PUBLISHER'S NOTE

Alison Stoneman
Publisher, Canadian Donor's Guide

Building on a legacy

Thank you for choosing the Canadian Donor's Guide as your authoritative annual directory of fundraising organizations in Canada. In our 34th edition, we continue to ensure the information on charities you seek and our editorial content continue to meet your respective reference needs.

The Canadian Donor's Guide is published annually in cooperation with the Canadian Association of Gift Planners (CAGP), the Canadian Bar Association and Imagine Canada. We are grateful for the positive relationship we enjoy with these organizations, as well as the support of the charities from across Canada that purchase descriptive listings or display advertising. Together, their investments make it possible to publish the Canadian Donor's Guide and deliver more than 17,000 copies of our publication to key decision makers and professional advisors in Canada's donor community. We sincerely appreciate the faith you have placed in us.

For those who prefer, you can access all Canadian Donor's Guide content online at www.donorsguide.ca

Entering my second full year as publisher, I continue to make every effort to maintain the quality for which our publication has become known and respected. I was especially heartened with the positive feedback received at the CAGP's 2019 Annual Meeting and Conference in Montreal. It was a privilege to personally meet so many people that I have been working with online and over the phone for many years.

We remain committed to providing relevant content in our Editorial Section, featuring timely submissions from Canadian charitable organizations, lawyers working across Canada and those supporting the charitable sector.

Jim Parks will once again assist you with ways to navigate the latest incarnation of the Income Tax Act to the mutual benefit of philanthropists and charities. He goes into detail about the powerful and disruptive advent of crowdfunding including the care that was taken to ensure donations received after the Humboldt Broncos tragedy were appropriately managed.

Malcolm Burrows, Charlotte McGee and Emily Hubling offer their takes on Estate Planning and Distribution. Charlotte's article includes a timely prompt to plan for your digital assets within your estate plan.

Elena Hoffstein illuminates new legislation to define political activities that can be undertaken by charities and non-profits. Senator Ratna Omidvar and Senator Terry Mercer of Canada's Special Senate Committee on the Charitable Sector discuss the state of our charitable institutions and their supporters.

I always enjoy reading the experiences about the lived experiences of those who benefit from charitable good works. You'll find three new profiles included in this year's edition.

We are pleased to include information regarding Imagine Canada's Standards Program, including the benefits for charities to engage in the accreditation process. To acknowledge its importance, we have placed the Imagine Canada Standards Program trustmark next to those charities listings who have already been accredited.

Marina Glogovac of Canada Helps and Teresa Marques of the Rideau Hall Foundation discuss the sustainability of the current donor pool and issue a call to action for innovation to ensure charities continue to survive and thrive. Maintaining the status quo will likely not do. It will take innovation to leverage social media and crowdsourcing platforms while identifying and engaging different demographics and communities on their terms. In their article they opine, "Why should we care about the survival and success of the charitable sector? Healthy charities in Canada are important for all Canadians, and we're unlikely to truly understand the social and economic gaps left by failed charities until it is too late." I am confident that everyone will do their best to foster positive change.

Thank you again for your dedicated support of the Canadian Donor's Guide as a trusted resource. If you have any questions, suggestions or enhancements, feel free to contact me directly. May the Guide always be helpful in your endeavours to easily and effectively match donors with donees.

CHARITABLE DONATIONS

A Summary of Tax Considerations

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OVERVIEW

Tax consequences can be important when structuring charitable gifts. Proper planning can increase the benefits to the donor, which are often a major incentive for charitable giving. A gift to a registered charity by an individual (including a trust) entitles the donor to a deduction in computing tax otherwise payable, whereas a gift by a corporation entitles it to a deduction in computing taxable income, as opposed to a tax credit. These rules are found in section 118.1 of the *Income Tax Act* (the "ITA") for gifts by individuals and section 110.1 of the ITA for gifts by corporations.

2019 BUDGET PROPOSALS

The March 19, 2019 federal budget proposed changes dealing with charitable donations and related matters, as follows:

1. The concept of qualified Canadian journalism organization ("QCJO") will be introduced. A QCJO will be a corporation, partnership or trust that meets certain eligibility criteria and that is designated as such by a special panel that will be appointed. A Registered Journalism Organization ("RJO") will be treated as a "qualified donee", entitled to issue official receipts for donations and receive grants from other registered charities. To be registered, a QCJO must apply to Canada Revenue Agency ("CRA") and meet certain criteria, and be either a corporation or a trust that is constituted and operated for purposes exclusively related to journalism. An RJO will be exempt from tax and subject to compliance requirements similar to those for registered charities. An RJO will also be eligible for refundable tax credits, based on salary or wages paid. A temporary non-refundable tax credit will be available to individuals based on amounts paid for "eligible digital subscriptions", to maximum of $75 per year for total payments of $500 or more. More detail about these changes is set out below.
2. The rules for donations of certified cultural property will be changed. The Cultural Property Export and Import Act (the "CPEIA") includes "national importance", as a criterion in determining whether certain property is subject to export controls. The Federal Court held in a recent case that a painting by a foreign artist was not of "national importance" and the owner did not require an export permit. Although that decision was reversed by the Federal Court of Appeal, in the interim the budget provides that the requirement for "national importance" will not apply when determining whether cultural property qualifies for tax relief when donated to a designated institution. The requirement for "national importance" will remain for purposes of determining whether export permits are required for foreign objects. This is discussed more fully below.
3. The income tax treatment of certain stock options will be changed. Currently, gains from stock options are taxed as the equivalent of capital gains. The budget will limit this treatment for employers of large, long-established, mature firms, by capping the value of this benefit at $200,000 per year, based on the market value of the shares. Benefits derived from the exercise of stock options above that limit will be fully taxable as regular income. However, employees of start-ups and Canadian growth companies will not be subject to this new cap. These changes will likely make it less attractive for some employers to donate stock that has been acquired under a stock option arrangement.

BASIC TAX RULES

Individuals

An individual donor can claim a credit against tax otherwise payable. This summary comments on charities that are registered by CRA, Registered Canadian Amateur Athletic Associations (RCAAAs), certain non-profit housing corporations, Canadian municipalities, the Crown, the United Nations and certain foreign charities (including certain foreign universities) and other donees. Credits or deductions are available only for gifts to "qualified donees" except as noted. The federal tax credit is calculated at the lowest personal tax rate of up to $200. For gifts exceeding $200, the credit is 33% of the amount of the gift. A comparable tax credit is available in calculating provincial taxes, with special rules in Quebec. An individual can claim credit for gifts of up to 75% of net income for the year. Unused credits can be carried forward for five years and used to offset tax in those years, subject to the 75% limit. The limit does not apply in the year of death or the previous year. The 75% limit is increased by 25% of taxable capital gains realized when making a gift of appreciated capital property, and 25% of recaptured capital cost allowance on a gift of depreciable property (to a maximum of 25% of the lesser of the capital cost or the fair market value of the property).

This article does not discuss provincial tax implications, aside from pointing out that there are variations based on different marginal rates in the provinces or territories.

Corporations

A corporate donor can claim a deduction in computing taxable income and is subject to the same 75% limit as individuals. It can claim a deduction of up to 75% of its net income for the year plus 25% of a taxable capital gain and 25% of recaptured capital cost allowance on a gift of depreciable property (to the same maximum mentioned above.)

TYPES OF GIFTS

The following are some basic features and tax consequences of certain types of gifts.

1. Gifts by Will

Gifts made by will are "testamentary" gifts. The donor ("testator") states in a will that on death, property is to be given as a bequest or legacy to a named charity or a charity to be chosen by the executors. The gift can be cash or property, such as a work of art or shares. If the testator leaves too much discretion to the executors in choosing a charity or the amount of the gift, CRA could allege the gift is made by the estate and not deemed to be made in the year of death.

Testamentary gifts are deemed to be made by the estate rather than by the deceased. The estate can elect to claim the credit in the deceased's year of death or the preceding year. A transfer of property must be completed within 60 months after death. The credit can offset 100% of net income for the year of death and the prior year. This credit can be useful in calculating tax in the year of death, since the deceased is deemed to have disposed of capital assets immediately before death (subject to certain exceptions, such as for spousal rollovers) at fair market value, realizing capital gains in that year.

A gift made by will or as a designation under a life insurance policy, Registered Retirement Savings Plan (RRSP), Registered Retirement Income Fund (RRIF) or Tax-Free Savings Account (TFSA) is deemed to be made by the estate at the time when the property is transferred to the donee. To be eligible for full credits, the gift must be made by a Graduated Rate Estate ("GRE", as discussed below) entitling the deceased to claim credit in the year of death or immediately preceding year or entitling the GRE to claim credit in the year of transfer or a preceding year of the estate (but only for gifts in the first 36 months). The property that is transferred must have been acquired by the estate as a consequence of death and, if there is a direct designation, the transfer must be made as a consequence of death. The credit can be shared or allocated between the individual and the estate, but cannot be claimed twice. An estate can qualify as a GRE for up to 60 months after death. However, if more than 36 months have elapsed since death, the estate will not be able to claim a credit in any preceding year of the estate. If the estate is not a GRE, it can claim a credit in the year of the gift or any of the five following years.

2. Annuities

Charitable organizations can issue annuities, but charitable foundations can be deregistered if they incur ineligible debt obligations. A charity should ensure that it has legal authority to issue annuities under provincial law dealing with insurance or other relevant laws. The charity can purchase an annuity from a financial institution rather than issuing it itself, to reduce its risk of loss. The value of property received from a charity in exchange for a gift must be determined and becomes the cost of the property to the charity. If the donor receives a stream of annuity payments, the amount of the gift will be equal to the excess of the amount transferred by the donor over the amount that would be required to purchase an annuity providing the same payments.

3. Life Insurance

A charity can benefit from a gift of a life insurance policy in several ways. A gift involving an insurance policy can result in a large donation at a relatively small cost to the donor. A charity can purchase an insurance policy on the donor's life on the understanding that the donor (or some other person) will pay the premiums directly to the insurance company, or make cash gifts to the charity so it can pay them. This is often supported by a pledge to pay the premiums. The charity can issue a tax receipt for the premiums paid. On the death of the donor, the charity will receive the death benefit, which will not be a gift by the donor. A drawback from the charity's point of view is that there may be no assurance the donor will pay the premiums. If the donor fails to pay, the charity can surrender the policy or pay the premiums using its own funds.

Alternatively, the donor can transfer an existing policy to the charity and agree to pay future premiums. The charity can issue a receipt for the fair market value of the policy, which may not necessarily be the cash surrender value (normally only whole life or universal life policies will have a value) less any outstanding policy loans. The charity can issue a tax receipt for premiums paid. If a qualified valuator determines that the fair market value of the policy exceeds its cash surrender value (less any outstanding policy loans), the higher amount should be the eligible amount in the receipt issued by the charity. The donor will be subject to tax on the amount by which the cash surrender value (less any outstanding policy loans) exceeds the adjusted cost basis (a defined term) of the policy. CRA has stated that this is not affected by the issuance of an official receipt by the charity reflecting a fair market value that is higher than the cash surrender value. In some situations, a corporation that has taken out key man insurance on an individual may find the insurance is no longer required, and donate the policy to a qualified donee. The same considerations would apply, namely a disposition of a policy giving rise to tax consequences, and the availability of an official receipt for the fair market value of the policy.

If the charity is concerned that it will not be able to pay the premiums, the donor (or another donor) can give cash, which the charity can use to buy an annuity providing periodic payments to fund the premiums. The charity should be able to treat the annuity and policy in a way that does not cause problems in meeting its disbursement quota. Alternatively, the charity could rely on a promise from the donor (or another donor) to make annual gifts to pay the premiums. The ability to pay the premiums on a donated policy could be a factor in determining the fair market value of the policy. If the policy is likely to lapse because the charity does not pay the premiums, the fair market value could be reduced. A registered charity is not required to pay tax on its income and should not be adversely affected if a policy is not "exempt." The eligible amount of a gift of a life insurance policy will be the lesser of its fair market value and the "cost" of the policy to the donor, if the gift is made within three years after the donor acquired it.

The donor can continue to own the policy, and name the charity as the beneficiary. The donor will receive no tax relief for the premiums paid or the value of the policy, since no property is being given to the charity. Under insurance law, the donor can change the beneficiary from the charity to another person. If the charity is the named beneficiary, it will receive the death benefit on the donor's death. The donor is deemed to have made a gift to the charity immediately before death, if the charity receives the death benefit under the policy within 36 months after death. The fair market value of the gift is deemed to be the fair market value, at the time of the individual's death, of the right to that transfer. The Department of Finance has stated that "in nearly all cases" the fair market value at death of the right to transfer is "expected to be" the fair market value at death of the money that is ultimately received. A donor can use life insurance proceeds to pay a bequest in a will, naming the estate as beneficiary. On the donor's death, the estate will receive the death benefit free of tax and pay the bequest to the charity, which will issue a receipt. The credit will reduce tax in the year of death or the prior year, if there are excess credits. In some provinces, probate tax on the value of the proceeds passing through the estate may be a factor. Where life insurance proceeds are paid to an estate and used to pay a bequest, the gift will be treated as a gift by the estate, subject to an election to carry it back to the year of death.

Other arrangements involving life insurance may be tax-effective, such as having a private corporation purchase insurance on the life of one of the shareholders. There are techniques to take advantage of the tax-free proceeds on death, the capital dividend account of the corporation, the rules for taxation of dividends and "post-mortem" planning. Subject to a spousal rollover, capital gains are realized in the year of death. In some cases there can be "double tax" because the deceased owns shares of a corporation that owns assets with unrealized gains. Life insurance can often be used to reduce those gains or the tax, in combination with charitable donations.

In some situations, the features of the policy are shared or ownership of the policy is split. This type of planning raises a number of regulatory and tax issues and requires sophisticated advice for both the donor and the charity. Donors should seek advice about insurance issues as well as tax issues.

4. *Gifts of Residual Interests*

A donor can give property to a charity, while retaining the right to use it for his or her lifetime. Alternatively, the donor can establish a charitable remainder trust by transferring assets to the trust, reserving a right to receive payments for life and transferring the balance in the trust on death to a charity. If certain conditions are met, CRA considers the donor has made a current gift. This type of gift could be made during a person's lifetime or by will. The value of the gift will be the fair market value of the transferred property (usually cash) less the present value of the reserved interest, taking into account an appropriate discount rate, the life expectancy of the donor, current interest rates and any other relevant factors. This type of gift is analogous to a charitable annuity. If there is a right to encroach on the capital, the value of the residual interest is considered to be nil. A trust will generally be required for gifts of property other than real estate.

CRA has stated that the gift of a beneficial interest in the capital of a charitable remainder trust is not automatically treated as a gift of a non-qualifying security, but the general anti-avoidance rule might apply if the trust owns non-qualifying securities. CRA will consider whether the trust is "affiliated" with the donor immediately after the gift was made. If the donor retains a beneficial interest in the income of the trust, the donor may be "affiliated" with the trust. Whether this is the case will be a question of fact. A trust and a person are affiliated if the person is a "majority-interest beneficiary." This includes a person who has a beneficial interest in the income of the trust if it has a fair market value that is greater than 50% of the fair market value of all beneficial interests and a person who, with an affiliated person, holds beneficial interests in the income of the trust if the fair market value of those interests is greater than 50% of the fair market value of all beneficial interests.

Using a charitable remainder trust or making a gift of a residual interest by will often involves reliance on the administrative policies of CRA and raises a number of technical issues. The Department of Finance had at one time considered changes in the ITA dealing with charitable remainder trusts, but no amendments were ever introduced. Specific advice should be sought before this type of planning is utilized.

5. *Gifts of Capital Property*

A donor of capital property is deemed to have received proceeds of disposition equal to the fair market value of the property. If the fair market value exceeds the cost, a capital gain will be realized. If the property is depreciable property, recaptured capital cost allowance is included in income. A donor can reduce capital gains tax on a gift of appreciated capital property to a charity by designating the transfer price as an amount not greater than its fair market value and not less than its adjusted cost base. The donor will then be deemed to have disposed of the property for the designated amount and considered to have made a gift of the designated amount when calculating the tax credit or deduction. This enables the donor to avoid realizing a capital gain altogether, or realize only a desired amount of capital gain (for example, to offset capital losses). There are restrictions for non-resident individuals disposing of Canadian real estate to a charity.

The taxable capital gain is nil for gifts of securities traded on a designated stock exchange (such as shares, bonds, warrants and debentures) and mutual fund shares or units or shares or interests in certain segregated funds. It is more tax-efficient for the donor to give securities directly to a charity, rather than sell them and give the proceeds to it. CRA recently confirmed that if the value of securities increases between the date of death and the date on which they are transferred to the charity, the gain will be deemed to be nil. CRA has confirmed that a contract holder who designates a registered charity as beneficiary of a segregated fund policy does not qualify for the relief in paragraph 38(a.1) from non-recognition of gains.

An employee who exercises a stock option is taxed on a benefit equal to the difference between the fair market value of the shares at the time of exercise and the sum of the exercise price plus the amount paid for the option. In certain circumstances, the employee can claim a deduction against the stock option benefit so only 50% of the benefit is taxable. If an employee stock option is exercised and marketable securities are given to a qualified donee in the year and within 30 days after the option is exercised and if certain other conditions are met, only 25% benefit is taxable. Individuals who make qualifying donations of marketable securities acquired through such stock options are not required to report any of the benefit. Changes in the 2019 budget will make it less attractive for employees to exercise stock options in corporations that are "mature". As noted above, the increased tax on the benefits from these options may discourage donations by executives of mature public companies.

Taxpayers who own eligible unlisted exchangeable securities can exchange them without causing tax to be payable on a gain. There is no tax on a gain on the exchange, and the donor can receive a receipt for the donation of the listed securities received on the exchange, without recognizing a gain. This beneficial treatment for capital gains on gifts of marketable securities applies to capital gains on the exchange (with some exceptions) of unlisted securities for listed securities where:

a) at the time they were issued, the unlisted securities included a condition allowing the holder to exchange them for the listed securities;

b) the listed securities are the only consideration received on the exchange; and

c) the listed securities are donated within 30 days after the exchange.

d) There are special rules for exchangeable partnership interests. These are intended to ensure that gains attributable to a reduction in the adjusted cost base of the partnership interest are not exempt.

A gift of a "non-qualifying security" to a charity will be ignored in determining the tax deduction or credit in most cases. A non-qualifying security generally includes an obligation of the donor or a non-arm's length person, a share issued by a corporation with which the donor does not deal at arm's length or any other security issued by the individual or a non-arm's length person. There are exceptions for obligations, shares or securities listed on designated stock exchanges and deposits with financial institutions. If the property is disposed of within five years of receipt of the gift, or ceases to be a "non-qualifying security" within the five year period, the person will be treated as having made a gift at that time. This rule does not apply to an "excepted gift", which is generally a gift to an arm's length qualified donee that is not a private foundation, if the donor deals at arm's length with all of the donee's directors or trustees immediately after the gift. These rules deny a tax credit for certain types of gifts, including shares of privately-held companies, subject to some relief if the donee disposes of the security within five years. The rules apply where the non-qualifying security is donated to a trust of which the registered charity is a beneficiary.

Rules dealing with "loan-back" arrangements apply when a person donates property to a charity which is not dealing at arm's length with the person and receives a loan from the charity, or is allowed to use the property donated to the charity. The fair market value of the gift is reduced for purposes of calculating the tax credit. These rules apply to certain arm's length arrangements. CRA's administrative positions on gifts of capital property are set out on its website.

Recognition of a gift of a non-qualifying security is deferred until the time (within five years after the donation) when the qualified donee has disposed of the non-qualifying security for consideration that is not, to any person, another non-qualifying security. An anti-avoidance rule provides that, if as a result of a series of transactions, a particular person holds a non-qualifying security of a donor and the donee has acquired a non-qualifying security of that person or of the donor, the gift will be deferred until such time (within five years of the donation) as the donee disposes of the non-qualifying security for consideration that is not another non-qualifying security of any person.

CRA has stated that where an individual owns "thin" controlling voting shares of a private corporation, under which they is not entitled to receive dividends or to participate beyond a nominal amount on winding up, but controls the corporation, in some circumstances it will treat the value of the shares as more than a nominal amount. A gift of this type of share to a registered charity could offer flexibility in dealing with the valuation issue, particularly if an election is made to treat the amount of the gift as the adjusted cost base of the shares. However, this could raise other issues, including problems under the excess business holdings rules for private foundations and "acquisition of control" issues for charitable foundations.

6. Gifts of Art, Cultural and Ecological Property

(i) Art

Certain gifts of inventory by an artist receive special treatment. In those circumstances, where an appropriate designation is made, an artist is entitled to a credit based on the fair market value of the property but no income is triggered on the disposition.

Works of art are generally considered to be personal-use property unless they are inventory. Personal-use property is property that is used primarily for personal use or enjoyment and includes jewellery, clothing, furniture, and certain works of art. For purposes of calculating the capital gain or loss, the adjusted cost base and proceeds of disposition of personal-use property are deemed to be at least $1,000. This rule eases the compliance and administrative burden associated with the reporting of dispositions of personal-use property. The $1,000 deemed adjusted cost base and deemed proceeds of disposition for personal-use property do not apply if the property was acquired after February 27, 2000, as part of an arrangement in which the property is given to a charity. Therefore, if this type of property with a value of less than $1,000 is donated to a charity in those circumstances, it will no longer be treated as personal-use property, and any resulting capital gain will be taxable.

(ii) Cultural Property

A gift of certified cultural property to a designated institution will not trigger a capital gain. The donor is allowed a credit (if an individual) or a deduction (if a corporation) for the fair market value of the property and is not limited to 75% of income. There are special rules for determining the fair market value of cultural property. In addition, any capital gain on an object that is donated is exempt from tax. The determination is made by the Canadian Cultural Property Export Review Board and there are extensive rules for the procedures to be followed and appeals if the amount determined is not acceptable to the donor. The Board must certify the property and designate the institution. Unused credits or deductions can be carried forward for five years, or back one year in the event of death. Charities that receive gifts of cultural property are subject to a penalty tax in certain circumstances if they dispose of the gifted property within ten years of its receipt. If the gift is part of a "tax shelter gifting arrangement", the donor cannot use a value for the property in excess of the cost amount.

The 2019 budget will change the criteria for certification. In Heffel Gallery Limited v The Attorney General of Canada, the Federal Court held that the requirement for cultural property to be of "national importance" did not apply to the painting in question, and the owner could export it without a permit. That decision was reversed by the Federal Court of Appeal. The decision raised concerns that foreign works of art would not necessarily be of "national importance" and meet the requirement for certification as cultural property. As a result, the budget will remove the requirement that property be of "national importance" to qualify for the enhanced tax incentives for donations of cultural property. The change will not affect the restrictions on the export of cultural property.

The change will apply for donations made on or after March 19, 2019.

(iii)Ecological Property

There are similar rules for gifts of ecologically-sensitive property to the Crown, a municipality or a charity that is approved for the conservation and protection of the environment. There are incentives for owners of ecologically-sensitive land to protect that land while at the same time qualifying for a tax benefit. The precise nature of the conveyance of property will depend on legal issues and in some cases there may be split ownership.

Special rules apply when valuing gifts of ecological property. These include gifts of the land itself and gifts of easements over the land. The use of easements provides some flexibility, permitting the owner to retain legal title while fettering its future use and preventing development, but this can raise difficult valuation issues in some cases. The fair market value will be determined by the federal Minister of the Environment and Climate Change Canada (ECCC) and there are extensive rules for the procedures to be followed and appeals if the amount determined is not acceptable to the donor. As in the case of gifts of cultural property, a charity accepting a gift is subject to a penalty if it disposes of the property within ten years or changes its use without the consent of the Minister of ECCC. Under the Ecological Gifts Program, Environment Canada certifies that land is ecologically-sensitive and an expert panel certifies the value. Deductions or credits for gifts of ecologically-sensitive land or interests in that land are available for carry-forward for ten years, rather than the usual five years. To ensure that donated ecological property is not later used for other purposes, a 50% tax is imposed on the fair market value of the property on a recipient that changes the use of the property or disposes of it without consent of the Minister.

The rules deal with civil law issues in Quebec and permit donations of certain types of personal servitudes if they meet a number of conditions, including a requirement that they run for at least one hundred years.

7. Gifts of Inventory

Unlike gifts of capital property, gifts of inventory do not permit the donor to choose an amount between the cost of the property and its fair market value. As a result, a gift of property that is part of the inventory of a business will result in an income inclusion. While there will be a corresponding eligible amount for the gift (the eligible amount will depend on whether any advantage is received by the donor), it is frequently less advantageous to donate inventory rather than capital property. This is one of the reasons why special rules were enacted for gifts of inventory made by artists, as discussed above.

Corporations can claim a deduction for gifts of medicine held in inventory to a registered charity, if the charity has received financial assistance from Canadian International Development Agency (CIDA) and uses the medicine in carrying out its foreign activities. For gifts made on or after July 1, 2008, the medicine must have been available to be used by the charity at least six months prior to its expiration date and must qualify as a drug (within the meaning of the *Food and Drugs Act*) which meets certain technical requirements. In addition, a prescribed return must be filed and the charity must in the opinion of the Minister of International Cooperation meet certain conditions prescribed by regulation. This limits the situations in which corporations can claim tax relief for donations of medicine from inventory.

Under the current rules, a corporation is entitled to claim a special additional deduction equal to the lesser of 50% of the excess of the value of the medicine over its cost and the cost itself. This was intended to encourage corporations to donate medicine for international relief. Under the budget proposals, this measure will be repealed, apparently because the Department of Finance considers that there has been relatively low participation and there are high compliance costs for the charities that receive the donations. This change will not affect the ability of the corporation to claim the standard deduction based on the fair market value of the donated medicine.

8. Gifts to the Crown

A gift to Her Majesty in right of Canada or Her Majesty in right of a Province (a "Crown gift") is subject to the same income limitation as other gifts, i.e. 75% of the donor's income for the year plus 25% of any taxable capital gain, plus an amount equal to 25% of recapture of previously claimed capital cost allowance. Consequently, Crown gifts provide the same tax relief as gifts to other qualified donees. The Crown will include an agent of the crown, and gifts to the museums listed in the *Museums Act* (including, for instance, the National Gallery of Canada, the Canadian Museum of Civilization, the Canadian Museum for Human Rights and the Canadian Museum of Nature) are treated as gifts to the Crown.

9. Designations Under RRSPs, RRIFs, TFSAs and Insurance Policies

Donations made as a consequence of a direct designation of proceeds of RRSPs, RRIFs or TFSAs to a charity on the death of an individual qualify as gifts eligible for the individual donation tax credit, if the transfer of funds from RRSPs or RRIFs or TFSAs to the charity occurs within 60 months after death. The fair market value of the gift is deemed to be the fair market value, at the time of the individual's death, of the right to the transfer. Since the balance in an RRSP or RRSP is treated as income in the year of death, in the absence of a rollover to a spouse, the credit for a gift to charity in the year of death will effectively eliminate the tax otherwise payable on the balance, if there is a direct designation and an election to carrying it back. This is the same result as if there were a bequest by will of the amount included in income under the RRSP or RRIF, without having to determine the amount in advance. Although CRA will allow spouses to share the credit for a donation, this is not the case for gifts made by will. One spouse can make a gift and the other spouse can utilize the credit while alive, but on death only the estate or the deceased can claim credit and there is no opportunity to shift it to a surviving spouse.

Gifts by will and by direct designation in RRSPs, RRIFs and TFSAs or insurance policies are treated as gifts made by the estate. This provides more flexibility. If the credit is more than can be used in the year of death or the year prior to death, the estate can carry the balance forward under the usual rules. The concept of a GRE is important. Gifts made by will and by direct designation of insurance policies, RRSPs, RRIFs and TFSAs are deemed to have been made when the property is actually transferred to the charity and the estate can choose to carry back all or part of that donation. It is unclear how the rules will apply where there are intervening life interests created by will or in the case of charitable remainder trusts.

As an alternative to designating the qualified donee as a beneficiary, a taxpayer can withdraw funds from the RRSP or RRIF, include them in income and donate them to a qualified donee. In many situations, the tax credit will exceed the tax payable on the amount withdrawn. Relief from the requirement for the issuer to withhold tax on the payment may be available to improve cash flow. In a specific situation, the numbers should have to be reviewed to see if this strategy is advantageous.

10. Miscellaneous Issues

(i) Social Media

Social media have become relevant in some donation arrangements. Some charities raise small amounts by way of text messages. Where donors are not concerned about receipts, this can be an effective way to raise money in small amounts from a wide range of donors. Similarly, "crowdfunding" techniques might be useful for some charities. If a charity engages in a concerted effort to raise money through crowdfunding, it might be regarded as carrying on a business. A charity that carries on business is subject to revocation of registration unless (in the case of a charitable organization or public foundation), the business is "related" to its charitable purposes. One registered charity facilitates the receipt of donations by way of text messages and other electronic means. Another organization enables charities to use crowdfunding and provides access to a broad range of donors, on the theory that they will give small amounts. The donor receives an official receipt. These arrangements do not seem to cross the line and cause the charity to be carrying on a business, but simply constitute another form of fundraising.

The overwhelming response through Go-Fund-Me after the tragic Humboldt Broncos accident illustrates the power of, and to some extent complexity of, efforts to raising money through social media. Saskatchewan is the only province with legislation that governs this situation. According to newspaper reports, the Saskatoon Community Foundation set up the Humboldt Broncos Memorial Fund and qualified donations entitled donors to receive official charitable receipts and the funds will be disbursed in accordance with the requirements in the ITA. Under Saskatchewan law, money raised through a public appeal must follow a process that includes the appointment of a supervising judge, submission of a proposed court order for final allocations and a time line for payments.

Some social media campaigns have also resulted in fraud. Newspaper accounts mention situations in which people purportedly suffering from cancer have raised money from the public. In one instance a homeless person purportedly gave his last few dollars to help a woman who had run out of gas. This was exposed as a fraud. These and other instances illustrate that the lack of supervision or legislative framework leaves it open in many situations for social media to be used inappropriately.

These incidents are different from legitimate solicitation by registered charities and other qualified donees, where the identity of the organization and the use of the funds are clear at all times and there is a mechanism in place to issue official receipts and for oversight by CRA and other regulators.

(ii) Canada/U.S. Issues

Under the Canada-United States Income Tax Convention (the "Treaty"), Canadian residents are entitled to relief for gifts made to eligible U.S. organizations, subject to 75% of income for the year from U.S. sources. There are rules without that limit for gifts made to a university or college at which the donor or a family member was a student.

The U.S. organization is not a "qualified donee" as defined in the ITA. CRA has taken the position that a Canadian registered charity cannot treat such a gift as a gift to a qualified donee. Registered charities cannot make gifts other than in the course of carrying out their charitable activities to anyone other than a qualified donee. This is often a factor in the plans for donors who wish to assist Canadian charities in carrying on activities in other countries. There is more latitude for the donor to make a gift directly to the U.S. organization than to make a gift to a registered Canadian charity, with a view to having it support the U.S. organization with a grant.

Split Receipting

Under the "split receipting" rules, the value of a gift is the excess of the value of the donated property over the value of any benefit or advantage received by the donor or a person not dealing at arm's length with the donor. This will apply where some consideration is received from the charity, such as recognition, a small gift, membership, a meal, etc. A charity must place a value on any benefit received by the donor in exchange for the payment, and issue a receipt for the "eligible" amount, even if the benefit is not from the charity itself.

CRA has issued guidance on the split-receipting rules and the concept of deemed fair market value. The guidance deals with the requirement for an intention to give, the amount of an advantage and the nominal threshold which disregards an advantage that does not exceed the lesser of 10% of the fair market value of the property and $75. An advantage will not be nominal if its fair market value cannot be determined.

CRA has successfully challenged arrangements in which a relatively small amount of money is transferred to a charity, as part of a more complicated arrangement resulting in the issuance of an official receipt for an amount far in excess of the cash. The courts have held that there is no gift, even for the cash amount, because the entire arrangement is a single transaction, with an advantage accruing to the "donor", and no part is a "gift" with the required donative intent.

(iii) Tax Shelters

As a result of perceived abuses, the value of the property donated to a charity cannot exceed its cost, if the gift occurs within three years of acquisition of the property by the donor, or if the donor acquired the property within the preceding ten years and it is reasonable to conclude that one of the main reasons for acquiring it was to make the gift to a qualified donee, regardless of the actual value of the property. If property is acquired with any expectation that it may be given to a registered charity during the lifetime of the owner, its value cannot exceed its cost. This does not apply to gifts of inventory, marketable securities, Canadian real estate, certified cultural property or approved ecological property or to gifts on death, but applies to gifts of cultural property if the donor acquired the property as part of a "tax shelter gifting arrangement." The intention of the donor when the donated property is acquired is relevant. If one of the main reasons for acquiring the property was to make a gift (other than by will), the donor may have to use the acquisition cost as the fair market value at the time of the gift. For gifts that are subject to the three-year rule or the 10-year rule there are extensive "tracing" rules to deal with transfers of property prior to the time of the gift.

The reassessment period for participants in tax shelters or "reportable transactions" is extended until three years after filing where the information that should have been filed by the tax shelter promoter or with respect to the reportable transaction has not been filed on a timely basis or has not been filed at all. In most situations, if a taxpayer files a notice of objection to an assessment, there is no requirement to pay the amount in dispute. To discourage taxpayers from participating in charitable donation tax shelters and to reduce the risk that unpaid amounts will not be collected after objections and appeals have been exhausted, CRA can collect 50% of the disputed amount of tax, interest or penalties even if an objection or appeal is pending.

(iv) Anti-Avoidance Rules

Anti-avoidance rules can apply to a charity that receives cash from a donor and uses it to buy property from the donor at more than its cost. These rules are very far reaching and can have a significant effect on a number of situations in which donors expect to receive credit for the value of the property rather than its cost. CRA expects charities to be diligent in establishing the fair market value based on the "cost" approach, and in determining the value of any advantage that would reduce the eligible amount of a gift. If a donor fails to inform the registered charity of circumstances that reduce the eligible amount, despite the amount shown on the official receipts, the eligible amount will be nil. This could be significant risk for a donor who is prepared to gamble that an advantage will not reduce the eligible amount of the gift. Registered charities should review the circumstances in which gifts of property are received when determining the eligible amount of the gift. In many cases, this will require consultations with the donor.

(v) Intermediate Sanctions

CRA can assess charities for intermediate sanctions, which give it the option of assessing tax or penalties rather than revoking registration, for various types of non-compliance, such as issuing improper receipts, carrying on an unrelated business (in the case of a charitable foundation or charitable organization) or carrying on any business (in the case of a private foundation), acquiring control of a corporation, conferring an undue benefit and other defaults. The rules for creating endowments, transfers between charities and meeting the disbursement quota require charities to plan carefully. Anti-avoidance rules prevent "trafficking" in unused charitable donations made by corporations.

(vi) Private Foundations

A private foundation that owns more than 2% of any class of shares of a corporation is required to report its holdings together with those of persons not dealing at arm's length with the foundation when filing its T3010 return. Where the foundation holds more than 2% and the combined holdings of the foundation and non-arm's length persons exceed 20%, either the foundation or the other persons (or the group collectively) must divest to below 20%. If the divestiture does not occur within stipulated periods of time, the foundation will be subject to penalties. CRA can treat non-arm's length persons as dealing at arm's length, if sufficient reasons are given.

Private foundations are subject to more stringent compliance than charitable organizations and public foundations. For instance, they cannot carry on any business (a charitable organization or public foundation can carry on a "related" business). CRA has issued guidance on its interpretation of "related" business. There are restrictions on acquiring control of corporations, the rules dealing with non-qualifying securities are a concern and the 2017 budget will repeal the ability to transfer ecological property to private corporations in a tax-advantageous manner.

(vii) Disbursement Quota

The disbursement quota requires a registered charity to spend at least 3.5% of the average value of its accumulated investment assets in the preceding two years on its own charitable activities or by making gifts to qualified donees. Charitable organizations with less than $100,000 of such assets and charitable foundations with less than $25,000 of such assets are not subject to this requirement. Previous gifts with restrictions that prevent the charity from spending the capital will be restricted under charity or trust law after the disbursement quota rules were relaxed.

(viii) Refund of Gifts

CRA can issue a reassessment to disallow a credit or deduction and make consequential assessments if donated property is returned to the donor by the qualified donee. The qualified donee returning a gift must issue a revised receipt and send a copy to CRA if the amount changes by more than $50. Qualified donees must file an information return to disclose returned gifts.

(ix) Qualified Donees

CRA maintains a publicly available list of qualified donees, including registered charities, RCAAAs, Canadian municipalities, certain municipal and public bodies performing a function of government in Canada, certain housing corporations, prescribed foreign universities and certain foreign charities. Most qualified donees are subject to some of the compliance rules that previously applied to registered charities and are required to maintain and make available proper books and records and issue proper receipts. Failure to do so could lead to suspension of receipting privileges, removal from the list of qualified donees or revocation of registration in the case of RCAAAs. RCAAAs are required to have the promotion of amateur athletics in Canada as their exclusive purpose and function and are subject to rules dealing with the conferral of undue benefits and carrying on an unrelated business, similar to the rules that apply to registered charities. In some situations, a prescribed foreign university may have a relationship with other entities, such as teaching hospitals, that could expand the ways a gift can be applied, without running afoul of concerns that it is acting as a mere conduit.

The 2018 federal budget removed the requirement for foreign universities to be prescribed by regulation and listed in a schedule, with "grandfathering" for universities that was already recognized as qualified donees. Foreign universities are required to register, as is the case for other qualified donees. This is designed to simplify the situation while requiring foreign universities to comply with requirements that apply to other qualified donees that are not registered charities.

The 2019 federal budget will add "registered journalism organizations" to the definition of qualified donee and the government will establish an independent panel of experts from the Canadian journalism sector to assist it in implementing these measures, including recommendations about criteria for eligibility. As qualified donees, registered journalism organizations will be subject to the compliance that is required of other qualified donees, including filing annual information returns that are available to the public. Non-compliance will expose the organization to sanctions such as penalties, suspension of receipting status or ultimately revocation of that status.

These changes will apply as of January 1, 2020. In addition, to becoming qualified donees, eligible organizations will be able to claim a 25% refundable tax credit for salary or wages paid to eligible newsroom employees.

The budget also proposes a temporary non-refundable 15% tax credit for amounts paid by individuals for "eligible digital subscriptions" with a registered journalism organization. This is intended to allow individuals to claim up to $500 per year in costs for those subscriptions to a maximum credit of $75 per year. These credits will be available for amounts paid after 2019 and before 2025.

CRA can refuse to register or revoke the registration of a charity or RCAAA or suspend its receipting privileges if a director or equivalent official is found to have been involved in certain inappropriate conduct. This generally would be the case if that person has been found guilty of a criminal offence in Canada (or outside Canada, if that offence, committed in Canada, would be a criminal offence) relating to financial dishonesty and has not received a pardon. It also applies to directors or equivalent officials who had been involved in the operation of a charity or RCAAA that was engaged in serious non-compliance for which its registration was revoked within the past five years, or who were "promoters" of a "gifting arrangement" or other tax shelter in which a registered charity or RCAAA participated, if the registration of the charity or RCAAA was revoked within the past five years. There is no requirement to disclose the existence of ineligible individuals in an annual return and CRA will use an educational process if it finds ineligible individuals are acting as trustees or directors, and ask the registered charity or RCAAA to remove them. This could raise non-tax issues.

(x) Graduated Rate Estates

There will be a deemed disposition of capital property immediately before death at fair market value unless there is a spousal rollover. For deaths after 2015, the credit will not be available until the estate transfers the property to a charity within 60 months after death. However, for transfers made after 36 months, the credit cannot be carried back to a previous year of the estate.

The capital gain will be based on the fair market value of the property at the date of death, but the charitable receipt will be based on the value of the property when the transfer occurs. If the value of the property fluctuates (which is almost always likely to be the case, except for property with a clearly fixed value), the value of the gift will be more or less than the value used to determine the capital gain. This presents a potential mismatch, along with the concern about the interest cost, if the transfer does not occur until after the terminal return has been filed.

CRA has confirmed that if marketable securities are transferred by a GRE to a qualified donee, the accrued gains will not be realized, to the same extent as if the donor had transferred them to the qualified donee while alive. As a result, the benefit of the receipt can be claimed in the estate or carried back to the terminal return or return for the prior year and the tax on the accrued gain can be avoided. CRA has also confirmed that cash derived from the sale of marketable securities will be "substituted property" and a donation of cash will be treated as if the marketable securities themselves had been transferred.

If the terminal return is filed on the basis that capital gains were realized on certain securities, and those securities are later transferred by the GRE to a qualified donee, the capital gains will not be realized, in the same way as if the donor had transferred them, and the return can be amended accordingly.

There are issues about transfers of the residue of an estate with an intervening life interest. Jurisprudence has established that a gift of the residue of an estate to a charity is treated as a current gift, regardless of the fact that the charity does not receive the property until later, as long as the value of the residual interest can be calculated using actuarial principles, and there is no discretion to encroach on capital prior to the death of the income beneficiary. The value of the residual interest is determined by subtracting the current value of the life interest, based on various assumptions, from the value of the assets, as in the case of a charitable remainder trust. Gifts of residual interests will no longer be allowed until there is an actual transfer of property.

If there is a delay in completing the transfer of property by will, there may be questions about income received on that property before the transfer. CRA says the estate cannot allocate the income to the charity and deduct it in computing its income and also treat it as a charitable donation. The estate will be able to choose one course or the other but not both. If income earned on property not transferred until after death might be regarded as income of the estate, "payable" to the charity, deductible in computing the estate's income and included in the income of the charity, then this should be relatively neutral and not cause tax consequences for the estate or the charity. On the other hand, if the income is treated as part of the gift to the charity, there might be a delay if the property has not been transferred and the time frame for recognizing the donation is delayed. For deaths before 2016, the gift was treated as a gift in the year of death and the income from that property would likely be regarded as either income payable to the charity (and deductible by the estate) or part of the gift and thus included in the amount of the receipt for the year of death.

An estate can carry back a capital loss realized in its first year and deduct it from gains in the terminal return. The estate will file an amended terminal return or an amended return for the prior year if a donation credit is carried back. This could affect the interest that is refunded as a result of the overpayment in the terminal return or the year prior to death.

(xi) Official Receipts

Official receipts must disclose CRA's website address. CRA changed its email address and announced that although it was not enforcing this rule previously, it requires all official receipts to include its new email address by the end of March 2019.

(xii) Political Advocacy

As a result of the decision of the Ontario Superior Court in Canada Without Poverty, the Department of Finance introduced changes dealing with the political advocacy and activity, consistent with changes proposed in the 2018 budget and an earlier report of a special panel. CRA had proposed to revoke the registration of Canada Without Poverty on the grounds that it had devoted too many of its resources to political activity. Rather than challenge CRA under the traditional process in the Federal Court of Appeal, Canada Without Poverty began proceedings in the Ontario Superior Court, challenging the constitutionality of the limit under which a maximum of 10% of the resources could be devoted to political activity. The Court held that the provision was unconstitutional and there is no limit on the ability of a registered charity to devote its resources to non-partisan political activity in carrying out its charitable purposes. This decision was essentially followed the recommendations of the special panel. CRA has issued guidance or how the new rules will be administered. In summary, a registered charity will be able to participate in an unlimited amount of non-partisan political activity such as public policy dialogue and development activities, if it is carried on in furtherance of charitable purposes, but will not be able to participate in partisan politics and will not be able to devote any of its resources to direct or indirect support of or opposition to any political party of candidate for public office. For charities that were registered before September 14, 2018, some changes will be retroactive to January 1, 2008. Other changes are retroactive to June 29, 2012. For charities registered on or after September 14, 2018, the amendments are considered to have come into force on that day.

(xiii) Transfers for Nominal Consideration

CRA has confirmed that a transfer of property for nominal consideration, to ensure that the transfer is legally effective, will not be disqualified as a "gift" merely because consideration was received, if it is nominal and the parties clearly intended the transfer to be a gift.

CAVEAT

This summary is of a general nature only, is not intended to deal with all Canadian income tax considerations. It is not intended to be, and should not be construed to be, legal or tax advice to any particular reader. Therefore, readers should consult their own tax and legal advisers with respect to their particular circumstances.

May, 2019
James M. Parks
Gardiner Roberts LLP

Member of:
Canadian Bar Association
Canadian Tax Foundation
International Fiscal Association
International Bar Association
Society of Trust and Estate Practitioners
American Bar Association
New York State Bar Association

ACCREDITATION

The Guide to Giving: The Imagine Canada Standards Program

About the Standards Program

Through the Imagine Canada Standards Program, accreditation is given to charities and nonprofits that have taken action to bolster trust by identifying and reducing organizational risk, improving board governance practises, being transparent and accountable with finances and fundraising, and fostering a strong workforce. Charities must meet 73 standards in financial accountability and transparency, fundraising practice, board governance, staff management, and volunteer involvement to become accredited by Imagine Canada.

Earning the Imagine Canada Trustmark

The Standards Program Trustmark is a symbol of excellence and leadership in the charitable sector. This is the most rigorous recognition in organizational excellence that a Canadian charity can receive. In all cases, a charity must provide evidence to demonstrate compliance for each standard, pass an independent peer review, and complete an annual compliance report to show ongoing adherence to the standards, which means their policies and practices have been vetted by multiple independent professionals and by Imagine Canada.

Give with Confidence When Giving Back

This Guide to Giving presents tips and information to help you make more meaningful contributions to the causes you care about most.

1. Give to something you are passionate about: Consider your donation a contribution toward the world you want to build. Ally yourself with organizations that reflect your ideals and invest in the future you want to see.
2. Impact vs. overhead: It's easy to focus on a charity's fundraising and administrative costs, understanding impact is not. Evaluating or ranking a charity solely on how much it spends on overhead is misleading. The bottom line is that the measure of an organization's effectiveness is the impact it makes on the community, not what it spends. Charities need the right tools to get the job done and, like businesses, have hard cost 'checks and balances' to ensure it is accountable, transparent and effective.
3. Registered charities & tax receipts: Charities and nonprofits are not exactly the same and there are different rules governing these two categories of organizations. One simple distinction is that only registered charities are able to issue tax receipts for donations. If a tax receipt is important to you, visit the Canada Revenue Agency website to confirm if an organization is a registered charity.
4. Where to find and research charities: Most Canadians are familiar with the charities they donate to on a regular basis but what if you wanted to learn about other organizations? Obviously, a good Google search can be useful but time consuming. We suggest starting with 'giving portal' sites such as CanadaHelps. Not only do they feature all of Canada's registered charities, but charities can also add additional information about their impact.
5. Your rights as a donor: Giving to your favourite cause should give you joy and personal satisfaction. If someone asking for a donation makes you feel uncomfortable, pressures you or does not have the information you need to make a decision, do not feel obligated to give right away or at all. Ask for a brochure or website address and tell them you'll make up your mind once you have more information.
6. Leadership matters: The most successful charities are the ones that are well managed. Strong leadership and good governance are the qualities you want to look for when considering donating to a charity. You can explore this information on your own by visiting a charity's website or reviewing their annual reports and financial information, or you can look for third-party accreditation.

Accredited Charities and Nonprofit Organizations

Right now, more than 240 organizations from all causes, sizes and regions have been accredited, and every year more are joining. There are many well-managed charities and nonprofits that do amazing work in Canada, but if you are looking for somewhere to start, visit imaginecanada.ca to review the list of accredited organizations.

Submitted by Imagine Canada

ACCRÉDITATION

POUR LA CAUSE. POUR LA COMMUNAUTÉ.
AGRÉÉ DEPUIS 2012
IMAGINE CANADA

Le Guide des dons de bienfaisance: Le Programme de normes d'Imagine Canada

À propos du Programme de normes

Par le biais du Programme de normes, l'agrément est décerné aux organismes de bienfaisance et sans but lucratif qui ont pris les moyens de rehausser la confiance du public, notamment en réduisant les risques organisationnels, en bonifiant les pratiques de gouvernance du conseil d'administration et en favorisant le renforcement de leur main-d'œuvre. Les organismes souhaitant devenir agréés doivent répondre aux exigences de chacune des 73 normes qui s'articulent autour de cinq domaines : la gouvernance du conseil d'administration, la responsabilité financière et transparence, la collecte de fonds, la gestion du personnel et la participation des bénévoles.

Obtenir le sceau de confiance d'Imagine Canada

Le sceau de confiance est un symbole d'excellence et de leadership dans le secteur caritatif. Il s'agit de la reconnaissance officielle la plus rigoureuse en termes d'excellence organisationnelle qu'un organisme de bienfaisance canadien peut recevoir. Les organismes agréés doivent démontrer que leurs pratiques sont conformes à chacune des normes, se soumettre à un examen par des pairs indépendants et déposer un rapport de conformité annuel pour démontrer le respect continu de ces normes.

Donner avec confiance

Ce Guide des dons de bienfaisance contient une panoplie d'information et d'astuces pour vous aider à rendre le don à la cause de votre choix encore plus valorisant.

1. Écoutez votre cœur. Votre don, c'est un geste qui contribue à bâtir le monde de demain comme vous souhaitez le voir. Ralliez-vous aux organismes qui font échos à vos idéaux et faites un investissement dans l'avenir de votre choix.
2. Impact vs frais administratifs. Il est facile de connaître les dépenses liées aux collectes de fonds et à l'administration des organismes de bienfaisance. Il l'est beaucoup moins de bien comprendre l'impact de leurs efforts. C'est pourquoi les évaluations basées exclusivement sur les coûts administratifs enregistrés par les organismes sont trompeuses. Après tout, la vraie mesure de l'efficacité de leur travail est l'impact qu'il a dans la collectivité. Les organismes de bienfaisance doivent se doter des moyens nécessaires pour accomplir leur tâche et comme les entreprises privées, ils disposent des mécanismes de contrôle pour garantir une démarche responsable, transparente et efficace.
3. Organismes de bienfaisance enregistrés et reçus d'impôt. Les organismes de bienfaisance et les organismes sans but lucratif diffèrent sur certains points importants, et leurs activités sont régies par des règles différentes. Entre autres, seuls les organismes de bienfaisance enregistrés peuvent délivrer des reçus d'impôt pour les dons. Si vous souhaitez obtenir un reçu, consultez le site Web de l'Agence du revenu du Canada pour savoir si un organisme est bel et bien un organisme de bienfaisance enregistré.
4. Se renseigner sur les organismes de bienfaisance. La plupart des Canadiens connaissent les organismes de bienfaisance auxquels ils donnent régulièrement, mais comment faire pour apprendre à connaître les autres organisations? Bien sûr, une recherche sur Google peut s'avérer utile, mais aussi très longue. D'où notre recommandation de commencer la recherche sur un portail Web spécialisé comme CanaDon. Vous y trouverez tous les organismes de bienfaisance enregistrés au Canada, y compris de l'information sur l'impact de leur travail que les organismes peuvent ajouter à leur profil.
5. Les droits des donateurs. Le donateur qui appuie une cause qui lui tient à cœur devrait en tirer un sentiment de joie et de satisfaction personnelle. Si vous êtes sollicité pour faire un don et si votre vis-à-vis vous rend mal à l'aise, vous met de la pression ou ne peut fournir toute l'information nécessaire pour que vous puissiez prendre une décision éclairée, vous n'avez aucune obligation de donner sur-le-champ ou de donner du tout. Demandez d'obtenir une brochure ou l'adresse d'un site Web, puis indiquez que vous allez prendre une décision après avoir reçu toute l'information demandée.
6. L'importance du leadership. Les organismes de bienfaisance bien gérés réussissent le mieux à atteindre leurs objectifs. Les pratiques de bonne gouvernance et un leadership solide sont deux qualités que vous devriez chercher chez un organisme avant de faire un don. Vous pouvez vous-même trouver de l'information à cet égard sur le site Web ou dans les rapports annuels et états financiers des organismes de bienfaisance. La certification d'une organisation indépendante représente également un bon indice.

Organismes de bienfaisance et sans but lucratif agréés

À ce jour, plus de 240 organismes, toutes causes, tailles et régions confondues, ont obtenu l'agrément, et chaque année, de nouveaux organismes s'ajoutent à la liste. Le Canada compte de nombreux organismes bien gérés qui font un excellent travail, mais si vous ne savez trop par où commencer, cette liste d'organismes agréés pourra vous aider.

Visitez www.guidedesdons.ca.

ESTATE DONATIONS

Malcolm Burrows
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Time and Flexibility

Earlier this year I visited Princess Margaret Cancer Centre in Toronto for a grant status update meeting with a family foundation. I used to work at the Princess Margaret Cancer Foundation, but left 20 years ago. Returning after two decades provided me perspective on two key charitable estate planning considerations: time and flexibility.

The Cancer Centre and the treatment of cancer has changed massively since I worked there. An obvious sign was a complete renovation of the 1995 building for which I helped raised funds. It has now outgrown its original space and the building is being reconfigured to accommodate three times the patients it was designed for. Philosophies and models of care also change. There is a new palliative care clinic, noteworthy because when I left in 1999, we were battling for a rudimentary palliative care program.

Finally treatment has dramatically advanced. The family foundation is funding a world-leading comprehensive program in metastatic brain cancer. In my day when cancer spread to the brain from a primary site, such as lung, there was little that could be done aside from basic pain relief. Now patients are living longer, precision tools like gamma knife radiation are used and there is a real commitment to patient education – both in hospital and to the world. The focus is on preserving cognition and quality of life. It's a big change.

My return visit underscores some of the traps and challenges that are inherent in planning estate donations. Often a gift is planned years before death and, frankly, it's hard to imagine future needs based on current information. Today's priorities, programs, techniques and organizational structures will change by the time the gift is realized. The planning process should be guided by Heraclitus's observation that "the only constant is change".

A gift by will requires humility and self-awareness in the planning. Most charities prefer estate donations to be unrestricted, but some donors want to be more targeted in their support. Here's some thoughts:

- When drafting wills, avoid narrow and inflexible restrictions on the use of the gift, for example, naming programs, department and projects.
- Avoid naming current staff. Employment and roles change.
- Identify essential elements of the charitable purpose that will endure. At a teaching hospital, these would include patient care, education and research. In the education world, scholarships are another.
- Preferences can be stated – such as no endowments or capital projects – that don't unduly restrict focus on essential elements of the charitable purpose.
- If the gift has restrictions, ensure the executor and charity are given latitude to negotiate a variation of purpose.

My return visit to Princess Margaret felt a bit like time travel. And in a sense, drafting a will to make a gift at an unknown time in the future requires thinking like a time traveller. It's a goofy metaphor, but it is worth remembering that planning a future gift is inherently different than making one today.

Malcolm is a philanthropic advisor with 25+ years of experience. He is head, philanthropic advisory services at Scotia Wealth Management and founder of Aqueduct Foundation.

NEW LEGISLATION

Elena Hoffstein
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Political Activities of Charities

Introduction

There has been a great deal of activity over the past few years over the role of charities in public policy debates and a number of significant developments recently that have changed the landscape for charities in this area.

Background

The precursor to the recent developments starts with the Canada Revenue Agency (CRA) audit programme of reviewing the political activities of charities which commenced in 2012. The first wave of audits targeted environmental charities but later expanded to include poverty, human rights and international-development charities. The government later clarified that while about 30 charities were audited with respect to political activities, only 5 resulted in determinations to revoke registration, all of which were primarily based on facts that were beyond their involvement in political activities.

In January 2016 the government announced a suspension of the audits and commenced a public consultation on the rules regarding the involvement of charities in political activities.

On May 4, 2017 the CRA published the Report of the Consultation Panel on the Political Activities of Charities (the "Consultation Report").

Recommendation no. 3 of the Consultation Report recommended that "the Act should be amended by deleting any reference to non-partisan political activities to explicitly allow charities to fully engage, without limitation, in non-partisan public policy dialogue and development, provided that it is subordinate to, and furthers, their charitable purposes".

On July 16, 2018 the Ontario Superior Court of Justice struck down those provisions of the Income Tax Act (the "Act") that restricted the amount of non-partisan political activities that a registered charity could undertake. The Canada Without Poverty v. AG Canada ("CWP") case1 provided that these provisions infringe on the charity's right of freedom of expression under ss. 2(b) of the Canadian Charter of Rights and Freedoms. The court also found that there was "no justification of ss. 149.1(6.2) that draws a distinction between charitable activities and non-partisan 'political activities' in the nature of public policy advocacy".

On August 15, 2018, the Minister of National Revenue announced its intention to appeal this decision2 but the CWP decision would not change the direction of the government to take steps to remove the quantitative limits on political activities and to implement Recommendation no. 3 of the Report of the Consultation Panel on the Political Activities of Charities (the "Report")3 (See Fasken Bulletin on "Political Activities of Charities: A New World" dated August 21, 2018). To this end, the Act was revised to effectively remove the distinction between 'non-partisan political activities' and 'charitable activities' by confirming that 'public policy dialogue and development' would be included in the definition of 'charitable activities'.

Evolution of the New Legislation

On September 14, 2018, the Department of Finance unveiled draft legislative proposals regarding political activities of charities (the "Proposals"). These Proposals would remove the reference to the "substantially all" test relating to the ability of charities to engage in political activities. The explanatory notes that accompanied this draft legislation clarified that the CRA would make the determination of permitted political activities by reference to the common law (of which there was little).

A draft guidance, Charities and public policy advocacy was released on October 2, 2018 ("Draft Guidance"), which was intended to replace the current CRA guidance, CPS-022, Political Activities. However, this was later withdrawn.

On October 25, 2018, the Department of Finance tabled a Notice of Ways and Means Motion to implement the changes noted above. The changes went beyond what was in the Proposals by providing that charitable activities include, without limitation, public policy dialogue and development activities carried on in furtherance of a charitable purpose.

On December 13, 2018, Bill C-86, Budget Implementation Act, 2018, No. 2 received Royal Assent. A number of the amendments are retroactive to prior years such as 2008 and 2012 and thus impact suspended audits.

Bill C-86 amends the Income Tax Act in the following ways:

a) it removes the "substantially all" test in ss 149.1(6.1)(6.2) and (6.201);

b) it retains the prohibition on charities from devoting their resources to the direct or indirect support of or opposition to any political party or candidate for public office";

c) it removes the suspension for non-compliance with the "substantially all" test but permitted suspension for devotion of resources to partisan activities;

d) it adds new definition of charitable activities to include public policy dialogue and development activities carried on in furtherance of a charitable purpose (the explanatory notes clarify that there are no limitations on this activity); and

e) it adds a new ss. 149.1(10.1) which provides that "Subject to subsections (6.1) and (6.2) public policy dialogue and development activities carried on by an organization, corporation or trust in support of its stated purposes shall be considered to be carried on in furtherance of those purposes and not for any other purpose"4 (the explanatory notes clarify that these activities will not be considered to reflect a separate political purpose).

It should be noted that the legislation does not contain a definition of public policy dialogue and development activities but the explanatory notes indicate that these activities "generally involve seeking to influence the laws, policies or decisions of a government whether in Canada or a foreign country" by "providing information, research, opinions, advocacy, mobilizing others, representation, providing forums and convening discussions".

Draft Guidance

On January 21, 2019, the CRA released a draft guidance, CG-027, Public policy dialogues and development activities (the "Draft Guidance").

The following are highlights of the Draft Guidance:

The Draft Guidance confirms that public policy dialogue and development activities (referred to as PPDDAs) include "seeking to influence the laws, policies, or decisions of a government, whether in Canada or a foreign country".

PPDDAs can be described as activities a charity carries on to participate in the public policy development process, or facilitate the public's participation in that process. A charity can also transfer resources to another qualified donee to support the recipient's PPDDAs. As long as a charity's PPDDAs further its stated charitable purpose, the Act places no limit on the amount of PPDDAS a charity can engage in and expenditures toward PPDDAs will be included in determining whether a registered charity has met its disbursement quota.

The Draft Guidance includes the following list of PPDDAs from the Consultation Report:

Providing information – charities may provide information to their supporters or the general public related to their charitable purposes (including the conduct of public awareness campaigns) in order to inform or persuade the public in regards to public policy. Such information must be truthful, accurate, and not misleading.

Research – charities may conduct research into public policy, distribute the research, and discuss the research and findings with the media and with others as they see fit. Note that to advance education as a charitable purpose, a charity's research must meet the criteria in Policy statement CPS-029, Research as a charitable activity.

Disseminating opinions – charities may express opinions on matters related to their charitable purposes to participate in developing public policy, as long as they draw on research and evidence and are not contrary to hate speech laws or other legitimate restrictions on freedom of expression.

Advocacy – charities may advocate to keep or change a law, policy, or decision, of any level of government in Canada, or a foreign country.

Mobilizing others – charities may call on supporters or the general public to contact politicians of all parties to express their support for, or opposition to, a particular law, policy, or decision of any level of government in Canada or a foreign country.

Representations – charities may make representations in writing or verbally to elected officials, public officials, political parties, and candidates, and appear at parliamentary committees, to bring their views to the public policy development process, and may release such materials publicly. Note that a charity engaging in this type of activity may be required to register as a lobbyist organization.

Providing forums and convening discussions – charities may invite competing candidates and political representatives to speak at the same event, or may request written submissions for publication, to discuss public policy issues that relate to the charity's purposes.

Communicating on social media – charities may express their views, and offer an opportunity for others to express their views, in regards to public policy, on social media or elsewhere.

It is important to note that there are requirements that charities need to satisfy before they may engage in PPDDAs, namely that:

(a) the PPDDAs must relate to the charity's stated charitable purpose; and

(b) the PPDDAs, when considered together with the charity's stated charitable purpose, would meet the public benefit test of the CRA.

In other words, charities may not be established for the sole purpose of engaging in PPDDAs.

No Partisan Political Activity

The Draft Guidance continues to confirm that charities are prohibited from partisan political activity. They cannot "directly or indirectly support or oppose a political party or candidate for public office".

Examples of direct support include the

following:

a) endorsing a candidate over social media;

b) telling people on a charity's website not to vote for a political party; and

c) making a donation to a political party or a candidate's election campaign.

Examples of indirect support or opposition include the following;

a) internal planning documents of a charity explicitly confirm it will oppose a political party that takes a different view on certain policy issues; and

b) internal minutes of a directors meeting record decision to oppose a candidate in a provincial election.

The Draft Guidance gives examples of allowed activities as follows:

a) communicating about policy issues either in or outside of an election period, provided they do not identify a political party or candidate; and

b) informing the public about policy positions of political parties and candidates so long as it does so in a neutral fashion, hold all candidates debates, or provide the voting record for all MPs or other levels of government on an issue.

Blogs/Websites

In addition the Draft Guidance clarifies that if a charity has a blog or website it is required to monitor these platforms and remove messages that support or oppose a political party or candidate for public office or post a notice that messages that support or oppose a political party or candidate will be removed.

Representatives of a Charity

The Draft Guidance also provides guidelines on how representatives of charities may personally engage in partisan political activities.

For instance, the Draft Guidance provides that while representatives of a charity, such as directors, are permitted to engage in political processes in their personal, private capacity, they:

a) must not use the charity's resources (i.e., office space, supplies, equipment, publications, or human resources) to support their personal political involvement;

b) must not use events or functions organized by the charity as a platform to voice their own political views; and

c) are encouraged to indicate that their comments are personal rather than the view of the charity.

Finally, the Draft Guidance notes that while the Act permits PPDDAs without restriction there are other legal requirements that a charity must be aware of such as federal and provincial lobbying and election legislation and the common law in different provinces.

Effect of the Proposed Changes

The new legislation and the Draft Guidance are a welcome development and will give charities greater opportunities to fulfil their charitable purposes and advocate for the charitable causes they promote.

Charities should revisit their policies on political advocacy as they may be too restrictive given the new rules.

The Draft Guidance makes it clear that the government will rely on records to satisfy itself that charities are complying with the new law and charities must keep in mind that the onus is on them to ensure that the PPDDAs are done in compliance with the Act.

Records of minutes relating to political activities should demonstrate that the primary consideration in carrying on PPDDAs is to further the stated purposes of the charity and provide a public benefit.

Absence of records make it difficult to support an argument that the charity is in compliance should an issue arise.

Expenditures on PPDDAs should be properly characterized as they now qualify as charitable activities.

Elena Hoffstein is a Partner at the law firm of Fasken Martineau DuMoulin LLP practising in the areas of private client services and charity law

PROFILE

Sharon McLean, legacy donor with Sandra Dow, The Arthritis Society

Dedicated to solving the osteoarthritis mystery

S

Sharon knew all too well, the devastation that arthritis can have. Her mother, Clarice, was diagnosed at a time in her life when she was enjoying a vibrant life, actively involved in her community, her passions and above all, enjoying her two children, Sharon and her brother Bill.

Osteoarthritis severely affected Clarice's knees and hips, causing intolerable pain and limiting her life. Sharon's decision to invest in research to find a cure was done in honour of her mother and the tremendous inspiration her mother had been to her.

Sadly, Sharon also developed severe, limiting, multi-joint osteoarthritis, and endured many surgeries over the years. While waiting for surgery to relieve her pain and give her back some movement, her weakened body led her to a terrible fall and the loss of her life at the age of 68.

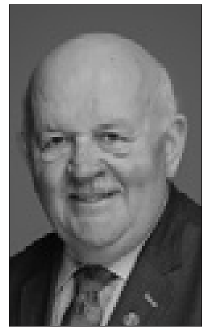
Sharon and her mother shared the feeling that early diagnosis is a key factor before the damage is done. Other factors they wanted to understand were: why one person in a family develops arthritis and another does not, why arthritis manifests in differing extremes depending on the individual, and for example, why it might develop in your hands and not your feet or vice versa. In Sharon's opinion, "Osteoarthritis is a big mystery." Through the establishment of this Gift in her Will, Sharon's legacy continues in the fight against arthritis so that future generations need not suffer.

I had the pleasure of getting to know Sharon, and if ever there was an award for courage and spirit – she would run away with the prize. What an inspiration Sharon was and remains. When she would contemplate her situation and her mother's, there was never an ounce of complaint ... only her characteristic sense of humour and sparkling eyes. What an honour to assist Sharon in creating her legacy.

Today, we honour Sharon and her vision. Her legacy lives on. On behalf of everyone at the Arthritis Society, thank you to all of our valued supporters. Your generosity is vital to everything we do. May this knowledge give you great satisfaction.

Sandra Dow
Vice President Philanthropic Giving
The Arthritis Society

CHARITIES CHALLENGED



Senator Terry Mercer

Senator Ratna Omidvar

Government Has a Role in Strengthening Canada's Charities and Non-Profits:

Canada's charitable and non-profit sector is the second largest in the world. More than 24 million Canadians — about two-thirds of the population — donated to a charity or non-profit organization in 2013.

But, as generous as Canadians are, there are still underlying challenges in the charitable and non-profit sector, which is in danger of failing the most vulnerable populations.

The number of donors in Canada is on the decline. Charitable and non-profit organizations are struggling to retain enough employees and volunteers to function day-to-day.

A recent report from Canada Helps, a non-profit organization that promotes online fundraising, puts the problem into perspective. It showed that while donations from Canadians reached more than $9 billion in 2015 — the most ever recorded — donations over the past decade have remained stagnant when inflation is factored in.

The report also revealed the number of families and individuals who claimed donations on their tax returns has dropped consistently. Between 2006 and 2015, the number of families who have claimed donations on their taxes has decreased by 149,000.

Whether it's poverty reduction, cutting-edge research in the fight against cancer, humanitarian aid for victims of natural disasters, or donations to the local school, charities and non-profits provide a vital lifeline to many communities. Because of these vital services that the organizations and their volunteers provide, reliable data is needed.

But data on this sector is severely outdated, so an in-depth review is long overdue.

In January 2018, the Senate created a special committee to study Canada's charitable and non-profit sector and the many challenges it faces.

Since then, we, as members of the Special Senate Committee on the Charitable Sector, have heard from several witnesses from across Canada.

An alarming trend plaguing this sector right now is the aging donor population. Over the past several months, our committee heard from experts in the field who all warned that we need to engage the next generation of donors.

Today, the vast majority of donors to charities and non-profits are older Canadians who are cutting back on their contributions and volunteering as they age. Canadians with a religious background are responsible for the bulk of donations but that segment of the population, too, is on the decline.

According to Statistics Canada, 35% of donors were 55 and older in 2013, up from 29% in 2010.

We also heard that professionals in the sector – from frontline staff to senior executives – are often underpaid and provided with few benefits or pension products.

Peter Elson, a professor at the University of Victoria, spoke from his experience as an executive director of a charity for 15 years.

"At the point of their retirement, the tables get turned and non-profit staff become the ones in need, even though they may have spent their whole careers helping others," he told committee members.

One of the reasons we are seeing this play out in the charitable and non-profit sector is because governments have increasingly been providing project-based funding rather than core funding for charities and non-profit organizations. This makes it difficult for organizations to retain full-time employees because they never know if the funding will be there for the next project.

How can organizations in the charitable and non-profit sector survive if they can't maintain consistent funding for projects or if they lose valuable talent to the private or public sector?

Some provinces have moved toward triennial funding so that resources are guaranteed for three years instead of applying for funding annually with no guarantee.

But funding challenges go well beyond transfers from government. Witnesses have outlined a number of regulatory barriers that prevent many organizations from launching social enterprises and accessing the capital needed to fuel their innovative solutions.

Our committee also heard about the regulatory challenges charities and non-profits face when applying for charitable status, which can require costly legal expertise to overcome. These challenges include taking the government to the Federal Court of Appeal.

We heard from experts that this process is too cumbersome and costly for charities and non-profits — they believe registration appeals should instead be heard by the Tax Court of Canada.

As recently as two years ago, a Consultation Panel on the Political Activities of Charities, appointed by the Minister of National Revenue, recommended the Income Tax Act be changed so that these kinds of appeals can be heard by the tax court in order to "level the playing field."

These are just some of the concerns that are being raised as we continue to study the charitable and non-profit sectors in Canada. But our work is not yet finished.

We have launched an online questionnaire asking Canadians to help us better understand the challenges faced by the sector and we anticipate hearing from more witnesses in the coming months before we release concrete recommendations. What our work has already told us, however, is that the charitable and non-profit sectors are in serious danger of falling behind unless the government takes swift action to make it more sustainable and fairer.

This article was first published at The Philanthropist which can be found at thephilanthropist.ca

This Year's Editorial Line-up

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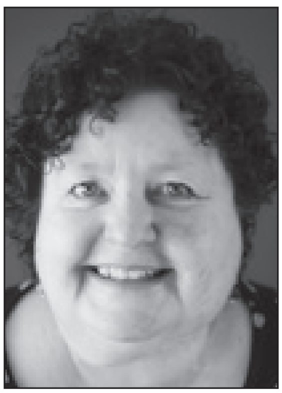
Senator Terry Mercer

Senator Ratna Omidvar

Elena Hoffstein



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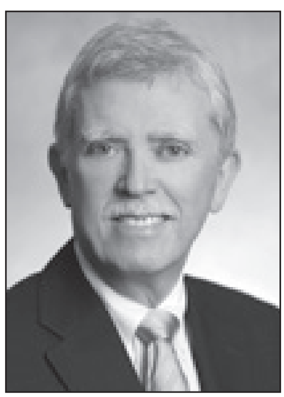

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ESTATE PLANNING

Charlotte McGee
Hull & Hull LLP

Benefits of Estate Planning for Today's Young Adults

Traditionally, the transition from adolescence into formal adulthood has been marked by certain milestones: moving in with one's partner, engagements, weddings, and the first purchase of a car or house, for example.

Today, however, as Dr. Steven Mintz notes in his Psychology Today article on modern adulthood,[1] the journey to achieving adult status is "far slower and much less uniform" than it was in previous generations.

The Canadian Encyclopedia reports that in recent years, the average age of first marriage in Canada is close to 30 years old for women, and 32 years old for men.[2] This contrasts sharply with the 1960s and 1970s, when young people in Canada were more likely to marry between the ages of 23 and 25 years old.[3]

Similarly, while the average young adult in the sixties could expect to achieve such "emblems of adulthood" as home ownership, marriage, children, and a stable job by around the age of 24,[4] far fewer young adults in the 2000s will have attained these markers by this same period. According to Statistics Canada, 54% of men and 43.4% of women in Canada have never married by their early thirties.[5] In Mintz's article, he notes that rates of childbearing, homeownership, and even car ownership for young adults have also sharply declined from those of past generations.[6]

Notably, many of the traditional adulthood markers relate to asset accumulation – whether it's the paycheque associated with a steady and lucrative job, or an investment in a home or vehicle, for example. With fewer millennials travelling down these conventional paths to adulthood, and arguably having fewer assets to their names, should today's young adults be concerned with formulating a plan for their estate?

In my view, the answer is yes. This article will address three of many reasons to set up an estate plan as a young adult today.

1. Your assets can be distributed to the beneficiaries of your choice, instead of being determined by Intestacy

In Ontario, Part II of the Succession Law Reform Act (the "SLRA")[7] governs how one's assets will be divided if a person dies "intestate" – namely, without a Last Will.

As many young millennial adults are unmarried and without children, I will focus on subsections 47(3)-(11) of the SLRA.[8] These subsections delineate how an estate will be divided if one dies without a will and has neither a spouse nor children (notably, common law spouses are not included as a "spouse" on intestacy). These rules can be summarized as follows:

1. If the Deceased has no spouse and no issue, the estate goes to the Deceased's surviving parents, equally.
2. If there are no surviving parents, the estate goes to the Deceased's siblings equally (and if a sibling has predeceased, that sibling's share goes to their respective children).
3. If there are no siblings, the estate goes to the Deceased's nephews and nieces equally.
4. If there are no nephews or nieces, it goes to the next of kin of equal degree of consanguinity. In some cases, distant relatives can end up inheriting from the estate, despite otherwise having no relationship with the Deceased.
5. If there are no next of kin, the estate escheats to the Crown.

Making an estate plan empowers a party to decide specifically to whom their assets – of both financial and sentimental value - will go.

Importantly, any unpaid debts of the Deceased, as well as the expenses and liabilities of the estate (e.g. funeral expenses, taxes, legal fees, etc.), are a first charge on the assets of the estate, and must be paid by the estate before assets will be distributed to beneficiaries.

2. You can choose who will manage your assets, limited or not

By way of a Last Will and Testament, one can appoint an Estate Trustee (or Estate Trustees) of their Estate. Among many other critical duties, the Estate Trustee is responsible for securing the assets of the Estate; settling any of the of the Deceased's debts and taxes; ensuring the Deceased's assets are distributed in accordance with the Deceased's wishes; and, often, tending to funeral arrangements.

When a person dies intestate and an Estate Trustee is not appointed, the process of the administration of their Estate becomes much more onerous, and can be significantly delayed. By executing a Will which appoints an Estate Trustee, one can ensure that a responsible and trustworthy person, who is up to the task, will give effect to their final wishes and manage their estate effectively after death.

3. You can document your intentions for your intangible, digital assets

A recent Globe and Mail article by Brenda

Bouw[9] sums it up succinctly: neglecting to plan for one's online assets can create "huge headaches" for executors, especially in light of Canadians' "expanding digital footprints".

In addition to those online assets which have true financial value - such as cryptocurrency, Paypal accounts, and some loyalty rewards programs - many digital assets, like Facebook or Instagram accounts, can have significant personal and sentimental value. By stating one's preferences for digital assets management in an estate plan, one can better ensure that their wishes for these assets are honoured, and potentially reduce conflicts between loved ones that might otherwise arise in this respect. The Globe and Mail cites Facebook profiles as a prime example:

"For instance … some loved ones may want a family member's Facebook profile to remain active after they pass away, for remembrance; while others might want to delete the account, for closure."[10]

If this article has inspired to start your estate planning process, I encourage you to meet with a trusted Estates Lawyer to assist with your planning needs.

Charlotte McGee is an associate at Hull & Hull LLP. She was called to the Bar of Ontario in 2018. Charlotte holds a J.D. from Queen's University and a B.A. in English Literature and Psychology from McGill University.

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2. Margarit Eichler, "Marriage in Canada" ed. Anne-marie Pedersen (14 Feb 2018), online: the Canadian Encyclopedia <https://www.thecanadianencyclopedia.ca/en/article/marriage-and-divorce> ["Canadian Encyclopedia"].
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4. Mintz, *supra* note 1.
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6. Mintz, *supra* note 1.
7. Succession Law Reform Act, R.S.O. 1990, c. S.26 ["SLRA"].
8. Ibid, *ss* 47(3)-(11).
9. Brenda Bouw, "Don't forget about digital assets in your estate plan" (24 Sept 2018) online: The Globe and Mail <https://www.theglobeandmail.com/investing/globe-wealth/article-dont-forget-about-digital-assets-in-your-estate-plan/>.
10. *Ibid*.

PROFILE

Carson and Grace

Carson's life with Grace

Carson has been with his Autism Support Dog, Grace, for more than a year and the changes in his life have been incredible. Carson's mother, Jeannine would like to share some of the impact that Grace has had on her son and her family.

We heard about BC & Alberta Guide Dogs and their Autism Support Dog program at a support group after another mom described the benefits a dog had for her son. Now that we have Grace, we cannot imagine life without her. She has changed our world in more ways than you can imagine

Before life with Grace, Carson was five years old and still in diapers. But for some reason, a month after Grace joined our family, Carson decided he was ready to try using the toilet – and is now diaper-free!

We live in an area with lots of parks and fields, but, sadly, Carson could not walk to them without tripping or bolting into traffic. He also did not have the muscle tone to walk, even though it was five minutes from our house. The therapists suggested I start looking into an adult wheelchair or stroller for him.

But again, Grace changed our world. As soon as he was attached to Grace, he began walking at such a calm and steady pace and the tripping stopped. Now he walks everywhere multiple times a day. Carson not only walks to the close park but walks to the bigger parks farther away, and loves it!

Before Grace, Carson could not sleep. Numerous times a week, he would only be able to sleep for about three to four hours a day. The therapists and doctors felt he was just so overwhelmed with life and his surroundings that he could not settle enough to sleep. We tried different medications, but they always left him groggy and it would take such a strong amount to work. Now, as a result of walking with Grace-- and her gift of calmness -- Carson has been sleeping a solid eight to nine hours a night!

Carson and Grace are always together. We have three floors in our house, and they are always on the same floor. If Carson goes to another level or is leaving to go outside, he says "Come on Grace!" He is also speaking more and taking ownership of helping Grace, which makes him even more independent. He is now able to attend school with her full time!

Grace has brought such peace and fun into our lives. Grace and I like to go to the dog parks and on hikes together. She loves being with the other dogs and it has become one of my favourite times of the day.

We thank her puppy raisers for doing such an amazing job! We know it was a major commitment to raise Grace and that BC & Alberta Guide Dogs do a lot to make the public aware about the expectations and the "rights" of Grace being in public places. Thank you!

An Autism Support Dog helps open the door to greater access, inclusion and overall quality of life for a child with autism and their family. To the parent of a child with autism, an Autism Support Dog means increased safety, security and support, and the ability to do simple things with their child like going to the supermarket, the mall or the park.

BC & Alberta Guide Dogs provide Autism Support Dogs, Guide Dogs, and PTSD Service Dogs -- along with training and aftercare support -- at no cost to families for the working life of the dog, which is typically eight years. With each certified dog costing $35,000.00, this means that BC & Alberta Guide Dogs relies on donations to provide these essential services.

Your support can make a difference in someone's life for years to come. To learn more about how you can help provide life-changing Guide and Service Dogs to those in need, or to read more stories like Carson's, please visit the BC & Alberta Guide Dogs website at www.bcandalbertaguidedogs.com.

BC & Alberta Guide Dogs is a registered charity that breeds, raises and professionally trains Guide Dogs for individuals who are blind or visually-impaired, Autism Support Dogs for children ages 3-10 with moderate to profound autism and their families, and PTSD Service Dogs for military and RCMP veterans living with Post-Traumatic Stress.

Submitted by BC & Alberta Guide Dogs

OPINION

Teresa Marques
Rideau Hall Foundation

Marina Glogovac
CanadaHelps

Innovation in the Social Good Sector

The 2018 Giving Report by CanadaHelps found that between 2006 and 2016, Canada's population grew at a rate three times faster than the size of donations over the same period. This also reflects fewer donors, with just one in five Canadian tax-filers making donations in 2016, down from one in four in 2006.

In partnership with Imagine Canada, the Rideau Hall Foundation sponsored Thirty Years of Giving in Canada, a landmark study that mapped donations and giving patterns in Canada from 1985 to 2014. It produced three important findings:

First, Canada's charities and non-profits are too dependent on aging donors: People aged 50 and over now account for three quarters of all donations, while those 70 and older make up 30 percent. Second, the long-term viability of the charitable sector in our country will require an increase in donation rates among younger Canadians. Finally, in the absence of better youth engagement, the effectiveness of the charitable sector will be severely restricted. There are several forces at work in changing giving behaviour, including disruptive technology, demographic changes, and cultural shifts. Increasingly, donors are influenced by their peers and are less incentivized by a tax receipt.

The most recent Global Trends in Giving report from the Public Interest Registry reveals that 41 percent of donors worldwide have given to crowdfunding campaigns that benefit individuals, nearly half (44 percent) for expenses related to medical treatments and family emergencies. At the same time, social media is now the leading communications tool that inspires giving. For example, 18 percent of donors have given through Facebook fundraising tools and 88 percent say they will likely to do so again. Of most concern to charities, it appears that a significant percentage of donors through crowdfunding believe that they donate less money to traditional charities as a result. All these numbers lead to an inescapable conclusion: Many young donors no longer see any lines separating charitable giving and other forms of giving. To them, giving is simply that—giving. And as the months and years pass, the informal, flexible and increasingly innovative ways of giving—the ways that appeal to them most—has the potential to squeeze out traditional charitable giving and put charitable programs at risk if they fail to adapt. Faced with this reality, we need innovation in our country's charitable sector like never before.

Why should we care about the survival and success of the charitable sector? Healthy charities in Canada are important for all Canadians, and we're unlikely to truly understand the social and economic gaps left by failed charities until it is too late. These organizations reflect the increasing diversity of our country; they engender greater inclusion in all aspects of Canadian life; they fill gaps in the health and welfare of people and communities that our governments are slow or unwilling to close; and they can spur transformational innovation by injecting seed capital into novel research in a manner that traditional funding mechanisms do not often allow for. The critical role charities play has always required innovative approaches to problem solving. In their recent book Ingenious, David Johnston, Rideau Hall Foundation chair and Canada's 28th Governor General, and Tom Jenkins, former CEO of OpenText, focus on this country's most influential innovations.

Breakfast for Learning is one example. Set up in Toronto in 1992, the non-profit program was the world's first to help schools make sure kids get the nutritious breakfasts and lunches they need to fuel their minds for learning. It grew quickly to include some 1,600 schools across Canada, serving 600 million meals to almost four million young students. As Johnston and Jenkins make clear, Breakfast for Learning is a resounding demonstration of the role schools play not only to instruct, but also to equip students with the basic physical capacity to learn. Understanding that the path to learning runs through the stomach, and then acting on that knowledge, is innovation.

So how should charitable organizations change? There's no question that the charitable sector must innovate to succeed. The need for innovation is not in the way charities attack societal issues, however, but rather in the way they adapt to survive and thrive amid the exponential rate of digital and cultural change we're currently experiencing. While they should keep looking to innovate in ways such as Breakfast for Learning did, that kind of innovation alone is not enough. Organizations should themselves embrace innovation in how they work and how they are sustained: they should become more adept at explaining the societal value of their services or cause to young Canadians; they need to find ways to be more transparent, earn higher levels of trust, and build long-term donor loyalty. They also must also truly embrace digital transformation. Technology is propelling innovation, disruption, and a rapid pace of change, but digital transformation is much more. It's not about simply adopting technology into organizational processes-such as creating a website, having an online donation form, or investing in new fundraising methods. Real transformation will require looking beyond just fundraising and instead developing a wholesale digital transformation strategy. This will require a mindset shift both within charitable organizations and by those who support them in the public and private sectors. Digital transformation is a holistic approach to integrating digital strategy and digital technologies into an overall organization. It is strategic and intentional change, enabled by technology but successful only through strong leadership, a learning orientation, cultural alignment, and innovation. Digital transformation is all-encompassing. Charities must think about their human resources and organizational strategies: what are their processes for a digital world, and how can they hire people with the right digital skills and mindset? They must think about their technology infrastructure and connectedness. They must have a content strategy to think about what their story is and how they are telling it, a social business strategy, and a channel strategy to ensure they are where their donors are.

Charities must develop data strategies, determine what they must collect and store, reconsider what questions they're asking, and identify their key performance indicators. The process will involve leveraging technologies and their impact on potential donors in a strategic (not reactive) way. For this change to be successful, it must also be sustainable. Transformation that's sustainable stems from the genuine makeup of an organization. The change in any charity must be faithful to its mission and vision; it must reflect an accurate understanding of the competitive landscape; it must take into consideration the needs of partners; and it must be based on a thorough review of organizational assets, gaps and competencies. Above all, change must deliver increasing value to contributors and beneficiaries, and to Canadians who neither give nor receive directly.

Transformation comes from leadership, and it is both ambiguous and messy. The statistics show that most digital transformations within all sectors fail, and success will be even more challenging in the traditionally risk-averse charitable sector. Success will require funder and board support, and agreement that charities need to invest in themselves. It requires courage and determination, embracing an innovation mindset, and cultivating a willingness to fail.

Healthy charities are important for everyone because they fill gaps, build on success, and include the excluded. But the status quo is a death knell for Canada's charities. Our country's charitable sector is at risk and only wholesale rethinking and reform will do. Canadian charities and non-profits have long shown that they can be innovators when it comes to tackling problems with limited resources. That spirit of ingenuity is needed now more than ever.

Teresa Marques is President and CEO of the Rideau Hall Foundation.

Marina Glogovac is President and CEO of CanadaHelps.

PROFILE

Naming a charity a beneficiary of RRSP

Ena Spalding and John Bargman
Photo credit: Pam Jenks

Being surrounded by wildlife and nature played a pivotal role in the lives of John Bargman and Ena Spalding. Despite being from two very different continents, Ena and John both grew up having very similar experiences and share a deep connection to their natural environments.

Ena was raised on a farm in Scotland, and nature played a huge part in her life. In her early years she had the opportunity to connect with nature and she developed a curiosity about plants and animals. These early experiences eventually led Ena to volunteer with the Scottish Wildlife Trust. She then went on to volunteer and work as an interpretive naturalist in parks and other protected areas for environmental organizations in Norway, Texas, and finally in Alberta as a Nature Conservancy of Canada (NCC) volunteer.

John was born in Uganda and lived there as well as in Kenya and Tanzania. Growing up in Africa, he was surrounded by abundant and varied wildlife. A frequent visitor to the national parks, John became quite knowledgeable about east African mammals. After moving to Scotland, he became an avid birdwatcher and photographer. Capturing nature, wild spaces and animals has been John's life-long passion.

The couple met in Scotland and — years later — made the decision to move to Canada, where they would be inspired by the many opportunities to spend time in the great outdoors, year-round. "Being outdoors in natural and wild places not only rejuvenates and inspires me, I cannot live joyfully without it," says Ena.

Ena and John are both passionate about nature and believe that protecting and conserving a diversity of habitats is essential for the survival of healthy populations of wildlife and native plants. Conserving Canada's natural spaces is extremely important to John and Ena, which is why they heartily support the Nature Conservancy of Canada. "We believe in NCC's goal to conserve and protect lands that provide habitats to hundreds of species, including species at risk. We love that we can be a part of creating this high-impact and lasting legacy."

In 2015, John and Ena attended an NCC estate and tax planning session. The information gleaned at the session motivated them to rethink their plans and to further look in to giving strategies that would offset their estate taxes. They chose to include specific bequests to several organizations, of which NCC is the major beneficiary. Their giving includes naming NCC as a beneficiary of a percentage of their RRSPs, which provides Ena and John's estate with tax credits that will divert more money toward the people and causes they love.

"The RRSP option is very attractive because it will decrease taxes on your estate, and it was so easy to do," says John. "It doesn't mean any changes to your will. You just complete a simple form from the bank that holds your RRSP. It takes less than a minute to do!"

"We feel confident that our legacy gifts will add to what NCC can accomplish in the future to protect natural areas across Canada, where flora and fauna can flourish, and people can visit, enjoy and learn," says Ena.

The future of Canada's natural areas is at the core of John and Ena's involvement as NCC volunteers, getting their 'hands dirty' by removing invasive plants or looking for species at risk. "We feel very lucky that our early lives enabled us to be outdoors and experience the rewards of the natural world," says John. "We'd like to pass that on to future generations, knowing that only through enjoying and valuing wild and natural areas will young people want to protect them."

Submitted by Nature Conservancy of Canada

ESTATE DISTRIBUTION

Emily Hubling
Fasken

When is "old enough"?

I often meet with clients who wish to have Wills prepared which provide for trusts for their children. After explaining the nature of a testamentary trust to the clients, I typically recommend that they select a set age that the child is to receive the capital (or the remainder thereof) of his or her trust, with perhaps additional set ages for partial distributions.[1] In the vast majority of these meetings, I am inevitably asked some variation of, "What do people normally do?" with respect to choosing an age.

As with nearly all elements of an estate plan, there is no "normal". Instead, I recommend that clients consider the following:

1. The maturity of the child.

To a certain extent, the ability to gauge the maturity of a child will largely depend on the current age of the child – it is much easier, for example, to determine the majority level of a 22-year-old than that of a five-year-old.

That said, there are considerations beyond the numerical age of the child that should be taken into account. How does the child currently handle responsibility? Are they generally able to meet their financial obligations, and make wise decisions with respect to money? Are they reliable?

When in doubt (or when a child is too young to make an determination), selecting a higher age for distributions, with flexibility granted to the trustees to make early distributions, is a preferred strategy to setting too young of an age and having an estate distributed before a child is ready to handle the responsibility that comes with the assets.

The client may also wish to provide a small amount of capital of the trust (1/10 or 1/4, for example), to be paid out at an earlier age, to give the child an opportunity to learn and make mistakes with money, before receiving the entirety of his or her inheritance.

2. The value of the assets held in trust.

The general logic of this consideration is that the greater the value that is held in trust, the older the child should be before it is distributed. This is not, however, a hard-and-fast rule: a mature 25-year-old may be better equipped to handle several million dollars than an immature 30-year-old is with several hundred thousand dollars.

I find it helpful for clients to do a quick calculation of how much their estate would be worth in today's dollars, taking into account all relevant assets (including any insurance proceeds that may be held on the same trust terms for a child), and then dividing this amount by the number of children they have. This often puts things into perspective – more often than not, there is more money to be set aside for a child than the client realizes.

3. The longevity of the trust.

The above considerations should be balanced with the cost and administrative burden of holding a trust for an extended period of time. For example, if a client wishes to include a trust that is held until age 50 for a child who is currently four, there is the potential for a trust that is held for 40+ years. This is a long time for a trustee to have to make investment decisions, report to the beneficiary, and file annual tax returns. In addition, testamentary trusts are subject to a deemed disposition every 21-years.[2] Finally, clients will need to consider alternate or replacement trustees, as their named trustees could pass away or otherwise no longer wish to act by the time the trust reaches its later years.

None of these points necessarily mean that the client should choose a different age. As with point 1 above, it may make sense, taking into consideration the maturity of the child, and the value of the potential distribution, to select a higher age, but allow for earlier distributions at the discretion of the trustees. However, the client needs to be aware of what it truly means to include a long-term trust in his or her Will.

One other consideration – when discussing the above points, I sometimes find it helpful to ask the client to reflect on his or her own life: at what age could he or she have handled an inheritance? It can help the client transform their understanding from a hypothetical discussion about when their currently-young child will inherit, to a real consideration of what it means to be a certain age and what the average person can handle.

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[1] There may be situations where a lifetime trust is appropriate – for example, a Henson trust, a trust for protection against claims of creditors, or where a client wishes to ensure capital remains for the benefit of the next generation (grandchildren).

[2] With limited exceptions, such as a spousal trust.

DONOR ACKNOWLEDGEMENT

Kimberley MacKenzie
Kimberley MacKenzie & Associates

The Tax Receipt I'll Never Forget

The first day I had to send out a tax receipt for a premium paid on a second to die life insurance policy was a day I'll never forget. The Director of Finance brought the receipt to me and told me to write a thank you letter and mail it to the donor. So I did.

There were a lot of competing priorities for me that day. Being fairly new to my job as a Director of Development we had a direct mail program to restructure and there were staff to hopefully inspire to do a better job. The tax receipt didn't really seem like a big deal to me. I was prompt, efficient, the letter was nice enough and the task was completed in less than one hour.

Twelve months later the exact same thing happened. The Director of Finance dropped the receipt off at my desk and told me it was time once again to write a thank you letter and pop it in the mail. One year later there weren't as many fires to put out so I had time to dig a little deeper.

When I reviewed the file to learn more I found out that there was a million dollar life insurance policy and that when both donors, Suzanne and her husband Peter, passed, our organization was to use the policy to build a nature reserve in the name of their son, Graeme. How curious! I now had the bandwidth to dig a little deeper. I phoned our donor and asked if I could drop the tax receipt off in person. Suzanne replied and said she would be delighted to receive me.

As fundraisers, especially when working on legacy files, we are often invited into some very intimate conversations and relationships with donors. I didn't know it at the time, but the relationship I was about to step into would turn out to be one that stands out for the rest of my career.

Suzanne and her dog greeted me warmly. We sat down to tea and cookies. The house was quiet. After a few pleasantries I jumped right in. "Can you tell me more about what motivated your gift? I'd love to hear about Graeme."

Graeme's love of nature at an early age meant that he had a childhood of camping, hiking and traveling to places like the Galapagos Islands and Australia. As Suzanne and Peter's only son Graeme had a lot of opportunities to travel and pursue grand outdoor adventures.

At the beginning of grade 13 Graeme was diagnosed with a rare form of bone cancer. Tragically just after his nineteenth birthday on April 23, 1993 Graeme died. To honour his legacy, a life insurance policy was purchased and our charity was named the beneficiary. In time, the Graeme Whistance-Smith Nature Reserve will be created as a testament to Graeme's love of nature.

Suzanne was ready for me to cry. She had tissues close by. We sat together quietly crying for a while. Eventually it was time for our visit to end and I drove home deeply touched at the way Suzanne opened her heart and shared her grief with me that day. I still cry about it. In fact, tears are streaming as I write this. That's okay, this is an emotional business and we need to open our hearts to feeling deeply with our donors.

Every year, when the tax receipt for this gift is issued, Suzanne is reminded of all the joy and love she still has for her only son who was taken from her far too early. How could I, and people before me, have thoughtlessly mailed that tax receipt every single year?

From then on two significant changes were made to the way that gift was managed.

1. The tax receipt was always, and still is, personally delivered.
2. The paper file in the office with the gift agreement and the life insurance policy now has Graeme's photograph and story included. Now every fundraiser who becomes responsible for this file will understand and honour the emotional connection attached to this gift.
3. We recognized the gift that year by inviting Graeme's parents to plant a tree in their son's honour. It was a joyous occasion.

As fundraisers we need to understand that:

1. Seemingly banal administrative functions like issuing a tax receipt can have a profoundly emotional impact on our donors. We need to be sensitive to this. There isn't a single job in the development office that doesn't emotionally impact your donors in some way.
2. Whenever possible please try to personalize the estate files with as much detail about the donors and their families. That way those who follow in your footsteps can appropriately maintain the relationship.
3. Engage and recognize your legacy donors now… during their lifetime, regardless of the size of the gift. The intention to include your organization as one of the last gifts your donor makes is priceless. Legacy donors deserve to feel the love and joy before their gift is realized. Otherwise, it will be too late.

There simply aren't any donor relationships that have touched me as deeply as the donors I have worked with on their planned gifts. Their stories, vulnerabilities, and dreams for the future are profoundly impactful and every day I'm grateful for the experience.

Kimberley helps organizations create the culture, systems and structures to build robust revenue streams. You can reach her at k@kimberleymackenzie.ca