challenges within the data landscape in Canada.

### **Impact of the COVID (Coronavirus disease)-19 pandemic and data capacity**

As is the case for other industries, data is needed to measure the impact that the COVID (Coronavirus disease)-19 pandemic is having on sector employers and their workforce of over 2 million Canadians; information is essential to support the recovery of the sector. With a workforce that is 80% female, it is especially important to understand the impact of the pandemic on the sector if policy makers are to fully comprehend its impact on Canadian women.

The urgency of the pandemic has revealed the lack of capacity in Canada to produce comprehensive, current, sector-wide labour market information. Data on the sector is dated (the CRA (Canada Revenue Agency)'s full T3010 data is not yet available for 2019). There are important gaps in data collection (e.g. (for example) diversity information). The accessibility of data that does exist is challenging; several government departments and agencies collect data on the sector, such as the CRA (Canada Revenue Agency), Statistics Canada and Employment and Social Development Canada, but it is not easily accessible. Provinces and territories also collect their own data on nonprofits and charities. First Nations charities and nonprofits have additional jurisdictional relationships. The interpretation of data is also difficult in a sector where the distinction between charities, nonprofit, voluntary, and social enterprise is often only made at a regulatory level.

### **National data strategy**

The CSDWG (Charitable Sector Data Working Group)'s consultations have yielded a need for a national data collection strategy. There is a need for better data infrastructure that will provide a more detailed picture of the sector's revenues, employees, contributions to GDP (gross domestic product) and many other key data. There are many different government departments that have

relationships with the sector, as well as other levels of government. There is no common data infrastructure to link the administrative data collected by all these levels, nor any ability to share data for outcomes tracking.

The complexity of the interdepartmental and cross jurisdictional relationships that the sector has with government presents challenges to the sector's capacity to report data especially in organizations where volunteers are responsible for reporting. There is a need to think strategically about the resources and capacity of both the regulator and the sector for data collection, reporting, and compliance. There is a need to identify how information can be shared for comparability, validity, quality, timeliness, and accessibility.

The CRA (Canada Revenue Agency) is one of the most significant sources of open data on the charitable sector at the national level. Existing CRA (Canada Revenue Agency) data collection tools and mechanisms, such as the T3010, are valuable sources of information on the sector. Yet, as many have noted, there is a need to update and to optimize what currently exists, and to explore alternative mechanisms for data not collected through existing tools.

The CRA (Canada Revenue Agency) can support data collection strategies that will enhance evidence-based decision making by championing cross-departmental efforts with the sector to develop those strategies. The Charities Directorate and the CRA (Canada Revenue Agency) can act proactively by seeking to engage at a more strategic level, with other departments and agencies and with the sector.

The CSDWG (Charitable Sector Data Working Group) will continue its consultation process and will make recommendations to strengthen the Government and the sector's capacity to make evidenced-based decisions once its consultation process is completed.

## Appendices

### 1. Appeals of decisions of the Charities Directorate – Additional context

In all other aspects of Canadian life, the law is fully tested, discussed, debated and ultimately evolved to reflect the needs of society, but not as it relates to charities.

Under the current system requiring charity appeals on registration and revocations to be heard at the first instance by the Federal Court of Appeal (FCA), there is little case law that has evolved over time to improve the environment in which charities function.

In response to the report of the Joint Regulatory Table, the ITA (Income Tax Act) was amended in 2005 to add an internal review process for charities to object to the CRA (Canada Revenue Agency)'s decisions to refuse registration, to revoke, to penalize, or to suspend. The Tax Court of

Canada retained jurisdiction over Part V tax assessments (including newly introduced penalties and suspensions), while the FCA (Federal Court of Appeal) maintained its jurisdiction over refusals of registration and revocation.

Throughout the Charities Directorate's application or audit process, the applicant or charity is given an opportunity to present facts to the CRA (Canada Revenue Agency) and respond to misunderstanding. If a refusal to register, or a notice of intention to revoke is issued resulting from an audit, is issued, the applicant or charity may file an objection with the CRA (Canada Revenue Agency)'s Appeals Branch and present additional information as desired. Once the CRA (Canada Revenue Agency)'s Appeals Branch has issued a final decision, the charity may choose to appeal to the FCA (Federal Court of Appeal), but the hearing is conducted on the basis of the written record established to date, and no new written or oral evidence may be introduced. This may prove to be problematic for charities that did not have legal representation during either the application/audit process or on the internal appeal involving the Appeals Branch.

A recommendation to change the appeal process for refusals to register and revocations over to the Tax Court of Canada would address a number of issues. The main reasons for making this change include:

- **Consistency** - While others in society, corporations and individuals, are permitted to appeal to the Tax Court on tax or ITA (Income Tax Act) related matters, charities are not, with the exception of appeals involving penalties and sanctions, which are few in number. This lack of consistency needs to be changed to afford the same opportunity for charities as is provided to all others in society.
- **Trial De Novo** - The current system is an appeal "on the record" meaning that no new written or oral evidence can be introduced, or witnesses can be called. As well, there is no opportunity provided to the applicant or charity to cross examine CRA (Canada Revenue Agency) on the record. This is an enormous disincentive for charities to bring cases forth in the current system. With litigation already being a costly and time-consuming process, charities need a system whereby they can introduce evidence that they deem is valid to their argument on appeal, not simply to be limited to the written record created during the CRA (Canada Revenue Agency) audit.
- **Rebalancing the Standard** - The current system whereby the FCA (Federal Court of Appeal) proceeds only on the basis of the CRA (Canada Revenue Agency)'s written record is challenging for the sector. Quite simply it feels unfair. For the law to have a chance to evolve and adapt, there needs to be a system whereby vigorous debate and the opportunity to introduce relevant information are integral elements of the process.
- **System in Place** - The Tax Court is already in existence to do what is needed because it is doing so in a fair and effective manner for Canadian taxpayers. It has an established

mechanism that hears cases in more locations than any other federal court. While there is an argument that allowing charities to appeal to the Tax Court in the first instance would add to its workload, it is unlikely that this change would trigger a tsunami of cases. Rather it would create an accessible pathway that would allow for charity cases to be heard.

## References

- Appeals of decisions of the Charities Directorate - Excerpts from Catalyst for Change: A Roadmap to a Stronger Charitable Sector, Senate of Canada (pages 74-77)
  - [https://sencanada.ca/content/sen/committee/421/CSSB/Reports/CSSB\\_Report\\_Final\\_e.pdf](https://sencanada.ca/content/sen/committee/421/CSSB/Reports/CSSB_Report_Final_e.pdf)
- Appeals of decisions of the Charities Directorate – Submission from the Muttart Foundation to the Special Senate Committee on the Charitable Sector (Section 3)
  - <https://www.muttart.org/wp-content/uploads/2018/10/Muttart-Submission-Oct.-2018.pdf>

## 2. “Home in government” – Design elements

A home in government would fulfill the following roles:

- It would develop **policies and programs** of broad interest and relevance to organizations operating in the charitable and nonprofit sector across Canada.
- It would advocate on behalf of these sectors when **broader government policies** are being considered, acting as a connector and communicator with other government departments.

The following “design elements” should be considered:

- A sector home in government should be **“central” enough that it is part of key discussions** and its views and opinions are taken seriously by other parts of government.
- Regardless of whether there is a political head (e.g. (for example) a Minister, Secretary of State, or Parliamentary Secretary), the home in government needs to be part of the **permanent machinery of government**.
- A home in government should be **cost-effective and relatively easy** for the federal government to implement.
- The mandate of a home in government should be limited to those issues that charities and nonprofits have in common because of their **corporate structures**.
- The home in government should recognize that charities and nonprofits make a **significant economic** as well as social contribution to Canada.

The Senate Committee recommended that a secretariat be created under the lead of the Minister of Innovation, Science and Economic Development, to “establish and convene regular meetings of an interdepartmental working group, convene meetings of appropriate groups of federal/provincial and territorial ministers with responsibility for various aspects of regulating



and relating to the charitable and non-profit sectors; and publish an annual report on the state of the charitable and non-profit sector.”<sup>7</sup> But, concluding that there is as yet no consensus on what shape this home might take, the RFWG (Regulatory Framework Working Group) decided that it would be appropriate to advocate for a home in government in a broad manner, recognizing the CRA (Canada Revenue Agency)’s ongoing role in regulating the sector under the ITA (Income Tax Act).

### 3. Membership, biographies of members, terms of reference, readouts, and meetings

#### Membership

The ACCS is made up of 17 members: 14 from the sector (S) and 3 from the Government (G).

Working Group	Regulatory Framework Working Group (RFWG)	Vulnerable Populations Working Group (VPWG)	Indigenous Peoples Working Group (IPWG)	Purposes and Activities Working Group (PAWG)	Charitable Sector Data Working Group (CSDWG)
Members	1. Andrea McManus (S) 2. Bruce MacDonald (S) 3. Terrance Carter (S) 4. Peter Dinsdale (S) 5. Geoff Trueman (G)	1. Paulette Senior (S) 2. Kevin McCort (S) 3. Peter Robinson (S) 4. Geoff Trueman (G)	1. Peter Dinsdale (S) 2. Susan Manwaring (S) 3. Arlene MacDonald (S) 4. Hilary Pearson (S) 5. Bruce Lawson (S) 6. Peter Elson (S)	1. Kevin McCort (S) 2. Susan Manwaring (S) 3. Terrance Carter (S) 4. Hilary Pearson (S) 5. Bruce Lawson (S) 6. Bruce MacDonald (S) 7. Paulette Senior (S) 8. Denise Byrnes (S) 9. Pierre LeBlanc (G) 10. Tony Manconi (G)	1. Arlene MacDonald (S) 2. Andrea McManus (S) 3. Paula Speevak (S) 4. Tony Manconi (G) 5. Hilary Pearson (S)
Priorities	Modernizing the regulatory framework in Government as it relates to the charitable sector.	Supporting the work of charities serving vulnerable populations.	Exploring charity-related regulatory and legislative issues faced by Indigenous Peoples and organizations.	Examining the regulatory approach to charitable purposes and activities, including its impact on charities working with non qualified donees, and charities engaging in revenue-earning activities.	Improving data collection and analysis related to the charitable sector.

#### Biographies of members

<https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/corporate-reports-information/advisory-committee-charitable-sector.html>

## Terms of Reference

The ACCS (Advisory Committee on the Charitable Sector)' mandate, member composition and roles, and framework for meetings, are outlined in its Terms of Reference available on <https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/corporate-reports-information/advisory-committee-charitable-sector/terms-reference.html>

## Readouts

Readouts of the meetings of the whole ACCS (Advisory Committee on the Charitable Sector) can be found on <https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/corporate-reports-information/advisory-committee-charitable-sector.html>

## Meetings

Below is a compilation of all the meetings of the ACCS (Advisory Committee on the Charitable Sector) between August 2019 and December 2020, including those of the ACCS (Advisory Committee on the Charitable Sector)' Working Groups. In addition to these meetings the co-chairs have met regularly by teleconference since the creation of the ACCS (Advisory Committee on the Charitable Sector) in March 2019.

	August 2019	September 2019	October 2019	November 2019	December 2019	January 2020	February 2020	March 2020	April 2020	May 2020	June 2020	July 2020	August 2020	September 2020	October 2020	November 2020	December 2020	January 2021	
Advisory Committee on the Charitable Sector	1			1	2		1	1	1	1	1					1		1	1
Purposes and Activities Working Group													1	1	1	1			1
Vulnerable Populations Working Group												1	1	1			1		1
Regulatory Framework Working Group												1	1	1	1		2		1
Indigenous Peoples Working Group												1	1	1		3	1	1	3
Charitable Sector Data Working Group												1	1	1	1		4	1	1
Co-chairs and working group leads														1	1	1			

► Image description

## Footnotes

- 1 Senate Special Committee on the Charitable Sector, **Catalyst for Change: A Roadmap to a Stronger Charitable Sector**, June 2019, <https://sencanada.ca/en/info-page/parl-42-1/cssb-catalyst-for-change/>.
  - 2 A qualified donee is an organization that can issue official donation receipts for gifts it receives from individuals and corporations. It can also receive gifts from registered charities Qualified donees
  - 3 Senate Special Committee on the Charitable Sector, **Catalyst for Change: A Roadmap to a Stronger Charitable Sector**, June 2019, p. 97. <https://sencanada.ca/en/info-page/parl-42-1/cssb-catalyst-for-change/>
  - 4 See Guidance CG (C.G.)-002, Canadian registered charities carrying on activities outside Canada and Guidance CG (C.G.)-004, Using an intermediary to carry on a charity's activities within Canada
  - 5 Muttart Foundation, Submission to the Senate Special Committee on the Charitable Sector, October 2018, p. 12 <https://www.muttart.org/wp-content/uploads/2018/10/Muttart-Submission-Oct.-2018-1.pdf>
  - 6 Imagine Canada, **Are Charities Ready for Social Finance?** by Adam Jog, 2020, <https://www.imaginecanada.ca/sites/default/files/2020-11/IRP%20Report%20Sept%202021%20FINAL.pdf>
  - 7 Senate Special Committee on the Charitable Sector, **Catalyst for Change: A Roadmap to a Stronger Charitable Sector**, June 2019, p. 62 <https://sencanada.ca/en/info-page/parl-42-1/cssb-catalyst-for-change/>
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