Philanthropic Foundations Canada
Fondations Philanthropiques Canada

Written Submission for the Pre-Budget Consultation in Advance of the Upcoming Federal Budget

From Philanthropic Foundations Canada

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SUMMARY

RECOMMENDATION 1 – Encourage more foundation capital for economic and social good by underwriting investments in projects that meet both foundation and government economic and social impact goals.

RECOMMENDATION 2 – Make a technical amendment to the Income Tax Act to ensure charities can pool funds to grant to Non-Qualified Donees.

RECOMMENDATION 3 – Designate the Tax Court of Canada as the primary appeals reviewer of CRA decisions.

RECOMMENDATION 4 – Initiate the process for a disbursement quota review in 2027 as promised in Budget 2022.

Introduction

Consider this: a nonprofit in Toronto launches a housing-first program that pairs stable, affordable housing with wraparound mental health supports. The group is able to purchase the building in a low-income but gentrifying neighbourhood thanks to low-interest investments from a group of charitable foundations utilizing capital from their endowments. The investments were possible because the government guaranteed the loans to ensure the foundation investments were secure.

The results? Reduced emergency room visits, fewer interactions with the justice system, and improved long-term outcomes for individuals experiencing chronic homelessness. The nonprofit builds equity and makes income from renting space for a market-rate café on the ground floor. Investment returns meet expectations. The foundations advance their charitable missions utilizing their assets to invest for good. And the governments' loan guarantees were no-cost to the taxpayer. This is just one example of the kinds of creative, low-cost community-based solutions that can underpin the success of government partnerships with our sector.

The Government of Canada is focusing right now on Canada's national and economic security, and rightly so. Our prosperity and our sovereignty are under direct threat. Public-private cooperation, smarter public expenditures, and reduced red-tape are on the agenda to develop the infrastructure required for Canada to become the strongest economy in the G7.

At the same time, Canadians are facing unprecedented challenges that have been developing for years and are today overwhelming as the country enters a tariff induced recession. Charities and nonprofits are being called upon by the communities they serve to address them, and they are showing up as they always do.

From affordable housing to crisis intervention programs to employment training to newcomer integration services, nonprofits are essential partners with government in helping Canadians in their hour of need and building resilient, inclusive communities. And even for Canadians not directly interacting with these organizations right now, they are addressing the very issues that shape the public policies Canadians require—like mental health care, climate resilience, and economic fairness.

A big part of that is thanks to the work of Canada's charitable foundations. There are more than 10,000 foundations in Canada, who together steward $135B in assets. They use those assets to invest directly in the economy, including social impact investments, and earn returns for grants to seed, support and sustain the work of non-profits and charities.

Foundations provide about $10B in grants every year. A critical element of civil society, they are complementary - not a substitute - for the state. To be clear, any gap left by a government looking to cost-cut could not even begin to be filled by foundations as the math simply does not work. For perspective, *all* foundation assets are the equivalent of 1/3 of the Quebec Pension plan, or merely what Canadian governments spent on health for just four months in 2024. Given the size of the foundation sector, the limits of a substitution model are very clear.

But where there *is* a real opportunity is with no-cost policy levers, red-tape reduction, and ensuring that the regulatory system that governs our sector is working.

We know the government is looking for ideas to increase Canada's economic health, while working with limited resources and pressures to be ambitious in bringing about greater impact. As policymakers, there are easy to implement, inexpensive solutions at the ready that can unlock the full potential of nonprofits - and their resources - to deliver innovative solutions to Canadians' most pressing challenges.

RECOMMENDATIONS

1. Encourage more foundation capital for economic and social good by underwriting investments in projects that meet both foundation and government economic and social impact goals.

Social finance is an approach to mobilizing capital that delivers both social dividends and economic returns. Mobilizing capital for social good creates opportunities for investors to finance projects that benefit society, and for social-purpose organizations to access capital, all while creating a financial return.

We are certain that the Government of Canada can accelerate more of this win-win behaviour. A specific and simple opportunity exists that could make a huge difference, and that the government could act on straight away is to derisk philanthropic investments.

Virtually all foundations are interested in investing their assets for social as well as financial returns. While participation is burgeoning, many investment committees remain timid due to the perceived fiduciary risk of focusing investments on anything other than a financial return because of their strict legal disbursement quota obligations.

Happily, the data on Canadian impact investments is very positive. They continually demonstrate a diversity of return profiles, showing them to be part of a robust financial strategy. What's more is that most meet or exceed market rates, reinforcing the growing alignment between impact and profitability, and making the case for broader institutional participation.

The government has a unique opportunity to support further leveraging of foundation capital for social good by underwriting investments for projects that meet both foundation and government economic and social impact goals. This would encourage more philanthropic investment in this arena, particularly from asset managers who are more traditional.

An immediate example is the Canada Rental Protection Fund, created by the Government of Canada, inspired by BC's Rental Protection Fund, to help the community housing sector acquire rental housing to preserve affordability of rents over the long term. It should include secured investment opportunities to leverage other sources of capital, including from philanthropy.

At a time where we need to invest more in Canada, the government can structure opportunities like this for foundations and other charity investors with low but guaranteed investment returns. This would help increase co-investment and limit the financial burden for the public purse.

2. Make a technical amendment to the Income Tax Act to ensure charities can pool funds in granting to NQDs

In 2023, a new regime was established called 'qualifying disbursements' that permit charities to make grants to non-qualified donees (NQDs).

This framework represents historic efforts by government and civil society to ensure a level playing field between charities and non-profits that provide public benefit but that are not registered charities.

While PFC is pleased in general with this important change, there remain challenges with the legislation as well as the implementation that require government attention. This is pressing as the new rules have been in force for over two years.

The anti-directed giving stipulation in the legislation says that organizations jeopardize losing their charitable status for knowingly accepting gifts conditional on them going to NQDs. As a result it discourages pooled funding partnerships – an essential practice used regularly, especially during urgent and quickly-evolving contexts, as has been seen during war, natural disasters and the COVID-19 pandemic. It helps charities quickly get money to where it is needed by transferring assets to other charities with expertise and connections on the ground.

This stipulation also makes Canada unattractive for international charities considering relocating here with their valuable assets and good jobs. Our rules for charities are still among the most antiquarian in the world.

We do not believe the government had the intention of discouraging these kinds of good practices and outcomes. We believe the provision was created to help prevent bad actors from using charities as conduits for nefarious activities, which is an important concern. A way to address both concerns is a technical amendment to the effect of what is written in the CRA's administrative guidelines for granting to NQDs - that gifts can be accepted by a charity for programs that support non-qualified donees, so long as the ultimate authority on the use of resources rests with the charity.

3. Designate the Tax Court of Canada as the primary appeals reviewer of CRA decisions that refuse or revoke registrations of charities.

The bulk of charity law is based on the common law, which is meant to evolve over time in ways that reflect societal change. But this evolution can only happen if there are court cases and rulings that move the law forward.

Currently, the main appeals process for charities is through the Federal Court of Canada. The Federal Court of Appeal is an expensive, onerous process which hears cases less frequently than the tax court, and that are based on documentation alone - with no opportunity to present other evidence than what the CRA presents. The Tax Court by contrast sits in more locations across Canada and the appellant is entitled to give testimony and to call others to help make their case. Similarly, government officials can call their witnesses. This is called a hearing “de novo.” It means that the only things the judge knows about the case at the outset is what is contained in the notice of appeal and the government’s response. Most of what a judge learns will come from the witnesses. The benefit of this type of process is that it provides more substantial records, offers more opportunities for more evidence to be considered, and allows an impartial review of a case to ensure fairness.

At the crux of all the policy issues PFC is advocating is the fact that regulation is inadequate, out-of-date, and not meeting today’s evolving needs. To help remedy this, we recommend the Government of Canada designate the Tax Court of Canada as the primary reviewer of CRA decisions including those that refuse registration of a charity or revoke the registration of existing charities. The idea has been in circulation for years and most notably was raised in the 2019 Senate Report *Catalyst for Change: A Roadmap to a Stronger Charitable Sector* (recommendation 23). This change would provide more opportunities to develop law that would help the concept of charity and related issues progress to meet society’s needs.

4. Initiate the process for a disbursement quota review in 2027 as promised in Budget 2022.

The disbursement quota rate (the minimum annual amount set by the government that a charity must spend), was raised to 5% for assets over $1 million in 2022. PFC recommended and supported this decision. The revised evidence-based rate helps prevent capital accumulation, and getting more money out to community, while also preventing erosion of charities’ endowments so they can invest them to get the necessary returns to grant or spend on charitable activities.

In Budget 2022 a review after five years was promised. To ensure this deadline is met, PFC calls on the government to begin preparations for an evidence-based consultative process.

The government should commit to the rate being regularly reviewed and determined according to a data-driven formula that promotes principles of philanthropic impact and preclusion of significant endowment capital accumulation or erosion. PFC recommends that reviews include analyses of a rolling five-year average of inflation, and actual returns and liquidity for a responsible and balanced investment portfolio. As a floor for disbursing assets, the disbursement quota should be based on long-term rates of returns for prudent and diversified investment practices by endowed charities. We encourage the government to consider a formula along these parameters: DQ = responsible investment indexed net returns – compounded inflation – reasonable operating costs.

Philanthropic Foundations Canada (PFC) is Canada's national philanthropic network, working together towards a more just, equitable and sustainable world. Our membership are private and public foundations, charities, non-profits, donor-advised funds and corporate giving programs whose primary purposes are grantmaking. Together our members represent the majority of all public and private foundation assets in Canada.