COMMUNITY FOUNDATIONS OF CANADA | FONDATIONS COMMUNAUTAIRES DU CANADA

Rebooting Philanthropy:
A Partner in Transforming Canada

September 2021

Disbursement Quota Consultation, Government of Canada

EXECUTIVE SUMMARY

The Federal Government's Disbursement Quota (DQ) consultation provides an opportunity to ask fundamental questions about philanthropy. This submission suggests that any answer to the narrow question of the DQ needs to be situated within a broader context. Examined on its own, a DQ recommendation is a stopgap measure that cannot produce meaningful progress. For societal transformation -- generating concrete and long-lasting wellbeing -- we need a broad sector and regulatory modernization that helps maximize the impact of philanthropic organizations.

Recommendations:

Governance and Management

1 We recommend that the annual CRA T3010 charity reporting form include questions about the diversity of boards of directors.

Endowments and Investments

2 We recommend that the government create policies that activate non-dispersed assets philanthropic organizations hold through mission related investments.

3 We recommend the government work with provinces and territories to create flexibility for foundations to update normally unalterable donor trust agreements, reducing barriers for philanthropic organizations to explore alternative models to meet community needs.

Grantmaking Practices

4 We recommend that to simplify grantmaking rules the current government re-introduce and pass the content of Bill S-222 and that the government work with the charitable and nonprofit sectors to reform and relax the existing rules on non-qualified donees and direction and control.

5 We recommend the Income Tax Act be updated to allow organizations governed by the act to a) adopt charitable purposes aligned with remedying root causes of complex social and environmental challenges, and to b) ensure they are empowered to participate -- along with other partners like governments, the private sector and academia -- in societal missions that can solve such challenges.

6 We recommend that **a meaningful DQ increase is necessary** but wholly insufficient to tackle the challenges we face.

While these recommendations provide important context in support of the DQ consultation process, this submission has not provided a number by which the government should increase the DQ. By providing a number, this submission would be affirming the consultation's primary but flawed question, and upholding a regulatory system in need of a more fundamental overhaul. And, while like many organizations, we recommend that a meaningful DQ increase is necessary, it is wholly insufficient to tackle the challenges we face.

Introduction

Community Foundations of Canada (CFC) is the national leadership organization for Canada's 193 local community foundations. Together with community foundations from coast to coast to coast, we help drive local solutions for national change on the issues that matter most to Canadians.

Community foundations are on the ground in communities. They see firsthand how national policies play out at the grassroots level. Their grants invest in the public good, building and sustaining healthy and inclusive communities where everyone belongs.

Together, these recommendations reflect the perspectives of CFC's national leadership team based on its knowledge of the field and were informed by consultations with community foundations, partners, as well as constituencies and communities historically excluded from public policy processes.

Through the consultation process, a diversity of perspectives on the DQ, sector regulation, and the future of philanthropy were articulated. While this submission does not represent consensus among all community foundations, the recommendations underscore the critical role that government, working in collaboration with the philanthropic and community sectors, can play to support a just and equitable recovery and the continued impact and relevance of philanthropy as we collectively navigate a turbulent future.

From optimization to transformation

"I have come to understand the current system of philanthropy in Canada is built on systems of white supremacy, systemic racism and colonizing practices. How can we imagine a new future which leaves these painful legacies behind us?"

Volunteer Board Member, Community Foundations of Canada

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Multiple challenges highlight the urgent need to reimagine our approach to philanthropy: the COVID-19 pandemic, Indigenous Reconciliation and the legacy of Residential Schools, Black Lives Matter, the #MeToo movement and pervasive racial injustice - all happening under the existential threat of the escalating climate crisis. This time of great change and challenge calls for both courage and ambition.

We believe this moment can be the catalyst for the establishment of a new social contract, one that revitalizes and reimagines relationships between government, philanthropy, the private sector and people. Changes in government policy proposed in this submission can facilitate new terms of engagement between philanthropic organizations and communities.

We believe we need to shift our mindsets and behaviour and move beyond the status quo. Many philanthropic organizations strive for optimization, making the most effective use of existing resources and rules. And so, many conversations about the DQ have focused on debating percentages. Should it be 3.5%? 5%? 10%? These conversations are reductive and risk being a distraction at a moment when the federal government has a broader opportunity for change that can support philanthropy to meet the needs of communities today and into the future. They are conversations about optimization, not transformation.

Societal transformation is both a responsibility and an opportunity for all institutions across sectors. It means achieving net-zero, realizing Indigenous rights, gender and racial equity. All of these would build a stronger, more cohesive and equitable society where everyone belongs and flourishes.

The Federal Government’s consultation, therefore, brings to the forefront a more fundamental question:

How can philanthropic organizations best serve the needs of communities to better meet the challenges of the 21st century and move towards societal transformation?

Governance and Management Impact

1. Reflecting the Diversity in Communities:

For organizations to understand how to meet the needs of Canadian communities, their boards, staff, and volunteers need to reflect the diversity of Canada.

This year, Statistics Canada released a survey to better understand the diversity of Canada's charity and nonprofit boards of directors. While 8,835 people completed the survey, providing important baseline data on sector diversity, there are no immediate plans to repeat it. To address this, **we recommend that the annual CRA T3010 charity reporting form include questions about the diversity of boards of directors.** As Senator Ratna Omidvar says, "[t]his way, the data could be fulsome, disaggregated and provide an accurate picture of diversity in the sector every year. The country and the sector could see if progress is being made based on clear, ongoing evidence." Similarly, charities could be required to disclose their diversity plans in the same way corporations do in their annual reporting to the government. The StatsCan 2021 survey revealed that only 30% of respondents had such diversity plans.

Endowment and Investment Impact

2. Investing for Impact (as well as Financial Return):

2010 marked the first public call for philanthropic organizations to rethink their endowment investment policy to maximize endowed contributions to public benefit. In its report Mobilizing Private Capital for Public Good, the Canadian Task Force on Social Finance's first recommendation was: "To maximize their impact in fulfilling their mission, Canada's public and private foundations should invest at least 10% of their capital in mission related investments (MRI) by 2020 and report annually to the public on their activity."

Since that time, the world of investing for impact has expanded significantly. In 2019, a new report on Canadian foundations' experience, The Impact Investing Guidebook for Foundations: 2019 Primer, reported that: "Foundations are leveraging their core expertise in philanthropy to think deeply about how to affect change across various populations, using investments as the tool to complement traditional grants. And impact investing is increasingly moving beyond the private markets. Investors are using their whole portfolio, across all asset classes, to seek mission-aligned impact paired with market rate returns."

Seeking impact moves investment policy beyond the simple screening of investments (e.g. to exclude certain potential investments such as military producers, oil and gas, etc.) to proactively seeking out investments producing measurable positive change, through market products or direct investments into social enterprise.

Only a minimum of 3.5% of resources is legislated to be used for generating mission impact. Consequently, 96.5% may be invested for financial returns. But the bulk of philanthropic organizations (and their assets) remain invested in traditional markets that fail to drive, or don't prioritize, social or environmental impact.

We recommend that the government create policies that activate the 96.5% of non-dispersed assets philanthropic organizations hold through mission-related investments. This could include incentives or mandates for responsible investments, using tools such as taxation, and/or redefining the notion of a disbursement quota to encapsulate how foundations are deploying the full scope of their endowed assets toward their mission.

These policy changes would align philanthropic organizations' endowments with their role in directly producing public benefit and financial income, unlocking additional financial resources available for investment in underserved areas such as affordable housing, local economic development and job creation, and green infrastructure.

3. Reviewing Endowments' Perpetuity:

For the last century, there has been a well-established norm favouring perpetual endowments and the long-term perspective they engender. Certainly, they can contribute to stability and can be a source of resilience in rocky economic times. However, does the nature of today's existential threats -- like those driven by climate change and the corrosive impact of inequality on social cohesion -- mean that we should look at perpetuity head-on?

Perpetual capital also bestows a great deal of power in the hands of funders. It grants them a substantial platform for their voices, their influence, their leadership. But does perpetual capital foster a deeper bias for the status quo and resistance to change?

Many new pools of North American philanthropy-designated capital are adopting an eventual spend-down approach (such as The Bill and Melinda Gates Foundation, which is committed to be spent down within 20 years of the founders' deaths) or committing to The Giving Pledge. Philanthropist Mackenzie Scott typifies this approach. As she explained in June 2021:

> we are all attempting to give away a fortune that was enabled by systems in need of change. In this effort, we are governed by a humbling belief that it would be better if disproportionate wealth were not concentrated in a small number of hands and that the solutions are best designed and implemented by others. Though we still have a lot to learn about how to act on these beliefs without contradicting and subverting them, we can begin by acknowledging that people working to build power from within communities are the agents of change. Their service supports and empowers people who go on to support and empower others.

The federal government's consultation on the DQ was partially motivated by whether "adequate funding is available to support the current needs" of Canadian society. Canada is increasingly behind in meeting current needs, especially when we consider the growing income gap and exclusion of equity and sovereignty-seeking groups, the areas of under-attended social issues, and the overlying challenge of transition to a socially inclusive net-zero economy.

One pathway to remedy this challenge would be to unlock the ability of foundations to more easily access capital restricted by perpetual donor-based agreements. This would allow foundations to ensure that restricted funds can be aligned with current, community-informed priorities of need; that additional funds are available when needed to support direct and immediate impact and to better mitigate social and environmental crises.

We recommend the government work with provinces and territories to create flexibility for foundations to update normally unalterable donor trust agreements, reducing barriers for philanthropic organizations to explore alternative models to meet community needs. This could include opportunities to spend-down existing endowments or the application of timelines on new endowments. In addition, the government could expand its use of incentives, like matching fund formulas, targeting the growth of endowments for equity and sovereignty-seeking groups, and ensuring that the endowments are adaptable to meet the needs of the time.

Grantmaking Impact

4. Simplified Grantmaking Rules:

Canadian philanthropic organizations have failed to reach equity and sovereignty seeking communities looking for solidarity and support. As Unfunded: Black Communities Overlooked by Canadian Philanthropy reported last year, “[d]espite the clear case for investment, Canadian philanthropy has largely been absent in supporting Black people in Canada.” One fact from this first-ever empirical analysis of this segment of philanthropic funding, representing Canada’s largest private and community foundations, is that Black-led organizations receive less than 0.1% of funds distributed through grants.

Although comparable in-depth research doesn’t yet exist covering how philanthropic organizations meet the needs of Indigenous communities, anecdotal evidence points to similar structural deficiencies. For example, one law firm’s review of CRA T3010 forms for 2018 showed that only 1% of grants over $30,000 went to Indigenous charities and related qualified donee groups, representing only 0.5% of the funds those total grants represented.

Overcoming this historic inequity requires a major shift in the mindset, governance and programming of philanthropic organizations in Canada. Government policy has a key role in reducing the regulatory barriers to philanthropic programming with Black-led, equity-seeking and Indigenous organizations that aren’t registered charities but undertake charitable activities.

One significant barrier preventing philanthropic organizations from granting to grassroots organizations tackling priority issues, is the rule requiring recipients of grants to be “eligible donees”. Historically excluded communities lack ubiquitous charitable infrastructure with the result that they are categorized as “non-qualified donees” and are ineligible to receive direct contributions from philanthropic organizations. This situation is further exacerbated in rural and Northern Canada, which has a dearth of registered charities. Canada could implement proven policies from other jurisdictions, which have developed practical means to solve this problem in ways that protect the integrity of the charitable grant.

For example, in the United Kingdom, there is no requirement that recipients of a charitable donation be any specific class of organization. The donor entity accepts responsibility to ensure they make disbursements for appropriate charitable purposes. Or, in the United States, American charities operating outside the US can exercise “expenditure responsibility'' ensuring that grants are appropriate and can be documented as such. Alternatively, a US charity can undertake an “equivalency determination” that their grantee is the equivalent of a US charity (a “501c3”) for a specific grant.

The Canadian Senate's modernizing Bill S-222, the Effective and Accountable Charities Act, introduces these ideas to Canada. The proposed legislation would require that a charity conduct due diligence on the organizations it plans to collaborate with. The tabled legislation stipulates that the charity would gather sufficient information "necessary to satisfy a reasonable person that the resources will be used for a charitable purpose", including information on the identity, experience and activities of the partner organization.

We recommend that to simplify grantmaking rules the current government re-introduce and pass the content of Bill S-222 and that the government work with the charitable and nonprofit sectors to reform and relax the existing rules on non-qualified donees and direction and control.

5. Update the Income Tax Act to Endorse Solving Root Causes of Problems:

Canadian charity regulations are based on outdated and restrictive Elizabethan era 'noblesse oblige' precepts that force charitable interventions to focus on the symptoms of social and environmental problems but not the causes. Present-day social and ecological challenges demand that foundations, charities, nonprofit organizations, working in collaboration with government and business, tackle the root causes of problems such as youth-at-risk, biodiversity loss, or carbon emissions.

We recommend the Income Tax Act be updated to allow organizations governed by the act to a) adopt charitable purposes aligned with remedying root causes of complex social and environmental challenges and to b) ensure they are empowered to participate -- along with other partners like governments, the private sector and academia -- in societal missions that can solve such challenges.

6. Moving Beyond the Disbursement Quota:

The DQ is a blunt instrument in the context of the scope of regulatory modernization needed to enable a strong philanthropic sector and the societal transformation needed in this moment of transition. A meaningful DQ increase is necessary but it is also insufficient as a standalone measure.

The Canadian philanthropic funder landscape is lopsided, with some segments benefitting from well-endowed capital pools. Meanwhile, other segments, including many equity and sovereignty-seeking groups and rural and remote communities, have a disproportionately small capital base at their disposal.

A higher DQ minimum, alongside other recommendations outlined in this submission such as those seeking to address donor agreement restrictions, will unlock capital to support the vital work of charities and nonprofit organizations, including additional capital for equity and sovereignty-seeking groups. However, these recommendations do not in and of themselves ensure more equitable funding patterns. The adoption of such a policy should be coupled with requirements to ensure more equitable funding patterns including through earmarking funds for equity and sovereignty-seeking groups.

In addition, an increased DQ minimum could take into consideration the relative size and organizational development of the philanthropic organization. For example, it could require an increase of the DQ for philanthropic organizations with assets below $100 million and a larger increase of the DQ for philanthropic organizations with assets above $100 million. 100M is used as an example only, it is not CFC’s recommended threshold and further analysis is required for this type of categorization.

While these recommendations provide important context in support of the DQ consultation process, this submission has intentionally not provided a number by which the government should increase the DQ. By providing a number, this submission would be affirming the consultation's primary but flawed question, and upholding a regulatory system in need of a more fundamental overhaul. **And, while like many organizations, we recommend that a meaningful DQ increase is necessary, it is wholly insufficient to tackle the challenges we face.**

Conclusion

Philanthropy is at a moment where society is demanding change. The COVID-19 pandemic, Indigenous Reconciliation and the legacy of Residential Schools, Black Lives Matter, the #MeToo movement, pervasive racial injustice and the climate crisis - all highlight the need for philanthropic organizations to deeply listen and respond to communities.

The structural changes we have proposed, including the shift in the DQ, will require changes in the business models of philanthropic organizations. Those changes are needed to respond and will spur innovative approaches to philanthropy. We are prepared to support and foster this change across the many relationships we hold.

Government regulations are one influence on the practices of philanthropic organizations. Alongside this submission, we have our own work to do towards a just recovery, towards a philanthropic sector built for the 21st century—one that centres community, embeds equity, accelerates impact and sets the scene for a future where everyone belongs.