



# Family Business Succession Planning

## How to Beat Death and Taxes



## Presenters:

- Michael A. Goldberg, Minden Gross LLP
  - Succession Planning 101
- Aaron S. Grubner, Minden Gross LLP
  - Succession Planning - Family Shareholder Agreements
- Howard S. Black, Minden Gross LLP
  - “Probate” Taxes And Claims By Spouses And Dependents
- Jamie Golombek, CIBC Private Wealth Management
  - Succession planning & Charitable giving

## Moderator:

David Louis, Minden Gross LLP

# SUCCESSION PLANNING 101

Michael A. Goldberg

## OBJECTIVES OF SUCCESSION PLANNING

- Passing on and preserving family wealth for:
  - Children and future generations
  - Charitable and other endeavours
- Involving the next generation in the management of family wealth
- Endless other possibilities

## PRESERVING FAMILY WEALTH

- Death Taxes
  - Income taxes
  - Probate fees
  - US and other foreign estate taxes
- Exposure to creditors
- Loss of control over family wealth
  - Family infighting
  - Mismanagement

## THE SUCCESSION PLAN

- Tools of the planner:
  - Estate freeze
    - Defer “Death Taxes”
    - Capital gains exemption planning
      - For you
      - Multiplying the exemption among family members
  - Income splitting

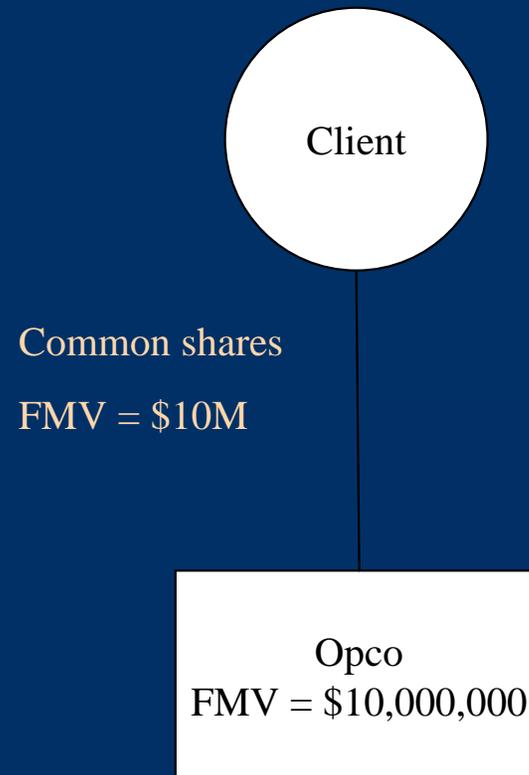
## THE SUCCESSION PLAN

- Tools of the planner (cont'd):
  - Asset protection planning
  - Insurance
  - Other planning tools
    - Shareholders' agreements
    - Family constitutions
    - Wills and Powers of Attorney
    - Charitable giving

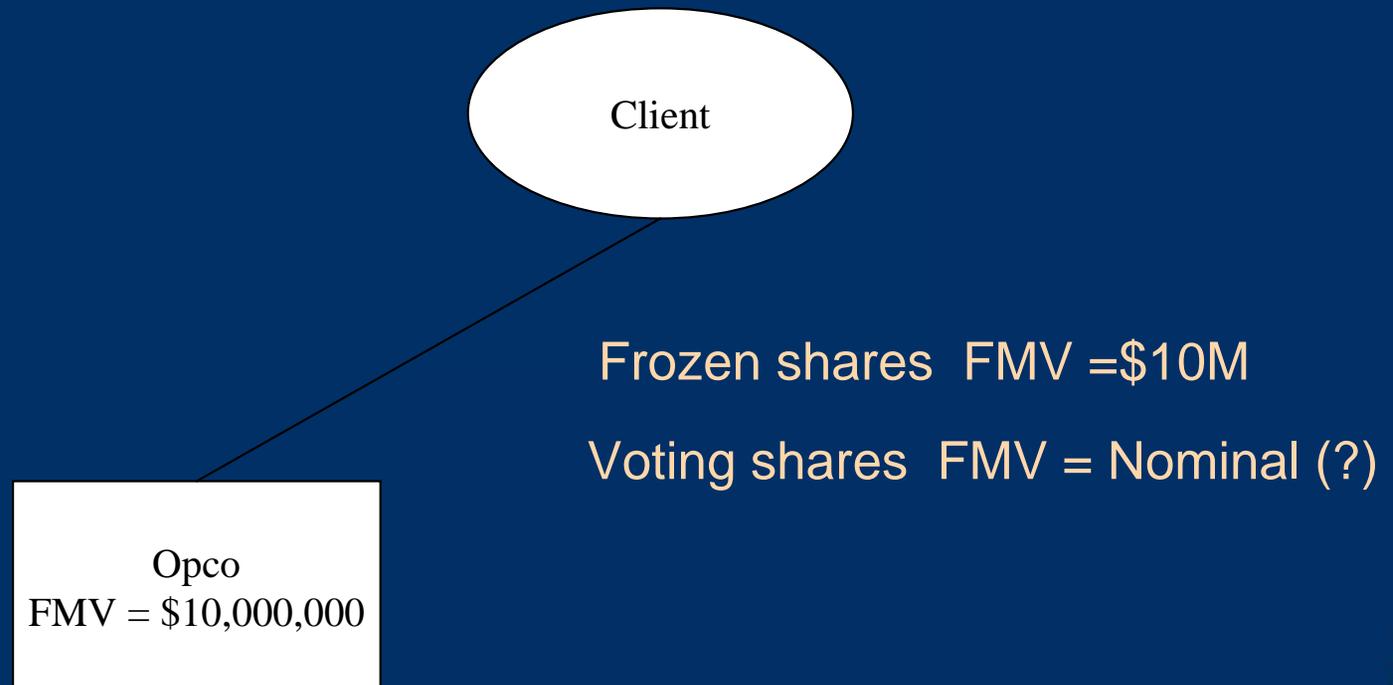
## ESTATE FREEZE

- What is it?
  - Strategy to defer and minimize death taxes
  - Many side benefits
- Is it appropriate for you?
- International families
  - US citizens/Green Card holders

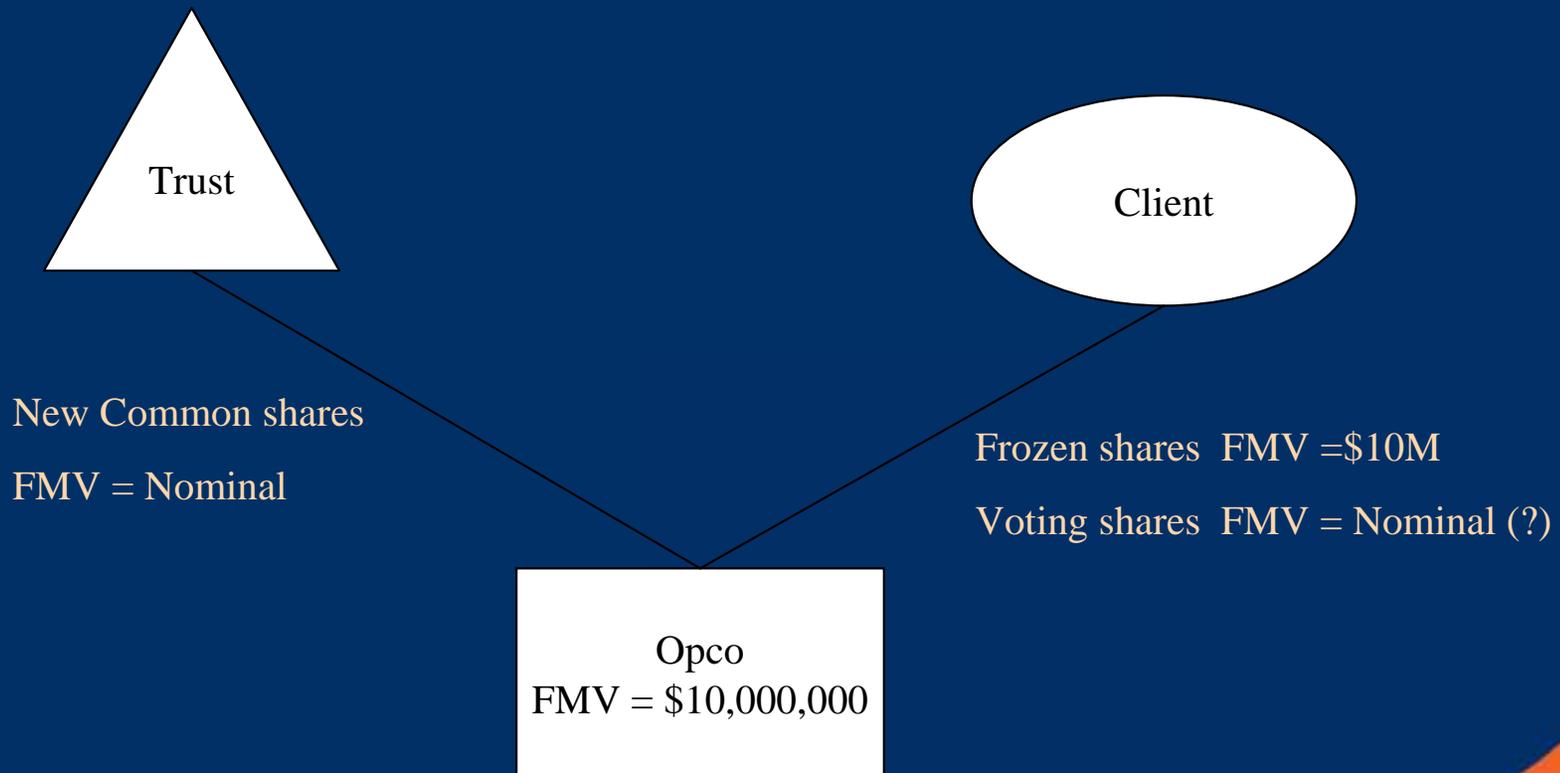
# ILLUSTRATION OF AN ESTATE FREEZE



# ILLUSTRATION OF AN ESTATE FREEZE



# ILLUSTRATION OF AN ESTATE FREEZE



## ESTATE FREEZE – OTHER BENEFITS

- Capital Gains Exemption Planning
  - \$750k of tax free capital gains for:
    - You on a “crystallization” or future sale
    - Your family members, including minors ( “Multiplying the exemption”)
  - Can be very rewarding!

## ESTATE FREEZE – OTHER BENEFITS

- Income splitting
  - Spouse
  - Children, including minors
  - Beware complex restrictive rules
    - Attribution rules
    - Kiddie taxes etc.

# ASSET PROTECTION



Some words of caution.....

## ASSET PROTECTION

- Estate freeze
  - Protection of personal and family assets
- Asset protection trusts
- Business assets

## INSURANCE

- Manage death tax
- Innovative products
  - Asset protection
  - Estate creation
  - Tax minimization
  - Investment opportunities etc.

## INSURANCE

- Corporate Owned Insurance
  - Used to fund buyouts and succession
  - Lower cost premiums
  - Reduction in death tax
- Insurance Portfolio Reviews

## MODIFICATIONS TO THE PLAN

- Changes in legislation
- Changes in family and business circumstances
  - Marriage of a child
  - A child emigrating from Canada
- 21 year anniversary of the trust

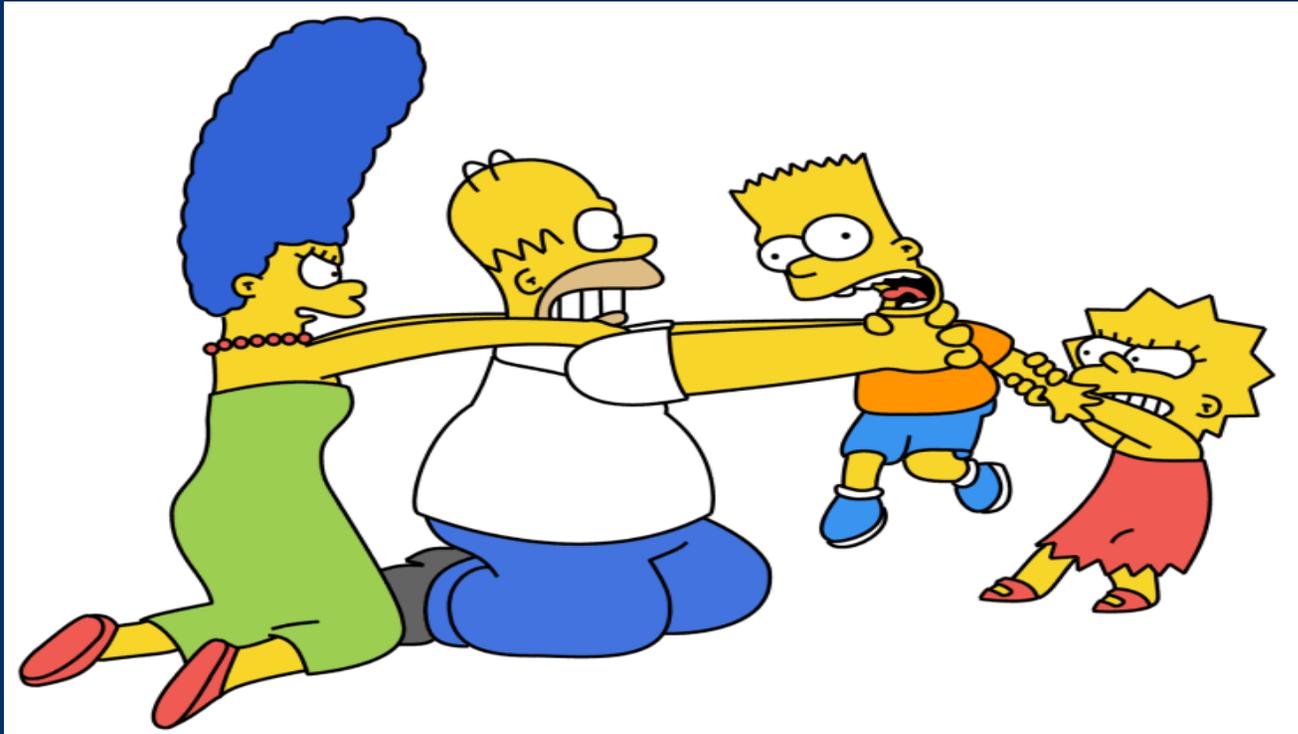
# SUCCESSION PLANNING

## FAMILY SHAREHOLDER AGREEMENTS

Aaron S. Grubner

## INTRODUCTION

Family relationships are always harmonious!



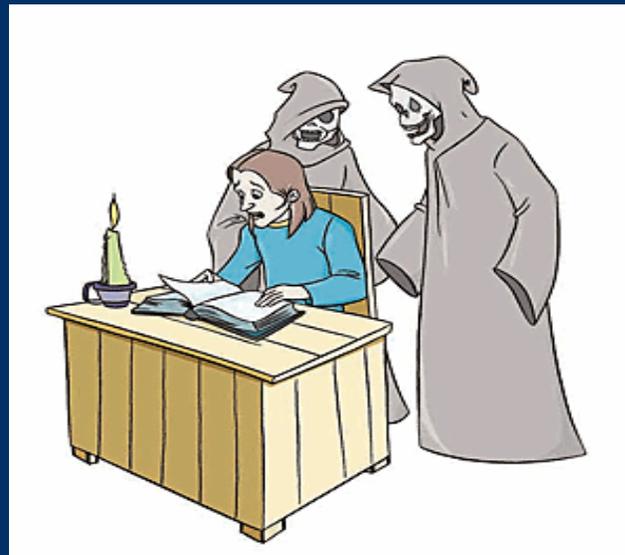
## PURPOSES OF FAMILY SHAREHOLDER AGREEMENTS

- Include matters not covered at law
- Can override restrictions on Directors
- Unanimous Shareholder Agreement (USA)
  - restrict powers of Directors
  - supremacy of USA
  - binding on future assignees
  - protective provisions can apply after family trust expires

## THE FOUR "D'S"

Decisions

Disability



Death

Disputes

## DECISIONS

- Voting
- Appointment of Directors and Officers
- Threshold for Decision Making
- Proportionality of Shares
- Share Restrictions
- Borrowing and Financing
- Employees
- Business Activity

## DEATH

- Treatment of freeze shares on death of founding patriarch or matriarch of family business
- Buy-out of shares of deceased shareholder
- Decision making after death of founding or major shareholder

## DEATH

- Future control of business
- Rights of employment in business
- Valuation
- Financing
  - Insurance
  - Payment Terms

# DISABILITY

- Short Term Disability
- Long Term Disability

## DISPUTES

- Disagreements
  - Dispute Resolution
  - Rights of First Refusal
  - Tag Along and Drag Along Rights
  - Shotgun/Buy-Sell
  - Right to Sell Entire Business
  - Windup and/or Division
  - Arbitration

## CONCLUSION



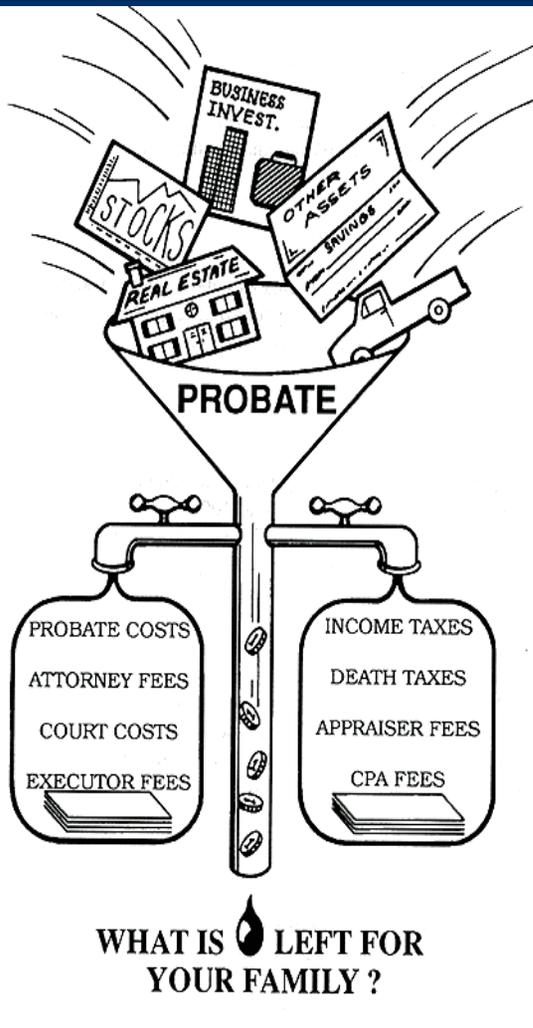
Don't throw in every conceivable provision...

# “PROBATE” TAXES AND CLAIMS BY SPOUSES AND DEPENDANTS

Howard S. Black

## ESTATE ADMINISTRATION (“PROBATE”) TAX

- Ontario “probate” tax is currently approximately 1.5% on the FMV of assets of a deceased – primarily on the gross value
- Require “probated” will in order to effect transfer of most assets that are registered in the name of deceased at death; therefore, 1.5% tax on FMV of investments at time of death
- Approximately \$15,000 tax on each \$1 million of assets



## BEWARE OF “PROBATE” TAX PLANNING OPPORTUNITIES

- Will substitutes are a means of avoiding payment of “probate” taxes – **HOWEVER:**
- Some “probate” tax planning opportunities give rise to adverse consequences
- Examples: joint accounts; joint ownership of principal residence; designating beneficiaries of RRSP’s/RRIF’s

## USE OF MULTIPLE WILLS

- A “probated” Will is only an administrative requirement; if one can effectively assume legal control over assets without the “probated” Will, that is acceptable
- *Granovsky* case (1998 Ontario Court decision)
- Use of a “Secondary” Will for non-“probated” assets (e.g. shares of a private corporation, personal effects, etc.)
- Still need a “Primary” Will to deal with any assets that might require “probate” in order to effectively deal with those assets

## USE OF BARE TRUSTEE CORPORATION



- Transfer *legal* title from individual to bare trustee corporation (no income tax as no transfer of *beneficial* ownership)
- No requirement to transfer *legal* title to assets on death as bare trustee corporation continues as *legal/registered* owner of assets

## USE OF BARE TRUSTEE CORPORATION (cont.)

- Shares of bare trustee corporation are dealt with in “secondary” will and transferred to beneficiaries
- Can use bare trustee corporation to hold *legal* title to homes, cottages, investment accounts, and other assets in order to avoid “probate” tax on those assets

## INCOME TAX IMPLICATIONS

- E.g. Value of portfolio is \$5,000,000
  - Probate tax would be approx. \$75,000
  - Use of a bare trustee and secondary will
  - Probate tax avoided
- No adverse income tax implications
- Administrative & Reporting
  - Nil tax return for bare trustee corporation
  - Cost of incorporation & annual minutes

## SPECIAL WILL PROVISIONS FOR SUCCESSION PLANNING

- Remember to carefully consider certain Will provisions to ensure proper succession planning:
  - Shareholders' Agreements (e.g. designations, elections)
  - Specific bequest of voting, freeze shares, credit balances
  - Appointment of executors: association and other tax issues
  - Assets which are sequestered in a corporation



## CLAIMS BY SPOUSES AND DEPENDANTS

- Competing interests of testamentary freedom vs. legal obligations of financial support
- Law recognizes rights of:
  - Spouses under the *Family Law Act*; and
  - Dependants under the *Succession Law Reform Act*

## CLAIMS BY SPOUSES UNDER THE *FAMILY LAW ACT*

- Limited to legally married spouses as opposed to common law spouses (people become common law spouses generally following period of cohabitation of not less than three (3) years)
- Right of election to take under the Will of the deceased spouse OR to claim equalization of *net family property*
- Election by surviving spouse for equalization of *net family property* can disrupt estate plan under the Will

## CLAIMS BY SPOUSES UNDER THE *FAMILY LAW ACT* (Cont.)

- Court has fairly wide powers to enforce equalization claim BUT: limited protection available to businesses:
  - “An order...shall not be made so as to require or result in the sale of an operating business...or so as to seriously impair its operation, unless there is no reasonable alternative method of satisfying the award.” (subsection 11(1))
- Court can, however, order payment to spouse of share of profits or transfer of shares and/or issuance of new shares

## CLAIMS BY SPOUSES UNDER THE *FAMILY LAW ACT* (Cont.)

- Accordingly, as part of estate plan, may wish to consider entering into a domestic contact (cohabitation agreement or marriage contract)
- Domestic contracts carry specific requirements (full financial disclosure, ILA, etc.)

## CLAIMS BY DEPENDANTS

- Legal definition of dependant:  
“dependant” means,
  - (a) the spouse [includes common law] of the deceased,
  - (b) a parent [includes grandparent] of the deceased,
  - (c) a child [includes grandchild] of the deceased,
  - (d) a brother or sister of the deceased,to whom the deceased was providing support or was under a legal obligation to provide support immediately before his or her death (section 57 – *Succession Law Reform Act*)

## CLAIMS BY DEPENDANTS (cont.)

- Expanded definition of “child”:
  - Includes a person whom the deceased has demonstrated a settled intention to treat as a child of his or her family (e.g. stepchild)



## CLAIMS BY DEPENDANTS (cont.)

- Impact of Ontario Court of Appeal decision in *Cummings v. Cummings*
- Has added moral considerations for the Court to consider in determining adequacy of support
- Court now considers what moral obligations arise between the deceased and his or her dependants as a result of society's expectations of what a judicious person would do in the circumstances

## CLAIMS BY DEPENDANTS (cont.)

- Little, if any, protection available to defend against possible claims
- Support order may be made despite any agreement or waiver to the contrary
- Court *may* consider reasons for making or not making adequate provision for support; therefore, include written reasons in Will or in other document
- Consider carefully people to whom you provide support, whether directly or indirectly

# Succession planning & Charitable giving

CIBC PRIVATE WEALTH MANAGEMENT



## Minden Gross LLP/UJA Federation

PRESENTED BY:

Jamie Golombek CA, CPA, CFP, CLU, TEP

Managing Director, Tax & Estate Planning

CIBC Private Wealth Management

Chair, PAC Jewish Foundation of Greater Toronto





## The Big Picture

### Trends in Estate Distribution

\$10 Trillion transfer of wealth over the next 20 years in North America

- Significant share will be directed toward philanthropy (an estimated \$50 billion)
- Tremendous opportunity for families to discuss charitable interests and philanthropic goals

Source: Statistics Canada and Imagine Canada



## The Big Picture

After you have carefully planned for yourself and your family, think of your charitable giving as one of your children and ask yourself:

- What are my philanthropic interests?
- Have I shared my charitable interest and values with my family?
- Do I hope that my children will continue to give as I have in the past?



## The Philanthropic Dialogue

Many believe that tax planning is the major motivation for philanthropy...



## The Philanthropic Dialogue

Many believe that tax planning is the major motivation for philanthropy...

*That is not true....*



## Motivations to Give

79% of Canadians give to support a cause they feel passionately about or that benefited their loved ones

69% want to share their good fortune

63% support projects in their community

29% give to fill gaps in government support

11% donate to realize tax benefits

Source: Statistics Canada and Imagine Canada



## Donor Advised Fund vs. Private Foundation

Expert investment advice / committee / institutional pricing

Expertise and advice in broad range of gifting areas

Worry-free administration including annual reporting, stewardship of all grants and low administration fees

Funds may be anonymous



Did you know that  
**private** foundations  
are **public**  
&  
**public** foundations  
are **private**?



# Canada Revenue Agency

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[Charities and Giving](#)

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**Information for**

- Individuals
- Business
- Other groups

**Search CRA**



## Charities Listings

The Canada Revenue Agency (CRA) maintains a searchable list of Canadian charities. Use the Charities Listings to determine if a charity is registered with the CRA. You can also view a charity's [Registered Charity Information Return](#) to:

- view a charity's financial information (assets, liabilities, income, and expenditures);
- find out about the activities of a charity; and
- contact a charity.

For information about how to use the Basic or Advanced searches, see [Search tips](#).

### Charities Listings - Basic search

[Advanced search](#)

By **charities listing**:

By **charity name**:

### Additional information

- [What if I can't find the charity I am looking for?](#)
- [What is a Registered Charity Information Return?](#)



[Charities and Giving](#)

**Go to**

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[Charities and Giving](#) > Search

**Charities and Giving**

[New search](#)

[Return to list](#)



## Canadian Registered Charities - Detail Page

The Charities Directorate has not necessarily verified the information provided by the Charity.

### THE BLACK FAMILY FOUNDATION

<b>BN/Registration Number:</b>	119216208RR0001
<b>Charity Status:</b>	Registered
<b>Effective Date of Status:</b>	1973-11-24
<b>Sanction:</b>	N/A
<b>Language of Correspondence:</b>	English
<b>Designation Description:</b>	Private Foundation
<b>Charity Type:</b>	Welfare
<b>Category:</b>	(Welfare) Charitable Corporations
<b>Address:</b>	3044 BLOOR ST WEST SUITE 296
<b>City:</b>	TORONTO
<b>Province/Territory/Other:</b>	ONTARIO
<b>Country:</b>	CA
<b>Postal Code/Zip Code:</b>	M8X2Y8
<b>Charity Email Address:</b>	N/A
<b>Charity Web site Address:</b>	N/A

Registered Charity Information Return: [T3010 Return](#)



[Charities and Giving](#) > Search

**Charities and Giving**

[New search](#)

[Return to list](#)



## Registered Charity Information Return

Please note that if more than one return is listed for the same year, the charity may have received approval to change its fiscal period end (fiscal year end). In that case, the charity must file an additional return for that fiscal period.

If the information displayed requires an update or amendment, a person authorized by the charity should [contact the Charities Directorate](#) as soon as possible.

The following annual information returns are available online for this charity:

### Year 2008

- [2008-12-31](#) Registered Charity Information Return

### Year 2007

- [2007-12-31](#) Registered Charity Information Return

### Year 2006

- [2006-12-31](#) Registered Charity Information Return

### Year 2005

- [2005-12-31](#) Registered Charity Information Return

### Year 2004

- [2004-12-31](#) Registered Charity Information Return



[Charities and Giving](#) > Search

- Charities and Giving**
- Registered Charity Information Return
- Amendment
- New search



## Directors / Trustees and Like Officials - THE BLACK FAMILY FOUNDATION

3 Directors / Trustees and Like Officials.

Registered charities that notice problems with their online information should visit the [amendment page](#) for instructions on how to correct the information.

#	Directors/Trustees and Like Officials
1	Last Name: Black First Name: Conrad Initial: Position in Charity: Chairman/President Director/Trustee at year end? Yes Arm's Length Indicator: No
2	Last Name: Black First Name: Barbara Initial: Position in Charity: Director Director/Trustee at year end? Yes Arm's Length Indicator: No
3	Last Name: Black First Name: June Initial: Position in Charity: Director Director/Trustee at year end? Yes Arm's Length Indicator: No

## Section E. Financial Information

[Top of page](#)

**E1** Was the financial information reported below prepared on an accrual or cash basis? **4020** ACCRUAL

**E2** *Figures are shown to the nearest dollar.*

### Assets

Cash, bank accounts, and short-term investments	<b>4100</b>	\$ 905,665
Amounts receivable from non-arm's length parties	<b>4110</b>	\$ 50,000
Amounts receivable from all others.	<b>4120</b>	
Investments in non-arm's length parties	<b>4130</b>	
Long-term investments	<b>4140</b>	\$ 1,157,049
Inventories	<b>4150</b>	
Capital assets (at cost or fair market value)	<b>4160</b>	
Other assets	<b>4170</b>	
Total assets (add lines 4100 to 4170)	<b>4200</b>	\$ 2,112,714

### Liabilities

Accounts payable and accrued liabilities.	<b>4300</b>	\$ 6,510
Deferred revenue	<b>4310</b>	
Amounts owing to non-arm's length parties	<b>4320</b>	
Other liabilities	<b>4330</b>	
<b>Total liabilities</b>	<b>4350</b>	\$ 6,510
Amount included in lines 4150, 4160, and 4170 not used in charitable programs	<b>4250</b>	



## Donor Advised Fund vs. Private Foundation

Ability for donor(s) to recommend grants to any registered charity

Connecting philanthropy to family goals

Ongoing involvement for next generations

Gifting of private company shares to public foundation at little cost to family



*What does it actually cost?*

\$1 - \$999,999	1.00%
\$1 million - \$4,999,999	.75%
\$5 million - \$9,999,999	.50%
\$10 million +	.25%



## Ways to Give

Gifts of Cash

Gifts of Life Insurance

Gifts of Appreciated Securities

Gifts of RRIFs and RRSPs

Gifts of Real Estates

Gifts of Private Company Shares

Charitable Remainder Funds

Bequests



## The Jewish Foundation of Greater Toronto Can Help

Expert investment and administration for a minimal fee

Anonymous giving option

Innovative gifting opportunities

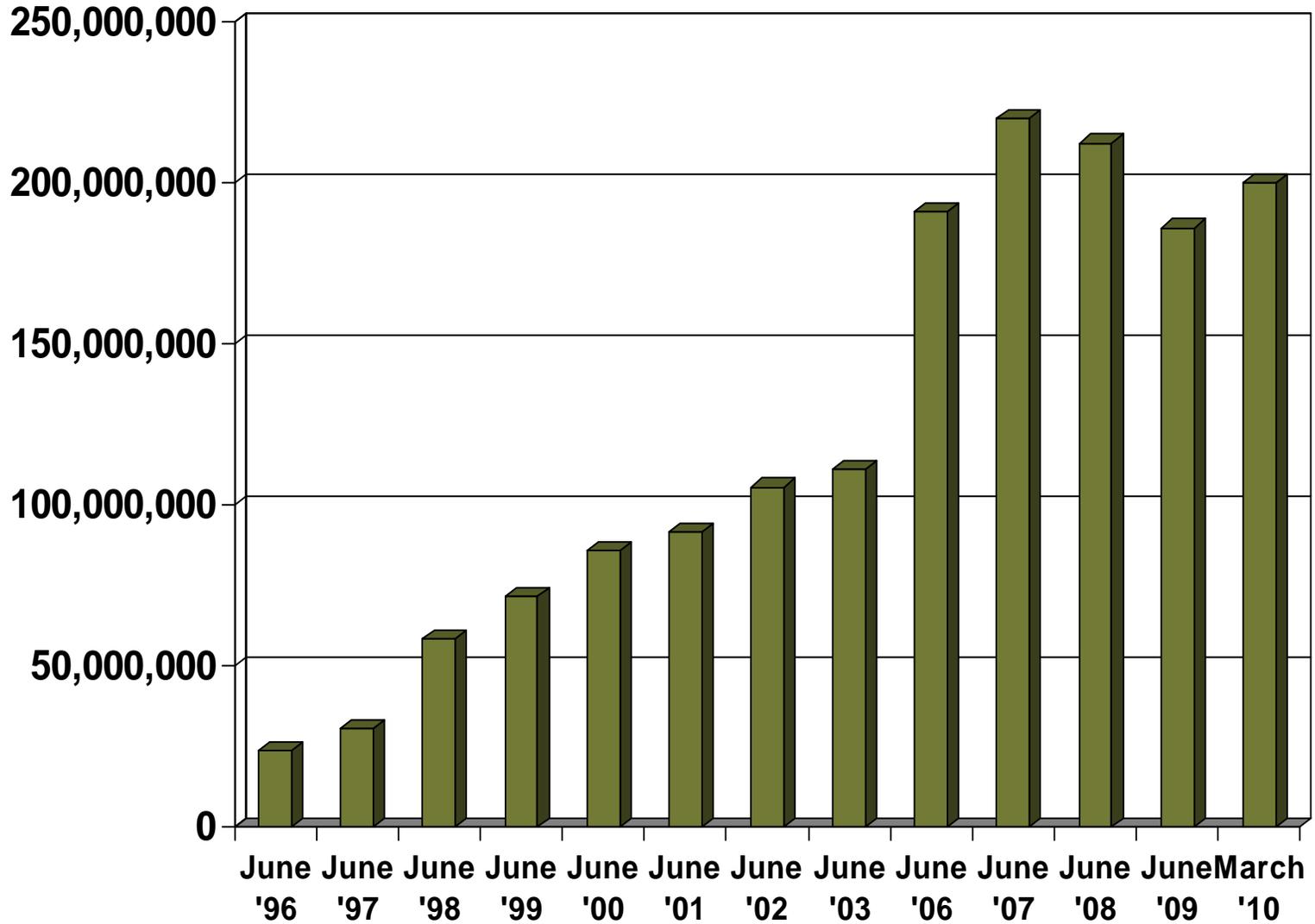
Expertise and advise in a broad range of granting areas to meet  
community needs

Providing thorough stewardship and due diligence to ensure effective  
use of funds

“One-stop-shop” for charitable giving

# Foundation Growth

(market value)





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THANK YOU

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