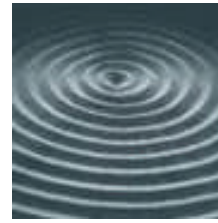
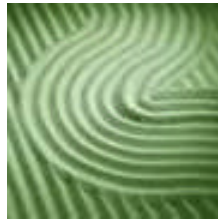


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Federal report recommends
changes to the regulations
of charities
Robert B. Hayhoe
June 30, 2003

WILLS, ESTATES, TRUSTS & CHARITIES

Federal report recommends changes to regulation of charities

By Robert Hayhoe

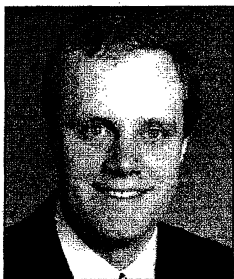
The Joint Regulatory Table (JRT) of the Voluntary Sector Initiative (VSI) has now issued its final report recommending changes to the federal regulatory environment for charities.

The VSI is a joint federal government and voluntary sector project designed to examine how the federal government could better assist the voluntary sector's work in the public interest. The VSI is divided into Tables (working groups) by subject area.

The Table which is of most interest to lawyers is the JRT. This Table was convened in November 2002 and has equal representation from the sector (both voluntary sector organizations and professionals like lawyers) and from the federal government.

The JRT was asked to look at four areas: (1) the accessibility and transparency of the federal charities regulator (currently the Canada Customs and Revenue Agency (CCRA)), (2) appeals from regulatory decisions, (3) compliance reforms (interme-

mediate sanctions) and (4) institutional models. The JRT issued an interim report in the fall of 2002 that made recommendations in each of the four subject areas. The interim report was then the



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subject of an extensive consultation process which (with some notable objections to the scope of the JRT's terms of reference) supported most of the recommendations.

In March 2003, the JRT delivered its final report to John Manley (Minister of Finance),

Elinor Caplan (Minister of National Revenue) and Sheila Copps (Minister Responsible for the Voluntary Sector). Because of the positive responses received during the consultation process, the final report is very close to the interim report.

Accessibility

The JRT report identifies a need for greater transparency in the CCRA's registration decision-making process. The recommendation is that the CCRA publish reasons for its positive and negative registration decisions (backed up by making the completed application package public for failed applications as it now is for successful ones). The report also recommends that the financial statements that registered charities must file with their T3010 annual returns be made available to the public.

The JRT report provides a detailed discussion of a proposal that the results and existence of a CCRA charities audit be made public. However, in recognition that the very existence of an audit could suggest wrongdoing to some, the report only recom-

mends that audits be disclosed if serious penalties are imposed.

Finally, the JRT report recommends that the CCRA's internal policy database should be made available to the public (as is now beginning to be done on the CCRA's website).

Appeals

The current appeal system available to a charity against a registration or de-registration decision is a judicial review in the Federal Court of Appeal. This system is universally recognized as unsatisfactory.

The JRT report recommends that the CCRA introduce an independent internal administrative review system to consider registration and compliance decisions. Following an unsatisfactory administrative review, a charity should have recourse to a trial *de novo* (the suggested venue being the Tax Court of Canada).

As well, the JRT recognizes that a combination of the inappropriateness of the current appeal structure and the financial realities facing charities has resulted in an almost total lack

of jurisprudence on most of the tax issues facing registered charities. The report recommends that a litigation funding model, perhaps modeled on the Court Challenges Program, be considered as a way of obtaining more jurisprudence.

Intermediate sanctions

The JRT recognizes that the current sanction system (essentially de-registration for all tax law violations) is both too severe and too blunt. Provided that a working appeal procedure is implemented, the JRT recommends that charities be susceptible to suspension of qualified donee status (requiring that the CCRA obtain control of the receipting process) and/or to suspension of a charity's tax-exempt status (with a tax based on revenue).

While the interim report had recommended monetary penalties on directors and officers of charities, the consultation process indicated strong opposition to this proposal, so further study is recommended.

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Report identifies new models for regulator

REPORT

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The report also deals with sanctions on charities established by deceptive fundraisers.

The JRT is concerned that the current rules permit a registered charity to collect money from the public with fraudulent underlying purposes without any ability for the CCR to revoke registration until a few years later when the disbursement quota is not met. The JRT recommends the addition of a specific revocation ground, being that the registration was obtained on the basis of false information.

This new revocation ground is very troubling. Common practice on registration applications is to give accurate but limited information about the applicant's proposed activities. Furthermore, the application

requires a very detailed *pro forma* budget, which must often be based on very tenuous assumptions. It is not difficult to imagine situations in which the CCRA might seek to apply this ground but which do not involve deceptive fundraisers. Why not address the issue of deceptive fundraisers directly?

Institutional reform

The JRT was asked to identify possible new models for the federal regulator (but not to express a preference). The first model suggested is an improved CCRA Charities Directorate (as seems to be developing now). The second is an improved Charities Directorate assisted by a new voluntary sector agency, which would be largely advisory.

The third model considered would involve a total replacement of the CCRA with a new Charities Commission. The

thought is that this would avoid some of the perceived role conflicts that currently exist and allow the Commission to focus clearly on its mandate. The final proposal is that the responsibilities of the Charities Directorate be divided between it and a new Charities Commission, with the Commission being given responsibility for registration and revocation decisions and the CCRA keeping audit responsibility.

The JRT report is a useful and detailed look at the administrative aspects of federal charity tax regulation. While the substantive charity tax rules are also ready to be re-examined, most of the changes proposed to the regulatory model would be improvements on the current system.

Robert Hayhoe practises charity tax law with Miller Thomson LLP in Toronto.