

ADVISORY COMMITTEE ON THE CHARITABLE SECTOR RELEASES REPORT #3

*By Theresa L.M. Man & Jacqueline M. Demczur**

A. INTRODUCTION

THE ADVISORY COMMITTEE ON THE CHARITABLE SECTOR (“ACCS”) released its Report #3, dated July 15, 2021, subtitled “Towards a federal regulatory environment that enables and strengthens the charitable and non-profit sector” (“ACCS Report #3”).¹ This is the third of a series of ongoing reports by the ACCS.² In this ACCS Report #3, the ACCS makes 23 recommendations for action in two main areas: the relationship between the Canada Revenue Agency’s (“CRA”) Charities Directorate and charities (particularly those serving vulnerable populations); and the ability of charities to earn income from activities, such as related or unrelated business activities. This *Bulletin* provides an overview of the ACCS Report #3.

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¹ Canada Revenue Agency, Advisory Committee on the Charitable Sector, *Report #3 of the Advisory Committee on the Charitable Sector — July 2021* (July 15, 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-july-2021.html>> [Report #3].

² For an overview of the ACCS first and second reports in this series, see Theresa LM Man and Jacqueline M Demczur, *Charity & NFP Law Bulletin No. 489*, “Advisory Committee on the Charitable Sector Releases its First Report” (24 March 2021), online (pdf): Carters <<https://www.carters.ca/pub/bulletin/charity/2021/chylb489.pdf>> [*Bulletin No. 489*], and Theresa LM Man and Jacqueline M Demczur, *Charity & NFP Law Bulletin No. 495*, “Advisory committee on the Charitable Sector Releases Report #2” (27 May 2021), online (pdf): Carters <<https://www.carters.ca/pub/bulletin/charity/2021/chylb495.pdf>> [*Bulletin No. 495*].

B. BACKGROUND

AS EXPLAINED in earlier *Charity & NFP Law Bulletins*, 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 ensure the regulatory environment supports the important work that charities do.³ Following the release of the 2019 Report of the Senate Special Committee on the Charitable Sector, “Catalyst for Change: A Roadmap to a Stronger Charitable Sector” (the “Senate Committee Report”),⁴ the ACCS was asked to consider the recommendations of the Senate Committee Report.

The ACCS first met in December 2019, and since then has organized itself into six working groups, which includes one to respond to the Disbursement Quota Consultation recently launched by Finance Canada.⁵ At its meetings on April 28 and May 31, 2021, the ACCS reviewed and moved forward with recommendations proposed by two working groups: the Vulnerable Populations Working group (“VPWG”) and the Purposes and Activities Working Group (“P&AWG”).

The ACCS Report #3 made 12 recommendations regarding the relationship between the Charities Directorate of the CRA and charities and 11 recommendations about the ability of charities to earn income from activities. The ACCS Report #3 also provides an update on the Charitable Sector Data Working Group (“CSDWG”).

³ For additional information about the mandate, membership, and structure of the ACCS, 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>>. For further details and commentary on the background of the ACCS, see also *Bulletin No. 489* and *Bulletin No. 495*, *ibid*.

⁴ 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 (pdf): <https://sencanada.ca/content/sen/committee/421/CSSB/Reports/CSSB_Report_Final_e.pdf>.

⁵ For further details on the Disbursement Quota Consultation, see Terrance S Carter, Jacqueline M Demczur and Theresa LM Man, *Charity & NFP Law Bulletin No. 498*, “Complexities of the Disbursement Quota Consultation: More Than Just A Number” (25 August 2021) online (pdf): Carters Professional Corporation <<https://www.carters.ca/pub/bulletin/charity/2021/chylb498.pdf>>

C. RECOMMENDATIONS TO IMPROVE THE RELATIONSHIP BETWEEN THE CHARITIES DIRECTORATE AND CHARITIES

THE VPWG'S PRIMARY FOCUS is to examine the specific and systemic challenges that Canadian grassroots charities face. Specifically, the VPWG considers the situations of charities which offer responsive and essential services to those on the margins of society.

Recommendations 1 to 6 deal with areas that could be addressed in the short term, focussing on accessibility of information, such that communication and interaction with the charitable sector would improve the relationship with the charitable sector and reduce unnecessary administrative burdens of valued time and resources.

Recommendation 1 asks the CRA to promote the availability and accessibility of the Charities Directorate telephone enquiries line. This would include allowing organizations to ask questions anonymously to encourage charities to overcome their hesitancy of making inquiries of the CRA. It also recommends a short post-call survey for the CRA to determine client satisfaction.

In recommendations 2 to 5, the ACCS makes various recommendations to improve accessibility issues. This includes asking the CRA to develop and deliver a focused outreach and education program for charities serving vulnerable populations; to continue to use clear and accessible language in its communication, education, and guidance products to improve accessibility and ease of use; to review the CRA's model charitable purposes to ensure they are accessible and understood by charities; and to further develop focused communication, education and guidance products on advocacy and public policy work to illustrate, in a clear and straightforward manner, the range and scope of acceptable activities.⁶

In recommendation 6, the ACCS recommends the establishment of a "buddy" program within the charitable sector, in which established voices in the sector will help new and smaller charities.

Recommendations 7 to 10 deal with medium-term action steps that will require further consideration, input, and deliberation. The ACCS recommends the CRA clarify the rules on earned income derived from social enterprises in order to legitimize and expand the use of these platforms by smaller charities and

⁶ Canada Revenue Agency, "Model purposes" (22 July 2013), online: Government of Canada <<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/applying-registration/charitable-purposes/model-purposes.html>>.

non-profits, as well as help reduce overall operating costs for smaller organizations. The ACCS also recommends the CRA recognize that the reduction of systemic oppression is a charitable purpose. In addition, it recommends that the CRA increase accessibility of its resources and services for seeing and hearing-impaired communities; as well as update and align accounting forms and tools to be consistent with modern practices used by charities and their accountants.

Recommendations 11 and 12 are focussed on long-term issues affecting the sustainability and stability of the charitable sector. In this area, the ACCS recommends the CRA consider requesting the Department of Finance to: (i) amend the *Income Tax Act* provisions to not require charities to carry on their “own activities” (which have resulted in “direction and control” measures); (ii) expand the category of qualified donees; and (iii) enable non-profit organizations to receive grants without becoming registered charities. Additionally, the ACCS recommends the CRA to clarify allowable practices by charities to reimburse reasonable and acceptable costs to volunteers.

D. RECOMMENDATIONS TO ALLOW CHARITIES TO EARN INCOME FROM ACTIVITIES

THE P&AWG REVIEWS the regulatory and legislative regime governing the “earned-income” activities of charities. As the charitable sector continues to experience a growing demand for services along with declining revenue, more charities are interested in growing their revenue through commercial activities. The P&AWG considers how changes to the regulatory environment may help charities undertake commercial activities for this purpose.

Recommendations 1 to 5 deal with short-term recommendations. Specifically, the ACCS recommends the CRA to:

- update the revised draft guidance CPS-019, *What is a related business?*⁷ to be more “enabling” (by emphasizing that it is intended to enable, not to prevent, the earning of income through business activities) and to make it public as soon as possible;

⁷ Canada Revenue Agency, CPS-019, *What is a related business?* (31 March 2003, modified 11 February 2020), online: Government of Canada <<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/policy-statement-019-what-a-related-business.html>>.

- ensure that fees charged for charitable programs are not conflated with related business in the guidance;
- adjust all guidance documents to clarify the steps taken before sanctions or revocations are applied;
- improve intradepartmental communication among the various CRA branches that deal with a charity's reporting requirements (such as payroll, sales tax, and annual T3010 reporting) to provide consistent information and avoid duplicate reporting; and
- develop tools for publicly reporting stakeholder satisfaction with CRA education and communications.

Recommendations 6 to 8 deal with medium term issues for the CRA work to create a more supportive environment for earned income activities of charities. Specifically, the ACCS recommends the CRA to revise and clarify its guidance on the various ways in which charities can earn income (including eliminating the current “linked and subordinate” test for related business). It also recommends the CRA to coordinate with other federal departments and provincial governments to develop a shared vision of an environment where charities can earn income to further their purposes. The CRA is also recommended to support the development of advisory capacity and services to help charities’ efforts to generate earned income.

Lastly, recommendations 9 to 11 deal with long-term plans. Specifically, the ACCS recommends that further study and consultation be conducted on two important issues regarding income generation by the sector: the “destination of funds” test and the “substantially run by volunteers” test. In this regard, the P&AWG intends to continue consultations to better understand the implications of adopting a destination of funds test, and to provide further recommendations to the Minister of National Revenue. The ACCS also recommends further review of the out-dated volunteer-run business provisions in the *Income Tax Act* before making specific recommendations to the CRA.

E. UPDATE ON THE CHARITABLE SECTOR DATA WORKING GROUP

THE CHARITABLE SECTOR DATA WORKING GROUP (“CSDWG”) is focused on improving data collection and analysis related to the charitable sector. It made several recommendations in ACCS Report #2 and is now continuing its work with consultations focussing on the financial data ecosystem of the charitable

sector.⁸ While the CSDWG’s consultations about financial data are still in the early stages, preliminary findings show that the charitable sector is not homogeneous in its use of financial models and options. The lack of individual, granular-level data available means that nuances in the situations of charities may be missed. One additional challenge identified by the CSDWG is the multi-jurisdictional regulatory environment of Canada, which makes it difficult to compare and contrast data across the sector and across the country. Accordingly, the CSDWG will continue to look for ways to improve data collection through the T3010 and other mechanisms, as well as to identify the data which will assist the Government to make evidence-based decisions about issues in the charitable sector.

F. CONCLUSION

THE ACCS’S three priority recommendations to create a policy “home in government,” to amend the *Income Tax Act* to focus on the purposes rather than the activities of charities, and to create a federal data strategy for the charitable sector, remain important in the ongoing conversation between the Minister of National Revenue and the ACCS. By categorizing the recommendations of ACCS Report #3 in the short, medium, and long-term, the ACCS recognizes that some recommendations can be implemented by the CRA more quickly than others, and that other recommendations may require legislative change or further consultation with other government departments.

⁸ 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>>.