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REPORT OF THE STANDING COMMITTEE ON FINANCE RECOMMENDS CHANGES TO ENCOURAGE CHARITABLE GIVING

By Terrance S. Carter[*]

A. INTRODUCTION

On December 9, 2009, the Standing Committee on Finance ("the Committee"), as part of its 2009 pre-budget consultations, released its report, entitled *A Prosperous and Sustainable Future for Canada: Needed Federal Actions* ("the Report").[1] The Report will now be considered by the Ministry of Finance in drafting the 2010 federal budget. In June 2009, the Committee had invited Canadians to participate in pre-budget consultations, with the backdrop of nascent recovery from the last fall's recession. In light of the serious financial difficulties that many charities have had to cope with during the recession, the recommendations of the Committee to Parliament are particularly crucial in speeding the recovery of the charitable sector and encouraging future giving. The Report recognizes that charities and volunteers make an invaluable contribution to Canada, providing alternative or supplemental assistance to those in need.[2] This *Charity Law Bulletin* summarizes some of the submissions made to the Committee by the charitable and not-for-profit sector, as well as the recommendations put forward by the Committee in the Report.

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[1] Online at: http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4304866.
[2] *Supra*, note 1, at page 73.

B. SUBMISSIONS FROM THE CHARITABLE SECTOR

In terms of tax incentives for giving, the Committee heard from witnesses from the charitable and not-for-profit sector on a number of suggestions. Witnesses put forward the suggestion that donations of publicly listed securities could be enhanced by providing a tax credit of 42% of the adjusted cost base of the security and the normal 29% tax credit on the resulting capital gain. Another suggestion with regard to publicly listed securities was to extend the exemption from capital gains tax to gifts of real estate and donations of private company shares. In the case of gifts of real estate, it was suggested that the charity would receive all or part of the proceeds from the sale of the property, with an exemption for the donor on the capital gains tax on that portion of the real estate which he or she donated.

Of the various tax incentives discussed, the most notable was the "stretch" tax credit proposed by Imagine Canada, and supported by a number of witnesses. The "stretch" tax credit is an innovative tax incentive, that would "stretch" the normal tax credit of 29% to 39% for donations over $200 that exceed a donor's previous highest giving level, starting with 2008 as a baseline. To continue to benefit from the credit, the donor in subsequent years would need to increase their level of giving over that 2008 baseline to a maximum of $10,000. It was suggested to the Committee that the government work in tandem with the charitable sector to promote such a tax credit, and undertake a five year review of the credit to determine if it was meeting the goal of increasing giving.[3]

Charities and not-for-profits have also had difficulty in getting access to financing, given the recent economic downturn. In this regard, the Report notes that it was suggested that debt capital, such as loans, be made more accessible to smaller charities with unpredictable revenue streams, which often have difficulty accessing funding. In addition, grants from the government, or access to investment capital through capital development funds would also alleviate the difficulties for charities, social enterprises and similar organizations. The Report also remarks that the Committee heard from witnesses that the creation of a registered retirement savings plan-eligible tax credit could be created for tax payers who wish to invest in community economic development investment funds carried out by local nonprofits. Further, the Report comments that the government was urged to create an "economic recovery" or "recession relief" fund to prevent spending cuts to agencies that serve vulnerable beneficiaries.

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[3] *Ibid*, at page 74.

In the October 2009 *Charity Law Update*[4], we reported that the National Charities and Not-for-Profit Law Section of the Canadian Bar Association had submitted a proposal to the Ministry of Finance on the reform of the disbursement quota ("DQ"). In this regard, the Report remarks that the Committee was urged to eliminate the disbursement quota because it, "is confusing, requires an 'inordinate' amount of time to understand and implement, is unduly complex, makes arbitrary and excessive capital disbursement demands that ignore the realities of the investment market, and imposes a costly administrative burden on charities."[5] In the alternative, witnesses also suggested a review of the DQ regime in order to simplify the system and make it more flexible. Recommendations were also made to the Committee in the area of volunteerism, such as providing tuition relief to post-secondary students who volunteer, promoting the value of volunteering in the education system, and providing tax credits for athletics coaches and officials to offset the costs incurred in their certification. Witnesses also put forward support for the idea that a national goal of increasing the rate of volunteerism by a certain percentage of time be implemented.

C. COMMITTEE RECOMMENDATIONS

The Committee recognized that "the federal government has a role to play in encouraging charitable giving and in supporting charitable organizations."[6] The Report notes that such support is necessary to better position charities for the future in order to facilitate their contribution to society. In this regard, the Committee made the following recommendation:

> "The federal government examine incentives that would have the effect of increasing the level of charitable giving by businesses and individuals. In particular, the government should consider:
>
> - An increase in the charitable tax credit rate to 39% for incremental annual increases in giving, provided that annual giving is more than $200 and less than $10,000;
> - The creation of a corporate structure for not-for-profit organizations that would allow the issuance of share capital and other securities; and
> - The elimination of the capital gains tax on donations of real estate and land to public charities."[7]

Due the Canada's position as a wealthy country, the Committee also recommended an increase in funding to the *Global Fund to Fight AIDS, Tuberculosis and Malaria*.

[4] See Terrance S. Carter in "CBA Submits Concept Paper on the Reform of the Disbursement Quota Regime" in Charity Law Update (October, 2009) online: http://www.carters.ca/pub/update/charity/09/oct09.pdf.
[5] *Ibid*, at page 76.
[6] *Ibid*, at page 77.
[7] *Ibid*, at page 78.

It is certainly good news that the first recommendation from the Committee is a formal endorsement of the stretch tax credit put forward by Imagine Canada, and supported by many other organizations within the charitable sector. Imagine Canada has stated that they will continue to promote the stretch tax credit as a priority for the 2010 budget. It is also encouraging to see the recommendation for the creation of a corporate structure for not-for-profit organizations that would allow for the issuance of share capital and other securities, presumably in the context of encouraging social enterprise. As well, the recommendation for the elimination of the capital gains tax on donations of real estate and land to “public charities” (possibly intended to exclude gifts to private foundations) would provide an important incentive for major capital gifts to charities, similar to what has happened over the last decade as a result of the exemption from capital gains tax for gifts of publicly traded securities.

It is unfortunate, though, that the Committee made no recommendation with regard to the representations from the charitable sector relating to reform of the DQ regime. However, given the recent recessionary times it is understandable that the Committee would focus its recommendations on increasing giving and access to financing for charities and not-for-profits. At least the Report did recognize the submission made to the Committee regarding the need to either reform or eliminate the DQ.

D. CONCLUSION

It will be important for stakeholders in the charitable and not-for-profit sector to watch to see what comes out of the 2010 federal budget in order to see which of the Committee’s recommendations will be adopted. While only a select few of the issues presented by witnesses before the Committee have received formal recommendation in the Report, pressure must remain on the Federal Government to adopt the recommendations that have been made. The fact that only three recommendations of many were adopted also means that the charitable and not-for-profit sector has considerable dialogue to continue with the government even after the 2010 budget is released to promote further reform.

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