



**Brief from Philanthropic Foundations Canada
To the Standing Committee on Finance
Pre-Budget Consultations**

August 2018

Recommendations to the Committee:

- a) Strongly encourage the Ministers of Finance and Revenue to implement the recommendations of the Consultation Panel on the Political Activities of Charities, including a comprehensive review of the existing regulatory framework in the *Income Tax Act***
- b) Ask the CRA to establish a clear set of guidelines regarding program-related investing (loans to charities and non-profits or below market-rate impact investments by foundations).**
- c) Recommend the prioritization and funding of the collection of key data on the non-profit sector by Statistics Canada that would enable better policy-making and regulation, and more effective business planning by the non-profit sector in Canada**

1. Introduction

Philanthropic Foundations Canada (PFC) is a Canada-wide membership association of 135 grantmakers, including private and public foundations and corporate giving programs. Our mission is to promote the growth of effective and responsible foundations and organized philanthropy in Canada. In 2016, the grantmakers we represent contributed **over \$641 million in grants and over \$382 million in expenditures on charitable programs** to organizations and communities right across Canada.

Charitable foundations are an important source of annual funding to charities, making grants of about **\$5.7 billion** in 2016 to Canadian charities, per Canada Revenue Agency (CRA) figures. This philanthropic funding is critical to the functioning of many charities and thus to the skills and labour force participation rates that are essential to Canadian economic competitiveness. We believe that there are opportunities for the federal government through its regulatory framework both to increase the flow of philanthropic capital to Canadian charities and non-profits and to enable charities to contribute more effectively to the competitiveness of Canada's economy.

2. Creating a More Modern Regulatory Framework for the Charitable Sector

What makes a country competitive? The World Economic Forum defines it as "the set of institutions, policies and factors that determine the level of productivity of a country". Productivity is about more than the availability of jobs and contributions to the production of goods and services. Productive workers are supported by education and training, child care and strong social infrastructure (affordable housing, access to health services, availability of recreation etc). Many of these supports are provided and operated by organizations in the charitable and nonprofit sector. And many of these organizations have front line experience and policy capacity that they can contribute to public policy makers to make the work of government smarter and more effective.

What might make charities less effective in contributing to competitiveness? A federal regulatory system that 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. Disproportionate reporting requirements, rigid rules governing financial relations between charities and non-charities, rules that discourage charities from advocacy and contributing to better public policy development, and lack of regulatory clarity on the ways in which investment capital can be provided to charities by charitable funders, all combine to make charities and charitable funders less innovative, less effective and less capable of contributing to the competitiveness of our economy overall. We would like to see federal regulation and law that encourages

rather than deters legitimate and productive partnerships between charities, businesses and governments.

The federal government has recognized this justifiable need. In 2015, the Prime Minister directed the Ministers of Finance and National Revenue to modernize the rules governing the charitable and non-for-profit sectors. The mandate letters to these Ministers (as well as to the Ministers of Justice and of Families, Children and Social Development) directed these Ministers to work towards “clarifying the rules governing “political activity,” with an understanding that charities make an important contribution to public debate and public policy.” We agreed strongly with this latter statement.

But on this and on the larger question of modernizing the *Income Tax Act* regime for charities (which has *never* been thoroughly reviewed), there has been no action taken to date. An experienced and expert Consultation Panel on the Political Activities of Charities, appointed by the Minister of National Revenue in September 2016, reported in the spring of 2017 and called for changes to the federal framework governing the charitable sector. PFC strongly supports all four of the Panel’s recommendations, listed below. A recent decision by the Ontario Superior Court referenced these recommendations and struck down the ITA provisions regarding political activities. In light of this, **we ask that the Committee strongly encourage the Ministers of Finance and Revenue to implement the recommendations of the Consultation Panel on the Political Activities of Charities immediately.**

1. Revise the CRA’s administrative position and policy to enable charities to fully engage in public policy dialogue and development.
2. Implement changes to the CRA’s administration of the ITA in the following areas: compliance and appeals, audits, and communication and collaboration to enhance clarity and consistency.
3. Amend the ITA by deleting any reference to non-partisan “political activities” to explicitly allow charities to fully engage, without limitation, in non-partisan public policy dialogue and development, provided that it is subordinate to and furthers their charitable purposes.
4. Modernize the legislative framework governing the charitable sector (ITA) to ensure a focus on charitable purposes rather than activities and adopt an inclusive list of acceptable charitable purposes to reflect current social and environmental issues and approaches.

We believe that the time is long overdue for a modernization of the definition of what constitutes charitable activity (the focus of Recommendation 4). Today the charitable and non-profit sectors are working more and more with the business sector and with social enterprises to pursue public and community benefit. The regulatory regime for charities does not easily accommodate intersectoral activity or social innovation. To

allow charities to contribute more productively to Canadian competitiveness, we need to review the *Income Tax Act's* rules regarding the regulation of charitable activities. The Panel recommendations are widely supported by the sector and would immediately open the door to more effective policy work, more productive partnerships between charities and non-charities, more deployment of capital into the sector and a more significant impact on Canadian competitiveness. Recommendations 1, 2 and 3 of the Panel could be implemented for the 2019 Budget without fiscal impact. Recommendation 4 could be acted upon through the creation of a joint process with the sector to work through the regulatory review process and make considered recommendations to the Minister of Finance.

3. Expanding Opportunities for Financing The Sector

Charities and non-profits need access to all forms of capital, whether earned income, loans or investments, since donations and grants together cannot meet all their financing needs. Social innovation and entrepreneurial activity in the non-profit sector is not usually financed from charitable giving. Charitable grants per the *Income Tax Act*, can be made *only* to qualified donees, or charities, regardless of whether a charity and a non-profit share a similar charitable or public benefit purpose. The invested assets of charitable foundations, by contrast, can be made available to businesses and nonprofits such as social enterprises as well as to charities (through loans for example).

Canadian non-profits and charities need more diversified sources of financing to make a greater contribution to productivity, job creation and competitiveness. We believe that this effort should be given a more prominent place in federal strategies for increasing productivity in the social sector as well as in the business sector. The philanthropic sector is very interested in developing the impact investing and debt capital marketplace for charities. Private funders supported the work of the Canadian Task Force on Social Finance in 2010, contributed to the establishment of the MaRS Centre for Impact Investing in 2011, participated in the Canadian National Advisory Board to the G8 Social Impact Investing Taskforce in 2014, and a Canadian foundation leader was a member of the Co-creation Steering Group established by the Minister of Families, Children and Social Development to help define a national strategy on the development of social finance and social innovation in Canada. This group has examined mechanisms to attract investors and accelerate the growth of intermediaries that act as a bridge between investors and the charitable and non-profit sectors. We understand that the steering group has now reported to the Minister and has made a number of recommendations to update and improve the regulatory framework to permit more social finance activity.

PFC is committed to promoting education and information-sharing on impact investing with the goal of increasing the availability of charitable resources for charitable and nonprofit organizations that support communities and Canadian workers. We look to

the federal government to play its part in addressing legislative and policy barriers to investment in the non-profit and charitable sector, with a focus on the *Income Tax Act* and associated regulations.

To create a more encouraging and permissive regulatory regime for charitable funders who wish to provide capital in the form of loans and investments in charities and non-profits we ask the Committee to recommend that:

- The CRA establish a clear set of guidelines regarding **program-related investing** (loans to charities and non-profits or below market-rate impact investments by foundations).

This type of program-related investing or PRI has had little regulatory recognition other than in a CRA policy guidance document on community economic development (CG-014) first published in 1999 and revised in 2012. While the revisions in 2012 were helpful in defining PRIs and in clarifying that foundations can make PRIs even to non-profits (not just charities) if agency rules are followed, the regulations are not entirely clear and their requirements for direction, control and reporting are a disincentive to the use of these mechanisms, especially by smaller foundations. The guidance on PRIs could be set out independently and not embedded in a document on community economic development but established as a tool that can be used for any recognized charitable purpose or, more broadly, for public benefit, pursued by a registered charitable foundation. The requirements for direction and control of funds, and rules on reporting should also be reviewed to ensure that they are proportional to the risk incurred and to the capacities of the smaller lenders. At present, these rules are overly onerous and restrictive to charities and their agents.

4. Creating A Competitive Data Framework for the Charitable Sector

We recommend that

- the Government prioritize and fund the **collection of key data on the nonprofit sector** by Statistics Canada that would enable better policy-making on the regulation and capacity-building of the non-profit sector in Canada.

This recommendation is broadly supported by organizations in the sector and would address a significant inhibitor of sector competitiveness which is the absence of timely and comprehensive information on the economic contribution and employment profile of the charitable and non-profit sector. Statistics Canada no longer collects data about the sector as a whole. There is widespread frustration in the sector over the lack of useful and policy relevant data. The last systematic census of the charitable and non-profit sector was conducted in 2003, over 14 years ago. The last study of the contribution of the non-profit sector to Canada's economy was done in 2009. This situation, for a sector that contributes enormously to Canadian economic and social productivity, should be unacceptable to a government that is concerned with growth and competitiveness.

The philanthropic sector wants to work in partnership with the federal government to modernize our regulatory relationship and to develop our capacity to contribute to Canadian competitiveness and community wellbeing. These recommendations would lead to significant improvement in our ability to do our work on behalf of Canadian communities and to collaborate with government to create a more competitive economy and society.

Thank you for your consideration.