Déclaration de renseignements annuels T3010 et Guide T4033 pour les organismes de bienfaisance enregistrés

SECTION NATIONALE DU DROIT DES ORGANISMES DE BIENFAISANCE ET À BUT NON LUCRATIF
ASSOCIATION DU BARREAU CANADIEN

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AVANT-PROPOS

L'Association du Barreau canadien est une association nationale qui regroupe plus de 37 000 juristes, dont des avocats, des notaires, des professeurs de droit et des étudiants en droit dans l'ensemble du Canada. Les principaux objectifs de l'Association comprennent l'amélioration du droit et de l'administration de la justice.

Le présent mémoire a été préparé par la Section nationale du droit des organismes de bienfaisance et à but non lucratif de l'Association du Barreau canadien, avec l'aide de la Direction de la législation et de la réforme du droit du bureau national. Ce mémoire a été examiné par le Comité de la législation et de la réforme du droit et approuvé à titre de déclaration publique de la Section nationale du droit des organismes de bienfaisance et à but non lucratif de l'Association du Barreau canadien.

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I. INTRODUCTION

Ce mémoire a été préparé par la Section nationale du droit des organismes de bienfaisance et à but non lucratif de l'Association du Barreau canadien (la Section de l'ABC). La Section de l'ABC se consacre aux questions de droit et de la pratique du droit qui se rapportent à la réglementation et à l'administration des organismes de bienfaisance et à but non lucratif au Canada.

Pour les raisons précisées ci-dessous, la Section de l'ABC recommande que des éclaircissements soient apportés au formulaire T3010 (Déclaration de renseignements des organismes de bienfaisance enregistrés). À certains endroits, il faudrait uniformiser l'utilisation de la terminologie. Il faudrait réexaminer la raison d'être de l'exigence de divulgation de certains renseignements. Enfin, il faudrait également reconsidérer les politiques générales qui sous-tendent certains aspects de la divulgation requise[1].

Dans de nombreux cas, ce ne sont pas des spécialistes qui remplissent le formulaire T3010. Il s'agit parfois de bénévoles qui travaillent pour l'organisme de bienfaisance concerné, ou de professionnels qui n'ont pas la formation nécessaire pour bien gérer les subtilités de la *Loi de l'impôt sur le revenu*, surtout celles qui ont trait au contingent des versements, ainsi qu'aux règles détaillées qui s'appliquent aux organismes de bienfaisance. Le formulaire devrait être aussi simple et aussi clair que possible. Il faudrait également que les politiques générales qui sous-tendent l'obligation de divulgation soient bien précisées.

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[1] La Section de l'ABC est consciente du fait qu'aucun changement ne sera apporté à la version actuelle du formulaire T3010 jusqu'à ce que ce formulaire ne subisse un nouvel examen approfondi, mais que des changements pourraient être apportés au guide T4033-1.

En juin 2006, la Section de l'ABC avait présenté des mémoires qui portaient sur une version préalable du formulaire T3010. En avril 2010, des représentants de la Section de l'ABC ont rencontré des membres de la Direction des organismes de bienfaisance, pour discuter de questions se rapportant à l'examen, alors en cours, du formulaire de déclaration T3010B. La nouvelle version du formulaire de déclaration, T3010-1, a été publiée en novembre 2010. En janvier 2011, la version révisée du guide T4033-1 a été publiée à son tour. Les versions T3010-1 et T4033-1 de ces documents reflètent les changements qui avaient été annoncés dans le budget fédéral de mars 2010 (le « budget de 2010 »), en ce qui a trait au contingent des versements.

Le présent mémoire a été rédigé en fonction des documents T3010B et T4033B, mais cadre maintenant avec les versions T3010-1 et T4033-1[2].

La Section de l'ABC appuie l'actuel processus d'examen, ainsi que le travail accompli par la Direction jusqu'à ce jour. Ce mémoire présente les commentaires officiels de la Section de l'ABC sur plusieurs questions qui se rapportent à cet examen.

À la suite du budget de 2010, il ne sera plus nécessaire de déclarer certains renseignements. Au moment de la publication du formulaire T3010-1 en novembre 2010, l'ARC avait annoncé que cette déclaration devait être produite par des organismes de bienfaisance enregistrés, pour les exercices qui prennent fin à compter du 1er décembre 2010. Cette exigence a été modifiée par un communiqué qui accompagnait la publication du guide T4033-1 le 18 janvier 2011, déclarant que les organismes de bienfaisance dont l'exercice prenait fin entre le 23 mars 2004 et le 31 décembre 2008 devaient utiliser le formulaire T3010A (05) et le guide T4033A, que les organismes de bienfaisance dont l'exercice prenait fin entre le 1er juillet 2009 et le 3 mars 2010 inclusivement devaient utiliser le formulaire T3010B et le guide T4033B, et que le formulaire T3010-1 et le guide T4033-1 devaient être utilisés pour les exercices prenant fin à compter du 4 mars 2010.

La Section de l'ABC est d'avis qu'en plus des modifications de nature administrative qui ont été annoncées par l'ARC, d'autres modifications, plus fondamentales encore, devraient être incorporées dans le formulaire T3010.

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[2] Lorsque le texte du présent mémoire mentionne le formulaire T3010, il le fera donc parfois de manière générique, plutôt que d'en préciser le suffixe.

II. LEGISLATIVE BASIS FOR THE T3010 RETURN

A. Dual Purpose

Subsection 149.1(14) of the *Income Tax Act* provides for filing both an "information return" and a "'public information return". This distinction is repeated in subsection 189(6.1), for the returns a charity must file after its registration is revoked. Each return must contain information in prescribed form.[3] The two concepts of the information return and the public information return have been combined into a single return, currently the T3010-1 for fiscal years ending on or after March 4, 2010 and T3010B or T3010A(05) for previous fiscal years.[4] Through use of the combined return, the distinction between the two functions has been blurred and there is ambiguity in how information will be treated. The CBA Section understands the information return and the public information return were combined into a single return for simplicity.[5] If the dual nature is to be maintained, the CBA Section recommends that the return clearly identify and communicate to the sector and the public those sections required for compliance and those required for public information.

If CRA uses the T3010 return to fulfill both purposes, it should identify the portions that are part of the "public information return" and those that relate to the "information return." It should also explain the basis on which it requests the information. A review of how the two types of return are distinguished in the *Income Tax Act* is instructive. The first difference relates to public disclosure of information. Under subsection 149.1(15), notwithstanding section 241, information in a public information return shall be communicated or otherwise made available to the public by the Minister in the manner deemed appropriate. The intent seems to be for at least some information collected on the T3010 return to be disclosed to the public. Referring to the information in the return rather than listing it in the *Income Tax Act*

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3 Under subsection 248(1), "prescribed" means in the case of a form, the information to be given on a form or the manner of filing a form, authorized by the Minister. In some cases, although the ITA contemplates that a form will be prescribed, no form is in fact prescribed.

4 We assume that form T3010 has been authorized pursuant to regulation as both the information return and the public information return for purposes of subsection 149.1(14). In T4033, CRA states that "an information return" includes forms T3010, TF725, T1235, T1236 and a copy of the financial statements. It appears that this all refers to the information return and not the public information return, but this is not clear.

5 There appears to be some precedent for a dual-purpose return. For instance, the T3 income tax return that must be filed by a trust under ITA paragraph 150(l)(c) also serves as an information return for purposes of regulation 204. However, there is no element of public disclosure and the sole objective is to assist CRA in monitoring compliance.

provides some flexibility. This avoids any requirement to amend the *Income Tax Act* if the information changes. However, it also creates uncertainty.

In addition to the information in the public information return, under subsection 241(3.2), CRA can provide to the public, among other things:

- a copy of the charity's governing documents;
- any information provided in the prescribed application for registration;
- the names of the directors and when they held their respective positions;
- a copy of the notice of registration (including conditions and warnings);
- a copy of any letter sent to a charity whose registration has been revoked or annulled, dealing with the grounds for revocation or annulment;
- a copy of any letter or notice sent to a charity or relating to suspension under section 188.2 or any assessment of tax or penalty; and
- an application by the charity, and information filed in support, for a designation, determination or decision by the Minister under subsections 149.1(6.3), (7), (8) or (13).[6]

Further, paragraph 241(3.2)(f) allows CRA to provide any financial statements required to be filed with an information return under subsection 149.1(14).

The definition of specified gift in section 149.1 required the amount in question to be designated as a specified gift in the "information return" for the year. This was presumably the information return, not the public information return, contemplated in subsection 149.1(14). The definition of capital gains pool provided that the amount in question must be declared by the charity in "an information return under subsection (14)". It was not clear if this provision referred to the information return, the public information return or both. Both issues are resolved with the changes in the 2010 Budget, but there is still uncertainty in other respects.

The second difference relates to enforcement. Paragraph 168(l)(c) states that a registered charity may face revocation if it fails to file an information return required under the *Income Tax Act* or a regulation. Some argue that the reference to an information return includes a

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[6] This list would also include subsection 149.1(5) for requests to treat amounts as deemed expenditures under draft legislative proposed by Finance Canada in 2005 and again in July 2010, for documents sent by the Minister or filed or required to be filed, after May 13, 2005.

public information return. The CBA Section does not think this is (or should be) the case, given the distinctions noted above and the wording in the provisions imposing interim sanctions.

Subsection 188.1(6), imposes a penalty if the charity fails to file an "information return" as required by subsection 149.1(14). While the *Income Tax Act* is not clear, it seems reasonable to conclude (based on the *Act* and CRA's audit and administrative practices) that this is intended to compel disclosure of the information CRA requires to perform its regulatory role. This would not necessarily be disclosed to the public and the consequences of failing to file that return would be serious. Since the main purpose of a public information return is to inform the public, the consequences of not filing should be less severe. However, CRA takes the position that failure to file either return can result in a penalty.[7] According to the *Income Tax Act*, an "information return" is not the same as a "public information return"[8] and failure to file the latter should not be grounds for revocation.

However, by combining the information return and the public information return in one T3010 form, it is unclear what constitutes a failure to file. If the one return has a dual purpose, it seems that failure to file the physical return, whether the information return or the public information return or both, constitutes failure to file an "information return" or a "return".[9] Failure to complete one part of the return while completing the other part creates uncertainty about whether a return has been filed. At a minimum, if the T3010 continues to serve a dual purpose and is considered to be both the information return and the public information return contemplated in subsection 149.1(14) of the *Income Tax Act* (or CRA through its administrative policies) should make it clear whether failure to complete the public information portion of the return would be grounds for revocation or a penalty. This is discussed further below.

CRA seems to have begun to use the returns at least in part to obtain information solely to monitor compliance, and not to provide information to the public. However, the return does not set out the purpose for which the requested information is required, and does not

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7 See CRA guides T4033B and T4033-1.

8 Otherwise, the word "public" is superfluous.

9 T4033B and T4033-1 states that registered charities have to file "an information return" each year, without distinguishing between the information return and the public information return in subsection 149.1(14). It also states that a charity that does not file "its return" can lose its registered status.

segregate the types of information. Charities are therefore uncertain about the consequences that flow from providing (or failing to provide) information in the T3010 return.

The Federal Court of Appeal recently upheld a penalty assessed against a non-resident corporation for failure to file a T2 return, despite the fact that no tax was payable.[10] The Tax Court judge had rejected an argument that the T2 return performed a dual function, stating that if the government intended to treat the non-resident income tax return as an information return subject to penalties under subsection 162(7), more direct and unambiguous language should have been used. The Federal Court of Appeal held that the tax return filed when no tax is payable is an information return, since it could have no other function. This did not alter its character as a tax return and therefore the requirement to file a return did not apply. Nevertheless, the Court of Appeal held that the taxpayer was liable for a penalty under subsection 162(7), for failure to comply with an obligation imposed by the *Income Tax Act* or regulations, without expressly finding that there had been a failure to file an information return. This uncertainty should be avoided as it relates to the dual role of the T3010B return.

If the focus of a particular section is compliance, the return and the guide should clearly identify the regulatory purpose for which the information is sought (e.g. disbursement quota calculation, political activities, related business activities, undue benefit). There should be more information in the guide about the purpose and the substance of these compliance issues and the reason for each question. Possibly, links could be provided to related explanations on the CRA website on the more complicated compliance issues.

T4033B and T4033-1 state that "most" of the return, and all financial statements filed with it, are available to the public. Confidential data is marked as such and includes the information in Section F, Schedule 4, part of Form T1235 and Form RC232-WS. They also state that some confidential information is collected on Form T2081, dealing with excess corporate holdings.

In addition to the information in T3010-1, CRA may have to deal with compliance under proposed Bill C-470 requiring disclosure of compensation for employees and executives of registered charities. If Bill C-470 is enacted as currently proposed, CRA will be required to

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10 *Exida.com Limited Liability Company v The Queen*, 2010 FCA 159.

develop a mechanism to collect the required information or adapt the T3010-1 and schedules (such as Schedule 5) for that purpose.

B. Due Dispatch

The CBA Section recommends that a reasonable time limit be imposed on CRA to use information in the T3010 return for assessing or other compliance purposes.

A time limit could be imposed through amendments to the *Income Tax Act* or otherwise. This would be consistent with current limits to CRA's ability to issue reassessments (absent misrepresentation or fraud or similar circumstances) after a reasonable time and to deal with returns with due dispatch in the first instance. Under subsection 189(8), certain provisions in Part I of the *Income Tax Act* apply to registered charities under Part V. These include the rules dealing with assessments, particularly section 152. Subsection 152(1) provides that the Minister shall, with due dispatch, examine a return of income and assess the tax, interest and penalties, if any, payable and make certain other determinations. However, these rules apply only for purposes of an amount assessed under Part V or a notice of suspension. There is no obligation on the Minister to do anything with the information return or public information return required under subsection 149.1(14). So although there is a requirement to file the T3010 return under Part I, filing does not result in any assessment under Part I.

Similarly, where an assessment is issued under Part V for a penalty under subsection 188.1(6) for failure to file a return, the rules in Part I for the timing of subsequent reassessments apply. However, this does not address the issue of timely review of information in the T3010 return.

Charities should not face an unlimited timeframe for review of information they provide for compliance purposes, with potentially unlimited exposure to revocation, penalties, or other intermediate sanctions based on the information. If the information in the return is only for disclosure to the public, and the status of the charity under the *Income Tax Act* is not directly affected, when the information is reviewed is not of the same significance. However, this further illustrates the need to differentiate between the "public" and "compliance" information in the return. This could perhaps be accomplished by dividing the return into separate components, each clearly identified, with the purpose of the information and any limits on the timeframe within which it can be reviewed by CRA clearly identified.

While the CBA Section recognizes the utility of streamlining the return (or returns) and lessening the compliance burden on charities, it believes there is a danger that charities will not understand the purpose for which information is being sought, the nature of the sanctions that might be imposed on them (including revocation) and other technical requirements.

The CBA Section previously pointed out to both CRA and Finance Canada its concerns about the complexity of the disbursement quota rules and the inability of charities and their advisors to comprehend them and comply, particularly in the context of the disclosure required in the current T3010.[11] This is addressed in the 2010 Budget with a simpler approach to the disbursement quota, as set out in T3010-1 and T4033-1.

C. Additional Information from CRA

The CBA Section recommends that CRA provide, either on its website or in the material sent to the charity with the return, the information it has on file about the charity's objects. Charities, CRA and the public would then have the same information on the intended (and approved) purposes of the organization. This would be particularly useful given the high turnover among volunteers and staff of some organizations, as well as accountants who assist in the preparation of their returns. In addition, CRA would have more confidence that the charity's responses are based on a correct understanding of the facts.

D. Changes in Activities or Programs

The CBA Section questions CRA's view that charities must advise of any new activities or programs not expressly approved on initial registration. In some circumstances it may be prudent for an organization without advice from a professional to seek CRA's views on a proposed program, because it may not be viewed by CRA as charitable. The CBA Section does not believe the *Income Tax Act* imposes this obligation on registered charities. At the very least, if these questions remain, the return should warn about the potential prejudicial impact of answers to the questions.

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11 The fact that the return consists of four pages and up to six schedules and the guide consists of 25 pages shows how complicated the reporting process has become.

E. Comments on Specific Parts of the Form

In addition to the general comments, the CBA Section has several specific concerns.

1. The new commentary under the heading "Program Areas" at page 9 of T4033-1 requires allocation among various program areas. It is not clear how the charity determines "total time and resources" to be allocated among activities and program areas. For instance, the time spent might be relatively small compared to the resources allocated and vice versa.

2. The opening words of T4033-1 Section C state that, at a certain point, if a charity remains inactive, CRA may take the view that it no longer meets the requirements for registration. The basis for this statement is not clear. It would be helpful for CRA to expand on this (the new description of an "inactive charity" is helpful, stating that during the entire fiscal period, it must not have used any of its resources to carry out its charitable activities or to further the charitable purposes for which it is established) without regard to whether it earned income, had assets or issued tax receipts, as set out in T4033B. The statement at page 12 of T4033-1 that a charity considering new programs should contact CRA implies an obligation rather than a recommendation.

3. Question C2 asks if the charity was active during the period and requires an explanation of why it was not active, if that is the case. It is not clear why CRA requires this information and what the implications are of being inactive or providing (or not providing) an explanation. T4033B and T4033-1 state for question A2 that if operations have terminated, a request for revocation of registration should be submitted. The question presupposes that operations have been commenced and subsequently terminated, but does not address the situation where no operations have ever begun. This is addressed indirectly at question C1, which asks if the charity was active and requires an explanation as to why it was inactive during the relevant period. The guide seems to require a request to have registration revoked, regardless of the circumstances, because the charity is no longer "in operation", but it is not clear what is meant by "in operation". CRA should clarify its position on inactive charities, whether they have ever been active or not.

4. Question C3 asks if the charity made gifts or "transferred funds" to qualified donees or other organizations. This is a broad question, since any payment appears to

constitute a transfer of funds, whether for valuable consideration or not, and the question appears to include all payments to all suppliers. It is not clear if this is intended or if it is properly targeted. The notes in T4033B and T4033-1 refer only to gifts. They also refer to a situation where the charity "transferred resources to other organizations." This is again without regard to whether the transfer was for full consideration or in the nature of a gift or grant. Question 2 on Schedule 2 asks if any of the charity's resources were "provided" for programs outside Canada under any kind of "arrangement" including a contract, agency agreement, or joint venture to another individual or entity. The terminology is inconsistent: question C4 refers to individuals, intermediaries, entities or other means and T4033-1 refers to individuals, entities or intermediaries.

5. Answering "yes" to Question C3 requires completion of form T1236, which deals only with qualified donees, but the question itself asks about transfers that are not necessarily gifts. If this is to identify situations in which registration might be revoked for making a gift to a person other than a qualified donee, it is not properly framed.

6. Question C4 asks if "any resources" were provided for activities outside Canada. This should be coordinated with the guidance on foreign activities. It is not clear why the question focuses on foreign activities rather than resources that involve a third party and an agency, partnership, joint venture or similar arrangement.

7. Questions dealing with fundraising expenditures should be coordinated with the guidance on fundraising.

8. Question C10 asks if the charity received any "donations or gifts", which suggests a distinction between the two terms. Question C11 refers to "gifts" and question D3 to "donations". A single term should be used for consistency throughout the form, and the technical changes dealing with gifts in proposed subsection 248(30) should be considered.

9. It will be impossible in many situations for a charity to determine whether a donor is a Canadian citizen, employed in Canada, carrying on a business in Canada or has disposed of taxable Canadian property, as required by question C10. This requires an inordinately high level of due diligence by the charity and could adversely affect

fundraising efforts if donors perceive it to be intrusive. Many charities are unaware of whether a donor is a resident of Canada. "Resident in Canada" has the technical meaning and does not merely mean having a Canadian address. The residence of a donor is a question of fact and it is often unclear (there is considerable case law on point). A charity will be unable to determine in many cases whether the donor is a resident of Canada Even if it obtains a statutory declaration or carries out other high level due diligence, it cannot be certain.

10. In T4033B and T4033-1, on Part 2 on Schedule 4, dealing with information about donors not resident in Canada, CRA states that information must be provided about the name of each donor not resident in Canada "unless the donor has met certain legislated criteria," the value of the donation is $10,000 or more and the donor is an organization, a government or an individual. T4033-1 no longer states that the *Income Tax Act* offers certain protections for the identity of donors contributing to charity where the donor is a Canadian citizen, employed in Canada, carrying on business in Canada, or has disposed of taxable Canadian property. T4033B and T4033-1 state that to satisfy this obligation, charities should "ensure that they obtain sufficient information to complete this section". This cannot always be done, for the reasons mentioned.

11. Disclosure of information about donors, whether non-resident or otherwise, could subject them to some risk. This is particularly so with foreign activities, where supporters of what may be perceived to be controversial goals may be identified through the T3010 return and become the target of unwelcome , improper or illegal approaches by third parties. The disclosure of the name of an individual or organization that carries out foreign activities on behalf of the registered charity could also lead to concerns about security.

12. It is not clear why question D2 requires information about whether the charity owns land or buildings.

13. It is not clear why question D4 focuses on total expenditures on travel and vehicles as opposed to other expenditures.

14. Question D4 requires disclosure of the total amount of gifts made to all qualified donees, but does not include other transfers, as contemplated in question 3C. The first line asks for total expenditures on professional and consulting fees. The notes in

T4033B on the answer at line 4860 include fundraising as well as legal and accounting fees in the professional and consulting services. This may result in duplication of the amounts disclosed as expenditures on fundraising at question C7, line 5460.

15. Line 4630 requires disclosure of the total non-tax receipted amounts from fundraising, which presumably include amounts raised through sponsorships and other casual collection methods. In schedule 6, line 5020 requires disclosure of total expenditures on fundraising and could be coordinated with the on fundraising guidance.

16. Disclosure of expenditures on fundraising involving regulated gaming activities such as lotteries or 50-50 draws requires further clarity. Reference should be made to the CBA Section's separate letter on the fundraising guidance.

17. Schedule 6, line 4610 requires disclosure of gross income from renting land or buildings and line 4650 requires disclosure of other revenue not already included which, according to T4033B and T4033-1, includes income from rental or leasing of equipment or other resources (other than land or buildings). It is not always clear whether some types of equipment are part of a building or are equipment. It is not clear why there is a breakdown between income from rental of land or buildings (including rental derived from property used in carrying out charitable activities as well as surplus land) and revenue from the rental of equipment (which also may be used in carrying out charitable activities).

18. The last question on Schedule 6, dealing with the value of property not used for charitable activities to calculate the 3.5% for disbursement quota purposes is unclear. It refers to the value of property not used for charitable activities or administration "during" the 24 months before the beginning of the fiscal period and the 24 months before the end of the fiscal period. The word "during" has been interpreted as at any time within a period. As a result, it is not clear if the "value" is intended to be an average, the highest amount, the lowest or some other amount. The notes in T4033 and T4033-1 indicate that the average value is to be determined for property not used directly in charitable activities or administration during the 24 months. Presumably this means property not used at any time during the 24 months. The notes to both line 5900 and 5910 are unclear as they relate to the number of

periods chosen by the charity in calculating the average value of the property. While the examples address this by pointing out that the charity can choose the number of periods within each 24 month period, the guidelines do not address situations that involve less than a full fiscal period. For instance, in the second example on page 28 of T4033B and page 25 of T4033-1, the charity did not exist at December 31, 2003 (or 2008) and was incorporated at some point during 2004 (or 2009). The average value of its assets is $50,000, being the total of $100,000 at December 31, 2004 (or 2009) divided by two 12 month periods. The example seems to presuppose that the value as of December 31, 2004 (or 2009) represents a full 12 month period, as opposed to the first fiscal period after incorporation, which could be less than 12 months. The same issue arises in determining the average value at December 31, 2005 (or 2010), since there may not necessary have been a full 12 month period ending on December 31, 2004 (or 2009).

19. Page 28 of T4033B states the disbursement quota is intended to ensure that most of the funds are used to further the charity's charitable purposes and activities, to encourage registered charities not to accumulate excessive funds and to keep other expenses at a reasonable level. This must be deleted from T4033-1, as a result of the changes in the 2010 Budget. CRA acknowledges that funds can be accumulated, subject to the disbursement quota and other specific rules in the *Income Tax Act*.

20. Lines 4180 and 4505 in Schedule 6 to T3010-1 refer to 10 year gifts. These appear to be unnecessary for fiscal years ending after March 4, 2010, when the concept of 10 year gifts is no longer relevant. The CBA Section is concerned that this disclosure may be required to identify assets the income from which cannot be spent as a result of restrictions that may not qualify as 10 year gifts under the previous definition. It would be helpful if CRA made a positive statement in T4033-1 about the ability to accumulate funds, subject to the requirements in the *Income Tax Act*, including compliance with the new disbursement quota rules, following the repeal of the more complicated disbursement quota rules and the former "80-20" concept.

21. It would be helpful if the T3010 contained a specific question asking whether any specified gifts or enduring property had been received in fiscal years ending prior to March 4, 2010, if CRA expects this information to be disclosed.

22. Schedule T1236, dealing with gifts to qualified donees, contains a blank space, in which we understand details will be added about designated gifts. As a result of the 2010 Budget, T3010-1 does not refer to specified gifts, but also does not refer to designated gifts. Clear guidance would be helpful on how the disclosure of designated gifts is to be addressed and whether CRA will require disclosure about amounts that were previously treated as enduring property, specified gifts or otherwise treated differently under T3010B and T4033B for fiscal years ending prior to March 4, 2010.

III. SUMMARY OF RECOMMENDATIONS FOR THE T3010 RETURN AND T4033 GUIDE

The CBA Section recommends that:

1. The dual purpose of the T3010 return should be reconsidered.

2. The basis for disclosure of information to the public should be reconsidered.

3. The distinction between public and confidential information should be clarified.

4. Sanctions for failure to provide all of the information should be clarified if the return continues to perform a dual function.

5. Specific timelines should be established in the *Income Tax Act* or by CRA policy to deal with the information in the T3010 return, particularly where there are potential penalties or other sanctions.

6. Current information on file with CRA about objects and approved activities should be provided to the charity by CRA.

7. CRA should clarify its views on the circumstances in which it expects (or requires) charities to seek advance approval for changes in activities or programs.

8. The terminology in the return should be made more consistent.

9. The reasons for requiring information in the return should be reconsidered, particularly for expenditures and information about executive compensation;

10. More specific comments should be added in T3010 and T4033 dealing with sponsorships, gaming and other lottery revenues and expenses.

11. CRA should clarify its views on the circumstances in which an inactive charity, whether it has been active or not, will be required to request revocation of its registration.

12. There should be an exemption in appropriate circumstances, in the discretion of CRA, from the requirement to disclose the names of third party recipients.

13. CRA should clarify its comments on allocating "total time and resources" among various activities and programs, taking into account potential disparity between time, on the one hand, and resources, on the other.

14. The commentary in T4033 should be coordinated with the comments in the guidance on fundraising and the guidance on foreign activities (and when it is issued, the similar guidance on the use of intermediaries domestically).

15. CRA should provide more detailed instructions on the disclosure of designated gifts in form T1236.

16. CRA should recognize in T4033 that in some cases it will be impossible for a charity to determine whether a non-resident donor of more than $10,000 is a resident of Canada, carries on business in Canada, or has disposed of taxable Canadian property.

17. CRA should state in T4033 that charities can accumulate funds, subject to meeting the disbursement quota and otherwise complying with the *Income Tax Act*, despite the fact that form T3010 no longer refers to 10 year gifts, enduring property or other terms repealed by the 2010 Budget;

18. CRA should acknowledge the concerns about timeliness of the review of information set out in the T3010 return, notwithstanding that no formal assessment is issued under the *Income Tax Act* on a T3010;

19. Other ancillary changes should be made in the T3010 form and the T4033, consistent with the themes throughout these comments.

IV. CONCLUSION

The T3010 form should be clarified. Its terminology should be made more consistent. Policies behind certain disclosure requirements, and the requirements themselves, should be reconsidered. The CBA Section believes that this would enable registered charities to better meet their reporting requirements, and enable CRA to better manage its monitoring and enforcement mandate.