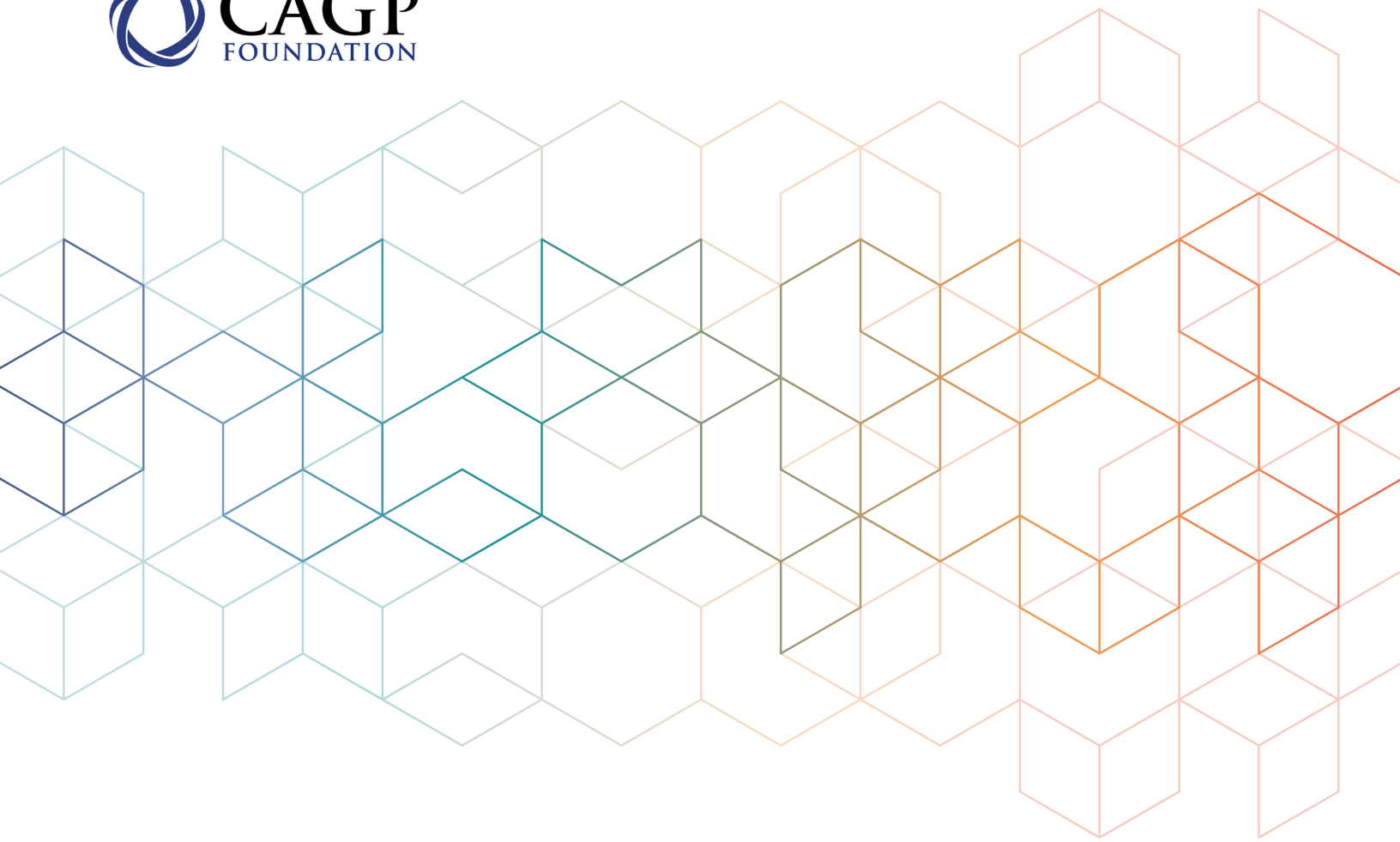




Empowering Philanthropy

AN OVERVIEW OF DONOR-ADVISED FUNDS



Table of Contents

Preface	3
Introduction	4
Section One: Background	5
Section Two: Types of Funds.....	7
Section Three: Establishing a DAF	9
Section Four: Responsibilities.....	10
Section Five: Making a Grant.....	11
Section Six: Operating Charities	13
Section Seven: Donor-advised Fund Assets	16
Section Eight: Investment Governance.....	17
Section Nine: Financial Professionals.....	19
Section Ten: Charges and Fees	20
Section Eleven: Succession of the DAF Advisor & Transition	23
Section Twelve: Estate Planning	25
Acknowledgements	26



Preface

Over the past two decades, donor-advised funds (DAFs) have become one of the fastest-growing vehicles for charitable giving in Canada. Whether donors are giving on a small or large scale, DAFs offer them an efficient and cost-effective way to manage their philanthropy. In 2023 over 20,000 Canadian charities received grants from DAFs, totaling just over \$1.4 billion.

The rise of DAFs highlights the generosity of individuals and families across Canada. While the overall number of donors has declined in the last ten years, DAFs have seen remarkable growth. There's been an increase in the number of foundations offering DAF administration and management services, as well as in the number of individual funds established. There's also a pool of substantial assets held in DAFs waiting to be distributed to operating charities. The flow of donations into DAFs – whether as initial capital or recurring contributions – is on the rise, and grants going out to charities continue to grow significantly in value. The number of charities benefiting from DAF grants has also grown, which speaks to the far-reaching impact of these funds.

The factors driving this growth are diverse and multifaceted, reflecting the evolving landscape of charitable giving.

High-net-worth donors are becoming more aware of how DAFs can support their giving goals, and many are using them to bring family members into the philanthropic conversation, fostering a culture of giving across generations. The fund establishment process has also become simpler and more accessible, making it easier for donors to set up DAFs.

Community foundations of all sizes have played a significant role in promoting DAFs, as have financial institutions, their associated advisor networks, and technology-based independent foundations. Changes to the *Income Tax Act*, especially those related to donations using appreciated securities, have made DAFs appealing to a wide range of

donors. An additional factor is the willingness of foundations to accept gifts of alternative asset classes like private equity, cryptocurrencies and hedge funds, which are often less liquid and may have higher minimums compared to traditional stocks. Another element is inter-family wealth transfers. And the expansion of DAFs in other countries like Australia, the United Kingdom, and the United States, has also been influential.

Looking ahead, we can expect the DAF sector to keep growing, though at a slower pace as it matures. Continued general economic growth and wealth creation, rising charitable giving from high-income households, and the increasing influence of women in managing family wealth, will likely contribute to this expansion. Philanthropists from the Baby Boomer, Gen X, and Millennial generations will also have an increasingly important role to play in the DAF sector. The ability to use DAFs to fund impact investment projects and causes may make them even more appealing. The number of advisor-driven foundations, particularly among mid-sized investment firms, is also expected to increase.

Technology will continue to simplify and streamline the process of how DAFs are set up and administered, helping to reduce costs. As more charities and other qualified donees benefit from the increasing flow of grants there's likely to be more recognition and a broader acceptance of DAFs as a key source of funding. Support from government and an interest in enabling the DAF sector to flourish will also play a role.

In conclusion, the continued rise of donor-advised funds in Canada is a testament to the power of philanthropy and the significant role individuals and families play in supporting the communities and causes important to them. As DAFs mature, they'll remain a vital part of the charitable giving landscape – helping donors make a lasting difference.

Introduction

In 2023 the publication of [Influence, Affluence & Opportunity: Donor-advised Funds in Canada](#) by the CAGP Foundation and KCI sparked conversations about developing guidelines to support community members implicated by the evolution of DAFs in Canada. This led to the Canadian Association of Gift Planners (CAGP) establishing a working group to discuss a way forward. The group is made up of practitioners, fundraisers, legal experts and researchers.

This document is an overview which accompanies a set of four resource documents that provide information for charities, donors, professional advisors, and DAF Foundations. It reflects the thoughtful contributions of our working group, who generously shared their time, experience, and perspectives. While it's not a formal report on the state of the DAF sector, nor is it a list of best practices, a manual, or legal advice, it does offer a comprehensive review of current practices and common issues that are often experienced by foundation and charity executives, fundraisers, donors, and professional advisors. Because DAFs vary widely and there are no standardized policies and practices across the foundations that manage them, we've focused on sharing suggestions and insights, and pointing out areas where there may be questions at various stages of the DAF lifecycle.

You'll find statements and data throughout this document that help to illustrate key points of discussion and highlight areas that can be confusing or misunderstood. We've sourced information and data from respected publicly-available sources including Canada Revenue Agency filings, Statistics Canada reports, the report of the Special Senate Committee on the Charitable Sector, the 2023 report on DAFs published by the CAGP Foundation and KCI, and the associated background research and DAF

foundation survey results, as well as various articles that have been published on the PANL (Philanthropy & Nonprofit Leader) Perspectives website hosted by Carleton University's Master of Philanthropy and Nonprofit Leadership program. The statements made and the data included may not be consistent with the views and experiences of individual foundations, but they represent the collective views of a wide range of foundations and operating charities participating in the DAF sector.

CAGP and the CAGP Foundation are enormously grateful to the members of the working group who made a significant contribution to this project. There is an Acknowledgements section at the end of the document which lists all contributors.

We especially appreciate the work of the following members:

- > **Nicola Elkins**, Benefaction Foundation, and **Malcolm Burrows**, Aqueduct Foundation, co-chairs of the DAF working group.
- > **Keith Sjögren**, Independent Consultant, who served as the lead author of this document.
- > Lead writers of the four tailored resources: **Aneil Gokhale**, Toronto Foundation; **Christine Kang**, Canadian Mental Health Association; **Catherine Mudie**, Desjardins Foundation; and **Mike Todd**, Transform Philanthropy.

We would also like to thank the Aqueduct Foundation; Benefaction Foundation; Desjardins Foundation; Myriad Canada; and the Private Giving Foundation available through TD, for their generous financial or in-kind support in the development of these resources.

SECTION ONE:

Background

The first donor-advised fund (DAF) was established in Canada in 1952 at the Vancouver Foundation. Today there are over 250 DAF foundations across the country, holding approximately 40,000 DAF funds. DAFs have recently grown in popularity with high net worth donors because they offer convenience, administrative and tax efficiency, and the ability to be integrated into their wealth management relationships.

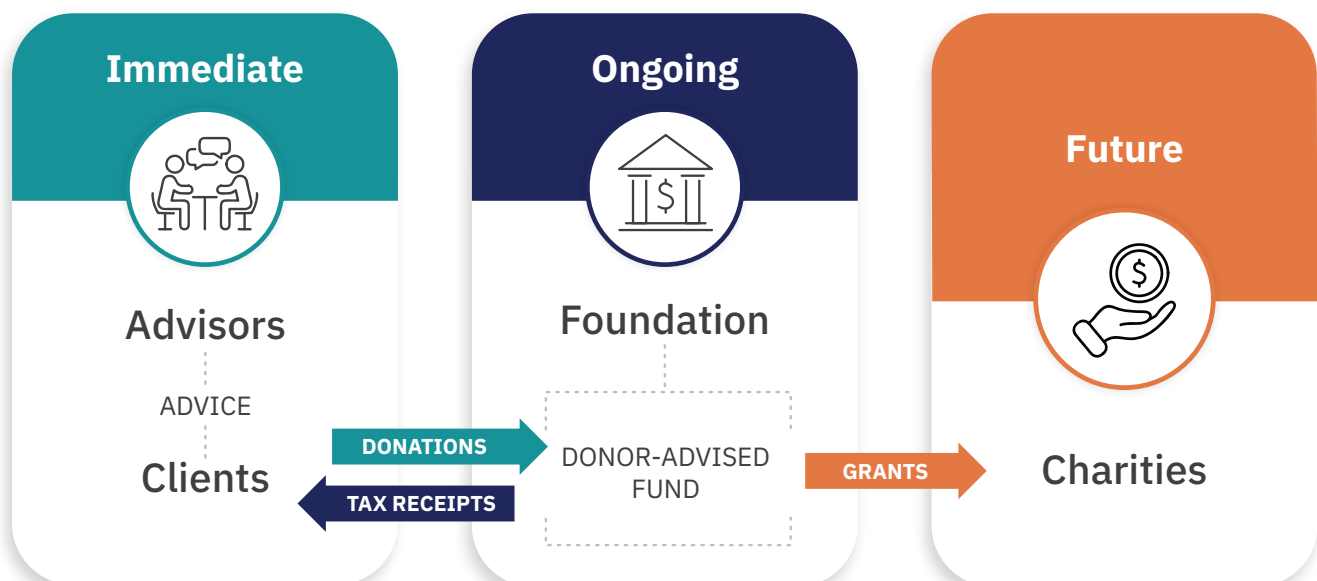
Canada Revenue Agency (CRA) defines donor-advised funds, for the purpose of completing annual T3010 filings, as *“a fund segregated into donor accounts, owned and controlled by a registered charity. Each account is comprised of contributions made by individual donors.”*

Donors may provide ongoing non-binding suggestions on payouts from DAFs, but it is the charity’s sole responsibility to make such decisions”.

In this document we define a DAF as **“a fund established at a registered charity on behalf of an individual, multiple donors, a group, association or business”.**

- > Donors can select the name of the fund, e.g. “Our Family Legacy Fund”.
- > Unlike other types of funds offered by public foundations, DAFs are established without an initial commitment to support a particular cause or charity.

How Donor-Advised Funds Work



The registered charity where a DAF is established is usually a public foundation, in order to:

- > Conduct active charitable programs, e.g. scholarships, etc.
- > Make grants to registered Canadian charities and other qualified donees.

The charity fulfils these purposes through administering DAFs and managing and administering other restricted funds.

Other registered charities like universities and hospitals, can also establish DAFs on behalf of donors.

- > In this case, the donor agrees to grant a specified amount/percentage of donated capital to the institution.
- > Despite widespread use in the United States, there's been minimal activity in this area in Canada.

Some foundations and financial professionals refer to DAFs as a “charity savings account”, but it's important for donors to understand that:

- > The account is not owned by them. The assets in the DAF are owned by the DAF foundation.
- > The donors can only provide non-binding advice about how the assets of a DAF are used. Conversely, a savings account at a bank is accessible to the depositor and they can withdraw funds and spend however they want.

SECTION TWO:

Types of Funds

DAFs fall into three primary categories:

1. Endowed
2. Spend Down
3. Flow Through

These are indications of the timeline of deployment of the charitable funds. Note that these aren't official categories and they might be labelled differently by various DAF foundations.

- > It's important not to confuse DAFs with donor-designated funds or field of interest funds where the charitable causes are identified by the donor when the fund is established and can't be modified.
- > DAFs can be established with a wide variety of assets including cash, life insurance proceeds, appreciated publicly traded securities and other types of financial assets permitted by regulation and approved by the Board of Directors of the foundation.
- > Donors can top up the balance of the fund with donations after the initial contribution, including through a gift in a Will.

- > Some foundations allow the establishment of DAFs through gifts of private company shares, real estate, works of art and cryptocurrencies. Donations of these alternative asset classes need to be managed carefully to ensure proper valuations and address liquidity.

1. Endowed DAFs

Long term or endowed DAFs work similarly to most private family foundations. In most cases, the investment income and gains from donated assets are distributed to qualified donees and the capital is kept for an agreed period or in perpetuity.

- > There's no regulatory annual disbursement quota (DQ) for an endowed DAF, or any other type of DAF. The regulatory DQ requirement applies to the registered charity overall.
 - » DAF foundations can decide to impose an annual disbursement requirement on each of their endowed DAFs.
 - » DAF foundations can, subject to the terms of the fund agreement, allow encroachment on the endowed capital within a DAF and increase the amount available for disbursements to charities.

2. Spend down DAFs

Unlike endowed DAFs, spend down funds distribute donated capital and earned income. They don't spend at a fixed rate unless the donor and the DAF foundation agree to this when the fund is established.

- > In terms of both numbers and assets, spend down DAFs are the most common type of DAF in Canada.
- > The donated capital is invested with the intent to grant out the entire amount until it's fully depleted.
- > These types of DAFs are used by individuals or families looking for more flexibility for how often and how much the DAF foundation grants.

Some DAF foundations allow accumulation DAFs on top of conventional spend down DAFs. These DAFs aren't required to make an annual distribution and are used to grow capital to fund a specific charitable project to be undertaken in the future.

3. Flow through DAFs

This is a non-endowed fund established by one or more principals to distribute all of a fund's capital to one or more qualified donees within a relatively short time period.

- > Assets in flow-through DAFs that exceed the foundation's minimum balance requirement are unlikely to be invested the same way as assets in endowed or spend-down DAFs, which have longer time horizons and different investment goals.

Legacy DAFs can be set up during a donor's lifetime to provide future annual support to a cause. They can also be created through a bequest in a Will, directed life insurance proceeds, or contributions from multiple donors in memory of someone.

- > This type of fund can also be set up through an instruction in a Will, subject to legal advice. Either way, it's not funded until the donor's death.
- > A letter of direction is often required by the foundation to identify charities to be supported if there's no advisor in place.
- > Endowed and spend down DAFs often convert to legacy DAFs at the death of the founder, allowing their charitable giving to continue.
- > Most DAF foundations include legacy DAFs in any published or reported totals.

There's no regulatory requirement for DAF donors' names to be made public through annual regulatory filings or in published annual reports.

- > Similarly to a direct donation to an operating charity – no donor information is required to be disclosed publicly.
- > Some members of the charitable sector suggest that the names of DAF founders should be publicly available through listings published by DAF foundations. This is already being done by a few foundations where donors have given permission.
- > Donors may prefer anonymity to maintain privacy around their giving practices, for personal security concerns, or to avoid unwanted gift solicitations.



SECTION THREE:

Establishing a DAF

To establish a DAF, donors enter into an agreement, or Deed of Gift, with the DAF foundation and make an irrevocable gift to them.

- > If the donor imposes time and/or use restrictions at the outset in the agreement, gifts are considered “restricted” for financial reporting purposes. Time restrictions include the capital being held for an agreed period or in perpetuity. Use restrictions reflect the type of charities to receive gifts from the DAF’s income, gains and/or capital.
- > The agreement also provides the right of the donor to give non-binding advice on how the DAF funds are disbursed.
- > When the ownership of assets to establish the fund are transferred, the donor receives a receipt for tax purposes and the assets become the DAF foundation’s property.
- > A Deed of Gift can also be called a Donor Agreement or Memorandum of Agreement.

The individuals establishing the fund, or a specifically designated alternative, are identified in the agreement or Deed of Gift as advisors for the fund.

- > These are the only people able to make granting recommendations to the DAF foundation for its consideration and final approval.
- > If a business or partnership opens a DAF, they appoint one or more advisors. Throughout this document, the individuals establishing the fund will be called “DAF advisors”.

A DAF can continue after the death of the original advisors, so successor advisors can be identified to pass the granting recommendation role over to other family members or individuals (see Section Eleven: Succession of the DAF Advisor & Transition).

- > If no advisor remains in place for a fund, the DAF foundation will decide how best to distribute the DAF’s assets.
- > Typically, grants will go to charities the DAF has supported before, or to a field of interest fund aligned with their past giving. These preferences can also be stated in the agreement or Deed of Gift.

The DAF foundation will always maintain a notional segregated account for the donated funds. For investment management purposes some foundations may pool DAF assets with other foundation restricted assets.

SECTION FOUR:

Responsibilities

DAFs create an ongoing exchange of responsibilities between the DAF advisor and the foundation.

- > The foundation retains all legal rights and responsibilities for fund assets and for making disbursements. It's responsible for making sure the DAF advisor is aware of the terms and conditions associated with the establishment of the fund.

The foundation is responsible for fulfilling regulatory and legal requirements and administration so that the DAF is managed in compliance with:

- > The agreement between the foundation and the DAF advisor.
- > All federal and provincial statutes and regulations applying to the foundation itself, the specific fund, and any underlying investments.

The DAF advisor has no obligations of compliance, reporting and overall fund administration for their DAF.

- > The foundation provides them with fund-level reporting like asset levels, donation and disbursement information.
- > Unless approved by the foundation, the DAF advisor doesn't get reporting on the performance of DAF assets managed externally by an advisor at a full-service brokerage company or a contracted investment counsellor.

At some foundations, within set guidelines, DAF advisors may offer non-binding input on how the fund's assets are invested (see Section Eight: Investment Governance).

- > All investments must follow the foundation's Board-approved policies, which outline what types of investments are allowed within a DAF.

Each foundation is responsible for establishing its own terms and conditions for:

- > Minimum initial and ongoing contributions.
- > Minimum balances to be maintained.
- > Minimum and maximum granting amount.
- > Investment options available to the DAF.
- > Fees associated with the day-to-day management and administration of the fund.

The required annual disbursement quota (DQ) imposed on foundations by the *Income Tax Act* is currently set at 5% for foundations with investment assets over \$1 million.

- > The DQ is applicable only at the foundation level not at the individual DAF level.
- > Some foundations apply the DQ at the DAF level irrespective of the DAF balance, for compliance purposes and so that donated capital held in DAFs is seen as active.
- > Foundations may make exceptions to their usual policies for individual DAFs, depending on the specific circumstances.
- > In practice most DAF foundations exceed the DQ in the granting of both capital and earned investment income.

SECTION FIVE:

Making a Grant

Donor-advised fund assets are generally granted based on the DAF advisor's recommendation. They can support any registered charity or other qualified donee as defined by the *Income Tax Act*. Depending on their objects, some DAFs may also make qualifying disbursements to non-qualified donees.

- > The recommendation from the DAF advisor must include the identity of the recipient donee as well as the timing and amount of the grant.
- > The grant must meet the requirements of a "qualifying disbursement" according to the *Income Tax Act*.
- > The role of the DAF advisor should be clearly distinct from the role and responsibility of a financial professional who may help establish the fund and then manage its assets. Unless specifically authorized by the fundholder, the financial professional can't provide granting advice for the fund.

The foundation has the sole authority and responsibility to determine whether the grant is made, since the donor has made an irrevocable gift.

- > If the recipient charity or qualified donee is in good standing with CRA, the grant is consistent with foundation policies, and there are adequate assets in the DAF, the DAF advisor's wishes are respected and implemented.

Under current regulations and sector practice, the DAF advisor can choose to either:

- > Allow their identity and contact information to be disclosed to the recipient charity.
- > Only allow disclosure of the name of the fund making the grant.
- > Ask to remain completely anonymous.

In practice, few DAF grants in Canada are made anonymously.

- > Anonymous granting may make it difficult for grantees to steward the DAF advisor.
- > The benefits of anonymous grants are limited because charities will respect a named DAF advisor's wish not to be publicly recognized.
- > Whenever possible DAF foundations should disclose information about the origin of funds.

Sometimes foundation staff can help DAF advisors identify charities and track the impact of their grants.

- > In other cases, DAF advisors may receive guidance from independent wealth or philanthropic advisors. Unless named in the agreement, these individuals aren't formally involved with the arrangement between the foundation and the DAF advisor.
- > DAF advisors should ensure that they're comfortable with the knowledge and resources of anyone offering advice on how the DAF fund is disbursed.

Can DAF advisors enter into a multi-year pledge agreement with a charity given that the foundation is responsible for meeting the terms and conditions of the pledge?

- > DAF foundations aren't bound to honour a DAF advisor's personal pledges.
- > The DAF advisor should get prior approval of a pledge agreement from the DAF foundation before finalizing details with the donee.
- > Some DAF foundations may be willing to enter into a three-way pledge agreement with the DAF advisor and charity, on condition that there are enough funds kept in the DAF to fulfil the pledge.

To comply with the ***Income Tax Act***, DAFs cannot be used to:

- > Make contributions to political parties or candidates.
- > Pay for the education of individuals, unless the gift is to a scholarship fund at a registered charity.
- > Buy tickets to a charity gala event.
- > Buy items from a charity auction.
- > Pay for entry to a fundraising event, like a golf tournament.
- > Benefit or give advantage to the DAF advisor, other donors to the fund or related parties through payment of membership fees or dues, tuition fees, etc.
- > Participate in a crowdfunding campaign.
- > Grant to an international charity which isn't a qualified donee.



SECTION SIX:

Operating Charities

At least 20,000 Canadian charities benefit from DAF grants annually.

- > In 2021, grants from DAFs to charities totaled almost \$1 billion.
- > DAF grants represented nearly 10% of the flows within the charitable sector from “other registered charities” in 2021.

Many charities recognize that grants from DAFs have increased significantly in the past decade but the growth hasn’t led to dedicated resources allocated to this emerging source of funds. It’s acknowledged that some tensions exist between operating charities and DAF foundations.

This section offers recommendations to improve collaboration between the two groups, including:

- > Foundations are encouraged to offer educational and information resources to charities that regularly receive DAF grants .
- > Foundations and sector associations like CAGP can help charities better understand DAFs and their potential benefits.
- > Charities should assess DAF grant activity and develop strategies to prepare to effectively source and manage this kind of funding.
- > DAF advisors should be engaged and stewarded by charities, like direct donors are.
- > Charities should respect DAF donor’s wishes for anonymity and privacy, as they would for direct donors.

In 2021, grants from DAFs to charities totaled almost \$1B

Some charities don’t have adequate tracking procedures for DAF grants, meaning many of these gifts are unsolicited. This means that they may be treated differently to gifts from direct donors, unless a current donor has switched to giving through a DAF.

- > Some charities treat DAF gifts similarly to grants from community foundations and the United Way, so they may go unacknowledged.
- > Larger charities are better resourced to deal with grants from DAFs than smaller ones.
- > Examples from other countries show that it would be beneficial for foundations and charities to work together to improve their practices and processes.

There’s evidence that donors who give through a DAF are more likely to be repeat donors than non-DAF donors. This means they’re worth cultivating and stewarding as a group.

- > DAF advisors usually have significant capacity to keep granting which is appealing to charities.
- > Charities with a dedicated website page or material targeting DAFs are more likely to receive a grant from a DAF.

DAF foundations give their DAF advisors options about the amount of personal information they wish to disclose to a recipient charity.

- > If the DAF foundation doesn't provide enough personal information about the DAF advisor to the charity it limits their ability to thank and steward them, give information on relevant activities and report on the impact of the gift.
- > It's important for foundations to give enough information so the charity can direct the funds to a specific project, if this was requested by the DAF advisor.
- > Charities need to respect the instances when a DAF advisor chooses to remain anonymous.
- > In this case the foundation can offer to pass on information from the charity to the DAF advisor.

DAF foundations should become more transparent about their granting policies and practices so that charities are aware of the process and the information they'll receive.

- > There is little or no standardization in granting policies amongst the over 250 DAF foundations in Canada. Charities and foundations would benefit from the development and implementation of guidelines.

Most foundations, except some community foundations, typically don't encourage grant applications from charities.

This could change as DAF foundations aim to improve their services by bringing funding opportunities to philanthropists with corresponding interests.

- > Charity donor databases, especially those used by smaller charities, often aren't structured to record the name of both the granting foundation and the DAF advisor.
- > This means that DAF advisors might not receive confirmation of the grant being received or get a timely acknowledgement and thanks from the charity.

Most DAF foundations are moving away from issuing cheques to making electronic fund transfers (EFTs). This means that the DAF advisor's information could easily be missed by fundraising or donor relations staff at the charity, even if it was attached or sent separately.

- > DAF foundations should continue collaborating to improve systems for accurate recording and tracking of grants and DAF advisor information.
- > As DAF grantmaking increases, charities need to work to overcome internal challenges preventing effective monitoring and recording of DAF data.
- > DAF foundations are encouraged to adopt and share clear granting and payment policies to help charities effectively administer grants and steward DAF advisors.

When there are one or more intermediaries like DAF foundations or financial advisors charities find it harder to connect with the financial professionals behind the donations.

- > Some charities worry that this could affect their ability to build lasting, reliable funding relationships and access regular and sustainable donations through DAFs.
- > However, there's no clear evidence to support this concern, as DAFs tend to have high distribution rates and DAF donors are often just as generous – if not more so – than direct donors.

Charities have also raised concerns that DAF grants are rarely used to fund endowments at institutions like universities and hospitals.

- > DAF donors point out – with supporting data – that their DAF investments tend to earn higher returns from DAF foundations than traditional endowments.
- > Some DAF advisors prefer to give annually than make a one-time endowed gift, as it offers more flexibility in managing future donations.

It's worth noting that there are increasing flows from private foundations to DAFs.

- > Private foundations can be limited in their investments and in holding private company shares. Also, private foundations are more work intensive and admin-heavy for donors. This makes DAFs an effective alternative.

There's also a small flow from DAFs to private foundations. This happens when a donor needs to make a time-sensitive gift while their application for a private foundation is being processed. DAFs can be established within 48 hours, while private foundations can take up to a year to be approved by CRA.

SECTION SEVEN:

Donor-advised Fund Assets

Key voices in the charitable sector – including policymakers, CRA, Department of Finance officials and charity leaders – have raised concern about the significant capital accumulated and retained in DAFs.

This concern isn't limited to DAFs but also applies to private and public foundations and charitable trusts.

Key issues include:

- > The belief that donors receive immediate tax benefits at a cost to the taxpayer, while the actual charitable impact of their capital is delayed. In 2021 tax credits for DAF donations were estimated at \$625 million, yet DAFs granted \$922 million to charities, far in excess of the tax credits received.
- > A recognized shortage of long-term and operating capital across the charitable sector, along with the perception that DAFs may be diverting funds away from operating charities.
- > The view that DAFs and other giving vehicles are only distributing at minimum levels, despite having the capacity to grant significantly more.

Several proposals have been made to CRA to address this, including:

- > Only issuing tax receipts when grants are made from a DAF instead of at the time the funds are donated to the DAF.
- > Requiring DAF money to be fully granted in a specific time period, such as ten years.
- > Imposing an annual disbursement quota at the individual fund level as well as at the foundation level.

Introducing these measures may not be necessary, given that DAFs already distribute 10% of their assets annually – twice the regulatory DQ required of public and private foundations under the *Income Tax Act*.

- > Requiring an annual distribution would affect only a small number of DAFs, since most are already active each year, although it may be a disincentive to open accumulation funds.

These proposed changes would significantly increase the administrative workload for DAF foundations. This could lead to higher fees charged to DAFs, ultimately reducing the funds available for distribution to charities.

SECTION EIGHT:

Investment Governance

As mentioned already, DAF advisors can't direct how funds donated to a DAF are invested.

- > Provincial *Trustee Acts* require charities to act as prudent investors and maintain fiduciary control over investments.
- > Similarly, the *Income Tax Act* makes it clear that donors cannot retain control over assets once they're donated to a registered charity.
- > Under common law, funds donated to a DAF foundation constitute a transfer of property to that foundation.

However, some DAF foundations allow donors setting up a fund to recommend an investment advisor or portfolio manager to manage their donated assets on the foundation's behalf.

DAF foundation Boards have a fiduciary responsibility for the assets held in their DAFs.

- > All investments must follow relevant provincial laws, e.g. Ontario's *Trustee Act* and comparable legislation in other provincial statutes.
- > Boards or Investment Committees should closely supervise and regularly review all portfolios managed by third parties.

DAF foundation Boards should create and approve an Investment Policy Statement (IPS) and review it annually, with a process to ensure that all investments strictly adhere to it.

- > The Investment Policy Statement should prioritize the safety and liquidity of fund assets and ensure alignment with regulatory requirements.

- > At a minimum, investments should aim to preserve the full granting power of the assets through returns that match or exceed the rate of inflation.
- > In special circumstances the Board or the Investment Committee may decide that an exception to the Investment Policy is in the foundation's best interest.

DAF advisors may have preferences about the nature of investments in their DAF. Foundations may choose to offer a range of investment options with different levels of risk and duration, which must comply with governing regulations.

- > If DAF advisors want to restrict how the fund is invested it must be done at the outset, through the agreement or Deed of Gift.

The Board may choose to outsource the investment of DAF assets to one or more investment managers, based on the foundation's structure and how its assets are administered and managed.

- > These investment managers should be firms and/or individuals registered and in good standing with appropriate provincial securities commissions or the Canadian Investment Regulatory Organization (CIRO).
- > Occasionally, DAF advisors may suggest specific investment recommendations – such as impact investments or private equity – for the Foundation to consider.
- > These types of investments may require Board approval.

In some cases, the specific circumstances of a gift or DAF may justify making an exception to the IPS, with approval from the Board or Investment Committee.

- > For example, a DAF might be allowed to hold a different mix of investments than usual, as long as those asset allocations are consistent with permitted investments and align with the overall strategy of capital protection.
- > Before accepting the gift and allowing the exception, there should be a clear plan in place to revert to the Investment Policy within an agreed timeline and using a predetermined strategy.

Some prospectus-exempt investments may carry inherent risks such as liquidity.

- > Exceptionally, the Boards or Investment Committees may approve the acceptance of a maximum portfolio allocation to this type of investment within a specific DAF, provided all interested parties acknowledge and agree in advance to the terms.

Impact investing, aimed at both financial and social returns, is considered an alternative to ESG or sustainable investing activities, which typically involve publicly trade investments.

CRA views certain kinds of investments at less than fair market value as acceptable.

- > These are known as Program Related Investments (PRIs). PRIs involve *Income Tax Act* and regulatory compliance considerations and should be structured and implemented by the DAF foundation with the assistance of legal advice as well as investment advisors or portfolio managers where appropriate.

- > If the investment generates a below-market return, CRA treats the difference between the market and below-market return as a gift of charitable assets to an eligible recipient under the *Income Tax Act*, meaning it's considered to be used for charitable purposes.
- > In Ontario, the *Charities Accounting Act* allows for social investments, though with some limits. These may overlap with the requirements of a PRI under the CRA Community Economic Development Guidance.

Some foundations are considering impact investing by DAFs as an option.

- > Several private and DAF foundations have embraced this approach to increase the impact of charitable giving on the major challenges facing our communities and the world.
- > These organizations have amended their investment policies and now allocate their capital to impact-focused programs or investment pools that align with their charitable objectives, and are often advised by specialist managers.
- > While impact investing aligns with the values of many DAF advisors, some foundations have found it challenging to include in their investment policies, often due to lack of demand from donors and availability of expertise.

When working with investment advisors or portfolio managers, DAF foundations should establish robust financial controls to ensure accountability, mitigate risk, and protect the foundation's assets.



SECTION NINE:

Financial Professionals

This section deals with financial professionals, a role not to be confused with DAF advisors, who are the individuals allowed to give granting recommendations to a DAF foundation

When financial professionals, wealth managers, investment counsellors, insurance agents, financial planners, family office executives and philanthropic consultants (collectively referred to as Financial Advisors) are in regular contact with financial institutions and DAF foundations, their roles and responsibilities should be made clear.

Financial professionals may be regulated at the federal or provincial level, and must also follow professional standards and internal regulations set by the firms or institutions they represent

In some cases, donors or prospective donors are engaged by an employee of the DAF foundation or, increasingly, an employee of an operating charity wanting to establish a flow of donations from DAFs, to discuss the opportunity presented by a DAF.

In all cases, a financial professional is obligated to disclose to the client/donor any benefit, fees, commissions or other form of compensation that they'll receive from the DAF foundation, or any financial institution or affiliated business.

Regulators in both Canada and the United States have raised concerns about conflict of interest when a financial professional acts as investment manager to a DAF, and the fact that their compensation is driven by assets under management.

Similar concerns apply when the investment management is handled by a business affiliated with or owned by the institution that established and provides operational support to a DAF foundation.

Financial Professionals can play a variety of roles to help clients establish and manage DAFs, including:

EDUCATOR – making clients aware of how DAFs and alternative giving vehicles work.

REFERRER – connecting clients with a DAF program/foundation that isn't affiliated to the Financial professional's employer/firm.

AGENT – introducing clients to an in-house DAF program and assisting them in the process of setting up a DAF, which may result in some kind of recognition for the Financial professional.

INVESTMENT MANAGER – entering into a formal agreement with the DAF foundation to manage the investment for the client's DAF.

ADVISOR – representing the client, with documented authority to act on their behalf in developing and/or providing grant recommendations to the DAF foundation.

SECTION TEN:

Charges and Fees

This section provides information on charges and fees levied to individual funds by DAF foundations.

- > The focus of this section is on how fees are structured and calculated, not the actual amount charged.
- > Charges and fees vary widely. Some are considered cost recovery while others are seen as fees for services provided.
- > No charges or fees are paid directly by the DAF advisor since all amounts collected are charged directly to the fund, which is owned by the DAF foundation.

A detailed schedule of fees to the DAF advisor should be made available by the DAF foundation when the DAF is established.

- > These fees primarily cover the ongoing administration of the fund and the management of investments held by the fund.
- > Some foundations combine administration and investment management fees.

DAF foundations often recover costs or charge standard fees for processing certain types of donations:

- > Donations by credit card.
- > Electronic fund transfers or online donations to a DAF.
- > Donations of securities.
- > Donations in the form of non-financial assets.

Most DAF foundations charge an administration fee based on the assets held by a DAF at the end of a specified period, e.g. a month, a quarter, or a year.

- > Fees are calculated based on a percentage of end-of-period assets.
- > Fees may be calculated monthly and charged monthly, quarterly or semi-annually.
- > It's unusual for DAF foundations to charge a flat fee other than a minimum or maximum monthly fee.
- > Flow-through DAFs may have a distinct fee schedule because the relationship is short-term and the DAF foundation needs to recover costs. These fees typically include a flat or percentage fee based on the donation amount, plus a charge per grant issued.

A variety of service elements and operational activities are covered by administration fees collected by a DAF foundation, including:

- > General operating costs like expenses connected with governance, premises, personnel, and associated third-party service providers.
- > Issuance of tax receipts for donations.
- > Due diligence on charities DAF advisors recommend to receive grants.
- > Granting costs incurred by the DAF foundation.
- > Grant confirmations and regular reporting of DAF activity.
- > Informational and educational communications and events with DAF advisors.

- > Promotional material and material required by regulation.
- > Regulatory filings.

Some foundations charge a donation fee on the amount of initial and subsequent donations to DAFs when the fund's initial and ongoing assets are below a specified threshold.

- > Donation fees are calculated as a percentage of the donated amount.
- > For substantial donations, fees may be capped at a specific amount.
- > However, applying a fee to each donation can discourage regular contributions, so most DAF foundations don't use this model.

Some foundations may charge additional fees if the granting activity of a fund exceeds a specified yearly maximum.

Administration fees or expense recovery rates may change from time to time at the discretion of the DAF foundation.

- > It should be noted that a few foundations don't charge administration fees to a DAF, instead covering their operating costs with investment management fees.
- > Regular administrative fees are normally based on a sliding scale reflecting the assets held in the DAF.
- > In some cases, including the size of a fund or the nature of the relationship with the DAF advisor, fees or recovery rates may be negotiable.
- > DAFs set up by individuals or families may pay lower administrative fees than those established by organizations or in support of corporate giving programs.

There is an example of a foundation setting the fees based on service requirements.

In addition to the annual administration fee, most DAFs also incur investment management related fees or cost recovery charges. These fall into two categories:

1. Investment service fees – charged to a DAF by the foundation to cover the cost of investment management provided by associated or external asset managers, including full-service brokerage advisors or investment counsellors recommended to the foundation by the DAF advisor.
2. Management expense costs – charged to either proprietary or third-party pooled or mutual funds offered by DAF foundations.

Investment management fees, like administration fees, are based on the size of assets under management (AUM). Large DAFs attract relatively lower fees than smaller DAFs when it comes to the percentage of AUM charged.

- > The basis of all investment fees structure must be clearly disclosed to the DAF advisor when the fund is established, as well as the calculation and charging method.
- > These fees are subject to all applicable sales taxes depending on the province where the foundation is located.

Fees for pooled or mutual funds that aren't charged to the DAF are reflected in the net asset value of the units of the various pooled and mutual funds held by the DAF.

In most cases, investment funds offered by DAF foundations established by financial institutions are managed by in-house asset management units.

- > Some view this lack of an arm's length relationship between the foundation and the asset manager as presenting a conflict of interest between the parties.

Other fees which may be applied include:

- > A per donor fee if the DAF is established by a corporation or organization to collect contributions from participants in a payroll-based charitable program.
- > An early closing flat fee if the DAF is closed within a specified period of time.
- > A fee for low or no activity or if the balance is reduced to a level below the minimum established by the foundation.
- > A negotiated fee for any investigatory or legal action required to complete a grant to a charity.

SECTION ELEVEN:

Succession of the DAF Advisor & Transition

Upon the death or incapacitation of a DAF advisor, usually the original donor, the responsibility to provide grant recommendations to the DAF foundation is generally assumed by individuals identified as successors.

- > Most DAF founders choose to name heirs or relatives as their successors.
- > It's recommended to name contingent successors in case the primary successor becomes incapacitated or is unable to discharge their role.
- > There's no limitation on the age of the successor, although a temporary successor can be appointed until the primary successor reaches a specified age.
- > There's usually no requirement for a DAF advisor or successor to be a Canadian resident.
- > In some cases, the DAF advisor might establish a committee to collectively oversee and make grant and investment recommendations
- > The foundation may limit the number of successors in a single fund.
- > The fund advisor can change the succession plan at any time, as long as this is allowed by the DAF foundation's policy.

The fund advisor can provide granting advice at any time during their life or while the fund is active. They may choose a number of ways to have the remaining assets used upon their death, including:

- > Distributing the remainder assets to specific charities. In some cases, e.g. single-issuer foundations like the UHN Foundation, a portion may need to go to that institution.
- > Establishing a program of recurring annual grants to specific charities.
- > Distributing the remainder assets to one or more new DAFs in the name of heirs.
- > Transferring the remaining assets to a field of interest fund which allows the foundation to make grants within specific categories.
- > Giving discretion to the foundation to distribute the assets as considered appropriate by the Directors.

A DAF can be converted to a legacy fund similar to an endowment, subject to specific policies established by the foundation. For example:

- > Stipulation that a legacy fund must meet a minimum asset level, e.g. \$500,000 or \$1 million.
- > A maximum period of time for both the principal and accrued income to be fully granted out to qualified donees, e.g. 20 years.

If a successor isn't identified, or there's no granting advice on file from the original donor, the fund becomes an "orphan". The undistributed assets become unrestricted assets of the foundation subject to any applicable time or use restrictions.

- > The foundation must use the assets for its own charitable purposes.
- > Most foundations have policies in place to ensure that assets held in orphaned DAFs are distributed to charities who've already received grants from the fund or charities with a similar purpose.
- > In the absence of clear guidance, the foundation can distribute the assets at their discretion.

If a DAF advisor or successor want to end the DAF arrangement with a foundation rather than exhausting the assets held in the fund or waiting until the death of the advisor, there's a formal process to follow, outlined in the guidelines of the DAF foundation.

- > It's likely that they'll require a formal request along with the appropriate documentation.
- > The request should include granting advice about the distribution of remaining fund assets to other charities.
- > If the DAF holds non-cash assets like securities, the foundation will liquidate and distribute the assets before closing the DAF.
- > Written confirmation will be provided from the foundation, stating that the fund has been closed, with a final statement and other documentation for the advisor's records.

Separation and divorce are also linked to DAF Succession – a planned transfer of the advisor role.

When spouses or partners who act as advisors to a DAF separate the assets in the fund remain undivided because they're owned by the DAF foundation – not the individuals – and aren't subject to any separation or divorce settlement.

- > If only one person is listed as the DAF advisor, that person retains advisory responsibility for the assets, regardless of the original source of the capital which set up the fund.
- > If a couple are both named as advisors, they can agree to continue jointly acting as advisors.
- > They can also choose to close the fund by distributing the assets to charities. Or each person can open their own DAF and ask the foundation to transfer the agreed portion of the assets to the new funds.

SECTION TWELVE:

Estate Planning

Individuals can simplify their charity support by designating a DAF as a beneficiary of their estate in their Will (subject to legal advice), insurance policies or other financial accounts where a beneficiary can be nominated.

- > A charity may receive a specific dollar amount, a percentage of the estate or the remainder after all other distributions.
- > Responsibility for making recommendations to a DAF foundation cannot be passed on through a Will.
- > It's much easier for an executor of an estate to make a single payment to a DAF as opposed to multiple payments to various charities.

Based on legal precedent, neither a Power of Attorney nor the Executor of an estate has the authority to direct how a DAF foundation distributes or invests DAF assets – unless they've been officially appointed as the successor advisor to the DAF.

- > When the original and any subsequent gift was made to the DAF, the DAF advisor relinquished all control over the funds.
- > Even during the lifetime of the DAF advisor, the foundation is not legally liable for how the funds are managed, nor can it be sued by the DAF advisor for failure to protect the fund assets, although a court application can be made to enforce a restricted charitable purpose trust.
- > Without a Letter of Wishes or similar document (see below), there's no obligation for the foundation to grant funds to charities previously supported by the DAF.

- > Without appropriate documentation in place at the time of the donor's death, the assets in a DAF become unrestricted assets of the foundation, subject to any overriding time or use restrictions.

Granting advice given can identify particular charities and the allocation they are to receive.

Alternatively, the advice can suggest nominating someone to act as advisor for the distribution of DAF assets as outlined in the previous section.

One of the advantages of using a DAF is its flexibility. It allows people to update their estate plans without the costs and administrative issues usually associated with amendments.

- > Foundations may ask the DAF advisor to prepare a Letter of Wishes outlining their philanthropic goals and recommendations for the distribution of funds, which can be modified during the DAF founder's lifetime.
- > There's no requirement to notify named charities of any changes, whether adding or removing charities, or adjusting the amounts the charities are to receive at the donor's death.
- > The Letter of Wishes should be reviewed periodically to ensure that it continues to reflect the intentions of the DAF advisor.

Acknowledgements

We're grateful to all those who contributed their knowledge, expertise and time to this project.

DAF WORKING GROUP

CO-CHAIR

MALCOLM BURROWS

Executive Director,
Aqueduct Foundation

CO-CHAIR

NICOLA ELKINS

Founder & CEO,
Benefaction Foundation

COORDINATOR

DANA THOMSON

Executive Assistant,
Canadian Association of
Gift Planners (CAGP)

ADAM JAGELEWSKI

Managing Partner,
Twin River Capital

ANDREA BUTTARS

Vice-President, Philanthropic
Services, Hamilton
Community Foundation

ANDREA DICKS

President, Community
Foundations of Canada

ANEIL GOKHALE

Director, Philanthropy,
Toronto Foundation

ARUNDEL GIBSON

Client Consultant, Cidel
Asset Management Inc.

BOBBY KLEINMAN

Executive Director of Estates
& Trusts, Jewish Community
Foundation of Montreal

BRAD OFFMAN

CEO, Spire Philanthropy

CATHERINE MUDIE

Senior Advisor, Philanthropic
Support for Members and Clients,
Desjardins Foundation

CRAIG HIKIDA

Vice President, Donor Services,
Vancouver Foundation

DARREN PRIES-KLASSEN

former CEO, Abundance Canada

ELENA HOFFSTEIN

Lawyer, Miller Thomson

ERIC SAARVALA

Executive Director, Raymond
James Canada Foundation

FLORENCE CAREY

Lawyer, F I Carey Law Corporation

GRACE XIN

Vice-President, Philanthropic
Services and Community Building,
Ottawa Community Foundation

HEATHER L. M. POWERS

Director, RBC Charitable
Gift Program, RBC Family
Office Services

JACQUELINE DEMCZUR

Lawyer, Carters
Professional Corporation

JENNIFER BUTTON

Director and Head, Philanthropic
Services, RBC Wealth
Management, Royal Trust

JO-ANNE RYAN

Vice President, Philanthropic
Advisory Services, TD Wealth

KATE LAZIER

Director & Lead Estate
Planning and Philanthropy,
CIBC Private Wealth

KATHY R. ASSAYAG

President & CEO, Jewish
Community Foundation
of Montreal

MARY BETH TAYLOR

Vice President, Philanthropy,
Children's Hospital
Foundation of Manitoba

MICHAEL BLATCHFORD

Partner, Miller Thomson LLP

MICHELLE OSBORNE

Executive Director, Gift Planning,
University of Toronto

MIKE TODD

Founder, Transform
Philanthropy

NICOLE D'Aoust

Partner, McCarthy Tetrault

RUTH MACKENZIE

President & CEO,
Canadian Association of Gift
Planners (CAGP)

SILVIA UGOLINI

Principal Director, Planned
Giving, University Advancement,
Concordia University

SUSAN MANWARING

Partner, Miller Thomson LLP

TERRANCE S. CARTER,

Lawyer, Trademark Agent,
Carters Professional Corporation

REPORT AUTHOR**KEITH SJÖGREN**

Independent Consultant

REPORT EDITOR**KAREN HUDSON**

VP, Growth Initiatives,
Benefaction Foundation

