

ADVISORY COMMITTEE ON THE CHARITABLE SECTOR RELEASES REPORT #4

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The Advisory Committee on the Charitable Sector (“ACCS”) released its Report #4, on October 9, 2024, subtitled “Towards a federal regulatory environment that enables and strengthens the charitable and non-profit sector” (“ACCS Report #4”).¹ This is the fourth of a series of ongoing reports by the ACCS.² In this ACCS Report #4, the ACCS makes 18 recommendations for action in several areas. This Bulletin provides an overview of the ACCS Report #4.

As previously discussed in earlier *Charity & NFP Law Bulletins*, the ACCS was established in 2019 to serve as a consultative forum between the Government of Canada and the charitable sector. Its purpose is to foster dialogue on emerging issues affecting charities and to ensure the regulatory framework supports

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¹ Canada Revenue Agency, Advisory Committee on the Charitable Sector, Report #4 of the Advisory Committee on the Charitable Sector — October 2024 (October 9, 2024) 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-2024.html>> [Report #4].

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], and Theresa LM Man and Jacqueline M Demczur, *Charity & NFP Law Bulletin* No. 500, Advisory committee on the Charitable Sector Releases Report #3” (25 August 2021), online (pdf): Carters <<https://www.carters.ca/pub/bulletin/charity/2021/chylb500.pdf>> [Bulletin No. 500].

the vital work charities undertake.³ Following the 2019 Senate Special Committee on the Charitable Sector's report, *Catalyst for Change: A Roadmap to a Stronger Charitable Sector* (the "Senate Committee Report"), the ACCS was tasked with considering its recommendations.⁴

Report #4 provides insights into various issues affecting Canada's charitable sector. It sets out recommendations to better improve the charitable sector, including modernizing the regulatory framework for charities, improving transparency, increasing collaboration with Indigenous organizations, and simplifying the charitable registration process, among others. The report highlights the importance of ongoing consultations with stakeholders to ensure regulatory approaches align with the sector's needs, and stresses the importance of government-charity partnerships to address societal challenges.

A. DEFINITION OF CHARITY AND CHARITABLE PURPOSES WORKING GROUP

The report from the Definition of Charity and Charitable Purposes Working Group ("DCCPWG") examines Canada's legal framework for defining charity and charitable purposes. It was prompted by concerns from sector representatives and the Senate Committee Report. The report explores whether Canada's reliance on common law to define charitable purposes requires minor revisions or significant legislative reform, acknowledging the challenges faced by the CRA and the Charities Directorate in conducting comprehensive research on this issue.

The report outlines stakeholder concerns with the current system and summarizes consultations with charity law experts from Canada, England and Wales, New Zealand, and Australia. It highlights three key areas for further research: the role of independent charities regulators, the use of legislation to define charitable purposes, and federalism considerations that might impact potential reforms.

The Report contains a comparative analysis which shows that other jurisdictions have moved towards legislating charitable purposes, offering broader and more inclusive definitions than those traditionally provided at common law. The report suggests that relying on the CRA to define charitable purposes, with limited options to challenge its decisions, raises concerns about democratic accountability, thereby hints

³ For further details and commentary on the background of the ACCS, see also Bulletin No. 489, Bulletin No. 495, and Bulletin No. 500, *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.

at the potential benefits of legislative reform. While some argue that federalism is an obstacle to such reforms, a comparative analysis of provincial and international practices in the report suggests otherwise.

The DCCPWG offers the following recommendations:

1. Legislative amendments to the *Income Tax Act*: Including objects such as “advancing amateur sport and recreation” and “prevention of poverty” as charitable purposes.
2. Reconciliation-focused policy review: Recommending a review of CRA policies related to Indigenous peoples, informed by the principles of reconciliation and the UN *Declaration on the Rights of Indigenous People*.
3. Support for Indigenous communities: Developing outreach and support for Indigenous communities to build trust and address tax issues affecting their work and contributions to reconciliation.
4. Consultations on a "Home in Government": Exploring the establishment of an independent charities regulator or another government body to modernize charity law and regulation.

B. NATIONAL INHERENT RISK ASSESSMENT WORKING GROUP

The March 2023 "*Updated Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*,"⁵ released by the Department of Finance, focused on the vulnerabilities within Canada's anti-money laundering and anti-terrorism financing (AML/ATF) regime. This assessment, following recommendations from the Financial Action Task Force (FATF), highlights the charitable sector as particularly susceptible to terrorism financing risks. The report raised concerns about the unintended consequences of the current AML/ATF regime on charities, especially those involved in humanitarian aid and development work in regions deemed high-risk for terrorism financing.

⁵ Department of Finance Canada, Updated Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada (March 2023) online: <<https://www.canada.ca/en/department-finance/programs/financial-sector-policy/updated-assessment-inherent-risks-money-laundering-terrorist-financing-canada.html>>.

Amid growing concerns over biases in the auditing of charities and allegations of systemic Islamophobia, the government initiated a review of the fairness and objectivity of these assessments. The National Inherent Risk Assessment Working Group (NIRAWG) was tasked with reassessing the risk methodologies to ensure that they accurately reflect the diverse nature of the charitable sector and consider efforts to mitigate terrorism financing risks since 9/11.

The NIRAWG made five recommendations to improve the effectiveness and fairness of Canada's AML/ATF regime:

1. **Adopt a more comprehensive risk assessment approach:** Encouraging the Department of Finance to integrate both inherent and residual risk analyses to provide a more accurate understanding of vulnerabilities within the charitable sector, aligning with international best practices.
2. **Ensure Charter compliance:** Developing and disseminating guidance for AML/ATF regulatory bodies to fulfill their responsibilities while adhering to the Canadian Charter of Rights and Freedoms.
3. **Incorporate gender and diversity considerations:** Including Gender-based Analysis Plus (GBA Plus) to ensure risk assessments and regulatory duties account for diverse impacts and support equitable compliance practices across all sectors.
4. **Clarify legal frameworks:** Seeking clarification from the Department of Public Safety Canada how recent Criminal Code amendments affect the charitable sector, ensuring alignment with Canada's policy positions and giving clear guidance for navigating potential contradictions.
5. **Establish an advisory body:** Creating a collaborative advisory group, involving key ministries and humanitarian organizations, to review and advise on policy applications and decisions, ensuring a balanced and inclusive approach to AML/ATF measures.

C. TRANSPARENCY AND DATA RELATED WORKING GROUP

The Transparency and Data Related Working Group ("TDWG") has focused on addressing data and technology challenges within the charitable and non-profit sector, in light of recent legislative changes.

Despite progress, the sector still faces issues with data comprehensiveness, timeliness, accessibility, as well as challenges for both the public and the sector to interpret and use this data effectively. There is also a need for more real-time data access and less administrative burdens on charities when reporting.

The TDWG's recommendations emerge from research, consultations, and collaboration with government bodies. Notably, the recommendations stem from changes introduced in Budget 2022 related to disbursement quotas (DQ) and grants to non-qualified donees. Their goal is to make the regulatory environment more transparent and easier to navigate, ultimately facilitating charitable work.

The TDWG made the following recommendations:

1. Disbursement Quota (DQ):

- a) Create a transparent tracking tool: Directing the CRA to develop a public tool to track each charity's DQ amount and their actual disbursements using data from Form T3010, increasing transparency in compliance.
- b) Improved public reporting: Introduce DQ reporting features to the CRA's website, and giving web page's "Quick View" section for public awareness, and add an aggregated annual report on sector compliance.

2. Granting to Non-Qualified Donees:

- a) Create a transparent tracking tool: Developing a publicly accessible tracking tool showing the percentage of funds granted to non-qualified or other qualified donees by each charity, leveraging reported data to increase transparency and accountability.
- b) Use of artificial intelligence for data analysis: Encouraging the CRA to use artificial intelligence to analyze data from Form T1441 on grants to non-qualified donees for improved data analysis, in collaboration with reputable partners.

3. Filing with the CRA:

- a) Improve data quality: Enhancing training for charities on completing Form T3010 to ensure data accuracy and quality.
- b) Electronic filing: Continuing to push for electronic filing to reduce errors and improve efficiency, as well as simplifying the process for changing authorized representatives to make online account management more accessible for charities.

D. RELATIONSHIP BETWEEN THE CRA AND THE CHARITABLE SECTOR WORKING GROUP

The relationship between Canadian charities and the CRA's Charities Directorate involves both regulatory oversight and support to ensure compliance with tax laws. This relationship is complex and has been marked by challenges and improvements over the years. The primary concern are complex administrative tasks faced by charitable organizations in Canada, particularly in registration, audit, and reporting processes. The sector experiences difficulties with the CRA's digital platforms and perceives the registration process as cumbersome, leading to a need for costly legal services.

The Relationship between the CRA and the Charitable Sector Working Group ("CRACSWG") reviewed past ACCS reports, conducted focus groups, and engaged in discussions to gather feedback from the sector. Based on this feedback, the CRACSWG identified key issues and made several recommendations to improve the relationship between the CRA and charities.

The CRACSWG provides the following recommendations:

1. Streamline Online Processes:

- a) Improve the online platform for easier data entry and improving functionality in the T3010 form completion process.
- b) Address challenges related to My Business Account (MyBA) and ensure easy access and functionality by the appropriate organizational leadership.

2. Revise Registration Procedures:

- a) Simplify charitable registration process to make it more accessible (particularly for small, grassroots organizations), through a comprehensive review and potential simplification of current procedures to reduce the need for legal representation.

3. Improve Educational Support:

- a) Re-establish education programs similar to the Charities Partnership and Outreach Program to provide compliance-related education and training.
- b) Offer clear guidance on allowable administrative expenses and management reporting and provide training through webinars and practical case studies to improve understanding and compliance accuracy.

4. Improve Engagement and Support:

- a) Use digital tools (such as chatbots and interactive websites) to improve user experience and accessibility.
- b) Develop outreach campaigns to assure charities that engagement with the CRA will not necessarily lead to increased scrutiny.
- c) Create a mentorship program to assist organizations with the charitable registration process.

5. Facilitate Access and Communication:

- a) Establish flexible communication options, including after-hours support and targeted communication strategies for small and volunteer-run organizations.
- b) Increase CRA participation at sector events to build trust and give direct support through workshops and information sessions.

6. Foster Partnerships and Community Engagement:

- a) Partner with legal education and information providers, including umbrella groups and non-profit networks, to offer free or low-cost services to charities.
- b) Connect with community groups and health organizations to understand and address sector-specific needs and challenges.

E. CONCLUSION

Consistent with its mandate, the ACCS's Report #4 has identified emerging issues relating to charities and made recommendations aimed at ensuring support for the important work that charities do. Collectively, the recommendations in Report #4 aim to make Canadian charities' interactions with the CRA smoother, reduce their administrative burdens, and foster a more supportive regulatory environment.



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