

THE MUTTART FOUNDATION

Consultation on Administration and Management Expenses

18-21 April 2023

Banff, Alberta

A Summary of the Discussion

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This report is a summary of one of a series of periodic discussions convened by the Muttart Foundation on voluntary sector regulatory issues. The session was held to promote an exchange of ideas and to develop a fuller understanding of the concerns of both sector groups and government regulators. Any remarks included in the report are intended to reflect the discussions. No undertakings or commitments from either regulators or sector participants are expected or made, notwithstanding any of the wording in the report.

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A Summary of the Discussion

Day 1 - AM

Bob Wyatt kicked off the session by presenting the history of the Muttart consultations, their purpose and the ground rules and guiding principles for engagement.

INTRODUCTIONS AND RELATED ISSUES/CONCERNS ABOUT THE TOPIC

Participants then introduced themselves and were asked to identify their top concern on this issue, having read the preparatory materials:

- How will these changes impact charities?
- What's the problem we are trying to solve? How will this intersect with other policies?
- This is a simple yet complex issue.
- There is a limited understanding of allocation rules.
- The sector is complex- it will be challenging to have definitions that will work for all.
- The regulatory environment is shifting to adapt to the needs of organizations. There may be adaptation required here too.
- What is the impact of additional changes on the disbursement quota (DQ)?
- How do we draw a perimeter around this issue to make it understandable?
- "Where do charitable activities end and administration costs begin?" (Reference to Carl Juneau)
- How does this affect operating charities vs. foundations?
- What is it that we are doing that isn't charitable?
- A detailed approach to itemizing administration and management (A&M) costs may have unintended consequences.
- Need to acknowledge that the public has strong views on administration costs.
- The solution may be in setting accounting standards.

PRESENTATION BY THE CANADA REVENUE AGENCY (CRA)

CRA staff went through the details of their PowerPoint presentation, which included a set of questions for discussion. The presentation is included in the appendices.

Participants made the following comments and questions:

- We need greater clarity on the problem we are trying to solve here and the scope of that problem.
- Transparency of A&M costs are at issue. There are perceptions that these costs are not

- reasonable and are too high.
- We also need to recognize that the focus is on a small number of large charities with large assets.
- Common law deems that all activities are charitable, so this legislative amendment is inconsistent with common law.
- A lot of the changes that have been made to the T3010 over the years are piecemeal. We probably need to take a step back and do a new T3010 but it's expensive and time consuming.

INTERNATIONAL PERSPECTIVES ON THE TREATMENT OF A&M COSTS

USA Presentation

- Private foundations are subjected to a 5% payout of assets each year in the form of grants, gifts, charitable activities, etc. 'Ordinary' and 'necessary' business expenses count toward the payout, but these two words are not defined in law.
- In the Reagan era, there was a perception that private foundations were spending too much on administrative costs. As a result, a law was passed, and charities could not allocate more than .65% of their net noncharitable assets for admin expenses.
- A study of 900 private foundations done three years later found a 50% error rate in the returns. None of the foundations that overcounted incurred a penalty because they had paid out more than 5% of their assets for charitable purposes. The cost of doing these audits was very high. The law expired after three years.
- Other key findings from the study:
 - \$9.8 billion was spent on charitable activities and 7.1% on expenses.
 - The law had no impact on dealing with situations of abuse (such as excessive executive compensation). These excesses were controlled by other provisions within the Internal Revenue Service (IRS) to deal with bad actors.
 - The calculations for administrative expenses were complex and the error rate was high.
- There is an enduring concept in the U.S. about ensuring equity between the way businesses and charities are treated and so the same standard applies to businesses writing off business expenses.
- The visibility of enforcement actions is more important than having complex rules.
- When you look at returns, you have to look at the totality of the data provided, not just expenses.
- Historically, populist politicians from rural, more agricultural states targeted the expenses incurred by private foundations in big cities to garner political votes. In the 60s, that led to hearings with penalties for some private foundations such as the Ford Foundation.
- We need to accept that delivering charitable services has costs- involves logistics, staffing, management, accountability measures, etc.
- While form 990 is more comprehensive than the CRA's T3010, it is too complex for the average person to fully understand. It's essentially a data communication tool used between charities and the IRS. Schedule O (a blank page) allows for explanations about the data.
- There are data quality issues on the 990 as well- the terms are ambiguous and the diversity of charities and how they interpret the questions make data quality a challenge. Nevertheless, the 990 can provide good information for donors and advisors.

Day 1 - PM

England and Wales Presentation

The Charity Commission is not tax-based, there is no disbursement quota, no separate categories of reporting and no limit on management and administration. There are general principles which rely on charity trustees and only in rare, extreme cases would the Charity Commission take action. These cases are usually because the activities of the charity are not furthering their stated charitable purpose. There is no guidance on administration. There is some guidance related to fundraising costs: costs must be proportionate to revenue (if not there is a requirement to provide an explanation) and costs must be in the best interest of the charity.

There are accounting and reporting standards for charities (SORP – Statement of Recommended Practice) which apply to all charities in the United Kingdom that have been in place for approximately 30 years. These were developed by the regulators and representatives from charities. Charities are mainly asked to report on charitable activity costs and fundraising costs. These are done on a full cost basis (which includes an allocation of “support” costs). The total amount and details of the support costs must be included in the notes to the accounts. They must then identify categories of charitable activities (with support costs) and should also provide a table to show the allocation of the support costs.

The method of allocation needs to be reasonable and consistent. Examples of allocation are by number of employees, by square footage of office space, through time sheets of employees, etc. The method must be stated in the notes to the accounts.

Changes will likely be implemented in 2025.

Australia Presentation

Many Australian foundations which enjoy tax concessions are regulated in relation to their distributions by income tax provisions as administered by the Australian Tax Office.

Each financial year, public ancillary funds (e.g. community foundations) must distribute at least 4% of the market value of their net assets (as at the end of the previous financial year) and a private ancillary fund (e.g. family foundations) 5% on the same basis.

While net assets are used to determine the fund’s minimum distribution, the total distribution that must be made is not net of any amount (for example, expenses of the fund).

Private funds are prohibited from certain transactions to ensure there is little opportunity for tax abusive behaviour:

- No borrowing,
- No security over funds, and
- No collectibles.

In relation to fees and expenses, the provisions provide that:

The trustee of a public ancillary fund may apply income or capital of the fund:

- (a) to pay or reimburse the trustee for reasonable expenses incurred on behalf of the fund; and
- (b) to pay fair and reasonable remuneration for the trustee’s services in administering the fund.

Other foundations distributions are regulated by state trustee provisions and the common law which follow the outline of the law in England and Wales previously described.

Definitions of Expenses and Administrative Costs

The Australian Charities and Not-for-profits Commission provides a National Standard Chart of Accounts (NSCOA). It is a free data entry tool and data dictionary for charities and other not-for-profit organizations. All Australian governments (Commonwealth, state and territory) have agreed to accept NSCOA when requesting information from not-for-profits.

The NSCOA provides consistency in accounting categories and terms used within non-government organizations (NGOs). Organizations can acquit financial reporting requirements for grants and other filings using the categories already collected in their standard chart of accounts, rather than re-calculating for different government-imposed definitions of financial categories.

In turn, this allows government departments to aggregate and compare financial data for policy development and administration costs are significantly reduced in both the government and not-for-profit sectors.

The initial design was for those small to medium NGO's which receive government funding without the benefit of internal professional participation. It has become apparent that others may find the NSCOA of benefit, especially in the use of the data dictionary. A number of medium to large organizations have taken the data dictionary as a guide for their charts of accounts and modified to suit and where appropriate adding extra accounts that are not defined in the NSCOA. Some organizations have other requirements which require expansion into sub accounts for extra items and use of cost centre accounting for organizational projects and programs (both funded and unfunded).

PRESENTATION OF HISTORICAL CONTEXT (see Appendices)

GROUP EXERCISE

Participants were asked to come up with 10 examples of A&M costs that would not be considered part of the DQ.

Group 1

- Regulatory violations, legal fees, audit fees, penalties and fines, human resources, investment management, litigation, costs of participating in consultations, directors and officers' liability insurance, costs related to compliance, and leasehold improvements.

Group 2

- Management and administrative costs are not all "DQable". Costs related to delivering charitable programs are DQable; costs related to "existing" are not DQable (Board, T3010 filing are examples).
- This group also explored the parallels to the for-profit sector and which expenses are deductible before declaring profit.
- Finally, this group proposed that for a certain level of revenue, charities could simply apply an across-the-board percentage.

Group 3

- This group identified several possibilities – many of the items they listed might be allocated costs (through a proportionate formula). Board governance, insurance (cyber insurance), headquarter offices, internal policy development, consultants (in some cases), information technology, professional fees (some), calculation to determine return on investment, volunteer/staff acknowledgement, and HR costs (some).

Group 4

- The first comment from this group was that everything done by a charity is purpose driven. They did, however (for the purpose of the exercise) identify several possibilities – many of the items listed might be allocated costs. Investment fees, corporate services team, audit, fundraising, legal costs and board meetings.

At the end of day one participants asked, “What was Finance trying to achieve?” During the consultation phase, it became clear that there was a need for the legislation to clarify how to calculate the DQ and how to “treat” management and administration. The intent was to codify the existing practice. This is really a construct for tax purposes.

Day 2 - AM

GENERAL DISCUSSION

The following three questions were put forward for discussion:

1. Should there be a threshold? Should the guidance adopt an A&M expenditure ratio as a percentage of revenues and/or assets?
2. What would constitute acceptable A&M expenditures? Is the reasonable and consistent standard sufficient? (CRA Question 15)
3. What is the best way for the CRA to communicate our position on A&M to both the public and the sector? (CRA Question 5)

Perspectives on the First Question

- There are foundations that do flow through grants – this would mean that the disbursement quota is zero.
- The above would also happen when dollars come from the Federal Government and money is flowed through to charities – this would create an excess disbursement quota.
- A stepped-up rate already exists.
- The asset level makes more sense than the revenue level – this is about transparency – as DQ.
- Could Finance consider that “in good faith” – and for operating charities the bar is lower? These operating charities could complete the A&M reporting and a set percentage could simply be applied – the rest could be dealt with through administrative policies.
- The public has an interest in knowing A&M. Could this be satisfied by simply accounting for A&M expenses then providing a place to explain?
- There is a problem with accuracy of T3010s – it’s already difficult to enforce existing policies – will this new legislation simply make enforcement harder?
- What is the goal? To increase spending? Or to increase transparency?
- A&M language is problematic – this is about costs related to strategy, leadership,

accountability, impact, etc.

- Would a standard rate sacrifice transparency for simplicity?
- Applying a standard percentage would skew the data but 80% of charities have revenue of \$250,000 or less (and should fill out part D of the T3010). Could we consider that if charities fill out part D – there isn't a need to detail A&M expenses?
- There is a difference between public and private foundations and regulations should be different.
- Is compensation one of the issues related to the need for transparency? In the U.S. there are penalties for excessive compensation.
- Public perception of A&M costs isn't the responsibility of the CRA – the T3010s are accessed by the general public in a limited way. In 2021, the data is as follows: 188,214 "hits" in English and 26,237 in French.

After the morning break, the group returned to the policy goals of the amendment.

Policy Goals of the amendment

- Increase spending on the DQ.
- Ensure transparency in how A&M costs are allocated.
- Ensure simplicity (in the calculation of A&M costs).
- Inform compliance at CRA.

More discussion:

- If the threshold is increased, and a percentage is applied – this would simplify for smaller charities but would not have an impact on transparency, it would not inform compliance and might only minimally increase spending.
- Consideration could be given to a lower standard for organizations and a higher standard for Foundations.

Day 2 - PM

Perspectives on the Second and Third Questions

What would constitute acceptable A&M expenditures? Is the reasonable and consistent standard sufficient?

- A list of A&M expense examples could be included in an appendix to the guidance.
- Charities should be encouraged to develop their own policies on A&M costs and allocations, keeping their particular charitable purposes and circumstances in mind.
- Some preliminary guiding principles and/or questions were proposed and are found later in this report.

What is the best way for CRA to communicate its position on A&M to both the public and the sector?

CRA began by clarifying what kind of advice they are looking for here:

- What are the key messages?
- Do we include this information about A&M as part of the guidance on DQ or as a separate guidance?
- How do we reach out to the sector?

- How do we explain that minimal spending on administrative and management costs is not necessarily a good thing?

Comments received on Messaging and Communications Strategies

- We should frame the messaging on A&M spending by talking about the importance of investing in good leadership, ensuring resources for stewardship, strategy development, being accountable, and demonstrating impact.
- We should be telling the stories of charities and linking A&M to impact. Resourcing A&M properly is encouraged because it can lead to better and more impactful outcomes.
- CRA should carefully consider its messaging. The most we can hope for is that when they roll out the guidance, they incorporate messages about the value of spending on A&M. They could also “dump the wheel” i.e., the diagram about how charities spend their resources.
- An interchange could be an option to get sector knowledge and expertise in CRA to help develop a communications strategy.

Tools and Processes

- Use infographics. Communicate what needs to be said on one page. Keep it clear and simple. The message should be able to be delivered in two minutes or less.
- There is some value in having a Schedule O similar to that in the 990 form. Filling it out would be voluntary but would allow organizations to tell their story instead of having outsiders and journalists come to conclusions about the data without the benefit of explanations for extenuating circumstances.
- What language could we use instead of A&M costs? Supporting expenses? Enabling expenses?
- CRA can provide messaging for the sector that can be used in their organizations and with their stakeholders. We need to define A&M and be clear about what’s in and what’s out. There is an enormous amount of grey in A&M- the approach has to be practical and sensible. We need to recognize reality- that we have to live with the contradiction that there is a statutory obligation to report A&M but that spending money on A&M is appropriate. There is program-related A&M and organization-related A&M- we are talking about the latter.

Engaging with Sector Organizations

- The communications effort will have to be sustained and ‘surgical’. The sector doesn’t have the financial resources to do large sustained campaigns. We need to go on the offense in terms of the messaging, instead of defending A&M costs. Imagine Canada would like to be part of a larger conversation about how to communicate this out to the sector in a sustainable way.
- Getting the message to a large audience of charities has always been a problem. In Australia, studies were done about effective communications to the sector and they learned the sector is oral-based, and that using narratives, videos, podcasts - especially for volunteers and staff - is most effective in getting key messages across.
- CRA road shows with a panel of accountants, lawyers and charity representatives would also be a way to get the message out. Practitioners would also need to be part of such panels. CRA could also show up at conferences and events of umbrella organizations.

- Large charities have a bigger reach than CRA and should be engaged in helping out. Philanthropic Foundations Canada (PFC) and Community Foundations of Canada (CFC) are two natural partners to get the message out.
- For organizations that use the services of auditors, the auditors should nudge organizations about developing an organizational policy for A&M and also convey the message to managers and the board that it's okay to spend on A&M.
- CPA Canada organizes a conference annually for charities- CRA could be invited. CPA Canada also does roundtables across the country and gets good participation from the charitable sector.

Engaging with the Public

- Public opinion is entrenched on this topic. We need to boldly overcorrect by having a comprehensive stakeholder communication strategy that says management and administration spending is good. Remember that people have to hear something at least seven times for it to stick. Language has to be simple.
- The Trustees Annual Report in the UK has a narrative section- they talk about their activities and describe the public benefits. They have to explain their reserves and investment policies. These reports are posted on their own websites. The board prepares the report and it is very much in their own words. If we took this approach, we would have to suggest a threshold because the reporting burden could be too great for small charities.
- Consider the audience of business leaders and business communities.

DEVELOPMENT OF SCENARIOS

Participants were then asked to go into groups to create scenarios that would raise questions about the application of A&M costs. The descriptions of the scenarios can be found in the appendices.

Day 3 - AM

There was a plenary discussion of the first two scenarios. This activity led to further refinement of guiding principles and/or guiding questions which can be found later in this report.

Further comments and questions were raised in relation to scenarios one and two.

- An unreasonable and excessive salary level would raise the question of undue private benefit.
- How does the DQ apply to donor advised funds (DAFs)?
- Can we look to trust law for guidance?
- Are investment management costs an unrelated business activity?
- Would legal fees, due diligence costs and the costs of protecting and maintaining assets be considered A&M costs? The answers would depend on the mission/purpose/nature of the charity.
- An endowment could be drawn down over time due to the high cost of the A&M expenses. The foundation might not be a going concern over time.
- Investment is fundraising, so it is considered revenue generation.

Day 3 - PM

The participants were split up into working groups to identify any further guiding principles/questions/issues for Scenarios 3 and 4. The following comments were made:

- There can be a range of possible outcomes in allocating A&M costs. The charitable purpose of the organization impacts those decisions. Charities need to clearly describe their purposes. A form to expand on the explanation of purpose and/or programs would be useful.
- The concern for bad behaviour lies in the extremes on either end of the continuum, from too few costs to too many costs. CRA should only be looking at egregious behaviour.
- Asking organizations to figure out their A&M expenses individually may not lead to the change in practice desired. A collective approach and education about how to do this would be more appropriate.
- Need to remember that the intent of the 'carve out' in legislation is to maximize funds going to charities by ensuring they don't include A&M costs in their base for the purposes of calculating the DQ.
- The test of reasonableness demands the question: to whom is it reasonable?
- Where there is ambiguity as to whether a cost can be included in the DQ disbursement, it is more likely an A&M cost.
- Umbrella organizations could support their members to help build their policies on A&M attribution.
- Look at the attribution of business costs for analogies: there are infrastructure costs to 'approach the market' and costs that are 'in market'. Costs before operations for a charity would conceivably be A&M and costs at operation would be 'DQable'.
- Organizations will probably be expected to prorate costs like utilities, IT, HR, board governance. The percentage of the split between charitable activities and A&M will vary.
- The guidance should provide some guiding questions. The parameters will need to be described. Organizations will need to be able to defend their decisions.
- A blank page for the narrative, much like Schedule O in the 990 form could be useful for compliance purposes, for the public, for donors and funders, and for business intelligence. On the other hand, concerns were expressed about how this information is interpreted. It could create more confusion and the benefits of communicating out to these audiences may be marginal. Also, space is limited on the form.

OVERVIEW OF CONTEXT, GUIDING PRINCIPLES/QUESTIONS, PROCESS SUGGESTIONS AND UNRESOLVED ISSUES

Context

- We are dealing with competing objectives (increase in DQ so more funds flow to charities vs. CRA messaging that A&M costs are okay).
- Common law and new legislation are contradictory.
- All charities are different so application/allocation of A&M costs will vary.
- New legislation is more relevant to foundations (carve out).
- Goals: 1) Increased spending on the DQ 2) Ensure transparency in how A&M costs are allocated 3) Simplicity 4) Informs compliance at CRA.

Guiding Principles/Questions

- Is this an expense of the charity or an expense of the program?
- Is this a direct cost or an indirect cost?
- Is this a “pre-execution” cost (A&M) or an execution cost of the charitable program?
- Is this an expense related to the existence of the charity? Or to its charitable programs?
- Would the expense have occurred if the organization wasn’t carrying out its charitable programs?
- Reasonable and consistent test is relevant and acceptable.
- Guidance should provide parameters. What might those be?

Process Suggestions

- Encourage charities to develop their own policies on A&M and allocations.
- Encourage umbrella organizations to help members and other organizations to develop such policies.
- Put examples of A&M costs/expenses in an appendix to the guidance.

Unresolved Issues

- Setting a threshold, yes or no?
- Fundraising and revenue generation (from investments).
- Should there be space to provide narrative on the T3010? (to explain purpose, or to explain variations).
- Should guidance refer to the allocation question? If so, what needs to be said?

After the scenarios were discussed, the facilitators summarized where they felt the group was at in consideration of the topic. Further discussion followed:

- On process – it might be easier to consider a list of factors (rather than examples).
- Can one of the guiding principles be related to “vehicles” of program delivery, both tangible and intangible?
- Given that many smaller foundations don’t have any staff – the level of complexity of this calculation will be challenging.
- There are sections of the Act related to qualifying disbursements that seem contradictory to the new legislation – this might require a technical amendment.
- When discussing whether a threshold could be set for smaller charities, a number of issues were considered:
 - The biggest advantage would be simplicity.
 - The disadvantages would be related to transparency and lost compliance information.
 - The threshold could be related to revenue (somewhere between \$100K and \$250K) or related to assets (but this would be more complicated).
 - Threshold could be applicable to all charities below a certain revenue or only to operating charities (not to Foundations).
 - Most participants felt that the line referring to A&M in Section D of the T3010 could simply be removed (as opposed to applying a standard percentage).
 - Another possibility is to exclude foundations that are meeting their DQ through grants.
 - Materiality of DQ needs to be considered.

- Suggestion to allow for a three-year test period (as was done in U.S.).
- It was noted that there is a commitment by the Department of Finance to review the overall DQ framework in five years.

Day 4 – AM

The facilitators started the session by providing a quick overview of the presentations, activities, and discussions over the last three days.

COMMUNICATING THE DQ

CRA still had an outstanding question for which it was seeking input: How do we best communicate the DQ? Should it be done in the form of guidance or on their web pages?

Feedback received:

- There could be guidance on DQ, A&M, and fundraising. It was noted that the A&M guidance is being done at the same time as the revision of the fundraising guidance.
- A&M could be in the form of guidance but should be hyperlinked to other related topics. The problem with that is on the Canada.ca. you can get lost. It's challenging to navigate.
- Put A&M guidance in the DQ guidance. If it stands alone, it will cause confusion.
- Fundraising guidance is 38 pages now, which is too long. A&M could run to 20 pages. Other pre-existing information on the DQ is 20 pages. All this information becomes unmanageable.
- It's important to consider that A&M is broader than the DQ for the purposes of the sector. Fundraising also has significance well beyond issue of DQ so it should be separate.
- The guidances have to be consistent.
- The T3010 can be submitted in paper format, although the CRA no longer mails out blank forms. It can also be submitted through MyBA using an online form.
- T4033 is the guide to filling out the T3010. What we are talking about for A&M would affect the guide. CRA is working on new language in the guide, which will be completed in October 2023.
- There is a public relations problem with the guide. It is not easily accessible. There is a message that goes out to charities two months before the T3010 is due. The T4033 could be appended at that time but not all charities get that notice.
- Communications on A&M can't only be from CRA. Resources would be required to communicate out to the sector and umbrella organizations could be included in the process. One solution is problematic when we are dealing with two audiences.
- When are problems solved with rules versus with principles? Is it not generally better to go with principles instead of hard rules? Also, need to look at the materiality of A&M across the sector.
- The changes in legislation and regulation are about transparency, public perception, and about concerns that resources are going to private benefit. This legislation may not achieve the goal of greater transparency.
- It would be good to benchmark and make comparisons- what are 'like' organizations doing when it comes to attribution of A&M costs? What are the outliers?
- Remember that there will be a review of the DQ in five years. A&M data will be part of that review.

T3010 Data Challenges

- There is a serious lack of data. Not all organizations are not doing their job of properly reporting on the T3010. The information is often incomplete and there are errors. Rather than reject and return a large proportion of returns, returns requiring further intervention/clarification have been keyed. Paper returns are keyed in so there are errors. Only 22% of charities file electronically.
- There will be a new T3010 in the fall of 2023. Those who don't complete the DQ section will have their forms returned. CRA currently accepts any version of T3010 but that will change this fall as well.
- In New York state they tried to out organizations that were not compliant. But shaming of this nature is complicated and there would be jurisdictional issues to deal with in Canada.
- In the UK, data is available, but it does not change public perception.
- Technical changes to the form could improve data collection. (For example, if they don't answer, they can't continue to fill out the form.)
- Consider using behavioural nudging at CRA. Include things like peer pressure to get organizations to complete the T3010.

Guiding Factors Used in the U.S. to Consider A&M Expenditures

As it was becoming clear that the CRA guidance would be using guiding principles in its proposed approach to determining A&M costs, a participant offered up the types of questions the IRS had developed when the law on expenses was in place for three years. It was noted that the IRS used these factors to scrutinize all expenses, not just A&M, so these may be of limited use for the purposes of the DQ.

1. What is the nature of the expenditure? What is it for?
2. Is the provider internal or external?
3. Is the expenditure supporting the organization, its charitable work, or is it for a particular project?
4. Is the expenditure required by law? Is this to satisfy legal requirements for the operation of the organization or for charitable activities?
5. Are these expenditures to support the application of best practices?
6. Is the expenditure linked to some specific requirements of the charity or to some specific requirement of the donor or senior management?

CLOSING SESSION

Participants were invited to provide feedback on the consultation. What went well? What could be better? Final thoughts, observations, and insights.

- The process was fascinating – reflecting on how it can be applied to other work.
- Expertise from different perspectives is important.
- Facilitators helped to bring out different aspects of the topic – that was very helpful.
- Reflecting on capacity of the sector vs. expertise in the room; unsure how many have the capacity to engage in this topic.
- Unsure if the new legislation will solve the problem or address the “mischief” that government had in mind.
- Thank you to Muttart and facilitators – this was one of the more difficult consultations. It was always going to be – we did struggle all the way through to find what the “mischief”

was.

- Process is great, the right people were in the room, we covered a range of aspects. Good to have both lawyers and accountants in the room.
- At times, felt that we were not making progress.
- What went well: process, right people, range of aspects, accountants, and lawyers. Robust process
- At times, thought we were going backwards and round and round.
- I have great sympathy for the CRA – and hope that there will be some material that will be helpful.
- Thanks to Muttart and participants – spirit of good will and candor – particularly with government representatives.
- We can solve together what we can't solve alone.
- Original *Income Tax Act* – was about 4000 words – typed out in readable font. Now 1,000 pages, over 1 million words. Why is it so complicated? In part because in administration and adjudication, we forget what problem we are trying to solve.
- Echo – problem that we are trying to solve was unclear – quick calculation – may have made sense to just choose a higher DQ - might have been easier.
- Huge lesson also from international perspectives.
- Thanks to the Foundation and the entire team.
- Learning was incredibly rich – more than I would have expected – thanks to facilitators and participants.
- Rare opportunity – real privilege.
- Liked the plenary sessions; could have been better – exploring some of the adjacent topics.
- Clarity of communication will be really important.
- How do we support CRA to access financial resources to make real changes?
- Reasonable and consistent – will be different for each charity.
- Thanks to Muttart – to hosts – for continuing this exercise – thanks to government participants for how you have received the information.
- Facilitation as always – superb.
- Thanks to all – this is unlike any other process – brings all of the stakeholders to the table – particularly with government people – what makes it special, effective and useful is that we have the right people from Finance and CRA – they come consistently – willing to take criticism.
- We need to make the best of a mess – we have done a pretty good job of moving it along.
- As a matter of legal policy – one goal per policy makes things easier – that is not what happened here.
- What went well – the messiness worked quite well – not a clear path but that was okay – framing that there isn't a specific outcome – gives permission to explore the messiness.
- Constructing and deconstructing the case studies was helpful – understanding the nuances – great appreciation for complexity of the task.
- How can umbrella organizations promote online filing of T3010?
- This process of enthusiastic discussion in a safe space doesn't happen in the U.S.
- Challenging subject matter – thanks to Muttart – process illuminated the challenges but also provided some paths to solutions.
- Proven process – continues to deliver – thanks to participants who gave generously of your time.
- One of the tougher consultations – masterful facilitation job.

- Partnership of sector and Finance/CRA – important – what would happen if this were true of other departments?
- Policy changes happen for different reasons and in different ways – not always the most logical path to achieve the outcome.
- Draft will be produced with further opportunity for input.
- Really appreciated the facilitation – lots of flexibility in the agenda – allows us to go in directions that we hadn't initially thought about.
- We knew this would be complex – scenarios were helpful.
- We were able to extract a number of principles and that will be helpful in drafting – international perspectives were great.
- Like the word “DQable”.
- Thank you to Bob and Muttart Foundation – appreciate the opportunity to hear from the sector and have that be delivered candidly – this helps understand the real issues.
- Take back what I heard – interesting to hear the perspectives – it is more complex than what I had first imagined.
- The way in which we were able to step outside of the sector echo chamber – great cast of characters of those in the room.
- Solution seekers – that was appreciated – special shout out to CRA and Finance colleagues.
- Really enjoyed the case studies – added an element of fun – and an element of reality of how this impacts charities.
- How do we work within the system that has been modified – how do we potentially think of changes to the system – this can be an “and” approach.
- Thanks to Muttart and Bob – don't know that there is any other organization that can do this.
- Baggage of the perceptions and realities on this topic – made some of the conversation very challenging.
- Having an agenda that isn't firm – is very helpful – extending conversations over dinner is also helpful.
- I wish I was feeling a bit better about the legislation – nervous about the ramifications.
- Lots of great ideas have surfaced.
- Simple question – complicated issues – that is still true.
- More work needs to be done on data and reporting of data.
- Principle approach is likely the best approach as we move forward.

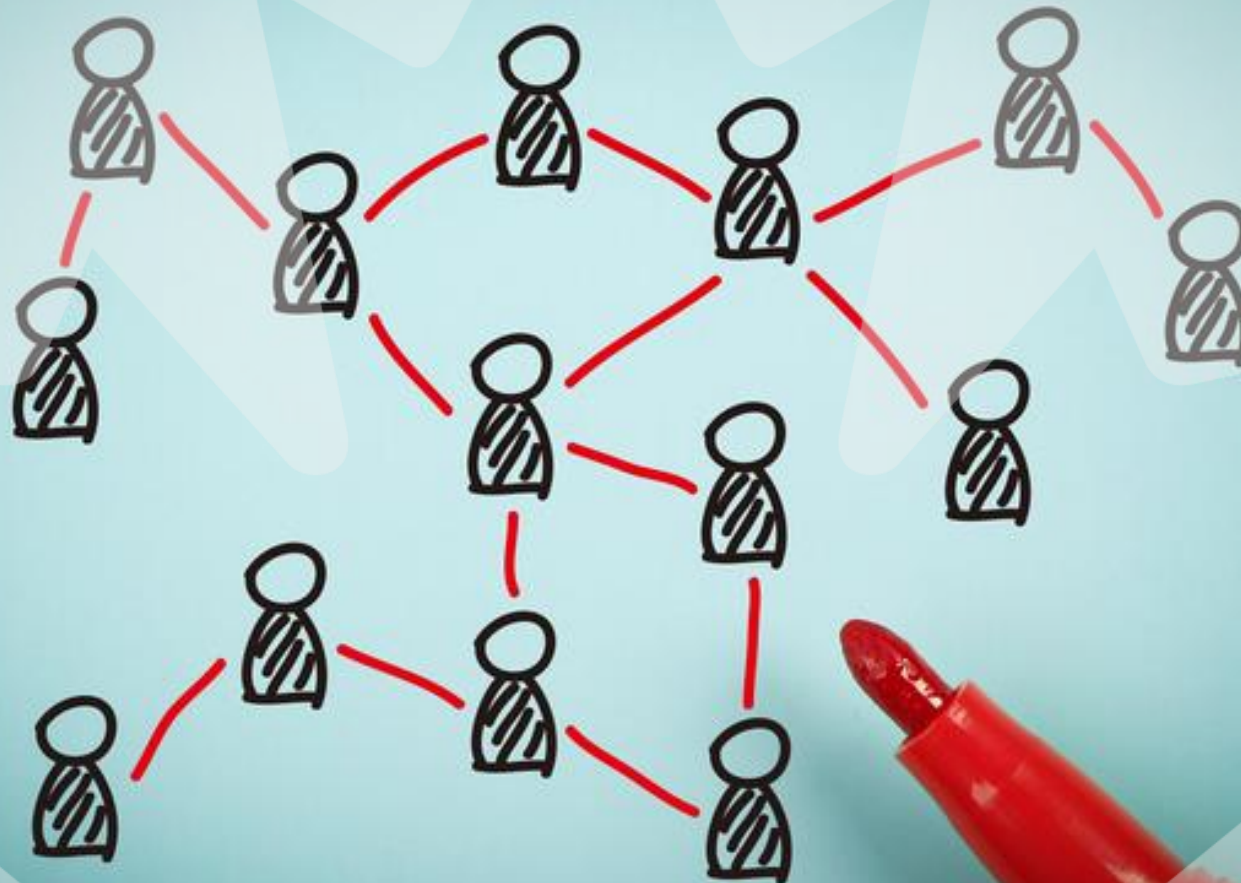
Closing Remarks

Bob Wyatt provided some closing remarks. Thank you to all participants. This process works because the Advisory Committee ensures that the right people are in the room. It's rare for the sector to have dedicated time to discuss an issue. CRA will have a difficult job in drafting this guidance.

There are over 86,000 charities serving Canadians and people in other countries. Most don't know that the legislation has changed. Thankful that the participants didn't shy away from the issues that needed to be discussed. We all recognize that we are doing this on behalf of charities and the beneficiaries of those charities.

Bob then reiterated his thanks to all the participants and specifically thanked the participants from the CRA and from Finance, the international guests, the facilitators and the technicians. He invited everyone to complete the online survey that will be sent as this is important to the Advisory Committee.

**Appendix A
CRA Presentation**



**Draft administration & management (A&M) guidance:
discussion and questions**

Table of contents

1. Introduction
2. Bill C-32, Income Tax Act amendments
3. Terminology
4. Disbursement quota (DQ)
5. Public perception of administration & management (A&M)
6. Books and records
7. T3010 reporting
8. Overlapping expenditures
9. Allocation table expenditures
10. Closing thoughts

Introduction

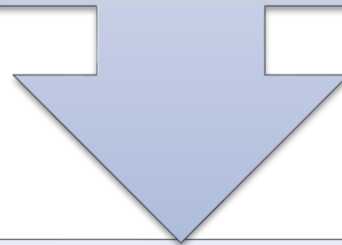
- First and foremost, the CRA sees A&M expenditures as an essential part of a well-run charity's operations. We expect charities to incur these expenditures.
- We recognize there is a serious public perception problem when it comes to A&M, and will address this in the guidance.
- Given the diverse nature of the charitable sector, the guidance must be general in scope.
- We will provide information on how to identify and track A&M expenditures in the guidance, while maintaining the principle that these expenditures should be **reasonable and consistent**.

Income Tax Act amendments

Bill C-32 amended the Income Tax Act to read:

Subsection 149.1(1.1)

For the purposes of paragraphs (2)(b), (3)(b) and (4)(b) and subsection (21), the following shall be deemed to be neither an amount expended in a taxation year on charitable activities nor a gift made to a qualified donee:



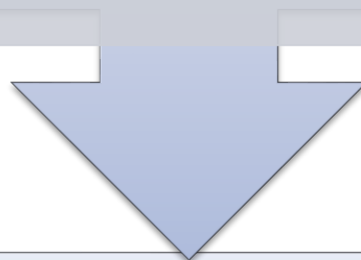
Paragraph (d)

expenditures on **administration and management** of the charity

Income Tax Act amendments

Subsection 149.1(2)(3)(4)

149.1(2) The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization



Paragraph 149.1(2)(b),3(b),4(b)

b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it that are qualifying disbursements, amount the total which is at least equal to the organization's DQ for the year

DQ cont.

DQ calculation, explicit exclusion of A&M and rate increase

- Expenditures incurred directly towards charitable activities or administration do not form part of the DQ calculation, and this has not changed.
- And, the exclusion of A&M expenditures as a means to meet DQ is not new. However, the historical data shows that A&M is often incorrectly reported on the T3010s of all three designations of charity. The explicit exclusion of A&M will likely bring more attention to this requirement.
- The DQ progressive rate increase to 5% is new and is intended to increase overall charitable spending.

Terminology

- Before looking at the details of expenditure allocation, we need to discuss certain terms, including:
 - Charitable activities
 - A&M
 - Fundraising
 - Total other expenditures

Charitable activities

- The common law approach to charitable activities as considered in the case law:

Per Justice Iacobucci, at para. 152 (Vancouver Society v. MNR)

- “the character of an activity is at best ambiguous”

Terminology cont.

- it is really the purpose in furtherance of which an activity is carried out, and not the character of the activity itself”

- **Per Justice Gonthier, at para. 53-61 (Vancouver Society v. MNR)**

- “an activity, taken in the abstract, can rarely be deemed charitable or non-charitable”
- “the degree of connection between the activity and the charitable purpose which it furthers must be the primary consideration in the determination as to whether an activity is charitable.”
- “the key consideration is the nexus between the activity in question and the charitable purpose to be served.”

Terminology cont.

A&M

- While at common law A&M expenditures would ordinarily be incidental to a charitable purpose, and thus charitable, the Act carves them out for DQ purposes.
- A&M expenses are **not directly connected** to program delivery, but support the overall operations of the charity.
- Charities are best positioned to make determinations about what constitutes A&M – ultimately, we require that these support functions be reported on a **reasonable and consistent basis**.

Terminology cont.

- For example, A&M could include:
 - holding meetings of the board of directors
 - accounting, auditing, personnel, and other administrative services
 - buying supplies and equipment, and paying occupancy costs for administrative offices
 - applying for grants or other types of government funding
 - applying for gifts from other qualified donees (usually foundations)
- But expenditures can vary widely between different types of charities.

Terminology cont.

Fundraising

Fundraising by registered charities guidance, CG-013, at para. 17 states:

- fundraising is any activity that includes, solicitation of present or future donations of cash or non-cash gifts, or the sale of goods or services to raise funds, whether explicit or implied.

And, at para 113:

- A charity must separate fundraising content from other content, and assess the:
 - proportion of charitable, fundraising, and management/administrative content within the activity
 - resources devoted to charitable, fundraising, and management/administrative content (employee and volunteer time, financial, and property)
 - prominence of the fundraising content in the activity

Terminology cont.

Total other expenditures

- Line 5040 represents allocation of other expenditures such as:
 - return of grants;
 - life insurance premiums (paid by charity to maintain donation of life insurance).
- Charities often report all expenditures on line 5040, rather than allocating them according to the appropriate category. This creates significant data analysis challenges, even if most of these charities would otherwise meet their DQ.

Disbursement quota (DQ)

Definition

The DQ formula is defined under subsection 149.1(1) of the Income Tax Act:

$$A \div 365 \times B$$

where

A

is the number of days in the taxation year, and

B is

(a) 3.5% of the prescribed amount for the year, in respect of all or a portion of a property owned by the charity at any time in the 24 months immediately preceding the taxation year that was not used directly in charitable activities or administration, if the prescribed amount is equal to or less than \$1 million but greater than (...)

(b) if the prescribed amount for the year in respect of all or a portion of a property owned by the charity at any time in the 24 months immediately preceding the taxation year that was not used directly in charitable activities or administration is greater than \$1 million, \$35,000 plus 5% of the amount by which the prescribed amount exceeds \$1 million, and

(...)

DQ cont.

Income Tax Regulations on DQ calculation

- Regulation 3701(1) – establishes the amount in B of the DQ formula at subsection 149.1(1), where a charity chooses a number between 2 and 8 of equal and consecutive periods that total 24 months and end immediately before the beginning of the fiscal period.
- Regulation 3702 applies 3701 by determining the average value of a property, or a portion of a property, owned by a registered charity and not used directly in charitable activities or administration, based on the property's value on the last day of each period chosen by the charity.

DQ cont.

Impact on charities by designation:

- A charitable organization must meet a DQ if the average value of its property not used directly in charitable activities or administration during the 24 months prior to the fiscal year exceeds \$100,000.
- A public or private foundations must meet a DQ if the average value of its property not used directly in charitable activities or administration during the 24 months prior to the fiscal year exceeds \$25,000.

DQ cont.

- It is unlikely the new progressive 5% rate and explicit A&M exclusion will have a major impact on charitable organizations in general.
- Public and private foundations may find the 5% more challenging, as they cannot use investment management expenditures, which can be a mix of fundraising and A&M expenditures, to meet their DQ – and this forms the majority of foundation expenditures apart from gifts to qualified donees / qualifying disbursements.

DQ cont.

Questions:

1. Do you have any questions regarding the application of the A&M exclusion provision at para.149.1(1.1)(d) of the Income Tax Act?
2. Should the new guidance address the disbursement quota (DQ) rules in detail? Or should it exclusively focus on A&M?

Public perception of A&M

- Given their negative perception, A&M expenditures are difficult to properly present to the public.
- As indicated earlier, charities need to adopt a reasonable and consistent method for determining and allocating these expenditures.
- T3010 data on A&M appears unreliable. For example, many charities report no line 5000 expenditures but high 5040 expenditures.
- Accurate reporting, within reasonable parameters, is essential.

Public perception cont.

Questions:

3. What does the sector think of the quick view pie chart on the charities and giving web pages?
4. Should the quick view feature be removed/ replaced?
5. What is the best way for the CRA to communicate our position on A&M to both the public and sector?

Books and records

Documentation of expenditures

- Documentation is key to reporting and allocating expenditures.
- Subsection 230(2) of the Act requires a charity to maintain accurate books and records, particularly:
 - (a) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act
- Auditors often find charities documentation is problematic.

Books and records

Questions:

6. Specifically, what problems are charities having documenting their A&M expenditures?
7. What can the guidance do to help charities document A&M expenditures and, more generally, maintain their books and records?

T3010 reporting

- The Income Tax Act requires registered charities to file a T3010 for each taxation year within six months of their fiscal year end.
- In both section D and Schedule 6, charities allocate their expenditures, with larger charities reporting more.
- Charities must use schedule 6 if they have revenue over \$100,000, or the amount of property they did not use in charitable activities was more than \$25,000, or they had permission to accumulate funds during the fiscal period.

T3010 reporting cont.

Section D

D4 Expenditures:

Professional and consulting fees	4860	\$	_____
Travel and vehicle expenses	4810	\$	_____
All other expenditures not already included in the amounts above (excluding gifts to qualified donees)	4920	\$	_____
Total expenditures (excluding gifts to qualified donees) (add lines 4860, 4810, and 4920)	4950	\$	_____
Of the amount at line 4950:			
(a) Total expenditures on charitable activities	5000	\$	_____
(b) Total expenditures on management and administration	5010	\$	_____
Total amount of gifts made to all qualified donees	5050	\$	_____
Total expenditures (add lines 4950 and 5050)	5100	\$	<input type="text"/>

T3010 reporting cont.

Schedule 6

Expenditures:

Advertising and promotion	4800	\$	_____
Travel and vehicle expenses.....	4810	\$	_____
Interest and bank charges.....	4820	\$	_____
Licences, memberships, and dues	4830	\$	_____
Office supplies and expenses.....	4840	\$	_____
Occupancy costs	4850	\$	_____
Professional and consulting fees	4860	\$	_____
Education and training for staff and volunteers	4870	\$	_____
Total expenditure on all compensation (enter the amount reported at line 390 in Schedule 3, if applicable)	4880	\$	_____
Fair market value of all donated goods used in charitable activities	4890	\$	_____
Purchased supplies and assets	4891	\$	_____
Amortization of capitalized assets	4900	\$	_____
Research grants and scholarships as part of charitable activities	4910	\$	_____
All other expenditures not included in the amounts above (excluding gifts to qualified donees).....	4920	\$	_____
Specify type(s) of expenditures included in the amount reported at 4920	4930		
Total expenditures before gifts to qualified donees (add lines 4800 to 4920).....	4950	\$	_____

Of the amounts at lines 4950:

(a) Total expenditures on charitable activities.....	5000	\$	_____
(b) Total expenditures on management and administration	5010	\$	_____
(c) Total expenditures on fundraising	5020	\$	_____
(d) Total other expenditures included in line 4950.....	5040	\$	_____

Total amount of gifts made to all qualified donees	5050	\$	_____
Total expenditures (add lines 4950 and 5050).....	5100	\$	_____

T3010 reporting cont.

Lines 5000-5040, T3010

- Line 5000 - charitable activity expenditures
- Line 5010 - A&M expenditures
- Line 5020 - fundraising expenditures
- Line 5040 – other limited activities

T3010 reporting cont.

Questions:

8. How can the guidance help charities better understand the expenditure categories at lines 5000 – 5040 of the T3010 ?
9. How should the guidance explain/define charitable activities expenditures at line 5000?
10. How should the guidance explain/define A&M expenditures at line 5010?
11. How should the guidance explain the difference between fundraising and A&M expenditures at lines 5010 and 5020?
12. How should the guidance explain/define “other expenditures” at line 5040?
13. What are charities actually reporting on line 5040?

Overlapping expenditures

Issues:

- Many expenditures overlap between lines 5000-5040.
- The data indicates that charities find it very difficult to distinguish between the expenditure categories listed on the T3010.

Overlapping expenditures

Questions:

14. Would a threshold for overlapping expenditures help charities allocate, e.g., no need to allocate expenditures under 10% (a “substantially all” test) and can include with another expenditure?
15. What would constitute acceptable A&M expenditures? Is the reasonable and consistent standard sufficient?

Line 5020, Fundraising

- We are reviewing the fundraising guidance and are looking to make changes. We recognize that the fundraising and A&M guidance need to align.
- In the fundraising guidance, thresholds and ratios are used to provide certainty:
 - If 90% or more of the activity was devoted to fundraising, a charity must allocate all the costs to fundraising
 - The fundraising ratio is a global calculation for a fiscal period, determined by dividing fundraising expenditures by fundraising revenue using the entries from the charity's Form T3010

Line 5020, Fundraising

Questions:

16. Should the guidance adopt an A&M expenditure ratio, similar to the one in the fundraising guidance? (e.g., If A&M costs are $x\%$ or higher relative to total revenue)
17. Is there another way of determining acceptable A&M expenditures?

Allocation examples

Questions:

18. Would expenditure allocation table examples be helpful?
19. Are there specific allocation issues the guidance should address?

Example 1 – Charitable activities 60%, A&M 15%, fundraising 25%

Occupancy costs	Occupancy Cost Line 4850	Charitable activities Line 5000	A&M Line 5010	Fundraising (rental expenses) Line 5020
Mortgage payment <ul style="list-style-type: none"> Principal payments - \$15,674 (Interest payments of mortgage are reported under line 4820, interest and bank charges (\$1M mortgage balance *6.94% interest) 	\$15,674	\$9,404 <i>(\$15,674 * 60%)</i>	\$2,351 <i>(\$15,674*15%)</i>	\$3,919 <i>(\$15,674*25%)</i>
Property tax <ul style="list-style-type: none"> Assessment of 1 Million dollar commercial property = \$24,000 – 9637 (Provincial rebate of 40% for registered charities) Total \$14.455 	\$14,455	\$8,673	\$2,168	\$3,614
Insurance	\$3,500	\$2,100	\$525	\$875
Utilities	\$6,000	\$3,600	\$900	\$1,500
Repairs	\$3,000	\$1,800	\$450	\$750
Total	\$42,629	\$25,577	\$6,394	\$10,658

Example 2 – interest on mortgage and equipment

Interest and bank charges	Interest and bank charges Line 4820	Charitable activities Line 5000	A&M Line 5010	Fundraising Rental interest expense Line 5020
Interest charges mortgage				20 %
<ul style="list-style-type: none"> \$1,000,000*6.94% interest) = \$67,932	\$67,932	\$54,346		\$13,586
Interest paid to acquire equipment (capitalized assets)	\$500	\$500		
Total	\$68,432	\$54,846	-	\$13,586

Example 3 – compensation and allocation by task

Compensation	Compensation Total Line 4880	Charitable activities Line 5000	A&M Line 5010	Fundraising Line 5020
Teachers (5)	\$300,000	\$255,000		\$45,000
Administrative staff (2) (e.g., principal, reception)	\$85,000		\$68,000	\$17,000
Total	\$385,000	\$255,000	\$68,000	\$62,000

Allocation details for Teachers (5):

- 85% of \$300,000 = \$255,000 allocated to Charitable activities (Line 5000)
- 15% of \$300,000 = \$45,000 allocated to Fundraising (Line 5020)

Allocation details for Administrative staff (2):

- 80% of \$85,000 = \$68,000 allocated to A&M (Line 5010)
- 20% of \$85,000 = \$17,000 allocated to Fundraising (Line 5020)

Example 4 – amortization of depreciable capital property

Depreciation of depreciable capital property	Amortization of capitalized assets Total Line 4900	Charitable activities Line 5000	A&M Line 5010	Fundraising Line 5020
Passenger Vehicle (school bus) <ul style="list-style-type: none"> • Cost \$100,000 • Rate of depreciation 30% • Undepreciated capital cost (UCC) at end year: \$70,000 (\$100,000 - \$30,000) 	\$30,000 (Cost x depreciation rate)	\$30,000		
Equipment (Photocopier) <ul style="list-style-type: none"> • Cost \$3,000 • Rate of depreciation 20% • Undepreciated capital cost at (UCC) end of year: \$2,400 (\$3,000 - \$600) 	\$600 (Cost x depreciation rate)		\$600	
Total	\$30,600	\$30,000	\$600	-

Example 5 – various professional fees

Professional fees	Professional fees Total Line 4860	Charitable activities Line 5000	A&M Line 5010	Fundraising Line 5020
Accountant <ul style="list-style-type: none"> Consulting fees: \$5,500 Maintaining financial books and records and minutes of meetings: \$2,000 Fiscal period filing (T3010): \$3,000 Total : \$10,500	\$10,500		\$10,500	
Lawyer <ul style="list-style-type: none"> Incorporation fees: \$3,500 Negotiating & drafting agreement with grantee organization \$1,500 Total : \$5,000	\$5,000		\$5,000	
Investment management <ul style="list-style-type: none"> Brokerage fees: \$5,000 Total : \$5,000	\$5,000			\$5,000
Total	\$20,500		\$15,500	\$5,000

Final questions

20. What issues have we not considered?

21. Do you have any questions?

CLOSING THOUGHTS

Closing remarks

- When the guidance is ready, CRA plans to post it on the Canada.ca web pages for a 60-day feedback period – we welcome and encourage your feedback, both now and after it is posted.
- Please also feel free to contact us if you would like to discuss any topics or issues further.

Appendix B
Historical Context

Charitable Trusts

Some Themes

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Design Features of the Disbursement Quota

DQ RATE

- 0%, 3.5% and 5% (s. 149.1(1) definition of “disbursement quota”)

DQ BASE

- “...property **owned** by the charity...**not used** directly in charitable activities or administration...” (s. 149.1(1) definition of “disbursement quota”)

QUALIFYING EXPENDITURES (paras 149.1(2)(b), (3)(b) and (4)(b))

- Includes:
 - “**charitable activities carried on by it**”
 - “**gifts by it that are qualifying disbursements**”
- Does NOT include:
 - “expenditures on **administration and management** of the charity” (Subs. 149.1(1.1))

RELIEVING PROVISIONS (Subs. 149.1(5))

- Administrative discretion to reduce the DQ

CONSEQUENCES OF NON-COMPLIANCE

- Revocation of charitable registration (Paras 149.1(2)(b), (3)(b) and (4)(b))

Tax Policy of the Disbursement Quota

Why have a disbursement quota?

- DQ gives expression to a simple idea:
 - “*Doing Charity requires the...doing charity part*”

How does the disbursement quota achieve this tax policy objective?

- The “*Doing*” Part of “Doing Charity”
 - DQ Rate mandates an annual expenditure
- The “*Charity*” Part of “Doing Charity”
 - Qualifying expenditures reflect the charity part of the equation

Going Back In Time

- Modern charity tax concessions under federal income tax law trace back to 1930
- Initial proposal was for a particularized list of institutions: “*any church, university, college, school or hospital*”
- After much Parliamentary debate, the particularized list was replaced with “*any charitable organization*”
- Specifically understood that the common law would inform its development
- Breadth and flexibility of the common law were understood to be welcome features

May 28, 1930. House of Commons Debates, 1930. Volume 3, Pages, 2714-2715.

Mr. EULER:

In casting about for some phrase which would make this clause **as broad as possible**, we decided on the phrase "charitable organization," ...I think the hon. leader of the opposition is familiar with Halsbury's Laws of England in which charities are discussed as follows: *"Charity" in its legal sense comprises four principal divisions: trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion, and trusts for other purposes beneficial to the community not falling under any of the preceding heads.*

Mr. BENNETT:

I am satisfied that the term "charitable organization" covers **every species of benevolence that any citizen of Canada may desire to indulge in**...enables the **broadest field of choice**. In fact, the word "charitable" is so broad that there is **no field of human endeavour which he may desire to assist that is not open to him**.

**May 28, 1930. House of Commons Debates, 1930.
Volume 3, Pages, 2714-2715.**

Mr. EULER:

This is going to give us a lot of work.

Mr. BENNETT:

I think not.

Why The Common Law Meaning of Charity?

Pragmatism:

- Ended protracted debate over a more particularized list of charities
- Common law provided a pre-existing body of law on “charity” developed in hundreds of years

Appealing:

- Common law was adaptable, flexible and enabling

Continuity with Statutory Design of Income Tax Law:

- Income tax is an “accessory” to the general law

Flash Forward to the Late 90's

Vancouver Society of Immigrant and Visible Minority Women v MNR [1999]
1 SCR 10

- “...*Pemsel* classification is a **flexible** judicial creation, and thus amenable to subsequent **change and development.**” (para 36)
- Charity has “**innate flexibility**” (para 36)
- *Pemsel* categories “**must not be given the force of a statute**” (para 36)
- “We must adhere to **principle as well as precedent.**” (para 48)
- “Before asking this Court to modify the common law, litigants should demonstrate that they have exhausted the possibilities of the existing law. In the law of charity, those **possibilities are considerable.**” (para 81)
- Charity is a “**moving subject**” (paras 146 and 201, quoting *Scottish Burial Reform and Cremation Society Ltd. v Glasgow Corporation* [1968] A.C. 138 at 154)
- “...both the legal conception of charity, and within it, the educated man’s ideas about education, are **not static, but moving and changing.**” (para 166, quoting from *Inland Revenue Commissioners v McMullen*, [1981] A.C. 1 at 15)

Cautionary Note from the Supreme Court of Canada

Vancouver Society of Immigrant and Visible Minority Women v MNR [1999]
1 SCR 10

In the absence of clearly defined principles in this area of law, the courts (**and perhaps more importantly, administrative decision makers**, such as the Minister, who rely on judicial decisions) may become too wedded to **outdated conceptions** of existing categories and lose sight of the **underlying principles** which motivate the law of charity. (Gonthier J at para 36)

To What Does Charity Adapt?

Drivers of Adaptation according to *Vancouver Society*:

- “social developments” (para 36, 48)
- “changing social needs” (para 36)
- “social needs of the time” (para 36)
- “new social needs arise” (para 50, 146)
- “social problems” (para 50)
- “pressing social needs” (para 51)
- “society’s current social, moral, and economic context (para 159, 94)
- “...changes in ideas about social values” (para 166, quoting from *Inland Revenue Commissioners v McMullen*, [1981] A.C. 1 at 15)
- “modern Canadian society” (para 169)

What does *Vancouver Society* tell us about charitable activities?

- Minority and majority judgments in *Vancouver Society* concur that activities are not intrinsically charitable or non-charitable

- Instead, activities are characterized based on the purposes they further:

“...an activity, taken in the abstract, can rarely be deemed charitable or non-charitable. Rather, it is the purpose underlying the activity to which the courts must look initially in assessing whether the activity is charitable.” (para 54 per Gonthier J)

*

*

*

“...it is really the purpose in furtherance of which an activity is carried out, and not the character of the activity itself, that determines whether or not it is of a charitable nature.” (para 152 per Iacobucci J)

- Also see paragraphs 52, 53, 54, 56, 58, 59, 101, 152, 153, 154 and 205

What is the requisite link between activities and purposes?

Variously Described:

- “**coherent relationship**” to the purposes (para 52, per Gonthier J.)
- “...has the effect of **furthering the purpose**” (para 53, per Gonthier J.)
- “...whether its activities are **sufficiently related to those purposes.**” (para 53, per Gonthier J.)
- “...**sufficient degree of connection...**” (para 54, per Gonthier J.)
- “...degree to which they actually are **instrumental in achieving the organization’s goals.**” (para 54, per Gonthier J.)
- “...**sufficiently related...**” (paras 56, 63, per Gonthier J.)
- “...**substantially connected to and in furtherance of**” (para 56, per Gonthier J.)
- “...key consideration is the **nexus** between the activity in question and the charitable purpose to be served.” (para 60, per Gonthier J.)
- “There is **no magic** to this process: it is simply a matter of **logical reasoning** combined with an appreciation of context.” (para 98, per Gonthier J.)

What is the requisite link between activities and purposes?

Cont'd:

- “...there must be a **direct, rather than an indirect**, relationship between the activity and the purpose it serves...**I would be reluctant to interpret “direct” as “immediate”**. **All that is required is that there be a coherent relationship** between the activity and the purpose, such that the activity can be said to be furthering the purpose.” (para 62, per Gonthier J.)
- “In light of the preceding discussion regarding the construal of charitable activities, **exclusively charitable activities** would be those that **directly further** charitable purposes and not other, non-charitable, purposes.” (para 154, per Iacobucci J.)
- Test is objective – the link exists...or it does not

Appendix C
Description of Scenarios

1. The Community Foundation of Upper Rubber Boot (CFURB) has been around since 1985 and has \$15 million of assets under management. The organization has 1.75 staff, a dedicated board of community volunteers (who are each paid an annual honorarium) and increased its funding during the community during the Covid-19 pandemic. The purposes of CFURB are to build community vitality in the Greater Upper Rubber Boot area, to hold assets in trusts for other registered charities and to advance community poverty reduction efforts. The organization has an FT ED and a .75 person that split their time between donor stewardship and grant making. The long-time ED's salary is now set at \$650,000.

The asset mix is broken down as follows:

- a \$2 million 'DAF for purpose'
 - The DAF was initiated by a family of which there are no living family members, with a purpose of supporting animal welfare in the downtrodden Big Toe neighbourhood. In the fund agreement that established the DAF, it specifies that the DAF has a spending rate 3.5%. There are no 'right to vary', successor or sunset clauses. During the pandemic, the sole animal welfare organization in the region permanently closed. The investment management fee on the DAF is charged 50 basis points.
- a \$5 million trust held for an operating charity.
 - The fund is charged an investment management fee of 50 basis points and incurs an investment advisory expense to CFURB of 1%.
- The other \$8 million is a general endowment that is managed by CFURB and is unrestricted.

2. The Lost Cause Foundation was created to support grassroots art organizations in the Arctic.

They have \$100M in assets. The foundation was established in 2001 through the gift of an Inuit artist who received a large inheritance. 4% purchasing power was part of the donation contract.

They currently have 1.5 staff.

They have a 6% return on their investments currently. 3% of the assets are in impact investments (\$3M) – all of which are program related investments.

The foundation received a donation of a piece of art from a prominent Inuit artist in 2010, they feel they need to hang on to it over time for the value to increase. The value at the time of the donation was valued at \$1M.

The foundation received a gift of real estate, valued at \$1M in Whitehorse. They occupy 50% of the building, and they lease out 25% to arts organizations, and 25% to a for-profit coffee shop.

They have a mortgage of \$500,000, which they needed to get to finance repairs after a flood.

Annual A&M Costs:

1. Insurance costs for building
2. Storage costs for art
3. Staff costs (ED and finance staff)
4. Outsourced CIO costs
5. Investment management expenses
6. Consultants for governance, etc.
7. Board and Cyber security insurance
8. IT costs
9. Communications costs
10. Sponsoring conferences
11. Costs of board meetings
12. Mortgage interest payments
13. Property management expenses
14. Utilities
15. Legal expenses for lease to non-profits
16. Membership dues and subscriptions
17. Travel costs
18. Meeting expenses

Total expenses come to \$6.5M

3. The Little Lawyers Foundation exists to encourage preschoolers to pursue charity law.

It has a \$100 million endowment consisting of PRIs, impact investments, and conventional investments.

The Foundation makes a grant to the Little Lawyers Childcare Society to deliver an educational program. The two charities are collocated in a building owned by the Foundation. To qualify for the grant, Little Lawyers needs to make upgrades to the building to meet code requirements for early childhood education and care facilities.

Further grant conditions require Little Lawyers to purchase police checks, deliver safeguarding training, and purchase sexual abuse liability insurance that is excluded from their general liability policy.

The governance of this Foundation is a hot mess. A majority of board members, after discovering unauthorized grants have been made, obtained a court order to claw back funds. Funds to Little Lawyers are partially returned in the month leading up to the Foundation's year end, and only after the building upgrades were completed.

4. The BW Public Foundation

Background:

- In existence for 40 years - community-based public foundation; seed capital for foundation was the family's agricultural business; The family subsequently sold the family business and gifted some of the proceeds to the foundation; started as a private foundation and was redesignated as a public foundation a few years ago when the family/donors no longer had governance and operating control

- Original charitable purposes provide support to qualified donees through its grantmaking to qualified donees; its stated objects have not been changed since its inception
- Staff - Executive Director (non-family member), grantmaking staff, and community engagement staff (for DAF program and food program)
- Historical activities: funding of / / grantmaking to qualified donees

Current activities:

1. Qualifying expenditures in support of the charitable sector through gifts to qualified donees and grants to grantee organization
2. Promoting community philanthropy - donor-advised funds (from public donors) and management of investment assets on behalf of other community foundations given this public foundation's experience with asset management oversight of its own funds (i.e., the Foundation acts as an umbrella charity helping with capacity building and efficiency for other registered charities)
3. Food program - food distribution program for food precarious vegan and vegetarian families and individuals in Ontario where the majority of the food inventory made available for distribution to charity beneficiaries are from in-kind contributions by local grocers of food produce that is at or just beyond their best before dates — no donation tax receipts are issued for these contributions but the Foundation's current accounting treatment (in line with ASNPO) is that the value of the in-kind contributions is recognized in the Statement of Income and Expenditures (P&L) as In-kind Contributions and the disbursement of the food items is shown as a Food Expense. Some food produce is purchased by the Foundation as well to supplement food inventories arising from the collection of food inventory from grocers
4. Program-related investments - the Foundation has a portfolio of \$50 million in PRIs (investments by the Foundation itself) and also incurs costs associated with identifying PRIs, providing seed capital to help those startups incorporate the structures that conduct the program-related activities, and use some of its Human Resources to share the investment opportunity with other public foundations and private social enterprise investors.

Current assets include:

1. \$500 million FMV total assets broken down as follows:
2. \$100 million of the \$500 million represents the investment assets of other charitable foundations that the Foundation has (as an umbrella charity) agreed to manage on the other charitable foundations' behalf because the Foundation has good experience with investment policy setting and has built the right investment infrastructure for charitable foundations (i.e., by hiring an outsourced ICIO who in turn researches investment counsel firms' product offerings, provides guidance on investment custodial service providers, manages portfolio rebalancing to achieve the required ROR and cash flows needed to fund the Foundation's programs, granting commitments, and activities)
3. \$350 million in investable assets of which \$50 million are invested in program-related investments
4. \$50 million in capital assets including a commercial building that houses the Foundation's operations and administration functions, food distribution centers, and food storage facility a portion of which is leased for FMV rent to a for-profit arm's length third party, transportation trucks

Current contentious issues:

1. Oppression actions over (1) executive compensation (2) strategic direction of Foundation/its future mandate (3) program disagreement
2. Non-compliance matter regarding a food regulation matter concerning the handling of expired food
3. Related to B., a lawsuit from a charitable beneficiary who claims to have experienced food poisoning from food produce supplied by the Foundation
4. Family is exploring the possibility of having its name removed from the Foundation's name — the Foundation will potentially incur legal costs and brand consulting costs associated with this future possibility