

VIRTUAL PHILANTHROPY: COMBINING THE VIRTUOUS AND THE VULGAR IN THE NEW PARADIGM

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Introduction

This Second Annual National Conference on Planned Giving opens with a plenary session devoted to the perennial question as to what motivates donors to give to charity. The Conference has been called “Field of Dreams” and my job is to tell you what wealthy donors dream about at night so that you can mark out and construct the field to which they will flock in droves. Unfortunately, understanding what motivates a donor is one of those questions with which God has chosen to perpetually perplex us by withholding any clear answer free from contradictions. If there was a Bible for charitable giving, the Book of Ecclesiastes would be devoted to the question of what motivates a donor. Like the Preacher in Ecclesiastes one might answer this imponderable question with the words:

“Vanity of vanities, saith the Preacher, vanity of vanities; all is vanity.”²

As in Ecclesiastes, however, one has missed the Preacher's point if one embraces this simple answer to the question of the meaning of life as a simplistic answer which permits the questioner to read no further than the second verse and to ignore the wisdom in the remaining twelve chapters. The value of the question about what motivates a donor is in exploring the many complex and conflicting answers, rather than being bewitched by any one answer which almost certainly has been manipulated to fit into some preconceived philosophical or marketing precept. It is particularly difficult to find a balanced comprehensive answer to the question of motivation when it arises in an Inquisition atmosphere where those posing the question are poised like the Grand Inquisitor to burn at the stake any heretic who dares to breathe the word “tax”. In my experience, dialogues on

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¹ Ecclesiastes 1:2, King James Version.

donor motivation are more often an exercise in identifying the infidels and apostates than a genuine quest for truth and understanding.

Like many Biblical quests, a meaningful understanding of the issues and answers is withheld from those who pursue the question for ulterior motives other than seeking truth and understanding. If one is demanding to know the definitive motivation of donors solely to design the most successful fundraising or planned giving program, let me be the first to express the hope that the question is never answered. There is already more than enough pressure to reduce philanthropy to nothing more than fundraising. Charities must concentrate more on fulfilling and communicating their mission and less on slick fundraising initiatives if they are to survive the funding crisis which is currently threatening their existence.

The function and funding of charities must be understood in the context of the society in which they exist. Considering charitable funding and donor motivations in detachment from the economic, tax, social and political environment of the donor is a futile academic exercise. In Canada today, it is absolutely necessary to factor in three contextual issues. The first is that Canadians are not only concerned, but increasingly afraid, about the future of the social, educational and cultural fabric of Canada. The second is that there is a tax revolt rage among wealthy donors which puts an entirely different spin on the issue of tax motivation. The third is that Canadians have a profound aversion to the elites patronisingly telling the average person what is good for him or her. Canadians are looking for *bona fide* leadership but are not content to have leaders simply pander to them.

Canadians have a great concern about maintaining the quality of life in our society but are in open tax revolt and no longer trust the elites. In the last federal election, Canadians decimated a government which was perceived as having no moral focus and had its agenda and policies set by opinion polls rather than principles. This antagonism to "being told what they think we want to hear" is being extended to charities which are perceived as being willing to say or do anything for a donation. Canadian donors want to give to charities which know and carry out their mission with competence and compassion. They are in the process of massively rejecting overly sophisticated fundraising which is cynically based on marketing without program integrity. The ability of the Canadian masses to ignore the pontifications of the elite which was demonstrated in the rejections of the Meech Lake and Charlottetown Accords is being applied to high-powered charitable fundraising. It is difficult to determine whether ego, tax or altruism are positive motivations for Canadian donors; but it is easy to determine that they are reacting against overly slick marketing-based rather than program-based fundraising.

There is a funding crisis for charities in Canada and many charities will not survive in their current form and function. This is part of both a domestic and international restructuring of economies and the role of governments. The fiscal and governmental framework in which charities have constructed their private and government funding base presumes a comprehensive government-funded social and educational safety net. This safety net is being radically rationalised and many aspects of it are fast disappearing. The tax rage and populism in Canada are not as ideological as those cultivated by Newt Gingrich. Ralph Klein's Alberta illustrates that there is support for painful fiscal retrenchment; but the people want Medicare restructured rather than destroyed. On the other hand, these donors are not willing to simply give private funds to replace tax dollars. Charities and large donors have an important role in tempering tax rage by diverting tax deductible resources into the community so that the rampage against profligate government spending does not degenerate into a heartless and mean crusade motivated by personal greed.

The paradigm of charitable funding in Canada is changing. Charities must adjust to this new paradigm not only in how they position their funding solicitations but in how they carry out their programs. Many of the Canadians who are approaching the age when they must transfer their wealth because of mortality are the same people who created the health care, social welfare and arts organisations which are now threatened. They see in the entrenched and bloated bureaucracies of hospitals and symphony orchestras the same cost structure and attitude problems they see in government. They want to preserve the programs but are less concerned about the survival of the institutions.

There is some form of charitable Darwinism active in Canada and this is not in itself a bad thing. The tragedy is that in determining "the survival of the fittest", the criteria for charities surviving or failing are not their social function and their contributions to society, but whether or not they can obtain funding. While these issues are related, in the present paradigm many donors who do not have personal experience with specific organisations tend to give money to charities which have the best marketing. Unfortunately, there is no necessary correlation between marketability and the importance of the social service provided by the charity.

While in the short run the best way to survive this Darwinian process is to have the best fundraising program, in the long run survival will depend upon adapting how the charity operates. In the new paradigm, donors, especially large donors, are increasingly making their donation decisions as if they were investment decisions. More significantly, these investment decisions are being made based upon their beliefs and fears about the future rather than their allegiances to the

past. Fundraising strategies based upon the charitable world and economy as we know it will have a short shelf life. Smart donors do not want to believe that their money is going to the charity with the biggest marketing budget rather than the best program. As the government funded social safety net is reduced, what the return donors want on their "investment" is not personal recognition but programs which accomplish important charitable purposes.

If the quest for understanding donor motivation in the new paradigm is limited to a discussion of the relative importance of altruism, tax benefits and recognition, it is clear that the agenda is being set by fundraisers. A donor driven discussion of motivation will focus on the recipient charity's purposes and programs with some consideration given to tax efficiency. Fundraisers will be surprised and threatened by the extent to which large donors focus on the needy and their concerns that overheads do not significantly reduce the amounts actually received by the ultimate beneficiaries of the charity's programs. It is a wasted exercise to pursue a discussion based upon the passing paradigm and we must struggle to understand the societal context in which charities will operate and must be funded in the future.

The problems I am alluding to become more concrete when one considers the changes in the health care field. As hospitals are being amalgamated into regional health boards, such venerable institutions as Vancouver General Hospital no longer exist in name or law. As delivery of specialty services is being rationalised among different hospitals, entire departments disappear when some bureaucrats decide that all heart surgery will take place at Hospital A and kidney dialysis and transplants will be done at Hospital B. A donor considering a million dollar endowment must factor in many variables about the future of health care's most significant institutions which were irrelevant when making a small gift to fund a current operating program. In the new paradigm there are far more fundamental problems than recognition considerations to analyse before talking to a donor about a million dollar endowment.

The challenge and the opportunity is that Canadians are not sure to whom they should look to provide leadership and guidance in determining how to respond to this new paradigm. Their lawyers and accountants have traditionally focussed on accumulating wealth and discouraged giving assets or capital to charity. Their response to slick fundraisers approaches the level of aversion accorded former Prime Minister, Brian Mulroney. They need advisors who look to the future and can discuss values and how much they should leave to their families and whether the community or public good is a responsible alternative.

It is my belief that the future of charitable funding lies in gifts of assets rather than cash. Whenever there is a disposition of assets, there is an opportunity for tax planning. It follows therefore that if the future of charitable funding lies in gifts of assets, then the real future growth in charitable funding will involve creative tax planning. The motive in such tax planning is not to achieve tax benefits for the donor but to achieve tax efficiency which provides maximum benefit to the charity. It is naive and amateurish to deny the significance of the tax environment in which charitable giving and estate planning takes place.

The charitable vehicle of choice for this new paradigm is the private foundation. It allows the donor to plan maximum tax efficiency with the privacy of dealing only with the donor's own advisors and directors. Questions as to the longevity of charitable institutions and the changing charitable landscape can be deferred until gifts are made out of the foundation rather than at the time of funding. Flexibility is enhanced for gifts such as life insurance policies because the irrevocable charitable beneficiary becomes the private foundation. The ultimate beneficiary can become any charity to which the private foundation chooses to make grants. The private foundation allows the donor to make complicated gifts of assets to charity in ways which allow maximum tax efficiency and integrated planning with other aspects of the donor's estate plan.

In both the old and new paradigms it is reasonable to ask whether philanthropy is virtuous or vulgar. In neither is it appropriate to cast aspersions upon the motivation of donors who employ sophisticated tax planning and suggest that they are "altruistically challenged". In the new paradigm, the practice of charity will evolve to virtual philanthropy. Virtual philanthropy will combine the altruistic motivation of the virtuous with the tax efficiencies of the vulgar and pioneer creative new forms of funding. Virtual philanthropy will be a challenge for fundraisers as it will retain the quintessence of altruistic philanthropy, so will focus on purposes and programs, but will not have the form of traditional charity, so will be a much greater marketing challenge.

Virtuous Philanthropy

Collins English Dictionary defines "virtuous" as "characterised by or possessing virtue or moral excellence; righteousness; upright". Charities are always happiest with donors who are virtuous and whose motivations are altruistic and pure. Charities like people who are primarily committed to the charitable purpose of the organisation and respond emotively with cash to fundraising appeals. Ego is allowed and encouraged in virtuous philanthropy. Charities shamelessly pander to ego in promoting donor recognition. In fact, recognition is forced on donors

who frequently prefer anonymity. This is partly because in our modern cynical world it is difficult for fundraising professionals to believe that there are donors who have unadulterated altruism.

Another reason that fundraisers like the virtuous donor is the secondary meaning that the person is chaste or virginal. It is always easier to entice the naive donor into accepting all of the charity's blandishments and representations. Consequently the gift is given on the charity's terms with little input from the donor as to application.

In my experience, there is actually an increase in altruistic virtuous donors in this decade. Unlike the fundraiser's stereotype, however, they are neither naive nor emotive donors. They are no longer content to simply give alms to mitigate the suffering of the poor. Like the Puritans in Elizabethan England, they have become disenchanted with the interminable process of giving to the poor. This is not an expression of the mean-spiritedness of our age. Their altruism is such that they want to get past the empty promises of fundraisers and devote their funds to organisations which are promoting solutions which can fundamentally solve problems rather than just alleviate symptoms. As in the era of the Tudors leading up to the enactment of the Statute of Elizabeth in 1601³ which forms the legal basis for the modern law of charity, virtuous donors know that a dysfunctional economy is forcing a fundamental change in how charitable organisations must operate in the future.

Charities must adapt to the paradigm shift if they are to appeal to the significant (and increasing) portion of the donor constituency which is more interested in the value of social service provided than anything else. Charities have focussed on the public recognition extended to the donor as the motivating force for philanthropy to such an extent that they have offended many donors. Charities, not donors, are the proponents of the fundraising philosophy that philanthropy focusses primarily on the benefactor rather than the recipient. They have forgotten that the virtuous donor is fundamentally committed to the purposes and programs of the charity rather than to the aggrandisement of his or her personal ego. Charities have promoted the networking opportunities offered to board or fundraising activists so much that they seem to deny that many people are genuinely interested in the mission of the charity for which they are volunteering. Similarly, they have so aggressively emphasised tax benefits to large donors that the possibility that altruism motivates their giving seems to have been repudiated.

³ The formal title is *An Acte to Redress the Misemployment of Landes, Goodes and Stockes of Money heretofore Given to Charitable Uses*, 1601, 43 Elizabeth I, c. 4, and is also known as the *Statute of Charitable Uses*, 1601.

The virtuous donor is in many respects the most vulnerable to donor fatigue. Government cutbacks mean that donor fatigue will be chronic if they cannot see a glimmer of hope in finding new ways for charities to create long term solutions to problems rather than just temporarily alleviating symptoms. These donors usually share the government's view about the seriousness of the debt crisis and are not impressed by fundraising campaigns directed towards lobbying the government for more money. In Canada, their predilection to reduced government involvement is not so much an ideological "Contract With America" crusade as a quest for greater economic efficiency and more compassion. They are too sensible to consider it more virtuous to waste charitable dollars on uncaring, bloated and inefficient charitable bureaucracies and institutions than to waste tax dollars on uncaring, bloated and inefficient government bureaucracies and institutions.

Charities must respond to the paradigm shift by leading and shaping the adjustment in both the donor's motivation and their program emphasis from alleviating problems to solving problems. Succeeding in raising gifts from the wealthy virtuous donor will increasingly depend less on marketing in the traditional fundraising style than on communicating a charity's unique ability to deliver a needed service effectively. A large donor considers the long term and wants a charity to be sufficiently well administered that it is reasonable to expect that it will be continuing to fulfil its mission decades later. A charity must clarify its mission and values and then convince a donor that it fulfils its purposes compassionately, competently and efficiently. Charities must change their stereotypes of large donors and position themselves as problem solver,s rather than just permanent institutions in the social safety net, if they want to overcome donor fatigue and inspire new funding commitments.

Vulgar Philanthropy

Collins English Dictionary defines "vulgar" as "marked by lack of taste, culture, delicacy, manners, etc". Anyone in the philanthropy field can immediately think of scores of examples of vulgar philanthropy. Those who work in charities think of a "vulgarian", whom the dictionary describes as a person who is rich or has pretensions to good taste. Donors think of charities which lack taste and delicacy in their fundraising endeavours.

The dividing line between virtuous and vulgar philanthropy is self interest. Virtuous philanthropy is pragmatic enough to accept self interest if the donor is sufficiently upright and righteous. If the self-interest is restricted to matters of ego and tax, charities attach no moral condemnation to deny the exemplary

citizen full credit for virtuous philanthropy. However, if the donor is vulgar, self interest tips the scale to make his or her philanthropy vulgar. The presence, and even primacy, of self interest does not cause a charity to reject the funds of a vulgar donor. Nor is the vulgarian denied public recognition. There is, however, a not very subtle distinction in the level of approbation extended to the vulgarian.

For many people, the epitome of vulgarity in philanthropy is a donation motivated by tax considerations. I must confess to personally being on the side of the Philistines on this issue. My experience is that gifts which result from careful planning to achieve the maximum tax benefit are usually driven by concerns about economic efficiency and even stewardship rather than being motivated by tax. An individual or corporation making a charitable gift, no matter how tax efficient, must have some genuine charitable motivation as the tax savings are almost never as large as the gift. This can be contrasted with revenues from gaming and lotteries, fees for services, government contracts and grants, business marketing sponsorships and revenues from related business activities which require no charitable motivation as no after-tax gift is made. It is ironic that donors are criticised for any dilution in charitable motivation resulting from tax benefits in an era when charities are increasingly cultivating sources of funding which require no charitable intent whatsoever. It seems perverse to suggest that funding from sources with diluted charitable motivation is tainted while accepting without question funding from sources completely devoid of any charitable motivation.

In fact there is something insidious about the "line in the sand" drawn in the donor motivation debate by many fundraising experts which makes altruism and tax efficiency opposing rather than complementary factors. Fundraisers who are experts in raising cash from direct mail, special events, gala dinners, business sponsorships and cash pledges sometimes have not made the transition into the new paradigm of asset gifts. They do not have the technical expertise to understand the multifarious enigmas of tax planning and so conceal their lack of comprehension by proclaiming that these sorcerers of tax alchemy who threaten the "pure philanthropy" of the passing paradigm are "altruistically challenged". There is a higher percentage of "altruistically challenged" people supporting charities by attending charity bingos or auctions and buying charity lottery or gala dinner tickets than by making tax planned asset gifts.

Charities have exhausted the traditional fundraising techniques. Fundraising today is reaping donor fatigue rather than cash. The future growth in charitable funding lies in asset and capital gifts realised immediately or deferred until some intervening life interest or death. Any large asset or capital disposition requires both creative tax planning and prudent estate planning. The charities which are

going to succeed in fundraising in this new paradigm are those which develop and implement creative tax strategies and sophisticated planned giving instruments.

This is not to say that the real motive in such gifts is to achieve tax benefits. Instead it is to recognise that donors are as overwhelmed with tax fatigue as they are with donor fatigue. If there is anything that a donor hates more than yet another charitable solicitation for a voluntary donation, it is the power of Revenue Canada to compel an involuntary contribution of over fifty cents of every dollar earned by the donor. Increasingly, tax fatigue is greater than donor fatigue. The challenge of the creative tax planner is to utilise tax fatigue to overcome donor fatigue and convert the taxpayer's destructive tax revolt nihilism into a constructive charitable contribution. Given the option of passively remitting 50 cents tax on every earned dollar to the bottomless pit in Ottawa or actively directing that 50 cents to a worthy community cause, many taxpayers will give the money to charity even though it means also giving the remaining 50 cents of every earned dollar.

The rage against government waste and inefficiency is so great that there are many days when I believe the greatest threat to charitable funding is responsible government spending. If charities want to receive donations from wealthy taxpayers frustrated with government waste, however, they must be effectively providing valid community services. Charities cannot succeed in tapping into tax revolt rage which is sweeping Canada simply by pointing the finger at Ottawa. Angry taxpayers are no happier about a charity using their resources ineffectively and wastefully than the government doing so. If charities are going to receive donations, it is necessary to convince donors to take one whole dollar of donation out of the donor's pocket rather than only fifty cents of tax. If a charity is not doing more for less, then the donor will move on to another charity which meets the donor's more stringent criteria for meriting funding.

This conference is the annual meeting of the Canadian Association of Gift Planners. It is in the area of planned giving instruments that the self interest of the donor moves beyond indirect tax benefits from the government to direct receipt of hard cold cash from the charity. A donor decides whether he or she will contract for a charitable gift annuity based upon the financial return paid by the charity to the donor. In the United States, charitable remainder trusts have tax provisions which enable the donor/income beneficiary to effectively receive more income after the sale of appreciated property and for the rest of the donor's life than if no gift was made. While equivalent provisions specifically authorising such a result do not exist in the Income Tax Act in Canada, there is an increasing demand to find ways to achieve a comparable result under our tax laws. The

self-interest in such a result is obvious, although most donors are not willing to give away the capital interest upon death to achieve a higher income interest during their lives.

Virtual Philanthropy

Collins English Dictionary defines “virtual” as “having the essence or effect but not the appearance or form”. It is my opinion that the new paradigm of charity will involve more and more of what I call virtual philanthropy. This is a term which my children who grew up computer literate would relate to much more quickly than I have. Virtual philanthropy has the altruistic quintessence and charitable effect of traditional philanthropy; but will progressively evolve into forms and operating techniques which are not recognised by an increasingly antiquated law of charity. Revenue Canada will have to learn to adapt to activities which do not appear to be charitable by embracing flexibility rather than espousing orthodox dogmas.

Donors who are tired of giving money to alleviate symptoms frequently are keen to reject the form of the traditional charity as well as specific organisations and programs. If they believe that the only effective charity is to teach job skills and create employment for the poor and disadvantaged, they will seek programs which accomplish those objectives even though Revenue Canada and small businesses do have problems considering micro-enterprise development as being charitable. They will push the law of charity until it looks much more like the Preamble⁴ to the Statute of Elizabeth than renaissance⁵ philanthropy. Revenue Canada will have to come to grips with the reality that more than a century has passed since the House of Lords gave a “modern” definition to charity in

⁴ “The relief of aged, impotent, and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars of universities; the repair of bridges, havens, causeways, churches, sea banks and highways; the education and preferment of orphans; the relief, stock or maintenance of houses of correction; marriages of poor maids; supportations, aid and help of young tradesmen, handicraftsmen and persons decayed; the relief or redemption of prisoners or captives and the aid or ease of any poor inhabitants concerning payments of fifteens,* setting out of soldiers and other taxes.”

*A tax of one fifteenth formerly imposed upon personal property.

⁵ A concept developed more fully in the author's article “Religious, Reformation, Remedial and Renaissance Philanthropy” P. 6 & I. Vidal, eds., *Developing Welfare - Repositioning Non-Profit and Co-operative Action in Western European Welfare States* (Barcelona: Centre d'Iniciatives de l'Economia Social, 1994), also (1993/94) 2 *The Charity Law & Practice Review*, P.P. 53 - 67.

Pemsel⁶. The definitions in vogue during the relatively short modern period of history when there was a fully funded social safety net and charities were only to fund “services inadequately provided for by the State”⁷ and “gaps in the State benefit system”⁸ are not adequate for the future.

At the opening plenary session of the last annual meeting of the Canadian Association of Gift Planners, the speaker in my slot was Stephen Lewis. He argued very forcefully that charities must engage in more political advocacy in the future as the sector could not provide all of the services which the government was down loading on to it. Political advocacy of increased government funding is a course of action legitimised as “philanthropy” more in United States law than Canadian law. It is primarily the domain of single issue interest groups rather than gift planners. This line of argument reflects Dr. Lewis's experience with charities in the United States while Ambassador to the United Nations and his ideological orientation as a former New Democratic Party politician. This line of argument is not very attractive to donors who think the deficit is too big and that Ottawa does not effectively and efficiently use the many tax dollars which the donor unwillingly remits to Revenue Canada.

The donor in the new paradigm wants to fund solutions rather than services. Ideological and fiscal concerns means that the solutions are not simply more tax money. However, the donor is pragmatic enough to know that almost any solution will require significant government funding if it is to be implemented on a broad enough scale to accomplish fundamental change. The donor is also sceptical enough to know that any partnership with government is so unequal that it will almost certainly result in the donor's money being usurped by government.

In the new paradigm, the strategy is to collaborate with government rather than enter into partnership with government. Canada desperately needs a national debate on issues relating to the role of the charitable sector in the new paradigm. To date, tax rage has been a bilateral dialogue of the deaf between those ideologically committed to maintaining the status quo and those ideologically committed to reducing taxes and the role of government. This has been a debate between the private sector and government with no real voice given to the

⁶ The Commissioners for the Special Purposes of the Income Tax v Pemsel [1891] AC 531 (HL).

⁷ Lord Goodman, Chairman, “Charity Law and Voluntary Organisations”, National Council of Social Services (1976), Appendix 1, para. (w), London, England.

⁸ Charity Commissioners for England and Wales, Charities for the Relief of the Poor (1991), London, England.

disadvantaged or charities. Charities are presumed to function in the same way as they have in the past as a provider of services and bridge over gaps in the State benefit system. Everyone knows that in the future the government will download responsibilities with no regard for the charitable sector's ability to fund an ever-increasing gap. Therefore, charities are not invited to the debate because it is presumed their only role is to ask for money which will not be available.

The debate is complicated by the evolution in recent years of a new species of "contract charities" which are the creation of government money designed specifically to facilitate the government downloading services. These charities receive all of their funds from government on a contract basis to enable the government to say it is reducing its size and number of employees devoted to providing social services. These contract charities are inevitably going to have their contract funding reduced and have no broad base of public support. As they do not receive money from the public, they have no accountability to donors. Consequently, the fear is that any reduction in government funding will be borne entirely by the needy intended recipients and not reduce the compensation paid to the managers who contract on behalf of the charities. The individuals who have set up contract charities to receive government grants will abandon them when the government money ceases to flow, as they have no real linkage to the historical charitable sector. The increasing number and profile of contract charities and single issue advocacy charities has soured the attitude towards partnership or collaboration with government of both the historical charities and donors.

Any debate so far about how charities should function in the future has been purely a fiscal debate. Everyone is aware of the widening gulf between the rich and poor and the tax rage of the middle class. No one is devoting energy to finding constructive ways to encourage the rich to voluntarily devote some of their excess wealth back into the community to fund creative new solutions to solve the problems of our society. Instead, we are allowing the mean-spiritedness of the present age to transport the roles of the rich as well as charities back to the stereotypes assigned to them in the novels of Charles Dickens. Canadians must find a way to build a new collaborative role for charities and government which will voluntarily attract millions of dollars from the rich in the coming intergenerational transfer of wealth, rather than using guilt to extract hundreds of dollars from the middle class who are suffering from donor fatigue and tax fatigue. It is not the subject of this paper to deal with that aspect of virtual philanthropy. However, charities seeking to access these donors should know that prior to any collaboration with government, virtual philanthropists will want to experiment and develop experience by first collaborating with charities. Charities wanting to receive significant funding from virtual philanthropists must

position themselves as problem solvers more than service providers. The solutions will have the essence or effect of charity but not its appearance or form.

The appearance and form of donations will change even more than the appearance and form of programs. The biggest change is the shift away from cash gifts to assets. The issues involved in trying to quantify tax motivation in cash gifts are difficult enough without adding the complications of tax planning involved in disposing of assets. Sophisticated gift planning becomes entangled with estate planning which simultaneously seeks to accomplish: tax deferral through estate freezing and inter-generational transfers; income splitting and provision for a surviving spouse; protection from creditors and matrimonial property disputes; tax saving from charitable gifts and wealth replacement through insurance. The quintessence of philanthropy is usually present and often more generous and responsible when the gift takes place as part of a review of the entire estate.

In the new paradigm of charitable funding, there will be much less emphasis on the “form” of the charitable donation and much more emphasis on the “effect” of a financial transaction which nets a charity a huge “profit”. The future of funding in virtual philanthropy will increasingly consist of diverting taxable income, profits and gains so that they are “earned” by tax exempt charities rather than having them “earned” by taxpayers who have percentage limitations on how much they can reduce taxable income by making charitable donations. As funding techniques pioneered fundraising in international jurisdictions which have a negligible income tax rate, such as Hong Kong, are imported and refined in Canada, the “form and appearance” of donations will radically alter.

Those of us familiar with the computer world know the term “virtual reality” which Collins English Dictionary defines as “a computer-generated environment that, to the person experiencing it, closely resembles reality”. One of the dangers of the brave new world of virtual philanthropy is that it can become merely virtual reality. We must be careful that we do not become so enamoured with all of the potential for change that we become mesmerised by techniques and concepts. Generating speculative models can become so spellbinding that we can mistake the hypothetical for reality. It is important that any “Field of Dreams” be there in the morning and not vanish with the harsh reality of daylight.

Conclusion

Canadian charities and their beneficiaries need the funding which can come from creative tax planning designed to give significant amounts of wealth back to the communities in which it was created. Private foundations are critically important to the evolution of the new paradigm of gifting assets rather than cash. They are important not only for technical reasons related to tax planning and privacy. Their greatest significance is as a bridge from a paradigm in which donors gave relatively small amounts of cash out of disposable income directly to operating charities for designated purposes, to a paradigm in which donors will give increasingly large amounts of assets out of their capital to their private foundation for undesignated purposes.

Until now, Canadians have substantially relied upon their tax dollars to fund most of the services which charities provide. It is too much to expect, and likely not prudent to ask, most donors immediately to go from giving a few thousand dollars to their favourite charities to making million dollar asset gifts to the same organisations. It is only large institutions, like universities and hospitals, which can expect donors to make that jump in a single leap. If small charities and Canadians in general want some of the projected massive intergenerational transfer of wealth to be made available to small charities which can not reasonably anticipate million dollar endowments, then gift planners must learn to introduce the private foundation as an acceptable intermediary step. It is the vehicle which allows this large personal wealth to be transferred to the charitable sector in a way which both is acceptable to the donors and makes it accessible to small charities that subsequently apply to private foundations for grants.

Charities must move beyond the simplistic assumption that wealthy donors are giving only because of ego, marketing and tax. These are factors which must be considered but are not enough to result in a gift if there is no underlying charitable intent. Tax is undoubtedly a factor in gift planning, particularly if there are asset transfers. Revenue Canada Taxation has published a "Declaration of Taxpayer Rights" which states "The Constitution and laws of Canada entitle you to many rights that protect you in matters of income tax". Further, it says: "You have a right to arrange your affairs in order to pay the minimum tax required by law". Therefore, Revenue Canada has explicitly given taxpayers the right to plan their affairs to minimise taxes and increase their personal wealth. Consequently, the charitable sector should attach no moral stigma to donors planning their affairs so as to minimise tax and increase their charitable donations.

In the estate planning field, we have long adopted the maxim that nothing is certain but death and taxes. The one efficiency that Revenue Canada can boast is that it has combined these two certainties in a single location — Ottawa is where Canadians send their tax dollars to die. If Canadians want to maintain and build a country which continues to provide a safety net for the disadvantaged and improve our quality of life, they will aggressively seek ways to keep their tax dollars alive in their local communities working for the public good. This is how one deals with tax rage without becoming mean and greedy.

Creative tax planning is increasingly important as a means of demonstrating to potential donors that gifting assets to charities is a useful way to accomplish both benefit to the community and estate planning. This tax planning, however, must never overwhelm the charitable intent. I began this paper quoting Ecclesiastes in saying that the motivation in the fundraising paradigm was vanity. A more modern translation provides a better analysis of gift planning motivated only by tax:

“Meaningless! Meaningless!” says the Teacher.

“Utterly meaningless! Everything is meaningless.”⁹

It is absolutely necessary for gift planners to give primary attention to the value of the service provided by the charity rather than the value of the gift provided by the donor. Charities must work to promote and nurture altruism so that the number of virtuous donors will increase. If there is no intrinsic moral or religious value and social benefit advanced by the donation, the donors prefer to keep the money for their own purposes. Virtuous donors are concerned that a charity clearly understand its mission and values and carry out its purposes compassionately, competently and efficiently. Tax may be vulgar; but donors who take advantage of creative tax planning to increase economic efficiency are not “altruistically challenged”. In the new paradigm of charities, the virtuous in motivation and the vulgar in tax planning combine and are transfigured into virtual philanthropy. Virtual philanthropy will have the quintessence of altruism; but its concept of charity will return to its broader Elizabethan roots found in the Preamble and not be as restricted as the modern legal definition based on *Pemsel* which reflects a society with a fully funded social safety net.

⁹ Ecclesiastes 1:2, New International Version.