

## MEMBER ADVISORY #3-2016

December 12, 2016

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

### 1. CRA Consultation on Political Activities: Update

The Charities Directorate of the Canada Revenue Agency (CRA) and the Department of Finance conducted their consultation with charities to clarify the rules governing political activities through late November and early December. As part of this consultation, CRA and Finance held in person meetings in seven Canadian cities with representatives of interested charities. PFC participated in the consultation session in Montreal. See [here](#) for a description of the process and questions.

PFC also submitted two briefs to CRA. The [first](#) provided our position on behalf of foundations with respect to political activities. The [second](#), prepared in collaboration with CEGN, comments on the issue of the lack of fairness in the charities audit process. The results of the consultations and the recommendations in the briefs are being reviewed by a panel of five individuals from the charitable sector or closely associated with the sector. The panel includes Marlene Deboisbriand, vice-president of the Boys and Girls of Canada; Peter Robinson, CEO of the David Suzuki Foundation; Kevin McCort, president and CEO of the Vancouver Foundation; Susan Manwaring, partner at Miller Thomson; and Shari Austin, principal consultant at Shari Austin & Company. The panel will compile a report for the Minister of CRA in January 2017. This feedback will be considered in the development of new guidance or educational resources for charities on the rules governing political activities.

It should be noted that this consultation process is raising the larger question of the necessity of modernizing the legal and regulatory framework for charities as a whole. PFC has stated in our brief that we wish to endorse the recommendation of Imagine Canada that consideration be given to amending the *Income Tax Act* to restore an emphasis on charitable purposes, rather than regulating how charities achieve those purposes.

Reviewing the intent of the *Income Tax Act* with the idea of focusing on charitable purposes, rather than activities, would encourage charities who wish to pursue policy work and so-called “political” activities as a way of fulfilling their charitable purpose, including supporting the federal government in its efforts to promote social innovation and to accelerate “smart and inclusive” growth.

Imagine Canada issued a [media release](#) on December 14 commenting on the consultations and noting that “*there is clear support from organizations across the country for a legislative amendment that ends restrictions on the public voice of charities.*”

## **PFC Survey on Funders and Political Activities**

To obtain input from our members, PFC recently conducted a survey of funders and political activities. Of the 31 respondents, just under one-third occasionally respond to requests for information, make submissions or urge government officials to adopt a policy. Contacts are evenly distributed between federal and provincial levels. Just over a third (12) make grants to organizations that seek to change laws and policies. But close to one-third (9) report that they are more cautious in this area of funding now because of attention paid to CRA audits and to confusion over what is allowed and what is not allowed. Thirteen respondents do not believe that the CRA's policy guidance on 'political activities' is clear enough. Many feel that the description of a ~political activity~ needs to be much clearer; and that more examples are necessary in CRA`s guidance. The difference between political activities and lobbying is not clear enough.

Some comments:

- We believe the overall framing of the CRA rules to be misguided. There should be no more audits of political activities. The proper purpose of audits is to ensure the foundations and nonprofits are allocating their resources in alignment with their charitable missions. As such, the audits should not focus on activities but rather on allocation of financial resources.
- The current audits aren't following CRA's own practices and guidelines; there is no reason that some charities should have been stripped of their charitable number without warning letters and proper recourse. The selection of the charities to be audited was politically motivated by the previous government in order to silence opposition. And, the audit process is both a huge financial, time and reputational burden on those organizations being audited. Finally, the idea that an organization would be stripped of its status because "eradicating" poverty is not a charitable purpose, but "alleviating" poverty is charitable, is absurd beyond belief.
- CRA should focus on the purpose, rather than the activities involved. Reference to research should be removed from the context of political activity guidance. Guidelines need to be transparent, with clear boundaries. Communication needs to be consistent in all formats used. Political activities are not well understood.

- It appears that the CRA rules on "political activities" have been used in an extremely partisan way with certain organizations being targeted for audit with the result being that good work is frustrated and inhibited for extremely unreasonable lengths of time.
- It is very hard for a foundation to know whether a donee is actually performing political activities, so that is an issue. It is really hard for any charity to be completely devoid of all political activities in one form or another. Clear rules are definitely required.
- While it may be reasonable to have some limits the current approach is fraught with difficulty given the lack of clarity.
- Concern that certain charities have been audited in the past (especially environmental charities) and it's unclear if going forward they will maintain their registered charity status or qualified donee status. Thus unclear if ongoing financial support is viable

PFC will be tracking the consultations and results closely and will keep members informed of any changes.

## **2. Excess Business Holdings Regime: Reminder re Reporting Requirements**

In 2007, Finance Canada created the excess corporate holdings regime for private foundations. Effective March 19, 2007, a private foundation that holds issued and outstanding shares (whether public or private) of a share class of a corporation may need to report the holdings and material transactions. There has been no change in this regime but CRA has announced that it will no longer mail the Worksheet to foundations so we thought it would be helpful to reiterate the rules and to provide a link to the CRA site where the Worksheet can be found (and printed)

Under the regime, there are three ranges of corporate holdings each with different implications:

- Safe Harbour – The foundation is not required to report its own holdings or the holdings of any relevant persons of any class of shares of a corporation if, throughout the fiscal period, the foundation never held more than 2% of any of the classes of shares of that corporation.
- Monitoring – If the foundation's total corporate holdings percentage of any class of shares of a corporation exceeded 2% of the issued and outstanding shares of that class at any time during its fiscal period, the foundation has to determine and report to the CRA the percentage of shares that it and any relevant persons with material interests held, at the end of that fiscal period, of each class of shares of

the corporation. It must also report its own material transactions and the material transactions of any relevant persons for each such class of shares.

- Divestment – If the foundation holds more than 2% of a share class of a corporation at the end of its fiscal period, and the foundation and all relevant persons together hold more than 20% of that same class of shares, the foundation may be subject to divestment obligations (see Calculating excess corporate holdings and divestment obligations). The reporting requirements in the monitoring range also apply in the divestment range.

Holdings and material transactions must be reported on Form T2081, Excess Corporate Holdings Worksheet for Private Foundations. A private foundation uses this form to report its holdings percentage of any class of shares of a corporation and any material transactions. It is filed with Form T3010, Registered Charity Information Return.

See [here](#) for the description and link to Worksheet.

### **3. The Limited Partnership Rule and CRA Reporting Requirement**

The CRA requires registered charities to annually report their partnership holdings. To fulfil the reporting requirement, charities must answer the question [Did the charity have direct partnership holdings at any time during the fiscal period?](#) This question is now incorporated into the T3010 reporting form.

### **4. For B.C. Members: The Societies Act**

Beginning November 28, 2016, existing B.C. societies can transition under the new British Columbia Societies Act (the “Act”). They have two years or until November 28, 2018 to transition. To do so, B.C. societies must file a transition application. The transition application must include a society’s constitution, bylaws and a statement of directors and registered office. The transition application will be filed online. The society will need to create an account on the new online filing system. The B.C. Corporate Registry will be contacting all existing societies by mail.