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Tools for Housing

A one-day annual conference for volunteers and staff of housing providers.

Saturday October 27, 2001

Toronto Congress Centre
650 Dixon Road,
Etobicoke

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the newsletter of Prentice Yates & Clark

May McIntyre, our loyal and long serving office manager, has decided to retire after 24 years of service. May started with us in October, 1977 and has been a willing and dedicated member of our team. Her sense of humour and Scottish wit have probably served her well over the years especially having to cope with "5 bosses". She will be missed by all of us here and by the many clients who have come to know her over the years. We wish her nothing but the best in her retirement.

Managing the Property of Charities:

Directors/Officers' Liability Insurance and Investing Charitable Property

Those involved with charities in Ontario are familiar with the limitations historically placed upon them. These included restricting the ability of charities to compensate directors who sit on their boards, to indemnify directors and officers for personal liability that arises as a result of the performance of their duties, and to combine into a single account or investment portfolio multiple restricted funds that charities have. To do any of these things in the past, it was necessary for a charity to get the permission of a judge of the Superior Court of Justice.

by Edward M. Hyland*

Charities Accounting Act Regulations: Recent Changes

AN amendment to the Charities Accounting Act (Ontario) in 1996 gave the Attorney General the authority to make regulations to permit charities in Ontario to engage in certain activities that otherwise would have required the permission of the Superior Court of Justice.

On February 3, 2001, the Attorney General published Regulation 4/01 in the Ontario

Gazette. Regulation 4/01 allows charitable organizations in Ontario to indemnify their directors and officers for actions that they carry out in the performance of their duties. In other words, if a director is sued personally because of something the director did (or failed to do) in the course of carrying out her duties as a director, then the charity can now compensate the director for the cost of



(continued on reverse)

defending the lawsuit or for a judgment that a court makes against the director. As part of the Regulation, charities are also allowed to purchase liability insurance for their directors and officers. In addition, the Regulation also permits charities to combine restricted or special purpose charitable funds into a single account or investment portfolio. However, there are rules about how charities can do these things.

Directors' and Officers' Indemnification and Liability Insurance

Under the Regulation, a charitable organization may indemnify its corporate directors and officers for personal liability that results from them carrying out their duties. However, a charity can not indemnify the directors or officers if their liability arises out of their failure to act honestly and in good faith in the performance of their duties. Put positively, if a director's actions or omissions give rise to some form of personal liability against him, the charity can indemnify him only if the actions or omissions were the result of decisions related to his duties which he made honestly and in good faith.

As well as indemnifying its directors and officers, a charity can also purchase liability insurance to cover personal liability that results from the acts and omissions of its directors and officers. Any policy of indemnification of directors and officers that a charity adopts or liability insurance that it maintains is not allowed, however, to prevent any person from suing the charity's directors or officers. The right to sue a director or officer personally is maintained; the Regulation simply states that the charity can now save its directors and officer harmless, or purchase insurance to cover the risk of personal liability.

The Regulation further states that the charity's board of directors must consider the following factors when deciding whether to adopt an indemnification policy or to purchase liability insurance:

- the degree of risk of being sued that the directors or officers are exposed to;
- whether the risk of being sued could not be eliminated or significantly reduced by means other than indemnification or the purchase of liability insurance;
- whether the cost or amount of the liability insurance is reasonable in relation to the amount of potential liability that a director faces and the risk of him being found liable (for example, the amount of potential liability may be high, but the risk of being sued or of being found liable very low);
- whether the cost of the insurance is reasonable in relation to the revenue available to the charity; and
- whether it advances the administration of the charity to purchase the insurance or to give the indemnity.

In addition to taking these factors into account, the board of directors of the charity must also ensure that the payment of any indemnity or the purchase of insurance would not render the charity insolvent. As well, the cost of the insurance or the payment of the indemnity may be paid only from the charitable property to which the liability relates and not from any other charitable property. Thus, for example, if a charity has a special purpose fund that is unlikely to attract liability, then income from that fund should not be used to purchase liability insurance or to pay an indemnity.

What does all of this mean for charities that already have directors' and officers' liability insurance, or already have a policy of indemnification, and the insurance or policy pre-dates February 3, 2001? The board of directors would be wise to review the insurance that has been purchased and the indemnification that has been given to ensure that both comply with the terms and conditions set out in the Regulation, in particular taking into account the factors set out above. The board should make a record of its review, either in the form of minutes or in the form of a resolution; again, this is a requirement of the Regulation. If the charity is a corporation incorporated under the Corporations Act (Ontario), then the board should also ensure that the decision to indemnify the directors and officers has been approved by the members.

Combining Charitable Property

It's not unusual for a charity to have a number of restricted funds, each of which must be invested and accounted for separately. The downside of investing these funds separately is a lower rate of return for the overall investment portfolio of the charity. The Regulation now allows a charity to take these separate funds and hold them in a single account or investment portfolio. However, a charity may do so only if it advances the management of each of the restricted funds. As well, the charity must allocate all gains, losses, income and expenses proportionately among all of the funds, in a fair and reasonable manner.

The record-keeping required if a charity decides to combine the funds might give the board of directors pause before doing so. The charity will have to maintain detailed records with respect to each individual fund, including:

- the value of the individual fund immediately before it becomes part of the combined fund, and the date on which it becomes part of the combined fund;
- the value of any part of the individual fund that does not become part of the combined fund;
- the source and value of additional property that is contributed to an individual fund and the date on which the additional property is contributed;
- the value of the additional property that is contributed to the individual fund immediately before it (the additional property) becomes part of the combined fund, and the date on which it becomes part of the combined fund;
- the amount of revenue received by and the expenses paid from the combined fund that is allocated to the individual fund, and the date of each such allocation; and
- the value of all distributions from the combined fund made for the purposes of the individual fund, and the date and purposes of each such distribution.

In addition to the records for the individual funds, the charity will also be required to maintain records for the combined fund with the following information:

- the value of each individual fund that is part of the combined fund, and the date on which each individual fund becomes part of the combined fund;

- the value of each additional property that becomes part of the combined fund, the date on which it (the additional property) becomes part of the combined fund, and the details of the individual fund to which the additional property relates;
- the amount of revenue received by and the expenses paid from the combined fund that is allocated to each individual fund that makes up the combined fund, and the date of each such allocation; and
- the value of all distributions from the combined fund made for the purposes of an individual fund, and the date and purpose of each such distribution.

Given the detailed records that a charity must keep in respect of both the individual funds and the combined fund, the charity's directors might ask themselves whether the management and administration of the funds are indeed advanced by the combination. The cost and bother of the record-keeping might outweigh any increase in return on investment as a result of the combination.

Conclusion

There's no question that Regulation 4/01 provides a welcome relief to the previous restrictions that prevented charities from indemnifying their directors and officers and purchasing liability insurance. These restrictions were a real obstacle to attracting and obtaining high quality board members. However, to ensure that the indemnities given and the insurance purchased are not subsequently determined to be of no effect, it is important that a charity's board of directors fulfills the requirements set out above.

One thing that Regulation 4/01 did not address is the common law prohibition against a charity compensating a director for services that the director might provide to the charity. Thus, the common law rule still applies to charities that operate in Ontario: a director has a fiduciary duty not to be in a conflict situation by accepting, directly or indirectly, any form of compensation as a result of providing services or goods to the charity of which she is a director. The effect of Regulation 4/01 not addressing this issue is that charities may continue to find it difficult to attract people to their boards when those people are also providing services or goods to the charity.

Regulation 4/01 is an important step in adapting the law of charity in Ontario to the exigencies that charities face in attracting qualified persons to provide good governance and to manage the financial affairs of charities. However, the legal reform necessary to provide charities with the flexibility that they need to operate in contemporary society remains unfinished. Charities and their advisors await the next step.

"PYC commissioned this article as a service to its clients. Edward Hyland is a lawyer with Iler Campbell, 890 Yonge Street, Toronto Tel: (416) 598-0103; thyland@ilercampbell.com. He provides advice and assistance to organizations, focusing on human rights and charity issues."

visit our web site

www.pyc.net

We would like to welcome the following recent additions to our professional staff.

**Wendy Leung
Delna Anary
Jyoti Saggar**

You may have met them already or you will in the near future as they become an integrated part of our audit team.

WELCOME ALL!

Tools for Housing

Saturday, October 27, 2001

Toronto Congress Centre
650 Dixon Road, Etobicoke

For a number of years, PYC has offered a fall conference for non-profit and co-operative housing providers. In order to offer you a wider range of workshops this annual event is now being sponsored by both Prentice Yates & Clark and Iler Campbell.

NewViews is planning to launch its Windows version NV2 this fall. If it is available in time a workshop on NV2 will be offered both in the morning or the afternoon.

The workshops under development are:
NewViews for Windows (repeated in the morning and afternoon)

**Internal Controls
Accountability**

Download in Motion

Appreciative Inquiry – for organizational change

Manage Your Maintenance with HM Worx

Reading Financial Statements

Human Rights and Your Organization

Options for Management

Mould and Mildew

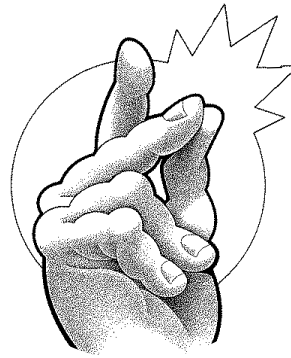
Running Your Computer System

Each registrant will attend one workshop in the morning and one in the afternoon. The registration fee of \$75 (until October 9) includes a continental breakfast, two refreshment breaks, luncheon, closing reception and workshop handouts for the two sessions you attend. Parking is free.

Look for a registration package in the mail shortly. Detailed information will also be available at www.pyc.net or contact the Organizer Kit Chapman at (416) 363-6509 or chapman.assoc@sympatico.ca

Need Contact Information Fast?

With the expansion of the Internet, there are literally thousands of online databases that businesses can turn to for quick access to key information, usually at no cost. Rather than let your fingers do the walking, click your mouse a few times to explore the following sites when you need to find phone numbers, people, e-mail addresses, and information about businesses. Be sure to bookmark the sites that your business finds most useful.



Canada 411

<http://canada411.sympatico.ca>
The Canada 411 Web site has over 10 million listings for Canadian businesses and personal residential lines. It also features a toll-free number look-up. Searches provide a list of all listings for a given name along with the person's address. You can also limit your search to a province or city.

Canada YellowPages.com

<http://www.canadayellowpages.com>
Canada YellowPages.com is a Web site that contains a searchable database of Canadian and U.S. business listings, as well as classified ads and news.

Area Code Look-up

<http://www.555@1212.com/geo.jsp>
This site lets you look up area codes for any city in North America as well as for countries around the world.

Infospace

<http://infospace.com/info>
This Web address takes you to the area of the Infospace Web site that provides databases for looking up Canadian personal phone listings, business listings, reverse look-up, yellow pages, and e-mail addresses.

Telephone Directories on the Web

<http://www.teldir.com/eng/>
Telephone Directories on the Web is the Internet's original and most complete index of online phone books, with over 400 links to yellow pages, white pages, business directories, e-mail addresses and fax listings from over 170 countries.

Yahoo People Search

<http://people.yahoo.com>
This site offers a comprehensive e-mail and people finder.

WhoWhere

<http://www.whowhere.lycos.com/>
WhoWhere allows you to enter a person's first and last name to search for an e-mail address. This engine not only displays results for e-mail addresses, but also for Internet service providers, personal phone numbers, addresses and home pages.

PeopleSearch

<http://peoplesearch.net/>
This Web site advertises itself as the "ultimate multi-engine people search". Take your pick from the Search Deluxe, PeopleSearch Classic, PeopleSearch International, or PeopleSearch Reverse Lookup for e-mail, phone numbers, and addresses. Enter a first and last name, and extra information, if you have it. PeopleSearch will then zip through people finders, including MIT AOL, NetFind, DatabaseAmerica, IAF, Bigfoot, IAF, WhoWhere, MIT, White Pages, Yahoo, Canada411, and Switchboard. Your screen will fill up with windows in layers. All you have to do is click the pages until you find the name you're looking for.

Global Company Research

<http://www.digitallook.com>
Global Company Research is a directory and financial database on a wide selection of United Kingdom, U.S., French, Spanish, and Italian companies.

Wall Street Research Net

<http://www.wsrn.com/index.html>
The Wall Street Research Net (WSRN) specializes in providing electronic distribution of information of use to investors. The site has thousands of unique resources and over 500,000 links to help professional and private investors research actively traded

companies and locate important news. The largest section at this site is Company Research, which has entries for over 29,000 companies, mutual funds and indexes. There are more than 500,000 links to such items as SEC (Security Exchange Commission © U.S.) documents,

company home pages, annual reports, press releases and other investor information. Companies can be accessed by ticker symbol, or looked up in the alphabetical index or by full or partial name. The site also provides links to the home pages for these companies.

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We hope that you find news@pyc.net a useful source of information. If you should ever have any specific questions or concerns regarding your own business or personal finances, please call us. We will gladly help in any way that we can. If you would like to

contact us by e-mail, we can be reached at news@pyc.net. Some of the articles appearing in this issue of news@pyc.net were prepared by the Canadian Institute of Chartered Accountants for the clients of its members.