The 2003 Annual CHURCH & the LAW SEMINAR

November 12, 2003

Disbursement Quotas and Related Matters for Churches and Charities

(Power Point Presentation)

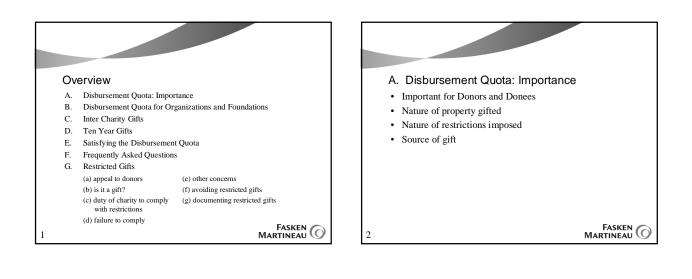
By Maria Elena Hoffstein Fasken Martineau

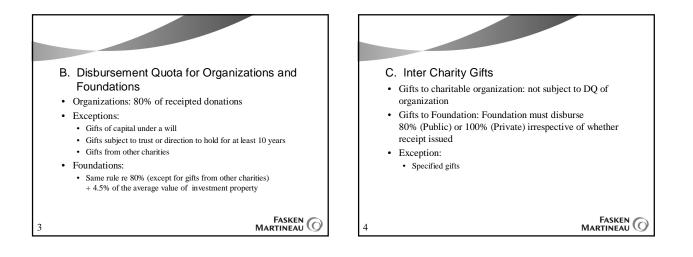


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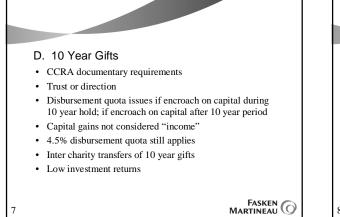
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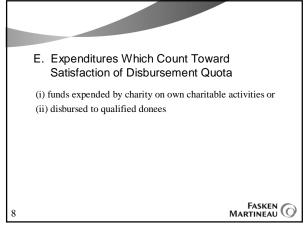
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How Does the Issue Arise?	Specified Gifts
 Donor wishes to satisfy charitable pledge by gift from private foundation to public foundation Private Foundation wishes to wind up and transfer its property to community foundation Organization wants to set up parallel foundation for asset protection purposes 	 Gifts from one charity to another designated by donor charity as a specified gift will not count toward satisfaction of DQ of donor charity Donee charity does not have to include amount of gift in its DQ Important for donee Foundation to make inquiries Also important for Organizations to ask because specified gifts not included in income of organizations which can't disburse more than 50% of their income to qualified donees Inter-charity transfers of 10 year gifts also problematic
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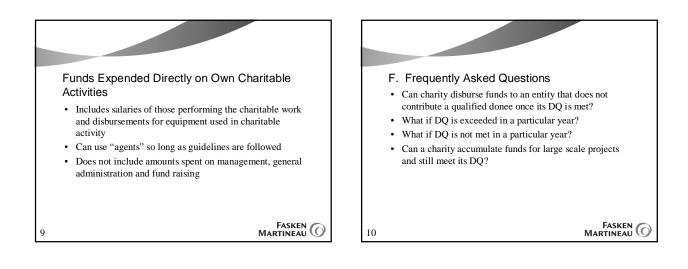


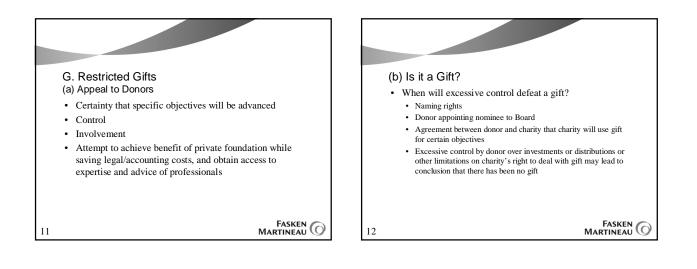


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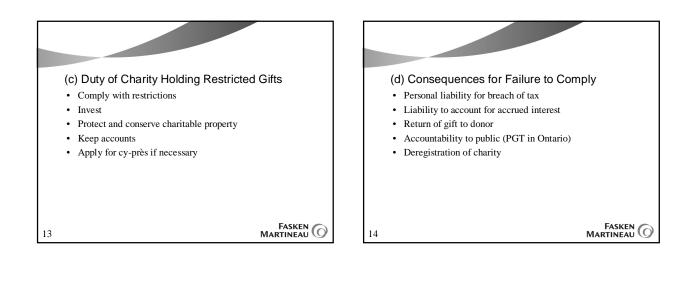
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(e) Other Concerns with Restricted Gifts	(f) Avoiding Restricted Charitable Gifts
 If restriction on: objects of the gift investment powers ability to spend capital If no flexibility to vary the terms, required to get court approval for variation Court's jurisdiction invoked if charitable purposes impossible or impractical Summary procedure available in Ontario under <i>Charities Accounting Act</i> (s.13) in certain circumstances 	 Restricted gifts - legal responsibility and exposure to liability Encourage gifting of unrestricted gifts Encourage donor advised funds Instruct fundraisers to understand and identify differences between unrestricted and donor restricted gifts Fundraising materials should include statement to explain gifts will be considered to be given to further general charitable purposes unless donor specifies otherwise
consent of all beneficiaries required FASKEN FASKEN MARTINEAU	16 FASKEN O

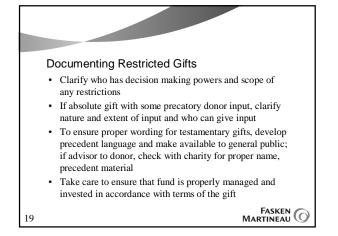
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(a) Decumenting Postricted Cifts	Decumenting Pectricted Cifts
(g) Documenting Restricted Gifts	Documenting Restricted Gifts
 Public fundraising appeals 	 Incorporate by reference administrative powers in bylaws
Include clear statement that any surplus funds remaining could be	Expressly permit commingling
used to further general charitable purpose of charity	 Specify if capital encroachments allowed after period of
Specify name of trust/endowment	time If direction to accumulate income, consider disbursements quota implications Accumulations Act considerations
Specify purpose of restricted gift in clear language to avoid failure of gift for lack of certainty	
Ensure object of gift is within charitable objectives of	
donee charity	 If only income to be spent, consider cy-près clause to permit
Review and approve donor restrictions	income to be redirected if insufficient for original purpose
Include cy-près clause if primary purpose becomes impossible or impracticable FASKEN	
Impossible or Impracticable Fasken Martineau	18 FASKEN (MARTINEAU





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