



SPEAKING POINTS

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SENATE SPECIAL COMMITTEE ON THE CHARITABLE SECTOR, SEPT 18, 2018

Thank you for the invitation to appear before you today.

I am President of Philanthropic Foundations Canada, a pan-Canadian association of grantmaking foundations. Today I will be discussing the role of Canadian charitable foundations and how their work is encouraged or hindered by the federal policy and regulatory regime for charities.

As mentioned in the written brief which we provided to the Committee, Canadian foundations collectively contributed grants of about **\$5.7 billion** in 2016 to Canadian charities. This is a large amount, even spread across the 86,000 or so charities in the country.

I am here today to discuss not how *much* is given but the conditions under which these grants are given, and to suggest that it is possible for philanthropic foundations to become more effective funders in today's Canada. Specifically, we recommend that the Senate Committee could encourage the Ministers of Finance and Revenue to undertake a comprehensive review of the existing regulatory framework for charities in the *Income Tax Act*.

I want to acknowledge an important development that occurred last Friday when the federal government released draft legislative proposals that would remove the quantitative limits on so-called "political" activities of charities from the Income Tax Act. This was a first and very positive response to the Consultation Panel on the Political Activities of Charities which reported last year. PFC is extremely encouraged and pleased to see that the federal government is willing to remove this provision which has in fact discouraged charities from helping in the development of public policy in pursuit of their charitable purposes. This

action is a very important step in reviewing the regulation and policing of charities through their activities, in this case, political activities. We appreciate the government's willingness to move forward and see this as a very encouraging sign. We look forward to the promised legislative amendments to be introduced into the House.

However, in general, the current federal regulatory system in our view still unnecessarily constrains the deployment of capital and prevents effective partnerships within the charitable sector and between the charitable sector and the private and public sectors. These constraints include:

- Disproportionate reporting requirements,
- rigid rules governing financial relations between charities and non-charities,
- lack of regulatory clarity on the ways in which investment capital can be provided to charities by charitable foundations, and
- Excessive focus on the activities rather than the purposes of charities.

These constraints combine to make charities and charitable funders less innovative, less effective and less capable of contributing to our society overall. We would like to see federal regulation and law that encourages rather than deters legitimate and productive partnerships between charities, foundations, businesses and governments.

A provision of the Income Tax Act that we would like to see reviewed, is the provision on maintaining direction and control of funds. We join with others in the charitable sector who are recommending that the federal government change the rules governing the provision of grants and loans to non-charities which must be made through agency agreements and replace these agreements with so-called "expenditure responsibility" agreements to ensure that the charity's resources are being used in furtherance of its purposes. This would mean that a foundation would take responsibility with the grantee for ensuring that its funds are being used for charitable purposes while not creating barriers to partnership or compliance. Today both grants and loans to non-charities must be made through agency agreements which impose onerous monitoring and management rules on the agents themselves. This can be changed without abandoning the principle that charitable funds be used for charitable purposes.

Our central ask is that the Senate Committee call for a comprehensive review of the Income Tax Act with respect to charities. We have not had such a review of the Income Tax Act provisions regarding charities in the 50 years since these provisions were introduced. This makes no sense. Many of the provisions were introduced piecemeal and are inconsistent with each other. This is no way to regulate an important sector that contributes so much to Canada's economy and society in the 21st century. Such a review will take some time, as it should. And ideally it should be done in collaboration with experts and actors in the charitable sector itself. But it needs to be done.

One of our members, the Muttart Foundation of Edmonton suggested, in a presentation to Senators in February 2017, several issues that could be reviewed. One is that such a review could include an open discussion on the definition of charity, which has not been modernized in Canada as it has been in other commonwealth jurisdictions such as the UK and Australia. The review could also consider why all appeals by charities of decisions made by the CRA must go to the Federal Court of Appeal instead of the more accessible Tax Court. And given the increasing need for more revenue from sources other than philanthropy or government, why not consider allowing charities to generate revenue by engaging in business activity by engaging in business activity as long as it is destined to activities that are in pursuit of charitable purpose.? Why does the Income Tax Act have such a focus on activities rather than simply purposes? Charities are confusingly monitored and forced to report by the CRA on various kinds of activities some of which are charitable, some fundraising, some administrative and of course some political. How to decide consistently and report clearly? Should activities be removed from the Act? The courts themselves have pointed out the confusions and difficulties posed by focusing on defining various activities of charities. These are some of the questions that a comprehensive review could address.

My final comment relates to the role of foundations in today's landscape of donors, recipients and civil society organizations. Foundations arguably have a unique role. They are long term funders, they are able to take calculated risks, even the risk of failure, since there are few short-term consequences to a failed grant. And so they can fund the experimental, the innovative or unproven social

initiative, in a unique contribution to the process of social change. These characteristics make it even more important that they be allowed and encouraged to fund flexibly and creatively while always respecting public policy frameworks and policy goals.

Thank you for your time and I welcome your questions.