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**THE 2008 ANNUAL  
CHURCH & CHARITY LAW™ SEMINAR**

**Toronto – November 6, 2008**

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**When Codes Collide:  
Codes of Conduct in Light of *Christian  
Horizons* Decision**

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**By Edudzi Ofori, B.A., LL.B., Barry W. Kwasniewski, B.B.A., LL.B.  
and Terrance S. Carter, B.A., LL.B., Trade-mark Agent**

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*Christian Horizons* Decision

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OVERVIEW

- A. Introduction
- B. Human Rights Regime Change (Ontario)
- C. *Christian Horizons* Decision
- D. What This Means for Charities and Non-Profit Corporations in Ontario

Note : For more information on these topics, please refer to *Charity Law Bulletin No. 144*

<http://www.carters.ca/pub/bulletin/charity/2008/chv1b144.pdf>  
and *Church Law Bulletin No. 22*

<http://www.carters.ca/pub/bulletin/church/2008/chch1b22.pdf>

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A. INTRODUCTION

- On April 28, 2008, the Ontario Human Rights Tribunal (“HRTO”) released its decision in the case of *Heintz v. Christian Horizons* (“*Christian Horizons*”)
- In the words of the Ontario Human Rights Commission (“OHRC”), *Christian Horizons* will have a “significant impact for faith-based and other organizations that provide services to the general public”
- The decision is currently under appeal

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- In light of *Christian Horizons*, it is important for such organizations in Ontario to be aware of the decision's facts, reasons, and the potential impact it will have on their hiring policies, as well as on codes of conduct that may already be in place, or may be implemented in the future
- This discussion also requires comments regarding the recent changes to the human rights regime in Ontario
- On June 30, 2008, the *Ontario Human Rights Code Amendment Act, 2006* (also referred to as Bill 107) came into effect

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- One of the most significant changes under the amended *Human Rights Code* (Ontario) is that the HRTO will now be processing human rights complaints instead of the OHRC
- Other changes involve the addition of an administrative branch, removing restrictions on damage awards for mental anguish, and permitting human rights violations pleadings in civil actions

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**B. HUMAN RIGHTS REGIME CHANGE IN ONTARIO**

**1. Procedural Changes**

- The new system consists of three bodies each designed to meet specific functions in the administration of justice with respect to human rights
- Under the old regime in Ontario, the OHRC assisted complainants in drafting a complaint and advancing the fact finding and investigation aspects of the complaints process

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- Under the revised *Human Rights Code* (Ontario), the role of the OHRC in preventing discrimination and promoting and advancing human rights in Ontario is no longer to process claims. Instead, the OHRC will focus on the following objectives:
  - Expanding its work in promoting a culture of human rights in the province
  - Conducting public inquiries
  - Initiating its own applications (formerly called ‘complaints’)
  - Intervening in proceedings at the HRTO

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- Focusing on engaging in proactive measures to prevent discrimination using public education, policy development
- The OHRC will also undertake the review and development of public policy on human rights
- The HRTO will deal with all claims of discrimination filed under the *Human Rights Code* (Ontario)
- The HRTO will resolve human rights applications through mediation or adjudication in a fair, open and timely manner
- Applicants will now have direct access to the HRTO

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- Along with the OHRC and HRTO, the Human Rights Legal Support Centre (“Legal Centre”) will fulfill unique objectives in the goal of administering human rights to Ontarians
- The Legal Centre is an independent agency funded by the Ontario Government through the Ministry of the Attorney General and recently opened on June 30, 2008

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- The objects of the Legal Centre are as follows:
  - To establish and administer a cost-effective and efficient system for providing support services, including legal services respecting applications to the HRTO
  - To establish policies and priorities for the provision of support services based on its financial resources

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- The Legal Centre holds itself out to provide legal advice and assistance to Ontarians; more specifically, it can help individuals:
  - Resolve a dispute involving rights under the *Human Rights Code* (Ontario)
  - File an application to the HRTO if individuals want to ask the HRTO to consider and resolve the dispute through mediation or at a hearing
  - Provide legal assistance when applications to the HRTO are at mediation or at a hearing before the HRTO

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- Help enforce an Order of the HRTO if the HRTO finds that an individual has experienced discrimination

2. Damage Awards

- Under the old regime there was a \$10,000 cap on damages awarded for mental anguish
- The HRTO no longer has to adhere to a prescribed limit for damages relating to mental anguish
- In light of this, complainants will have more incentive to make claims, since their damage awards have the potential to more closely reflect the compensation they may be entitled to

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**3. Civil Pleadings**

- **Another major development in human rights law under the new regime in Ontario is that individuals can make not only human rights claims before the HRTO, but can now also plead human rights violations in civil lawsuits**
- **For instance, someone who pleads that his or her employer wrongfully dismissed him or her can also plead that his or her human rights were infringed**

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- **Where a civil court finds that a human rights violation has occurred, a civil court can now award damages to compensate wronged individuals**
- **It will be important to pay attention to how the courts actually implement this increased power**
- **Nonetheless, human rights violation pleadings in civil cases can be expected to increase as a result of the changes**

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- **For individuals, corporations, and charities alike, the changes to the human rights system in Ontario will be very important. This is especially true for employers who must ensure that their employment practices comply with the *Human Rights Code* (Ontario)**
- **As *Christian Horizons* illustrates, charities with specific objectives reflected in their policies (including codes of conduct) that have the potential to be discriminatory are at risk of becoming involved in the human rights process now made more serious because of changes to the Human Rights Regime in Ontario**

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**C. CHRISTIAN HORIZONS DECISION**

**1. Background**

- **Christian Horizons identifies itself as an Evangelical Christian Ministry, that operates over 180 residential homes across Ontario to provide care and support to approximately 1400 individuals with developmental disabilities**
- **Connie Heintz, an individual of deep Christian Faith worked as a support worker for Christian Horizons for 5 years.**

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- **Prior to commencing her employment with Christian Horizons, Ms. Heintz signed a Lifestyle and Morality Statement (“Statement”), which formed a part of her employment contract**
- **The Statement outlines that Christian Horizons “hold[s] life to be sacred and the family model as endorsed by Jesus as fundamental”**

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- **The Statement further provides that Christian Horizons rejects the following non-exhaustive list of conduct as being incompatible with effective Christian counselling ideals, standards and values:**
  - **Extra-marital sexual relationships (adultery)**
  - **Pre-marital sexual relationships (fornication)**
  - **Homosexual relationships**
  - **Theft, fraud**
  - **Physical aggression**
  - **The use of illicit drugs**

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- While working for Christian Horizons, Ms. Heintz began to develop awareness of her sexual orientation
- She confided in two of her co-workers and was eventually confronted by her supervisor
- Ms. Heintz did not deny her relationship or her sexual orientation
- This encounter prompted a series of events that ultimately resulted in Ms. Heintz resigning her employment with Christian Horizons in September 2000

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- Ms. Heintz argued that the requirement that all employees sign the Lifestyle and Morality Statement is a violation of the *Human Rights Code* (Ontario) and that she was terminated from employment because of her sexual orientation
- Christian Horizons argued that it fell with the “special employment” provisions of s. 24(1)(a) of the *Human Rights Code* (Ontario), which permits certain organizations to restrict hiring or give preference in employment to persons identified by one of the proscribed grounds of discrimination

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2. Issues

- s. 24(1)(a) Employment Exemption:
  - Was Christian Horizons entitled to the exemption provided in s. 24(1)(a) of the *Human Rights Code* (Ontario) in the circumstances of this case?
- Poisoned work environment:
  - Did Christian Horizons create, or permit a poisoned work environment, or otherwise discriminate against Ms. Heintz, such that her right to be free from discrimination was infringed?

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**3. Decision**

- **Exemption under s. 24(1)(a):**
  - **Christian Horizons did not meet the criteria for the exemption under s. 24(1)(a), and therefore its requirement that Ms. Heintz comply with the Statement violated her right to be free from discrimination in employment**
  - **For Christian Horizons to qualify for the section 24(1)(a) exemption, it had to establish that:**

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- **It was a religious organization**
- **It was primarily engaged in serving the interests of persons identified by their creed**
- **It employed or gave preference in employment to persons similarly identified**
- **The qualification (the restriction in employment to persons similarly identified by creed) was a reasonable and bona fide qualification because of the nature of the employment**

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- **Although Christian Horizons was found to be a religious organization, its primary object and mission is to provide care and support for individuals with developmental disabilities, without regard to their creed**
- **Even if Christian Horizons was found to be primarily engaged in serving the interests of those who adopt its faith beliefs, it still did not meet the s. 24(1)(a) exemption test because compliance with the Lifestyle and Morality Statement was not a reasonable or *bona fide* qualification for employment**

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– The primary role of a support worker is “not to help all residents to adopt a Christian way of life [...]” but to “provide residential care and support to persons who have developmental disabilities”

– Christian Horizons failed to meet the fourth criteria for the s. 24(1)(a) exemption because it was unable to establish that compliance with the Lifestyle and Morality Statement was objectively “appropriate” and “reasonably necessary” in connection with those duties

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• **Poisoned work environment:**

– Christian Horizons was found to have violated the *Human Rights Code* (Ontario) by:

- Suggesting Ms. Heintz seek counselling in order to effect her “restoration”
- Creating or permitting a poisoned work environment and taking no steps to remedy the harmful effects on Ms. Heintz
- Acting on discriminatory views in matters of human resources

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**5. Remedies**

- Ms. Heintz was awarded \$23,000 in damages
- In addition, *Christian Horizons* was ordered to pay to Ms. Heintz certain lost wages and benefits
- The adjudicator also awarded “public interest” remedies, which entailed *Christian Horizons’* development and implementation of policies and training programs in accordance with the *Human Rights Code* (Ontario)

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**D. WHAT THIS MEANS FOR CHARITIES AND NON-PROFIT CORPORATIONS IN ONTARIO**

- *Christian Horizons* has been met with a significant degree of controversy since its release
  - It is under appeal and involves a difficult set of facts
  - Nevertheless, Ontario charities and non-profit corporations can draw some principals from the decision in the interim
1. Exemption under s. 24(1)(a)
- The decision does make it clear that a faith-based organization seeking to rely on the exemption as a “religious” organization will need to establish that it truly is “religious”

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- Religious charities should ensure that they have clear religious purposes stated in their objects
- They should also consider incorporating their Statement of Faith into their governing documents, where applicable
- An organization will also need to show that it is “primarily engaged in serving the interests of persons identified by their creed”
- Religious organizations may want to consider, where appropriate, expanding their membership base in order to include individuals who the organization may have served but who have not been offered an opportunity to become a member

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- An organization whose primary purpose is to proselytize individuals outside of the organization's religion may qualify for the s. 24(1)(a) exemption, although this was not made as explicit in the decision as it could have been
- The decision found that s.24(1)(a) requires an organization to primarily provide services to persons who adhere to its faith belief instead of serving the interests of persons similarly identified
- An organization must also show that its restriction in employment is a reasonable and *bona fide* qualification related to the nature of the job

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- An organization should ensure that its objects, services, and the duties of its employees are carefully defined and relate to the restriction being imposed, such as the requirement that all employees adhere to a statement of faith or a code of conduct

2. Poisoned Work Environment

- Charities and faith-based organizations must be careful to ensure that they do not create or permit an environment in which rumours and discriminatory attitudes are allowed to pervade the workplace

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- They also need to be proactive to ensure that all employees are treated with respect and dignity, even in their dismissal
- One aspect of the decision that is particularly unclear relates to the suggestions made by the adjudicator that the Morality and Lifestyle Statement itself, as well as Christian Horizons' theology of sexuality, were themselves causes of the poisoned work environment
- As a result of these comments, it is uncertain in what circumstances a code of conduct can make value based statements in reference to sexual orientation, if at all

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- The question remains whether organizations in Ontario that fall within the exemption under s. 24(1)(a) can still implement codes of conduct for their employees that violate the *Human Rights Code* (Ontario) with respect to sexual orientation
- It is likely that organizations can still implement such codes of conduct where the test under s. 24(1)(a) (as discussed above) is met
- However, organizations will need to ensure that their code of conduct's language is respectful and appropriate and that it is not implemented in a way that creates a poisoned work environment

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