

## And Now Hear This

For the longest time it seemed that the nonprofit world was the neglected sibling. Now things seem to have changed. As has been previously noted in this column, the last few years have seen more legal and policy activity about the voluntary sector than in any time in the last 30 years. Much of that work is now coming to a reporting stage. This month's column updates on several of these initiatives, the joint regulatory table, the work of Industry Canada in modernizing the *Canada Corporations Act*, and one aspect of the Future Directions Initiative of the Charities Directorate of Canada Customs and Revenue Agency. All of these initiatives are important to the future of the voluntary sector.

### Joint Regulatory Table

The Joint Regulatory Table is an advisory body created under the Voluntary Sector Initiative. It released its interim report, *Improving the Regulatory Environment for the Charitable Sector* on August 7th. The report examines how charities are regulated federally and looks at options for change. Consultations on the report will be held between September 3 and October 31. Based on these consultations, the Table will make its final recommendations to Ministers in March 2003. It is important that non-profit and charities make their views known.

The work of the Table has focussed on several important areas.

The first area is accessibility and transparency of the regulatory regime. A long-standing concern has been that there is not enough information available about registered charities and about how the CCRA makes decisions - especially decisions on registration and de-registration. The question is to find a balance between allowing individual organizations to deal confidentially with the regulator and providing the public with more information on charities and regulatory decision-making.

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The second concern is the possibility of introducing intermediate sanctions for charities that are not complying with the rules for

continued registered status. Right now, under the *Income Tax Act*, there is only one result for not following the requirements - de-registration - a penalty that is considered by many to be too harsh except for the most severe breaches of the law. The Table examined various alternative sanctions to allow for an appropriate regulatory response when infractions of the law occur, together with a system of recourse for

organizations that disagree with decisions made by the regulator. Now appeals of CCRA decisions to deny or revoke charitable registration must be made to the Federal Court of Appeal. The Table is considering how the appeal process can be

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made easier without making it more cumbersome and costly for charities. At the same time, it is examining how to bring more cases before the courts, so that the decisions can clarify charity law in complex or novel cases.

Lastly, the Table is also examining the issue of institutional reform. The last work on this topic, the 1999 report *Working Together*, set out three models to consider. The Table has more fully developed the range

of regulatory models outlined in the earlier work: an enhanced Charities Directorate that would continue to operate within CCRA, a complementary agency that would work alongside CCRA, and an independent commission.

In examining these models, the Table is striving to

- ensure public confidence in voluntary organizations,
- maintain the integrity of the tax system, and
- ensure a supportive and enabling environment for voluntary organizations.

In its deliberations, the Joint Regulatory Table has addressed each of these issues and their details are contained in the August 7th Interim Report, including interim recommendations are contained in this report. This is an interim report. The views presented are not necessarily those of all members of the Table. Consultations on the report will be conducted between September and November 2002. Based on those consultations, the Joint Regulatory Table will make its final recommendations to the government no later than March 2003.

To learn how you can provide comments and/or participate in the planned consultations, go to [www.vsi-isbc](http://www.vsi-isbc).

## **Canada Corporations Act**

At the same time that the Joint Table has been doing its work, Industry Canada has been examining how best to modernise the *Canada Corporations Act*, the federal corporate statutes under which many organizations are registered. Cross-country consultations on the discussion papers were held between May 9, 2002 and June 19, 2002.

As part of the Voluntary Sector Initiative, an expert panel has been meeting on the reform of the CCA, on issues related to liability in voluntary organizations, and has contributed to the new proposed *Not-for-Profit Corporation Act*. While many voluntary organizations are either provincial corporations or aren't incorporated at all, this law may have implications for them in the future. One dimension of the legislation as it relates to not-for-profits concerns liability of organizations and their boards of directors. This was identified as a significant issue by many organizations

during consultations, in particular in research and focus groups on small organizations.

Industry Canada has now released a series of background papers on issues related to director's liabilities. These papers, entitled: "A Study of the Liabilities Facing Directors and Officers of Non-profit Corporations in Canada"; "Virginia's Liability Caps for Nonprofit Directors and Officers"; and "Vicarious Liability in the Non-profit Sector", can also be found on the Industry Canada website, <http://strategis.ic.gc.ca/SSG/cl00610e.html>, or in the VSI reading room, [http://www.vsi-isbc.ca/eng/working\\_groups/nonprofit\\_law/reading\\_room.cfm](http://www.vsi-isbc.ca/eng/working_groups/nonprofit_law/reading_room.cfm).

While both charity law and the *Income Tax Act* allow charitable organizations to carry out related business activity, the rules surrounding what is related and what is not related lack clarity. These proposed guidelines seek to provide clarification. ●

While the consultation phase of the project has ended, additional submissions are welcome, either by email or regular mail.

The email address is [nfp\\_comments\\_commentaires@ic.gc.ca](mailto:nfp_comments_commentaires@ic.gc.ca). The postal address is Gilles Gauthier, Director, Corporate and Insolvency Law Policy Directorate, 235 Queen Street, 5th Floor West, Room 561-F, Ottawa, Ontario K1A 0H5. Other contact information can be found at the Industry Canada website or by calling 613-952-1259.

## Business Activities and Charities

While the Joint Regulatory Table and Industry Canada have been doing their work, CCRA has issued draft guidelines on the type and degree of business activities charities can engage in. These guidelines were developed through consultations with the Joint Regulatory Table. While both charity law and the Income Tax Act allow charitable organizations to carry out related business activity, the rules surrounding what is related and what is not related lack clarity. These proposed guidelines seek to provide clarification. Comments are encouraged before October 2002. This document, including an introductory letter from the government and voluntary sector co-chairs of the Joint Regulatory Table, can be found on-line at [http://www.ccra-adrc.gc.ca/tax/charities/consultation\\_policy-e.html](http://www.ccra-adrc.gc.ca/tax/charities/consultation_policy-e.html). If you are unable to access the Internet, you can call (613) 954-0043, or write to Charities Directorate, CCRA, Tower A, 320 Queen Street, Ottawa ON K1A 0L5.

The various changes these three initiatives herald will affect the look and shape of the sector for decades to come. It is important that charities and non-profits make their views of what is being proposed known as quickly as possible.

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