

COMMENT: Minister's decision to suspend CAC needs to be reconsidered



By Terrance S. Carter

The Minister of National Revenue has suspended the activities of the Charities Advisory Committee (the "CAC"), along with 12 other advisory committees, pending a review of each body's role and mandate. In a letter to members of the Committee, Minister Carol Skelton indicated that the review is expected to be finished by the end of the summer.

This unexpected suspension is an unfortunate decision that should be reconsidered. The CAC has provided valuable advice, assistance, and feedback to the Charities Directorate of the Canada Revenue Agency ("Charities Directorate") on matters related to the regulation of charities since it was established in

March 2004. This view is shared by Imagine Canada, a leading national intermediary organization working on behalf of the charitable sector. In a recent letter to the Minister, the organization expressed its strong support for the continuation of the CAC, saying the Committee is "crucial to the effective regulation of registered charities."

The CAC was created as a result of a recommendation made by a joint group of voluntary sector and federal government officials (the "Joint Regulatory Table") after a three-year review of the regulation of charities. In its March 2003 report, the Joint Regulatory Table recommended that a "charities advisory group with membership from the voluntary sector and government departments" be established to "advise the government on improving the regulator's policy framework." The report went on to suggest that the advisory group would "play a key role in encouraging the free exchange of ideas and promoting open and constructive contact between the regulator and the regulated. Its guidance would help senior regulatory officials become sensitive to developments in the sector and make sure that all key internal and external groups are

involved in policy development."

The Joint Regulatory Table's recommendation was adopted by the federal government in its 2004 Budget, where it promised a "more transparent relationship with the charitable sector." The CAC's mandate, as stated in the budget, was to provide registered charities with a stronger voice in shaping the administration of tax rules, and to advise the Minister of National Revenue on those administrative issues.

The creation of the CAC has been described as the "first milestone" of the Federal Government's commitment of \$24 million for the improvement of the regulation of charities. Then Minister of National Revenue, Stan Keyes, affirmed in March 2004 that the CAC "will provide us with an opportunity to engage key members of the sector, as we implement better regulations for charities [and] will be the sounding board for implementing these significant changes to charities regulation. With the funding committed in the budget, we will be putting better information out into the public domain, giving Canadians access to better information so they can make more informed decisions about their donations."

Since that time, the CAC has been actively engaged in fulfilling its mandate. Its activities have included advising the Charities Directorate on administrative policy agenda, identifying and discussing emerging issues and trends in the charitable sector, communicating sector concerns to the Charities Directorate, dialoguing on compliance concerns, and providing a forum for the exchange of information that impacts on the Charities Directorate programs and policies. Specifically, the CAC has discussed and made recommendations to the CRA in the following areas:

- reorganization of the Charities Directorate;
- regulatory reform;
- CRA's audit process;
- draft CRA publications and policies;
- legislative proposals (including Bill C-33, discussed with the Department of Finance);
- public education and information for charities; and
- receipting process and practices.

The CAC has also regularly received presentations from various divisions of the Charities

Directorate on emerging issues affecting the charitable sector. The CAC has consulted with the Charities Directorate officials concerning those issues, expressing its concerns and making recommendations.

The work of the Charities Directorate has been greatly aided by its ability to regularly consult with a committee that provides both professional and stakeholder input. The CAC has helped facilitate more effective regulatory compliance in the charitable sector through its promotion of public education, transparent reporting and decision making, and flexible and fair sanctions. Given the constructive role the CAC has played in improving the relationship between the Charities Directorate and the charitable sector, it is hoped that the Minister of National Revenue will soon reconsider her decision to suspend the activities of the CAC and allow the Committee to continue its important work.

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Consider courtroom experience when choosing expert witness

EXPERT

—continued from p. 8—

Another often-overlooked quality is established credibility. For example, an expert who always provides testimony for insurance companies could be accused of bias. A balanced client list helps establish credibility, as does a record of delivering speeches, teaching, or writing articles of a professional nature.

Preparing an expert witness

1. Before your expert witness sets foot in court, review their curriculum vitae, not necessarily for their experience, but rather their areas of strength in relation to your case. It is important to highlight these strengths to the court.

When your expert takes the stand, don't forget to review these strengths along with their qualifications, experience and credentials to establish their status as an expert. The curriculum vitae is an important, admissible document.

2. Information is ammunition and you want to provide your expert with as much ammunition as possible. Prior to court, review with them the testimony of opposing experts and other witnesses so they can advise you on the strengths and weaknesses of the case to date, information that may need to be addressed in chief.

3. Allow your witness to help

you identify the main thrust of opposing counsel's argument, so you can craft a stronger rebuttal and prepare for a cross examination of their expert witness.

4. Typically, business valuers testify near the end of the plaintiff's or defendant's case. You should have your expert at least cover these items:

- the scope of the report to emphasize the basis of the conclusions;
- the assumptions so nothing is left to speculation;
- the "methodology" to show how the conclusion was arrived at;
- have your expert prepare a "jury package," if applicable, summarizing the key financial information in his or her report. This package can be used while the jury deliberates.

Many trials come down to the effective presentation of a case in which the credentials and conclusions of each expert witness are vigorously challenged. In such a situation, there is enormous value in ensuring you have an experienced expert on your side.

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Concerned about additional time

FAMILY

—continued from p. 18—

tained and consequences they are left to deal with as a result of the breakdown of the marriage. I should not like to think that any of these observations are to be viewed as cynical or lacking in a full appreciation of the subtleties of the Supreme Court's didactic reasoning.

Given the salaries they command and the privileged positions they hold within society, one would have thought that perhaps Her Majesty's judges at the Supreme Court of Canada would not have worried about us poor sole practitioners who struggle day-in and day-out in the trenches. I am glad to have had my prejudices shown up for what they are and for the fact that, at least to this writer, it is obvious that those who inhabit that edifice on Wellington Street do, in fact, care for us struggling lawyers.

My only concern is now whether I will have enough hours in the day for the additional time required on each file and whether or not my poor clients have the financial resources, coupled with the emotional and physical stamina, to deal with this new regime?

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Preserve and protect assets for benefit of all creditors and shareholders

SHAREHOLDERS

—continued from p. 3—

receiver to pay its legal costs of about \$32,000.

Counsel for the Shareholders Committee argued they were in the same position as the applicant Freedhoff, whose legal fees were to be paid by the receiver pursuant to Justice Morawetz's order.

Justice Ground disagreed. He wrote, "The Applicants [Freedhoff] brought legal proceedings by

been unsuccessful in such resistance, consenting to the issuance of an order in the form negotiated among interested parties. I know of no basis on which any such person should be awarded costs of such proceedings let alone be granted a charge to secure such costs."

Michelle Wong of Heenan Blaikie acted for Freedhoff. She described the shareholders committee's claim for costs as "essentially a copycat claim." She told

"In my view, the position of the [shareholders committee] is no different from the position of any other party resisting motions..."

way of an oppression claim and, subsequently, by way of a motion to appoint a Receiver which was converted to the appointment of a Monitor, to preserve and protect the assets of the Corporation for the benefit of all creditors and shareholders of the Corporation. The Applicants had carriage of all proceedings through to and including the ultimate appointment of the Receiver.

"In my view, the position of the [shareholders committee] is no different from the position of any other party resisting motions to appoint a Receiver or Monitor or other protective order and, having

The Lawyers Weekly, "Justice Ground recognized there was no basis for it. If some shareholders protected assets for the benefit of all the shareholders, it doesn't mean all of them should get costs on a piggyback claim."

She said Diepdaume's application for leave to appeal Justice Morawetz's order will probably take place at the end of July. But "this proceeding itself is likely to go on for some time."

Eliot Kolers of Stikeman Elliott LLP acted for the shareholders committee.

Reasons: *Freedhoff v. Diepdaume Mines Ltd.* [2006] O.J. Nos. 2668 and 2669.