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Reflections on the 2019 Federal Budget from the Perspective of Charities and Non-Profits

By Linda J. Godel and Lauren Crosby

Much has been written about the Federal Budget (**Budget**) tabled by the Department of Finance (Canada) on March 19, 2019 and its impact on charities and non-profits. The changes to the *Income Tax Act* (Canada) regarding the support of Canadian journalism and donations of cultural property (discussed below) only affect a small number of organizations, however, the Budget contained many other topics of significance to the sector. Some highlights of the proposals that will be of particular interest to Canadian charities and non-profits are outlined below.

Housing

The Budget addressed the housing crisis in Canada, both in terms of affordability and availability, and it acknowledged the increased demand for community and subsidized housing. Building upon the National Housing Strategy from the 2017 Federal Budget, the Budget included a proposal to introduce new laws to “require the federal government to maintain a National Housing Strategy that prioritizes the housing needs of the most vulnerable.” Charities and non-profits that provide or address housing as part of their activities should take note.

Research

The Budget furthers last year’s commitment to build research excellence in Canada as the federal government announced additional proposed support for scientific research. Charitable and non-profit research recipients in the Budget included Stem Cell Network, Terry Fox Research Institute, Ovarian Cancer Canada, Brain Canada Foundation, Let’s Talk Science and Genome Canada. Charities and non-profits that conduct research will be interested to note the Budget’s proposal for the establishment of the Strategic Science Fund in 2022-2023 through which the federal government will grant future research funding. Further details about this Fund are expected in the upcoming months.

Health and Well-Being

A significant focus of the Budget was the health and well-being of Canadians. In particular, the government proposed funding for suicide prevention and additional funding to address the opioid crisis, both issues of prominence in the news of late. Other acute health issues faced by Canadians which were covered in the Budget included support for those affected by Alzheimer's and other dementias (which accompanies the upcoming public release of Canada's National Dementia Strategy), as well as funding to improve organ and tissue donation and transplantation in Canada. Accessibility and inclusion were also addressed in the Budget with the government reflecting on its own internal practices by committing to make federal government workplaces more accessible. In addition, funding was proposed to address some of the barriers to employment faced by people with visual impairments, intellectual disabilities and Autism Spectrum Disorders.

Social Finance Fund

The Budget reaffirmed the commitment to establish the Social Finance Fund which was originally announced in the 2018 Fall Economic Statement (see our November 26, 2018 article). The objective of the Fund will be to provide social purpose organizations, including charities and non-profits, with access to capital to help them carry out activities which will have a positive social or environmental impact. It is anticipated that recipients of funds will be chosen in the last quarter of 2019 by a team of professional investment managers with experience in social finance. With social and impact investing gaining significant momentum in the sector, the creation of the Social Finance Fund is an exciting development that will enable more organizations to effect change through their investments.

Diversity, Culture and the Arts

The Budget reinforced the federal government's commitment to gender equality, diversity and inclusion, and fighting racism. The Women's Program received a \$160 million commitment over five years to "tackle systemic barriers impeding women's progress" while diversity and inclusion will be supported by \$20 million plus of funding. In addition, a new Anti-Racism Strategy will receive financial support to counter various forms of racism. The federal government also expressed its support of the arts by making commitments to Canadian musicians, artistic events and festivals.

Donations of Cultural Property

Previously, when a taxpayer donated cultural property of "outstanding significance" and "national importance" to certain types of Canadian entities, the taxpayer was entitled to a tax credit or deduction (depending upon whether the taxpayer is an individual or a corporation), which could nullify the tax liability of the taxpayer for a year. The taxpayer would also be exempt from paying income tax on any capital gains resulting from the disposition of the property.

From and after March 19, 2019, the criteria for qualification for the charitable donation tax credit/deduction and exemption have been amended to remove the requirement that the cultural property be of "national importance". This change stems from confusion caused by a 2018 decision of the Federal Court of Canada which interpreted the meaning of "national importance", creating uncertainty as to whether cultural property that originated outside of Canada would qualify for the tax benefit.

The rationale for this preferential tax treatment is to incentivize taxpayers to keep important cultural property in Canada so that it can be enjoyed by Canadians. It is hoped that any ambiguity caused by the court decision will be eliminated by this change.

Healthy Sport System

In conjunction with the national dialogue on concussion guidelines and the #metoo movement, the Budget contained a commitment to "promote accessible, ethical, equitable and safe sports." Beyond the \$30 million proposed funding, further details of these measures were not provided. Non-profit sports organizations will be interested in seeing where this proposal leads.

Canadian Journalism

From a technical perspective, the 2019 Budget builds on the announcements contained in the 2018 Federal Budget and the 2018 Fall Economic Statement regarding the federal government's support of Canadian journalism (see our February 28, 2018 and November 26, 2018 articles).

Specifically, the Budget included the following measures which are designed to support Canadian journalism organizations to produce original news:

- Certain Canadian journalism organizations will be able to apply to obtain the status of "Qualified Canadian Journalism Organization" (QCJO);
- QCJOs that meet certain requirements may apply for registration as qualified donees which will enable them to receive tax receiptable donations;
- Certain QCJOs will be able to claim refundable labour tax credits; and
- Subscribers of specific types of digital news provided by QCJOs will be able to claim non-refundable tax credits.

The eligibility criteria for the above measures will be recommended by an independent panel to be appointed.

Qualified Canadian Journalism Organizations

To qualify as a QCJO, a journalism organization will need to be established as a corporation, a partnership or a trust, and be recognized by the relevant administrative body (to be appointed by the government) as meeting certain qualifications. While some of the qualifications for QCJOs have yet to be determined, the Budget did contain the basics.

To qualify, an organization will need to primarily produce original news content "on matters of general interest and reports of current events." Organizations that mostly focus on specific topics (e.g., sports, entertainment) will not be eligible. In addition, to qualify as a QCJO, an organization must operate in Canada, and depending on how it is structured, it must meet specific governance requirements, which are generally aimed at demonstrating its Canadian identity, ownership and control. The organization must also employ at least two arms' length journalists who are involved in the production of its news content.

Organizations that are significantly involved in producing content that promotes goods or services or the interests or activities of an organization or its members will be ineligible for QCJO status. Government agencies, and municipal and Crown corporations also cannot qualify (nor can any organizations that are significantly involved in producing content for a government, an agency of the government or a Crown corporation).

Qualified Donee Status

A "qualified donee" is a type of entity which is exempt from paying income tax and includes Canadian registered charities, Canadian amateur athletic associations, certain universities outside Canada, etc. Qualified donees can receive funds from Canadian registered charities and issue tax receipts for donations from individuals and corporations. The Budget proposes to permit eligible QCJOs to be registered as qualified donees and receive donations, subject to certain obligations such as those relating to issuing donation receipts, filing annual returns, and maintaining books and records. Like other qualified donees, certain information about these organizations will be made public, and they risk being subject to sanctions for failing to meet their obligations.

QCJOs wishing to become qualified donees will be required to apply for registration with the Canada Revenue Agency, and meet certain additional criteria. For example, a QCJO's purposes will need to exclusively relate to journalism, and it must be structured in such a way as to impose additional restrictions on the composition of its board of directors or trustees, the donations that it receives, and the distribution of its profits and income.

Not all QCJOs will qualify as qualified donees. For example, QCJOs which are established as partnerships or which have business activities that are not related to their purposes will not be eligible.

Refundable Labour Tax Credit

Effective January 1, 2019, eligible QJCOs are entitled to claim a refundable tax credit on salaries or wages paid by them to certain of their newsroom employees. Both QJCOs which are qualified donees and those that are not are eligible for this credit, provided that they meet certain requirements for Canadian control or ownership.

Again, certain QJCOs will be automatically ineligible to receive this credit, such as those that receive funding from the Canada Periodical Fund's Aid to Publishers component. In addition, since this tax credit only applies to employees who are "primarily engaged in the production of original *written* news content" [emphasis added], news organizations that are involved in broadcasting activity will not be able to utilize the credit.

The refundable labour tax credit is equal to twenty-five percent of eligible labour costs with a cap of \$55,000 per employee per year, less government assistance received in the year. As such, the maximum annual tax credit per employee will be \$13,750. As noted above, the independent panel will set the criteria for eligibility for the tax credit.

Personal Income Tax Credit for Digital Subscriptions

For the period after 2019 and before 2025, individuals who pay for certain Canadian digital news provided by QJCOs can claim a non-refundable tax credit for their subscription fees. This temporary credit will be available for subscriptions in digital format only. News content that is available in a combined digital and newsprint format will not qualify, nor will subscriptions which have a broadcasting component.

Subscribers will be able to claim a maximum of \$500 for their subscription costs which will provide them with a maximum tax credit of \$75 per year. If a QJCO loses its status, any amounts paid to it by subscribers prior to such loss will still qualify for the tax credit.

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While the changes to Canada's *Income Tax Act* that affect charities and non-profits were not extensive, the Budget contained many announcements that could have a significant impact on the sector. As always, the devil is in the detail and we will need to wait and see the actual outcomes.

We would be happy to advise on any changes in law and policy that may affect your organization.

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