



December 12, 2021

Via email: charity-bienfaisance@fin.gc.ca

Mr. Ted Cook
Director General
Tax Policy Branch
Finance Canada
90 Elgin Street
Ottawa, ON K1A 0G5

Dear Director:

Re: First Nations and the DQ

The Canadian Bar Association's Charities and Not-for-Profit Law Section (CBA Section) is pleased to make an additional comment on Finance Canada's consultation on the Disbursement Quota (DQ).¹

The CBA is a national association representing over 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. We promote the rule of law, access to justice, effective law reform and provide expertise on how the law touches the lives of Canadians every day. The members of the Charities and Not-for-Profit Law Section practice in all areas of charities and not-for-profit law and in every size of practice.

Since we responded to your original consultation in September 2021,² we received additional comments about the effect of the DQ on First Nations.

First Nations Impacts and Consultation

Before any changes to the DQ are made, there is a constitutional obligation on the Government to consult with First Nations who may be affected by the changes to ensure their views are considered. This obligation arises where the Government references the disbursement rules in modern treaties and other agreements with First Nations; and these agreements could be impacted by any changes.

¹ Department of Finance, *Boosting Charitable Spending in our communities*, December 2021.

² CBA Section letter to Finance Canada on DQ consultation, September 29, 2021, available [online](#).

First Nations settlement corporations (or sometimes trusts) are organizations created pursuant to settlements (modern treaties) with provincial, territorial and/or federal governments and are the recipients of settlement funds.³

Funds held in these corporations (or sometimes trusts) have an expectation that they be held in perpetuity. Therefore, they operate like an endowment and are invested for the long term.

Under the recently adopted *United Nations Declaration on the Rights of Indigenous Peoples Act* (S.C. 2021, c. 14), any legislative changes, including changes to the DQ for registered charities and qualified donees, which affects First Nations, should be done in consultation with those affected modern treaty First Nations.

We respectfully recommend that Finance Canada ensure this consultation has taken place before introducing legislative amendments to the DQ.

We trust that our input is helpful and welcome the opportunity to discuss it in more detail if necessary.

Yours truly,

(original letter signed by Julie Terrien for Elizabeth Moxham)

Elizabeth Moxham
Chair, CBA Charities and Not-for-Profit Law Section

³ The Essentials of First Nation Settlement Trusts, available [online](#).