
ST. MICHAEL'S COLLEGE SCHOOL

GIFT ACCEPTANCE POLICY

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Gift Acceptance Policy

St. Michael's College School

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1. INTRODUCTION

(a) Duties of SMCS and Its Directors

St. Michael's College School ("SMCS") accepts gifts in support of its charitable purposes. This Gift Acceptance Policy applies to all fundraising at SMCS, including the annual campaign, planned gifts, special fundraising initiatives, campaigns and any arms-length bodies conducting fund raising on behalf of SMCS.

The board of directors of SMCS has the following duties:

- to apply all funds raised to further its charitable purposes;
- to comply with legal requirements involving receipting of gifts and fundraising;
- to comply with the limitations, conditions, terms of reference, directions or other restrictions imposed by the donors (failing which the directors could be held personally liable for any loss or damages that might be incurred as a result of their breach of fiduciary duty).

(b) Role of the Office of Advancement of SMCS

All fundraising initiatives and gift acceptance (except otherwise provided in this Policy) of SMCS are to be conducted through the Office of Advancement of SMCS.

(c) Charitable Status and Charitable Purposes of SMCS

SMCS is a registered charity with Canada Revenue Agency ("CRA") and designated as a charitable organization. The charity business number of SMCS is 119191500RR0001.

The following are the charitable purposes of SMCS as set out in its Supplementary Letters Patent, issued December 16, 2005:

- (a) To provide general, academic and spiritual education for male students in the context of the Roman Catholic faith, reflecting the Statement of Faith of SMCS and in furtherance of the teachings and practices of the Congregation of the Priests of St. Basil as represented and administered at civil law through The Basilian Fathers of Toronto, an Ontario non-share capital corporation (the "Basilian Fathers").
- (b) to uphold and maintain the Statement of Faith of SMCS;
- (c) to establish, operate and maintain a school or schools and related programs, courses, and classes to educate the whole person, intellectually, morally, physically, spiritually, and aesthetically for male students at the primary and secondary level;
- (d) to provide instruction and guidance in the Roman Catholic faith and its relationship to academic and general education through classes, courses, seminars, bible studies, meetings, concerts, musical performances, technical training, and sports programs that reflect a synthesis of culture and faith;
- (e) to encourage and strengthen students in their Roman Catholic faith;
- (f) to support and encourage unity in the body of Christ by deepening and extending fellowship amongst Roman Catholic schools, churches, and Roman Catholic organizations;

- (g) to establish and administer bursaries and scholarships for its students;
- (h) to establish, maintain and operate residences for the use of Basilian Fathers who are able to assist, either directly or indirectly, in furthering the objects of SMCS;
- (i) to acquire and hold land for the purposes of SMCS;

(d) Purpose and Review of Policy

In keeping with SMCS's charitable purposes and mission statement, and in accordance with the requirements of the *Income Tax Act* (Canada) ("ITA") and CRA, the purpose of this Policy is to provide the staff of SMCS with general guidelines and procedures when accepting and receipting various types of gifts made to SMCS in accordance with the law in Canada (including case law and the requirements of the ITA) by:

- summarizing the general policies applicable to all charitable gifts to SMCS; and
- identifying various means of charitable giving and the specific policies related to acceptance of each type of gift.

Since the law in relation to the acceptance and receipting of gifts changes from time to time, and the application of this Policy to gifts made to SMCS may vary as a result of the particular circumstances surrounding each gift, this Policy is not intended to be comprehensive nor exhaustive. In situations where the application of this Policy to a particular gift is not clear, the staff of SMCS should review the application of this Policy with legal and accounting advisors where necessary.

This Policy reflects the status of the law at the time when this Policy is adopted by the board of directors of SMCS. Therefore, this Policy will need to be reviewed and updated by the board of directors from time to time (at least once a year) to ensure that this Policy accurately reflects the then current law and the practices of SMCS.

(e) Role of St. Michael's College High School Foundation

St. Michael's College High School Foundation (the "SMCS Foundation") is established for the purpose of raising, investing and applying funds for the sole benefit of SMCS. It is the intention of SMCS and the SMCS Foundation that the fundraising activities of SMCS and the SMCS Foundation be coordinated through continuous consultation and communication between the two charities.

2. DEFINITION OF GIFT

A valid gift is eligible for an official donation receipt that may be claimed as a non-refundable tax credit for an individual donor, or tax deductions for a corporate donor, on the donor's income tax return. Donors who receive recognition for their gifts, including honour rolls, signage, plaques, or naming opportunities, etc., are subject to section 6 below.

The definition of gift has changed since the proposed changes to the ITA were first announced in 2002. The proposed split-receipting rules and related changes have been revised over the years and still have not been enacted into law. Nevertheless, both CRA and the courts require compliance with these rules. It is anticipated that these proposed changes will be enacted by Parliament in 2013. These rules are complicated and aspects of how these rules are to be

applied remain unclear. This section sets out a general description of these rules. SMCS shall monitor the development of these rules and seek legal and accounting professional advice in relation to the application of these rules where necessary.

(a) Split-Receipting Rules

In the past, in order to have a valid gift, property must be transferred voluntarily, without any contractual obligation and with no advantage of a material nature returned to the donor. The split-receipting rules permit the donor to have an “advantage” (i.e., a benefit in return), provided that the value of the property donated by the donor exceeds the amount of advantage received by the donor, subject to certain rules.

- i) The gift must be donated voluntarily by the donor.
- ii) Only the “eligible amount” of a gift can be receipted. The eligible amount of a gift is the difference between the fair market value of the gift and the amount of the advantage. In order to ascertain the eligible amount of the gift, the charity is required to determine the fair market value of the property and the amount of any advantage.
- iii) The “amount of advantage” is very broadly defined, and includes the value of any property, service, compensation, use or other benefit that the donor or a person who does not deal at arm’s length with the donor has received, obtained or enjoyed, or is entitled (either immediately or in the future, either absolutely or contingently) to receive, obtain, or enjoy that is (i) in consideration of, (ii) in gratitude of, or (iii) in any other way related to the gift.
- iv) The donor must have a clear intention to donate the property to the charity.

(b) De Minimis Threshold

Advantages that have a combined value that does not exceed the lesser of \$75 or 10% of the value of the gift are considered too minimal to affect the amount of the gift. These advantages do not need to be deducted from the value of gifts when issuing receipts. The de minimis rule does not apply to cash or near cash equivalents, such as redeemable gift certificates, vouchers, and coupons.

(c) Intention to Donate Threshold

If the value of an advantage received for a gift is more than 80% of the value of the gift itself, it is considered that there is no true intention to make a gift. No official donation receipt will be issued. If the intention to make a gift threshold has not been met, the onus is on the donor to establish to the satisfaction of the CRA that there was an intention to make a gift in order for the gift to be receipted.

(d) Fair Market Value

The duty to accurately determine the fair market value of donated property lies with the charity. The fair market value of an in-kind gift as of the date of the donation must be determined before an amount can be recorded on an official donation receipt. If the fair market value of an item cannot be reasonably determined, an official donation receipt cannot be issued.

Fair market value generally means the highest price, expressed in dollars, that a property would bring in an open and unrestricted market, between a willing buyer and a willing seller, both of

whom are knowledgeable, informed, and prudent, and who are acting independently of each other.

CRA accepts that if the fair market value of an item can be reasonably determined, an appraisal is not required. However, where this is not the case, one or more independent appraisals will be required to determine the fair market value of donated property in accordance with SMCS's policy for independent appraisals set out in section 6 below.¹

(e) Deeming of Fair Market Value

Under certain conditions, a receipt issued for a non-cash gift will be deemed to be the lesser of the gift's fair market value and its cost to the donor (or in the case of capital property, its adjusted cost base) immediately before the gift is made. In general, the deeming provision applies to gifts made after December 5, 2003, if any of the following are met:

- the gift received by the charity was initially acquired by the donor as part of a tax shelter arrangement; or
- the gift was acquired by the donor less than three years before the time of donation; or
- the gift was acquired by the donor less than ten years before the time of donation, and one of the main purposes for the donor to acquire the property was to gift it to a qualified donee (for example, a registered charity).

The deeming provision does not apply to gifts made as a consequence of a taxpayer's death; gifts of inventory; gifts of real property situated in Canada; gifts of certified cultural property (special valuation procedures apply); and gifts of certain publicly-traded securities. If the charity is not a private foundation, then ecological gifts are also exempt.

(f) Loan Back Rules

A loanback occurs when a donor makes a gift to a charity and within 60 months of making the gift, at least one of the following two situations occur. These situations have the effect of reducing the fair market value of the gift for income tax purposes.²

- Situation one – The charity holds a non-qualifying security of the donor that it acquired after the time that is 60 months before the gift was made.
- Situation two - The donor (or a person or partnership not dealing at arm's length with the donor) uses the charity's property under an agreement that was made or modified after the time that is 60 months before the gift was made; and the property was not used by the qualified donee in its charitable activities.

The application of these rules is complex. Legal or accounting advice will be sought should these circumstances arise.

¹ CRA, Summary Policy CSP - F07, "Fair market value (appraisal)", September 3, 2003 (<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/csp/csp-f07-eng.html>); CRA Summary Policy CSP - F02, "Fair market value", October 25, 2002 (<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/csp/csp-f02-eng.html>); CRA webpage "Determining Fair Market Value" (<http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/dtrnmfmv-eng.html>).

² CRA, Summary Policy CSP-L07, "Loanback", September 3, 2003 (Revised November 19, 2010).

(g) Non Gifts

The following transactions do not constitute “gifts” and are not eligible for official donation receipts:³

- the donation does not meet all of the requirements for a gift as summarized above
- a court ordered donation
- the payment of a basic fee for admission to an event or program
- the payment of membership fees that convey the right to attend events, receive literature, receive services, or be eligible for entitlements of any material value that exceed 80% of the value of the payment
- a payment for a lottery ticket or other chance to win a prize
- the purchase of goods or services from a charity
- a donation for which the fair market value of the advantage or consideration provided to the donor exceeds 80% of the value of the donation
- a gift in kind for which the fair market value cannot be determined
- sponsorship
- donations provided in exchange for advertising
- gifts of services (for example, donated time, labour)
- gifts of promises (for example, gift certificates donated by the issuer, hotel accommodation)
- pledges
- loans of property
- use of a timeshare
- lease of premises

3. GIFT RESTRICTIONS

(a) Donor Restrictions

It is possible for a donor to impose certain conditions and restrictions to be attached to a gift when the gift is made, e.g. restrictions on the charitable purpose for which the gift must be applied, restrictions on the recipient to hold the gift for a period of time before disbursing it, etc. These restrictions must be imposed at the time when the gift is made. A donor cannot impose restrictions or to remove the restrictions after the gift has been made. If the restrictions are only intended to be in force for a period of time and be removed after the expiry of the period, this would also need to be set out at the time when the gift is made.

The directors of SMCS are committed to fulfill their fiduciary duty under common law to comply with the limitations, conditions, terms of reference, directions or other restrictions imposed by donors of SMCS. All conditions and restrictions that a donor desires to be imposed on a gift must be approved by SMCS in writing in advance before the gift is accepted. Where necessary, SMCS will seek legal advice when a donor intends to impose restrictions on a gift to ensure that SMCS is able to comply with the conditions and restrictions to be imposed and to clarify SMCS’s duties in fulfilling those conditions and restrictions.

³ CRA, *What is a gift?*, “What types of transactions generally do not qualify as gifts?” (<http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/gfts/whts-eng.html>).

A donor who wishes to impose conditions or restrictions on a gift to SMCS will be required to enter into a gift agreement with SMCS to set out such conditions or restrictions on the gift. Such an agreement will generally contain a clause to provide SMCS with the power to vary the restricted purpose of the gift in the event that it becomes impossible or impractical for any reason. Such wording is included in the template gift agreement in Schedule B of this Policy.

A gift that is subject to donor restrictions will be held by SMCS as an externally restricted fund, and be managed by SMCS in accordance with the requirements of common law and regulations under the *Charities Accounting Act* (Ontario) (i.e. a charity may commingle funds received for a restricted or special purpose with other funds similarly received into a single account or investment portfolio, while restricted funds may not be commingled with its general operating funds).

A gift that is not subject to donor restrictions will be held by SMCS as an unrestricted fund to be applied towards the general charitable purposes of SMCS in the sole discretion of the board of directors of SMCS.

(b) Perpetual Endowment Funds

A donor may impose a restriction to establish a perpetual endowment fund by requiring the capital of the fund donated to SMCS be held in perpetuity, with the income to be used at the discretion of SMCS's board of directors or for a specific purpose designated by the donor, if any. SMCS will not be permitted to disburse the corpus of the endowment fund in perpetuity. Should SMCS be wound up, the perpetual endowment fund would need to be transferred to another Canadian registered charity, which would be required to continue holding the perpetual endowment fund in perpetuity, and applying the income from the perpetual endowment fund in accordance with the restrictions imposed by the donor when the fund was first established.

A donation of at least \$125,000 is required in order to establish a perpetual endowment fund at SMCS. However, a donation of at least \$25,000 is required in order to establish a perpetual endowment fund for a bursary or a scholarship at SMCS.

(c) Long Term Funds

A donor may establish a fund with the capital to be held for a long period of time, rather than to be held in perpetuity. Such a fund will be referred to as a "long term fund".

The income will be used at the discretion of SMCS's board of directors or for a specific purpose designated by the donor, if any. SMCS will not be permitted to disburse the corpus of the long term fund for the period of time designated by the donor. At the end of this period, the corpus may be disbursed in accordance with the restrictions imposed by the donor. Should SMCS be wound up before the expiry of this period, the long term fund would need to be transferred to another Canadian registered charity, which would be required to continue holding the long term fund until the expiry of the said period, and applying the income from the long term fund in accordance with the restrictions imposed by the donor when the fund was first established.

A donation of at least \$50,000 is required in order to establish a long term fund at SMCS.

(d) Ten-Year Gifts

A “ten-year gift” is a term in the ITA whereby a donation is made by a donor subject to the donor’s written trust or direction that the property given, or property substituted for it, be held by the recipient charity for 10 years or more. Long term funds and perpetual endowment funds are ten-year gifts. As the result of the repeal of the 80% disbursement quota, there is no longer any requirement for donors to make ten-year gifts in order to avoid the application of the 80% disbursement quota on the gift. New gifts are not required to be ten-year gifts. This means that donors can require gifts be subject to a hold period shorter than ten years. However, gifts that were given to SMCS as ten-year gifts continue to be subject to the restriction imposed by the donors.

(e) Donor Advised Funds

After having made a gift, it is not permissible for the donor to continue having an aspect of control over how the recipient charity deals with the gift, otherwise the continued control of the donor over the gifted property might defeat the gift. However, it is possible for the donor to provide non-binding advice to the recipient charity regarding the distribution, management or other matters concerning the gift, provided that the advice provided by the donor is not binding on the recipient charity. Such a gift is commonly referred to as a “donor-advised fund.” The primary concern with donor-advised funds is that, if too much control is retained by the donor, the donation will not be considered to be a gift at law.

A donor who wishes to provide advice to SMCS with respect to a gift made to SMCS will be required to establish the gift as a donor advised fund and to enter into a gift agreement with SMCS to set out the terms of reference of the gift and how advice may be provided to SMCS by the donor from time to time.

4. RECEIPTING

The issuance of official donation receipts by SMCS shall be in accordance with the requirements of the ITA and CRA.

A registered charity that issues an official donation receipt that includes incorrect information is liable to a penalty equal to 5% of the eligible amount stated on the receipt. This penalty increases to 10% for a repeat infraction within 5 years. A registered charity that issues an official donation receipt that includes false information is liable to a penalty equal to 125% of the eligible amount stated on the receipt, where the total does not exceed \$25,000. Where the total exceeds \$25,000, the charity is liable to a penalty equal to 125% and the suspension of tax-receipting privileges. A registered charity that contravenes or continues to contravene the ITA could also have its registration revoked.

(a) Due Diligence

Management of charitable receipting rests with SMCS’s Finance Office. In order to ensure the accuracy of the official donation receipts issued by SMCS, SMCS reserves the right to inquire of its donors and obtain assurance from them, either verbally or in writing as may be appropriate, concerning circumstance surrounding the gifts that may be relevant for the purpose of SMCS’s issuance of official donation receipts. The inquiry may include the ownership of the property, the cost of the property when acquired, when the property was acquired, the purpose for which it was acquired and by whom, the circumstances surrounding which the property was acquired,

whether the acquisition of the gift involves any tax shelters, gifting arrangement, or limited recourse debt, whether there is any advantage in respect of the gift; as well as any other information that is essential to determining the correct eligible amount for the gift.

(b) Preparation and Contents of Receipts

In order to issue an official donation receipt, the charity must determine whether or not the donation constitutes a gift, who the donor is, and the eligible amount of the gift for receipting purposes.

Each official donation receipt must contain at least the following information:⁴

- a statement that it is an official receipt for income tax purposes;
- name and address of SMCS as on file with the Canada Revenue Agency;
- charity's registration number;
- serial number of the receipt;
- place or locality where the receipt was issued;
- day or year donation was received;
- day on which the receipt was issued if it differs from the day of donation;
- full name, including middle initial, and address of the donor;
- amount of the gift;
- value and description of any advantage received by the donor;
- eligible amount of the gift;
- signature of an individual authorized by the charity to acknowledge donations; and
- name and website address of the Canada Revenue Agency (www.cra.gc.ca/charitiesandgiving).

For non-cash gifts (gifts in kind), the receipt must also contain the following additional information:

- day on which the donation was received (if not already indicated);
- brief description of the property;
- name and address of the appraiser (if property was appraised); and
- deemed fair market value of the property in place of amount of gift above.

Each receipt must be prepared in duplicate (since SMCS is required to keep on file a copy of every official receipt issued), and must be signed by an authorized person. In situations where it is necessary to issue an extra copy of the official donation receipt or issue a temporary receipt, such extra copy or temporary receipt shall not include the registration number of the charity and must contain a notation to the effect that "this copy is for your information only and is not an official receipt for income tax purposes."

⁴ Part XXXV of the Income Tax Regulations; and CRA, IT-110R3 *Gifts and Official Donation Receipts*, June 20, 1997 (<http://www.cra-arc.gc.ca/E/pub/tp/it110r3/README.html>); CRA, *New requirement for official donation receipts - Questions and Answers*, April 2007; CRA, *Samples – Official Donation Receipts*.

(c) Control of Receipts

SMCS and its employees are required to guard against the unauthorized use of official donation receipts, e.g. keeping pre-printed receipts in a locked office with access provided to authorized personnel.

(d) Lost, Spoiled or Stolen Receipts

To replace a lost official donation receipt, a replacement receipt can be issued. It must contain all required information, serial number of the original receipt, and a statement that it replaces the original receipt. SMCS's copy of the lost receipt will be retained and marked "cancelled". In the case of a spoiled receipt, all copies will be retained and marked "cancelled," and another receipt may then be issued.⁵

In the event of lost or stolen receipts, SMCS will notify CRA immediately. Depending on the circumstances, it may be necessary for CRA to cancel the registration number and issue a new one to SMCS.⁶

If a receipt that contains incorrect information has been prepared but has not sent it to the donor, a new receipt will be prepared. However, both copies of the original receipt must be retained and mark "cancelled" on them.

(e) Facsimile Signatures

SMCS may use a facsimile signature on a receipt. SMCS will comply with the following requirements of CRA:⁷

- the receipts are distinctively imprinted (usually by a commercial printer) with the name, address, and registration number of SMCS;
- the receipts are serially numbered by a printing press or numbering machine; and
- all unused receipt forms are kept at SMCS's address.

(f) Date of Issue and Date of Donation

The "date of issue" of a receipt is the date on which the receipt was prepared. There are no regulations requiring the issuance of official donation receipts within a particular time frame, but CRA suggests that they be issued at least by the last day of February following the year during which the gift was made.⁸

Gifts received after the end of the year may not be added to the previous year's donations unless the gift was postmarked in the previous year.⁹

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

The donation date is the date that the gift is made. The donation date may not necessarily be the date of physical delivery of the gift. For example, a property may be on loan to SMCS before it is actually donated to SMCS. The value of the gift shall be valued on the date of donation.¹⁰

Donors wishing to receive an official donation receipt for the current calendar year are asked, where possible, to contribute gifts prior to December 1st. SMCS retains the right to process gifts within a reasonable time frame. In some instances, gifts received later than December 1st may not be accepted for donation in the given calendar year. Donors are asked to remain sensitive to calendar year end deadlines.

(g) Computer Generated Receipts

Computer-generated official donation receipts are acceptable to CRA provided they contain all the required information, are clear and easy to read, and the data is sufficiently protected from unauthorized access. To protect computer-generated receipts from unauthorized access, SMCS will ensure that: the computer system used to store the receipts is password protected and restricts entry to and modification of donor contribution records; donor records are stored on non-erasable media (such as CD-ROMs or printouts) with copies kept off-site for recovery purposes; and hard copies of issued receipts can be printed on request.¹¹

Donation receipts can be sent by email to donors provided that the following precautions are taken to protect electronic receipts:

- receipts are in a read-only or non-editable format;
- receipts are protected from hackers through the use of appropriate software;
- the documents are encrypted and signed with an electronic signature;
- the use of a secure electronic signature is kept under the control of a responsible individual authorized by the charity; and
- copies of email-issued receipts are retained by the charity.

(h) Name on Receipts

A donation receipt will be issued to the donor who provided the gift in question to SMCS. It is a question of fact whether property donated from one individual to a registered charity is the property of that individual and/or another.¹²

In general, where a charitable donation is provided by way of a cheque on an account held jointly by spouses (i.e. both names of the spouses appear on the cheque), then SMCS will issue the official donation receipt in either or both names, regardless of how the cheque is endorsed.

Where the provider of the gift asks SMCS to issue an official donation receipt in another name and there is no obvious indication as to the true donor, SMCS will request a written declaration or letter from the party providing the donation as to the identity of the true donor, in order to allow SMCS to ensure that the name it records on the receipt is that of the true donor.

¹⁰ *Ibid*; and CRA, RC4142(E) Rev. 05, *Tax Advantages of Donating to Charity*.

¹¹ *Ibid*. See also CRA, Policy Statement CPS – 014, *Computer-Generated Official Donation Receipts*, February 22, 2000 (<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-014-eng.html>).

¹² CRA, Policy Commentary CPC – 010, *Official donation receipt - Whether receipts can be issued in a name other than the donor's*, February 21, 1994 (<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cpc/cpc-010-eng.html>).

5. TYPES OF GIFTS

SMCS encourages and solicits contributions of cash and gifts-in-kind (including securities, other personal property and real property), either as outright gifts or through planned gift vehicles in accordance with the requirements of the ITA. Planned gifts include bequests, life insurance policies, charitable trusts, and gift annuities. The policy for accepting, processing, acknowledging, and receipting gifts to SMCS is set out in this section of the Policy.

(a) Cash and Near Cash

Description of Gift:

Gift of cash are accepted by SMCS. Forms of payment may include cash, cheque, money order and credit card.

Acceptance Policy:

- i) Following receipt of the cash gift, SMCS will issue to the donor an official donation receipt in the eligible amount of the gift.
- ii) A gift by credit card is considered to have been made on the date the donor authorized the charge to the credit card.
- iii) Gifts received after the end of the year may not be added to the previous year's donations unless the gift was postmarked in the previous year¹³ (e.g. a cash gift made by way of a cheque that was mailed and posted marked in December but not received by SMCS until January).

(b) Bequests

Description of Gift:

A bequest is a provision in a will, directing a gift of property from an estate to be paid to SMCS. There are several types of bequests accepted by SMCS:

- i) A *specific bequest* - A gift of a specific sum of money or a specific property, such as real estate or securities.
- ii) A *residual bequest* – A gift of all or a percentage of the residue of the estate after having paid gifts to other beneficiaries under the estate.
- iii) A *contingency bequest* – A gift of all or a share of the estate in the event of the prior death of certain other beneficiaries or in the event of certain conditions having been met.
- iv) A *residual bequest subject to life interest* – A gift of property following the death of certain other beneficiaries who have use of the property in the estate during their lifetime.

¹³ CRA, IT-110R3 *Gifts and Official Donation Receipts*, June 20, 1997 (<http://www.cra-arc.gc.ca/E/pub/tp/it110r3/README.html>).

Acceptance Policy:

- i) Upon request, sample bequest language will be made available to donors and their lawyers to ensure that the bequest is appropriately documented in the will. Sample bequest clauses are set out in Schedule A to this Policy. When sending sample bequest clauses to potential donors, the following disclaimer shall be provided:

Disclaimer: This information is provided solely for the interest of friends and donors to St. Michael's Colleges School. However, St. Michael's Colleges School is not a source of legal, tax or financial advice and the information set out should not be relied upon as a substitute for professional advice. While every effort has been made to ensure accuracy, the information set out herein may not apply in all situations or provinces (especially Québec). You are encouraged to discuss your will provisions and language fully with your own lawyer (or notary), who needs to draft your will for you.

- ii) A bequest in the appropriate amounts can be used to create named endowment funds if appropriately provided in the will.
- iii) Donors are invited and encouraged to provide information to SMCS about their bequest and, if they so choose, to send to SMCS a copy of the relevant section of their will.
- iv) SMCS does not provide any legal, accounting, tax or financial advice to donors in the preparation of their will, or become involved in the execution or witnessing of a will in which SMCS is named as beneficiary. SMCS staff or SMCS may not be named as executor in a donor's estate. SMCS recommends that donors consult legal and tax professional advisors before completing a will.
- v) During the administration of an estate involving SMCS as a beneficiary, a representative of the Office of Advancement or the Finance Office of SMCS, in consultation with SMCS's legal counsel, will represent SMCS in dealings with the lawyer and/or estate trustee. SMCS will have the duty to exercise due diligence that the terms of the will are abided by, gifts made to SMCS are received in a timely manner, and the interests of SMCS are maximized. SMCS may decline the bequest if, in the discretion of SMCS, the legal, accounting, or other professional fees associated with administration of the estate exceeds the amount of bequest.
- vi) In special situations, such as unusual circumstances of the administration of the estate, gifts of residual interest of an estate, insufficient assets to pay the full bequest, etc., SMCS will consult its legal counsel.
- vii) SMCS reserves the right to decline a bequest involving an estate that has not been properly administered, and its trustees not having received appropriate compensation. In cases where personal or real property is gifted to SMCS under the will, SMCS's policy in relation to the acceptance of those gifts would apply.
- viii) Following receipt of the bequest, SMCS will issue to the estate an official donation receipt in the eligible amount of the gift.

(c) Life Insurance

Description of Gift:

Gifts of life insurance may be contributed to SMCS in the following ways:

- i) Irrevocably assign the ownership and beneficiary rights of a paid-up life insurance policy to SMCS;
- ii) Irrevocably assign the ownership and beneficiary rights of a life insurance policy to SMCS, on which premiums remain to be paid;
- iii) Naming SMCS as a beneficiary of a life insurance policy.

Acceptance Policy:¹⁴

- i) In situations i and ii above, SMCS becomes the legal owner of the gifted life insurance policy. All consents required under provincial regulations to be signed to change a beneficiary must also be signed before it is a completed gift.
- ii) If an assigned policy is not yet fully paid-up as in situation ii above, the acceptance of the assigned policy shall be conditional upon SMCS not having any liability to the insurance company or to the donor with respect to the payment of future premiums, unless otherwise agreed to by SMCS in advance.
- iii) If an assigned policy is not yet fully paid-up as in situation ii above, SMCS shall try to obtain assurance from the donor that he/she will continue to make donations towards paying future premiums (for which the donor would be entitled to official donation receipts as explained below), unless otherwise agreed to by SMCS in advance. In the event that the donor is not willing to pay or continue to pay future premiums, SMCS shall determine the appropriate course of action, i.e. whether to pay the premium to maintain the policy or to redeem/cash in the policy.
- iv) The receipting of gifts of life insurance shall be as follows:
 1. Where the assigned policy is a fully paid-up life insurance policy as in situation i above, SMCS may issue an official donation receipt for the eligible amount of the policy's value, including accumulated dividends and interest which are also assigned to SMCS at the time. When determining the eligible amount of a policy's value, the following factors will need to be considered: (a) cash surrender value; (b) the policy's loan value; (c) face value; (d) the state of health of the insured and his/her life expectancy; (e) conversion privileges; (f) other policy terms, such as term riders, double indemnity provisions; and (g) replacement value.¹⁵ Generally, only a whole life or universal life policy will have a cash surrender value. A term life

¹⁴ CRA, IT-244R3, *Gifts by Individuals of Life Insurance Policies as Charitable Donation*, September 6, 1991 (<http://www.cra-arc.gc.ca/E/pub/tp/it244r3/it244r3-e.html>).

¹⁵ CRA, Document number: 2008-0267091E5, February 25, 2008.

insurance policy cannot be fully paid-up and the cash surrender value would be nil. The cash surrender value for a new insurance policy would also be nil.

2. Where the assigned policy is not yet fully paid-up as in situation ii above, SMCS may issue an official donation receipt for the eligible amount of the policy, including accumulated dividends and interest which are also assigned to SMCS at the time, but not including any loan outstanding on the policy. The various factors mentioned above will need to be considered when determining the eligible amount. Where the policy assigned is a term life insurance, the cash surrender value is nil.
 3. In addition, if the policy is not yet fully paid-up as in situation ii above, SMCS may issue an official donation receipt for donations for the eligible amount of the premium paid, regardless of whether the payment is made directly to the insurance company or to SMCS which would in turn pay the premium.
 4. The increase in the cash surrender value of the life insurance policy after the assignment of the policy as a result of subsequent premium payment does not affect the amount of the donation at the time of the assignment.
 5. SMCS may issue an official donation receipt for the eligible amount of repayment of outstanding policy loans by the donor.
 6. Where the assignment of a life insurance policy is not irrevocable, SMCS may not issue an official donation receipt.
 7. Where SMCS is named as a beneficiary of a life insurance policy as in situation iii above, SMCS may issue an official donation receipt when SMCS receives the insurance proceeds upon the death of the insured. No official donation receipt may be issued upon naming SMCS as the beneficiary or for premiums paid for such a policy.
- v) Prior to the repeal of the 80% disbursement quota in 2010, where a gift of life insurance policy is subject to a trust or direction by the donor that the value of the life insurance policy and the proceeds from the policy be held by SMCS for not less than 10 years, such a gift is a ten-year gift. In addition, subsequent premium payments may also be designated by the donor as ten-year gifts. See section 3 above regarding explanation on ten-year gifts.
- vi) The administration of a gift of life insurance will involve a representative of SMCS Office of Advancement. This representative will:
- request a copy of the donor's life insurance policy, confirming SMCS's designation as owner and beneficiary;
 - in the case of policies that have not been fully paid-up, request annual, written notices of premium payments from the life insurance company.

(d) Registered Retirement Plans

Description of Gift

Gifts of registered retirement plans may include the following:

- i) Direct designation of a charity as a beneficiary to receive the proceeds of registered retirement income fund or registered retirement savings plan on the death of the donor;
- ii) Gifting to a charity the proceeds of registered retirement income fund or registered retirement savings plan on the death of the donor by way of bequest.

Acceptance Policy:

- i) SMCS receives gifts of registered retirement plans as described above.
- ii) Registered retirement income funds or registered retirement savings plans cannot be transferred to a registered charity during the life time of the donor and be eligible for official donation receipts. While a donor may withdraw funds from these savings and make a donation to SMCS, the donor will need to be cautioned in doing so and be encouraged to seek independent tax advice whether the official donation receipt issued by SMCS would be sufficient to off-set tax owed on the withdrawal of the savings. Should there be tax withheld by the financial institution holding the retirement savings fund, an official donation receipt may be issued for the net amount of donation made to SMCS.

(e) Publicly-Listed Securities

Description of Gift:

Donations of publicly-listed securities do not give rise to a capital gain for the donor and therefore donors will likely have incentives to donate them. Publicly-listed securities include the following:

1. a share, debt obligation or right listed on a prescribed stock exchange (including Toronto, Montreal, Tiers 1 and 2 of the TSX Venture Exchange and a number of foreign stock exchanges set out in Income Tax Regulation 3200);
2. a share of the capital stock of a mutual fund corporation;
3. a unit of a mutual fund trust
4. an interest in a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a)); and
5. a prescribed debt obligation, i.e. a bond, debenture, note, mortgage or similar obligation (a) of or guaranteed by the Government of Canada, or (b) of the government of a province or an agent of that government.

Gifts of stock options may also be donated. Under certain circumstances, the donation may entitle the donor to a reduction of his/her employment benefits and/or relief from capital gains tax.

Acceptance Policy:

- i) SMCS generally accepts gifts of publicly-listed securities that have an active secondary market, not subject to a volatile market, and can be readily converted into cash within a reasonable period of time after having received the gifts.
- ii) Mode of donation:
 1. Donations of public securities may be transferred in one of two ways, electronic transfer or presentation of the certificate. Where possible, an electronic transfer of securities is encouraged. The administration of a gift of securities will involve a representative of SMCS Office of Advancement or the Finance Office with SMCS's investment advisors and SMCS's brokerage firm.
 2. Electronic transfer - The shares are transferred electronically from the donor's account to SMCS's account. The donor is asked to open a no obligation, one time only account with SMCS's brokerage firm and to direct, in writing, the internal transfer of the gifted securities to SMCS's account. SMCS representatives will follow the following procedures to effect the transfer of the gift:
 - assess, in consultation with SMCS's investment group, if the gift is marketable and acceptable;
 - consult directly with the donor's broker;
 - identify immediately to SMCS's broker the name of the donor; the name of the delivering broker; the name and number of delivered shares; and number of shares; and
 - request written confirmation of the date of transfer from the donor's broker.
 3. Presentation of certificate – The donor may mail or deliver endorsed certificates to SMCS or SMCS's agent. In some instances, the donor's signature requires bank notarization. Instructions are on the reverse of the certificate.
- iii) Date of donation:
 1. Electronic transfer - Electronic transfers can take up to several days to complete depending on the procedures used by the brokerages involved. The ITA does not specifically contemplate this manner of gifting shares. However, as a general rule, CRA accepts that the date of a gift of electronically transferred shares is the date the shares are received in the charity's account.
 2. Presentation of certificate – If an endorsed share certificate or an unendorsed share certificate accompanied by a signed stock power of attorney is hand-delivered to SMCS, CRA considers the gift to have been made at the time SMCS receives and accepts the gift. Where the share certificate is mailed to SMCS, SMCS is deemed to have received the share certificate on the day it was mailed, provided that SMCS accepts the gift.
- iv) Valuation of gift for receipting purposes:

1. In general, the value of the securities will be the closing bid price of the share on the date it is received or the mid-point between the high and the low trading prices for the day, whichever provides the best indicator, given the circumstances, of fair market value on normal and active market trading.
 2. However, the determination of the fair market value will take into account a number of factors, including the size of the block of shares in relation to the whole, the volume traded, the attributes of the shares, whether the donor had control or was a minority shareholder, whether there were any restrictions on the transferability of the shares, and whether the shares were thinly traded, requiring a look at trades over a longer period of time. Under those situations, an independent appraisal may be required to determine the fair market value in accordance with SMCS's policy for independent appraisals set out in section 6 below. Where unusual circumstances are involved in the gift, the gift agreement with the donor will need to set out the method of valuation to be used, a price adjustment clause should an issue arise with CRA with respect to the valuation, and whether the donor or SMCS will be responsible for the cost of the appraisal.
- v) In general, SMCS's policy is to liquidate gifts of securities as soon as possible after receipt.
- vi) Certain employee stock options may also be donated to SMCS. The employee will need to exercise the stock option, then the holder may donate to SMCS the securities received from the exercise of the stock option or the holder may direct a broker or dealer to sell the securities and pay the proceeds of sale to SMCS.¹⁶
- vii) Limitations imposed by *Charitable Gifts Act* (Ontario) on the acceptance of gifts of shares no longer apply because the statute was repealed in 2009.
- viii) The excess business holding rules proposed by the 2007 federal budget are not relevant to SMCS since these rules only apply to shares held by private foundations.
- ix) Upon confirmation of the receipt of a gift of publicly-listed securities, SMCS will issue a tax receipt for the eligible amount of the gift on the date SMCS receives the gift.

(f) Private Securities and other Business Interests

Description of Gift:

Donors may contribute private company shares.

Acceptance Policy:

- i) SMCS generally accepts gifts of private company shares provided that:
 1. SMCS assumes no liability in accepting these gifts;

¹⁶ CRA, P113, *Gifts and Income Tax Act* (<http://www.cra-arc.gc.ca/E/pub/tg/p113/p113-e.html>);

2. the fair market value of the gifts can be easily determined by an independent appraisal and will be paid by the donor, unless SMCS agrees in advance to be responsible for the costs. SMCS's policy for independent appraisals is set out in accordance with SMCS's policy for independent appraisals set out in section 6 below;
 3. the gifts are not subject to a volatile market;
 4. the gifts can readily be converted into cash within a reasonable period of time after having received them and there is no agreement or other obligation in place that may prevent SMCS from doing so; and
 5. the donor deals at arm's length with SMCS, and the donor deals at arm's length with each director of SMCS.
- ii) SMCS does *not* accept gifts of "non qualifying securities", i.e. private company shares of a donor who controls the company and gifts of debts (such as a promissory note issued to the donor by the donor's company) in respect of a donor's corporation, where the donor does not deal at arm's length with SMCS, or the donor does not deal at arm's length with each director of SMCS.¹⁷
- iii) SMCS does not accept gifts of other business interests, e.g. partnership interests.
- iv) The fair market value of the private company shares on the date of the donation will be determined by an independent appraisal and will be paid by the donor, unless SMCS agrees in advance to be responsible for the costs. SMCS's policy for independent appraisals is set out in section 6 below.
- v) The administration of a gift of securities will involve a representative of SMCS Office of Advancement or the Finance Office with SMCS's investment advisors. The representative will:
- assess, in consultation with appropriate parties, if the gift is acceptable in accordance with this Policy; and
 - obtain a valuation of the gift in accordance with SMCS's policy for independent appraisals set out in section 6 below.
- vi) Decisions regarding the sale of private company shares rest with SMCS's board of directors, upon review with its investment committee and in consultation with SMCS's investment advisors. In general, SMCS's policy is to liquidate these gifts as soon as possible after receipt.
- vii) The excess business holding rules proposed by the 2007 federal budget are not relevant to SMCS since these rules only apply to shares held by private foundations.
- viii) Upon confirmation of the receipt of a gift of private company shares, SMCS will issue a tax receipt for the eligible amount of the gift on the date SMCS receives the gift.

¹⁷ CRA, RC4108(E) 1204, *Registered Charities and the Income Tax Act*.

(g) Gifts-in-Kind

Description of Gift:

Gift-in-kind refers to a gift of property other than cash, and includes capital property, depreciable property, personal-use property, a leasehold interest, a residual interest,¹⁸ a right of any kind, a license, a share, a chose in action, and inventory of a business.¹⁹ It does not include gift of services.

Acceptance of some gifts-in-kind are subject to special considerations and are specifically referred to in other sections of this Policy, including life insurance policies, publicly-listed securities, private securities and other business interests, real estate, etc. The acceptance of other in-kind gifts is governed by this section of the Policy, including gifts of books, art work or art collections, equipment, software, or other property.

Acceptance Policy:

- i) SMCS accepts gifts-in-kind that are in reasonable condition and meet other criteria set out in this Policy. SMCS reserves the right to display or store the gifted property or sell it and apply the proceeds towards the charitable purpose of the gift.
- ii) SMCS accepts gifts of art that are either intended for the permanent art collection at SMCS or for fundraising purposes of SMCS (e.g. at SMCS's fundraising auction event).
- iii) SMCS accepts gifts of books that are intended for the permanent collection of SMCS's library collection and the acceptance of these gifts is subject to consideration and approval by the librarian of SMCS.
- iv) SMCS accepts gifts of archival materials that are intended for the permanent collection and the acceptance of these gifts is subject to consideration and approval by the Archives of St. Michael's College School (ASMCS).
- v) SMCS will encourage the donor to provide a written letter of offer to SMCS containing the desired terms for the proposed in-kind gift, to allow SMCS to determine whether it is interested in accepting the gift, before the donor proceeds with the establishment of the fair market value of the in-kind gift.
- vi) Property of little or only nominal value to the donor does not qualify as a gift-in-kind.²⁰ The fair market value of gifts-in-kind shall be determined by independent appraisals in accordance with SMCS's policy for independent appraisals set out in section 6 below.
- vii) Gifts of capital property are subject to special rules when receipting these gifts. Capital property is usually defined as any property of value that a taxpayer buys for investment

¹⁸ See CRA, IT-226R, *Gift to a Charity of Residual Interest in Real Property or an Equitable Interest in a Trust*, November 29, 1991 (<http://www.cra-arc.gc.ca/E/pub/tp/it226r/it226r-e.html>).

¹⁹ CRA, IT297R2, "Gifts in Kind to Charity and Others" at para. 6 (<http://www.cra-arc.gc.ca/E/pub/tp/it297r2/README.html>).

²⁰ *Ibid.*

purposes, or to earn income, and may give rise to capital gain or loss upon disposition. Common types of capital property include securities such as stocks and bonds; land, buildings and equipment used in a business or rental operation, etc. Upon donation of a capital property, the donor is deemed to have disposed of that property for its fair market value and this deemed disposition may result in a capital gain. The donor may claim charitable donation credit/deduction from the official donation receipt from the charity.²¹ If the fair market value of the gifted capital property is greater than its adjusted cost base, the donor may designate a value between the adjusted cost base and the fair market value of the donated property to be treated both as the proceeds of disposition for the purpose of calculating the donor's capital gain and the amount of the gift for the purpose of calculating the tax credit/deduction allowed for charitable donations.²² However, such a designation does not affect the receipt to be issued by SMCS. The ITA is being proposed to be amended so that the amount designated by the donor may not exceed the fair market value of the property, and may not be less than the greater of the amount of the advantage, if any, in respect of the gift, and the adjusted cost base of the property (determined without reference to the proceeds of disposition designated in respect of the property).

- viii) In some situations, the donation of gifts-in-kind by a donor may be treated as donation of inventory for the donor's purposes, e.g. an artist, author or composer creates a work of art, literary manuscript or musical composition with the intention of selling it, but later donates it to a charity; or an art or antique dealer who buys and sells art, antiques, rare books, or other cultural property as a business donates one of these objects.²³ SMCS's policy on accepting gifts of inventory is set out in section 6 below.
- ix) Further, special rules apply when an artist, author or composer donates their inventory (e.g. an artist, author or composer creates a work of art, literary manuscript or musical composition with the intention of selling it, but later donates it to a charity). In these situations, the artist, author or composer may claim charitable donation credit/deduction from the official donation receipt from the charity. If the fair market value of the gifted property is greater than its adjusted cost base, the donor may designate a value between the adjusted cost base and the fair market value of the donated property to be treated both as the proceeds of disposition for the purpose of calculating the donor's capital gain and the amount of the gift for the purpose of calculating the tax credit/deduction allowed for charitable donations.²⁴ The split-receipting rules will need to be complied with when issuing receipts.
- x) However, the donation by an artist, author or composer of certain other types of property (e.g. diaries or correspondence) is considered to be a disposition of capital property. Similarly, the donation by an author or composer of original manuscripts or musical compositions, letters, memoranda or similar papers is generally considered to be a

²¹ CRA, RC4142, *Tax Advantages of Donating to Charity*.

²² CRA, IT-288R2, *Gifts of Capital Property to a Charity and Others*, January 16, 1995 (<http://www.cra-arc.gc.ca/E/pub/tp/it288r2/it288r2-e.html>).

²³ CRA, P113, *Gifts and Income Tax Act* (<http://www.cra-arc.gc.ca/E/pub/tg/p113/p113-e.html>); CRA IT-504R2 (Consolidated), *Visual Artists and Writers*; CRA (<http://www.cra-arc.gc.ca/E/pub/tp/it504r2-consolid/it504r2-consolid-e.html>); IT-288R2, *Gifts of Capital Property to a Charity and Others*.

²⁴ *Ibid.*

disposition of capital property, since it is not usually the business of authors or composers to sell such original documents.²⁵

- xi) Certified cultural property is property that has been determined by the Canadian Cultural Property Export Review Board to be of “outstanding significance and national importance” to Canada and for which the Board has issued a tax certificate for the fair market value.²⁶ Although a donor donating a work of certified cultural property to a designated institution or public authority designated by the Minister of Canadian Heritage would receive favorable tax treatment of such a disposition, donation of these types of property is not relevant to SMCS because SMCS is not a designated institution or public authority. Gifts of uncertified cultural property to SMCS are treated in the same manner as other gifts-in-kind.

- xii) An official donation receipt is issued for the eligible amount of the gift on the date of donation.

(h) Real Estate

Description of Gift:

Gifts of real estate may be made in the following ways:

- i) Outright gifts;
- ii) Residual interest in a property, i.e. where a property (e.g. the donor’s principal residence or family cottage) is conveyed to SMCS, with the donor retaining the use of the property for the donor’s life time or for a period of time;
- iii) To fund a charitable remainder trust.

Acceptance Policy:

- i) This section sets out the acceptance policy for outright gifts of real estate. Acceptance policy for gifts of residual interest in real property and personal property is explained in section 5(i) below. Acceptance policy for gifts of real property to fund a charitable remainder trust is explained in section 5(j) below.
- ii) Although SMCS welcomes gifts of real estate, the acceptance of gifts of real estate without conducting the necessary due diligence could expose SMCS to significant liability.
- iii) The administration of a gift of real estate will involve a representative of SMCS Office of Advancement, Finance Office or designate in consultation with SMCS’s President or designate. Various factors, including zoning restrictions, environmental factors, marketability, current use, and cash flow, will be taken into account to ascertain that acceptance of the offered gift is in the best interests of SMCS.

²⁵ *Ibid.*

²⁶ CRA, Summary Policy CSP - C06, *Cultural property (disposition, gift)*, October 25, 2002; CRA, IT407R4 (Consolidated), Dispositions of Cultural Property to Designated Canadian Institutions, (<http://www.cra-arc.gc.ca/E/pub/tp/it407r4-consolid/it407r4-consolid-e.html>).

- iv) In general, SMCS will require donors to enter into a gift agreement with SMCS for gifts of real estate setting out the terms of the gifts.
- v) Before accepting an outright gift of real estate, SMCS must be satisfied with the following:
1. Where applicable, the donor having provided SMCS with an up-to-date original survey of the property, signed and sealed by a qualified Ontario Land Surveyor, which shows the current location of all buildings, structures, additions, fences, improvements, easements, rights-of-ways and encroachments thereon with the setbacks and boundaries prior to the date set for examining title, and SMCS being satisfied that the survey shows that the buildings are in compliance with all applicable municipal by-laws.
 2. SMCS, at its expense, having conducted a full title search and all other searches considered appropriate by SMCS (including a physical and engineering inspection) on the property and satisfying itself, in its sole discretion, with the result thereof, including but not limited to:
 - the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically accepted by SMCS;
 - all zoning by-laws, building inspections, soil tests and procedures, encumbrances on or off title, outstanding work orders, deficiency notices, requisitions for work to be done or any other notice of non-compliance of any municipal or provincial government body or agency, where applicable, all mechanical, electrical, heating, ventilation, air conditioning systems, sprinkler systems, boilers, and all other equipment on the property would be in good working order on the date of donation;
 3. SMCS being satisfied that no person or persons or corporations having any claim or interest in the property or any part thereof adverse to or inconsistent with the donor's title.
 4. SMCS, at its expense, having conducted an inspection of the property by a qualified environmental engineer and obtaining a phase one and/or phase two environmental assessment report(s) satisfactory to SMCS. This requirement may be waived by SMCS if it not applicable, e.g. the donation of a condominium unit.
 5. SMCS, at its expense, having conducted an inspection of the subject property by a home inspector and obtaining an inspection report satisfactory to SMCS. This requirement may be waived by SMCS if it not applicable, e.g. the donation of vacant land.
 6. SMCS having determined the fair market value of the property by independent appraisals in accordance with SMCS's policy for independent appraisals set out in section 6 below, and being satisfied with the same.
 7. SMCS being satisfied that the marketability of the property for re-sale.

- vi) SMCS reserves the right to retain the property or sell it and apply the proceeds towards the charitable purpose of the gift. In general, it is SMCS's policy to sell real estate as soon as possible after having received title in situations involving outright gifts, or after the termination of the donor's interest in the property in situations involving gifts of residual interest. In rare exceptions, the property may be retained for investment purposes or for use in accordance with the charitable purposes of SMCS.
- vii) Since SMCS is not a charity that is designated by the Ministry of the Environment, the donation of ecological gifts of real estate is not relevant to SMCS.
- viii) In the case of an outright gift of real property, an official donation receipt is issued for the eligible amount of the gift on the date of donation based on the fair market value of the property.

(i) Residual Interest

Description of Gift:

A gift of residual interest in a property involves conveying property to SMCS, with the donor retaining the use of the property for the donor's life time or for a period of time.

Acceptance Policy:

- i) This section sets out the acceptance policy for gifts of residual interest of both real property and personal property.
- ii) The administration of a gift of residual interest will involve a representative of SMCS Office of Advancement, Finance Office or designate in consultation with SMCS's President or designate. Various factors, including marketability, current use, and cash flow, will be taken into account to ascertain that acceptance of the offered gift is in the best interests of SMCS.
- iii) SMCS will require donors to enter into a gift agreement with SMCS for gifts of residual interest.
- iv) Before accepting a gift of residual interest, SMCS must be satisfied with the following:
 1. Where it is a gift of residual interest in real estate, all of the requirements concerning acceptance of an outright gift of real estate referred to in section 5(h)v above have been met.
 2. SMCS being satisfied that the donor has clear title to the property being donated.
 3. SMCS being satisfied that there are no other rights that anyone has with respect to the property, other than the donor retaining the use of the property.
 4. During the period of time when the donor retains the use of the property, the donor agrees to be responsible for the maintenance of the property, subject to reasonable wear and tear, as well as all expenses involved with the possession, maintenance and up-keep of the property, (where it is a gift of residual interest in real estate,

examples of these expenses may include but not limited to the following: municipal taxes, mortgage payments, insurance, condominium monthly common expenses, utilities, repairs and maintenances). Where the donor does not pay these expenses, SMCS may agree to assume some or all of these expenses under extra-ordinary circumstances.

5. During the period of time when the donor retains the use of the property, the donor agrees to obtain and maintain fire and liability insurance on the full replacement value of the property with SMCS as the named insured on the policy, and authorizes the insurance company to notify SMCS prior to the insurance policy being terminated or lapsing; the donor agrees to provide proof of such insurance to SMCS from time to time and forthwith upon request by SMCS; and the donor having agreed to be fully responsible for the premium and any other costs of the policy. Where it is a gift of residual interest in real estate, the donor may acquire his/her own insurance policy on the contents of the property.
 6. During the period of time when the donor retains the use of the property, the donor agrees not to grant any lease or license in favour of any party or let anyone use the property without the prior written consent of SMCS.
 7. During the period of time when the donor retains the use of the property, SMCS has the right to inspect the property from time to time, upon reasonable notice to the donor.
 8. SMCS having determined both the fair market value of the property and the present value of the property taking into consideration the interest retained by the donor by independent appraisals in accordance with SMCS's policy for independent appraisals set out in section 6 below, and is satisfied with the same. The method of valuing a residual interest in real property will vary according to the type of gift, other interests in the property or trust and the documentation providing for the gift. The general approach is to value the various interests taking into consideration the fair market value of the property itself, the current interest rates, the life expectancy of any life tenants, and any other factors relevant to the specific case. In the case of property other than real property, the longer the period before full ownership of the property is passed to the charity, the more difficult it is to establish its value.²⁷ In cases where the size of a residual interest at the time of the donation cannot reasonably be determined, such as when a life tenant or trustee has a right to encroach on the capital of the trust, no deduction or tax credit in respect of the donation will be allowed.²⁸
 9. SMCS being satisfied that the marketability of the property for re-sale after the termination of the interest of the donor in the property.
- v) SMCS reserves the right to retain the property or sell it and apply the proceeds towards the charitable purpose of the gift. In general, it is SMCS's policy to sell property as soon as possible after the termination of the donor's interest in the property in situations

²⁷ CRA, IT-226R, *Gift to a Charity of Residual Interest in Real Property or an Equitable Interest in a Trust*, November 29, 1991 (<http://www.cra-arc.gc.ca/E/pub/tp/it226r/it226r-e.html>).

²⁸ *Ibid.*

involving gifts of residual interest. In rare exceptions, the property may be retained for investment purposes or for use in accordance with the charitable purposes of SMCS.

- vi) An official donation receipt is issued for the eligible amount of the gift on the date of donation based on the present value of the property taking into consideration the interest retained by the donor.

(j) Charitable Remainder Trusts

Description of Gift:

Generally, a charitable remainder trust involves a donor (settlor) transferring property (e.g. real estate, securities, or cash, etc.) to a trust for a trustee to manage the property. The donor or a beneficiary (usually a family member of the donor) (usually referred to as a “life tenant”) retains a life or income interest in the trust but an irrevocable gift of the residual interest in the trust is made to a registered charity. The charity would receive the trust property when the trust is collapsed at the end of the interest of the life tenant. Such a gift may be made through a testamentary trust or an *inter vivo* trust. A registered charity can issue an official donation receipt for the present value of the charity’s remainder interest in the property.²⁹

Acceptance Policy:

- i) During the administration of a gift of charitable remainder trust, a representative of the Office of Advancement or its designate, in consultation with SMCS’s legal counsel, shall represent SMCS in dealings with donors and their representatives. Various factors, including marketability, current use, and cash flow, will be taken into account to ascertain that acceptance of the offered gift is in the best interests of SMCS.
- ii) SMCS does not provide tax, accounting or financial advice to donors in the preparation of their trust to settle a charitable remainder trust. Donors are strongly encouraged to consult a lawyer or financial advisor before establishing a trust. SMCS retains the right to decline a gift of charitable remainder trust where the donor does not have professional counsel.
- iii) SMCS will require donors to enter into a gift agreement with SMCS for gifts of charitable remainder trust. Upon request, a sample trust agreement may be provided by SMCS to the donor for reference purposes.
- iv) Before accepting a gift of charitable remainder trust, SMCS must be satisfied with the following:

²⁹ CRA, IT-226R, *Gift to a Charity of Residual Interest in Real Property or an Equitable Interest in a Trust*, November 29, 1991 (<http://www.cra-arc.gc.ca/E/pub/tp/it226r/it226r-e.html>); CRA, Summary Policy CSP - C02, *Charitable remainder trust (gift of residual interest) - Planned giving*, October 25, 2002 (<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/csp/csp-c02-eng.html>).

1. Where it is a gift involving real estate, all of the requirements concerning acceptance of an outright gift of real estate referred to in section 5(h)v) above have been met.
2. SMCS being satisfied that the transfer of property to the trust has been completed and the equitable interest in the trust has vested in SMCS, which vesting will require the following being met:
 - person or persons entitled to the gift are in existence and are ascertained;
 - the size of the beneficiaries' interests are ascertained; and
 - any conditions attached to the gifts are satisfied.
3. SMCS being satisfied that the gift to SMCS is irrevocable and that it will eventually receive full ownership and possession of the property transferred. Where the trust property consists of personal property such as paintings, sculptures or other moveable articles, the location or possession of the trust property may, because of its nature, be changed with relative ease. In order to satisfy the requirements that the transfer must be irrevocable and it is evident that SMCS will eventually receive full ownership and possession of the property transferred, SMCS must be satisfied that SMCS's ownership of the interest is protected until the actual transfer and distribution of the property occurs.
 - During the period of time when the life tenant retains the use of the property, SMCS having received assurance that the life tenant will be responsible for the maintenance of the property, subject to reasonable wear and tear, as well as all expenses involved with the possession, maintenance and up-keep of the property, (where the gift involves real estate, examples of these expenses may include but not limited to the following: municipal taxes, mortgage payments, insurance, condominium monthly common expenses, utilities, repairs and maintenances). Where the life tenant does not pay these expenses, SMCS may agree to assume some or all of these expenses under extra-ordinary circumstances.
 - During the period of time when the life tenant retains the use of the property, SMCS having received assurance that the life tenant will obtain and maintain fire and liability insurance on the full replacement value of the property with SMCS as one of the named insured on the policy, will authorize the insurance company to notify SMCS prior to the insurance policy being terminated or lapsing; will provide proof of such insurance to SMCS from time to time and forthwith upon request by SMCS; and will be fully responsible for the premium and any other costs of the policy. Where it is a gift involving real estate, the life tenant may acquire his/her own insurance policy on the contents of the property.
 - During the period of time when the life tenant retains the use of the property, SMCS having received assurance that the life tenant agrees not to grant any lease or license in favour of any party or let anyone use the property without the prior written consent of SMCS.

- During the period of time when the life tenant retains the use of the property, SMCS has the right to inspect the property from time to time, upon reasonable notice to the life tenant.
4. SMCS has determined both the fair market value of the property and the present value of SMCS's remainder interest in the property in the charitable remainder trust by independent appraisals in accordance with SMCS's policy for independent appraisals set out in section 6 below, and is satisfied with the same. SMCS would not accept any gift of charitable remainder trust unless the present value of SMCS's remainder interest is at least \$200,000. It is CRA's requirement that the method of valuing an equitable interest in a trust will vary according to the type of gift, other interests in the property or trust and the documentation providing for the gift. The general approach is to value the various interests taking into consideration the fair market value of the property itself, the current interest rates, the life expectancy of any life tenants, and any other factors relevant to the specific case. In the case of property other than real property, the longer the period before full ownership of the property is passed to the charity, the more difficult it is to establish its value. In cases where the size of an equitable interest at the time of the donation cannot reasonably be determined, such as when a life tenant or trustee has a right to encroach on the capital of the trust, an official donation receipt may not be issued.
 5. SMCS being satisfied that the marketability of the property for re-sale after the termination of the interest of the life tenant in the property.
- v) In accordance with CRA's requirements, where a donor has donated property into a charitable remainder trust and received an official donation receipt from SMCS, if the donor intends to donate further property into the charitable remainder trust, such donations will not entitle the donor to an additional official donation receipt. In order for the donor to receive an official donation receipt for the additional contribution, it is necessary for the donor to settle a new charitable remainder trust.
 - vi) SMCS will not serve as a trustee for a charitable remainder trust, but may refer the donor to trust institutions that may agree to do so.
 - vii) SMCS reserves the right to retain the property or sell it and apply the proceeds towards the charitable purpose of the gift. In general, it is SMCS's policy to sell property as soon as possible after the termination of the life tenant's interest in the property in situations involving gifts of charitable remainder trust. In rare exceptions, the property may be retained for investment purposes or for use in accordance with the charitable purposes of SMCS.
 - viii) An official donation receipt is issued for the eligible amount of the value of the equitable interest in the trust as explained above.

(k) Charitable Gift Annuities

Description of Gift:

A charitable gift annuity is an arrangement under which a donor irrevocably transfers property to a charitable organization in exchange for immediate guaranteed payments for life at a specified

rate depending on life expectancy or for a fixed term. A portion of the property is used to purchase a commercial prescribed annuity from a licensed issuer. The cost of the annuity is based on the donor's age and income requirements. The remainder of the property not required to purchase the annuity is considered an outright gift to the charity. The licensed issuer or the annuity pays the donor a guaranteed income for a specific time or for the remainder of the donor's life. Upon death of the donor, SMCS would receive remaining guaranteed income from the annuity, unless the donor has specified otherwise.

Charitable foundations, however, cannot enter into arrangements to issue annuities, since an undertaking to make an annuity payment is considered a debt, which is a ground for revocation under the ITA. Therefore, the SMCS Foundation cannot accept such gifts.

It is SMCS's policy not to accept gifts of charitable gift annuity.

(l) Other Gifts

Types of gifts that may be donated evolve with new ways of planned giving from time to time. Examples of these gifts include gifts of flow-through shares, time-share recreational property, airline premium points, etc. It is not possible to anticipate these new gifts and include every type of these gifts in this Policy, although this Policy will be updated from time to time. Gifts not mentioned in this Policy will require review by SMCS. Where necessary, SMCS may seek legal advice.

6. SPECIAL ISSUES

(a) Gifts from Other Registered Charities

Official donation receipts will not be issued for gifts received from other registered charities. However, the gift may be acknowledged by way of a letter or ordinary receipt - one that does not state that it is an official receipt for income tax purposes. Before any gifts are received from other registered charities, the donor charity will be required to advise SMCS whether the gift is a restricted gift, and if so, to provide SMCS with full particulars of the restrictions. In general, a deed of trust will need to be entered into with the donor charity.

(b) Gifts from Businesses and Sponsorship Fees

Sponsorship is when a business makes a donation to a charity and, in return, receives advertising or promotion of its brand, products or services. If a business receives special recognition for its donation, or if it receives more than nominal recognition (for example, banners, advertising of products), this usually constitutes sponsorship. Providing sponsorship to a charity or to a charitable event is not a gift, and generally an official donation receipt will not be issued.³⁰

However, an official donation receipt can be issued for gifts received from businesses that are not sponsorship fees, i.e., where the business does not receive any advertising or promotion of

³⁰ CRA's website <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/gfts/spnsr-eng.html>.

its brand, products or services, and where the business receives the same level of recognition as all other donors, with no special treatment, and the recognition is nominal.

There are three possible scenarios involving corporate contributions to SMCS:

Scenario 1 – 100% sponsorship fee - A corporation makes a contribution to SMCS and receives advertising or promotion of its brand, products or services in return having a value that is equal to the amount of the contribution made. An official donation receipt would not be issued by SMCS.

Scenario 2 – 100% donation - A corporate contribution made to SMCS with absolutely no benefit received by the corporation in return for having made the gift. In those circumstances, the full amount of the contribution made would be reflected in an official donation receipt.

Scenario 3 - Split-donation (i.e. part donation and part payment for the benefit received by the corporation) - A corporate contribution made to SMCS and receives *some* benefits that are less than the amount of contribution made. Whether or not an official donation receipt can be issued will depend on the application of the split-receipting rules. However, CRA is of the view tht it is difficult, if not impossible to establish a fair market value for sponsorship, and when the fair market value cannot be determined, a receipt cannot be issued.

Where SMCS is supported in a sponsorship arrangement, in general, the sponsor will be requested to enter into a sponsorship agreement with SMCS to set out the terms of the sponsorship. In particular, the use of SMCS's name, marks, logos and insignia by the sponsor is prohibited without the written approval and license by SMCS.

Where an official donation receipt is not required to be provided to a business donor, a general receipt will be provided to the business to acknowledge SMCS's receipt of the sponsorship.

(c) Donation of Inventory by Businesses

Special rules apply to donation of inventory by businesses.³¹ When a charity receives inventory from a business, its responsibilities are to determine that it has in fact received a gift and to determine the value of the gift.³² Whether a gift has been received depends on whether the business received any benefit in return.

If the business has "sold" the inventory to SMCS, no official donation receipt will be issued. If the business transfers the inventory to SMCS at no charge but obtains a *material* benefit from the transaction (such as promotion or advertising), then no gift has been made and no official donation receipt will be issued.

If the business has made a true gift of inventory to SMCS (i.e. the business received no benefit in return whatsoever), an official donation receipt may be issued in accordance with the split-receipting rules. Generally, gifts of inventory are exceptions to the deeming provision when determining the fair market value of the inventory for purposes of gifting the inventory to SMCS.

³¹ CRA, *Policy Commentary* CPC-018, "Official donation receipts – whether gifts out of inventory qualify as charitable donations," March 29, 2000 (<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cpc/cpc-018-eng.html>).

Property of little or only nominal value to the donor will not qualify as a gift in kind and therefore is not entitled to an official donation receipt.³³ This would be the case if a business were to donate its obsolete inventory to SMCS when the business has already written off the value of the obsolete inventory.³⁴

SMCS has no obligation to, and does not, advise businesses of their tax obligations which generally are as follows:

- The business can deduct the cost of acquiring or producing the item given to the charity from its income.
- If the business does make a true gift out of inventory, it must add the fair market value of the item to its income and then claim a charitable tax deduction.
- If the business obtains a material benefit from the transaction, it can probably write off the cost as a business expense.

As provided for in section 7 below, SMCS does not provide any legal, accounting, tax or financial advice to corporate sponsors or donors. They are encouraged and recommended to seek their own independent legal, accounting, tax or financial advice from professionals.

(d) Gift Certificates

A corporation may issue gift certificates, vouchers and coupons in support of SMCS's fundraising events, such as auctions and raffles. When a gift certificate is donated to SMCS, SMCS will comply with CRA's administrative position in regard to the circumstances under which an official donation receipt may be issued by SMCS for the value of the gift certificate received.³⁵

In general, an official donation receipt can be issued when the donor is not the issuer of the gift certificate and the donor has purchased the gift certificate either from the issuer or another third party. An issuer is the person (individual, retailer or business) that creates the gift certificate. A gift certificate purchased from the issuer and then donated to a charity is considered property and may be receipted for its eligible amount.

An official donation receipt for a gift certificate may be issued only in the following situations:

- When the holder of a gift certificate that has been issued for consideration (the terms of which permit its assignment) donates the gift certificate to a registered charity, the charity may issue an official receipt to the donor for the eligible amount of the gift.
- When the issuer of a gift certificate donates it to a charity for no consideration, the registered charity can only issue an official receipt at the time the charity receives property when it redeems the gift certificate. The official receipt may be issued for the eligible amount of the gift of the property to the charity by the issuer.

³³ CRA, *Interpretation Bulletin* IT-297R2 "Gifts in Kind to Charity and Others" at para. 6 (<http://www.cra-arc.gc.ca/E/pub/tp/it297r2/README.html>).

³⁴ CRA, Document Number 961130A, May 23, 1996.

³⁵ CRA, Donation of Gift Certificates or Gift Cards Guidance, CG-007, August 15, 2011 (<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/gftcrt-eng.html>). See examples in this Guidance.

- When the issuer of a gift certificate gives it to a charity for partial consideration, the charity may issue an official receipt to the donor for the eligible amount of the gift.

The official donation receipt shall specify the nature of the property it received in exchange for the gift certificate, as well as the eligible amount of the gift.

Sometimes, the fair market value of a gift certificate may not be the equivalent of its face value. Factors that may affect the fair market value of the gift certificate include:

- the flexibility of the certificate - does the certificate expire after a certain time, is it usable only within a specific timeframe, does it restrict the purchaser to specific merchandise within the store
- its usefulness - does the retailer offer merchandise for the amount of the gift certificate, or will the certificate account for a portion of regular selling property (for example, a \$50 gift certificate at a car dealership)

No official donation receipts will be issued for gift certificates they receive directly from the issuer for no consideration. Such a certificate is not property, but rather a promise. However, when these gift certificates are redeemed for property, official donation receipts can then be issued.

(e) Donation of Services

A registered charity may issue official donation receipts for donations that qualify as gifts, which require a voluntary transfer of *property*.

Contributions of services (i.e. time, skills, effort) are not property. Therefore, official donation receipts will not be provided for services provided free of charge or for an invoice marked "paid."³⁶

However, an official donation receipt may be issued if a person provides a service to SMCS, SMCS pays for the service, and the person then returns the payment to SMCS voluntarily as a cash gift. In such circumstances, two transactions will need to take place:

- the provision of a service and the payment of the services provided;
- the making of a cash gift by the service provider.

These two transactions will need to be conducted by way of an exchange of cheques to ensure the presence of an audit trail, as the donor must account for the taxable income that would be realized either as remuneration (in which case the charity may also be required to issue a T4 slip) or as business income. A copy of the invoice issued by the service provider will be retained on file.

³⁶ CRA, Policy Commentary CPC-017, *Gifts of Services*, March 29, 2000 (<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cpc/cpc-017-eng.html>); *Summary Policy CSP-S03, Services*, October 25, 2002 (<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/csp/csp-s03-eng.html>).

(f) Fundraising Events

Issuing receipts for various fundraising events may be subject to special rules, including fundraising dinners, charity auctions, lotteries, raffles, draws, concerts, shows and sporting events, golf tournaments, and membership fees. See CRA's *Income Tax Technical News* No. 26, December 24, 2002, for details.³⁷

(g) Donation Tax Shelters

In general, tax shelters are arrangements that permit an investor to claim a tax deduction equal to a portion or even the entire amount of the investment within a short time period to create a loss in the current period from that particular source of income, and be able to reduce, therefore "shelter", income taxes payable from other sources of income. A tax shelter includes any property or gifting arrangement for which a promoter represents that an investor can claim deductions or credits which equal or exceed the cost of the property less certain benefits within a four year period.

In recent years, tax shelters gradually evolved to involve charitable donations of gifts-in-kind and leveraged charitable donations. Common forms of these donation tax shelters involve "buy-low donate-high" tax shelters, gifting trust arrangements and leveraged charitable donation arrangements. Both the Department of Finance and CRA have been attempting to shut down abusive tax shelter donation arrangements with various amendments to the ITA since 2003, and reassessing taxpayers involved with such donation tax shelters. Amendments to the ITA have been proposed to curtail abusive tax shelter donation arrangements.

Given the risks associated with abusive donation tax shelter arrangements, as new opportunities are presented to SMCS, they will be reviewed in detail with legal counsel and due diligence will be exercised to ensure the interest of SMCS are protected, and the charitable status of SMCS is not jeopardized.

(h) Disbursement Quota

SMCS is required to expend 3.5% of its assets that are not used directly in its charitable activities or administration (this is commonly referred to as the "3.5% disbursement quota").

The previous requirement on charities to expend 80% of its receipted income from the previous year on charitable activities in the current year (this is commonly referred to as the "80% disbursement quota") was repealed by the 2010 federal budget. As a result, related concepts of enduring property, ten year gift, capital gains pool, and specified gift have also been repealed.

(i) Pass Through Gifts

SMCS will not act as a conduit for funds to third parties to which Canadian donors could not directly make a gift eligible for tax relief. As such, official donation receipts will not be issued for gifts that the donor requires to be forwarded to an organization that is not a "qualified donee".

³⁷ CRA. *Income Tax Technical News* No. 26, December 24, 2002 (<http://www.cra-arc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.html>).

Otherwise, SMCS may run the risk of being subject to sanctions and penalties and having its charitable registration revoked.³⁸

A donor may not direct that funds be given to specific individuals that are not qualified donees, except when SMCS's mandate specifically contemplates the type of fundraising that would benefit those individuals (such as SMCS's fundraising event for victims of a particular flood or fire).

SMCS will not issue an official donation receipt if a donor has directed SMCS to give the funds to a specified person or family member. In reality, such a gift is made to the person or family and not to SMCS. However, donations subject to a general direction from a donor that the gift be used in a particular program operated by SMCS are acceptable, provided that any benefit that may accrue to the donor or any person not dealing at arms' length with the donor does not exceed the limit permitted under the split-receipting rules, and decisions regarding utilization of the donation within a program rest with SMCS.³⁹

(j) Consents

Prior to accepting any gifts, all necessary consents and releases must have been received, including but not limited to spousal, insurer, issuer, etc.

(k) Independent Appraisals

Where the fair market value of a donated property (e.g. gifts-in-kind, private securities and other business interests, real estate, etc.) needs to be determined by an independent appraisal, the following procedure will be followed:⁴⁰

i) The appraiser must be:

1. a qualified professional appraiser, valuator or other individual who is accredited in the field of valuation;
2. knowledgeable about the principles, theories, and procedures of the applicable valuation discipline and follow the Uniform Standards of Professional Appraisal Practice or the standards of the profession
3. have expertise in the property that is being appraised
4. knowledgeable about and active in the marketplace for the specific property;
5. independent (i.e. not be associated with the donor, SMCS, or another party associated with the purchase, sale, or donation of the property); and
6. knowledgeable about the elements of a properly prepared and credible valuation report.

³⁸ CRA, Canadian Registered Charities Carrying Out Activities Outside Canada Guidance, CG-002, July 8, 2010 (<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html>); Using an Intermediary to Carry out a Charity's Activities within Canada Guidance, CG-004, June 20, 2011 (<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/ntrmdry-eng.html>).

³⁹ CRA, Summary Policy CSP - G05, *Gift (directed)*, September 3, 2003 (<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/csp/csp-g05-eng.html>).

⁴⁰ CRA, P113, *Gifts and Income Tax Act* (<http://www.cra-arc.gc.ca/E/pub/tg/p113/p113-e.html>); and CRA Summary Policy CSP - F07, *Fair market value (appraisal)*, September 3, 2003 (<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/csp/csp-f07-eng.html>).

- ii) The appraiser will be required to provide an appraisal report to SMCS. The appraisal or evaluation report should be based on the principles, theories, and procedures of the applicable valuation discipline and follow the standards of the profession. The report has to be an estimate of the fair market value of the property as of the date of donation.
- iii) Where the gift is less than \$1,000, CRA does not require a professional appraisal, but all documents supporting the determination of the fair market value will need to be retained. In that case, a member of the charity, or another individual, with sufficient knowledge of the property may determine its value.
- iv) For gifts greater than \$5,000, SMCS will seek a minimum of two independent appraisals. For gifts of less than \$5,000, SMCS may seek one appraisal. Where two appraisals are obtained, and if the discrepancy between the two appraisals is less than 10 per cent, SMCS will take the average of the two. Where the discrepancy is greater than 10 per cent, SMCS will take the lower of the two or the donor may choose to have a third appraisal conducted at the expense of the donor. In the latter instance, SMCS will take the average of the three appraised values to be the fair market value.
- v) If a property is appraised, the name and address of the appraiser will be included on the official donation receipt.

(l) Investment Policy and Disbursement Policy

Subject to any restrictions imposed by the donors, the investment and disbursement of any gifted property shall be made at the discretion of the board of directors of SMCS in accordance with the investment policy and disbursement policy, respectively, of SMCS in place from time to time.

(m) Anti-Terrorism Issues

Charitable activities that were until recently thought to be common place and uneventful can now lead to a charity becoming susceptible to criminal charges and/or deregistration for having facilitated “terrorist activities” or supported “terrorist groups” under Canada’s antiterrorism legislation, which is a group of federal statutes, regulations and international best practice guidelines, including Canada Revenue Agency’s Checklist for Charities on Avoiding Terrorist Abuse, the FATF International Best Practices, and the U.S. Voluntary Best Practices (“Anti-terrorism Legislation”). Violation of the Anti-terrorism Legislation could result in the loss of charitable status and the corresponding exposure of its directors to personal liability. In addition, financial transactions involving charities can lead to the possibility of allegations of terrorist financing or to surveillance and monitoring of a charity’s financial activities.

To evidence that SMCS will not permit any form of terrorist activities or support for such activities or groups involved in such activities, as well as guarding itself in reasonably limiting any possibility that it might become associated with terrorism and to respond appropriately if it becomes aware of any possible connection with terrorism, SMCS will not accept donations from donors who are involved or appear to be involved in terrorist activities, terrorist groups or financing or facilitating terrorist activities or terrorist groups. In this regard, the following procedure will be followed:

- i) All donors and donations shall be subject to review by SMCS to determine, to the extent possible, whether they are compromised by any connection or appearance of connection with terrorist activity, terrorist groups, or facilitating terrorist activity or groups or whether they may be otherwise in violation of the Anti-terrorism Legislation.
- ii) A reasonable sampling (to be determined in the discretion of the board) of all new or proposed donors or donations less than \$10,000 shall be subject to an initial review, all new or proposed donors or donations greater than \$10,000 shall be subject to an initial review, and all existing donor-lists shall be subject to review as required, but not less than annually.
- iii) All donor reviews, whether of new or existing donors, shall consider the donor, the donor's possible motives, and the nature of the transaction(s) to identify whether these are suspicious or of concern for any other reason under Anti-terrorism Legislation in force at the time. A written record of each review shall be kept permanently in a special file to be opened for such reviews. Factors for the review will include the following:

Background of donor	<ul style="list-style-type: none"> • How was the donor brought into contact with SMCS? • Does the donor have a pre-existing relationship with SMCS? • Are there any concerns about the relationship between the donor and SMCS?
Evaluation of donor	<ul style="list-style-type: none"> • Is the donor listed among the following lists: <ul style="list-style-type: none"> ○ Listed Entities, being the list of entities identified as being associated with terrorism by the Government of Canada pursuant to the Anti-Terrorism Act, as set out and amended from time to time (http://www.publicsafety.gc.ca/prg/ns/le/cle-eng.aspx); ○ Specially Designated Nationals and Blocked Persons List (available at: http://www.treas.gov/offices/enforcement/ofac/sdn/); ○ List of Names subject to the Regulations Establishing a List of Entities made under subsection 83.05(1) of the Criminal Code, and/or the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism (RIUNRST) and/or United Nations Al-Qaida and Taliban Regulations (UNAQTR) (all of which can be accessed at: http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailID=525%20); or ○ Terrorist Exclusion List, being the list of entities designated by the U.S. Secretary of State as terrorist organizations pursuant to section 411 of the USA PATRIOT ACT of 2001, as set out and amended from time to time (http://www.state.gov/j/ct/rls/other/des/123086.htm) • Do the donor's stated goals support or facilitate terrorist activities or terrorist groups?

Origin of Funds	<ul style="list-style-type: none"> • Is there any reason to believe that the donor may have obtained the funds through an illegal activity? • Is there any reason to believe that the donor may be directly or indirectly intending to support or facilitate terrorist activities or terrorist groups through a donation?
Donor restrictions	<ul style="list-style-type: none"> • Has the donor set restrictions on the donation? • Is the donation restricted for use in a country where terrorist activities or support for terrorist activities is a particular concern? • Could the restrictions operate as a conduit for monies to terrorist groups or for terrorist activities? • Could the restrictions result in the monies financing or facilitating terrorist activities or terrorist groups?

iv) On the basis of a careful review of a donation, SMCS will make an assessment of:

- the level of any risk;
- the nature of the risk;
- whether the risk can be minimized or eliminated;
- if the risk cannot be eliminated, has legal advice been sought and obtained;
- the impact of such a risk on SMCS, its members and directors, and its charitable purposes; and
- SMCS's willingness to accept this level of risk and its possible consequences.

Reference may be made to the Risk Matrix for the Charitable Sector, prepared by the U.S. Department of the Treasury's Office of Foreign Assets Control, available at http://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/charity_risk_matrix.pdf.

v) If SMCS is willing to accept the level of risk inherent in accepting a donation, SMCS may decide to accept the donation if it meets any other criteria SMCS may have. SMCS's assessment, including all positive and negative considerations, must be carefully documented and included in a special file to be created for such assessments.

vi) If SMCS is not willing to accept the risk involved in accepting a donation, then SMCS shall immediately return the donation or notify the potential donor, along with a brief explanation that SMCS is unable to accept the gift. Any such letter shall be reviewed and approved by legal counsel and SMCS shall keep a copy of the documentation, concerning the donation, on file. SMCS will also seek legal counsel to determine what legal obligations it may have, if any, to report SMCS's concerns about the donation.

7. GIFT AGREEMENT, GIFT ACKNOWLEDGEMENT, AND OTHER DONOR RELATED ISSUES

SMCS has a donor-centered approach to its fundraising programs. Donor recognition guidelines and processes are based on donors' needs and wishes, and allow the flexibility required to respect the individuality of the donor, the donation, and SMCS's needs and charitable purposes. The key purpose of donor recognition is to sincerely show respect for, and appropriate gratitude to, donors who support SMCS.

(a) Gift Agreement and Pledges

In general, with respect to gifts over \$25,000 or gifts that are subject to conditions and restrictions imposed by the donor, SMCS will request donors to enter into gift agreements with SMCS to evidence the gift and set out the terms of any conditions or restrictions on the gift. SMCS may also enter into non-binding pledge agreements with donors with respect to gifts to be made over a period of time.

All gift agreements (including pledge agreements) will be reviewed by SMCS's legal counsel where necessary. Where substantially the same agreement is used repeatedly, then only the prototype agreement needs to be reviewed by legal counsel. Template gift agreement with optional provisions for scholarship endowment fund, bursary endowment fund, named endowment fund and long term fund; as well as template direction for additional contribution to endowment fund are set out in Schedule B of this Policy.

(b) Gift Acknowledgement

All gifts to SMCS are to be acknowledged by SMCS's Office of Advancement. An official donation receipt will be issued by SMCS's Finance Office, together with a pre-printed card or personal letter, depending on the amount of the gift.

(c) Donor Recognition

- i) Donors will be recognized and thanked in ways that are meaningful to the donor, while ensuring each donor is involved and engaged with SMCS.
 1. For gifts of \$1000 or greater, SMCS's Office of Advancement will acknowledge the gift with a personalized note.
 2. At the discretion of SMCS's Director of Advancement and/or the President, SMCS may give further recognition of the donor, e.g. letter, phone call, personal engagement, etc. This action will be coordinated through the Office of Advancement.
- ii) Donors may name student awards after themselves, celebrate the achievements of a friend or colleague, or remember a loved one by naming the fund in his or her honour. Named awards or space in SMCS's premises may be created for a specified period of time.
 1. Scholarships and bursaries - A minimum gift of \$25,000 is required to establish a scholarship or bursary. Smaller gifts may be considered for special prizes.
 2. Classrooms, science labs, offices and other space - Space may be named for an individual who has made a significant contribution to SMCS. No financial parameters have been identified, although the gift is generally required to be equivalent to the operating cost of the space, including ongoing maintenance and upgrading. Classrooms, science labs, offices and other space at SMCS can be named for a specified period of time or until the use of the space is changed at the sole discretion of the board of directors of SMCS. In the latter scenario, the name may be retained at the same location or transferred to a new location, at the sole discretion of the board of directors of SMCS.

- iii) SMCS reserves the right to revoke any naming rights if, in the reasonable opinion of SMCS, the naming right may cause prejudice or embarrassment to SMCS, including but not limited to situations where the donor is involved in any criminal investigation, charges or conviction.

(d) Anonymous Donors

SMCS will respect and observe the wish of a donor to remain anonymous with respect to gifts made to SMCS. However, SMCS reserves the right to disclose the identity of the donor and the type and value of the gift where it is required to do so at law.

(e) Stewardship

Stewardship is different from recognition in that it represents the legal obligation of SMCS to manage and use the gifts as intended by the donors. Stewardship's goal is to maintain an ongoing relationship with donors to ensure they are satisfied with the handling of their past gifts and to encourage them to make future gifts. Stewardship of the donor includes thoughtful communication to the donor on the impact of their gift(s). In consideration of each individual donor's specific needs and wishes, stewardship may include:

- the chance to meet the recipient of their gift, i.e. student;
- a formal financial reporting on the status of the endowment and its growth/use; or
- a formal report on the impact, where meeting the recipient isn't possible/desirable.

(f) No Persuasion or Pressure

SMCS does not permit any employee, volunteer or person representing SMCS to use persuasion or pressure on a donor in securing any gift.

(g) Conflict of Interest

Donor interest and well-being takes priority in gift negotiation. If an individual presents himself/herself as a representative of SMCS and attempts to sell to a donor any financial or other products related to a donation, such a person must declare a potential or actual conflict of interest to both the donor and SMCS. As well, the donor will be requested to provide an acknowledgement of having been advised of such by the said individual and of the donor's intention to continue to make a gift to SMCS. If the individual presents himself/herself as a representative of an outside firm and part of this persons' financial counseling involves arranging a gift to SMCS, then no conflict exists.

(h) Confidentiality

SMCS will keep all information, data, or other communications with donors strictly confidential. However, SMCS reserves the right to disclose such information where it is required to do so at law.

(i) No Advice to Donors

SMCS does not provide any legal, accounting, tax or financial advice to donors with respect to gifts to SMCS. Donors are encouraged and recommended to seek their own independent legal,

accounting, tax or financial advice from professionals. Where necessary, donors will be requested to provide SMCS with an acknowledgement that:

- they have obtained independent professional advice; or
- they have been advised by SMCS to obtain independent professional advice and have waived obtaining such advice;

and that SMCS is released from any liability that may arise in relation to the making of the gift by the donors. The donors are responsible for all costs incurred in relation to obtaining such independent advice.

(j) Legal Advice to SMCS

SMCS reserves the right to seek legal advice in relation to the negotiation, acceptance, receipting and management of gifts.

8. DECLINING AND RETURNING A GIFT

- i) SMCS reserves the right to decline a gift. Each gift will need to be reviewed on a case by case basis. The following are examples of circumstances under which SMCS may decline a gift:
- The donated property does not constitute a “gift” at law as referred to in section 2.
 - There are features to or restrictions of the gift that are contrary with the objectives, values, and goals of SMCS.
 - The gift could jeopardize the charitable status of SMCS.
 - The gift or terms of a gift are illegal, discriminatory or violates any federal, provincial or municipal laws or regulations.
 - SMCS is unable to honour the terms or restrictions of the gift.
 - The gift may compromise SMCS’s academic integrity or interfere with the SMCS’s academic judgment;
 - The gift may require any action on the part of SMCS which is unacceptable to SMCS or violates SMCS’s policies and regulations.
 - The gift requires or stipulates the future employment at SMCS of any specified person or doing business with any specified company or person.
 - The gift contains unreasonable conditions.
 - The gift is for a partial interest in property, unless SMCS agrees otherwise.
 - The gift is financially unsound or could expose SMCS to liability or embarrassment.
 - The donor relies on an appraisal or evaluation provided to the donor by third parties, that is perceived by SMCS to be inaccurate or unreliable.
 - An appropriate fair market value of the property donated or the advantage received by the donor cannot be determined, or will result in unwarranted or unmanageable expense to SMCS in determining such value, or the donor does not agree with the value determined by SMCS.
 - The gift could improperly benefit any individual that is not permitted under the ITA or by CRA.
 - The gift is made by an individual, corporation or organization whose philosophy and values are inconsistent with the overall philosophy and values of SMCS.
 - Where the donor requires a donation receipt issued by SMCS shortly after the donation is made or within a certain time frame, but the gift could not be assessed,

processed and donation receipt issued in accordance with the requirements of the ITA within the time frame requested by the donor.

- ii) Once a gift has been received by SMCS and an official donation receipt issued, the property becomes a charitable asset and *cannot* be returned to the donor at law. Nevertheless, if a gift is returned to a donor for whatever reason, a revised receipt will be issued to the donor and a copy of the revised receipt will be sent to CRA when the amount of the returned property is more than \$50. An information return will also be filed with CRA within 90 days after the day the property is returned if an official donation receipt was issued for the original property, and if the returned property has a fair market value of more than \$50.⁴¹

⁴¹ CRA, *Qualified donees – Consequences of returning donated property Guidance*, CG-016, October 19, 2012 (<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/rtrng-dntd-prpty-eng.html>).

Schedule A

Sample Bequest Clauses

SPECIFIC BEQUEST

a) FOR GENERAL CHARITABLE PURPOSES

I direct my trustees to deliver, pay or transfer the sum of \$_____ or (xxx shares of xxxxxxxxxx) to St. Michael's College School, currently located at 1515 Bathurst Street, Toronto, Ontario, Canada M5P 3H4, with the current charitable registration no. 119191500RR0001, to be used for its general charitable purposes. The receipt from the treasurer or any other person purporting to act for the said charity will be a sufficient release to my trustee who will not be required to enquire into the actual authority of such person, and my trustee shall not be required to see to the application of the bequest.

b) FOR SPECIFIC FUND OF SMCS

I direct my trustees to deliver, pay or transfer the sum of \$_____ (or xxx shares of xxxxxxxxxx) to St. Michael's College School - _____ Fund (OR the _____ Fund of your choice), currently located at at 1515 Bathurst Street, Toronto, Ontario, Canada M5P 3H4, with the current charitable registration no. 119191500RR0001, to be used for the charitable purposes of the said _____ Fund (OR the _____ Fund of your choice) pursuant to its general terms and conditions in place from time to time. The receipt from the treasurer or any other person purporting to act for the said charity will be a sufficient release to my trustee who will not be required to enquire into the actual authority of such person, and my trustee shall not be required to see to the application of the bequest.

Note: For more information on the charitable purposes of the _____ Fund OR the _____ Fund of your choice, please see SMCS's website at _____.

c) FOR PERSONAL ENDOWMENT FUNDS

I direct my trustees to deliver, pay or transfer the sum of \$_____ (or xxx shares of xxxxxxxxxx) to St. Michael's College School - _____ Named Endowment Fund (insert name), currently located at 1515 Bathurst Street, Toronto, Ontario, Canada M5P 3H4, with the current charitable registration no. 119191500RR0001, to be used to support the charitable purposes set out in the _____ (insert name) Named Endowment Fund Agreement that I established with St. Michael's College School during my lifetime and pursuant to the general terms and conditions of the said Agreement in place from time to time. The receipt from the treasurer or any other person purporting to act for the said charity will be a sufficient release to my trustee who will not be required to enquire into the actual authority of such person, and my trustee shall not be required to see to the application of the bequest.

RESIDUAL BEQUEST

a) FOR GENERAL CHARITABLE PURPOSES

I direct my trustees to deliver, pay or transfer the residue of my estate (or a specific portion of the residue, e.g. 20 percent) to St. Michael's College School, currently located at 1515 Bathurst Street, Toronto, Ontario, Canada M5P 3H4, with the current charitable registration no. 119191500RR0001, to be used for its general charitable purposes. The receipt from the treasurer or any other person purporting to act for the said charity will be a sufficient release to my trustee who will not be required to enquire into the actual authority of such person, and my trustee shall not be required to see to the application of the bequest.

b) FOR SPECIFIC FUND OF SMCS

I direct my trustees to deliver, pay or transfer the residue of my estate (or a specific portion of the residue, e.g. 20 percent) to St. Michael's College School - _____ Fund (OR the _____ Fund of your choice), currently located at 1515 Bathurst Street, Toronto, Ontario, Canada M5P 3H4, with the current charitable registration no. 119191500RR0001, to be used in accordance with the charitable purposes of the said _____ Fund (OR the _____ Fund of your choice) pursuant to its general terms and conditions in place from time to time. The receipt from the treasurer or any other person purporting to act for the said charity will be a sufficient release to my trustee who will not be required to enquire into the actual authority of such person, and my trustee shall not be required to see to the application of the bequest.

c) FOR PERSONAL ENDOWMENT FUNDS

I direct my trustees to deliver, pay or transfer the residue (or a specific portion of the residue, eg. 20 percent) of my estate to St. Michael's College School - _____ (insert name) Named Endowment Fund, currently located at 1515 Bathurst Street, Toronto, Ontario, Canada M5P 3H4, with the current charitable registration no. 119191500RR0001, to be used to support the charitable purposes set out in the _____ (insert name) Named Endowment Fund Agreement that I established with to St. Michael's College School during my lifetime and pursuant to the general terms and conditions of the said Agreement in place from time to time. The receipt from the treasurer or any other person purporting to act for the said charity will be a sufficient release to my trustee who will not be required to enquire into the actual authority of such person, and my trustee shall not be required to see to the application of the bequest.

Schedule B
Template Gift Agreement