

Minister  
of National Revenue



Ministre  
du Revenu national

Ottawa, Canada K1A 0A6

March 30, 2021

Mr. Gérald Lafrenière  
Interim Clerk of the Senate,  
Clerk of the Parliaments,  
and Chief Legislative Services Officer  
The Senate  
Ottawa ON K1A 0A4

Dear Mr. Lafrenière:

Pursuant with Rule 12-24 (3) of the Rules of the Senate, I am pleased to enclose one copy in each official language, for deposit with the Senate, of the document entitled Response to the Report of the Special Senate Committee on the Charitable Sector: Catalyst for Change: A Roadmap to a Stronger Charitable Sector.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Diane Lebouthillier'.

The Honourable Diane Lebouthillier

Enclosures

Minister  
of National Revenue



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Ottawa, Canada K1A 0A6

March 30, 2021

The Honourable Terry M. Mercer, Senator  
Chair of the Senate Special Committee on the Charitable Sector  
The Senate  
Ottawa ON K1A 0A4

Dear Senator Mercer:

As the Minister of National Revenue I am pleased to respond to the Report of the Special Senate Committee on the Charitable Sector (the Committee), *Catalyst for Change: A Roadmap to a Stronger Charitable Sector* (the Report), on behalf of the Government of Canada.

The Government appreciates the hard work of the Committee and welcomes its analysis, views and recommendations. The Government shares the Committee's commitment to examine the complex challenges facing Canada's Charitable and non-profit sector today and to find innovative and practical new ways to better support the sector in the future.

Canada's charitable and non-profit sector is diverse and vibrant. From sport to social support services, an estimated 86,000 registered charities and 85,000 non-profit organizations engage in public benefit activities that touch almost every aspect of Canadian life. The sector is also a significant economic driver, generating more than seven per cent of Canada's gross domestic product and employing more than 2 million people.

After carefully reviewing the Committee's report, and recognizing that the charitable and non-profit sector is the shared responsibility of several government departments, the Government has chosen to respond thematically to the Report's recommendations. It is hoped that this Government Response clearly demonstrates the Government's commitment to be responsive to the needs of Canada's charitable and non-profit sector, so that they can continue to make their essential contribution to building a stronger, more inclusive and more resilient nation.

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## **Strengthening the Sector (Recommendations 1 – 8)**

### Volunteering

Much of the Committee's report focused on finding ways to improve the recruitment and retention of individuals who work in or the charitable sector, both paid and unpaid.

**Recommendation 1** of the Report directs the Government of Canada to implement a national volunteer strategy to encourage volunteerism with a focus on the needs of northern, rural and urban communities. Employment and Social Development Canada (ESDC) is working collaboratively with the non-profit and charitable sectors to build capacity and support those Canadians to volunteer by providing direct funding to voluntary sector organizations through grants and contribution agreements. However, it is sector-led organizations, such as Volunteer Canada, that provide strategic national leadership and expertise on volunteerism to increase the participation, quality and diversity of volunteer experiences. ESDC currently has four national programs that encourage volunteerism by all Canadians:

- **Social Development Partnerships Program (SDPP)** – working in partnership with non-profits and other organizations to improve outcomes for people with disabilities, children and families and other vulnerable populations.
- **New Horizons for Seniors Program (NHSP)** – funding for projects that make a difference in the lives of seniors and in their communities.
- **Canada's Volunteer Awards (CVA)** – celebrating Canadians who make a difference through volunteerism.
- **Canada Service Corps** – giving young Canadians (ages 15-30) the chance to participate in meaningful volunteer service opportunities.

The Government supports the Committee's recommendation to include in contribution agreements the costs associated with the recruitment and retention of volunteers (**Recommendation 2**). For transfer payment programs that include the charitable and non-profit sector, the Treasury Board of Canada Secretariat (Secretariat) will promote the incorporation of unique eligible activities and eligible expenditures. This includes costs and activities associated with the recruitment and retention of volunteers needed to deliver a funded project or activity.

The Government agrees with the Report's recommendation to seek ways to reduce the financial burden placed on organizations by the need for fingerprinting services and police checks on volunteers (**Recommendation 3**). Currently, the Royal Canadian Mounted Police does not charge a fee for either service when the request is accompanied by documentation confirming that the criminal record check is for the purposes of

volunteering with a charitable organization. However, policing in Canada is decentralized across different levels of government and provinces or municipalities individually determine their fee structure. The Government is working with the Canadian Association of Chiefs of Police and will encourage their provincial, territorial and municipal counterparts to waive or reduce the fees for criminal records checks for volunteers.

The Government supports recognition programs for volunteers who assist the government in the delivery of services (**Recommendation 4**). Thousands of Canadians devote their time and skills to making Canada a better place. The Government appreciates the time and effort of the many volunteers who support federal departments and agencies and wholeheartedly endorses their recognition. While awards for volunteers are within the authority of each deputy head, deputy heads of federal departments and agencies will be encouraged to consider establishing an approach for regular recognition of volunteers who assist in the delivery of their services.

ESDC also administers the CVA, a recognition program celebrating Canadians who are involved in volunteer activities. Throughout the process of delivering the CVA, regional reviewers and a National Advisory Committee are used to help with the selection process. Members of the National Advisory Committee play a leading role in assessing top-ranked nominations. They advise and assist the Minister of Families, Children and Social Development on all matters related to the selection of award recipients and support the promotion of the program.

### Staffing

The Report identified the need for the development of pensions for the charitable and non-profit sectors that are portable across provincial and territorial jurisdictions (**Recommendation 5**). Canadians benefit from a comprehensive retirement income system that is supported by three pillars. The first two pillars include the public pensions: Old Age Security (OAS) and its Guaranteed Income Supplement (GIS), and the Canada Pension Plan (CPP) and Quebec Pension Plan (QPP). The Third pillar consists of voluntary tax-assisted private savings opportunities through a wide range of vehicles, including Registered Pension Plans (RPPs), individual and group Registered Retirement Savings Plans (RRSPs) and Tax Free Savings Accounts (TFSA), and Pooled Registered Pension Plans (PRPPs). PRPPs were developed in collaboration with provinces and territories in 2012 to help expand coverage to Canadians without access to a workplace pension plan and the self-employed. More recent targeted measures that are further benefitting low- and moderate-income workers include increasing GIS top-up payments, the CPP enhancement coupled with a boosting of the Canada Workers Benefit, and, most



recently, enhancing the GIS earnings exemption. These vehicles and supports are available to serve the retirement needs of workers in the charitable and non-profit sectors.

The Government recognizes the important role that non-profits and charities can play in helping communities tackle social and environmental challenges through innovation and by delivering new solutions that combine social purpose and financial objectives. Through the development of a Social Innovation and Social Finance Strategy (SI/SF Strategy), the Government is working to ensure the long-term sustainability of the sector and its workforce, recognizing the distinct needs of Canada's northern, rural and urban communities (**Recommendation 6**). The Government will continue to build on and strengthen its work with the sector to ensure the SI/SF Strategy responds to their needs.

One engagement mechanism the Government plans to put in place in 2021 is a Social Innovation Advisory Council (SIAC). Once appointed, the SIAC will provide strategic advice to the Government on how to encourage the growth of social purpose organizations in Canada. The SIAC will provide an important perspective from within the stakeholder community and report regularly to the Government on progress and emerging issues in relation to the SI/SF Strategy, including those related to human resources, long-term sustainability and operations in a post-COVID context.

The Human Resources Council for the Non-Profit Sector (the Council) was an independent organization established in 2005 by stakeholders in the voluntary sector, and was among 34 sector councils that received funding through ESDC's Sector Council Program (SCP). The SCP was sunset in 2013 and was replaced by the Sectoral Initiatives Program (SIP). Once established, the SIAC will support the Minister of Families, Children and Social Development and serve as an ongoing stakeholder engagement channel for the social innovation and social finance sector, which includes the voluntary sector. The SIAC membership will consist of leaders, practitioners and experts, including the community, cooperative, philanthropic, financial and research sectors. The SIAC could provide additional perspectives on HR issues, such as the proposed human resources renewal plan (**Recommendation 7**).

### Governing

**Recommendation 8** of the Report asks the CRA (Canada Revenue Agency) to determine what questions could be included in the T3010 (for registered charities) and the T1044 (for federally incorporated not for-profit corporations) on diversity representation on boards of directors based on existing Employment Equity guidelines. It should be noted that the Advisory Committee on the Charitable Sector (ACCS) is an independent advisory body that generally sets its own agenda and priorities. However, the

Government supports this recommendation and will ask the ACCS to consider conducting further study on this issue. If the ACCS decides to examine the issue the CRA will review and consider any resulting recommendations.

### **Funding the Sector (Recommendations 9 – 15, 34 and 35)**

#### Tax treatment of charitable and non-profit organizations

**Recommendation 9** of the Report asks the CRA to direct the ACCS to review existing tax measures available to individual donors in order to strengthen the culture of giving among new and current charitable donors.

It should be noted that tax support for charitable donations in Canada has been recognized as being among the most generous in the world. The primary mechanism for providing tax support in Canada is the Charitable Donation Tax Credit (CDTC) for individuals and the Charitable Donation Tax Deduction for corporations.

For the vast majority of individuals who donate more than \$200 in a year, the tax assistance received through the CDTC more than offsets any tax paid on the income used to finance the donation:

- On the first \$200 of annual donations, the CDTC provides a 15-per-cent credit.
- For donors whose taxable income does not exceed \$200,000, the CDTC provides tax assistance at 29 per cent on the portion of donations over \$200.
- With the introduction of a 33-per-cent personal income tax rate on taxable income in excess of \$216,511 in 2021, donors with income subject to the 33-per-cent marginal rate can also claim a 33-per-cent credit on the portion of donations exceeding \$200 made from this income.

In addition to federal tax assistance, all provinces and territories have charitable donation tax credits, with the average provincial credit being 16.5%. Total combined federal/provincial tax assistance averaged about 46% in 2019 on donations above \$200. For donors with taxable income in excess of the highest rate, total tax assistance on donations would be around 50% in most provinces, and as high as 54% in Nova Scotia.

- The Income Tax Act (ITA) also provides an exemption from capital gains tax for most donations of public listed securities, as well as ecologically sensitive land and certified cultural property. Taking this into consideration, the total tax relief provided can be as high as 81% when provincial incentives are added.

Generally, taxpayers may claim donations up to 75% of their net income in a year and unused donations can be carried forward for up to five years (up to 10 years in the case of ecologically sensitive land).

For 2019, individuals are estimated to have claimed over \$11 billion in donations, with federal tax assistance on these donations amounting to approximately \$3 billion, while corporations are estimated to have donated \$3.1 billion with federal tax assistance of approximately \$655 million.

Tax incentives for charitable giving encourage people to donate more to charities by reducing the after tax cost of giving. However, the after-tax cost of giving is only one of several factors influencing why people donate. For example, according to Statistics Canada, donors list compassion for those in need (89%) and personal belief in a cause as their primary motivations for giving.

Nevertheless, the Government supports the recommendation to ask the ACCS to review existing tax measures for donors and will ask the ACCS to conduct further study on this issue. **(Recommendations 9, 34 and 35)**. While the Committee has suggested the CRA implement a pilot project as part of the recommendation with respect to private company shares **(Recommendation 34)**, It should be noted that the CRA is required to apply the ITA provisions as written and, as such, implementing this aspect of the recommendation would be beyond the authority of the CRA without further parliamentary approval.

#### Grants and contribution

The Report recommends that the Government implement policies to require federal departments and agencies to compensate the full administrative costs associated with delivering services being funded in transfers to charitable and non-profit organizations **(Recommendation 10)**. The Government supports this recommendation. The Secretariat uses government Communication tools to disseminate information to the transfer payment community and has a network of practitioners at the senior management and working levels. With leadership from the Secretariat through policy instruments, government departments will have further direction to compensate recipients for administrative costs related to the funded project or activity.

The Report also urges the Government to extend support it currently offers to the for-profit sectors, particularly with respect to overhead and infrastructure costs, to the charitable and non-profit sector **(Recommendation 11)**. The Government does not support this recommendation because Non-profits are already eligible to receive support under most of Innovation Canada's programs and services, including the Business

Benefits Finder and Network funding under the Strategic Innovation Fund and Superclusters. However, there are some funding streams where a non-profit may not be eligible because these funds are specifically intended to support and scale commercial businesses with long term financial returns to investors.

The Committee recommended that grants and contribution agreements should cover a minimum of two years, and that the level of information required for both application and reporting on these agreements should be commensurate with the level of funding, minimizing complexity for smaller amounts (**Recommendation 12**). The Government supports this recommendation and the Secretariat will continue to promote the flexibilities available in the current Policy on Transfer Payments and its supporting instruments by way of government communication tools and its network of practitioners.

The Report calls upon the Government to develop and implement a standardized set of reporting categories and an on-line tool for charitable and non-profit organizations to submit financial reports based on these categories (**Recommendation 13**) and suggests that the Treasury Board of Canada should be tasked with working with federal departments and agencies and federal, provincial, and territorial working groups. Transfer payments contribute to a broad and diverse range of government priorities and objectives across over 40 departments, with different mandates, results and targets. Such diversity has resulted in a significant variety of results and financial reporting needs across the federal government. If a new Charitable and Non-Profit Secretariat is created (see **Recommendation 22**), the Secretariat will work with the new entity to leverage lessons learned and explore the development of guidance on reporting with the use of an online tool.

The promotion of innovation is a major theme in the Report. ESDC currently has two national programs that support innovation for charitable and non-profit organizations: The Social Finance Fund (SFF) and the Investment Readiness Program (IRP). **Recommendation 14** calls on the Government through ESDC, to support innovation across charitable and non-profit organizations, including through the advisory group managing the Social Finance Fund. The 2018 Fall Economic Statement and Budget 2019 announced an investment of \$755 million in a Social Finance Fund, to attract new private capital into innovative projects that will help drive positive social change. This funding will also help create a self-sustaining social finance market and increase the quantity and accessibility of affordable capital available to social purpose organizations. ESDC has spent the last year working with stakeholders and investment experts to design a SFF that would both support an inclusive economic recovery and contribute to solving persistent social and environmental problems. In addition, since 2019, the Government through



ESDC has invested \$50 million into the IRP to help prepare social purpose organizations, including charities and non-profits, to participate in the social finance market.

The recent Speech from the Throne and the Fall Economic Statement note the Government is investing in economic empowerment and increasing diversity in procurement. In line with Canada's SI/SF strategy, Public Services and Procurement Canada (PSPC) is working to foster inclusive innovation in federal procurement, including by leveraging government buying power to generate positive societal impacts. PSPC supports ESDC's efforts under the SI/SF strategy to help build the readiness of charitable and non-profit organizations, more specifically through access to business support and procurement opportunities (**Recommendation 15**). PSPC recognizes that public procurement can be a driver for growing the market for smaller organizations such as charitable and non-profit organizations. Supporting small enterprises is a key priority for PSPC – currently, over two thirds of the suppliers from whom PSPC acquires goods and services are small enterprises (fewer than 100 employees), with 30% of suppliers having fewer than ten staff.

The Office of Small and Medium Enterprises (OSME), as part of PSPC, works to make it easier for smaller businesses to bid on federal contracting opportunities. Through a network of regional offices, OSME raises awareness, educates, and assists businesses in doing business with the federal government, and works to identify and reduce barriers in federal procurement. This includes a pan-Canadian network of six regional offices and four satellite locations, a toll-free national InfoLine, and the BuyAndSell.gc.ca website. More information on OSME's services to smaller businesses can be found at BuyAndSell under "Support for Smaller Businesses."

### **Supporting the Sector (Recommendations 16-22)**

#### Data

During the development of the 2018 General Social Survey on Giving, Volunteering, and Participating (GSS-GVP), Statistics Canada embarked on an unprecedented consultation process with a large number of representatives from the non-profit and academic sectors. As a result of this process, the 2018 GSS-GVP addressed many of the data gaps identified by experts in this area (**Recommendation 16**). As a result, informal volunteering is now measured within the GSS-GVP. The GSS program is also undergoing a significant modernization exercise focused on re-engineering its collection platforms to increase the timeliness of data and ensure the content meets the needs of stakeholders.

Outside of the GSS-GVP, a number of other activities are underway within Statistics Canada. The National Economic Accounts Division (NEAD), for example, has entered into an agreement with ESDC to complete a satellite account for non-profit institutions this fiscal year (2020-21). This work will include detailed annual estimates of the non-profit sector, including its contribution to Gross Domestic Product (GDP) as well as employment. High level national estimates will also be provided on a quarterly basis three months after the reference period.

The Report also recommended that the CRA seek the advice of the ACCS on what additional information could be included in the Agency's T3010 form that would support the work of the sector (**Recommendation 17**). The Government recognizes that the information found in the T3010, Registered Charity Information Return, is useful for research and planning across government and in the sector. The questions on the T3010 are primarily based on the charities-related provisions of the ITA. One of the purposes of these questions is to support compliance by charities with the regulatory requirements for registration. This data also serves a public information purpose, as it helps Canadians understand how individual charities operate, and a research purpose, to support policy development related to charities. The Charitable Sector Data Working Group of the ACCS is looking for ways to improve data collection. This working group is consulting with data experts and stakeholders from the charitable sector to understand their needs and determine if there are any enhancements that could be made to the T3010, including whether this form is the right instrument to collect data on the sector's diversity. The Government supports this recommendation and is currently acting to address it.

### Capacity

Several funding options exist under Innovation, Science and Economic Development Canada's (ISED) programming to support the development and adoption of shared administrative technologies for non-profits (**Recommendation 18**). For example, members of ISED Superclusters or participants in the Strategic Innovation Fund networks can, via the lead organization, use operating and administrative funds to support the purchase of administrative technology to benefit the entire ecosystem.

The Report recommends that the Minister of National Revenue seek the advice of the ACCS with respect to modifying CRA restrictions on accessing other forms of capital by charitable and non-profit organizations; and that all federally funded initiatives with respect to innovation that are available to for-profit organizations be available to and promoted among charitable and non-profit organizations (**Recommendation 19**). The CRA will ask the ACCS to review the Committee's recommendation. If the ACCS decides to examine the issue the CRA will consider

any resulting recommendations from the ACCS and refer them to the appropriate department or agency if required.

#### The relationship with the federal government

The Committee has identified a need to improve the CRA's relationship with charitable and non-profit organizations by: communicating decisions with greater clarity; reducing wait times for responses on applications for status and other requests for information; and, increasing collaboration with provincial and territorial counterparts to reduce the reporting burden on charitable and non-profit organizations (**Recommendation 20**).

The CRA has implemented several improvements in order to communicate its positions more clearly. For instance, the CRA modified its correspondence to include legislative and common law requirements in plain language when denying applications for charitable registration so that decisions can be more clearly understood. The CRA recognizes that some of the content in agency communications related to the rejection of applications, the revocation of registered charitable status and the results of internal appeals can be complex and is continuously working to improve its communication efforts with registered charities and other qualified donees.

The CRA has also implemented several improvements to reduce wait times for applications for charitable status and other requests for information. In June 2019, the CRA launched a suite of digital services which included a new online application form. The online application form includes detailed instructions to assist organizations submit all of the necessary information in order to reduce processing delays. Further, the CRA made modifications to the structure and content of its webpages, streamlined internal procedures, and developed new tools in order to expedite the review of applications.

In 2019, 14 sector members with experience grounded in the issues facing the charitable sector to were nominated to the ACCS. Membership was drawn from different geographic locations across Canada from coast to coast. The ACCS Terms of Reference also allow for consultations with stakeholders and organizations from across the charitable sector including smaller organizations, organizations in rural and remote communities, organizations representing and serving newcomers to Canada and organizations supporting and serving Indigenous communities. In June 2020, the ACCS identified its five priorities and created distinct working groups to each address each priority. All five working groups have identified a need to review the different perspectives in the sector and realize the importance of consulting with subject matter experts and organizations.

The ACCS identified supporting the work of charities serving vulnerable populations and exploring charity-related regulatory and legislative issues faced by Indigenous Peoples and organizations as two of its main priorities. To address these priorities, the ACCS has created two distinct working groups, the Vulnerable Populations Working Group and the Indigenous Peoples Working Group. Both working groups are consulting with relevant organizations and will develop recommendations for the ACCS based on their findings **(Recommendation 21)**.

The Government supports the creation of a single window into government for the charitable sector **(Recommendation 22)**. ESDC currently leads the Government's approach to the charitable and non-profit sector. The volunteer sector is supported through a number of channels, including ESDC's administration of Canada's Volunteer Award, the Social Development Partnerships Program which makes strategic investments to the voluntary sector, as well the \$350 million Emergency Community Support Fund to help community organizations serve vulnerable Canadians during the COVID-19 pandemic. While ISED and other departments and agencies, including the CRA, the department of Canadian Heritage, and Finance Canada play important roles in supporting the sector to ensure a coordinated Government approach, ESDC may also be well-situated in light of its programming's central focus on the charitable and non-profit sector. ESDC could leverage its current work on the Social Innovation and Social Finance Strategy to engage stakeholders in order to better understand expectations on the role and mandate of a centralized secretariat.

### **Modernizing the Legal Definition of Charity (Recommendations 23-26)**

The Government supports the Report's recommendation to ask the ACCS to review the common law meaning of charity to determine whether Canada should follow the approach of other jurisdictions, such as Australia and England, and enact legislation to broaden the legal meaning of charity **(Recommendation 25)**.

The ITA currently relies on the common law, which defines charitable purposes as the relief of poverty, the advancement of education, the advancement of religion, or certain other purposes that benefit a community. Although sometimes described as hundreds of years old, this definition has continuously evolved over time to recognize new charitable purposes. In addition, through its policy guidance, the CRA has incrementally expanded upon this definition recognized new charitable purposes, by analogy to existing purposes. Further, while the ITA does not expand upon the common law definition of charity for tax purposes, where gaps have been identified, the Government has instead acted by extending "qualified donee" status to certain categories of organizations. Qualified donee



status provides these organizations the same ability to issue tax deductible donation receipts as charities, as well as the ability to receive funding from registered charities.

In addition to registered charities, qualified donees include registered Canadian amateur athletic associations, the United Nations or an agency thereof, the federal, provincial, and territorial governments, municipal governments and municipal or public bodies performing a function of government, certain low-cost housing corporations in Canada, certain foreign universities outside Canada attended by Canadian students, and registered foreign charities that have received a gift from Her Majesty in right of Canada. This list was most recently expanded in Budget 2019 to include registered journalism organizations.

The Government agrees with the recommendation to ask the ACCS to review the common law meaning of charity (**Recommendation 25**) and will consider any recommendations arising from such a study. In addition, the Government will ask the ACCS to review the policy considerations relating to qualified donee and tax preferred status with a view to establishing a principle-based framework for new categories of qualified donee and other tax preferred entities (**Recommendation 26**).

The Committee has made a number of recommendations for improving the appeals system for charities including moving appeals relating to registered charity status (i.e., refusal to register an organization as a charity or revocations of charitable status) to the Tax Court of Canada (TCC), rather than the Federal Court of Appeal (FCA) (**Recommendation 23**), as well as considering alternative methods for assisting charities to appeal such decisions, such as a litigation fund (**Recommendation 24**).

The Charities Directorate of the CRA is responsible for all program activities related to the provisions of the ITA regarding qualified donees, including registered charities. This includes both assessing applications for registration as a charity and ensuring that organizations that are registered comply with the registration requirements. The CRA generally takes uses a graduated approach to ensuring compliance with the rules, meaning that it uses a range of compliance actions from education to the application of “intermediate sanctions,” such as monetary penalties and temporary suspensions of registration, before proposing to revoke an organization’s registration (which is generally used as a last resort).

Where an organization is denied registration or the CRA proposes to revoke an organization’s registration, it may file an objection with the CRA’s Appeals Branch. During this process, the organization has an opportunity to explain why they disagree with the CRA’s decision and include all relevant facts and supporting documents, and



may also present new information to the CRA. Through this reconsideration process, approximately 30% of decisions relating to refusals to register and 15% of proposed revocations following audits are resolved in favour of the charity.

Where an organization disagrees with a decision of the CRA's Appeals Branch, it may challenge the decision at the Federal Court of Appeal (FCA), which decides the case "on the record" (i.e., on the evidence that was before the CRA at the time of its decision). In the case of an organization that is already registered (i.e., where the CRA is proposing to revoke its registration), in the majority of cases, the organization is permitted to maintain its registration throughout this process.

The Government is committed to ensuring that the tax system is fair and equitable, and recognizes the importance of having effective and accessible appeal processes for charities. In this respect, the Government will review the framework for appeals relating to registered charity status and determine whether improvements could be made to this process (**Recommendations 23 and 24**).

#### **Regulation of Charities under the Income Tax Act (Recommendation 27, 30-33, and 42)**

The Senate Committee has made a number of recommendations with respect to how to improve the regulatory rules for charities.

**Recommendation 27** of the Report recommends the Government replace the current categories of registered charity with two new categories: public charity and private charity. Currently, registered charities are classified into three categories in the ITA: 1) charitable organizations, 2) public foundations and 3) private foundations. Generally speaking:

- Charitable organizations are organizations that carry out charitable activities directly (e.g., churches, schools and hospitals), and have a board of directors where more than 50% of the directors deal at arms length.
- Public foundations are organizations that are focused on making gifts and grants to other charities and qualified donees to support their activities, and also have a board of directors where more than 50% of the directors deal at arms length.
- Private foundations are charities that are controlled by a group of related persons, but that generally also focus on making gifts and grants to other charities and qualified donees.

The regulatory rules in the ITA apply differently depending on the organization's designation, with private foundations facing the most restrictions.

The Government agrees that, due to legislative changes over time, the regulatory rules for charitable organizations and public foundations are now very similar. The Government agrees to review the categories of charitable designations to determine where improvements can be made.

The Committee has also recommended that:

- That the Government of Canada direct the CRA to revise Guidance CG002 “Canadian registered charities carrying out activities outside Canada.” The revised guidance should demonstrate a shift in focus from “direction and control” to careful monitoring through the implementation of an “expenditure responsibility test.” (**Recommendation 30**).
- That the Government of Canada direct the CRA to develop, implement and evaluate a pilot project to allow registered charities to make gifts to non-qualified donees in certain limited circumstances, namely where the gifted funds are subject to careful monitoring and used for exclusively charitable purposes, in order to facilitate cooperation between registered charities and non-charities (**Recommendation 31**).

As noted earlier, Canadian tax incentives for charitable donations are considered to be amongst the most generous in the world. Given this generosity and other tax privileges provided to charities, organizations that choose to register as charities are required to follow a particular set of rules set out in the ITA. These rules are primarily designed to ensure that donated funds are used for charitable purposes, protecting public trust in the charitable sector as a whole. The rules also help to protect the integrity of the tax system providing safeguards against fraud and abuse and prevent the erosion of the tax base.

One central rule to the regulation of charities in Canada, is that under the ITA, registered charities are able to use their resources in one of two ways - either on their own charitable activities; or as gifts to qualified donees (described earlier). This rule helps to ensure a high level of accountability for tax-assisted donation by ensuring that donations are either expended directly by the registered charity or, where gifted, that they are given to specific categories of organizations approved by the Government.

Charities are fully able to engage with intermediaries to carry out activities (e.g., through contractors or agents), but they must still control and direct the use of the charity’s funds, in order to demonstrate that they are the charity’s activities. Longstanding guidance from the CRA outlines the requirements for a charity to engage an intermediary to carry out activities - requirements which have been upheld by the courts on multiple occasions.

While **Recommendation 30** proposes that the CRA adopt an “expenditure responsibility” test by modifying its guidance, the CRA’s guidance accurately reflects the legal requirements, and it is beyond the CRA’s authority to simply modify the legal test in this manner. However, the Government will review these rules to determine where improvements can be made, but can make no specific commitments. Similarly, the CRA is unable to implement a pilot project to allow registered charities to make gifts to non-qualified donees as proposed in **Recommendation 31**.

That said, the Government recognizes that some charities find these rules overly restrictive and onerous, and is committed to ensuring that the regulatory framework supports the important work that charities perform. As such, the Government will review these rules to determine if they continue to be appropriate or if improvements can be made. As noted earlier, the rules requiring charities to carry on their own activities or make gifts to qualified donees are fundamental to the regulatory regime for charities under the ITA. Careful study by the Government would need to be undertaken before considering modifying these rules.

The Committee also recommends that that the Government of Canada review the ITA provisions governing registered charities every five years, beginning no later than next fiscal year (**Recommendation 32**). The Government does not support this recommendation because the legislative rules with respect to registered charities in the ITA are already subject to on-going review. A dedicated section is in place within the Tax Policy Branch of the Department of Finance which reviews and prepares proposals for consideration by the Minister of Finance as a part of the process for preparing the Federal Budget each year.

The Committee has recommended that that the Government of Canada review the “ineligible individual” provisions set out in section 149.1(1) of the ITA (**Recommendation 42**). These provisions are in place to prevent individuals with a history of financial dishonesty or that have abused the rules regarding charitable registration in the past from controlling or directing registered charities. Nevertheless, the Government agrees to review these provisions to ensure that these are functioning properly or to determine if improvements can be made.

The Committee has also recommended that the GoC consider which activities registered charities should not be allowed to carry out and prescribe them through precisely defined statutory prohibitions (**Recommendation 33**). It should be noted that the Government’s involvement in the regulation of charities stems solely from the tax benefits provided to charities under the ITA, and the rules and restrictions which relate to accessing these tax benefits. In this respect, the legislation already prescribes the rules that must be followed,

including any activities which are prohibited. As above, these rules generally relate to measures that are necessary to ensure the proper use of tax assisted funds, and safeguard against fraud and abuse. The regulation of charities more generally (i.e., setting out allowable activities for charities) is a matter of provincial responsibility.

The CRA also provides comprehensive guidance with respect to the legislative rules, as well as any requirements arising from the common law relating to charities, which is published on the Government of Canada's website.

### Business activities

**Recommendation 28** of the Report calls on the CRA 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) through the implementation of a "destination of funds" test. The Government does not support this recommendation.

Under the ITA, charities have the ability to carry on a wide variety of revenue-generating activities. In terms of occasional and periodic fundraising activities and events (i.e., activities which do not rise to the level of a business) there are few restrictions placed on these types of activities. In terms of business activities (generally meaning activities that are regular, continuous and designed to earn a profit), the ITA allows charities to carry on businesses that relate to the furtherance of their charitable purposes. 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. In addition, the concept of related business encompasses a range of complementary business activities that, while not involving the direct delivery of services, are nonetheless necessary for the fulfillment of the purpose (e.g., parking lots and cafeterias at hospitals) or which naturally flow from a particular activity (e.g., where the charity sells property created in a sheltered workshop). When a charity runs a related business, any revenue received from such activities is completely exempted from income tax.

In practice, it is largely only businesses that have little or no connection to a charity's purposes that do not qualify as a related business, and even then only when these are run by paid staff, as volunteer-run businesses are deemed to be related businesses under the ITA. Where a charity seeks to operate an unrelated business, it can establish a separate, taxable corporation to carry on the business and donate the profits back to the charity (and paying a very low rate of tax as a result of the Charitable Donation Tax Deduction).



That said, the Government supports **Recommendation 29** which calls on the Government to update policy statement CPS-019 (What is a related business) to provide greater clarity on permissible revenue generation activities for registered charities. The CRA is reviewing its policy statement CPS-019, What is a related business, to provide greater clarity on permissible revenue generation activities for registered charities, particularly with regard to revenue generating opportunities arising from new technologies. In this regard, the CRA will work with sector representatives and consider any recommendations brought forward.

### **Disbursement Quota (Recommendations 36-37)**

Currently, the ITA requires charities to expend at least 3.5% of the value of its property not used in charitable programs or administration (e.g., investment property) on charitable activities each year. This test, known as the “disbursement quota,” is designed to ensure that donated funds are deployed for charitable purposes and are not simply accumulated indefinitely by charities.

In practice, the vast majority of charities meet or exceed their disbursement quota each year. **Recommendation 36** of the Report asks the Government of Canada to direct the ACCS to examine the advantages and disadvantages of amending the disbursement quota for registered charities; and the advantages and disadvantages of setting the disbursement quota in regulation, rather than statute. The CRA will ask the ACCS to consider undertaking a review of these issues.

The Committee has also recommended that Government of Canada instruct the ACCS 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 (**Recommendation 37**). Generally speaking, donor advised funds are accounts within a registered charity whereby donors are entitled to provide ongoing advice as to how their donations should be disbursed. Concerns have been expressed that individual donor advised accounts within a charity may not be meeting the disbursement quota, even though the organization as a whole is compliant. The Government will ask the ACCS to consider examining this issue.

### **Non-Profit Organizations (Recommendations 38-40)**

#### Transparency

**Recommendation 38** directs the CRA to revise its interpretation of the “not-for-profit purpose rule” to provide greater clarity and certainty for non-profit organizations (NPOs) regarding the extent to which it is permissible for them to hold surplus income; and to



reflect the language of the ITA, which focuses on the purposes of the organization. The CRA will evaluate its interpretation of the not-for-profit purpose rules concerning the accumulation of a surplus from income by a NPO, to determine if its interpretation is consistent with the language of the ITA and consider whether it can provide greater clarity and certainty for NPOs.

#### Review of Income Tax Act provisions relating to non-profit organizations

Under the ITA, NPOs are broadly defined and include any club, society, or association that is not a charity and that is organized and operated solely for social welfare, civic improvement, pleasure or recreation, or any other purpose except profit. NPOs are generally exempt from income tax but, unlike charities, cannot issue official donation receipts for tax purposes, or receive gifts from registered charities.

At the time of its introduction in the Income War Tax Act, 1917, the exemption for NPOs applied mostly to small, grass-roots organizations serving the public. However, it is estimated that there are over 85,000 NPOs in Canada today, including such varied groups as professional and trade associations, service clubs and other mutual benefit associations, recreational and golf clubs, civic improvement organizations, multicultural groups, condominium corporations, advocacy organizations, and political parties.

Unlike charities, NPOs are not required to register with the CRA in order to benefit from the tax exemption. NPOs are not permitted to allow their income to be payable to, or available for, the personal benefit of any proprietor, member, or shareholder, and are prohibited from operating for the purpose of profit. If an NPO fails to meet these requirements on an annual basis, it is subject to tax on any income in the same manner as an ordinary business.

The Committee has recommended that the ACCS review the tax treatment of NPOs, including whether the ITA should distinguish between public benefit and member benefit non-profit organizations (**Recommendation 40**). The Government will ask the Advisory Committee to consider this issue, including whether additional public information should be available with respect to such organizations (**Recommendation 39**).

#### **Other Legal Issues (Recommendations 41)**

##### Canada's anti-spam legislation (CASL)

**Recommendation 41** asks the Government of Canada instruct the ACCS to review the impact of Canada's anti-spam legislation on charities and charity-like organizations. It

should be noted that the charitable sector's fund-raising activities are not included in CASL, as legitimate messages sent by registered charities with the sole purpose of raising funds are exempt from CASL's application. However, one of the recommendations emanating from the 2017 Standing Committee on Industry, Science and Technology statutory review of CASL was that the Government clarify the application of the Act and its regulations to charities and non-profit organization to ensure the legislation is clear and understandable. The Government supported this recommendation and is currently acting to address it.

### **Conclusion**

Once again, on behalf of the Government of Canada I would like to thank the Committee for its hard work and the valuable insights and recommendations its report has provided. Your committee's recommendations and insights will help to guide the Government's engagement with Canadians, civil society and stakeholders, including businesses of all sizes, organized labour, the broader public sector, and the not-for-profit and charitable sectors, so that we can all work together to build a stronger, more inclusive and more resilient nation.

Sincerely,



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