

## GOVERNMENT RESPONDS TO RECOMMENDATIONS OF SENATE REPORT ON CHARITIES & NFP SECTOR

*By Terrance S. Carter and Esther S.J. Oh\**

### A. INTRODUCTION

THE FEDERAL GOVERNMENT published a detailed [response letter](#) on March 30, 2021 to the Senate's special report on the charitable and non-profit sector.<sup>1</sup> In this regard, as discussed in [Charity & NFP Law Bulletin No. 451](#), the Special Senate Committee on the Charitable Sector ("Committee") had earlier released its final report, [Catalyst for Change: A Roadmap to a Stronger Charitable Sector](#) ("Report"), on June 20, 2019.<sup>2</sup> The Report was the result of a year-long study and included 42 recommendations to the Government of Canada ("Government"), officially adopted by the Senate of Canada on November 30, 2020, ("Recommendations"), with a focus on key themes to strengthen the charitable and non-profit sector, while proposing measures to update the legal framework. The Committee was formed in 2018 to examine the impact of federal and provincial laws and policies governing registered charities, non-profit organizations and other similar groups, and to examine the impact of the voluntary sector in Canada.

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\* Terrance S Carter, BA, LLB, TEP, Trade-Mark Agent, is the managing partner of Carters, and counsel to Fasken Martineau DuMoulin LLP on charitable matters. Esther S.J. Oh, B.A., LL.B., is a partner, who practices charity and not-for-profit law. The authors would like to thank Martin U. Wissmath, B.A., J.D., student-at-law, for his assistance in preparing this *Bulletin*.

<sup>1</sup> Letter from The Hon. Diane LeBouthillier, Minister of National Revenue, to Mr. Gérald Lafrenière, Interim Clerk of the Senate, Clerk of the Parliaments, Chief Legislative Services Officer, The Senate (30 March 2021) Senate of Canada, online:

<[https://sencanada.ca/content/sen/committee/421/CSSB/reports/CSSB\\_GovResponse\\_Charitable\\_e.pdf](https://sencanada.ca/content/sen/committee/421/CSSB/reports/CSSB_GovResponse_Charitable_e.pdf)> [Response].

<sup>2</sup> Canada, Special Senate Committee on the Charitable Sector, *Catalyst for Change: A Roadmap to a Stronger Charitable Sector*, (Final Report), (Ottawa: Senate of Canada, June 2019), online:

<[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)> [Report].

The 20-page letter from the Minister of National Revenue reviews and responds to all of the 42 Recommendations. This *Bulletin* provides an overview of the Government’s extensive response to the Report (“Response”) and highlights comments of particular interest.

## B. STRENGTHENING THE SECTOR

THE RESPONSE BEGINS with a review of the first eight recommendations, titled “Strengthening the Sector”, and provides comments on three areas: volunteering, staffing, and governing.

### 1. Volunteering

In answer to the Report’s call for a “national volunteer strategy to encourage volunteerism with a focus on the needs of northern, rural and urban communities” in **Recommendation 1**, the Response indicates that Employment and Social Development Canada (“ESDC”) is working with the charitable and non-profit sectors “to build capacity and support” by providing direct funding to voluntary sector organizations.<sup>3</sup> It is organizations, such as Volunteer Canada, that “provide strategic leadership and expertise on volunteerism” according to the Response, noting four national programs of the ESDC: Social Development Partnerships Program; New Horizons for Seniors Program; Canada’s Volunteer Awards; and Canada Service Corps.

The Response reflects the Government’s agreement and supports **Recommendations 2–4**, to include in contribution agreements the costs associated with the recruitment and retention of volunteers; to seek ways to reduce the financial burden placed on organizations by the need for finger printing services and police checks on volunteers; and recognition programs for volunteers, respectively.<sup>4</sup> In this regard, the Response states that the Treasury Board of Canada Secretariat will promote the incorporation of “unique eligible activities and eligible expenditures” into transfer payment programs that include the charitable and non-profit sector. The Response notes that while the Royal Canadian Mounted Police do not charge fees for finger printing or police checks for individuals volunteering with a charitable organization, Canada’s decentralized policing systems result in different bodies individually determining their fee structure. As such the Government is working with the Canadian Association of Chiefs of Police to encourage their

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<sup>3</sup> *Supra* note 1 at 2.

<sup>4</sup> *Ibid.*

provincial, territorial and municipal counterparts to waive or reduce the fees for criminal record checks for volunteers.

## 2. Staffing

The Response to **Recommendation 5** states that there are already “vehicles and supports available to serve the retirement needs of workers in the charitable and non-profit sectors”, including three “pillars” to support a comprehensive retirement income system.<sup>5</sup> In this regard, the Response lists Old Age Security with its Guaranteed Income Supplement; the Canada Pension Plan and Quebec Pension Plan, as well as a wide range of “voluntary tax-assisted private savings opportunities”, such as Registered Pension Plans, Registered Retirement Savings Plans and Tax Free Savings Accounts, and Pooled Registered Pension Plans. The latter were developed with provinces and territories to “expand coverage to Canadians without access to a workplace pension plan and the self-employed.”

Through the development of a Social Innovation and Social Finance Strategy, the Government is working to ensure the long-term sustainability of the sector and its workforce, recognizing the “distinct needs of Canada’s northern, rural and urban communities” according to the Response for **Recommendation 6**.<sup>6</sup> In this regard, the Government plans to implement a Social Innovation Advisory Council (“SIAC”) in 2021 to provide advice on “how to encourage the growth of social purpose organizations in Canada”, including “long term sustainability and operations in a post-COVID context.” This SIAC “could provide additional perspectives on human resources issues, such as the proposed human resources renewal plan” for **Recommendation 7**, according to the Response.

## 3. Governing

The Response expresses support for **Recommendation 8**, which asks the Canada Revenue Agency (“CRA”) to determine what questions could be included in the T3010 (registered charities) and T1044 (federally incorporated not-for-profit corporations) forms regarding diversity representation on boards of directors based on existing Employment Equity guidelines. The Advisory Committee on the Charitable Sector (“ACCS”), an independent body to advise the Minister of Revenue, will be asked “to consider conducting further study on this issue.”

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<sup>5</sup> *Ibid* at 3.

<sup>6</sup> *Ibid* at 4.

## C. FUNDING THE SECTOR

RESPONSES TO **Recommendations 9–15, 34 and 35** are divided into two areas: tax treatment of charitable and non-profit organizations; and grants and contribution.

The Government supports asking the ACCS to “review existing tax measures available to individual donors in order to strengthen the culture of giving among new and current charitable donors” in the Response to **Recommendations 9, 34 and 35**. The Response notes that the “primary mechanism for providing tax support in Canada is the Charitable Donation Tax Credit for individuals and the Charitable Donation Tax Deduction for corporations.”<sup>7</sup> However, the Response indicates that implementing a pilot project with respect to private company shares in **Recommendation 34** is “beyond the authority of the CRA without further parliamentary approval”.

### 1. Grants and contribution

The Government supports **Recommendation 10** to implement policies “to require federal departments and agencies to compensate the full administrative costs associated with delivering services being funded in transfers to charitable and non-profit organizations”.<sup>8</sup> However, the Response does not reflect support for **Recommendation 11** with respect to overhead and infrastructure costs to the charitable and non-profit sector on the basis that they are already eligible to receive support under most of Innovation Canada’s programs and services, and because some funds are “specifically intended to support and scale commercial businesses with long term financial returns to investors.”<sup>9</sup>

The Response expresses support for the recommendation that grants and contribution agreements should cover a minimum of two years, and that the level of information required to apply for and provide reports under these agreements should be commensurate with the level of funding, thereby minimizing the complexity of agreements relating to smaller amounts in **Recommendation 12**.<sup>10</sup> The Response states that if a new Charitable and Non-Profit Secretariat is created (**Recommendation 22**), it would help to implement the standardized reporting for charitable and non-profit organizations called for in **Recommendation 13** with the use of an online tool.

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<sup>7</sup> *Ibid* at 6–7.

<sup>8</sup> *Ibid* at 6.

<sup>9</sup> *Ibid*.

<sup>10</sup> *Ibid* at 7.

In relation to **Recommendation 14**, which calls on the Government, through ESDC, to support “innovation across charitable and non-profit organizations”,<sup>11</sup> the Response states that existing ESDC programs and funding under the 2018 Fall Economic Statement and Budget 2019, including an investment of \$755 million in a Social Finance Fund, will “help create a self-sustaining social finance market and increase the quantity and accessibility of affordable capital available to social purpose organizations.”<sup>12</sup> The Report notes that Public Services and Procurement Canada is “working to foster inclusive innovation in federal procurement,” to “help build the readiness of charitable and non-profit organizations” through access to business support and procurement opportunities in accordance with **Recommendation 15**.<sup>13</sup>

## D. SUPPORTING THE SECTOR

THREE THEMATIC AREAS encompass the Response to **Recommendations 16–22**: data, capacity and the relationship with the federal government.

### 1. Data

**Recommendation 16** relates to the 2018 General Social Survey on Giving, Volunteering and Participating (“GSS-GVP”), which “addressed many of the data gaps identified by experts” in the non-profit sector.<sup>14</sup> In addition to significant modernization of the GSS-GVP program, Statistics Canada’s National Economic Accounts Division “has entered into an agreement with ESDC to complete a satellite account for non-profit institutions this fiscal year (2020–21)” that will include annual estimates of the non-profit sectors contribution to Gross Domestic Product and employment.<sup>15</sup> The Government also supports **Recommendation 17** that the CRA seek advice from the ACCS on what additional information could be included in the T3010 to support the work of the sector. In this regard, the Response indicates that the ACCS is currently “looking for ways to improve data collection.”<sup>16</sup>

### 2. Capacity

In relation to **Recommendation 18**, the Response states that there are several existing funding options under Innovation, Science and Economic Development Canada’s programming to “support the

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<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid* at 8.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid* at 9.

<sup>16</sup> *Ibid.*

development and adoption of shared administrative technologies for non-profits”.<sup>17</sup> The Response confirms that the CRA will ask the ACCS to review **Recommendation 19** to expand access to federally funded initiatives for innovation that are currently restricted to for-profit organizations, but which should be available to and promoted among charitable and non-profit organizations.

### 3. The relationship with the federal government

The Response indicates that steps have been taken to address the need to improve the CRA’s relationship with charitable and non-profit organizations, as set out in **Recommendation 20**. In this regard, steps taken by the CRA include: modifying correspondence to reflect greater clarity including “legislative and common law requirements in plain language” so application denials “can be more clearly understood”; launching a “suite of digital services” in June 2019, including a new online application form; streamlining procedures to “expedite the review of applications”; and nominating 14 sector members “with experience grounded in the issues facing the charitable sector” to the ACCS.<sup>18</sup>

The Response notes that the ACCS has two distinct working groups: the Vulnerable Populations Working Group and Indigenous Peoples Working Group, to develop ways to support the work of charities “serving vulnerable populations and exploring charity-related regulatory and legislative issues”, as called for by **Recommendation 21**.<sup>19</sup> The Government also supports **Recommendation 22** for “the creation of a single window into government for the charitable sector”, led by the ESDC.

## E. MODERNIZING THE LEGAL DEFINITION OF CHARITY

**RECOMMENDATIONS 23 and 24** called for improving the appeals system for charities, such as moving appeals for refusing to confer charitable status or revoking that status to the Tax Court of Canada instead of the Federal Court of Appeal, as well as alternative methods for assisting charities to appeal such decisions through a litigation fund. The Response describes the current system, and states that the Government will “review the framework for appeals” and “determine whether improvements” can be made.<sup>20</sup> It is interesting to compare this response with Recommendation 2 from [Report #1 of the Advisory](#)

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<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid* at 10.

<sup>19</sup> *Ibid* at 11.

<sup>20</sup> *Ibid* at 13.

[Committee on the Charitable Sector – January 2021](#) (the “January 2021 ACCS Report #1”),<sup>21</sup> that recommended that appeals from denials of registration and revocations be made to the Tax Court of Canada rather than to the Federal Court of Appeal.

In relation to **Recommendation 25**, the Government supports asking the ACCS to review the common law meaning of charity, which the *Income Tax Act* (“*ITA*”) relies on,<sup>22</sup> and whether to “enact legislation to broaden the legal meaning of charity” as was done in Australia and England.<sup>23</sup> The Response states that the list of qualified donees was recently expanded by the Budget 2019 to include registered journalism organizations. In addition, the Government will ask the ACCS to review policy considerations for “establishing a principle-based framework for new categories of qualified donee and other tax preferred entities” in the Response to **Recommendation 26**.

## F. REGULATION OF CHARITIES UNDER THE INCOME TAX ACT

IN THE RESPONSE to **Recommendation 27** of the Report, the Government “agrees to review the categories of charitable designations to determine where improvements can be made” with respect to the different regulatory rules that apply to charitable organizations, public foundations and private foundations under the *ITA*.<sup>24</sup> Although it will review the rules of the CRA’s “direction and control” policy as called for by **Recommendation 30**, the Government makes “no specific commitments” to implement an “expenditure responsibility test” instead, as that is beyond the CRA’s authority, according to the Response.<sup>25</sup> The CRA also cannot implement “a pilot project to allow registered charities to make gifts to non-qualified donees as proposed in **Recommendation 31**.”<sup>26</sup> However, the rules will be reviewed to determine if improvements can be made, according to the Response. It is also interesting to compare this response to Recommendation 1 in the January 2021 ACCS Report #1 that called for the elimination of the “own activity” test in the *ITA* and the corresponding CRA “direction and control” policy.

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<sup>21</sup> Canada, Special Senate Committee on the Charitable Sector, *Report #1 of the Advisory Committee on the Charitable Sector – January 2021*, (Ottawa: Senate of Canada, January 2021) online: <<https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/corporate-reports-information/advisory-committee-charitable-sector/report-advisory-committee-charitable-sector-february-2021.html>> [January 2021 Report].

<sup>22</sup> RSC 1985, c 1 (5<sup>th</sup> Supp).

<sup>23</sup> Response, *supra* note 1 at 12.

<sup>24</sup> *Ibid* at 13–14.

<sup>25</sup> *Ibid* at 15.

<sup>26</sup> *Ibid*.

The Government does not support **Recommendation 32** and its call for a review of the *ITA* provisions “governing registered charities every five years, beginning no later than next fiscal year”.<sup>27</sup> In this regard, the Response states that the legislative rules are “already subject to on-going review” with a “dedicated section” in place in the Tax Policy Branch of the Department of Finance, which reviews and prepares proposals for consideration by the Minister of Finance as part of preparing the Federal Budget. With regard to **Recommendation 33**, which calls upon the Government to prescribe and precisely define activities that registered charities should not be allowed to carry out in statutory prohibitions, the Response notes that the *ITA* “already prescribes the rules that must be followed” and that the more general regulation of charities is a provincial responsibility.<sup>28</sup> In this regard, the Response confirms that provisions in subsection 149.1(1) of the *ITA* to “prevent individuals with a history of financial dishonesty or that have abused the rules regarding charitable registration in the past from controlling or directing registered charities” — the “ineligible individual” — will be reviewed to ensure their proper function and whether improvements can be made for the Report’s **Recommendation 42**.

## 1. Business activities

A subsection of the Response provides comments concerning **Recommendations 28 and 29** of the Report. The Government does not support **Recommendation 28**’s call for the CRA “to develop and implement a pilot project to assess the viability of granting registered charities greater latitude in undertaking revenue-generating activities” through a “destination of funds” test.<sup>29</sup> In this regard, the Response indicates that the *ITA* already provides charities the ability “to carry on a wide variety of revenue-generating activities” including “businesses that relate to the furtherance of their charitable purpose.” Any revenue received from activities of a related business run by a charity is “completely exempted from income tax”, according to the Response.<sup>30</sup> However, the Response states that the CRA will review and update its policy statement [CPS-019, \*What is a related business\*](#) to “provide greater clarity on permissible revenue generation activities for registered charities.”<sup>31</sup>

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<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid* at 15–16/

<sup>29</sup> *Ibid* at 16.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid* at 17.



## G. DISBURSEMENT QUOTA

THE RESPONSE briefly discusses the *ITA* requirement for charities to expend at least 3.5% of their property not used to invest in charitable programs or administration on charitable activities each year. For **Recommendation 36**, the CRA will “ask the ACCS to consider undertaking a review” of the advantages and disadvantages of amending the disbursement quota as well as setting it in “regulation, rather than statute”.<sup>32</sup> The Government will also ask the ACCS, in the Response to **Recommendation 37**, to consider “means of ensuring that donations do not languish in donor-advised funds, but are instead used to fund charitable activities in a timely fashion.”<sup>33</sup>

## H. NON-PROFIT ORGANIZATIONS

TO “PROVIDE greater clarity and certainty for non-profit organizations regarding the extent to which it is permissible for them to hold surplus income; and to reflect the language of the *ITA*, which focuses on the purposes of the organization,” the Response confirms that the CRA will evaluate its interpretation of the “not-for-profit purpose rules concerning the accumulation of a surplus from income by a NPO” in the *ITA*, as per **Recommendation 38**.<sup>34</sup> The Government will also ask the ACCS to consider whether the *ITA* “should distinguish between public benefit and member benefit non-profit organizations” in the Response to **Recommendation 40** and “whether additional public information should be available with respect to such organizations (**Recommendation 39**).”<sup>35</sup>

## I. CANADA’S ANTI-SPAM LEGISLATION (CASL)

FINALLY, the Response addresses **Recommendation 41** that requests that the ACCS carry out a review of the impact of CASL “on charities and charity-like organizations.”<sup>36</sup> The Response notes that a similar recommendation was also put forward by the 2017 Standing Committee on Industry, Science and Technology’s statutory review of CASL to clarify the application of the Act and its regulations to charities and non-profit organizations in order to ensure the legislation is clear and understandable.<sup>37</sup> The Response notes that the Government is currently working to address the above concerns.

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<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid* at 17–18.

<sup>35</sup> *Ibid* at 18.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid* at 19.

## J. CONCLUSION

THE RESPONSE TO the 42 Recommendations of the Report is a mix between the Government's commitments to support some with new programs, statements that describe existing programs that are said to adequately address the Recommendation, and those that the Government does not support, which includes proposals that are beyond the authority of the CRA to implement. The implication is that it is for Parliament and the provincial legislatures to implement some of the Recommendations. Of note for proposed federal reforms are **Recommendations 23 and 24** calling for appeals for charitable status decisions, and **Recommendation 30** to revise the CRA's "direction and control" policy. Charities and not-for-profit organizations are encouraged to read the Response and follow other developments that effect the sector, such as Bill S-222<sup>38</sup> proposing to eliminate the "own activities test" tabled earlier this year and currently in Second Reading in the Senate, as discussed in [Charity & NFP Law Bulletin No. 486](#), as well as the January 2021 ACCS Report #1 , as discussed in [Charity & NFP Law Bulletin No. 489](#).



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<sup>38</sup> *An Act to amend the Income Tax Act (use of resources)*, 2nd Sess, 43rd Parl, 2021, (second reading 16 March 2021), online: <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=11099585> ["Bill S-222"]