

*Discussion Paper*

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# Improving the Regulation of Canadian Foundations with Donor Advised Funds

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**The Pemsel Case**  
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"The law of charity is a moving subject"  
– Lord Wilberforce

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## About Us

Named after the 1891 House of Lords decision, *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531, which established the four principal common law heads of charity used in Canada and elsewhere, The Pemsel Case Foundation is mandated to undertake research, education and litigation interventions to help clarify and develop the law related to Canadian charities. The Pemsel Case Foundation is incorporated under the Alberta *Societies Act* and is a registered charity.



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# Improving the Regulation of Canadian Foundations with Donor Advised Funds

Donor advised funds in Canada have become popular with high-net worth donors in the last twenty years. According to [preliminary 2024 T3010 data](#), there are approximately 400 registered charities with donor advised funds. Those entities with active donor advised fund programs are fewer, [totaling between 230 to 240](#), according to a recent [landmark study](#). A [2025 study](#) reports that foundations with donor advised funds held \$10.5 billion and make grants of over \$1 billion per annum. In 2021, donations into DAFs were \$2.2 billion, representing 9.8% of all donations claimed for tax purposes. That's one in every ten dollars donated. Donor advised funds (DAFs) are the fastest growing charitable structure in Canada, and they need to be better understood and regulated.

Introduced into Canada by Vancouver Foundation in 1952, donor advised funds are still closely associated with the 207 members of Community Foundations Canada. The significant growth, however, is in newer foundations, many associated with financial institutions. In 2021, for example, eight of the top twenty registered charities by donations value are foundations with donor advised funds. The dramatic growth attracts scrutiny from members of the charitable sector and politicians, but the Canada Revenue Agency (CRA) Charities Directorate response has been minimal.

Donor advised fund (DAF) research in Canada is limited. The most consistent project is by researcher Keith Sjorgren, who previously owned Investor Economics, a financial services research firm. The firm has published three reports since 2015. A fourth iteration published in 2023, was published by the Canadian Association of Gift Planners and fundraising consultancy KCI. Investor Economics' 2021 Donor-Advised Fund report outlines five categories of foundations: Independent, faith-based, community, other and financial institution. It is the last category that causes the most angst. This is due to the relationships these foundations have with for-profit financial companies.

This article focuses on three questions. 1) What is a donor advised fund? 2) What are the issues with donor advised funds and for the foundations that hold them? 3) How could Canada better regulate donor advised funds?

I am writing as a practitioner, not a lawyer or academic. I draw on my 35-year career as a foundation manager, public policy volunteer, and philanthropic advisor. I work for a trust company that has a contract to administer a public foundation with donor advised funds.

## 1. Definition

Good regulation starts with clear definition. Observers note there is no Canadian legal definition of donor advised fund. Defining "donor advised fund" is the first step before proposing new laws or enhanced regulation.

Yet, definitions and features vary greatly, both by foundations with donor advised funds as well and regulators. What is a donor advised fund? And what isn't? Is it just a type of charitable fund or a type of charity? If it's a fund, what are the defining characteristics?

The definitional challenge is complicated by the debate imported from the U.S. In the U.S., the label "donor advised fund" is applied to certain 501(c)(3) tax exempt organizations associated with financial institutions. When announcing [new requirement](#) for "donor-advised funds" in 2024 that focus on excess private benefit and relationships with investment managers, the Internal Revenue Service (IRS) uses the terms "sponsoring organization" and "DAF" interchangeably. In the US context a DAF is not just a charitable fund but the charity itself. There was an unsuccessful 2020 bill in Congress that proposed to create "donor advised fund" as a new 501(c)(3) category. These organizations, all associated with financial institutions, would have been segregated within the charitable community and donors to these entities would receive reduced tax benefits. Community foundations with donor advised funds would have been exempt from the proposed 2020 rules. The influence of financial and investment firms in the US have created a schism within the charitable sector, which Canada should avoid by treating foundations with DAFs as registered charities first.

### **Defining DAFs in Canada**

Recently, Canada has made progress in defining DAFs within the charitable sector. In late 2023, CRA issued its first public definition of "donor advised fund" in the T4033E Rev 24, the guide to completing T3010 charity information return. The definition was introduced to support four new questions on the T3010 to determine number and value of DAFs held by registered charities. It is concise, but helpful.

Line C18, Line 5860 states "For the purposes of this guide, a DAF is a fund segregated into donor accounts, owned and controlled by a registered charity. Each account is comprised of contributions made by individual donors. Donors may provide ongoing non-binding suggestions on payouts from DAFs, but it is the charity's sole responsibility to make such decisions." The definition clarifies that DAFs have donors or other third parties who provide "ongoing non-binding suggestions". The statement that a "DAF is a fund segregated in donor accounts" is poorly worded, but probably is meant to indicate that DAFs are segregated funds, which is the typical structure within a charity.

Previously, there was some consensus about the definition of donor advised funds in Canada, but also significant differences and blind spots. Quoting researcher Keith Sjorgren, the Special Senate Committee on the Charitable Sector posits the following:

A donor-advised fund is an account within an existing public or private foundation. To establish an account, the donor makes an irrevocable gift to the foundation, and in exchange receives a tax receipt along with administrative and investment services ... The funds are granted, often overtime, by the sponsoring foundation to qualified donees on the advice of the account holder. (pg 109)

A January 2021 article in *The Philanthropist* defined donor advised fund or "DAF" as follows:

DAFs enable a group or an individual to give money to a charitable foundation while retaining the right to recommend which registered charities or qualified donees will receive the funds. The foundation handles all administrative, reporting, and governance matters for which it charges a fee, generally a percentage of total assets. The donor gets a

tax receipt upon creating the DAF, but the money doesn't immediately have to be spent. In fact, most DAFs invest the upfront donation and the funds grow, tax-free. Some compare DAFs to personal charitable savings accounts, but there is a major difference: donors don't control the DAFs, and the foundations holding them can reject their advice.

Both definitions agree with CRA that donor advised funds are charitable funds that enable donors to make recommendations about future grants to other registered charities/qualified donees. They are funded with irrevocable donations to the foundation that owns the fund. All donations are eligible for a donation tax receipt. *The Philanthropist* and Sjorgren emphasize the service aspect of the arrangement, using commercial language like “fee” and “exchange” (a.k.a. *quid pro quo*). Neither definition mentions the donor's ability to provide investment advice and retain an investment advisor for their fund, which is an option offered by some Canadian foundations. Similarly, these definitions assume, unlike CRA's statement, that the charitable activity will only be in form of grants to registered charities, although some foundations allow DAFs to make grants to non-qualified donees and engage in charitable programs. The donor (or grant advisor) is assumed to be living and providing active guidance to the foundation that holds the fund in all three definitions.

In practice the definition of “donor advised fund” is less clear due to the diversity of mission and practice among foundations. A review of Canadian community foundation websites reveals considerable variety of language about charitable funds. For example, the [Vancouver Foundation](#) has two categories of funds, both endowments: donor advised funds and designated funds. Donor advised funds includes four categories: memorial funds (named in memory of another), legacy funds (established today and funded with an estate donation), educational fund (scholarships), or focused area funds (charitable purposes). A designated fund allows the donor to name one or more specific charity or focused area. None of these definitions fully align with the three definitions mentioned above. Similarly, the [Oakville Community Foundation](#) has four fund types: 1) Grant and Grow—combination of endowment and immediate granting; 2) Cause Fund (donor chooses one of the foundation's focused area); 3) donor advised funds; 4) bequest funds (same as legacy fund above). There is an element of donor advice in all these funds, but no agreement on definition or terminology.

CRA's definition was developed for reporting purposes but is broad enough to encompass a wide range of charitable activities and fund structures. As evidenced by the community foundation websites, charitable funds have a variety of features, and there is even greater diversity of practice among Canadian foundations with donor advised funds—all developed without specific CRA input. CRA's initial definition is simple and broad. This is helpful, but the definition was developed to support reporting by registered charities related to four T3010 question, not to regulate. But the two processes are related. First CRA will gather DAF data and then it will, presumably, use this data to inform future regulation. Regardless of the process, CRA needs to take clear positions of DAFs and provide charities with operational guidance. CRA should develop of public Guidance product for the information and benefit of all foundations with donor advised funds.

## Defining the charity

Labelling a registered charity as a “DAF” or donor advised fund is inconsistent with Canadian charity law or the *Income Tax Act*, yet it has become increasingly common. Charity lawyer Mark Blumberg [writes](#) that “A DAF is a registered charity and it has separate donor advised funds.” [Elsewhere](#) he states “There is no standard definition of which registered charities are donor advised funds or DAFs.” Blumberg makes no distinction between “DAFs” that are “community foundations” or “financial services DAFs.” He applies the label “DAF” to all foundations with donor advised funds, which is problematic.

Using the term “DAF” or “donor advised fund” for a registered charity with donor advised funds in Canada is misleading. While some Canadian foundations use the term “DAF” as a self-description, it is a term more frequently used by critics to describe foundations associated with financial institutions. DAF is a politicized term imported from the U.S. that creates regulatory confusion in Canada. *The Philanthropist* article reports that there are critics in the charitable sector that “point fingers at others—self-serving financial institutions, inattentive foundation boards, tax-dodging donors—as the reason these valuable instruments of philanthropy are getting a bad name.” By adopting “DAF” as a label for charities, Canada risks losing sight of the structures, obligations and regulatory solutions in its charity system. Reform starts with treating these organizations as part of the registered charity system and regulating them accordingly.

In Canada registered charities don’t sponsor DAFs, they own them. Registered charities aren’t DAFs, they are foundations with DAFs. It is CRA’s role to define and assert the primacy of Canadian charity law in the regulation of foundations with donor advised funds.

## 2. Issues with Donor Advised Funds

All foundations with donor advised funds face some structural tensions as DAFs rely on ongoing donor advice to carry out the foundation’s charitable purposes. Foundations associated with financial institutions have a special set of issues that arise from ties with a for-profit corporation. That said, many of these risks are present for charities that have major donors, inexperienced boards, and immature or lax governance. In no particular order, here are issues foundations and regulators face.

### Incomplete Donation

Are donations complete in law if the donor still retains the ability to influence the use of the charitable funds? No, if the donor can still direct the use of the donated property or receives private benefit. Yes, if the foundation agrees to consider recommendations related to grants or other approved charitable purposes.

### Commercial Language

Foundations with donor advised funds often use commercial language. For example, fees. Fees are paid for contractual services, yet the foundation owns property in its DAFs and recovers expenses against its own funds. Are foundations that charge “fees” for donor advised funds providing a semi-contractual service to a donor that is undermining the legitimacy of donations?

### Weak Fiduciary Oversight by the Foundation

Foundations with donor advised funds are suspected of being “bare” or “sham” charitable trusts. The concern is weak fiduciary oversight and donors have too much ongoing control. Foundations need to exercise and document fiduciary oversight of funds.

### Investment Management

Is a donation complete if the donor is allowed to make investment decisions for donated funds? If so, what are the parameters of these decisions? In provincial trustee acts, trustees have an obligation to act as a prudent investor and document any delegation of investment powers through policy.

### Private Benefit – Corporate

A charitable foundation exists exclusively for charitable purposes. Do corporate-branded donor advised fund “programs” provide undue private and commercial benefit to the associated financial institution? What happens when a “donor advised fund” a branded product of an associated corporation?

### Fair Market Value for Services

The Board of a charitable foundation is a fiduciary and has the duty to ensure suppliers, such as investment managers, provide services for fair market value. This is especially important when the supplier has a non-arm’s length relationship to the foundation with donor advised fund.

### Delayed Public Benefit

The most persistent complaint about donor advised funds is delayed public benefit, or the risk of funds “languishing”, a term used by the 2019 Senate Committee on the Charitable Sector. The foundation is hoarding charitable capital and not distributing it to qualified donees or using it for charitable activities. There are three ways public benefit may be delayed or frustrated: i) DAFs are inactive and donors are not required to make recommendations annually to make grants and qualifying payouts; ii) long-term or perpetual endowment funds only disburse a fixed amount annually; iii) even DAFs with flexible granting rules may delay of the original gift for years.

### Lack of Transparency

Foundations with donor advised funds, especially those aligned with financial institutions, are seen by some observers to lack transparency. There is a perceived lack of public information on the foundation overall, as well as on individual grants, funds, source of funds, and finances. Charities are concerned about the lack of donor disclosure, due to anonymous granting. Systemically, there no reporting requirements for individual funds.

### Conflicts of Interest

For foundations associated with financial institutions there are perceived conflict of interest and undue corporate bias. Is the foundation only investing in the investment products of the affiliated business? Is an investment advisor incented to recommend the foundation and do they get paid to manage investments? Does the foundation restrict grants, or exempt donors from an annual

disbursement requirement at the fund level to maximize assets under management and fees?

### Unfair Competition

Investment advisors have incentives to steer clients to giving to an affiliated foundation with donor advised funds and away from charities in the community. This is a version of a long-standing complaint in the charitable sector. Large charities have advantages that most registered charities—small and volunteer run—do not. Foundations with donor advised funds are viewed as giant, unfair competitors that displace donations that should go directly to charities in the community.

My list of issues is long because Canada requires a candid discussion about risks, regulation, and best practices. In response to this need, the Canadian Association of Gift Planners (CAGP) formed a sector DAF Working Group in 2024 to discuss issues and understand the range of practices among foundation. (Disclosure: I am co-chair.) CAGP is publishing Canadian Guidelines on DAFs in 2025, and four overview documents addressed to different audiences (foundations, donors, charities, and financial advisors). Standard-setting by the sector is important but given the value and influence of DAFs and their importance to the Canadian charitable sector, CRA needs to provide foundations with more policy guidance beyond a simple definition.

Perspective, however, is needed. Many of these issues are not unique to foundations with commercial ties or even to foundations with donor advised funds. For example, the question of unfair competition in the charitable sector is understandable and not new. When I worked at Sick Kids Foundation 20 years ago competitors call the foundation the “Spanish trawler” of the Toronto charitable sector. There is always competition, and it often feels unjust, but it is not illegal.

Similarly, working at hospital foundations and a university for 14 years, I observed unused funds. In certain cases, neither capital nor income were used annually. This inactivity was typically due to either internal power dynamics or policy. An example of an internal dynamic is a departmental chair ignoring charitable restrictions or underspending. Scholarship dollars may not be awarded, perhaps due to lack of administrative resources or overly restrictive terms. An example of a policy restriction is an endowed academic Chair. Chairs and other endowed positions may take years to fund fully and recruit. In the interim funds are invested and unused. Are these funds languishing? Yes, by some definition, but it is also a legitimate exercise of discretion by the charity. In other instances, I witnessed little fiduciary oversight about the use of funds. My point is languishing funds are not unique to foundations with donor advised funds. Moreover, there are no regulatory transparency requirements for any charitable fund type in Canada. There is, however, an obligation for charitable Boards to use charitable property exclusively for charitable purposes.

As a matter of policy, some Canadian foundations with donor advised funds have an annual minimum disbursement rate at the fund level, and others do not. The type of foundation is not a good predictor of the existence of such policies. A couple of years ago, the CEO of a community foundation with donor advised funds expressed surprise that Aqueduct Foundation (where I am Executive Director) required funds to grant annually at the same rate as the overall minimum disbursement quota amount, then 3.5%. Her foundation did not. She asked “how do your donors react to that”? Similarly, some foundations with donor advised funds focus on perpetual endowments, and others do not. Long-term or perpetual charitable funds are a fundamental feature of charity law—supported by both provincial trust law and the Income Tax Act—yet they slow the flow of funds into the community.

Several of these issues are more relevant to foundations with commercial ties, but many of these foundations have strong governance and compliance with charity law. Canada doesn't need new U.S.-style rules, such as applying a disbursement quota to "DAFs". Our best regulatory option is to use established tools and laws. The CRA Charities Directorate has a major role in increasing education and compliance activities. Foundations need to respond with improved governance.

### 3. Existing Regulatory Remedies and New Standards

The most common regulatory proposal in the U.S. is to impose a minimum disbursement quota rate on all "donor advised funds". This solution has Canadian advocates but adopting a disbursement quota obligation at the fund level in Canada would fundamentally change the logic of the Income Tax Act and charity law. It would override the authority and discretion of the foundation board to manage its charitable property, by-passing the role of the Board of Directors. It also would codify, in law, the incorrect conclusion that control of donated funds rests with donors. New rules would create a new class of registered charity and a new reality. A second class of registered charities would be established with increased donor control and reduced board authority. The better solution is to treat the foundation with donor advised funds as a registered charity, not an interloper.

There are no regulations specific to "DAFs" in Canada, but there are many relevant obligations that registered charities have in Income Tax Act and in charity law. Issues related to donor advised funds are real and require regulatory attention. Solutions can be found by drawing on Canadian legal requirements and regulatory precedents.

Below are some recommendations:

#### CRA Guidance on Foundations with Donor Advised Fund

CRA should develop and publish a Guidance on Foundations with Donor Advised Funds to provide the sector with true standards of practice, grounded in charity law and the Canadian *Income Tax Act*. The Charities Directorate has used policy or Guidance documents for more than 25 years to articulate its interpretation of charity law for charities and the legal community. Guidance products are reference documents used when the Directorate examines new charity applications. They are used to inform compliance activities, such as audits. Guidance products are also educational documents that outline best practices for charities. A Guidance product about foundations with donor advised funds would be helpful to boards and management.

A Guidance product is administrative policy, not law. These products summarize existing charity law and provide a helpful, one-stop summary. Guidance products also outline CRA's audit requirements, which may ultimately lead to revocation of charitable status. Given the value of DAFs in Canada (donations, assets and grants) and outstanding issues related for foundations with DAFs, a Guidance product long overdue.

CRA Guidance products include synopses of charitable purposes (e.g., CG-030 Guidance on Advancement of Education and Charitable Registration) as well as practice documents such as CG-013 Guidance on Fundraising by Registered Charities and CG-002 Guidance on Canadian Registered Charities Carrying on Activities Outside Canada. CG-002 is especially analogous, as it deals with charitable activities carried out by agents and contractors that are under the direction

of the charity.

Existing CRA charity Guidance products address many of the issues outlined above and may provide an idea of how CRA might interpret these issues. These requirements include:

As specified in the Act, a charity must be operated for exclusively charitable purposes and devote its resources to charitable activities.

- Grant advisors are similar to the “intermediaries” described in CG-002, which are subject to “direction and control” by the charity. A foundation with donor advised funds has an obligation to ensure “direction and control” over the general charitable use of its resources held by individual funds, which would eliminate donor discretion.
- A foundation with donor advised funds may accept granting advice from donors and grant advisors within defined parameters. “A charity can accept advice from its intermediaries and does not have to make every decision involved in the carrying on of an activity. However, it must be able to intervene in any decision.” (CG-002)
- Direction and control requirements should include minimum annual deployment of funds for charitable purposes (grants or charitable activities) and written policy outlining the conditions for exemption to the annual fund expenditure requirements.
- “A charity must record all steps taken to exercise direction and control as part of its books and records.” (CG-002)
- Direction and control must be exercised over charitable property, including investments. This is typically done through investment policy. The degree of donor discretion related to investments needs to be defined and monitored by the foundation. This practice is consistent with provincial trustee acts.
- A charity needs to “implement appropriate steps to determine the fair market value for the goods or services supplied and has adequate measures in place to control costs” (CG-013). Fair market value contracts apply to investment and administrative services from a related party to address undue private benefit
- Disclosure is addressed through “use of independent auditors and/or externally established standards to promote truthful, accurate, accessible, and timely disclosure of financial information.” (CG-013)
- Best practices for charity disclosure should be included with reference to sector resources, such as Imagine Canada’s Standards program. Disclosure methods include the T3010, public availability of audited financial statements, publishing an annual report with activities data, and sharing internal policies. Privacy policies should also be addressed.

#### Increased CRA Education

After the publication of a Guidance product, CRA should consider an educational program to inform foundation boards about legal requirements and best practices. CRA has several examples of public and charity educational initiatives.

### Increased CRA Audits

After the Guidance product and education program, CRA would be prudent to launch a targeted audit program of foundations with donor advised funds. A risk-based program would logically focus on large foundations and foundations with ties to financial institutions. The number of organizations would be between 30 and 60, which is manageable over two to three years.

## 4. Conclusion

Foundations with donor advised funds are an increasingly important structure to help affluent Canadians donate assets to benefit multiple charities or charitable purposes. Canada should resist the temptation to uncritically import the rhetoric and regulatory recommendations about “DAFs” from the U.S. Strong regulation of charitable funds, including those that allow a measure of donor advice, is best done by clarifying the rules for foundations. Solutions are available in existing charity law and regulation. Through its Guidance products, education programs and audit activities, Canada Revenue Agency can lead the reform process. Foundations with donor advised funds are first registered charities that have an obligation to operate at a high standard and provide public benefit.



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