MILLER THOMSON LLP

Barristers & Solicitors

Charities & Not-For-Profit Newsletter

In response to reader requests, Miller Thomson is planning to make the Charities and Not-For-Profit Newsletter available by electronic distribution. Unless a subscriber requests otherwise, the next issue of the Newsletter is the last one which will be distributed in paper form to all subscribers. The following issue will be distributed in electronic form only, other than to subscribers for whom we have no email address or who have requested to continue receiving paper newsletters. We anticipate moving to an all electronic format in the near future. If you do not think that we have your email address, please send it to us at: charitieseditor@millerthomson.ca.

April 2002

Inside

Publication Mail Agreement Number - 40026254

Change to CCRA Registration Policy

For the last few years, the Canada Customs and Revenue Agency (CCRA) has been willing to register charities effective the earlier of the date of the charity's establishment and the date of application for registration. The CCRA has announced that, beginning March 1, 2002, it will no longer register a charity on a date prior to the application date. In fact, unless the applicant charity specifically requests otherwise, the CCRA will date the registration as of the later of the date of application and the beginning of the fiscal period during which registration is granted (which could be later than application, given the backlog in applications). For more information, see: <http://www.ccra-adrc.gc.ca/tax/charities/memorandum/edreq.html>

Susan M. Manwaring
Toronto 416.595.8583
smanwaring@millerthomson.ca

Ontario's Proposed New Privacy Law

Charities, hospitals and all other organizations that collect or use personal information only in Ontario will soon have to implement Canada's privacy principles.

Because of Canada's constitutional structure, developing comprehensive privacy protection requires both federal and provincial initiatives. As discussed in our Spring 2001 issue, the federal *Personal Information Protection and Electronic Documents Act ("PIDEDA")* has been in force for general inter-provincial and international commercial matters for over a year, and as of January 1, 2002 was extended to commercial uses of personal health information. On January 1, 2004 it will be extended to commercial activities within a province (including the selling or trading of fundraising lists) unless the province adopts similar legislation.

Ontario released the wording of its proposed *Privacy of Personal Information Act*, 2002 for consultation on February 4, 2002. Responses were due March 31, 2002, and it is expected that some form of law will be adopted in Ontario by the end of this year. We are aware of submissions being made by a number of organizations in the voluntary sector.

While the basic principles of the proposed Ontario law are the same as *PIPEDA*, the Ontario law will not be limited to commercial transactions, and will apply equally to charitable and non-profit transfers of personal information. Although it is a general privacy law, a large number of provisions specific to the voluntary sector have been written into the proposed law.

Under the proposed Ontario law, organizations wishing to collect, use, or disclose personal information must advise the individuals of the intended purposes and nature of such collection, use and disclosure, and obtain their consent to such activities. They also must implement appropriate security methods to protect the personal information that they hold, and must give individuals access to their personal information about them that is held by the organization.

The provisions in the proposed Ontario law regarding the nature of the consent required are greatly expanded from *PIPEDA*. Consent must be "informed", which is defined to mean that the individual must understand the nature and consequences of the consent, must be aware that the consent can be withdrawn at any time, and must have other reasonably expected information. Consent may be implied only if the purpose of the activity is reasonably obvious to the individual. Generally speaking, the proposed Ontario law does not encourage the use of implied

consent. The Canadian Marketing Association takes the position that the Bill requires opt-in consent for all marketing purposes. It is not surprising that it opposes the Bill.

In addition, personal information about an individual is to be collected directly from the individual unless the individual consents, or otherwise certain limited exceptions apply.

There is a specific provision regarding the use of personal information for fundraising. Further provisions are to be specified in proposed regulations, the wording of which is not yet available.

Finally, the Ontario law, like the European Union's Data Directive of 1995, contains a provision prohibiting disclosure of personal information outside Ontario unless similar provisions would apply, and out of province organizations are required to appoint representative agents in Ontario. This has the potential to be an onerous burden for charities from other provinces which fundraise in Ontario and we again suggest that such charities should consider making submissions on the issue.

Ontario is proposing to enforce its proposed law in a way that is substantially different from *PIPEDA*, and that may make it easier for individuals to launch complaints and obtain orders against an organization. Federally, the Privacy Commissioner has no power to make binding decisions, and unresolved disputes must be settled in Federal Court. But Ontario's Information and Privacy Commissioner will have the power to make orders regarding behaviour, but not to award damages. For an award of damages, individuals will have to prove actual damages in court. Ontario's provision may make it easier to enforce compliance in a cost effective manner.

Although Canada has had *PIPEDA* in force for over a year now, compliance with privacy policies in Canada is still well below compliance in the United States, where although there is no general privacy law, there is a fear of class action suits. Ontario's new law will increase the awareness of and compliance with privacy laws, and Canadian organizations, including charities and hospitals, should respond appropriately.

For the text of the proposed law see: < http://www.cbs.gov.on.ca/mcbs/english/56Y2UJ.htm >.

Paul Jones, Toronto
416.595.2639
pjones@millerthomson.ca

Bill 95, *Ethics and Transparency in Public Matters Act*, 2001

The Liberal Member for Sarnia-Lambton in the Legislative Assembly introduced this Private Member's Bill in late June, 2001. The Bill received second reading on October 11, 2001, was referred to the Legislature's Standing Committee on Public Accounts which held public hearings about the Bill on November 22 and 29. A number of organizations made submissions to the Committee, including the Ontario Hospital Association. The Committee scheduled clause-by-clause review of the Bill on February 20, 2002.

Essentially, the Bill is designed to require open meetings and more stringent conflict of interest rules for certain specified provincial and municipal councils, boards, commissions and other public bodies ("Designated Public Bodies", or "DPBs"). Designated Public Bodies include, at the outset, a number of specific government agencies and boards, as well as professional colleges, public library boards, hospital boards and medical advisory committees, etc. The Bill however also gives Cabinet the authority to prescribe additional DPBs by regulation, but if the Bill passes, it is unlikely that Cabinet would apply the *Act* beyond the broader public sector into the private sector. The Bill is modeled on Michigan's *Open Meetings Act*, which has been the source of litigation and frustration for many organizations in that state who fall within its ambit.

The Bill breaks down into two parts, one broadly for transparency matters and one broadly for Ethics.

Transparency in the Bill refers to a new requirement that meetings of boards of directors of DPBs and committees thereof would be open to the public, except in limited circumstances. The limited circumstances are not very clearly defined and it would be incumbent upon a DPB to "deliberate" whether such circumstances would apply.

The Bill would also require that DPBs make all minutes of their meetings publicly available and make rules respecting how public notice and minutes of meetings would be given.

The second Part of the Bill, pertaining to ethics, would require members of DPBs to disclose any personal interests that would raise a conflict for the member in accordance with the terms of the Bill. The intersection between the Bill's conflict of interest provisions and the declaration provisions governing directors of corporations under the *Corporations Act* (Ontario) is unclear, except that the Bill purports to trump all other legislation or regulation. Passage of the Bill would therefore require that boards of directors reconsider the conflict of interest provisions in their corporate bylaws.

A breach of the duties and responsibilities under the transparency part of the Bill may create personal liability for members of a DPB (up to a maximum fine of $1,000.00 for improper exclusion of an individual from a meeting) or trigger remedial intervention and forced compliance by the Attorney General. A failure to disclose a conflict of interest under the ethics part of the Bill may result in a maximum fine of $1,000.00.

There is considerable scope under the Bill for Cabinet to make regulations regarding a wide variety of matters provided for under the Bill.

The Bill is emblematic of an important public and legislative impulse for greater accountability and transparency in public institutions. However, given the possible cost implications for affected organizations, the Bill may not

receive government support to proceed to third reading in the Legislature. Nevertheless, as the Bill is clearly designed to encourage public accountability and transparency, it may receive the government's support if amendments are made to the Bill to make it more acceptable to government members.

In the interim, it should be noted that if the Bill passes into law, the Bill would require affected organizations to consider a broad range of amendments to their corporate bylaws, their operational guidelines and policies, their access to information and records policies, and their conflict of interest rules.

Alan Belaiche, Toronto
416.595.8511
abelaiche@millerthomson.ca

Congratulations, Charities Directorate

In our Spring, 2001 newsletter, I wrote an article commenting on the frustration that we were having on behalf of our clients, in dealing with the Charities Directorate of the CCRA and, in particular with the process for registering new charities.

I am very pleased to now write to suggest that we should take our hats off to those members of the Charities Directorate working on the Future Directions Initiative and in particular, to the new Director General, Maureen Kidd. We are all well aware of the financial constraints and limitations that the government offices have been dealing with and their large volume of work. That said, it appeared that the Charities Directorate had forgotten that in order to ensure the effective and efficient functioning of charities, they had to be responsive and helpful in dealing with members of the public. This has clearly changed. In particular it is our experience that the turn-around time for new applications for registration is much better. The Directorate appears to have instituted streamlined processes for those applications of charities which are clearly charitable and which can therefore be registered quickly.

We also note some recognition of the fact that it is absolutely inappropriate to complete an audit type review at the time of registration. Most applicants have not commenced operations and to subject them to review for certainty of activities, simply cannot work.

Obviously, we are very supportive of the CCRA auditing operating charities to ensure that their activities meet the objectives for which they were established. We would just like to see those audits take place after the charity has an opportunity to commence operations.

In any event, I think we should all note the good work and improvement in service. We should also continue to support and assist with the Future Directions Initiative.

Susan M. Manwaring, Toronto
416.595.8583
smanwaring@millerthomson.ca

New Clergy Residence Form

The CCRA has introduced a new form which must be completed by all religious employers in order for their staff to claim a clergy residence deduction for the 2001 taxation year. This new requirement will be of interest to all religious organizations.

The clergy residence deduction (or manse allowance) is a tax deduction equal to the value of housing for religious workers who are either members of the clergy, regular ministers of a religious denomination or members of a religious order (the status test) and who minister to a congregation or who are appointed by a religious order or denomination to do administrative service (the function test). The Courts have interpreted these requirements quite broadly. For a more detailed discussion of the tests for the deduction, see CCRA Interpretation Bulletin IT-141R (Consolidated) Clergy Residence Deduction (available at http://www.ccra-adrc.gc.ca/E/pub/tp/it141r-consolid-eq/it141r-consolid-e.html).

Prior to the new CCRA form, the clergy residence deduction was a taxpayer issue, requiring no direct employer involvement. However, the Income Tax Act was amended effective for the 2001 year to provide that the deduction is only available to an individual if the individual's employer certifies that the employee meets the requirements for the deduction.

Now that employers will have to certify entitlement to the deduction, they have a duty to issue accurate certificates. Issuing false certificates can result in a penalty applicable to both the employer and the individual signing the certificate. Religious employers should therefore be considering whether they require legal opinions with respect to the entitlement of some of their staff to the deduction. This is particularly so where the employer had suggested to the staff person at the time of hiring that the clergy residence deduction would be available.

The new CCRA form (available at http://www.ccra-adrc.gc.ca/E/pbg/tf/t1223eq/README.html) asks a number of questions about the employee. It is important that the questions (particularly those dealing with religious order status) be answered properly. For example, if the form indicates that members of the alleged order are permitted to earn outside income or are subject to the same restrictions as other employees, the CCRA will assume that the individual and the alleged order do not qualify.

The form indicates that it need not be filed with the individual's return, but should be kept for later review. However, it is important that the form be completed and in the hands of an individual prior to that individual claiming the deduction in a year.

Miller Thomson lawyers are nationally recognized experts on the clergy residence deduction. We have litigated dozens of cases over two decades of involvement with the issue and continue to deal with clergy residence issues daily.

Robert B. Hayhoe, Toronto
416.595.8174
rhayhoe@millerthomson.ca

When a Non-Profit Organization is Required to Register for GST

This article reviews the application of GST to non-profit organizations. For purposes of the GST, a non-profit organization does not include a registered charity. The application of GST to registered charities will be discussed in a future article.

An entity is a non-profit organization if it was organized and operated solely for non-profit purposes and it does not distribute or otherwise make available for the personal benefit of any member any of its income unless the member is an association which has as its primary purpose and function the promotion of amateur athletics in Canada.

A non-profit organization is required to register for GST if it is providing "taxable" goods and services in Canada in the course of a commercial activity; and its worldwide revenues from taxable sales is equal to or more than $50,000.00 in the current calendar quarter and over the preceding four consecutive calendar quarters.

A non-profit organization may voluntarily register for GST purposes even if it is not required to do so. If a non-profit organization is registered, it is entitled to claim input tax credits for GST it has incurred on expenses to provide taxable goods and services.

In most circumstances, a non-profit organization will be providing exempt supplies (goods and services that are exempt from GST). If a non-profit organization provides non-exempt supplies, it is liable for GST on inputs related to such supplies. A person who makes only exempt supplies is not required to register for the GST and accordingly is not entitled to claim input tax credits on GST it paid towards expenses. Exempt supplies include the following:

1. **Certain Fund Raising Activities by Volunteers** - Supplies made by non-profit organizations which provide sales of tangible personal property are exempt from GST if the non-profit organization does not carry on the business of selling such property, all the sales persons are volunteers and the consideration for each item sold does not exceed $5.00 in value.

2. **Gambling Activities** - Where the principal activity is the placing of bets or the placing of games of chance, no GST applies if the administrative functions and other functions performed in operating the game and taking the bets are carried out exclusively (90% or more) by volunteers and in the case of a bingo or casino the game is not conducted in premises that is used principally for the purposes of conducting gambling activities (principally means more than 50%).

3. **Nominal Consideration** - A supply made by a non-profit organization of tangible personal property is exempt from the GST if the consideration for the supply is equal to the usual charge by the non-profit organization for such a supply of tangible personal property and does not exceed its direct costs.

4. **Amateur Performances and Events** - For amateur performances and events the supply of tickets to spectators for a performance, athletic event or competitive event is exempt from GST if all or substantially all of the performers, athletes or competitors are not remunerated, directly or indirectly for their participation.

5. **Recreational Services** - The supply made by a non-profit organization of a membership in, or services supplied as part of a program that consists of classes or activities involving athletics, outdoor recreation, music, dance, arts, crafts and other hobbies or recreational pursuits if the program is primarily available to children 14 years of age or under or the recreational program is provided primarily for under-privileged or mentally or physically disabled individuals.

6. **Memberships** - The supply of a membership in a non-profit organization is exempt from the GST where there is no benefit to each member other than:

- An indirect benefit that is intended to be available to all members collectively;
- The right to receive services supplied by the organization in the nature of conciliating or settling disputes or complaints involving members;
- The right to vote at or participate in meetings;
- The right to receive or acquire property or services supplied to the member for consideration that is not part of the consideration for the membership and is equal to the fair market value of the property at the time the supply is made;
- The right to receive a discount on the value of the consideration for a supply to be made by the public sector body where the total value of all such discounts to which a member is entitled by reason of the membership is insignificant in relation to the consideration for the membership; or
- The right to receive periodic newsletters, reports or publications the value of which is insignificant in relation to the consideration for the membership or that provide information on the activities of the non-profit organization other than newsletters or reports that are of significant value and for which a fee is ordinarily charged to non-members.

Sandra Mah, Calgary
403.298.2466
smah@millerthomsom.ca

Charitable Giving with Life Insurance

The donation of a life insurance policy offers an opportunity to leave a significant legacy to a favourite charity for a relatively small annual payment.

The tax savings desired by the donor will often dictate the structure of the life insurance donation.There are two basic scenarios:

I. In one, where the donor wants an immediate tax break, he or she transfers ownership of an existing policy to the charity; the charity, in turn, becomes the beneficiary of the policy. If the donation is a permanent life insurance policy with accumulated cash, the charity would issue a tax receipt in the amount of the cash surrender value of the

policy at the date of transfer, which would offset tax arising on the transfer. Depending upon the type of policy and the arrangements made, the charity may be able to withdraw some or all of the cash surrender value. Further, the charity would issue a receipt for any premiums paid by the donor following the transfer. Note, however, that no receipt is issued for the death benefit that is paid to the charity on the death of the life insured because the charity, rather than the donor, is the owner of the policy.

In a variation of this first scenario, the donor purchases a new policy and donates it to the charity. Generally, it is preferable for the donor to be the original owner of the policy and transfer it to the charity once the policy is in force. This procedure ensures the donor's privacy during the underwriting process. Again, the donor is entitled to a tax credit (or deduction, if the donor is a corporation) for the amount of the premiums paid following the transfer of the policy to the charity. As above, a donation receipt is issued for the premiums paid following the transfer, but no receipt is issued to the donor for the death benefit.

In either case, the charity would want to ensure that sufficient premiums are paid throughout the lifetime of the life insured so that the policy does not lapse. To keep track of the payments, some charities prefer to have the donor send the annual premium payment to them. They, in turn, remit the payment to the insurance company. Other charities require the donor to remit the premiums directly to the insurer.

If the donor defaults, the charity could consider paying the premiums to keep the policy in force until the death of the life insured. Alternatively, the charity could collapse the policy and obtain any cash surrender value. Provided that the policy remains in force until the death of the life insured, the charity would receive the death benefit directly from the insurer.

The charity may require that a life insurance donation be designated as a "10-year gift," to ensure that the value or proceeds of the policy are not included in the calculation of the income of the charity and subject to the charity's annual disbursement quota. If this is the case, the donor should be asked to complete a direction that the charity is to hold the property for at least ten years.

II. In the second scenario, the donor expects a large tax bill on death, perhaps due to the deemed disposition of shares of a successful family business that arises on death. In this situation, it may be preferable for the donor to retain ownership of the life insurance policy throughout his or her lifetime and to donate the insurance proceeds that are paid on death to the charity. Where the large tax bill will arise on the death of a surviving spouse, joint last-to-die life insurance on the two spouses should be considered.

Prior to the February 2000 Federal Budget, this was a cumbersome and inefficient strategy, that could easily fail. In order to obtain the tax credit for the insurance proceeds, the *Income Tax Act* required the donor to designate his or her estate as beneficiary of the policy and to gift the proceeds to the charity in his or her will. Donors weren't always aware of this requirement, and if set up incorrectly, their estates lost access to a significant tax credit. Moreover, the requirement that the gift be made through a will attracted probate taxes and defeated the desire for privacy that some donors sought.

Lobbying by charitable organizations and other interested parties were successful. The legislation implementing the February 2000 Federal Budget, which received Royal Assent on June 14, 2001, addresses the difficulty of obtaining a donation tax credit for life insurance proceeds donated to a charity. Under the new rules, when a donor designates a charity as the beneficiary of the insurance proceeds directly in the policy itself, the donation tax credit in the amount of the proceeds is available to offset the deceased donor's taxes that arise on death. The new legislation applies retroactively to deaths that occurred after 1998. Similar provisions were implemented for the direct designation of charities as beneficiaries of RRSPs and RRIFs.

The new legislation means that the proceeds of the insurance policy are not included in the deceased donor's estate for probate purposes, or available to most creditors of the estate. The proceeds go directly to the charity; distribution is not held up by estate litigation. By not being in a will, which becomes a public document once probated, the donor can remain anonymous. Further, if the donor has a change of heart, it's simpler, quicker and cheaper to change a life insurance beneficiary designation than a will.

In light of the new legislation, charities may want to review their records for recent donations of life insurance proceeds and advise the executors of the donors' estates that the donors may be eligible for additional tax relief.

Rachel Blumenfeld
416.596-2105
rblumenf@millerthomson.ca

This is a modified version of an article which first appeared in the September 14, 2001 *Lawyers Weekly*.

Volunteers in a Unionized Environment?

As a not-for-profit organization the use of volunteers can be a vital part of your operation, particularly where shrinking budgets and funding compel management to rethink the efficiency in which a service is delivered. In other words, how can we deliver more for less?

The opportunity to use volunteers creatively and freely in a unionized environment will be governed by the terms of the collective agreement. Consequently, any initiative you take in deploying your volunteers may be seen as an invasion of bargaining unit work and lead to the labour relations difficulties that are now emerging across Canada.

Although you may currently be fortunate enough to share an amicable past history with the union, this could change the minute you seek to intro-

duce a new volunteer program. The union may choose to file a grievance and ultimately proceed to a full arbitration to preserve the integrity of the bargaining unit or it may be trying to widen and expand what is referred to as the "work of the bargaining unit" by taking away work now being done by volunteers.

In a recent case that was decided last year, the Canadian Blood Services (successor to the Red Cross) began to use volunteer drivers to transport donors. The employer was faced with a policy grievance from the union. Up until the negotiation of a recent collective agreement, the driving of people who required transportation to donate blood was assigned to volunteers. It was only after a new collective agreement was signed that the union began objecting to this long-standing practice.

The panel of arbitrators reviewed the case law on the issue and enumerated the following principles:

1. Generally employers will have the right and discretion to assign work within the workplace, so long as it is done in good faith.

2. Employees do not have a proprietary interest in a particular bundle of duties or responsibilities.

3. Therefore, a union will have the burden of establishing that an assignment is contrary to any provision in the collective agreement.

4. If such language exists, the arbitrator must determine if the disputed work falls within the definition of "bargaining unit work."

The Board went on to comment that where the collective agreement lacks an express provision for this issue, job classifications and job descriptions should be reviewed. The Board decided that the policy grievance should be dismissed.

This case strongly indicates that the assignment of volunteers to work that is clearly "work of the bargaining unit", may survive a union challenge in certain circumstances. The Board was careful to observe that volunteers had done the driving previously and that there was no loss of work to the employees.

In another recent case, the Board of Arbitration prefaced their decision by asking the following question: What is the proper role of volunteers in a unionized hospital, which is struggling to maintain vital health services to the public?

The hospital and the union had entered into an agreement about the use of volunteers. The parties agreed that volunteers would not be used in such a way as to cause a reduction in hours, or the elimination of any bargaining unit position. A dispute arose when the hospital started to use volunteers to remind patients about their upcoming ultrasound appointments. With the assistance of the volunteers the missed appointments were drastically reduced.

The union filed a grievance alleging there was a violation of the collective agreement and asking that the hospital stop using the volunteers. The hospital led evidence to show that it had no choice but to use the volunteers because the waiting list for an ultrasound was being unduly prolonged by missed appointments. The volunteers reduced the missed appointments from 21.4% to 4.1%. The hospital asserted that they had a duty to ensure that such a valuable resource was utilized as fully as possible.

The grievance was denied. The Board found that in the absence of clear limits in the collective agreement, there was a great benefit to the public in using the volunteers. The union attempted to rely on language in the collective agreement that stated volunteers could only be used to enhance and complement staff, but could not do any bargaining unit work. The Board of Arbitration did not interpret the language in that way.

The challenge facing many organizations presently will be to address the utilization of volunteers. To successfully manage such an exercise will require the cooperation of the union and the implementation of a long-term strategy. The goal should be to ensure that the use of volunteers becomes as unfettered as possible, and that unions do not view their use as a threat to the survival of their bargaining unit.

If you would like some ideas on how to start thinking in such terms, please feel free to contact us by email. Many of the changes can be made without any significant cost, but as with any worthwhile project, advance planning is essential.

Nicholas Pavlov, Health Industry Labour Advisor, Markham
905.415.6747
npavlov@millerthomson.ca

Robert Hickman, Markham
905.415.6755
rhickman@millerthomson.ca.

Large Gifts Resulting in Private Foundation Status

Registered charities which are either charitable organizations or public foundations are able to provide better donation tax treatment to their donors than could a registered charity which is a private foundation. For example, the capital gains tax inclusion rate for donations of publicly listed securities to a charitable organization or public foundation is only half of the normal rate which applies for donations to a private foundation.

The *Income Tax Act* (the "*Act*") defines both charitable organization and public foundation to require that not more than 50% of the capital which has been contributed to the organization or foundation has been contributed by one person or by members of a group of persons who do not deal with each other at arm's length. Charities which fail this 50% of capital contributed test are private foundations.

While the 50% of capital contributed restriction appears to have been added to the *Act* to catch the typical private family foundation, it can also catch other types of situations. For example, most newly incorporated and registered charities would be in danger of falling afoul of this rule in their first year of operations if they received any one gift which amounts to more than 50% of their capital. Even a more mature

charity which has the good fortune to obtain one very large gift could be in danger of being reclassified as a private foundation. One example which has been reported in the media was a donation of Red Hat Inc. stock received by the Hamilton Community Foundation from an individual donor. This donation, which was reported to have been worth approximately $40 million on the date of the gift, was more than the existing capital of the Hamilton Community Foundation.

While the *Act* does provide the Minister of National Revenue with discretionary authority to re-designate a registered charity which technically meets the definition of private foundation as either a public foundation or a charitable organization, this re-designation must be applied for. The need for this application introduces substantial delay and uncertainty to registration applications and attempts to finalize very large gifts.

The Department of Finance recently issued a comfort letter indicating that this result was not appropriate with respect to a charitable organization and that the Department of Finance intended to recommend that the *Act* be amended to provide that the 50% of capital test be replaced with a requirement that the large donor be at arm's length with the recipient charity after the donation and not control the charity or any activity of the charity. We were concerned that the Department of Finance had limited its comments to charitable organizations and did not appear to have acknowledged that the same difficulty applies with respect to public foundations. As a result, we wrote to the Department of Finance asking that the same change be made applicable to public foundations. The Department of Finance agreed that public foundations should not be treated differently from charitable organizations and indicated that our request will be included in a future technical bill.

We were also concerned that the requirement that the donor not control an activity of the charity could be interpreted narrowly to apply to entirely appropriate situations (like a community foundation fund) so we asked that the reference to a donor controlling an activity of the donee be clarified. The Department of Finance indicated that the narrow interpretation would be an unintended result. Hopefully the implementing technical bill will simply drop this requirement.

Robert B. Hayhoe, Toronto
416.595.8174
rhayhoe@millerthomson.ca

*This article originally appeared in the November, 2001 issue of Charitable Thoughts.

Around Miller Thomson

NEW LAWYERS

Miller Thomson is pleased to welcome the following new lawyers to our Charities and Not-for-Profit Group:

As part of our January, 2002 merger with the Waterloo Region firm of **Sims Clement Eastman LLP, Richard Meunier, Q.C., Stephen Cameron, William Greenwood, John Griggs, Thomas Jutzi** and **Daniella Tisi** have joined Miller Thomson. Sims Clement Eastman and its lawyers have a long history of serving charities and not-for-profit organizations as lawyers and as volunteers. All of the above lawyers have developed expertise in charity and not-for-profit law by their representation of local and national organizations.

They can be reached at 519.579.3660 or by email:

Richard Meunier, Q.C./
rmeunier@millerthomson.ca

Stephen Cameron
scameron@milerthomson.ca

William Greenwood
wgreenwood@millerthomson.ca

John Griggs
jgriggs@millerthomson.ca

Thomas Jutzi
tjutzi@millerthomson.ca

Danielle Tisi
dtisi@millerthomson.ca

Rachel Blumenfeld joined our Toronto office in September of 2001. She has a particular interest in planned giving, having most recently practised with a large life insurer where she devoted significant time to the design and management of planned giving vehicles and strategies.

Ms. Blumenfeld is on the programming committee of the Canadian Association of Gift Planners and is a member of the Charities, Tax and Estates sections of the Ontario Bar Association. She is also very involved in the voluntary sector as a volunteer and past board member of REENA, an organization for the developmentally disabled.

She can be reached at 416.596.2105 or rblumenfeld@millerthomson.ca.

Sandra Enticknap joined our Vancouver office in March 2002. She has practiced in Vancouver since 1975 and specializes in Wills, Estates and Trusts, Estate Disputes and Charitable Gift Planning. She advises major charities, trust companies, and government as well as individuals. She is a frequent writer and speaker on these matters and is a contributing author of the B.C. Probate Practice Manual. She also has mediation training and uses mediation in her practice to resolve disputes.

She can be reached at 604.643.1292 or senticknap@millerthomson.ca.

Jacqueline King joined our Toronto office in February, 2002. As part of her litigation practice, she represents charitable and religious organizations on various issues across Canada. She frequently assists them with policy development and conducts training sessions on various legal issues, including litigation risk reduction strategies. Jacqueline is frequently asked to speak to the media on behalf of her clients and has had numerous speaking engagements at the request of clients across Canada.

She can be reached at 416.595.2966 or jking@millerthomson.ca.

PROFESSIONAL ACTIVITIES

Robert Hayhoe spoke on "How to Survive a CCRA Charities Audit" at the

September 2001 Annual Conference of the Canadian Council of Christian Charities.

Kathryn Frelick spoke at the Annual Conference of the Hospice Association of Ontario in September, 2001 on the "Legal Implications of Volunteers in the Home".

Susan Manwaring's article in the last Miller Thomson Charities and Not-For-Profit newsletter entitled "Recent Trends in Charitable Giving" was republished by invitation in the *International Journal of Not-for-Profit Law* in September of 2001 as "Recent Trends in Charitable Giving in Canada"

Robert Hayhoe and **Susan Manwaring** made a joint presentation in October 2001 on "Cross-Border Gifts" at a seminar of the Canadian Association of Gift Planners Conference hosted by **Rachel Blumenfeld**.

Sandra Enticknap lectured to the students in the Planned Giving Course at the British Columbia Institute of Technology on the topic of "Working with Financial and Estate Planning Professionals" in November, 2001.

Sandra Enticknap co-authored (with Keith Hazell of the United Way) an article entitled "Charitable Remainder Trusts" which was published in the December 2001 issue of *The Scrivener*, a magazine published by the Society of Notaries Public in British Columbia.

Hugh Kelly spoke at the Ontario Catholic School Trustees Association Seminar for Board Chairs and Vice-Chairs and Directors of Education in January, 2002 on "Governance in the Non Share Capital Environment".

Susan Manwaring spoke on "Recent Developments in the Law Effecting Charitable Donations" at an Insight Conference entitled Innovative Strategies for High Net Worth Clients.

Miller Thomson was a plenary sponsor of the 2002 Annual Conference of the Canadian Association of Gift Planners held in Winnipeg. **Susan Manwaring** spoke on "Private Foundations, **Rachel Blumenfeld** spoke on "Wills and Estates" and **Sandra Enticknap** spoke on "Threats to Gifts - Creative Solutions and Strategies for the Gift Planner".

Robert Hayhoe is the new Canada Regional Coordinating Editor for the *International Journal of Not-for-Profit Law*.

Robert Hayhoe is now a member of the editorial board of the Journal of the Church Law Association of Canada.

Susan Manwaring has joined the Government Relations Committee of the Canadian Association of Gift Planners.

Robert Hayhoe was elected as the 2001-2002 Vice-Chair, Tax of the Ontario Bar Association Charity and Not-For-Profit Law Section. **Jasmine Sweatman** continues to serve as the Continuing Legal Education Coordinator for the Section.

Miller Thomson LLP Charities and Not-For-Profit Group

Vancouver

Sandra L. Enticknap	604.643.1292
Martin N. Gifford	604.643.1264
Alan A. Hobkirk	604.643.1218
Donald H. Risk	604.643.1207

Calgary

William J. Fowlis	403.298.2413
Sandra M. Mah	403.298.2466
Greg P. Shannon	403.298.2482

Edmonton

Bruce N. Geiger	780.429.9774

Toronto

Jennifer E. Babe	416.595.8555
Alan Belaiche	416.595.8511
Rachel L. Blumenfeld	416.596.2105
Mark R. Frederick	416.595.8175
Kathryn Frelick	416.595.2979
Robert J. Fuller	416.595.8514
Robert B. Hayhoe	416.595.8174
Hugh M. Kelly	416.595.8176
Jacquline L. King	416.595.2966
Susan M. Manwaring	416.595.8583
Rosanne T. Rocchi	416.595.8532
M. Jasmine Sweatman	416.595.8623
Michael J. Wren	416.595.8184

Markham

Peter D. Lauwers	905.415.6470
Brenda Taylor (Corporate Services)	905.415.6739

Waterloo Region

Richard Meunier, Q.C.	519.579.3660 x350
Stephen Cameron	519.579.3660 x340
William R. Greenwood	519.579.3660 x347
John Griggs	519.579.3660 x357
Thomas Jutzi	519.579.3660
Danielle Tisi	519.579-3060 x372

Note:

Miller Thomson's Charities and Not-For-Profit Newsletter is provided as an information service to our clients and is a summary of current legal issues of concern to business persons and their advisors. These articles are not meant as legal opinions and readers are cautioned not to act on information provided in this newsletter without seeking specific legal advice with respect to their unique circumstances. Your comments and suggestions are most welcome and should be directed to:

The Editor, Miller Thomson LLP Charities and Not-For-Profit Newsletter at the Toronto office at *charitieseditor@millerthomson.ca.*