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FEDERAL BUDGET 2019: IMPACT ON CHARITIES AND NOT-FOR-PROFITS

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A. INTRODUCTION

On March 19, 2019, Finance Minister Bill Morneau tabled the fourth budget of the Liberal Federal Government ("Budget 2019").[1] Similar to previous budgets by the Liberal Government, Budget 2019 again focuses on investing in the middle class, economic growth, as well as advancing reconciliation with Indigenous peoples in Canada.

This *Charity & NFP Bulletin* provides a summary and commentary on these and other provisions from Budget 2019 that impact the charitable, not-for-profit ("NFP"), and health sectors. In this regard, Budget 2019 includes a number of important tax incentives and amendments. The most important are the addition of registered journalism organisations as qualified donees, as well as amendments to the *Income Tax Act* ("ITA") and the *Cultural Property Export and Import Act* to ensure that existing special tax incentives will continue to be available for donations of cultural property of outstanding significance to designated institutions in Canada, such as museums and public art galleries, notwithstanding a recent court decision that had raised uncertainty in this regard. In addition, amendments are proposed to the *Excise Tax Act*

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[1] Canada, *Budget 2019: Investing in the Middle Class*, (19 March 2019) online: <https://budget.gc.ca/2019/docs/plan/toc-tdm-en.html>.

("ETA") to expand the list of GST/HST–exempt health care services to include a multidisciplinary health care service, as well as the creation of a $755 million Social Finance Fund.

B. JOURNALISM

1. Support for Canadian Journalism

In the 2018 Federal Budget ("Budget 2018") the Government proposed funding over five years to support the continued existence of news sources that provide "trusted, local perspectives, as well as accountability in local communities."[2] In addition, Budget 2018 also introduced that the Government was considering new models to enable private giving and philanthropy for "trusted, professional, non-profit journalism and local news".[3] The *2018 Fall Economic Statement* ("Economic Statement")[4] discussed in *Charity & NFP Law Bulletin* No. 435 announced a new category of qualified donee for eligible non-profit journalism organizations, a refundable tax credit for qualifying news organizations, and a temporary non-refundable tax credit for subscribers of digital news media, the details of which were to be provided in Budget 2019.[5]

As a follow up to these initiatives, Budget 2019 proposed the following tax measures in greater detail to "provide support to Canadian journalism organizations producing original news":

- Allowing journalism organizations to register as qualified donees;
- A refundable labour tax credit for qualifying journalism organizations; and
- A non-refundable tax credit for subscriptions to Canadian digital news.

It should be noted that Budget 2019 states that the "… Government will establish an independent panel of experts from the Canadian journalism sector to assist the Government in implementing these measures, including recommending eligibility criteria."

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[2] Canada, *Budget 2018: Equality and Growth: A Strong Middle Class*, (27 February 2018) online: <https://www.budget.gc.ca/2018/docs/plan/toc-tdm-en.html> at 183.
[3] *Ibid* at 184.
[4] Canada, Department of Finance, "2018 Fall Economic Statement: Investing in Middle Class Jobs" (21 November 2018), online: <https://www.budget.gc.ca/fes-eea/2018/docs/statement-enonce/fes-eea-2018-eng.pdf> [Economic Statement].
[5] *Ibid* at 41.

Each of the proposed measures are summarized below. However, the application of these measures will depend on whether or not an organization is a "qualified Canadian journalism organization" ("QCJO"). A QCJO is defined as a corporation, partnership or trust that meets certain eligibility criteria and, in accordance with proposed amendments to the ITA, is "designated at that time by a body prescribed" for the purposes of the definition of QCJO under section 248 of that ITA. Eligibility requirements to be a QCJO are extensive, and include, for example, that the chairperson (or other presiding officer) and at least 75 per cent of the directors of the QCJO must be Canadian citizens, that it is primarily engaged in the production of original news content, and that it must not be significantly engaged in the production of content for a government, Crown corporation, or government agency.

a) Qualified Donee Status

Budget 2019 proposes to add a new category of qualified donee for "registered journalism organizations". Qualified donees are entities that can issue receipts for donations and can also receive gifts from registered charities and include entities such as registered charities. Since a number of registered charities already engage in journalism in the magazine sphere under the heading of advancement of education, it will be interesting to see how attractive qualified donee status as a registered journalism organization is to existing registered charities.

In order to obtain qualified donee status, an organization will first have to be a QCJO that applies to the Canada Revenue Agency and meets additional criteria. Similar to the QCJO status, these criteria are extensive and include that registered journalism organizations be limited to corporations or trusts that are "constituted and operated for purposes exclusively related to journalism", that "any business activities it carries on are related to its purposes" and that registered journalism organizations are not "factually controlled by a person (or a group of related persons)."

As qualified donees, registered journalism organizations will have the benefits of being qualified donees, *i.e.*, they can issue receipts for donations and receive gifts from registered charities. However, they will also have the obligations of qualified donee status, meaning QCJOs with registered journalism organization status will be publicly listed, have to file annual information returns that are available to the public, issue receipts in accordance with the ITA regulations and maintain books and records as required under the ITA. Non-compliance with these obligations will also mean that registered journalism organizations are exposed to monetary penalties, suspension of receipting status, or revocation of status in the same manner as other qualified donees. An interesting difference between registered journalism organizations and registered charities is that the information return filed by registered journalism organizations must report "the names of any donors that make donations of over $5,000 and the amount donated."

Budget 2019 states that this measure will apply as of January 1, 2020.

b) Refundable Labour Tax Credit

In addition to being eligible for registered journalism organization status, Budget 2019 also proposes to introduce a 25 per cent refundable tax credit on salary or wages paid to eligible newsroom employees of qualifying QCJOs. As with registered journalism organization status, QCJOs must also meet additional criteria or be excluded from eligibility for the credit. Expenses that are eligible for the credit will include, "salary or wages paid to eligible newsroom employees in respect of a taxation year and will be reduced by the amount of any government or other assistance received by the QCJO in the taxation year." Budget 2019 also notes that registered journalism organizations will also be entitled to this tax credit in respect of eligible expenses.

The independent panel of experts referenced in Budget 2019 in relation to the implementation of these tax measures will consider eligibility criteria for the purposes of this measure. In this regard, Budget 2019 indicates that the measure will apply on or after January 1, 2019, and that the panel will recognize eligible organizations as of that date, "to ensure that the credit is available as intended."

c) Personal Income Tax Credit for Digital Subscriptions

A temporary, non-refundable 15 per cent tax credit is also proposed by Budget 2019 on amounts paid by individuals for "eligible digital subscriptions" with a QCJO. The tax credit allows individuals to claim up to $500 in costs paid for "eligible digital subscriptions", up to a maximum credit of $75 per year. An "eligible digital subscription" is one that provides a taxpayer with access to digital content provided by a QCJO. Again, a QCJO will need to meet additional criteria in order for content to be eligible for the credit.

Budget 2019 states that the credit will be available to amounts paid after 2019 and before 2025.

C. DONATIONS OF CERTIFIED CULTURAL PROPERTY

Budget 2019 proposes to amend the ITA and the *Cultural Property Export and Import Act* to remove the requirement that property be of "national importance" in order to qualify for the enhanced tax incentives for donations of cultural property.

By way of context, the ITA provides enhanced income tax incentives for the disposition of certified cultural property to institutions and public authorities designated by the Minister of Canadian Heritage in order to ensure that important cultural property remains in Canada for the benefit of Canadians. The incentives include a tax exemption for capital gains realized on the disposition of cultural properties to those designated institutions and, when disposition is by way of a gift to those institutions, the provision of a charitable donation tax credit (for individuals) or deduction (for corporations) to donors, for up 100 per cent of their net income.

Currently, to qualify for the incentives, a donated property must have been issued a certificate by the Canadian Cultural Property Export Review Board. The certification will require the property to meet two requirements, among others: (a) it must be of "outstanding significance" by reason of its close association with Canadian history or national life, its aesthetic qualities or its value in the study of the arts or sciences; and (b) it must be of "national importance" to such a degree that its loss to Canada would significantly diminish the national heritage. These requirements are set out in the *Cultural Property Export and Import Act* and are also used to regulate the export of cultural property out of Canada.

A court decision by the Federal Court of Canada in *Heffel Gallery Limited v The Attorney General of Canada,* released on June 12, 2018 and discussed in the August 2018 *Charity & NFP Law Update*, which relates to the export of cultural property, interpreted the "national importance" test as requiring that cultural property have a direct connection with Canada's cultural heritage. This decision has raised concerns that certain donations of important works of art that are of outstanding significance but of foreign origin may not qualify for the enhanced tax incentives. To address these concerns, Budget 2019 proposes to amend the ITA [subparagraph 39(1)(a)(i.1), paragraph 110.1(1)(c), and paragraph (a) of the definition total cultural gifts in subsection 118.1(1)] and the Cultural Property Export and Import Act [subsections 32(1) and 33(1)] to remove the requirement that property be of "national importance" in order to qualify for the enhanced tax incentives for donations of cultural property. No changes are proposed that would affect the export of cultural property. This measure will apply in respect of donations made on or after March 19, 2019.

D. SOCIAL FINANCE FUND

Budget 2019 provides more details on establishing a Social Finance Fund announced in the Economic Statement. In the Economic Statement, the Government proposed to provide up to $755 million on a cash basis over a period of 10 years to establish a Social Finance Fund. Social finance refers to the practice of making investments intended to create social or environmental impact, in addition to financial returns. The Social Finance Fund would be used to benefit charitable, non-profit, and other social purpose organizations in two ways: (1) to have access to new funding, and (2) to be connected with private investors who are looking to invest in projects that further social change. Creating a Social Finance Fund was one of the key recommendations put forth by the Social Innovation and Social Finance Strategy Co-Creation Steering Group (comprised of experts in the charitable and not-for-profit sector with the task of providing recommendations to the Government with respect to the development of social innovation and social finance strategy). The Economic Statement indicates that details on the funding will be released in 2019.

Budget 2019 explains that the Social Finance Fund will work as follows: (a) funding will be managed through professional investment managers with expertise in social impact reporting and a proven ability to promote inclusive growth and diversity in the social finance market, to be selected through a competitive selection process in the fall of 2019; (b) the fund manager(s) will invest in existing or emerging social finance intermediary organizations that have leveraged private or philanthropic capital for co-investment; and (c) the fund manager(s) will be required to leverage a minimum of two dollars of non-government capital for every dollar of federal investment, with the exception of investments for Indigenous-led or Indigenous-owned funds.

Budget 2019 also announces the following under the Social Finance Fund: (a) a minimum of $100 million will be allocated towards projects that support greater gender equality by leveraging existing philanthropic and private sector funds towards this purpose in order to help them reduce the social and economic barriers faced by diverse groups of Canadians of all genders; and (b) a $50 million investment will be made in the newly proposed Indigenous Growth Fund.

The Government also proposed in the Economic Statement that it will invest $50 million over two years in an Investment and Readiness stream, for social purpose organizations to improve their ability to successfully participate in the social finance market. Budget 2019 indicates that the two-year investment of $50 million will commence starting in 2019–2020 and this funding will support more robust business planning, provide technical assistance and enable social purpose organizations to develop impact measurement tools to monitor progress achieved.

E. HEALTH RELATED PROPOSALS

Budget 2019 includes a number of measures aimed at the Canada's health care system, a key component of the charitable and NFP sector in Canada. These measures include the following:

1. Moving Forward on Implementing National Pharmacare

   Although the Government is still awaiting the final report of the Advisory Council on the Implementation of National Pharmacare, which was announced in Budget 2018, Budget 2019 announces that, based on the Advisory Council's work to-date, the Government will be creating the Canadian Drug Agency. Budget 2019 proposes that the Government will provide Health Canada with $35 million over four years, starting in 2019–2020, for the Canadian Drug Agency Transition Office, which will in turn work with the provinces and territories to develop a vision and mandate for the Canadian Drug Agency. Once established, Budget 2019 envisions that, in addition to negotiating drug prices, which Budget 2019 predicts will reduce the cost of drugs in Canada by $3 billion per year in the long term, this new national drug agency will be tasked with working with the provinces, territories and other partners to evaluate the effectiveness of new drugs, to recommend which drugs represent the best value-for-money and to develop a national formulary of prescription drugs.

2. Making High Cost Drugs for Rare Diseases More Accessible

   Budget 2019 also proposes a national strategy for high-cost drugs for rare diseases. In this regard, Budget 2019 proposes to invest up to $1 billion over two years, starting in 2022–2023, to help Canadians suffering from rare diseases access the high-cost drugs they need.

3. Medical Expense Tax Credit

   Budget 2019 proposes to amend the ITA so that expenses incurred to access cannabis for medical purposes after October 17, 2018, when the new *Cannabis Act* and regulations thereunder came into effect, can qualify for the medical expense tax credit. The Government will also be reviewing the tax treatment of fertility-related medical expenses under the medical expense tax credit.

4. GST/HST Health Measures

Budget 2019 proposes to make an expanded list of biologicals, medical devices and health care services exempt from GST/HST under the ETA as follows:

- Donated human ova and in vitro embryos to be used in assisted reproductive procedures, supplied after March 19, 2019, will be exempt from GST/HST. These biologicals will then align with human sperm, which is already exempt

- Foot care devices ordered by licenced podiatrists and chiropodists after March 19, 2019 will be exempt from GST/HST

- Health care services rendered by a team of team of health professionals, such as doctors, physiotherapists and occupational therapists, whose services are GST/HST-exempt when supplied separately, will be GST/HST exempt so long as 90 per cent or more of the service is rendered by such health professionals acting within the scope of their profession. This measure will apply to multidisciplinary health services supplied after March 19, 2019.

5. Cannabis Taxation

Budget 2019 proposes that effective May 1, 2019, edible cannabis, cannabis extracts (including cannabis oils) and cannabis topicals will be subject to excise duties imposed at a flat rate based on the quantity of tetrahydrocannabinol ("THC") contained in the product. The new flat rate will replace the existing *Excise Act, 2001* regime, which is based on a different calculation and is apparently subject to compliance issues. The current excise duty regime and associated rates for fresh and dried cannabis, and seeds and seedlings, will be unaffected. Current exemptions will continue to apply to fresh and dried cannabis and cannabis oils that contain no more than 0.3 per cent THC, as well as to pharmaceutical cannabis products that have a Drug Identification Number and can only be acquired through a prescription.

F. ANTI-MONEY LAUNDERING (AML) AND ANTI-TERRORISM FINANCING (ATF)

Although the language in Budget 2019 dealing with AML/ATF issues focusses primarily on money laundering, the Budget implementing legislation will require amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* ("PCMLTFA"), which includes provisions dealing not only with money laundering, but also with terrorist financing. The PCMLTFA is foundational to the current information sharing regime within the Federal Government and agencies in Canada. Budget 2019 identifies that it intends to fill "gaps", devote funds to and strengthen what is already a robust information sharing regime.

Budget 2019 provides some specifics in this regard, stating that the PCMLTFA will be amended "to expand the definition of designated information", although no details are provided. What is evident is that the Federal Government intends to further expand the information sharing regime in Canada, and as such registered charities will want to carefully monitor this increase in information sharing by the Federal Government both inside and outside of Canada.

Budget 2019 also proposes to amend the *Criminal Code* so that the offence of money laundering, which currently requires intent to conceal and knowledge or belief with regard to the origin of the funds, would also criminalize the conduct when there is simply "recklessness." How this lowered threshold for the crime of money laundering will impact registered charities and NFPs is not clear at this time but will certainly require careful review once the implementing legislation is introduced with proposed changes to the *Criminal Code*.

G. FUNDING INITIATIVES TO SUPPORT THE CHARITABLE AND NFP SECTOR

Budget 2019 proposes funding for the following charities and NFPs:

1. Support for Science, Research and Technology Organizations

   - For Stem Cell Network, a proposed $18 million over a period of three years starting in 2019-2020

   - For the Brain Canada Foundation's Canada Brain Research Fund, a proposed $40 million over a period of two years starting in 2020–2021

   - For the Terry Fox Research Institute, up to $150 million over a period of five years starting in 2019-2020

   - For Ovarian Cancer Canada, a proposed $10 million over five years beginning in 2019–2020

- For Genome Canada, a proposed $100.5 million over five years beginning in 2020–2021
- For Let's Talk Science, a proposed $10 million over two years, starting in 2020–2021

2. Support for Artists and Cultural Events

- For the Canada Music Fund, a proposed $20 million over a period of two years starting in 2019-2020
- For the Canada Arts Presentation Fund, a proposed $16 million over two years starting in 2019-2020
- For the Building Communities Through Arts and Heritage Program and the Celebration and Commemoration Program, a proposed $24 million over two years starting in 2019–2020

3. Employment for Persons with Intellectual Disabilities and Autism Spectrum Disorders

- For the Canadian Association for Community Living, in partnership with the Canadian Autism Spectrum Disorders Alliance for the Ready, Willing and Able program, a proposed $12 million over three years starting in 2019-2020

4. Ensuring a Safe and Healthy Sport System

- For Canadian sports organizations in general, a proposed $30 million over five years starting in 2019-2020

5. Improving Emergency Medical Response in Western Canada

- For Shock Trauma Air Rescue Service (STARS), a proposed one-time investment of $65 million in 2018–2019

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