

From the Editor...

This issue of *The Philanthropist* is devoted to a review of the rules under the Income Tax Act of Canada relating to charities which came into force on February 24, 1977 and apply to all charities for 1977 and subsequent taxation years. For this issue we are grateful for the assistance of Denis C. Brown of Clarkson, Gordon & Co.

In reviewing the provisions we were struck by the inflexibility of the legislation and the amount of discretion which resides in the Minister in matters affecting charities. The old rules were also inflexible. However, under the old rules the only penalty under the Income Tax Act of not meeting a requirement of the Act was that the registration of the charity could be revoked, in which event the charity could no longer issue receipts described in paragraph 110(1)(a). There was no penalty tax and revocation did not necessarily mean the organization would no longer be tax exempt. Under the new rules, if a charity does not meet the relevant disbursement requirement, or infringes some other rule which could cause revocation, the Minister has the right in his discretion to revoke the charity's registration. The result of revocation is that the charity must divest itself of all of its assets within one year or be subject to a mandatory penalty tax equal to 100% of its undistributed assets. This is a severe result and there is no right to appeal the imposition of the penalty.

There is a right to appeal the Minister's decision to revoke a charity's registration which at first might appear to offer protection to the charity. However, the law appears to be well settled that if the Minister acted reasonably and honestly in reaching his decision and followed the correct legal principles his decision will not be overturned by an appeal court. The result appears to be that unless it is possible to show the Minister did not observe proper legal principles when exercising his discretion his decision will stand. In most cases a charity will have breached some rule and the Minister will have followed correct principles in revoking the charity's registration. For example, if a charitable foundation only distributed 89% of its income and not the required 90% and the Minister revoked the charity's registration because of this failure, the charity would have no legal grounds upon which to claim its registration should not be revoked.

It would be extremely difficult to show the Minister acted so unreasonably in a particular case as to have acted in bad faith or dishonestly.

The inflexibility of the provisions and the power of the Minister in this area concerns us. We fear that, because of the number of charities, the shortage of staff in the Department, the complexity of the rules and the very real possibility that they will be unintentionally breached, revocations will occur automatically without a case by case review for minor infractions. The danger of this happening as a result of the Department's error is illustrated by the experience of the Multiple Sclerosis Society of Canada as discussed by Mr. Kincaid in his comment on the legislation. While in many cases it might be possible to argue that the Minister did not formally exercise his discretion, it is doubtful whether such an argument would be successful in view of the decision of the Supreme Court of Canada in *Vincent v. M.N.R.** In any event, as mentioned above, the rule will have actually been infringed by the charity and there is no formal means by which such error can be remedied. If the Minister exercises his discretion in such a case and revokes the registration, unless the Minister can be persuaded to reverse his decision or agrees to work out a solution with the charity, the charity will have no alternative but to terminate its operations or engage in a time consuming and expensive reorganization.

The next issue of *The Philanthropist*, to appear in the Spring 1978, will revert to a more diversified format. We hope it will be of interest to charitable organizations, foundations and individuals interested in the field of charity.

Mary Louise Dickson

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