



MEMBER ADVISORY #1-2018

April 5, 2018

To: PFC Members
From: Hilary Pearson
RE: Public Policy, Legal and Regulatory Update

1. PFC Public Policy Priorities

Our ongoing public policy priorities at PFC include the following:

- a) Promoting a more facilitating regime for social investments by charitable foundations, including clarifying the CRA guidance governing program-related investment by foundations
- b) Advocating for a joint process with the federal government and from the charitable and nonprofit sector to review the *Income Tax Act* with respect to the definition of charitable purposes and activities, including provisions on political activity and direction and control.
- c) Advocating for the collection of key data on the non-profit sector by Statistics Canada that would enable better evidence and policy to govern the government-sector relationship in Canada

We welcome comments and input from PFC members on these policy priorities.

On the issue of promoting a facilitating regime for social finance, please see a [brief](#) presented by Hilary Pearson to the Senate Standing Committee on Social Affairs in February 2018.

2. Progress on Modernization of the Charitable Regulatory Regime

In May 2017, the Minister of Revenue Canada released the [Report](#) of the Consultation Panel on the Political Activities of Charities (“the Panel”). The Panel made four recommendations to the Minister. The first two relate to administrative changes, and the second two focus on more comprehensive and far-reaching legislative changes required to update the regulatory regime that structures the work of charities. PFC issued a [response](#) to the report and what it means for funders in Canada. In summer 2017 we submitted a [brief](#) to the pre-budget consultations of the House of Commons Finance Committee, reiterating a call to implement the recommendations. Over the last six months, PFC has worked with a coalition of umbrella organizations and sector charities to pursue a dialogue with the federal Ministers of Finance and Revenue Canada, and to make parliamentarians aware of the importance of action on these recommendations.

In the federal budget of March 2018, the government stated that it “has pledged to allow charities to do their work on behalf of Canadians free from political harassment, and promised to clarify the rules governing political activity, with an understanding that charities make an important contribution to public policy. An expert panel was created to study the issue of political activities by charities, and in 2017 this panel provided a series of recommendations to the Government based on consultations held with charities. *The Government will provide a response to this report in the coming months.*” (PFC emphasis)

PFC will continue with others in the charitable community to press for action and for a response that addresses the many concerns of charitable foundations and organizations on this question of the rigidities and the inconsistencies in the *Income Tax Act* that unnecessarily hamper the work of foundations and charities.

A new parliamentary study being conducted by the Senate may provide opportunities for a presentation of our recommendations for modernization of the ITA. The Senate struck a [Special Committee](#) at the end of January to “examine “the impact of federal and provincial laws governing charities, non-profit organizations, foundations, and other similar groups, and to examine the impact of the voluntary sector in Canada.” This Committee is chaired by Senator Terry Mercer and the Vice-Chair is Senator Ratna Omidvar. Hearings of the Committee will begin in mid-April and a report is expected by December 2018.

3. Federal Budget 2018: Public Benefit Journalism

In the February 2018 Budget, the major announcement of interest to the charitable sector and to foundations (other than the commitment to respond to the report of the Panel on Political Activities) was the following:

The Budget proposes to provide \$50 million over five years, starting in 2018-2019, to one or more independent, non-governmental organization(s) that support local journalism in underserved communities. The Government is specifically interested in ensuring “trusted, local perspectives as well as accountability in local communities.”

The Government also announced that it will explore new models that enable **private giving and philanthropic support** for “trusted, professional, non-profit journalism and local news.” As part of this initiative, the Government indicated that such new models “could include new ways for Canadian newspapers to innovate and be recognized to receive charitable status for non-profit provision of journalism, reflecting the public interest they serve.” There is no information yet on how or when the Government will pursue the question of charitable status for public benefit journalism organizations, although this could have implications for the definition of charity in Canada.

4. Changes To Ontario Law for Charities and Social Investment

In November 2017, Ontario gave Royal Assent to a new Act, *Cutting Unnecessary Red Tape Act, 2017*. Because of the amendments introduced in this Act, the Charities Accounting Act (CAA), which governs charities in Ontario, now provides a framework for “social investments” by trustees and charitable corporations holding property for charitable purposes and which excludes the application of the prudent investor rules in the *Trustee Act* (with minor exceptions) with regard to social investments. Up to now, uncertainty about the implications of the prudent investor rules of the *Trustee Act* may have been discouraging some charities and foundations, from engaging in social investments. The Government of Ontario is eager to facilitate increased social investing by charities in Ontario, and the changes to add “social investment” to the CAA are intended to encourage such investment. This is a positive signal for foundations in Ontario who may want to explore social finance investments from their portfolios. There will be guidance issued soon by the Office of the Public Guardian and Trustee in Ontario that will provide more information on social investment under the CAA.

In the meantime, for a detailed discussion of social investment options and rules in Ontario see a February 2018 paper by non-profit Lawyer Terrance Carter, [The Investment Spectrum for Charities, Including Social Investments](#)