

*Updating Charities and Not-For-Profit Organizations on recent legal developments and risk management considerations.*

**DECEMBER 2008 ISSUE  
HAPPY HOLIDAYS!**

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**Ottawa Region Charity Law Seminar**

Hosted by Carters Professional Corporation in Ottawa, Ontario.

**Wednesday, February 11, 2009.**

Register online at <http://www.carters.ca/pub/seminar/chrchlaw/ott/09/brochure.htm>.

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## **RECENT PUBLICATIONS AND NEWS RELEASES**

### **Calculation of 3.5% Disbursement Quota for All Registered Charities**

*by Theresa L.M. Man in Charity Law Bulletin No. 150, December 18, 2008.*

On November 28, 2008, Canada Revenue Agency (“CRA”) published a reminder indicating that the 3.5% disbursement quota will apply to charitable organizations registered before March 23, 2004, for their fiscal period beginning on or after January 1, 2009. Since these charitable organizations may not be familiar with how the 3.5% disbursement quota is calculated, this *Charity Law Bulletin* explains how to calculate the 3.5% disbursement quota.

All registered charities are required to expend a portion of its assets annually in accordance with a disbursement quota, which is a prescribed amount that registered charities must disburse each year in order to maintain their charitable registration. The purpose of the disbursement quota is “to ensure that most of a charity’s funds are used to further its charitable purposes and activities; to discourage charities from accumulating excessive funds; and to keep other expenses at a reasonable level.” Having a good understanding of the disbursement quota rules is important not only for charities, but also for donors and their advisors. The source of the gift, the nature of the proposed recipient charity, the nature of the property gifted, and restrictions that may be imposed on the gift by the donor will all have a bearing on the disbursement quota consequences of the gift.

#### **Read More:**

[PDF] <http://www.carters.ca/pub/bulletin/charity/2008/chylb150.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2008/chylb150.htm>

### **Introduction of Short-lived New Federal Legislation Governing Non-Share Capital Corporations (Bill C-4)**

*by Jacqueline M. Demczur, B.A., LL.B.*

On December 3, 2008, and one day prior to Parliament being prorogued, Bill C-4, *An Act respecting not-for-profit corporations and certain other corporations*, received first reading in the House of Commons of Canada before dying on the order paper. Bill C-4 was intended to replace Parts II and III of the current *Canada Corporations Act*, a statute that was first enacted in 1917 and has not been substantively changed since that time, which Parts govern federal non-share capital corporations. This was the third attempt by the Federal Government to reform the *Canada Corporations Act*, with earlier Bills C-62 (2008) introduced by the Conservatives and C-21 (2004) introduced by the Liberals, each dying on the order papers in the House of Commons when Parliament was dissolved for a general election. For the most part, the content of Bill C-4 was largely identical to what was contained in its

predecessor, Bill C-62. However, there are a few differences including, but not limited to, clarification of section 154 which deals with the filing of by-laws with the Director of Industry Canada, several changes in relation to Special Act non-share capital corporations and several changes related to the implementation of bijuralism, i.e. the co-existence of two legal systems (English common law and French civil law) in the proposed legislation.

For more information, see the Bill at [http://www2.parl.gc.ca/content/hoc/Bills/401/Government/C-4/C-4\\_1/C-4\\_1.PDF](http://www2.parl.gc.ca/content/hoc/Bills/401/Government/C-4/C-4_1/C-4_1.PDF);

*Charity Law Bulletin* No.138 summarizing the earlier Bill C-62 entitled “CRA Consultation Paper for a Proposed Policy on Fundraising by Registered Charities,” available at <http://www.carters.ca/pub/bulletin/charity/2008/chylb138.pdf>; and

*Charity Law Bulletin* No. 60 summarizing the earlier Bill C-21 entitled “New Canada *Not-For-Profit Corporations Act* and Its Impact on Charitable and Non-Profit Corporations,” available at <http://www.carters.ca/pub/bulletin/charity/2004/chylb60.pdf>.

## **CRA Revocations Continue**

*by Karen J. Cooper, LL.B., LL.L., TEP.*

In the ongoing series of revocations by Canada Revenue Agency (“CRA”) of the registered status of a number of registered charities and an RCAA involved in donation tax shelters referred to in previous *Charity Law Updates*, another registered charity had its registered status revoked this month. On December 8, 2008, CRA announced that it had revoked the charitable registration of the Fondation des Arts H.B. Ltée/H.B. Arts Foundation Ltd., effective December 6, 2008. The CRA news release indicates that on November 4, 2008, it issued a notice of intent to revoke the charitable registration of the Foundation pursuant to subsection 168(2) of the *Income Tax Act*, in part because “the primary, if not sole purpose of the Charity is to receive funds and flow these funds to offshore accounts as instructed, issue tax receipts, and to pay persons associated with the scheme.” It is unclear at this time with which particular shelter the organization was involved.

The CRA news release is available at <http://www.cra-arc.gc.ca/nwsrm/rlss/2008/m12/nr081208-eng.html>.

## **Excess Business Holdings Rules and the 2008 Federal Budget**

*By Theresa L.M. Man, M.Mus., LL.B., LL.M.*

Following the release of the federal budget on February 26, 2008, some of the proposals contained in the federal budget were implemented by the enactment of Bill C-50, the *Budget Implementation Act, 2008*, which received Royal Assent on June 18, 2008. Certain proposals contained in the federal budget that

relate to charities were contained in Bill C-50, including extending the capital gains tax exemption for certain donations of listed securities to certain exchangeable shares and partnership interests, and providing tax incentive for donations of medicines benefitting recipients in developing countries.

The proposed changes to the excess business holding rules contained in the 2008 federal budget were not contained in Bill C-50. Instead, on July 14, 2008, the Minister of Finance released for consultation draft legislative proposals to implement these proposed changes. A Notice of Ways and Means Motion to implement these proposed changes was tabled in Parliament on November 28, 2008. Since Parliament was prorogued on December 4, 2008, a new motion will need to be introduced when Parliament is in session again, which is scheduled to open on January 26, 2009.

For a summary of the proposed changes contained in the budget, see *Charity Law Bulletin* No. 135 available at <http://www.carters.ca/pub/bulletin/charity/2008/chylb135.pdf>. The news release by Finance is available at <http://www.fin.gc.ca/n08/08-096-eng.asp>.

## Highlights of CRA Registered Charities Newsletter Winter 2008

by Terrance S. Carter, assisted by Pamela Shin in *Charity Law Bulletin* No. 151, December 18, 2008.

The following *Charity Law Bulletin* highlights some key aspects of Canada Revenue Agency's ("CRA") *Winter 2008: Registered Charities Newsletter* No. 31 ("Newsletter") released on November 28, 2008. The Newsletter focuses on CRA Charities Directorate's positions on: noted compliance issues for registered charities; priorities for 2008/2009; the new call for funding proposals; a public education update; and other important topics. The full text of the Newsletter is available at <http://www.cra-arc.gc.ca/E/pub/tg/charitiesnews-31/charitiesnews31-e.pdf>.

### Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2008/chylb151.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2008/chylb151.htm>

## Split-receipting for Cemetery Plots

by Karen J. Cooper, LL.B., LL.L., TEP.

In the April 2008 *Charity Law Update* (available at [www.charitylaw.ca](http://www.charitylaw.ca)), it was reported that CRA had levied a penalty of \$499,055 to Adath Israel Congregation ("Adath"), a registered charity under the *Income Tax Act* (the "ITA"), and that it had also issued a Notice of Suspension of its receipting privileges to Adath for a period of one-year, commencing March 19, 2008. The penalty was imposed pursuant to subsection 188.1(9) of the ITA on the basis that donation receipts issued by Adath contained false information. It appears from CRA documents that one of the main concerns related to receipts issued for burial plots, although the actual facts remain unclear.

However, CRA has issued a recent technical interpretation (Document #2008-028417, dated November 24, 2008) which deals with the issuance of charitable donation receipts in a situation where a member-donor is entitled to pay less for a cemetery plot than a non-member. CRA states that in applying the proposed split-receipting amendments to this kind of situation, the “eligible amount” of the gift will be reduced by the value of the “advantage” provided to the members, which would include the right to purchase a cemetery plot at a discount. Unfortunately, the technical interpretation provides little specific guidance and the facts are vague. It is assumed that the donation receipt was being provided in respect of the annual membership fee paid by its members to a synagogue such as Adath.

One of the benefits of such a membership usually includes a discount on the price of a cemetery plot (or in some cases a cemetery plot at no charge). Since the definition of advantage in proposed subsection 248(32) provides that the amount of the advantage is generally the value, at the time the gift is made, of any property, service, compensation or other benefit received, or expected to be received in the future, by the donor, any donation receipt issued in respect of the membership fee should be reduced to reflect the value of the discount. Since the proposed amendments are proposed to be effective for any gifts made after December 20, 2002, and in most instances the membership fees are paid on an annual basis, a reasonable interpretation of the provisions and application of the technical interpretation would be for the gift or payment of the membership fee after the effective date of the amendment to be receipted on this basis. If the value of the benefit exceeds the amount of the fee, then a receipt would be issued for nil and the subsequent year’s fee reduced by the difference. One would expect that CRA would not require that the advantage reduce the value of each receipt, though the technical interpretation does not deal with this question. It is important that registered charities keep a careful record of the valuation used and how it is applied to the membership fees in order to avoid the problems that Adath appears to have encountered.

Unfortunately, the recent technical interpretation is only available through commercial subscription services or a direct request to CRA.

## **CRA Tax Alert: CRA Audit of All Tax Shelter Gifting Arrangement Donations**

*by Terrance S. Carter, B.A., LL.B.*

In a recently released Tax Alert, CRA reports that some taxpayers continue to participate in tax shelter gifting arrangements regardless of CRA’s warnings and audit actions against them. In this regard, CRA is in the process of and plans to continue auditing all tax shelter gifting arrangements. Already, well over \$2.5 billion in claimed donations have been denied.

CRA warns that it has approximately three years from the date of assessment to audit and reassess taxpayers. If a taxpayer has participated in a tax shelter gifting arrangement in 2007 and claimed a

“donation” on his or her tax return, the claim may have been accepted as filed. Nevertheless, CRA advises taxpayers to maintain their records and books in case of a review, since acceptance of a claim as filed does not necessarily mean that CRA agrees with the donation claim. Among the various types of tax shelter gifting schemes, CRA cautions taxpayers that they should avoid all schemes that promise donation receipts for three to four times the cash payment. Taxpayers can sometimes identify these schemes by packages that promote them with letters of commendation about the particular charity.

CRA advises those contemplating participation in a tax shelter gifting arrangement to seek independent legal and tax advice. In addition, CRA reminds that taxpayers who choose to correct their tax affairs before CRA begins any audit action or investigation may be able to avoid penalties or prosecution.

For more information on donation tax shelters, see *Charity Law Bulletin* No. 87 dated February 8, 2006, entitled “Beware of Donation Tax Shelter Valuations”, available at <http://www.carters.ca/pub/bulletin/charity/2006/chylb87.pdf> and *Charity Law Bulletin* No. 30 dated December 16, 2003, entitled “Tax Shelter Donation Schemes”, available at <http://www.carters.ca/pub/bulletin/charity/2003/chylb30-03.pdf>.

## New CRA Forms

by Karen J. Cooper, LL.B., LL.L., TEP.

As noted by CRA in last month’s *Charity Law Update*, as of January 2009, CRA’s new *Registered Charity Information Return* package (“Package”) will be available on the CRA website and will be mailed to all registered charities with fiscal periods ending on or after January 1, 2009. The Package includes the following forms: Form T3010B (09), *Registered Charity Information Return*, Form T1235 (09), *Directors/Trustees and Like Officials Worksheet*, and Form T1236 (09), *Qualified Donees Worksheet / Amounts Provided to Other Organizations*. The new T3010B is to be used only when filing annual information returns for fiscal periods ending on or after January 1, 2009. For fiscal periods ending on or before December 31, 2008, registered charities must continue to use Form T3010A (05), with accompanying Forms T1235 and T1236. The revised forms will be available at [www.cra.gc.ca/tx/chrts/formspubs/menu-eng.html](http://www.cra.gc.ca/tx/chrts/formspubs/menu-eng.html).

Also recently revised and released are the following CRA forms:

- Form T2050, *Application to Register a Charity Under the Income Tax Act*, and revised companion Guide T4063, *Registering a Charity for Income Tax Purposes*, available at <http://www.cra-arc.gc.ca/E/pbg/tf/t2050/README.html>.
- T3011 E (08) - *Application for Designation as Associated Charities* - used by two or more registered charities that have substantially the same charitable aim or activity, that want to be designated

"associated" under subsection 149.1(7) of the *Income Tax Act*. See Information Circular 77-6 *Registered Charities: Designation as Associated Charities* for more information.

- Attachment to IC84-3R5, *Gifts to Certain Charitable Organizations Outside Canada*, available at <http://www.cra-arc.gc.ca/E/pub/tp/ic84-3r5-attach/README.html>;
- RC4082 *GST/HST Information for Charities*, available at <http://www.cra-arc.gc.ca/E/pub/gp/rc4082/README.html>; and
- RC4034 *GST/HST Public Service Bodies Rebate* - Includes Form GST66, available at <http://www.cra-arc.gc.ca/E/pub/gp/rc4034/README.html>.

## **What Canadians Think About Charities: Highlights of Muttart's "Talking About Charities 2008" Report**

*by Terrance S. Carter, assisted by Pamela Shin in Charity Law Bulletin No. 152, December 19, 2008*

On October 19, 2008, The Muttart Foundation ("Muttart"), a well known private foundation based in Edmonton, Alberta, released *Talking about Charities 2008: Canadians' Opinions on Charities and Issues Affecting Charities* ("Report"). Muttart commissioned Ipsos Reid Public Affairs, a leading survey-based marketing research firm, to conduct Muttart's fourth survey on public opinion about charities and issues relating to charities. Muttart published similar reports in 2000, 2004, and 2006. The results of the 2008 survey are detailed throughout the 86-page Report. Some of the key aspects that the Report examines are: Canadians' attitudes towards charities, the role charities play in Canadian society, and their fundraising and advocacy activities.

This Report is an excellent resource for charities, as it provides insight into how the public perceives charities and the issues that affect them. In this regard, charities may want to use the Report to help them compare their practices with public opinion. This *Charity Law Bulletin* provides a brief overview of the highlights of this important resource tool. For more information on the details of the survey results, the full Report is available on Muttart's website at, <http://www.muttart.org/download/TAC2008/TAC2008-03-CompleteReport.pdf>.

### **Read More:**

[PDF] <http://www.carters.ca/pub/bulletin/charity/2008/chylb152.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2008/chylb152.htm>



## IN THE PRESS

**Employee or Independent Contractor – Be Aware of the Risks** by Barry W. Kwasniewski.

*Canadian FundRaiser eNews, Volume 18, No. 23, December 15, 2008.*

[Link] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=2833>

**Rights code trumps religious group's non-gay requirement** by Terrance Carter and Derek Mix-Ross.

*Lawyers Weekly, Vol. 28, No. 29, November 28, 2008.*

[PDF] <http://www.carters.ca/news/2008/lawyerwkly/tscdmr1128.pdf>

**Canadian FundRaiser eNews** included a link to *Charity Law Bulletin* No. 148.

*Canadian FundRaiser eNews, Volume 18, No. 22, November 30, 2008.*

[Link] [http://www.canadianfundraiser.com/Newsletter/issue\\_viewer.asp?Issue\\_ID=196](http://www.canadianfundraiser.com/Newsletter/issue_viewer.asp?Issue_ID=196)

## RECENT EVENTS AND PRESENTATION MATERIALS

**Canadian Association of Gift Planners Niagara/Golden Horseshoe Local Roundtable** was held in Burlington, Ontario, on December 9, 2008, and included a talk by Theresa L.M. Man entitled “Getting Cold Yet? Hot Policies for Hot Gifts.”

[WEB] <http://www.carters.ca/pub/seminar/charity/2008/tlm1209.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2008/tlm1209.pdf>

**Institute of Chartered Accountants** hosted a professional development session in Ottawa, Ontario, on December 9, 2008, with Karen J. Cooper presenting “Directors and Officers Liability: The Essentials and Beyond,” and “Current Issues Under the *Income Tax Act* Affecting Charities.”

**AFP Audio-Conference Series – Top Issues for Canadian Fundraisers** included a session entitled “Planned Giving and Gift Acceptance Issues and Policies for Canadian Fundraisers” by Terrance S. Carter and Theresa L.M. Man on December 3, 2008.

Materials available to attendees only.

**C.D. Howe Institute Policy Conference - Strengthening Canada's Charities: Examining Challenges to Canada's 'Third Sector'** included a presentation by Terrance S. Carter on “Canadian Registered Charities: Business Activities and Social Enterprise – Thinking Outside the Box” in Toronto, Ontario, on November 28, 2008.

[PDF] <http://www.carters.ca/pub/article/charity/2008/tsc1024.pdf>

**Association of Fundraising Professionals Ottawa Chapter Meeting** was held in Ottawa, Ontario, on November 20, 2008, and included a presentation by Jane Burke-Robertson and Karen J. Cooper entitled “Considerations in Creating Endowed Gifts and Gift Planning in Troubled Times.”

[WEB] <http://www.carters.ca/pub/seminar/charity/2008/jbrkjc1120.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2008/jbrkjc1120.pdf>



**Small Business Enterprise Centre Business & the Law Series** was held in Orangeville, Ontario, on November 19, 2008, and included the following presentations:

“Employment Law Issues: The Essentials” by Paula J. Thomas and U. Shen Goh; and

[WEB] <http://www.carters.ca/pub/seminar/business/2008/pjtusg1119.htm>

[PDF] <http://www.carters.ca/pub/seminar/business/2008/pjtusg1119.pdf>

“Recent Changes to the Canadian Criminal Law and How it Affects Your Risks as Employers”; and

“Due Diligence in Managing Risks” by Mervyn F. White.

[WEB] <http://www.carters.ca/pub/seminar/business/2008/mfw1119a.htm>

[WEB] <http://www.carters.ca/pub/seminar/business/2008/mfw1119b.htm>

[PDF] <http://www.carters.ca/pub/seminar/business/2008/mfw1119.pdf>

**The Financial Officer’s Group** held a meeting in Scarborough, Ontario, on November 6, 2008, that included a talk by Karen J. Cooper entitled “Surviving a CRA Audit.”

[WEB] <http://www.carters.ca/pub/seminar/charity/2008/kjc1106f.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2008/kjc1106f.pdf>

## **UPCOMING EVENTS AND PRESENTATIONS**

**Canadian Association of Gift Planners (CAGP) Ottawa Chapter** is hosting a session in Ottawa, Ontario, on February 5, 2009, with Karen J. Cooper presenting “Gifts of Land – Changing Ground Rules!”

**The Ottawa Region Charity Law Seminar** will be held at Arlington Woods Free Methodist Church in Nepean, Ontario, on Wednesday, February 11, 2009.

Details and online registration are available at

<http://www.carters.ca/pub/seminar/chrchl原因/ott/09/brochure.htm>.

**Directors’ and Officers’ Liability: The Essentials and Beyond for Your Nonprofit** will be presented by Terrance S. Carter for a workshop being hosted by Canadian Fundraiser in Toronto, Ontario, on February 19, 2009.

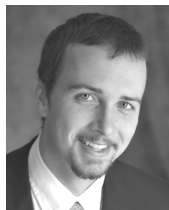
Register online at [http://www.canadianfundraiser.com/workshop\\_viewer.asp?workshop\\_ID=352](http://www.canadianfundraiser.com/workshop_viewer.asp?workshop_ID=352).

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**Terrance S. Carter** – Managing Partner, Terrance practices primarily in the area of charity and not-for-profit law and is counsel to Fasken Martineau DuMoulin LLP. Mr. Carter is a member of Canada Revenue Agency's Technical Issues Group, past member of CRA's Charities Advisory Committee, past Chair of the National Charity and Not-for-Profit Section of the Canadian Bar Association, and has been recognized as a leading expert in Canada by *Lexpert* and *Best Lawyers in Canada*. Mr. Carter is also editor of [www.charitylaw.ca](http://www.charitylaw.ca), [www.churchlaw.ca](http://www.churchlaw.ca) and [www.antiterrorismlaw.ca](http://www.antiterrorismlaw.ca), and a consulting editor of *Charities Legislation and Commentary* 2007 Ed.



**Sean S. Carter** – A graduate of Osgoode Hall Law School, having obtained his Bachelor of Arts in Political Science and Philosophy from the University of Toronto, Sean has gained valuable experience as a summer and now an articling student with Fasken Martineau DuMoulin LLP, as well as being a research assistant at Carters, with considerable experience writing on anti-terrorism law, including publications in *The International Journal of Not-for-Profit Law*, *The Lawyers Weekly*, *Charity Law Bulletin* and the *Anti-Terrorism and Charity Law Alert*.



**Nancy E. Claridge** – Called to the Ontario Bar in 2006 after articling with the firm, Ms. Claridge joins Carters to practice in the areas of charity, corporate and commercial law, in addition to being the firm's research lawyer and assistant editor of *Charity Law Update*. After obtaining a Masters degree, she spent several years developing legal databases for LexisNexis Canada, before attending Osgoode Hall Law School where she was a Senior Editor of the *Osgoode Hall Law Journal* and Editor-in-Chief of the *Obiter Dicta* newspaper, and was awarded the Dean's Gold Key Award and Student Honour Award.



**Karen J. Cooper** – A partner with the firm, Ms. Cooper practices charity and not-for-profit law with an emphasis on tax issues at Carters' Ottawa office, having formerly been a Senior Rulings Officer with the Income Tax Rulings Directorate of Canada Revenue Agency, as well as former counsel for the Department of Justice in tax litigation. Ms. Cooper also has considerable teaching experience, including as part-time professor at the University of Ottawa, Faculty of Common Law, and is a contributing author to *The Management of Charitable and Not-for-Profit Organizations in Canada* (LexisNexis Butterworths).



**Jacqueline M. Demczur** – A partner with the firm, Ms. Demczur practices in charity and not-for-profit law, including incorporation, corporate restructuring, and legal risk management reviews, as well as wills, estate planning and estate administration. She is a contributing author to Industry Canada's *Primer for Directors of Not-For-Profit Corporations*, and has written numerous articles on charity and not-for-profit issues for the *Lawyers Weekly*, *The Philanthropist* and *Charity Law Bulletin*, among others. Mrs. Demczur is also a regular speaker at the annual *Church & Charity Law*<sup>TM</sup> Seminar.



**Barry Kwasniewski** - Mr. Kwasniewski joined Carters' Ottawa office in October 2008 to practice in the areas of employment law, charity related litigation, and risk management. Called to the Ontario Bar in 1990, Barry has a wide range of litigation experience, including in commercial disputes, personal injury, long-term disability, employment, insurance defence, and professional liability. Barry is a volunteer lawyer at Reach Canada, is on the Board of directors of the Vista Centre, and has assisted in several United Way campaigns.



**Theresa L.M. Man** – A partner with Carters, Mrs. Man practices in the area of charity and not-for-profit law, with particular emphasis on tax issues. She is an Executive Member of both the Charity and Not-for-Profit Sections of the Ontario Bar Association and the Canadian Bar Association. In addition to being a regular speaker at the annual *Church & Charity Law<sup>TM</sup>* Seminar, Mrs. Man has also written articles for *The Lawyers Weekly*, *The Philanthropist*, *Planned Giving Pulse*, *International Journal of Civil Society Law*, *The Bottom Line*, *Canadian Fundraiser eNews*, and *Charity Law Bulletin*.



**Pamela Shin** – A graduate of the University of Western Ontario Faculty of Law, Pamela was active in the client counselling, contract drafting, and mooting competitions, as well as a number of programs and clubs, including Pro Bono Students Canada, Negotiation/Mediation practice and the Christian Legal Fellowship executive council. Pamela was nominated by her peers at Western Law for the Malcolm J. McKinnon Award and was awarded the Gold Medal for achieving the highest GPA in her undergraduate degree program. Currently articling with Carters, Pamela also gained experience as a summer student at a management counsel labour and employment boutique in Toronto.

## **ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS**

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