

Caution:

This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

CONSULTATION DRAFT

[Bilingual]

ONTARIO REGULATION

to be made under the

CHARITIES ACCOUNTING ACT

Amending O. Reg. 4/01

(APPROVED ACTS OF EXECUTORS AND TRUSTEES)

1. Ontario Regulation 4/01 is amended by adding the following section:

AUTHORIZATION TO PAY

2.1 (1) In this section,

“corporate trustee” means a corporation deemed by subsection 1 (2) of the Act to be a trustee within the meaning of the Act; (“fiduciaire constitué en société”)

“person connected to a director” means a person determined in accordance with subsection (3). (“personne liée à un administrateur”)

(2) A corporate trustee may, in the circumstances and subject to the restrictions set out in this section, make payments from the charitable property acquired by it to any of the following persons, for goods, services or facilities provided to it by the person:

1. A director of the corporate trustee.
2. A person connected to a director of the corporate trustee.

(3) The following are persons connected to a director of the corporate trustee for the purposes of this section, but do not include the corporate trustee itself:

1. A spouse, child, parent, grandparent or sibling of the director.
2. The employer of the director or of a person described in paragraph 1.
3. A corporation with share capital, if, singly or jointly, the director or a person described in paragraph 1 beneficially owns, controls or has direction over more than 5 per cent of the corporation’s shares.
4. A corporation without share capital, if, singly or jointly, the director or a person described in paragraph 1 beneficially owns, controls or has direction over more than 20 per cent of the outstanding voting membership interests of the corporation.
5. A corporation with or without share capital for which the director or a person described in paragraph 1 acts as director or officer.
6. A partnership in which the director or a person described in paragraph 1 is a partner, or in which a corporation described in paragraph 3, 4 or 5 is a partner.
7. A partner in a partnership described in paragraph 6.

(4) This section does not authorize any of the following:

1. Remuneration or other direct or indirect payment for services provided by a director as a director or employee of the corporate trustee, as the case may be, in that capacity.
2. Direct or indirect payment for providing fundraising services or for selling goods or services for fundraising purposes.
3. Direct or indirect payment made in connection to the purchase or sale of real property.

(5) Payments made under this section,

- (a) must be made with a view to the corporate trustee's best interests;
- (b) must be in an amount that is reasonable for the corporate trustee to pay for the goods, services or facilities that are provided;
- (c) must not result in the amount of the corporate trustee's debts and liabilities exceeding the charitable property's value, or render the corporate trustee insolvent; and
- (d) must not exceed the amount set out in the agreement referred to in clause (a) of subsection (6) for the goods, services or facilities to be provided.

(6) Before a corporate trustee's board of directors may authorize payment for goods, services or facilities under this section,

- (a) every director of the corporate trustee must agree in writing to a maximum amount that can be paid by the corporate trustee for the goods, services or facilities and, if the goods, services or facilities are to be provided by a person connected to a director, that person must also agree in writing to the maximum amount;
- (b) every director of the corporate trustee, other than the director providing the goods, services or facilities or the director to whom the person providing the goods, services or facilities is connected, as the case may be, must agree in writing that he or she is

satisfied that the payment is being made in accordance with the requirements, and within the restrictions, of this section; and

- (c) the board of directors must consider any guidance respecting payments made under this section that is issued by the Public Guardian and Trustee and published on a Government of Ontario website.

(7) In order for a corporate trustee's board of directors to authorize payment under this section, there must be at least four voting directors on the board, not including the director providing the goods, services or facilities or the director to whom the person providing the goods, services or facilities is connected, as the case may be.

(8) Regardless of whether goods, services or facilities are provided by a director of the corporate trustee or by a person connected to a director of the corporate trustee, neither the director nor any person connected to him or her shall attend any part of a board meeting during which the decision to authorize the payment is discussed, nor vote on the matter.

(9) The total number of persons receiving payment under this section must not exceed 20 per cent of the number of voting directors on the board.

(10) The directors of the corporate trustee shall ensure that information respecting payments made under this section in a given year is noted in the corporate trustee's financial statements for that year, and placed before its members at an annual meeting of the members.

(11) Clauses (5) (c) and (d) and subsections (6) to (10) do not apply with respect to a payment made under this section to a corporation described in paragraph 5 of subsection (3), if neither the director nor a person connected to the director, other than the corporation itself, would receive any benefit from the payment and,

- (a) the corporation is a corporation without share capital; or
- (b) all of the corporation's shares are owned by the corporate trustee.

[Commencement]