



2017 Canadian Federal Budget - How will it affect the Canadian charitable sector?

By Mark Blumberg and Kate Robertson¹ (March 22, 2017)

Today, Canadian Finance Minister Bill Morneau introduced his second Federal Budget of the Liberal Government of Justin Trudeau. While the Federal Budget announced the support of a number of individual charities, as well as support for important areas requiring assistance like affordable housing and universities, there were limited initiatives in the Federal Budget in terms of the charity and non-profit sector as a whole.

The budget contained very little information with respect to tax incentives for charitable donations and the regulation of registered charities. Keep in mind that in December of 2015, the Liberals [previously announced a major tax incentive when they raised taxes on those earning over \\$200,000 to 33%](#) but provided a matching tax incentive for those high income earners who make charitable donations. In 2016, the Liberal budget indicated that the Liberals would not be proceeding with the extra tax incentives for donations of real estate and shares of private corporations. As the amount of tax incentives available for charitable donations is

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already higher in Canada than any other country, it is not surprising that there are and probably will not be further incentives to donate to charities.

The budget was silent once again on the NPO Risk Identification Project ('NPORIP'), and presumably it will proceed. The NPORIP was a CRA project which involved an in-depth analysis of non-profits that are not registered charities. It would be helpful to have more clarity in the non-profit sector regarding the rules and regulations of non-profits that are not registered charities, particular with respect to the rules surrounding business activities.

Registered charities and political activities were mentioned in the 2016 federal budget and the Liberals made a commitment to consult on clarifying the rules surrounding political activities for registered charities. CRA invested a lot of time and effort consulting with Canadians on the political activity rules in 2016. There was no mention of the political activities consultation in the 2017 federal budget. We anticipate CRA will provide a response to the issue at some point over the summer and perhaps in the next federal budget, however as we have discussed in the past, the existing rules may not require any changes.

We were disappointed that there was no focus in the federal budget on increased transparency when it comes to non-profits and charities. However, there will be increased transparency for-profit corporations, which we believe is a good thing.

We noted some minor revisions to the myriad of tax incentives for charitable donations (outlined below):

Repeal the additional deduction available to corporations that donate medicine to eligible registered charities, given high compliance costs for charities and very low take-up. Corporations will continue to be able to deduct the fair market value of donated medicine.

In addition, Budget 2017 confirms that the First-Time Donor's Super Credit will be allowed to expire in 2017 as planned, due to its low take-up, small average amounts donated, and the overall generosity of existing tax assistance for charitable donations.

There were also various changes to the ecological gifts program discussed at the end of this note, which will tighten up the existing program with some tweaks made in order to avoid abuse.

Here are some snippets of some (but not all) of the federal budget proposals that either directly or indirectly impact charities/not-for-profits:

\$340 million in planned support for equipment and facilities for post-secondary institutions, research hospitals, and other not-for-profit institutions. E.g., the Canada Foundation for Innovation, which supports research infrastructure, Compute Canada and CANARIE, which provides an ultra-high-speed network for researchers.

Expanding Digital Learning Opportunities

Digital skills widen Canadians' access to a world of possibilities. Budget 2017 proposes \$29.5 million over the next five years for a new Digital Literacy Exchange program. The program will support non-profit organizations to implement initiatives that teach basic digital skills, including how to use the Internet safely and effectively, at pre-existing facilities such as public libraries, refugee housing complexes and seniors' homes. The program will focus on vulnerable groups such as low-income individuals and families, and seniors.

Developing Assistive Technology

Assistive technologies such as screen readers, alternative keyboards and refreshable braille displays can make it easier for Canadians with disabilities to more fully participate in the digital economy. To expand the range of assistive technologies, and to give more Canadians better access to digital services, the Government proposes to establish a new Accessible Technology Development program. This program would co-fund innovative projects led by private sector firms, non-profit organizations and research institutes, to develop new assistive devices and technologies. Budget 2017 proposes to invest \$22.3 million over five years to establish this program.

INNOVATING TO SOLVE CANADA'S BIG CHALLENGES

Innovation can do more than just drive strong economic growth. It also has the potential to solve the big challenges that face Canadians and their communities. For its part, the Government is committed to taking an innovative approach to solving difficult public policy challenges. This includes opening up the problem-solving process to Canadian and global innovators, who can bring fresh perspectives and new ideas to Canada's big challenges. From building more affordable housing in Indigenous communities to providing affordable high-speed Internet access to more homes and accelerating the adoption of renewable energy in our cities and transportation systems, the Government recognizes that big challenges demand new and innovative solutions.

By working with innovators from the private sector, non-profit organizations and social enterprises—as well as individual citizens—these new, innovative solutions can be found. Budget 2017 proposes to create a new initiative, the Impact Canada Fund, to introduce a new mission- or “challenge”-based approach for the federal government and help focus and accelerate efforts toward solving Canada's big challenges. The Impact Canada Fund will focus its initial efforts in two problem solving streams:

1) **A clean technology stream**, supported by up to \$75 million over two years, starting in 2017–18, to address challenges such as helping Canada's rural and remote communities reduce their reliance on diesel as a power source.

2) **A smart cities stream**, supported by \$300 million over 11 years, that will support the Smart Cities Challenge (see Chapter 2 for additional details). Budget 2017 also proposes to provide \$8.1 million over five years, starting in 2017–18, to oversee the implementation of the Impact Canada Fund. This initiative will also help advance the President of the Treasury Board's mandate commitment to devote a fixed percentage of government program funds to experimentation.

Indspire

Indspire is an Indigenous-led registered charitable organization with a proven track record of helping Indigenous students attend post-secondary institutions and find good jobs. It assists First Nations, Inuit and Métis students with the financial support they need to complete their education, become self-sufficient, contribute to the economy and give back to their communities. Budget 2017 proposes to provide Indspire with \$5 million per year for five years, starting in 2017–18, conditional on Indspire raising \$3 million per year in matching funds from the private sector. In total, this will

provide \$40 million over five years in bursaries and scholarships for more than 12,000 First Nations, Inuit and Métis students. In addition, the Government will propose amendments to the *Canada Student Financial Assistance Act*, so that students who are registered under the *Indian Act* but do not have Canadian citizenship can access the Canada Student Loans Program.

SUPPORTING THE NEXT GENERATION OF ENTREPRENEURS

Driven by boundless creativity and an innate comfort with technology, young entrepreneurs are already leaders in Canada's economy. Futurpreneur Canada is a national not-for-profit organization that helps young entrepreneurs by providing them with mentorship, learning resources and startup financing to help them bring their business ideas to life—and to market. The results are impressive: Futurpreneur Canada's core program has helped nearly 10,000 young entrepreneurs launch more than 8,000 new businesses over the past two decades. Last year, 40 per cent of the businesses supported by Futurpreneur were owned by women—more than double the national average. Budget 2017 proposes to provide Futurpreneur Canada with \$14 million over two years, starting in 2017–18, to continue its important work of supporting the next generation of entrepreneurs. Futurpreneur Canada will match these investments with funding received from other government and private sector partners.

Stem Cell Research

The Stem Cell Network, established in 2001, is a national not-for profit organization that helps translate stem cell research into clinical applications, commercial products and public policy. Its research holds great promise, offering the potential for new therapies and medical treatments for respiratory and heart diseases, cancer, diabetes, spinal cord injury, multiple sclerosis, Crohn's disease, auto-immune disorders and Parkinson's disease. To support this important work, Budget 2017 proposes to provide the Stem Cell Network with renewed funding of \$6 million in 2018–19.

To help address immediate housing needs, Budget 2016 committed to invest \$2.2 billion over two years, to give more Canadians access to more affordable housing. To supplement these investments, Budget 2016 also provided funding for low-cost loans and new financing tools to encourage

municipalities, housing developers and non-profit housing providers to develop more affordable rental housing units.

To build on these early efforts, Budget 2017 proposes to invest more than \$11.2 billion over 11 years in a variety of initiatives designed to build, renew and repair Canada's stock of affordable housing and help ensure that Canadians have affordable housing that meets their needs. These investments will be made as part of a new National Housing Strategy. The Strategy was developed following extensive consultation with and input from provinces, territories, municipalities, Indigenous Peoples, industry experts, stakeholders and, most importantly, those Canadians who are living with the challenge of finding adequate and affordable housing in many of Canada's big cities, and rural and remote communities.

Infrastructure Partnerships Through Bilateral Agreements

The bilateral agreements will involve cost-sharing for agreed-to projects, with the proportions determined based on the recipient of the funds. The Government will provide funding for projects on the following basis: up to 40 per cent federal funding for projects undertaken with municipal and not-for-profit partners; up to 50 per cent federal funding for projects with provincial partners; and up to 75 per cent federal funding for projects with Indigenous partners and projects with territorial partners. For public transit in provinces, the Government will provide up to 50 per cent of eligible costs for rehabilitation projects (with funding for rehabilitation projects capped at 15 per cent of total public transit funding), while funding for new public transit construction and expansion projects will be cost-shared at up to 40 per cent federal funding.

Protecting Communities at Risk

Hate-motivated crime has no place in Canadian society, and Canadians should feel safe when they gather at places of worship, educational institutions or community centres. Yet sadly recent events illustrate that efforts must be made to increase the safety and physical security of these spaces. Budget 2017 proposes funding of \$5.0 million over five years, starting in 2017–18, in support of the Communities at Risk: Security Infrastructure Program, which provides funding to not-for-profit

organizations to make needed security infrastructure improvements such as the installation of outdoor lighting or security cameras.

A New, Ambitious Approach to Work-Integrated Learning

Co-operative education and work-integrated learning programs, such as the ones offered by the University of Waterloo, the Université de Sherbrooke, Dalhousie University and the British Columbia Institute of Technology, are a proven way for students to get the work experience they need to build their résumés and build a network of professional contacts. To create new co-op placements and work-integrated learning opportunities for post-secondary students enrolled in science, technology, engineering and mathematics (STEM) and business programs, Budget 2016 provided \$73 million over four years for job-creating partnerships between employers and interested post-secondary institutions. This investment is expected to create up to 8,700 new work-integrated learning placements over the next four years, making more opportunities available to young women and men interested in STEM. To create even more work-integrated learning opportunities for Canadian students, the Government intends to renew and expand federal funding for Mitacs, a not-for-profit organization that builds partnerships between industry and educational institutions.

Investing in Skills Innovation

As recommended by the Advisory Council on Economic Growth and the Forum of Labour Market Ministers, new approaches are needed to address skills gaps and support lifelong learning throughout Canadians' working lives. To that end, Budget 2017 proposes to provide \$225 million over four years, starting in 2018–19, and \$75 million per year thereafter, to establish a new organization to support skills development and measurement in Canada.

Working in partnership with willing provinces and territories, the private sector, educational institutions and not-for-profit organizations, this organization will:

- Identify the skills sought and required by Canadian employers.
- Explore new and innovative approaches to skills development.
- Share information and analysis to help inform future skills investments and programming.

To create even more work-integrated learning opportunities for Canadian students, the Government intends to renew and expand federal funding

for Mitacs, a not-for-profit organization that builds partnerships between industry and educational institutions.

Mitacs has set an ambitious goal of providing 10,000 work-integrated learning placements for Canadian post-secondary students and graduates each year— up from the current level of around 3,750 placements. Budget 2017 proposes to provide \$221 million over five years, starting in 2017–18, to achieve this goal and provide relevant work experience to Canadian students.

Attracting Talent to Strengthen University Research

Canada is a world leader when it comes to investing in research at postsecondary institutions, ranking first among G7 nations and eighth among Organisation for Economic Co-operation and Development nations. A significant portion of these investments are made by the Government. Federal investments in post-secondary research and research training are summarized below.

Federal Investments in Post-Secondary Research and Research Training in 2016–17

\$3,060 million

in planned granting agency support for research and research training. E.g., scholarships, fellowships, research grants, and support for the overhead costs associated with federally funded research conducted in post-secondary institutions.

\$340 million

in planned support for equipment and facilities for post-secondary institutions, research hospitals, and other not-for-profit institutions. E.g., the Canada Foundation for Innovation, which supports research infrastructure, Compute Canada and CANARIE, which provides an ultra-high-speed network for researchers.

\$158 million

in planned support for arm's length organizations, most of which support higher education research. E.g., Mitacs, which supports collaborative industry-academia research projects with a focus on the training of highly qualified personnel, Genome Canada, the Canadian Institute for Advanced Research, the Stem Cell Network, the Institute for Quantum

Computing, Brain Canada and the Perimeter Institute for Theoretical Physics.

\$741 million

for investments to accelerate infrastructure projects at universities and colleges and affiliated institutions through the Post-Secondary Institutions Strategic Investment Fund.

\$186 million

in other expenditures for research and development and related scientific activities in the higher education sector. E.g., research performed by institutions in the post-secondary sector for science-based departments and agencies.

STRENGTHENING CULTURAL AND RECREATIONAL INFRASTRUCTURE

Canada's cultural industries—from television and film to dance to digital games—are the heartbeat of our communities and an important contributor to Canada's economy. Collectively, they employ nearly 650,000 Canadians, providing good, well-paying jobs for the middle class, and account for approximately 3 per cent of Canada's gross domestic product. More than an economic driver, Canada's cultural industries reflect the Canadian experience, and share that experience with the world. They showcase Canadians' creativity and diversity, strengthening our understanding of what it means to be Canadian.

To help promote arts and culture in Canada, Budget 2016 invested \$1.9 billion over five years to support key national cultural institutions. This funding also included \$168.2 million over two years for the Canada Cultural Spaces Fund. Budget 2017 proposes to build on this commitment, with a further investment of \$1.8 billion over 10 years starting in 2018–19. Of this amount, more than \$1.3 billion will be provided to provinces and territories through integrated bilateral agreements, on a base plus per capita allocation basis. This investment will be delivered through the second phase of social infrastructure funding.

CANADA CULTURAL SPACES FUND

To construct, renovate and better equip the creative spaces and hubs that will be home to the next generation of artists and innovators, Budget 2017 proposes to provide \$300 million over 10 years to the Canada Cultural Spaces Fund. This investment will help support the development of

Canadian talent, and support entrepreneurialism in the arts and cultural communities.

This new investment will bring artists, cultural entrepreneurs and organizations together in shared spaces where they can collaborate and take their ideas to new heights. The new investment in the Canada Cultural Spaces Fund will be focused on the construction, renovation and equipment needs of creative spaces/hubs, which will help drive growth in Canada's creative economy.

Renewing Investments in Pathways to Education Canada

Each year, too many young Canadians drop out of high school—often because they don't have access to the basic supports needed to succeed in school. To help these young students, the Government provides support to Pathways to Education Canada, a charitable organization that helps youth in lower-income communities across Canada complete high school and successfully transition into post-secondary education and employment.

Budget 2017 proposes to renew the Government's support for Pathways to Education Canada by providing \$38 million over four years, starting in 2018–19. Of this amount, \$14 million will be reallocated from Employment and Social Development Canada's existing resources. With this renewed funding, Pathways to Education Canada will provide more vulnerable youth with the supports they need to succeed in school, including tutoring, career mentoring and financial help, such as scholarships and internships.

Pathways to Education Canada

Established in 2001, Pathways to Education Canada works with local partners to provide youth from lower-income neighbourhoods with the academic, social and financial supports they need to complete high school. Launched as a pilot project in the Regent Park area of Toronto, the Pathways program has since expanded to 18 communities across Canada, and served more than 5,300 students in 2014–15.

The Pathways program has proven to be very successful—on average, high school graduation rates increased by 85 per cent in communities offering the Pathways program. Between 2004 and 2015, more than 4,000 Pathways students successfully graduated from high school; nearly three-quarters of these graduates have gone on to pursue postsecondary education or training, further improving their prospects for finding good,

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SUPPORTING FAMILIES THROUGH EARLY LEARNING AND CHILD CARE

For too many families, the lack of affordable, high-quality child care means difficult choices—some parents may have to sacrifice retirement savings to pay for child care, while others may leave their careers because child care is unavailable or unaffordable. Recognizing the connection between child care and family economic security, Budget 2017 proposes measures that will increase support for early learning and child care, so that more Canadian parents can pursue new opportunities to learn and to work. With stronger skills and more work experience under their belts, families can focus on what matters most—building a better future for themselves, and their children.

To help Canadian children get the best start in life, and to better support Canadian families, Budget 2016 provided an initial \$500 million in 2017–18 for early learning and child care.

Building on this commitment, Budget 2017 proposes to invest an additional \$7 billion over 10 years, starting in 2018–19, to support and create more high quality, affordable child care spaces across the country. A portion of this investment will be dedicated to early learning and child care programs for Indigenous children living on- and off-reserve.

Over the next three years, these investments could:

- Increase the number of affordable child care spaces for low- and modest income families by supporting up to 40,000 new subsidized child care spaces.

- Make it more affordable for parents to return to work, with thousands of parents more likely to enter the labour force once child care is made more affordable.

To ensure that Canadian families have better access to high-quality, affordable child care, the Government is working with the provinces and territories to develop a National Framework on Early Learning and Child Care, focusing on best practices and new approaches to best serve families. In addition, a distinct Indigenous Framework on Early Learning and Child Care, will be created in cooperation with Indigenous partners. The distinct Indigenous framework will reflect the unique cultures and needs of First Nations, Inuit and Métis children across Canada.

BUILDING AN INCLUSIVE NATIONAL HOUSING STRATEGY

All Canadians need and deserve housing that is safe, adequate and affordable. Without it, Canadians feel less secure, making it harder to accomplish every other goal—from raising healthy children to pursuing education, jobs and opportunity. When affordable housing is in short supply, Canada's whole economy suffers.

The lack of access to adequate, suitable and affordable housing is a particular concern in big cities. To help address immediate housing needs, Budget 2016 committed to invest \$2.2 billion over two years, to give more Canadians access to more affordable housing. To supplement these investments, Budget 2016 also provided funding for low-cost loans and new financing tools to encourage municipalities, housing developers and non-profit housing providers to develop more affordable rental housing units.

To build on these early efforts, Budget 2017 proposes to invest more than \$11.2 billion over 11 years in a variety of initiatives designed to build, renew and repair Canada's stock of affordable housing and help ensure that Canadians have affordable housing that meets their needs.

These investments will be made as part of a new National Housing Strategy. The Strategy was developed following extensive consultation with and input from provinces, territories, municipalities, Indigenous Peoples, industry experts, stakeholders and, most importantly, those Canadians who are living with the challenge of finding adequate and affordable housing in many of Canada's big cities, and rural and remote communities.

The Strategy will provide a roadmap for governments and housing providers across the country as they decide how to best support housing renewal in their communities. Key elements include:

- A renewed partnership between the Government and provinces and territories to better support key housing priorities.
- A new \$5 billion National Housing Fund to address critical housing issues, and better support vulnerable citizens.
- Targeted support for northern housing.
- Targeted housing support for Indigenous Peoples not living on-reserve.
- Renewed and expanded federal investments to combat and prevent homelessness.
- Making more federal lands available for the development of affordable housing.
- Expanded funding to strengthen CMHC's housing research activities.

The National Housing Fund will:

- **Encourage greater collaboration and investment in housing:** A new coinvestment fund will be established to pool resources among many housing partners, including governments, the private sector and community organizations, to prioritize large-scale community renewal projects.
- **Expand direct lending for new rental housing supply and renewal:** Building on investments made in Budget 2016, the National Housing Fund will provide municipalities and other housing partners with sustained and improved access to low-cost loans for the repair and renewal of housing units, as well as for the construction of new affordable housing, through the Affordable Rental Housing Financing Initiative. This will leverage billions of dollars available for investment in affordable housing, and help improve the quality and condition of affordable housing across Canada.
- **Support for innovations in affordable housing:** To develop a stock of affordable rental housing that delivers a better quality of life for residents, CMHC will make up-front capital contributions available to affordable housing providers. This will encourage innovative approaches to housing development, such as energy efficiency retrofits to lower utility costs, and accessibility modifications to expand the range of housing options available to Canadians living with disabilities.
- **Preserve the affordability of social housing:** To help social housing providers maintain rent-geared-to-income units when long-term operating agreements expire, CMHC will provide temporary funding to social housing providers as they transition to more sustainable operating models.

- **Support a strong and sustainable social housing sector:** CMHC will also establish a Sector Transformation Fund and Technical Resource Centre to provide technical assistance, tools and resources to help social housing providers transition to more efficient and financially sustainable operating models. Further details about the National Housing Fund will be announced as part of the launch of the National Housing Strategy later this year.

Over the next number of years, a large number of operating agreements which help subsidize affordable rental housing will be expiring as CMHC-supported mortgages wind down. The Government intends to preserve the baseline funding related to these agreements, so that Canadians have access to housing options that are affordable and meet their needs. The use and renewal of these funds will be determined over the next year. These funds are in addition to the new investments in affordable housing and homelessness supported by Budget 2017.

MAKING MORE FEDERAL LANDS AVAILABLE FOR AFFORDABLE HOUSING

The Government has a unique opportunity to directly contribute to the creation of additional affordable housing and social housing. Budget 2017 proposes to invest \$202 million over the next 11 years to make surplus federal lands and buildings available to housing providers at low or no cost for the development of affordable housing. This includes funding to top up the existing Surplus Federal Real Property for Homelessness Initiative in 2017–18, and a new expanded initiative starting in 2018–19, which will also provide funding for environmental remediation and for renovations or retrofits needed to ensure that the surplus federal buildings are suitable for use as housing. Taken together, these investments will increase by a factor of 10 the Government's annual contribution of land and property intended for development as affordable housing.

STRENGTHENING CANADA'S ANTI-MONEY LAUNDERING AND ANTI-TERRORIST FINANCING REGIME

Legislative and regulatory provisions of Canada's anti-money laundering and anti-terrorist financing framework are regularly reviewed to ensure they meet the objectives of detecting and deterring money laundering and terrorist financing activities, while balancing rights under the *Canadian*

Charter of Rights and Freedoms and privacy concerns. The Government proposes to introduce legislative amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to:

- Expand the list of disclosure recipients that can receive financial intelligence related to threats to the security of Canada to include the Department of National Defence and the Canadian Armed Forces.
- Support more effective intelligence on beneficial owners of legal entities.
- Make various technical and other changes to: strengthen the framework, support compliance, improve the ability of reporting entities to operationalize the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, and ensure the legislation functions as intended.

PRIORITIZING CRITICAL HOME CARE INFRASTRUCTURE

Many patients currently receiving care in Canadian hospitals could be better supported at home or in the community. To help more Canadians receive the care they need outside of hospital settings, the Government has offered \$1 billion over four years to provinces and territories, starting in 2018–19, for home care infrastructure. In total, the Government has committed to invest \$11 billion over 10 years to support better home care and mental health initiatives. Further details on this commitment are provided in Chapter 3.

To date, the provincial and territorial governments of New Brunswick, Newfoundland and Labrador, Nova Scotia, Yukon, the Northwest Territories, Nunavut, Saskatchewan, Prince Edward Island, British Columbia, Alberta, Ontario and Quebec have accepted the federal offer and will receive their share of the home care infrastructure investment.

ECOLOGICAL GIFTS PROGRAM

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 (ecogifts) are eligible for special tax assistance. Individual donors are eligible for a charitable donation tax credit, while corporate donors are eligible for a charitable donation tax deduction. The amount of the donation, up to 100 per cent of net income, may be claimed in a year and unused amounts may be carried forward for up to ten years. In addition, any capital gains associated with the donation of ecologically sensitive land (other than a donation to a private foundation) are exempt from tax.

The ecogift program is primarily administered by Environment and Climate Change Canada (ECCC). In order for a gift to meet the requirements of the ecogift program, the Minister of ECCC must:

- certify that the land is ecologically sensitive and that its conservation and protection is important to the preservation of Canada's environmental heritage;
- approve the organization that will receive the gift, if it is a registered charity; and
- certify the fair market value of the donation. In addition, any easements, covenants or servitudes must run in perpetuity in order to qualify as ecogifts.

To help ensure that donated land is not subsequently used for other purposes, the Income Tax Act imposes a tax of 50 per cent of the fair market value of the land upon a recipient who, without the consent of ECCC, changes the use of the property or disposes of it. The Canada Revenue Agency is responsible for assessing and collecting the tax in such situations.

Budget 2017 proposes a number of measures in order to better protect gifts of ecologically sensitive land.

Transfers of ecogifts

Where ecogifts are transferred between organizations for consideration, the protection offered by the 50-per-cent tax (which applies where the use of the property is changed, or the property is disposed of, without the consent of ECCC) may be inappropriately lost. To ensure that transfers of ecogifts from one organization to another do not result in the loss of this protection, Budget 2017 proposes that the transferee of the property in such a situation be subject to the 50-per-cent tax if the transferee changes the use of the property, or disposes of the property, without the consent of ECCC.

Program administration

To ensure the effective operation of the ecogift program, Budget 2017 also proposes to clarify that the Minister of ECCC has the ability to determine whether proposed changes to the use of lands would degrade conservation protections.

Approval of recipients

Where it is proposed that a registered charity be the recipient of an ecogift, the Minister of ECCC must approve the recipient on a gift-by-gift basis. This is intended to ensure that recipients of ecogifts are focused on the long-term protection of ecologically sensitive land. However, municipalities and municipal and public bodies performing a function of government are automatically eligible recipients. Budget 2017 also proposes that the requirement to approve recipients be extended, on a gift-by-gift basis, to municipalities and municipal and public bodies performing a function of government.

Private foundations

The Income Tax Act categorizes registered charities as charitable organizations, public foundations or private foundations. Usually, a majority of the directors of a private foundation do not operate at arm's length from one another. In addition, the main donors to a private foundation are typically part of the group that controls the foundation or are persons who do not deal at arm's length with the controlling group. Private foundations can currently receive ecogifts, but this can give rise to concerns about potential conflicts of interest. For example, where a director of a private foundation donates an easement in respect of a property to the private foundation, the individuals responsible for enforcing the private foundation's rights under the easement would often be the same persons as those against whom the rights must be enforced. To prevent these potential conflicts of interest, Budget 2017 also proposes that private foundations no longer be permitted to receive ecogifts.

Personal servitudes

In Quebec, where civil law applies, both real servitudes and personal servitudes can exist. However, only real servitudes may be donated under the ecogift program since personal servitudes cannot run in perpetuity. As the conditions associated with real servitudes can be difficult to meet, such donations are infrequently made. To encourage more ecogifts in Quebec, Budget 2017 also proposes that certain donations of personal servitudes qualify as ecogifts. Qualifying donations will be required to meet a number of conditions, including a requirement that the personal servitude run for at least 100 years.

These measures will apply in respect of transactions or events that occur on or after Budget Day.

Mark Blumberg and Kate Robertson are lawyers at Blumberg Segal LLP in Toronto, Ontario. To find out more about legal services that Blumbergs provides to Canadian charities and non-profits please visit www.canadiancharitylaw.ca or www.globalphilanthropy.ca Blumbergs also maintains Canada's largest charity information portal at www.charitydata.ca with up to 13 years information on every Canadian registered charity. The portal is free and the aim is to increase transparency in the Canadian charity sector.

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