Good Government Act heralds positive changes for charities

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The Ontario government recently introduced Bill 212, the *Good Government Act 2009*. The bill contains proposed amendments to legislation that will level the playing field for charities operating in Ontario, making them consistent with charities in other provinces.

The changes include the following:

1

➔ The *Accumulations Act* is being amended to clarify that the rules of law and statutory enactments relating to accumulations do not apply, and are deemed never to have applied, to charitable trusts.

2

➔ The Bill provides for the repeal of the *Charitable Gifts Act*. This Act has been particularly problematic in that it restricts charities from directly or indirectly owning more than a 10 percent interest in a business. The restriction was outdated and the government should be applauded for announcing its repeal.

3

➔ Bill 212 amends the *Charities Accounting Act* as a consequence of the repeal of the *Charitable Gifts Act*. The *Charities Accounting Act* will now contain provisions that permit the Public Guardian and Trustee of Ontario to make inquiries and require information or documents respecting charities in which an executor, trustee or director holds a substantial interest.

The draft legislation provides that the Public Guardian and Trustee can ask for the entity's business records, information on its assets and liabilities, accounts of income and expenses, financial statements and the particulars of any fees, salary or other remuneration paid to any person by the entity. Anyone who withholds this information is guilty of an offence and can be liable to a fine not exceeding $25,000.

The determination of what constitutes a substantial interest is very similar to the determination used by the *Income Tax Act* for the excess business holdings rules. If the executor, trustee or director beneficially owns, controls or has direction, either directly or through another entity, over more than 20 percent of the voting rights, or 20 percent of the assets of the entity, the Public Guardian and Trustee will be permitted to make these inquiries.

There is no annual requirement to file information about substantial interests. This provision requires proactive requests for information to be made by the Public Guardian and Trustee. The Public Guardian and Trustee would likely rely on these rules in situations where it discovers a concern regarding the entity.

The revised statute will allow the Public Guardian and Trustee to apply to court for an order related to management operation, ownership or control of the entity to ensure that the entity is operating in the best interests of the purpose for which the estate or trust is held.

4

➔ A second amendment to the *Charities Accounting Act* relates to interests in real or personal property. Historically, the Act restricted the holding of land by a charity and provided that it could only be held for the purpose of actual use or occupation of the land for the charitable purpose. That was interpreted to mean that the charity could not own land as an investment.

The proposed section provides that a charity that holds an interest in real or personal property shall use the property for the charitable purpose for which it is held and the statute no longer provides for vesting in the Public Guardian and Trustee if there is an excess property held.

Individuals at the Public Guardian and Trustee's office have interpreted this section to mean that holding land will no longer be any different than holding any other investment property and that such investments will be governed by the *Trustee Act*. Hopefully, the Public Guardian and Trustee's office will release a public statement to this effect before Bill 212 becomes law.

5

➔ Amendments are proposed to the *Religious Organization Lands Act*, which previously restricted the length of a lease of land that a religious organization could enter into. The prior restriction of leasing for no more than 40 years has been removed.

New legislation often brings with it questions, and there will be some requests for clarification on the proposed legislation. However, these changes are helpful overall for the charitable sector and are changes which the Ontario Bar Association, Charities and Not-for-Profit Section has been discussing with the office of the Public Guardian and Trustee for a number of years.

The changes should be well received and will permit greater flexibility to charities when structuring revenue-generating activities in the future. ■

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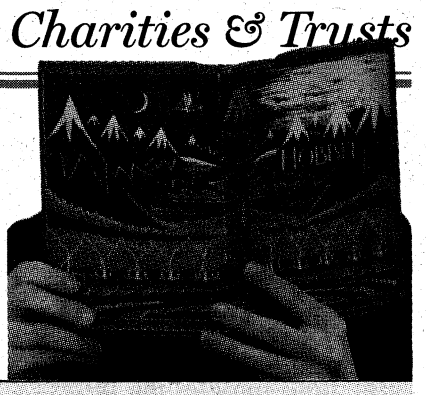

An oddity in Wills & Estates Law

Tolkien heirs settle Lord of the Rings lawsuit

Tolkien fans rejoice—the writer's heirs have settled a nasty lawsuit with New Line Cinema over profit from the Lord of the Rings films, paving the way for two new films based on *The Hobbit*.

Tolkien's son, Christopher, 84, and daughter Priscilla, 80, sued New Line, now a unit of Warner Brothers, for an estimated US$150 million, according to the *Los Angeles Times*. As heirs to the writer's estate, they claimed they had not received their share of the box office receipts from the three Lord of the Rings movies. The films garnered US$2.96 billion worldwide and at least US$3 billion in DVD and other sales, according to the lawsuit.

Hobbit enthusiasts will be happy to know that the suit, which sought to terminate New Line's rights to *The Hobbit*, settled in time for the two Hobbit movies to go into production next year. —*Natalie Fraser*

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