

## Final Report: Examining the Definition of Charity & Charitable Purpose for 21<sup>st</sup> Century Canada

Working Group on the Definition of Charity and Charitable Purpose  
Advisory Committee on the Charitable Sector

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## Executive Summary

From 2022-2024, the ACCS Working Group on the definition of charity and charitable purpose undertook a series of consultations and research to explore how Canada legally defines charity and charitable purpose, and whether its legal approach warrants minor revision, major legislative reform, or some combination of the two. The prompt for the Working Group's mandate came from charitable sector representatives, as well as the 2019 Senate report *Catalyst for Change*. In its report, the Senate recommended the ACCS (a) review the legislative reforms in Commonwealth countries that provided more detailed definitions of charity and charitable purpose, and (b) explore whether Canadian deference to the Common Law on charitable purpose required modernization through Parliamentary legislation. Examining the history of the Common Law on charitable purpose and its operationalization by the Charities Directorate is a monumental task. The Working Group recognized that such an endeavor requires more sustained examination and resources than the current instance of the ACCS has at its disposal. Nonetheless, the Working Group appreciated that the CRA and its Charities Directorate are not sufficiently resourced to undertake this research on its own. The Working Group recognized that the ACCS can contribute to the topic, in part by integrating input from the charitable sector.

This report begins (**Section I**) with an overview of why stakeholders and others are concerned by the Canadian approach to defining charity and charitable purpose. In **Section II**, the Report turns to a summary of the Working Group's consultations with experts on Canadian charities law and Indigenous philanthropy; UK charities law and legal reform; and Australia's charities law, legal reform, and regulatory organization. Those consultations identified three core topics for further research and analysis: (a) an independent charities regulator; (b) the increasing use of legislation to define charitable purpose; and (c) federalism considerations that may affect any federal reform of charities law. Independent charities regulators have increasingly appeared across the Commonwealth. Because this subject was addressed in an earlier ACCS report, it is not addressed at length herein. Nonetheless, the sector's advocacy for a "home in government" or independent regulatory commission hovers throughout this report.

**Section III** explores comparatively how jurisdictions in the Commonwealth and Civil Law jurisdictions define charitable purpose. Section III shows that Commonwealth countries (and Civil Law countries, less surprisingly) have legislated in the area of charities law. Moreover, their legislative definitions provide an expansive understanding of charitable purpose, some of which reflect equity considerations unique to particular jurisdictions. For instance, Australia's legislation includes provisions designed to circumvent negative implications of the Common Law's "public benefit" doctrine on the country's indigenous peoples. At the same time, as Table 1 in Part III of this report illustrates, Canada's CRA has used its authority to issue guidance and policy documents to expand upon the Common Law's narrow definition of charitable purpose. Stakeholders raise democratic accountability concerns about over-reliance on an independent administrative agency (i.e. the CRA) to decide what is and is not a charitable purpose for Canada. Because defining charitable purpose is as much a political act as an administrative regulatory matter, there are some calls for a more democratically representative approach, such as legislative reform. At the same time, legislative reform is a hefty endeavor. Parliament has limited time and capacity to undertake legislative reform across the entirety of its statute book. If it were to do so in the area of charities law, the Working Group concluded that the feasibility

of legislative reform on defining charitable purpose would depend on the scope of reform such legislation brings forth, including the creation of an independent charities regulator or home in government. Nevertheless, Section III explains why three areas of legal reform might warrant surgical reforms, and which inform the recommendations provided.

**Section IV** of the report is dedicated to Federalism concerns about possible reform of charities law in Canada. Consultations with Canadian experts revealed a conflict over whether any federal reform of charities law would result in Provincial opposition on grounds of federalism. Experts noted that though the Federal Government regulates charities using its taxation power under section 91 of the Constitution, the Provinces are formally invested with authority over charities under section 92 of the Constitution. Though Provinces have not uniformly legislated in the area of charities, they nonetheless retain the authority to do so. Absent from the theoretical debate about federalism and charities reform was evidence of how the Provinces have legislated to influence or effect the definition of charities in their jurisdiction. The table in Appendix B of this report identifies legislation Province-by-Province to create an empirical record to ground any discussion of federalism concerns. As Appendix B shows, many Provinces have little to no legislation addressing charities. Others that have legislation regulate charities in certain activity areas. But with respect to defining charitable purpose, there is general deference to the Common Law approach adopted by the CRA.<sup>1</sup>

Charity regulation can be a complex area to regulate. This complexity suggests that a more fruitful way to frame future federal reform of charities law is through the concept of “cooperative federalism”. Political scientists, legal scholars, and the Supreme Court of Canada have recognized the import of cooperation across levels of government when regulating complex areas of legal regulation. This report recognizes that any federal legal reform of charities law should be done in cooperation with the Provinces and Territories.

The Working Group’s research and consultation inform its proposed recommendations to the Government of Canada on behalf of the ACCS. Those recommendations, more fully explained and elaborated below, are as follows:

**Recommendation 1:** In the absence of legislative reform defining charitable purposes, the ACCS recommends to the Minister of Finance to consider legislative amendments to the Income Tax Act to include as charitable purposes certain proffered objects that have already been the subject of considerable stakeholder input and analysis, including but not limited to “the advancement of recreation and sport” and “the prevention of poverty” (See Section III(A)(3-4)).

**Recommendation 2:** The Minister of National Revenue and the Commissioner of the CRA should undertake a Reconciliation-focused review of policies that relate to support for indigenous peoples in Canada, including but not limited to CPS-012 (See, Sections I(E), III(A)(2)).

**Recommendation 3:** The Ministers of National Revenue and Finance, and the Commissioner of the CRA, in coordination with the Minister of Crown-Indigenous Relations, should adopt a

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<sup>1</sup> The Working Group did not have the resources to ensure a comprehensive review of each Province’s statute book. Nonetheless, we believe this data-based approach is a useful way to bring resolution to ongoing concerns about federalism and legislative reform in charities law.

Reconciliation-focused analysis of issues that youth, Elders, and governing councils encounter in their work on and off reserve, including but not limited to land settlement claims (See, Section III(A)(2))/and T4A filing requirements with respect to the tax implications on indigenous peoples, in the context (or in service of) contributing to Reconciliation in Canada(See, Section III(A)(2)). Such a focus involves (a) assessing the consistency of existing tax measures with the Government of Canada’s commitments to Reconciliation, and (b) developing educational programming and outreach to support tax compliance for those affected, on- and off-reserve.

**Recommendation 4:** The Minister of National Revenue should undertake consultations with the charitable sector to determine whether and to what extent the sector would benefit from a “home in government”, an independent charities regulator, or some other government body to support, promote, and modernize the law and regulation of charities in Canada (See, Section II(C)).

## Introduction

During 2022-2024, members of the Advisory Committee on the Charitable Sector agreed to form a Working Group to provide initial groundwork to foster policy debate on the future of charity law in Canada. The Working Group, formally known as the Definition of Charity and Charitable Purpose Working Group (DCCPWG), consisted of Anver M. Emon, Sheherazade Hirji, Sharmila Khare, Hilary Pearson, and Bob Wyatt. Wyatt served as chair of the Working Group until he stepped down from the ACCS, after which Emon was appointed as chair. Pearson's role on the committee came to an end when her term on the ACCS expired. Nonetheless, the Working Group was pleased to continue consulting her as needed. The aim of the Working Group was to consider whether the current reliance on the Common Law definition of charity (e.g., the so-called *Pemsel* categories) and the use of CRA guidance documents to elaborate on new charitable purposes was and remains sufficient as the ACCS reflects on the evolution of charity into the 21<sup>st</sup> century. The Working Group's research consisted of two strands of analysis. First, the Working Group met with charities law leaders in Canada as well as other common law jurisdictions (e.g., England and Wales, Australia). Each meeting was an opportunity to discuss whether the Common Law approach still in use in Canada was sufficient, whether more regulatory guidance was needed, or if legislative approaches needed to be pursued more robustly. The selection of comparator jurisdictions was due in part to the recent adoption of charity legislation in those countries, presenting an opportunity for the Working Group to learn from other experiences, and benefit from lessons learned. The second strand consisted of research undertaken on two key issues that regularly arose in discussions on the future of charity and charitable purpose in Canada, namely the scope of charitable purposes across jurisdictions, and concerns about federalism under the Canadian Constitution.

This report is organized around four parts. **Section I** will address the question about defining charity and charitable purpose in the broader context of discussion and debate among both the ACCS membership and stakeholders in Canada. **Section II** will summarize the Working Group's consultation meetings over the course of its operations. This second part will be organized around themes raised by participants to these discussions, as opposed to mechanically providing a read out of each meeting, speaker by speaker. Three common themes emerged from the consultations: the limits of Canadian federalism on potential Parliamentary reform; the extent of charitable purposes that are not already captured by Canada's regulatory regime; and the relationship between defining charitable purposes and the independence of a charities regulator from other arms of governance. The third theme from the consultations coincides with the recommendation from the prior iteration of the ACCS for a 'home in government'. Because the third topic has been addressed by the ACCS and is the subject of a recommendation, this report will not elaborate on that issue. Nonetheless, the findings of this report are offered alongside that recommendation. **Section III** will present comparative analysis of how other common law (and some civil law) jurisdictions define charity and charitable purpose. **Section IV** will address the current state of provincial legislative activity in the field of charity, and whether and to what extent future federal legislation may run afoul of federalism considerations under ss. 91 and 92 of the Constitution Act, 1982. The report concludes with recommendations to the Minister and areas for further research.

## I. On the Canadian Definition of Charity and Charitable Purpose: History and Regulatory Limits

The Working Group examined the definition of charity and charitable purpose due to various concerns raised by ACCS members and from within the halls of Canadian government. These concerns had to do primarily with the difficulty in securing charitable status, and maintaining that status in light of whole of government policies on other considerations.<sup>2</sup> Other concerns reflected insights gained from observing the stress the Covid19 pandemic imposed on the charitable sector, and the specific impact on marginalized communities. These concerns bore down on the narrow issue of this report, namely the legal frameworks that inform charities law in Canada, and the scope of what counts as a charitable purpose under the law.

### A. Common Law Beginnings

Canada adopts the Common Law definition of charity. As such it is important to begin with history of the Common Law's definition. The Common Law definition of charity is anchored in the *Charitable Uses Act, 1601*.<sup>3</sup> The statute provided a list of charitable causes or activities that were presumed to inure to the public benefit, and to which the Crown aimed to encourage private donation and support, while also ensuring against fraud. The listed categories were numerous, a sample of which includes:

- Relief of the poor and aged
- Maintenance of sick and maimed soldiers
- Repair of bridges, churches, highways, and seabanks
- Support for and education of orphans
- Marriage of poor women
- Support and aid of young tradesmen

These categories of course reflect the age in which the statute outlined them. Nonetheless, the statute has served as precedent from which later judges would analogize to new charitable purposes as required by a case before the court. This would come to a head in the *Pemsel* case, as will be discussed below.

### B. The Common Law's Early Exclusionary History

Importantly, ACCS members raised difficult questions about the actual and perceived inclusiveness of Canadian Law by continued reference to this 1601 statute as part of the Canadian charity law regime. To the extent the 1601 statute remains part of our Common Law history, it arguably imports an exclusionary history that runs contrary to Canada's efforts to eradicate systemic racism and discrimination from the country and its institutions. The Act was

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<sup>2</sup> For an example, see the NIRA Working Group's analysis of NIRA 2023.

<sup>3</sup> 43 Eliz I, c. 4. Though the Act was later repealed, it remains an important analytic anchor point for the common law's development of charities law and doctrine.

formulated at the same time that Queen Elizabeth I and England profited from the Atlantic slave trade, thanks to England's then leading slave trader, Sir John Hawkins.<sup>4</sup> Historian Emily Weissbourd explains that the Privy Council under Elizabeth I issued a series of declarations designed to expel Blacks and North Africans in England. In these declarations, the Privy Council publicly shared its concerns about the "divers blackamoorers [Black Moors] brought into this realm, of which kind of people there are already here to manie [sic]."<sup>5</sup> As historians of this period explain, to expel these "blackamoors" from England was tantamount to ensuring their sale in the Atlantic slave trade. This contextualization of the 1601 Act is meant to emphasize one historical reality: the *Charitable Uses Act, 1601* never included Muslim and/or racially Black residents within its vision.

This 1601 exclusion, however much it lay in the past, nonetheless echoes contemporary concerns among Muslim and Black Canadians that the charitable sector continues to marginalize them. For instance, concerns about the regulation of Muslim-led charities has been a point of ongoing debate, analysis, and even litigation. Two reports issued in 2021 raised concerns about the CRA's audits of Muslim-led charities.<sup>6</sup> The Office of the Taxpayers' Ombudsperson undertook a review of charity audits, but was unable to fulfill his mandate due to privacy and secrecy considerations.<sup>7</sup> One charity, the Muslim Association of Canada, sued the Government on *Charter* grounds. Though the Ontario Superior Court decided the case was premature, the judge made a series of troubling comments in *dicta* that leave the issue of possible bias unresolved.<sup>8</sup> At the time of this report, the National Security Intelligence Review Agency (NSIRA) is undertaking a separate review.<sup>9</sup>

Similarly, as the authors of *Unfunded: Black communities overlooked by Canadian Philanthropy*, conclude, "Canadian philanthropy has largely been absent in supporting Black people in Canada."<sup>10</sup> Interviews with Black not-for-profit leaders gave numerous reasons for this

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<sup>4</sup> So central was the slave trade to Hawkins's business and wealth that his crest featured a bound slave. For a BBC story on Hawkins and the slave trade under Elizabeth I, see [https://www.bbc.co.uk/devon/content/articles/2007/01/18/abolition\\_plymouth\\_slave\\_trade\\_feature.shtml](https://www.bbc.co.uk/devon/content/articles/2007/01/18/abolition_plymouth_slave_trade_feature.shtml). For more historical account of Elizabethan slave trading, see, Nick Hazlewood, *The queen's slave trader: Jack Hawkyns, Elizabeth I, and the trafficking in human souls* (New York: William Morrow, 2004).

<sup>5</sup> Emily Weissbourd, "'Those in Their Possession': Race, Slavery and Queen Elizabeth's 'Edicts of Expulsion,'" *Huntington Library Quarterly* 78, no 1 (Spring 2015): 1-19. The reference to blackamoors is a reference both to race (Black), region (North Africa) and by implication religion (Muslim).

<sup>6</sup> See, Anver M. Emon and Nadia Z. Hasan, *Under Layered Suspicion: A Review of CRA Audits of Muslim-led Charities* (Toronto: University of Toronto, 2021), online: [www.layeredsuspicion.ca](http://www.layeredsuspicion.ca); Tim McSorely, *The CRA's Prejudiced Audits* (Ottawa: International Civil Liberties Monitoring Group, 2021), online: <https://iclmg.ca/prejudiced-audits/>

<sup>7</sup> For more information, visit the OTO's website: <https://www.canada.ca/en/taxpayers-ombudsperson/news/2023/03/taxpayers-ombudsperson-releases-report-on-the-fairness-of-the-canada-revenue-agencys-audit-process-for-charities.html>

<sup>8</sup> *Muslim Association of Canada v Attorney General of Canada*, 2023 ONSC 5171.

<sup>9</sup> See the notice of review posted on NSIRA's website: <https://nsira-ossnr.gc.ca/en/reviews/ongoing-and-completed-reviews/ongoing-reviews/notification-of-nsiras-review-of-cras-review-and-analysis-division-rad/>.

<sup>10</sup> Rachel Pereira, Liban Abokor, Fahad Ahmad, and Firrisaa Jamal Abdikkarim, *Unfunded: Black Communities Overlooked by Canadian Philanthropy* (Network for the Advancement of Black Communities and Carleton University, nd)2. Online: <https://www.forblackcommunities.org/assets/docs/Unfunded-Report.pdf>

philanthropic lacuna: a lack of data; a lack of representation in philanthropic foundations; and systemic barriers, including anti-Black racism.<sup>11</sup> This systemic limitation is not entirely surprising when Canadian courts state that advancing anti-racism in Canada may not be a charitable purpose. As the CRA notes in its 2003 Guidance, the Supreme Court of Canada declined to comment on whether combatting racism or racial inequality is a charitable purpose. In other words, when given an opportunity to expand the meaning of charity, the very judiciary that Canada relies on to grow the definition of charitable purpose declined to comment out of an abundance of judicial restraint. This was in part related to the view that parliamentarians and not the courts should act to define/expand charitable purposes

The CRA responded to the Supreme Court's judicial restraint by issuing new guidance recognizing that organizations combating racism fulfil a charitable purpose under the existing *Pemsel* categories. As the CRA states in its Guidance:

Promoting racial equality is consistent with existing, broadly-based legislation and public policy. This establishes it as undoubtedly beneficial to the public, and no longer political. As a result, the Canada Revenue Agency intends to accept the promotion of racial equality as manifestly beneficial to the public.<sup>12</sup>

This guidance offers an important vehicle of inclusion, and thereby cuts against the exclusionary implications of invoking the 1601 statute.<sup>13</sup> Nonetheless, administrative Guidance documents do not have the same legal standing as legislation or common law precedent. Moreover, despite CRA efforts to publicize its guidance widely, Guidance documents may not be sufficient for giving effective notice to the public under liberal and democratic notions of the rule of law.<sup>14</sup>

### C. The 1891 *Pemsel* Decision

While the 1601 statute marked charity law's Common Law beginnings, it was not the only statute to regulate charitable activity. By the 1800s, the 1601 Statute co-existed with several statutes across the British Empire, each of which was designed to regulate charities in their respective jurisdictions. By the 1800s, as courts across the expansive British empire had to adjudicate cases of charity and charitable purpose, they examined many of these statutes to develop a Common Law rule. This was precisely the legal context facing the House of Lords in the case of *Commissioners for Special Purposes of Income Tax v. Pemsel* in 1891.<sup>15</sup> The case required

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<sup>11</sup> Pereira et al, *Unfunded*, 16.

<sup>12</sup> *CRA Policy Statement*, CPS-021, September 2, 2003. Online: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/policy-statement-021-registering-charities-that-promote-racial-equality.html>

<sup>13</sup> Incidentally, the CRA Guidance mechanism makes evolution in the law possible through sustained policy analysis, whereas the Court's case-by-case approach under conditions of judicial restraint seem to limit the scope of evolution and growth Canadians can expect from the judiciary..

<sup>14</sup> On notice as an element of the rule of law, see Lon Fuller, *The Morality of Law*, rev. ed (New Haven: Yale University Press, 1969).

<sup>15</sup> *Commissioners for Special Purposes of Income Tax v. Pemsel*, [1891] A.C. 531.



the Law Lords to consider the scope of charitable purpose in light of the varied statutes on charities in the Empire. Lord MacNaughten issued a harmonizing definition, which echoes throughout the Common Law today:

“Charity” in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion, and trusts for other purposes beneficial to the community, not falling under any of the preceding heads.<sup>16</sup>

MacNaughten J’s four heads of charity are often called the *Pemsel* categories of charity. These four categories are the poles around which charity law in Canada revolve, and from which the CRA and the courts determine the evolution of any definition of charity and charitable purpose.

Both the courts and the CRA offer institutional mechanisms for expanding the definition of charity. When courts expand the definition of charity, they set binding precedent (e.g., *stare decisis*). When the CRA issues policy or guidance statements expanding the definition of charity, it uses its administrative authority under the Income Tax Act to reflect the changing policy landscape. Courts and administrative bodies like the CRA offer important vehicles for expanding the meaning of charity. One fundamental democratic institution missing in this context is Parliament, which through legislation can issue definitions of charity that become binding on both courts and administrative bodies. Whereas other jurisdictions have issued novel legislation in the field of charities, Canada has yet to do so.

The call for reconsidering the definition of Charity in Canada is not necessarily an indictment of the existing *Pemsel* categories. The four categories themselves are broad and have to date been a useful vehicle from which the courts and the CRA can analogize to include other ideas of charity and charitable purpose. But when we locate charities across the whole-of-government, the Working Group recognizes that charities are necessarily implicated by other policies. For instance, as Canada seeks to grow its population through immigration, the charitable sector is concerned whether the *Pemsel* categories are sufficient to calibrate new Canadians’ mosaic of value systems with Canada’s charity categories. Another example comes from the Covid19 Pandemic. As various studies revealed, the charity sector was not as robust as once thought, with marginalized communities having especially suffered the absence of sufficient social services from relevant government agencies and the charitable sector. On the one hand, this absence can be attributed to limited philanthropic prioritization. On the other hand, the limited philanthropic prioritization may be tied to the limited legal identification of certain communities needs’ as necessary and important objects of philanthropic support. The fundamental concern is whether the *Pemsel* categories sufficiently signal to the Canadian philanthropic and charity sector a notion of charity and charitable purpose that is equitably inclusive of an evolving Canadian public.

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<sup>16</sup> *Commissioners for Special Purposes of Income Tax v. Pemsel*, [1891] A.C. 531.

Moreover, the call for such reconsideration is coupled with a fundamental question about whether for democratic reasons, the Common Law is a sufficient legal basis for defining charity in a complex, multicultural, and growing Canada in the 21<sup>st</sup> century. As Canada's population diversifies through immigration, as our society tackles complex issues of food security, climate change, and class inequality in conditions of inflation,<sup>17</sup> and as the public sector increasingly privatizes long standing publicly managed social services,<sup>18</sup> the future of charity requires more policy-oriented reflection. For both whole-of-government and democratic reasons, such policy decisions may be better positioned within Parliament than the courts or even the administrative agencies that regulate and audit charities. While the CRA offers important mechanisms to grow the scope of charitable purposes (e.g., Guidance documents), the concerns Working Group members reviewed center on Parliament's duty, as a representative body of elected officials, to define charity for 21<sup>st</sup> century Canada, given both the legal and public policy issues at play.

#### D. The Senate's Call for a Review of the Definition of Charity and Charitable Purpose in Canada

The ACCS is not the first federal body to raise questions about the adequacy of the Common Law's definition of charity and charitable purpose. These issues were raised by the Senate Special Committee on the Charitable Sector in its 2019 report *Catalyst for Change: A Roadmap to a Stronger Charitable Sector*.<sup>19</sup> The report reflects the Senate's consultations with the not-for-profit sector on the future of charity (and charity regulation) in Canada. Among its recommendations, the Senate suggested that the ACCS undertake a review of how charities are defined in Canada, and how Canada's approach compares to other jurisdictions. Recommendation 25 states in relevant part:

That the Government of Canada, through the Advisory Committee on the Charitable Sector, 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.<sup>20</sup>

In its response, the Government agreed that the ACCS should review the "common law meaning of charity", though it also assured the Senate that the current approach, though hundreds of

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<sup>17</sup> Amber Ripley, "Household food insecurity: it's not just about food," *Canadian Public Health Association*, 13 January 2023, online: <https://www.cpha.ca/household-food-insecurity-its-not-just-about-food#:~:text=In%202021%2C%20at%20least%2015.9,rate%20of%2057%25%20in%202018>.

<sup>18</sup> Katherine DeClerq, "Ontario passes health-care bill allowing private clinics to conduct more surgeries," *CTV News*, 8 May 2023, online: <https://toronto.ctvnews.ca/ontario-passes-health-care-bill-allowing-private-clinics-to-conduct-more-surgeries-1.6389103>

<sup>19</sup> Special Senate Committee on the Charitable Sector, *Catalyst for Change: Roadmap to a Stronger Charitable Sector*, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, June 2019 (Hereinafter, *Catalyst for Change*). Available online: <https://sencanada.ca/en/info-page/parl-42-1/cssb-catalyst-for-change/>

<sup>20</sup> *Catalyst for Change*, 19.

years old, has nonetheless evolved over time.<sup>21</sup> While the government’s response is true in principle, the Working Group’s consultations (see Part II) suggest that Common Law evolution may promise more than it currently delivers. Indeed, the Senate reported that stakeholders appearing before its committee questioned “whether the common law is truly an effective means of allowing the law to adapt to the needs of the society it serves.”<sup>22</sup>

Even if there is no appetite for major legislative reform, there is broad recognition that the law on charity and charitable purpose is overdue for Parliamentary review.<sup>23</sup> Hilary Pearson, then-President of Philanthropic Foundations Canada, shared with the Senate committee her surprise that the charities provisions in the ITA have not been systematically reviewed in over fifty years:

We have not had such a review of the Income Tax Act provisions regarding charities in the 50 years since these provisions were introduced, although a number of them have been introduced subsequently over the past 50 years. It makes no sense that no comprehensive review has been done...This is no way to regulate an important sector that contributes so much to Canada’s economy and society in the 21<sup>st</sup> century.<sup>24</sup>

Based on testimony and its own analysis, the Senate report recognized that “[t]he ITA provisions governing charities and NPOs have not been reviewed in over 50 years and have been called ‘outdated, convoluted’, and ill-equipped to deal with the complex public policy challenges of the 21<sup>st</sup> century.”<sup>25</sup>

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<sup>21</sup> Ministry of National Revenue, “Response to the Report of the Special Senate Committee on the Charitable Sector,” March 30, 2021, 11-12. The Government’s response can be found online here: <https://sencanada.ca/en/info-page/parl-42-1/cssb-catalyst-for-change/>

<sup>22</sup> *Catalyst for Change*, 68.

<sup>23</sup> Among the other reasons for review of the charities law regime is the concern among stakeholders about how the CRA integrates an analysis of charitable activities to assess whether or not a charity is fulfilling its stated charitable purpose. The interplay between “charitable purpose” and “charitable activities” is an issue that the courts have not clarified, but which may be ripe for legislative reflection given stakeholder concerns about the CRA’s reliance on “activities” in ways that may distort a charity’s purpose-based approach. Quoting from the Pemsel Foundation submission, the Senate cautiously warned that “[p]rovisions considering activities should recognize that, with limited exceptions...the common law allows wide scope in what a charity can do.” *Catalyst for Change*, 82. The audit of the Islamic Shia Assembly of Canada (ISAC) illustrates the problematic nexus between activities and purposes in CRA audits. ISAC was organized to advance religion. The audit examined ISAC’s activities to celebrate Ramadan, claiming that the scope of activities did not calibrate with the charitable purpose of advancing religion. But some have suggested the audit unduly imposed a Protestant lens to frame the activities-purpose nexus, to the detriment of how the charity understood its purpose relative to its constituency. See, Anver M. Emon and Nadia Z. Hasan, *Under Layered Suspicion: A Review of CRA audits of Muslim-led Charities* (Toronto: University of Toronto, 2021), online: [www.layeredsuspicion.ca](http://www.layeredsuspicion.ca).

<sup>24</sup> Hilary Pearson before the Senate Special Committee on the Charitable Sector. *Proceedings of the Special Senate Committee on the Charitable Sector*, Issue no. 6, September 17, 2018. Online: <https://sencanada.ca/en/Content/Sen/Committee/421/CSSB/06ev-54208-e>

<sup>25</sup> *Catalyst for Change*, 64.

## E. Charity Law and Reconciliation: Preliminary Questions

As the Working Group explored the history and law of charities in Canada, it paid close attention to how its work coincided with Canada's commitment to Reconciliation with indigenous communities across the country. At the same time, it recognized that charity law and charitable law reform are not necessarily priorities for indigenous communities in Canada (see, Part III). As part of its due diligence, the Working Group researched the literature on indigenous communities, charities, and philanthropy in Canada. Needless to say the literature is sparse. As noted in the 2011 report *Aboriginal Philanthropy in Canada*, commissioned for the Circle on Philanthropy and Aboriginal Peoples in Canada and the United Way Winnipeg, there is a paucity of studies worldwide, with little being produced in Canada.<sup>26</sup> Importantly, the report noted the limited philanthropic support for indigenous causes in Canada, in contrast to the needs faced by indigenous communities. "[E]very social indicator tells us that Aboriginal communities are deeply in need of development. Not only that, [they] are in need of collaboration and innovation."<sup>27</sup> As Wendy Scaife writes in the Australian context, "Indigenous needs are some of the deepest in society and span funding areas as diverse as conservation, health, youth, education, housing, economic development, poverty, world peace, human rights, arts employment, sustainable development and social justice."<sup>28</sup> Despite this need, the Working Group was concerned at the limited philanthropic support for indigenous causes and issues in Canada. The 2020 Charity Report showed that indigenous organizations, charities, and causes in Canada received 0.2% of all private foundation grants in the country.<sup>29</sup> Until recently, foundations would make limited grants to non-charities due to various regulatory constraints viewed by many as onerous and unjust. This created a limiting factor as so few Indigenous communities have organized charities. The changes to the Income Tax Act to permit grants to non-qualified donees (NQDs), and the recently issued guidance on these grants, permit more flexibility in granting to non-charities. Whether this new development in the Income Tax Act leads to greater support for indigenous causes in Canada will depend on data not yet available at the time of writing.

The Working Group was concerned that the legal framework of charity law may also impede support for indigenous charities, organizations, and causes in Canada. Leaders in the indigenous philanthropic and charitable sector have explanations that raise equitable concerns about continued reliance on the Common Law as a foundation for defining charity and charitable purpose in Canada. They speak about a prevailing popular belief among philanthropic foundations and others that indigenous peoples do not require philanthropic support because

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<sup>26</sup> AMR Planning and Consulting, *Aboriginal Philanthropy in Canada: A Foundation for Understanding* (Winnipeg: United Way, 2011), 12. For an Australian literature review and analysis, see Wendy Scaife, "Challenges in Indigenous Philanthropy: Reporting Australian Grantmakers' Perspectives," *Australian Journal of Social Sciences* 41, no 4 (2006): 437-452.

<sup>27</sup> AMR, *Aboriginal Philanthropy in Canada*, 4.

<sup>28</sup> Scaife, "Challenges in Indigenous Philanthropy," 438.

<sup>29</sup> The Charity Report, *Intelligence Report: Who Gives and Who Gets: The Beneficiaries of Private Foundation Philanthropy* (Toronto: The Charity Report, 2020), 27.

the federal government assumes responsibility (financial and otherwise) for indigenous people's needs. It is true that the Constitution Act, 1867, allocates jurisdiction over indigenous peoples on reserve to the federal government. Recall that s. 91— which identifies the areas over which the federal government exercises jurisdiction — includes within the federal purview all matters pertaining to “Indians, and Lands reserved for the Indians.”<sup>30</sup> This constitutional provision creates the misperception among philanthropic foundations and others, it is argued, that indigenous communities already have sources of support. As the authors of *Aboriginal Philanthropy in Canada* state, “the dominant role played by government has overshadowed and perhaps even excused the comparatively small role of philanthropy.”<sup>31</sup> The fact that the Constitution Act, 1867 may help create this false impression speaks to both an equity-based and a reconciliation-based reason for re-considering the legal definition of charity and charitable purpose.

The Working Group also found troubling, at least with respect to the Government's commitment to Reconciliation, that the *Pemsel* public benefit test may operate adversely on indigenous peoples, in particular those who do not live on reserve. Under the *Indian Act*, indigenous peoples on reserve do not pay taxes under the Income Tax Act. As such, the tax benefits of a charity on reserve are limited. But suppose indigenous peoples off reserve were to create charities that serve their tribal communities. Such endeavors could not be registered as a charity. According to CRA Policy CPS-012 (November 1997), providing benefits to “Aboriginal peoples of Canada” can qualify as a charitable purpose. However, the policy does not permit focusing on one nation over another. “An organization cannot qualify for registration with purposes established to assist Aboriginal peoples of Canada if it further restricts its beneficiaries to a limited class of eligible persons, also known as ‘a class within a class.’ For example, limiting beneficiaries to a particular nation that excludes members of other nations does not meet the necessary element of public benefit.”<sup>32</sup>

Because our courts are beholden to the Common Law, reliance on the courts to adopt workarounds to the Common Law's public benefit test is arguably misplaced.<sup>33</sup> Other jurisdictions with significant indigenous peoples have used legislation to overcome the Common Law public benefit test's implication on indigenous peoples. Writing about Australia and New Zealand, Fiona Martin notes that the *Pemsel* public benefit test requires a scope and scale of benefit that exceeds the narrow focus of indigenous-facing charities seeking to address

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<sup>30</sup> *Constitution Act, 1867*, s. 91(24).

<sup>31</sup> AMR, *Aboriginal Philanthropy in Canada*, 16.

<sup>32</sup> Canada Revenue Agency, *Policy Statement: Benefits to Aboriginal peoples of Canada* (Ref. no. CPS-012), 6 November 1997, online: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/policy-statement-012-benefits-aboriginal-peoples-canada.html>

<sup>33</sup> See, for instance, Ruth Sullivan, *The Construction of Statutes*, 7<sup>th</sup> ed. (Toronto: Lexis Nexis, 2022), in particular chapter 17 on the Common Law. Deference to the common law where statutes are silent, coupled with judicial restraint, combine to create an obstacle to judicial evolution in the public benefit test with respect to indigenous peoples.

particular, more local conditions of a narrowly defined community.<sup>34</sup> Jurisdictions with sizable indigenous populations have resorted to new charity legislation to limit the adverse effect of the Common Law on indigenous peoples. For example, Australia’s 2013 Charities Act, section 9 applies to entities that “receive, hold or manage benefits that relate to native title, etc.” The section exempts from public benefit analysis a charitable benefit that is “directed to the benefit of Indigenous individuals only.”<sup>35</sup> More broadly, section 8 of that Act permits disregard of public benefit where an organization’s purpose is to relieve “the necessitous circumstances of one or more individuals who are in Australia.” This could apply to the benefit of indigenous peoples as well as refugees, thereby working around the limiting effect of the Common Law public benefit test.

The Federal jurisdiction in the *Constitution Act*, 1867, the *Pemsel* categories, and the scope required for public benefit may not be well calibrated to the lived experiences of indigenous peoples on *and off* reserve. In the interest of Reconciliation the Working Group recognizes important equitable and Reconciliation-based reasons to revisit the definition of charity and charitable purposes in Canada.

## II. Summary of Consultations with Canadian Stakeholders and Representatives from Common Law Jurisdictions

The ACCS Secretariat arranged numerous guests to present to the Working Group. Without the efforts of the ACCS Secretariat, the scope of the Working Group’s report would have been less robust and less representative. Such consultations ensured effective due diligence with respect to Canadian stakeholder communities, as well as comparative analysis with Common Law jurisdictions that have experimented with new modes of defining charity and charitable purpose.

The list of those consulted during the course of the Working Group’s meetings were as follows:

Adam Aptowitzer, Partner, Charitable and Not-for-Profit Law, KPMG Law LLP, Canada

Kathy Chan, Professor of Law, Faculty of Law, University of British Columbia, Canada

Lindsay Driscoll, Legal Expert on charity law in the UK, formerly commissioner of Charity Commission (England and Wales), United Kingdom

John Keyes, Adjunct Professor, Faculty of Law, University of Ottawa; formerly Chief Legislative Counsel, Ministry of Justice, Government of Canada.

Bruce MacDonald, Imagine Canada

John Maton, Charity Commission, England and Wales (UK).

Myles McGregor-Lowndes, Professor Emeritus, Queensland University of Technology, Australia

Adam Parachin, Professor of Law, Osgoode Hall Law School, York University, Canada

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<sup>34</sup> Fiona Martin, “Convergence and divergence with the common law: the public benefit test and charities for indigenous peoples,” in *Not-for-Profit Law: Theoretical and Comparative Perspectives*, eds. Matthew Harding, Ann O’Connell, and Miranda Stewart, 159-178 (Cambridge: Cambridge University Press, 2014),

<sup>35</sup> *Charities Act, 2013* (Australia), sections 8 and 9.

Natasha Sekulic, Acting Assistant Commissioner, Australian Charities and Not-for-Profits Commission, Australia

Sally Ann Stonier, Registration Director, Australian Charities and Not-for-Profits Commission, Australia

Andrew Valentine, Partner, Miller Thompson, LLP, Canada

Justin Wiebe, MasterCard Foundation

Sue Woodward, Commissioner, Australian Charities and Not-for-Profits Commission, Australia

#### A. Consultations on Federalism and Legal Reform

The questions posed to Canadian law specialists centered on the sufficiency of the current regime, the desire for change in the definition of charity and charitable purpose, and whether federal legislative reform would be useful and/or preferrable to that end. There was no single answer, nor did responses favor one approach over another. Whether Canada persists in the Common Law approach (coupled with the CRA's administrative guidance) or adopts legislative reform, there are challenges to confront.

Canadian scholars were split on whether the Common Law offers a viable approach to evolution going forward. Some preferred the current state of *Pemsel+* (the Common Law plus CRA guidance) as the current approach is familiar to lawyers and practitioners in the field; legislative change promises to alter the legal landscape, and may present unintended legal consequences given insufficient legislative drafting and ambiguities that may remain thereafter. Moreover, with new legislation, courts must maintain involvement in interpreting it, which is what they currently do in relation to the Income Tax Act.

Others were more critical of continued reliance on the courts to evolve the law under the Common Law. Those critical of the current approach noted that too few charity law cases are brought before the courts to warrant the confidence in the courts to evolve the law. Moreover, they emphasized the limits of the courts to evolve charity law by reference to the changing social realities in Canada. Canadian society is evolving quickly, but the expansion of charity and charitable purpose is not keeping up. It would be speculative to determine how many cases are sufficient for evolving the law. Instead, the Working Group appreciated that jurisdictions such as England and Wales have turned away from the Common Law and toward statutory reform to enhance both the efficacy of the charitable sector, and uphold commitments to rule of law principles such as clarity and precision. For instance, the UK government's 2002 review of charities law and regulation recognized the centrality of the Common Law to the definition of charitable purpose. Importantly, the report fervently criticized continued reliance on it as impeding the growth and vibrancy of the charitable sector. In particular, the UK report noted that continued resort to the Common Law left the law "confusing and unclear", and did not fully capture the scope of society's evolving notions of public benefit.<sup>36</sup> The UK opted for legislative reform for England and Wales in order to support the rule of law principles of clarity on charity

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<sup>36</sup> Cabinet Office (UK), "Private Action, Public Benefit: A Review of Charities and the Wider Not-for-Profit Sector," *Strategy Unit Report* (September 2002): 37-38.

law, as well as mirror society's evolving ideas of public benefit in the 21st century. Reflecting on the 2002 UK report, the Working Group concluded that from a democratic perspective, legislative reform in charity law reflects greater accountability to the public, as opposed to the current reliance on the CRA's Charity's Directorate. Precisely because Canada's charities regulation is annexed to the taxation regulator, presenters raised concerns about the moral hazard of locating such definitional authority in a regulator that also sits within an agency that views charities under the guise of public expenditure.

Speakers were asked to address the legislative process in Canada. The Working Group was fortunate to have among our speakers experts in the legislative drafting process in Canada. Many addressed the difficulties of drafting legislation and the politicization of the legislative process. Any attempt to create a statutory definition would be complex, both in terms of the content of the statute and the process of pushing legislation through a complex parliamentary process. They raised concerns about the effect of any legislation on the current state of the Common Law and CRA's voluminous guidance and policy documents on the sector. Though they appreciated the need for modernization, they raised concerns about the vulnerability of the legislative process to partisan political agendas. Any federal legislation may run afoul of Provincial authority. The Provinces retain jurisdiction under the Constitution Act, 1867 to regulate charities within their boundaries, though they have not utilized this authority robustly, and instead have largely deferred to the federal government's regulatory regime based on its authority to erect an income tax regime. While the potential for federalism conflicts are limited, the speakers suggested that any federal legislative endeavor would require harmonization in support of a cooperative federalism.

Importantly, specialists from other countries offered important insights with respect to the politicization of charity through the introduction of legislative reform. The Australian experience was not as political as it could have been, we were told. But that lack of politicization may have been due to the fact that the reforms did not merely redefine charity and charitable purpose. The reform legislation created an independent charities regulator distinct from the taxing authority, to oversee charities registration. The creation of an independent regulator coupled with the legislative definition of charitable purpose not only clarified to the sector and legal community what counts as a charitable purpose, but also built relationships of trust with the charities regulator as a government agency. This was no less true for England and Wales, where the 2006 legislation created an independent, non-ministerial Charity Commission, with "functions to register, regulate and support charities."<sup>37</sup> In addition to overseeing charities and their registration, the Charities Commission has over the years "accepted a number of new charitable purposes and extended existing purposes" using its legislative authority, thereby vesting in the Commission a responsibility for evolution not unlike that already vested in the CRA's charities directorate.<sup>38</sup> Though the authority of the Commission and Directorate are analogous, the larger context of trust is distinct. Precisely because the Charities Commission of

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<sup>37</sup> Lindsay Driscoll, "England and Wales: *Pemsel plus*," in *Modernising Charity Law: Recent Developments and Future Directions*, eds. Myles McGregor-Lowndes and Kerry O'Halloran (Cheltenham, UK: Edward Elgar, 2010), 48-73, 52.

<sup>38</sup> Driscoll, "England and Wales: *Pemsel plus*," 53.



England and Wales is distinct from any taxing authority, it has been able to generate positive working relationships with the charitable sector. In Canada, however, trust with the CRA's Charity Directorate remains an issue precisely because it is annexed to the taxing authority. The Joint Regulatory Table's report, *Strengthening Canada's Charitable Sector*, noted the importance of regulatory reform to ensure that the charitable sector trusted the Charities Directorate. Its suggested reforms were designed to increase the transparency and integrity of the Directorate relative to the charities subject to its oversight.<sup>39</sup>

## B. Consultations on Defining Charitable Purpose(s)

Prior iterations of the ACCS have not undertaken an analysis of the definition of charity or charitable purpose. The Working Group recognized that any reconsideration of charity's definition would need to be future-oriented as the topography of charitable activity in Canada is shifting, especially given the limits the sector encountered during the Covid19 pandemic. Working group members recognized that the definition of charitable purposes may not be encompassing enough (e.g., advancement of recreation and sport)<sup>40</sup>, but they also noted that there is little data on whether and to what extent the definition of charitable purpose is an obstacle to charitable registration. Further, they shared an awareness that given Quebec's public policies on secularism, any effort to redefine charity and charitable purpose may open debate on the salience of advancing religion as a necessary category of charitable purpose. Finally, Working Group members expressed concern about the ambiguity of public benefit as a catch-all category of charitable purpose that may be difficult for smaller organizations to appreciate, especially if their operational budget does not permit hiring outside legal counsel to provide guidance for registration purposes.

In consultations on the issue of charitable purposes, the Working Group heard experts explain the challenge concerning charitable purposes. For instance, Canadian scholars identified a tension between registering charities pursuant to a charitable "purpose" analysis, but then subjecting them to audits by reference to their "activities". The CRA's focus on activities presumes that it is in a position to determine and decide for a charity how its activities further its purpose. This places a considerable amount of authority and discretion in the CRA at a cost to

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<sup>39</sup> Bob Wyatt and Maureen Kid, *Strengthening Canada's Charitable Sector: Regulatory Reform* (Ottawa: Voluntary Sector Initiative, 2003). Online: <https://publications.gc.ca/collections/Collection/Rv4-2-2003E.pdf>

<sup>40</sup> There has been considerable discussion within the charitable sector about the inclusion of recreation and sport as a charitable purpose in Canada. For example, see Peter Broder, "Sports and Charity," *Law Now*, 33 no. 1 (Sept-Oct 2008), 1 (referencing the UK's Charity Act, 2006, which lists sport as a charitable purpose in its own right); Samantha Rogers, "Sport Philanthropy in Canada: The Case for Change", [a report submitted to the Special Senate Committee on the Charitable Sector](#), November 2018 (online, accessed 20 September 2023); Samantha Rogers, "The Case for Sport Philanthropy: Why Isn't Sport Considered Charitable?" [Guides and Resources: Association of Fundraising Professionals, November 27, 2019](#) (online, accessed 20 September 2023). The 2019 Senate Report, *Catalyst for Change*, also recognized the frustration of sector leaders with the ineligibility of sport for charitable registration. *Catalyst for Change*, 157. A review of Appendix A reveals many jurisdictions that include recreation and sport as charitable purposes. Given the considerable Canadian discussion on sport and recreation as a viable charitable purpose, the Working Group did not independently undertake examination of this issue; rather it recognizes the already vibrant views within the sector on sport and recreation as a charitable purpose on its own.

the charity to direct its activities relative to how it understands the purpose for which it was registered. While the CRA's interest in activities is understandable at a general level, it is not clear to consultants how at a granular level the CRA calibrates activities with the fulfilment of charitable purposes.

Among the Canadian lawyers and experts consulted, there was disagreement about whether the use of legislation would help or hinder the future of charity law. For some, legislation would simply move the current debate on charitable purposes from a Common Law context to a statutory drafting context. Others saw legislation as a means to redress certain absences in the law, particularly as they relate to equitable and reconciliation purposes related to Canada's indigenous peoples. All recognized the vulnerability of legislative reform to partisan politics.

Experts consulted from the UK and Australia helpfully addressed some of the concerns noted by Canadian sector leaders. For instance, the Australian experiment with legislation was not unduly politicized or partisan, though the Australian legislation was not bipartisan. The 2006 legislation for England and Wales attracted considerable debate on the meaning of public benefit and its scope of inclusion, though that debate was arguably an important part of ensuring the definition was future-proofed. As Driscoll wrote in her review of the legislation and its legislative process, "It is the public benefit aspect rather than any extension of charitable purposes which is seen to be the modernising element."<sup>41</sup> In her remarks to the Working Group, Driscoll outlined the now legislated purposes of the legislation, indicating that the statutory list was a recitation of all purposes already found to be charitable (whether through the Common Law or otherwise), with new categories added through the legislative process. This approach both preserved the existing law on charities while extending it further. Both Australian and UK experts claimed that the legislation created greater clarity about what was charity, and how charities can comply with the regulatory regime.

### C. Consultations on Independent Charity Commissions and the Future of Charity Law

The discussion with representatives from the UK and Australia addressed the significance of coupling any legislated definition of charitable purpose with statutory creation of an independent charities regulator. For England, Scotland and Australia, the charities regulator is an independent agency, in some cases loosely affiliated with a ministry. For example, the Charity Commission of England and Wales is a "non-ministerial government department with functions to register, regulate, and support charities."<sup>42</sup> It has quasi-judicial authority over matters pertaining to the registration of charities. Most significantly, the legislated charity commissions the Working Group encountered are independent from all other agencies and bureaus of government, and notably are not annexed as part of the taxing authority. Indeed, the Australia Charities and Not-for-Profits Commission was created in part to address concerns from the

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<sup>41</sup> Lindsay Driscoll, "England and Wales: *Pemsel plus*," in *Modernising Charity Law: Recent Developments and Future Directions*, eds. Myles McGregor-Lowndes and Kerry O'Halloran (Cheltenham, UK: Edward Elgar, 2010), 48-73,48.

<sup>42</sup> Driscoll, "England and Wales: *Pemsel plus*," 52.

charities sector that the Australian tax authorities had a conflict of interest when deciding the scope of what is and is not charitable.<sup>43</sup>

In Canada, the Charities Directorate sits within the Canada Revenue Agency, which administers and enforces the Income Tax Act. Though the Charities Directorate is a distinct unit within the CRA, it nonetheless is beholden to the CRA's compliance mandate under the ITA. This nexus between the Directorate and the CRA implies that the registration of charities and any charity policy developments co-exist with, and are potentially counter-balanced by policy considerations over foregone tax revenue. As New Zealand legal scholar, Sue Barker describes the Canadian system, ours is a "tax expenditure" model of charities regulation. "[A] tax expenditure analysis conceptualises some (albeit not all) of the tax privileges for charities as a 'subsidy' and recasts the revenue said to be 'forgone' from such 'subsidy' as a direct tax expenditure so that it can be assessed against alternative policy options, such as a system of direct grants."<sup>44</sup> Barker is critical of this model, of which Canada serves as her exemplar,<sup>45</sup> because it

contributes materially to charities being misunderstood, undervalued, and therefore overlooked...More fundamentally, a tax expenditure analysis structurally ignores the benefits provided by charities which...may be intangible and difficult to measure but are nevertheless critically important...Ignoring such benefits perversely leads to charities being perceived and regulated as if they are a "tax loophole", or a "fiscal cost", and therefore something to be reduced.<sup>46</sup>

The prior iteration of the ACCS addressed the Canadian charitable sector's concern on the nexus between charities regulation and taxation. In its report of January 2021, the ACCS recommended the creation of a "home in government" for the charitable and non-profit sector outside the Charities Directorate of the CRA. As the then-ACCS wrote,

[t]he lack of such a 'home' means the absence of a place for comprehensive and coordinated policy development within the federal government...There is broad agreement in the sector that a broader policy perspective afforded by such a policy unit or secretariat would help to ensure a more productive and effective partnership between the charitable and nonprofit sector and the federal government across a range of infrastructural issues....<sup>47</sup>

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<sup>43</sup> Kerry O'Halloran, Bob Wyatt, Laird Hunter, Michael Gousemett and Myles McGregor-Lowndes, "Charity law reforms: overview of progress since 2001," in *Modernising Charity Law: Recent Developments and Future Directions*, eds. Myles McGregor-Lowndes and Kerry O'Halloran (Cheltenham, UK: Edward Elgar, 2010), 37.

<sup>44</sup> Sue Barker, *What Does a World-Leading Framework of Charities Law Look Like?* (New Zealand: Charities Law Reform, 2022), 66.

<sup>45</sup> For Barker's critical comments of the Canadian "tax expenditure" model of charities regulation, see Barker, *What Does a World-Leading Framework of Charities Law Look Like?* 69-70.

<sup>46</sup> Barker, *What Does a World-Leading Framework of Charities Law Look Like?* 66-8.

<sup>47</sup> Advisory Committee on the Charitable Sector, *Report #1 of the Advisory Committee on the Charitable Sector*, January 2021. Online: <https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency->

The Working Group noted the nexus in the Australian and English/Welsh legislation between defining charity and creating an independent charities commission – in these cases, the impetus to modernize the definition of charity was accompanied by the creation of independent charity commissions to oversee registration and support of charities and research policy development in the region. By viewing these two features together, each jurisdiction was able to modernize the definition of charity while also updating its regulatory regime in a manner consistent with sector calls for regulatory reform. The Working Group recognizes that any legislative efforts to reform charity might be more successful if it included redesigning the administrative framework of charities regulation into the 21<sup>st</sup> century.

Related to the issue of institutional design, the ACCS conducted consultations on what “home in government” means to the charitable sector. To date, there is no clear understanding within the charitable sector of what “home in government” means. For some, it requires tasking a Parliamentary Secretary with responsibility to support the Charitable Sector. For others, it involves creating an advisory committee with the authority to work across all relevant ministries to advise on charities law. And still others would call for an independent charities regulator. Consultations on this issue tend to emphasize the need for a champion for charities that is independent, separate from the taxation regime, and focused on promoting innovative growth in the policy and regulatory regimes governing charities and charity law. At the same time, discussions with the CRA illuminated the role the policy division of the Charities Directorate plays, along with the limitations that beset that unit. For instance, though the policy division is able to develop policy documents, it cannot publish them due to the wide range of approvals required. In other words, it lacks the necessary independence to develop policy documents that support the charitable sector and its efficient regulation.

### III. Comparing Charitable Purpose Globally: Identifying Gaps in Canada’s Charities Law

Among the first things the Working Group and ACCS members discussed were what charitable purposes were missing from the Canadian charity law regime. Answering this question is a complex matter. In one sense, the question presumes of its audience a degree of technical knowledge about how charity law operates through the Common Law and the CRA. That is not something that can be presumed of Canadians writ large. Sector representatives offer an important source of information for this question. But to garner a representative sample across Canada’s charity and not-for-profit landscape would entail a qualitative survey, the scope of which would exceed the budget of the ACCS. Instead, the Working Group undertook comparative research of how Common Law and Civil Law countries define charitable purposes and/or public benefit. Appendix A provides two tables listing Common Law jurisdictions (Table A1) and Civil Law jurisdictions (Table A2), and their relevant legislation that defines charitable purpose and/or delineates public benefit. Whereas Common Law jurisdictions provide considerable legislative guidance on charitable purposes, Civil Law legislation centers on defining

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[cra/corporate-reports-information/advisory-committee-charitable-sector/report-advisory-committee-charitable-sector-february-2021.html](https://www.cra.ca/corporate-reports-information/advisory-committee-charitable-sector/report-advisory-committee-charitable-sector-february-2021.html)

public benefit for purposes of delineating the requirements for registering as a not-for-profit (regardless of tax benefits). The examination of both Common Law and Civil Law countries was deemed necessary due to Canada's bijural legal environment. Appendix A is not meant to exhaust comparative legal analysis. It offers a starting point to consider the Canadian definition of charity and charitable purpose.

A review of the definitions across countries reveal that the global community of nations identifies numerous charitable purposes and public benefits. The following table (Table 1) provides an overview of the different charitable purposes and public benefit categories gleaned from Appendix A. The first column lists the charitable purpose/public benefit category, the second column identifies the countries that recognize the relevant category, and the third column showcases whether and through what legal mechanism Canada recognizes that category. Of course, each jurisdiction may define these purposes or benefits differently, despite the shared vocabulary. Whether the CRA accepts a given purpose or benefit in Column 1 does not necessarily mean its understanding is the same as any other jurisdictions that similarly supports that same purpose or benefit. Further research is required to examine the connotation of each category in any given legal system. Nonetheless, the list provides a broad accounting of public benefit/charitable purpose categories that both include and far exceed the four *Pemsel* categories of the Common Law.

Table 1. Comparison of Charitable Purposes: Canada and the World

Charitable Purpose (Advancement of...)	Jurisdictions Recognizing Charitable Purpose		Canadian recognition of charitable purpose
(Amateur) Sport and Recreation	England & Wales Fiji France Germany <sup>48</sup> Israel Italy Jamaica	Japan New Zealand Russia Scotland South Africa United States	Canada does not recognize advancement of sports or amateur sports as a charitable purpose. It can be an activity charities undertake in furtherance of some other charitable purpose.  <a href="#">CRA Policy Statement CPS-027 (April 30, 2009)</a>
Animal Welfare/Protection	Australia England & Wales Germany Jamaica	Malta Scotland South Africa	Though advancing animal welfare is not an independent head of charitable purpose, Canada considers it charitable as falling under the <i>Pemsel</i> categories of advancement of education and public benefit.  <a href="#">CRA Guidance Ref No. CG-011 (Aug 19, 2011)</a>
Armed forces	England & Wales Jamaica		Though not an independent head of charitable purpose, organizations that support public amenities, such as the armed forces, can register for charitable status.  CRA: <a href="#">Other purposes beneficial to the community</a>
Arts	England & Wales France Germany Italy Jamaica	Japan Malta Russia Scotland	Though the promotion of the arts is not an independent head of charitable purpose, CRA guidance recognizes that activities that promote the arts may fall under <i>Pemsel</i> categories of advancing education and public benefit.  <a href="#">CRA Guidance CG-018 (Dec 14, 2012)</a>
Citizenship	Brazil England & Wales	Jamaica Scotland	
Community Development	England & Wales Germany Italy <sup>49</sup> Jamaica Japan Malta	Scotland South Africa	Community economic development is not an independent charitable purpose, but can be charitable under various <i>Pemsel</i> .  <a href="#">CRA Guidance CG-014 (rev. Aug 9, 2017)</a>
Conflict Resolution	England & Wales Jamaica Malta Scotland		See, Racial Equality, below.
Construction/repair of buildings used for charitable purposes	Fiji		
Consumer protection	Germany Italy South Africa		
Crime Prevention	Germany		

<sup>48</sup> Germany includes chess as sport.

<sup>49</sup> Italy specifically recognizes community-based radio broadcasting.

Culture	Australia Brazil England & Wales France Germany Israel	Jamaica Malta Russia Scotland South Africa	The Government of Canada has a ministry devoted to promoting Canadian heritage. Though the promotion of ethnic cultures is not an independent head of charity, the CRA recognizes it as falling under <i>Pemsel</i> heads of charitable purpose.  <a href="#">CRA Guidance CG-003 (Jan 25, 2008)</a>
Democracy	Brazil Germany Malta		
Diversity (and equality)	England & Wales Jamaica Scotland		See, Racial Equality below.
Education	Australia Brazil England & Wales Fiji France India Ireland Israel	Italy Jamaica Malta Mauritius New Zealand Russia Scotland South Africa	Advancing Education is a <i>Pemsel</i> head of charitable purpose, and is recognized under the Common Law.
Employment/care of discharged criminals	Fiji		Note: There are registered charities in Canada that are dedicated to serving people impacted by the criminal justice system. Such charities would fall under the existing <i>Pemsel</i> categories of charitable purpose.
Environment (protection & improvement)	Australia Brazil England & Wales Germany India Italy Jamaica	Japan Malta Mauritius Russia Scotland South Africa	Protecting the environment is not an independent charitable purpose under the law. However, the CRA recognizes it as charitable under the <i>Pemsel</i> head of advancing the public benefit.  <a href="#">CRA Summary Policy CSP-E08 (Sept 3, 2003)</a>
Fair Trade with developing country producer	Italy		
Farming	Germany		Though this is not an independent head of charity under Canadian law, the CRA recognizes that charities may advance local farming under the category of Community Economic Development.  <a href="#">CRA Guidance CG-014 (July 26, 2012)</a>
Food and nutrition security	Brazil		Food security is not an independent charitable purpose. Moreover, there is no CRA guidance on this specific issue. Nonetheless, it may qualify as a charitable purpose if described as a human right. See Human Rights, below.
Funeral services for the poor	Fiji		See, Relief of Poverty, below.
General Public Benefit Clause	Australia Germany India	Ireland Mauritius New Zealand	Canadian Common Law recognizes public benefit as an independent charitable purpose under <i>Pemsel</i> .
Gender Equality	Germany Japan		Canada has a federal ministry devoted to promoting gender equality (WAGE). Though gender equality is not an independent charitable purpose under Canadian law, it may be considered a charitable purpose given CRA guidance on human rights. See Human Rights, below.

Health/Public Health/Medical relief	Australia Brazil England & Wales Germany India Israel Italy	Jamaica Japan Malta Russia Scotland South Africa	The CRA claims the Common Law recognizes promotion of health as charitable. It provides guidance for charities that advance health for purposes of charitable registration.  <a href="#">CRA Guidance CG-021 (Aug 27, 2013)</a>
Heritage	Brazil England & Wales France Germany	Italy Jamaica Malta Scotland	
Historical Site preservation	Germany India Russia		The CRA registers as charities heritage societies devoted to the preservation of property with historical significance under the <i>Pemsel</i> category of public benefit.  <a href="#">CRA Summary Policy CSP-H05 (Sept 3, 2003)</a>
Hobbies	Germany <sup>50</sup>		
Housing	Italy South Africa		Though housing is not an independent charitable purpose, organizations that advance housing may qualify for charitable registration based on existing <i>Pemsel</i> categories.  <a href="#">CRA Guidance CG-022 (Feb 7, 2014)</a>
Human Rights	Australia Brazil England & Wales Italy Jamaica	Japan Malta Mauritius Scotland	Though human rights is not an independent charitable purpose under the Common Law, the CRA considers its advancement consistent with the four <i>Pemsel</i> categories.  <a href="#">CRA Guidance CG-001 (May 15, 2010)</a>
Humanitarian aid/disaster relief	Japan Russia South Africa		See, Human Rights, above.
Indigenous Exception to Public Benefit Test	Australia New Zealand		Advancing the interests and needs of indigenous peoples is not an independent category of charitable purpose. But the CRA recognizes it as falling under the <i>Pemsel</i> category of public benefit. It provides guidance to organizations supporting indigenous peoples, but precludes organizations from serving only certain nations over others (e.g., class within a class)  <a href="#">CRA Policy Statement CPS-012 (Nov 6, 1997)</a>
Internationalism and International understanding	Germany Japan		
Libraries, reading rooms	Fiji		Though not an independent head of charitable purpose, organizations that support public amenities, such as libraries can register for charitable status.  <a href="#">CRA Summary Policy CSP-P20 (Sept 3, 2003)</a>
Marriage and Family	Germany Russia		Though not an independent category of public benefit, supporting the family can fall under the general public benefit category of <i>Pemsel</i> .  See, <a href="#">Other purposes beneficial to the community</a>

<sup>50</sup> Specifically, Germany recognizes amateur radio, aeromodelling and dog sports.



Police, Fire, and Rescue services	England & Wales Germany Jamaica	
Professional/Trade Ethics	Malta	
Racial Equality	England & Wales Jamaica Scotland <sup>51</sup>	Advancing racial equality is not an independent charitable purpose in Canada. The CRA interprets it as charitable by falling under one of two <i>Pemsel</i> heads of charitable purpose: education and public benefit.  <a href="#">CRA Policy CPS-021 (Sept 2, 2003)</a>
Reconciliation	Australia England & Wales Jamaica Malta Russia Scotland	Reconciliation in Canada resonates in a specific manner, which is distinct from the countries listed herein, with Australia as one exception. Reconciliation is not an independent head of charitable purpose in Canadian law. But the CRA does recognize charities that advance interests related to indigenous peoples  See, Indigenous Exception to Public Benefit Test, above  Other jurisdictions that use “reconciliation” tend to refer to managing social unrest. Such matters may be captured by CRA guidance on organizations promoting racial equality (see above).
Reformation of criminals prostitutes, and drunkards	Fiji Germany	Though not an independent head of charitable purpose, organizations advancing the rehabilitation of prisoners may qualify for charitable status under the <i>Pemsel</i> head of public benefit.  <a href="#">CRA Summary Policy CSP-R16 (Sept 3, 2003)</a>
Relief of Poverty	England & Wales Fiji Germany India Ireland	Jamaica Mauritius New Zealand Russia Scotland
Relief of need due to youth, age, ill-health, disability, financial hardship, or other disadvantage	England & Wales Fiji Germany Jamaica Russia Scotland	This is an independent <i>Pemsel</i> category of charitable purpose. But the CRA is careful to distinguish between relief and prevention of poverty, the latter of which is not a basis for charitable status.  <a href="#">CRA Guidance CG-029 (Nov 27, 2020)</a>
Relief for people persecuted on political, racial, or religious grounds, refugees, expellees, ethnic German repatriates, war victims, etc.	Germany	The CRA provides guidance on relief of: <ul style="list-style-type: none"> <li>the Aged: <a href="#">CRA Guidance CG-026 (Dec 8, 2016)</a></li> <li>Youth: <a href="#">CRA Guidance CG-020 (June 24, 2013)</a></li> <li>The Disabled: <a href="#">CRA Guidance CG-021 (Aug 27, 2013)</a></li> </ul>
Religion	Australia Brazil England & Wales Fiji Germany Israel	Malta Mauritius New Zealand Scotland South Africa United States
		Advancing religion is an independent <i>Pemsel</i> head of charity in Canada.

<sup>51</sup> Scotland’s statute provides for racial harmony.

Religious Equality	England & Wales Jamaica	Russia Scotland <sup>52</sup>	See, Racial Equality, above
Saving lives	England & Wales Germany	Jamaica Scotland	
Science and Technology	Brazil England & Wales France Germany Israel Italy	Jamaica Japan Russia Scotland United States	Though promoting science and technology is not an independent charitable purpose in Canada, it can be captured by reference to the <i>Pemsel</i> category of advancing education. Moreover, the CRA offers guidance on charities that promote research.  See, <a href="#">CRA Policy Statement CPS-029 (April 30, 2009)</a>
Security and Safety	Australia Japan United States		
Skill, industry, vocational training, frugality	Fiji Germany	Italy Japan	See, Community Economic Development, above
Social/Public Welfare	Australia Brazil Israel	Japan South Africa	See, General Public Benefit Clause, above.
Support for military service people and reservists	Germany		See, Annex A, of <a href="#">CRA Guidance CG-027 (Nov 28, 2020)</a>
Support for Youth	Japan		Though advancing the wellbeing of youth is not an independent head of charitable purpose, the CRA has guidance for charities advancing the interests and wellbeing of youth.  <a href="#">CRA Guidance CG-020 (June 24, 2013)</a>
Tourism	Italy		Canadian courts have recognized the promotion of tourism as a charitable.  <a href="#">CRA Policy Statement CPS-005, April 22, 1991</a>
Voluntary Sector	Germany Italy	Japan Malta	Foundations are a primary source of funding to support the charitable sector. So too is the recent legislative reform to enable charities to provide grants to non-qualified donees.  CRA Draft Guidance CG-032 (Nov 30, 2022)
Yoga	India		

Table 1 reveals that jurisdictions around the world, including Canada, share similar values with respect to defining charitable purposes that support the public benefit.<sup>53</sup> Of course, each jurisdiction may have unique conceptions of public benefit that are part of specific cultural practices (e.g., India and yoga). Whereas many jurisdictions specify these purposes in legislative format, Canada begins its analysis with the *Pemsel* categories. While judicial interpretation is an important source of legal authority, case law on charitable purposes is limited, with courts often exercising judicial restraint over expanding the definition of charitable purpose (e.g., racial equality and preventing poverty). The principal vehicle for expanding the ambit of charitable

<sup>52</sup> Scotland's statute provides for religious harmony.

<sup>53</sup> Given that the Charities Directorate approaches charitable registration by reference to one of four charitable purpose, there may be some inconsistency between the CRA's policy on a given Column 1 topic and how other states understand the topic.

purposes is the CRA, which uses policy and guidance documents to analogize from the four *Pemsel* categories to ensure the sector can evolve as Canada grows.

#### A. Conclusions from Consultations and Research

The above chart, when considered alongside the consultations, offers an opportunity to reflect on what redefining charity and charitable purposes for 21<sup>st</sup> century Canada may entail.

##### 1. Canada as *Pemsel+* due to Administrative Guidance

Canada, through the CRA, has expanded the scope of charitable purposes. This expansion from the original four *Pemsel* categories allows us to conclude that Canada adopts a *Pemsel plus* approach to charitable purpose. Canada has kept up with the global evolution of charitable purpose and public benefit through CRA policy and guidance development. The CRA's Charities Directorate, through its policy division, undertakes considerable effort to publish these guidance documents to support the evolution of Canada's charitable sector. If future legislation were proffered that redefined charitable purpose, legislators would have the ample resource of CRA guidance and policy documents to incorporate into the legislation while creating opportunities for growth.

##### 2. Charity Law, Public Benefit and Reconciliation with Indigenous Peoples

The Working Group recognizes that there important areas for the ACCS to explore, especially with respect to the sector's (non)responsiveness to indigenous communities in Canada. Moreover, the Working Group believes the Charities Directorate should reconsider its policies with respect to charitable support for indigenous peoples, in light of the Government's commitment to Reconciliation and its obligations under the principle of honour of the Crown.

The Working Group learned about the legislative efforts in Australia and New Zealand to limit the negative implications of the public benefit doctrine on indigenous practices among communities in those jurisdictions. Of course, the realities of indigenous peoples in Australia and New Zealand differ from those of indigenous peoples in Canada. As such, any effort to recalibrate the definition of charity with commitments to Reconciliation will require consultation with indigenous communities in Canada. The Working Group was pleased to secure insight from members of the ACCS and those working in the field of philanthropy and indigenous communities. The Working Group shared our preliminary findings of efforts in Australia and New Zealand, and queried whether and to what extent indigenous communities in Canada would benefit from definitions of charity (and/or public benefit) that would better enable indigenous charitable activity and practices. We also sought more generally to better understand whether and to what extent reform of the definition of charity is a priority for indigenous communities. Because our consultations were limited, the Working Group offers no general account of indigenous communities and their interest in charity and charity reform. But our findings from the limited consultations were noteworthy:

- **Reform of Charity Law:** Reforming the definition of charity is not a priority among indigenous communities known to those we consulted. There are other areas far more significant for them at this time. Nonetheless, there are individuals working at the intersection of philanthropy, not-for-profits, and charities, who are eager to see philanthropic support of indigenous causes increase from current levels.
- **Honoraria and the T4A:** Indigenous communities and others increasingly call upon Elders in the community to support the work of Reconciliation. Moreover, indigenous communities wish to issue honoraria to youth for their contribution to the community. But these payments require T4A filings, which in some cases push the recipients over certain income levels, thereby leading to income tax liability. Indigenous communities would benefit from greater understanding of the implication of these payments and their taxation implications.
- **Trusts and Reconciliation.** Often government funds or land claim settlement funds allocated to indigenous peoples are held in trust. Consultations suggested that more guidance on trust law, and its implications on funds held in trust for indigenous peoples is needed.
- **Grants to Non-Qualified Donees.** At the time of consultation, the CRA had not yet issued its guidance on Grants to Non-Qualified Donees. Consultations suggested that the new legislation allowing grants to non-qualified donees will be important for many indigenous organizations that do not register as charities. The hope is that the guidance will provide clarity for purposes of compliance. At the same time, consultations raised concerns about the onus on recipients to ensure compliance. The concern is that, given resource and capacity limits among potential indigenous recipients of grants, foundations may be risk averse to make grants to indigenous-led organizations, and instead will opt for gifts to qualified donees and grants to non-indigenous non-qualified donees to do the work. But such a model perpetuates a model of hegemony and dependence that runs contrary to the aims of Reconciliation.
- **On the limited indigenous-identified registered charities.** Registering and maintaining charitable compliance carries a heavy administrative burden that many indigenous communities choose not to bear. Additionally, there is a tension borne out of the critique of settler-colonialism to register an indigenous-led organization with the Canadian government.

The Working Group considered with interest Australia's and New Zealand's legislative features to counter the effect of the public benefit test on indigenous practices and customs in those countries. At the same time, the Working Group appreciated through consultations that the realities and lived experience of indigenous communities in Canada are not comparable to those jurisdictions, given the diversity of indigenous communities (and their respective histories) across the country. The consultations certainly revealed the above concerns that call for greater education and discussion in particular legal and taxation issues. However, redefining charity is not one of those concerns at this time.

In addition to consultations, the Working Group reflected on how the CRA and the Charities Directorate may nonetheless reconsider certain policies from the vantage point of the

Government's commitment to Reconciliation. Recall that Canada's legal and policy framework guiding Reconciliation are based on Section 35 of the *Charter*, the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP), the Truth and Reconciliation Commission, and the Royal Commission on Aboriginal Peoples. To provide clarity on how this complex environment guides Government action, Justice Canada offer a series of principles. For the purpose of the Working Group's analysis, two principles are significant. Principle 1 states as follows:

The Government of Canada recognizes that all relationships with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right to self-government.<sup>54</sup>

According to the Government, this principle "affirms the priority of recognition in renewed nation-to-nation, government-to-government, and Inuit-Crown relationships."<sup>55</sup> Referring to the Royal Commission on Aboriginal Peoples, the Government estimates that there are between 60-80 historical nations in Canada, which implies distinct nation-to-nation approaches. Indigenous peoples cannot be reduced to a singular peoples or category. Nation-to-nation approaches require an appreciation of the historical communities and the institutions that they rely upon for governance.

Principle 8 reads as follows:

The Government of Canada recognizes that reconciliation and self government require a renewed fiscal relationship, developed in collaboration with Indigenous nations, that promotes a mutually supportive climate for economic partnership and resource development.

The Government explains, among other things, that a new fiscal relationship entails a fairer relationship with Indigenous nations. A fair relationship, it asserts, "can be achieved through a number of mechanisms such as new tax arrangements, new approaches to calculate fiscal transfers, and the negotiation of resource revenue sharing agreements."<sup>56</sup>

The Working Group considered the implication of these two principles when it reviewed the CRA's Policy CPS-012 (November 1997), which provides in relevant part an explanation of why charities in support of indigenous peoples must be framed generally, and not focus on a particular nation, or what the Policy calls a "class within a class"

An organization cannot qualify for registration with purposes established to assist Aboriginal peoples of Canada if it further restricts its beneficiaries to a limited class of eligible persons, also known as 'a class within a class.' For example, limiting beneficiaries to

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<sup>54</sup>Justice Canada, "Principles respecting the Government of Canada's relationship with Indigenous peoples," available online: <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html> (hereinafter, *The Principles*)

<sup>55</sup> Justice Canada, "The Principles," online: <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

<sup>56</sup>Justice Canada, "The Principles," online: <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

a particular nation that excludes members of other nations does not meet the necessary element of public benefit.<sup>57</sup>

When reading the CRA's policy document proscribing registration of charities benefiting a "class within a class", the Working Group was concerned that this policy runs contrary to the Government's first principle of treating each indigenous nation distinctly and with respect. As noted in Part I, the Working Group was troubled by the implication of this policy for off-reserve indigenous peoples organizing a charity to support members of their tribe or community. On our reading of the CRA policy, we understand that the CRA registers charities that support indigenous peoples. But the CRA would decline charitable status to a nation-specific organization.

The Government's first principle of reconciliation would call this policy into question on grounds of disrespecting the integrity of distinct indigenous nations as nations. The Working Group appreciates that consultations have preliminarily indicated that there is no demand from indigenous communities to reverse or revoke CPS-012. Nonetheless, the Working Group considers that for as long as the Government of Canada remains committed to Reconciliation, every Department and Agency must pay close scrutiny to policies affecting indigenous peoples to ensure they comply with the principles of Reconciliation. There may have been valid policy considerations that led to the creation of CPS-012, including the Common Law doctrine of public benefit. But that is the same doctrine that prompted Australia and New Zealand to legislate the definition of charity precisely to support indigenous communities and practices in those jurisdictions.

The Working Group believes Principles 1 and 8 on Canada's commitment to Reconciliation to be strong reasons why the CRA should reconsider the public benefit doctrine's implications on indigenous peoples, with Policy CPS-012 as a particular case in point. This particular policy offers an opportunity for the CRA to operationalize the principles of Reconciliation, and future proof the charities regulation regime in support of more robust Canada's nation-to-nation relationship with indigenous peoples.

### 3. Expanding Charity to Include Prevention of Poverty

Another limitation in Canada's definition of charity and charitable purpose pertains to eradicating systemic forms of inequality. Though Canada recognizes the relief of poverty as a charitable purpose, recent case law does not recognize preventing poverty as a charitable purpose.<sup>58</sup> Preventing poverty, according to the Federal Court of Appeals, does not necessarily mean providing relief to someone who is in fact poor. Though the court recognized "poverty" is a relative term, preventing poverty may nonetheless involve activities that confer benefits to those who are not poor. The court was unwilling to extend the Common Law definition of relief

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<sup>57</sup> Canada Revenue Agency, *Benefits to Aboriginal peoples of Canada, Policy Statement CPS-012*, November 6, 1997. Online: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/policy-statement-012-benefits-aboriginal-peoples-canada.html> (emphasis added).

<sup>58</sup> *Credit Counselling Services of Atlantic Canada Inc. v. Canada (National Revenue)*, 2016 FCA 193.

for the poor to include prevention of poverty. In doing so, it made a comparative reference to the Charities Act, 2011 of England and Wales:

In the United Kingdom, Parliament adopted the *Charities Act, 2011* (UK), c. 25 and in so doing included the prevention of poverty (in addition to the relief of poverty) as a charitable purpose. In effect, the appellant is asking this Court to do that which required an act of the UK Parliament to do. In my view, just as in the United Kingdom, it will require an act of Parliament to add the prevention of poverty as a charitable purpose.<sup>59</sup>

The Federal Court of Appeal’s reasoning reflects the principle of judicial restraint relative to Parliament’s legislative authority. This restraint certainly undercuts continued faith in the common law as a means of growing and evolving the definition of charitable purpose. Moreover, if we adopt an intersectional analysis of systemic inequality by reference to race, the analysis becomes bleaker.<sup>60</sup> For instance, according to StatCan analysis of Census 2021 data, “[i]ndigenous people are more likely to experience poverty” while “the poverty rates in racialized groups were all significantly higher than the national rate of 8.1% in 2020.”<sup>61</sup> In these cases, not all members of these groups may necessarily be poor, whatever the metric may be. But when viewing poverty from an intersectional lens like race and indigeneity, the current law becomes part of the systemic problem of inequality along racial lines. To the extent organizations, especially those serving marginalized/racialized communities, insist on more attention to forms of systemic inequality that create the conditions of poverty, the prevailing Common Law obstacle will preclude efforts to minimize economic inequality.

#### 4. Expanding Charity to Include the Advancement of Amateur Sport and Recreation

Finally, the Working Group noted the large number of jurisdictions around the world that recognize the advancement of amateur sport and recreation. Additionally, it reviewed in detail and with interest the submissions to the Special Senate Committee on the Charitable Sector on the issue.

Members of the ACCS discussed the absence of amateur sport and recreation as a charitable purpose. For some, the current tendency among local sports organizations is to organize as corporate not-for-profits; the added onus on them to provide the necessary filings to comply with charities regulations may be too much for them to undertake. Others bemoaned the absence of this charitable purpose in Canada as a matter of public health considerations. For instance, in 2019, StatCan reported that 63.1% of Canadians have increased health risks due to

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<sup>59</sup> *Credit Counselling Services of Atlantic Canada Inc.*, ¶18.

<sup>60</sup> Historians of race, poverty, and welfare recognize a close correlation in North America between racialization and poverty, as well as other indicia of diversity. See, Carly Hayden Foster, “The Welfare Queen: Race, Gender, Class and Public Opinion,” *Race, Gender and Class* 15, no ¾ (2008): 162-179; Julilly Kohler-Hausmann, *Getting Tough: Welfare and Imprisonment in 1970s America* (Princeton: Princeton University Press, 2017).

<sup>61</sup> StatCan, *Disaggregated trends in poverty from 2021 Census of Population*, 9 November 2022. Online: <https://www12.statcan.gc.ca/census-recensement/2021/as-sa/98-200-X/2021009/98-200-X2021009-eng.cfm>

excess weight.<sup>62</sup> Public health considerations assume special significance in light of the Covid19 pandemic and the implications sheltering in isolation had on exercise regimens, as well as mental health. Still others were troubled by the fact that many charities undertaking various purposes (e.g., advancement of education or religion) may wish to organize sporting leagues and regimens in order to foster community and local forms of belonging. The discussion on sport and recreation goes beyond the Registered Canadian Amateur Athletic Associations (RCAAA), and instead includes any organization that views the advancement of sport and recreation as a public benefit unto itself, or a way to build community consistent with other charitable purpose they may serve.

#### IV. Federalism Considerations on Regulating Charities in Canada

Among consultations with Canadian experts, the issue of federalism repeatedly appeared. Canada is a federal state. The Constitution Acts, 1867-1982, sections 91 and 92 allocate different powers to the provincial and federal governments. Section 91 defines the powers of the Federal Parliament, while Section 92 provides the list of subjects over which each Provincial legislature has exclusive law-making authority. According to Section 92(7), the provinces have exclusive power to make laws on “[t]he Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.”<sup>63</sup> This specific reference to charities and eleemosynary institutions suggests that Provinces have exclusive authority to regulate charities. But as is commonly known among charities law specialists, the Provinces have not exercised this authority extensively or uniformly. Rather, the Federal Government has used its taxation power under Section 91(3) to regulate charities under the Income Tax Act. Federalism became a point of discussion during the Working Group’s consultation process. For some, any effort to legislatively redefine charity and charitable purpose at the Federal level would run the danger of being *ultra vires* because such authority exclusively resides in Provincial legislative bodies. For others, because the Provinces have not uniformly or extensively legislated in the field of charities, federal efforts to reform the law of charity would not run afoul of Provincial law. And finally, more recent scholarship on federalism has showcased a tendency for greater cooperation and harmonization across dual and parallel governing bodies, given that complex legal issues may cut across distinct jurisdictions of authority.<sup>64</sup>

These distinct viewpoints raise a fundamentally empirical question about the current state of case law on federalism considerations in the field of charity legislation, and the scope or extent of provincial legislation affecting charities. The Working Group recognized that the above arguments are all valid in the abstract. But without understanding the extant case law on federalism and/or the extent of provincial legislation affecting charities, it is difficult to determine whether and to what extent federal efforts to redefine charity and charitable purpose

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<sup>62</sup> See Statistics Canada, “Health Fact Sheets: Overweight and obese adults, 2018,” online: <https://www150.statcan.gc.ca/n1/pub/82-625-x/2019001/article/00005-eng.htm>

<sup>63</sup> Constitution Acts, 1867-1982, s. 92(7).

<sup>64</sup> Cites



would run afoul of the Constitution Act's division of authority. The Working Group's preliminary research on case law revealed limited judicial analysis on federalism considerations related to charity regulation. Its overview of provincial legislation regulating the activities of charities is provided in Appendix B. The table in Appendix B is a preliminary assessment based on searching each province's statute book for references to non-profit regulation that may affect the operation of charities in Canada. The findings in Appendix B will require further examination and verification from a Provincial, Territorial, and Federal table tasked with assessing statute books and regulations as they relate to charities. Our preliminary assessment suggests that the substantial body of Provincial legislation affecting charities has little to do with defining what charity is or its charitable purposes. However, if the federal government were to undertake more robust charities law reform, including creating a home in government or an independent charities regulator distinct from the CRA, the regulation of charities would be an area ripe to consider as a subject of cooperative federalism.

#### A. Limited case law on federalism and charities regulation

There is limited case law regarding federalism with respect to provincial legislation regulating charities. The following two cases contain very short discussions of federalism issues and section 92(7). Inferred from the examples below is a judicial appreciation of the federal government's exercise of regulatory authority relative to its taxation power under section 91 of the Constitution. This judicial reading is consistent with scholars who characterize Canada's charities regulation as evincing a tax expenditure model.

##### 1. [\*International Pentecostal Ministry Fellowship of Toronto v. Canada \(National Revenue\)\*](#)

The plaintiff charity was a registered charity under the CRA. The CRA audited the plaintiff and sent a letter intending to revoke its status as a registered charity. The plaintiff charity made various arguments, only one of which concerns federalism. Namely, the charity argued that the regulation of charities is *ultra vires* the federal Parliament because exclusive legislative authority with respect to the regulation of charities lies with the provinces. Therefore, the CRA exceeded its jurisdiction; its decision should be considered void *ab initio*.

Having lost its case in Federal Court, the charity appealed to the Federal Court of Appeals (FCA).<sup>65</sup> The appellate court responded as follows:

We have not been persuaded that there is any merit to the Appellant's argument that the provisions of the ITA dealing with the registration and deregistration of charities are an unconstitutional infringement on provincial legislative authority. In our view, these provisions relate, in their pith and substance, to federal taxation, and accordingly they are *intra vires* the Parliament of Canada under subsection 91 (3) of the Constitution Act, 1867. Both the advantages of registration and the drawbacks of revocation relate solely to the tax treatment of charities and their donors. They do not impermissibly affect the affairs of charities in any other way, nor do they impede provinces from otherwise regulating

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<sup>65</sup> *International Pentecostal Ministry Fellowship of Toronto v. Canada (National Revenue)*, 2010 FCS 51.

charities...We are therefore of the opinion that the Respondent acted within its jurisdiction when it revoked the Appellant’s charitable status.<sup>66</sup>

## 2. *Ecojustice Canada Society v Alberta*<sup>67</sup>

As a background to this litigation, the Alberta government issued an Order in Council (OIC) for a public inquiry into “Anti-Alberta energy campaigns”.<sup>68</sup> The Terms of Reference used for the inquiry included “whether any Canadian organization [under inquiry] has charitable status in Canada.”<sup>69</sup> Ecojustice challenged the inquiry on the grounds that the subject matter of the inquiry fell under federal jurisdiction. Ecojustice argued, among other things, that the scope of inquiry dealt with the registration and deregistration of charities, which was more appropriately classified under a federal head of power. Ecojustice relied on *International Pentecostal* (see above) to argue that the inquiry’s focus on charitable status was *ultra vires* provincial authority.

The Alberta court’s analysis of *International Pentecostal* at paragraph 97 offered a clarification of *International Pentecostal*’s federalism implications. According to the Alberta court, the prior case did not imply that the

determination of charitable status itself falls exclusively under section 91(3) of the Constitution Act, 1867. Rather, what the Court held was that the impugned provisions of the Income Tax Act, though they allowed the federal government to revoke charitable registrations, were designed as an extension of the federal taxation power and were therefore within the federal government’s jurisdiction.<sup>70</sup>

The Court continued:

As discussed in the pith and substance analysis, the OIC facilitates the Commissioner to make non-binding recommendations, the precise content of which is unknown at this juncture. Therefore, even if IPM [*International Pentecostal*] were read to mean that the deregistration of charities falls squarely within federal powers, the claim that the Inquiry will, in fact, lead to the revocation of charitable status of certain entities is too speculative at this juncture for the OIC to be classified under section 91(3).<sup>71</sup>

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<sup>66</sup> *International Pentecostal Ministry*, ¶18-9.

<sup>67</sup> *Ecojustice Canada Society v. Alberta*, 2021 ABQB 397.

<sup>68</sup> <https://www.alberta.ca/public-inquiry-into-anti-alberta-energy-campaigns.aspx>

<sup>69</sup> <https://open.alberta.ca/dataset/3176fd2d-670b-4c4a-b8a7-07383ae43743/resource/bf531aa7-3707-4d51-a8ef-18dff1f05d0/download/energy-report-public-inquiry-anti-alberta-energy-campaigns-app-a-tor.pdf> (see paragraph 2(1)(c)).

<sup>70</sup> *Ecojustice Canada Society v. Alberta*, ¶97.

<sup>71</sup> *Ecojustice Canada Society v. Alberta*, ¶98.

## B. Charities Regulation Ripe for Cooperative Federalism

The Alberta court in *Ecojustice Canada* noted that while federalism is a keystone to Canadian rule of law, it need not be viewed as a zero-sum game.

In response to the increasing complexity of modern society and the frequent blurring between the two spheres of legislative powers, courts have, in recent years, adopted a more flexible view of federalism...[C]ourts must be mindful of the ‘possibility of intergovernmental cooperation and overlap between valid exercises of provincial and federal authority.’<sup>72</sup>

The *Ecojustice Canada* court was right in identifying cooperation across jurisdiction as an increasingly common trope in judicial analyses of federalism implications in complex regulatory areas. Cooperative federalism is a concept drawn from political science; and in the Canadian context, it generally refers to “collaboration between federal and provincial governments to develop the Canadian welfare state.”<sup>73</sup> Political scientists offer a wide range of models that capture different calibrations of cooperative federalism.<sup>74</sup> Moreover, in practice we find cooperative federalism appears in judicial decisions across Canada, including the Supreme Court of Canada. Judges have not settled on a set formula for cooperative federalism since each case in controversy presents distinct regulatory issues and contexts, each of which presents specific considerations for calibrating provincial and federal authority. In their quantitative analysis of the Supreme Court of Canada’s use of “cooperative federalism” to 2019, Harding and Snow find that the phrase has been used in 24 decisions between 1976-2019. In the formative period of its use (1976-2009), the phrase was not widely used, though its meaning remained largely consistent. Since 2010 the SCC has been more divided over competing conceptions of cooperative federalism as it attempted to give greater substance to the phrase. This is not the appropriate place to determine the merits of one approach to cooperative federalism or another. Rather, this reference to cooperative federalism gestures to the fact that courts have already recognized that complex areas of regulation sometimes require flexibility and cooperation across federal and provincial governments.

When considering both the Income Tax Act provisions on charity, and the Provincial legislation and regulation that affects charities in Appendix B, there is already considerable calibration between the Provinces and the Federal government. Provinces provide legislative frameworks within which to create corporate organizational structures, and claim not-for-profit status. But across provincial legislation, there is a deference to either the common law or federal law on defining charity and charitable purpose.

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<sup>72</sup> *Ecojustice Canada Society v. Alberta*, 2021 ABQB 397, ¶155.

<sup>73</sup> Mark S. Harding and Dave Snow, “From the Ivory Tower to the Courtroom: Cooperative Federalism in the Supreme Court of Canada,” *Publius: The Journal of Federalism*, 53, no 1 (2022): 106-132, 106.

<sup>74</sup> Eric M Adams, “Judging the Limits of Cooperative Federalism,” *Supreme Court Law Review: Osgoode’s Annual Constitutional Cases Conference* 76 (2016): 27-43, 33. Available online: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1327&context=sclr>

For instance, *Alberta's Charitable Fundraising Act* was enacted to ensure public confidence when making donations to charities.<sup>75</sup> Section 1(1)(c) of that act defines charitable purpose to include: "a philanthropic, benevolent, educational, health, humane, religious, cultural, artistic or recreational purpose, so long as the purpose is not part of a business", where business under the act is associated with a for-profit venture.<sup>76</sup> Comparing this list of charitable purposes with the CRA's guidance and policy documents noted in Appendix A, there is considerable calibration between Alberta's and the CRA's definition of charitable purpose.<sup>77</sup>

British Columbia's *Charitable Purpose Preservation Act* concerns the obligations upon charities that are given gifts of "discreet purpose" charitable property. The act defines what constitutes discrete purpose charitable property, and the obligations upon a charity that receives such property as a donation to support its charitable purpose. In its interpretation section, the Act defines "charitable purpose" as "a purpose recognized at law as being charitable, and includes payment of debts or liabilities, including expenses, arising from the actual, intended or purported advancement of that purpose."<sup>78</sup> The definition does not provide a list of purposes as did the Alberta statute above; rather its definition of charitable purposes was narrowly tailored to the purpose of the statute, namely the implication of income producing property given as gifts to charities to support their charitable purpose, and the a charity's obligations for that property under BC law.

Quebec's *Taxation Act* regulates taxation in the Province. Book VIII of the *Taxation Act* (ss 985.1-985.23) includes provisions regulating charities, retains the power of the Minister to revoke charitable status, and sets out disbursement quotas and information return requirements. But the *Act* does not define charitable purpose. Rather, when defining *charitable activities*, the Act merely includes "public policy dialogue and development activities carried on in furtherance of a charitable purpose."<sup>79</sup>

Obviously, depending on the scope and scale of any federal reform of charities regulation, there will undoubtedly be federalism concerns and considerations. But a review of the Provincial legislation noted in Appendix B suggests that there is reason to believe charities regulation may be an area where Provincial and Federal authorities will be well suited for calibrating in a cooperative manner. To the extent any reform of the regulatory regime will revisit the definition of charitable purpose, there is little reason to anticipate a conflict between how Provinces and Federal regimes define charitable purpose. Other areas of compliance may require more robust dialogue between both levels of government.

## V. Working Group Recommendations

The Working Group on the definition of charity and charitable purpose developed its thematic focus by reference to the ACCS Terms of Reference, which provide in relevant part:

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<sup>75</sup> *Charitable Fund-Raising Act*, RSA 2000, c C-9, s. 2.

<sup>76</sup> *Charitable Fund-Raising Act*, RSA 2000, c C-9, s. 1

<sup>77</sup> Note that the Alberta statute's reference to "recreation" may still fall within the CRA's definition of charitable purpose, depending on the particular activities at issue.

<sup>78</sup> *Charitable Purposes Preservation Act*, SBC 2004, c. 59, s. 1.

<sup>79</sup> *Taxation Act*, CLQR, c I-3, s. 985.1(0.a)

The Advisory Committee on the Charitable Sector (the Committee) is a consultative forum for the Government of Canada to engage in meaningful dialogue with the charitable sector, to advance emerging issues relating to charities, and to ensure the regulatory environment supports the important work that charities do.<sup>80</sup>

The report identified an emerging issue related to charities and that directly relates to the regulation of charities in Canada. The issue of defining charity and charitable purpose was given prominence by the Special Senate Committee on the Charitable Sector in its report *Catalyst for Change*. Indeed, that report issued a recommendation that the ACCS further explore how Canada might consider defining charity and charitable purpose in light of comparative analysis with different jurisdictions.<sup>81</sup> The Working Group's mandate was further informed by consultations with the charitable sector, Charities Directorate officials, and others. The Working Group's research findings address concerns within the charitable sector about the inclusivity of the regime, and its efficacy for a changing voluntary sector landscape in the 21st century.

The Working Group on defining charity and charitable purpose undertook consultation with experts and counterparts in Australia and England, and examined the prevailing legal regimes of G20 and other countries to identify the limits and strengths of Canada's definition of charity and charitable purpose. The recommendations below are developed in light of its research findings. Because the research was narrowly focused, the recommendations below do not exhaust the range of issues and topics that fall under the rubric of defining charity and charitable purpose. The report and its recommendations offer a point of departure to advance policy discussion in the sector and within the government.

#### A. Recommendation 1

*In the absence of legislative reform defining charitable purposes, the ACCS recommends to the Minister of Finance to consider legislative amendments to the Income Tax Act to include as charitable purposes certain proffered objects that have already been the subject of considerable stakeholder input and analysis, including but not limited to "the advancement of recreation and sport" and "the prevention of poverty".*

The Working Group's report notes that though the CRA relies on the four *Pemsel* categories of charitable purpose, the CRA has extended the scope of charitable purpose through extensive Guidance and Policy documents. Canada's definition of charitable purpose is more accurately

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<sup>80</sup> For the Terms of Reference for the ACCS, please see them online: <https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/corporate-reports-information/advisory-committee-charitable-sector/terms-reference.html> (accessed 20 September 2023).

<sup>81</sup> The Working Group considers its report as both complementary to the Special Senate committee's *Catalyst for Change*, and a response to the recommendation that body made to the ACCS. The nexus between this report and the 2019 Senate Report presents an opportunity for the ACCS to collaborate with the Senate in furtherance of the recommendations that stem from the ACCS Working Group research.

described as *Pemsel plus*. Each extension to include new charitable purposes involves considered documentation from the CRA to guide the sector and those organizations seeking registration as charitable. The research undertaken by the Working Group revealed two examples of how the definition of charitable purpose can and should be extended. While the below targeted purposes are drawn from the Working Group's research-based findings, the recommendation is not limited to only these two. Rather, these two examples are drawn from long standing deliberations. They are offered here as examples, but are not exclusive of others that could also be considered upon further research.

**Sport and Recreation.** The case for recreation and sport as a charitable purpose was presented to the Special Senate Committee on the Charitable Sector, and remains a point of ongoing discussion within Canada's charitable and not-for-profit sectors. The discussion on sport and recreation goes beyond the Registered Canadian Amateur Athletic Associations (RCAAA), and instead includes any organization that views the advancement of sport and recreation as a public benefit unto itself. As Appendix A reveals, many comparator jurisdictions include recreation and sport as a charitable purpose. The Working Group advises the ACCS to recommend that the Minister of National Revenue and Commissioner of the CRA consider either new guidance, new policy, or a legislative amendment to the Income Tax Act to include the advancement of sport and recreation as a charitable purpose.

**Prevention of Poverty.** As discussed in the report, *Pemsel* identifies the relief of poverty as a charitable purpose. Relief of poverty, however, does not include prevention of poverty. Canada's Federal Court of Appeal explicitly stated that relief of poverty implies that the beneficiary of charitable support is already poor. But prevention of poverty does not necessarily imply the beneficiaries of charitable activity are poor; supporting such individuals may be construed as private benefit, rather than public benefit. At the same time, the Working Group recognizes that the prevention of poverty is an important approach to reversing the momentum of systemic discrimination, which includes prevention programs, including preventing Canadians from suffering the ails of poverty. Indeed, this approach would be consistent with Federal government priorities to stem the economic implications of systemic discrimination in Canada.<sup>82</sup>

While the ACCS ought not presume to instruct the Minister of Finance on the most appropriate way to address this issue legislatively, the Federal Court of Appeals indicates a legislative amendment is necessary as the courts are unwilling to extend the Common Law definition on their own. Comparing the legislative detail of the UK, the Federal Court of Appeal stated:

In the United Kingdom, Parliament adopted the *Charities Act, 2011* (UK), c. 25 and in so doing included the prevention of poverty (in addition to the relief of poverty) as a charitable purpose. In effect, the appellant is asking this Court to do that which required an

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<sup>82</sup> See, Heritage, *Building a Foundation for Change: Canada's Anti-Racism Strategy, 2019-2022*, which recognizes the nexus between systemic discrimination and economic wellbeing. Online: <https://www.canada.ca/en/canadian-heritage/campaigns/anti-racism-engagement/anti-racism-strategy.html>,

act of the UK Parliament to do. In my view, just as in the United Kingdom, it will require an act of Parliament to add the prevention of poverty as a charitable purpose.<sup>83</sup>

The Working Group recognizes one option would be to amend the definition of “charitable purposes” in Income Tax Act s. 149.1(1) to read as follows

*charitable purposes* includes making qualifying disbursements; (*fins de bienfaisance*), and the prevention of poverty.

#### B. Recommendation 2:

*The Minister of National Revenue and the Commissioner of the CRA should undertake a Reconciliation-focused review of policies that relate to indigenous peoples in Canada, including but not limited to CPS-012.*

The Working Group report outlines the way other jurisdictions have used legislation to control against adverse implications of the public benefit doctrine on indigenous peoples and their practices. While preliminary consultation suggests that charities law and charities law reform is not a high priority for indigenous communities in Canada at this time, the Working Group is concerned certain CRA policies work against the Government’s commitment to Reconciliation. One policy in particular is CPS-012, which the Working Group recommends needs to be reconsidered. The Government’s accession to UNDRIP and its elaboration of Reconciliation Principle strongly suggest this policy should be revised in furtherance of Reconciliation. Beyond this particular policy, the Working Group recommends that the Charities Directorate needs to re-assess its policies on indigenous people, charity, and philanthropy in light of Reconciliation Principles. This endeavor will require a recalibration of the Common Law’s public benefit doctrine with the principles of Reconciliation.

#### C. Recommendation 3

*The Ministers of National Revenue and Finance, and the Commissioner of the CRA, in coordination with the Minister of Crown-Indigenous Relations, should adopt a Reconciliation-focused analysis of issues that youth, Elders, and governing councils encounter in their work on and off reserve, including but not limited to land settlement claims (See, Section III(A)(2))/and T4A filing requirements with respect to the tax implications on indigenous peoples, in the context (or in service of) contributing to Reconciliation in Canada(See, Section III(A)(2)). Such a focus involves (a) assessing the consistency of existing tax measures with the Government of Canada’s commitments to Reconciliation, and (b) developing educational programming and outreach to support tax compliance for those affected, on- and off-reserve.*

Recommendation 3 arises from consultations with ACCS members and others working in the field of Indigenous philanthropy and charity. The number of experts in this field is small, and the

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<sup>83</sup> *Credit Counselling Services of Atlantic Canada Inc.*, ¶18.

demands on their time are immense. The Working Group conducted a preliminary form of engagement, which requires supplementation to ensure due diligence with respect to the issues facing diverse indigenous communities in the country. Nonetheless, the consultations identified key issues that these experts repeatedly hear in relevant stakeholder communities, and which bear upon the wellbeing of indigenous communities. As explained in the report, Elders who provide services on and off reserve often receive honoraria. But those honoraria may pose upon them tax liabilities with which they may be unfamiliar given the Indian Act's suspension of tax liability in various instances. In other instances, land claims litigation results in financial settlements held in trust for indigenous communities in a major Canadian bank (e.g., RBC).

#### D. Recommendation 4

*The Minister of National Revenue should undertake consultations with the charitable sector to determine whether and to what extent the sector would benefit from a “home in government”, an independent charities regulator, or some other government body to support, promote, and modernize the law and regulation of charities in Canada.*

As discussed in Part II regarding the Working Group's consultations, legislative reform in Australia and England/Wales on defining charity went hand in hand with—or was preceded by—regulatory reform that created an independent charities regulator. These charities commissions sit independently within the government, or at an arm's length from a ministerial home. Importantly they operate independently of the taxing authority. The Working Group reviewed Report #1 of the earlier instance of the ACCS, which addressed the interest in a “home in government”. That earlier ACCS Report offered an outline of how that office would be placed within government and a general scope of activity allocated to that office. Moreover, it designed the office as having a whole-of-government remit.

In consultations with experts from Australia and England and Wales, the Working Group learned that the independent charities commissions perform similar scopes of work. None of those independent regimes audit the charities subject to taxation, though they nonetheless recognize the role they play in regulating charities in light of whole-of-government policies, such as money laundering and terrorism financing.

The Working Group also discussed with members of the Charities Directorate of the CRA the scope of work their officers undertake, the limited financial and human resources available for policy development, and the implications of locating the charities regulator within the taxing authority. First, for as long as the Charities Directorate sits within the CRA and exercises tax audit functions, it will continue to be perceived (rightly or wrongly) as viewing charities through the tax expenditure model, which may offend charity sector stakeholders. Second, while a Government might surgically excise the Charities Directorate from the CRA to create an independent charities commission focused only on regulation and charities policy, the CRA would need to allocate new funding lines to fulfil its mandate under the Income Tax Act. Third, discussions with Charities Directorate officials suggest that they have the institutional framework



to develop new policy on charity and charitable purpose, but do not have the necessary autonomy to issue policy developments in a timely and regular fashion.

The Working Group recognizes the “home in government” model as an option that anticipates the Charities Directorate remaining within the CRA exercising the function of both charities regulator under the Common Law, and tax auditor under the Income Tax Act and other whole of government policies. The Working Group advises the ACCS to recommend to the Minister and Commissioner to undertake consultations with the charity sector to identify how best to develop an institutional response to the articulated sector desire for an independent champion for the charitable sector in Canada.

## Appendix A: Table of Charitable Purpose/Public Benefit Definitions by Country

## Common Law Jurisdictions

State	Definition of Charity
Australia <a href="#">Charities Act 2013</a>	<p><b>Charity</b> means an entity:</p> <ul style="list-style-type: none"> <li>(a) that is a not-for-profit entity; and</li> <li>(b) all of the purposes of which are:               <ul style="list-style-type: none"> <li>(i) <b>charitable purposes (see Part 3) that are for the public benefit</b> (see Division 2 of this Part); or</li> <li>(ii) purposes that are incidental or ancillary to, and in furtherance or in aid of, purposes of the entity covered by subparagraph (i); and</li> </ul> </li> <li>(c) none of the purposes of which are disqualifying purposes (see Division 3); and</li> <li>(d) that is not an individual, a political party or a government entity.</li> </ul> <p><b>Charitable Purposes</b></p> <p>12 Definition of charitable purpose</p> <p>(1) In any Act <b>charitable purpose means any of the following:</b></p> <ul style="list-style-type: none"> <li>(a) the purpose of advancing health;</li> <li>(b) the purpose of advancing education;</li> <li>(c) the purpose of advancing social or public welfare;</li> <li>(d) the purpose of advancing religion;</li> <li>(e) the purpose of advancing culture;</li> <li>(f) the purpose of promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia;</li> <li>(g) the purpose of promoting or protecting human rights;</li> <li>(h) the purpose of advancing the security or safety of Australia or the Australian public;</li> <li>(i) the purpose of preventing or relieving the suffering of animals;</li> <li>(j) the purpose of advancing the natural environment;</li> <li>(k) any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j);</li> <li>(l) the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:               <ul style="list-style-type: none"> <li>(i) in the case of promoting a change—the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k); or</li> <li>(ii) in the case of opposing a change—the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs</li> </ul> </li> </ul> <p>See <a href="#">Division 2</a> for definition of purposes for the public benefit.</p>
England and Wales <a href="#">Charities Act (CA) 2011</a>	<p><b>S.1 Meaning of “charity”</b></p> <p>For the purposes of the law of England and Wales, “charity” means an institution which—</p> <ul style="list-style-type: none"> <li>(a) is established for charitable purposes only, and</li> <li>(b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities</li> </ul>

State	Definition of Charity
	<p>See <a href="#">s. 3 of the Charities Act (2011)</a> for statutory list of charitable purposes</p> <p>(1) A purpose falls within this subsection if it falls within any of the following descriptions of purposes—</p> <ul style="list-style-type: none"> <li>(a) the prevention or relief of poverty;</li> <li>(b) the advancement of education;</li> <li>(c) the advancement of religion;</li> <li>(d) the advancement of health or the saving of lives;</li> <li>(e) the advancement of citizenship or community development;</li> <li>(f) the advancement of the arts, culture, heritage or science;</li> <li>(g) the advancement of amateur sport;</li> <li>(h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;</li> <li>(i) the advancement of environmental protection or improvement;</li> <li>(j) the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;</li> <li>(k) the advancement of animal welfare;</li> <li>(l) the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services;</li> <li>(m) any other purposes— <ul style="list-style-type: none"> <li>(i) that are not within paragraphs (a) to (l) but are recognised as charitable purposes by virtue of section 5 (recreational and similar trusts, etc.) or under the old law,</li> <li>(ii) that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of paragraphs (a) to (l) or sub-paragraph (i), or</li> <li>(iii) that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised, under the law relating to charities in England and Wales, as falling within sub-paragraph (ii) or this sub-paragraph.</li> </ul> </li> </ul> <p>(2) In subsection (1)—</p> <ul style="list-style-type: none"> <li>(a) in paragraph (c), “religion” includes— <ul style="list-style-type: none"> <li>(i) a religion which involves belief in more than one god, and</li> <li>(ii) a religion which does not involve belief in a god,</li> </ul> </li> <li>(b) in paragraph (d), “the advancement of health” includes the prevention or relief of sickness, disease or human suffering,</li> <li>(c) paragraph (e) includes— <ul style="list-style-type: none"> <li>(i) rural or urban regeneration, and</li> <li>(ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities,</li> </ul> </li> <li>(d) in paragraph (g), “sport” means sports or games which promote health by involving physical or mental skill or exertion,</li> </ul>

State	Definition of Charity
	<p>(e) paragraph (j) includes relief given by the provision of accommodation or care to the persons mentioned in that paragraph, and</p> <p>(f) in paragraph (l), "fire and rescue services" means services provided by fire and rescue authorities under Part 2 of the Fire and Rescue Services Act 2004.</p>
<p>Fiji</p> <p><a href="#">Charitable Trusts Act 1945</a></p>	<p><b>Charitable Trusts Act 1945, s2:</b> In this Act, unless the context otherwise requires – Charitable purpose includes any of the following purposes, that is to say –</p> <ul style="list-style-type: none"> <li>(a) The supply of the physical wants of sick, aged, destitute, poor, or helpless persons, or of the expenses of funerals of poor persons;</li> <li>(b) The education (physical, mental, technical, or social) of the children of the poor or indigent;</li> <li>(c) The reformation of criminals, prostitutes, or drunkards;</li> <li>(d) The employment and care of discharged criminals;</li> <li>(e) The provision of religious instruction, either general or denominational, for the people;</li> <li>(f) The support of libraries, reading-rooms, lectures, and classes for the instruction of the people;</li> <li>(g) The promotion of athletic sports and wholesome recreations and amusements of the people;</li> <li>(h) Encouragement of skill, industry, and frugality;</li> <li>(i) Rewards for acts of courage and self-sacrifice;</li> <li>(j) The erection, laying-out, maintenance, or repair of buildings and places for the furtherance of any of the purposes herein mentioned;</li> <li>(k) Such other purposes as may be declared by the Minister to be a charitable purpose;</li> </ul>
<p>India</p> <p><a href="#">Income Tax Act (1961)</a></p> <p><a href="#">Companies Act 2013</a></p>	<p>Charitable organizations in India can take the form of trusts, societies or Section 8 companies.<sup>84</sup> To be eligible for tax exemption under the <a href="#">Income Tax Act (1961)</a>, a not-for-profit entity must be organized for religious or charitable purposes.</p> <p><b><u>Income Tax Act Definition s 2(15)</u></b></p> <p>"<b>charitable purpose</b>" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:</p> <p>Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—</p> <ul style="list-style-type: none"> <li>(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and</li> <li>(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;</li> </ul>

<sup>84</sup> <https://cof.org/country-notes/nonprofit-law-india>

State	Definition of Charity
	<p><b><u>Definition for Section 8 Companies</u></b>  <b>Formulation of companies with charitable objects, etc.</b>— (1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—</p> <p>(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;</p> <p>(b) intends to apply its profits, if any, or other income in promoting its objects; and</p> <p>(c) intends to prohibit the payment of any dividend to its members,</p> <p>the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word —Limited  , or as the case may be,</p> <p>the words —Private Limited   , and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section</p>
<p>Ireland  <a href="#">Charities Act, 2009</a></p>	<p><b><u>Charitable organisation</u></b> means—</p> <p>(a) the trustees of a charitable trust, or</p> <p>(b) a body corporate or an unincorporated body of persons—</p> <p>(i) <b>that promotes a charitable purpose only</b>,</p> <p>(ii) that, under its constitution, is required to apply all of its property (both real and personal) in furtherance of that purpose, except for moneys expended—</p> <p>(I) in the operation and maintenance of the body, including moneys paid in remuneration and superannuation of members of the staff of the body, and</p> <p>(II) in the case of a religious organization or community, on accommodation and care of members of the organization or community,</p> <p>and</p> <p>(iii) none of the property of which is payable to the members of the body other than in accordance with section 89</p> <p><b><u>Charitable Purpose</u></b>  For the purposes of this Act each of the following shall, subject to subsection (2), be a <b>charitable purpose</b>:</p> <p>(a) the prevention or relief of poverty or economic hardship;</p> <p>(b) the advancement of education;</p> <p>(c) the advancement of religion;</p> <p>(d) any other purpose that is of benefit to the community.</p> <p>(2) A purpose shall not be a charitable purpose unless it is of <b>public benefit</b>.</p>
<p>Israel  <a href="#">Income Tax Ordinance (1961)</a>  <a href="#">Value Added Tax Law 5736-1975</a></p>	<p><b>Income Tax Ordinance 1961, part 3 ch. 1 art. 1 s. 9 (b):</b> ... "<b>public institution</b>" – a body of at least seven persons most of whom are not related to each other, or an endowment, most of the trustees of which are not related to each other, which exists and functions for a public purpose, its property and income being only used for the public purpose, and which submits annual reports on its assets, income and expenses to the Assessing Officer's satisfaction according to regulations made for this purpose by the Minister of Finance; for this purpose – ...</p>

State	Definition of Charity
	<p>"public purpose" – a purpose concerned with religion, culture, education, science, health, social welfare or sport and any other purpose approved by the Minister of Finance as a public purpose; ...</p> <p><b>Value Added Tax Law 5736-1975, ch. 1 s. 1:</b> ... "non-profit organization" – (1) the State, a local authority or an association of towns;  (2) an incorporated or unincorporated body of persons, which does not carry on business for profit and which is not a financial institution;  (3) a body corporate established by virtue of Law and not registered as a company, cooperative society or partnership;  (4) a benefit fund exempt from income tax under section 9(2) of the Income Tax Ordinance;</p>
<p>Jamaica  <a href="#">The Charities Act, 2013</a></p>	<p><b>The Charities Act 2013, s3(1):</b> For the purposes of this Act, a charitable purpose is a purpose specified in the First Schedule that is for the public benefit</p> <p><b>The Charities Act 2013, s3(4):</b> In this Act, "public benefit" –</p> <p>(a) Includes a benefit which–</p> <ul style="list-style-type: none"> <li>(i) Is available to members of the public at large; or</li> <li>(ii) Is available to a section of the public ascertained by reference to some specified geographical area; but</li> </ul> <p>(b) Does not include a benefit, as described in paragraph (a) if the person for whom it is intended to be available are to be ascertained primarily by reference to their relationship with a particular person or body of persons, whether that relationship is one of blood, status, contract or otherwise.</p> <p><b>The Charities Act 2013, sch. 1: Charitable Purposes</b></p> <ol style="list-style-type: none"> <li>1. The prevention or relief of poverty.</li> <li>2. The advancement of education.</li> <li>3. The advancement of religion.</li> <li>4. The advancement of health or saving of lives.</li> <li>5. The advancement of good citizenship or community development.</li> <li>6. The advancement of the arts, culture, heritage, or science.</li> <li>7. The advancement of amateur sport.</li> <li>8. The advancement of human rights, conflict resolution, or reconciliation.</li> <li>9. The promotion of religious racial harmony or equality and diversity.</li> <li>10. The advancement of environmental protection or improvement.</li> <li>11. The relief of those in need because of youth, advanced age, ill-health, disability, financial hardship or other disadvantage (including temporary disadvantages such as the effects of a public disaster or public emergency).</li> <li>12. The promotion of the efficiency of the armed forces or the efficiency of the police force</li> <li>13. The advancement of animal welfare.</li> <li>14. A purpose specified by the Minister, by order, subject to negative resolution of the House of Representatives, as being analogous to a purpose mentioned in paragraphs 1 to 13.</li> </ol>
<p>Malta</p>	<p><b>Voluntary Organisations Act (Chapter 492 of the Laws of Malta) 2007, Part I, Preliminary:</b></p>

State	Definition of Charity
<p><a href="#">Voluntary Organisations Act (Chapter 492 of the Laws of Malta) 2007</a></p>	<p>"public purpose" or "public benefit" means a social purpose which:</p> <ul style="list-style-type: none"> <li>(a) promotes or serves the general public interest or the interest of a sector of the general public, whether directly or indirectly:</li> </ul> <p>Provided that:</p> <ul style="list-style-type: none"> <li>I. if, in the opinion of the Commissioner, the organisation does not reach sufficient levels of promotion or service to the general public interest or the interest of a sector of the general public, he may decide that this criteria is not satisfied; and</li> <li>II. such purpose is not to be presumed to exist only because the organisation has a "social purpose" as defined in this Act;</li> </ul> <ul style="list-style-type: none"> <li>(b) does not promote or serve any private benefit unless such benefit is solely limited and incidental or ancillary to the principal purpose and objectives of the organisation and as permitted by this Act and, or the Second Schedule to the Civil Code;</li> <li>(c) is of a continuing nature and shall apply throughout the existence of the voluntary organisation; and</li> <li>(d) does not include a political purpose;";</li> </ul> <p>"social purpose" means any charitable or philanthropic purpose, and without prejudice to the generality of the aforesaid, includes:</p> <ul style="list-style-type: none"> <li>(a) the advancement of education, including physical education and sports;</li> <li>(b) the advancement of religion;</li> <li>(c) the advancement of health;</li> <li>(d) social and community advancement, including the promotion of the ethical, educational and social aspects of a particular profession or trade, but which does not include the promotion of any private economic interest;</li> <li>(e) the advancement of culture, arts and national heritage;</li> <li>(f) the advancement of environmental protection and improvement, including the protection of animals;</li> <li>(g) the promotion of human rights, conflict resolution, democracy and reconciliation;</li> <li>(h) the promotion or protection of the interests of other public benefit organisations, including federations of such organisations;</li> <li>(i) the carrying out of activities intended to raise funds to support other public benefit, non-profit or voluntary organisations or to generally support the voluntary sector as a whole or parts of it through the application, grant, transfer or otherwise making available of funds so raised to them or for their benefit; or</li> <li>(j) any other purpose as may be prescribed by the Minister by means of regulations made by virtue of this Act;</li> <li>(k) shall not include a political purpose;</li> </ul>
<p>Mauritius</p> <p><a href="#">Foundations Act 2012</a></p>	<p><b>Foundations Act 2012, s7(1):</b> A Foundation shall be a charitable Foundation where it has as its exclusive purpose or object –</p> <ul style="list-style-type: none"> <li>(a) the relief of poverty;</li> <li>(b) the advancement of education;</li> <li>(c) the advancement of religion;</li> <li>(d) the protection of the environment;</li> </ul>

State	Definition of Charity
	<p>(e) the advancement of human rights and fundamental freedoms; or</p> <p>(f) any other purpose beneficial to the public in general.</p>
<p>New Zealand</p> <p><a href="#">Charities Act, 2005</a></p>	<p><a href="#">Meaning of charitable purpose and effect of ancillary non-charitable purpose</a></p> <p>(1) In this Act, unless the context otherwise requires, <b>charitable purpose</b> includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.</p> <p>(2) However, —</p> <p>(a) the purpose of a trust, society, or institution is a charitable purpose under this Act if the purpose would satisfy the public benefit requirement apart from the fact that the beneficiaries of the trust, or the members of the society or institution, are related by blood; and</p> <p>(b) a marae has a charitable purpose if the physical structure of the marae is situated on land that is a Maori reservation referred to in <a href="#">Te Ture Whenua Maori Act 1993 (Maori Land Act 1993)</a> and the funds of the marae are not used for a purpose other than —</p> <p>(i) the administration and maintenance of the land and of the physical structure of the marae;</p> <p>(ii) a purpose that is a charitable purpose other than under this paragraph.</p> <p>(2A) The promotion of amateur sport may be a charitable purpose if it is the means by which a charitable purpose referred to in subsection (1) is pursued.</p>
<p>Scotland</p> <p><a href="#">Charities and Trustee Investment (Scotland) Act 2005</a></p>	<p><a href="#">S. 7 The charity test</a></p> <p>(1) A body meets the charity test if—</p> <p>(a) its purposes consist only of one or more of the charitable purposes, and</p> <p>(b) it provides (or, in the case of an applicant, provides or intends to provide) public benefit in Scotland or elsewhere.</p> <p>(2) The charitable purposes are—</p> <p>(a) the prevention or relief of poverty,</p> <p>(b) the advancement of education,</p> <p>(c) the advancement of religion,</p> <p>(d) the advancement of health,</p> <p>(e) the saving of lives,</p> <p>(f) the advancement of citizenship or community development,</p> <p>(g) the advancement of the arts, heritage, culture or science,</p> <p>(h) the advancement of public participation in sport,</p> <p>(i) the provision of recreational facilities, or the organisation of recreational activities, with</p>



State	Definition of Charity
	<p>the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended,</p> <ul style="list-style-type: none"> <li>(j) the advancement of human rights, conflict resolution or reconciliation,</li> <li>(k) the promotion of religious or racial harmony,</li> <li>(l) the promotion of equality and diversity,</li> <li>(m) the advancement of environmental protection or improvement,</li> <li>(n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage,</li> <li>(o) the advancement of animal welfare,</li> <li>(p) any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.</li> </ul>
<p>South Africa</p> <p>There is no single piece of legislation dealing exclusively with charities. There is a <a href="#">Non-Profit Organization Act, 1997</a>, which mostly replaced <i>The Fund-raising Act, 1978</i>.</p> <p>More clarity on the definitions is offered in the <a href="#">Tax Exemption Guide for Public Benefit Organisations in South Africa</a>, produced by the South African Revenue Service.</p>	<p><a href="#">Non-Profit Organization Act, 1997</a></p> <p>“nonprofit organisation” means a trust, company or other association of 20 persons—</p> <ul style="list-style-type: none"> <li>(a) established for a public purpose; and</li> <li>(b) the income and property of which are not distributable to its members or office bearers except as reasonable compensation for services rendered</li> </ul> <p><a href="#">Tax Exemption Guide for Public Benefit Organisations in South Africa</a></p> <p>The term “public benefit activity” is defined and means any –</p> <ul style="list-style-type: none"> <li>● activity listed in Part I; and</li> <li>● any other activity determined by the Minister from time to time by notice in the Government Gazette to be of a benevolent nature, having regard to the needs, interests and well-being of the general public.</li> </ul> <p>The PBAs listed in Part I for purposes of section 30 are categorised as follows:</p> <ul style="list-style-type: none"> <li>● Welfare and Humanitarian (paragraph 1)</li> <li>● Health Care (paragraph 2)</li> <li>● Land and Housing (paragraph 3)</li> <li>● Education and Development (paragraph 4)</li> <li>● Religion, Belief or Philosophy (paragraph 5)</li> <li>● Cultural (paragraph 6)</li> <li>● Conservation, Environment and Animal Welfare (paragraph 7)</li> <li>● Research and Consumer Rights (paragraph 8)</li> <li>● Sport (paragraph 9)</li> <li>● Providing of Funds, Assets and Other Resources (paragraph 10)</li> <li>● General (paragraph 11)</li> </ul>
<p>United States</p> <p><a href="#">Internal Revenue Code</a></p>	<p><a href="#">Internal Revenue Code</a></p> <p>501 (c ) (3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the</p>

State	Definition of Charity
	prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

## Civil Law Jurisdictions

State	Definition of Charity
<p>Brazil</p> <p><a href="#">Law 13.151/2015</a></p> <p>Listing the purposes for which foundations may be organized to support the public benefit.<sup>85</sup></p>	<p><b>LAW No. 13.151, OF JULY 28, 2015:</b> The foundation may only be constituted for the purposes of:</p> <p>I – social assistance;</p> <p>II – culture, defense and conservation of historical and artistic heritage;</p> <p>III – education;</p> <p>IV – health;</p> <p>V – food and nutrition security;</p> <p>VI – defense, preservation and conservation of the environment and promotion of sustainable development;</p> <p>VII – scientific research, development of alternative technologies, modernization of management systems, production and dissemination of technical and scientific information and knowledge;</p> <p>VIII – promotion of ethics, citizenship, democracy and human rights;</p> <p>IX – religious activities</p>
<p>France</p> <p><a href="#">Law of July 1, 1901 relating to the contract of association</a></p> <p><a href="#">Law on Philanthropy Development</a></p> <p><a href="#">General Tax Code</a></p>	<p><b>Law of July 1, 1901 relating to the contract of association:</b> The association is the agreement by which two or more people pool, in a permanent way, their knowledge or their activity for a purpose other than to share profits. It is governed, as to its validity, by the general principles of law applicable to contracts and obligations.</p> <p><b>Law of July 23, 1987 on the Development of Philanthropy:</b> A foundation is the act by which one or more natural or legal persons decide to irrevocably allocate property, rights or resources to the realization of a work of general interest and not for profit...</p> <p><b>Article 200, s1(b) General Tax Code re Tax Benefits to Donors:</b> Works or organizations of general interest of a philanthropic, educational, scientific, social, humanitarian, sporting, family or cultural nature, or contributing to the enhancement of the artistic heritage, in particular through subscriptions opened to finance the purchase of objects or works of art intended to join the collections of a French museum accessible to the public, to the defence of the natural environment or to the dissemination of French culture, language and scientific knowledge ;</p>

<sup>85</sup> While charitable purpose in the Common Law is a phrase common across Common Law jurisdictions, this comparative analysis recognizes that the Civil Legal system does not necessarily utilize similar legal language. As such, the focus herein will be on analogous purposes around which charitable activity is organized.

State	Definition of Charity
<p>Germany</p> <p><a href="#">Law on Associations (Vereinsgesetz) of 1964</a></p> <p><a href="#">The Fiscal Code (Abgabenordnung)</a></p>	<p><b>Law on Associations (Vereinsgesetz) of 1964, s. 1 para. 2:</b> (1) An association within the meaning of this Act shall be any association, irrespective of its legal form, to which a majority of natural persons or legal entities have voluntarily united for a longer period of time for a common purpose and have subjected themselves to organized decision-making.</p> <p>(2) Associations within the meaning of this Act are not:</p> <ol style="list-style-type: none"> <li>1. Political parties within the meaning of Article 21 of the Basic Law,</li> <li>2. Parliamentary groups of the German Bundestag and the parliaments of the Länder.</li> </ol> <p><b>The Fiscal Code, s.52:</b> (1) A corporation shall serve public-benefit purposes if its activity is dedicated to the altruistic advancement of the general public in material, spiritual or moral respects. It shall not be deemed an advancement of the general public if the group of persons benefiting from such advancement is circumscribed, for instance by membership of a family or the workforce of an enterprise, or can never be other than small as a result of its definition, especially in terms of geographical or professional attributes. Advancement of the general public may not be contended merely because a corporation allocates its funds to a public-law entity.</p> <p>(2) Subject to the provisions of subsection (1) above, the following shall be recognised as advancement of the general public:</p> <ol style="list-style-type: none"> <li>1. the advancement of science and research;</li> <li>2. the advancement of religion;</li> <li>3. the advancement of public health and of public hygiene, in particular the prevention and control of communicable diseases, also by hospitals within the meaning of section 67, and of epizootic diseases;</li> <li>4. the advancement of assistance to young and old people;</li> <li>5. the advancement of art and culture;</li> <li>6. the advancement of the protection and preservation of historical monuments;</li> <li>7. the advancement of upbringing, adult education and vocational training including assistance for students;</li> <li>8. the advancement of nature conservation and of Landscape management within the meaning of the Federal Nature Conservation Act and the nature conservation acts of the Länder, of environmental protection, of coastal defence and of flood defence;</li> <li>9. the advancement of public welfare, in particular of the purposes of the officially recognised voluntary welfare associations (section 23 of the VAT Implementing Ordinance), their subsidiary associations and their affiliated organisations and institutions;</li> <li>10. the advancement of relief for people persecuted on political, racial or religious grounds, for refugees, expellees, ethnic German repatriates who migrated to the Germany between 1950 and 1 January 1993, ethnic German repatriates migrating to Germany after 1 January 1993, war victims, dependents of deceased war victims, war disabled and prisoners of war, civilian war disabled and people with disabilities as well as relief for victims of crime; the advancement of the commemoration of persecutees, war and disaster victims; the advancement of the tracing service for missing persons;</li> <li>11. the advancement of life saving;</li> <li>12. the advancement of fire prevention, occupational health and safety, disaster control and civil defence as well as of accident prevention;</li> </ol>

State	Definition of Charity
	<p>13. the advancement of internationalism, of tolerance in all areas of culture and of the concept of international understanding;</p> <p>14. the advancement of the protection of animals;</p> <p>15. the advancement of development cooperation;</p> <p>16. the advancement of consumer counselling and consumer protection;</p> <p>17. the advancement of welfare for prisoners and former prisoners;</p> <p>18. the advancement of equal rights for women and men;</p> <p>19. the advancement of the protection of marriage and the family;</p> <p>20. the advancement of crime prevention;</p> <p>21. the advancement of sport (chess shall be considered to be a sport);</p> <p>22. the advancement of local heritage and traditions;</p> <p>23. the advancement of animal husbandry, of plant cultivation, of allotment gardening, of traditional customs including regional carnival, of the welfare of servicemen and reservists, of amateur radio, of aeromodelling and of dog sports;</p> <p>24. the general advancement of democratic government in the territory of application of this Code; this shall not include endeavours which are solely in pursuit of specific individual interests of a civic nature or which are restricted to the local-government level;</p> <p>25. the advancement of active citizenship in support of public-benefit, charitable or religious purposes.</p> <p>To the extent that the purpose pursued by the corporation does not fall under the first sentence above, but the general public is correspondingly advanced altruistically in material, spiritual or moral aspects, this purpose may be declared as being for the public benefit. The highest revenue authority of each Land shall designate a revenue authority within the meaning of the Fiscal Administration Act which is responsible for decisions pursuant to the second sentence above.</p> <p><b>The Fiscal Code, s.53:</b> A corporation shall be deemed to serve charitable purposes if its activity is dedicated to altruistic support for persons</p> <ol style="list-style-type: none"> <li>1. who on account of their physical, mental or emotional state are dependent upon the assistance of others, or</li> <li>2. whose means are not greater than four times the standard rate of social assistance as defined in section 28 of the Social Code, Book XII; in the case of a single person or single parent, five times the standard rate shall apply instead of four times. This shall not apply to persons whose assets are sufficient to effect a lasting improvement in their upkeep and who may reasonably be expected to use those assets for such purpose. In the case of persons whose financial circumstances have been transformed by special reasons into a state of need, the means or assets may exceed the stated limits. Means for the purposes of this provision shall be <ol style="list-style-type: none"> <li>a) income as defined in section 2(1) of the Income Tax Act, and</li> <li>b) other means intended or suitable for the provision of subsistence</li> </ol> </li> </ol>

State	Definition of Charity
	<p>accruing to all household members. Maintenance payments, both paid and received, shall also be taken into account. As defined here, the need for economic assistance shall be deemed proven for persons who receive benefits pursuant to the Social Code, Book II or XII; the Housing Benefits Act; section 27a of the Federal War Victims' Relief Act; or section 6a of the Federal Child Benefits Act. The corporation may provide proof on the basis of the respective benefits notice applicable for the period of support or on the basis of a confirmation from the benefits provider. The requirement to provide proof of the need for economic assistance may be waived upon application by the corporation if, based on the particular type of support provided, it can be assured that support is provided only to persons in need of economic assistance as defined here; section 60a(3) to (5) shall apply accordingly with regard to notifications waiving the requirement to provide proof.</p> <p><b>The Fiscal Code, s. 54:</b> (1) A corporation shall serve religious purposes if its activity is dedicated to the altruistic advancement of a religious community which is a public-law entity.</p> <p>(2) These purposes shall include, in particular, building, decorating and maintaining houses of worship and religious community centres, conducting religious services, training priests, providing religious teaching, conducting burials and safeguarding the remembrance of the dead, also administering church assets, remunerating members of the clergy, church officials and servants of the church, and providing old-age and disability pensions for these persons and their dependants.</p>
<p>Italy</p> <p><a href="#">The Third Sector Code</a></p>	<p><b>LEGISLATIVE DECREE 3 July 2017, n. 117 (The Third Sector Code), Art.4 (1):</b> Third sector entities are voluntary organizations, social promotion associations, philanthropic entities, social enterprises, including social cooperatives, associative networks, mutual aid societies, associations, recognized or unrecognized recognized, foundations and other entities of a private nature other than companies established for the pursuit, on a non-profit basis of profit, of civic, solidarity and social utility purposes through the performance of one or more activities of general interest in the form of voluntary action or free disbursement of money, goods or services, or mutuality or production or exchange of goods or services, and registered in the national register of the Third Sector</p> <p><b>LEGISLATIVE DECREE 3 July 2017, n. 117 (The Third Sector Code), Art. 5:</b> 1. Third sector entities, other than social enterprises including social cooperatives, carry out exclusively or principal one or more activities of general interest for the pursuit, on a non-profit basis, of civic purposes, solidarity and social utility. They are considered to be of general interest, if carried out in accordance with the particular rules that governing their exercise, activities having as their object:</p> <ul style="list-style-type: none"> <li>(a) social interventions and services within the meaning of Article 1, paragraphs 1 and 2, of Law No. 328 of November 8, 2000, as amended, and interventions, services and benefits under Law February 5 1992, No. 104, and Law No. 112 of June 22, 2016, and subsequent amendments;</li> <li>(b) health interventions and services;</li> <li>(c) social and health benefits referred to in the Decree of the President of the Council of Ministers February 14, 2001, published in the Official Gazette No. 129 of June 6, 2001, and subsequent amendments;</li> </ul>

State	Definition of Charity
	<p>(d) education, education and vocational training, pursuant to of Law No. 53 of March 28, 2003, as amended, as well as cultural activities of social interest with an educational purpose;</p> <p>(e) interventions and services aimed at safeguarding and improvement of the conditions of the environment and the use prudent and rational use of natural resources, excluding of the activity, habitually exercised, of collection and recycling of urban, special and hazardous waste;</p> <p>(f) interventions for the protection and enhancement of cultural heritage and landscape, pursuant to Legislative Decree 22 January 2004, no. 42, as amended;</p> <p>(g) undergraduate and postgraduate education;</p> <p>(h) scientific research of special social interest;</p> <p>(i) organization and management of cultural, artistic or recreational activities of social interest, including activities, including publishing, of promotion and dissemination of the culture and practice of voluntary work and activities of general interest referred to in this article;</p> <p>(j) community-based radio broadcasting, pursuant to Article 16, paragraph 5, of Law No. 223 of August 6, 1990, as amended. subsequent amendments;</p> <p>(k) organization and management of tourist activities of social, cultural or religious;</p> <p>(l) out-of-school training, aimed at the prevention of school dropout and educational and training success, the prevention of bullying and the fight against poverty educational;</p> <p>(m) instrumental services to third sector entities rendered by entities composed of not less than seventy percent of entities of the Third sector;</p> <p>n) development cooperation, pursuant to Law no. 11 August 2014, No. 125, as amended;</p> <p>(o) commercial, productive, educational and information, promotion, representation, licensing licensing of certification marks, carried out within or for the benefit of fair trade supply chains, to be understood as a relationship commercial relationship with a producer operating in an economically disadvantaged, located, as a rule, in a developing country, on the basis of a long-term agreement aimed at promoting the producer's access to the market and providing for the payment of a fair price, development measures in favor of the producer, and the obligation of the producer to ensure safe working conditions, in compliance with national and international regulations, so as to enable the workers to lead a free and dignified existence, and to respect trade union rights, as well as strive for the fight against child labor;</p>

State	Definition of Charity
	<p>(p) services aimed at the integration or reintegration into the labor market of workers and persons referred to in Article 2, paragraph 4, of the legislative decree revising the regulations on social enterprise, referred to in Article 1, paragraph 2, letter c), of Law No. 106 of June 6, 2016;</p> <p>(q) social housing, pursuant to the Decree of the Ministry of Infrastructure of April 22, 2008, as amended, as well as any other activity of a temporary residential nature aimed at meeting social, health, cultural, educational or labor;</p> <p>(r) humanitarian reception and social integration of migrants;</p> <p>(s) social agriculture, pursuant to Article 2 of Law 18 August 2015, No. 141, as amended;</p> <p>(t) organization and management of sports activities amateur sports;</p> <p>(u) charity, distance support, free transfer of food or products referred to in Law No. 166 of August 19, 2016, as amended, and as amended, or disbursement of money, goods or services to support of disadvantaged persons or activities of general interest in accordance with this article;</p> <p>(v) promotion of the culture of legality, peace among peoples, nonviolence and unarmed defense;</p> <p>(w) promotion and protection of human, civil, social and political, as well as the rights of consumers and users of the activities of general interest referred to in this article, promotion of equal opportunities and initiatives of mutual aid mutual aid, including the time banks referred to in Article 27 of the Law No. 53 of March 8, 2000, and the solidarity purchasing groups referred to in Article 1, paragraph 266, of Law No. 244 of December 24, 2007;</p> <p>(x) care of international adoption procedures pursuant to Law No. 184 of May 4, 1983;</p> <p>(y) civil protection pursuant to Law No. 24 February 1992, no. 225, as amended;</p> <p>(z) redevelopment of unused public property or property confiscated from organized crime.</p> <p>2. Taking into account the civic, solidaristic and social utility referred to in Article 1, paragraph 1, of Law June 6 2016, No. 106, as well as the purposes and principles set forth in Articles 1 and 2 of this Code, the list of activities of general interest referred to in paragraph 1 may be updated by Decree of the President of the Council of Ministers to be adopted pursuant to Article 17, paragraph 3, of Law No. 400 of August 23, 1988 upon the proposal of the Minister of Labor and Social Policy, in concert with the Minister of Economy and Finance, after agreement in the Unified Conference, having acquired the opinion of the competent parliamentary commissions, which shall express their opinion within thirty days from the date of transmission of the decree, after which the latter can still be adopted.</p>

State	Definition of Charity
<p>Japan</p> <p><a href="#">Law to Promote Specified Nonprofit Activities (1998)</a></p>	<p><b>Law to Promote Specified Nonprofit Activities (1998), ch. I art. 2 s. 2 :</b> “Specified nonprofit corporation” under this law shall mean an organization that has as its main purpose the implementation of specified nonprofit activities, that conforms with each of the following items, and that is a corporation established under the provisions of this law:</p> <ul style="list-style-type: none"> <li>i. an organization that is covered by both of the following items and is not for the purpose of generating profits: a. provisions regarding acquisition and loss of qualifications for membership are not unreasonable; b. the number of officers receiving remuneration total no more than one-third of the total number of officers;</li> <li>ii. an organization whose activities conform with each of the following items: <ul style="list-style-type: none"> <li>a. the activities are not for the purpose of propagating religious teachings, performing ceremonies, or educating or fostering believers;</li> <li>b. the activities are not for the purpose of promoting, supporting, or opposing a political principle;</li> <li>c. the activities are not for the purpose of recommending, supporting, or opposing a candidate (including a prospective candidate) for a public office (meaning a public office as specified in Article 3 of the Public Offices Election Law [Law No. 100 of 1950]; the same shall apply hereafter), a person holding a public office, or a political party.</li> </ul> </li> </ul> <p><b>Law to Promote Specified Nonprofit Activities (1998), ch. I art. 2 s. 1:</b> “Specified nonprofit activities” under this law shall mean those activities specified in [below], which are for the purpose of contributing to advancement of the interests of many and unspecified persons.</p> <ol style="list-style-type: none"> <li>1. Promotion of health, medical treatment, or welfare</li> <li>2. Promotion of social education</li> <li>3. Promotion of community development</li> <li>4. Promotion of science, culture, the arts, or sports</li> <li>5. Conservation of the environment</li> <li>6. Disaster relief</li> <li>7. Promotion of community safety</li> <li>8. Protection of human rights or promotion of peace</li> <li>9. International cooperation</li> <li>10. Promotion of a society with equal gender participation</li> <li>11. Sound nurturing of youth</li> <li>12. Development of information technology</li> <li>13. Promotion of science and technology</li> <li>14. Promotion of economic activities</li> <li>15. Development of vocational expertise or expansion of employment opportunities</li> <li>16. Protection of consumers</li> <li>17. Administration of organizations that engage in the above activities or provision of liaison, advice, or assistance in connection with the above activities</li> </ol>
<p>Russia</p>	<p><b>Federal Law No. 7-Fz Of January 12, 1996 On Non-Commercial Organizations (NCOs Law), ch. I art. 2 (1):</b> A non-commercial organization is one not having profit-making as the main objective of its activity and not distributing the earned profit among the participants.</p>



State	Definition of Charity
<p><a href="#">Federal Law No. 7-Fz Of January 12, 1996 On Non-Commercial Organizations</a></p> <p>(further definitions of types of charities at para. 6) <a href="#">Civil Code of the Russian Federation, Part I, Federal Law No. 51-FZ, November 30, 1994</a></p> <p><a href="#">Federal Law No. 135-FZ, "On Charitable Activities and Volunteering," August 11, 1995</a></p>	<p><b>Federal Law No. 7-Fz Of January 12, 1996 On Non-Commercial Organizations, ch. I art. 2(2):</b> Non-commercial organizations may be created for achieving social, charitable, cultural, educational, scientific and managerial goals, for the purposes of protecting the health of citizens, developing the physical culture and sports, satisfying the spiritual and other nonmaterial requirements of citizens, protecting the rights and legitimate interests of citizens and organizations, settling disputes and conflicts, rendering legal aid, and also for any other purposes directed towards the achievement of public weal.</p> <p><b>Federal Law No. 135-FZ, "On Charitable Activities and Volunteering," August 11, 1995, s. I art. 1:</b> Charitable activities shall be interpreted as voluntary activities of the citizens and of the legal entities involved in altruistic (unpaid or payable on privileged terms) transfers to citizens or to legal entities of property, including monetary means, in altruistic works, services or other support.</p> <p><b>Federal Law No. 135-FZ, "On Charitable Activities and Volunteering," August 11, 1995, s. I art. 2.1:</b> Charitable activities shall be aimed at:</p> <ul style="list-style-type: none"> <li>- the social support and protection of citizens, including the improvement of the material situation of those of scanty means and the social rehabilitation of the unemployed, disabled and other persons, who, by force of their physical or intellectual characteristics and of other circumstances, are unable to independently realize their rights and legal interests;</li> <li>- preparing the population to overcome the aftermath of natural calamities of ecological, industrial, or other kinds of catastrophes and to prevent accidents;</li> <li>- rendering assistance to the victims of natural calamities, of ecological, industrial and other kinds of catastrophes and of social, national and religious conflicts, and to victims of reprisals, to refugees and to forced re-settlers.</li> <li>- assistance in strengthening the peace, friendship and comity among peoples, and in preventing social, national and religious conflicts;</li> <li>- assistance in building up the authority and the role of the family in society;</li> <li>- assistance in protecting maternity, childhood and fatherhood;</li> <li>- assistance in activities in the spheres of education, science and culture, of art and enlightenment, and in the intellectual development of the personality;</li> <li>- assistance in the activities, involved in the prevention of diseases and in the health protection of citizens, as well as in the propaganda of the healthy way of life and the improvement of the citizens' moral and psychological attitudes;</li> <li>- assistance in activities in the sphere of physical culture and of organized sports;</li> <li>- protection of the environment and wildlife;</li> <li>- protection and a proper maintenance of the buildings, objects and territories of the historical, cult, cultural or natural use value, and of the burial sites.</li> </ul>

## Appendix B: Provisional Table of Provincial Legislation Addressing Charities

Province	Legislation	Description of Legislation
Alberta	<a href="#">Calgary Foundation Act, SA 2000, c. 25</a>	This AB statute creates the Calgary Foundation, and lists as its objects “3. The objects of the Foundation are to use the funds entrusted to it for such educational, recreational, cultural and benevolent purposes as are charitable and which will, in the sole discretion of the Board, most effectively assist, encourage and promote the well-being of mankind, primarily the inhabitants of the Calgary district.”
	<a href="#">Companies Act, RSA 2000, c C-21</a> (Part 9)	The Act sets out legal rules governing non-profit companies in relation to the following: incorporation and organization; alternation of constitution; membership and shares; management and administration; provisions relating to special limited companies; provisions applying to companies with objectives other than the acquisition of gain and dissolution.  Unlike the Societies Act, a non-profit incorporated under the Companies Act can engage in business activities provided the proceeds are used to promote its objects.
	<a href="#">Charitable Fund-Raising Act, RSA 2000, c C-9</a>	Sets out the Standards of Practice relating to fundraising carried out by charitable organizations and fund-raising businesses. The purpose of these rules is to protect potential donors from false and misleading requests for donations.
	<a href="#">Charitable Donation of Food Act, RSA 2000, c C-8</a>	Purpose is to limit the liability of those who donate food or distribute donated food – for example they cannot be held liable for injury if food is rotten.
	<a href="#">Edmonton Community Foundation Act, SA 1971, ch. 117</a>	The statute lists as the objects of the foundation: <ul style="list-style-type: none"> <li>a. to accept, hold, use and administer property and funds for charitable, recreational, educational, athletic, cultural, historical and other purposes which may be for the benefit or advantage of members of the Edmonton Community ;</li> <li>b. to use funds entrusted to it for the acquisition and development of historical and cultural objects and endeavours designed to enrich the cultural heritage and cultural well being of the inhabitants of the Edmonton Community and to promote, encourage, co-ordinate and assist in the orderly, artistic or cultural development of the Edmonton Community;</li> <li>c. to hold title to lands, buildings, property and funds acquired or designated for the use of any organization or group in the community which may be for the benefit or advantage of groups or categories of persons who are members of the Edmonton Community;</li> <li>d. to accept, hold, use and administer funds and property for the encouragement and support of any cultural activity such as symphony, opera, ballet, drama, singing, dancing, art, sculpture, theatre, handicrafts, talents, skills or other activities that may contribute to the quality of life in the Edmon-ton Community;</li> <li>e. to accept, hold, use and administer donations and gifts intended to promote the arts, music, theatre, religion, and any other worthwhile activity that may benefit any group in the Edmonton Community;</li> </ul>

		<ul style="list-style-type: none"> <li>f. to use funds entrusted to it for such purposes as will, in the sole discretion of the Board, most effectively encourage and promote recreation and sporting activities which may prove beneficial to the inhabitants of the Edmonton Community;</li> <li>g. to accept, hold, use and administer donations and gifts intended to promote and assist any worthwhile community endeavour and any activity that may improve the quality of life for any group or class of citizens in the Edmonton Community ;</li> <li>h. to accept, hold, use and administer funds and property for any purpose designated by the donor which the Board deems worthy;</li> <li>i. to promote and encourage gifts, donations and bequests of funds and real and personal property, both from private agencies, religious organizations, service clubs, community bodies, corporations and property as well as properties which are made available to private agencies either in part or in total by Government or City grants, whether such grants be in cash, land or buildings;</li> <li>j. to use the funds entrusted to it for such purposes as will in the sole discretion of the Board most effectively provide care for needy men, women and children, and in particular the sick, aged, destitute and helpless;</li> <li>k. to promote educational advancement in scientific or medical research for the increase of human knowledge and the alleviation of human suffering;</li> <li>l. to better underprivileged or needy persons; and</li> <li>m. to provide for such other services as may in the discretion of the Board appear to contribute to the mental, moral, cultural and physical improvement of the inhabitants of the Edmonton Community</li> </ul>
	<a href="#">Gaming, Liquor &amp; Cannabis Legislation,</a>	<p>s.20(1)(b) must satisfy the board that the proceeds from the gaming activity will be used for a charitable or religious object or purpose approved by the board.</p> <p>23(1) In this section, “bingo association” means an association of charitable or religious organizations formed for the purpose of conducting gaming activities.</p>
	<a href="#">Religious Societies’ Land Act</a>	Established a mechanism by which a religious society or congregation may hold land (not in excess of 320 acres) for the site of a church building or burial ground. Permits the incorporation of church congregations for the purposes of owning land. It also ensures dealings with the land held by a religious society are done in accordance with the wishes of the congregation or religious society.
	<a href="#">Societies Act</a>	Provides legal authority for incorporation of societies for “any benevolent, philanthropic, charitable, providence, scientific, artistic, literary, social, educational, agricultural, sporting or other useful purpose, but not for the purpose of carrying on any trade or business.” Many cases decided under this Act involve interpretation of society by-laws.
British Columbia	<a href="#">Charitable Purposes Preservation Act, SBC 2004, c 59</a>	Act was intended to address uncertainty surrounding the protection of donations that have been given for a specific charitable purpose, and seeks to prevent such donations from being used for objects other than those intended by the donor.

		The CPA arose in the context of cases involving the Christian Brothers of Ireland in Canada who were found guilty of criminal and civil charges. There was a question regarding whether the schools owned by the charity, purchased using donations, could be used to satisfy the claims of the tort-victims. ONCA held that all assets of a charity, whether they are owned beneficially by a charity or they are held by the charity pursuant to a special purpose charitable trust, are available to satisfy claims – BC responded legislatively to this with the CPA.
	<a href="#">Food Donor Encouragement Act, SBC 1997, c 8</a>	Protects corporations and their directors, agents, and employees from liability when donating food or distributing donated food.
	<a href="#">Gaming Control Act</a>	"charitable or religious organization" has the same meaning as it has in <a href="#">section 207</a> of the <a href="#">Criminal Code</a> ;
	<a href="#">Societies Act, SBC 2015, c 18</a>	Governs how societies (not-for-profit corporations) are created and run in B.C. Includes regulations for the society's constitution, bylaws, director structure, and whether the society has authorized becoming a member funded-society.
	<a href="#">Trustee (Church Property) Act, RSBC 1996, c 465</a>	The Act provides procedures by which a religious society or congregation of Christians may appoint trustees to hold, mortgage, lease, acquire, and deal with land on behalf of the religious society or congregation. Under the Act, the trustees are accountable to the bodies they represent, and have the power to sue and be sued.
	<a href="#">Vancouver Foundation Act, SBC 2000, c. 32</a>	The BC statute deems as charitable the following objects of the Vancouver Foundation <ul style="list-style-type: none"> <li>a. to provide care for needy men, women and children, and in particular the sick, aged, destitute and helpless;</li> <li>b. to promote educational advancement and scientific or medical research for the increase of human knowledge and the alleviation of human suffering;</li> <li>c. to better underprivileged or delinquent persons;</li> <li>d. to promote recreational activities and the conservation of human, natural and heritage resources;</li> <li>e. to provide for any other charitable purposes that the board considers contribute to the mental, moral, cultural and physical improvement of the inhabitants of British Columbia.</li> </ul>
Manitoba	<a href="#">Charities Endorsement Act</a> (Repealed in 2013)	<i>The Charities Endorsement Act</i> had previously provided that no person or organization could solicit donations for a charitable purpose unless they were authorized by the Manitoba government. This required most charities fundraising in Manitoba to register with the Manitoba government (subject to certain exemptions). It was also necessary to file copies of any agreements with promotional agencies conducting fundraising on a charity's behalf. With the repeal of the Act, provincial registration in Manitoba will no longer be required. ( <a href="#">Source</a> )
	<a href="#">The Food Donations Act, CCSM c F135</a>	Protects donors from liability associated with the donation of food in Manitoba.
	<a href="#">The Religious Societies' Lands Act, CCSM c R70</a>	Deals with the use and disposition of lands and cemeteries belonging to churches for religious purposes.
	<a href="#">Winnipeg Foundation Act, S.M. 2004, c. 45.</a>	The foundation's objects are as follows:

		<p>4(1) The objects of the Foundation are to receive donations and to establish and manage one or more funds to be used for the following charitable purposes:</p> <ul style="list-style-type: none"> <li>(a) providing assistance for needy persons, and in particular for the sick, elderly and impoverished;</li> <li>(b) increasing human knowledge and alleviating human suffering through educational advancement and scientific or medical research;</li> <li>(c) promoting the conservation of human, natural and heritage resources;</li> <li>(d) promoting a philanthropic climate within the community;</li> <li>(e) any other charitable, educational or cultural purposes that, in the opinion of the board, are desirable.</li> </ul>
New Brunswick	<a href="#">Charitable Donation of Food Act, RSNB 2011, c 124</a>	Protects donors from liability associated with the donation of food.
Newfoundland & Labrador	<a href="#">Donation of Food Act, SNL 1997, c D-26.1</a>	Protects donors from liability associated with the donation of food.
	Lottery Licensing Regulations, NLR 1/02	<p>s.2(b) "charitable or religious object or purpose" means an object or purpose for</p> <ul style="list-style-type: none"> <li>(i) the relief of poverty,</li> <li>(ii) the advancement of education,</li> <li>(iii) the advancement of religion, or</li> <li>(iv) other purposes beneficial to the community;</li> </ul> <p>(c) "charitable or religious organization" means an organization having solely charitable or religious objects or purposes and which performs services solely for public good or welfare without profit or pecuniary gain to its members;</p>
Northwest Territories	<a href="#">Societies Act, RSNWT (Nu) 1988, c S-11</a>	Non-profits are able to incorporate under the Act. As a registered legal entity, an incorporated society can own property and enter into contracts, and may also be eligible to register as a charity with the CRA, qualify for government grants, or apply for a lottery license. The Act also requires a society to hold an annual general meeting, and to file financial statements and lists of directors with the Registrar of Societies.
Nova Scotia	<a href="#">Religious Congregations and Societies Act, RSNS 1989, c 395</a>	Provides for ownership of land for "any number of persons not less than twenty, capable of contracting, desire to form themselves into a congregation of Christians for the public worship of God" and meet the requirements of congregation as set out in the Act.
	<a href="#">Societies Act</a>	"A society may be incorporated under this Act to promote any benevolent, philanthropic, patriotic, religious, charitable, artistic, literary, educational, social, professional, recreations or sporting or any other useful object, but not for the purpose of carrying on any trade, industry or business."
Nunavut	<a href="#">Societies Act, RSNWT (Nu) 1988, c S-11</a>	Regulates the incorporation, by-laws, powers, members, duties and more of societies (non-profit organizations) in Nunavut. Note: not all Societies are Registered Charities under the <i>ITA</i> ; the onus is on the society to register as a charity with the CRA.
Ontario	<a href="#">Not-for-Profit Corporations Act, 2010,</a>	Provides Ontario not-for-profit corporations, including charitable corporations, with a modern legal framework. It sets out how not-for-profit

	<a href="#">S.O. 2010, c. 15</a> (in force as of October 19, 2021 with a 3-year transition period for corporations previously governed under the <a href="#">Corporations Act</a> ).	corporations are created, governed and dissolved. Note: not all not-for-profit corporations are charitable corporations.
	<a href="#">Charities Accounting Act, R.S.O. 1990, c. C.10</a>	Allows the Attorney General, on the advice of the Public Guardian and Trustee of Ontario, to make Regulations regarding charities.
	<a href="#">Charitable Gifts Act, RSO 1990, c C.8</a> (Repealed in 2009)	<i>Charitable Gifts Act (CGA)</i> prevented charities from owning more than 10% of any business; Any gift of shares above 10% had to be sold within 7 years. The CGA was repealed in 2009, at the same time, Section 4.1 was added to the <i>Charities Accounting Act</i> to allow the OPGT to request documentation with respect to businesses in which the charity has a 'substantial interest'.
	<a href="#">Donation of Food Act, 1994, SO 1994, c 19</a>	Limits personal liability of persons or corporations who donate or distribute food in Ontario.
	<a href="#">Kitchener-Waterloo Foundation Act, SO 2003, c Pr6</a>	The Act states the object of the foundation as follows: <b>4.</b> (1) The objects of the Foundation are to improve the quality of life for the inhabitants of the Kitchener Waterloo district by receiving, maintaining, managing, controlling and using donations for charitable purposes.
	<a href="#">Ministry of Community and Social Services Act, RSO 1990, c M.20</a>	Empowers the Minister of Community and Social Services to operate and manage charities in Ontario, (ss 13-14).
	<a href="#">Religious Organizations' Lands Act, RSO 1990, c R.23</a>	Regulates the acquisition and holding of land, trustee powers regarding land, conveyances and more of religious charitable organizations in ON.
	<a href="#">Trustee Act, RSO 1990, c T.23</a>	General legislation for trustees within ON, several sections relating to court orders regarding powers for trustees for charities (ss 14-15).
	<a href="#">Public Guardian and Trustee Act, R.S.O. 1990, c. P.51</a>	Empowers the Public Guardian and Trustee of ON to accept and administer any charitable or public trust (s 12).
Prince Edward Island	<a href="#">Charities Act, repealed by 2020 C.58</a> (Repealed in 2020)	This Act was initially enacted to protect the public from fraudulent charities, it was repealed and not replaced because "The Act is no longer being used and is not necessary as a tool to protect the public." <sup>86</sup>
	<a href="#">Donation of Food Act, RSPEI 1988, c D-13.1</a>	Limits personal liability of persons or corporations who donate or distribute food.
	<a href="#">Trustee Act, RSPEI 1988, c T-8</a>	General legislation for trustees within PEI, several sections relate specifically powers exercisable by trustee of charity or society (s 22).
Quebec	<a href="#">Act respecting the Québec sales tax, CQLR c T-0.1</a>	Act setting out sales tax within QC, including for charitable organizations (Division V.1).
	<a href="#">Companies Act, CQLR c C-38</a>	This Act contains some basic regulations for not-for-profit corporations in QC (s 218).
	<a href="#">Act respecting assistance for the development of cooperatives and non-</a>	The objective of this Act is to foster the creation, maintenance and development of cooperatives and non-profit legal persons by granting financial or technical assistance. Applies to non-profit legal person

<sup>86</sup> <https://docs.assembly.pe.ca/download/dms?objectId=da9190c1-a62a-40f0-84e4-3da000c88ae4&fileName=bill-56.pdf>

	<a href="#">profit legal persons, CQLR c A-12.1</a>	constituted under Part III of the <a href="#">Companies Act (chapter C-38)</a> . These corporations are not necessarily registered charities under the <i>ITA</i> .
	<a href="#">Act respecting lotteries, publicity contests and amusement machines, CQLR c L-6</a>	Regulation of lotteries, publicity contests and amusement machines in QC, which could have some connection to charities.  <b>49.0.1.</b> Before issuing a bingo licence, the board must ensure that the charitable or religious purposes pursued by the applicant are consistent with those defined by regulation and that the activities for which a licence is applied for are compatible with the applicant’s constitutive charter or other documents evidencing its existence.
	<a href="#">Regulation respecting bingo, CQLR c L-6, r 4</a>	“charitable purposes’ means objects or purposes intended to relieve suffering or poverty and those intended to promote education or achieve any other objective favourable to the population in the fields of culture, the arts, sports or community interests; ( <i>fins charitables</i> )
	<a href="#">S-13.1, r. 1 - By-law respecting bingo</a>	2. Only a charitable or religious organization referred to in paragraph <i>b</i> of subsection 1 of section 207 of the Criminal Code (R.S.C. 1985, c. C-46), holder of a bingo licence issued by the Régie des alcools des courses et des jeux and to which the Company awards a retailer’s number can offer Bingo
	<a href="#">Religious Corporations Act, CQLR c C-71</a>	Regulates the incorporation of private incorporations whose objects are to organize, administer and maintain a church, congregation or work of which they are members and whose purposes are charity, teaching, education, religion or welfare.
	<a href="#">Taxation Act, CQLR c L-3</a>	Regulates QC taxation, including taxation of charities (ss 985.1-985.23). Sets out the requirements for charitable organizations, retains the power of the Minister to revoke charitable status, sets out disbursement quotas and information return requirements.
Saskatchewan	<a href="#">The Charitable Fund-raising Businesses Act, SS 2002, c C-6.2</a>	Regulates licensing, solicitation, documentation, investigations and appeals of charitable fund-raising businesses in SK.
	<a href="#">The Donation of Food Act, 1995, SS 1995, c D-32.01</a>	Limits personal liability of persons or corporations who donate or distribute food.
	<a href="#">Religious Societies Land Act, RSS 1978, c R-19</a>	No direct reference to charities, but some charitable organizations might fall within the definition of “religious societies.”
	<a href="#">Saskatoon Foundation Act, SS 1970(1), c. 93</a>	The 1970 statute founding the Saskatoon Foundation has since been amended, in part by changing the name to the Saskatoon Community Foundation in 2005, with its objects amended in 2021 to read as follows:  “5(1) The purposes of the Foundation are: (a) to receive money and accept gifts and donations and to invest or manage them to create a fund or funds, (such as endowment and flow-through funds) and use the income derived or amounts collected for grants to qualified donees as defined in subsection 149.1(1) of the Income Tax Act (Canada) for the mental, moral and physical improvement of the inhabitants of the City of Saskatoon and area; and  (b) to improve the efficiency and effectiveness of registered charities by receiving and managing, including investing and administering, funds for these charities”.
	<a href="#">The Trustee Act, 2009, SS 2009, c T-23.01</a>	General legislation for trustees within SK, several sections relating to court orders regarding charities and charitable purpose trusts (ss 22, 50).

