THE MUTTART FOUNDATION

Consultation on Housing

28 April - 1 May 2026

Ottawa, Ontario

A Summary of the Discussion

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. Written summaries of the presentations on international jurisdictions were provided by the international participants following the consultation and this content may vary slightly from the oral presentations. 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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Day 1

OPENING PRESENTATION

The session began with a synopsis of the history of the Muttart consultations. The panellists who were engaged at the very beginning of the consultation process spoke to the unique nature of the process, identified initial concerns expressed by both parties (the charitable sector and the regulator), and shared their perspectives on both the impacts and successes of this consultation process over the years.

Bob Wyatt then went on to explain the principles and ground rules for engagement for this consultation over the next few days.

ROUNDTABLE INTRODUCTIONS

Participants were asked to introduce themselves and to share one issue that relates to the Canada Revenue Agency (CRA) regulations on charities that engage in housing.

Here are the issues, questions and observations made by the participants:
- This topic is a slippery slope – even good policy may not solve all the issues.
- What are the areas of abuse?
- Housing is a means - it is not a charitable purpose - we need to ask who is served.
- There is limited case law in this area.
- Housing for employed people (mixed income, up to median household income, nonprofit or charity, etc.)
- When developing guidance in this area, should we take a principle-based approach (to allow maximum flexibility) or be more specific (so that organizations know exactly what is permissible)?
- When defining relief of poverty – can we acknowledge that this can apply to various income thresholds?
- How do we make accessing capital easier for charities?
- It would be interesting to explore and discuss housing for “key workers”.
- The current Government of Canada is not overly friendly to our sector, but housing is potentially a gateway for the sector because of the timeliness of the issue.

- The sector is serving more complex needs – greater intersectionality (housing and addiction, housing for older adults, etc.).
- What's different when charities are involved in housing – as compared to the private sector.
- What does affordability mean?
- We need to think of housing as it relates to community.
- We need to consider what is similar and/or different across geographic markets.
- How can we find reliable data related to housing?
- What are the current barriers for charities to provide housing?
- Housing has been focused on supply. We need to understand the full spectrum of needs - what other supports are needed?
- Social housing is important, but we also need to consider home ownership.
- How do Build Canada Homes and the new Canada Strong Fund affect our conversation?
- There are jurisdictional issues to consider when discussing housing?
- The CRA has not seen any substantive issues that are problematic in this area; although the housing guidance has been recently updated, CRA is not satisfied with the current guidance.
- Charitable funding is being sought to replace government funding – how can those work together?
- What are the metrics for "who" can access housing?
- How does the advancement of religion as a charitable purpose relate to housing?
- To advance this discussion we need to specify:
  - What charitable purpose does housing meet?
  - What activities further that purpose?
  - What issues are being encountered (e.g. private benefit)?
- Mixed housing can be seen as including business activities and providing private benefit.
- There is a category of "qualified donee" that is allowable under the *Income Tax Act* – for people over 55 (seniors housing).
- Challenges for charity – property taxes and GST.
- It is difficult for charities (particularly Foundations) to transfer dollars to nonprofits.
- We need constancy of policy over the long term.
- Mixed-use and mixed-income developments are seeing shifts in their portfolios of the ratio of market to non-market rentals.
- Shifting income can also be challenging – income of residents increases – do they then lose their housing?
- There are differences between acquisition and new builds (existing tenants).
- How is affordability affected over time?
- Potential risk of misuse, particularly through "captive" nonprofits established by developers.
- Housing is one of two or three massive policy failures.
- We should consider housing as a human right.

- How can we expand access to affordable housing?
- Who are eligible beneficiaries?
- CRA looks at both income and assets. Asset-based is problematic if goal is home ownership.
- Nonprofits can do some things that charities can't do - should they be treated equally?
- Are there interesting examples related to Indigenous housing? Or housing for persons with disabilities?
- Given governments' increasing emphasis on speed, is there an opportunity to act in this space? How can risk be effectively managed amidst accelerated timelines?
- Other areas to consider - shelters for victims of domestic violence, clergy housing, transitional housing and housing for people with addictions.

PRESENTATIONS BY INTERNATIONAL GUESTS

The content of the presentations from all four international guests can be found in the Appendix.

After the first presentation (Ireland), participants raised the following questions and observations:

Q – What are the projections for growth vs. the actual numbers of units being created in Ireland?

A – The government estimates that 12,000 units will be built next year but the charitable sector says that it will be able to build only 8,000 units. In contrast, the province of Quebec said it would build 1,000 new units next year for co-op housing, social housing, etc.

It should be noted that the housing regulator in Ireland has only been around for five years and the charities regulator is ten years old.

In Ontario, with a population that is three times larger than Ireland, 85,000 persons are homeless; half are considered chronically homeless, and 23% of them are children and youth.

The session adjourned for the day.

Day 2

Participants were invited to ask questions related to the presentations made by international guests.

Q – Australia has coding for housing (advancing social or public welfare) – that is the purpose. What is the effect of that? It sounds more inclusive.

A – That purpose was to modernize the language – it has not changed the concept of relief of poverty. The language is clearer: "relieving distress or disadvantage of individuals and families". It pushes the boundaries but hasn't yet been tested as it hasn't gone before the courts.

Comment: Pushing the boundaries can be very positive.

A – In Australia, the provision of crisis accommodation for those escaping violence, for people needing housing following a natural disaster, for veterans in need, for those formally incarcerated, etc. – are all acceptable activities.

Q – Could some of this parallel the Canadian concept of community economic development?

A – In some cases, this could be the case. In the USA, the category called “advancing public welfare and public benefit” is where some of this would fit.

A – In Ireland, the charitable purpose “relief of poverty and prevention of economic hardship and other purposes beneficial to the community” fits under “advancement of community welfare” and allows for alleviation of housing needs.

Comment: This all relates back to who are the beneficiaries. There seem to be two approaches: first is the measure of income, and second is how you define classes of people. How do you reconcile these: Perhaps defining classes provides more flexibility than firm metrics related to income?

Comment: One participant noted that the CRA has a list of purposes that have been previously approved. (The list is attached as an appendix.)

Comment: We could explore section 141-1(i) of the *Income Tax Act*. It allows for “housing for the aged” to be considered qualified donees. There are currently 13 organizations registered under this provision. Could this section be expanded to other groups?

Comment: In Australia, the biggest challenge for charities is having to deal with three levels of government. The Commonwealth gives money to the States with conditions; those conditions are sometimes too restrictive.

Q – What are the differences between the qualified donee allowance in the *Income Tax Act* and registering as a charity?

A – To qualify under the *Income Tax Act* – there needs to be exclusivity.

Comment: In England and Wales, the wording is “demonstrate that people are at risk of poverty” – this provides more flexibility.

Comment: We need to remember that in Canada, housing is not a charitable purpose. It can be an activity and must contribute to the charitable purpose.

Q - What part of the purpose conversation is preventing charities from doing the work? What are the roadblocks? What are the challenges for the sector?

A – Several of the challenges were presented during participant introductions. Examples and/or case studies will be helpful in identifying additional challenges.

KEY ISSUES REVIEW:

Drawing from the issues identified by participants Tuesday morning, a summary list was drawn up by the facilitators and shared with participants for their review and feedback.

Beneficiaries

- Housing is a means – it is not a charitable purpose – we need to ask “who” is served.
- Housing for employed people (mixed sites, up to median household income, (nonprofit or charity, etc.), working poor.
- When defining relief of poverty, can we acknowledge that this can apply to various income thresholds.

- The sector is serving more complex needs – greater intersectionality (housing and addiction, housing for older adults, etc.)
- What are the metrics for “who” can access housing?
- Who are eligible beneficiaries?
- Are there interesting examples related to Indigenous housing? Or housing for persons with disabilities?
- Other areas to consider - shelters for victims of domestic violence, clergy housing, transition housing and housing for people with addictions.
- It would be interesting to explore and discuss “key workers.”
- There is a category of “qualified donee” that is allowable under the *Income Tax Act* – for people over 55 (seniors housing).

Potential abuse areas

- What are the areas of abuse?
    - The CRA has not seen any substantive issues that are problematic in this area; although the housing guidance has been recently updated – CRA is not satisfied with the current guidance.
- Potential area of abuse – “captive” nonprofits – started by developers.
- Many definitions / categories are somewhat vague and various interpretations could lead to abuse.
- What does affordability mean?
- Social housing is important, but we also need to consider home ownership.
- We should consider housing as a human right.

Money

- How do we make accessing capital easier for charities?
- How does Build Canada Homes agency and the new Canada Strong Fund affect our conversation?
- Challenges for charity – property taxes and GST.
- Shifting income can also be challenging – income of residents’ increase – do they then lose their housing?
- There are differences between acquisition and new builds (existing tenants).
- How is affordability affected over time?
- Charity funding is being sought to replace government funding – how can those work together?

Data

- We need to consider what is similar and/or different across housing markets.
- How can we find reliable data related to housing?

Barriers

- What are current barriers? What are the future barriers we could anticipate?

Jurisdiction

- What jurisdictional issues exist (federal, provincial and municipal)?

Housing / Charitable purpose

- How does the “Advancement of Religion” as a charitable purpose relate to housing?
- To advance this discussion we need to specify:
  - What charitable purpose does housing meet?
  - What activities further that purpose?
  - What issues are being encountered (e.g. private benefit)?

Mixed use and mixed income

- What issues do mixed income and mixed use raise (private benefit, business activities, etc.)?
- Market rates
- Mixed-use and mixed-income developments are seeing shifts in their portfolios of the ratio of market to below market rentals.

Private sector vs. charities vs. nonprofits

- What is different when charities are involved in housing as compared to the private sector?
- It is difficult for charities (particularly Foundations) to transfer funds to nonprofits.
- Nonprofits can do some thigs that charities can’t do - should they be treated equally?
- Housing has been focussed on supply. We need to explore the reasons for the needs related to housing, and what other supports are needed.

Participants were asked to review the list of issues and provide comments

- We absolutely need to speak about purposes – most housing activities may be attached to “relief of poverty”, but we need to understand the other potential purposes where housing would be an acceptable activity.
- One way to view this is to start with purposes, then look at beneficiaries.

Before prioritizing the list of issues raised, participants felt it would be useful to have a common understanding of charitable purposes in Canada and how activities can directly or indirectly achieve those purposes. One of the participants offered to share a presentation on that subject.

The presentation can be found in the Appendix.

Discussion related to purposes

The broad issue of charitable purpose and the link to housing as an activity was raised several times. The presentation by one of the participants provided clarity and raised the following issues and questions:

- The question of private benefit is important. The benefit needs to be reinvested into the charitable purpose (e.g. charging market rent allows the charity to provide subsidies).

- We need to understand what private benefit is not allowed in housing projects.
  - Private benefit needs to be reasonable, necessary and proportionate.
- If there is private benefit, the charity needs to explain the connection to the purpose.
- Another question is whether the activity that creates private benefit is "related" to the charitable purpose.
- The presentation on purposes brought up an example of 'post-activity' private benefit (i.e. sale of property that had increased in value) which doesn't create issues for the regulator.
- Is the key issue "related business" and how it relates to private benefit?
- When thinking about private benefit, should we consider the benefit in both pre and post activities?
- When creating guidance guardrails, principles and examples will be useful.
- Most activities of charities ultimately do create private benefit (e.g. education equips people for the workforce).
- In Australia, the language used is that private benefit must be "incidental or ancillary". There are two key propositions: 1) if incidental activity naturally tends to the charitable purpose, and 2) the incidental activity is minor in quantitative terms to the charitable purpose.
- CRA is not concerned about post-activity (or downstream) benefit – the courts have shown acceptance of downstream private benefit.
- It is important to remember that the CRA does not set the law – the CRA interprets and administers the law.
- There are several CRA guidance products that address related issues but they are not all linked together. If the charity is furthering a charitable purpose (e.g. relief of poverty) and to do so it provides mixed housing, the additional units may be considered as investment (as opposed to related business).
- The charity needs to demonstrate that the investment side is clearly being used to further a charitable purpose. The challenge may be whether CRA evaluates each property individually or the entire portfolio of properties of an organization.
- Given the current housing crisis and the investment by the federal government (and many provincial governments) in this area, the strategies and investments need to align with CRA regulations.
- The issue of philanthropic capital investment in this area has not been discussed and needs to be part of the discussion.

In the afternoon, the following fictional scenario was provided and participants were asked to identify issues that this type of situation might raise, especially issues that might be offside with CRA regulations.

A registered charity whose purpose is the relief of poverty has as one of its activities the provision of housing for low-income Canadians. The charity wants to build rental units that will include both subsidized rentals and market rentals. The funds will come from Build Canada Homes and a philanthropist will also be contributing to the project.

Regulatory issues, questions and comments

- There would need to be more clarity on the eligibility criteria for beneficiaries and on the ratio of subsidized units to non-subsidized units.
- If there is commercial space on the site, there is a need to ensure that the revenues are directed back to the charity.
- The *Income Tax Act* says the charity must operate exclusively for charitable purposes, but these kinds of projects are likely to include non-charitable activities. Is the CRA okay with 'dual arc' activities that are both charitable and have incidental non-charitable outcomes?
- Is there room in the guidance to clarify that charities need to demonstrate that market rent units will subsidize the non-market units instead of looking at percentage of market and non-market units?
    - If you can show the math on how the market rates will support subsidized units, that should be sufficient for CRA.
- The CRA guidance is not clear. It was also pointed out that there is not much in the way of case law on these matters, which makes it more challenging to be definitive about what is in and out when it comes to charitable activities.

Non-regulatory issues, questions and comments

- Boards may be nervous about personal liability when organizations undertake this kind of project. They may feel more comfortable about the organization 'staying in its lane' and may be unwilling to commit to what can be perceived to be a high-risk venture without long-term certainty of the outcome.
- Financial sustainability is also an important consideration for boards. Beyond the build, they want to ensure that they can maintain operational costs over the long term.
- There needs to be consideration about other regulatory bodies beyond CRA and the rules and regulations inherent in the various jurisdictions in which housing projects take place.
- These projects can be quite complex and require a high degree of expertise regarding execution. Does the charity have the scope, capacity and knowledge to undertake the project?
- Could a charity that has a largely subsidized portfolio take on a mixed income build? Are issues dealt with on a portfolio basis or on a project-to-project basis?
- Charities without experience in the housing sector will encounter their most significant challenges at the application stage of a project; existing charities with a proven track record of undertaking sizeable are likely better able to address these issues.
- What happens if an established church registered as a charity wants to build housing on its own property? What are the issues? They come under the advancement of religion purpose so housing as an activity would have to be explicitly stated.
- Organizations in the housing sector know how to be landlords. They could have a building with market rentals on one side of the street and use their skills, knowledge and revenues to do a low rent building on the other side of the street. Is operating the building with market rents incidental to the activity of providing low rental housing on the other side of the street?
- Is the income from market rate units taxable?
- What is the public perception of the charity that owns a market rate building?

- Related-business activity is very specific at CRA. Passive activities like collecting rent, cleaning, and maintaining the building would not be deemed to be offside.
- Financial modeling would be useful and would allow a charity in more expensive cities to develop guidelines that reflect the local market. For example, a building with 90% of the units at market rent and 10% at subsidized rent might work best in some cases.
- This example was raised for discussion: a charity that focuses on housing creates a nonprofit property management company and outsources that function to the nonprofit. More nonprofits in the area ask for the charity's property management services so that 75% of the business is now coming from that activity. Is that allowable?
  - This would work if the property management business was a subsidiary to the charity. In Canadian charity law, incidental benefit refers to a private or non-charitable benefit that arises from a charity's activities but is permitted because it is necessary, reasonable, and secondary to achieving the charitable purpose.
- There was some question about the proportionality of the above two examples.
  - If there is no mathematical formula, there is less clarity in the interpretation. And if you are using your staff to do indirect activities, the charity may come into question.
- One of the issues that relates to charities doing business is competitive neutrality, but if the charity is renting out units at fair market value, you are not undermining the rental market.
- It was pointed out that there are different philosophies on revenue generation activities. For example, New York University once owned a spaghetti making factory and this business was allowed until regulations were later changed to disallow it. Australia's High Court permitted Word Investments Ltd, which operated commercial ventures, to maintain charitable status because all profits were directed towards charitable purposes. How close can we get to identifying the edges of what is permissible so as to not always be saying 'it depends'?
  - The *Income Tax Act* provides a categorization of activities called related business. If you are delivering your purpose through a commercial activity like a museum charging admission or periodically selling cookies for a fundraising event, these would not be considered business activities. It's the commercial activities carried out on a regular basis that are concerning to the regulator.
- How do we undermine fair market pricing? Isn't this the purpose of a charity? Housing is a natural monopoly so there are no fair market prices.
- For-profit landlords use a range of deductions to avoid paying taxes. The transfer of profits from market rate rentals to subsidized units means a loss of tax dollars, but it is meant to achieve the targeted purpose.
- Can we not agree that we want charities to be successful? Charities that can diversify their revenue streams will be more sustainable over the long-term. We should be applauding charities that make revenues and reinvest it in their purpose.
- The charitable sector is in this space because of market failure. We have deregulated private sector housing, and the nonprofit sector is now having to pick up the pieces.
- Who will deliver Build Canada Homes? It should be the non-market sector. We are having this conversation because 20 years ago, most people who were low income were not living in market housing. The very cheapest accommodation now requires

a family income of $120,000. We are so far from the bottom of what the market is offering that we are not competing with them. The market has abandoned about 40% of Canadians who are not being served.
- When the government expanded the number of childcare spaces, it was felt that delivery by nonprofits would be better and different from the private sector. The way in which we participate in the housing market should also be different from how the private sector does it.

Developing Scenarios

Participants were divided into four groups and asked to create scenarios meant to highlight one or more regulatory issues related to the activity of providing housing.

The following instruction was provided:

You are a charity, and your housing activities align with your charitable purpose. Your focus is on Canadians unable to access housing. The activities could be focused on a certain community of beneficiaries (such as the elderly) or on persons with a certain income level. Create scenarios that are likely to elicit questions about CRA regulations.

The session then adjourned for the day.

Day 3

The four scenarios that were developed on Wednesday were shared with participants. Each group provided a short explanation of their own scenario and answered any questions of clarification. The participants were then divided into four groups, given a scenario that they had not created, and were asked to identify 2-3 key issues that might be offside the current regulatory regime, that would require new regulations or regulatory change.

Scenario 1

Our charity has charitable purposes that include relief of poverty and providing community services for the aged, people with disabilities and people otherwise in need. The charity has acquired a tenanted building under the Rental Protection Fund Program - under that program the funding is a grant to a charity who agrees to keep the affordable rents. The balance of the purchase price is financed (government programming to support the charity financing the building). There is no means testing of the existing tenants in this building – rents range from deeply affordable to affordable. There is a Starbucks and a vacant commercial unit in the building on the ground floor.

There is space on the property for two more buildings. The Board has made the decision that the charity will build two buildings, one will be market rental with the tenants being the aged – there is no expectation of government subsidy for these rentals. The second building will be built under the Build Canada Homes program.

The rents will be below market, affordable, and available to those who are poor, disabled, unhoused youth, recovering from addiction or mental health issues and may present with other disabilities or are otherwise in need. There will be excess land on which the charity proposes to build community space which includes a bowling alley. The bowling alley will be available to those who live in the buildings at subsidized rates. The bowling alley will also be available to the general public – with a bonus (higher) rate available to staff at CRA (see below).

In the Rental Protection Building there are five floors of underground car parking. This is used for commuter car parking during the day and is used by the charity as a homeless shelter at night – and the charity brings in allied health care professionals for the provision of services. During the day the car park is charged out at extraordinary high rents (the building is across the street from a government department, and they make up a high percentage of permit holders in the car park).

The financial projections will show that the rentals and grants from the Rental Protection Building will support the lower rents and a portion of the financing charges in that building. The financing charges will also be funded by some of the revenue from the car park. Rents from the market-rate building will create surpluses which will bring the rents down in the Build Canada Home building. The bowling alley will be built with a generous donation from Mr. Harris who has agreed to give money to build Harris Lanes. He has given the money on the condition that a t-shirt printing operation be available with a screen-printing facility for the teams at the bowling alley. The Charity intends that this will provide jobs for people who are hard to employ.

Analysis of Scenario 1

- While this scenario presented several complexities, the biggest issue was seen to be the donor directed funds for the bowling alley and the t-shirt operation, which would be offside with CRA. Is the bowling alley central to the core design? Does it build community? Is it meant to provide training or create jobs for those living in the community? Will the profits be returned to the community? It was pointed out that providing a public amenity is generally deemed a charitable purpose by CRA.
- There would need to be some sort of guarantee that the rent protected units would continue to remain affordable but there was no indication that the charity would means test in the future. Affordability was not defined. There was also a question about whether the Starbucks rent was protected as well.
- This scenario includes a complex set of facts, but from an operational perspective, how many of the issues must be adjudicated at the beginning? Is there enough charitable purpose in the aggregate to approve a project of this nature?
- Concern was also expressed about the use of the underground parking lot as an overnight homeless shelter. While the activity is charitable in nature, this led to a broader discussion about the degree to which the private market has abandoned a significant numbers of people and that we are no longer providing even the most basic housing. Some spoke to identifying the values that underpin housing projects such as these, to ensure that the interests of all beneficiaries are protected.
- Overall, this project could be feasible from a regulatory perspective, but much more detailed information would be required.

Scenario 2

This scenario is based on a real-life example.

- Charitable purpose: relief of poverty
- Beneficiaries: Canadians unable to access housing

A charity purchased land and built a mixed rental and home ownership community with 47 units (free standing homes) made up of two-bedroom homes and homes adapted for disability. It is funded through a private family foundation, CMHC funding, provincial funding and tax breaks on development fees. The charity has a majority share in the condo companies.

Housing project

- Rental – 20 affordable rentals (but not supported housing) – eligible renters are closer to poverty.
- Home ownership – 27 homes – sold at below market value. Shared equity –charity owns 25% of each home and purchaser buys 75% using a mortgage (often from a credit union). To be eligible to apply for a mortgage, income must be $55k to $80K (above poverty line but below median). Homeowner doesn't pay rent for 25% owned by the charity. Purchaser can't increase their stake above 75%. Charity has first right of refusal to buy back from the purchaser with pre-set equity returns for the purchaser set at 2% a year. The charity also provided help to some purchasers with downpayments.
- Common green space and space for a community project.

Additional scenarios – what if the original planning included:

- Seven of the houses to be sold at fair market value to non-beneficiaries?
- a local food shop?
- a for-profit skating rink?

Analysis of Scenario 2

- One of the issues raised was the need for clarification about the beneficiaries. We don't know why they are unable to access housing, but having access to the household income thresholds as defined by regions would be useful in this scenario. There would also have to be means testing at the beginning of the project and a determination of what happens if the beneficiaries' income rises above the poverty level.
- In order to provide rental housing at below market rates, the project would need access to government funding and/or the ability to sell the seven homes to cross subsidize this cost. Would the sale of the seven homes be considered an activity that furthers the charitable purpose: relief of poverty?
- The cap on equity for the purchaser and the charity is important because it means the property stays in the affordable housing space.
- Generally, the participants were of the view that there would not be a problem with the food shop idea, insofar as the income generated from the rent would be directed back to the charity.
- The for-profit skating rink was not supported as a concept because it doesn't fill a

need, given that there are so many already. A swimming pool or a fitness facility might be more feasible and needed in the community, but more information would be needed on the plan, such as whether they would lease the land to a 3rd party and under what conditions, whether it would be to a for-profit or a nonprofit entity, how the community would benefit, etc.

- The cost of the homes comes into play. For example, a family on a $55,000 income should pay no more than $1,375 for a mortgage, condo fees and utilities. If the homes are worth $450,000, paying 75% of the mortgage would be roughly $2000 per month. Where is the benefit? You build equity but if you cap that investment to 2% it is below the 5% they are likely to get in the marketplace.
- Dealing with home ownership projects is complicated at the Charities Directorate. You won't find anything in the guidance, but when discussed internally they look at it from the private benefit lens: is the activity necessary, reasonable and proportionate? They recognize that getting people out of poverty is important, but does the private benefit exceed the rules?

Scenario 3

King Enterprises ("King") is a real estate developer. King holds land (the "Land"). It has concluded it is unable to make a profit developing the Land following its regular business model. King will instead establish a registered charity (the "the Cross Foundation") and gift the Land to the Cross Foundation. The board of the Cross Foundation will be the shareholders of King.

King and the Cross Foundation will enter into an agreement whereby the Cross Foundation will pay King fair market value consideration to develop the Land. King will be paid in full when the project is finished and the luxury units (described below) are sold by the Foundation on the open market. In addition, King will be given an indefinite lease at $0 in relation to the commercial floor described below. King will also be paid fair market value compensation to be the property manager going forward once the project is complete.

The development will be a mixed use 15 floor building allocated as follows:

- 1 floor will be allocated to commercial retail leased to for-profit retailers;
- 1 floor will be allocated to commercial offices;
- 7 floors will be allocated to affordable housing defined as housing accessible to families earning 75-100% of median income. These units are rented at rental rates calibrated to ensure affordability for the target demographics; and
- 6 floors will be allocated to deluxe high-end residential. These units will be sold at fair market value.

Analysis of Scenario 3

- A big red flag in this scenario is that King Enterprises has control of the charity. This would lead CRA to look at the issue of private benefit.
- King Enterprises is getting excessive private benefit because in addition to being paid full market value for the land, it is getting a 0% indefinite lease and future income as property manager.

- Is the commercial retail space deemed a passive investment by the charity, (i.e. collecting a rent check vs. running a business)? Is the charity charging fair market rates? If yes, then there are no private benefit issues.
- Is the construction and sale of condos considered a business? If it is a one-time sale of units never to be repeated, is this a business? Could it be categorised as fundraising instead? It would need to be clear that the sale of the condos underpins the funding for the affordable housing.
- Are the seven floors being offered to beneficiaries who meet the test for poverty? CRA (CG-009) says it's up to the charity to come up with their guidelines for the selection process. The CRA accepts that the charity can provide context for its definition of poverty.
- Community Economic Development (CED) policy specifies different levels of median income in a census district. If we move towards 75% or higher, are we moving towards the prevention of poverty or enabling them to get out of poverty? 75%-100% of median income would be $41 per hour. Should this be considered relief of poverty?
- In principle, the inability to afford housing is a proxy for being poor. You then qualify for relief of poverty. (For a definition of poverty, you can refer to the ACNC definition in Australia.) One can also look at market basket, census data, etc. as calculations of poverty, and other indices such as the material deprivation index.
- A concern is that we widen the population of beneficiaries to the point where we are going to the other end of the continuum, where people are at risk of becoming poor, but only on a very occasional basis. Will charities move away from addressing the housing needs of the most vulnerable? Will the sector gravitate to those who are less in need because it's easier to do?
- We need to think about the housing continuum. If you move people along the line (from high acuity needs to supporting housing to below market rents to market housing) it will create access to housing space for someone else.
- It would be interesting if the CRA refused registration on the basis this project isn't charitable and the case was appealed to the courts.

Scenario 4

This charity is registered under the fourth head to relieve conditions attributable to being aged.

The charity constructs a building (Grant World). The general contractor of Grant World is the brother in law of the CEO of the charity, who is willing to donate $1 million towards the build and will be the partner in initiative. The ground floor will be leased to a commercial entity, the first two will be rented to other registered charities, and the next three floors will be leased to a nonprofit housing corporation through the form of a grant. What remains of the building's 100 units will be leased out like "timeshares" to the aged for the summer months, who then sublease to students for the school year. The facilities will be specially adapted for the elderly (grab bars, no stairs).

The charity remains the owner of the building, collects rent, and manages the units that it rents out.

As capital becomes available, the charity seeks other locations to develop further properties with the same partner/general contractor above.

Analysis of Scenario 4

The group that reviewed the scenario made the following comments:

- The charitable purpose is not related to the relief of poverty.
- The purpose is related to relieving conditions attributable to being aged – and does not need to be responsive to financial needs.
- The group felt that simply providing housing for the aged probably did not meet the charitable purpose.
- The scenario did not provide any information as to what fees are being paid – is it fair market value? Or is the fee subsidized?
- The fact that grab bars are being provided may not be sufficient – what could be added is the presence of a nurse, or provision of meals.
- The private benefit being gained by subletting may be problematic.
- This example is similar to what could be provided by a for-profit company.
- Is this allowable under current regulation? Participants were uncomfortable with this as there does not appear to be a “means” test.
- In Australia, the guidance on housing goes into more detail on this issue.
- The scenario was developed to be uncomfortable. If this scenario is permissible, what is the loophole that may need to be closed?
- If this were a religious organization, would we have the same questions?
- Although there seems to be related business activity in the scenario – we would need to understand if the profits are then reinvested into the furtherance of the charitable purpose.
- Is proportionality an issue in this scenario?
- There doesn’t seem to be a procurement policy in the scenario; perhaps one way to get around this is to call it a private/public partnership – this can lead to mischief (i.e. inflated costs, provision of tax receipts).

Beneficiaries

One of the issues raised on the first day by many participants, and that was also part of the discussion in each of the scenarios, has to do with beneficiaries.

The facilitators shared an AI list of beneficiaries:

- Low-income individuals or families
- Persons experiencing poverty
- Needy/necessitous/underprivileged persons
- People of limited or small means
- Homeless individuals
- Refugees experiencing poverty
- Poor seniors
- Poor persons with disabilities

A discussion ensued in which the following points were raised:

- We need to consider more than the income level of beneficiaries. The cost of housing in different markets is also an important factor.
- Much of this related to how we define “poor”.
- Seniors and persons with disabilities do not need to be “poor” to access housing.
- It is up to the charity to make the case as to why housing can be provided to various beneficiaries.
- Relief of poverty is not the proper conversation – provision of housing to individuals who would consume more than 30% of their income is allowable (example: nurses in downtown Vancouver).
- Charities can have multiple purposes – charities need to be careful to ensure alignment of the housing activity to one of their charitable purposes.
- Housing provided by charities meets the needs of those not able to access the for-profit market.
- A participant raised a point about populations, such as Indigenous people, who may be unable to access market housing because of racism. Would this be a permissible form of housing.
- Other elements that could be considered in terms of the right to housing could include affordability, accessibility, security of tenants, safety, proximity to services, and non-discrimination.
- Many participants liked the suggestion that charities take a human rights approach to housing.
- One participant reminded the group that the purposes listed under the fourth head provide the space necessary to do much of this work.
- Participants now understand that there is quite of bit of latitude already allowed within the existing regulation.
- Could CRA provide a way for charities to test potential projects in advance? Could that be done by the policy division of the CRA?
- The CRA has an advanced tax ruling process where you can pay to get advice before a transaction. The alternative would be to provide 2 or 3 real life case studies or examples in the guidance.
- Reminder of three key pieces 1) if housing is built under federal/provincial/municipal dollars there are likely to be fewer issues with respect to CRA rules; 2) CRA is looking for undue private benefit; 3) charity needs to define relief of poverty/or beneficiaries.

Day 4

The facilitators started the day with a recap of what was discussed over the last three days:

- Roundtable introductions and preliminary identification of the regulatory issues that relate to the provision of housing by charities.
- Presentations by the international guests.
- Review of the issues, sorted into common themes.
- Discussion and presentation on charitable purposes and activities.
- The development of scenarios.

- Analysis and identification of the key issues in each of the different scenarios.
- Discussion on beneficiaries.

There were two other issues outstanding: private benefit and key workers. As time was limited, the participants opted for a discussion on key workers.

Key Workers

For the purposes of discussion, the group was referred to the UK's 2009 Charity Commission guidance which includes the following definition of key workers:

> Those persons (and their dependants living with them) who have need of such accommodation by virtue of:
>
> (i) their employment in the public or voluntary sectors or in a relevant employment in the locality in such manner or capacity as to advance education, relieve sickness, promote public health, relieve charitable need, protect human life and property, promote the sound administration of the law, or advance other charitable purposes for the general benefit of the community, including in particular (but without prejudice to the generality of the foregoing) the maintenance for the benefit of the community of its infrastructure, including supplies of gas, water, electricity and food, of transport and other means of communication, of telecommunication information and information technology services, and of emergency services; and
>
> (ii) the fact that they could not afford from resources available to them to secure such accommodation on normal commercial terms.

The discussion included the following points:

- How does the key worker conversation fit into this discussion on housing? Housing is a mechanism to relieve poverty. Should we not be looking at the income of workers instead? Should this not be more of a policy conversation, especially among municipalities, who struggle to provide services when it is too expensive for the workers to live in a city's core?
- If a long-term care facility provides housing to its own workers, is this not a key activity for meeting the charity's purpose. Of course, this raises questions about how the care facility is economically structured and overall viability. Is this not more about the business model of the charity? We should raise the wages instead. Providing housing distorts the market. Larger charities might be able to do this, but smaller ones would be disadvantaged.
- But the care economy requires key workers. It can be considered more of an extension of the core services already being provided. For example, what if childcare centres in northern Saskatchewan can't recruit workers? Could we set up a charity with the charitable purpose of advancement of education and undertake activities that provide supportive housing and transport the employees to their jobs? These jobs are part of the care economy. Are there existing nonprofits in the community that could take on this activity?
- The issue of housing for key workers is broader than the housing needs of workers in the care economy. For certain communities with a high cost of living (like Vancouver) or small rural communities that have problems attracting talent (like allied health professionals), providing housing for key workers could be a solution to achieving their purpose. But these employees would not be living below the poverty line.

- When it comes to health care workers, municipalities take the responsibility and the necessary measures to attract doctors and nurses. But look at construction trades: there's no obvious linkage to the charitable sector, but the need for housing in urban areas exists for this class of workers as well. For example, a carpenter's union might want to create a charity to provide housing in Toronto. There is no issue if they provide housing at market value. But if they provide housing at less than market rates, you are getting into private benefit.
- Employers are having trouble with lower wage positions. These employees' housing needs cut across all sectors, but the situations will require different incentives and tools.
- We are talking about two things here: a charity delivering key worker housing for its own employees and a charity providing housing for certain classes of essential workers in a community. It was recommended that we focus on principles and look to the Australian guidance for the principles they have developed, which could then be adapted to the Canadian context.
- There may be a contradiction between charitable purpose and supporting housing for workers in for-profit enterprises. We are then economically subsidizing the business, which would create unfair competition.
- Promoting the efficiency and effectiveness of other charities could conceivably be used as an argument to register a charity that provides housing to nonprofits.
- From the regulator's perspective, they mostly want to ensure there is no private benefit. It looks like regulations are not a barrier. The bigger picture of affordable housing needs to be addressed but regulation for charities working in this field is not a significant barrier.
- When you try to address a market failure in a community, there is room for charities to come up with solutions, even if they have to work with the private sector to deliver public or charitable services. The private benefit will be necessary and proportionate to the service. The tricky part is to define what jobs are deemed essential services.
- The market is producing some answers in the USA with its AI powered robots. Chinese robotic technology is already being developed to do jobs that have automated functions. The car industry is already using robots. These jobs will not require housing.

FINAL REFLECTIONS ON THE CONSULTATION

Participants expressed deep appreciation to the Muttart Foundation and specifically to Mr. Wyatt, as this was Mr. Wyatt's last consultation as host. Participants spoke to Mr. Wyatt's vision and perseverance as the consultations have led to changes that have favourably affected all charities in Canada.

The international guests, the government representatives, the Muttart team, allied professionals and the facilitators were also thanked.

Beyond the many expressions of thanks, participants made the following comments about their experience:

- This was a huge learning experience. We have all appreciated the creativity of those working in this area.
- One participant noted that not having a presentation by the CRA at the beginning of the consultation made it more challenging to focus the conversation.

- The idea of having a "rulings mechanism" might be very helpful – it may help to fast-track decisions.
- Trust in the process has led to some good, tangible outcomes. We now have more clarity, and we hope that an updated guidance will help unlock some new housing projects.
- The idea that housing could be a purpose under the fourth head of charity is interesting to explore.
- Appreciation was expressed to all participants for making those who were attending their first consultation feel welcomed.
- It is a great privilege to spend several days speaking in depth of one topic. We discovered that the problem is not what we thought it was. There is more clarity than we thought there was and it is a good feeling to know that most of what is currently being delivered is onside with CRA regulations.
- Additional or revised guidance will be helpful; we also need to find ways to inform others in the sector about what was learned.
- Several participants noted that they appreciated the presentation on charitable purposes and suggested that such a presentation could be used in other consultations.
- Appreciated the pacing of the consultation and the facilitation approach - conversations never felt rushed.
- Involvement of other government players (CMHC, Canada Build Homes, etc.) would be good. Maybe a bit more exercise (walking).
- Having Quebec represented was very helpful given that the issues in Quebec are often different than in the rest of Canada.
- It's great to understand the priorities of compliance. Risk is inherent in the work.
- We want good rules that are enforced and to get rid of rules that aren't helpful. In the end we all want the bad actors gone.
- Is there a way to prepare for these consultations? The best preparation is listening and engaging.
- One of the topics not covered is the role of philanthropy.
- This field will continue to evolve and will undoubtedly gain in complexity and may require bigger changes in regulation and the law.

CLOSING REMARKS BY BOB WYATT

Mr. Wyatt reflected on this Consultation which was his last as host. He mentioned that it was interesting that the topic of housing connects well to the topic of the very first Consultation: Community Economic Development.

The consultation process is about creating understanding of the issue from all perspectives. The consultations help the regulator understand how the guidance is received by charities and helps charities understand what challenges and issues are faced by the regulator.

Recognition and thanks were provided to:

- The facilitators, who are able to funnel all the conversations into input that benefits all Canadian charities.

- The first-time participants for trusting the process and bringing all their expertise.
- The returning participants for their devotion; their time is precious and their contributions are of great benefit.
- The international guests for their commitment to attending the consultations – their input allows us to understand and benefit from how issues are handled in each of their jurisdictions.
- The Muttart team for their incredible work in ensuring that the consultations are successful.

Finally, Mr. Wyatt thanked everyone for the special evening that recognized his vision and passion for the consultation process.

Appendix A
Presentations by International Guests
USA

Overview of US Rules for Charities and Low-Income Housing

The presentation began by noting that in the US, the standards for charity status are overseen by the Internal Revenue Service; the standards themselves are set forth in regulations issued by the US Treasury Department in 1959, interpreting section 501(c)(3) of the Internal Revenue Code. The statute itself is silent on the meaning of “charity,” hence the need for explanatory guidance.

The Treasury regulations draw on the Preamble to the Statute of Charitable Uses and English common law to amplify what the US Congress intended when it provided that charities are entitled to exemption from federal income tax. As a result, the US standards echo such familiar charitable concepts as the relief of poverty, the advancement of education and assistance to the elderly.

In addition to the Treasury regulations, additional guidance on charities and housing has been set forth in Revenue Procedure 96-32 which links the relief of poverty to the provision of housing to individuals and families that meet criteria promulgated by the US Department of Housing and Urban Development that define very low, low, and moderate income for purposes of tax credits provided to developers of housing as a means to incentivize the construction of housing for persons falling within the income definitions. The standards recognize that to be successful as a place to live, a community should reflect residents with a range of incomes, including very low income, low income and moderate income.

In addition to guidance on the provision of income-based housing, guidance has been issued regarding the provision of housing to the elderly, which takes the position that the elderly constitute a charitable class based on the special needs of that class of individuals. As a result, benefits provided to the elderly, including housing, that help address the needs of that class of individuals are appropriate for a charity without regard to the assets or income of the elderly beneficiaries. Housing for the elderly as a charitable activity rests on the extent to which the charity in question helps address the needs of the elderly.

It was also noted that the provision of housing to students and, in appropriate circumstances, faculty and administrators of a school or college/university can also qualify as advancing education, yet another basis on which the provision of housing can be considered a charitable activity.

The special rules for financing housing facilities were also discussed, particularly the use of tax credits provided to developers of low-income housing if the housing meets particular requirements set by the Department of Housing and Urban Development. The federal tax credits are managed by the states in which the projects are located, even though the credits themselves reduce the federal tax liability of the holder. The credits can also be sold to other entities, such as banks and other financial institutions. Once awarded, the credits provide a tax benefit each year for ten years. The amount of the credits varies with the nature of the property, such as whether it is new construction or the renovation of existing property.

Appendix B
Presentations by International Guests
United Kingdom and Wales

Backgrounder on the UK and Wales charitable housing sector

The charitable housing sector began about 1,000 years ago with the first almshouses – housing for people in need by reason of sickness, age, etc. There are still over 1,600 almshouse charities in existence.

Then around the middle of the 18th century there was recognition of the need to provide better quality housing to the poor and an alternative to the workhouse. A number of 19th century philanthropists set up housing associations to provide housing in inner cities, for example: Joseph Rowntree, Octavia Hill, George Peabody, and the Cadbury brothers.
Local authority social housing kicked in later, and now the majority of social housing is provided either through local authorities or Registered Social Landlords, which are not charitable. There was a big argument in the 1990's when the UK government wanted to transfer large tranches of social housing to charities. The Charity Commission argued not all the tenants fell within categories of charitable beneficiaries, and so transfers were made to non-charitable housing associations.

Our regulatory system

Just to outline our regulatory system, at government level we have charity law regulation by our Charity Commission and tax regulation by His Majesty's Revenue and Customs (HMRC). At local authority level, we have planning decisions and local property taxes (known as business rates).

Currently there are significant challenges for housing charities, but the charity law and main tax framework are not cited as being uppermost among those challenges. There have been few, if any, Charity Commission or HMRC inquiries into housing charities around issues of selection of tenants/mixed use developments.

Relevant charitable objects

Charity legislation for England and Wales sets out 13 charitable purposes. There is no stand-alone housing purpose – but housing generally falls within:

- Relief of poverty;
- Relief of hardship; or
- Rural or urban regeneration.

Housing can also be provided under other purposes such as promotion of education, promotion of religion, and advancement of health - for example, housing for a school caretaker or religious leader, and also housing for key workers.

Providing housing "for the benefit of the community" is not charitable – there was a failed application by a registered social landlord in 1982 for recognition of charitable status. Helena_Partnerships_Limited_v_HM_Revenue_and_Customs.pdf

But a charity can limit housing to members of a particular religious community without being in breach of charity or equality legislation. A 2020 case went to the Supreme Court on this issue. R (on the application of Z and another) (AP) (Appellants) v Hackney London Borough Council and another (Respondents) - UK Supreme Court

What housing related activities can be carried out in pursuance of these purposes? Activities to further these objects can include:

- Providing rented housing
- Low cost home ownership schemes
- Making equity loans at low or 0% interest
- Social investment in purchasing land/housing

Relief of poverty – test for eligibility

The Charity Commission recognises that it's generally charitable to relieve either the poverty or financial hardship of anyone who "does not have the resources to provide themselves, either on a short or long-term basis, with the normal things of life that most people take for granted".

And in the housing context, a person may be regarded as 'poor' or in 'necessitous circumstances' if they cannot afford from all their resources either the purchase price or the market rental of accommodation that would provide a modest and decent standard of living. The Commission's guidance says relief must be commensurate with need.
Below is an extract from the Charity Commission's Analysis of the law underpinning The Prevention or Relief of Poverty for the Public Benefit.

Relief of poverty

21. In **IRC v Baddeley**[21] Viscount Simonds stated:

> *"..........relief connotes need of some sort, either need for a home or for the means to provide for some necessity or quasi-necessity, and not merely an amusement, however healthy."*

By the term "necessity or quasi-necessity" Viscount Simonds appears to be referring to either a necessity or something which is such an established part of a modest standard of living that it can be regarded as a "quasi-necessity" rather than a non-essential item or activity.

22. The courts have sometimes defined poverty by having regard to the need and the inability of an individual to satisfy that need from their material resources e.g. **Trustees of the Mary Clark Home v Anderson,** and **In re Gardom**. In these cases, the court defined the beneficiaries as poor because they were persons in need of the facilities provided by the charity and they could not obtain access to such facilities without assistance from the charity. The facilities in question were provided for the purpose of satisfying a need for a necessity, namely a modest standard of accommodation.

23. In those cases where the need is the lack of resources to provide a modest standard of living having regard to general standards, the relief will be assistance in attaining those standards. It is clear from caselaw that the relief given should be commensurate with the need[22].

The relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage – test for eligibility

The relief provided must be linked to a particular characteristic of the beneficiary, for example age, financial hardship. The relief must be commensurate with need.

In relation to age, in the Joseph Rowntree case mentioned in more detail below, the Charity Commission said itself "The problem of the elderly is a growing one in modern society. Longevity increases and the more traditional forms of family life and protection and care are no longer, for one reason or other, fashionable. But if elderly people by being helped to obtain suitable accommodation with an element of community or shared services or protection through the services of a warden can defer the time when they may fall on to state services or need a greater degree of shelter such as a hospital or a geriatric ward, then this is in the long term to the benefit of the community as well as to the benefit of the individuals concerned."

Relieving need by long leases/affordable low-cost home ownership

A 1982 High Court case established relief can be in the form of granting long leases which give security of tenure.

Two housing charities, which are part of the Joseph Rowntree group of charities, applied to the court for determination of whether five potential schemes for homes for the elderly were charitable. The schemes all involved sale of units on long leases, some where applicants had to have modest means and some where they did not.

The Charity Commission had said this activity was not charitable. But the court held that all five schemes were charitable.

More recently but still not very recent, in 2009 the Charity Commission and HMRC published joint guidance on affordable low cost home ownership (LCHO) Affordable home ownership: charitable status and tax. (HMRC also published this short supporting guidance Annex vii: affordable home ownership — charitable status and tax - GOV.UK.)

Some key points from the guidance:

- If there are good reasons for doing so, charities can offer sales at a range of different percentages.
- A small percentage of outright sales may constitute incidental non-charitable activity and not be taxable.
- Charities can seek clearance if unsure about a particular project.

What about a change in circumstances for tenants?

In the Joseph Rowntree case, one of the Charity Commission's objections was that "the schemes do not satisfy the requirement that the benefits they provide must be capable of being withdrawn at any time if the beneficiary ceases to qualify." The judge considered this and concluded:

> If the grant of a long-term leasehold interest with the concomitant security of tenure that such an interest would give to the elderly is necessary to meet the identified needs of the elderly, then in my judgment that is no objection to such a grant. The plaintiffs have put in evidence that they oppose the inclusion in a lease of any provision entitling the plaintiffs to determine the lease in the event of a change in financial circumstances of the tenant.

> Their main reason - which to my mind is a cogent one - is the unsettling effect it could have on aged tenants.

The Charity Commission has slightly different guidance for almshouses and RSLs:
Almshouses (From OG 61 Almshouse guidance)

- Normally, trustees should ask a resident to leave almshouse accommodation if their change of circumstance would have disqualified him or her as an applicant if it had happened before their appointment. However, it would not be a breach of trust for them not to do so in every case. The treatment of a resident is a matter for the discretion of the trustees, and before making such a decision, they should consider relevant factors such as:
  - the wishes of the resident;
  - the age of the resident (and the possible unsettling effect of asking him or her to leave);
  - the health and physical capacity of the resident;
  - the alternatives open to the resident;
  - the relative merits of any other applicants for appointment; and
  - any other pertinent factors (such as possible adverse publicity).

Registered Social Landlords

The following is a description of Registered Social Landlords from the withdrawn Charity Commission Guidance for charitable registered social landlords:

> The Government, Commission, and Corporation are all clear that it is not appropriate for RSLs to means-test beneficiaries with a view to terminating their tenancies should their economic circumstances improve. Equally, charitable RSLs should remind beneficiaries that the RSL's charitable support can only be offered in law because their circumstances are such as to show a need for the help that the charity can give. The beneficiary should be asked to inform the trustees if his or her circumstances improved substantially so as to throw this into doubt. All charitable RSLs should, from the outset, have in place policies for dealing with cases that come to the trustees' attention. RSLs might, for example, promote any available incentive schemes leading to full or shared ownership of the current (or other) dwelling.

For rural or urban regeneration, Charity Commission guidance says "the terms of occupation [of the housing] must be commensurate with the provision of charitable relief". And, when granting leases, the trustees should ensure that, when the site has been regenerated, they can reclaim property or its value from tenants who no longer qualify as beneficiaries.

Housing for key workers

The 2009 Charity Commission guidance includes a definition of key worker:

> 'those persons (and their dependants living with them) who have need of such accommodation by virtue of:
> (i) their employment in the public or voluntary sectors or in a relevant employment in the locality in such manner or capacity as to advance education, relieve sickness, promote public health, relieve charitable need, protect human life and property, promote the sound administration of the law, or advance other charitable purposes for the general benefit of

> the community, including in particular (but without prejudice to the generality of the foregoing) the maintenance for the benefit of the community of its infrastructure, including supplies of gas, water, electricity and food, of transport and other means of communication, of telecommunication information and information technology services, and of emergency services; and
> (ii) the fact that they could not afford from resources available to them to secure such accommodation on normal commercial terms.

The guidance also says properties must be within a reasonable travelling distance of the key worker's workplace. Arrangements with purchasers should include resale back to the charity if the purchaser wants to sell.

What levels of incidental private benefit are permissible?

In the Joseph Rowntree case, the Court considered issues of private benefit and concluded the following were, in that case, acceptable incidental private benefit:

- A tenant can pass on the tenancy to a spouse or other dependent even if they don't meet the initial criteria for qualifying for the accommodation.
- A tenant profits from the increase in the value of their equity – the court felt this was acceptable, particularly as the profit is not at the expense of the charity.

The Charity Commission's 2009 guidance includes this under the heading of "Safeguards against non-incidental private benefit ":

> When shared-ownership purchasers sell on their share (and assuming that they have not increased their interest to complete ownership) RSLs will want to ensure that the home is resold on similar terms to a properly qualified beneficiary household. Historically, shared ownership leases have stated that RSLs must seek subsequent buyers from their own or the council's housing waiting lists. More recent shared ownership leases include a pre-emption right, meaning that residents must offer the home back to the RSL first, before seeking a buyer elsewhere. These terms are intended to enable you to find suitable buyers for resales.

For sheltered housing, where there is a warden to support residents, the provision of housing to the warden is acceptable incidental private benefit. prevention-or-relief-of-poverty-for-the-public-benefit1.pdf

Mixed use developments

Mixed use is used here to mean either a mix of Low Cost Home Ownership (LCHO) and commercial, or a mix of LCHO and outright sales at market value.

HMRC is willing to offer clearance for proposed developments, either at the planning stage or if circumstances change as a development progresses.

The 2009 Charity Commission guidance has an appendix of examples including:

- It's not charitable to plan from the outset to sell a significant percentage of a mixed development as outright sales. The example given is 30% outright sales.

- "Selling to non-charitable beneficiaries may be incidental to the charitable purpose where it is part of a mixed development which is reasonably considered to be a more appropriate way of relieving charitable housing need than providing LCHO only."
- If circumstances change from time development is planned to time properties are ready for sale so that too few beneficiaries can afford LCHO, the charity can transfer some properties to outright sale and treat as non-primary purpose trading. What matters is what the charity planned/expected to happen, not what actually happened.

Use of wholly owned trading subsidiaries

In England and Wales, charities can trade for profit if it's in pursuance of their primary purpose or ancillary to their primary purpose. Otherwise, any trade for profit is taxable and must usually be routed through a wholly owned subsidiary.

Examples of non-primary purpose activities in the housing context include:

- Funding planning applications for non-charitable use of charity land.
- Buying and selling properties just to make a profit.

Charities may also choose to run certain primary purpose activities through a subsidiary to ring-fence risk or for possible VAT benefits: for example, the YMCA Wimbledon development mentioned below.

Other tax rules relevant to housing/owning land

Any investment in land for financial benefit is treated as qualifying charitable expenditure. Annex iii: approved charitable investments and loans - GOV.UK

Rental income from land is tax exempt provided the profits are applied for charitable purposes. But if services are provided along with the use of the land or buildings, for example, provision of a caretaker, food or laundry, these services in themselves might amount to trading. Annex i: tax exemptions for charities - GOV.UK

We also have a charity law framework under the Charities Act 2011 that disposals of charity land require prior Charity Commission consent unless certain criteria are met.

What can help make a charity housing project affordable/viable?

- *Charity already owns high value land* – either in a central commercial district or high value residential district, for example 200 Blackfriars Road Case Study 5: Southwark Charities - Planning the Future - United St Saviour's Charity and YMCA Wimbledon YMCA Wimbledon - Housing Design Awards.
- *Interpretation of "best value*" – for Charities Act 2011 consents and self-certification, acceptance by the Charity Commission that 'best value' can take into account price and delivery of social value.
- *Funders willing to forward fund planning costs -* planning is uncertain and costly.
- *Community led developments* – these reduce the likelihood of planning objections from local residents.
- *Collaboration between separate projects*

- *Collaboration between similar charities to make joined up approaches to investors*
- *Sector resources* – For example the Archbishop of Canterbury's Commission on Housing, Church and Community partnered with the charity Housing Justice to release a series of resources to empower churches to respond to the local housing need of their area. Your response to local housing need – Housing Justice

Appendix C
Presentations by International Guests
Australia

Current Housing Situation in Australia

Housing supply (both rental and ownership) and affordability are high on the agenda of the Australian national government and of each State and Territory. As of early 2026, housing is ranked the second-most significant political issue in Australia, trailing only the broader "cost of living" category. It has consistently risen in importance, becoming a defining, top-tier issue in federal politics, frequently ranked above healthcare, crime, and the economy, particularly among voters under 40.

In December 2025, a national housing umbrella organisation summarised the situation as:

- The national mean price of residential dwellings surpassed A$1 million (CA$960,000) for the first time in 2025, making home ownership increasingly out of reach for many Australians.
- Over 122,000 people were experiencing homelessness on Census night (pop. 27m), with the rate rising to 48 per 10,000 people. In 2023–24, around 280,000 people accessed specialist homelessness services, and persistent homelessness is increasing, particularly among First Nations people and those with mental health issues.
- 71% of low-income households are experiencing housing stress, with many allocating more than 40% of their income to housing costs. Nearly one in three renters missed a rent or mortgage payment in the past year due to financial hardship, and 19% reported having to couch surf or sleep in their car.
- The shortfall in social and affordable housing is now estimated at 640,000 households, with average waiting times for social housing exceeding 10 years in some regions.
- Rental stress is worsening, with a sharp rise in people stuck in rental stress for over two years, and one in four renters in stress having no savings to manage an emergency.

New housing structures, "Special Purpose Vehicles" (SPVs), that leverage government funds through loans and subsidies have been developed as well as partnerships with for-profit organisations such as developers and financial institutions. Two reports on SPVs are:

- **Paper 1: Advice to Peaks (Final)**
  This paper explains what's driving the growth in use of SPVs and examines the policy and regulatory issues this creates.
- **Paper 2: Advice to CHOs (Draft)**
  This report provides CHOs with information on how to establish SPVs, what to consider, and the associated risks and opportunities.

  Legal Firm Housing Briefs:

- Unlocking potential: The role of institutional capital in social and affordable housing
- https://www.gtlaw.com.au/insights/role-of-institutional-capital-in-social-and-affordable-housing
- Why an SPV funding structure for community housing projects requires special attention
- https://www.gtlaw.com.au/insights/why-an-spv-funding-structure-for-community-housing-projects-requires-special-attention

Australia – Charity Regulation

Australia is a federation of states with a Commonwealth government.

The constitutional power to regulate charities rests with the States.

The Commonwealth has been able to use its ancillary constitutional powers for taxing and corporations to create a national charities commission as a gateway to federal tax exemptions and concessions. It is known as the Australian Charities and Not-for-Profit Commission (ACNC), established in 2012. https://www.acnc.gov.au

Destination of Profits Test

The case of *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Ltd* (2008) 236 CLR 204 (Word Investments) has been a profound watershed in Australian charity law jurisprudence, entrenching the destination-of-profits test in Australian taxation law.

Word Investments Ltd (Word) was established in 1975 by Wycliffe Bible Translators (Wycliffe), an evangelical missionary organisation, as an income tax-exempt charity. Word provided financial and fundraising support to Wycliffe. It also claimed that Word Investments was exempt as a charity.

Word Investments initially raised funds through housing development and then passed any surplus on to Wycliffe.

The Administrative Appeals Tribunal, the Federal Court, and then the Full Court of the Federal Court found, by examining its constitution, that Word was charitable. The High Court found that Word was entitled to be regarded as a 'charitable institution'. It was found that Word's objects were confined to advancing religious charitable purposes, and it endeavoured to make a profit only in aid of its charitable purposes. They considered that isolating profit as the relevant purpose would create a false dichotomy between the characterisation of an institution as commercial or charitable. In that regard, although the commercial fundraising activities of Word were not intrinsically charitable, they were charitable in character because they were carried out in furtherance of a charitable purpose.

This has allowed charities to conduct fundraising businesses that are free of income tax, provided that all funds are used for their charitable purposes.

Statutory Definition of Charity

The Commonwealth has also legislated a statutory definition of charity for federal purposes in *The Charities Act* 2013. https://www.acnc.gov.au/for-charities/start-charity/role-acnc-deciding-charity-status/legal-meaning-charity

While the Charities Act specifies a list of twelve charitable purposes (**NB, not activities),** the statute's design allows the common law definition to continue to operate. The Charities Act largely adopts the accepted principles of the common law, seeks to clarify uncertain matters, and allows the courts and regulators, as quasi-judicial decision-makers, to continue developing definitions within the Act.

The provision of housing is an activity (**NB NOT a purpose**) that may be undertaken by an organisation with one or more of the charitable purposes set out in the Charities Act.

The most common purpose of those undertaking housing activities is the advancement of social or public welfare (akin to the relief of Poverty). The Charities Act provides that the purpose of advancing social or public welfare includes, without limitation, the purposes of:

- relieving the poverty, distress or disadvantage of individuals or families,
- caring for and supporting the aged or individuals with disabilities, and
- caring for, supporting and protecting children and young individuals.

ACNC Policy Statement on Housing

The ACNC has issued a Commissioner's Interpretation Statement (CIS) on Housing. This Commissioner's Interpretation Statement is a public statement and is considered binding on ACNC officers. Commissioner's Interpretation Statements set out how the ACNC interprets the law on the relevant topic.

This Interpretation Statement was initially published on 1 December 2014 and revised in November 2021. https://www.acnc.gov.au/tools/guidance/commissioners-interpretation-statements/commissioners-interpretation-statement-provision-housing-charities#section-7737 It is currently under review again, with public consultation on a draft closed in December 2025 (the draft was included in the readings package but is no longer available online).

One of the drivers for the ACNC review is the Commonwealth government's Housing Australia Future Fund (HAFF). https://www.housingaustralia.gov.au/funding-under-housing-australia-future-fund

HAFF is a dedicated $10 billion investment by the Australian Government, established in November 2023 under the Housing Australia Future Fund Act, to improve housing outcomes for Australians. Through the HAFF, Housing Australia is working in partnership with all levels of government and the community housing, development and finance sectors to support the delivery of 20,000 new social homes and 20,000 new affordable homes across Australia over five years from 2024.

Housing Australia provides loans and grants for projects that increase the supply of social and affordable housing and address acute housing needs across Australia, including regional, rural and remote areas.

The updated ACNC CIS statement aims to:

- achieve greater harmonisation with State and Territory social housing tenant eligibility criteria,
- provide guidance on tenant cohorts that are commonly prioritised for funding, including veterans and older women,
- update home ownership guidance to make clear where the ACNC will accept that any private benefit is merely incidental,
- provide more detailed guidance on how we assess benefits to third parties, including private and public investors, and
- clarify the ACNC's holistic approach to assessing poverty, distress and disadvantage.

Two significant submissions are:

Law Council of Australia https://lawcouncil.au/resources/submissions/draft-commissioners-interpretation-statement-on-charities-provision-of-housing

National Shelter https://shelter.org.au/submission-to-the-acnc-consultation-on-the-commissioners-interpretation-statement-charities-provision-of-housing/

State Definitions of Charity

As noted above, there are State definitions of charity as well. Australian colonies received English law on settlement, including the law relating to charitable trusts and the Statute of Charitable Uses of 1601 (Statute of Elizabeth). As Australian states were formed, they adopted or closely followed the English definition of charity as developed from the Preamble to the Statute of Elizabeth. The classification of four heads of charitable purposes from Pemsel's case has been the foundation upon which Australian courts and legislatures have built Australian charity jurisprudence.

There have been calls for the state jurisdictions to align their statutory definitions of charity with the Commonwealth's Charities Act to mitigate the maze of different definitions of charity, particularly in relation to state taxes.

In addition to the common law definitions, the terms 'charity', 'charitable purpose' and 'charitable status' occur in 45 pieces of State and Territory legislation. Some have specifically included or excluded 'housing' in their definitions. For example:

- The Land Tax Act 2004 (ACT) does not provide any broad exemptions for charities, although it does provide specific exemptions for religious institutions and ***nonprofit community housing***. However, the Duties Act 1999 (ACT) and the Payroll Tax Act 2011 (ACT) do provide exemptions for 'charitable organisations.'
- Qld Collections Act 1966 Section 5 'Charitable purpose' can mean 'charitable' according to Qld law, the supply of help, aid, relief or support, education or instruction, ***housing assistance to people in distress.***
- The Duties Act 1997 (NSW) and the Land Tax Management Act 1956 (NSW) both define eligible charities by reference to charitable purpose, albeit through the use of different definitions. On the other hand, the Payroll Tax Act 2007 (NSW) adopts the common law definition. The effect of this disparity is that, in practice, the Revenue office will apply different considerations to charity concessions based on the type of concession that is sought.

Appendix D
Presentations by International Guests
New Zealand

Focus on purpose – What Does a World-Leading Framework of Charities Law Look Like? by Sue Barker, a report prepared for the New Zealand Law Foundation Te Manatū a Ture o Aotearoa for the 2019 International Research Fellowship.
https://www.nzlii.org/nz/journals/NZLFRRp/2022/3.html

Box 3.4 beginning on page 131 – case study of the *Re Queenstown Lakes Community Housing Trust* [2011] 3 NLZR 502 (HC) case.

- relief of poverty and non-incidental private benefit (i.e. when does housing someone stop being charitable?)
- mixed-used properties
- what charities can do versus when they need to work with intermediaries

Box 3.4 – social housing case study:

In *Re Queenstown Lakes Community Housing Trust* [2011] 3 NLZR 502 (HC) ("**Queenstown Lakes**"), the purpose of the Queenstown Lakes Community Housing Trust ("**the Trust**"), as expressed in its trust deed, was to "provide housing … for households that … will contribute to the social, cultural, economic and environmental wellbeing" of those living within the Queenstown area, at a cost within their means. The Trust was an initiative arising out of a community study undertaken by the Queenstown Lakes District Council ("**the Council**"): housing affordability was having such a negative impact that the Queenstown community was having difficulty attracting and retaining key workers vital to its functioning and operation. Queenstown is a tourist town not unlike Aspen in Colorado; work needed to service the tourist industry, such as making coffees and cleaning toilets, often does not pay sufficiently well for workers to be able to afford to live in the expensive Queenstown area. Commuting half an hour by car (assuming the worker had access to a car) from either Cromwell (on the other side of the Shotover Gorge) or Kingston (at the southern tip of Lake Wakatipu) was not considered a realistic option for those working often unsociable hours on often low wages. Public transport was also unlikely to be realistically available at such times.

Appendix E
Presentations by International Guests
Ireland

Some background on the Social Housing Context in Ireland

Ireland, with a population of 5.6m people, had 17,517 people accessing state-funded emergency accommodation in March 2026, according to recent figures reported by the Department of Housing, Local Government and Heritage. This figures includes 5,571 children and 2,659 families. These figures do not include the 290,000 people who are known as the "hidden homeless" and comprise those families and individuals who do not have shelter of their own but are currently "couch surfing" between family, friends and acquaintances (Simon Communities of Ireland charity). According to the Irish Parliamentary Budget Office, 113,500 households had ongoing need for permanent suitable social housing at the end of 2024. This figure included 59,900 households on the social housing list and a further 53,000 household in active Housing Assistance Payment tenancies who were still in need of secure accommodation. Waiting times for family accommodation (i.e., more than two bedrooms) on the social lists can extend up to 10 years. There is a seven-year wait for a one-bedroom accommodation.

The definition of charitable purposes under s 3 of the Charities Act 2009 contains several possible categories through which housing can be delivered as a charitable purpose:

- *Section 3(1) a*) the prevention or relief of poverty or economic hardship;
- Section 3(11) (*a*) the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, or disability, and
- Section 3 (11) (*l*) the integration of those who are disadvantaged, and the promotion of their full participation, in society.

Nonprofits delivering social housing are required to register with the Approved Housing Bodies Regulatory Authority and such bodies are known as "Approved Housing Bodies" or "AHBs".

Over 90% of AHBs are also registered charities and are therefore also regulated by the Charities Regulatory Authority (CRA).

Social and Affordable Housing in Ireland

The Charity Landscape

The Irish Landscape of Approved Housing Bodies

1800s: Philanthropic Housing Trusts

1922-1970: State funding for social housing; Targeted charitable housing

1973: Cooperative Housing Ireland

1979: State grants to NPOs to provide social housing

1992-2019: State backed Local Auth loans to AHBs

to provide rental accommodation

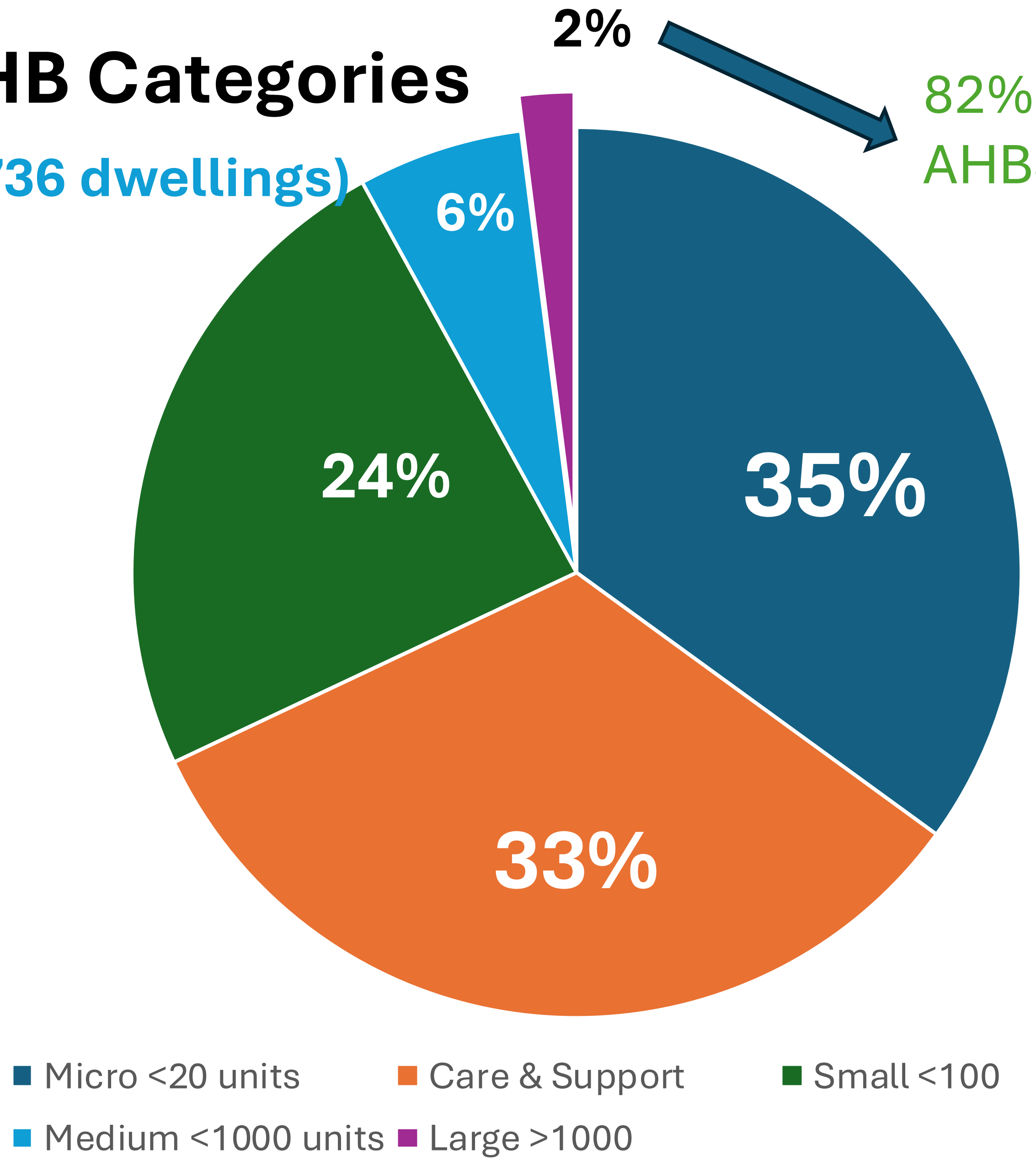
Today: 427 Registered AHBs (95% =charities) regulated by

Charities Regulator (CRA) & AHBRA (AHB regulatory authority)

Large AHBs (2% of sector; 9 AHBs) provide 73% of social housing stock;

AHB Categories

(67,736 dwellings)



82% of growth expected from 2% of Large AHBS (9 entities) in the next few years.

The sector is financially significant: €1.95 billion in total income; €9.8 billion in fixed assets; €8.6 billion in liabilities.

Sector liability comprises:

- €4.2 billion in long-term loan financing.
- €1.9 billion in government capital grants.
- Remaining liabilities include future CALF, CREL and other debt obligations.

The AHB Sector is heavily State-funded (99% of capital financing is derived from 3 Government loan programmes (CSO, 2017).

Legislatively enabled housing schemes

Social Housing (since 1883)

- Income thresholds in Ireland based on **net household income** and **location**, with maximum limits for a single person reaching €40,000 in high-cost areas

Cost Rental Housing (2021)

- Net Income < **€66,000**
- You do not qualify for social housing support
- You can pay rent (<€35% of income)
- No owned property
- (Aimed at priced-out renters o/s social housing T/Hs)

Affordable Housing (2024)

- Helps people on moderate incomes to buy new homes at reduced prices
- Local authority takes % stake in home to cover reduced price
- Proof from Bank that you cannot get a mortgage for 85.5% of the market value of the home.
- Buy back rules

The State is the main funder of AHBs in Ireland

37 of Ireland's AHBs are classified by EUROSTAT as being "on balance sheet" as part of the general government sector in the national accounts due to the very limited control AHBs enjoy over rent calculation; dwelling allocation and dwelling design.

- **Capital Advance Leasing Facility (CALF):** This is a primary support mechanism where the State, through local authorities, provides a long-term loan of up to **30%** of the capital cost of a new or acquired development.

- **Capital Assistance Scheme (CAS):** Aimed at special needs housing, this scheme provides up to **100% funding** for specific housing projects, though it has been largely superseded by CALF for general social housing.

- **Housing Finance Agency (HFA) Loans:** AHBs can **borrow up to 100% of project costs** from the HFA, which is a state-owned entity, typically paired with CALF support.

- **Social Housing Current Expenditure Programme (SHCEP):** Supports the delivery of social housing through long-term leasing, with over €517 million available in 2024.

- **Cost Rental Equity Loan (CREL): Provides up to 30% of the capital cost for AHBs to deliver Cost Rental homes**, aiming for below-market rents. In 2024, significant funding was allocated to this, with €300m provided for 1,000 cost rental homes.

Two Regulators – One Sector

The Charities Regulator (CRA)

- Maintains Charities Register (95% of all AHBS are charities)
- No public guidance specific to charitable housing associations
- 2 statutory investigations for non-compliance with Charity Law (Peter McVerry Trust; Cabhrú Housing Association);
- 1 further investigation discontinued due to criminal prosecution (egregious private benefit case)

The Approved Housing Bodies Regulator (AHBRA)

- Maintains AHB Register (427 registered AHBs);
- Oversees financial, governance, stock and tenancy management of AHBs;
- Published guidance on best practices but not specifically from charities perspective
- 1 statutory investigation to date (Peter McVerry Trust)

MOU between CRA & AHBRA for cooperation & Information sharing

CRA Regulatory Investigations to Date

- **2021: Cabhrú Housing Association Services**
  - Findings of private benefit by CEO and related parties
  - Evidence of mixed use of properties for commercial gain (student short-term rentals of elderly tenant properties; commercial leases to student agency) without proper oversight, contractual arrangements or consideration of whether such change of use was in line with charitable objects. No evidence that profits made from these activities was not used for charitable purposes.
- **2022: Navan Mental Health Housing Association**
  - Investigation into Care & Support housing charity: concerns regarding behaviour of a charity Trustee relating to Conflicts of Interest and private benefits.
  - Opening of Garda investigation into charity led to suspension of CRA investigation in 2024. Criminal prosecution and conviction of Trustee in 2026 resulted in discontinuation of CRA investigation.

Peter McVerry Trust (PMVT) Scandal 2024: Too big to fail??

PMVT is one of the largest national housing and homeless charity committed to reducing homelessness & harm caused by substance misuse and social disadvantage. It provides low-threshold entry services, primarily to younger people & vulnerable adults with complex needs, & offers pathways out of homelessness based on the principles of the Housing First model.

In 2023, PMVT notified the CRA and AHBRA of significant concerns relating to its solvency and ability to manage creditor liabilities. This resulted in investigations by both regulators

Based on the findings of these reports, serious issues related to related party transactions, conflicts of interest and poor governance emerged which necessitated a €15 million bailout loan from the State to the charity to prevent the charity (which provides social and support housing to more than 12,000 individuals annually) from failing.

PMVT Scandal 2024: Too big to fail??

CRA Report

- PMVT's misuse of sinking fund restricted funds
- PMVT's misuse of restricted charitable donations to fund operational expenses.
- PMVT's inappropriate takeover of 9 charities & misuse of their funds o/s their charitable purposes; appt of PMVT staff as Tees of these charities raising Conflicts of Interest.
- PMVT had entered into a loan and property transaction with related 3rd parties (CEO and its auditor) without Board knowledge or approval.

AHBRA Report

- Inappropriate use of sinking fund
- Failure to maintain accurate fixed asset register;
- Poor Board governance & oversight;
- Reporting to the Board and/or sub-committees of capital expenditure was neither accurate nor complete;
- Potential conflicts with suppliers & advisers never declared to board;
- Limited management of capital & creditor liabilities relating to land & premises & no evidence of a liabilities register.
- No documented capitalisation policy

CRA Charity Regulation in Practice

- In practice, it is at the registration stage that the Regulator seeks to pre-empt issues that may relate to private benefit/conflicts occurring in charitable housing applications – can lead to restructuring of non-charitable and charitable arms & dispensation with non-charitable aims.
- Post registration, in absence of complaint or an investigation that raises “boundary issues”, these issues have not surfaced to date.
- General charity law guidance is planned in the future; at present, the published guidance of the Charity Commission for England and Wales forms a useful reference point, given the similar common law underpinnings shared by both jurisdictions.
- An additional tax angle plays out under ss207 & 208 of the Taxes Consolidation Act 1997 dealing with “trading charities”. Published Revenue Guidance in relation to these sections takes a narrow view of what is possible in Ireland in terms of mixed use housing facilities.

According to Revenue Guidance . . . .

- *“Section 208 TCA exempts from income tax trading profits and (from 1 January 2024) professional services income arising to charities. There are two important requirements attaching to the trading and professional exemption.*

- *First, the income must be applied solely to the purposes of the charity.*

- *Second, one of the following conditions must be satisfied: · the trade or profession must be exercised in the carrying on of a primary purpose of the charity – for example, where a religious organisation sells religious books and magazines, the main object of the organisation is the promotion of religion and the sale of books and magazines is a facility to achieve that object; or · the work in connection with the trade or profession is carried on mainly by beneficiaries of the charity - for example, the sale of goods produced by people with a disability through a shop or mail order/online catalogue.”*

Recent media coverage shows that while our landscape may look different, we ultimately share the same headaches when it comes to providing housing for those in need

Housing body scraps cost-rental homes in project

OLIVIA KELLY
Dublin Editor

Housing association Clúid is to meet Dublin city councillors next week over the failure of a north Dublin cost-rental scheme that was meant to be built on land provided by the local authority.

Councillors have questioned the legitimacy of Clúid's decision to scrap the cost-rental element of the complex of more than 140 apartments in Cabra and change it to 100 per cent so-

Clúid, one of the State's largest non-profit housing bodies, is building 144 homes on the site at Bannow Road, close to Broombridge rail station.

Most of the homes were designated for social housing, but 40 were to be used for a cost-rental scheme to provide homes for workers who earn too much to qualify for social housing but cannot afford private market rents.

The council said it had been informed by Clúid that it "can no longer deliver" the 40

ment of the scheme is unviable" due to rising costs.

In response to queries, Clúid said the future maintenance costs at Bannow Road had pushed the cost-rental element beyond viability.

"Rising costs in areas such as planned maintenance, cyclical costs and component replacement mean that it would not be possible to deliver these as cost-rental homes with rents 25 per cent below market rate," it said.

Clúid has applied to the De-

the designation of 40 of the 144 homes from cost-rental to social homes and was "confident" the department would support it.

A spokesman for the department said it would consider the application.

Housing policy

Independent councillor Cieran Perry said the council transferred the site to Clúid on the basis that cost-rental housing would be provided there.

"It is not up to Clúid to decide

would be on the site, and it is concerning that they have already applied to the Department of Housing," he said.

"I don't think we can have a private company basically changing housing policy."

The decision must not be made without consultation with councillors, Perry added.

"We won't be accepting Clúid making this decision regardless of what the Department of Housing did say. We agreed to the disposal on the basis we were getting cost-rental

Sinn Féin councillor Séamus McGrattan said there was huge disappointment locally over the loss of the cost-rental element.

"This was the option for people who don't meet the criteria for social housing – that option is now gone."

The fact Clúid had cited the cost of future maintenance rather than construction as making the scheme unviable was of particular concern, he added.

"I think it makes every cost-rental project in the city now unviable," McGrattan said.

The Irish Times, April 2026

Recent Irish media coverage

Minister urges housing bodies to engage on difficulties for cost-rental projects

OLIVIA KELLY
Dublin Editor

Minister for Housing James Browne is urging housing bodies who have hit financial difficulties in delivering cost-rental projects to engage with his department to ensure the viability of the schemes.

Browne was speaking following the collapse in recent days of a north Dublin cost-rental project because it had become financially "unviable".

Housing association Clúid plans to scrap the cost-rental element of a complex of more than 140 apartments in Cabra and change the development to 100 per cent social housing.

Rising maintenance costs "mean that it would not be possible to deliver these as cost-rental homes with rents 25 per cent below market rate," Clúid said.

Under the cost-rental system, operating since 2021, rents are based on the cost of building, managing and maintaining the properties. It aims to help workers who earn too much to qualify for social housing but cannot afford private market rents.

There was, Browne said, a "very significant pipeline" of cost-rental projects.

Unviable

"Individual projects may be challenging, individual approved housing bodies may be having an issue with particular projects. The way you resolve them is by engaging with the Department of Housing and to ensure that they are viable and what the challenges are, and as to why they're finding their particular project is unviable, when others are not," he said.

"In relation to any approved housing body who's having difficulty in terms of the maths around what they have proposed to provide . . . what they need to do, is to come in and talk to the Department of Housing."

Browne was speaking at an event to mark the start of construction of 578 cost-rental and social housing apartments at the former St Michael's estate in Inchicore, the only cost-rental scheme being undertaken directly by Dublin City Council.

The council had to borrow €132.5 million to fund the construction of the cost-rental apartments, which represent three-quarters of the homes in the estate. The apartments are expected to cost up to €450,500 each to build, but the Government only provides local authorities with a grant of €150,000 per cost-rental home.

Debt burden

Most schemes are undertaken by approved housing bodies or the Land Development Agency due to the high debt burden their development places on local authorities. The council will use the rents charged to the cost-rental tenants to pay back its 40-year loan. The level of rents will be determined before the completion of the development in early 2028.

Browne said he wanted more cost-rental schemes undertaken by local authorities.

"I think from ourselves in Government, we have to look at how do we help local authorities – because I think they do have the ambition here, they do have the drive – how we can help them now to scale up this model here and help them to be able to deliver more on cost-rental."

■ Minister for Housing James Browne and Lord Mayor of Dublin Ray McAdam with local councillors and others yesterday mark the start of construction of 578 cost-rental and social homes in Inchicore.
PHOTOGRAPH: PAULO NUNES DOS SANTOS

The Irish Times, April 2026

Recent Irish media coverage

Is the cost-rental housing model broken?

Olivia Kelly
Analysis

For tenants, cost-rental is all positives, apart from the fact that there isn't enough of it, but cracks are emerging for providers

Since applications opened for the first cost-rental housing development in Balbriggan in north Dublin in July 2021, every scheme has been vastly over-subscribed.

Within a week, more than 1,000 prospective tenants had applied for the 25 Balbriggan cost-rental homes provided by housing association Clúid, with rents between €935 and €1,150 a month.

In December 2024, the Land Development Agency (LDA) advertised 195 cost-rental apartments at Shanganagh Castle near Shankill in south county Dublin. More than 4,600 people applied to rent homes ranging from €1,175 to €1,775 a month.

At the start of this year another housing body, Respond, advertised 145 cost-rental apartments in Tallaght for €1,875 a month and received more than 2,000 applications.

The scheme is designed to cover the "cost" of housing provision over a period of up to 40 years. Rents are based on the cost of building, maintaining and managing the homes, rather than on making a profit and, although not stipulated in legislation, the Government has decided rents must be at least 25 per cent below market values.

Eligible tenants, those earning less than €66,000 net in Dublin or €59,000 outside the capital, should be spending no more than 35 per cent of their net income on rent. They would be living in newly-built A-rated homes and their landlord will be a highly regulated entity, generally a not-for-profit housing body, the LDA, or in a small number of cases, a local authority. Possibly the scheme's biggest asset is there is no limit on the duration on of the tenancy, so tenants effectively have a home for life.

For tenants, cost-rental is all positives, apart from the fact that there isn't enough of it. However, for providers, cracks are starting to emerge.

The initial projects were able to provide rents considerably below market rates. In Clúid's Balbriggan scheme, the rents were almost half of the local rents for new homes. The following year in Clondalkin in west Dublin, Tuath was offering homes in rents 30 per cent below market rates.

> **Possibly the scheme's biggest asset is there is no limit on the duration on of the tenancy, so tenants effectively have a home for life**

However, as construction prices have increased and schemes have been developed in more expensive areas, rents have been creeping up.

In O'Devaney Gardens (now called Montpelier) in Dublin 7, where applications for the first cost-rental homes closed this week, Tuath is offering one- and two-bedroom apartments with rents of €1,490 and €1,695 respectively, but also a small number of three-beds for €1,895.

While this would still be 25 per cent lower than local market rents for a three-bed, only a small number of eligible tenants would meet the affordability test. To not exceed a rent payment of 35 per cent of net income, the household would have to have take-home pay of at least €64,971, but to qualify for cost rental their pay can't be above €66,000.

Another financial difficulty emerged last week where the cost, not of construction but of the long-term maintenance, forced Clúid to abandon cost-rental plans in Cabra, Dublin. It said it would be unable to offer rents below the 25 per cent of market rates while still meeting its loan repayments.

Bottom line

Sinn Féin housing spokesman Eoin Ó Broin said the design of the scheme, which requires the cost of the development loan to be paid back over 40 years, is pushing rents beyond the viability limits.

"In most other jurisdictions, cost-rental is repaid over 60 years," he says. "The bottom line is it was badly designed from the start, messed around by constant reviews, and is not actually trying to address the real problem: how do you structure things in a way that gets the rent down to a point where people who need it can afford it?"

Minister for Housing James Browne said he was committed to cost-rental, and housing bodies experiencing challenges with the financing of projects should engage with his department.

"We can look again at their proposal and how they're proposing to deliver it and what their challenges are."

The Irish Times, April 2026

Appendix F
Overview of Charitable Purposes
Adam Parachin's Presentation

MUTTART CONSULTATION ON HOUSING

Professor Adam Parachin
Osgoode Hall Law School
McCarthy Tétrault
aparachin@osgoode.yorku.ca

THE COMPLIANCE SYSTEM YOU WANT…

STUFF FOUNDATIONS CAN DO	**STUFF FOUNDATIONS CANNOT DO**

LET'S TRY TO MAKE IT SIMPLE

Subs. 149.1(1) of the *Income Tax Act (Canada)*

"charitable foundation" means a corporation or trust that is ***constituted*** ***and*** ***operated*** ***exclusively*** ***for*** ***charitable purposes***…"

<u>THE CONSTITUTED TEST</u>

The *<u>constituted test</u>* means your formal purposes must be exclusively charitable.

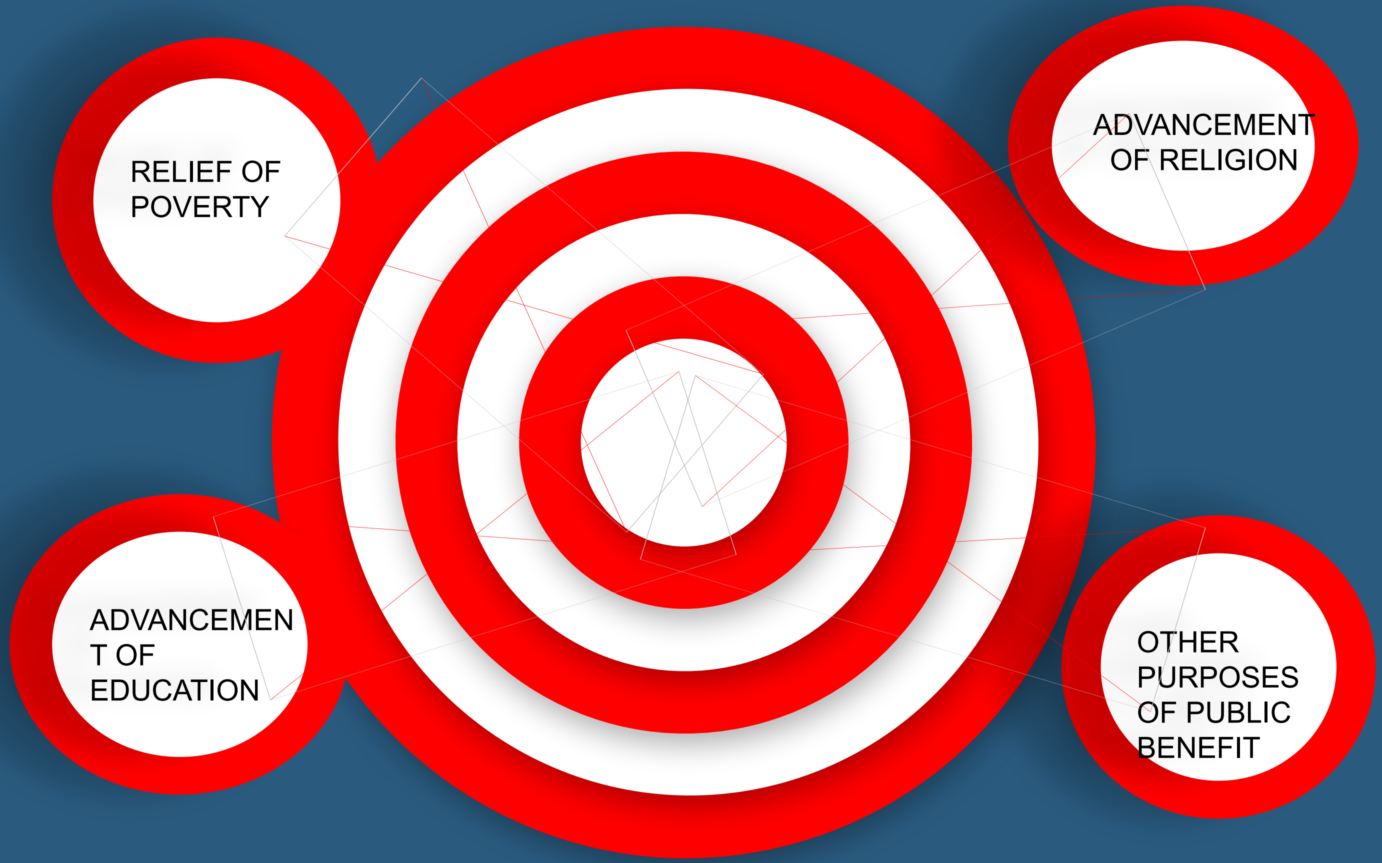
Think of your formal purposes as your target.

Your target must be exclusively charitable.

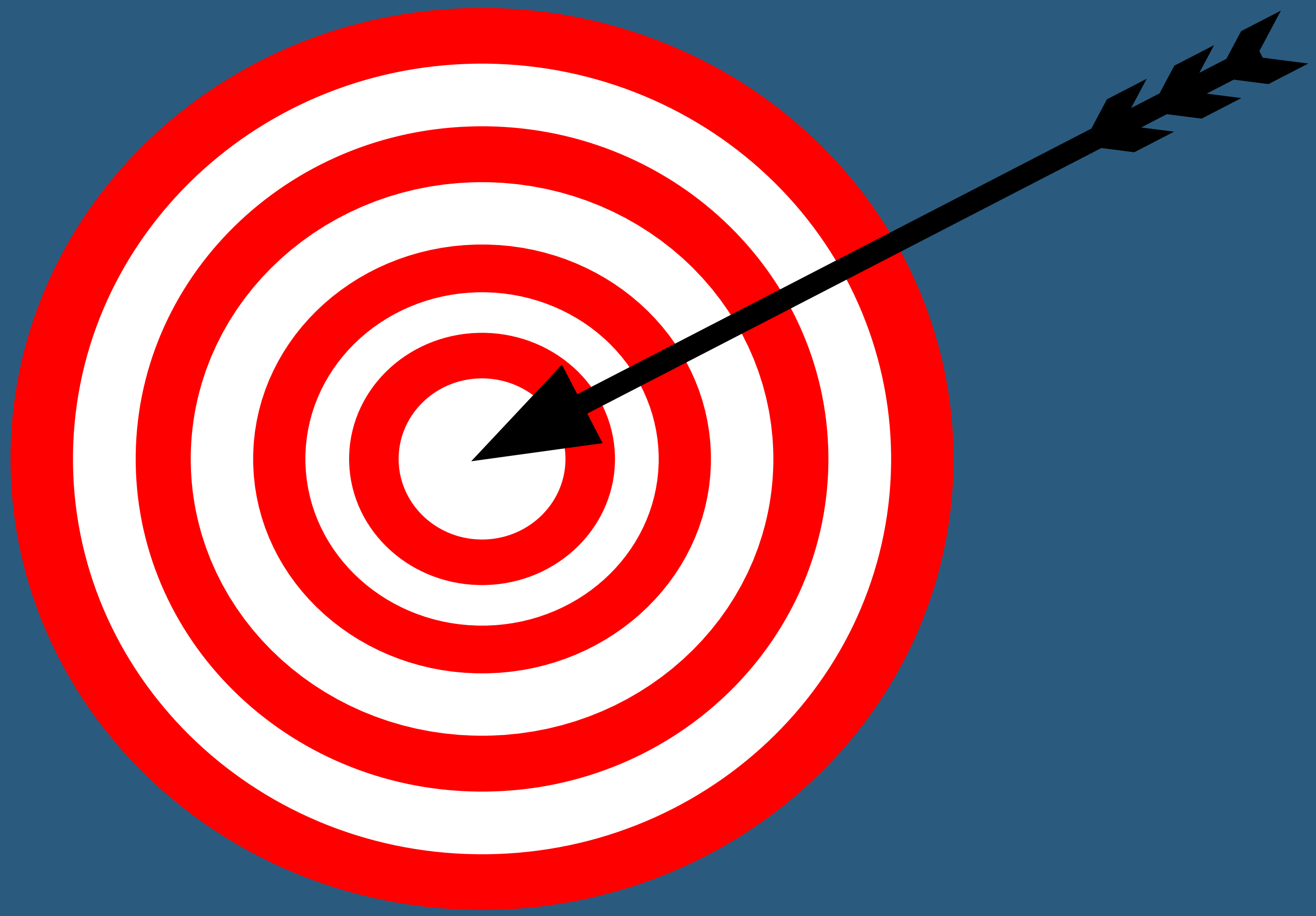
THE CONSTITUTED TEST

Charitable Purposes:

1. the relief of poverty;
2. the advancement of education;
3. the advancement of religion; and
4. other purposes beneficial to the community



THE OPERATED TEST



The *operated test* means your activities must further your purposes.

Think of your activities as how you aim at your target.

Your activities must be exclusively aimed at your purposes.

THE OPERATED TEST

Diverse ways to aim at a target.

No closed list of activities.

If an activity furthers your purpose, then generally speaking you can do it.

The Constituted Test:

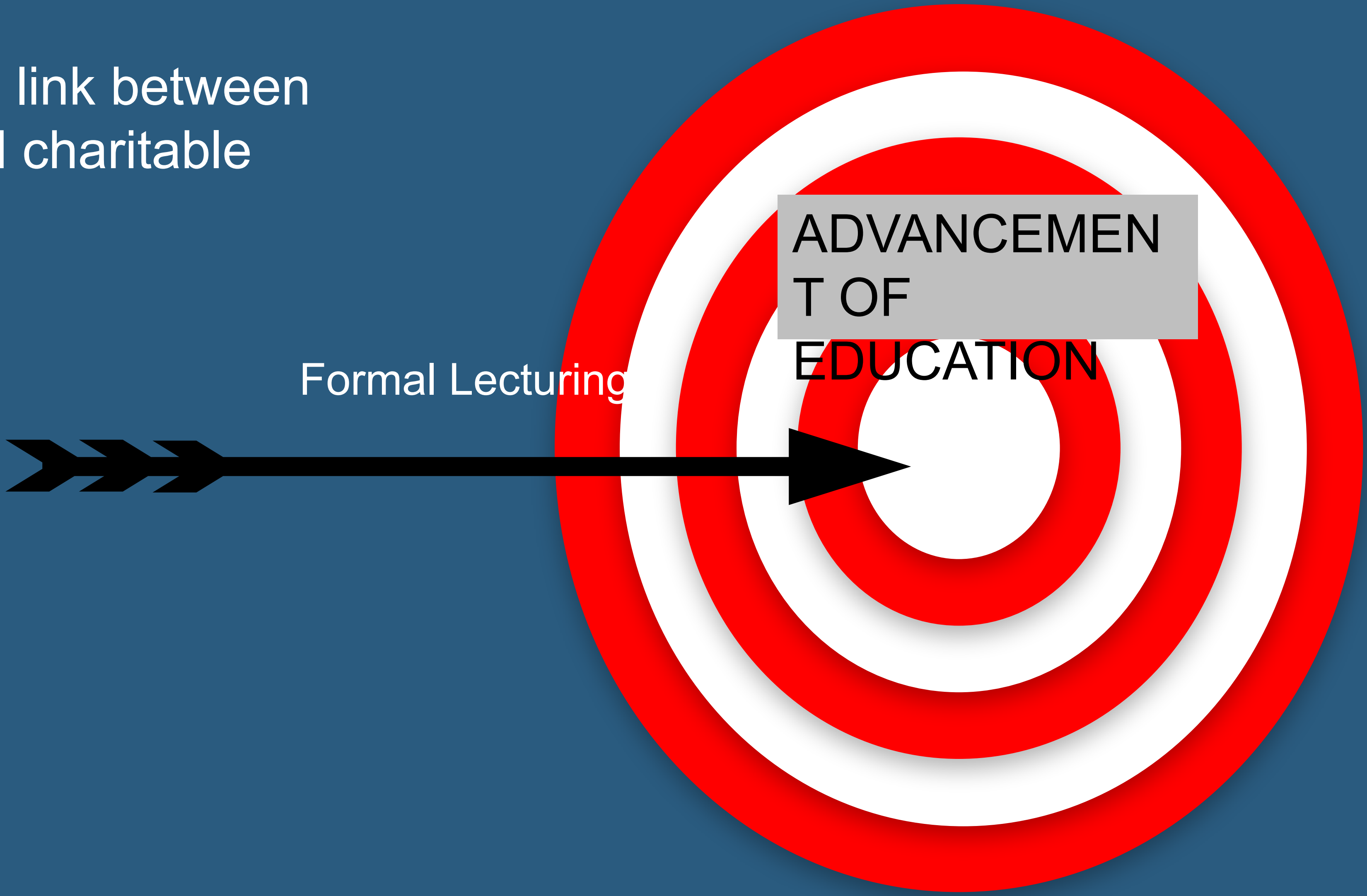
Your target has to be exclusively charitable.

The Operated Test:

Your activities have to be aimed at the exclusively charitable target.

IDEALIZED / OVERSIMPLIFIED CHARITABLE ACTIVITY:

Direct and Immediate link between charitable activity and charitable purpose



THIS SOUNDS PRETTY SIMPLE…

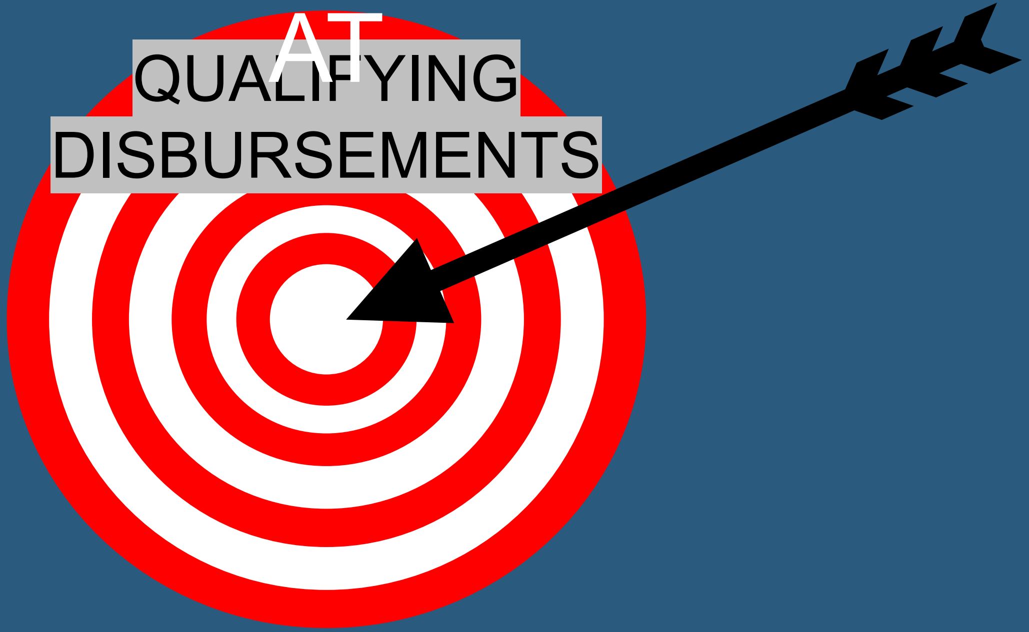
So what’s all the fuss about?

It is not always straightforward

PROHIBITED ACTIVITIES

AIMING AT THE WRONG TARGET

TARGET YOU ARE AIMING AT



YOUR ACTUAL OBJECTS

THE TRUE CHAIN OF CAUSATION

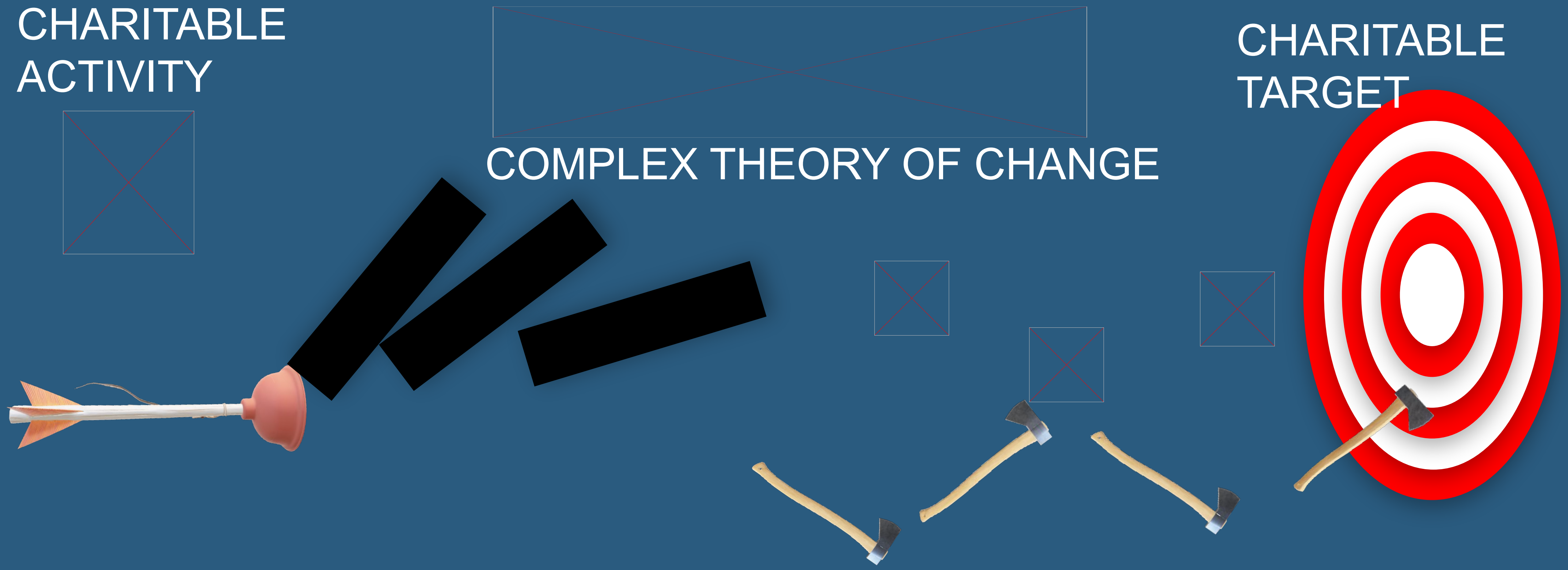
MBA SCHOOL

ADVANCEMENT OF EDUCATION

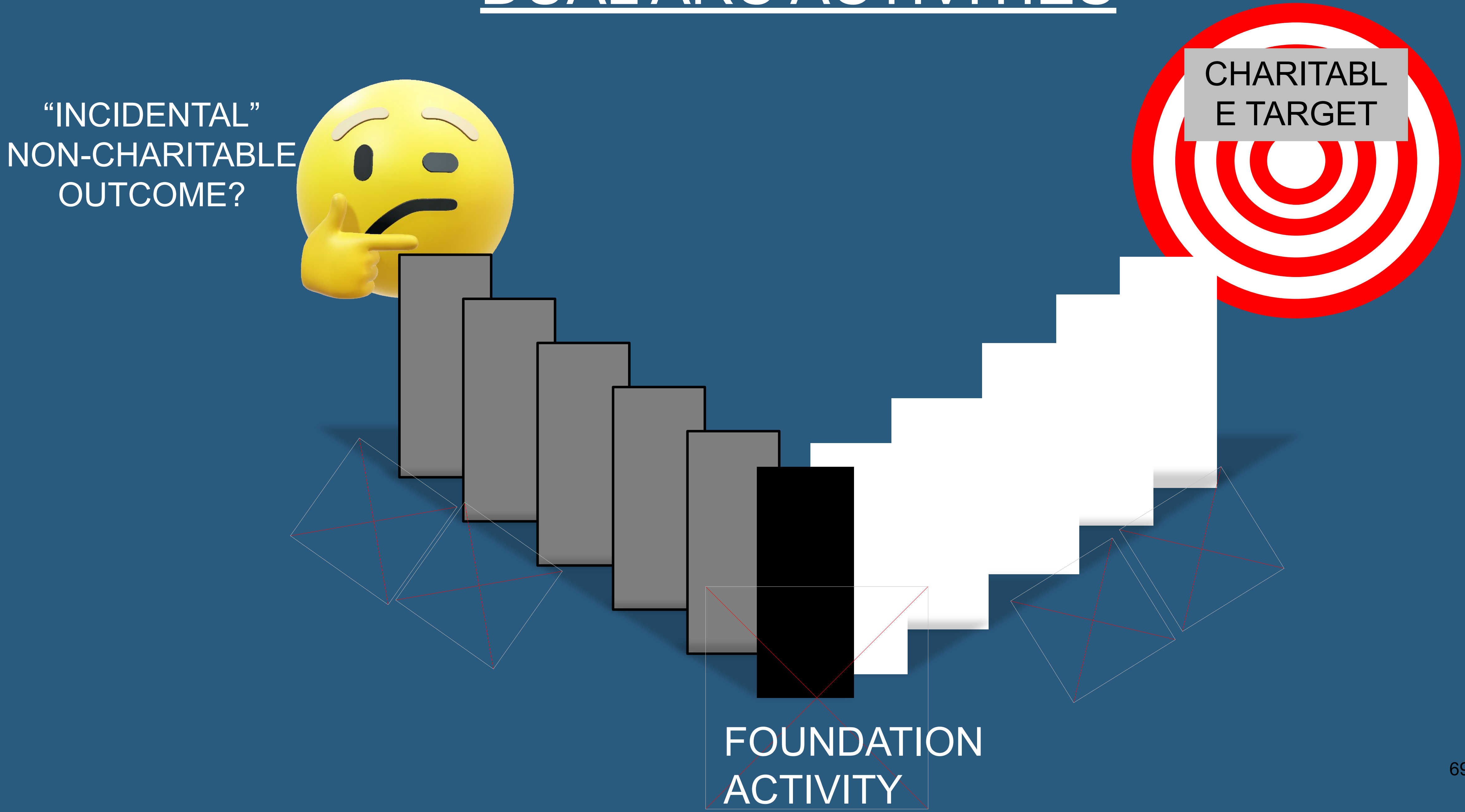
HIGH INCOME EMPLOYMENT

CONCENTRATED WEALTH

DOMINO EFFECT / COMPLEX CHAIN REACTION ACTIVITY



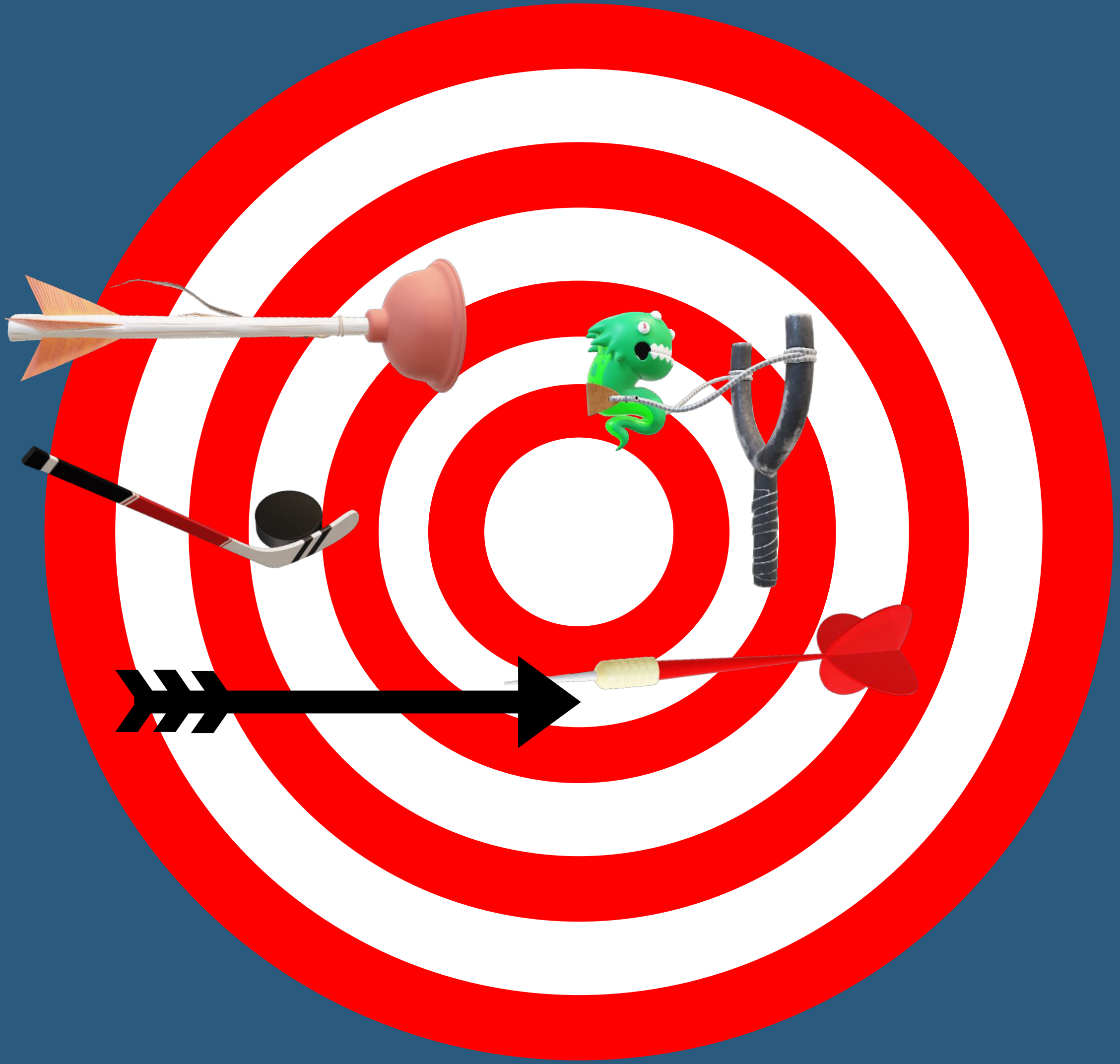
DUAL ARC ACTIVITIES



NEW(ISH) CRA STRATEGY FOR THE "ACTIVITIES PROBLEM"

Combine purposes and activities.

Require charitable objects to list both the end (the target) and the means (the way you will aim at the target)?



A Phrase to Remember

…constituted and operated exclusively for charitable purposes…

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