



September 29, 2021

Miodrag Jovanovic, Assistant Deputy Minister  
Tax Policy Branch  
Department of Finance  
Government of Canada  
Via: [charity-bienfaisance@fin.gc.ca](mailto:charity-bienfaisance@fin.gc.ca)

**Re: Consultation: Boosting charitable spending in our communities**

Dear Miodrag Jovanovic,

On behalf of the Ontario Nonprofit Network (ONN), we are writing to provide feedback to the consultation concerning the disbursement quota (DQ) for registered charities. ONN is the independent nonprofit network for the 58,000 nonprofits and charities in Ontario, focused on policy, advocacy and services to strengthen the sector as a key pillar of our society and economy.

We are pleased to have the opportunity to contribute to this consultation. Following a summary of recommendations, we make some preliminary remarks, followed by directly addressing each question asked in the Consultation.

Before beginning, we would like to emphasize our support for the government's overall objective of supporting front-line organizations serving vulnerable communities. Equity must be at the heart of the laws and policies governing charitable and nonprofit organizations, and ensuring that organizations that serve vulnerable communities, particularly those led by Black, Indigenous, and racialized persons, are well supported is vital for a more equitable charitable sector.

A recent report, *Unfunded: Black Communities Overlooked by Canadian Philanthropy*, identified the need to address massive inequities in granting practices in Canada.<sup>1</sup> ONN supports measures to ensure that nonprofit revenues are distributed equitably, whether they come from governments, foundations, donors, or other sources. That said, it is important to recognize the limited role that foundation grants play in the sector's revenues. Current data is lacking, but the most recent comprehensive study of nonprofit revenues indicates that community, family, and corporate

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<sup>1</sup> Rachel Pereira, Liban Abokor, Fahad Ahmad, and Firrisaa Jamal Abdikkarim. *Unfunded: Black Communities overlooked by Canadian Philanthropy*. A research report prepared by the Network for the Advancement of Black Communities and Carleton University's Philanthropy and Nonprofit Leadership program. 2020. Available at <https://forblackcommunities.org/#report>

foundations provide only about six percent of revenues to the sector under the current framework.<sup>2</sup> We support a broader approach by the Government of Canada to address inequities in revenues across the nonprofit sector alongside the sector's own work to tackle racism and colonialism within the sector. We recognize that these issues go beyond the scope of this consultation.

We also recognize that it would neither be possible nor desirable for the Income Tax Act to specify how charitable funds are specifically spent, and so it is unlikely that any changes to the DQ will substantially affect the systematic underfunding of organizations led by and serving Black, Indigenous, and racialized persons. A more holistic public policy framework will be needed to improve wealth disparities within the sector and beyond. Here, we limit our comments to the important objectives that can be achieved through improvements to the DQ.

## Summary of Recommendations

### 1) Immediate Actions:

- a) Consider creating a three-pronged DQ:
  - i) 2.5 percent of assets invested in [program-related investments](#) (PRI), thereby better reflecting the reality of below market returns on social enterprise investments, and.
  - ii) For assets not involved in charitable activities, administration, or program related investment, the greater of
    - (1) 10 percent of assets, or
    - (2) 80 percent of income and capital growth from assets not involved in charitable activities or program related investments, thereby preventing excessive wealth accumulation for charities earning high returns.
- b) Introduce a discretionary intermediate sanction for DQ non-compliance that is simple to calculate and is collected in part or in whole before appeals, thereby preventing unfair tax advantage for those who have the means to draw out disputes.
- c) Maintain current relief, accumulation, and carry-forward provisions in order to preserve flexibility that meets the needs of diverse funding models in the sector. However, require that the Canada Revenue Agency (CRA) list publicly the organizations who have received an exception and ideally provide reasons as to why this decision was taken. This will ensure the public can effectively interpret T3010 data and understand the extent of non-compliance in the sector.
- d) Do not make changes for the COVID-19 period, as it would not necessarily address emergency needs.

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<sup>2</sup> Cornerstones of Community: Highlights from the National Survey of Nonprofit and Voluntary Organizations. 2005. P. 25. Available at <https://www150.statcan.gc.ca/n1/en/catalogue/61-533-X>

- e) Simplify the T3010 charitable reporting form, as well as the asset base on which the DQ is calculated, using plain language and clear design principles, and invest in educating the sector in its proper completion to ensure that future improvements to the DQ are based on sound data.

## **2) Future improvements:**

- a) Conduct or support research to identify the extent to which organizations that spend or grant below any proposed DQ give to front-line charities serving vulnerable and historically marginalized communities.
- b) Revisit the DQ on a more regular basis to ensure the framework continues to align with the principles established below, in particular encouraging a more equitable sector.

## **Preliminary Remarks**

### *Concerning Data*

There is a general lack of data which makes evidence-based policymaking concerning the DQ difficult. However, given that the current policy is based on a similar dearth of information and therefore to a great extent already arbitrary, we believe several improvements can be made based on better articulated legislative purpose and principles. We do not believe the absence of data should prevent the Government from making immediate improvements in this area, but we strongly encourage the Government to address the data gaps identified by commentators, and to research and consult, revisiting this question on a regular basis.

We recognize that any changes to the DQ must balance the opportunity to increase funding to the nonprofit and charitable sector and prevent abuse of the charitable tax system, while preserving charitable assets for the long-term. Ultimately, Canada offers some of the most generous charitable tax credits in the world and the DQ is the only way currently under the ITA to legally guarantee that some minimum public benefit results from these generous subsidies.

### **1. Should the disbursement quota be raised to produce additional funding for charities, and to what extent?**

Many in the Canadian nonprofit sector believe that requiring foundations to increase their granting would automatically increase the funding available to front-line organizations. This may not be the case, given the existing range of charitable activities that includes everything from hospitals and universities to international development to private schools. While an increase to the DQ may not produce significant additional funding for front-line charities serving vulnerable populations, and the exact amount is unclear, it is reasonable to expect some increase, and this increase would be a welcome complement to increased direct funding by the Government.

We recommend not a simple raising of the DQ but a change to its formula, as outlined below.

**2. Would it be desirable to increase the disbursement quota to a level that causes foundations to gradually encroach on investment capital, and would it be sustainable in the long-term for the sector?**

We recommend that the DQ be set with the following principles in mind that together encourage a more equitable sector:

1. **Capital accumulation, equity, and long-term sustainability:** Capital accumulation which increases wealth disparities should be mitigated but there are many legitimate purposes for perpetual foundations to exist. Nevertheless, the generosity of past generations teaches us that where there is social value in preserving a foundation, future donors will often rise to the task.
2. **Respect for diversity of income earning models.** Foundations have diverse investment strategies and returns. We neither want to discourage low-interest investments in the social economy (co-operative and nonprofit social enterprises and housing, community land trusts, and similar), nor allow high-risk high yield investments to lead to inappropriate capital accumulation simply because they are rare.
3. **Setting a floor in crisis.** Long-term investments are needed most in crisis times. Establishing a minimum spending threshold via the DQ helps to mitigate the effect of economic recession. Consequently, low returns are not a good reason to provide temporary relief from the DQ, and there are scenarios in which foundations can be legitimately required to encroach on capital.
4. **Balancing the public interest and donor's wishes.** Charitable assets are publicly subsidized through tax receipts and exempt from capital gains tax. Consequently, the public has both an interest in a significant portion of the income and capital being spent to benefit the public.
5. **Social enterprise and granting are different.** Program related investments such as loans to social enterprises are not equivalent to grants. Both accomplish important goals, but one is not a substitute for the other.

We therefore recommend at minimum the following.

1. The Government can create an enabling environment for program-related investments (PRIs) while respecting that they are not the same as charitable disbursements, by setting a lower DQ for assets invested in PRIs (e.g. 2.5 percent instead of the current 3.5 percent). This reflects that social enterprises benefit from non-traditional investments that would not attract traditional investors because they earn below market returns. To reflect this, and preserve this lower DQ from being abused, we recommend that **part of the definition of PRI be earning a below-market rate, where "below-market" is set equivalent to the DQ (i.e. 2.5 percent)**. This ensures that organizations making market return investments that have some loose connection to mission (e.g. real estate for a housing organization) do not enjoy a reduced DQ.

2. The Government can respect the diversity of income earning strategies in the sector while preventing excessive wealth accumulation by offering a two-pronged DQ for assets invested in non-PRIs. **For assets invested in non-PRIs, the DQ should be the greater of 10 percent of the assets not used in charitable activities or 80 percent of the annual increase in assets (e.g. income and capital growth) not used in charitable activities.** This formula ensures that those earning high rates of return (whatever the number of these organizations may be) do not excessively accumulate wealth without delivering a public benefit. Furthermore, by maintaining the absolute minimum of 10 percent, this ensures that in years where income dips below 10 percent, a minimum spending threshold still remains.

While this may require some organizations to encroach on capital, given that both the capital and income are publicly subsidized and charities are under no obligation to accept terms of gift which prevent the encroachment of capital, we believe it is appropriate to sometimes require a limited encroachment on capital. However, given that charities have now engaged in gift planning for a number of decades with the 3.5 percent in mind, it would be fair to those organizations to implement some form of transitional provisions.

The one drawback of this overall approach that we note is that it adds complexity when, as others have noted, charities already seem to have trouble filling in the relevant portions of the T3010 form. To mitigate this drawback, **we recommend:**

- **simplifying the asset base on which the DQ is calculated,**
- **taking a plain language and clear design approach to the T3010, and**
- **investing in educating the sector in this aspect of the T3010 and more broadly.**

For the sake of illustration, our proposed approach would affect key groups of foundations as follows, using the example of \$100,000 in assets:

<b>Foundation profile</b>	<b>Current DQ</b>	<b>Proposed DQ</b>	<b>Net difference in disbursement required</b>
<b>Conventional foundation:</b> 100% in long-term, low-yield non-PRIs at a rate of 3.5%	3.5% of \$100,000= \$3,500	<b>10%</b> of \$100,000 \$10,000	+\$6,500
<b>Foundation with half its assets loaned to social enterprises (program related investments, or PRI):</b> 50% in PRI earning 2.5%, 50% in non-PRI earning 5%.	3.5% of \$100,000= \$3,500	2.5% of \$50,000=\$1,250 + 10% of \$50,000=\$5,000  Total \$6,250 <b>(6.2%)</b>	+\$2,750

<b>High-risk, High Return Foundation:</b> 100% in non-PRI earning 14%	3.5% of \$100,000= \$3,500	$(14\% \times 0.8) = \mathbf{11.2\%}$ of \$100,000=\$11,200	+\$7,700
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As this table demonstrates, designing the DQ in this way encourages greater disbursements across the board, but nevertheless builds in flexibility to support social finance, consistent with the Government’s priorities in other areas. Additionally, it ensures those who can afford to disburse more, do so.

**3. What additional tools (e.g., monetary penalties or other intermediate sanctions) should be available to the CRA to enforce the disbursement quota rules?**

One element of equity is that no community should be overpoliced because of their race, religion, or any other personal characteristics. This principle also applies to the regulation of nonprofits and charities.<sup>3</sup> At the same time, we do not want any organizations to be under-regulated just because they have the resources to draw out court processes. Consequently, while confidentiality provisions in the Income Tax Act may prevent us from having data on the exact extent of non-compliance and ongoing compliance efforts, we agree in principle that it is to the advantage of the sector that the CRA be given the tools it needs to effectively regulate those who may immediately enjoy tax benefits but can effectively avoid relinquishing control of their assets through delaying disbursement and then drawing out opposition to any audit and compliance action for years.

For unintentional non-compliance, for example in the case of a small family foundation unaware of annual obligations, a compliance agreement and commitment to disbursing the funds is likely sufficient combined with support for greater education in the sector. For abusive non-compliance, i.e., tax schemes that derive tax advantages from the delay in audit and further delay through compliance agreements, we recommend monetary penalties with the following features:

- simpler penalties similar to existing intermediate sanctions which can be applied faster than the revocation tax;
- calculated at a rate that removes the economic incentive to delay the disbursement of funds;
- that cannot be satisfied by simple disbursements to charities;
- combined with collection provisions which allow owing amounts to be collected immediately in order to avoid the use of dispute and appeal mechanisms to draw further tax advantages; and
- retain the Minister’s discretion not to apply penalties where there is innocent non-compliance.

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<sup>3</sup> We have seen concerns raised recently about the treatment of Muslim charities by the Canada Revenue Agency, for example. See our blog post dated August 19, 2021, available at: <https://theonn.ca/transparency-and-elimination-of-bias-at-cra-essential-for-charitable-sector/>

In this context, we hesitate to recommend any hard and fast rules as to when it is appropriate to apply penalties (e.g. repeat offences, existing compliance agreement), but instead suggest a holistic approach that asks whether the non-compliance appears to be calculated to achieve a tax advantage or instead is done out of ignorance or owing to some external factor. This is consistent with the CRA's current approach.

#### **4. Do the relieving and accumulation of property provisions continue to be useful for charities?**

We support maintaining provisions that provide the Minister with discretion to accommodate the wide diversity of organizations and situations in the charitable sector. We understand that in 2018, the relieving provisions amounted to only \$46 million and the accumulation provision \$300 million.<sup>4</sup> This suggests to us that these provisions are used but not to a large extent and this reflects their exceptional character.

However, we recommend that an exception to s.241 of the Income Tax Act be created where a charity has been granted relief from the DQ or permission to accumulate property for a specific purpose, and that the CRA be required to list the organizations who have been granted relief publicly, ideally with the requirement to issue public reasons for these decisions. We consider this necessary to enable the public to effectively interpret T3010 data. Without knowing which organizations have been granted special relief, it is impossible to assess the extent of non-compliance in the sector. We do not consider that such a duty would be onerous to the CRA given that such exceptions are rare.

#### **5. 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?**

We support the ability to carry-forward disbursements, as this better reflects the diversity of funding patterns in the sector.

#### **6. Are there any temporary changes to the disbursement quota that should be considered in the context of the COVID-19 recovery?**

We do not believe that changing the DQ is an effective way to generate significant funds for front-line charities serving vulnerable populations. We also do not consider it appropriate to lower the requirements in a time of crisis. Therefore, we do not recommend any temporary changes.

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<sup>4</sup> Mark Blumberg (2020). Blumbergs' Canadian Charity Sector Snapshot 2018. Blumberg Segal LLP. at p.11. Available at: <https://www.canadiancharitylaw.ca/wp-content/uploads/2020/10/Blumbergs-Canadian-Charity-Sector-Snapshot-2018.pdf>

Thank you for giving serious consideration to our recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cathy Taylor', written in a cursive style.

Cathy Taylor,  
Executive Director  
[cathy@theonnc.ca](mailto:cathy@theonnc.ca)

Copy to:        Tony Manconi, Director General, Charities Directorate, Canada Revenue Agency  
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