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From the Director General – Elizabeth Tromp

Canadians expect different levels of government to work together to meet their needs. In an earlier newsletter, we discussed plans to initiate discussions and build working relationships with provincial and territorial governments seeking collaboration on the regulation of charities. With the provinces and territories, we have a shared interest in the efficient and effective regulation of charities. The charitable sector stands to benefit from enhanced service and a reduction of duplication. Jurisdictional collaboration is one of five elements of the Framework for Charities Regulatory Reform, and in support of this element, the Canada Revenue Agency (CRA) is now talking to all provinces and territories about our shared interests.

Feedback from preliminary discussions identified a shared interest in public education and awareness. As part of its public education strategy the Charities Directorate has entered into an agreement with Ontario for public information products on the subject of deceptive fundraising practices and “phoney charities”. We are eager to enter into similar projects with other jurisdictions. More details on this joint effort are provided in this newsletter.

The Charities Directorate is planning the next phase of bi-lateral meetings with its provincial and territorial colleagues, and these are designed to result in two outcomes:

- (1) the identification of the specific information needs of the provinces/territories to enhance information sharing between regulators; and
- (2) reaching agreement on specific joint initiatives which respond to jurisdictional needs and interests within the framework of the CRA's proposals for collaboration.

As these initiatives develop we will be providing information on them through the Charities newsletter.

The expected outcome of all discussions and agreements with the provinces and territories is a dynamic plan for collaboration, which serves the common interest of provincial and federal regulators, the public and the charitable sector.

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du Canada

As well as improving and building working relationships with provincial and territorial regulators, the Charities Directorate is working on the other areas identified under Charities Regulatory Reform, namely:

- improving services for charities and the public;
- increasing public awareness and sector outreach;
- improving monitoring of charities; and
- revising the appeals process.

The CRA is committed to a series of program objectives that are designed to improve the ability of charities to meet their regulatory obligations. These include new ways of consulting with the sector such as our new Charities Advisory Committee and the Technical Issues Committee. These also include new approaches to sector education such as the strategic investment program being established. This program will see sector umbrella groups receive funding to conduct innovative education programs focused on regulatory compliance.

We will be developing strategies to increase the public knowledge of charities regulation, and the tools available to them to raise their confidence as donors. We are going to have the capacity to do more audits, the most obvious and key tool to monitoring compliance. But at the same time we will be placing the focus on risk management, improving the way we target some of those efforts and becoming more sophisticated across our program in how we view risk in that regard.

Internally we are changing our program delivery infrastructure to meet the demands of this new way of doing business. To this end we are creating a new organization that is more closely aligned with our new objectives. These changes, which will be implemented in stages over the coming months, will better position the Directorate to respond to the high expectations that have been placed upon us as a result of regulatory reform.

In order to ensure adequate support is in place to assist the Directorate in transitioning from the old state to the new, the previous Legislative and Regulatory Reform Secretariat, which has been responsible for considering where the needs of the charitable sector require that we go, will evolve into the Regulatory Reform Implementation Secretariat.

One change that has already take place is in the area that deals with policies. The Policy and Communications Division will have a broader role with respect to legislative and specialized policy development, federal/provincial-territorial collaboration, and strategic policy and planning, and has been renamed Policy, Planning and Legislation Division.

Other changes will take place shortly:

We will create a new Client Interface and Service Division, which will take on all the present functions of our Client

Assistance Section, with the added responsibility of the ministerial correspondence, client outreach and publications functions previously performed by the Policy and Communications Division. This new focus will allow us to given better service to all of our clients – from both the charitable sector and the general public.

In recognition of expanding responsibilities related to sanctions and an enhanced audit approach, we will be expanding our Compliance Division.

We are certain that all of these changes will contribute to the ability of the Charities Directorate to carry out the ambitious reform agenda of the government with view to improving the regulatory framework for charities, while increasing public and voluntary sector confidence in the regulation of charities.

Elizabeth Tromp

What's New

Director General of Charities

Following Ms. Maureen Kidd's acceptance of an assignment with the International Monetary Fund in Washington, D.C., we were pleased to welcome Ms. Elizabeth Tromp as the new Director General of the Charities Directorate.

Ms. Tromp was most recently Manager, Planning and Coordination, for FINTRAC (Financial Transactions and Reports Analysis Centre). From 1998 to 2002, she held the position of Director General, Enforcement, with Citizenship and Immigration Canada, and from 1992 to 1998 she worked for the Solicitor General of Canada in the Aboriginal Policing Directorate, first as Director, Operations and Liaison, and then as Director General. Her experience working with a large and varied clientele will be a valuable asset in her work with the charitable sector as she moves forward on implementing the reforms to the charities regulatory framework.

Reminder about your annual information return

When filing your annual information return, please remember that the Basic Information Sheet (BIS) forms part of the return. The BIS contains personalized information for an individual charity, including its name, mailing address, and Business Number (BN). Blank annual information returns are not available at Tax Service Offices (TSOs) because TSOs cannot produce a BIS. However, we would be pleased to send you annual return packages along with your BIS on request. To make such a request, please call toll-free 1-800-267-2384 (English) or 1-888-892-5667 (Bilingual).

Public education on phoney fundraising

Over the past six months, the Charities Directorate has been working with the Government of Ontario on a public education project to warn the public about phoney

fundraising. We have contributed to two products that were introduced during Ontario's Consumer Awareness Week, November 15-19: a month in Ontario's Fraud Free Calendar, and a pamphlet, *Charitable Donations: Get the facts before you give*.

This project is in line with the commitment in the March 2004 Federal Budget to Charities Regulatory Reform – Jurisdictional Collaboration, and the CRA's *Framework for Charities Regulatory Reform – Jurisdictional Collaboration*.

Many charities plan their major fundraising campaigns to coincide with the holiday season as the year draws to a close. Along with genuine requests for charitable donations, though, some people take advantage of the generosity associated with the season for private gain. This joint project has been timed to coincide with the holiday season, to increase public awareness of this issue and help prevent donations from going to phoney charities.

Information on this project can be found on-line at: www.cbs.gov.on.ca/mcbs/english/CAW_main.htm.

Although some of the information on deceptive fundraising practices, such as the contacts listed, is specific to Ontario, the issues that it deals with are a concern to all Canadians.

The CRA appreciates the opportunity to participate with Ontario in this collaborative effort, and we look forward to working on other projects with Ontario and other jurisdictions on joint education and public awareness, as well as in other areas within the framework for Charities Regulatory Reform – Jurisdictional Collaboration.

Reminder: Simply submitting returns for corporate status is not sufficient

Often when we are contacted about re-registration and/or delinquent filing letters, clients tell us that they have sent their return and paid their annual fee. However, the return and fee to which they refer serve to maintain their corporate status rather than their charitable status. For example, federally incorporated charities file with Industry Canada. For incorporated charities, filing the paperwork necessary to maintain corporate status is not sufficient to maintain charitable registration. **Registered charities must file an annual *Registered Charity Information Return (T3010A)* within six months of their taxation year.**

Reminder to investors issued

The CRA has issued a Fact Sheet reminding investors that the proposed legislative changes announced by the Department of Finance on December 5, 2003, to limit the tax benefits of charitable donations made under tax shelter and other arrangements are effective throughout the 2004 and subsequent tax years.

The CRA wants to make sure potential donors know about the risks associated with participating in certain tax shelter

donation arrangements, including gifting trust arrangements, leveraged cash donations, and buy-low, donate-high arrangements.

The reminder can be found on the CRA Web site at: www.cra.gc.ca/newsroom/factsheets/2004/nov/1125tax-e.html

New publication: *Cornerstones of Community*

Statistics Canada has released a new publication, *Cornerstones of Community: Highlights from the National Survey of Nonprofit and Voluntary Organizations* (Catalogue no.: 61-533-XWE). The publication includes information on both charities and nonprofit organizations. The data from the National Survey of Nonprofit and Voluntary Organizations identify a number of organizations that are widely diverse in nature, touching virtually every aspect of Canadians' lives.

To obtain a copy of this publication or for more information, please contact Statistics Canada:

by phone	1-877-679-2746
by e-mail	sbss-info@statcan.ca
by mail	Statistics Canada Small Business and Special Surveys Division 120 Parkdale Avenue Ottawa ON K1A 0T6

Did you know?

Q. Why does the T3010A now ask for the dates of birth of directors? I'm not comfortable having this made public. Do I have any alternative?

A. Revisions to the information requirements of the Return were deemed necessary to facilitate the administration and enforcement of the *Income Tax Act*. Collecting this personal information allows the Canada Revenue Agency (CRA) to better identify those organizations that misuse the generous tax incentives available to charities and their donors for non-charitable or unlawful activities. Requesting directors' dates of birth provides the CRA with a means of identifying, with certainty, the directors/trustees who are responsible for managing a charity.

Only a director's name, position in the charity, and arm's length status to other directors will become public information. Other information is not part of the public portion of the *Registered Charity Information Return* and will be kept confidential.

We appreciate that some directors/trustees may not wish to share their date of birth with the person completing the form. A director/trustee may give this information (the name and the birth date of the director) in a sealed envelope to the

individual completing the return. The person completing the return must then include the sealed envelope with the return.

Directors, trustees and like officials are persons who govern a registered charity. These persons hold positions that are usually identified in an organization's governing document (e.g., president, treasurer, secretary, director).

Q. Are there regulations concerning the minimum number of meetings that the board of a charity must hold, or is this regulated in the by-laws of individual charities?

A. The *Income Tax Act* is silent on the issue of the number of meetings required. These may well be regulated by the by-laws of an individual charity and may also be affected by provincial or territorial regulations.

Based on court decisions, it can be said that, regardless of the province or territory in which they operate, directors and like officials should not be passive. They have a fiduciary responsibility to ensure that a charity is being operated in the public interest. They have a duty of diligence that requires them to be knowledgeable about the workings of the charity and ensure that the charity and its assets are cared for properly. Arguably, one of the implications of the duty of diligence is that directors must ensure that the board of directors meets regularly. Insufficient knowledge due to a lack of such meetings or poor attendance does not absolve directors of legal responsibility.

Charities and their directors may wish to seek professional advice on their legal obligations in this regard.

Changes to governing documents

Q. What is required when a charity changes its governing document?

A. To qualify for registration as a charity, an organization must be legally established by a governing document (e.g., letters patent, articles of incorporation, trust document, or constitution). The governing document identifies the charity, states its purposes, and provides information on the organization's structure and internal procedures.

When a charity's purposes change, these must be reflected in an amendment to its governing document.

All changes must be *certified*.

For unincorporated entities, certification of the governing document means for our purposes that it is signed by at least

two current directors/trustees of the organization and bears an effective date.

For incorporated entities, certification of the governing document means that it should show the effective date of the change and the stamp, seal, or signature of the government authority that issued the document.

Some incorporating authorities require that by-laws be filed with the application for incorporation. Once approved, these by-laws form part of the charity's governing document. As such, they must be submitted to us.

In both cases, we will also require a detailed statement of activities indicating how the organization intends to accomplish each of the new objects set out in its governing document. This will allow us to determine whether the organization continues to meet the legal requirements for registered status under the *Income Tax Act*. Copies of any promotional material such as brochures, newsletters, posters, etc., used to advertise the organization's activities as well as any other literature used directly in furtherance of its objects (in either draft or final form) should be included as these may be useful in understanding the function and character of the organization.

Charities should note that this information only pertains to the CRA's requirements. Charities may also need to take into account federal or provincial regulations in these matters.

If for any reason the corporate status of a charity becomes dissolved, the organization would cease to exist as an entity at law and would no longer qualify for registration. Please contact us if for any reason the corporate status of your organization becomes dissolved.

More information on the requirements for governing documents is available in our publication *Registering a Charity for Income Tax Purposes*, T4063.

Issues

When is an amalgamation not an amalgamation?

In a previous issue, we explained how the Charities Directorate differentiates between amalgamations, mergers and consolidations for the purpose of determining whether the originating organizations will continue to exist (and thus can keep their BN) or cease to exist (and need to apply for charitable registration as the new entity).

Amalgamations

When two or more charities amalgamate, they bring their membership, assets, and liabilities into the entity that emerges. However, the original charities do not cease to exist or dissolve. While they no longer have separate identities, they continue their existence within a single entity—the amalgamated charity.

Mergers

In mergers, one entity winds up its affairs and transfers its assets to another.

Consolidations

In consolidations, all the original bodies dissolve and transfer their assets to a new entity.

We recognize that for other purposes these words are sometimes used interchangeably or given a completely different meaning than we ascribe to them. These meanings are not consistent even within provinces, and it is not unusual for legislation that affects charities to use conflicting meanings for each term.

In particular, some legislation uses the word “amalgamation” when referring to what the Charities Directorate considers to be a merger or a consolidation.

Charities may distinguish between these situations by examining the language used in the legislation in each case.

For example, with respect to amalgamations, one should look for the words “continue” or “continuance” as in “any two or more companies may amalgamate and continue as one company”. The amalgamated body may be said to “possess” all the assets and rights of the original bodies.

On the other hand, if the legislation refers to assets being “transferred,” “transmitted,” or “conveyed,” this indicates that there has **not** been an amalgamation.

Letters patent of amalgamation are issued that “confirm the agreement” between the corporations.

If, however, Letters Patent of incorporation are issued which create a corporation and make reference to the “new” corporation or the corporation “so incorporated,” this indicates that there has **not** been an amalgamation.

For example, based on our last review, the following pieces of legislation do not allow for amalgamations:

Canada Corporations Act
Northwest Territories Societies Act
Nova Scotia Societies Act
Prince Edward Island Companies Act
Yukon Societies Act
British Columbia Societies Act

Some pieces of legislation that do allow for amalgamations include:

Alberta Companies Act
Alberta Society Act
Manitoba Corporations Act
New Brunswick Companies Act
Newfoundland Corporations Act
*Ontario Corporations Act*¹
Quebec Companies Act
Saskatchewan Corporations Act

Below, the *Manitoba Public Schools Modernization Act* and the B.C. *Society Act* are cited as examples of provincial legislation where terms are used differently in provincial legislation than they are by the Charities Directorate. Both pieces of provincial legislation use the term amalgamation. However, the term refers to what the Charities Directorate calls a consolidation.

The (Manitoba) Public Schools Modernization Act

This legislation refers to the “amalgamation” of school divisions and school districts. However, a review of the legislation itself shows that it does not refer to an amalgamation in the sense understood by the Charities Directorate, but rather a consolidation.

Regulation 116/2002 provided for the **dissolution** of former divisions and the **formation** of the new school divisions.

As well as referring to “former divisions,” this legislation refers to the resulting entity as being a “new division”. It discusses the “formation” of “new” school districts following the dissolution of old ones. These references indicate that, in addition to not being amalgamations, such changes are consolidations rather than mergers. Therefore, the new entities involved are required to apply for registration if they wish to enjoy the benefits of charitable registration. Excerpts from this legislation are included below.

¹ Request to amalgamate under this statute must first be submitted to the Public Guardian and Trustee for their review and approval.

Manitoba Public Schools Modernization Act (excerpt)

Content of award – amalgamation

9 (6.2) An award of the board under clause 5(d) that forms a new school division or school district by amalgamating school divisions or school districts, or both, ...

(e) must dissolve the school boards of the divisions and districts that participated in the amalgamation;

(f) may make provision for the transfer of rights and property, debts, obligations and liabilities, and employees; ...

British Columbia Society Act

The *British Columbia Society Act* contains sections dealing with amalgamations, but these are worded differently. Because it refers to “new” and dissolved” societies (in Section 17 (3)), we treat these as consolidations.

B.C. Society Act (excerpt)

Society Act [RSBC 1996] CHAPTER 433

Amalgamation of societies

17 (1) Unless one or more of them is a grandfathered insurance society as defined in section 200 of the *Financial Institutions Act*, 2 or more societies may apply to amalgamate and form a new society by sending the registrar copies, in duplicate, of the special resolutions that authorize their respective directors

(a) to jointly sign a constitution and bylaws in Form 1, 2 or 3 of Schedule A, and

(b) to comply in other respects with section 3.

(2) Provisions of this Act that apply to the incorporation of a society apply to the amalgamation of 2 or more societies as if the amalgamation were the incorporation of the amalgamated society.

(3) After the issue of a certificate of incorporation to the new society, the former societies are dissolved, and all property and rights of those societies pass to and vest in the new society without further act or deed.*

* emphasis added

B.C. Society Act (excerpt cont'd)

(4) An amalgamation under this section does not adversely affect the rights of a creditor of a former society, and the new society is liable for all debts and obligations of the former societies.

(5) On production of the required evidence, the estate and interest of the former societies in land registered under the *Land Title Act* must be registered in the name of the new society, but the new society is exempt from the payment of fees calculated according to the value of that estate or interest.

Court News

Registered charity status of the Parkinson's Support and Research Society revoked

The CRA revoked the registered charity status of the Parkinson's Support and Research Society effective August 28, 2004.

It is important to distinguish between the Parkinson's Support and Research Society (charitable registration number 893663716RR0001) and the similarly named Parkinson Society Canada (charitable registration number 108091786RR0001). The Parkinson Society Canada continues to enjoy the benefits of registered charity status.

In the CRA's opinion, its review of the Parkinson's Support and Research Society's (the Society) activities and expenditures showed that the Society was not devoting sufficient resources toward charitable purposes as required by a registered charity under the *Income Tax Act*. The revocation of the organization's charitable status was one in a series of actions that the CRA took to ensure that moneys donated would not be used for non-charitable purposes.

On March 4, 2004, the CRA issued a letter advising the Society of the intent to revoke its registered status. As was its right, the Society appealed the matter to the Federal Court of Appeal on April 14, 2004.

Generally while an appeal is before the court, a registered charity retains all its privileges, including its ability to issue receipts. However, given our concerns with this particular organization and the possibility that moneys would be diverted to non-charitable purposes, we took the step of requesting an injunction to prevent the Society from misusing funds in this way. We also requested an expedited hearing from the Federal Court of Appeal.

The CRA filed an application for an injunction on April 28, 2004, which was obtained on July 30, 2004. The injunction prevented the Society from issuing or promising to issue charitable donation receipts. This was only the second time such an injunction had been sought.

On August 11, 2004, the Federal Court of Appeal dismissed the Society's appeal, citing delays by the Society. This allowed the CRA to publish the Notice in the Canada Gazette on August 28, 2004 revoking the registered charity status of the Parkinson's Support and Research Society.

More information on the revocation process can be found in Charities Newsletter No. 16 (www.cra.gc.ca/E/pub/tg/charitiesnews-16/README.html).

Not just any valuation will do

There have been several recent cases that deal with the determination of fair market value. One recent case, *Maréchal v The Queen*, 2004 TCC 464, concerned the fair market value (FMV) of a ceramic sculpture donated by Mr. Maréchal to the Montreal Museum of Fine Arts in 2000.

Mr. Maréchal bought the sculpture for \$1,719.23 in 1999. The Canadian Cultural Property Export Review Board determined the FMV to be \$5,000. The appellant contended that the FMV was \$8,000.

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 who are both knowledgeable, informed, and prudent, and who are acting independently of each other.²

Based on this definition, Mr. Maréchal argued that since there were a variety of figures (\$1,719.21, \$3,500, \$5,000 and \$8,000) the highest should be chosen.

However, in his judgment, the Honourable D.G.H. Bowman, Associate Chief Justice, stated:

“Where the Board or this Court has the obligation of determining the FMV of a property and is faced with several different figures, it does not fulfil that obligation by picking the highest. It is not bound by any valuation and is not obliged to pick any one. Its obligation is to do the best it can to arrive at a true value, difficult as this may be. This may involve rejecting all valuations, or taking material from some or all of them and arriving at a conclusion that differs from all of the valuations. It is not a mechanical process. It is one that requires weighing all of the material before it and applying its best judgment to arrive at a correct result.”

² The general meaning of fair market value comes from the comments of Judge Cattanach in *Henderson v. MNR 73 DTC 5471*. This case has been cited in many of the valuation cases that followed.

The appeal was dismissed.

The complete decision is available at:

<http://decision.tcc-cci.gc.ca/en/2004/html/2004tcc464.html>

The courts base their decisions on the particular facts of a case. Therefore, in another situation, a court may arrive at a different decision. Some of the major factors that can help determine which among a series of estimates will be considered the fair market value were described in Charities Newsletter No. 18 (www.cra.gc.ca/E/pub/tg/charitiesnews-18/README.html). These include the effective date of valuation, and the relevant market that needs to be considered.

For example, valuation was also an issue in the cases of *Klotz*³, *Tolley*⁴, *Quinn*⁵ and *Nash*⁶. In *Klotz*, the Crown was successful in arguing that the FMV was the amount for which the paintings were sold by the promoter to the donor. On the other hand, in *Tolley et al.*, the appellants were successful in arguing that the FMV of the prints donated was the amount appraised. In each of these cases the sets of facts were similar on the surface but the outcomes were different. All of these cases are currently under appeal to the Federal Court of Appeal.

Copies of all Tax Court of Canada decisions can be found at: <http://decision.tcc-cci.gc.ca/en/>.

Policies

The Charities Directorate will soon publish two draft policies, one on umbrella groups and one on the Charities Directorate's decision-making process. A description of the policy on umbrella groups is available below. When available, you will be able to find both draft documents on the CRA Web site at: www.cra.gc.ca/tax/charities/consultation_policy-e.html.

Umbrella groups

Although the *Income Tax Act* defines charitable organizations as organizations “all of the resources of which are devoted to charitable activities carried on by the organization itself,” the Charities Directorate recognizes that an organization need not work directly with individual charitable beneficiaries in order to advance a charitable purpose and have charitable activities.

³ *Klotz v. The Queen*, 2004/02/13 (TCC) Docket: 2003-308(IT)G.

⁴ *Tolley v. The Queen*, 2004/09/24 (TCC) Docket: 2002-3719(IT)G.

⁵ *Quinn v. The Queen*, 2004/09/24 (TCC) Docket : 2002-3718(IT)G.

⁶ *Nash v. The Queen*, 2004/09/24 (TCC) Docket : 2002-3720(IT)G.

An umbrella organization may be registered if it is an organization that supports the charitable sector by promoting the efficiency and effectiveness of registered charities, or advances a charitable purpose by working with and through member groups.

A draft policy on which we are currently working will include a full description of the conditions under which such an organization may be registered as a charity. The draft policy is expected to be available on the CRA Web site by the beginning of the new year.

Contact information

The Charities Directorate

You can call us toll free at 1-800-267-2384 (English) or 1-888-892-5667 (bilingual).

You can also write to us at:

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Ottawa ON K1A 0L5

You can contact us by e-mail for comments or suggestions

- about the newsletter at:
charities-bienfaisance-bulletin@ccra-adrc.gc.ca
- about draft publications at:
consultation-policy-politique@ccra-adrc.gc.ca
- about the RoadShow at:
information.sessions@ccra-adrc.gc.ca
- about the Web site at:
Charities-Bienfaisance@ccra-adrc.gc.ca

You can contact the Charities Representative toll-free at 1-866-303-0316, or 948-8608 in the greater Ottawa area, or by e-mail at: **charities-bienfaisance-resource@ccra-adrc.gc.ca**

You can find all our publications at: **www.cra.gc.ca/charities/**

Draft publications for consultation are available at:
www.cra.gc.ca/tax/charities/consultation_policy-e.html

For information on new additions about charities, see the “What’s new” page at: **www.cra.gc.ca/tax/charities/whatsnew/whatsnew-e.html**

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