



Report #3 of the Advisory Committee on the Charitable Sector

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

June 2021

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Preface

The Honourable Diane Lebouthillier
Minister of National Revenue

Bob Hamilton
Commissioner of the CRA

July XX, 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, Imagine Canada

Hilary Pearson

Former President, Philanthropic Foundations Canada

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Peter Dinsdale – *President & CEO of YMCA Canada*

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Introduction

The Mandate of the ACCS

The Advisory Committee on the Charitable Sector (the ACCS) began its work in late 2019 as a permanent 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 Canada. The objectives of the ACCS are to advance emerging issues relating to charities, and to ensure that the regulatory environment supports the important work that charities do. The Committee provides the Minister of National Revenue and the Commissioner of the CRA with recommendations for administering and interpreting the Income Tax Act (ITA) and the common law for registered charities and other qualified donees. The Committee may also make recommendations for legislation relating to registered charities and other qualified donees in the ITA.

Areas of Focus

The federal government's institutional framework shapes the work and operations of the approximately 86,000 charities in Canada. The federal ITA and CRA policy guidance define and govern their ability to set their missions, raise funds or generate revenues, work with non-charities, and deploy their resources. Data on the charitable sector, collected by the federal government, provides evidence for good policy-making. Federal administrative policies and decisions affect the sector's access to and use of federal grants and contributions. Federal regulations affect all charities, large or small, urban or rural, operating within or outside the country and all populations served by those charities. In all these ways, a well-functioning framework is fundamental to the sector's sustainability and to its effectiveness. For this reason, the ACCS has chosen to focus its work on advice for improving this framework. Our first report, in January 2021, advised on the need for a sector policy "home in government," and on important revisions to the ITA to update and advance the understanding of charitable work in Canada. Our second report, published in April 2021, advised on ways to improve the relationship between the CRA and organizations led by and/or serving Indigenous peoples, on the need for more effective data strategies across government and collection of data by the CRA, and on additional changes to the ITA to simplify the categorization of charities.

Summary of this Report

At its meetings on April 28 and May 31, 2021, the ACCS reviewed and agreed to move forward with its third report. This report of the ACCS focuses on two main areas and includes recommendations for action in each area. The first area encompasses aspects of the relationship

between the Charities Directorate of the CRA and charities particularly those serving vulnerable populations. These include communication and education, the language of CRA guidance documents, accessibility and consistency of information provided by the CRA, and interactions of various kinds with these charities. The second area of focus is the ability of charities to earn income from activities, some of which might come from related or unrelated business activities.

These areas were studied by the Vulnerable Populations Working group (VPWG) and the Purposes and Activities Working Group (P&AWG). The two groups held consultations with many charities and intermediary groups and networks across the sector. Their recommendations are based on input from a range of charities working with diverse clients and in many sub-sectors. They address common themes that were heard in separate consultation meetings organized by the VPWG, the P&AWG and also the Indigenous Peoples Working Group.

- One theme raised in all discussions with charities and networks was the level of concern or “fear” felt by many charities in approaching the Charities Directorate, worried that drawing attention from the Agency might lead to closer review or an audit. Many charities were unaware of the “education-first” approach from the Charities Directorate, and instead focused on relatively rare sanctions that might be imposed.
- Another theme heard frequently was the lack of transparency and accessibility of language. This could be in the form of written communication or guidance which was difficult to interpret, or in the form of explanations from CRA staff that were inconsistent, or in the form of language that was not spoken by the clients wishing to interact with the CRA.
- A third theme was the lack of expertise and resources within the charitable sector to understand and interpret CRA guidance and policy decisions with certainty and confidence.

Broadly, these themes suggest that the relationship between the charitable sector and the regulator requires a higher degree of communication, transparency, and sensitivity on the part of the regulator to the context in which many charities must operate. Many charities are critical of a concept of charity embedded in statute and regulation that is patriarchal and out of step with today’s environment in which equity, human rights and the dismantling of systemic oppression are considered to be central to the purpose and work of many organizations serving vulnerable populations. Barriers of language, practices and processes need to be critically examined, in the view of many who participated in the ACCS consultations. Their views are summarized in the text that follows as What We Heard.

In this report, the ACCS observations and recommendations are separated into short-, medium- and long-term actions. Our reason for doing so is to recognize that some recommendations can

be implemented by the CRA itself more quickly and with relatively fewer additional resource implications, while others may require legislative change and/or discussions with other government departments or may require more consultation and discussion.

Next Steps

The recommendations in this report should be read in conjunction with those made in our previous two reports. Our continuing exchanges with charities and professional advisors since the beginning of 2021 have reinforced the importance and potential impact of recommendations made in our January and April reports, specifically three priority recommendations: to create a policy “home in government” to amend the ITA to focus on the purposes rather than the activities of charities, which would assist both charities and nonprofits serving remote and vulnerable populations; and to create a federal data strategy for the charitable sector that would drive more evidence-based policy-making. The Minister of National Revenue has shown continuing and strong interest in the work of the ACCS, meeting most recently with the full Committee on May 19. We provided our advice and recommendations to her in this forum, and our previous two reports, with the full expectation that she and her colleagues will consider them attentively. The ACCS is continuing its work through the summer of 2021 and will be studying issues to do with charitable sector revenue, data, and regulatory definitions of charity.

Summary of recommendations

What we heard	How it matters	Recommendation	Outcome
Vulnerable populations			
<ul style="list-style-type: none"> • Many charities, particularly smaller, rural and remote and those serving vulnerable populations have difficulty approaching CRA. • Policies, services and financial reporting requirements of the CRA are complex. • CRA policies and processes may embed patriarchal and exclusionary practices. • Charities have difficulty collaborating with non-charities; smaller nonprofits serving vulnerable populations cannot easily access funding. 	<ul style="list-style-type: none"> • Charity "consultation hesitancy" and aversion to exploring activities such as advocacy or business income generation. • Additional costs in meeting requirements. • Constraint on charities working with vulnerable populations and using a human rights or anti-racism lens. • Volunteer support for smaller charities is harder to obtain. 	<ul style="list-style-type: none"> • Improve accessibility to information, simplify language and seek client feedback on CRA interactions with charities. • Clarify the inclusion of anti-racism work as part of a charitable purpose; update the policy on promoting racial equality; and expand CRA services for seeing and hearing impaired. • Consider incentives for volunteer support. • Make changes to the ITA to allow for changes in the "direction and control" rules and expansion of the category "Qualified Donee". 	<ul style="list-style-type: none"> • Improvement in ease and frequency of communication between charities and the CRA. • Reduced administrative costs for charities. • Greater confidence in pursuing systemic racism work and in working in a regulatory environment more sensitive to equity. • Sustainable volunteer support for smaller charities. • More collaboration between charities and nonprofits or non qualified donees.

What we heard	How it matters	Recommendation	Outcome
Earned income			
<ul style="list-style-type: none"> • Earned income is an increasing priority for many charities and the legislative and regulatory framework for this revenue stream is inadequate and outdated. • The CRA guidance document on "Related Business" is badly in need of revision. 	<ul style="list-style-type: none"> • Ability to generate revenue from earned income is overly constrained by the regulatory system. 	<ul style="list-style-type: none"> • Expand and clarify the guidance CPS-019 on "related business" Adjust all guidance to clarify education-first approach. • Consider new guidance document on all the categories of earned income. • Simplify and clarify financial reporting requirements for charities and improve internal CRA coordination on reporting. • Add language to explicitly encourage use of shared platforms as revenue-generating enterprises. 	<ul style="list-style-type: none"> • Greater clarity for charities around activities designed to earn income from business activities.

Recommendations

Vulnerable Populations Working Group

The primary focus of the VPWG was to examine specific and/or systemic challenges facing thousands of grassroots charities in Canada, serving the most marginalized in remote, urban, rural, and northern communities throughout the country. Many of these charities consist of fewer than five staff members and/or volunteers, but some are large multi-million-dollar entities.

The VPWG consulted with over twenty-five organizations of differing sizes, programs and services. Despite the barriers faced particularly by smaller charities, they are doing their utmost to stretch and deliver critically needed programs and services to countless Canadians while addressing continuous challenges around their own sustainability. They collectively address pressing community challenges across a spectrum of needs, including but not limited to:

- Housing & shelter
- Food security
- Violence prevention
- Poverty & Homelessness
- Youth Development
- Counselling & Support
- Legal Services
- Immigrant & Refugee services
- Indigenous Language Revitalization
- Cultural/Racial/Ethno-specific programs and services
- Disability Supports
- Women, girls/trans/LGBTQ2i programs and services

Together, these small, medium, and large charities work in areas that are vital to people of all diversities and backgrounds. What they have in common are the responsive and often life-saving programs and services they provide to those placed on the social and economic margins of society.

What We Heard

To better highlight and delineate what we heard, we have identified short-, medium-, and long-term barriers. For this purpose, short-term describes those barriers the CRA could proactively address and work to break down in order to improve its relationship with charities serving

vulnerable populations. Medium- and long-term issues and barriers will require further in-depth internal deliberations and quite possibly regulatory or statutory changes to address effectively.

Short-term Issues and Barriers

The VPWG notes that many of the organizations who were consulted expressed concern over accessibility to information related to compliance, procedures, and resources, including understanding which questions to ask. Some charities cited the need for models of appropriate ways to complete complex forms and for more examples of acceptable purpose statements. These models could be made available on the CRA website, to support those registering for charitable status. It would also be helpful to have clear and understandable feedback when an organization's application for registration is declined. One noteworthy area for greater clarity is the need for clear information on advocacy, its allowance, parameters, and the responsibilities associated with engaging in advocacy activities.

The VPWG notes the importance of reducing fear and instilling a sense of comfort and ease when organizations reach out to the CRA for support, to understand the services available or to ask questions on matters of importance to them. We see an opportunity and a responsibility for umbrella or membership organizations to play a key intermediary role in educating their members or affiliates on common areas of clarification or facilitating such conversations to occur as needed.

Medium-term Issues and Barriers

Charities serving vulnerable populations are focused on reducing overall operating costs, particularly among smaller charities; aligning reporting forms to current standards; and ultimately increasing resources available to support their purpose. Based on consultation feedback, there is interest in taking advantage of the cost-effectiveness of shared platforms across the sector. We are aware some membership/umbrella organizations, as well as larger entities, already have shared platforms in place, such as insurance, pension, and benefit plans, purchasing, IT, and back-office services. In some cases, confusion around whether offering these services to other charities constitutes operating a business has limited their expansion.

The VPWG recognizes that cost-saving and efficiencies are important to smaller charities, as are ways of generating additional revenue through earned income. The CRA rules around social enterprises and related business are often complex and unclear for smaller organizations.

We heard a chorus of feedback on perceptions of the charitable model as patriarchal. Many charities spoke of the need for a model that is inclusive of an integrated equity framework

recognizing the historical lack of access to capital and systemic oppression. These organizations spoke of the need for a human rights-based approach that allows them to advocate for systemic change. Some also spoke of the need to shift from an approach that monitors expenditures to one where the charity is assessed by its purpose and mission as the lens through which it carries out its work. Indigenous and Black-led organizations which focus on addressing deep-rooted community needs due to systemic oppressions of colonialism and racism, criticized the approach of the ITA and the CRA's regulations which require charities to pursue "own activities" and to maintain "direction and control" in charity interactions with "non-qualified donees." Consulted charities asked for more recognition and qualification of work to address systemic issues such as anti-racism/anti-discrimination as "public education" and thus deemed to be part of a charitable purpose.

The VPWG also heard the need for more regular updates and more rapid recognition of changing realities. For example, the VPWG notes the CRA's policy on promoting racial equality has not been updated for some time. Given recent events over the past year, an update is now due to reflect the Government's commitment to address systemic racism.

The VPWG also recognizes the lack of accessibility to CRA services for communities in need of specific tools, such as the seeing and hearing impaired.

We heard repeated requests to update and align the accounting standards and gift appraisal thresholds in the CRA forms with modern practices of accounting and appraisals used in the sector.

Long-term Issues and Barriers

The VPWG received poignant feedback from its consultations, centered on long-standing issues. Several organizations commented on the lack of communication across divisions within the CRA and encouraged the need for cross-agency information sharing to prevent confusion or repetition (e.g., requirements for reporting on HST or Payroll issues). Similarly, many spoke of the need to modernize the ITA and regulations that impose "direction and control" requirements on charities trying to support vital community initiatives to better serve their communities through collaboration with non-charities.

We received many comments about the challenge of attracting and retaining directors and volunteers. This was particularly apparent for direct service delivery organizations, such as food banks, or organizations in smaller or rural communities. A similar observation was made in the 2019 Report of the Special Senate Committee on the Charitable Sector, which recommended that

the government create a national volunteer strategy, and that funding by governments include provisions for supporting the recruitment and retention of volunteers. Among the actions that the CRA could take to support the retention of volunteers is to ensure that the rules regarding reimbursement to volunteers of reasonable costs to volunteers, such as transportation, childcare, training, mandatory record checks, etc. are clearly expressed and communicated to charities. It may also be valuable for the Department of Finance to study the options through the tax system of recognizing the hours put in by volunteers in support of the organization's purpose. And it would be helpful especially to smaller charities for the Government to consider other options to support charities in the recruitment and retention of directors as suggested by the Senate Special Committee on the Charitable Sector.

Some organizations noted that while the CRA has implemented improvements with outreach and information sessions, in both official languages, they have clients who receive automated calls and do not speak any of the official languages. Language used thus poses an ongoing barrier. Some queried why it is not possible for nonprofits to have access to charitable sector resources without the need to become charities, and thus avoid the challenges inherent within the current model.

Recommendations

Short-Term (more easily addressed in the short-term and/or within the operational and administrative scope of the CRA, and realizable in the near future)

The following recommendations on accessibility of information, communication and interaction with the sector, if applied will improve the relationship with the charitable sector and reduce unnecessary administrative burdens of valued time and resources.

It is recommended that the CRA:

1. Promote the availability and accessibility of the Charities Directorate telephone enquiries line, including the ability for organizations to ask questions on an anonymous basis; implement short post-call surveys to determine client satisfaction. These initiatives will help encourage more charities to come forward with their inquiries, reduce the "fear" factor associated with contacting the CRA, and allow the CRA to make service improvements as appropriate.
2. Develop and deliver a focused outreach and education program for charities serving vulnerable populations to help increase awareness of available CRA services (e.g., the Charities Directorate telephone enquiries line, the Community Volunteer Income Tax

- Program and relevant education and guidance publications). Umbrella or intermediary networks could be enlisted to extend the CRA’s efforts on outreach and education.
3. Continue to revise communication, education, and guidance products to use clear and accessible language to the greatest extent possible, with a view to increasing accessibility and ease of use, particularly for smaller organizations that may lack access to professional services. A user group of charities could be created to review and give feedback on language clarity and accessibility.
 4. Review the model charitable purposes on CRA’s website to ensure that they are more accessible, so that organizations can navigate the requirements for registration more easily and better understand how the purposes influence the establishment and ongoing operation of the charity.
 5. 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. Encourage willing partners in the charitable sector to create a “buddy” program that draws on established voices in the sector to help new and smaller charities, whether to deal with specific issues or to build connections and develop capacity within the sector.

Medium-Term (those that will require further consideration, input, and deliberation)

It is recommended that the CRA:

7. Clarify the rules on earned income derived through the operation of social enterprises, such as shared platforms, which would help to legitimize and expand the use of these platforms by smaller charities and nonprofits, and help reduce overall operating costs for smaller organizations.
8. Recognize that work by charities to address and reduce all forms of systemic oppressions, particularly on the lives of vulnerable populations (i.e., anti-Indigenous/anti-Black racism) constitutes a charitable purpose.
9. Increase accessibility of CRA resources and services for the seeing and hearing-impaired communities
10. Update and align accounting standards, forms, and technology tools, as appropriate, to be consistent with modern practices used by charities and their accountants (such as regularly updating thresholds for appraisals of gifts-in-kind and other technical filing requirements).

Long-Term (those that address more deeply embedded practices and regulations, affecting the sustainability and stability of a significant portion of the charitable sector)

It is recommended that the CRA:

11. Consider requesting the Department of Finance to make changes to the ITA provisions for “own activities” that lead to the requirement for “direction and control” measures (as recommended by the ACCS in its first Report), and to expand the category of qualified donees, to enable non-profit organizations to receive grants without becoming registered charities. Currently, many smaller grassroots organizations apply for charitable status primarily to access funds from granting foundations and government. Eliminating this requirement would permit smaller non-profit organizations to avoid the expensive and time-consuming process of obtaining and maintaining charitable status.
12. Clarify what is allowable as a practice in reimbursing reasonable and acceptable costs to volunteers (e.g., costs of transportation, daycare, training, mandatory records checks, etc.).

Purposes and Activities Working Group – Earned Income by Charities

The Purposes and Activities Working Group (P&AWG) has begun a review of the regulatory and legislative regime governing the ‘earned-income’ activities of charities, given the priority that many charities attach to this income stream to generate sustainable resources for the sector. As more and more charities look into earned income as a way to generate money to meet their mission (and perhaps make up for lost revenue and increased competition in other streams), we need to have an adequate regulatory and legislative framework to guide and govern this work. Under these circumstances, it is a priority for the sector and the Charities Directorate that guidance and legislation be up-to-date, clear, and helpful to those navigating this changing terrain.

Revenue generation by charities in broad terms falls into four categories: fundraising/donations from the public; grants/contributions from funders and governments; investment income from property; and earned/commercial income. Using Form T3010, Registered Charity Information Return data from 2019, it is clear that grants and contributions from government represent the largest share of revenue for the sector (+/- \$199 billion). Earned and investment income combined is second, at +/- \$36 billion, and fundraising rounds out the picture at +/- \$26 billion annually.

Each category of revenue presents unique challenges and opportunities, from conditions and incentives around donations, to charges and restrictions on grants from government funders, to restrictions on acceptable forms of “business” revenue. Many examples illustrate the adaptation and evolution of practices and regulations governing these activities. For example, Canada’s favorable tax treatment of donations supports fundraising revenue; a growing willingness of funders and governments to include in the grants they make allowance for charity administrative costs makes donor funding more viable; the broad interest in social enterprise opens up new opportunities for mission-aligned income generation by charities.

The pandemic is generating contradictory signals related to fundraising from the public and in securing grants and contributions from institutional donors and governments. CanadaHelps reports that despite strong (in some cases record-breaking) growth in on-line giving, underlying demographic trends combined with the economic turmoil attributed to COVID-19 has caused overall donations levels in 2020 to fall back to what they were in 2016¹. Foundations and government funders are reporting that demand/requests for support far exceeds the resources they have available, even if many of them have emerged from the pandemic with increased resources (e.g. foundations benefiting from strong investment returns, or government departments being provided with robust granting budgets).

The charitable sector continues to experience stress around the growing gap between demand for their services and the resources available to meet their purpose.² Many charities are afraid that the gap will not be met through more fundraising and government grants. As a result, more and more charities are looking at ways to earn income through commercial activities to help them raise the resources needed. While the pandemic is exacerbating the funding gap faced by many charities, interest in earned income as a possible solution is not a new phenomenon. As the second largest source of funding for the sector, it is already well established. The spike in interest on this topic among charities is noteworthy, and one we’ve seen before (e.g. Imagine Canada published an extensive survey of earned income activities of charities following the 2008/09 financial crisis,³ which also brought the subject to the fore).

The P&AWG held a series of meetings and hosted two focus groups in April 2021 with over 20 organizations/individuals, for the purpose of gathering input on:

- the amount and types of interaction their organization has with the CRA around earned income;

¹ <https://www.canadahelps.org/en/the-giving-report/>

² <https://www.imaginecanada.ca/en/360/canadas-emerging-social-deficit>

³ <http://sectorsource.ca/research-and-impact/imagine-canada-research/earned-income>

- areas the CRA might improve, such as communications, forms, or client service, to support an organization's ability to earn income through commercial activity;
- the types of barriers, besides funding, that hinder undertaking commercial activities by an organization;
- the benefits, challenges, and accessibility of the CRA's guidance products on this issue;
- other areas of concern, challenges, or benefits about the role of the CRA as it relates to regulating commercial activities of charities.

We also considered the findings and recommendations from the Special Senate Committee Report on the Charitable Sector, and the Government of Canada's response to that report. Our consultations focused on aspects of this regime that remain unclear and/or generate inconsistent interpretations.

What We Heard

Similar to the approach taken by the VPWG, the P&AWG has grouped the input into short, medium and long-term issues and barriers. We also note whether changes can be dealt with via communications, guidance, regulation, or legislation.

Short term Issues and Barriers

Guidance documents from the Charities Directorate of CRA

CRA produces a wide range of guidance documents to help charities understand and comply with the regulatory and legal frameworks governing their activities. CRA's guidance on related business activity as a way to earn income is published as CPS-019, [What is a Related Business?](#) and dates from 2003, although CRA has undertaken an extensive review and consultation on necessary revisions which have not yet been made public. Portions of CG-013, [Fundraising by Registered Charities](#) also provide relevant guidance on how/when fundraising overlaps with earned-income as do portions of CPS-024, [Guidelines for registering a charity: Meeting the public benefit test](#).

A common theme in our consultations is that many charities express concern, or even fear, when considering contacting CRA for advice. They are concerned that contacting CRA will trigger investigation, audit, and possible repercussions. A review of any CRA guidance product reveals that most include the phrase *"A registered charity that engages in unacceptable [insert activity here] is liable to sanctions or the revocation of its registration,"* or *"The CRA may impose sanctions on charitable organizations and public foundations, including penalties or revocation of their registration, if they [insert activity here]."* In practice, CRA has adopted an education first

approach that seeks to help charities understand the rules and get/stay onside. Given that revocation is a last resort, only undertaken when a charity refuses to comply after extensive engagement with CRA, we suggest that guidance be adjusted to clarify the steps taken before any penalties or revocations are applied. CRA may even consider removing references to penalties from the various guidance products and creating a single guidance document that details the “education-first/penalties last” approach that applies to all CRA guidance products.

The current guidance on related business (CPS-019) revolves around determining “what is a related business.” It could be much more approachable and useful to charities if it were rewritten or expanded to better align with and describe the various ways charities can earn income, e.g.:

- carrying on charitable programs
- operating a related business
- managing an unrelated business through for-profit subsidiary corporations; or
- earning investment income.

Given the importance of earned income to the charitable sector, and how other parts of the federal Government are encouraging social enterprise via charities and non-profits (e.g. Employment and Social Development Canada (ESDC) and its \$755 million Social Finance Fund), CPS-019 should acknowledge that this is a legitimate and even encouraged activity, and clarify that the guidance is intended to help charities successfully navigate the regulatory regime.

The ACCS would be pleased to assist the CRA to ensure care is taken when drafting these clarifications. For example, a statement made in the Minister of National Revenue’s response dated March 30, 2021, to the Report of the Special Senate Committee on the Charitable Sector (specifically referring to Recommendation 28 of the Senate Report) mischaracterized fees for charitable programs as related business income, as follows:

“In this respect, related businesses include a range of activities involving the charities charging for, or being paid, to deliver goods or services that fulfill their charitable mandate. This includes charities that charge admissions to museums and theatres or that operate health, wellness and athletics centres, as well as those that provide training courses or run tuition-based schools.”

The ACCS believes this to be an inaccurate statement about the current state of the law. A suggestion that fees from charitable programs (such as tuition fees) are related business income only increases the confusion and concern of the sector. Charging a fee for a charitable program

has been a longstanding acceptable practice. Improved guidance products would highlight the fact that such revenue streams are not related business income.

Interactions with CRA

Over the past few years, CRA has significantly increased its capacity to engage with the charitable sector through expanded call-centers, education programs, outreach, etc. Yet our consultations indicated that many were not aware of this, and some also held the perception that stakeholder interactions were generally negative. More specifically related to earned income, others voiced concern that they had received contradictory or differing advice from CRA, thus increasing their uncertainty about the risks in running their operations. To help inform the conversation about the quantity and quality of interactions between CRA and charities, CRA should consider developing tools for publicly reporting stakeholder satisfaction following interactions with the Charities Directorate.

Medium-term Issues and Barriers

Charities have embraced earned income as a strategy to generate resources to use in addressing their purpose, and the ITA recognizes and supports this reality. However, there is a broadly held view that the current regulatory and legislative regime more effectively inhibits this work than enables it. Our consultations and deliberations focused on the need for a more supportive environment for earned income activities of charities.

Charities face variations federally and provincially when navigating the regulations governing their income earning activities. We suggest that CRA coordinate with other federal departments (notably ESDC, Global Affairs Canada (GAC), and Heritage Canada as each has extensive interactions with Canadian charities), and provincial governments where possible, to develop a shared vision of how an enabling environment for earned income by charities can further the purposes of the sector.

Many charities lamented the absence of expertise available to them when developing or expanding income-earning opportunities. Clear guidance supported by a clear statement from governments that earned income is encouraged within the sector may increase the confidence of service providers to develop the necessary legal and accounting advisory capacity to support the charitable sector and its efforts to generate revenue.

We heard questions in our consultations around the use of thresholds and tests for determining when a business activity is “linked’ or “subordinate.” The guidance (CPS-019) suggests that an

activity has to be “linked” and “subordinate” to be a related business and confirms that these are the tests to be used by charities (and CRA auditors) to help determine whether an activity can/should remain within a charity as a “related business,” or perhaps be moved to a separate entity, or a for-profit subsidiary. These concepts of “linked” and “subordinate” are not defined and establishing quantifiable limits for either would be very difficult, if not impossible. These requirements are not contained in the ITA. They were meant to assist a charity, but they have proved to be an impediment to charities wanting to become involved in related businesses. The absence of enabling guidance often serves to prevent a charity from undertaking or expanding an activity, for fear of becoming off-side with CRA. The replacement of these “tests” would be beneficial to building the confidence of the sector when engaging in income-generating activities. The sector needs a more practical holistic approach. More consultation by the P&AWG with the sector will be needed to support any recommendations the ACCS might make to the government regarding the concepts of linked and subordinate activities in order to provide charities with a sense of simplicity, confidence and clarity concerning what is possible with income generation.

Long-term Issues and Barriers

There is wide-spread interest from many charities in an approach that focuses on the uses and *not* the sources of funds for charitable purpose. The solution suggested by some in the sector is to apply a “destination of funds” test (in other words an approach that enables charities to earn revenues from business-type activities as long as those revenues are dedicated to charitable purposes). However, in its response to the Special Senate Committee’s report recommendation to pilot a “destination of funds” test, the Government indicated that it does not intend to “develop and implement a pilot project to assess the viability of granting registered charities greater latitude in undertaking revenue-generating activities (provided the proceeds are used to further charitable purposes).” We understand that the Government’s hesitation rests on three factors; i) the requirement that the ITA is administered as written (e.g. a pilot project would require temporary or partial suspension of the Act and that is not legally possible); ii) the assertion that charities already have sufficient flexibility within the ITA to earn income to support their activities; and iii) a concern that a destination of funds test would allow tax-exempt charities to unfairly compete with tax-paying businesses.

While we acknowledge that this approach may indicate a significant policy shift, we argue that major societal shifts that are underway, and exacerbated by the pandemic, call for thinking outside the traditional framework. We know that regulatory sandbox pilots have happened in other areas of the government. We also know from our consultations that charities do not believe there is flexibility within the current framework. Finally, framing earned income by charities as

synonymous with the work of the private sector sets up a false and incomplete narrative. For-profit entities do not have a charitable purpose. Organizations in our sector are defined by a public/charitable purpose and their ability to meet their purpose should be fully supported. The P&AWG suggests that we continue consultations to better understand the implications of this fundamental change to the income-earning regime governing charities, and to provide further recommendations to the Minister of National Revenue.

Volunteer Run Businesses

One theme that recurred in our consultations was concern regarding the legislative feature that an “unrelated business” can be deemed a “related business” if it is “substantially run” (at least 90%) by volunteers. The concern expressed was that using “volunteer-run” as a measure to deem a business to be a “related business” is often gender-biased, can encourage labour exploitation and possibly mission-drift by the charity. Alterations to this element would require legislative change. If it is dropped as a measure, this might result in some earned-income activities being offside because the requisite percentage of volunteers is no longer met. That is not the desired outcome. But the issue does demonstrate how out of date the current related business framework has become. An in-depth review to consider how to modernize these and other provisions on business activities would enable affected charities to responsibly exit or transform such a business (e.g. transferring it to a separate taxable corporation, owned by the charity, that makes full use of the Charitable Donation Tax Credit/Deduction).

Recommendations

Short term

It is recommended that the CRA:

1. Update the revised draft guidance document CPS-019, [What is a Related Business?](#) to be more enabling (i.e. to emphasize that it is intended to enable, not to prevent, the earning of income through business activities) and make it public as soon as possible.
2. Ensure that fees charged for charitable programs are not conflated with related business in the guidance.
3. Adjust all guidance documents to clarify the steps taken before sanctions or revocations are applied. Consider the option of removing references to sanctions and revocations from the various guidance products of the Charities Directorate and create a single guidance document that details the “education-first/sanctions last” approach.
4. Improve intradepartmental communication among the various CRA branches that deal with a charity’s reporting requirements (e.g., Payroll, sales tax, and annual reporting

through the T3010), in order to provide consistent information and to avoid duplicate reporting, especially where this directly impacts income-earning activities of charities.

5. Develop tools for publicly reporting stakeholder satisfaction with CRA education and communications.

Medium-term

It is recommended that the CRA work to create a more supportive environment for earned income activities of charities by:

6. Revising and clarifying guidance on the various ways in which charities can earn income, including eliminating the current “linked and subordinate” test for related business.
7. Coordinating with other federal departments (notably ESDC, GAC and Heritage Canada), and provincial governments where possible, to develop a shared vision of how an enabling environment for earned income by charities can further the purposes of the sector.
8. Support the development of advisory capacity and services to charities to help with their efforts to generate earned income.

Long-term

- The ACCS reviews and consultations have touched on two issues that are of interest and concern to both government and the sector regarding earned income, namely the “destination of funds” test and the “substantially run by volunteers” test, both described above. There is no consensus on which direction reforms in these areas should go, yet there is enough interest in reform that further study and consultation on both of these topics is needed before the ACCS can make specific recommendations.
- 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.
- Regarding the volunteer-run business provisions in the ITA, we heard from many charities that this framework has become quite outdated, both limiting what charities can do, and also holding entrenched patterns in place that need to change. Given the extensive use of this business model by charities in Canada, further review is needed before any specific recommendations are made.

Update on the Charitable Sector Data Working Group

The Charitable Sector Data Working Group (CSDWG) has been focused on improving data collection and analysis related to the charitable sector. To date, the CSDWG has engaged in consultations with the sector, with researchers, data analysts, academics, and with departments of the federal government. In the second report of the ACCS, we made three recommendations related to data including:

- A National Data Strategy
- Improvements for Data Completeness, Timeliness, and Accuracy
- Building Data in Diversity

The release of the Satellite Account for Non-Profit Institutions and Volunteering in March 2021 and the release in April 2021 of the Non-Profit Organizations and Volunteering Satellite Account: Human Resources Module 2010-2019 provided welcome, and long-awaited data for the sector. We reiterate the recommendation made in the second report of the ACCS that the Government commit to provision of consistent and timely charitable sector data with dedicated and ongoing resources for data collection, integration and analysis within Statistics Canada.

The CSDWG has begun consultations focusing on the financial data ecosystem of the charitable sector which includes reviewing data sources on the capitalization of the sector, earned income, Donor-Advised Funds, and the application of the Disbursement Quota (DQ). In doing so, we have noted that the federal government has endorsed the Special Senate Committee's Recommendation 36 "that the Government of Canada direct the Advisory Committee on the Charitable Sector to examine the advantages and disadvantages of amending the disbursement quota for registered charities" and Recommendation 37 "that the Government of Canada instruct the Advisory Committee on the Charitable Sector 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."

We recognize that the issue of the application and calculation of the DQ has now become a priority following on the commitment to consultations made in the federal Budget 2021. A number of elements related to this complex question need to be reviewed. At issue, amongst other things, is the rate of the DQ, the application of the DQ on assets (real property and cash, including earned income), donor restrictions on expenditure of capital, gaps in the application of the DQ, and the sector's need for more resources.

The CSDWG is at the early stages of its consultations around financial data; what we have heard to date points to a sector that is not homogeneous in its use of financial models and options. It is clear even at this early stage that it is important to collect data and information at the individual/more granular level; sector-wide or aggregate statistics may hide the nuances that provide necessary information for more accurate, inclusive and evidence-based decisions. For example, it is problematic to base policy decisions such as an increase in the DQ rate on aggregate or high-level data derived from the T3010 reporting form data. When considering the application of the DQ calculation one should take into account the fact that charity assets are reported in some cases with a different understanding of reporting lines, that disparity within the sector creates outliers in the data that affect the aggregate picture, and that calculating average rates of DQ application on aggregated data from one or two years of T3010 data on assets and expenses could be misleading. There is also little data from the T3010 database that indicates at an aggregate level the patterns of funds flowing to specific areas of the charitable sector, so it is difficult to make inferences about the deployment of philanthropic donations. In another example, while earned income is reported to have become the second source of revenue (after government funding), for the sector, there is a lack of clarity about what the sector is reporting as earned income, and whether large charities such as universities could be impacting the overall percentage. It is unclear how social enterprises are captured in data on the nonprofit sector as a whole. They can be charities and/or nonprofits, or private enterprises.

Additional challenges prevent Canada from being able to fully describe the financial ecosystem of its social purpose/charitable sector. The multi-jurisdictional regulatory environment makes it difficult to compare and contrast data across the sector or across the country. There is lack of consistency in data collection across the provinces and territories and between the provinces and the federal government. For example, there is no standardized set of reporting categories for financial reporting for charities, as was mentioned in the second report of the ACCS. While the CRA charities database is open, it is difficult for the average organization or consumer of information to use as it is often in raw form. When data is requested, CRA is not able to send it digitally. Intermediaries and data platforms such as CapitalW and Powered by Data have emerged to make sense of the financial data available through the T3010. CapitalW has also begun to create a database of information on nonprofits (incorporated either federally or provincially) but the CSDWG reiterates its recommendation that a National Data Strategy is imperative.

The CSDWG will continue to look for ways to improve data collection through the T3010 and through other mechanisms, and to identify financial data that supports the Government's capacity to make evidence-based decisions on the issues and priorities of the sector.

Appendix – 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 (RFGW)	Vulnerable Populations Working Group (VPWG)	Indigenous Peoples Working Group (IPWG)	Purposes and Activities Working Group (P&AWG)	Charitable Sector Data Working Group (CSDWG)
Members	<ol style="list-style-type: none"> 1. Andrea McManus (S) 2. Bruce MacDonald (S) 3. Terrance Carter (S) 4. Peter Dinsdale (S) 5. Geoff Trueman (G) 6. Susan Manwaring (S) 7. Tony Manconi (G) 	<ol style="list-style-type: none"> 1. Paulette Senior (S) 2. Kevin McCort (S) 3. Peter Robinson (S) 4. Geoff Trueman (G) 	<ol style="list-style-type: none"> 1. Peter Dinsdale (S) 2. Susan Manwaring (S) 3. Arlene MacDonald (S) 4. Hilary Pearson (S) 5. Bruce Lawson (S) 6. Peter Elson (S) 7. Terrance Carter (S) 	<ol style="list-style-type: none"> 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) 	<ol style="list-style-type: none"> 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' 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 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 between January 2020 and May 2021, including those of the ACCS' Working Groups. In addition to these meetings the co-chairs have met regularly by teleconference since the creation of the ACCS in March 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	February 2021	March 2021	April 2021	May 2021
Advisory Committee on the Charitable Sector		1	1	1	1	1				1		1	1		1	1	2
Purposes and Activities Working Group							1	1	1	1			1	1	1	3	
Vulnerable Populations Working Group							1	1	1		1		1	3	3	2	1
Regulatory Framework Working Group							1	1	1	1	2		1		1	1	1
Indigenous Peoples Working Group							1	1	1	3	1	1	3	2	1	1	
Charitable Sector Data Working Group							1	1	1	1	4	1	1	2	1	3	1
Co-chairs and working group leads									1	1	1				2		1