

Ecological Gifts Program

Appraisal Review Panel

Operational Guidelines

November 2019

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I. Introduction

This document sets out the operational guidelines for the Appraisal Review Panel (the Panel), which was established to review appraisals¹ of fair market value of land or partial interests in land submitted with applications for certification of ecological gifts for income tax purposes under the Ecological Gifts Program (EGP). These guidelines describe the policies and procedures of the Panel in making recommendations to the Minister of Environment and Climate Change (the Minister) regarding the fair market value of ecological gifts. They also address preparation of a Summary Report.

In particular, the guidelines include:

- a brief explanation of the provisions of the *Income Tax Act* relating to ecological gifts;
- an introduction to the provisions that apply to ecological gifts made in the Province of Quebec;
- an overview of the Appraisal Review and Determination Process;
- Appraisal Review Panel members;
- roles and responsibilities of those involved in the EGP;
- policy on appraising the fair market value of ecological gifts;
- guidelines for completing appraisal reports;
- key steps in the review process;
- information about appeals from redeterminations of fair market value by the Minister;
- guidance in preparing written recommendations to the Minister;
- guidelines for communication by members of the Panel within the EGP and with the public;
- guidelines for preparing the Summary Report;
- conflict of interest guidelines for Panel members;
- basic principles of natural justice.

Additional information about the program and relevant publications are located on the EGP web site at www.canada.ca/ecological-gifts.

¹ In these guidelines, the term “appraisal” includes all types of valuation reports.

II. Ecological gifts under the *Income Tax Act*

The Government of Canada established the EGP in 1995 to encourage the conservation of habitat and biodiversity in Canada. The Program is administered by Environment and Climate Change Canada (ECCC) and promotes the donation of privately held land and conservation easements, covenants or servitudes on land certified as ecologically sensitive.² Landowners may donate ecologically sensitive land to governmental organizations, including municipal or public bodies performing a function of government, municipalities or to registered charities involved in the conservation and protection of Canada's environmental heritage. Donors are eligible for a number of tax benefits.

As with other charitable gifts, ecological gifts lead to a tax credit or deduction for donors. In addition, ecological gifts benefit from the elimination of any tax on the capital gain realized on the disposition of the property. Corporate donors may deduct the eligible amount of their gift directly from their taxable income, while the eligible amount for a gift from an individual is converted to a non-refundable tax credit.

Unlike other charitable gifts, there is no limit to the dollar amount of ecological gift donations in a year that are eligible for the deduction or credit. For an ecological gift, the tax credit is based on the total eligible amount of the gift.

Similar provincial tax incentives may also be available.

In addition, since 2003, the *Income Tax Act* permits donation receipts to be issued in circumstance where an intention to make a gift is present but some benefit (or "advantage") is also received by the donor.

Initially, the *Income Tax Act* was silent on the subject of determining the fair market value of ecological gifts. In 1998, the *Income Tax Act* was amended to provide that "the value of an ecological gift of a servitude, covenant or easement to which land is subject is deemed to be the greater of its fair market value otherwise determined and the amount by which the fair market value of the land is reduced as a result of making the gift."³ In 2000, the *Income Tax Act* was amended again to require the fair market value of land donated as an ecological gift to be certified by the Minister.⁴

² Unless the context requires otherwise, the word "land" will include easements, covenants and servitudes.

³ *Income Tax Act*, s. 118.1(12).

⁴ *Income Tax Act*, ss. 110.1(1)(d) and 118.1(1), definition of "total ecological gifts".

Since the changes in 2000, the certification of ecological gifts under the *Income Tax Act* is a three-step process:

1. The Minister or a designate (the Certification Authority) must certify that the land comprising the gift is ecologically sensitive and must be of the view that the conservation and protection of the land is important to the preservation of Canada's environmental heritage.
2. If the recipient is a registered charity, a municipality, or a municipal or a public body performing a function of government, the Minister or the Certification Authority must approve the recipient to receive the gift.
3. The Minister must issue a Statement of Fair Market Value of an Ecological Gift (Statement of Fair Market Value) certifying the fair market value of the land comprising the ecological gift.

Ecological gifts in the Province of Quebec

Ecological gifts made in the Province of Quebec or, in certain specific cases, in a region bordering Quebec by Quebec residents, are subject to the benefits and requirements of both the federal *Income Tax Act* and the *Quebec Taxation Act*.⁵ They both contain similar provisions regarding ecological gifts. Between the two governments, these benefits and requirements are implemented in a coordinated manner.

In accordance with administrative agreements, the Government of Canada and the Government of Quebec share responsibilities in the areas of recipient certification, certification of the ecological sensitivity of lands, and the determination of the fair market value of gifts.

In Quebec, ECCC is responsible for the review and determination of the fair market value, using the process described in these guidelines, as well as for issuing the Statement of Fair Market Value as described below.

When the fair market value of the ecological gift has been determined or redetermined, the Minister issues a Notice of Determination of Fair Market Value of an Ecological Gift (Notice of Determination) or a Notice of Redetermination of Fair Market Value of an Ecological Gift (Notice of Redetermination). Once the gift has been made, a Statement of Fair Market Value is issued jointly by the Minister and the Quebec *Ministère de l'Environnement et de la Lutte contre les changements climatiques* in accordance with the *Quebec Taxation Act* and administrative agreements.

⁵ R.S.Q., chap. I-3.

If the donor wishes to appeal a redetermination of value of an ecological gift made in Quebec, the donor may appeal to the Tax Court of Canada and the Court of Quebec. The value determined by the Tax Court of Canada will serve for the purposes of the federal income tax return. The value as determined by the Court of Quebec will serve for the purposes of the provincial income tax return.

Throughout these guidelines, all procedures and requirements for ecological gifts made in the Province of Quebec or by donors residing in Quebec should be read to include the procedures and requirements noted in this section.

III. Overview of the Appraisal Review and Determination Process

The Appraisal Review Panel (the Panel) was established in 2000 to review appraisals submitted by donors in support of donors' estimates of the fair market value of ecological gifts and to make recommendations to the Minister about the fair market value. To obtain a tax credit or deduction, donors of ecological gifts must submit an appraisal of the value of the gift together with an Application for Appraisal Review and Determination (Application).

The Panel performs an administrative review of each appraisal report to determine:

- if the report is in accordance with the Guidelines for Appraisals⁶ and
- the basis for recommendation to the Minister regarding the fair market value of the land or the easement, covenant or servitude.

In its review, the Panel considers whether the analysis, opinions and conclusions in the appraisal report under review are appropriate and reasonable and support the fair market value set out in the appraisal report.

Following the review, the Panel Chair makes a recommendation to the Minister about the fair market value of the land or the easement, covenant or servitude comprising the gift. The Minister considers the recommendation and determines the fair market value. The donor receives the Notice of Determination.

Upon receiving the Notice of Determination, the donor has the option of withdrawing from the EGP, accepting the Minister's determination of fair market value, or seeking a redetermination by the Minister.

If the donor seeks a redetermination, the matter is considered by the Redetermination Committee of the Panel. After reviewing the original Application and any subsequent submissions made by the donor, the Redetermination Committee recommends a fair market value to the Minister, who, after considering the recommendation, issues a Notice of Redetermination.

Upon receiving the Notice of Redetermination, the donor has the option of withdrawing from the EGP or accepting the Minister's redetermination of fair market value without prejudice to the donor's right to appeal the redetermination to the Tax Court of Canada after making the gift.

If the donor accepts the Minister's determination or redetermination of fair market value and completes the donation, the Minister issues the Statement of Fair

⁶ The Guidelines for Appraisals may be found on the Ecological Gifts Program web site at www.canada.ca/ecological-gifts.

Market Value to the donor. The recipient of the ecological gift issues an official donation receipt to the donor.

The key steps in the Appraisal Review and Determination Process are explained in greater detail in Part VII.

IV. Appraisal Review Panel Members

The Panel is composed of up to six members.

Members

- one Chair;
- five senior appraisal specialists (known as Reviewers) holding the designation of Accredited Appraiser Canadian Institute (AACI), or, in Quebec, Chartered Appraiser (C.App./EA) from five regions of ECCC, one of whom may serve as the Chair.

The Chair will be an individual holding the designation of AACI, or C.App./EA or an individual with extensive relevant experience in valuation of land.

The Chair may designate a Panel member as an Appraisal Review Panel Regional Coordinator to assist the chair in the administration of the Panel's responsibilities in a specific region.

Ad hoc Reviewers

The Chair may retain ad hoc Reviewers to perform reviews as required to meet the demands of the EGP.

The ad hoc Reviewer(s) conduct reviews of appraisal reports and report to the Chair in accordance with the procedures set out in these Operational Guidelines. Where, because of the nature of the ecological gift, an individual with a Canadian Residential Appraiser (CRA) designation is qualified to value the gift, an individual possessing a CRA designation may be retained as an ad hoc Reviewer.

V. Roles and responsibilities of those involved in the Ecological Gifts Program (EGP)

The EGP is administered within ECCC by a national Secretariat and Regional Coordinators. The overall purpose of the Panel is to make recommendations to the Minister respecting the fair market value of ecological gifts. It is an independent advisory panel.

Minister of Environment and Climate Change

In the context of the EGP, the Minister is responsible for:

- certifying land as ecologically sensitive and issuing a Certificate for Donation of Ecologically Sensitive Land or, in Quebec, a *Visa pour dons de terrains ou de servitudes ayant une valeur écologique* (the Quebec Minister certifies ecological sensitivity for Quebec);
- approving registered charities, municipalities, or municipal or public bodies performing a function of government, to receive ecological gifts (the Quebec Minister approves the recipient for Quebec);
- making determinations or redeterminations of the fair market value of ecological gifts and issuing Notices of Determination, Notices of Redetermination and Statements of Fair Market Value.

The Minister may designate others to certify land as ecologically sensitive and to approve eligible registered charities to receive specific gifts.

National Secretariat

The EGP Secretariat, part of the Canadian Wildlife Service within ECCC is responsible for:

- coordinating and administering the EGP;
- preparing, compiling and disseminating information about the EGP to participants and to the public;
- providing support and information to Panel members, including technical, analytical and financial support and information;
- working with the Chair on the administration of the EGP, the Panel and the Appraisal Review and Determination Process;
- managing information including maintaining the EGP web site located at www.canada.ca/ecological-gifts.
- maintaining a national database of all gifts in the EGP;
- conducting program evaluation; and

- working with donors, recipients, other government agencies and partners to further develop strategic policy in connection with the EGP and other tools to protect ecologically sensitive land.

Regional Coordinators

There is an EGP Regional Coordinator in five regional offices of ECCC. The EGP Regional Coordinators are responsible to:

- receive and process requests for certification of land as ecologically sensitive;
- receive and review requests for approval of the recipient registered charities to receive ecological gifts;
- receive and conduct an initial review of Applications for Appraisal Review and Determination;
- forward information from the Panel to donors, recipients and others participating in the donation of specific ecological gifts;
- disseminate general information about the EGP to qualified recipients, donors, conservation agencies, and other interested members of the public; and
- coordinate implementation of the EGP with non-government and provincial partner agencies.

Appraisal Review Panel

The Panel is responsible for the following:

- reviewing appraisal reports for ecological gifts in accordance with The Standards of the Appraisal Institute of Canada, or *l'Ordre des évaluateurs agréés du Québec* (for donations in Quebec);
- reviewing these Operational Guidelines;
- reviewing the EGP's Appraisal Review and Determination Process to ensure that the appraisal reports comply with the Guidelines for Appraisals and that the analysis, opinions and conclusions in each appraisal report under review are appropriate and reasonable and support the fair market value set out in the appraisal report;
- making recommendations to the Minister about the fair market value of land or interests in land comprising ecological gifts;
- reconsidering (on request for a redetermination) and making recommendations to the Minister about the fair market value of land or interests in land comprising ecological gifts;
- preparing on a periodic basis a Summary Report about the activities of the Panel and delivering the Summary Report to the Minister; and
- making recommendations about improvements to the operation of the Panel and the Appraisal Review and Determination Process and, where appropriate, including those recommendations in the Summary Report that is delivered to the Minister.

Under the direction of the Chair, one or more members of the Panel or ad hoc Reviewers may carry out the appraisal report review responsibilities.

Chair

The Chair has the following responsibilities:

- reviewing appraisal reports for ecological gifts in accordance with The Standards of the Appraisal Institute of Canada, or *l'Ordre des évaluateurs agréés du Québec* (for donations in Quebec), these Operational Guidelines, and the EGP's Appraisal Review and Determination Process to ensure that the appraisal reports comply with the Guidelines for Appraisal and that the analysis, opinions and conclusions in each appraisal report under review are appropriate and reasonable and support the fair market value set out in the appraisal report;
- assessing each appraisal report to determine the nature and extent of the review required;

- determining if reviews should be conducted by one or by more than one Reviewer;
- assigning members of the Panel or ad hoc Reviewers to review appraisal reports;
- where necessary, designating another member of the Panel as an Appraisal Review Panel Regional Coordinator to assist the chair in the administration of the Panel's responsibilities in that region;
- working with the Secretariat regarding the administration of the EGP, the Panel and the Appraisal Review and Determination Process;
- where necessary, communicating with donors, recipients and other involved in the donation of ecological gifts about the Appraisal Review and Determination Process;
- determining when it is necessary to retain additional experts to assist in the valuation of ecological gifts and, if so, ensuring appropriate experts are retained;
- ensuring that all reviews are fair, objective and impartial;
- making recommendations to the Minister about the fair market value of land or interests in land comprising ecological gifts and, in particular, making recommendations regarding the fair market value for the Notice of Determination or the Notice of Redetermination, issued to donors by the Minister;
- overseeing the policy and operations of the Panel;
- identifying appraisal review resources required to carry out the responsibilities of the Panel and retaining qualified professionals to provide review services;
- when necessary preparing the agenda for Panel meetings in consultation with the Secretariat and other Panel members as required;
- when necessary chairing plenary Panel meetings to discuss substantive legal or policy issues, administrative matters and other general Panel business;
- conducting the Panel meetings on schedule and in an efficient manner;
- ensuring that deliberations maximize the opportunity for consensus among Panel members by ensuring full participation by each member and full discussion of dissenting views;
- chairing Panel meetings of the Redetermination Committee;
- determining what Panel members are required to participate in the Redetermination Committee or whether the redetermination can be conducted by a Redetermination Committee comprised of a portion of the Panel;

- conducting redeterminations of recommendations of the fair market value of ecological gifts with other members of the Redetermination Committee;
- leading the communication and training initiatives of the Panel;
- leading the policy development of the Panel and ensuring these Operational Guidelines are updated as necessary to reflect ongoing policy development;
- identifying appropriate expertise where necessary to assist in the development of policy and procedures of the Panel, including expertise to assist in addressing valuation issues or concerns common to a number of reviews;
- implementing the policy and procedures of the Panel in accordance with these Operational Guidelines;
- where necessary, making recommendations about changes or improvements to the operations of the Panel and the Appraisal Review and Determination Process; and
- overseeing the preparation and delivery of the Summary Report.

Members of Appraisal Review Panel

In addition to their other responsibilities as Panel members, he/she may be assigned by the Chair, in accordance with the procedure set out below, to do the following:

- review appraisal reports to ensure they meet the Guidelines for Appraisals;
- review appraisal reports for ecological gifts in accordance with The Standards of the Appraisal Institute of Canada, *l'Ordre des évaluateurs agréés du Québec* (for donations in Quebec), these Operational Guidelines, and the EGP's Appraisal Review and Determination Process to ensure that the appraisal reports comply with the Guidelines for Appraisals and that the analysis, opinions and conclusions in each appraisal report under review are appropriate and reasonable and support the fair market value set out in the appraisal report; and
- make recommendations to the Chair, in accordance with these Operational Guidelines, about the fair market value of land or interests in land comprising ecological gifts.

One or more Panel members or ad hoc Reviewers may be assigned by the Chair to review an appraisal report.

If designated by the Chair, a Panel member may act as an Appraisal Review Panel Regional Coordinator to assist the Chair in the administration of the Panel's responsibilities in a specific region.

Ad hoc Reviewers

Ad hoc Reviewers may be assigned by the Chair, in accordance with these guidelines, to:

- review appraisal reports to ensure they meet the Guidelines for Appraisals;
- review appraisal reports for ecological gifts in accordance with The Standards of the Appraisal Institute of Canada, *l'Ordre des évaluateurs agréés du Québec* (for donations in Quebec), these Operational Guidelines, and the EGP's Appraisal Review and Determination Process to ensure that the appraisal reports comply with the Guidelines for Appraisal and that the analysis, opinions and conclusions in each appraisal report under review are appropriate and reasonable and support the fair market value set out in the appraisal report; and
- make recommendations to the Chair, in accordance with these Operational Guidelines, about the fair market value of land or interests in land comprising ecological gifts.

One or more Panel members or ad hoc Reviewers may be assigned by the Chair to review an appraisal report.

Meetings and travel for the Appraisal Review Panel

The entire Panel may meet in person no more than once a year to carry out its purposes and typical responsibilities. In addition, the Chair and all or most of the Panel members may attend up to two Redetermination Committee meetings per year; (note: one of these potential Redetermination Committee meetings may be conducted in association with the Appraisal Review Panel meeting.) The Panel may meet in different locations in Canada, at the discretion of the Chair in consultation with the Secretariat. Representatives of ECCC and of the Quebec Ministère de l'Environnement et de la Lutte contre les changements climatiques on behalf of the Governments of Canada and Quebec may participate as ex-officio members and attend Appraisal Review Panel meetings.

The Chair may attend (in a presenter role) up to three workshops, conferences or training sessions per year in Canada, such as the Ontario Land Trust Alliance and Appraisal Review Panel appraiser training workshops, for example.

The Chair may also be requested to no more than one meeting per year at ECCC Headquarters in Gatineau, Quebec.

Other travel, may be required for specific appraisal reviews, by Chair and/or Panel members / ad hoc appraisal Reviewers, on rare occasions (up to two times per year).

VI. Guidelines for Appraisals

Donors of ecological gifts must have the fair market value of the land, easement, covenant or servitude appraised according to the Guidelines for Appraisals and must submit the appraisal report with the Application. The Guidelines for Appraisals are intended to help appraisers prepare ecological gift appraisals and include the following:

logical gifts must have the fair market value of the land, easement, covenant or servitude appraised according to the Guidelines for Appraisals and must submit the appraisal report with the Application. The Guidelines for Appraisals are intended to help appraisers prepare ecological gift appraisals and include the following:

- general requirements for all ecological gifts;
- information about the timing of appraisals;
- mandatory format for all appraisals;
- acceptable qualifications for appraisers of ecological gifts;
- details about certification statements for appraisals.

All appraisers engaged in the valuation of ecological gifts must consult the Guidelines for Appraisals. Donors and recipients who engage the services of an appraiser for the valuation of an ecological gift should provide the Guidelines for Appraisals to the appraiser at the earliest opportunity.

Consult the EGP Secretariat or the EGP website for the current version of the Guidelines for Appraisals.

VII. Key steps in determining fair market value

The tax benefits associated with ecological gifts are based on the fair market value of the land or the easement, covenant or servitude donated. The donor must submit an Application to take advantage of the tax benefits of an ecological gift. The following procedures apply once the donor submits the Application.

Determination of Fair Market Value – Procedures

1. The Appraisal Review and Determination Process normally begins after the certification of the ecological character of the gift and the approval of the recipient, if necessary, are complete, even if the application is made at the same time.
2. The donor must have the fair market value of the land, easement, covenant or servitude appraised according to the Guidelines for Appraisals (Consult the EGP Secretariat or the EGP website) and must submit the appraisal report with the Application.
3. The donor must submit the Application, together with an electronic copy (PDF) or a printed colour copy of the appraisal report stating the fair market value and all supporting documentation, to the appropriate regional office of ECCC. If the ecological gift is an easement, covenant or servitude, the donor must submit the final or the most recent dated version of the easement, covenant or servitude. If the ecological gift is a gift of land after the termination of an interest (such as a life estate or superficies) retained by the donor, the donor must submit the final or the most recent dated version of the agreement creating the retained or remainder interest.
4. The donor may submit the Application before or after completion of the donation. In many cases, the donor will submit the Application before making the donation. However, the donor may submit the Application up to three years after the end of the donor's taxation year in which the gift was made.⁷
5. The Application indicates that the donor has taken all necessary steps to ensure that the gift qualifies as ecologically sensitive land by inclusion of either a copy of a completed Certificate for Donation of Ecologically Sensitive Land or a request for that Certificate. In Quebec, donors must submit a copy of the *Visa pour dons de terrains ou de servitudes ayant une valeur écologique*, or a copy of the Notice of intention to issue a *Visa*, along with the Application.
6. Incomplete applications are returned to the applicant, together with any supporting documentation including the appraisal report, with a request that the applicant provide all required information.

⁷ *Income Tax Act*, s. 118.1(10.3).

7. Complete applications are forwarded to the Panel, together with any supporting documentation, including the appraisal report.
8. The Panel will conduct a preliminary review of the appraisal report to ensure that the Guidelines for Appraisals have been followed. The donor is notified if the appraisal report has minor deficiencies that can be rectified without returning the Application.
9. If there is a minor deficiency with the appraisal report, the donor may be asked to provide additional or improved information in connection with the appraisal report. A minor problem is a problem that is correctable with additional or improved information, for example, an incomplete legal description or inconsistent references within the appraisal report as to the size of the property comprising the ecological gift.
10. The appraisal report is then subject to an administrative review by one or more Panel members appointed by the Chair.
11. If authorized by the donor on the Application, further information may be requested directly from the appraiser who completed the appraisal report. For example, depending on the circumstances, the appraiser may be asked for the following kinds of additional information:
 - rationale or support for conclusions in the appraisal report;
 - additional exhibits, including maps and photographs.
12. Where necessary, the Chair will indicate the need for additional experts to assist in the review of the appraisal report or to aid in resolving a problem in the review. For example, if the valuation of the ecological gift involves the valuation of timber, the Reviewer may require the assistance of an expert knowledgeable in this area. In appropriate circumstances, for example, where access to the donor's land may be required, the donor will be notified that an additional expert has been retained.
13. If, during the review, an additional expert is retained or additional information is obtained from sources other than the original appraiser, ECCC will provide the donor with a copy of any report prepared by the expert or other additional information gathered during the review. The donor is offered an opportunity to respond prior to the Panel making a recommendation to the Minister.
14. If the ecological gift is an easement, covenant, servitude, or a gift of land after the termination of an interest (such as a life estate or superficies) retained by the donor, and any changes were made to the agreement establishing the interest after the appraisal was completed or after the Application was submitted to the EGP, the donor must provide a copy of the final version of the agreement to the Program together with a statement from the appraiser who completed the appraisal report advising whether or not there has been a change in value as a result of the changes to the agreement. Each submitted version of an easement, covenant or servitude or agreement creating a retained interest must be dated.

15. Upon completion of the review, the Panel will recommend a fair market value for the ecological gift to the Minister. The recommended fair market value may be either the value stated in the original appraisal report or a value other than that stated in the appraisal report.
16. After considering the recommendation of the Panel, the Minister determines the fair market value of the ecological gift and send the donor a Notice of Determination.
17. If the fair market value set out in the Notice of Determination differs from the value stated in the Application and the original appraisal report, the Notice of Determination will include reasons for the difference in value.
18. Upon receiving the Notice of Determination, the donor should advise the nearest regional office of ECCC in writing, within 90 days, whether the donor will:
 - a) accept the fair market value set out in the Notice of Determination,
 - b) withdraw the Application on the understanding that the donor may reapply in the future, or
 - c) request a redetermination by the Minister of the fair market value set out in the Notice of Determination (the donor must request a redetermination within 90 days of being notified of the fair market value by way of the Notice of Determination).
19. The value set out in the Notice of Determination will apply to the land, easement, covenant or servitude for all income tax purposes related to charitable gifts, not just for ecological gift purposes, for a period of two years from the date of the Notice of Determination unless the donor requests a redetermination of the fair market value.⁸ This is the case whether or not the donor notifies ECCC that the donor is withdrawing from the Program.
20. If the donor accepts the fair market value set out in the Notice of Determination, upon receiving evidence that the ecological gift has been made, such as a copy of the registered transfer document, the Minister issues a Statement of Fair Market Value at the value set out in the Notice of Determination.
21. If the ecological gift is an easement, covenant, servitude, or a gift of land after the termination of an interest (such as a life estate or superficies) retained by the donor, the donor must provide a copy of the registered easement, covenant, servitude or agreement creating the retained interest and any other relevant registered transfer agreements to the Program.
22. After the Minister issues a Statement of Fair Market Value, it is the recipient's responsibility to issue an official donation receipt to the donor for the fair market value of the property and the eligible amount of the gift.

⁸ *Income Tax Act*, s. 118.1(10.1). The value as determined by the Minister will also be the value for two years for the purposes of subparagraph 69(1)(b)(ii), subsection 70(5) and sections 110.1 and 207.31.

23. If the donor withdraws from the EGP, normally the donor may re-enter the process within two years, subject to the provisions, including all relevant time limits, of the *Income Tax Act*. For example, if a donor withdraws from the EGP after receiving a Notice of Determination and wishes to re-enter the process and request a redetermination, the donor must do so within the 90-day time period set out in the *Income Tax Act*, that is, within 90 days of being notified of the fair market value by way of a Notice of Determination. The donor may re-enter the process for up to two years from the date of the Notice of Determination if the donor wishes to complete the donation of the ecological gift. If the donation has not been made within the two-year period and the donor wishes to make an ecological gift, he/she must reapply and provide an updated or new appraisal.

Redeterminations of fair market value – Procedures

1. When a donor requests in writing a redetermination of the fair market value of an ecological gift within 90 days after receiving a Notice of Determination, the Redetermination Committee of the Panel (the Redetermination Committee) will consider the redetermination at the next in person Appraisal Review Panel meeting or at a Redetermination Committee meeting (up to 2 per year).
2. The Redetermination Committee meets up to three times a year to consider requests for redetermination of the fair market value of ecological gifts.
3. The Redetermination Committee normally will consider a request for redetermination of fair market value within four months of the date on which the request is received.
4. Although donors requesting a redetermination of the fair market value of an ecological gift are not required to provide additional information in support of the request, they may provide the Redetermination Committee with information relevant to the fair market value of the gift that was not provided in the first instance. This information, which must be in writing, might include, as appropriate:
 - additional written submissions by the appraiser in support of the estimate of value in the appraisal report; and
 - additional relevant valuation or market information such as the following:
 - one or more additional appraisal reports;
 - where the gift has not been made, information about market activity at the time of or since the date of the original appraisal report;
 - where the gift has been made, additional information about market activity at the time the gift was made;
 - written submissions responding to the reasons for the determination of value provided with the Notice of Determination.

5. The Redetermination Committee considers the request for redetermination, together with accompanying material, and recommend a fair market value of the ecological gift to the Minister. The recommendation is normally made within 60 days of the conclusion of the meeting of the Redetermination Committee. The meeting may take place over more than one day.
6. After considering the recommendation of the Redetermination Committee, the Minister confirms or re-determines the fair market value and sends the donor a Notice of Redetermination of Fair Market Value of an Ecological Gift.
7. If the fair market value set out in the Notice of Redetermination differs from the value stated in the original appraisal report or from the value in the Notice of Determination, the Notice of Redetermination will include reasons for the redetermination of value.
8. Upon receiving the Notice of Redetermination, the donor should advise the nearest regional office of ECCC in writing, within 90 days, whether the donor will:
 - a) withdraw the Application on the understanding that the donor may reapply in the future, or
 - b) accept the fair market value as set out in the Notice of Redetermination.
9. The value set out in the Notice of Redetermination will apply to the land, easement, covenant or servitude for all income tax purposes related to charitable gifts (not just for ecological gift purposes) for a period of two years from the date of the Notice of Redetermination.⁹ This is the case whether or not the donor notifies ECCC that the donor is withdrawing from the Program.
10. If the donor accepts the fair market value set out in the Notice of Redetermination, upon receiving evidence that the ecological gift has been made, such as a copy of the registered transfer document, the Minister issues a Statement of Fair Market Value at the value set out in the Notice of Redetermination.
11. If the ecological gift is an easement, covenant, servitude, or a gift of land after the termination of an interest (such as a life estate or superficies) retained by the donor, the donor must provide to the EGP a copy of the registered easement, covenant, servitude or agreement creating the retained interest.
12. After the Minister issues a Statement of Fair Market Value, it is the recipient's responsibility to issue an official donation receipt to the donor for the fair market value of the property and the eligible amount of the gift.
13. If the donor withdraws from the EGP, normally the donor may re-enter the process within two years, subject to the provisions, including all relevant time limits, of the *Income Tax Act*. The donor may re-enter the process for up to two years from the date of the Notice of Redetermination if the donor wishes

⁹ *Income Tax Act*, s. 118.1(10.1). The value as determined by the Minister will also be the value for two years for the purposes of subparagraph 69(1)(b)(ii), subsection 70(5) and sections 110.1 and 207.31.

to complete the donation of the ecological gift. If the donation has not been made within the two-year period and the donor wishes to make an ecological gift, the donor must reapply and provide an updated or new appraisal.

14. Accepting the fair market value as set out in the Notice of Redetermination does not prevent the donor from appealing the confirmation or redetermination of value to the Tax Court of Canada following completion of the donation and receipt of the Statement of Fair Market Value. The appeal must be filed within 90 days of the Minister issuing the Statement of Fair Market Value.

Appeal to Tax Court of Canada

The donor may have a right to appeal the fair market value of the ecological gift redetermined by the Minister to the Tax Court of Canada.¹⁰ The donor may appeal to the Tax Court of Canada only if an irrevocable gift of the ecological property has been made and the following conditions are satisfied:

1. the donor requests, within 90 days of receiving a Notice of Determination, that the Minister confirm or redetermine the fair market value of the property and the Minister has so confirmed or redetermined the value by issuing a Notice of Redetermination or a Notice of Redetermination was issued to the donor at any time on the Minister's own initiative;
2. the Minister has issued to the donor a Statement of Fair Market Value.¹¹
3. The appeal is filed within 90 days of the Minister issuing the Statement of Fair Market Value.

The Tax Court of Canada may confirm or vary the amount confirmed or redetermined by the Minister to be the fair market value of an ecological gift. The value determined by the Court is then deemed to be the fair market value of the ecological gift determined by the Minister.¹²

In Quebec, the donor may appeal to the Tax Court of Canada and the Court of Quebec. The value determined by the Tax Court of Canada will serve for the purposes of the federal income tax return. The value as determined by the Court of Quebec will serve for the purposes of the provincial income tax return.

¹⁰ *Income Tax Act*, s. 169(1.1).

¹¹ *Income Tax Act*, s. 169(1.1).

¹² *Income Tax Act*, s. 171(1.1).

VIII. Conducting reviews and making recommendations

This section contains information about the format of the review of appraisal reports and the contents of recommendations to the Minister about fair market value.

Conducting the review of an appraisal report

The Chair or an Appraisal Review Panel Regional Coordinator reviews the appraisal report that accompanies the Application and assigns the appraisal report to one or more members of the Panel or the ad hoc Reviewer(s) for review.

In deciding who will conduct the review, the Chair or the Appraisal Review Panel Regional Coordinator considers the following:

- location of the ecological gift,
- nature of the gift,
- experience of the Reviewer, and
- any other factors the Chair or the Appraisal Review Panel Regional Coordinator determines appropriate.

The appraisal report Reviewer completes an Appraisal Review Form and forwards it and any documentation received during the review, to Chair. If the Reviewer recommends a value different from the value estimated in the appraisal report, the Reviewer must provide written reasons for the difference in value in a memorandum accompanying the Appraisal Review Form.

If the Reviewer encounters any problems or requires additional information while conducting the review of the appraisal report, the Reviewer should immediately consult with the Chair or the Appraisal Review Panel's Regional Coordinator. If the Panel agrees it is necessary (and if the donor has authorized this on the Application), the Reviewer may request further information directly from the appraiser who completed the appraisal report. In other cases, the Chair or the Appraisal Review Panel Regional Coordinator may request further information from the donor or appraiser. See Part XI, Communication with Others, for information about communicating with donors and others.

The Reviewer, the Chair and the Panel's Regional Coordinator should document all information received orally and include all such documentation and any additional written information in the file relating to the appraisal review.

The Reviewer normally completes the review and returns it to the Chair or the Panel's Regional Coordinator within 30 days. Sometimes, more time is required

to obtain additional information. If returned to an Appraisal Review Panel's Regional Coordinator, he/she then forwards the completed review to the Chair.

Upon receiving the review and accompanying material and examining it, the Chair, makes a recommendation. If satisfied with the conclusions of the Reviewer, the Chair recommends to the Minister that the fair market value of the ecological gift be determined to be either the value stated in the original appraisal report or some other value. If the recommended value is different from the value estimated in the appraisal report, the Chair must provide written reasons for the difference in value.

Normally, the recommendation from the Chair to the Minister is sent within 90 days of receiving the complete application and an appraisal that conforms to requirements in the EGP Guidelines for Appraisals. This may be extended if circumstances require.

Retaining additional experts

The Chair may identify the need to retain additional experts to assist in the appraisal report review or to aid in resolving a problem in the appraisal report. Other experts could include foresters, planner or legal advisors, for example. This may occur at the time that the Chair or an Appraisal Review Panel Regional Coordinator assigns the appraisal report to a Reviewer or during the course of a review if the need for additional expertise is necessary. In the latter case, the Reviewer should discuss the matter with the Chair who will decide whether or not additional expertise is required.

When appropriate, the donor will be notified by ECCC that an additional expert has been retained. A copy of any final reports prepared by additional experts must be provided to the donor who is given an opportunity to respond.

The type of expertise required will vary depending on the nature of the ecological gift. For example, if the valuation of the ecological gift involves the valuation of timber, the Reviewer may require the assistance of an expert knowledgeable in this area.

In some cases, the Chair in consultation with the Secretariat may identify the need for another independent appraisal report or a report from another expert in order to make an informed recommendation about the fair market value of an ecological gift.

IX. Requests for redeterminations

Requests for redeterminations will be considered at meetings of the Redetermination Committee of the Appraisal Review Panel. The Chair or another Panel member designated by the Chair will chair these meetings.

The Chair determines if the Redetermination Committee will be comprised of all or a portion of Panel members. Other experts may participate in Redetermination Committee meetings. In deciding on the size of the Redetermination Committee, the Chair may take into account a variety of factors such as, but not limited to, the type of ecological gift, the fair market value, and the amount and type of evidence available to support the fair market value of the ecological gift.

Normally, the Redetermination Committee considers only written submissions and supporting documents.

Members of the Redetermination Committee must abide by the rules of conduct and the principles of natural justice set out in these Operational Guidelines. Members must review all materials relevant to the request for redetermination prior to the meeting.

The Redetermination Committee will make every effort to operate by consensus in making recommendations about the fair market value of ecological gifts.

The Redetermination Committee will make a recommendation to the Minister on the fair market value of the ecological gift within 60 days of the conclusion of the meeting. If the fair market value set out in the recommendation differs from the value stated in the original appraisal report or from the value in the Notice of Determination, the recommendation must include written reasons for the difference in value.

X. Conduct of the Appraisal Review Panel

All Panel members shall conduct themselves in a manner that is fair, objective and impartial. They must therefore:

- behave fairly, objectively and impartially toward all participants in the Appraisal Review and Determination Process;
- show respect for all participants;
- operate in a fair and transparent manner in carrying out their duties;
- avoid oral or written communications about matters associated with an appraisal review except those carried out in accordance with the procedures set out in the section of these Operational Guidelines headed “Communicating with Others”;
- respect the confidentiality and Protected B nature of materials submitted for the Appraisal Review and Determination Process and internal Panel deliberations;
- avoid informal contact about the review with any party involved in the Appraisal Review and Determination Process except other Panel members and the Secretariat; and
- conduct themselves in accordance with the conflict of interest guidelines, the guidelines for using Appraisal Review Panel information, and the principles of natural justice set out below.

Conflict of interest guidelines for Appraisal Review Panel members

1. Panel members must avoid any conflicts of interest that could impair or damage the independence, integrity or impartiality of the Panel.
2. Panel members must arrange their private and business affairs and conduct themselves in a manner to avoid a conflict of interest.
3. A Panel member will have a conflict of interest where that Panel member’s personal interests, or the interests of a close friend, family member, business associate, client, corporation or partnership in which the Panel member holds a significant interest, or a person to whom a Panel member owes any obligation that may prevent that member from acting unfettered, are affected by any decision, information or other matter that may be heard by or acted upon by the Panel.
4. Panel members may not enter into employment or contractual relations where that employment or contract is contingent upon the Panel making a particular recommendation on value or on any other matter to be dealt with by the Panel.

5. Panel members must not benefit personally, directly or indirectly, from any appraisal report they are reviewing. An “indirect benefit” is:
 - a benefit derived by a close friend, family member, business associate, client, or corporation or partnership in which the Panel member holds a significant interest; or
 - a benefit which advances or protects the interests of the Panel member although it may not be measurable in money.
6. The actions of Panel members in the course of Panel duties should not give rise to the perception that a Panel member’s ability to exercise those duties has been or could be affected by his or her private gain or interest.
7. Panel members also should avoid the perception of bias or conflict of interest. For example, if a Panel member, prior to his or her appointment, provided advice to a donor or recipient agency that subsequently could be viewed as influencing an appraisal review, that Panel member could be perceived as having a conflict of interest. In addition, conduct, such as public statements about a particular property or project that suggests that a Panel member has made up his or her mind before considering all the evidence, could give rise to a reasonable apprehension that the member is biased.
8. Panel members must disclose a conflict of interest or any circumstance that may have a negative effect on their ability to perform the duties required of their appointment in writing to the Chair at the earliest opportunity.
9. The Chair must disclose a conflict of interest or any circumstance that may have a negative effect on the Chair’s ability to perform the duties required of the Chair’s appointment in writing to the other members of the Panel at the earliest opportunity.
10. A Panel member, including the Chair, who has a conflict must immediately take steps to resolve the conflict, including:
 - removing himself or herself from any appraisal review or redetermination that gives rise to a conflict of interest;
 - ending participation in any discussions or recommendations relating to the appraisal; and
 - leaving the room when the Panel or the Redetermination Committee is discussing or making a decision relating to that matter.

Using Appraisal Review Panel Information

1. “Appraisal Review Panel information” is information which is acquired by reason of involvement with the Appraisal Review Panel and which the Panel is under an obligation to keep confidential and protected. Confidentiality is important to ensure:
 - frankness of deliberations in meetings of the Panel;

- responsiveness to new information as it becomes available; and
 - that recommendations of the Panel are not officially disclosed to the participants or the public before the Minister makes a determination.
2. Panel members will have access to Appraisal Review Panel information only for Panel purposes.
 3. Panel members must not use Appraisal Review Panel information for their personal benefit.
 4. Panel members must protect Appraisal Review Panel information from improper disclosure.
 5. Panel members may divulge Appraisal Review Panel information if:
 - a) they are authorized to release it; and
 - b) the release is to a person who has a lawful right to the information.
 6. If Panel members are in doubt about whether Appraisal Review Panel information may be released, they must request advice from the Chair.

Some principles of natural justice

Certain legal principles govern proceedings such as those of the Appraisal Review Panel. If the Panel or a member of the Panel violates any of these principles, the Panel's recommendation and, ultimately, the Minister's determination of fair market value, may be open to attack in the courts. A court could set aside the determination and order that the matter be reconsidered.

These principles are:

- The Panel must not do anything that is procedurally unfair.
- Panel members must be unbiased and free from any conflict of interest (see Conflict of Interest Guidelines above).
- Donors have the right to have adequate notice of the date a redetermination is to be considered, to know the case to be met, to answer it and to put forward their position.
- Redeterminations normally will be conducted on the basis of written rather than oral evidence. Donors must be given an adequate opportunity to submit written materials before the Panel makes a decision affecting their interests. Donors also must be given adequate notice of the all the materials the Panel will consider in the redetermination.
- What constitutes knowing the case to be met and being given an opportunity to answer it depends on the circumstances. In relation to a redetermination, this will include, without necessarily being limited to, the following:

- The recommendation of fair market value must be made on the basis of the written evidence presented to the Panel, all of which must be disclosed to the donor.
- The donor must be given an equal and fair opportunity to respond to all the information considered by the Panel in its redetermination, including information gathered by the Panel and information which may be contrary to the donor's interests.
- While Panel members may apply their expertise to the evidence presented to them, they cannot add any new material to the evidence at a redetermination without providing the additional evidence to the donor and giving the donor an opportunity to reply. Any evidence that the Panel intends to take into consideration in making its recommendation should be made available to the donor who should be given an opportunity to respond.
- The Panel must hear and consider all of the evidence and representations put before it. Those Panel members who have heard and considered the evidence and representations put before the Panel must be the members who make the recommendation. The recommendation of fair market value must not be delegated to someone else and must not be made by anyone who has not heard and considered all the evidence.
- In making its recommendation, the Panel should consider only information and evidence relevant to the determination of fair market value. The Panel should not consider evidence that is not relevant to the determination of fair market value.

XI. Communicating with others

The public and the media

The Chair or the Chair's designate is authorized to speak on behalf of the Panel. Individual members and ad hoc Reviewers of the Panel should refrain from speaking on behalf of the Panel without express authorization from the Chair. Individual Panel members and ad hoc Reviewers should refer questions from the public or from the media about the business and the recommendations of the Panel to the Chair and the EGP Secretariat.

Donors

During the Appraisal Review and Determination Process, all communications with donors, recipients, the media and others normally will be made in consultations with the Chair, the Secretariat or regional staff of ECCC.

When a Panel member or an ad hoc Reviewer is conducting a review of an appraisal report, the person conducting the review must not communicate directly with the donor. The Chair will cooperate with the Secretariat in handling all communications with donors and advise the Secretariat about the need for any direct communication with donors to ensure coordinated and efficient communications.

If authorized by the donor on the Application, the Reviewer may request information directly from those who prepared the appraisal (and any other documents submitted in support of the Application). In these cases the Reviewer should consult the Chair or the Appraisal Review Panel Regional Coordinator prior to making the request for information.

XII. Summary Report

The Chair is responsible for the preparation of a Summary Report to be produced annually for the EGP Secretariat. The report outlines and summarizes the information on the operations of the Panel during the previous fiscal year and if necessary presents recommendations for improvements to the Appraisal Review and Determination Process.

The Chair prepares the Summary Report with input from members of the Panel and the Secretariat. Matters addressed in the Summary Report may include:

- an overview of the EGP including the objectives;
- activities and accomplishments of the Panel in the past fiscal year:
 - number of reviews and redeterminations conducted;
 - number of ecological gifts made;
 - number of appeals to the Tax Court of Canada;
 - how well EGP objectives were met;
- a review of aspects of the Appraisal Review and Determination Process, including:
 - the composition and size of the Panel;
 - the timing for each step in the process;
 - the frequency and circumstances in which second appraisal reports were prepared and the usefulness of those reports.
- Panel recommendations.