



2014 Canadian Federal Budget - How will it affect the Canadian charitable sector?

By Mark Blumberg¹ (February 11, 2014)

There are over 400 pages of material in the 2014 Federal budget. About 20 pages relate to Canadian non-profits and charities directly. Here are some excerpts from the budget that affect non-profits and charities and I will be placing further information on www.canadiancharitylaw.ca

Charities

The Government of Canada recognizes that the charitable sector plays an essential and irreplaceable role in our society by providing valuable services to Canadians, including to those most in need. Economic Action Plan 2014 further responds to the report of the House of Commons Standing Committee on Finance on charitable donation tax incentives by proposing investments to reduce the administrative burden on charities and measures to enhance public awareness and tax incentives for charitable giving. It also proposes to amend the Criminal

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Code to remove an antiquated restriction and allow charities to conduct their lotteries through the use of modern technology.

Further Response to the Report of the House of Commons Standing Committee on Finance on Charitable Donation Tax Incentives

To encourage Canadians to donate to registered charities, the Government of Canada provides individuals and businesses with tax incentives that have been described as among the most generous in the world. In fact, federal tax assistance for the charitable sector amounts to approximately \$3 billion annually. Provinces and territories also provide significant tax assistance.

In February 2013, the House of Commons Standing Committee on Finance completed an extensive review of charitable donation tax incentives and related issues. Economic Action Plan 2013 responded to the Committee's February 11, 2013 report Tax Incentives for Charitable Giving in Canada by introducing the First-Time Donor's Super Credit, which is being promoted by charities across Canada. In Economic Action Plan 2013, the Government also committed to work with the charitable sector and redouble its ongoing efforts in several areas identified by the Committee. Economic Action Plan 2014 introduces several measures that deliver on this commitment.

Investing to Reduce the Administrative Burden on Charities and Enhancing Public Awareness

Economic Action Plan 2014 further responds to the recommendations in the report of the House of Commons Standing Committee on Finance on charitable donation tax incentives by proposing to reduce the administrative burden on charities and enhance public awareness.

Registered charities must file annual information returns with the Canada Revenue Agency. Unlike other groups, however, charities do not have the option of filing their information returns electronically. This poses a significant

administrative burden for volunteers and staff of some 86,000 registered charities across Canada. This issue must be addressed to allow charities to devote more time and resources to charitable activities rather than administration. In addition, making data on charitable giving and trends more accessible will enhance public understanding of the charitable sector.

Both information technology modernization and enhanced public awareness have been identified as key priorities by the charitable sector. Accordingly, Economic Action Plan 2014 proposes the following measures:

- To reduce the administrative burden on charities, funding will be provided to the Canada Revenue Agency to modernize its information technology, thereby enabling charities to apply for registration and file their annual information returns electronically for the first time. This will represent an overall cash investment of \$23 million over five years.
- To improve public awareness, the Canada Revenue Agency will establish an enhanced web presence on charitable giving trends and characteristics in Canada.

These measures are expected to cost \$1 million in 2014–15 and \$0.5 million in 2015–16.

Enhancing Tax Incentives for Giving

Economic Action Plan 2014 further responds to the recommendations in the report of the House of Commons Standing Committee on Finance on charitable donation tax incentives by proposing measures to enhance tax incentives for charitable giving. Existing tax incentives play an important role in encouraging charitable giving by Canadians. Economic Action Plan 2014 proposes to further enhance these incentives with the following measures:

- To encourage Canadians to make additional donations of ecologically sensitive land, the 5-year carry-forward period for claiming these donations will be doubled to 10 years.

- To further facilitate charitable giving, the trustee of an individual's estate will be allowed increased flexibility to apply charitable donation credits against the income tax liabilities of the individual or the estate.

These measures are expected to cost \$10 million in 2015–16.

Since 2006, the Government Has Taken a Number of Important Steps to Support the Charitable Sector

The Government has:

- Provided a complete exemption from the capital gains tax for donations of publicly listed securities, donations of ecologically sensitive land to public conservation charities, as well as certain donations of exchangeable shares.
- Introduced a temporary First-Time Donor's Super Credit on cash donations of up to \$1,000 made before 2018.
- Reduced the administrative burden on charities by greatly simplifying the disbursement quota requirements, allowing charities to focus more time and resources on their charitable activities.
- Reassured Canadians that their donations are used to support legitimate charities engaged in charitable activities by introducing several new measures that improve accountability and transparency in the charitable sector.

Amending the Criminal Code to Modernize Charitable Lotteries

Economic Action Plan 2014 proposes to amend the Criminal Code to allow charities to conduct lotteries through the use of modern technology. Each year, charities in Canada raise hundreds of millions of dollars to support worthy causes through lottery sales. However, outdated legislation forces charities to process

and activate all sales manually, and then send customers their tickets by mail—barring them from using modern electronic technology like computers.

In order to reduce administrative costs associated with charitable lotteries and allow charities to modernize their lottery systems, Economic Action Plan 2014 proposes to amend the Criminal Code to allow charities to conduct various aspects of lotteries through the use of a computer. The use of a computer will also allow charities to use modern e-commerce methods for the purchasing, processing and issuing of lottery tickets and issuing of receipts to donors. Prominent Canadian charities including the Heart and Stroke Foundation, the Canadian Cancer Society and Sick Kids Hospital report that allowing the use of computers could save millions of dollars each year in administrative costs for all Canadian charities that run lotteries. For example, the Heart and Stroke Foundation has identified potential savings of \$1 million in annual administrative costs related to the use of computers in its lottery alone. Charities will be able to use these substantial savings to support their important work.

Building on the support already voiced by the Governments of Ontario, Alberta and Manitoba, the Government will consult with the provinces and territories on the proposed amendments to the Criminal Code.

Exploring the Potential of Social Finance Initiatives

Economic Action Plan 2014 announces that the Government will continue to work with leaders in the not-for-profit and private sectors to explore the potential for social finance initiatives.

Governments are not always best placed to solve the most pressing or persistent social and economic problems. There are Canadians who possess innovative solutions to these problems and there are others who are willing to fund “social entrepreneurs” in meeting these challenges.

In December 2013, the Minister of Employment and Social Development created a new Ministerial Advisory Council on Social Innovation, which includes experts and practitioners in the fields of social finance and social enterprise.

The Government of Canada is committed to supporting Canadians' use of innovative approaches to address pressing unmet social and economic needs.

The Government will continue to work with leaders in the not-for-profit and private sectors to explore the potential for social finance initiatives and examine whether there are barriers to their success.

Investing in Arts, Culture and Sports

The Government's continued commitment to arts and culture helps build stronger communities by bringing people together through shared artistic and cultural experiences. In addition, the Government will continue to support efforts to preserve Aboriginal languages.

The Government is committed to helping Canadians stay healthy. Economic Action Plan 2014 proposes a number of sport and fitness measures such as maintaining the Government's record level of investment in sport.

In the coming years leading up to the 150th anniversary of Confederation, Canadians will commemorate many historic nation-building events, including the 150th anniversary of the Charlottetown Conference, the Quebec

Conference and Montreal's 375th anniversary.

Renewing Arts Funding

Beginning in 2015–16, Economic Action Plan 2014 proposes to provide ongoing funding of \$105 million per year in support of core cultural programs.

Ongoing federal funding helps support the cultural sector and improves Canadians' access to the arts and cultural activities in their communities.

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This includes funding of:

- \$25 million for the Canada Council for the Arts.
- \$30.1 million for the Canada Cultural Investment Fund.
- \$30 million for the Canada Cultural Spaces Fund.
- \$18 million for the Canada Arts Presentation Fund.
- \$1.8 million for the Fathers of Confederation Buildings Trust.

This investment will ensure that Canadians continue to enjoy access to a great diversity of Canadian arts and culture.

Donations of Ecologically Sensitive Land

Economic Action Plan 2014 proposes to double the carry-forward period for donations of ecologically sensitive land. The Ecological Gifts Program provides a way for Canadians with ecologically sensitive land to protect natural areas and leave a legacy for future generations. Under the Program, donations to certain registered Canadian charities of land that has been certified as ecologically sensitive are eligible for special tax assistance, including the Charitable Donations Tax Credit for individual donors and a deduction for corporate donors. Charitable donations not claimed in a year may be carried forward for up to five years.

To encourage additional donations of ecologically sensitive land, Economic Action Plan 2014 proposes to double the carry-forward period for donations of such land to 10 years, as recommended by the House of Commons Standing Committee on Finance in its February 11, 2013 report, *Tax Incentives for Charitable Giving in Canada*.

It is estimated that this change will reduce federal revenues by a small amount in each of 2013–14, 2014–15 and 2015–16.

Donations of Ecologically Sensitive Land

30. (1) The portion of subparagraph 110.1(1)(d)(iii) of the Act before clause (A) is replaced by the following:

(iii) the gift was made by the corporation in the year or in any of the ten preceding taxation years to

(2) Subsection (1) applies to gifts made on or after Budget Day.

31. (1) The portion of paragraph (c) of the definition “total ecological gifts” in sub- section 118.1(1) of the Act before subparagraph (i) is replaced by the following:

(c) the gift was made by the individual in the year or in any of the ten preceding taxation years to

(2) Subsection (1) applies to gifts made on or after Budget Day.

Continued Support for the Virtual Museum of Canada and Online Works of Reference

Beginning in 2015–16, Economic Action Plan 2014 proposes to provide ongoing funding of \$4.2 million per year for the Virtual Museum of Canada and \$1.2 million per year for the Online Works of Reference. The funding and responsibility for these programs will be transferred to the Canadian Museum of History.

The Virtual Museum of Canada brings together content from Canada's museums on one website to provide access to virtual exhibitions. Beginning in 2015–16, Economic Action Plan 2014 proposes to provide ongoing funding of \$4.2 million per year for the Virtual Museum of Canada. This funding supplements existing funding of \$2 million per year, for a total annual investment of \$6.2 million. The funding and the responsibility for the Virtual Museum of Canada will be transferred to the Canadian Museum of History.

The Online Works of Reference provides online content on Canadian culture and history and gives access to The Canadian Encyclopedia/Encyclopedia of Music in Canada and The Dictionary of Canadian Biography, a comprehensive historical dictionary that provides articles with accounts of the lives and times of the individuals who contributed to Canada's development. Beginning in 2015–16, Economic Action Plan 2014 proposes to provide ongoing funding of \$1.2 million per year for the Online Works of Reference. This funding supplements existing funding of \$0.9 million per year, for a total annual investment of \$2.1 million. The funding and the responsibility for the Online Works of Reference will be transferred to the Canadian Museum of History.

Special Olympics Canada

Economic Action Plan 2014 proposes additional funding of \$10.8 million over four years for Special Olympics Canada.

Special Olympics Canada is a national, volunteer-driven organization that provides sport training and competition opportunities for approximately 36,000 athletes of all ages with an intellectual disability. Special Olympic athletes represent our country at the Special Olympics

World Games and are great role models, particularly for children and young Canadians. Their passion is inspiring and shows that sport has the power to enrich lives, change attitudes and strengthen communities. However, only approximately 5 per cent of Canadians with an intellectual disability are

registered with Special Olympics—a number Special Olympics Canada is committed to significantly increase.

Economic Action Plan 2014 proposes to provide funding of \$10.8 million over four years to support the efforts of Special Olympics Canada. This funding is in addition to the ongoing funding of \$1 million per year mentioned above. The Government is proud to assist Special Olympics Canada in its efforts to provide sport training and competition opportunities for Canadian athletes with an intellectual disability.

Other Tax Actions to Improve Tax Integrity, Strengthen Compliance and Enhance Fairness

In addition to the international aggressive tax avoidance package outlined above, the Government is taking steps in Economic Action Plan 2014 to improve the integrity of the tax system and strengthen tax compliance by:

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- Deeming the value of a gift of certified cultural property to be no greater than the donor's cost of the property, if it was acquired under a gifting arrangement that is a tax shelter.

...

- Providing the Minister of National Revenue with more authority to prevent the potential abuse of registered charities by state supporters of terrorism.
- Announcing a public consultation on the income tax framework for non-profit organizations (NPOs) to ensure that the tax exemption for NPOs is appropriately targeted and not subject to abuse by organizations that claim the exemption but are not operating in the manner intended, and to ensure that reporting requirements for legitimate NPOs provide the public and the Canada Revenue Agency with sufficient information to evaluate their activities.

In this context, Budget 2014 announces the Government's intention to review whether the income tax exemption for NPOs remains properly targeted and whether sufficient transparency and accountability provisions are in place. This review will not extend to registered charities or registered Canadian amateur athletic associations. As part of the review, the Government will release a consultation paper for comment and will further consult with stakeholders as appropriate.

Donations of Ecologically Sensitive Land

The Ecological Gifts Program provides a way for Canadians with ecologically sensitive land to contribute to the protection of Canada's environmental heritage. Under this program, certain donations of ecologically sensitive land, or easements, covenants and servitudes on such land, are eligible for special tax assistance. Individual donors are eligible for a Charitable Donations Tax Credit, while corporate donors are eligible for a Charitable Donations Deduction. As with other charitable donations, amounts not claimed for a year may be carried forward for up to five years. In addition, capital gains associated with the donation of ecologically sensitive land are exempt from tax.

To permit donors to take greater advantage of tax assistance and thereby encourage larger donations, Budget 2014 proposes to extend to ten years the carry-forward period for donations of ecologically sensitive land, or easements, covenants and servitudes on such land.

This measure will apply to donations made on or after Budget Day.

Estate Donations

Donations made by an individual to a registered Canadian charity or other qualified donee are eligible for a Charitable Donations Tax Credit (CDTC). Subject to certain limits, a CDTC in respect of the eligible amount of the donation may be applied against the individual's income tax otherwise payable. The eligible amount is generally the fair market value of the donated property at the time that the donation is made (subject to any reduction required under the income tax rules). The individual may claim a CDTC for the year in which the donation is made or for any of the five following years.

Where an individual makes a donation by will, the donation is treated for income tax purposes as having been made by the individual immediately before the individual's death. Similar provisions apply where an individual designates, under a Registered Retirement Savings Plan (RRSP), Registered Retirement Income Fund (RRIF), Tax-Free Savings Account (TFSA) or life insurance policy, a qualified donee as the recipient upon the individual's death of the proceeds of the plan or policy. Under these circumstances, the CDTC available may be applied against only the individual's income tax otherwise payable.

On the other hand, a CDTC available in respect of a donation made by an individual's estate may be applied against only the estate's income tax otherwise payable. Budget 2014 proposes to provide more flexibility in the tax treatment of charitable donations made in the context of a death that occurs after 2015. Donations made by will and designation donations will no longer be deemed to be made by an individual immediately before the individual's death. Instead, these donations will be deemed to have been made by the estate, at the time at which the property that is the subject of the donation is transferred to a qualified donee.

In addition, the trustee of the individual's estate will have the flexibility to allocate the available donation among any of: the taxation year of the estate in which the donation is made; an earlier taxation year of the estate; or the last two taxation years of the individual. The current limits that apply in determining the total

donations that are creditable in a year will continue to apply. A qualifying donation will be a donation effected by a transfer, within the first 36 months after the individual's death, of property to a qualified donee. In the case of a transfer from an RRSP, RRIF, TFSA or insurer, the existing rules for determining eligible property for designation donations will apply. In any other case, the donated property will be required to have been acquired by the estate on and as a consequence of the death (or to have been substituted for such property).

An estate will continue to be able to claim a CDTC in respect of other donations in the year in which the donation is made or in any of the five following years.

This measure will apply to the 2016 and subsequent taxation years.

Estate Donations

32. Subparagraphs 38(a.1)(ii) and (a.2)(ii) and 39(1)(a)(i.1) and section 118.1 of the Act are modified in accordance with the proposals relating to Estate Donations described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Donations of Certified Cultural Property

For the purpose of calculating a Charitable Donations Tax Credit (for individuals) or a Charitable Donations Deduction (for corporations), the value of a gift of property is deemed to be no greater than its cost to the donor if, generally, the donor acquired the property as part of a tax shelter gifting arrangement or held the property for a short period. Gifts of certified cultural property are exempt from this rule and also benefit from a capital gains exemption. As a result, Canadians are encouraged to donate culturally significant property to designated institutions and public authorities to help preserve Canada's national heritage.

Representations as to the fair market value of certified cultural property are reviewed by the Canadian Cultural Property Export Review Board. As part of its duties, the Board is responsible for certifying cultural property for income tax purposes, including determining its fair market value. The donation of certified cultural property could be a target for abuse by tax shelter promoters because of the combination of its favourable tax treatment, inherent uncertainties in appraising the value of art and artifacts, and the exemption from the rule that deems the value of a gift to be no greater than its cost to the donor in certain circumstances. Budget 2014 proposes to remove, for certified cultural property acquired as part of a tax shelter gifting arrangement, the exemption from the rule that deems the value of a gift to be no greater than its cost to the donor. Other donations of certified cultural property will not be affected by this measure.

This measure will apply to donations made on or after Budget Day.

Donations of Certified Cultural Property

33. (1) Paragraph 248(37)(c) of the Act is replaced by the following:

(c) of an object referred to in subparagraph 39(1)(a)(i.1), other than an object acquired under a gifting arrangement (as defined in subsection 237.1(1)) that is a tax shelter;

(2) Subsection (1) applies to gifts made on or after Budget Day.

State Supporters of Terrorism

To prevent potential abuse of the charitable sector by foreign state supporters of terrorism, Budget 2014 proposes that where a charity (or a Canadian amateur athletic association) accepts a donation from a foreign state listed as a supporter of terrorism for purposes of the State Immunity Act, or from an agency of such a

state, the Minister of National Revenue may refuse to register the charity (or amateur athletic association) or may revoke its registration. The Minister of National Revenue will take into consideration the specific facts of each case, exercising this authority in a fair and judicious manner.

The Canada Revenue Agency helps charities understand and meet their compliance obligations. The Agency will provide information about best practices for exercising due diligence when accepting gifts and for preventing terrorist abuse of the registration system for charities.

The Canada Revenue Agency will utilize existing compliance reporting and, as such, the measure will not impose an additional reporting burden on charities.

This measure will apply to donations accepted on or after Budget Day.

State Supporters of Terrorism

34. (1) Subsection 149.1(4.1) of the Act is amended by striking out “and” at the end of paragraph (d), by adding “and” at the end of paragraph (e) and by adding the following after paragraph (e):

(f) of a registered charity, if it accepts a gift from a foreign state, as defined in section 2 of the State Immunity Act, that is set out on the list referred to in subsection 6.1(2) of that Act.

(2) Subsection 149.1(4.2) of the Act is amended by striking out “or” at the end of paragraph (b), by adding “or” at the end of paragraph (c) and by adding the following after paragraph (c):

(d) if the association accepts a gift from a foreign state, as defined in section 2 of the State Immunity Act, that is set out on the list referred to in subsection 6.1(2) of that Act.

(3) Subsection 149.1(25) of the Act is amended by striking out “or” at the end of paragraph (a), by adding “or” at the end of paragraph (b) and by adding the following after paragraph (b):

(c) the charity or association has accepted a gift from a foreign state, as defined in section 2 of the State Immunity Act, that is set out on the list referred to in subsection 6.1(2) of that Act.

(4) Subsections (1) to (3) apply in respect of gifts accepted on or after Budget Day.

Consultation on Non-Profit Organizations

A non-profit organization (NPO) that is a club, society or association organized and operated exclusively for social welfare, civic improvement, pleasure or for any other purpose except profit, qualifies for an income tax exemption if it meets certain conditions. This income tax exemption for NPOs has changed little since its introduction in 1917. Today, NPOs include such varied groups as professional associations, recreational clubs, civic improvement organizations, cultural groups, housing corporations, advocacy groups and trade associations. Concerns have been raised that some organizations claiming the NPO tax exemption may be earning profits that are not incidental to carrying out the organization’s non-profit purposes, making income available for the personal benefit of members or maintaining disproportionately large reserves.

In addition, because reporting requirements for NPOs are limited, members of the public may not be adequately able to assess the activities of these organizations, and it may be challenging for the Canada Revenue Agency to evaluate the entitlement of an organization to the tax exemption.

In this context, Budget 2014 announces the Government’s intention to review whether the income tax exemption for NPOs remains properly targeted and whether sufficient transparency and accountability provisions are in place. This

review will not extend to registered charities or registered Canadian amateur athletic associations. As part of the review, the Government will release a consultation paper for comment and will further consult with stakeholders as appropriate.

The Search and Rescue Volunteers Tax Credit

To recognize the important role played by search and rescue volunteers who put themselves at risk in the service of their communities, EAP 2014 announces a new 15-per-cent non-refundable Search and Rescue Volunteers Tax Credit on an amount of \$3,000 for ground, air and marine search and rescue volunteers. This credit will be available to search and rescue volunteers who perform at least 200 hours of service during a year.

Supporting Entrepreneurs Through Intensive Mentoring

Economic Action Plan 2014 proposes to provide an additional \$40 million over four years to the Canada Accelerator and Incubator Program to help entrepreneurs create new companies and realize the potential of their ideas through intensive mentoring and other resources to develop their business.

Business accelerators and incubators play an important role in the development of innovative businesses by providing them with hands-on advice from experienced entrepreneurs and other resources. This is why, in September 2013, the Government launched the Canada Accelerator and Incubator Program (CAIP) as part of the Venture Capital Action Plan. CAIP aims to establish a critical mass of outstanding accelerator and

incubator organizations across Canada. It will enable leading organizations to expand their intensive mentoring and business development services to high-

potential companies and entrepreneurs, including young Canadians, so that they can develop their ideas into globally competitive businesses.

The Request for Proposals under CAIP, launched in September 2013, attracted a significant number of high-quality applications from organizations across the country. To increase the impact of CAIP in helping entrepreneurs realize the business potential of their ideas, Economic Action Plan 2014 proposes to provide the program with an additional \$40 million over four years, starting in 2015–16, increasing its total funding to \$100 million.

Recipient organizations under this initiative will be announced in the coming months.

What Are Accelerators and Incubators?

- Accelerators are typically for-profit organizations owned and operated by venture capital investors. Accelerators provide a range of services to early-stage firms, including financial support, mentorship, business advice, office and development space, and complementary services offered by partner organizations.
- Incubators are typically not-for-profit organizations that offer similar services as accelerators but tend to provide longer tenure for participating firms and a broader suite of services in terms of physical space and mentorship. Incubators are often sponsored by universities, colleges or economic development corporations.

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