



MEMBER ADVISORY #2-2018

November 1, 2018

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

1. PFC Public Policy Priorities

Our ongoing public policy priorities 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

In August 2018, PFC submitted its [annual brief](#) to the pre-budget consultations of the House of Commons Finance Committee. This brief makes specific recommendations on three priorities for PFC in 2019:

- a) Implementation of all four recommendations of the Consultation Panel on the Political Activities of Charities including a comprehensive review of the regulatory framework for charities in the Income Tax Act.
- b) Establishment of a clear set of guidelines by CRA regarding program-related investing
- c) More funding for the collection of key data on the nonprofit sector by Statistics Canada.

The Parliamentary Committee has yet to make its recommendations to the Minister of Finance for the 2019 spring Budget. Meanwhile, a separate study on the charitable sector is being done by a special Committee of the Senate which will report possibly in December (see Item 4).

2. Social Finance

In September, a Report on a [Social Innovation and Social Finance Strategy for Canada](#) was made public by the Minister of Employment and Social Development. The report was developed by a group of people coming from the “social purpose” sector including charities, non-profit organizations, co-operatives, and private businesses advancing a social or environmental mission. It makes 12 recommendations which the group argues are interlinked and part of a systemic approach to address gaps that arise across six interconnected areas:

1. **Skills and capacity** to equip social purpose organizations with the knowledge and resources to adopt social innovation and social finance approaches;
2. **Funding and capital** opportunities so that social purpose organizations have the financial resources to develop, test, adopt, and grow innovative solutions to social and environmental problems;
3. **Market access** for social purpose organizations to be able to find buyers for their goods and services;
4. An enabling **policy and regulatory environment** that creates the conditions for social innovation, social finance and social purpose organizations to flourish;
5. **Evidence and knowledge sharing** to enable social purpose organizations and funders to work together based on what works, develop better goods and services, scale their impact and evaluate progress; and
6. **Awareness and mobilization** efforts to spur interest and build support for the growth of social innovation and social finance approaches.

Of interest to foundations are Recommendation 6 to create a Social Finance Fund, and Recommendation 9 to address the legal and regulatory issues impeding charities and non-profits from engaging in social innovation, social finance, and social enterprise. The latter dovetails with the recommendation to modernize the regulatory system for charities (including foundations) addressed in the separate Consultation Panel on Political Activities of Charities.

3. Charities and Political Activities

The Minister of Finance has finally tabled legislation (see [statement by the Minister of Finance](#) in the House of Commons to implement a revision to the treatment of the political activities of charities. This is a result of a lengthy and intensive campaign by many organizations in the charitable sector, in which PFC fully participated, to persuade the government to act on Recommendation 3 of the Consultation Panel on the Political Activities of Charities

The proposed changes to the Income Tax Act will introduce a new definition of charitable activities that “provides that charitable activities include, *without limitation*, public policy dialogue and development activities carried on in furtherance of a charitable purpose. Public policy dialogue and development activities generally involve seeking to influence the laws, policies or decisions of a government, whether in Canada or a foreign country. Under this definition, such activities will be considered charitable activities provided they are carried on in furtherance of a charitable purpose (e.g., the relief of poverty or the advancement of education). An organization could therefore, for example, meet the test of the definition "charitable organization" where some or all of its activities are public policy dialogue and development activities carried on in furtherance of a charitable purpose.

The Act will be amended to remove the reference in the provision to non-partisan political activities and to the "substantially all" condition in relation to the resources a charitable foundation may devote to political activities in furtherance of its charitable purposes. The effect of this amendment is to remove the existing limits on the extent to which a charitable foundation can engage in non-partisan political activities. The prohibition against a charitable foundation devoting resources to the direct or indirect support of, or opposition to, any political party or candidate for public office is maintained.

This is excellent news for many charitable foundations who engage in public policy and advocacy work or who support such work by other charities. The Government listened and

responded to the views and statements of many PFC members and charities on this issue and we are very encouraged by this result.

There will be detailed Questions and Answers for charities developed by Imagine Canada and by PFC soon. We are waiting for the release by the CRA of draft guidance to implement the new policy and will advise members as soon as it is available.

4. Progress on Modernization of the Charitable Regulatory Regime

Over the last year, 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 modernizing the provisions of the Income Tax Act with respect to charities and related business, maintaining direction and control of charitable funds and allowing more leeway for charities to pursue any activities consistent with their charitable purposes.

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 study being conducted by the Senate of Canada 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.” is providing several opportunities for discussion on modernizing the legal and regulatory regime. Hilary Pearson spoke to the [Committee on September 17](#). Other PFC members who have addressed the Committee so far include the J W McConnell Foundation, the Muttart Foundation, the Trico Foundation, and the PWC Canada Foundation. All of these [presentations can be viewed](#) and in most cases written transcripts are available. A report is expected by December 2018.