

WILLS, ESTATES, CHARITIES & TRUSTS

Directorate announces reforms to charitable regs

By Terrance S. Carter and Nancy E. Claridge

Initiatives announced in the 2004 Federal Budget ("Budget") represent the most significant reform of the charities regulatory environment in more than 20 years. Responding to these initiatives, the Charities Directorate of Canada Revenue Agency ("CRA") released Registered Charities Newsletter 19, outlining a number of changes intended to benefit the charitable sector by continuing to build public trust and confidence in charities and the CRA as a regulator.

First, CRA appointed a new resource person to deal with complaints about the level and quality of service and service standards, information requests from charities requiring help for voluntary compliance and complaints of a general nature. In place for a one-year trial period, the Charities Representative will not, however, be able to reverse application decisions or other technical determinations.

Next, then Minister of National Revenue, Stan Keyes, announced the creation of the Charities Advisory Committee. The twelve-member committee will provide a vehicle to identify and discuss emerging issues and trends regarding regulatory oversight of the charitable sector, review compliance patterns and recommend enhancements, discuss administrative policy development, and advise on developments and trends in the sector that may impact CRA policies and programs.

Finally, the CRA has committed to five key areas of reform.

1. To improve services, CRA will increase the type and amount of information available publicly, making it easier for charities to submit required information, and enhancing the communication methods for charities and the public to access this information. Examples of the information that will be available include: names of charities sanctioned under the new system; reasons for charity registration and revocation decisions; research used for decision-making; and information about special permissions or exemptions granted to individual charities. Electronic services will be expanded to enable e-filing of annual returns, applications for registered status, and real-time interaction with CRA charity staff.

2. To increase public awareness and sector outreach, CRA will launch a campaign to increase public awareness about CRA's role in regulating charities, giving

greater confidence to donors that there is formal monitoring of charities, and encouraging Canadians to give to charitable causes in which they believe. CRA will also expand its communication and educational activities to assist charities in understanding and following the rules and obligations associated with being a registered charity, as well as developing a Strategic Funding Program for education on charities regulation in the sector, by the sector. The

newly created Charities Advisory Committee will provide charities with a stronger voice in shaping the way in which charities are regulated.

3. CRA will improve monitoring of charities and introduce intermediate sanctions for infractions, as the harshness of the only penalty currently available – that of revoking charitable status – is recognized by CRA as inappropriate in many cases. Intermediate sanctions will provide a better

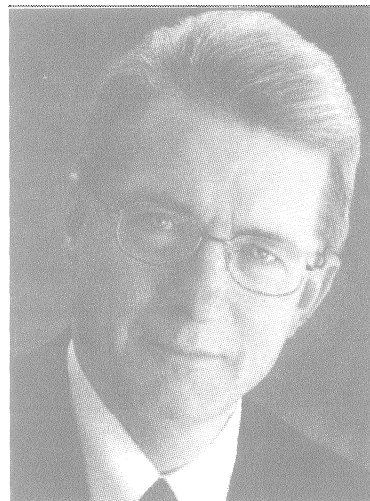
alternative for dealing with minor infractions, and CRA will work with the charity, entering into a compliance agreement to rectify the problem. Revoking a charity's status will remain as the ultimate sanction for severe breaches of the *Income Tax Act*, including continued, repeated, or cumulative infractions.

4. An independent unit within the Appeal Branch will be established to provide internal reconsideration of applications for charitable status that have been denied,

revocations or annulments of charitable registration and sanctions CRA proposes to impose. As there is currently no formal process for the internal review of CRA's decisions pertaining to charities, this will provide an initial means of impartial, fast, efficient, and inexpensive review.

5. CRA plans to initiate and build working relationships with provincial and territorial governments that seek collaboration on

see CRA p.15



Terrance S. Carter

Tax changes for charities

CRA

—continued from page 13—

the regulation of charities, over the next five years. Increased cooperation among jurisdictions will provide opportunities for a more rigorous and client-centred response to concerns about charity regulation, cut down on duplication of effort, reduce confusion, and better address deceptive fundraising practices.

The Budget also proposed several changes to the disbursement quota, including a reduction for assets of foundations not used in active charitable activities from 4.5% to 3.5% per year in order to be more representative of long-term real rates of return on the typical investment portfolio held by a foundation.

The 3.5% disbursement quota will be extended to include charitable organizations, so that all registered charities will be subject to the same obligations. Amendments will be made to enable charities to access capital gains realized on endowments (formerly 10 year gifts) to meet their disbursement requirements.

Gifts made by way of direct designation will be treated as endowments for the purpose of the disbursement quota rules, and endowments received and spent in the same year will be subject to the 80 percent disbursement requirement. These measures will apply to tax years that begin after March 22, except where otherwise indicated in the Budget.

Terrance S. Carter practices with Carter & Associates in Orangeville, Ont., a firm that focuses on charities and not-for-profit organizations. He is a member of the Charities Advisory Committee of the Canada Revenue Agency.

Nancy E. Claridge, a student at Osgoode Hall Law School, worked as a summer student and will return to article at Carter & Associates.