

evidence must be gathered and meticulously maintained should the CRA wish to challenge the appraisal in later years.

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## The 2018 Budget and the Charitable Sector: Mixed Signals on Potential Changes?

*Daniel Frajman*

A lot has been written on potential positive change in the charitable sector in light of the 2018 federal budget.<sup>1</sup> Note has been taken that the Government of Canada indicated in the budget that it will soon respond to the 2017 report of the Consultation Panel on the Political Activities of Charities,<sup>2</sup> and the Director General of the CRA Charities Directorate seemed to reiterate this at an address made at the May 2018 Canadian Bar Association Charity and Non-Profit Law Annual Symposium, where with regard to possible support for journalism referred to in the 2018 budget,<sup>3</sup> the Director General indicated that something was being developed and that the Department of Finance has taken the lead on the matter.

*La Presse*, the major French language newspaper in Quebec (which in recent years has begun to publish online only, with reader access being available free of charge), certainly seems confident that non-profit journalism has a future in Canada. *La Presse* completed amendments to its charter in June 2018 that allow it to operate as a non-profit (apparently as a "social trust" without members under the *Civil Code of Quebec*), and *La Presse's* current indirect owner Power Corporation of Canada is set to cut ties with the new structure and provide it with a sizable initial grant of \$50 million.<sup>4</sup>

Time will tell if amendments to the *Income Tax Act* ("ITA") and/or administrative changes by the CRA will allow *La Presse* and other news sources to become charities (they cannot under current law<sup>5</sup>). Certainly many Canadians would support this, and as indicated above the government at least has hinted that it might happen.

What is however alarming is that pending organizations such as *La Presse* hopefully being allowed to register as charities, tax department interpretations continue to be issued that seem to unduly limit the ability of non-profit organizations to operate as non-profits. The latest example is an interpretation letter issued by Revenue Quebec on June 2, 2017 and published on March 9, 2018.<sup>6</sup> This Quebec interpretation deals with a condominium corporation (a syndicate of co-owners under the *Civil Code*) renting space on the building's roof, thereby reducing payments required of the individual co-owners to the condominium's contingency fund.

Revenue Quebec applies the Quebec *Taxation Act*, but its provisions on non-profits (sections 986 and 996) are essentially identical to paragraph 149(1)(l) ITA's rule for non-profits. Furthermore, in coming to an answer, this Quebec interpretation letter referred to past CRA interpretations 2009-0348621E5, 2010-0357831E5 and 2012-0468581E5, which for example denied non-profit status to condominium corporations renting out vacant suites for above cost-recovery. This Quebec interpretation letter found that the corporation's rental income would not be accessory to operations and would unduly reduce condo fees and in effect put revenues at the disposal of members, and therefore non-profit status was denied. Recent jurisprudence on non-profits may be more accommodating, and may for example require non-profits to operate on a cost-recovery basis over the medium and long-term rather than each year.<sup>7</sup>

Therefore, as *La Presse* takes a leap of faith based on a potential change of some nature referred to in the budget announcement, we are faced with unsettled law for non-profits, and a hope that positive change is forthcoming for charities. Time will tell, and for journalism the stakes appear high.

<sup>1</sup> See for example C. Yvonne Chenier, Q.C., "The CRA Comes To Lunch", *Canadian Not-for-Profit News*, July 2018, 51.

<sup>2</sup> Briefly summarized, the Consultation Panel made three recommendations for the modernization of Canadian charity law as regards political purposes and activities, and a fourth recommendation to the effect that the general legislative framework governing the charitable sector should be modernized.

<sup>3</sup> Budget 2018 indicated that, "... over the next year the Government [of Canada] will be exploring new models that enable private giving and philanthropic support for trusted, professional, non-profit journalism and local news. This could include new ways for Canadian newspapers to innovate and be recognized to receive charitable status for not-for-profit provision of journalism, reflecting the public interest that they serve."

<sup>4</sup> "Bill to Make *La Presse* Not-for-Profit Passes", *Montreal Gazette*, June 15, 2018, p. D5.

<sup>5</sup> It has been held that the dissemination of news is not in itself charitable (*News To You Canada v. Canada*, 2011 FCA 192, [2011] 5 C.T.C. 176).

Furthermore, newspapers publishing editorials and similar copy cannot easily navigate the current rules on political purposes and activities.

<sup>6</sup> Revenu Québec interpretation letter 17-036658 001, « Syndicat de copropriétaires — Revenus de location et maintien du statut d'organisme exonéré d'impôt ».

<sup>7</sup> See *BBM Canada v. The Queen*, 2008 TCC 341, 2008 CarswellNat 1844 and the Court of Quebec decision of *Coop publicitaire des concessionnaires Chrysler Jeep Dodge du Québec v. Agence du revenu du Québec*, 2016 QCCQ 11252.

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## An Update to the Tax Donation Rate Schedule

Adam Aptowitzer

For many years tax and charity professionals calculated the after tax cost of a donation based on certain principles. One of those principles was that, at the top brackets both federally and provincially, the credit for the donation offset the tax owing for a dollar of income earned and then donated.

As the so-called 1% movement became more vocal, governments felt they had a licence to tax higher income earners (although they taxed well more than the top 1%). In doing so many Canadian governments created new top tax brackets with higher tax rates, however they 'neglected' to raise the top donation tax credit rate. The result was that those in the highest bracket paid tax on money they donated. For example in Ontario, at the highest rates, a taxpayer would pay \$4 to the government on \$100 they did not have (because it was donated to charity).

One reason for this decision may be found in the application of the highest donation tax credit to donors in all brackets (on cumulative donations over \$200). The higher the highest tax credit rate the higher the tax leakage in all brackets. So there is a definite incentive not to increase the rate over because of the magnified impact throughout the system.

This consideration was likely the impetus behind the federal government's decision in 2016 taxation year to ensure the credit was equal to the tax rate at the (then new) highest bracket but if the donation itself caused taxable income to drop into the second highest bracket the credit was lowered to equal that tax rate and kept at that level for all donors in lower brackets. This may have complicated the system but it had the merit of being fair.

As provinces started down this path we held our breath to see if this new — and absurdly unfair — method of attacking the wealthiest donors would catch on across the country or whether that was the high water mark. Unfortunately, it seems that the jury is still out. British Columbia has moved from the traditional fair system to the newer punitive one and Ontario's proposed budget persists in using it (despite the fact that revamping its brackets was a perfect opportunity to rethink the approach). On the other hand, the Newfoundland and Labrador budget has reverted to the more fair system.

Below is a review of the relevant rates in each province assuming more than \$200 in donations.

	Highest Provincial Tax Rate	Highest Provincial Donation Tax Credit Rate	Bracket at which rates are equal
BC	16.80%	14.70%	Second Highest
AB*	15%	21%	N/A
SK	14.75%	14.75%	Highest
MB	17.40%	17.40%	Highest
ON 2018 Proposed	20.53%	17.5%	Third Highest
ON Current	20.53%	17.41%	Third Highest
QU	25.75%	24.00%	Second Highest
NB	20.30%	17.95%	Second Highest
NS	21%	21%	Highest
NL	18.30%	18.3%	Highest
PE	16.7%	16.7%	Highest**
YT	15%	12.80%	Second Highest
NT	14.05%	14.05%	Highest
NU	11.50%	11.50%	Highest

\*AB rates will never be equal because the top credit rate is by law always higher than the highest tax rate

\*\*PE rate calculation does not include operation of surtax which will raise taxes but not the donation tax credit rate

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