

YOUR GUIDE TO

Charitable Giving

& ESTATE PLANNING

LEAVE A LEGACY™
GREATER TORONTO AREA



Only **YOU** can build
YOUR LEGACY

Charitable
Giving Begins
at Home

Eight Questions
Donors Should Ask
Charities

How to Give with
a Passion and get
the best Tax Relief

Key Considerations
in Planning
Endowed Gifts

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06DPFLAL

Editor's Note

My experiences as a father who has been blessed with an insightful and self-assured daughter have guided me to a simple and undeniable truth. A legacy may well be built on what you invest, donate or bequeath, but it is defined by how successfully you communicate clarity of vision and personal values.

This publication has evolved out of a shared commitment by a broad and diverse spectrum of professional advisors to more effectively address the scope of philanthropic needs and challenges, and to inform, educate and motivate individuals who have the desire and resources to

make an impactful difference.

My objective in guiding the preparation of this unique resource was to achieve two goals: to create an exceptional framework with which to promote dialogue between fiduciary advisors and the individuals with whom they earn trust, and to provide a useful reference with which to define and execute your own personal charitable giving and estate planning strategy.

On behalf of Leave A Legacy™, I am confident that this effort exceeds my objective.

Arthur C. Ryan,
Editor



LEAVE A LEGACY™
GREATER TORONTO AREA

Planned giving, very simply, is the process of designating charitable gifts so that the values and causes you hold dear – your philanthropic interests – are supported within your estate while maximizing tax and other financial benefits.

LEAVE A LEGACY™ Greater Toronto Area is a collaborative effort involving professional advisors and charitable organizations including social service agencies, foundations, educational institutions, health organizations and other religious, environmental and philanthropic groups to promote interest in charitable giving through a will or a planned gift.

LEAVE A LEGACY™ GTA is a program of the Canadian Association of Gift Planners (CAGP*ACDP) to promote interest in making planned gifts.

The Association brings together professionals from various disciplines to ensure that the gift planning process achieves a fair and proper balance between the interests of donors and the aims and objectives of registered charitable organizations in Canada in accordance with the Association's Standards of Professional and Ethical Practice.

To learn more about the Canadian Association of Gift Planners™, please visit their website at www.cagp-acdp.org.

To learn more about LEAVE A LEGACY™ Greater Toronto Area, please visit our website at www.leavelegacygta.org.



LEAVE A LEGACY™
GREATER TORONTO AREA

LEAVE A LEGACY™ is an initiative of the Greater Toronto Area Round Table of the Canadian Association of Gift Planners (CAGP) in partnership with local charities, not-for-profit organizations, sponsors and estate planning professionals in the GTA.

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Gift Planning The Time is NOW

Ken Ramsay, CFRE and
Ann Rosenfield, CFRE

The next 10 years could mark a significant, positive change for charities and their approach to gift planning.

While planned giving has tended to be reactive in most organizations, the time is now for charities and their supporters to fully embrace planned giving.

Why planned giving? Why now?

Currently many forms of fundraising have become increasingly competitive which means revenues have been generally flat or that a few charities have done very well while the majority is struggling to maintain and increase fundraising.

Because planned giving has been a relatively under-used source for funds, charities have a real chance to be a leader in their sector by tapping into this market.

Other trends contribute to this timeliness. The average individual includes a charity in their will at age 49. This means that the “Baby Boomers” are in the midst of this process.

Our experience talking to over 230,000 Canadians finds that the average Canadian donor is much more aware of planned giving now than in the past. Coupled with research which shows that once donors put a charity in their will, they are likely to keep that charity in their will, this is clearly a strong resource for charities to promote with supporters.

Added all together, the planets are in alignment and the time is now for Canadian charities to make planned giving a priority.

Ken Ramsay is the President of **Legacy Leaders**. He was a member of the founding Board, and served as the first Chair, of CAGP.

Ann Rosenfield, CFRE is the Executive Vice President, Operations of **Legacy Leaders**. She also serves as a faculty member for the Fundraising and Resource Development program at Georgian College.

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YORK
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redefine THE POSSIBLE

Create a Legacy

The benefits will last for generations

Brad Offman

Symphony patron Maria Sanchez died in 1984. On Friday night, she'll present a program of Bach, Brahms and Beethoven.

Carpenter Dominic Mason died in 1997. Tomorrow, he'll renovate the playground at the local homeless shelter.

How is this possible? How can two individuals who passed away many years ago have such a profound impact on a world that they no longer occupy? While this question may seem perplexing, the answer is actually quite simple. Both Maria and Dominic decided to leave a legacy to their favourite charity by creating an endowment fund. Through a gift in their respective wills, Maria and Dominic made sure that the organizations that they loved during their lifetime would continue to benefit and thrive when they were no longer alive.

This is pretty powerful stuff. It sounds pretty cool but it also sounds like an expensive proposition, reserved for the wealthiest of individuals. Fortunately, the truth is that the vast majority of Canadians can achieve the same wonderful objectives as Maria and Dominic. Unfortunately, less than 10% of us choose to do so.

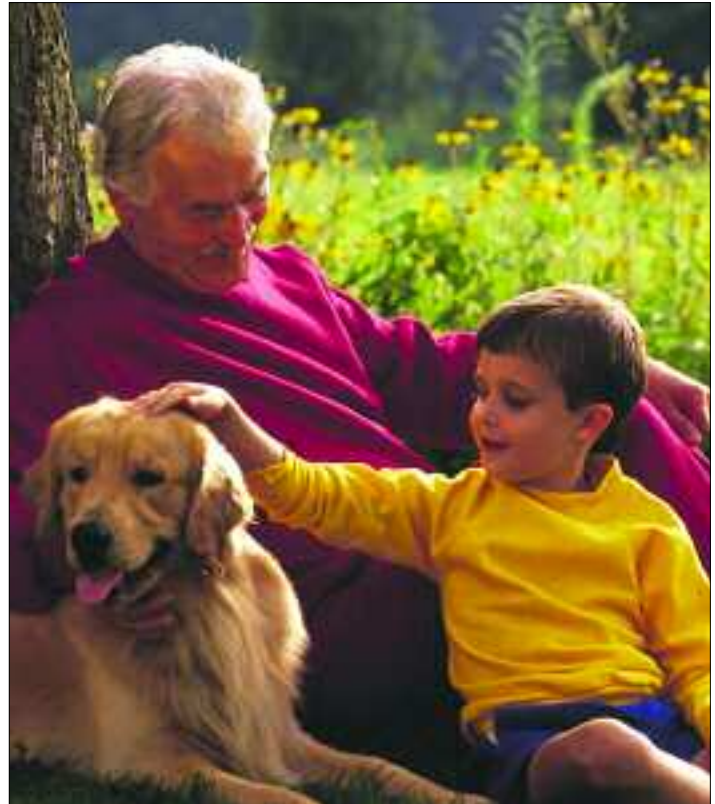
During our lives, we're

preoccupied with mortgage payments, college tuition and saving for our retirement, all of which typically take precedence over a large gift to our favourite charity. We write small cheques, hoping it will make some kind of difference in the lives of people or animals who are less fortunate than we are.

Let's face it. Whether we like it or not, we're typically worth more dead than alive.

As crass as that might sound, it's also the truth. Like most Canadians, I simply don't have the financial capacity to make a major gift to a charity during my lifetime. But I also know that through my estate, I have the power to give more. Much more. The gift that I have chosen to leave to a local-area hospital is precisely 1,000 times larger than the largest donation that I have made during my life. Yes, you read that right. 1,000 times! This astounding number speaks less to my generosity as a donor than it does the capacity of very average Canadians to leave very above-average gifts to the organizations that they know and love.

Leaving a legacy to the generations that follow is a tradition that pervades virtually every culture, nationality and religious affiliation. In our wonderfully diverse country, more and more Canadians from all backgrounds are joining the ranks of Dominic and



Maria. You can truly make a difference in the lives that follow. Join the club. It's a membership with benefits that will last for generations to come.

Brad Offman is the volunteer Chairperson of the Greater Toronto Area chapter of **Leave A Legacy**.



Charitable Giving Begins at Home

Jo-Anne Ryan

Canadians were lauded for their generosity in donating cash and other aid to help victims of last December's Asian tsunami catastrophe. But what is the general state of charity in Canada?

On the surface, it would seem to be sound. Statistics Canada reports that Canadians contributed \$6.5 billion to charity in 2003 — the highest amount ever reported and an 11% increase from the previous year.

But the reality is that many Canadian charities are struggling, finding it difficult to recruit volunteers to secure enough funding as demand for their services grows.

Under pressure

Part of the problem is the increasing number of charities, which means a smaller slice of the pie for each. The number of registered charities has increased by about 1,500 every year over the past three decades. As of 2003, there were

more than 80,000 registered charities in Canada and almost 71,000 non-profit organizations.

Canadian charities are active in a wide array of fields, including health, the environment, social services, arts and culture, sports and recreation, and religions and are important to Canada's economic health as well.

Making a difference

There is certainly hope for improvement on the donor front, however. Corporations are likely to step up the pace of charitable donations in their efforts to be seen as good corporate citizens.

Individuals, too, can play a key role. The baby boom generation has the potential to usher in a golden age of philanthropy.

Over the next 10 years the boomer generation is expected to receive a massive income transfer through inheritances, amounting to as much as \$1 trillion. While many of these boomers could end up making large charity bequests in their wills — and their beneficiaries passing along more of their inheritance to charities — the process can begin sooner.

innovative way to support the causes that matter to you. With a minimum donation of only \$10,000, this initiative provides many of the benefits of a private foundation without the complexities and costs normally associated with establishing one.

In addition, when publicly traded securities or mutual funds are donated to the Private Giving Foundation, the taxable capital gains on the donated securities are cut in half, to 25% from 50%. This benefit is not available for donations to private foundations.

Alternatively, Community Foundations are another way to establish a legacy of giving. You can donate to Community Foundations in cities, towns and rural areas across Canada. A Community Foundation is a philanthropic organization focused on building permanent endowments in order to tackle long-term community challenges and meet immediate needs.

As everyone's situation is different, please consult your tax advisor to determine the most appropriate strategy for your particular circumstances.

Jo-Anne Ryan is the Executive Director of the Private Giving Foundation, a donor-advised fund program available exclusively through TD Waterhouse. (www.TDWaterhouse.ca/privategiving)



Community Living Toronto has been providing services to individuals with an intellectual disability for over 50 years. Founded as a grass-roots family movement, we have helped to dramatically change the lives and experiences of people with an intellectual disability.

At one time people with an intellectual disability were considered 'retarded' and incapable of learning, they were put in an institution where they were cut off from their family and society. But today, thanks to the work of Community Living

Securing Futures

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Toronto people with an intellectual disability have more opportunities to reach their full potential than ever before. Not only that, but families now have a place to turn for information, support and advice.

You can help build the best possible future for people with an intellectual disability.

Call 416.968.0650 or visit communitylivingtoronto.ca for more.

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Establish a legacy of giving today

A new initiative at TD Waterhouse¹, the Private Giving Foundation provides a simple,

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10 Things You Can Do Today To Leave A Legacy

Once you have identified the not-for-profit organizations that best represent your values and interests, there are many ways to start giving. Your initial move should be to consult with legal, financial, banking and business advisors and the not-for-profit organizations you wish to support. With their help, and the following list, you'll be on your way to making a real difference:

- 1 Prepare a Will. Without a Will you lose control over your property at death.
- 2 Leave a gift in your Will for the charitable organizations that make a difference in your life. Imagine the positive impact on our community if everyone made a gift from their estate to their favourite charity.
- 3 Leave a specific dollar amount or a percentage of the assets in your Will to charity.

4 Consider using assets for your charitable gift. These include but are not limited to cash, stocks, bonds, mutual funds, term deposits, real estate, art, jewellery or insurance. Such gifts may even provide tax savings.

5 Name a charitable organization as a beneficiary of your RRSP or RRIF.

6 Name your favourite charitable organization as the beneficiary of an existing or paid-up life insurance policy.

7 Purchase a new life insurance policy naming your favourite charitable organization as the beneficiary.

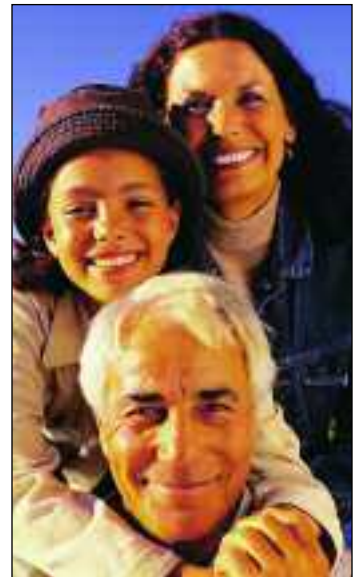
8 Remember your loved ones with memorial gifts.

9 Encourage family and friends to leave gifts to

their favourite charitable organization in their Wills.

10 Ask your financial or estate planning advisor to include charitable giving as part of their counsel to clients.

The most important thing to do is to act now. Throughout the course of your life, your plan can adapt to your changing desires but only if you take the time now to set it in motion.



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For information on how you can leave a gift in your will call Debby MacFarlane 416-964-9231 ext.238 or visit our web site at www.belmonthouse.com



Leave a gift in your will.

Foundation for Leaving a Legacy

Rachel Blumenfeld

Donating to charity can be as simple as sending a cheque to a local hospital or university, or it can be a more complex and integral part of an overall estate plan. A bequest to charity in a Will can be a tax-effective strategy that benefits a favourite charity without tying up your assets or capital during your lifetime.

Your tax bill on death is often much higher than during your lifetime. This is because, on death, an individual is deemed to have disposed of all capital property owned at the time of death. Generally, any capital gains that

have accrued become taxable at the time of death, unless the property is left to a spouse. In addition to the taxable capital gains that are reported in the terminal tax return, the value of any RRSPs or RRIFs owned by the deceased are included, even though the RRSPs or RRIFs are paid out directly to a named beneficiary.

When you make a bequest to a designated charity in your Will, your estate can use the tax credit from the donation in your final tax return to offset some or all of the tax that arises on death. If the amount of the donation exceeds your net income, the remaining amount of the donation credit



can be carried back to the previous tax year and used to reduce taxes paid or payable in the prior year.

A bequest in a Will can be for a specified amount or a percentage of your estate. It is important that legal advice be sought when drawing up a Will, to ensure that your Will and the bequest are prepared properly. When leaving a bequest to charity in a Will, it is important that the legal name of the charity be used in the Will, in order to prevent a dispute between similarly named charities and to ensure that the intended charity receives the donation.

There are numerous other ways to leave a legacy to charity in addition to a simple bequest. The donation of a life insurance policy, for example, offers an opportunity to leave a substantial gift to a favourite charity for a relatively small annual payment. You may wish to donate the insurance policy itself to a charity during your lifetime, in which case you will receive a receipt for the premiums paid following the donation. The charity will receive the proceeds after your death.

You may also designate the charity as the beneficiary of the proceeds of the insurance policy,

while retaining ownership of the policy. Your estate will then receive a tax credit in the amount of the insurance proceeds paid to the charity, which may be used to offset the large tax bill that arises as a result of death. Similarly, you may designate a charity as the beneficiary of your RRSP or RRIF and your estate would receive a receipt for the amount received from the registered plan.

Business owners who expect large capital gains on the disposition of a business at the time of death may want to consider the donation of a certain class of shares of the business to a charity. The shares would generally be redeemed by the company, often using the proceeds of life insurance that are paid to the company when the business owner dies. The donation of private company shares, both during lifetime or on death, is a complex strategy requiring the involvement of legal and tax advisors, as well as the charity – but it is one that is certainly rewarding in many ways to the donor and the charity alike.

Rachel L. Blumenfeld practices in the areas of estate planning and administration and charities and not-for-profit law with **Miller Thomson LLP**.

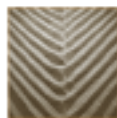
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Estate Planning expresses your individual Will

M. Jasmine Sweatman

Putting together an estate plan is not about death but about the future of family members and charitable organizations that you support. Age or marital status does not determine whether you should have a Will. Anyone who has assets – bank accounts, RRSP's, personal property, real estate or insurance policies – single or not - should have a Will. It is this document that will

detail how you want your assets to be distributed upon your death.

It is equally important to seek the professional advice of a lawyer to guide you on the legal and practical implications of your estate plan. Important things to think about during this process are what are your assets and liabilities, who do you want to benefit, including the proper legal names of your beneficiaries, especially if they are charitable organizations, and



who do you want to manage your estate.

Charities and not-for-profit organizations support the fabric of our community. Providing for them during your estate planning process allows you to support the

organizations that directly affect your community.

M. Jasmine Sweatman, B.A., LL.B., TEP, LL.M.
Certified Specialist (Estates and Trusts Law)
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How to Give with a Passion and get the best Tax Relief

Tim Cestnick

You gotta love it when kids tell jokes.

“Daddy, why did the rooster cross the road?” my son Winston asked the other day.

“I dunno,” I replied.

“Because he was paper-clipped to the chicken!” Winston laughed.

Boy, did he laugh. In the end, his bad joke got a good response because he was having such a good time telling it. Enthusiasm can do that.

When it comes to your charitable giving, are you enthusiastic? Do you give with a passion?

It's the time of year when many of us consider giving to charity. This year, I'd like to discuss giving with a passion, and how to gain the most tax relief from giving.

Passion benefits

In a survey conducted by The Philanthropic Initiative Inc. (TPI), a Boston-based non-profit consulting firm, donors realize instinctively that having a passion helps them commit more completely to philanthropy, to give more of their time and money, and to increase their personal satisfaction and impact. According to TPI, passion can support you as a donor in many ways, including the following:

• Fuelling your initiative

Giving becomes easier when helping with an issue that you believe is vital.

• Deriving greater satisfaction

Giving becomes more satisfying when you're making a difference in an area important to you.

CONTINUED ON THE NEXT PAGE

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Your excitement about an issue can be contagious.

• **Having a greater impact on an issue or area.**

If your giving is scattered, it will be more difficult to know if you're making a difference.

Passion found

How do you give with a passion? Let's face it, passion is not like a light switch that you can turn on and off.

Peter Karoff, founder of TPI, writes that "the alignment of one's passion to one's giving is often elusive, but worth the search."

It's a matter of determining what you're passionate about

This year, don't just give. Take the time to determine your passions, then give to charities that are in line with those passions.

first. You can figure this out by asking yourself the question: What things do you value most in life? Don't shy away from this test.

There are no right or wrong answers. Simply list 10 things in life that you value most. These are your core values. My list includes: Faith in God, healthy family relationships, strong friendships, helping others, physical fitness, competition and career achievement, among other things.

Your passions will tie directly into your core values. Since I value physical fitness and competition, organized sports is a passion of mine — hockey in particular. So, when I make a donation to help an underpriv-

ileged child play hockey, I'm giving with a passion. It also ties in with another of my core values: helping others.

Passion exercised

When making donations, think outside the box. Consider these ideas to make your giving easier.

1. Donate your losers

Consider donating some of your stocks or mutual funds that have dropped in value. You'll trigger capital losses that you can use to offset capital gains, and you'll receive a donation credit for the fair market value of the securities.

2. Donate your winners

If you're thinking of selling

investments that have appreciated in value, consider donating those securities to charity. Canadian tax law will reduce your tax bill by 50 per cent on the disposition, plus you'll receive a donation credit for the value donated.

3. Donate on-line

This year, I've volunteered my time on the board of a wonderful charity called CanadaHelps. Consider donating on-line at www.canadahelps.org to simplify your giving. You can donate to a registered charity in Canada, and you'll get your receipt by e-mail in seconds.

Tim Cestnick, FCA, CPA, CFP, TEP is author of *The Tax Freedom Zone* and *Winning the Tax Game*, among other titles, and Managing Director of Tax and Estate Planning at AIC Limited.

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www.giving.humber.ca

Giving the Gift that Lasts

Elena Hoffstein

There are many reasons why one makes a charitable gift: to support the objectives of a charity, to commemorate the life or death of a loved one, to perpetuate a family tradition to list just a few. For many, making an annual gift is just one element of their charitable gifting and there is the additional desire to build a perpetual endowment that will continue to provide benefits.

There are a number of ways in which a permanent endowment can be achieved either through a gift made during one's lifetime or

through a gift made through one's will to take effect on death.

For wealthy individuals and families, the private foundation has long been favoured as a vehicle for accomplishing their charitable objectives. An attractive feature of the private foundation is that it allows donors to retain administrative control over assets donated while realizing the tax benefits of charitable gifting. In recent years, new anti-avoidance rules under the Income Tax Act have imposed stringent limitations on gifts to private foundations, and donors have looked to alterna-



tive structures to direct their gifts to charities. The most significant of these is the **donor-advised or donor-directed fund** administered by a public foundation such as a community-focused foundation.

The establishment of such a fund provides the tax benefits of a gift to a public foundation while affording the donor some degree of control

SEE GIVING ON PAGE 19

This is probably the worst ad on the page.
There's no headline. There's no photography. There's not even a product to sell. What is a miracle is the fact that it is here at all because I'm writing this letter three years after I was diagnosed with breast cancer. I know I was facing the greatest battle of my life. Thanks to the wonderful support and care that I received from the staff at Princess Margaret Hospital, I am here today writing this message of hope. Maybe you have already come to know this special Hospital as I have. Please consider leaving a gift in your will to further research and help find a cure for cancer.
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Jennifer Polito*

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The Princess Margaret
Hospital Foundation

Key Considerations in Planning Endowed Gifts

Terrance S. Carter

The primary means of creating gifts of lasting value is through contributing to an endowment fund of a charity, whereby the donated capital is kept intact for a minimum of 10 years, or in some cases in perpetuity, with the income from that capital amount being available for use by the charity. Endowment funds can be created by a donor or by the charity itself. Maximizing the benefits of endowment funds requires that the donor seek the assistance of a lawyer to draft the endowment agreement, as well as an accountant to assist with personal tax planning.

Donors and their professional advisors must look into the future and think about how any restrictions placed on the endowed gift might affect the ability of the charity to use the funds for its future charitable activities. In this regard, it is important to bear in mind that restrictions placed now may not be viable in the future, and neither the charity nor donor would be able to unilaterally vary the endowment agreement unless that right was originally built in. Otherwise, a court order to vary it would be required. Also, as with any other investment, the goal is to protect and increase the value of the principal donation, while at the same time

ensuring that there is sufficient income which the charity can use for its charitable programmes.

When planning to make an endowed gift, donors and their advisors should consider the following:

- What is the donor's intent in making the gift? Is the gift to be used for a specific purpose, or for the general purposes of the charity? Will a long-term programme of the charity be funded?
- Is the capital to be held in perpetuity or on a long-term basis (i.e. at least 10 years)?
- Is the gift to be invested in a particular manner or in accordance with the general investment policy of the charity?
- Should interest from the gift be partially reinvested or disbursed in total?
- Can the capital amount of the gift be disbursed in special circumstances?
- Will there be ongoing donor input through donor-advised directions on investment or yearly disbursements?
- Should the gift be given directly to the charity or should it be given to a parallel foundation?
- Is the charity permitted to apply the gift to a different purpose in the event that the original purpose is no longer viable?

- Is the gift to be given to another charity in the event that the charity is wound up?

It is also important that donors and advisors be fully aware of, and conversant with, the associated tax rules affecting endowment gifts, which have recently been significantly revised.

Endowment funds can be complex, particularly if they are to be held in perpetuity, the details of which cannot be fully explored in this article. Interested readers can consult the articles on



endowed gifts and donor-restricted charitable trusts which are available at www.charitylaw.ca.

Terrance S. Carter practices law at **Carter & Associates**. His focus is charity and not-for-profit law with an emphasis on fund raising and gift planning. He is counsel to and affiliated with Fasken Martineau DuMoulin LLP, and is a member of Canada Revenue Agency's Charity Advisory Committee. He has been recognized as one of the leading experts in charity and not-for-profit law in Canada by Lexpert. Mr. Carter is also a frequent author and speaker on charity and not-for-profit law, as well as editor of www.charitylaw.ca

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Eight Questions Donors Should Ask Charities

Malcolm Burrows, CFRE

The process of planning a large gift of assets often focuses on tax planning and the various tools of giving, such as bequests, life insurance, or trusts. Perhaps the most important question is overlooked: **what will the donation achieve?**

Planned gifts, particularly bequests in wills, are typically the largest charitable donation of a person's life, but often they are made without due diligence of the recipient charity or the

intended purpose of the donation. In my experience, over 50% of donors who make a bequest in their wills to charity do not inform the charity in advance. The charity finds out only after the donor dies, which leaves no room for planning.

This lack of communication is unsurprising. Most individuals consider their estate plans to be private. They want the flexibility to change their minds or they want to preserve privacy.

However, by asking the

charity several questions, either directly or through an advisor, the donor can ensure that his/her gift is well spent.

The checklist:

1) Policy on use of planned gifts and bequests

What is the charity's policy on the use of undesignated bequests and planned gifts? For example, are they spent immediately or are they endowed? Are they used to pay a deficit, support administration, or pay for the direct programs and services of the charity?

2) Annual budget

What is the amount of the charity's annual budget? What is the charity's long-range strategic plan? If the charity has a small budget and depends on annual funding, it may be most prudent to set up a donor-advised fund at a community

foundation or a private foundation to provide annual support, rather than a flood of capital.

3) Accountability

Are annual reports and audited statements available to the public? Can the donor meet with senior officers of the charity to discuss priorities? Is there any reporting after the gift is received? What are the operating costs of the charity?

4) Gift designation

Does the charity allow donors to designate to a particular area or activity of the charity? Can gifts be given in memory of others?

5) Personal endowment funds

Does the charity have a permanent endowment where capital is kept intact and the income spent annually? Does the charity offer donors the

CONTINUED ON THE NEXT PAGE

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opportunity to name endowment funds with their bequest? How are funds invested?

6) Privacy Policy

Does the charity have a donor confidentiality and privacy policy? Can a donor remain anonymous, and what does anonymous mean? Can the charity guarantee the donor will not receive unwanted mail or phone calls?

7) Donor recognition

How does the charity recognize its donors of bequests and planned gifts after they are received? Does the charity have an optional program to recognize and involve donors during life?

8) Staff Gift Planner

Does the charity have a staff Gift Planner or Planned Giving Officer? Has the planner adopted the Canadian Association of Gift Planners' Standards of Ethical and Professional Conduct?

Most charities appreciate passionate donors (and advisors), so please -- go ahead -- ask the tough questions. Ultimately, trust is the most important factor in a donor's relationship with a charity. Trust should be earned, not assumed.

Malcolm D. Burrows, CFRE
Charitable Gift Planning Consultant, **Scotia Private Client Group**, and Chair of Government Relations, Canadian Association of Gift Planners.
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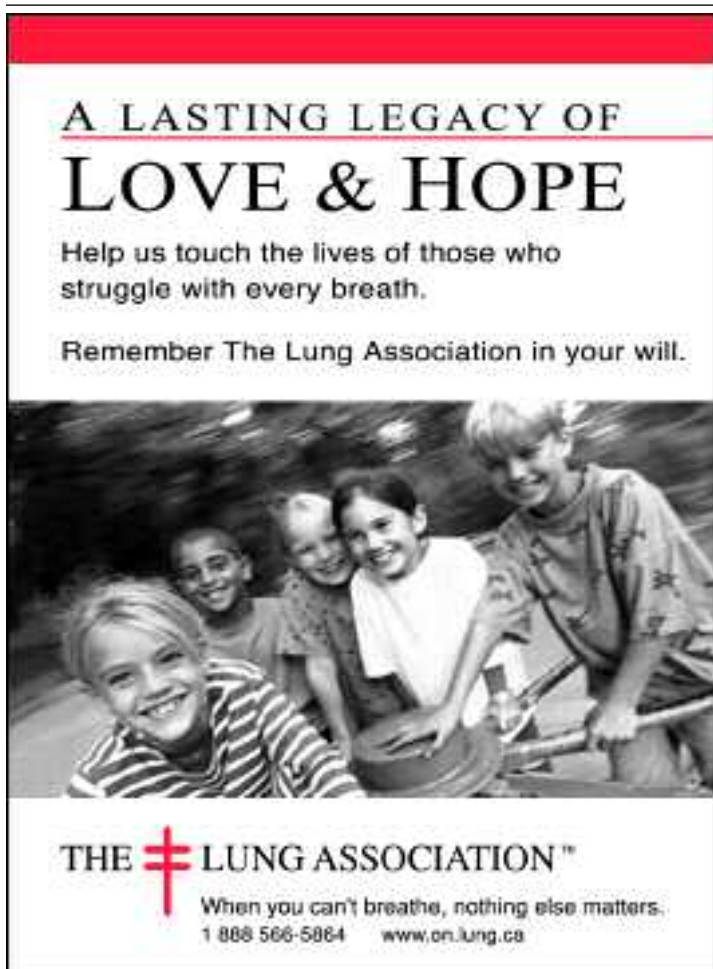
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Self-Directed Giving of Social Capital is Best

Tim Cestnick

If you had a million dollars, what would you do with the money? Taking the advice of the band The Bare Naked Ladies, you'd probably buy that special someone in your life a house, K-car, fur coat (but not a real fur coat), exotic pet, green dress, monkey, lots of Kraft dinner with exotic ketchups, and a few other things.

But what if you couldn't spend the million dollars on

yourself, your family, or friends? Suppose that, instead, you'd have to give the money to charity. Which charity would get your money? This money is called your "social capital."

Social Capital

You see, our tax system ensures that a portion of your wealth, whether you like it or not, is going to be used for the general welfare of this country. It's the law. The truth is, you can't reside in Canada,

earn an income and accumulate wealth here, without contributing a substantial portion of your income and the growth on your assets to others.

The interesting thing is that our government gives you a choice in how you support the general welfare of our country. You can donate voluntarily, or involuntarily. But make no mistake: one way or the other, you're going to contribute your share of social capital.

Self-Directed Giving

If you give involuntarily, you are simply giving a portion of your income each year to the government for it to distribute however it sees fit. The Canada Revenue Agency collects this money through our tax system.

Unfortunately, most Canadians use this default method of donating their social capital. Even though you

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- CNIB is the nation's primary provider of vision loss support services and home to one of the world's largest specialized libraries.
- CNIB provides services at no cost to over 100,000 Canadians – this number is expected to double by 2015.
- Every 10 minutes of each working day, one new client turns to the CNIB for help.
- One in four Canadians will experience severe vision loss in their lifetime.
- AMD is the leading cause of blindness in Canadians over 50 years of age.

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may disagree fiscally or morally with how the government spends your social capital, you have no say in the matter by using this default method of giving.

Paul Martin and the folks in Ottawa could choose to buy every teenager in Canada a fur coat, K-car, monkey, and a Bare Naked Ladies CD, and you'd have no say in the matter (well, not until it becomes a scandal – and then we'd all forget about it by the next election).

By contrast, voluntary giving allows you to direct how your social capital is used. You can donate that capital to the causes and organizations you want to support. Let's call this "self-directed" giving.

Most Canadians that I

have spoken with would agree that self-directed giving of social capital is a more efficient method of contributing to the general welfare of the country than paying tax dollars, where those dollars have to first pass through the bureaucracy of the government before ending up who knows where.

You should also know that, for every dollar over \$200 that you donate to charity in a year (up to 75 percent of your income), you will recover in tax savings at least the amount of tax you would have otherwise paid on that dollar when you earned it. So, making a donation is a true shifting to the charity of the social capital that would have otherwise been handed to the government.

Don't get me wrong. I'm

not suggesting that Canadians avoid paying income tax. I'm just suggesting that the portion of your taxes that represent social capital would be more efficiently utilized if you gave directly to the registered charity of your choice.

Your Choice

I don't want to downplay the importance of giving to charity for other reasons. There are many good reasons to give – not simply because it's a more efficient way to spend your social capital.

Giving brings joy by making a difference, encourages others to give, helps us take the focus off ourselves, and helps to eliminate the poverty mentality. The poverty mentality is that mindset that causes us to cling to our money because it repre-

sents our safety and security.

The funny thing is, if you take two individuals each earning exactly the same income, with the same net worth, which one is going to feel wealthiest: The one who clings to his money worried that he doesn't have enough, or the one who gives generously and recognizes he has more than he needs? It's tough to feel insecure financially when you're giving to meet the needs of others.

It's your choice. Self-direct your social capital, or allow the government to direct it. As for me – I choose to take control of where my social capital is used.

Tim Cestnick, FCA, CPA, CFP, TEP is author of *Winning the Tax Game 2005*, and the *Tax Freedom Zone*. He can be reached at tim@timcestnick.com.



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Basic Canadian Donation Tax Law

Robert B. Hayhoe

The income tax system is designed to recognize Canadians' charitable donations. This brief article describes the basic Canadian tax rules for donations by living Canadians (a slightly different set of rules apply to donations at death).

A Canadian resident individual who makes a gift of cash or other property to a charity that is registered with the Canada Revenue Agency is entitled to

claim a donation tax credit against income tax (provided the donor files an official receipt with his or her next tax return). The tax credit is set at approximately 25% for the first \$200 of gifts in a year and at about 45% for gifts between \$200 and 75% of the individual's income for the year. The credit is designed to provide all donors, regardless of income, the same recognition as a top marginal tax rate donor. Similarly, corporations are entitled to deduct charitable donations up to 75% of income in each year.

If an individual or corporation donates more than 75% of income in a year, the portion of the donation that cannot be used in the year can be carried forward up to five years. In some circumstances, it may also be advantageous not to claim a donation until a subsequent year even if the amount given in the year is less than

75% of income (for example, if other deductions make the donor non-taxable in the year anyway).

While it used to be that if a donor received anything of value from the charity, no tax receipt could be issued, the tax rules are being amended to allow a donor to receive an "advantage" as part of a gift. In this case, the value of the advantage received by the donor reduces the donation amount.

When the property being donated has appreciated since acquisition, the property is deemed sold at fair market value, perhaps causing a taxable capital gain. However, gifts of listed securities (public company shares, mutual fund units, etc.) give rise to a capital gain that is only taxed at half of the ordinary rate (unless the gift is made to a private foundation). As a result, it may be better for donors with investment portfolios to donate appreciated securities rather than cash.

Robert Hayhoe is a partner at **Miller Thomson LLP** in Toronto and practices in the area of charities and not-for-profit law. He may be reached at 416.595.8174 and by email at rhayhoe@millerthomson.ca.

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Giving the Gift that Lasts

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through a consultative or advisory function. Donor-advised or donor-directed funds are useful tools not only for the wealthy, but also for any person who wishes to build a lasting endowment of some permanence.

A donor-advised fund is a fund established within a charity for which the donor receives an immediate tax receipt but retains the right to advise the charity on how the money in the fund and the income generated are to be spent. At the time the fund is established, the donor can name the fund, the purpose of the fund and even the charitable causes to be supported. Donors can designate that their gift be held in perpetuity

with distributions to be made only from the income, or can designate that distributions be made out of principal as well as income over a number of years.

One of the more significant issues for some donors is the extent to which they can exercise control over the fund. In that regard, it is important both for donors and for charities to be aware that in order for a donation to qualify for a tax receipt, it must be a "gift" at law. While the term "gift" is not defined in the Income Tax Act, Canada Revenue Agency has stated that a gift must be made voluntarily, the donor cannot impose directions that benefit the donor or any related person (other than recognition), nor control the gift to such an extent that there is in

effect no gift made, nor can the gift revert to the donor or any related person. Thus, it is not uncommon to find, in donor agreements, provisions to the effect that while the donor will be consulted, ultimate authority over investment and disposition decisions lies with the charity.

It is also important for both donors and charities to be aware of the **disbursement quota** rules. The disbursement quota is a prescribed amount that registered charities are required, under the Act, to disburse each year in order to maintain their charitable registration. This requirement is intended to ensure that charities use the bulk of their tax-receipted gifts on charitable activities/purposes, and discourage charities

from spending excessive amounts on fundraising and administrative expenses. The disbursement quota rules requires charities to expend **80% of received donations** in the year following the receipt of the donation.

If the intention of the donor is to establish and fund an endowment, it would be important to ensure that donations to a permanent fund be characterized as a ten-year gift or an enduring property. This would take the donation out of the requirement that the charity has to expend 80% of the donation, and would allow the charity to hold the capital of the fund in perpetuity or for whatever length of time is set out in the terms of the gift.

Elena Hoffstein is a lawyer with **Fasken Martineau DuMoulin LLP** specializing in charities, charitable giving, trust and estate planning.



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