

CAGP · ACPDPTM

CANADIAN ASSOCIATION OF GIFT PLANNERS
ASSOCIATION CANADIENNE DES PROFESSIONNELS EN DONS PLANIFIÉS

Outline of Submission

To the
Parliamentary Standing Committee on Finance

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Presented by

**The Canadian Association of Gift Planners/
Association canadienne des professionnels
en dons planifiés**

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EXECUTIVE SUMMARY

The following is a summary of the Canadian Association of Gift Planners brief to the Standing Committee on Finance regarding pre-budget consultations for 2009. We feel that our recommendations will help create and sustain a more prosperous future for all Canadians. Specifically, these tax changes overall should be implemented to ensure that our nation has the infrastructure required by Canadians and enables the fastest growing revenue stream for the charitable sector to continue to prosper in the world of the future.

Recommendations:

CAGP-ACPDTM is making three recommendations. One related to tax incentives for gifts of assets. One for tax incentives related to gifts of income. And one recommendation regarding simplification of the “disbursement quota” system for building endowments and expending assets on charitable works.

- 1. That the Department of Finance move forward quickly with changes to the *Income Tax Act* to clarify the law surrounding donations to Charitable Remainder Trusts.**
- 2. Increase the flow of charitable funds in the wake of the recession and encourage Canadians to enhance their charitable giving by establishing a “stretch” charitable tax credit, as advanced by Imagine Canada and other sector organizations.**
- 3. Support the Imagine Canada and CBA submission on changes to the disbursement quota regime governing charities under the *Income Tax Act* and work with charities to develop a new regulatory approach that will strike a better balance between public accountability for tax expenditures and flexibility for donors and charities to effectively advance their charitable work.**

The Canadian Association of Gift Planners/Association canadienne des professionnels en dons planifiés (CAGP-ACPDTM) is comprised of 1400 charitable gift planners from across Canada who adhere to strict standards of ethics. Three-quarters of members are employed directly by charities to assist donors. One quarter work in the private sector in the fields of law, trusts, accounting, life underwriting and financial planning.

The purpose of the Canadian Association of Gift Planners is to support philanthropy by fostering the development and growth of gift planning. The Association creates awareness, provides education and is an advocate of charitable giving.

Recommendation #1

This Committee recommends that the Department of Finance move forward quickly with changes to the *Income Tax Act* to clarify the law surrounding donations to **Charitable Remainder Trusts**.

This recommendation is consistent with the Standing Committee's request to identify how "relatively ineffective measures be changed to ensure that they have the intended effects". The Government has taken many positive steps to improve the ability of the charitable sector to engage the public in its missions and raise donor dollars to support those in need. The Charitable Remainder Trust is an attractive structure to older donors (age 65+) to use to support their charities of choice during their lifetimes. Clarification of the Charitable Remainder Trust rules in the *Income Tax Act* will promote donor and advisor confidence and ensure proper regulation of this gift vehicle. We believe this device will take on a prominent role in structuring near end-of-life asset gifts by middle income Canadians.

History of the Charitable Remainder Trust

The Charitable Remainder Trust has been acknowledged by the Department of Finance and Canada Revenue Agency as a valid tool for giving significant gifts of assets that needs clarification in Canadian law. In the spring of 2003 at the request of these Departments, a proposal was tabled by CAGP-ACDP™ for a legislative framework for Charitable Remainder Trusts under Canadian law. While both Finance and CRA have been cooperative with CAGP-ACDP, the major regulatory changes within the sector have delayed this initiative.

We have recently provided the Department of Finance with a detailed proposal on how to improve these rules. The proposal was prepared by CAGP-ACDP™.

What is a Charitable Remainder Trust?

A Charitable Remainder Trust is a "life income" gift that allows individual donors age 65+ to create a trust, retain a life income and, upon their death, the remainder interest goes to charity. Since the trust is irrevocable the donor also receives a current tax receipt for the **future** value of the capital in the trust. It is an important giving technique internationally, but due to lack of clarity in Canadian law, Charitable Remainder Trusts have not been widely used here.

An Example

Mrs. Donor, age 80, lost her husband 2 years ago. She has been a life long supporter of the United Way and has included it in her will. She has decided she wants to make the gift now, but is concerned that she has enough income in future years to support her lifestyle.

With a charitable remainder trust she would get income for life and the charity gets the capital at the time of her death, as the gift is irrevocable. She will also receive a tax receipt for the present value of the future interest of the charity, which would be approximately 70% of the amount contributed for a donor of this age. The amount of the receipt is always discounted and determined by looking at age and life expectancy. Most importantly, Mrs. Donor is recognized today by the United Way for her generosity.

Key Proposed Changes

The CAGP proposal asks for the inclusion of a new gifting vehicle to be defined in the *Income Tax Act* (Canada) as charitable remainder trust. Such a trust must have a qualified donee as a beneficiary and would provide for annual distributions to an income beneficiary that in most cases would be the donor, but could be the donor and his or her spouse or a third party. The proposal contemplates that the transfer of property to a full charitable remainder trust would be a gift for tax purposes. The charity would be required to value the remainder interest which is left to the benefit of the charity and can issue a tax receipt for that amount. The proposal asks that incentives available in the *Income Tax Act* to gifts made directly to charities apply to the transfers of property to a charitable remainder trust. Otherwise it contemplates that the transfer of property into the charitable remainder trust would be taxable in the same way a transfer to a charity would be taxable. It is contemplated that the charitable remainder trust would be exempt from tax but that the annual distributions made to a beneficiary would be taxable under the *Income Tax Act*. In other words, the proposal tabled is as consistent as possible with the current provisions of the *Income Tax Act* and the administrative policy which supports the charitable remainder trust with some uncertainty under the current regime.

Conclusion

The Charitable Remainder Trust is a prudent and effective giving tool that could unlock significant gifts of assets from donors age 65 years and older. We ask for the support of this Committee to bring some urgency to the Charitable Remainder Trust proposal currently with the Department of Finance. The continued discussions on this proposal are an excellent example of collaboration by both Government Departments and the charitable sector. The time has come for a final push to adopt the Charitable Remainder Trust proposal in the Income Tax Act for the benefit of Canadians.

Recommendation #2:

There is no doubt that many organizations in the charitable sector are facing higher than usual demand for their services as a consequence of the recession. At the same time, for some organizations, their ability to carry on their mandate is challenged by the symptoms of the financial crisis including less access to government funding, a temporary slowdown in donations, and some substantial declines in the value of foundations' endowments.

On the other side, there is also no doubt that Canadians want to help the charitable community during their time of need. There have been many stories of giving and compassion shown during this recession.

CAGP-ACPDTM supports Imagine Canadas' proposal of a stretch tax credit that would apply to donated amounts above \$200 that exceed a donor's previous highest giving level. This new measure would be based on an individual tax payer's best previous year of giving using 2008 as a baseline. They are recommending a stretch tax credit of 39 per cent on these new donations – an increase of 10 percentage points higher than the current level. This measure would provide incentives to Canadians to continue to increase their level of giving year after year in order to increase their previous year's baselines and to continue benefitting from the stretch tax credit. This new and unique measure would encourage middle-income earners and first-time donors to give annually – up to a maximum of \$10,000.

The "stretch" tax credit provides a way for the average Canadian to make a difference. It complements recent incentives encouraging gifts of assets aimed primarily at higher income Canadians with an initiative that is less exclusive and recognizes that most Canadians can donate income when a welcome tax incentive is in place.

The intent of this “stretch” tax credit is to potentially change giving behaviour through a new direction in tax policy – a policy that is relatively simple to implement. We ask the Standing Committee to strongly consider this opportunity to open up a channel of giving for Canadians that has not been seen before.

**Recommendation #3:
Disbursement Quota Regime**

CAGP-ACPDTM supports the Concept Paper on Reform of the DQ Regime submitted by the Canadian Bar Association which proposes the development of a new regulatory approach to replace the disbursement quota imposed on unendowed tax receipted income (the 80/20 rule).

A key to increasing productivity is creating an environment that will permit members of all sectors of our economy to function efficiently and to devote substantially all of their resources to core operations.

The existence of many excessively complex regulations is a drain on the charitable sector and does not, in practice, increase compliance. In the voluntary sector where two-thirds of organizations have revenue of less than \$100,000 per annum, the danger of excessive regulation is great. Concentration on infrastructure and capacity building should be primary functions, not secondary to compliance.

CAGP-ACPDTM generally supports the steps taken by the Government to provide greater tools for regulation and audit of the sector. We particularly support those measures that enable the sector and the Government to work together, but do not significantly increase the administrative burden to the charity.

CAGP-ACPDTM recommends that the Committee look at areas where increased complexity has created operating impediments for the sector and encourage the Government to adapt the proposal submitted and simplify its approach.