



**Written Submission to the
Department of Finance with
respect to the disbursement
quota for Canadian registered
charities**

September 29, 2021



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Dear Department of Finance,

Blumberg Segal LLP is a law firm based in Toronto that provides legal services to Canadian non-profits, registered charities and donors. We have ten lawyers and 5 consultants/support staff that focus almost exclusively on non-profit and charity compliance issues. Blumberg Segal LLP (Blumbergs) maintains the websites, <http://www.CanadianCharityLaw.ca> and www.Smartgiving.ca that provide extensive information and resources to Canadian charities to encourage them to understand their legal obligations and strive for higher ethical standards and to donors to understand how to vet charities. Also, over five years ago, Blumbergs launched a free transparency tool for the public at the website www.CharityData.ca with up to seventeen years of information on every Canadian registered charity. We encourage donors to be generous but careful in the way they practice charity and philanthropy. Our firm is concerned about the well-being of the non-profit and charitable sector and that there is appropriate regulation for this very important sector.

Executive Summary

We are firmly in favour of an increase in the disbursement quota, ideally to 10%. We also suggest possible changes in our submission to simplify the disbursement quota. We discuss numerous “excuses” provided for the status quo and why they are not convincing, as well as suggest many reasons why it would be very positive to increase the disbursement quota. We also respond to specific questions asked by the Department of Finance in relation to the disbursement quota.

Introduction

In the recent 2021 Federal Budget it was announced that there will be a consultation on the disbursement quota (DQ) and this submission is in relation to that consultation.

While we would have preferred that the Department of Finance just increase the DQ, at least you are focused on the issue. For around a decade, our law firm has suggested

that the disbursement quota be increased as it was not in line with the significant investment returns of foundations and their obligations to society.

Recently in our [Submission](#) for the Pre-Budget Consultations for the Canadian Federal Budget we wrote :

- **Recommendation 3:** That the Federal government increase the disbursement quota payout from the current 3.5% to 10% in line with other groups requesting this improvement.

We also noted with respect to the DQ:

3) Private foundations are sitting on approximately \$95 billion in assets. Since 2012 we have suggested an increase in the disbursement quota payout. In the past, we had suggested a payout of 5 - 6% but as many years have gone by and many foundations have grown considerably, it probably makes more sense to have a disbursement quota of 10% per year. This would increase funding to charitable organizations by billions of dollars and in light of the devastation caused by COVID-19 and climate change, it cannot come quick enough. Some foundations have had a 10%+ annual return on their investments in the past but have been giving out only 3.5% or in some cases far less. The largest private foundation in 2019 (which is the last full year available for data) gave out 1%.

The low percentage referred to above may be legal if CRA has approved a reduction in the particular foundation's disbursement quota. In 2019 private foundations according to the T3010 data had assets of around \$74.5 billion and made gifts to qualified donees of \$2.45 billion and spent about \$832 million on their own charitable activities. So private foundations spent about \$3.77 billion on gifts and charitable programs which is about 5% of their assets.

Furthermore, with some foundations having received significant returns that are far in excess of the 3.5% DQ, and added capital from donors, it raises the question of whether there should be more pressure to see greater impact from these foundations.

While we appreciate that some want their foundation to last forever and they see that it is more likely that the capital can be maintained if little or no funds are distributed, we need

to ask a fundamental question around why we have foundations at all. Also, we need to ask why they are receiving so much tax benefit, and whether it is healthy in a society to have such great charitable assets controlled by a very few that is not being actively used when there is such great need.

The DQ is a blunt instrument. It achieves a minimum that only affects registered charities who wish to give less than the minimum. Practically speaking its largest impact is on a few large foundations that are spending the minimum or less. In an ideal world if these large foundations were giving out more funds there might not even be a need for it at all. We clearly don't live in that ideal world and this issue of a low DQ has been around for over a decade with high investments returns by some foundations and very low payouts.

We recently reviewed the Advisory Committee to the Charitable Sector's (ACCS) submission dealing with the disbursement quota. We believe it is reflective of the views of a small number of foundations and some of their professional advisors who are opposed to changing the rate of the DQ which would require them to increase grantmaking. . Some of these foundations advocate for greater tax incentives for donations that will predominantly benefit the very wealthy and for de-regulating the charity sector so that these foundations can operate with little or no oversight. We have blogged about our concerns with the ACCS report [here](#). Many foundations don't take such a view and are amenable and preparing to adapt to a changed DQ.

There is a good article by Yonis Hassan, a charity leader, entitled "[The Advisory Committee on the Charitable Sector let down charities and communities by not recommending a disbursement quota hike](#)" that focuses on "performative allyship" of certain people in dealing with this issue.

Excuses

In this section we address a number of excuses given by a few foundations and their professional advisors as to why the DQ should not be changed at this juncture.

Complexity

A common excuse is that making a change in the Income Tax Act is extremely complicated. Despite the 2010 changes that simplified the DQ, some people argue that changing the 3.5% number in the Income Tax Act is extremely complex. While the DQ may affect different groups in different ways we don't agree that this is such a complicated

question. In our current society battling COVID-19 and tremendous inequality, the DQ looks like a relatively simple matter in comparison.

There is not enough data

Other excuses for inaction are that there is not enough data on how increasing the DQ would impact foundations and specifically that some foundations may have restrictions on the use of their funds such as a perpetual endowment as we will discuss later. Some argue that we also don't know how much an increase in the DQ will result in additional funds.

Our law firm is very interested in data on the charity sector. We have created our CharityData.ca website to assist the Canadian public with understanding the important role of charities.

We agree that there is not enough data being collected by CRA. We have suggested on numerous occasions that CRA ask more questions on their T3010 to be able to allow the public greater information and nuance in understanding the charity sector. Canada is far behind other countries in this regard. That being said, unfortunately, there is no indication that CRA will be increasing the usefulness of the T3010.

Having a lack of data did not stop some foundations from advocating that the 4.5% DQ should be reduced to 3.5% in 2004. Lack of data has not stopped some who oppose an increase in the disbursement quota from implying that perpetual funds are quite common amongst foundations and that any increase in the DQ is unmanageable.

In fact, we have data on all registered charities in terms of their assets, liabilities, revenue and expenditures. With the current data, we can see which foundations are giving out 10% or 15% and which are giving out less than 1%. So, we have the data to understand that an increase of the DQ from 3.5% to say 7% or 10% is going to result in many foundations having to increase tremendously their grantmaking.

There is no doubt that charitable assets are subject to a variety of restrictions, but how many foundations it affects exactly, what percentage of their funds are restricted, and how they are restricted is certainly not information that we have seen. Having this information would help understand the constraints on foundations. In **Schedule A** we

discuss the type of data that could be useful in understanding the issue. We have requested that CRA obtain that data to improve our understanding of the DQ discussion, but we are not aware that they have done so.

However, the lack of data in this area should not preclude action to change the DQ. Foundations have operated in some cases for decades without adequate data and one tries to make the best decisions despite an environment where there is not enough data.

Therefore, the data issue is a bit of a red herring when it comes to the DQ issue.

Some foundations will have a problem disbursing at a higher DQ level

Some argue that a number of foundations may have trouble meeting a newly expanded DQ. This may be true for some foundations. In fact, some foundations with huge assets seem to have a 'difficulty' disbursing at the current 3.5% level and prefer giving at 1-2%. Unfortunately, as CRA does not prioritize enforcement of the DQ, and the number of CRA audits has plummeted over the last few years, it does not look like the DQ is treated by some foundations as much more than a suggestion from the Federal government.

While some completely ignore the DQ, some registered charities have asked for CRA to grant them a disbursement quota reduction which would allow them to spend less than the DQ if there is a good reason to do so.

Furthermore, if a change in the law requires a charity to do things differently, such as encroach on capital, a charity, for example in Ontario, can go to the Office of the Public Guardian and Trustee (OPGT) and file a Section 13 application under the Charities Accounting Act or more formally obtain a court order to change the legal restrictions covering a gift. In other provinces they can go to court with an application for *cy-près*.

While it may cost \$10,000 – \$20,000 for a charity to obtain a court order through this process, the more groups doing them the more efficient law firms will be in bringing them. For a \$100 million foundation, that already spends significant amounts of money on administration, legal fees, accounting fees, branding etc., submitting one *cy-près* application is a very small ask.

The cy-près system is an area of provincial jurisdiction and one that needs significant regulatory improvements. Here are some examples of how a court may deal with a cy-près application relating to spending rates:

- If a group has a perpetual endowment for gifts to any registered charity of \$10 million and they wish to distribute all the funds to charities this year because they think that would be more convenient or expedient, a judge would probably not be prepared to allow such a change.
- In some cases, courts may be prepared to make minor changes to the rates – for example to move from a restricted gift that is a traditional endowment where only income can be spent to a “total return” approach where income plus capital gains can be spent.
- Furthermore, and most importantly to our discussion, if a change in the law makes it impossible for a registered charity to comply with the requirements of a restricted gift (such as an increase in the DQ and failure to meet the DQ could result in revocation and other consequences) the courts would probably be prepared to adjust the restrictions, but only enough to comply with the law. If the DQ was increased to 7% and the charity only makes 6% income on the restricted gift, the court may allow the charity to encroach to the extent of 1%. The courts would not allow a greater expenditure than is required by law. So, the higher the DQ in that case, the more the directors of the charity, have an incentive to get a cy-près order and such cy-près order will have a greater impact on the rate of spending.

Keep in mind, this sort of expenditure and effort for a process to vary the restrictions would only be needed if there are restricted gifts such as perpetual endowments, no other funds available to satisfy the DQ, and the returns in the market are not adequate to make the higher payout. Based on this, we believe that this will actually apply to a very small percentage of foundations.

Certainly, since 2010 there is little reason for a donor to create a perpetual foundation even if they would like the fund to be long-term. Before 2010, unless a gift to a charity was structured as a 10-year gift (with income only being able to be spent in the first 10+ years) charities would need to spend both 80% of the receipted amount plus 3.5%. With the 2010 changes removing the 80 percent requirement, foundations did not need to use the ten-year (or longer) concept and they can make an unrestricted gift and the board could just give out 3.5% per year.

Therefore, some foundations would be in a better position to carry out their work if the DQ was increased to a higher number rather than being constrained by a donor who may have made certain assumptions decades ago that are not correct anymore. Keep in mind

that likely this will affect a small number of groups that have perpetual endowments as their only asset.

While some may balk at the opportunity to change the restrictions on foundations, others will welcome the ability to go to court to give the foundation more flexibility to spend more than what was set out sometimes decades ago by a donor at a very different time.

An increase in the DQ could shorten the life of our Foundation

This is potentially correct. In theory, if you grant more funds per year then the foundation will use up its resources quicker and this may affect the longevity of the foundation. At its extreme, a foundation has the most likelihood of lasting forever if it never spends any money on charitable activities or grants. Clearly, that is unacceptable, and we are not aware of people advocating that position. The goal of providing tax subsidies to foundations is to have them support charities and carry out in some cases charitable activities, not to remain forever. Even with a higher disbursement quota, if foundations obtain good investment returns, and perhaps even have additional contributions from donors, the foundation can in theory last forever. So, the question is only one of degree. If the returns were not so consistently high, the actual grants by some very low and the need in society very significant, we would probably not be having this discussion.

While in theory a forever foundation sounds great, there are many issues with such an approach. Most forever foundations don't last forever and end for many reasons including but not limited to, the board is no longer interested in running the foundation, fights within the organization, and investments are lost because of stock market crashes and embezzlement. There are many other reasons for foundations being wound down, such as successor directors that are not aware of the legal restrictions on the funds they have and granting the funds to charities but not in accordance with their legal requirements. Furthermore, many foundations that originally were set up with the intention of lasting forever have either new directors, or their directors have changed their minds, and are now focused on a orderly, impactful, and legally compliant winddown of the foundation.

The cost of forever foundations might be too great for our society in relation to the benefits provided and the tax subsidy. The administrative costs including investment fees, etc. are significant.

The excuses mentioned above are not compelling reasons to allow \$95 billion to sit idle while there is so much need in Canada and around the world.

Increasing DQ will not necessarily help groups that are the most vulnerable

On page 3 of the ACCS submission the ACCS states:

The ACCS agrees with the goal of supporting organizations who are providing service to the most vulnerable. However, the DQ is but one tool in the policy toolbox. We do not believe that there is clear evidence that raising the disbursement quota alone, without making other legislative changes and using other policy tools, will achieve that goal.

At the moment, BIPOC groups and others serving historically disadvantaged communities have received almost no funding from foundations. See [Canadian charities giving to Indigenous Charities and Qualified Donees – 2018](#) and [UNFUNDED: Black Communities overlooked by Canadian Philanthropy](#).

If the DQ is increased from 3.5% to 7% or 10%, it will inevitably result in billions of dollars of extra grants or foundation spending on their charitable programs. Indeed, increasing the DQ will not necessarily ensure that more funds go to particular organizations such as BIPOC groups. Instead, consistent with the current problematic granting patterns, certain groups such as universities, hospitals, and religious institutions will probably continue to receive a disproportionate amount of the extra funds, as they currently receive a disproportionate amount of the grants.

BIPOC groups currently receive a trivial amount of funds from charities, including but not limited to foundations. If the DQ is doubled, and there are no other legislative changes or foundations have a change of heart, BIPOC groups may expect to receive double the amount of funds from groups currently spending 3.5%. Receiving twice a trivial amount is better than receiving only the trivial amount.

The key point might be that some foundations have particular priorities that don't include funding BIPOC groups or certain others in need. They may be focused on the opera, medical research, protecting animals, etc. However, because foundations will in general be providing much more funds to charities and if they continue to prefer to fund charities such as universities, hospitals and religious causes, it will allow some charities and

governments to then reallocate some of the funds they would have given to these certain groups to BIPOC groups etc.

The ACCS makes it clear that they do not support the Federal government “regulating the destination or direction of grants to specific communities and causes.” Any proposal to require that a certain percentage of funds go to certain priority areas would probably be more complicated and divisive than an increase in the DQ. This is another reason the DQ should have been increased years ago and we could have avoided some of the recriminations and discussions taking place today.

Now we will discuss why we think the DQ should be increased.

Here are some of our top reasons for significantly increasing the DQ:

Why should governments increase support to charities when foundations don't do their part?

A number of organizations have called for the Federal and Provincial governments to more generously fund the charitable sector, especially in light of COVID-19. It appears that governments have acted and continue to strongly support charities, especially at the provincial level. If some representing the sector don't believe there is any compelling reason to ensure more funds move from foundation investments to operating charities, then it completely undercuts the notion that the Federal and Provincial governments should provide additional funding to the charity sector during and after COVID-19. Why should the Federal government incur greater debt and sacrifice funding for other programs when \$95 billion-plus is sitting largely idle in private foundation investments and could be used to increase funding of operating charities? If charities with large amounts of assets are not prepared to do more to fund operating charities, why should the Federal and Provincial governments do it?

On a related note there is no cost to the Federal and Provincial governments for implementing this increase in the DQ. In times of tremendous government debt and deficit there are many good proposals for the Federal and Provincial governments to spend money on different programs to improve society that in some cases these governments may not have the resources to fund. This is a very helpful change does not cost governments or the tax system anything.

The great need in society and many foundations use the DQ as a guide for how much to give

As we have noted in our [past articles](#), many of the largest foundations are giving significantly more than the 3.5% but a few are not.

What should the norm be for foundations spending on grants and charitable activities, at the most minimal level? Many operating charities are spending 60-80% per year. Many Canadian DAFs say they are pushing out 15-20% per year. US private foundations are at a minimum 5% and people in the US are pushing for a higher disbursement obligation for US foundations. Yet some very well-resourced charities in Canada are spending 3.5% or less.

While the ACCS submission suggested that some foundations may misunderstand the DQ and see it as a cap rather than a floor – although this is possible, we believe the answer is a little more conventional. Some foundations give generously and are focused on how much impact they can have on society; others see the charitable foundation as being part of the tax system. If the Income Tax Act says an individual needs to pay a 50% tax, very few people will voluntarily decide to pay more. Some foundations use similar logic. Why if the Income Tax Act requires a 3.5% disbursement and allows the foundation to keep 96.5% of the amount with increases in investments being non-taxable, why should they disburse more? Many foundations that are giving at 3.5% will simply adjust to give at 7% or 10% if it is required by a disbursement quota increase. It is unlikely that those foundations will give any more than whatever the DQ requirement is set at.

If the goal of philanthropy and charity is to improve society and the wellbeing of humankind by preventing and solving social issues and eliminating suffering, it will be beneficial to have a higher DQ.

Investment returns much higher than 3.5%

Since 2008, foundations have been receiving investment returns that are far in excess of the 3.5%.

According to one Canadian [source](#), “The long-term annual rate of return on the S&P/TSX Composite Index (TSX) was 9.3% per year between 1960 and 2020.” While past returns

do not guarantee the same for the future, the 3.5% DQ is clearly far below what returns many charities have received and this is one reason that there has been a huge accumulation of assets in some charities, including but not limited to private foundations.

Significant tax subsidy

The issue of the appropriate DQ rate should be is also related to the issue of the tax subsidy provided for donations, especially of marketable securities. The question is asked, “why should a donor get all the tax benefit upfront, and beneficiaries have to wait decades or longer to potentially receive the bulk of the benefits?”

When a donor gives a foundation marketable securities, as is sometimes done with the largest transactions, there can be a 70%+ tax subsidy given to the donor when they receive an official donation receipt.

In addition, and sometimes more importantly, as the asset grows within the foundation it does so on a tax-free basis. Increases in the asset are not taxed.

When you have both the income tax deduction to the donor and the income/capital gains in the foundation are not taxed, with the \$95 billion in assets that private foundations have the costs to the tax system will be significant. In total, the charity sector has assets of over \$500 billion. These two subsidies add up to many billions of dollars per year. This should not be glossed over and it is an important factor when thinking about the appropriate DQ.

Certainly, if the DQ stays at 3.5%, the Department of Finance will have to look even closer at the tax subsidies for donations to foundations and whether foundations may have to pay some income tax. It would appear to be simpler to increase the DQ rather than impose an income tax on foundations.

Cost of running perpetual funds

While some idolize perpetual endowments there are many concerns with them. From a public policy point of view, while one may not prohibit their operations or establishment, the tax system should not overly encourage them. It is rarely discussed but if you have

funds invested in perpetuity the investment fees on investing those funds are significant. Also, the internal and external (advisor) administrative costs of dealing with those funds can be significant. Over decades the amounts can really add up such that a foundation may spend almost as much on these costs as they do on charitable activities and charitable grants. Furthermore, often a perpetual foundation will be set up with limited purposes that may become more irrelevant as time goes on.

Dangers of having a large amount of capital sitting idle and controlled by a few people

There is a lot of wealth inequality in Canada that needs to be addressed. It is not just personal and corporate wealth, but also control over foundations who then can have significant influence over public policy and the charitable sector. There are concerns that foundations sometimes lack diversity in their decision-making. Also, a disproportionate amount of the assets held by foundations are in Ontario.

At the moment, a foundation can be controlled by one family or even one person. This is not necessarily problematic but, in some cases, and when discussing large amounts of taxpayer subsidized funds, there may be concerns. Unlike a CEO who can be fired or a politician who can be voted out, with many foundations there is no accountability to the public. Increasing the DQ will force slightly greater wealth distribution by requiring foundations to provide more funds to charities. The greater the funds charities receive, the more charitable activities they can carry out.

Protect the reputation of the charitable sector

As we have seen, especially in the US, many critics of foundations are highlighting the inadequate grantmaking compared to assets. The negative coverage can undermine the public's confidence in foundations and the whole charitable sector.

Public confidence in charities has already [declined significantly](#) and having so many assets being hoarded, with the tremendous need in our society, it will further undermine the public's view of charities.

Examples of the critical Canadian coverage are:

[As the disbursement quota consultation begins, the hoarding of money goes under the microscope](#)

[Charities' cash — and the special tax breaks it enjoys — warrants the new scrutiny proposed in federal budget](#)

[The giving capacity of private foundations needs to be put on a war footing](#)

[DQ Consultation: Fear and loathing in the charity sector](#)

[Top 20 private foundations accumulate \\$40 billion in wealth, spend pennies on the dollar](#)

With COVID-19 and the increasingly difficult situation that governments at all levels are going to be dealing with over the next few years, the notion that \$95 billion can be invested and only 3.5% used each year for grants or charitable programs is going to seem very unfair and cause a lot of criticisms of foundations.

Some argue that foundations should be able to choose how much they give out and reserve their wealth for future needs. We take the position that this is inappropriate because foundations do not know what the future will bring in terms of donations and need. You could say that there is not enough data on that question! It would be unlikely that there would not be donors in the future, but if there was a decline in donations in the future it might be the result of cynicism about philanthropy in part because of the massive accumulations of assets by some private foundations. If people start to despise foundations and philanthropists, it could cause a reduction in people contributing to charity now and in the future. Despite all the discussion about the importance of having long-term funds to deal with difficult times, rainy days or to deal with long-term issues, with COVID-19 there is a torrential downpour of need. Some foundations are failing miserably in dealing with that situation. Keeping the DQ low may undermine the long-term prospects of philanthropy.

Equity amongst philanthropists

When a philanthropist gives an unrestricted gift to an operating charity, they get certain tax benefits. Those funds are probably spent to help those in need within a year or two. When another philanthropist contributes to their own private foundation but decides they are only going to make grants or spend money on charitable programs at the minimum level of 3.5% then very little of those funds are spent over the next year or two actually helping people. The problem with this is that in both scenarios the philanthropists obtain the exact same tax benefit, but society is receiving very small benefits each year from the latter philanthropist. Clearly, treating these two types of philanthropists the same is unfair. By having a higher DQ rate this will reduce the inequity slightly.

Perhaps donations that don't receive recognition and are unrestricted, which are much more helpful for operating charities, should receive greater tax incentives than restricted donations with or without recognition.

Finance Consultation

Below is our responses to the Department of Finance's specific questions asked as part of the consultation process:

- *Should the disbursement quota be raised to produce additional funding for charities, and to what extent?*
 - *Yes, and we have suggested the level of 10% per year. Perhaps the DQ could be graduated so assets under say \$500,000 would be 5% and then assets over \$500,000 would be 10%. Another idea would be to have the DQ raised for 3 years to cover the huge investment increases and demands of COVID-19 and then have it lowered to say 7%.*
- *Would it be desirable to increase the disbursement quota to a level that caused foundations to gradually encroach on investment capital, and would it be sustainable in the long-term for the sector?*
 - *Increasing the DQ to even 10% will not necessarily result in any encroachment on 'capital'. Many factors would be relevant including other unrestricted funds, further contributions, investment returns, ongoing operating costs, etc. The long-term sustainability of the charitable sector will be enhanced if the DQ is increased significantly and even if that results in some foundations having to encroach on 'capital'. Some foundations that are stuck with donor restrictions might not be that upset if they are forced to give more as we have discussed above in dealing with cy-près.*
- *What additional tools (e.g., monetary penalties or other intermediate sanctions) should be available to the CRA to enforce the disbursement quota rules?*
 - *While monetary penalties or intermediate sanctions may be appropriate, we would suggest the usual CRA approach of 'education first' would be applicable. Also, we would suggest that there be greater transparency as to which foundations have been granted a disbursement quota reduction.*
 - *We also note that many foundations omit to complete or inaccurately complete Line 5900 and 5910 on the T3010 which is important for calculating the DQ. Although we don't think it is necessary and charities*

can complete accurately the aforementioned lines the DQ could be simplified. At the moment it is based on an average value of a registered charity's property not used directly in charitable activities or administration during the 24 months before the beginning of the fiscal year if over \$100,000 for charitable organizations or \$25,000 for public and private foundation. We would suggest the DQ could be based on the total net assets instead of the current calculation scheme. So therefore a charity would just need to use lines 4200 on the T3010 (total assets) and line 4350 (total liabilities). Instead of having the DQ averaged over 2 years probably it would be simpler just to use the net assets from the last fiscal year's T3010 to determine the amount that is required to be spent for the DQ in the following year.

- *We are concerned that some private or public foundations may be using grants to donor advised funds (DAFs) or other foundations to circumvent the intention of the DQ. Consideration should be given to excluding amounts provided by foundations to public and private foundations in certain circumstances. For example, if a foundation provides funds to a DAF and those funds are not granted out by the DAF within the same year, they should not count towards the DQ. [This is a simple trick whereby the foundation meets their DQ requirement by providing funds to the DAF, the foundation can still recommend how those funds are used and no actual operating charity is receiving the funds.] Furthermore, if a foundation grants funds to another entity with a stipulation that those funds, or part thereof, cannot be spent for a period greater than one year then those funds should not be counted toward the DQ. [Another trick is to provide multiple years of funding in one year, but those funds are restricted so they can only be used over many years. Therefore, the granting foundation satisfies their DQ in a particular year without the full amount of the funds being available to be spent by the operating charity. If the foundation provided 5 grants over 5 years, then it would have a different DQ treatment but practically the funds available for the charity to spend and the timing is the same.]*
- *Do the relieving and accumulation of property provisions continue to be useful for charities?*
 - *Yes, there may be instances where they are required. There should be greater transparency as to why CRA provides to a particular group an ability to spend less than the DQ provides. If there will not be greater transparency, then perhaps these rules should be abolished.*

- *Do the existing carry-forward provisions strike the appropriate balance between ensuring the timely disbursement of funds and allowing foundations to make large gifts on a more infrequent basis?*
 - *They seem to be appropriate if the DQ is increased to 10%. Otherwise, it may be better to eliminate a carry-forward. The carry-forward provides flexibility but at the moment some foundations seem to have too much flexibility and they are not doing enough to have a public benefit in light of the significant tax advantages.*

- *Are there any temporary changes to the disbursement quota that should be considered in the context of the Covid-19 recovery?*
 - *Our preference would be to increase the DQ substantially to 10%. If this is not possible then perhaps the DQ is increased to an amount significantly higher than 3.5% but lower than 10%, but over the next 3 years as the society is dealing with and recovering from COVID-19 the DQ could be temporarily at 10%.*

The DQ discussion is not the only issue affecting the charity sector and there are other issues at hand that relate directly or indirectly to the DQ discussion.

- 1) The current donation tax credit, specifically gifts of marketable securities, largely result in a few very wealthy individuals and corporations receiving most of the tax benefit. While we support benefits for donations to charities it is based on the notion that the funds will be used for charitable activities at some reasonable point in time. At the moment, a person who donates to a hospital or university or Indigenous charity receives the same benefit whether it is unrestricted or restricted as to time or area. Obviously for charities having unrestricted funds is more useful – sometimes far more useful. If a donor expects that they can donate funds to a private foundation, they can receive 100% of the tax benefits in the year of donation and they can spend only 3.5% of the funds while receiving perhaps a 10% investment return then the deal between the donor and the taxpayer is wildly out of sync and should be adjusted. For example, one idea could be that, if funds are donated with a requirement that they are kept for more than 1 year they should receive a reduced tax benefit and if it is more than 10 years, they would receive a further reduced tax benefit and if it is more than 20 years there would not be a tax benefit.

- 2) Additionally, there is a huge tax cost of having \$95 billion invested in a manner where there is no income tax on the investments.

- 3) If you combine the donation tax credit and the non-taxability of registered charity investments this gives a huge tax subsidy largely to a small group of people and increases the divide in our society and can hurt the reputation of charities as they may be increasingly viewed as wealthy and undeserving of support.

- 4) DAFs have increased tremendously over the last decade. Currently, the DQ applies to registered charities, but not to individual funds and so theoretically a DAF can satisfy its DQ requirement and therefore allow some funds to avoid any payout. There have been proposals that not only should the DAF meet the regular DQ requirement but also each DAF account should also meet a certain minimum disbursement requirement. In the US there have been proposals that each DAF fund should distribute 20% per year and these seem to have bipartisan support. Most contributors to DAFs, but not all, would probably be fine with a 5-year time horizon for expenditures. Many DAFs are in total distributing around 10-20% per year so in terms of the DQ increase it would probably have a very limited impact. Many DAFs require minimum disbursement of 3-5% per fund and in addition, other donors donate to the DAFs flow their funds-through the same year to other charities and this results in the 10-20% per year expenditures. It is correct that some DAFs may allow some of their individual funds not to disburse, but that is a far less significant problem than the \$95 billion sitting in private foundations. Although some have tried to differentiate between community foundation DAFs and DAFs affiliated with financial institutions, there are far more similarities than differences and some DAFs affiliated with financial institutions may be disbursing more funds than community foundations.

- 5) We talk about charities having a public benefit and helping those most vulnerable in society. How do we know with the very limited transparency that we have in Canada, that this is actually taking place? Everyone knows a few charities doing great work but many of the largest charities in this country are largely opaque and there is little disclosure about them. Some large foundations don't even have a website or social media presence. The greater the tax benefits and the greater the assets the greater the importance of having transparency, accountability and compliance with legal requirements.

Conclusion

The DQ is only one of the legal requirements that charities must meet. There are many issues within the charitable sector that will not be solved by increasing the DQ, such as greater transparency and other issues we have raised in our submissions. We argue that if the Department of Finance does not increase the DQ there will be negative implications to the charity sector. With COVID-19 and the Federal government being prepared to

make so many changes, continued reluctance to increase the DQ will result in greater cynicism about government and their decision-making processes.

Moreover, while increasing the DQ may result in more funds going to operating charities there is also a need to ensure that more of the funds go to certain historically disadvantaged groups. Increasing the DQ is one part of moving the sector forward in a positive way, but the funds granted also need to be provided more equitably. We have discussed the very unfortunate granting practices that have resulted in very little funds going to BIPOC charities. We are not optimistic that foundations will necessarily grant more equitably but having them grant more funds will free up other groups to tackle that challenge.

Increasing the DQ is a minor adjustment to the Income Tax Act and far more needs to be done in the charity sector to have it work better and achieve more.

If you require further information or wish to discuss this submission, please do not hesitate to contact us.

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Schedule A

Here are some questions that we believe should be added to the T3010. These changes could be applicable to foundations that have large assets. Alternatively CRA could have in the past canvassed the largest 500 hundred foundations to find out this information. While having this information might be helpful in the discussion of the DQ, we maintain that it is certainly not necessary to have this level of detail for Finance to decide to increase the DQ.

- 1) **Externally restricted vs. unrestricted:** how much of a foundation's assets are restricted as compared to the foundation's unrestricted assets (which would include board restricted or internally restricted) – and the amounts of each.

- 2) **Nature of External Restrictions:** If it is an externally restricted gift then the nature of the restriction(s) for each fund (keeping in mind that there can be more than one restriction per fund). For example:
 - a. Perpetually endowed funds where only the income can be disbursed
 - b. Perpetually endowed funds where a total return approach to disbursement is permissible
 - c. Restrictions as to the timing of when funds can be spent (e.g. funds must be disbursed over 5 years, or only the income can be spent for the first 10 years, then can encroach on capital)
 - d. Restrictions as to the purpose of funds (e.g. can only be spent in a particular charitable scope)
 - e. Restrictions as to the location of funds (i.e. can only be spent in a particular geographic area)
 - f. Restrictions as to how funds can be spent on a particular purpose (e.g. can only be spent on a particular charitable activity that furthers a broader charitable purpose)

- 3) **Explanation of each fund:** the current value of the fund and list of restrictions that apply

- 4) **Origin of Restrictions:** When were the restrictions imposed and by whom (donor or Board or other person/entity)

- 5) **Flexibility of Restricted Assets:** What flexibilities if any are provided in terms of the restriction (some may have amendment clauses, cy-près options, secondary purposes, ability to loan against capital, ability in exceptional cases to encroach on capital, etc.)