When can Directors of Charities be Compensated?

November 27, 2018

The holiday season is a time to reconnect with family and friends and reflect on the year that has passed. It is also a time of year that many people make charitable giving a priority.

Many modern charities are complex, multinational organizations with globalized initiatives and a large staff of paid employees, as well as volunteers, who bring those initiatives to life. Several of Canada's top not-for-profit organizations receive hundreds of millions of dollars (and in some cases several billions of dollars) in revenue each year. Given the above, it is perhaps not surprising that some executives at Canada's largest charities are being well-compensated for running these massive corporations.

On the other hand, in Ontario directors of charities are not entitled to receive a salary or director's fees simply for occupying the position of director, though in many provinces directors can be compensated for goods, services, and facilities provided to the charity of which they are a director.

In order to bring Ontario in line and to create some welcome flexibility in this regard, recent amendments to the regulation under Ontario's *Charities Accounting Act* have clarified the circumstances in which a charity may make payments to a director – or persons connected to a director – for providing goods, services, and facilities to the charity.

Persons connected to a director include the director's family, any employers of the director's family, as well as corporations of which the director owns or controls more than 5% of the shares or more than 20% of the voting membership interests.

In order to be eligible under the new rules, any compensation must be made with a view to the best interests of the charity, and the amount of compensation must be reasonable in relation to the goods and services provided. Compensation cannot be paid if, as a result, liabilities of the charity would be greater than the value of its charitable property, or would make the charity insolvent. Additionally, every director of the charity, as well as any person or corporation connected to a director and receiving compensation, must agree in writing to a maximum amount of the compensation to be provided.

To ensure that the process is fair, a director cannot be present at any discussion, or vote on any matter, related to his or her own compensation, or the compensation of any connected persons. Moreover, the total number of directors receiving payment under the amended regulations cannot exceed 20% of the number of voting directors, meaning that if one director is being compensated, there must be at least four other voting directors.

Direct or indirect compensation of a director as an employee of the charity, for fundraising services, or for the purchase and sale of real property, remains prohibited (although a court order or an order under s. 13 of the *Charities Accounting Act* can be sought in order to approve such arrangements), and all information related to the compensation of directors and connected parties must be noted in the charity's financial statements and put before the members of the charity annually.

If you are interested in learning more about the finances of your favourite charities, you can contact the Charities Directorate of the

Canada Revenue Agency or visit their website. Additionally, the Ontario government's Sunshine List, published annually, discloses any salaries over $100,000 for charities that receive significant public funding and are therefore subject to the *Public Sector Salary Disclosure Act*.

Click here to view the article in the digital edition of Your Guide to Charitable Giving & Estate Planning, Fall 2018.

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