

UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

CHARITABLE FUNDRAISING

RESEARCH PAPER

Albert H. Oosterhoff
Professor, Faculty of Law
The University of Western Ontario
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1. Background

[1] The subject matter of this paper was discussed at the 2003 Annual Meeting of the Uniform Law Conference of Canada. The topic was raised by the Ontario Commissioners because of a concern about unethical and fraudulent practices by some charities and fundraising businesses. These concerns arose out of actual cases of fraudulent practices and the difficulties experienced in Ontario in calling the perpetrators to account. Concerns about such practices appear to be widespread. However, while four of the provinces have enacted legislation that regulates charities and/or fundraising businesses, the others lack such legislation.

[2] The meeting authorized the Ontario Commissioners to engage an academic to prepare a research paper to consider the case for uniform legislation to regulate fundraising by charities and fundraising businesses and to make recommendations to the Uniform Law Conference. In addition, the Ontario Commissioners were authorized to establish a working group comprising experts from Ontario and other jurisdictions to assist the author of the research paper. In February, 2004 The Ontario Commissioners engaged Professor Albert H. Oosterhoff, of the Faculty of Law, The University of Western Ontario, to prepare the research paper.

2. Working Group

[3] A Working Group was established comprising the following persons:

Peter D. Broder, Acting Vice President of Public Affairs, Canadian Centre for Philanthropy

W.G. Tad Brown, Finance and Development Counsel, University of Toronto, and director of the Association of Fundraising Professionals of Canada.

Terence S. Carter, Carter and Associates, Orangeville, Ontario, practicing primarily in the area of charities, not-for-profit organizations, trade marks, and gift planning.

Terry de March, Director, Policy and Communication, Charities Directorate, Canada Revenue Agency.

Kenneth R. Goodman, Team Leader of the Litigation Department and the Charitable Property Program, Office of the Public Guardian and Trustee, Ministry of the Attorney General of Ontario (co-chair).

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John D. Gregory, General Counsel, Policy Branch, Ministry of the Attorney General of Ontario, and former Ontario Commissioner to the Uniform Law Conference of Canada.

Scott Hood, Policy Advisor, Alberta Government Services, Consumer Programs, with responsibility for administering Alberta's *Charitable Fund-raising Act*.¹

Susan M. Manwaring, Miller Thomson LLP, Toronto, with a practice focusing on providing tax and general counsel advice to charities and not-for-profit organizations.

Albert H. Oosterhoff, Professor, Faculty of Law, The University of Western Ontario (co-chair).

C. Lynn Romeo, General Counsel and leader of the Corporate, Commercial and IT team at Manitoba Justice, Civil Legal Services.

Frédérique Sabourin, Chairperson of the Civil Section, Uniform Law Conference of Canada.

Andrea Seale, Crown Counsel, Legislative Services Branch, Saskatchewan Department of Justice and responsible for overseeing the drafting and enactment of Saskatchewan's *Charitable Fund-raising Businesses Act*.²

John Twohig, Senior Counsel, Policy Branch, Ministry of the Attorney General of Ontario and liaison with the Uniform Law Conference of Canada.

[4] The Working Group met on February 26 at the Office of the Public Guardian and Trustee of Ontario, with some of the members taking part in the meeting by conference call. The focus of the discussion was principally on the issues that needed to be raised in the research paper. The Working Group met again on March 24, 2004 to consider and discuss the draft research paper. Some members again took part by conference call and John Walker and Patrick Kennedy of the Canada Revenue Agency also took part in the deliberations. The comments of the members were taken into consideration and were incorporated into the final draft of the paper.

3. Summary of the Paper

[5] The research paper first describes existing problems regarding charitable fundraising and explains how existing laws are inadequate to deal with these problems. Next, it summarizes legislative and regulatory responses in Canada. In this section I first discuss regulation at the federal level, including the changes to the regulation of charities proposed by the 2004 Federal Budget. Then I consider provincial regulation, focusing principally on the four provinces that have legislation regulating charitable fundraising, namely Alberta, Manitoba, Prince Edward Island, and Saskatchewan. Then I summarize responses to fundraising problems in England and Wales and in the United States. In the

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next section I discuss a number of significant reports that address fundraising and related issues. Finally I draw the conclusion that the research shows regulation at the provincial level of fundraising by charities (as distinct from other non-profit organizations) and by fundraising businesses on behalf of charities is indicated and why a Uniform Act is desirable. Consequently, I recommend that the Conference adopt a Uniform Act on charitable fundraising. I also make certain related recommendations and list a number of issues that, in my view, should be considered in reaching a decision whether a Uniform Act is desirable and what its contents should be.

4. Statement of Problems and Inadequacy of Existing Law

[6] Canada has a vibrant voluntary sector³ and a history of generous giving to charity. This is apparent from the 2000 National Survey of Giving, Volunteering and Participating.⁴ Some 78 percent of Canadians aged 15 or over made direct financial contributions to charitable and non-profit organizations between October 1, 1999 and September 30, 2000. Some deposited money in cash collection boxes. Others left a bequest to charity. Yet others made in-kind donations. The estimated total financial support was more than \$5 billion. The largest proportion, approximately \$4.9 billion, was given by 78 percent of Canadians who donated in response to requests from organizations, or who gave of their own accord.⁵ Further, a study conducted by the Canadian Centre for Philanthropy for the Muttart Foundation,⁶ showed that a large proportion of Canadians believe that charities play an important role in our society and are effective in meeting the needs of Canadians.⁷ The importance of Canada's voluntary sector was also affirmed in the 2004 Federal Budget, which noted that, in 2002 alone, 5.5 million Canadians made financial or in-kind donations worth \$5.8 billion to registered charities.⁸

[7] These figures are remarkable. It must be emphasized that this is so in large part because the fundraising practices of the overwhelming majority of charities and charitable fundraisers are ethical and beyond reproach. Moreover most of the moneys raised by the majority of charities and fundraisers are applied for the benefit of the intended charitable purposes. Therefore, when I discuss problems in the voluntary sector in this paper, it must be remembered that the problems are caused by a minority of charities and fundraising businesses. Nonetheless, these problems cause difficulties for the entire sector, because they have an adverse effect on charitable giving and on the trust that Canadians have in the voluntary sector.⁹

[8] Regulation of the voluntary sector is desirable for these reasons and I so conclude later in this paper. When considering regulation, however, it is important to remember that many charities are small and lack the resources to comply with a complex regulatory scheme. It would, therefore, be appropriate to allow for reduced compliance provisions for such charities. In other words, regulation should not make it impossible or difficult for legitimate charities to operate, but should seek to curb abuses and provide a climate in which all legitimate charities and fundraising businesses can flourish and foster the public's trust in the voluntary sector.

[9] A series of articles in the *Toronto Star* between November 13, 2002 and June 21, 2003, written by Kevin Donovan, discussed various abuses by a number of charities and fundraising businesses.¹⁰ He reported that of the approximately 80,000 registered charities in Canada, some 12,000 routinely spend more on fundraising and administrative and office expenses than on charitable works. Donovan gave numerous examples of charities that devoted less than 20 cents of every dollar collected – and sometimes considerably less – on charitable purposes. Some of these charities are “sound-alikes”, that is, their names are similar to legitimate charities. They trade on the good will of their legitimate counterparts. In other situations the charity uses a fundraising business to operate their solicitation and the percentage it takes from the money collected is excessive. Some of these organizations operate in bad faith, while others have made bad bargains with fundraising businesses or are simply inept at fundraising. While bearing in mind that these are newspaper stories, the examples are nonetheless horrifying. There were similar reports in 2000 on CBC's *The Magazine*, entitled “Bittersweet Charity”, and on CTV's *W5* program.

[10] In the last three years, Ontario had to deal with two egregious fundraising cases. The Public Guardian and Trustee investigated both charities and sought and obtained an order requiring the charities to pass their accounts. The first was *Ontario (Public Guardian and Trustee) v. AIDS Society for Children (Ontario)*.¹¹ It involved a registered charity, which entered into fundraising agreements with two fundraising businesses¹² that were also named as respondents to the application. After the public and other AIDS organizations complained that the moneys collected were not being applied for the society's charitable purposes, Revenue Canada revoked the charity's registration and the Public Guardian and Trustee discovered that of the \$921,440 collected, no moneys were applied to the society's charitable purposes. Instead, all the moneys were applied to the society's fees and expenses. Between 76 and 80 percent of the funds collected were paid to the fundraising businesses. The court held that the society and its directors stood in

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fiduciary relationship towards the public for all the moneys collected, and that the fundraising businesses' duty to account extended to the gross receipts collected. The court also noted that, at the behest of the Public Guardian and Trustee, the fundraising contracts might be void as contrary to public policy.

[11] The second case was *Ontario (Public Guardian and Trustee) v. National Society for Abused Women and Children*.¹³ This society was also a registered charity. It entered into three fundraising contracts with fundraising businesses¹⁴ that were also named as respondents. They received between 75 and 80 percent of the gross receipts. The society collected almost \$1 million, but only \$1,265 was actually applied for its purposes. The court found the directors liable for breach of fiduciary duty and ordered them to repay all moneys they received from the society. It also declared one of the fundraising contracts void for conflict of interest, because two of the charity's principals were employees of the fundraising business.

[12] These cases and others referred to in the newspaper accounts mentioned above, make it clear that there are significant problems in the voluntary sector. Although the abuses arise only in a minority of cases, they do serve to poison the fundraising environment to the detriment of all.

[13] There are also other concerns in the sector. One is the perception that there have been inadequate efforts to educate the public about charities and charitable fundraising. Another significant problem is that there is no standard method of accounting for expenses. Thus, for example, there is continuing debate about how expenses should be allocated among administrative costs, charitable activity, and the cost of fundraising. It appears that some charities allocate overhead expenses to fundraising, while others allocate some expenses associated with fundraising to other categories.¹⁵ This problem does not have a simple solution, because often there is considerable overlap between these various kinds of expenses, so that they can, with some reason, be allocated differently.¹⁶ Indeed, charitable organizations appear to have a broad discretion to allocate these expenses as seems appropriate to them.¹⁷ It has been estimated that the cost of fundraising for 50 percent of Canadian charities is approximately 12 percent of the funds raised, while the average cost is 26 percent.¹⁸ It has been noted, however, that it is too facile a solution to impose only a minimal or "bottom-line" fundraising cost ratio, since there are too many factors that affect the cost of fundraising, such as the frequency with which donors have given in the past, the average size of the donation made, the "popularity" of the charity, and the kind of campaign being used.¹⁹ Thus, it has been

suggested that governments can better serve the charitable sector by focusing on the *practices* of charities, rather than on variable *outcomes*. The practices of charities would include whether they adhere to ethical standards recommended by the sector or imposed by legislation. Information about the practices of charities would, of course, be in addition to the financial information a charity might be required to disclose.²⁰

[14] Another problem is the lack of coordination among the federal government and the provinces. This arises in part because most of the provinces have little or no regulation of charities and in part because of the confidentiality requirement imposed by s. 241 of the *Income Tax Act*.²¹ It prohibits the disclosure of taxpayer information by any official charged with administering the Act. Subsection (3.2) contains an exception under which an official may provide the following information about a registered charity: (a) a copy of the charity's governing documents, including its statement of purpose; (b) any information provided to the Minister by the charity when applying for registration; (c) the names and terms of office of the directors of the charity; (d) a copy of the notification of the charity's registration, including any conditions and warnings; and (e) if the registration of the charity has been revoked, a copy of any letter sent by the Minister to the charity setting out the grounds for the revocation. As we shall see below, by way of further exception, annual returns by registered charities may also be made public. However, the prohibition in s. 241 prevents the Charities Directorate from informing the provinces that it is investigating a charity for alleged abuses. The provinces are not so constrained. Some provinces, such as Alberta and Saskatchewan, are empowered by their statutes to release public information. In addition, provincial privacy statutes typically permit a public body to disclose personal information to another public body or law enforcement agency in Canada to assist in an investigation.²² The provinces use the Canshare system (which permits consumer protection agencies to exchange information) in order to inform other authorities about fundraising problems.

[15] In summary the problems are: (1) fraudulent and sometimes inept practices by charities and fundraising businesses; (2) the negative effect these practices have on the majority of legitimate and efficient charities and fundraisers; (3) the lack of trust generated by these practices among the public and the concern the public has about the use to which their donations are put; (4) the public's concern about lack of regulation of charitable fundraising in many provinces and of inadequate regulation at the federal level; (5) the lack of coordination between the provinces and between the federal authorities and the provinces; (6) the inability, because of confidentiality rules, of regulatory agencies to keep each other informed of allegations of wrongdoing and of investigations

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into such allegations; (7) a perception that charities are unable to regulate or police themselves; and (8) an inadequate effort to educate the public.

[16] I believe that only fundraising by or on behalf of charities should be regulated by the provinces. Other non-profits engage in fundraising, of course, but such fundraising is often monitored by other regulatory bodies. Further, the problems described in the paper that cause concern are those involving fundraising activities by or on behalf of charities.

5. Legislative and Regulatory Responses in Canada

[17] The regulation of charities falls within the subject matter of Property and Civil Rights, which lies within provincial jurisdiction.²³ It is also a matter of a merely local or private nature in a province and, thus, subject to provincial jurisdiction.²⁴ Arguably, it also falls under provincial jurisdiction because of the power given to the provinces to establish, maintain, and manage “Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province”.²⁵ Charities may, thus, be regulated by the provinces and territories. In addition, a charity that chooses to be registered as a registered charitable organization under the *Income Tax Act*²⁶ is subject to federal regulation. I shall describe the federal regulatory scheme first. After a brief reference to the lack of regulation in most provinces and territories, I shall then describe the legislation in the four provinces that have enacted legislation regarding charitable fundraising.

5.1 Federal Regulation

[18] Charities that wish to be able to issue receipts for charitable donations which corporate donors can deduct from their income tax²⁷ and for which individuals can receive non-refundable tax credits,²⁸ must be registered under the *Income Tax Act*. Further, only registered charities and other non-profit organizations are exempt from income tax.²⁹ Section 248(1) defines “registered charity” as “(a) a charitable organization, private foundation or public foundation, within the meanings assigned by subsection 149.1(1), that is resident in Canada and was either created or established in Canada, or (b) a branch, section, parish, congregation or other division of an organization or foundation described in paragraph 248(1) “registered charity” (a), that is resident in Canada and was either created or established in Canada and that receives donations on its own behalf, that has applied to the Minister in prescribed form for registration and that is at that time registered as a charitable organization, private foundation or public foundation”.

[19] Section 149.1(1) of the *Income Tax Act* defines “charity” as a charitable organization or a charitable foundation. The former is an operating charity. It must expend 80 percent of its tax-receipted income on charitable activities carried on by it and by way of gifts to qualified donees. Thus, only 20 percent of tax-receipted income can be spent on administration and fundraising costs. A charitable foundation, which may be either a public or a private foundation, is subject to a more complicated disbursement quota in accordance with a disbursement formula contained in s. 149.1(1), unless otherwise approved by the Minister. It is required to disburse 80 percent of its tax-receipted income in any year to charitable organizations, plus 4.5 percent of its capital assets. For private foundations the 80 percent increases to 100 percent in respect of gifts from other registered charities. Alternatively, a foundation can meet its quota by undertaking its own charitable activities.³⁰ These expenditure requirements or “disbursement quotas” are contained in s. 149.1(c) of the *Income Tax Act* and must be met unless otherwise approved by the Minister. Every registered charity is required, within six months of the end of each taxation year of the charity, to file an information return and a public information return for the year, in prescribed form and containing prescribed information.³¹ Notwithstanding s. 241, the Minister may make the information contained in the public information return available to the public, as well as a listing of all registered and previously registered charities that includes their names, location, registration number, date of registration, and date of revocation for a charity whose registration has been revoked.³²

[20] The Minister has power to revoke the registration of a charitable organization, a public foundation, or a private foundation, *inter alia*, because it fails to meet the disbursement quota.³³ Further, the Minister may give notice of intention to revoke the registration of a registered charity, *inter alia*, for failure to comply with the Act or the Regulations, or failure to file an information return as and when required by the Act or the Regulations.³⁴ The applicant may appeal the Minister’s decision to refuse to register it, or the Minister’s notice of intention to revoke a registration to the Federal Court of Appeal.³⁵ However, if a certificate has been issued under the *Charities Registration (Security Information) Act*³⁶ to the effect that a charity has made any resources available to a terrorist organization, the decision is not subject to appeal.³⁷ Further, the charity’s registration is revoked and the revocation is not subject to appeal.³⁸

[21] The Charities Directorate, part of the Policy and Planning Branch of the Canada Revenue Agency (“CRA”, formerly the Canada Customs and Revenue Agency), administers those portions of the *Income Tax Act* that relate to charities. Thus, it processes applications for registration, deals with audit and compliance matters, and provides information to the public, applicants, and charities. As mentioned above, the

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Charities Directorate is severely constrained by the confidentiality provisions of s. 241 of the Act. However, by reason of s. 149.1(15) the Charities Directorate maintains an online list of Canadian registered charities with the information permitted by that section, including the charities' information returns since the year 2000.³⁹ The return⁴⁰ provides summary financial information, including the amounts received by way of tax-receipted gifts and from other sources, expenditures on the charity's own charitable work and gifts to qualified donees, and the costs of fundraising. The return also lists the sources of revenue, the types of fundraising engaged in, the gross revenue raised from fundraising, whether professional fundraisers were used, and the amounts paid to the professional fundraisers. Thus, there is a significant amount of information that is available to the public. However, the information is supplied by the charity itself and the information has not necessarily been verified by the Charities Directorate. Further, there is no standardized method of accounting for expenditures.

[22] The Charities Directorate regularly publishes policy statements, policy commentaries, and information letters, as well as newsletters, all of which are available online.⁴¹ Over the past few years, the Directorate has held extensive consultations with charities, stakeholders, and staff to develop a vision of future service and compliance activities that will ensure public trust and improve client-oriented service. As a result of that process, a ministerial Charities Advisory Committee was established to provide regular advice, guidance and research through contact between the Directorate and the charitable sector. These welcome changes came in response to concerns about the Directorate's practices voiced by the voluntary sector and others.⁴² A recent paper noted that the wealth of information now available online is a big improvement over the former situation and that the resulting increased transparency and accessibility of the CRA will serve to educate charities about their rights and responsibilities.⁴³

[23] The final report of the Joint Regulatory Table made a large number of recommendations for improvements to this regulatory scheme.⁴⁴ The Joint Regulatory Table was a working group convened under the Voluntary Sector Initiative in 2000. It had equal representation from both the voluntary sector and the federal government. Among other things, the Report recommended⁴⁵ that the CRA should take responsibility for educating the voluntary sector about the regulatory system and about governance and accountability matters. In addition, the CRA should educate the public about charities, the registration process, financial accountability, how to file a complaint about a charity, and the like.

[24] The Report also recommended that the CRA and the provinces seek to ensure that regulation by the federal government and the provinces is complementary and

minimizes conflicting demands and duplicative administrative burdens on charities. Further, it recommended that amended legislation permit the CRA to share information with provincial regulators and other federal regulatory agencies.

[25] With respect to applications, the Report recommended that the CRA publish reasons for all its decisions on applications on its website, and further that the same information that can be disclosed for registered charities should be available on request for organizations whose application for registration has been denied. In addition, the Report contained a number of recommendations about the release of documents in various circumstances. The Report also recommended that the CRA should have available to it intermediate sanctions short of deregistration, including the imposition of remedial agreements and publication of the names of charities that have failed to file their annual returns, or whose qualified donee status and tax-exempt status has been suspended.

[26] The 2004 Federal Budget adopted most of the recommendations of the Joint Regulatory Table. The following is a summary of the proposed changes.⁴⁶ The Budget proposes a new compliance regime, a more accessible appeals process, and more transparency and greater accessibility to information. It also proposes to refine the disbursement quota rules.

[27] The Budget proposes compliance through education as a first priority. The CRA will work in partnership with leading voluntary sector organizations to educate volunteers and employees about the rules affecting charities. In addition, the Budget proposes the introduction of new intermediate sanctions, short of revocation of registration, for relatively minor breaches of the Act. These sanctions include: (1) the taxation of gross revenue generated by a charity from prohibited activities; (2) suspension for one year of a charity's tax-receipting privileges and of the right to receive funds from qualified donees when it has used donated funds other than for charitable purposes; (3) a monetary penalty of \$500 for failure to file the annual return on time, and publication of the names of late- and non-filers; and (4) other monetary penalties in a variety of situations, such as issuing receipts with incomplete information, carrying on an unrelated business, and providing an undue personal benefit to any person. Many of the penalties in the latter situations take the form of a tax on the moneys improperly earned or disposed of, with increases for repeat infractions. However, if a charity is required to pay taxes and penalties in excess of \$1,000 for the taxation year, it will be allowed to satisfy its liability by transferring the equivalent amount to eligible donees as determined by the Minister.

[28] The Minister retains the power to revoke the registration of a charity for serious breaches of the Act and for continued, repeated or cumulative infractions. The Budget

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also proposes that the Minister may revoke a registration that was obtained on the basis of false or deliberately misleading information.

[29] At present, when a charity's registration is revoked, the charity has one year in which to divest itself of its assets by transferring them to registered charities and other qualified donees. The Budget proposes that assets can be transferred only to a registered charity that is fully compliant with the Act, is not engaged in terrorist activities, and more than 50 percent of whose board members or trustees deal at arms' length with each board member or trustee of the charity whose registration is revoked. Assets not transferred to another charity within the year must, as at present, be transferred to the Crown as a revocation tax. The revocation tax will be assessed in the notice of intended revocation and the Minister will be able to seek judicial authorization to collect the tax early if the charity's assets are being diverted for private benefit.

[30] The Act will be amended to authorize the Minister to annul an organization's registration if the organization was registered in error. In that case no revocation tax will apply and already issued receipts will be honoured.

[31] The Budget proposes to allow charities and applicants for registration access to the internal objection review process of the CRA. This process would be used for intermediate sanctions as well as applications for registration that have been denied, revocations and annulments of a charity's registration, and designations of a registered charity as a private or public foundation or a charitable organization. Appeals of decisions on registration, revocation and annulment will lie to the Federal Court of Appeal. Appeals of taxes and penalties may be directed to the Tax Court of Canada.

[32] The Budget proposes to enhance transparency and accessibility by making additional information available. This information includes: financial statements filed with annual information returns; letters sent by the CRA to an organization with details of the grounds for annulment of its registration; the CRA's decisions regarding a notice of objection filed by a charity; the information a charity has filed in support of an application for special status or an exemption, and the CRA's responses; and the identification of a charity against which a sanction has been imposed, the type of sanction imposed, and the letter sent to the charity setting out the grounds for the sanction.

[33] With respect to organizations that have been denied registration, the following information will be made available to the public, but in such a way as to withhold the organization's identity: the organization's governing documents, including its statement of purpose; information the organization disclosed as part of the application; a copy of

the notice of denial; and a copy of the decision of the CRA's Appeals Branch if the organization filed a notice of objection.

[34] The Regulations will be amended to require that the name and website of the CRA appear on all receipts. The CRA intends to increase public education regarding the matters the public should be aware of when giving to charities, how to confirm the status of a charity, and how to file complaints about a charity. The CRA will also post the reasons for its registration decisions on its website, as well as the policies, procedures and research databases it uses when making a decision. In addition, the CRA will publish an annual report on its activities with respect to registered charities.

[35] Finally, the Budget proposes to change the disbursement quota rules as follows: (1) the 4.5 percent disbursement quota on capital assets will be reduced to 3.5 percent; (2) the 80 percent disbursement quota regarding the disposition of endowments will be replaced by a quota equal to the lesser of 80 percent of the capital gain realized on the disposition and 3.5 percent of the value of all property not used directly in charitable activities or administration; and (3) the 3.5 percent disbursement quota will also be extended to charitable organizations. In addition, all transfers from one registered charity to another will be subject to a disbursement requirement of 80 percent, subject to special rules for transfers of capital endowments and gifts made by way of direct designation.

[36] In sum, these changes, once enacted, will have the effect making the operations of the CRA and, consequently, the Charities Directorate more transparent, make more important information available to the public, and improve the compliance regime and appeal process. It is expected that the changes will greatly benefit the public and the voluntary sector. The fact that the federal government is making these changes highlights and supports the need for regulation in the voluntary sector and, in my view, consistent regulation is very important. It must be remembered, however, that federal regulation does not and cannot regulate all issues, including all aspects of fundraising and, thus, regulation at the provincial level is also necessary.

[37] The Province of Quebec has similar rules under its income tax legislation. However, in the 2004-2005 Budget the following statement appears: "The decision as to whether to retain the measures proposed on the regulatory reform respecting registered charities (BR 25) will be announced later."⁴⁷ Consequently, there may yet be changes in these rules.

5.2 Provincial Regulation

5.2.1 Generally

[38] While federal regulation is important and does deal with fraudulent practices, it is limited in scope. A charitable organization that wishes to raise funds for charitable purposes may choose not to be registered under the *Income Tax Act*.⁴⁸ In that case it is unable to issue receipts for income tax purposes, but is not precluded from raising funds for charitable purposes. In this situation, only provincial legislation can regulate the charity. In addition, provincial regulation can have an important role in supplementing federal regulation.

[39] There is very little regulation of charitable fundraising at the provincial and territorial level in most provinces. In Ontario a member of the public has the right to make a complaint in writing to a judge of the Superior Court of Justice “as to the manner in which a person or organization has solicited or procured funds by way of contribution or gift from the public for any purpose, or as to the manner in which such funds have been dealt with or disposed of”. Upon receipt of the complaint the judge may order the Public Guardian and Trustee to investigate the matter and report to the Attorney General and the judge. The judge may then order the charity to pass its accounts. This provision does not apply to a religious or fraternal organization or to any person who has solicited or procured funds for such an organization.⁴⁹ In addition to this very limited regulation, municipalities have the power to enact by-laws to regulate the days when charities may solicit funds.⁵⁰ Apart from Ontario and the four provinces discussed below, none of the other provinces and territories appears to regulate charities.

[40] Four Canadian provinces, namely, Alberta, Manitoba, Prince Edward Island, and Saskatchewan, have enacted legislation that addresses, in varying degrees, the problems faced by those charged with supervising charities. I shall now summarize the salient features of the legislation in these provinces.

5.2.2 Alberta

[41] The Province of Alberta has had legislation regulating charitable fundraising since 1951. In that year it enacted the *Public Contributions Act*.⁵¹ The Act was modified substantially in 1965.⁵² However, the Act was declared unconstitutional on the ground that it infringed the constitutional guarantees of freedom of speech because the power to refuse to authorize or licence a campaign was not subject to any explicit relevant

criteria.⁵³ One feature of the Act the court particularly objected to was that it required prior authorization before a fundraising campaign could be undertaken. After extensive consultation and consideration of a number of reports,⁵⁴ the 1965 Act was repealed and replaced by the *Charitable Fund-raising Act*.⁵⁵

[42] Section 2 of the *Charitable Fund-raising Act* provides that the purposes of the Act are: (a) to ensure that the public has sufficient information to make informed decisions when making contributions to a charitable organization or for a charitable purpose; and (b) to protect the public from fraudulent, misleading or confusing solicitations and to establish standards for charitable organizations and fundraising businesses when making solicitations. Thus, it regulates both charities and fundraising businesses. Section 3 provides that the Act does not apply to (a) a solicitation made by a charitable organization to a person or to a member of the person's family if the person is a member of the organization; (b) a solicitation made by a charitable organization for goods or services to be used by the organization for its administration or some other non-charitable purpose; or (c) a solicitation made in respect of a gaming activity that is authorized by licence under the *Gaming and Liquor Act*.⁵⁶

[43] The Act applies to (a) solicitations made by a fundraising business; (b) solicitations made by a charitable organization that uses a fundraising business to make solicitations on its behalf or that manages solicitations made by or on behalf of the charitable organization; and (c) solicitations made by a charitable organization which intends to raise gross contributions of \$25,000 or more from persons in Alberta during any financial year.⁵⁷

[44] The Alberta Act regulates the hours of telephone solicitation.⁵⁸ It requires persons making solicitations to provide information, prescribed by the regulations,⁵⁹ to the person being solicited.⁶⁰ Further, it requires charitable organizations and fundraising businesses to maintain detailed records, and charitable organizations must prepare audited financial statements or financial information returns, all as prescribed by regulation.⁶¹ As indicated below, the regulations impose a lower reporting requirement for smaller charities.

[45] Subject to some exceptions, the Act provides that a charitable organization must be registered in order to make a solicitation to an individual if it raises gross contributions of \$25,000 or more in a financial year in Alberta. Moreover, a charitable organization may not use a fundraising business to make or manage solicitations on its behalf, unless the charitable organization is registered.⁶² The Minister has the discretion to refuse to

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register or renew the registration of a charitable organization, or to impose terms, in certain circumstances, upon notice to the charitable organization.⁶³

[46] The Act defines a “fund-raising business” as a business that makes solicitations on behalf of or manages solicitations made by or on behalf of a charitable organization, for remuneration, and that is not an employee of the charitable organization.⁶⁴ A fundraising business must be licensed and post security with the Minister in order to make or manage solicitations on behalf of a charitable organization, and the Minister has a discretion to refuse to issue or renew a licence on prescribed grounds, or to impose terms, on notice to the applicant.⁶⁵ The Act contains detailed provisions regarding donor lists and fundraising agreements,⁶⁶ authorizes the Minister to establish standards of practice,⁶⁷ and requires charitable organizations to adhere to those standards.⁶⁸

[47] Part 3 of the Act regulates donor fundraisers. A “donor fund-raiser” is defined as “a business that makes a . . . request to buy” goods or services produced or provided by the business on the understanding that all or part of the purchase price will be donated to a charitable organization or be used for a charitable purpose.⁶⁹

[48] Part 4 of the Act deals with enforcement and makes provision for inspections and investigations. It empowers the Minister to initiate investigations either upon receipt of a complaint or on his or her own motion and to obtain court orders for the protection of the property of a charitable organization. The Minister also has power to suspend or cancel the registration of a charitable organization or the licence of a fundraising business, or to impose terms and conditions. Alberta has cancelled the registration of charitable organizations and the licenses of fundraising businesses on several occasions, thereby banning the organizations from continuing to operate in Alberta. In each case the authorities informed their counterparts in the other provinces of their actions.

[49] Part 5 of the Act contains miscellaneous provisions regarding misrepresentations and false statements. They also contain provisions requiring a charitable organization and a fundraising business to use their best efforts to comply with a request to refrain from making solicitations to a person and to remove that person from their list; provide for appeals from Ministerial decisions; and impose significant penalties for various offences.⁷⁰ Section 51 authorizes the Minister to disclose any information obtained under the Act to assist the public in determining whether to make contributions to a person, charitable organization, fundraising business, or donor fundraiser. Section 54 prohibits

municipalities from passing by-laws regulating or prohibiting solicitations by charitable organizations or fundraising businesses. Part 6 of the Act contains transitional provisions.

[50] Section 2 of the Regulation⁷¹ details how gross contributions must be calculated. Section 6 requires a charitable organization to prepare audited financial statements if solicitations were made by it or on its behalf during the financial year and its gross annual income was \$250,000 or more. Section 7 provides that a charitable organization must prepare a financial information return for a financial year, if solicitations were made by it or on its behalf during the financial year and its gross annual income was less than \$250,000.

[51] As part of the regulatory system, the Albert Government regularly publishes news releases, consumer alerts about unregistered fundraising organizations, and consumer tips, which are available online.⁷² In addition, a Charitable Advisory Committee was established in 1999 to advise Government Services on the operation and regulation of the voluntary sector in Alberta. The Committee sponsored a conference in 2000, which produced a report, called *New Directions, New Pathways[:]* *Report of the Alberta Charities Roundtable 2000*. The Report contains many recommendations to improve regulation and to strengthen the charity sector. In 1999, the Government introduced the following fundraising standards of practice, which were modeled on the National Society of Fundraising Executives' "Code of Ethical Principles and Standards of Professional Practice":⁷³

1. Charitable organizations and fund-raising businesses must comply with all relevant municipal, provincial, and federal laws.
2. Charitable organizations and fund-raising businesses must advocate, within the organization, adherence to all applicable laws and Standards of Practice.
3. The principals, directors, managers and employees of charitable organizations and fund-raising businesses that must comply with these Standards must effectively disclose to their organization all conflicts of interest and all situations that might be perceived as a conflict of interest.
4. Charitable organizations and fund-raising businesses must give donors the opportunity to have their names removed from lists that are sold, rented, or exchanged with other organizations.

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5. Charitable organizations and fund-raising businesses must not disclose any personal and confidential information about donors or prospective donors outside the work environment, and within the work environment only as appropriate.
6. Charitable organizations must, to the best of their ability, ensure that contributions are used in accordance with donors' intentions and obtain the explicit consent of a donor or the donor's representative before altering the conditions of a gift.
7. Charitable organizations must use accurate and consistent accounting methods that conform to the appropriate guidelines adopted by the Canadian Institute of Chartered Accountants (CICA).
8. Charitable organizations and fund-raising businesses must not take unfair advantage of a donor or prospective donor for their own advantage or benefit.

5.2.3 Saskatchewan

[52] It is convenient at this point to consider the Saskatchewan legislation, since it was modelled in part on the Alberta statute. For that reason, I can be briefer in describing this statute. *The Charitable Fund-raising Businesses Act*⁷⁴ came into force January 1, 2003. It differs from the Alberta Act in that it regulates only fundraising businesses, not charities. Saskatchewan encountered problems with some extra-provincial charities that were all associated with fundraising businesses. The province therefore decided that the regulation of fundraising businesses was an adequate measure and it was not necessary to impose onerous regulatory burdens on well-behaved charities operating within the province.

[53] The Act defines “fund-raising business” as a person that, for remuneration, manages or is responsible for a solicitation by or on behalf of a charitable organization, and is not an employee of the charitable organization.⁷⁵ The Act is administered by a registrar of charities.⁷⁶

[54] Section 5 of the Act provides that no person shall act as a fundraising business without a licence. Part II of the Act defines the terms upon which a charitable fund-raising business may obtain a licence and empowers the registrar to refuse to issue a licence or to renew a licence. It also provides that the registrar may require the applicant to be bonded.⁷⁷

[55] Part III of the Act prescribes rules for solicitations, including the kinds and hours of solicitation, the duty to disclose information, and the duty to comply with requests to refrain from solicitations. Part IV imposes a duty to maintain records, and to provide annual financial statements to the registrar. It also provides that a licensee may not commence a campaign of solicitation unless it has entered into a fundraising agreement with the charitable organization on whose behalf solicitations are to be made and prescribes the contents of the agreement.⁷⁸

[56] Part V authorizes the registrar to conduct investigations, while Part VI makes provisions for appeals from decisions of the registrar. Part VII contains a number of general provisions, including a requirement that charities provide financial and other information to any person on request. It also prescribes significant penalties for infringement of the Act⁷⁹ and it empowers the making of regulations.⁸⁰ Section 44 authorizes the registrar to disclose any information obtained pursuant to the Act or the regulations if, in the registrar's opinion, the disclosure is in the public interest.

5.2.4 Manitoba

[57] Manitoba's *Charities Endorsement Act*⁸¹ provides that, unless authorized by the Minister (or a local authority for a local campaign), no person or organization shall solicit money, goods, or financial assistance, or sell or provide goods or services on the representation that the money, goods, or financial assistance, or the sale or provision is for a charitable purpose. However, solicitations among the members of a charitable organization, by a religious organization for its own purposes, or by persons or organizations licensed to conduct lotteries are exempt.⁸² If the solicitation is to be carried on through or with the assistance of a fundraising business (which the Act calls a "promotional agency"), the authorization will not be granted and the solicitation cannot be carried out unless the terms of the contract with the fundraising business are disclosed to the authority from which the authorization is required, the contract expresses the remuneration to be paid to the fundraising business, the approving authority approves the remuneration, and the fundraising business agrees in writing to furnish the approving authority with audited financial statements upon completion of the solicitation.⁸³ The Act prescribes modest penalties for contravening the legislation.⁸⁴

5.2.5 Prince Edward Island

[58] Prince Edward Island's *Charities Act*⁸⁵ applies to a charity seeking financial support for its purposes by public appeals, but does not apply to appeals by a church for appeals among its members for support of the church's purposes, or collections at divine services, nor to organizations that are registered charities under the *Income Tax Act*.⁸⁶ The Act makes it an offence for a charity to solicit or make an appeal to the public for donations or subscriptions in money or kind, or to raise money for its objects by various forms of entertainments, unless the charity is registered under the Act. Moreover, it is an offence to make any collection for any charity or charitable fund unless the Minister has authorized the collection.⁸⁷ The Act empowers the Minister to register and deregister charities and requires the Minister to keep a register of all charities registered under the Act.⁸⁸ Registered charities are required to keep minutes and audited financial statements.⁸⁹ The Act imposes modest penalties for false statements or representations.⁹⁰

6. Responses in Other Jurisdictions

[59] Time did not permit more than a superficial look at legislative and other responses in other jurisdictions. Hence, the following should not be taken as a considered or detailed summary of the law in other jurisdictions, but rather as an indication that other jurisdictions have concerns similar to those voiced in Canada and, if the Conference decides that it wishes to promulgate a Uniform Act, these and possibly other jurisdictions should be looked at in greater detail.

6.1 England and Wales

[60] England and Wales have the longest history of regulating charities and charitable fundraising. Part II of the *Charities Act 1992*⁹¹ regulates professional fundraising, as well as "commercial participators", that is, promoters of businesses which claim that such businesses will benefit charities. The aim of Part II is to prevent fundraising fraud and to require adequate disclosure of information to putative donors. Professional fundraisers who solicit funds on behalf of charitable organizations and commercial participators must enter into contracts whose terms are prescribed. They are required to make disclosure to potential donors. Further, donors are entitled to a refund within a specified period of time when solicitations are made by radio or television.

[61] The Charities Commission is charged with overseeing charities. Charities are required to file annual reports with the Commission and these are available for inspection by the public.

[62] Part III of the Act is a consolidation of earlier legislation. It governs public appeals and collections and requires a permit of those who wish to conduct them. There is provision for the issuing of permits and their refusal in appropriate cases. However, Part III has never been brought into force because of perceived flaws which made the scheme unworkable. Consequently, the earlier legislation on public appeals continued in force.

[63] The law and regulation of charities in England and Wales is currently under review. The Government's Strategy Unit published an extensive report, entitled *Private Action, Public Benefit: A Review of Charities and the Wider Not-for-Profit Sector*⁹² on September 25, 2002. The government's response, entitled *Charities and Not-for-Profits – A Modern Legal Framework*⁹³ was published on July 16, 2003. The Home Office Charities Team is working on a new Charities Bill, to be introduced this Parliamentary Session, which will incorporate the government's response to the review.

[64] The government's response adopted most of the recommendations with some modification. The recommendations include a new definition of charity based on the principle of public benefit and a list of charitable purposes.⁹⁴ The Government also supports important recommendations for ensuring accountability and transparency, with a view to building public confidence. These recommendations include a requirement that larger charities complete an annual standard information return, which must highlight key qualitative and quantitative information about each charity;⁹⁵ a new statement on recommended practice on accounting and reporting by charities with improved methods for apportioning costs and expenditures, so that more meaningful financial comparisons can be made between organizations;⁹⁶ a new local authority licensing scheme for public collections to replace Part III of the 1992 Act;⁹⁷ and support for self-regulation by charities, backed by statutory regulation if the former fails.⁹⁸

6.2 United States

[65] As in Canada, charities are regulated federally through the income tax system. Charities are required to make application for tax-exempt status and to file annual returns with the IRS on Form 990 which detail their practices and finances for the year. The documents are accessible to the public.

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[66] In addition, the Federal Trade Commission regulates telemarketing by, *inter alia*, professional fundraisers.⁹⁹ That regulation was recently upheld.¹⁰⁰ The Federal Trade Commission publishes regular news releases on its web site.¹⁰¹

[67] At the state level, more than half of the states regulate charitable fundraising by statute.¹⁰² Most of the statutes are modeled on *A Model Act Concerning the Solicitation of Funds for Charitable Purposes*.¹⁰³ However, the United States Supreme Court has struck down parts of these statutes on the ground that they interfere unduly with the constitutional guarantee of freedom of speech. The court was particularly concerned about limits on the costs of fundraising and the obligation to make disclosure to potential donors.¹⁰⁴ These decisions have made regulation more difficult for states. However, many states continue to regulate fundraising in one form or another.

[68] The *Model Act* requires annual registration for charitable organizations, commercial co-venturers, and paid solicitors; annual reporting of financial statements; regulation of fundraising counsel, paid solicitors, and charitable sales promotions; and point of sale disclosure. The Act also requires that detailed records be kept and be available for inspection by the public. In addition, the Act empowers states to exchange information about charitable organizations, fundraising counsel, and commercial co-venturers with authorities in other states.

[69] California is an example of a state with extensive regulation. Under the *Uniform Supervision of Trustees and Fundraisers for Charitable Purposes Act*,¹⁰⁵ the state regulates all charitable corporations and trustees for charitable purposes, commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, and commercial co-venturers, over which the state has supervisory powers.¹⁰⁶ Paragraph 12584 mandates the Attorney General to establish and maintain a register of charitable corporations and trustees. Charities are required to file copies of their governing documents and additional periodic reports, under oath, governing the nature of the assets held for charitable purposes and their administration.¹⁰⁷ The Attorney General has power to conduct investigations into any charities.¹⁰⁸ Further, the register and copies of instruments and reports filed with the Attorney General are open for public inspection.¹⁰⁹ Commercial fundraisers are required to register with the Attorney General and are required to file annual financial reports, which must include their total revenue, fees, salaries paid, fundraising expenses, and distributions to charities.¹¹⁰ Similarly, there are registration and reporting requirements for fundraising counsel and commercial co-venturers.¹¹¹ A fundraising counsel is defined as a person who, for compensation, plans,

manages, advises, counsels, consults, or prepares material for or in respect of the solicitation of charitable funds, but who does not solicit funds or receive solicited funds, or employ anyone who does. A commercial co-venturer is defined as a person who, for profit, is normally engaged in trade or commerce and who represents to the public that the purchase or use of any goods, services, entertainment or other thing of value will benefit a charitable organization or will be used for a charitable purpose.

[70] In addition, the California *Charitable Solicitation Disclosure Act*¹¹² contains detailed regulation of professional and volunteer fundraisers that require disclosure of information. The disclosure varies depending upon the kind of solicitation.

[71] On February 23, 2004 a new bill, the *Nonprofit Integrity Act, 2004*, was introduced. It is sponsored by the Attorney General. The purpose of the bill is to increase reporting and disclosure requirements for charities and charitable fundraisers. Among other things, the bill would: (a) require annual independent audits of any charity with an annual gross revenue of \$500,000 or more; (b) require all contracts between a charity and a fundraiser or fundraising counsel to be in writing and include a statement of the fundraiser's fee and an estimate of what percentage the fee will be of the total contributions received; (c) require all contributions received by a commercial fundraiser to be deposited in the charity's bank account within five days of receipt; (d) impose new disclosure requirements for charitable solicitations; and (e) prohibit misrepresentations regarding the donation of tickets bought by donors. The American Association of Fundraising Professionals is concerned about some provisions of the bill and is working on amendments to ensure that the bill does not create onerous burdens on fundraisers in California.¹¹³

[72] The Attorney General maintains a website which contains publications and guides. It also links to a database of all registered charities in California that contains their financial IRS returns since 1998.¹¹⁴

[73] At the non-governmental level, the United States BBB Wise Giving Alliance maintains a website that provides *Standards for Charity Accountability* as well as reports on charities that solicit nationally and enables consumers to register complaints.¹¹⁵ Reports on charities that solicit regionally are available on local Better Business Bureau websites. The charity reports on the Alliance's website contain a detailed critique of any charity that fails to comply with the standards.

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[74] The *Standards for Charity Accountability* require a charity, among other things: (a) to spend at least 65 percent of its total expenses on program activities; (b) to spend no more than 35 percent of related contributions on fundraising; (c) to make its annual financial statements available to all on request and include a breakdown of expenses in the statements that indicates what portion is allocated to the charity's program, administration, and fundraising; (d) to prepare an annual report of the charity's mission statement, previous year's accomplishments, list of officers and directors, and financial information, and to make it available to all on request; (e) to provide the same information on its website, as well as electronic access to the charity's most recent IRS Form 990; (f) to protect the privacy of donors; and (g) to disclose how the charity benefits from the sale of products or services that state or imply that a charity will benefit from their sale.

[75] A professional organization that provides much relevant information is the Association of Fundraising Professionals. Its website has information about ethics, public policy, research and statistics, news, and other matters.¹¹⁶

7. Other Data

[76] There have been a number of studies over the years which have addressed the problems mentioned above. Some of these were conducted by the charitable sector itself, others by governments or governmental agencies, and yet others by broad-based bodies comprising representatives from both groups and the public.

[77] I have referred to several of these reports above, but I wish to refer to a few of them in greater detail because of their significance and because some of their recommendations are particularly relevant to charitable fundraising.

[78] The first of these reports is the Ontario Law Reform Commission's *Report on the Law of Charities*.¹¹⁷ The Commission made a large number of recommendations, of which the following are particularly significant for this paper: (1) The provisions of the *Income Tax Act* governing charities should be redrafted to express more clearly the rules governing the sector and in so doing the federal regime should be integrated as much as possible with the provincial regimes.¹¹⁸ (2) The *Income Tax* rules should impose optional quantitative rules to make compliance by charities easier, especially as regards fundraising expenses.¹¹⁹ (3) The Minister should publish an annual report summarizing the more important registration decisions during the year and other important surveillance matters.¹²⁰ (4) The decision to register or deregister a charity is of general public

importance and requires greater publicity, the Tax Court should be given initial jurisdiction over these matters and provincial authorities and third parties should have a right to participate in the decision-making process.¹²¹ (5) Imprudent fundraising and administrative expenses should be prohibited, charities should be required to report details of expenses in different categories, and they should be able to report on the basis of an optional quantitative rule.¹²² (6) An Ontario government agency, the Nonprofit Organizations Commission, should be created with responsibility over registration, fundraising, audits and investigations, and education.¹²³ (7) A law regulating nonprofit fundraising should be enacted with the sole objective of preventing fraudulent schemes, fundraising campaigns should be registered, third-party fundraising contracts should be registered with the Commission, and minimal point of solicitation disclosure should be required.¹²⁴

[79] The next report is the report of the Panel on Accountability and Governance in the Voluntary Sector.¹²⁵ The panel was an initiative of the voluntary sector for the benefit of the sector¹²⁶ and its report is generally known as the Broadbent Report, after the name of the Panel's chair. The Report's principal recommendations relevant to this paper include: (1) Federal and provincial governments and the voluntary sector should discuss good practices on the part of both sides and ensure that the voluntary sector has a voice in government policy making.¹²⁷ (2) Charities should adhere to a code of good governance practices developed by the Panel that would require the charity's board to take active responsibility for key decisions.¹²⁸ (3) Charities should be required to report to the federal government about their governance, programs, and finances; they should, as a condition for registration, be required to adopt a code of ethical fundraising, such as that promulgated by the Canadian Centre for Philanthropy; and they should respond appropriately to complaints and requests for information.¹²⁹ (4) There should be differential reporting requirements for small and large charities, the former being defined as having annual operating budgets of less than \$200,000; and that there should be clearer guidelines on related and unrelated business activity, a review of the disbursement quota, a greater consistency in accounting practices, and implementation of intermediate sanctions short of deregistration.¹³⁰ (5) The federal government should create a quasi-independent Voluntary Sector Commission to supplement the audit role of Revenue Canada.¹³¹

[80] The Panel noted that governments can effectively regulate fundraising by requiring: registration of charities that engage in fundraising, licensing and bonding of commercial fundraisers, disclosure of information, and imposition of civil remedies.

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Further, the regulatory scheme can be effectively supported by the remedies of deregistration and the cancellation of licenses. However, the Panel also noted that there are problems with government regulation in that: (a) compliance rates are low; (b) public awareness of the legislation is low; (c) the resources for effective enforcement are inadequate; and (d) legislation cannot deal effectively with fundraising conducted via the Internet.¹³² Accordingly, the Panel also recommended self-regulation, which would require voluntary organizations to adopt a code of ethical conduct, such as that developed by the Canadian Centre for Philanthropy, and that a condition for registration be the adoption of such a code.¹³³ The Panel further recommended that professional fundraisers that collect revenues in excess of \$25,000 be licensed and bonded and that, as a condition of their being granted a license, they adhere to a professional code of conduct, such as that adopted by the National Society of Fundraising Executives, which among other things, requires full disclosure of information, avoidance of conflict of interest, maintenance of confidentiality, and avoidance of percentage and commission-based fundraising contracts and the selling of donor lists.¹³⁴

[81] The Panel also recommended that donor education be enhanced and that information about registered charities be provided by the charities to the proposed Voluntary Sector Commission and be readily available to the public.¹³⁵ In addition, the Panel recommended that the members of an organization's board be fully responsible in cases of fraud, gross negligence, conflict of interest, or criminal acts on their part, whereas in other situations liability should be capped at a reasonable maximum and a due diligence defence should be available.¹³⁶ Finally, the Panel recommended that Revenue Canada and the proposed Voluntary Sector Commission continue to work with the Canadian Institute of Chartered Accountants and the voluntary sector to develop greater consistency in accounting practices.¹³⁷

[82] The next item is the Canadian Centre for Philanthropy's *Ethical Fundraising & Financial Accountability Code*, introduced in 1998.¹³⁸ The Code consists of an introductory statement and three parts. Part A defines donors' rights. Among other things, it entitles donors and prospective donors to receive promptly, upon request, the charity's most recent annual report and financial statements, the charity's registration number, information contained in the public part of the charity's most recent Charity Information Return, a list of the charity's directors, and a copy of the Code. It does not matter whether the person soliciting funds is a volunteer, an employee, or a hired solicitor. Further, the charity is required to respond promptly to a complaint by a donor or prospective donor.

[83] Part B of the Code gives a list of fundraising practices to which charities and fundraisers must adhere. Among other things, the charity cannot sell its donor list, but may rent, exchange, or share it, provided that the list excludes the names of donors who have requested that their names be excluded.

[84] Part C, entitled “Financial Accountability”, seeks to ensure that the charity will operate its finances in a responsible manner that is consistent with the ethical obligations of stewardship and adheres to the requirements of federal and provincial regulators. This Part contains details about the contents of annual financial reports, which are to be prepared in accordance with generally accepted accounting principles. Further, it states that the charity will meet or exceed the CRA’s requirement for expenditures on charitable activities.

[85] On April 14, 2003, the Canadian Centre for Philanthropy launched a logo featuring the phrase “Ethical Fundraising” superimposed over the Centre’s trademark design. Organizations that have adopted the Centre’s *Ethical Fundraising & Financial Accountability Code* are entitled to apply for a licence to use the logo. It is hoped that the use of the logo will enable the donating public better to assess the integrity of charities.

[86] It is apparent from this review that a number of organizations, both government and representatives from the voluntary sector, have given serious consideration to the problems mentioned earlier in this paper and have proposed a variety of solutions to those problems. Those solutions include both new and improved forms of regulation and self-regulation by the voluntary sector. Often it is recommended that both types of solution be applied in tandem.

8. Conclusions and Recommendations

[87] In this paper I have reviewed the problems that arise in charitable fundraising, the shortcomings of existing laws, the regulation of charities federally, and the regulation of fundraising and fundraisers in some provinces. I have also reviewed a number of reports that have commented on these problems and have suggested solutions. It is apparent from my research that provincial regulation of charitable fundraising (that is, fundraising by charities, as distinct from fundraising by non-profit organizations generally) has merit. The experience in Alberta with such regulation is positive and the regulation has enabled that province to ban undesirable fundraising activity, thereby protecting the public and legitimate charities and fundraising businesses. It is also apparent from my review that any legislation must take account of differences between

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charities, so that smaller charities with limited resources are not overburdened with reporting requirements. It may also be important that administrative decisions can readily be challenged at minimal cost to ensure that smaller charities are not disadvantaged. Further, my research has shown that there is significant concern about the lack of coordination between the CRA and the provinces, and between the provinces themselves. This lack of coordination consists both in the form of the regulation itself (or the lack of regulation), and in the inability to keep others informed of investigations because of confidentiality constraints.

[88] The matters discussed in the previous paragraph support regulation, but perhaps do not, or not sufficiently, explain why a Uniform Act is desirable. In my view these matters are most appropriately addressed in a Uniform Act for the following reasons: (1) Coordination and cooperation between different jurisdictions work best if all or most have similar legislation. Although the federal legislation will perforce be different because it has a different focus, the CRA already makes some information available to the public and the 2004 Budget proposes to make significantly more information available. The sharing of this information will enhance coordination and cooperation between the provinces and the CRA. (2) Some charities and fundraising businesses acting on their behalf cause problems in all jurisdictions. A Uniform Act will enable the several jurisdictions to deal with such organizations more effectively and in a more timely way. (3) A Uniform Act will facilitate regulation or extra-provincial fundraising by mail, telephone, internet and other means. (4) The public will find it easier to understand the regulation of charitable fundraising if the regulation is uniform throughout the country. (5) A uniform regulation throughout the country will make it easier for charities to comply, since they need satisfy only one, identical standard throughout the country.

[89] Accordingly, I ***recommend*** that the Conference adopt a Uniform Charitable Fundraising Act. Further, I ***recommend*** that the Act apply only to fundraising by organizations that are charities and that it not apply to non-profit organizations that are not charities.

[90] I also ***recommend*** that consideration be given to changes to the *Income Tax Act* that will allow for close integration between the regulations affecting charities under that Act and those under the proposed Uniform Act and allow for sharing of information.

[91] When considering the nature and contents of a Uniform Charitable Fundraising Act, I ***recommend*** that the following issues be considered:

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1. Whether there should be regulation.
 - Protection of the public.
 - Protection and enhancement of the voluntary sector.
 - Punishment of wrongdoers.
 - Coordination between different jurisdictions.
 - Ensuring that funds collected for charity are used for charitable purposes.
2. Who should be regulated?
 - Charitable organizations (as in Alberta) – differential requirements for larger and smaller charities.
 - Should smaller charities be exempt from registration?
 - Should a distinction be drawn between for profit fundraisers, charities with paid fundraising staff, and charities using only volunteers?
 - Fundraising businesses (as in Alberta and Saskatchewan)
 - Donor fundraisers (Alberta, ss. 33-37).
 - “Commercial participators” or commercial co-venturers.
 - Paid counsel.
3. What should be regulated?
 - Fundraising activity (soliciting, campaigns, canvassing - as in Manitoba, Prince Edward Island) – bearing in mind the constitutional challenge to Alberta’s former statute.
 - What kinds of fundraising activity, *e.g.*, also gifts-in-kind?
 - Non-receipted events, such as lotteries (regulated under the *Criminal Code*)
 - Fundraising agreements.
 - Fundraising expenses.
4. Form of regulation.
 - Fundraising activity:
 - Approval?
 - Alternatively should there simply be regulation of hours and types; requiring fundraiser to provide information to the public; maintain records; prepare financial statements and file returns; issuance of receipts; requiring that contributions be held in trust?
 - Charitable organizations:
 - Registration required for fundraising and use of fundraising business.
 - Registration requirements.
 - Grounds for refusal to register or renew, *e.g.*, for terrorist activity as determined federally, other criminal activity; imposition of terms.
 - Duration of registration.
 - Duty to provide information.
 - Possible regulation of directors and officers, *e.g.*, who can serve as a director or officer of a charity and be involved in fundraising, or be denied this right because of criminal activity.
 - Should “sound-alike” charities be prohibited?

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Fundraising businesses:

- Licensing required to engage in fundraising for a charity or to manage or be responsible for solicitations made by or on behalf of a charity.
- Licensing requirements.
- Grounds for refusal to register or renew; terms.
- Duration of licence.
- Duty to provide information.
- Bonding.
- Management of donor lists (belong to the charity).
- Should charities be guaranteed a minimum amount of donated funds when paid fundraisers are used?

Fundraising agreements:

- A charity cannot use a fundraising business unless the parties have entered into a fundraising agreement.
- Contents of the agreement.
- Ought percentage contracts to be forbidden? (Neither Alberta nor Saskatchewan does).

Donor fundraisers, “commercial participators” or commercial co-venturers; paid counsel:

- Should they be registered?
- Duty to provide information.
- Duty to comply with representations.

Standards of practice:

- Should standards of practice be legislated (see Alberta, s. 29), or should charities be permitted to regulate themselves (see 7 below)?
- Charities and fundraising businesses must comply with the standards.

Out-of-Jurisdiction regulation:

- Mechanisms for curbing or preventing dishonest and fraudulent practices carried on from outside the jurisdiction, including via the internet.

5. Enforcement.

- By whom? A Registrar?
- Should standardized accounting practices be legislated?
- Should there be limits on fundraising and organizational expenses?
- Mechanisms to deal with objectionable practices, such as persistent, unwelcome solicitations, sale of donor lists, *etc.*?
- Mechanism to permit donors globally to remove their names from direct solicitation mailing, telephone, and internet lists.
- Mechanism to permit the public to make complaints.
- Disclosure requirements.
- Annual reports to the regulator? By whom – charities, fundraising businesses, others? What must be reported – annual financial statement – audited financial statements – fundraising expenses – application of funds raised – public return of information? Should there be lower reporting

requirements for small charities? Should costs be reported annually or also over the life of a campaign?

- Inspections.
 - Power to suspend or cancel registration or licence, *e.g.*, for criminal activity by the organization or officers or directors.
 - Power to impose conditions.
 - Penalties for infringement of statute.
 - Appeals.
6. Coordination between different jurisdictions.
- Legislative provisions mandating coordination and sharing of information.
 - Amendments to privacy and confidentiality provisions, such as s. 241 of the *Income Tax Act* and/or provisions in the Uniform Act to permit regulators to share information about complaints and investigations.
 - Ensuring that provincial privacy legislation permits sharing of information with other regulators.
 - Considering whether registration in the charity's or fundraising business' home province would be adequate (assuming other jurisdictions have ready access to this information), whether registration in each province is desirable, or whether a form of extra-provincial registration would be desirable as is currently in place for corporations.¹³⁹
 - Possible integration of other registration requirements, such as registration of business names.
7. Self-regulation
- The voluntary sector already engages in self-regulation with, *e.g.*, codes of ethical conduct. Should such codes be incorporated into legislation or should legislation provide a fall-back position if self-regulation fails or is inadequate?
8. Public education.
- Regulators such as Alberta and the Charities Directorate have assumed a role in the education of the public. Should this role be mandated by the legislation?
 - Maintenance of a website which contains details of a charity's registration, deregistration or other sanctions, and annual returns. *Idem.* for fundraising businesses.
9. Consultation with voluntary sector.
- Consultation with the voluntary sector has been beneficial. Should mechanism be put in place to foster such consultation?

[92] If the Conference decides to develop a Uniform Act, other issues may arise as well. I reiterate my earlier statement that regulation should not be designed to inhibit legitimate charities and fundraising businesses. Rather, it should serve to curb abuses, ban and punish fraudulent activities, and serve to protect the public and enhance the role of the voluntary sector.

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ENDNOTES

- ¹ S.A. 1995, c. C-4.5, now R.S.A. 2000, c. C-9.
- ² S.S. 2002, c. C-6.2, as amended by S.S. 2003, c. 29.
- ³ A short publication entitled, “What is the non-profit/voluntary sector and why should I care?” (January 2004), http://www.vountary-sector.ca/eng/resources_tools/index.cfm, published by the Voluntary Sector Forum, notes that the voluntary sector: (a) comprises 180,000 incorporated organizations, of which approximately 80,000 are registered charities; (b) includes thousands of other non-incorporated, informal groups and service providers; (c) employs at least 900,000 people full-time; (d) has annual revenues of over \$90 billion and assets of over \$109 billion; and (e) is supported by the 27 percent of Canadians who volunteer over a billion hours each year.
- ⁴ Michael Hall, Larry McKeown and Karen Roberts, *Caring Canadians, Involved Canadians, Highlights from the 2000 National Survey of Giving, Volunteering and Participating* (Ottawa: Statistics Canada, 2001; <http://www.givingandvolunteering.ca/pdf/n-2000-hr-ca-pdf>). The survey is the result of a partnership of various government departments and voluntary sector organizations, including the Canadian Centre for Philanthropy, Canadian Heritage, Health Canada, Human Resources Development Canada, Statistics Canada, and Volunteer Canada. See also Norah McClintock, *Fundraising Numbers* (Toronto: Canadian Centre for Philanthropy, 2000), which discusses the results of a similar survey completed in 1997.
- ⁵ *Ibid.*, p. 10.
- ⁶ Michael Hall, Liane Greenberg, and Larry McKeown, *Talking about Charities* (Toronto: Canadian Centre for Philanthropy, 2000).
- ⁷ *Ibid.*, p. 4.
- ⁸ Department of Finance Canada, Budget 2004 – Budget Plan, Annex 9, under the heading “Registered Charities – Regulatory Reforms”, <http://www.fin.gr.ca/budget04/bp/bpa9ae.htm>.
- ⁹ Cf. Nancy Palmer, *Fundraising for Charities[:] Public Policy Issues in the 21st Century* (Report prepared for the Canadian Centre for Philanthropy and the Canada West Foundation. March 1995), p. 64, conclusion no. 4.
- ¹⁰ “Bad boys of charity waste your money” (Nov. 13, 2002); “Bogus Parkinson’s group thrives on hard sell” (Nov. 14, 2002); “Fundraising king takes 80% slice” (Nov. 15, 2002); “No one checking on charities: (Nov. 16, 2002); “Billions lost in charity scandal” (Nov. 18, 2002); “Charity loses \$7M gamble” (Dec. 2, 2002); “Charity ends fight to retain status” (Dec. 12, 2002); “Funds missing from charity’s books” (Jan. 25, 2003); “Charity scam preyed on desperate couples” (Mar. 1, 2003); “Government vows tough stand on bad charities” (Mar. 2, 2003).
- ¹¹ (2001), 30 E.T.R. (2d) 96 (Ont. S.C.J.).
- ¹² Canadian Programs and Promotions Inc., and 1036641 Ontario Ltd., carrying on business as “The Brown Baker”.
- ¹³ (Ont. S.C.J., January 31, 2002).
- ¹⁴ Community Fundraising Consultants, Canadian Care Marketing Associates, and O.F.C. Charity Call Centre.

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- ¹⁵ See Michael H. Hall, *Charitable Fundraising in Canada* (Toronto: Canadian Centre for Philanthropy, 1996), p. 31ff. This paper was a joint project of the Canadian Centre for Philanthropy and the Canada West Foundation.
- ¹⁶ See Peter McCormick, David Elton, and Casey Vander Ploeg, *Regulation of Charities in Alberta* (March, 1995), p. 9.
- ¹⁷ See, e.g., Peter Broder, “Apples and Oranges”, *Front & Centre* (November/December 2003), p. 18.
- ¹⁸ Hall, *supra*, note 15, p. 82.
- ¹⁹ *Fundraising for Charities*, *supra*, note 9, p. 65, conclusion no. 12. And see *Regulation of Charities in Alberta*, *supra*, note 16, p. 8.
- ²⁰ *Fundraising for Charities*, *ibid.*, pp. 65-6, conclusions nos. 13-15; *Regulation of Charities in Alberta*, *ibid.*, p. 12.
- ²¹ R.S.C. 1985, c. 1 (5th Supp.).
- ²² See, e.g., *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, s. 40(1)(q).
- ²³ *Constitution Act, 1867*, s. 92, para. 13.
- ²⁴ *Ibid.*, para. 16.
- ²⁵ *Ibid.*, para. 7.
- ²⁶ *Supra*, note 21.
- ²⁷ *Ibid.*, s. 110.
- ²⁸ *Ibid.*, s. 118.
- ²⁹ *Ibid.*, s. 149(1)(f).
- ³⁰ *Ibid.*, s. 149.1(8).
- ³¹ *Ibid.*, s. 149.1(14).
- ³² *Ibid.*, s. 149.1(15).
- ³³ *Ibid.*, s. 149.1(2)-(4).
- ³⁴ *Ibid.*, s. 168.
- ³⁵ *Ibid.*, s. 172.
- ³⁶ S.C. 2001, c. 41.
- ³⁷ *Ibid.*, s. 8(2).
- ³⁸ *Income Tax Act*, *supra*, note 21, ss. 168(3), 172(4.1).
- ³⁹ http://www.ccr-aadrc.gc.ca/tax/charities/online_listings/canreg_interim-e.html.

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- 40 Form T3010 or T3010A.
- 41 <http://www.ccr-aadrc.gc.ca/tax/charities/policy>.
- 42 See, e.g., John Bryden, MP's Report, *Canada's Charities: A Need for Reform*, October, 1996, <http://www.forces.org/evidence/files/bryden1.htm>.
- 43 Terence S. Carter and Theresa L.M. Mann, "Recent Changes to the *Income Tax Act* and Policies Relating to Charities and Charitable Gifts", prepared for the Society of Trust and Estate Practitioners and updated to March 1, 2004, p. 82.
- 44 Joint Regulatory Table, *Strengthening Canada's Charitable Sector[:]* *Regulatory Reform* (March, 2003), <http://www.vsi-isbc.ca/eng/regulations/report.cfm>.
- 45 The recommendations are summarized in Appendix 1, *ibid.*, p. 144ff.
- 46 The proposals can be found in Annex 9 to the Budget Plan, *supra*, note 8.
- 47 http://www.budget.finances.gouv.qc.ca/budget/2004-2005/index_en.asp, Additional Information on the Budgetary Measures, p. 181.
- 48 *Supra*, note 21.
- 49 *Charities Accounting Act*, R.S.O. 1990, c. C.10, s. 6.
- 50 *Municipal Act*, R.S.O. 1990, c. M.45, s. 236, para. 14, am. S.O. 1996, c. 1, Sch. M, s. 20(1).
- 51 Last consolidated as R.S.A. 1980, c. P-26, rep. S.A. 1995, c. C-4.5, s. 57(a).
- 52 S.A. 1965, c. 72.
- 53 *Epilepsy Canada v. Attorney General for Alberta* (1994), 20 Alta. L.R. (3d) 44 and 57, 115 D.L.R. (4th) 501 and 514 (C.A.).
- 54 Including a Discussion Paper on the *Public Contributions Act*, prepared by the Consumer Services Division of Alberta Municipal Affairs in July, 2003; and a major report by Canada West Foundation and the Canadian Centre for Philanthropy, entitled *Fundraising for Charities[:]* *Public Policy Issues in the 21st Century*, March 1995, as well as a Summary Report, entitled *Regulation of Charities in Alberta*, *supra*, note 16.
- 55 *Supra*, note 1.
- 56 S.A. 1996, c. G-0.5, s. 125.
- 57 Alberta Act, *supra*, note 1, s. 4.
- 58 *Ibid.*, s. 5.
- 59 *Charitable Fund-raising Regulation*, Alta. Reg. 108/2000.
- 60 Alta. Act, *supra*, note 1, ss. 6, 9.
- 61 *Ibid.*, ss. 7, 8.
- 62 *Ibid.* ss. 12, 13.

⁶³ *Ibid.*, ss. 14-16.

⁶⁴ *Ibid.*, s. 20.

⁶⁵ *Ibid.*, ss. 21-24.

⁶⁶ *Ibid.*, ss. 28-30.

⁶⁷ *Ibid.*, s. 31.

⁶⁸ *Ibid.*, s. 32.

⁶⁹ *Ibid.*, s. 33.

⁷⁰ *Ibid.*, s. 55. For example, a person who is guilty of an offence under the Act is liable to a fine of not less than \$1,000, and not more than \$100,000 or three times the amount the person acquired as a result of the offence, whichever is greater, or to imprisonment for not more than two years, or both. Directors and partners may also be found guilty.

⁷¹ *Supra*, note 59, amended March 15, 2004.

⁷² <http://www.gov.ab.ca/acn>. For example, on March 26, 2004, Alberta Government Services published a news release informing the public about a door-to-door seller which was charged with seven counts of infringing the Alberta Act.

⁷³ <http://www.gov.ab.ca/acn/199904/7461.html>.

⁷⁴ *Supra*, note 2.

⁷⁵ *Ibid.*, s. 2(f).

⁷⁶ *Ibid.*, s. 4.

⁷⁷ *Ibid.*, s. 13.

⁷⁸ *Ibid.*, s. 26.

⁷⁹ *Ibid.*, s. 46. The penalties are \$10,000 or imprisonment for up to one year for an individual on a first offence and \$25,000 for a corporation. The fines increase to \$25,000 and \$100,000, respectively, for subsequent offences.

⁸⁰ See *Charitable Fund-raising Businesses Regulations*, Sask., c. C-6.2, Reg. 1/03.

⁸¹ C.C.S.M., c. C60, first enacted by S.M. 1956, c. 5.

⁸² *Ibid.*, s. 2.

⁸³ *Ibid.*, s. 2(6).

⁸⁴ *Ibid.*, s. 4, namely, a fine of \$50 or imprisonment of up to 10 days for an individual, and a fine of up to \$500 for a corporation.

⁸⁵ R.S.P.E.I. 1988, c. C-4, first enacted by S.P.E.I. 1955, c. 3.

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86 *Supra*, note 21.

87 Prince Edward Island Act, *supra*, note 84, s. 3.

88 *Ibid.*, ss. 4, 7.

89 *Ibid.*, s. 5.

90 *Ibid.*, ss. 9, 10, namely, a fine of not more than \$500.

91 C. 41 (U.K.), as amended by *Charities Act 1993*, c. 10, s. 29 (U.K.).

92 <http://www.number-10.gov.uk/su/voluntary/report/index.htm>.

93 Available at <http://www.homeoffice.gov.uk/comrace/active/charitylaw/index.html>.

94 *Ibid.*, paras. 3.1-3.19. The recommendation (as revised by the government's response) is:

A charity should be defined as an organization which provides public benefit and which has one or more of the following purposes:

1. The prevention and relief of poverty.
2. The advancement of education.
3. The advancement of religion.
4. The advancement of health (including the prevention and relief of sickness, disease or of human suffering);
5. Social and community advancement (including the care, support and protection of the aged, people with a disability, children and young people).
6. The advancement of science, culture, arts and heritage.
7. The advancement of amateur sport.
8. The promotion of human rights, conflict resolution and reconciliation.
9. The advancement of environmental protection and improvement.
10. The promotion of animal welfare.
11. The provision of social housing.
12. Other purposes beneficial to the community.

The presumption of public benefit for charities for the relief of poverty, the advancement of religion and the advancement of education would be removed.

95 *Ibid.*, paras. 5.1-5.7. Small charities would not be subject to these requirements and charities with an income of less than £10,000 a year would be exempt from registration, *ibid.*, para. 6.41.

96 *Ibid.*, paras. 5.8-5.12.

97 *Ibid.*, paras. 5.20-5.28.

98 *Ibid.*, paras. 5.29-5.35.

99 Under the *Telemarketing Consumer Fraud and Abuse Prevention Act* (1994), 15 U.S.C. §§6101ff., amended by *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act*, Pub. L. No. 107-56, 115 Stat. 272 (2001), s. 1011. The latter added "fraudulent charitable solicitations" to §§6102(a)(2) and 6102(a)(3)(D) of the former. The Federal Trade Commission promulgated its Telemarketing Sales Rule, 16 C.F.R. §§310ff. under the Telemarketing Act and amended it to apply to fraudulent charitable solicitations in consequence of the 2001 Act.

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- 100 In *National Federation of the Blind v. FTC* (US Dist. Ct., Dist. of Md, Feb. 24, 2004).
- 101 <http://www.ftc.gov>.
- 102 See Ontario Law Reform Commission, *Report on the Law of Charities* (Toronto: Ministry of the Attorney General, 1996), pp. 575-578 for a discussion of the legislation in those states.
- 103 1986. Prepared by The National Association of Attorneys General Committee on Trusts and Solicitations, The National Association of State Charity Officials, and The Private Sector Advisory Group.
- 104 *Riley v. National Federation of the Blind of North Carolina*, 478 U.S. 781 (1988).
- 105 *Government Code*, Title 2, Division 3, Part 2, Chapter 6, Article 7 (West's Annotated California Codes).
- 106 *Ibid.*, para. 12581.
- 107 *Ibid.*, paras. 12585, 12586.
- 108 *Ibid.*, para. 12588.
- 109 *Ibid.*, para. 12590.
- 110 *Ibid.*, para. 12599.
- 111 *Ibid.*, paras. 12599.1, 12599.2.
- 112 *California Business and Professional Code*, Div. 7, Part 3, ch. 1, Art. 1.3, §§ 17510-17519.95.
- 113 See <http://www.afpnet.org>.
- 114 <http://caag.state.ca.us/charities/>.
- 115 An organization formed in 2001 with the merger of the National Charities Information Bureau and the Council of Better Business Bureaus Foundation and its Philanthropic Advisory Service. See <http://www.give.org/about/index.asp>.
- 116 <http://www.afpnet.org>.
- 117 *Supra*, note 102.
- 118 *Ibid.*, p. 630, recommendations 26(2), (5).
- 119 *Ibid.*, recommendation 26(4).
- 120 *Ibid.*, recommendation 26(6).
- 121 *Ibid.*, pp. 630-1, recommendation 26(9).
- 122 *Ibid.*, p. 632, recommendation 26(17).
- 123 *Ibid.*, p. 635, recommendations 35, 38.
- 124 *Ibid.*, pp. 585ff; p. 636, recommendation 41.

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- 125 Panel on Accountability and Governance in the Voluntary Sector, *Building on Strength[:]*
Improving Governance and Accountability in Canada's Voluntary Sector (February, 1999),
<http://www.vsr-trsb.net/pagvs/Book.pdf>.
- 126 *Ibid.*, p. ii.
- 127 *Ibid.*, pp. iii, iv.
- 128 *Ibid.*, p. iv.
- 129 *Ibid.*, p. v.
- 130 *Ibid.* pp. v, vii.
- 131 *Ibid.*, p. vi.
- 132 *Ibid.*, pp. 44-5.
- 133 *Ibid.*, pp. 45-6. The Canadian Centre for Philanthropy's *Ethical Fundraising & Financial*
Accountability Code is included in Appendix II, at p. 107 of the Report.
- 134 *Ibid.*, pp. 46, 47.
- 135 *Ibid.*, p. 48.
- 136 *Ibid.*, p. 76.
- 137 *Ibid.*, p. 92, recommendation 35.
- 138 See Canadian Centre for Philanthropy, *Ethical Fundraising & Financial Accountability Code*,
2001.
- 139 See, e.g., Esther S.J. Oh and Jacqueline M. Connor, assisted by U. Shen Goh, "Extra Provincial
Corporate and Fundraising Compliance for Charities", prepared for the Canadian Bar Association
/ Ontario Bar Association 2nd National Symposium on Charity Law, Toronto, April 14, 2004. The
paper discusses the extra-provincial, business name, and charitable fundraising registration
requirements for corporate charities.