British Columbia Government Retired Employees' Association
Box 23114 Cook Street PO Victoria BC V8V 4Z8

Financial Report for the April 2023 Directors Meeting

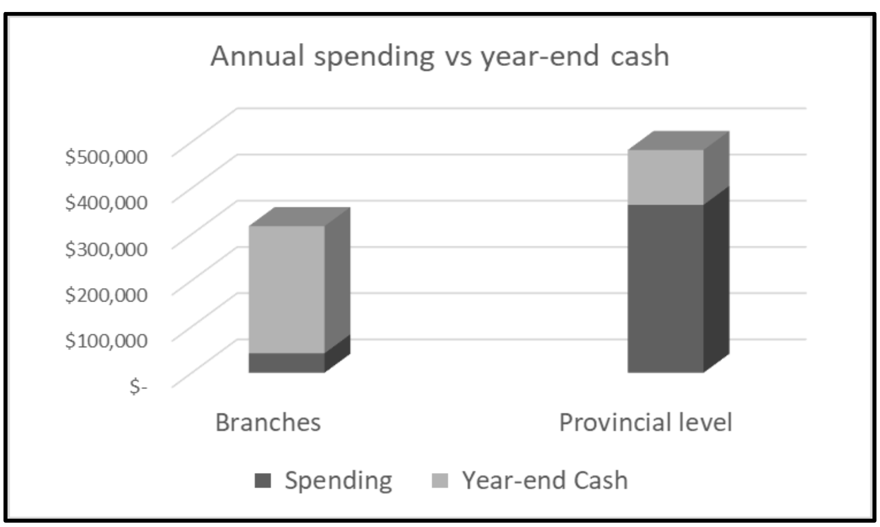
This has been an eventful year for our Association. We celebrated our 75th Anniversary, we returned to in-person Annual General Meetings and Directors Meetings, and we had a very successful recruitment campaign bringing in over 3,000 new members.

Although there are still two months remaining in this fiscal year, I expect the year-end Provincial level spending to be about $360,000 – a significant increase from past years, but not surprising considering what we have accomplished.

This increased spending has largely eliminated our surplus and we now have a more reasonable cash balance. As a non-profit, accumulating excess surplus income is contrary to our purpose and risks our non-profit status under the *Income Tax Act* and the *Societies Act* (see attached legal opinion).

Future spending, projected to grow at an equal or slightly higher rate than revenue, is sustainable within the Association's available cash and there is no imminent need to increase our dues.

However, we have a critical cash imbalance between funds held in Branch bank accounts and the Provincial level bank account. To give you some sense of the extent of this disparity, assuming no change in the dues funding formula, for 2023 Branches are projected to spend $42,000 with year-end cash of $275,000 and the Provincial level is projected to spend $360,000 with year-end cash of $120,000. Provincially we will run out of cash within one year while the Branches will still have over a quarter million dollars of excess accumulated income.



To correct this situation, we need to remember that the **Association is a single legal entity – neither the Branches nor the Provincial level has any independent legal status. The Association's money belongs to the Association – not to any Branch or to the Provincial level.** We need to think about what's best for the Association as a whole and for all our members, not just what's best at the Provincial level or best for a Branch.

Many options were considered and rejected. Obviously to continue doing what we had been doing in past years is not an option. To simply reduce Provincial level spending will require drastic cuts resulting in cancelling a number of essential member services. To claw money back from the Branches is also not a realistic option (from past experience that's a nearly impossible task). That only leaves options for changing how the Association's dues are allocated between the Branches and the Provincial level.

At the recommendation of the Finance Committee, the Table Officers endorsed the following funding model.

- Each Branch will send the Provincial Treasurer a copy of its February month-end bank statement.
- The Treasurer will compare this bank balance with the Branch's February month-end membership count.
    - Branches with a bank balance of less than $10 per member will receive funding to raise their cash to $10 per member.
    - Branches with a bank balance that exceeds $10 per member will receive no additional funding for this year.

There is no need for any part of our Association, whether a Branch or the Provincial level, to have accumulated excess cash greater than its operating needs. This is why $10/member was chosen. More than $10 will leave excess funds in Branch accounts that are needed at the Provincial level. History has shown that Branches typically spend $6 or less per member. $10 represents 170% of a typical Branch's annual spending. This is already on the high side of what the *Income Tax Act* considers reasonable. I know that not all Branches have similar operating costs, and the sudden influx of new members also causes some concern. If a Branch at any time has funding requirements beyond their available cash, the Directors can consider providing additional funds.

This funding model won't immediately correct the Branches' excess cash, but it will do so over time, without creating undue hardship.

This model can always be fine-tuned or completely changed in future years. But we need to start somewhere.

I know this is a major change from how our Association dues have always been shared between the Provincial level and the Branches. To confirm that these actions are both necessary and appropriate our lawyer, Michael Miller, was asked for a legal opinion. His response is attached. **Please read this legal opinion closely – it contains some very important principles and requirements for us as a registered not-for-profit organization.**

The Finance Committee also prepares a Provincial level budget each year for approval by the Table Officers. Starting this year, I will share this budget at the Directors Meeting. This budget only represents a portion of our Association's spending. Without the individual Branch budgets, the Committee can only use estimates based on prior year Branch expenses to project Association costs. Next year I will ask for each Branch's budget so the Committee can prepare a single budget for the entire Association.

Thank you. I look forward to seeing you in person at our meeting later this month.

Johanna Morrow
BCGREA Treasurer

From: **Michael Miller** <mmiller@mmdirect.ca>
Date: Fri, 14 Apr 2023 at 15:00
Subject: RE: Legal opinion
To: Brian Green <greenbeeconsult@gmail.com>

Brian,

This is brief but hopefully of some benefit to you.

Note that it is ultimately the officers (President, First Vice-President, Second Vice-President, Immediate Past president, Secretary and Treasurer) who bear responsibility/liability for oversight of the Association funds.

Regards,

mm
Michael A. Miller
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Memo: **April 13, 2023**

Re: **Non Profit Organizations**

<u>Non Profit Status</u>

- "Non-Profit" is sometimes thought of as status which is conferred upon an organization based on its goals, how it spends funds it receives or on how it is organized (eg., by virtue of being a society).

- A better way to think of it is "Non-Taxable".

- The Income Tax Act (s. 149(1)(l) exempts an organization like BCGEA from paying income tax on revenues that it receives provided that certain conditions are met:

  (a) it is not a charity;

  (b) it is organized exclusively for social welfare, civic improvement, pleasure, recreation or any other purpose ***<u>except profit</u>***;

  (c) it is in fact operated exclusively for the same purpose for which it was organized or for any of the other purposes mentioned in (b); and

  (d) it does not distribute or otherwise make available for the personal benefit of a member any of its income.

- The exemption granted applies only for the period throughout which the organization complies with all of the above conditions.

- Whether the organization qualifies for the exemption during any given period is a question of fact which is assessed by CRA based on the activities of the organization.

- One of the CRA considerations in determining whether the exemption is applicable is the accumulation of excess funds from year to year (as opposed to an unusual windfall in a particular period). **If the organization accumulates funds from year to year resulting in an accumulated balance in excess of what is reasonably required to carry out its non-profit activities, profit will be deemed by CRA to be one of the purposes and the tax exemption will be lost.**

  See INCOME TAX ACT IT-496R

  Note that this could trigger re-assessments of previous periods.

Entitlement to Membership Revenue

- Related to the issue of accumulation of excess funds is the question of entitlement to the Association's funds, which are primarily generated by membership dues.

- Although the current Bylaws authorize the creation of various branches of the Association and the practice has been to allocate Association funds among those branches, the membership dues are the property of the Association as a whole.

- The Bylaws provide as follows with respect to the use and investment of funds:

  Part 11 – Association Funds

  Bylaw 51: The treasurer shall invest funds of the association only as authorized by the directors and only on instructions to do so.

  Bylaw 52: The treasurer shall not disburse funds of the association without the sanction of the Officers.

- The Directors of the Association shall be the President, First Vice-President, Second Vice-President, Immediate Past President, Secretary, Treasurer, and the Chairperson of each Branch. (Bylaw 27)

- The Officers shall be, the President, First Vice-President, Second Vice-President, Immediate Past president, Secretary and Treasurer. (Bylaw 29)

Comments

- To the extent that certain branches of the Association are accumulating funds in excess of what is <u>reasonably required</u> to carry out current activities, the Association as whole is at risk of a determination that it is not operating exclusively on a not for profit basis.

  Accordingly, the entire organization could be assessed and reassessed as being taxable in the relevant periods.

- Even though funds are being transferred to branches, the funds must be used for the purposes of the Association at large. As set out in Bylaw 52, the responsibility to ensure that Association funds are properly utilized resides with the Officers.

- As set out in Bylaw 52, the responsibility to ensure that Association funds are properly utilized resides with the Officers. That responsibility requires managerial oversight – it is not sufficient to pay funds out to branches and hope that they are utilized properly. More so the case if the Officers are aware that funds are being accumulated in excess of what is reasonably necessary or being used for purposes which do not align with the purposes of the Association.

Recommendation

- The Association put in place a system of allocation of dues between branches that ensures compliance with the purposes of the Association and allows for ongoing review and oversight.