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UNIFORM LAW CONFERENCE OF CANADA

**CHARITIES PROJECT – DEFINITION OF CHARITY
WORKING GROUP MEETING OF MAY 26, 2023
SUMMARY NOTES**

**Presented by
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[1] Since the previous meeting of the ULCC Working Group on the Definition of Charity (“Working Group”), there was a meeting updating the Canadian Bar Association (CBA) on the status of the Working Group’s discussions. The upshot of the CBA meeting discussion was apparently that any attempt to redefine charity would have to go through the CBA Tax Section, which would be time-consuming.

[2] The Working Group also discussed the difficulties that would likely be encountered with trying to bring the Department of Finance onside since a redefinition of charity could have significant implications from the *Income Tax Act* perspective. The Working Group noted the likelihood that the Department of Finance would be resistant to a redefinition of charity that significantly expanded on the existing definition of charity. The Working Group therefore considered the possibility of carrying on without seeking Department of Finance input or approval of suggested changes. Instead, the Working Group might suggest changes and, if they were adopted by provinces, the Department of Finance could react as needed for the purposes of the *Income Tax Act* to address the potential loss of tax revenue while weighing this against the policy objective of providing tax credits for charitable donations. The Working Group would have to be cognisant of this since amendments to the *Income Tax Act* that yielded a potentially significant difference between the *Income Tax Act* definition of charity and the provincial definition would defeat one of the key purposes of attempting to redefine charity, namely, to achieve a greater degree of consistency in the definition of charity for charitable organizations.

[3] The Working Group then considered whether it was worth proceeding with an attempt to redefine charity. It was noted that concerns about the outdated and uncertain nature of the common law definition of charity have been noted many times in the past fifty or so years, but no change has been made. It was noted that the courts are unlikely to make a change given the statement in the majority judgment in the *Vancouver Society* case that change would need to come in the form of legislation. It has also been noted by the Working Group that the number of court decisions on the meaning of charity in Canada are limited such that any change through the courts is likely to be very slow.

[4] The impetus for a redefinition of charity, however, remains the same. The common law definition is out of date and uncertain. Further, there are different definitions of charity for purposes such as fundraising and municipal property taxation and these definitions differ from province to province and from purpose to purpose. Therein lies the reason for the ULCC considering this – to hopefully bring about some consistency (ideally, uniformity) in the definition of charity across the country and for various purposes (ideally at both the provincial and federal levels) and, at the same time, provide a greater degree of certainty to the definition of charity. Greater consistency and certainty would be welcome to persons working in the charity sector and to lawyers who provide advice to the charity sector. It was also suggested that CRA would welcome an attempt to achieve greater certainty in the definition of charity since they must administer those provisions of the *Income Tax Act* that rely on an underlying common law definition of charity. The Working Group’s focus would, however, be on the consistency and certainty of the definition of charity in areas of provincial jurisdiction, not on the federal income

tax aspects (but needing to remain cognisant of the loss of consistency if the Department of Finance felt compelled to amend the *Income Tax Act* in a way that would make the tax definition of charity significantly different from the definition of charity for provincial purposes). It was suggested that if charities could be brought onside with a revised definition of charity, the charitable organizations might put some pressure on the Department of Finance to be onside with a revised definition.

[5] The Working Group noted that it doesn't need to be a joint ULCC-CBA project; the ULCC could do it alone. The Working Group discussed the notion of starting from principles – the conception of charity as falling within four heads of charity has, it was suggested, caused us to lose sight of the general overarching principles. The Working Group proposes to clarify the common law definition of charity by proposing a definition that focusses on accepted general overarching principles of what constitutes 'charity', rather than focussing on specific activities that might fall within the four heads of charity, with the idea that such principles could be applied to any activity to determine whether it is charitable, whether or not previously adjudged or accepted as charitable.

[6] The Working Group acknowledged that it will be very challenging to achieve these goals of greater consistency and certainty in the definition of charity and the likelihood of success is quite low given the complexities and the history of many lamenting the state of the common law definition but with no change forthcoming. The Working Group nonetheless agreed to forge ahead given the potential benefits for the charity sector and on the assumption that while concern for the state of the common law definition of charity has been expressed many times, there has, as yet, been no attempt to suggest a revised modern definition of charity (the Working Group would need to confirm this). The Working Group could reflect on revisions to the definition in other countries, including the American Law Institute's *Restatement of the Law, Charitable Non-profit Organizations* (2021). The Working Group could put forward a clearer definition with some examples for possible expansion and see what the reaction is (e.g., sport and fitness, climate, the environment). If nothing else, it could have an educational effect identifying areas of the definition that are uncertain and under stress in the modern context.

[7] The Working Group considered the question of expanding the definition of charity to include within it purposes or activities that are widely understood by the public to be within "charity", but that are not currently within the common law definition of charity. A suggestion was made for an approach in which an attempt would be made to clarify the existing definition of charity but would simply make suggestions as to possible clarifications of the common law definition of charity.

[8] The Working Group meeting concluded with noting the needed for questions to the ULCC such as:

Do you confirm that uniformity in the definition of charity is essential?

Do you confirm that the common law definition needs clarification?

[9] The ULCC Working Group consists of:

Peter Lown, K.C., Chair

Maya Cachecho, Université de Montréal
Mark Gillen, University of Victoria
Kelly Hazlett, Government of British Columbia (until April 30, 2023)
Scott Hood, Government of Alberta
Sointula Kirkpatrick, Government of British Columbia
Darren Thomas, Government of Alberta

Clark Dalton, K.C., ULCC (until February 15, 2023)