

RICKETTS, HARRIS LLP

March 15, 2002

Re: Board Responsibilities and The Aids Society for Children Case

In a recently published Ontario Superior Court Case, there has been a very significant ruling which will potentially impact all charitable organizations. The facts are straightforward. The Aids Society for Children contracted with the Brown Baker to undertake door to door solicitation for donations and with Canadian Programs and Promotions Inc. to undertake a telemarketing solicitation. The Brown Baker collected \$241,000 from the Public and paid The Aids Society \$47,774. CPPI collected \$134,380 and paid the Aids Society \$32,163. The charity appears to have raised a grand total of \$926,440 from the public, none of which was used to carry out the objects of The Aids Society.

The Public Guardian and Trustee was made trustee of the assets of The Aids Society and Revenue Canada has revoked its charitable registration.

The Court held that the Directors of the Charity are responsible and accountable for the gross amount of funds received from the public by the Brown Baker and CPPI on behalf of the Aids Society. It found that the canvassers and telemarketers were agents of the Aids Society. It also found that the contracts between the Aids Society and both the Brown Baker and CPPI were potentially voidable as being contrary to public policy. In the subsequent accounting process the Court will have to determine whether or not the contracts were void and, if they are void, whether those fundraising organizations are entitled to be paid for their services on a *quantum meruit* basis.

This does not reflect new law. However, it does reinforce the rule that directors of a charitable organization are accountable for the operations of the charity.

I strongly recommend that you carefully examine all fundraising programmes which you undertake to see if they fall within the objects of the charity and whether the activity is one which may be reasonably undertaken with little financial risk to the charity. Such a review should be recorded in the minutes of the Board Meeting, so that if the fundraising activity is unsuccessful and called into question, you will have a record of the Board's reason for approving the activity.

Most fundraising activities will not be controversial. However, fundraising activities such as lotteries and bingos, which have high upfront costs or high overheads associated with them, will need to be reviewed in the light of this decision. The directors will need to decide if it is reasonable and prudent to proceed having weighed the potential return against the commitment to cover initial costs, bearing in mind that if the activity is unsuccessful and the charity has to fund the cost out of other revenues, the directors can be personally called to account for that shortfall.

Michael J. White