



January 31, 2023

Submission to the Government of Canada

'Registered charities making grants to
non-qualified donees (draft)'

BACKGROUND

The 2022 Federal Budget introduced a new framework for partnerships in the charitable sector called “qualifying disbursements.” It allows registered charities to make “qualifying disbursements” to both qualified donees and non-qualified donees (NQDs), provided certain requirements are met. The Canada Revenue Agency released their [draft guidelines](#) for grants to NQDs on November 30, 2022 for feedback by January 31, 2023.

The amended legislation, which these guidelines are for, represent historic and important efforts by civil society to create a level playing field between charities and nonprofits that provide public benefit and often serve communities inadequately supported by philanthropy. It is critical that the guidelines reflect these efforts and advance our shared intentions. We are at a defining moment to ensure the realization of fairness, equity and equality of opportunity in the regime governing the activities of charities and their work to advance the common good.

Summary of Recommendations

RECOMMENDATION 1 - Amend problematic language vis-a-vis risk, public benefit, grant versus gift, and monitoring and reporting.

RECOMMENDATION 2 - Limit recommendations and focus on requirements (that funds are applied to charitable activities in furtherance of a charitable purpose, and reasonable documentation is maintained).

RECOMMENDATION 3 - Clarify uncertain requirements (related to charitable objects, disbursement quota, non-monetary resources, and PRI).

PFC has reviewed the guidelines and we have engaged our network to understand them and solicit feedback. We released a preliminary assessment of the guidelines via a [Member Advisory](#) on December 16, held a webinar on the topic attended by 180 people, and we released a [post-webinar blog post](#) outlining the questions submitted during the webinar and our responses. We also surveyed our members for their input into our submission, and received direct feedback from more than 25% of our membership, despite the short time frame we were working with.

PFC'S ASSESSMENT AND FEEDBACK

Overall, PFC appreciates the intent of the CRA to create guidelines that support new partnerships for a wide range of users. It's clear we all want these to work for everyone. It's a good first draft in providing parameters on a new, exciting pathway to achieve meaningful results with non-profit partners. However, the guidance needs to become more user friendly and clearer about charities' responsibilities.

PFC is pleased to see that a key concern we have with the legislation has been referenced, related to language concerning directed giving (section 7.7 starting at point 83). The guidelines clearly articulate that gifts can be accepted by charities for programs that support non-qualified donees, but that charities must qualify that ultimate authority on the use of resources rests with the charity (section 7.4).

However, we recognize that these guidelines are not law. The directed giving stipulation states that organizations jeopardize losing their charitable status for knowingly accepting gifts conditional on them going to NQDs. The issue with this provision is that it creates risk to the charitable status of charities engaging in partnerships with NQDs, and as a result may discourage pooled funding partnerships – an essential practice used frequently, especially during urgent and quickly evolving contexts, as has been seen during war, natural disasters and the COVID-19 pandemic in Canada and globally.

RECOMMENDATION 1 - Amend problematic language

Risk

The term 'risk' is mentioned 62 times throughout the document, including a detailed risk-assessment chart (section 5.1). But in many cases, the definition of a risk being suggested is absent, only inferred, or sometimes even characterized inaccurately.

The prevalence of the term ‘risk’ in the guidelines implies that there is something inherently troubling and undesired with risk, and with partnering with NQDs. Seasoned grantmakers know that there is always an element of risk in unintended or undesired outcomes - despite due diligence and risk mitigation measures. Risk is an intrinsic part of grantmaking, and sometimes grants made to support new ideas, unknown or emerging organizations, or different approaches lead to the greatest outcomes. In fact, several observers including some grantmakers themselves have criticized foundations for not taking more risks in their programming as they are tax supported sources of social risk capital for society.

The reality is that there can be great benefits from a reasonable embrace of risk within a responsible granting portfolio. And philanthropy and the non-profit and charitable sector as a whole are expected by government and the public to take risks in addressing all sorts of social challenges. But charities range in their own risk tolerance, and they should be encouraged to consider this in all of their activities, including granting to NQDs.

Moreover, some recommendations in the guidelines appear to be arbitrary and not in line with best practices in grantmaking, or how the sector operates.

For example, a long-term grant is defined as 1-2 years in duration, and it’s seen as higher-risk (“medium-risk”). Experienced practitioners know that 1-2 year grants are in reality short time horizons and considered short-term investments. We also know that short-term funding is a critical issue facing the sector, as it is an inherently problematic mechanism for working to achieve sustainable and meaningful social impact. Piecemeal project funding undermines quality programming, decent work, and organizational health, resilience and preparedness.

This issue has been spoken and written about extensively for years in our sector. In fact a key [Federal Budget 2023 ask of Imagine Canada](#) is to establish a core government funding threshold for these reasons. Practitioners should easily understand that multi-year unrestricted funding to a NDQ providing a public benefit is a legitimate qualifying expenditure. The guidance ought to reflect this.

Another example of a problematic characterization is that a “high amount or significant transfer of resources per grant” is defined as above \$25,000. In reality a \$25,000 grant is on average, generally a smaller grant. However, the size of a grant objectively can only be determined relative to the size of the organization receiving it. For example, for an organization with an operating budget of \$10M, a \$25,000 grant would be small, but for an organization with a \$50,000 operating budget, a \$25,000 grant would be very significant.

The risks associated with the timeframe and amount of a grant can only be determined in the context of the grant itself and of the organizations involved.

The other major consideration is that with the arbitrary determinations of risk outlined in the guidelines, which do not align with real-world experiences, the “accountability” measures being recommended may be just as onerous and prohibitive as the “direction and control” regime. This would maintain the barriers and inaccessibility concerns the sector has identified.

Public benefit

PFC has long advocated for a more level-playing field and more inclusive operating rules to better support organizations providing programs that advance the common good even if they do not have official charitable status. While it’s imperative that underserved populations equitably benefit from available funds, charitable resources must be devoted to achieving charitable outcomes.

Given the markedly broad definition delineated by the government of what constitutes an NQD, and the real concerns of the government – and leaders in the non-profit and charitable sector – about the potential for mischief by private benefit interests, we recommend that the guidelines more strongly emphasize the intentions of the new regime to advance public benefit and charitable outcomes.

Gifts versus grants

The new delineation between gifts to QDs and grants to NQDs seems unnecessary. It is likely to create confusion as it is inconsistent and out of step with common sector parlance. Grants typically infer a sum of money given by an organization for a particular charitable purpose, whereas gifts are usually seen to mean a donation from an individual. However, the sector is adopting more participatory and partner-centered approaches and the notion of ‘grant’ is increasingly coming to be seen as colonial and top-down and therefore challenging. PFC would recommend using one term - the term ‘gift’ for both QDs and NQDs in the guidance, as is used in the new definition in the ITA for ‘qualifying disbursements’ (it states, “qualifying disbursement means a disbursement by a charity, by way of a gift or by otherwise making resources available.”).

Monitoring and reporting

The new pathway created by legislation creates opportunities for genuine partnerships between charities and NQDs. This is why PFC underscores the importance of removing paternalistic and colonial language and better reflecting good practice based on trust, reciprocity and mutual learning. The

term ‘monitoring and reporting’ sticks out as counter to this approach, and so PFC recommends it be replaced by ‘accountability framework’ for results and learning.

RECOMMENDATION 2 - Focus on requirements and limit recommendations (and move them to annex)

PFC advises the guidelines be significantly shortened, focused more squarely on the law itself, and make clear that the key risk that charities are directly responsible to manage is that which is laid out in the law: that the disbursement is exclusively applied by the NQD to charitable activities in furtherance of a charitable purpose of the charity, and that the charity maintains reasonable documentation to demonstrate this. The guidelines should be written in such a way that the key takeaway is that it is up to each charity to undertake reasonable due diligence (proportional to the funder’s assessment of the risk of the qualifying disbursement) and has the adequate accountability framework to achieve results and to satisfy an audit (should it happen).

It’s crucial the guidelines distinguish between what is required and what is recommended or possible tools, and we urge the government to focus on requirements and be brief in terms of recommendations. We propose that some of the text be turned into annexes (notably from 5.1 onwards), and that the government create an executive summary so that readers can rapidly become acquainted with the dense material and be aided in decision-making.

There is a growing shift in our sector towards trust-based philanthropy that seeks to advance equity, shift power, and build mutually accountable relationships. Trust-based philanthropy also requires humility and collaboration from grantmakers. One way we do this is taking on more of the administrative and financial burdens of application and reporting processes, as opposed to leaving it to grantees to absorb, which is traditionally the case. These guidelines must leave sufficient room for charities to continue and deepen these practices. While we appreciate that the guidelines offer the possibility to receive reporting other than in written format, the guidelines heavily prioritize written documentation. The introduction of oral or video applications and reporting have been significant advancements in supporting equity-seeking communities in our sector and so it is important that the guidelines underscore these possibilities.

RECOMMENDATION 3 - Clarify uncertain requirements

Charitable objects

Changes to the Income Tax Act have created a new regime of ‘qualifying disbursements’ defined as a “disbursement by a charity, by way of a gift or by otherwise making resources available” for qualified donees and a ‘grantee organization’ is defined as “a person, club, society, association or organization or prescribed entity, but does not include a qualified donee.” Yet, many charities in Canada have within their charitable objects the specific mandate to make grants to qualified donees.

PFC has recently come to understand that the government expects charities to amend their charitable objects to align with the legislation. If this is correct, this would mean that many charities may need to submit a request to the government to make this administrative change, which could prevent or impede the timely allocation of resources when they are needed most. And it would be a cumbersome burden with potential financial costs for thousands of charities in order to do what is already legally permitted.

PFC urges the CRA to consider a simpler and more economical solution. Ideally the government would not require changes to charitable purposes to be able to grant to non-qualified donees. We would encourage clarification from the CRA that the government will interpret the purposes of charities as they were intended when they were made – i.e. that those with purposes to make grants to qualified donees will still be seen as being able to make donations to other organizations who provide a public benefit as permitted by law. If this is not possible, potential alternatives might be check boxes on the next iteration of the T3010, or a simple and short downloadable and shareable template in plain-language that charities can use to send to the CRA via their [online portal](#) or another online system to make any necessary changes quick and easy. We recommend that for any new foundations, a consideration for charitable objects that include grants to NQDs be built in and not require changes in the future.

Grants to NQDs as part of the disbursement quota

Disbursements to non-qualified donees and qualified donees are now permitted as defined in the Income Tax Act, and so we expect that both would be included in a charity’s disbursement quota calculation. However, this has not been directly communicated by the CRA and we strongly encourage issuing a confirmation, as this has been a frequent question we have received.

Monetary and non-monetary resources

The guidelines stipulate that a grant can include both monetary and non-monetary resources. PFC recommends that non-monetary resources not be included. This will create confusion for DQ calculations, among other problems. If they must be included, we recommend the CRA issues similar guidance as currently exists for in-kind gifts to charities.

Program-related investment

PRI is a burgeoning area in Canadian philanthropy. They are investments for charitable activities, where foundations get the money back by a specified time, usually at below-market interest. The guidelines are silent on this issue, but looking forward, we recommend the government consider how these guidelines impact PRI, and consult with a wide array of experts on the issue.

CONCLUSION

In our view, these guidelines are a good start, but they need some significant work. The final guidelines must be relevant, helpful, user friendly and accessible. It's clear that the government and the sector are both invested in opportunities for encouraging greater partnerships with NQDs, as a crucial but historically under-funded segment of our sector. However, the revisions and clarifications as noted above will be critical to ensure this new regime is utilized by the sector for more equitable partnerships across civil society.

Non-qualified donees are important actors in our sector, and these new rules represent an exciting new era of charities working with them. The government's guidelines for these activities will have major ramifications for these partnerships, and so it's imperative that they serve the needs of the on-the-ground practitioners and reflect their expertise.