

## ADVISORY COMMITTEE ON THE CHARITABLE SECTOR RELEASES REPORT #2

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### A. INTRODUCTION

THE ADVISORY COMMITTEE on the Charitable Sector (“ACCS”) released its “Report #2 of the Advisory Committee on the Charitable Sector” on April 28, 2021, subtitled “Towards a federal regulatory environment that enables and strengthens the charitable and non-profit sector” (“ACCS Report #2”).<sup>1</sup> This is the second of a series of ongoing reports by the ACCS.<sup>2</sup> In this ACCS Report #2, the ACCS adds eight more recommendations concerning the regulatory system of charities, data collection, and legislation revisions to the *Income Tax Act* (“ITA”). This *Bulletin* provides an overview of the ACCS Report #2.

### B. BACKGROUND

THE ACCS WAS established in 2019 as a consultative forum for the Government of Canada to engage in meaningful dialogue with the charitable sector, to advance emerging issues relating to charities, and to

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<sup>1</sup> Canada Revenue Agency, Advisory Committee on the Charitable Sector, Report #2 of the Advisory Committee on the Charitable Sector — April 2021 (April 28, 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-april-2021.html> > [Report #2].

<sup>2</sup> For an overview of the ACCS first report in this series, see *Charity & NFP Law Bulletin No. 489*, online: Carters <https://www.carters.ca/pub/bulletin/charity/2021/chylb489.pdf>.

ensure the regulatory environment supports the important work that charities do.<sup>3</sup> Following the release of the 2019 Report of Senate Special Committee on the Charitable Sector, “Catalyst for Change: A Roadmap to a Stronger Charitable Sector” (the “Senate Committee Report”),<sup>4</sup> which made 42 recommendations to the Government of Canada focusing on various key themes to strengthen and modernize the policy and regulatory framework applicable to the charitable and non-profit sector,<sup>5</sup> the ACCS was asked to consider the recommendations of the Senate Committee Report.

At its first meeting in December 2019, the ACCS agreed on three broad areas within which it intended to pursue its exploration of issues and the development of its advice and recommendations: (i) evolving the institutional framework to effectively advance public purposes and to maximize sector impact; (ii) ensuring financial sustainability within the charitable sector; and (iii) establishing modern governance for the charitable sector.

In light of the issues highlighted by the COVID-19 pandemic, the ACCS decided in June 2020 to organize itself into five working groups to focus on the following five priorities:

- i) The Purposes and Activities Working Group (P&AWG) was tasked with reviewing how Canadian registered charities are required to function under the ITA, including how charities work with non-qualified donees, and revenue-earning activities by charities.
- ii) The Regulatory Framework Working Group (RFWG) was tasked with reviewing the broader regulatory and administrative policy environment in which charities operate.
- iii) The Vulnerable Populations Working Group (VPWG) was tasked with discussing and identifying the particular challenges facing charities serving vulnerable populations.

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<sup>3</sup> For additional information about the mandate, membership, and structure of the Advisory Committee on the Charitable Sector, see Canada Revenue Agency, Terms of Reference (September 5, 2019), online: <<https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/corporate-reports-information/advisory-committee-charitable-sector/terms-reference.html>>.

<sup>4</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)>.

<sup>5</sup> *Ibid.* See also Terrance S. Carter, Theresa L.M. Man, and Ryan M. Prendergast, “Special Senate Committee on the Charitable Sector Releases Final Report” Charity & NFP Law Bulletin No. 451 (June 27, 2019), online: <<https://www.carters.ca/pub/bulletin/charity/2019/chylb451.pdf>>.

- iv) The Indigenous Peoples Working Group (IPWG) was tasked with exploring charity-related regulatory and legislative issues faced by Indigenous Peoples and organizations.
- v) The Charitable Sector Data Working Group (CSDWG) was tasked with exploring how best to enhance and organize the available data about the charitable sector.

The working groups held consultations with organizations and individuals drawing on the previous work of many advisors, analysts and legal experts, as well as the evidence presented in 2019 to the Senate Special Committee on the Charitable Sector. According to the ACCS Report #2, the ACCS has met seven times in the 14 months since its first meeting in December 2019. At its meeting on March 11, 2021, the ACCS reviewed and agreed to move forward with recommendations proposed by three working groups: the Indigenous Peoples Working Group (IPWG), the Charitable Sector Data Working Group (CSDWG), and the Purposes and Activities Working Group (P&AWG).

In addition to the eight recommendations explained below, the ACCS Report #2 also provides an update for each of the ACCS's five working groups, with the appendices providing additional context on the IPWG and CSDWG recommendations.

## C. RECOMMENDATIONS

### 1. Improve relationship with and guidance for Indigenous peoples and organizations

Recommendations 1 to 4 of ACCS Report #2 deals with the regulatory system of charities as a whole to address issues where it “perpetuates a colonial approach, and is difficult, time-consuming and cumbersome for Indigenous organizations to access.”

In this regard, with Recommendation 1, the ACCS recommends that the Charities Directorate of the Canada Revenue Agency (“CRA”) update guidance documents to reflect the government’s commitment to a renewed relationship with Indigenous peoples. The ACCS Report #2 recommends the Charities Directorate, in consultation with Indigenous representatives, create a dedicated reconciliation guidance document that outlines the context in which reconciliation is beneficial to the community under the fourth head of charity by clearly acknowledging that purposes beneficial to Indigenous communities are charitable within the “spirit and intent” of the preamble to the Act of

Elizabeth 1601. Such guidance document would provide definitions, application examples, charitable registration support information, and outline consultation opportunities.

Recommendation 2 indicates that the Charities Directorate should undertake initiatives to improve the relationship with Indigenous communities or Indigenous-led charities and other stakeholders. This includes developing a permanent working or advisory group from Indigenous-led organizations, conducting in-depth studies on the effects of the ITA provisions related to charities on Indigenous communities, improving education and guidance to Indigenous-led organizations, and tailoring the Charities Directorate website more effectively to the needs of those communities.

Recommendation 3 asks the Charities Directorate to make a comprehensive and long-term commitment to building greater cultural competency within its staff. This would include the allocation of resources to build relations with Indigenous-led charities, and consult with Indigenous managers and employees.

Recommendation 4 asks the Charities Directorate to implement a new system to assess applications by Indigenous organizations for qualified donee status as a “municipal or public body performing a function of government.” The new system would involve establishing a committee that would be responsible for determining such applications.

## 2. Improve national charitable data strategy

Recommendations 5 to 7 focus on data on the charitable sector, which is key to evidence-based policy making. These initiatives would help address policy gaps, lack of understanding, and ineffective management due to the current data not being effectively coordinated, analyzed or disseminated through the federal government.

Recommendation 5 advises the Government of Canada to develop a cross-departmental “National Charitable Sector Data Strategy” to support the coordination, standardization, integration, and accessibility of data on the sector, and to enhance evidence-based programs, policies and practices. The national data strategy would be integrated with Statistics Canada and be advised by a pan-Canadian and cross-sectoral “Permanent Roundtable on Charitable Sector Data” to coordinate

various “data strategy efforts in the sector.” The recommendation also include creating a “Federal-Provincial-Territorial (FPT) table” to harmonize the national data strategy with data strategies at provincial or territorial level.

Recommendation 6 asks the CRA to work with other federal departments to determine the appropriate mechanisms to utilize existing administrative data sources. It also recommends that technologies and data management approaches be investigated to simplify and synchronize digital record keeping, as well as move more rapidly toward online filing of Form T3010 (Registered Charity Information Return) where paper filing would only be available as an exception. The ACCS also recommends updating the category codes for identifying charities to more appropriately describe the work of charities.

Recommendation 7 involves the formation of a “Sector Advisory Group” that would include a diversity of voices and representation to work with relevant federal departments who collect information on the charitable sector. The joint initiative would determine appropriate mechanisms to collect diversity information on the directors and paid employees of charities. The Sector Advisory Group should also work with the Government of Canada and mitigate the risk of harm of collecting information from vulnerable populations.

### 3. Simplify categories of charities under the ITA

Recommendation 8 addresses the confusion about the current categories of charitable organizations, public foundations and private foundations under the ITA. With the recommendation in the ACCS’s first report released on March 12, 2021, removing the “own activities” test from the ITA,<sup>6</sup> the ACCS Report #2 recommends that the ITA be amended to consolidate charitable organizations and public foundations into one category of public charity. This would simplify the categories of charities under the ITA to only two categories, namely public charities and private charities.

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<sup>6</sup> *Supra* note 2.

## D. CONCLUSION

THE ACCS points out in ACCS Report #2 that all the recommendations except Recommendation 8 are administrative policy changes, rather than legislative changes. The recommendations will, however, require additional resources and coordinated action by the CRA and other government departments, such as Statistics Canada. The ACCS expects to release a third report later this year.



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