# *REMUNERATION OF DIRECTORS IN ONTARIO*

# *and*

# *UPDATE ON REMUNERATION OF DIRECTORS IN ONTARIO*

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## AN ANALYSIS OF REMUNERATION OF DIRECTORS OF CHARITIES IN ONTARIO

### A. INTRODUCTION

The issue concerning remuneration of directors of charities in Ontario has, until the last four years, attracted little attention. Invariably, the salaried chief administrative officer of a charity was a member of its board of directors. For purposes of this paper, "board of directors" is defined as meaning any body or group that controls the operations of the charity whether that group consists of the board of directors, board of governors, board of management or, in the case of an incorporated church, the board of deacons or board of elders.

The paid chief administrative officer of a charity, whether such officer be the executive director or president or, in the case of an incorporated church, the pastor, has generally been entitled to be a member of the board of directors by virtue of his position as the key employee.

The rationale for such an arrangement has generally been to provide the person who was ultimately responsible for the day to day operations of the charity with input into the o6erall direction of the charity. The fact that the chief administrative officer or pastor, in the case of an incorporated church, was a paid member of the board of directors, was generally not considered to be a conflict of interest, or if it was, it was considered to be of a minor nature. From a practical standpoint, it was thought that other members of the board of directors of the charity would be able to provide an effective accountability group to thwart any attempt by the chief administrative officer to unilaterally run the charity under a monopoly of power.

This was the general status of affairs for a great number of crporate charities who had salaried chief administrative officers until the release of the landmark Ontario case of Re **Toronto Humane Society**[1] in 1987. That decision, and two other subsequently reported cases, has clarified the law in Ontario. Charitable corporations now may not pay members of their board any form of remuneration for services rendered without court approval, even though the

services are provided at a reasonable or below market cost. As a result, a chief administrative officer of an Ontario charitable corporation who is a salaried employee of the charity cannot continue to be a member of the board of directors of the charity for which he works.

In addition to providing clarity on the specific question of remuneration, the Ontario cases have raised important collateral questions, which although not answered by the court decisions, are important issues to address.

1. Are there amendments which should be made to the bylaws of a charitable corporation to comply with the recent court decisions? If so, what changes should be made to allow a paid employee to continue to have input into operations of the board?

2. Do the principles that have been enunciated by the courts have any application to unincorporated charities, and in particular, unincorporated churches?

3. Is there a procedure available to obtain approval of payment of a salary to a director other than obtaining court approval?

4. What steps should be taken in respect to reporting payments that have been made to members of a board in the past?

5. Do the recent decisions prohibit a director from receiving compensation for expenses in fulfilling his duties as a director?

In order to explore these and other questions, this paper will attempt to explain the basic issues the courts have had to grapple with, the facts surrounding each case, and the practical implications that result. It should be understood that the information contained in this paper is for general discussion purposes only and is not intended to be relied upon for purposes of a professional opinion. Any persons or charities considering altering their current practice in relation to remuneration of directors should first contact their legal counsel and accountant to discuss these issues further.

## B. THE DICHOTOMY OF RESPONSIBILITY FOR DIRECTORS OF CORPORATE CHARITIES

If a director of a share capital corporation is permitted to receive a salary from the corporation that he serves, why shouldn't a director of a corporate charity? To understand this discrepancy it is necessary to examine the dichotomy that has developed in the responsibilities of directors of corporate charities. While a director of a corporate charity is in many ways akin to a director of a share capital corporation, a director of a corporate charity is also subject to the obligations imposed by trust law which place a much higher fiduciary obligation upon him in relation to what he may or may not do with the charity's assets.

On the broader corporate side of the dual role of a director of a corporate charity, there are a number of provisions in the **Corporations Act**[2] of Ontario which suggest that a director of a charitable corporation should be able to receive remuneration from the corporation in the same manner as the director of a share capital company. Section 274 of the **Corporations Act** states that a corporation is deemed to have had from its creation the capacity of a natural person. This would suggest that unless otherwise restricted by other sections of the **Corporations Act** or other legislation, a charitable corporation has the ability to do what ever its board of directors decides. This would include theability to pay salaries or other remuneration to its directors without such action being ultra vires the jurisdiction granted to the corporation under the provisions of the **Corporations Act**.

Further, section *126(2) of the* ***Corporations Act*** specifically states that a director may receive reasonable remuneration and expenses for his services to the corporation as a director and may also receive reasonable remuneration and expenses for his services in any other capacity unless the Letters Patent or bylaws of the corporation otherwise provide. Letters Patent issued by the Province of Ontario in recent years now include such a prohibition. The following is the standard limitation now included in all Ontario Letters Patent.

*"The directors shall serve without remuneration and no director shall, directly or indirectly, receive any profits from his position as such; reasonable expenses incurred by any director in the performance of his duty may be paid."*

This provision prohibits a director being paid for his services as a director of a corporate charity. However, it is not clear whether such prohibition also precludes a director receiving monies from the corporation as remuneration for services supplied to the charitable corporation in some other capacity other than as a director, ie. as a professional advisor or administrator. Even if the provision does not preclude such payment, the courts have characterized the role of a director of a corporate charity with so many attributes of a trustee that the payment of remuneration to a director would now be considered to be a breach of trust.

The development of the role of a director of a corporate charity as a trustee has evolved generally

through the establishment of case law. However, it has also been referred to indirectly through the provisions of the **Charities Accounting Act**[3] **of Ontario**. Section 1(2) of the **Charities Accounting Act** states that *"any corporation, incorporated for religious, educational, charitable or public purpose shall be deemed to be a trustee within the meaning of this Act..."* Although the **Charities Accounting Act** does not specifically state that the director of a corporate charity is a trustee, recent case law has held that if a corporate charity is a trustee of charitable property, then a director of the corporate charity must by implication be considered to be a trustee of the property of the charity. Fortunately, it is not necessary to look at the more difficult and esoteric issue of whether or not a director of a corporate charity is in fact a trustee for all purposes. In the context of remuneration of directors it is only necessary to look at the more limited issue of why the courts consider that the director of a corporate charity has the fiduciary obligations of a trustee concerning the property of the charity and why that results in a prohibition on payment of remuneration to its directors.

## C. REVIEW OF CASE LAW ON REMUNERATION OF DIRECTORS

While Ontario courts have dealt with the issue of the trustee-like characteristics of director of charitable corporations only in the past five years, there have been English cases going back almost100 years which have not only dealt with this issue but now form the basic precedents upon which Ontario case law has developed.

**Bray v Ford** In the 1896 decision of **Bray v Ford**[4], the House of Lords in England was faced with an appeal on a libel action commenced by a solicitor who had received payment from a charity for services rendered by him as a lawyer when at the same time he served on its board of directors. The libel complained of was a letter which had been circulated to members of the charity alleging that the solicitor, while holding the fiduciary position of being a member of the board of directors, had illegally and improperly received payments for his services as a solicitor. In determining whether or not there was a basis for the libel action, the House of Lords had to determine whether or not the action of the solicitor in receiving payment for services was justified. In this regard, the court held that the solicitor was not warranted in making a charge for his professional services when he was also on the board of directors of the charity. The court held at page 51 of the decision that:

*"It is an inflexible rule of a court of equity that a person in a fiduciary position, such as the respondent's, is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put himself in a position where his interest and duty conflict. ...It is based on the consideration that, human nature being what it is, there is danger, in such circumstances, of the person holding a fiduciary position being swayed by interest rather than by duty, and thus prejudicing those whom he is bound to protect."*

Although the House of Lords did not state that a director of a corporate charity was a trustee of charitable property, the fiduciary obligations placed upon such a director not to receive remuneration from the charity was clearly akin to the obligation placed upon a trustee of charitable property.

**Re The French Protestant Hospital**

The English courts further articulated the position that had been taken in **Bray v Ford** in the 1951 decision of the Court of Chancery in Re **The French Protestant Hospital**[5]. In that decision, the court reviewed the Charter of the **French Protestant Hospital** originally incorporated in 1718. One of the bylaws of the corporation prohibited a director from directly or indirectly being interested in the supply of any goods or any work for the Hospital. For a number of years, a solicitor and a surveyor had both been members of the board of directors and had received remuneration for their services, although at a reduced rate. To accommodate these two directors, the Hospital corporation amended the bylaw that had prohibited payment of monies to directors so that it would not prevent a director receiving compensation for professional services. The issue that the court had to deal with was whether or not the proposed bylaw permitting payment to directors was valid. The court held that it was not. The argument that was presented to the court was that while the Hospital corporation was a trustee of the charitable property, the directors of the corporate charitywere not themselves trustees and therefore were entitled to amend the bylaws for the corporation to permit payment to directors who had provided professional services. While the court agreed technically that it is the corporation that holds the charitable property, the court refused to be bound by the usual concepts of corporate law and pierced the corporate veil to examine the actual relationship that was in place between the directors themselves and the charitable property as opposed td simply reviewing what was the responsibility of the corporation to its property. The court held at page 570 of the decision that since it was obvious that a aharitable corporation was completely controlled by its board of directors and since a charitable corporation holds its property in trust, the directors of a charity *"...are as much in a*

*fiduciary position as trustees in regard to any acts which are done respecting the corporation and its property."* The court went on to state that:

*"It is quite plain that it would be entirely illegal if they [the directors] were simply to put the property, or the proceeds of the property of the corporation, into their pockets and make use of it for their own individual purp ses or for their purposes as a whole, and not for the purposes of the charitable trut for which the property is held. Therefore, it seems plain that they are, to all intets and purposes, bound by the rules which affect trustees."*

In following **Bray v Ford**, the court concluded that unless there was some provision in the constitution of a charity, the directors of a corporate charity had no right to make any profit or claim emuneration out of the property of a charitable corporation. As there was nothing contained in the Letters Patent of the Hospital or its bylaws which permitted payment of services to directors of the charity, it was improper for the board of directors to pass a bylaw giving authority to the corporation to make payments which had been specifically prohibited under previous provisions of its bylaws.

**David Feldman Charitable Foundation**

Although the Re **Toronto Humane Society** decision is often quoted as the first Ontario authority to deal with a director's trusteelike obligation concerning charitable property, there was an earlier decision which established this principle. In the 1987 case of Re **David Feldman Charitable Foundation**[6] the court had to determine whether the director of a private charitable foundation established by that director was authorized to lend money that had been given to the foundation to the director's own personal company. The court reviewed the terms of the Letters Patent of the foundation and concluded that a charitable trust had been created for maintaining a fund with part or all of the income to be used as donations to recognized Canadian charities. The court recognized that pursuant to section 1(2) of the **Charities Accounting Act**, the corporation itself was deemed to be a trustee within the meaning of that Act. However, the court went further and stated that the directors were also trustees of the foundation. Based upon the fiduciary obligation arising from the trustee relationship, the court held that the decision of the directors to loan monies from the foundation to a limited company of one of its directors was a direct conflict of interest and as such the directors had committed a breach of trust.

**Toronto Humane Society**

The subsequent 1987 landmark decision of Re **Toronto Humane Society** involved the Public Trustee of Ontario exercising its jurisdiction under the provisions of the **Charities Accounting Act** to bring a court application that in part questioned the remuneration paid to an employee who was also a member of the board of directors. In 1986, differences arose amongst the members and directors of the Society about its future direction. The **Toronto Humane Society** came under the control of the president and those directors who supported an organization dedicated to obtaining legislation which would abolish the statutorily sanctioned practice of removing impounded animals for scientific research purposes. The newly appointed president proposed a restructuring of the board of directors and subsequently arranged to have five directors elected officers of the Society who were friends and associates of the president. Two of the directors later became paid employees of the Society at significant salaries.

Before the court could review the irregularities which were alleged to have taken place within the Society, the court first had to determine whether or not a charitable corporation was a trustee that was subject to the jurisdiction of the court. The court found that the charitable corporation was, at least for the purpose of the property of the charity, a trustee and subject to its review. The court then turned its attention to the status of the directors of the corporation. It could have held that the Society was a charitable corporation created by statute and that as long as the provisions of the statute were appropriately observed, the obligations of the directors were met. The position advocated by the Public Trustee of Ontario, however, was that a charitable corporation is a trustee of its property and since the corporation was without *"a body to be kicked or a soul to be dammed"* its directors must be held to the duties and obligations of a trustee. As such, the Public Trustee argued that a director, in his capacity as a trustee cannot put himself in a position where duty and interest conflict and that therefore there could be no remuneration paid to a trustee in his connections or activities in or about the trust without the approval of the court.

A major consideration was the self serving actions of the board of directors in an attempt to redirect the activities of the Society in a direction not previously taken. The court observed at page 246 of the decision that;

*"charitable institutions ... are reasonably easy victims for any small determined group with the intention of taking control... When one couples with it the capacity to pay substantial remuneration there arises a situation which all human experience dictates should be avoided."*

The court was not interested in whether a director of a corporate charity was a trustee in the pure sense of the word. Rather, the court concluded that the directors were under a fiduciary obligation to the Society and since the Society was dealing withcharitable property, the directors were under a fiduciary obligation in relation to the property of the charity. Since the president and the newly elected directors of the **Toronto Humane Society** had decided to pay one of its directors a salary, the court had little alternative but to find that there had been a self serving application of the charitable monies to the director in contravention of the fiduciary obligations of the directors. As directors were considered to be imbued with the characteristics of a trustee, the court held that the only proper way in which a director could obtain remuneration would be pursuant to the express provisions in the trust document or by order of the court.

As a caveat, the court suggested that there might be a mechanism that could be arranged to obtain approval for payment of remuneration to directors from the Office of the Public Trustee without having to obtain court approval. However, no explanation of the jurisdiction under which the Public Trustee could exercise this authority was given.

**Faith Haven Bible Training Centre**

In the 1988 decision of Re **Faith Haven Bible Training Centre**[7], the Ontario Surrogate court was asked to review the decisions of the board of directors concerning the distribution of a portion of the money and property of the charity to some of the current directors and past employees as compensation for past services upon the corporation's decision to cease operations. In 1975 the founders of the charity decided to establish a school dedicated to the provision of Christian education and training. In 1977 the founders of the school applied for and were granted Letters Patent under Part III of the Corporations Act under the name of "Faith Haven Bible Training Centre". In 1985, a decision was made to close down the school, sell its assets and dissolve the corporation.

Since 1983, the bylaws of the corporation had been ignored by its officers and directors in that no annual meetings of the membership were held. This meant that the directors simply continued in office without re-election and accordingly the decision to cease operations was made by the directors acting alone without a supporting special resolution by its members. Similarly, the board of directors unilaterally made the decision concerning the distribution of the assets of the charity.

It is worth noting that the Letters Patent of the corporation contained one of the usual restrictions required by the Public Trustee of Ontario that, *"upon the dissolution of the corporation and after payment of all debts and liabilities, its remaining property shall be distributed or disposed of to charitable organizations which carry on their work solely in Canada"*. Why the Board of Directors thought that they had any type of discretion at all concerning the distribution of the assets is not explained in the decision but clearly any payments to the directors or past employees of the charity In its dissolution were in contravention of the specific direction in the letters Patent concerning how the assets were to be distributed on dissolution.

The specific decisions of the Board of Directors which the Public Trustee objected to included (i) a transfer of an automobile to one of the directors and (ii) the payment of approximately $109,000.00 to various past employees of the corporation for past services, which employees included some of the then current members of the board of directors. In reviewing the actions of the board, the court held that the corporation held its net assets as a trustee to be distributed in accordance with the terms set out in the Letters Patent of the corporation. The court held further that whether or not the directors should be designated as trustees or whether they should be classified as fiduciaries bound to see to the execution of the trust was immaterial since the obligations and the end result that should have occurred were the same. Not surprisingly, the court held that the terms of the trust had not been fulfilled and the board of directors had acted in a conflict of interest in authorizing payments of both property and monies to former staff and current members of the board of directors.

The court went further than the earlier decisions and stated that since the breach of trust could not be excused, the directors of the charity should be personally responsible to repay to the corporation the monies and property wrongfully paid out. It was not just the directors who had received benefits that were held personally responsible to repay the monies but all of the members of the board of directors in place at that time. This was so even though one of the directors who received a benefit refrained from voting on the decision to pay monies to himself.

Fortunately for the directors, the Public Trustee provided assistance by suggesting that the court had jurisdiction under section 35 of the **Trustee Act**[8] to excuse the honorarium that had been paid to past employees. In relation to the vehicle and the cash that had been transferred and/or paid to some of the directors, the Public Trustee also suggested to the court that such payments could be justified pursuant to the jurisdiction given to the court under section 61 of the

Trustee Act that allows the court to grant a fair and reasonable allowance to trustees for their care, pains and trouble and time expended in or about an estate. Although the directors were not required to repay the almost $125,000.00 that had been paid out of the corporation's assets, it is interesting to note that the directors had to rely upon the provisions of the Trustee Act as opposed to the Corporations Act to obtain the necessary jurisdiction for the court to approve the otherwise illegal payments. It is ironic that the Trustee Act governing the high fiduciary responsibilities of trustees was the legislation that had to be used to grant relief for directors of a corporation that had attempted to run its affairs pursuant to the lower standards associated with operating a charity as a corporation as opposed to a charitable trust. The fact that the Trustee Act was invoked by the court in this case is evidence that directors of charitable corporations may very well be subject not only to the remedial provisions of the Trustee Act but to the more onerous obligations established for trustees under the provisions of that legislation.

**Harold G. Fox Education Fund v Public Trustee**

In the 1989 decision of **Harold G. Fox Education Fund**[9] the court again dealt with the issue of whether directors of a corporation under Part III of the Ontario Corporations Act have the right to provide for reasonable payment to a director for services rendered in a capacity other than as a director. The case involved a private trust fund which was established in 1966 to provide monies for educational purposes. One of the directors acted in the capacity as executive director of the funds and received compensation from 1972 through to 1986 of approximately $35,000. In 1986, the board of directors passed a resolution to authorize the payment of $1,000 per month to the director as compensation to him for his part time duties as administrator. The monies from the fund were primarily used to allow law students from England to article with Ontario law firms and vice versa.

After the Re **Toronto Humane Society** decision was released, the directors of the **Harold G. Fox Education Fund** prudently decided to disclose to the Public Trustee the past payments that had been made. The Public Trustee could have taken such information under advisement and not made the past payments an issue considering the confusion that had existed before the Re **Toronto Humane Society** case in 1987. However, the Public Trustee alleged that the payments to the executive director could not be justified and as such the past payments could not be ignored. As the Public Trustee would not approve the payments, the directors of the fund felt compelled to make an application to the court pursuant to the provisions of the **Charities Accounting Act** to obtain a direction concerning whether or not past payments as well as future payments to the executive director were legitimate payments by a charity even though the executive director was and would continue to be a member of the board of directors.

The court was sympathetic to the plight of the directors and their sincerity in wishing to obtain its approval. The court came to the conclusion that the compensation which had been paid was for legitimate services which were required by the charity and would have otherwise required that a special administrator be retained by the charity at a salary in accordance with those requirements. Having established that value had been received by the charity for the payment, the court reviewed the provision of section 126 of the **Corporations Act**, the limitations contained in the Letters Patent concerning payments to directors and section 61 of the **Trustee Act** and concluded that in the circumstances the payments were appropriate. However, the court did state that approval of the court should have been obtained before the payments were made.

The application that was before the court requested approval not only for past payments but approval for prospective payments to the executive director. Given the obvious integrity concerning the administration of the fund and the fact that the corporation and the directors would remain under the authority of the **Charities Accounting Act**, the court held that it would be appropriate to allow a reasonable compensation for future work as presented to the court in the amount of $1,000.00 per month.

The fact that the court approved future payments to directors required that the court go beyond the provisions of section 61 of the **Trustee Act** which limits court approval to payments for past services. Instead the court was required to invoke its inherent jurisdiction over the operations of charities. Whether or not the court will be prepared to exercise this same type of jurisdiction with every charity that is brought before the court under the provisions of the **Charities Accounting Act** is not clear. As such, the decision in **Harold G. Fox Education Fund** should not be relied upon as a guarantee that the court will approve future payment of remuneration to directors in every application.

Given the harshness of the comments contained in the earlier decision of Re **Faith Haven Bible Training Centre**, it is somewhat surprising that the court was as sympathetic in its comments as it was in the **Harold G. Fox Education Fund** decision. However, there were two mitigating factors that justify the difference

in approach. Firstly, the directors of the charity reported the past payments that had been made on their own instead of waiting for an audit to he conducted by the Public Trustee. Secondly, when the Public Trustee concluded that the payments to the executive director had not been appropriate, the directors took the initiative to bring an application before the court. By doing so, the directors evidenced an attitude of full disclosure to both the Public Trustee and to the court instead of an attempt to cover up. Charities that have paid remuneration to members of the board of directors in the past may be well advised to consider disclosing such payments to the Public Trustee instead of waiting for an arbitrary audit to reveal any impropriety of payments. This approach would probably only receive sympathetic treatment from either the Public Trustee or the court if it related to payments prior to the 1987 **Re Toronto Humane Society** decision or for a reasonable period thereafter when the directors first became aware of the effect of the decision. As Donna Campbell in her case comment on "Remuneration of Directors" in the **Philanthropist**[10] has stated, the comment by the court that approval should have been obtained before any payments were made to directors is *"a warning that, in future, directors who make such payments first and then seek approval of their action may do so at their peril"*. This is particularly true in light of the critical comments directed towards the directors of the charity in Re **Faith Haven Bible Training Centre** decision.

## D. PRINCIPLES RESULTING FROM CASE LAW

The following is a summary of the principles that can be elicited from the cases discussed above.

1. A charitable corporation in Ontario is considered to be a trustee in relation to its charitable property pursuant to the provisions of the **Charities Accounting Act.**

2. Whether or not directors of corporate charities are trustees for all purposes or are only imbued with the fiduciary responsibilities of trustees in the limited context of the property of a charity has not been determined definitively. The Re **Toronto Humane Society** and the **Harold G. Fox Education Fund** decisions would suggest that the director of a corporate charity is at most charged with the fiduciary obligations of a trustee in relation to the property of a charitable trust. The Re **David Feldman Charitable Foundation** and the Re **Faith Haven Bible Training Centre** decisions, however, would suggest that a director is a trustee in the fuller meaning of the term. Although there remains some judicial confusion concerning whether or not a director is a trustee of a charity for all purposes, there is a consensus among all of the decisions that at the very least a director is charged with the fiduciary obligations of a trustee in relation to the director's dealing with the charitable property. To that extent, there is no doubt that a very high fiduciary obligation has been placed upon directors of charities in dealing with its assets.

3. All of the judicial decisions are consistent in stating that the trustee like fiduciary obligations placed upon directors of corporate charities in relation to charitable property clearly makes it a conflict of interest and a breach of trust for directors to pay any monies of the charity or transfer any of its property to any director as remuneration for any services rendered by the director. The Re **Faith Haven Bible Training Centre** decision constitutes judicial acceptance of the proposition that payments made in contravention of this restriction will leave each member of the board of directors jointly and severally liable to repay the monies that were illegally paid.

4. Although the Re **Toronto Humane Society** and the **Harold G. Fox Education Fund** cases suggested that the Public Trustee might be able to approve both past and future payments to directors of charities, there does not appear to be any legislative authority for the Public Trustee to take on this role. From a practical standpoint, the Public Trustee might review past payments and decide not to make an issue of such payments, subject to the residual right or any other interested person to require a formal passing of accounts under the Charities Accounting Act. This review by the Public Trustee would in effect constitute an indirect approval process for past payments. However, the Public Trustee does not have the ability to either directly or indirectly approve future payments to directors.

5. Since the court in both the decisions of Re **Faith Haven Bible Training Centre** and **Harold G. Fox Education Fund** invoked provisions of the Trustee Act to find the necessary authorization to legitimize payments that had been made to directors, it would appear that the Trustee Act as a whole will have application to directors of corporate charities. This will be an important consideration for future directors to consider before becoming directors of charities, as their responsibility for the assets of the charity will be under the same scrutiny as an executor would be on the administration of an estate. I suggest that few directors of corporate charities in Ontario would

consider that their role as members of a board of directors was subject to the same scrutiny of the courts as the executor of an estate. Granted, it is not clear from the judicial decisionswhether or not a director of a corporate charity is a trustee at law. However, from a practical standpoint, whether or not a director is a trustee is of little consequence. The net effect of being a director of a corporate charity is that such person will be subject to the provisions of the Trustee Act and will be required to fulfil the same fiduciary duties as a trustee in relation to the assets of the charity.

## E. APPLICATION OF PRINCIPLES TO UNINCORPORATED CHURCH ORGANIZATIONS

An important collateral issue raised but not specifically dealt with by any of the cases is whether or not an employee of an unincorporated charitable organization, such as a pastor of a church, is precluded from holding the position as a member of the controlling board in the same way that an emplyee of a corporate charity is precluded from being a member of the board of directors. Although the Re **Toronto Humane Society** decision dealt only with the situation of directors of a corporate charity, the principle developed by the court in that decision as well as in the subsequent decisions of Re **Faith Haven Bible Training Centre** and **Harold G. Fox Education Fund** involved the recognition of the trustee-like obligations of directors not to put themselves into a position of a conflict of interest by receiving payments of money or other remuneration. Since an unincorporated church is recognized by Revenue Canada under the provisions of the **Income Tax Act**[11] (Canada) and by the Province of Ontario under the provisions of the **Charities Accounting Act** to be a charitable trust, the persons controlling the charitable trust as trustees will be charged with at least the same level of fiduciary obligations to hold the church property in trust as a director of an incorporated charity would be.

This trust relationship is underscored by the provisions of the **Religious Organizations' Lands Act**[12] of Ontario which states that unincorporated churches may hold, sell, mortgage and lease land on behalf of a church organization by means of at least three trustees duly appointed by the church to hold such property in trust. Even though the three trustees appointed under the provisions of the **Religious Organizations' Land Act** may be different from the controlling board of the church, there would probably be the same trustee fiduciary obligations imposed upon the members of the controlling board as upon the duly appointed trustees in consideration of the fact that the controlling board is really the body vested with the authority to make decisions in relation to the charitable property, whereas the trustees appointed on behalf of the church are generally intended to act as bare trustees only. This would not relieve the formal trustees from personal liability but rather would expand the group of persons upon whom the fiduciary obligations of a trustee would be imposed to include not only the formal trustees but all members of the controlling board of the church.

Although the application of the Re **Toronto Humane Society** and subsequent decisions have yet to be specifically applied to the context of an unincorporated church, the position of the Public Trustee's Office of Ontario is that the legal form of thecharity is of little consequence, as the Public Trustee conqaders all persons responsible for the use of charitable property to be akin to trustees whether they are formally recognized as a trustee or are designated with some other title such as director, deacon, elder, or whatever. In other words, the Public Trustee sees all persons in control of a charity to be trustees, if not in name at least in practice and will hold each of the members perscnally liable for any misuse of the charitable property or breach of trust. As such, an individual such as a pastor who receives his salary from an unincorporated church organization would be in a breach of trust if he was to remain as a member of the controlling board. This is so notwithstanding the fact that he may absent himself for any vote that involves a review of his salary or other benefits that he may be receiving from the unincorporated church. The Re **Faith Haven Bible Training Centre** decision is authority for the proposition that simply declaring a conflict of interest and not voting on a board decision involving the payment of monies to a director does not excuse the director from personal liability arising from the consequences of a breach of trust.

Since the decision of Re **Toronto Humane Society** puggested that payment to a director could be authorized if the trust dmcument permitted such payments, suggestions have been made that the constitution of an unincorporated church could be amended to specifically permit a pastor as a member of the controlling board to receive a salary. However, since a church is a charity which holds its property as a public trust, the beneficiaries of which go beyond the immediate members of the church, those members of the church themselves could not authorize an amendment to the constitution of the church to permit payment to members of the controlling board such as a pastor.

## F. PRACTICAL CONSEQUENCES FOR THE OPERATION OF CHARITIES IN ONTARIO

Whether or not the courts in other provinces across Canada will adopt the decisions rendered by the Ontario courts is not clear but there is a strong possibility that the reasoning of the Ontario courts as enunciated in the recent court decisions may be followed in other jurisdictions in Canada. As such, both incorporated and unincorporated charities elsewhere in Canada would be wise to heed the warnings that have been given by the Ontario courts. In light of the court decisions, there are a number of practical steps that a charity operating in Ontario should consider, whether or not such charity is incorporated, or is an unincorporated entity such as a church.

1. If a director of a charity has been receiving a salary or other remuneration from the charity and intends to remain as a member of the board of directors, he should immediately cease receiving a salary or any other remuneration.

2. If a member of the board of directors wishes to continue to receive a salary or other remuneration from the charity in consideration of his role as either an employee, executive director or in the case of a church, a pastor, then such person should immediately resign from the controlling board and thebylaws of the charity should be amended to ensure that his position does not entitle him to membership on the board.

3. If, as will probably be the case with most charities, the executive director continues to be employed by the charity and resigns from the board but wishes to continue to have a viable role as a participant in meetings of the controlling board, amendments would have to be made to the bylaws or constitution of the charity to accommodate these changes. This would involve redefining the role of such person in his capacity as an executive director or pastor so that such position provides him with the right to attend and participate at all meetings of the controlling board but not have the right to vote or be recognized as a member of the board. In relation to a church, whether incorporated or not, there is always the fear that a pastor may loose his ability to provide leadership in the church if he is not a voting member of the board. However, from a practical standpoint, if a pastor is not able to exercise influence over the church by virtue of his presence and spiritual leadership, any attempt to rely upon his voting authority on the controlling board would be short lived and more than likely futile. As such, removing a pastor from the controlling board but redefining his position to allow him to have the right to attend and participate but not vote should result in little, if any deterioration in his position and authority.

4. For those churches, whether unincorporated or not, which for theological reasons cannot accept that the pastor of the church would not be a member of the board, there is the alternative of creating a two-board structure. One board would be solely responsible for the spiritual direction of the church, such as a board of elders on which the pastor could be a full member. The other board would be charged exclusively with the responsibility of managing the property and monies of the church, such as a board of deacons. It would be this second board that would function as the trustees or the quasi-trustees of the charitable property of the church. The pastor would not be a member of the second board, although the description of his office could specify that he would have the right to attend and participate but not vote at all meetings of that board.

5. If for whatever reason, the charity decides that the executive director, employee or pastor of the charity must remain as a member of the controlling board of the charity, then the only alternative would be to make an application to the court upon notice to the Public Trustee to request approval for prospective payments as was done in the **Harold G. Fox Education Fund** case. Although both the Re **Toronto Humane Society** and the **Harold G. Fox Education Fund** decisions allude to a procedure whereby the Public Trustee could approve payments to directors before they occurred, there is no legislative framework for the Public Trustee to exercise such authority. Whether or not this will change in the future is yet to be seen.

6. In relation to past payments that have been made to directors or other members of the controlling board of the charity, the prudent course would be to make disclosure to the PublicTrustee. Although the Public Trustee does not have authority to approve past payments, the Public Trustee does have authority to review the accounts of all charities by virtue of the jurisdiction granted to it under the **Charities Accounting Act**. As such it has the statutory authority to require that it be informed of all activities concerning the use of charitable property. Informing the Public Trustee of those payments would allow the Public Trustee to review the actions of the board and make a decision on whether or not to take issue concerning such payments. In those situations where the Public Trustee was satisfied that the payments were reasonable and decided not to take issue with the

payments, it would be unlikely that the Public Trustee would require a formal passing of accounts under the **Charities Accounting Act**. Any future challenge by the Public Trustee concerning past payments that had already been disclosed could be met with a response to the court that the matter had already been disclosed and had been received without objection by the Public Trustee. Such position would not preclude the Public Trustee from objecting at a later time, but at least the disclosure would likely elicit a more sympathetic reception by the court. As such, it is probably better to disclose to the Public Trustee improper payments that have been made to directors made in a voluntarily basis instead of having the matter discovered by the Public Trustee in an audit initiated under the provisions of the **Charities Accounting Act**. There is obviously a risk involved with making such a disclosure; in that the Public Trustee might decide, as they did in the **Harold G. Fox Education Fund** decision, that the payments were not appropriate, thereby requiring the charity to make application to the court under the **Charities Accounting Act** to obtain the necessary approval. However, for those charities that have acted as **bona fides** charitable organizations with a board of directors that is arms length from the paid executive director and have made payments to the executive director through ignorance of the law, it is probable that the Public Trustee would take a somewhat sympathetic approach towards such a charity, particularly in consideration of the fact that the charity had initiated making the disclosure. Since there are literally hundreds of charities in Ontario, if not thousands, that have in the past made payments of salaries or other remuneration to directors or other members of the controlling board id contravention of the fiduciary obligations of directors of charities, it would be helpful if the Public Trustee"s Office would issue a formal policy statement that the disclosure of past payments made prior to the 1987 decision in the **Toronto Humane Society** case or up to such time that the board can reasonably be assumed to have become aware of the decision would not result in formal audits being required under the **Charities Accounting Act** or charges of breach of trust being made in those situations where the payments were reasonable in the circumstances. In this regard, it is probable that the Public Trustee would want to be satisfied that the charity had received value in return for the payment of services provided by the director, that the board of directors was arms length from the director receiving payments, and that the payments had been made through inadvertence and in ignorance of the state of the law as disclosed by the **Toronto Humane Society** decision in1987. As it is impossible to predict what the responsibility of the Public Trustee will be in every situation it is essential that charities that have made payments in the past to directors or other members of their controlling board consult with their legal counsel and accountant concerning what disclosure, if any, is to be made to the Public Trustee.

7. While there is a clear prohibition upon a director receiving remuneration to fulfil his duties as a director, both section 126 of the **Corporations Act** as well as the general prohibition provision contained in Letters Patent issued by the Province of Ontario contemplate and approve a director receiving compensation for reasonable expenses incurred by the director in the performance of his duties. For instance, the payment of reasonable mileage charges for the use of a director"s vehicle to attend a board meeting would be a legitimate disbursements of the charity's monies. However, if the payment to the director was in the form of a car allowance which resulted in more monies being paid to a director than would otherwise be paid out to reimburse a director for mileage costs, then such payment would be a misuse of the authority granted to a charity to allow a director to receive compensation for reasonable expenses. Although it is beyond the scope of this paper, a relevant collateral issue concerns whether the broader ambit of what a director can receive as compensation under a federal incorporation would permit a director to receive employment remuneration as opposed to being limited to simply a repayment of expenses. In this regard, the model bylaw provided by the Minister of Consumer and Corporate Affairs Canada in relation to incorporations of companies without share capital under Part II of the **Canada Corporations Act**[13] specifically states that nothing in the usual limitation that a director may not receive remuneration to act as a director shall *"preclude any director from serving the corporation as an officer or in any other capacity and receive compensation therefore"*. The question remains whether this permissive provision in the model bylaw for federal charitable corporations could be relied upon to circumvent the fiduciary duties established by the court in the recent Ontario decisions. If the concept that a director of a charitable corporation is imbued with trustee-like characteristics is accepted by the courts in future decisions involving federal charitable incorporations, then the consequences of applying trust law to charitable corporations incorporated under Part II of the **Canada Corporations Act** would most likely take precedent over a strict interpretation of a charity"s bylaw under corporate law, notwithstanding that such bylaws may have been approved by the Minister of Consumer and Commercial Affairs for Canada.

## G. CONCLUSION

As a result of the 1987 decision rendered in the **Re Toronto Humane Society** case, followed in the **Re Faith Haven Bible Training Centre** and **Harold G. Fox Education Fund** decisions, it is now clear that directors of charitable corporations in Ontario can no longer receive remuneration from the charity on which board they serve in relation to services provided to the charity either in their role as a director or in any other capacity. In addition, the same principle would appear to apply to members of the controlling board of unincorporated charities such as churches. Failure to comply with this restriction will leave the members of the board jointly and severally liable to repay monies improperly paid by the charity during such period of time that they were members of the board whether or not they voted on the resolution to pay such monies. As such, salaried officers of charities, whether incorporated or not, should be removed as members of the controlling board. At the same time, salaried officers of those same organizations can maintain input into the leadership of their organization by amending the bylaws or constitution of their charity to provide that such salaried persons may attend and participate at meetings of the controlling board provided that they do not become members of it or have the right to vote.

In light of the activist role being evidenced by the decisions of the courts in Ontario as well as by the Public Trustee"s Office, it would be prudent for charitable organizations in Ontario to review their bylaws and constitutions to ensure that they comply with the current state of the law in Ontario. Given the number of charities in Ontario that are probably operating in contravention of the law as stated in the **Toronto Humane Society** decision, there will likely be more litigation pending before the courts. As such, Ontario charities would be wise to ensure that they have taken all steps necessary to avoid being the subject matter of future judicial decisions in the evolution of the law on remuneration of directors.

**Footnotes**

1. **Re Toronto Humane Society** (1967), 60 O.R.(2d) 236.
2. **Corporations Act**, R.S.O. 1980, c.95 as amended.
3. **Charities Accounting Act**, R.S.O. 1980, c.65, as amended.
4. **Bray v Ford** [1896] A.C.44.
5. **Re The French Protestant Hospital**, [1951] 1 Ch.567
6. **Re The David Feldman Charitable Foundation**, (1987), 58 O.R.(2d) 626
7. **Re Faith Haven Bible Training Centre** (1988), 29 E.T.R. 198.
8. **Trustee Act**, R.S.O. 1980, .512 as amended.
9. **Re Harold G. Fox Education Fund v Public Trustee** (1989),69 O.R.(2d) 742.
10. **C. Donna L. Campbell**, "Case comment; Remuneration of Directors" (1990), The Philanthropist, Winter 1990, Volume IX No.1.
11. **Income Tax Act**, S.C. 1970-71-12, 63 as amended.
12. **Religious Organizatins Land Act**, R.S.O. 1980, c.448.
13. **Canada Corporations Act**, R.S.C. 1970, c C-32.

## *UPDATE ON REMUNERATION OF DIRECTORS OF CHARITIES IN ONTARIO*

The issue of remuneration of directors of charities in Ontario and in particular its application to ministers who are members of the controlling board of either incorporated or unincorporated churches has been the subject of ongoing discussions since the CCCC Bulletin No. 3 entitled "An Analysis of Remuneration of Directors of Charities in Ontario" was published in June of 1991 (Editor's note: Reprint copies of Bulletin No. 3 are available by contacting the CCCC office and should be referred to to obtain a full understanding of issues dealt with by this Bulletin.)

Specifically, there has been some debate concerning two matters: (i) whether ministers who are members of the controlling board of either incorporated churches or unincorporated churches (as opposed to being members of a board which deals only with spiritual matters), are subject to the same trustee-like fiduciary obligations as directors of non-church corporate charities and as such should not be put in a conflict of interest without court approval where they receive a salary while remaining members of the controlling board that oversees the financial and temporal affairs of their church; and (ii) assuming that the answer to (i) is yes, is there a simplified process of obtaining the requisite court approval or an alternative to securing court approval altogether?

In relation to the first matter, the determinative factor involves identification of the duties that are imposed at law upon a minister by virtue of his or her membership on the controlling board of a church. Since a church is a public charity the property of which is to be used exclusively in the fulfilment of its charitable objectives, a member of the controlling board of that church, whether the member be a lay person or a minister, has a fiduciary obligation not to place himself or herself in a position of a conflict of interest by receiving remuneration from that church. The legal form in which the church operates, ie, as a corporation or as an unincorporated association, should make little difference, since the church in both situations is a public charity. As such, the individuals who control the property and financial affairs of the church are imbued with these same trustee-like fiduciary obligations, whether those individuals are directors of an incorporated church or members of a board of an unincorporated church association.

While there have been no court decisions which have specifically addressed the issue of whether ministers of churches are subject to the same trustee-like fiduciary obligations as directors of corporate charities, it is quite possible that a court might decide that the same principles should apply in a church context, whether the church be an incorporated entity or not. As a result, it would be prudent that all members of the controlling board of a church avoid receiving any form of remuneration from that church, whether those members be paid ministers or lay members of the church.

It has been suggested that a technique available to circumvent the conflict of interest of ministers remaining on the controlling board of a church while receiving a salary from it is to amend the letters patent or constitution of the church to specifically authorize such payments. This suggestion emanates from the obiter dicta (ie., the secondary comments of the court not essential to the primary decision) in Re Public Trustee and Toronto Humane Society (1987), 60 O.R.(2d) 236. At page 247 of the decision, the court stated that a director of a charity, in accordance with his fiduciary obligations, could only receive remuneration either by order of the court or by express provision in the trust document. Although the court in that case did not have to deal with the issue of amending trust documents, the suggestion has been made that where court approval is not pursued for whatever reason, there is still the option of amending the church "trust documents" to authorize payments to ministers who remain members of the controlling board of the church.

However, all charities, whether incorporated or not including churches, are of a public nature, the beneficiaries of which are the public at large as opposed to the individual members of that charity. As a result, unlike a private trust where the beneficiaries and/or the settlor may have the ability to amend the trust document to permit its trustees to receive payments from the trust property, no similar option is available for a public charity like a church. This is particularly so since it is questionable whether the letters patent of an incorporated church or the constitution of an unincorporated church in fact constitute a trust document in any event.

This issue was dealt with in part in the decision of Re French Hospital [1951], 1 Ch.567,. In that case, the French Hospital attempted to pass an amending bylaw to permit payments to some of its directors for professional services, specifically for the legal and surveying services provided by some of its board members. The court held that since the letters patent creating the hospital corporation (in that case issued in 1718) had not authorized the payment of remuneration of directors, it would be contrary to the fiduciary obligations of directors of the charity to permit such payments now. As such, it would be questionable and

probably ineffective for the members of a church to attempt on their own and without court approval to amend the letters patent or constitution of their church to authorize the continuing payment of a salary or other remuneration to their minister while the minister remains a member of the controlling board of the church. Although the courts may eventually determine a different approach in dealing with ministers who are members of the controlling board of a church, until that occurs, the current case law in Ontario suggests that the only option for churches that wish to have their minister remain on the controlling board of their church, (assuming that they do not want to amend the description of the role of the pastor in relation to the controlling board of the church, as discussed in CCCC Bulletin No. 3 in June, 1991), is to obtain court approval. This position is consistent with that enunciated by theOffice of the Public Trustee of Ontario.

The continuing need for court approval leads to the second issue; whether there is a simplified process of obtaining court approval or possibly an alternative to having to secure court approval altogether. At the September, 1992 annual conference of the Canadian Council of Christian Charities held in Toronto, the previous Public Trustee, Hugh Paisley, Q.C., suggested an alternative to court approval whereby the Office of the Public Trustee might informally review and approve remuneration paid to an individual on the church board for that person's services as a church minister, provided that the church could substantiate that there were adequate safeguards and accountability measures in place.

In response to this proposal, the author on behalf of the Canadian Council of Christian Charities, communicated with the office of the Public Trustee and submitted a draft letter for consideration which was intended to form the basis of a precedent to be used by interested churches in Ontario, both incorporated and unincorporated, to obtain informal approval for the payment of remuneration to ministers who remained as members of the controlling board of their churches. However, due to the resignation of Hugh Paisley, Q.C., as Public Trustee of Ontario in December of 1992, a response to the form of the precedent letter was left in abeyance for a number of months. In the response received in June of 1993 from Eric Moore, Director and Legal Counsel of the Charitable Property Division of the Public Trustee's Office, he regrettably advised that notwithstanding the earlier comments that had been made by the previous Public Trustee, Mr. Hugh Paisley, Q.C., at the CCCC conference in September of 1992, there was no statutory or case law authority that could authorize the Office of the Public Trustee to give approval for informal applications made to its office. The complete text of Mr. Moore's letter is included at the end of this bulletin as a schedule and should be read in full.

Although Mr. Moore's letter states that the Office of the Public Trustee is not aware of any case law or legal basis which would exempt ministers from the prohibition of receiving remuneration while remaining members of the controlling board of their church, his letter does suggest that there may be an alternative to formal and costly court application to obtain the requisite court approval. In this regard, the Canadian Council of Christian Charities is currently in the process of consulting with the Office of the Public Trustee to determine how an informal court application can be brought which would be both simple and inexpensive. Although such a procedure would still involve a court application, it is contemplated that the application would be based on a pre-approved precedent form and would not require any attendance by either a lawyer or by anyone else on behalf of the church unless circumstances warranted it.

While the issue of remuneration to ministers who are members of the controlling board of churches has been a difficult subject for many churches, it is a serious issue with the latent potential to be more problematic in the future. As such, it is be prudent to deal with the issue sooner as opposed to later so that the applicable remedial steps can be taken. As a result of the co-operation being received from the Office of the Public Trustee of Ontario, it is hoped that a practical and inexpensive method to address the issue will be available in the near future for those churches that wish to have their ministers remain on the controlling board of their churches. Further information concerning this issue will be published in future CCCC Bulletins.

[See - Schedule A: Letter from the Public Trustee on next page.]

**SCHEDULE "A"**
**LETTER FROM THE OFFICE OF THE PUBLIC TRUSTEE**

*MINISTRY OF THE ATTORNEY GENERAL*
*OFFICE OF THE PUBLIC TRUSTEE*
*145 Queen Street West*
*Toronto, Ontario, M5H 2N8*

*03 June, 1993*

*Mr. Terrance S. Carter*
*Wardlaw, Mullin, Carter & Thwaites*
*Barristers & Solicitors*
*235 Broadway*
*Orangeville, Ontario L9W 2Z5*

*Dear Mr. Carter:*

*I am writing further to your correspondence and our telephone discussions regarding churches' board members being remunerated as the churches' ministers and the proposal that the Public Trustee might informally review and approve that remuneration. You have expressed the matter somewhat differently, as churches' paid ministers being on the churches' boards and the Public Trustee approving the paid ministers remaining on the boards, but the Public Trustee's concern is charitable property and, consequently, the remuneration, not board membership.*

*I apologize for the delay in responding but, as you know, a new Acting Public Trustee assumed her responsibilities only recently and needed some time to consider this issue.*

*As you know, the Courts have held that persons who are responsible for the administration and management of charitable property (directors of an incorporated charity, trustees of a charitable trust, etc.) may not be directly or indirectly remunerated in any capacity whatsoever without prior Court approval. The Courts have characterized payment of such remuneration without that prior approval as breach of trust, for which the persons responsible for the administration and management of the charitable property presumptively may be held jointly and severally personally liable. When the Courts determine, after the fact, that approval would have been given had it been sought before payment of remuneration, they may excuse what they continue to characterize as the breach of trust of paying the remuneration without prior Court approval, sometimes also making costs Orders adverse to the persons who ought to have requested the approval before the remuneration was paid.*

*It is this office's understanding of the Courts' decisions and, perhaps, implicit in the express requirement of prior Court approval, that any remuneration of any persons who are responsible for the administration and management of charitable property is to be exceptional rather than usual.*

*The Courts have not suggested that this law does not apply either to churches and their board members or, more particulary, to churches' board members being remunerated as the churches' ministers. The Courts might make such a legal distinction - although there are reasons why it should not be made - but, until the Courts do enunciate such a distinction, we must assume the general law applies to churches and their board members.*

*I understand that the Courts' decisions have generated concern in board of churches associated with the Canadian Council of Christian Charities. Apparently, many of these boards have remunerated and continue to remunerate board members for services as the churches' ministers, without Court approval of the remuneration or the Court's excusing the breach of trust in having paid such remuneration without prior Court approval. I should point out that the Courts' decisions apply generally to persons who are responsible for the administration and management of charitable property, not just to churches' board members.*

*I also understand that this issue was a topic of discussion at the September, 1992 conference of the Canadian Council of Christian Charities, which the previous Public Trustee, Hugh Paisley, Q.C., attended and addressed. I understand that Mr. Paisley suggested that, as an alternative to Court approval, this office might informally review and approve remuneration paid to an individual on a church's board for the individual's services as the churches' minister.*

*We have examined whether this office can provide these approvals and have concluded that it cannot. The Public Trustee has no apparent jurisdiction to approve remuneration and to incidentally excuse any breach of trust in respect of remuneration previously paid without Court approval. Determination of these issue is exclusively within the Courts' jurisdiction over trusts and charitable property.*

*The Public Trustee, naturally, has general views as to what the law may require or permit and brings those views to bear on specific charities law matters. For example, if the Public Trustee is satisfied that a charities' board members' application for Court approval of remuneration and to be excused from a breach of trust in paying remuneration without prior Court approval is proper, the Public Trustee usually advised in writing of non-objection, so the expense of legal counsels' attendance before the Court can be avoided. The Public Trustee's views are not determinative, they are the views of a governmental body with standing to enforce charities law, and they are not binding on the Courts. While the Courts have approved of the Public Trustee accommodating proper applications to the Courts for approval, they have never suggested that judicial determination could be dispensed with or that the Public Trustee could determine these issues on his or her own.*

*Obiter dicta in certain Court decisions, that "on notice to the Public Trustee approval might be given by fiat", appear to be the foundation for this suggestion that the Public Trustee has some undefined jurisdiction to give approvals outside Court. This is a misunderstanding of "fiat", an ancient term of legal practice that has fallen into disuse, which essentially means an uncontested, over-the-counter application to the Court for its formal authorization.*

*Clearly, there is a very great difference between the Public Trustee having general views on charities law's requirements, even making those general views publicly known, and taking positions on specific matters before the Courts, on the one hand, and purporting to determine specific matters outside of court, in effect as if a court, on the other.*

*While there may be a case for an alternative to court determination of these issues, I am sure you will appreciate that it may also be thought most undesirable that these issues should be purportedly determined in government officials' offices rather than in public. What is at stake, after all, is charitable property that none of the parties to the issues own except for the purpose of applying that property to charitable purposes.*

*I am sorry for the confusion caused to you and your colleges and hope that this letter now clarifies the issue for you. I would be pleased to meet with you and representatives of the Canadian Council of Christian Charities to further discuss these issues and how they might be addressed.*

*Yours truly,*

*Eric Moore*
*Director and Legal Counsel*
*Charitable Property Division*

□