

## FEDERAL BUDGET 2022: IMPACT ON CHARITIES AND NOT-FOR-PROFITS

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### A. INTRODUCTION

FINANCE MINISTER CHRYSITIA FREELAND tabled the sixth budget of the Liberal federal government (“Budget 2022”) on April 7, 2022.<sup>1</sup> Budget 2022 is comprised of nine chapters and three appendices focussing on a wide range of matters, such as housing affordability, climate change, reconciliation, health care, support for diverse communities, and tax fairness.

This *Charity & NFP Law Bulletin* provides a summary and commentary on provisions proposed in Budget 2022 that impact the charitable and the not-for-profit (“NFP”) sector. Budget 2022 includes a number of legislative proposals that will impact the operations of charities, including charities “partnering” with non-qualified donees in a legislative initiative aimed at reflecting the “spirit of Bill S-216”, increasing the disbursement quota for charities with investments above \$1 million from 3.5% to 5%, and expanding the scope of Canada’s anti-money-laundering and anti-terrorist-financing (AML/ATF) regime to cover crowdfunding platforms. Additionally, Budget 2022 responds to some of the challenges of the past couple

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<sup>1</sup> “Budget 2022” (7 April 2022), online: *Government of Canada*: <<https://budget.gc.ca/2022/report-rapport/toc-tdm-en.html>>.

of years by including a number of health-related initiatives, funding for Canada’s Performing Arts and Heritage Sectors, and financial support and funding for Indigenous communities, Black Canadian communities, and various religious communities through different programs and funds.

## **B. CHARITABLE DISBURSEMENTS TO NON-QUALIFIED DONEES**

ONE OF THE KEY proposals affecting charities in Budget 2022 is to amend the *Income Tax Act* (“ITA”) to allow charities to make “qualified disbursements to organizations that are not qualified donees,” provided that certain requirements in the ITA designed to ensure accountability are met.<sup>2</sup> Budget 2022 indicates that these changes are “intended to implement the spirit” of Bill S-216, the *Effective and Accountable Charities Act* (“Bill S-216”), which is currently being considered by Parliament.<sup>3</sup> However, Budget 2022 does not set out exactly how the ITA is proposed to be amended, and it is not clear whether or how the proposed changes may be different from the ITA amendments contained in Bill S-216.

By way of background, the ITA currently contains unnecessary and archaic provisions that have been in place since the early 1950s, requiring charities to devote all of their resources to charitable activities carried on by the organization itself. This is known in the charitable sector as the “own activities test.” This has led the Canada Revenue Agency (“CRA”) to implement an administrative policy that charities must direct and control the use of their resources when working through an intermediary, known as the “direction and control” requirement. This mechanism is built upon the fiction that everything that a charity does through a third-party intermediary must be structured as the activity of the charity itself when the reality is that the activity is, more often than not, intended to be the activity of the recipient third party. Such a requirement severely limits how charities can work with third parties that are not qualified donees. Many in the charitable sector have consistently expressed concerns with the CRA’s interpretation of the “own activities test” and the “direction and control” mechanism for years.

Bill S-216 proposes to amend the ITA by eliminating the fictitious “own activities” test in the ITA and the CRA’s related “direction and control” regime, and replacing it with a proposed new regime of

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<sup>2</sup> “Tax Measures: Supplementary Information”. (7 April 2022) online: *Government of Canada* <<https://budget.gc.ca/2022/report-rapport/tm-mf-en.html>>.

<sup>3</sup> Bill S-216, *An Act to amend the Income Tax Act (use of resources of a registered charity)*, 1st Sess, 44th Parl, 2022 <<https://www.parl.ca/legisinfo/en/bill/44-1/s-216>>.

“resource accountability.” Bill S-216 completed Third Reading in the Senate on December 9, 2021 and first reading in the House of Commons as of February 3, 2022.<sup>4</sup>

Budget 2022 proposes three areas of changes, which would become effective as of royal assent of the enacting legislation.

Firstly, Budget 2022 proposes to allow charities to “make qualifying disbursements” to organizations that are not qualified donees, provided that (i) these disbursements are in furtherance of the charity’s charitable purposes, (ii) the charity ensures that the funds are applied to charitable activities by the “grantee,” and (iii) charities meet “certain mandatory accountability requirements” to be “defined” in the ITA that are designed to ensure that their resources will be used for charitable purposes. Budget 2022 lists the following examples of what “certain mandatory accountability requirements” mean:<sup>5</sup>

- Conducting a pre-grant inquiry sufficient to provide reasonable assurances that the charity’s resources will be used for the purposes set out in the written agreement. This will include a review of the identity, past history, practices, activities and areas of expertise of the grantee.
- Having a written agreement between the charity and the “grantee”, including: the terms and conditions of the funding provided; a description of the charitable activities that the recipient will undertake; a requirement that any funds not used for the purposes for which they were granted be returned to the charity; and a requirement that records relating to the use of the charity’s resources be maintained and accessible for a minimum of six years following the end of the relevant taxation year.

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<sup>4</sup> For further background information about Bill S-216, see February 2022 Charity & NFP Law Update and the November 2021 Charity & NFP Law Update, with additional details on the predecessor Bill S-222 in Charity & NFP Law Bulletin No. 486 and Charity & NFP Law Bulletin No. 488. On March 31, 2022, 42 charity lawyers signed a second open letter advocating for legislative and regulatory reform through the adoption of Bill S-216 in the House of Commons without amendment, encouraging Finance Canada to support its passage as well. This follows an earlier open letter signed by 37 charity lawyers on February 19, 2021, in support of the predecessor Bill S-222, which died on the Order Paper when Parliament was dissolved on August 15, 2021.

<sup>5</sup> Canada, *Tax Measures: Supplementary Information*. (7 April 2022) online: <<https://budget.gc.ca/2022/report-rapport/tm-mf-en.html>>.

- Monitoring the grantee, which would include receiving periodic reports on the use of the charity's resources, at least annually (*e.g.*, details on the use of the funds, compliance with the terms of the grant, and progress made toward the purposes of the grant) and taking remedial action as required.
- Receiving full and detailed final reports from the "grantee", including outlining the results achieved with the charity's resources, detailing how the funds were spent, and providing sufficient documentary evidence to demonstrate that funds were used for the purposes for which they were granted. The charity would also be required to demonstrate that these final reports and supporting documentation were reviewed and approved by the charity.
- Publicly disclosing on its annual information return information relating to grants above \$5,000.

Secondly, in its Supplementary Information regarding Tax Measures, Budget 2022 proposes to require charities to, upon request by the CRA, "take all reasonable steps to obtain receipts, invoices, or other documentary evidence from grantees to demonstrate amounts were spent appropriately" in order to ensure the CRA is able to verify that charitable resources have been applied to the purposes for which they have been granted.

Thirdly, Budget 2022 proposes to prohibit charities from accepting gifts, the granting of which is "expressly or implicitly conditional on making a gift to a person other than a qualified donee" in order to prevent charities from acting as a conduit for donations to other organizations.<sup>6</sup>

However, since Budget 2022 does not set out exactly how the ITA is proposed to be amended, many questions remain unanswered:

- The most important question is that Budget 2022 makes no reference to the removal of the fictitious "own activities" test in the ITA, which is the root cause of the problem faced by charities. The CRA's interpretation of this ITA requirement is the basis for its top-down, impractical, inefficient, and unpopular "direction and control" policy. It is not clear whether the "own activities" test in the ITA will be removed. If not, any attempt to permit charities to disburse resources to non-

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<sup>6</sup> Canada, *Tax Measures: Supplementary Information*. (7 April 2022) online: <<https://budget.gc.ca/2022/report-rapport/tm-mf-en.html>>.

qualified donees may continue to be clouded by the underlying ITA requirement that all their resources must be devoted to its “own activities.”

- It is not clear whether the permission to make “qualifying disbursements” to non-qualified donees will be a new defined term in the ITA, and if so, how it would be defined in the ITA.
- The permission of charities making “qualifying disbursements” is described as making “grants” in Budget 2022 and the recipient non-qualified donees are referred to as “grantees.” It is not clear how this “grant making” mechanism would be set out in the ITA amendments, such as whether the term “grant” would be defined, whether “grant making” would be limited to transfer of monies or also include the transfer of other resources (such as facilities, and human resources), whether gifts to qualified donees would continue to be referred to as “grants”, etc.
- Budget 2022 indicates that “qualifying disbursements” must meet certain mandatory accountability requirements “defined” in the ITA. However, the examples of accountability requirements set out in Budget 2022 are extremely detailed, highly prescriptive, and operational in nature, that should not be set out in tax legislation, but in CRA administrative policies instead. If it is the intention that these detailed requirements are to be set out in a CRA guidance, it is not clear what exactly would be defined in the ITA and how Parliament could ensure that the examples in Budget 2022 would eventually be contained in CRA’s policies.
- The detailed and prescriptive nature of the mandatory accountability requirements set out in Budget 2022 are very similar to those that are currently required under the CRA’s “direction and control” regime, such as entering into written agreements with grantees, receiving periodic reports, and obtaining receipts, invoices, or other documentary evidence from them. It is not clear whether and how these new requirements differ from the current ones, given that Budget 2022 does not indicate whether the “own activity” test is to be eliminated or not.
- The mechanism proposed in Budget 2022 is different from that proposed in Bill S-216, which does not propose a “grant” mechanism. Should the proposal contained in Budget 2022 become law as a result of the budget-enacting legislation, it is not clear what might happen to the fate of Bill S-216.

It is also not clear whether there would be sector-wide public consultation on the preference between the mechanism contained in Budget 2022 as opposed to that proposed in Bill S-216.

- Last, but not least, is the good news that the proposed changes contained in Budget 2022 will become law immediately upon royal assent of the budget enacting legislation, as opposed to having to wait 2 years for changes in Bill S-216 to become effective after royal assent.

It will be important to monitor the progress of the proposed changes contained in Budget 2022.

### C. “GRADUATED” INCREASE TO THE DISBURSEMENT QUOTA

AFTER FORECASTING a potential increase to the disbursement quota (“DQ”) in the 2021 Federal Budget released on April 19, 2021<sup>7</sup>, the federal government launched a public consultation on August 6, 2021 (the “Consultation”)<sup>8</sup> in order to consider a potential increase of the DQ. The Consultation ended on December 2, 2021 with feedback received from the sector together with the Advisory Committee on the Charitable Sector.<sup>9</sup>

In this regard, in response to the Consultation process, Budget 2022 proposes a “graduated” DQ, whereby for investment assets exceeding \$1 million, the rate of the DQ will be increased from 3.5% to 5% for the portion of property not used in charitable activities or administration. By way of background, the DQ is a requirement set out in subsection 149.1(1) of the ITA and is the minimum amount that a charity must spend on its charitable activities or gifts to qualified donees to ensure that its charitable assets are used for charitable purposes. The 3.5% DQ obligation applies to property owned by the charity in the preceding 24 months that is not used directly in charitable activities or administration, if the value of property exceeds \$25,000 (for foundations) or \$100,000 (for charitable organizations). Budget 2022 also proposes

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<sup>7</sup> “Budget 2021” (19 April 2021), online: *Government of Canada* <<https://www.budget.gc.ca/2021/report-rapport/toc-tdm-en.html>>; See also Terrance S. Carter et al., *Charity & NFP Bulletin* No 492 “Federal Budget 2021: Impact on Charities and Not-For-Profits” (20 April 2021), online: *Carters Professional Corporation* <<https://www.carters.ca/pub/bulletin/charity/2021/chylb492.pdf>>; and Terrance S. Carter and Jacqueline M. Demczur, *Charity & NFP Law Update June 2021* “Pending Disbursement Quota Consultations: Questions for Consideration” (June 2021), online (pdf): *Carters Professional Corporation* <<https://www.carters.ca/pub/update/charity/21/jun21.pdf>>

<sup>8</sup> “Consultation: Boosting Charitable Spending in Our Communities” (6 August 2021), online: *Government of Canada* <<https://www.canada.ca/en/department-finance/programs/consultations/2021/boosting-charitable-spending-communities.html>>.

<sup>9</sup> Terrance S. Carter et al., *Charity & NFP Bulletin* No 502 “ACCS Makes Submission to Finance on the Disbursement Quota Consultation” (29 September 2021), online: *Carters Professional Corporation* <<https://www.carters.ca/pub/bulletin/charity/2021/chylb502.pdf>>.

that amendments will be made to the ITA to clarify that expenditures for administration and management cannot be used for purposes of meeting the DQ obligation.

In addition, Budget 2022 indicates that amendments will be made to existing rules under the ITA that permit CRA to grant a reduction in a charity's DQ obligation for any particular tax year. Currently, registered charities can apply under subsection 149.1(5) of the ITA by filing a T2094, *Registered Charities: Application to Reduce Disbursement Quota* with the CRA for each applicable fiscal period. Generally, this reduction is only granted where a charity has failed to meet its DQ obligation for circumstances beyond its control and only after it has used up any DQ excess or other measures. Presumably, the amendments suggested in Budget 2022 will provide the CRA with greater discretion in granting a DQ reduction. However, Budget 2022 also indicates that the CRA will be able to publicly disclose information relating to decisions by the CRA granting a charity a reduction to their DQ. Whether this means such decisions will be made available on the CRA's charities listing, or whether it can be requested under subsection 241(3.2) of the ITA (similar to information filed to support requests for permission to accumulate property), remains to be seen.

While the ITA currently permits charities to apply for permission to accumulate property, Budget 2022 proposes the removal of this ability. Subsection 149.1(8) is the section of the ITA which allows charities to apply for permission to accumulate property. This is a remedial provision intended to assist a charity that is finding it difficult to meet its disbursement quota of 3.5% for a particular reason, such as accumulating capital for a building program. The proposed removal of this section comes as changes to the DQ over time and those proposed in Budget 2022 mean that there is less of a need for subsection 149.1(8) of the ITA.

Budget 2022 also indicates that the CRA will be improving the collection of information to better identify whether charities are meeting the DQ and, "information related to investments and donor-advised funds held by charities." This suggests that the T3010 *Registered Charity Information Return* ("T3010") will need to be amended in the near future to allow the CRA to collect this information. It is unclear to what extent information concerning donor advised funds would become public in that event, or form part of the confidential information collected in the T3010.



This graduated increase to the DQ follows a great deal of discussion revolving around if and by how much the DQ should be increased, whether it would be done at the individual fund level as opposed to on a global level for a charity, and other potential changes to the DQ regime. As an arbitrarily high increase to the DQ rate or changes to the complexity of the DQ calculation could have created a significant administrative burden for charities, a graduated increase and an effort to collect more information from the sector concerning the DQ are good first steps in reforming the DQ.

While changes to the rate for the DQ and acquiring more information may be important responses to the Consultation and feedback from the sector, the recent discussion around the DQ raised many issues related to the DQ that are not addressed by Budget 2022.<sup>10</sup> In this regard, calculating and meeting the DQ obligation will continue to be a challenge for registered charities. Those that will have the graduated 5% rate apply to them will need to balance their increased DQ obligation with provincial common law matters concerning the management and investment of any endowment funds held by that charity. As well, in tracking expenditures in order to meet the DQ, registered charities will need to continue to be aware that program-related investments,<sup>11</sup> which might be seen as social investments at the provincial level in Ontario, do not count towards meeting their DQ.<sup>12</sup>

At this time, the proposed amendments to the ITA to implement these changes are not available, as the Notice of Ways and Means motion appended to Budget 2022 only states, “The Act is modified to give effect to the proposals relating to the Annual Disbursement Quota for Registered Charities as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day”.<sup>13</sup> In this regard, it will be important to monitor legislative developments for details of these changes.

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<sup>10</sup> See, for example, Terrance S. Cater, “Disbursement Quota Reform: Stabilizing A Three-Legged Stool”, Perspectives on Tax Law & Policy, Volume 3, Number 1, March 2022, Canadian Taxpayers Foundation. Available online at: <https://www.ctf.ca/CTFWEB/EN/NEWSLETTERS/PERSPECTIVES/2022/1/220106.aspx>.

<sup>11</sup> Program-related investments, or PRIs, are defined as “an activity that directly furthers the investor charity’s charitable purposes.” See Guidance CG-014 “Community economic development activities and charitable registration” (9 August 2017), online: Government of Canada <<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/community-economic-development-activities-charitable-registration-014.html>>.

<sup>12</sup> See Terrance S. Carter and Theresa L.M Man, *Charity & NFP Law Bulletin No. 507* “Reminder for Charities to Take Necessary Steps to Meet ” (February 24, 2022), online (pdf): *Carters Professional Corporation* <<https://www.carters.ca/pub/bulletin/charity/2022/chylb507.pdf>>

<sup>13</sup> “Notice of Ways and Means Motion to amend the Income Tax Act and Other Related Legislation” (7 April 2022), online: Government of Canada <<https://budget.gc.ca/2022/report-rapport/nwmm-amvm-01-en.html>>.



Budget 2022 indicates that these changes will be effective in respect of a charity's fiscal period beginning on or after January 1, 2023, and will be reviewed after five years.

## **D. SUPPORTING UKRAINE**

IN RESPONSE to the crisis created by the Russian invasion of Ukraine, Budget 2022 announces that in 2022 Canada will be making direct contributions of \$1.2 billion in support of Ukraine and its people. These measures include \$145 million in humanitarian assistance and \$35 million in development assistance committed to by Canada in 2022, \$30 million of which is to match donations made by individual Canadians. The Budget also announces that Canada proposes to provide \$500 million in military aid to Ukraine in 2022-2023, in addition to \$90 million in military aid already announced in 2022.

Canada will also offer \$1 billion in new loans to the Ukrainian government through an account established at the International Monetary Fund, which will enable the Ukrainian government to continue to function. This amount is over and above the \$620 million in loans already offered by Canada in 2022 to support Ukraine and in addition to the support being provided by the International Monetary Fund, the World Bank, and the European Bank for Reconstruction and Development, in which Canada is a shareholder.

Other measures mentioned in Budget 2022 include an outline of the Canadian sanctions being taken against Russia, individuals and entities, as well as the two new immigration streams that have been created to bring Ukrainian refugees to Canada. The government will be spending \$111 million over five years, with \$6 million proposed for future years, to implement the new immigration measures.

## **E. HEALTH MEASURES**

BUDGET 2022 includes a number of health-related initiatives. These include the following:

1. Reflecting changes in the delivery of health care services and the increasing role of nurse practitioners, Budget 2022 proposes to expand eligibility for the 83% hospital GST/HST rebate to cover charities and NFPs that deliver health care services with the active involvement of, or on the recommendation of either a physician or a nurse practitioner, regardless of their geographic location. Previously, the rebate was only available to charities and NFPs that delivered health care services with the active involvement of, or on the recommendation of a physician or, in a

geographically remote community, with the active involvement of a nurse practitioner. The expanded measure will apply to rebate claim periods ending after Budget Day.

2. Budget 2022 proposes to invest \$268 million in 2022-23 to continue to provide health care in remote and isolated First Nations communities on-reserve, as well as an additional \$190.5 million in 2022-23 to help Indigenous communities and organizations deal with the ongoing impacts of COVID-19.
3. Budget 2022 proposes to provide funding of \$5.3 billion over five years, starting in 2022-23, and \$1.7 billion ongoing, to Health Canada to provide dental care to families with an income of less than \$90,000 annually, with no co-pays for those with annual income below \$70,000. The program will start with children under 12 in 2022 and expand to full implementation by 2023.
4. Budget 2022 re-announces the federal government's March 25, 2022 commitment to top up the Canada Health Transfer to provinces and territories by \$2 billion to address the backlog of surgeries and other procedures caused by the COVID-19 pandemic.
5. In order to address the shortage of doctors and nurses in remote and rural communities, Budget 2022 proposes to increase Canada Student Loan forgiveness for doctors and nurses working in underserved communities.
6. Mental well-being measures set out in Budget 2022 include \$227.6 million over two years, starting in 2022-23, for "trauma-informed, culturally-appropriate, Indigenous-led services to improve mental wellness", and \$140 million over two years starting in 2022-23 for the Wellness Together Portal, which provides free information and support to those suffering from anxiety, depression and stress. Many users are children, youth and those who identify as LGBTQ2. Budget 2022 also announces \$3.7 million over four years starting in 2022-23 for the Black-led engagement, design, and implementation of a Mental Health Fund for Black federal public servants.
7. Other measures include the imposition of a new excise duty on vaping products as well as \$25 million over two years starting in 2022-23 for Women and Gender Equality Canada to pilot a menstrual equity fund for those who cannot afford menstrual products.

## F. RECONCILIATION

BUDGET 2022 contains a number of initiatives aimed at moving forward with a renewed relationship with Canada's Indigenous peoples and continuing to address the inequalities that exist between Indigenous and non-Indigenous Canadians. The Budget proposes to invest an additional \$11 billion over six years to support Indigenous children, families and communities. The measures announced in the 2022 Budget include the following, some of which were previously announced in the 2021-22 budget and are in the process of being implemented:

1. Budget 2022 announces additional investments of more than \$4.7 billion to help communities cope with the past harms suffered by Indigenous children and families, including those children who were forced into residential schools or were removed from their families and communities by the child welfare system during the Sixties Scoop.
2. Budget 2022 also proposes to invest \$4 billion over six years, starting in 2021-22, to implement Jordan's Principle, which would eliminate systemic barriers to and discriminatory underfunding of health, social, and educational services available to First Nations' children.
3. In order to reduce the over-representation of Indigenous children and youth in care, Budget 2022 announces investments in Indigenous-led solutions to keep Indigenous children and youth connected to their families, communities and cultures, including \$340.8 million over ten years, starting in 2021-22, to support Wabaseemoong Independent Nations' exercise of jurisdiction over child and family services and \$87.3 million over three years, starting in 2022-23, to enable Indigenous communities to continue to work with all levels of government to implement Indigenous child welfare laws.
4. To address the shock and trauma arising from the discovery of mass burial sites at the former residential school sites, the Budget proposes a number of measures including:
  - a. \$209.8 million over five years, starting in 2022-23, to Crown-Indigenous Relations and Northern Affairs Canada to locate, document and memorialize the mass burial sites, including "the complete disclosure of federal documents related to residential schools";

- b. \$10.4 million over two years, starting in 2022-23, to Justice Canada to support the appointment of a Special Interlocutor to work collaboratively with Indigenous people to protect and preserve unmarked burial sites;
- c. \$25 million over three years, starting in 2022-23, to Library and Archives Canada to support the digitization of millions of documents relating to the federal Indian Day School System; and
- d. \$25 million over three years, starting in 2022-23, to Parks Canada to support the commemoration and memorialization of former residential school sites.

## **G. FINANCIAL SUPPORT FOR THE CHARITABLE AND NFP SECTOR**

BUDGET 2022 contains a number of initiatives aimed at supporting charities, NFPs, and vulnerable and marginalized persons. The following is a select list of initiatives directed specifically at the charitable and NFP sectors or in support of marginalized communities:

### 1. Diversity and Inclusivity

- Support for Marginalized Communities – over \$271 million over five years towards various programs to fight racism, discrimination and hate, and in support of marginalized communities including LGBTQ2 Canadians, Black and other racialized Canadians, and religious minorities (including support in particular to remember the Holocaust and combat Holocaust denial, Anti-Semitism and Islamophobia).
- Supporting Black Communities – of note, of the \$271 million discussed above, \$50 million over two years to empower Black-led and Black-serving community organizations and the work they do, as well as exploring options to support capacity building in Black-led and Black-serving community organizations.
- Support for Journalism – \$55 million to Canadian Heritage to support local and diverse journalism, including funding to support production of journalism for underserved communities, to help racialized and religious minority journalists, and to help journalistic publications adapt to technological evolution.

- Development of a National School Food Policy to explore how vulnerable Canadian children can receive nutritious food at school.

## 2. Support for Artists and Charities

- Support for the performing arts – \$12.1 million over two years for the National Arts Centre to support creating, co-producing, promoting, and touring productions with NFP performing arts companies.
- Support for arts, culture and heritage organizations – \$50 million to the Department of Canadian Heritage, the Canada Council for the Arts, and Telefilm Canada as a result of revenue loss resulting from COVID restrictions.
- The Canada Arts Training Fund - \$22.5 million over five years, plus \$5 million ongoing, in support of the Canada Arts Training Fund to assist with the art sector’s recovery and to address historic inequities in funding for Indigenous and racialized arts training organizations.

## 3. Housing and Childcare

- Housing Support for the Vulnerable – increased funding in support of those experiencing or at risk of homelessness, as well as building affordable units for the most vulnerable, additional work to end chronic homelessness, and a new program to combat veteran homelessness.
- Rent-to-Own Projects – \$200 million in support of the Affordable Housing Innovation Fund, including \$100 million “to support non-profits, co-ops, developers, and rent-to-own companies building new rent-to-own units”.
- Early Learning and Child Care Support – \$625 million over four years to create an Early Learning and Child Care Infrastructure Fund to enable provinces and territories to make additional child care investments, such as building new facilities.

## **H. CONCERNS ABOUT TARGETING A PARTICULAR SEGMENT OF THE CHARITABLE SECTOR ALLEVIATED**

PRIME MINISTER JUSTIN TRUDEAU issued mandate letters to all Cabinet Ministers on December 16, 2021. The mandate letters to the Deputy Prime Minister and Minister of Finance, and to the Minister for Women

and Gender Equality and Youth, directed them to introduce amendments to the ITA to, among other things, “make anti-abortion organizations that provide dishonest counselling to pregnant women about their rights and options ineligible for charitable status [...]”.<sup>14</sup>

Irrespective of one’s position on this particular social issue, it was concerning that the mandate letters targeted an existing segment of the charitable sector that the federal government believed should no longer be eligible for charitable status by proposing amendments to the ITA to ensure that result. The proposal was of concern not only to the targeted groups but to other charities because it could have established a precedent for a similar approach to be taken by a future government with regard to another segment of the charitable sector that, in its view, should no longer be eligible for charitable status.

As mandate letters outline objectives set out by the Prime Minister for Cabinet Ministers to achieve, the targeted groups and other charities have been watching closely to see if the proposed amendments to the ITA would be included in this Budget. They have not. The federal government should be commended for listening to the concerns expressed and reconsidering its position, which was not only arbitrary and unfair to the targeted groups, but could have had serious implications for the entire charitable sector in the future.

## **I. CRA VIRTUAL AUDITS**

IN LIGHT OF the on-going pandemic, the CRA has been conducting audits and reviews of excise licensees virtually. These remote measures safeguard public health by avoiding in-person contacts and are also more efficient and cost-effective as the time and expense associated with travel to and from in-person meetings can be avoided when audits and reviews are conducted virtually. Budget 2022 proposes to confirm the ability of the CRA to continue to carry out virtual audits and reviews of all licensees, where CRA deems it appropriate to do so.<sup>15</sup>

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<sup>14</sup> Rt. Hon. Justin Trudeau to Minister Ien, “Minister for Women and Gender Equality and Youth Mandate Letter” (16 December 2021) online: *Prime Minister of Canada* <<https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-women-and-gender-equality-and-youth-mandate-letter>>; Rt. Hon. Justin Trudeau to Minister Freeland, “Deputy Prime Minister and minister of Finance Mandate Letter” (16 December 2021) online: *Prime Minister of Canada* <<https://pm.gc.ca/en/mandate-letters/2021/12/16/deputy-prime-minister-and-minister-finance-mandate-letter>>.

<sup>15</sup> Canada, *Tax Measures: Supplementary Information*. (7 April 2022) online: <<https://budget.gc.ca/2022/report-rapport/tm-mf-en.html>>.

## J. ENHANCING CANADA'S CYBER SECURITY

BUDGET 2022 proposes \$875.2 million over five years, beginning in 2022-23, and \$238.2 million ongoing, for additional measures to address the rapidly evolving cyber threat landscape, including:

1. Enhancing the federal government's Communications Security Establishment (CSE) ability to prevent and defend against cyber-attacks, including attacks on critical infrastructure;
2. Expanding cyber protection for small departments, agencies and Crown corporations;
3. Making government systems more resilient to cyber incidents.

## K. CLARIFICATION OF CALCULATION OF REVOCATION TAX

BUDGET 2022 confirms the government's intention to proceed with a number of previously announced tax and related measures, as modified to take into account consultations and deliberations since their release. One of these changes is the implementation of a technical fix related to clarifying the calculation of the revocation tax applicable to charities upon becoming a "listed terrorist entity." The fix was released as part of the draft ITA proposed changes released by the Department of Finance on February 4, 2022, further amending subsection 188(1.2) to provide clarity and readability.<sup>16</sup>

## L. EXPANSION OF SCOPE OF ANTI-TERRORISM PROVISIONS

CHARITIES AND NFPs may be affected by changes to the anti-money-laundering and anti-terrorist-financing (AML/ATF) regime. Budget 2022 proposes to adopt a number of steps in "protecting Canadians and safeguarding the rule of law in an increasingly complex financial world" by ensuring that Canada has the ability to detect and prosecute money laundering and terrorist financing offences. Generally, these provisions seek to expand the scope of current AML/ATF legislation and regulations to encompass emerging financial platforms, methods and existing areas of the financial system, specifically mortgages.

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<sup>16</sup> For further details, see Terrance S. Carter, *February 2022 Charity & NFP Law Update* "Legislation Update: Department of Finance Seeks Public Comment on Draft Legislative Proposal to *Income Tax Act*" (24 February 2022), online: *Carters Professional Corporation*: <[https://www.carters.ca/index.php?page\\_id=458](https://www.carters.ca/index.php?page_id=458)>. See also Terrance S Carter, *et al*, *Charity & NFP Law Bulletin No. 492*, "Federal Budget 2021: Impact on Charities and Not-for-Profits" (20 April 2021), online: *Carters Professional Corporation*: <<https://www.carters.ca/pub/bulletin/charity/2021/chylb492.pdf>>.



The first step outlined in Budget 2022 is for the federal government “to bring into force new regulations that extend AML/ATF obligations to payment service providers and crowdfunding platforms.” This change may affect charities and NFPs as an increasing portion of the sector now relies upon crowdfunding platforms in their fundraising efforts. Once AML/ATF obligations apply to these service providers and funding platforms, in all likelihood, charities will need to be aware that these new fundraising platforms (e.g. charitable donations via crowdfunding) will be reporting to FINTRAC (defined below).

Under the current AML/ATF regime, this information is potentially shared far beyond the federal government and beyond (nationally and internationally). It includes not just details of the financial transaction itself, but also personal identifying information about the sender and recipient (or donor and charity). This information will now be a part of the AML/ATF information collection and sharing regime. This regime exists between agencies of the federal government, and often involves sharing information internationally with similar agencies in other countries. Budget 2022 proposes to provide \$89.9 million over five years, and \$8.8 million ongoing, to support the Financial Transaction and Reports Analysis Centre of Canada (FINTRAC) to “enable FINTRAC to implement new anti-money laundering and anti-terrorist financing requirements for crowdfunding platforms and payment service providers” amongst other activities.

Another step set out in Budget 2022 is the proposed legislation being developed by the federal government to, among other things, “strengthen the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, the *Criminal Code*, and other legislation to enhance the ability of authorities to detect, deter, investigate, and prosecute financial crimes”. It is unclear what exactly is anticipated by this plan to “strengthen” existing legislation. The Budget, however, mentions that the government wants to ensure it is “well placed” to manage possible current and emerging threats, including “threats outside of the scope of the current AML/ATF Regime.” This includes applying the AML/ATF regime to the mortgage industry, which is identified in Budget 2022 as an alleged tool for money laundering and terrorist financing.

It was interesting to see the application and enforcement by the government of the existing AML/ATF regime during the protests beginning in February 2022, both in Ottawa and at the Canada–United States border (the “Protests”). The federal government declared a “public order emergency” on February 14, 2022 under the *Emergencies Act* with the *Emergency Measures Regulations* and an *Emergency Economic*

*Measures Order* being filed the following day (the “Order”).<sup>17</sup> The Order extended the scope of Canada’s AML/ATF rules in a finite and time-limited situation to cover crowdfunding platforms as well as payment processors and included digital assets, such as cryptocurrencies.

The Order also directed banks and financial service providers to immediately cease providing financial services where there were suspicions of an account being used “to further the illegal blockades.” On February 23, the Declaration of a Public Order Emergency was revoked, along with the expanded scope of powers in force during that period. Confronted with the Protests, while not applying *Criminal Code* aspects of the AML/ATF and the broader anti-terrorism and anti-money laundering regimes which may have applied, the federal government recognized that important support role that new online platforms (like crowdfunding and crypto-currency) play in financing activities. Mirroring the expansion of control with respect to new online platforms in the Order, Budget 2022 recognises the increasingly important role of these new financial platforms in transferring substantive support (both traditional money and cryptocurrencies) to various types of entities, from protest groups to registered charities. The government, therefore, in Budget 2022, aims to ensure that this new source of financial data, including the personal information of the individuals conducting the transaction, is now collected via those online platforms and transferred to FINTRAC and other agencies which retain and trade information pursuant to the AML/ATF regime.

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<sup>17</sup> Terrance S. Carter, Nancy E. Claridge, and Sean S. Carter, “ATF/AML Update: Crowdfunding Platforms and Banks Required to Report Donations Flagged for Protest Group” online: (24 February 2022) Carters < [www.carters.ca/index.php?page\\_id=467](http://www.carters.ca/index.php?page_id=467) >.