



UNIFORM LAW CONFERENCE OF CANADA

DEFINITION OF CHARITY – POLICY REPORT

Presented by the Working Group

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1. Working Group Membership and Meeting Report

1.1 Members of the Working Group

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Bob Wyatt, Executive Director of the Muttart Foundation, Member of the Order of Canada (2022).

1.2 Background

[1] It appears that the notion of addressing the definition of charity may have originated in the ULCC civil section minutes in 2013 that (at page 2) said,

“Lastly, it was reported that a suggestion had been advanced from Dr. Donovan Waters, QC and Professor Albert Oosterhoff for a project to reform the law of charity. It would be aimed at modernizing the archaic body of law relating to charitable objects.”

More recently, in the “Charities Project – Progress Report” presented by Peter Lown, QC (now KC) at the ULCC Conference in August of 2021¹ it was noted that:

“In 2018, the Advisory Committee on Program Development and Management (Advisory Committee) of the Uniform Law Conference of Canada (ULCC) received a proposal from the Canadian Bar Association Charities and Not-for-profit national sections. The proposal indicated that the charitable sector would benefit from uniform action in this area. It was suggested that the common law provinces or territories either had legislation that was not modern or lacked any legislation at all. This was contrasted with the recent legislation in the UK which consolidated and modernized the law in the Charities Act of 2011.”

There had been a brief joint ULCC/CBA document dated 9 February 2022 (see Attachment #2 to the August 2021 Progress Report) that stated that,

¹ Available, in English, at: <https://www.ulcc-chlc.ca/ULCC/media/EN-Annual-meeting-2021/CHARITIES-PROJECT-PROGRESS-REPORT-2021.pdf>, and, in French, at: <https://www.ulcc-chlc.ca/ULCC/media/FR-Annual-Meeting-2021/PROJET-DES-ORGANISMES-DE-BIENFAISANCE-%e2%80%93-RAPPORT-D%e2%80%99ETAPE-2021.pdf>.

“The co-chairs have developed a chart consisting of three categories and various sub topics under each category. In order to assess the relevance and priority of the various sub topics, it is essential to have relatively even and uniform understanding and descriptions of the topics.

At this stage, a thumbnail sketch of the issue and area is all that is required. Further research and analysis comes later.”

It then gave a list of five headings that needed to be addressed: The Problem; The Legal Response; Who is Impacted by the Problem; Potential Solutions; Benefits of Solving the Problem.

[2] There was also a report at the ULCC August 2022 meeting entitled “Charities Project – Interim Report and Issue Spotting Documents”², presented by Peter Lown, QC with notes by Yvonne Chenier, Q.C. and Peter Lown, Q.C., that gave further background on the development of a project relating to “Charities and Not for Profit Law”. This report also provided a brief note on the definition of charity, the locus of regulation of the charitable sector, and hybrid organizations (which it referred to as entities that “mixed charitable and commercial activities”).

[3] There was a report presented at the Charlottetown, Prince Edward Island, August 2023 ULCC conference by Peter Lown, K.C. entitled “Charities Project – Definition of Charity: Working Group Meeting of May 26, 2023, Summary Notes”³ that discussed the Progress of the Working Group at that point.

[4] According to item 8 of the Agenda for the ULCC Conference in Ottawa in August of 2024 there was a Progress Report on “Charitable Organizations” presented by Peter Lown, K.C., Alberta. We were not able to find a written project report for August 2024 on the ULCC website. The August 2024 ULCC Conference resolved:

“THAT the subgroup of the working group on re-definition of charitable purpose concentrate its work on sports; prevention of poverty; and religious organizations; and THAT the Working Group report back to the ULCC at the 2025 annual meeting.”⁴

[5] That resolution has been pursued by a newly constituted Working Group, with Mark Gillen as the only person continuing from the prior Working Group membership. Finding members for the newly constituted version of the Working Group occurred over the course of the fall of 2024. The newly constituted Working Group had its first meeting on January 21, 2025, and subsequently met to continue its discussions on the areas noted in the resolution on March 4, 2025. The Working Group had a third meeting on April 16, 2025, at which it reviewed a draft progress report to be submitted by the end of April for the August 2025 ULCC annual meeting.

² Available, in English, at: <https://www.ulcc-chlc.ca/ULCC/media/EN-Annual-Meeting-2022/Charities-Project-Interim-Report-and-Issue-Spotting-Documents.pdf>, and, in French, at: <https://www.ulcc-chlc.ca/ULCC/media/FR-Annual-Meeting-2022/Projet-sur-les-organismes-de-bienfaisance-Rapport.pdf>.

³ Available, in English, at: [https://www.ulcc-chlc.ca/ULCC/media/EN-Annual-Meeting-2023/Progress-Report-\(Part-1\)-Definition-of-Charity.pdf](https://www.ulcc-chlc.ca/ULCC/media/EN-Annual-Meeting-2023/Progress-Report-(Part-1)-Definition-of-Charity.pdf) and, in French, at: [https://www.ulcc-chlc.ca/ULCC/media/FR-Annual-Meeting-2023/Rapport-d%e2%80%99etape-\(partie-1\)-Definition-d%e2%80%99organisme-de-bienfaisance.pdf](https://www.ulcc-chlc.ca/ULCC/media/FR-Annual-Meeting-2023/Rapport-d%e2%80%99etape-(partie-1)-Definition-d%e2%80%99organisme-de-bienfaisance.pdf).

⁴ www.ulcc-chlc.ca/ULCC/media/EN-Annual-Meeting-2024/Civil-Section-Resolutions-2024.pdf.

1.3 Work of the Current Working Group Since its Creation

[6] The Working Group discussed each of the three topics noted in the August 2024 resolution of the ULCC, namely, “sports”, “prevention of poverty”, and “religious organizations”. Since the current Working Group had only recently been formed, it focused initially on the “prevention of poverty” since it seemed to the members of the Working Group that the prevention of poverty would be something provincial governments might be more willing to pursue. The prevention of poverty topic is discussed below, followed by brief notes on the Working Group’s early, and preliminary, discussions on sports and religious organizations. Prior to discussing the three topics identified in the ULCC August 2024 resolution, the Working Group focused on the provincial definition of charitable purposes relating to the validity of purpose trusts.

(a) Provincial Jurisdiction in Relation to the Definition of “Charity”

[7] The Working Group’s discussion included both the provincial context and the federal *Income Tax Act* (ITA) context of granting donors a tax credit for donations to registered charities.⁵ The Working Group, at points in its discussion of the three topics, noted that they are relevant to provincial jurisdiction in three main areas: (i) the validity of purpose trusts;⁶ (ii) the question of property tax exemptions for charities; and (iii) fund raising for charities through gaming. It noted that different policy concerns in these areas may dictate different legislative responses but also noted there may be benefits to those in the charitable sector of greater uniformity across these three areas and across provinces and territories.

(b) Prevention of Poverty

⁵ The Working Group noted that there were possible effects of changes at the provincial level on the interpretation of federal legislation including the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). In *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.* [1999] 1 S.C.R. 10 Iacobucci J., writing for the majority, noted, at para. 143, that “the ITA does not define what is or is not a charitable activity. Rather, it implicitly relies upon the common law for guidance.” The same point was made in *A.Y.S.A. Amateur Youth Soccer Assn. v. Canada Revenue Agency*, 2007 SCC 42, at para. 8 (per Rothstein J. writing for the majority).

⁶ Potential statutory additions to the common law definition of “charitable purposes” could address issues relating to the validity of either *inter vivos* or testamentary purpose trusts. For example, a will might make a gift of property to be held on trust for a one or more specific purposes. The validity of that purported purpose trust and the potential application of the rule against perpetuities, subject to several potential exceptions that vary across Canadian common law jurisdictions, might depend on whether that purpose was a charitable purpose. If it was not a charitable purpose, the property might revert (“result”) to the estate or the settlor of an *inter vivos* trust, and, in the case of a purported testamentary purpose trust, go to either residuary legatees or intestate heirs. The exceptions across Canadian common law jurisdictions relate to “wait-and-see” perpetuities legislation in Ontario, Alberta, British Columbia and the three territories (see, e.g., *Perpetuities Act*, R.S.O. 1990, c. P.9, s. 16), developing jurisprudence (see, e.g., *Keewatin Tribal Council Inc. v. City of Thompson* (1989), 61 Man. R. (2d) 241 (Q.B.); *Peace Hills Trust Co. v. Canada Deposit Insurance Corp.* (2007), [2008] 7 W.W.R. 372 (Alta. Q.B.); and *Fletcher’s Fields Ltd. v. The Ontario Rugger Union*, 2023 ONSC 373), and adoptions of section 74 of the *Uniform Trustee Act* on non-charitable purposes trusts (something similar having been adopted in the Alberta *Trustee Act*, S.A. 2022, c. T-8.1, s. 77). The Working Group noted that this aspect of provincial jurisdiction under 92(13) of the *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 relating to property and civil rights is likely of relatively limited significance since most professionally drafted wills tend to make gifts to incorporated charitable organizations rather than gifts on trust for charitable purposes.

[8] As noted above, the initial focus was on the prevention of poverty on the basis that this seemed to the members of the Working Group to be something provincial governments might be more willing to pursue. It also noted that the prevention of poverty is something that would be for the public good. It may also be an addition to what is considered “charity” that, in the view of the Working Group, would have little or no effect on federal income tax revenue were it to be considered charitable for the purposes of the federal ITA tax credit for charitable donations.

[9] The common law definition of “charity” derives from the preamble to the *Statute of Charitable Uses, 1601*.⁷ The various things described as charitable purposes in the preamble to that statute were summarized by Lord Macnaghten in the 1891 English decision in *Pemsel v. Special Commissioners of Income Tax*.⁸ In the *Pemsel* case Lord Macnaghten said that “‘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.”⁹ Lord Macnaghten’s classification was adopted by the majority in the Supreme Court of Canada decision in *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*¹⁰ It is the first head of

⁷ The preamble to the *Statute of Charitable Uses, 1601*, 43 Eliz. 1, c. 4, is generally recognized as just listing examples of the many purposes for which property was held for “uses” (“trusts” in modern-day terminology) that were for charitable purposes and for a long time it was not seen as a constituting document as to what was charitable (see G. Jones, *History of the Law of Charity, 1532-1837* (Cambridge: Cambridge University Press, 1969) at 26-34 and at 120-122). The majority decision written by Iacobucci J. in *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.* [1999] 1 S.C.R. 10 at para.146 said,

“... it is important to recall Lord Macnaghten’s understanding of the status of the preamble. In *Special Commissioners of Income Tax*, *supra*, at p. 581, immediately after his observation that ‘charity’ has a technical meaning and prior to his outline of the four divisions, Lord Macnaghten made the following reference to the *Statute of Elizabeth*:

‘Whatever may have been the foundation of the jurisdiction of the Court over [charitable trusts], and whatever may have been the origin of the title by which these trusts are still known, no one I think who takes the trouble to investigate the question can doubt that the title was recognised and the jurisdiction established before the Act of 43 Eliz. and quite independently of that Act. The object of that statute was merely to provide new machinery for the reformation of abuses in regard to charities. But by a singular construction it was held to authorize certain gifts to charity which otherwise would have been void. And it contained in the preamble a list of charities so varied and comprehensive that it became the practice of the Court to refer to it as a sort of index or chart. At the same time it has never been forgotten that the ‘objects there enumerated,’ as Lord Chancellor Cranworth observes (1 D. & J. 79), ‘are not to be taken as the only objects of charity but are given as instances.’ [Emphasis added by Iacobucci J.]

Therefore the court has always had the jurisdiction to decide what is charitable and was never bound by the preamble. Nonetheless, the preamble proved to be a rich source of examples and the law of charities has proceeded by way of analogy to the purposes enumerated in the preamble.”

⁸ [1891] AC 531 (U.K. H.L.).

⁹ *Ibid.*, at 583.

¹⁰ [1999] 1 S.C.R. 10 at para. 144. See also *A.Y.S.A. Amateur Youth Soccer Assn. v. Canada Revenue Agency*, 2007 SCC 42, per Rothstein J. at para. 26. As to the fourth head of “other purposes beneficial to the community”, the majority decision in the *Vancouver Society* case said, at para. 148, that

“The requirement of being ‘for the benefit of the community’ is a necessary, but not a sufficient, condition for a finding of charity at common law. If it is not present, then the purpose cannot be charitable. However, even if it is present the court must still ask whether the purpose in question has what Professor Waters calls, at p.

“relief of poverty” that is relevant here. The Working Group is not aware of any common law cases establishing that “relief of poverty” includes the prevention of poverty, though England and Wales has incorporated the latter in its statute. In 2016 the Federal Court of Appeal expressly declined to interpret the *Income Tax Act* definition of charitable purposes to include the prevention of poverty in *Credit Counselling v. MNR*.¹¹

[10] The Working Group considered whether it would be sufficient to have provincial legislation modify the common law definition of “charitable purpose” to simply add the “prevention of poverty” as an additional head of “charitable purpose”. That would leave it to the courts to fill out what would fall within “prevention of poverty”. Given the relative lack of jurisprudence on what falls within “charitable purposes”, particularly in recent years, it might take quite some time for the scope of such an added head of charitable purpose to be fleshed out by courts.¹² The Working Group, therefore, thought that it would be sensible, in the context of

550, the ‘generic character’ of charity. This character is discerned by perceiving an analogy with those purposes already found to be charitable at common law.”

See further at para. 177 where Iacobucci J. adopted the test set out in *D’Aguiar v. Guyana Commissioner of Inland Revenue*, (1970) 15 West Indian Reports 198, [1970] T.R. 31 (England P.C.), at page 33. This approach to the fourth head of other purposes beneficial to the community was confirmed in the 2007 Supreme Court of Canada decision in *A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)*, [2007] 3 S.C.R. 217, 287 D.L.R. (4th) 4, at paras. 27, 28 and 31.

¹¹ See *Credit Counselling Services of Atlantic Canada Inc. v. Minister of National Revenue*, 2016 FCA 193. Webb J.A., with whom Scott J.A. and de Montigny J.A. agreed, said at paragraph 16 that

“The Appellant did not refer to any cases that have held that the relief of poverty will include the prevention of poverty. To satisfy the requirement that a purpose is for the relief of poverty, the person receiving the assistance must be a person who is then in poverty. Poverty is a relative term. Therefore, it is possible that in some situations providing assistance through counselling or by other means to individuals in serious financial trouble may be considered to be relieving poverty, even if the individuals are not then destitute...”

Paragraph 17 added

“it is clear that the Appellant is assisting many consumers who are employed and who have assets and therefore would not necessarily, as of the time of receiving the assistance, be considered to be in poverty. In 2010 the Appellant assisted consumers in paying over \$10 million to their creditors under the debt management program. There is no indication that the Appellant screened these clients and only offered its services to those individuals who would be considered to be ‘poor’ as determined for the recognized charitable purpose of the relief of poverty...”

It is worth noting, in terms of legislation in this area, that Webb J.A. added, at paragraph 18, that

“In the United Kingdom, Parliament adopted the *Charities Act 2011*, 2011, 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.*” (emphasis added)

¹² See, e.g., Kathryn Chan, “The Registered Charity Appeals Process – More Reasons (and a Few Proposals) for Reform” (2024) 72:2 Canadian Tax Journal 359 at 359-69 discussing a perceived trend toward charities bringing public-law challenges to registration decisions in Superior Courts rather than challenging refusals of registrations in the Federal Court Appeal where the question of whether the organization’s purposes are charitable might be

provincial legislation adding the “prevention of poverty” to the heads of charity, to take some steps towards providing a statutory definition of that expression.

(i) Charities Commission for England and Wales “Guidance: Charitable Purposes”

[11] The Working Group explored some sources for fleshing out the notion of “prevention of poverty”. One of these was the guidance provided by the Charities Commission for England and Wales in its 2013 document entitled “Guidance: Charitable Purposes” (the CCEW Guidance).¹³ Section 3(1)(a) of the *Charities Act, 2011*¹⁴ for England and Wales provides that charitable purposes include the purpose of “*the prevention or relief of poverty*” (emphasis added). The CCEW Guidance, under heading “3. The prevention or relief of poverty”, provides some guidance on what might fall within that charitable purpose. It says, for instance, that

“The prevention or relief of poverty is not just about giving financial assistance to people who lack money; poverty is a more complex issue that is dependent upon the social and economic circumstances in which it arises. The commission recognises that many charities that are concerned with preventing or relieving poverty will do so by addressing both the causes (prevention) and the consequences (relief) of poverty.”

It then goes on to say that

“Examples of ways in which charities might relieve poverty include:

- grants of money
- the provision of items (either outright or on loan) such as furniture, bedding, clothing, food, fuel, heating appliances, washing machines and fridges
- payment for services such as essential house decorating, insulation and repairs, laundering, meals on wheels, outings and entertainment, child-minding, telephone line, rates and utilities
- the provision of facilities such as the supply of tools or books, payments of fees for instruction, examination or other expenses connected with vocational training, language, literacy, numerical or technical skills, travelling expenses to help the recipients to earn their living, equipment and funds for recreational pursuits or

addressed. Since the bulk of the case law on the meaning of charitable purposes in Canada has, for many years, been in the *Income Tax Act* context of the registration of charities, this would suggest there would be slow progress on fleshing out the meaning of “prevention of poverty” as an added charitable purpose.

¹³ Available at <https://www.gov.uk/government/publications/charitable-purposes/charitable-purposes#the-prevention-or-relief-of-poverty>.

¹⁴ 2011, c. 25. The statutory clarifications of charitable purposes in England first appeared in the *Charities Act, 2006*, 2006, c. 50. Section 2(1) of that Act said that “for the purposes of the law of England and Wales, a charitable purpose is a purpose which (a) falls within subsection (2), and (b) is for the public benefit (see section 3).” Section 2(2) of the 2006 Act said that “A purpose falls within this subsection if it falls within any of the following descriptions of purposes ...” and then provided a list of items in paragraphs (a) to (m). That list of items included the four heads of charitable purpose recognized by Lord Macnaghten in *Pemsel’s* case (see the text accompanying notes 8 and 9 above). In the 2011 Act s. 2(1) was similar to s. 2(1) of the 2006 Act except that it pointed to purposes that fall “within section 3(1)” and section 3(1) of the 2011 Act has an (a) to (m) list (a) to (l) of which is the same as in s. 2(1) of the 2006 Act with a slightly different approach to paragraph (m).

training intended to bring the quality of life of the beneficiaries to a reasonable standard

The provision of money management and debt counselling advice are examples of the ways in which charities might help prevent poverty.”

[12] The CCEW Guidance document also provides a link to another document entitled “The Prevention or Relief of Poverty for the Public Benefit”.¹⁵ That document says

“... the Charities Act recognises the prevention of poverty as a freestanding purpose and so charities may be set up solely for the prevention of poverty. Charities set up only for the prevention of poverty tend to take a very specific approach to poverty, which usually involves tackling its root causes.”¹⁶

It adds that

“In order to benefit from a charity whose aims include preventing or relieving poverty, a person, or a community, should be:

- in poverty; or
- at risk of being in poverty.”¹⁷

It further adds some ways in which charities might prevent or relief of poverty and these include “wide-ranging programmes (such as research, education and healthcare projects directed towards alleviating social conditions that can lead to, or can be caused by poverty) ...”¹⁸ The Working Group did note that research, education, and healthcare would likely be found charitable under existing heads of charity such as the advancement of education or previously accepted charitable purposes under the head of other purposes beneficial to the community.

¹⁵ Available at <https://assets.publishing.service.gov.uk/media/652541b02548ca000dddf055/prevention-or-relief-of-poverty-for-the-public-benefit1.pdf>.

¹⁶ *Ibid.* at page 9.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, at 10.

(ii) Government of Canada “Community economic development activities and charitable registration”

[13] The Working Group’s initial sense was that the guidance from the Charities Commission of England and Wales did not go very far down the path of identifying what might fall within the “prevention of poverty”. The Working Group, however, also considered Government of Canada policy and guidance on “Community economic development activities and charitable registration”¹⁹ for assistance in fleshing out content for the “prevention of poverty”.

[14] In discussing community economic development activities, that document refers to “relieving unemployment of individuals who are unemployed *or facing a real prospect of unemployment*”²⁰ (emphasis added) and “improving socio-economic conditions in areas of social and economic deprivation”.²¹ That document also provides examples of activities that relieve unemployment that include “providing referral services to appropriate agencies for assistance”, “forming and facilitating mutual support groups for individuals seeking employment”, “establishing lists of available jobs”, “matching individuals who are unemployed or facing a real prospect of imminent unemployment and are shown to need assistance to appropriate employers”, and “providing funds to allow individuals who are unemployed or facing a real prospect of imminent unemployment and shown to need assistance to attend job interviews or to relocate to get employment”.²²

[15] The above-noted “Community economic development activities and charitable registration” guidance says that “The law in Canada does not recognize community economic development (CED) as a charitable purpose. However, activities related to CED ... may be charitable when they directly further a charitable purpose.”²³ While “community economic development” may not, as this document interprets it, be a recognized charitable purpose in Canada, it suggests the types of things that might fall within community economic development could be considered charitable if they are directly in furtherance of a charitable purpose. If the “things” referred to in the CED policy are characterized as activities, they must be for a charitable purpose. If the “things” referred to in the CED policy are characterized as purposes, they must be exclusively charitable. There is an exception to the requirement that a charitable purpose be exclusively charitable. That exception says that if purposes are merely incidental to charitable purposes, in the sense that they are merely a means of fulfilling the charitable purposes, the purposes can still be said to be exclusively charitable. This suggests that the types of things the Working Group might draw on from these community economic development activities might be achieved by charitable organizations without statutorily adding to the accepted charitable purposes under the common law. That, however, would require that a charitable organization’s purposes fit under the existing common law heads of charitable purposes and that its purposes that relate to the prevention of poverty are merely incidental to relief of poverty or some other existing accepted head of charitable purpose under the common

¹⁹ See <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/community-economic-development-activities-charitable-registration-014.html#toc2>.

²⁰ *Ibid.*, at paragraph 17.

²¹ *Ibid.*, at paragraph 11.

²² *Ibid.*, at paragraph 17.

²³ *Ibid.*, at paragraph 6.

law. However, what the Working Group has in mind is an organization or trust that has as its main purpose the prevention of poverty and, as noted above, the Working Group is not aware of any common law cases establishing that “relief of poverty” includes the “prevention of poverty”.²⁴ Clarifying this would facilitate achieving the public good of preventing poverty without having to make it an incidental aspect of some more clearly recognized head of charitable purpose.²⁵

(iii) Considering Other Ways of Defining “Prevention of Poverty”

[16] The two sources, noted above, may not be the only sources of guidance for giving substance to the meaning of “prevention of poverty”. The Working Group will search for and consider other relevant sources of guidance and will make its own suggestions as to what might help give clearer meaning to “prevention of poverty”.

(c) Sports

[17] At the Working Group meeting on January 21, 2025, there was some discussion of the possibility of adding “amateur sport” to the common law definition of charity. A concern raised on that front was the problem of private benefit and how to enforce a prohibition of private benefit. The Working Group understood the concern from the federal income tax perspective of a potentially significant loss of tax revenue if amateur sport was added to the definition of charity.²⁶ It was also noted that there is some room for amateur sport as a charitable purpose if the objects of the organization are written to focus on education or health since education and health fall under existing heads of charitable purpose.²⁷

[18] At the Working Group meeting on March 4, 2025, there was a brief further discussion of “amateur sport”. It was suggested that many amateur sports organizations exist for the private benefit of their members, but others may provide broader community/public benefits. As to the question of adding amateur sports to the common law definition of charitable purposes, it was noted that for a purpose to be a “charitable purpose” under the common law it had to be (i) a recognized “charitable purpose”; (ii) that it be for a “public benefit”; and (iii) that the purpose be

²⁴ See the *Credit Counselling* case, *supra* note 11, and the discussion there.

²⁵ It may have been that in the *Credit Counselling* case, *supra* note 11, Credit Counselling Services of Atlantic Canada Inc. might have amended its purposes and altered its activities in a way that, to borrow the wording of Webb J.A., “screened these clients and only offered its services to those individuals who would be considered to be ‘poor’ as determined for the recognized charitable purpose of the relief of poverty.” Such a requirement may constrain the ability to address prevention of poverty that the public is likely benefit from.

²⁶ In *A.Y.S.A. Amateur Youth Soccer Assn. v. Canada Revenue Agency*, 2007 SCC 42, at para. 44 Rothstein J. noted the government’s tax revenue concern saying, “The government submits that 21 percent of all non-profit organizations in the country are sports and recreation organizations, and that the potential recognition of these organizations as charities could have a significant impact on the income tax system.”

²⁷ If the purposes are drafted to focus on education it could fit under advancement of education and, if for health, it could fit under other purposes beneficial to the community since providing for health has been a long-accepted type of purpose considered a charitable purpose under the fourth head of other purposes beneficial to the community.

exclusively charitable (subject to some limited exceptions).²⁸ If amateur sport were added to the list of “charitable purposes” the law should continue to require that the purpose also be for a “public benefit” so that private benefits (i.e., benefits for identifiable persons, such as members of sports associations) would not be considered valid charitable purposes. As noted above, the Working Group was not, at this stage, considering any extension of such an addition to charitable purposes to possible exemptions from property taxation and issues around fund raising through gaming.²⁹

(d) *Religious Organizations*

[19] The Working Group only briefly considered the question of “religious organizations” (or the charitable purpose of “advancement of religion”). That brief discussion evoked words such as “difficult”, “divisive”, and “thorny” to describe the issue. The sense was that any conclusion formed by the Working Group’s discussion of the issue of religion would ultimately dominate the discussion without any real likelihood of any suggestion forming part of the legislation of any province and would distract from the more significant opportunity with the somewhat more manageable issues of prevention of poverty and amateur sports.

²⁸ See Jean Warburton, Debra Morris, and N.F. Riddle, *Tudor on Charities*, 9th ed. (London: Sweet & Maxwell, 2003) para. 1-02 (at p. 2); and see, e.g., Jim Phillips, “Purpose Trusts” in Mark Gillen & Faye Woodman, eds., *The Law of Trusts: A Contextual Approach*, 4th ed. (Toronto: Emond, 2021) at page 175.

²⁹ Some jurisdictions in Canada do recognize amateur sports for the purposes of gaming. See, e.g., the *Gaming Control Regulation*, B.C. Reg. 96/2001, s. 19(c) of which provides that to be eligible for a grant under Part 6 of the *Gaming Control Act*, S.B.C. 2002, c. 14 an organization must be a not-for-profit organization that meets the eligibility requirements established by the community gaming grants manager and provide programs of community benefit that are inclusive and accessible. The *Community Gaming Grants: 2025 Program Grants Guidelines*, notes at p. 12, that eligible organizations must, for instance, be not-for-profit having a primary purpose to operate for community benefit and deliver programming in one of five identified sectors, have a voting membership that is inclusive and reasonably open to anyone with an interest in the organization and its programs, and has a board whose members do not receive remuneration or other financial benefit for their services. That *Community Gaming Grants* document also, at p. 8, refers to “Sport” as an eligible sector that includes, for instance, “Youth sports that build foundational skills or a pathway to competition, and instructional adult sports (e.g., soccer, swimming, hockey, skating, basketball, baseball, biking, rowing/paddling, sailing, martial arts, skiing, etc.).” See also, for Alberta, the *Charitable Gaming Policies Handbook* (available at: <https://aglc.ca/sites/aglc.ca/files/2025-04/25-04-01%20CGPH.pdf>) which, in Policy 2.1 deals with eligibility for charitable gaming, with 2.2.1 c) referring to “support amateur sports”. In Ontario the Alcohol and Gaming Commission of Ontario (created under the *Alcohol and Gaming Commission of Ontario Act, 2019*, S.O. 2019, c. 15, Schedule 1) indicates on its website (at: <https://www.agco.ca/en/lottery-and-gaming/charitable-gaming-eligibility-cge-charitable-organizations>) that one can apply for a “charitable gaming number” (CGE) and that eligibility for a CGE is based on “what is considered charitable in law” and notes that courts have determined that the term ‘charitable’ refers to organizations which provide programs for: the relief of poverty; the advancement of education; the advancement of religion; and other purposes beneficial to the community.” It also refers to Ontario Order in Council 208/2024 but that Order in Council does not refer specifically to amateur sport. However, Ontario has the *Charities Accounting Act*, R.S.O. 1990, c. 10, s. 7 that defines “charitable purposes” in terms corresponding to the *Pemsel* case head of charitable purpose. These heads of charitable purpose, however, appear in statutory form thereby arguably divorcing them from the preamble to the English *Statute of Charitable Uses 1601*. Amateur sports have been held to be charitable in *Re Laidlaw Foundation* (1984), 18 E.T.R. 77), but see *contra*, *Fletcher’s Fields Ltd. v. The Ontario Rugger Union*, 2023 ONSC 373.

2. Application to Quebec?

[20] The Working Group considered the possible application to Québec, but none of the current members of the Working Group have the relevant expertise to address the situation in Québec with respect to the topics listed in the ULCC resolution of August 2024. It is our understanding that the scope of charitable purpose trusts under the Québec Civil Code is significantly different from that in the common law jurisdictions. The Working Group would be happy to consider the relationship between the definition of charity in the common law provinces and in Québec and the potential application of any policy directions relating to the topics of concentration to Québec. It hopes to add an expert from Québec to guide the Working Group in that respect.

3. Next Steps

[21] The following are next steps the Working Group is considering subject to direction from the ULCC:

- (i) further consider whether the provinces should clarify that the common law heads of charity include the “prevention of poverty”;
- (ii) further consider suggestions for defining the scope of “prevention of poverty” if it were to be included in the common law heads of charity;
- (iii) further consider whether the provinces should, by statute, clarify that the common law heads of charity include “amateur sport”; and
- (iv) consider, subject to direction, further study of the relationship between the definition of charity in the common law provinces and in Québec, and to seek a committee member from Québec.

4. Draft Resolution

[22] The Working Groups suggests the following resolution subject to modification or direction from the ULCC as to next steps:

THAT the Report of the Definition of Charity Working Group be accepted;

THAT, in accordance with the directions of the ULCC, the Working Group continue its work, including identifying possible solutions to address the issues raised in the report; and

THAT the Working Group present a policy report to the ULCC at its 2026 annual meeting.