



List of Recommendations

The Canadian Bar Association Charities and Non-for-Profit Law Section recommends that the federal government:

- 1. modernize the regime for charities and not-for-profit organizations.**
- 2. amend the *Income Tax Act* to clarify that charities and not-for-profit organizations must be able to innovate, carry on business activities and earn tax exempt profits, as long as the profits are used for the purposes of the organization and not for the undue benefit of any party or the personal benefit of any director, shareholder or member, directly or indirectly.**
- 3. remove barriers that inhibit charities from working with not-for-profit organizations or non-registered charities and allow them to maximize their success.**



August 3, 2018

Via email: FINA@parl.gc.ca

The Honourable Wayne Easter, P.C., M.P.
Chair, Finance Committee
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6

Dear Mr. Easter:

Re: Pre-Budget 2019 Consultations

The Charities and Not-for-Profit Law Section of the Canadian Bar Association (CBA Section) is pleased to make this Pre-Budget 2019 submission to the House of Commons Standing Committee on Finance (Finance Committee).

Recommendations

The Canadian Bar Association Charities and Non-for-Profit Law Section recommends that the federal government:

1. modernize the regime for charities and not-for-profit organizations.
2. amend the *Income Tax Act* to clarify that charities and not-for-profit organizations must be able to innovate, carry on business activities and earn tax exempt profits, as long as the profits are used for the purposes of the organization and not for the undue benefit of any party or the personal benefit of any director, shareholder or member, directly or indirectly.
3. remove barriers that inhibit charities from working with not-for-profit organizations or non-registered charities and allow them to maximize their success.

Rationale

The CBA is a national association representing over 36,000 jurists, including lawyers, notaries, law teachers and law students across Canada. The CBA's mandate includes seeking improvements in the law and the administration of justice. The CBA Section has members across Canada practising in all areas of charities and not-for-profit law and in every size of practice, from large national firms to small and solo practitioners. We are dedicated to the evolution of a fair and efficient system reflecting principles of natural justice and Canadian interests.

This letter builds on the CBA Section's past representations on fiscal and regulatory measures that affect registered charities and not-for-profit organizations.¹ We focus on one significant and especially relevant issue to the consultation's *Economic Growth: Ensuring Canada's Competitiveness* theme. Charitable and not-for-profit organizations are an important part of the Canadian economy. We ask the Finance Committee to carefully examine the rules related to social enterprise and social finance to ensure those organizations can successfully innovate and compete.

There are an estimated 170,000 charities and not-for-profits in Canada – split roughly evenly between registered charities and not-for-profit organizations. The sector generates \$135 billion in income, employs two million people and accounts for more than 8.1% of Canada's GDP.² More than 13 million people (just under half of all Canadians aged 15 and over) volunteer annually, devoting two billion hours or the equivalent of just over one million full time jobs.³

The federal government's Social Innovation and Social Finance Strategy – aimed at finding new innovative approaches to improve the wellbeing of Canadians – is closely connected to government's focus on economic growth and competitiveness. A Co-Creation Steering Group of 17 members was appointed in June 2017 to consult and develop the strategy in partnership with the federal government by the end of summer 2018. Many participating organizations and the Steering Group have recognized the critical need to rationalize tax regulatory issues currently impeding the capacity of registered charities and not-for-profits to generate revenue. Much of this work does not refer to *Income Tax Act* categories or other established regulatory criteria, and the extent to which innovative approaches apply to registered charities and the not-for-profit sector is unclear. However, as lawyers often asked to advise charities and not-for-profits on related issues, we know that any solution must be framed with specific reference to the *Income Tax Act* to create compliance and enforcement certainty.

Different tax rules govern the two categories of organizations, particularly as they create and expand new revenue generating models to improve the well-being of Canadians. Registered charities are limited by rules on related business activities and permitted investments. Not-for-profit organizations are limited in their ability to earn a profit, even though any surplus funds are generally devoted back to their organizations' not-for-profit purposes.

As registered charities and not-for-profits struggle to innovate and be sustainable, these separate and often contradictory rules are often overlooked or misunderstood, causing compliance problems for the organizations. CRA administrative policies are often dated and inadequately address the current context of social innovation and social enterprise. Uncertainty on how particular rules apply to specific circumstances results in unnecessary administrative burdens and diverts resources from core programming. Compliance actions are costly for both the regulator and the organizations.

The federal government has committed to modernizing the regime for charities and not-for-profits. Acting on this commitment would be consistent with federal government support for social enterprise and social finance activities and would enable the sector to significantly increase its contributions to the growth and expansion of Canada's economy. The sector needs a regulatory environment that allows organizations to work efficiently and encourages sustainability and productivity.

We urge the federal government to amend the *Income Tax Act* to clarify that charities and not-for-profit organizations must be able to innovate, carry on business activities and earn tax exempt profits, as long as those profits are used for the purposes of the organization and not for the undue benefit of

¹ For recent examples of the CBA Section's law reform efforts, see Voluntary Disclosures by Canadian Registered Charities [online](#); Report of the Consultation Panel on the Political Activities of Charities [online](#); Canada's National Security Framework [online](#); National Security Green Paper [online](#); Political Activities for Charities [online](#); Regulation of Charitable and Not-for-Profit Sectors [online](#).

² [Key Facts about Canada's Charities](#).

³ [Volunteering in Canada, Statistics Canada, 2012](#).

any party or the personal benefit of any director, shareholder or member, directly or indirectly. We also urge the federal government to remove barriers that inhibit charities from working with not-for-profits or non-registered charities, allowing them to maximize their success.

The CBA Section would be pleased to collaborate with Finance Canada on any technical issues necessary to amend the *Income Tax Act*. Thank you for considering our views. We would be pleased to respond to any questions.

Yours truly,

(original letter signed by Marc-André O'Rourke for Linda J. Godel)

Linda J. Godel
Chair, CBA Charities and Not-for-Profit Law Section

Encl.