

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

DECEMBER 2009 ISSUE

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2010 Ottawa Region *Charity & Not-for-Profit Law Seminar*

Hosted by Carters Professional Corporation in Ottawa, Ontario.

Thursday, February 18, 2010.

Details available soon at <http://www.charitylaw.ca>.

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RECENT PUBLICATIONS AND NEWS RELEASES

Report of the Standing Committee on Finance Recommends Changes to Encourage Charitable Giving

Terrance S. Carter in *Charity Law Bulletin* No. 182, December 17, 2009.

On December 9, 2009, the Standing Committee on Finance (“the Committee”), as part of its 2009 pre-budget consultations, released its report, entitled *A Prosperous and Sustainable Future for Canada: Needed Federal Actions* (“the Report”). The Report will now be considered by the Ministry of Finance in drafting the 2010 federal budget. In June 2009, the Committee had invited Canadians to participate in pre-budget consultations, with the backdrop of nascent recovery from the last fall’s recession. In light of the serious financial difficulties that many charities have had to cope with during the recession, the recommendations of the Committee to Parliament are particularly crucial in speeding the recovery of the charitable sector and encouraging future giving. The Report recognizes that charities and volunteers make an invaluable contribution to Canada, providing alternative or supplemental assistance to those in need. This *Charity Law Bulletin* summarizes some of the submissions made to the Committee by the charitable and not-for-profit sector, as well as the recommendations put forward by the Committee in the Report.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2009/chylb182.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2009/chylb182.htm>

Tax Court of Canada Denies Leveraged Donation Tax Credit

Karen J. Cooper in *Charity Law Bulletin* No. 184, December 18, 2009

On November 12, 2009, the Tax Court of Canada (“TCC”) released its decision in *Maréchaux v. The Queen*. The decision relates to an appeal by a taxpayer from an assessment made under the *Income Tax Act* (“ITA”) in which a tax credit claimed by the taxpayer in respect of a purported \$100,000 gift to a registered charity was disallowed in its entirety. The decision is significant because it is one of the first dealing with a leveraged donation gifting arrangement from the donor’s perspective.

Leveraged cash donations are one form of tax shelter gifting arrangement that has been flagged by the Canada Revenue Agency (“CRA”). In such arrangements, a taxpayer receives a pre-arranged loan and makes a donation of the loan proceeds plus additional cash to a registered charity. The taxpayer is not at risk for the loan and the charity must use the proceeds in a predetermined manner.

CRA has issued several Taxpayer Alerts warning taxpayers that it intends to audit tax shelter gifting arrangements, including leveraged cash donations. Every such audit completed to date has resulted in a reassessment of taxes, plus interest and in some cases the CRA has denied the gift completely.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2009/chylb184.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2009/chylb184.htm>

Canada Revenue Agency Webpages on Specified Gift and 10-Year Gift

Theresa L.M. Man.

On December 2, 2009, CRA released two new webpages to clarify the meaning for specified gift and 10-year gift, at <http://www.cra-arc.gc.ca/tx/chrts/prtng/gfts/spcft-eng.html> and <http://www.cra-arc.gc.ca/tx/chrts/prtng/gfts/10gft-eng.html>.

CRA explains that a specified gift is a type of inter-charity gift that may affect their disbursement quota requirements. It is up to the donor charity to designate a gift as a specified gift in its information return for the year when the gift is made. The recipient charity should also identify it accordingly in its own information return. Charitable organizations and public foundations are normally required to disburse in the following year 80% of gifts they received from another charity in the previous year (100% in the case of private foundations).

CRA explains that the donor charity will not be able to use the specified gift to satisfy its own disbursement quota for the year when the gift is made. While CRA also indicates that the recipient charity's disbursement quota obligations for the current year would not be affected, this would have been the case regardless of whether the gift is a specified gift. What CRA should have explained is that a specified gift will not increase the recipient charity's disbursement quota obligations in the following year. However, if the recipient charity holds on to the specified gift and does not use the gift in its charitable activities or administration, the gift may have to be included when calculating the charity's 3.5% disbursement quota obligations.

In relation to 10-year gifts, CRA explains that a 10-year gift is a donation made to a registered charity that is subject to a donor's written trust or direction that the gift, or any property substituted for it, be held by the recipient charity, or another registered charity (if the gift is transferred) for 10 years or more from the date the gift was made. It would be useful if the webpage would clarify that the donor may impose any length of time for the hold period, provided that it must be at least 10 years.

CRA explains that a 10-year gift is a form of enduring property and is excluded from the charity's disbursement quota obligations calculation until the year it is spent or transferred to a qualified donee. However, if the recipient charity does not use the 10-year gift in its charitable activities or

administration while holding it, the gift may have to be included when calculating the charity's 3.5% disbursement quota obligations. As such, receiving 10-year gifts can be a useful way for a charity to accumulate a capital fund or endowment fund. CRA explains that the charity must ensure that each 10-year gift it receives is tracked separately, so that it may monitor when each holding period expires.

CRA further explains that a written trust or direction from the donor (signed and dated by the donor) must accompany the gift at the time when the gift was made to the charity, and cannot be added at a later date. In addition, CRA explains that spending any amount of the capital of a 10-year gift before the end of the hold period is allowable only where the donor's direction permits the charity to do so in order to meet its disbursement quota. CRA explains that the amount spent must be limited to the charity's 3.5% disbursement quota obligations.

It is useful that the webpage sets out sample language for a 10-year gift direction and permission to encroach on the capital for the purpose of meeting the charity's disbursement quota. However, the treatment of 10-year gifts for disbursement quota purposes is much more complicated than the simplified explanation contained on this webpage, and it is a concern that the reader may not be aware of the complexities involved and therefore may be misled as a result of the simplified explanation on this webpage.

Tax Court of Canada Decision

Karen J. Cooper

On November 13, 2009, the Tax Court of Canada (TCC) released its decision in *Donato v. the Queen*, 2009 TCC 590. The appeal related to charitable donations of cartoons made in the 1999 and 2001 taxation years. At issue was whether the appellant taxpayer realized taxable capital gains when the pieces were gifted to charities. The appellant, Andrew Donato, is a cartoonist and artist well known for his editorial cartoons in the Toronto Sun. Beginning around 1975, he began to produce five editorial cartoons a week on topical subjects. The 1999 donation consisted of 405 cartoons given to Touro College in New York City. The total appraised value of these cartoons was \$292,300, with each being individually appraised for approximately \$700 each. The 2001 donation was a gift of 305 cartoons to Brock University, which had a total appraised value of \$193,662.50. The schools issued donation tax receipts in the respective amounts.

In the mid-1990s, on the advice of his accountant, the appellant began gifting his cartoons to his wife, who in turn made the donation to the charities in order to ensure that the donations would qualify as personal-use property. In response to unfavourable adjustments proposed by CRA concerning the gifts to his wife, the appellant sought and received a rectification order declaring the gifts made from the appellant to his wife to be a nullity, so the charitable donations were actually made by the appellant.

Subsequent to the issuance of the rectification order, CRA issued reassessments in respect of the appellant's 1999 and 2001 taxation years. The reassessments allowed the charitable donation tax credits claimed by the appellant, but included taxable capital gains in his income in respect of the donations.

The only issue to be determined regarding the 2001 taxation year was the amount of the capital gain, if any, that was realized by the appellant as a result of his donation to Brock. The Tax Court of Canada's decision turned on whether the donated cartoons constituted personal-use property. Section 46 of the *Income Tax Act* provides a *de minimis* rule for personal-use property such that a disposition of personal-use property for proceeds no greater than \$1000 will not give rise to taxable capital gains. The appellant argued that the donated cartoons were personal-use property, each having a fair market value of less than \$1,000. Applying the definition of personal-use property contained in Section 54 of the *Income Tax Act*, the TCC examined whether the cartoons were used primarily for the personal use or enjoyment of the appellant taxpayer or a person related to the taxpayer. The TCC determined that the primary use of the cartoons was commercial, not personal, and that they were created and used primarily for the purpose of fulfilling the appellant's professional obligations to the Toronto Sun. Having decided that the cartoons were not personal-use property, the TCC did not need to consider CRA's alternative argument that the cartoons were a set. The TCC concluded that the assessment was correct and dismissed the appeal with respect to the 2001 taxation year. The same reasoning would have applied with respect to the cartoons donated in 1999, but the TCC found that the assessment for the 1999 taxation year was beyond the normal reassessment period (3 years) and, therefore, statute-barred.

Countdown to the *Canada Not-for-profit Corporations Act*

Jane Burke-Robertson.

"Countdown to the *Canada Not-for-profit Corporations Act*" begins with Carters' January *Charity Law Update*. On June 23, 2009, Bill C-4, the *Canada Not-for-profit Corporations Act* received Royal Assent. It is anticipated that the New Act will come into force in mid-2010 or in the early months of 2011. Once proclaimed in force, it will replace the *Canada Corporations Act* under which federal not-for-profit corporations are incorporated. All federal NFP corporations will be required to continue under the Act.

Starting in January, 2010, Jane Burke-Robertson will provide a series of information tips for existing federal NFP corporations, prospective incorporators under the new Act and provincial/territorial NFP corporations contemplating continuance to consider as they become familiar with the new legislation.

Tax Court of Canada Decision in Art Donation Case

Karen J. Cooper.

On October 26, 2009, the Tax Court of Canada (“TCC”) released its decision in *Russell, E.M. et al. v. The Queen*, 2009 TCC 548. The appellants were the representatives of 70 or so taxpayers who had participated in an art donation program, prior to proposed amendments to the *Income Tax Act* curtailing such arrangements. Art donation programs are a form of tax shelter gifting arrangement whereby the taxpayer buys art at a low price and on the same day donates the art to a charity, obtaining a charitable receipt for an amount equal to three to five times greater than what the taxpayer paid. Such programs rely on an appraiser’s certification that the art work has a fair market value far exceeding what the taxpayer paid just a short time earlier. In the program at issue, the promoter arranged to acquire art from artists for anywhere from \$20.00 to \$100.00 per original work of art and arranged for the donation of the works to a registered charity. The promoter then obtained appraisers’ certificates of value for each piece indicating a fair market value ranging from \$1,000 to \$1,500. The participants in the program received donation tax receipts for the higher amount. The appellants’ tax returns were subsequently reassessed by Canada Revenue Agency, which was appealed to the Tax Court of Canada. At issue in the appeal was whether the charitable receipts accurately reflected the fair market value of the gifts.

The Federal Court of Appeal has previously addressed similar art donation arrangements and found against the taxpayer, finding that what the taxpayer actually paid for the art is the best indicator of its fair market value (See *Charity Law Bulletin* 87 available online at <http://www.carters.ca/pub/bulletin/charity/2006/chylb87.pdf>). However, the appellants in *Russell* contended that the courts have not yet fully considered the proper identification of the market in reaching a conclusion on the fair market value of the donated property. The appellants argued that the proper consideration was the price each individual work of art would sell for in the retail market. Evidence was presented showing the mark-up that ordinarily occurs from the price paid to artists for their work to the price obtained for individual works sold to consumers in art galleries. The TCC rejected this argument, pointing out that the appellants’ approach ignores the reality that the buyers/donors have no access to the retail art market, other than through a gallery. Also, there was no evidence to suggest that there was any market for an individual to dispose of large quantities of individual pieces of art. The Court found that there was no market that permits a direct comparison for the purchase and sale of groups of original contemporary art. Therefore, the fall-back position to determine the art’s value is to look at what the buyers/donors paid.

Proposed amendments to the *Income Tax Act* have dealt with buy low, sell high donation schemes such as the program at issue in *Russell*. As of December 5, 2003, the value of a tax receipt issued by a charity for gifts of certain types of property, including art in this context, will be limited to the donor’s cost of

obtaining the property where it is donated within three years of acquisition or acquired through a gifting arrangement (See *Charity Law Bulletin* 38 at <http://www.carters.ca/pub/bulletin/charity/2004/chylb38-04.pdf>).

Roman Catholic Pastoral Agents in Quebec Disallowed Clergy Residence Deduction

Jennifer M. Leddy.

On October 29, 2009 the Federal Court of Appeal disallowed the claims of several pastoral agents in Quebec to the clergy residence deduction on the grounds that they were not members of the clergy, members of a religious order or regular ministers of a religious denomination for the purposes of Section 8 (1) (c) of the *Income Tax Act* (*Lefebvre, C. et al. v. The Queen* 2009 CAF 307 [Can LII]).

Most of the claimants had studied theology, obtained diplomas from faculties of theology and were deeply involved in a variety of ministries such as catechetics, ministry of the word, ministry to the sick and sacramental preparation. Notwithstanding these various ministerial "functions" and the evidence of their Bishop that they played an essential role in the life of the Church, the deductions were disallowed because they did not have the "status" of a "regular minister" with the Roman Catholic denomination.

The full reasons for the decision may be found in French at <http://www.canlii.org/fr/ca/caf/doc/2009/2009caf307/2009caf307.html>.

Good News - Bill 212 Receives Royal Assent

Terrance S. Carter.

On December 15, 2009, the *Good Government Act*, 2009, ("Bill 212"), received Royal Assent in the Ontario Legislature. As a result, changes to legislation affecting charities in the province are now in force. More information about Bill 212 can be found in *Charity Law Bulletin* No. 181, available at: <http://www.carters.ca/pub/bulletin/charity/2009/chylb181.pdf>.

Bill 212 represents significant reform to the regulation of charities in Ontario by overcoming limitations that have for decades plagued charities operating in Ontario. Highlights of some of the major changes to legislation affecting charities in Ontario include:

- The repeal of the *Charitable Gifts Act*;
- Amendments to the *Charities Accounting Act*, permitting a charity to hold land or other investments, such as mutual funds, for any length of time so long as those investments are being used for its charitable purposes;

- Amendments to the *Charities Accounting Act* expand the power of the Public Guardian and Trustee to make inquiries and require information where the charity, for instance, owns, controls, or has direction over more than 20% of the voting rights or equity of the shares of a corporation;
- Amendments to *the Accumulations Act* so that the rules of law and statutory enactments relating to accumulations do not apply and shall be deemed never to have applied to trusts created for a charitable purpose; and
- Section 10(1) of the *Religious Organizations' Lands Act* is amended by striking out the limit of one term of forty years, or for more than one term of not more than forty years, for which the trustees of a religious organization may lease land held for the benefit of the religious organization.

The Attorney General of Ontario, the Ontario Bar Association Charity and Not-for-profit Section, which was responsible for initiating the reforms, and the Ontario charitable sector as a whole, are to be applauded for this positive step in reforming the regulation of charities in Ontario.

Bill 212 can be viewed online at:

http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=2235

Fraser Institute Releases Generosity Index Concerning Private Giving In Canada and the U.S.A. In The 2007 Tax Year

Esther S.J. Oh.

On December 14, 2009, the Fraser Institute, a non-profit organization that studies how economic policy affects society, released its annual report entitled, *Generosity in Canada and in the United States: The 2009 Generosity Index* (“the Generosity Index”). The Generosity Index measures and compares private giving in each of Canada’s provinces, territories, as well as the 50 states and Washington, D.C in the United States of America. In this regard, the Generosity Index relies on data from personal income tax returns from the 2007 tax year to measure the percentage of tax filers who donated to charities in that year. The Generosity Index also measures the percentage of aggregate personal income donated to charity (with “aggregate personal income” defined as the sum of the total income earned by every individual in each jurisdiction considered for purposes of the Generosity Index).

Some highlights of the Generosity Index include the following:

- “Of all the provinces, Manitoba donated the highest percentage of its aggregate income to charity during the 2007 tax year (1.02%). Quebec, meanwhile, was the province that donated the lowest percentage of its aggregate income to charity (0.33%)”

- “A higher percentage of tax filers donated to charity in the United States (26.6%) than in Canada (24.0%) during the 2007 tax year. Similarly, Americans (at 1.60%) gave a higher percentage of their aggregate income to charity than did Canadians, (at 0.73%)”

The results of the Generosity Index indicate that Canadians fell far behind the Americans in the year 2007 in terms of private giving, with the average US donation being US\$4,623 in that year, compared to the average Canadian donation of CA\$1,504. The Generosity Index also notes that the provinces in Canada fell behind almost every US state in terms of the percentage of income donated and concludes that this “generosity gap undoubtedly limits the power and potential of charities to improve the quality of life in Canada.” Although Canada experienced an increase in charitable giving in aggregate income between 1997 and 2007, the extent of charitable giving fell in almost every province in the same period, with the exception of Ontario. Out of the 64 jurisdictions surveyed, the province of Manitoba ranked the highest on the Generosity Index among the Canadian provinces, but ranked only 33rd overall throughout Canada and the U.S.

The full report is available online at:

<http://www.fraserinstitute.org/researchandpublications/publications/7071.aspx>

Pregnant Employees: Employers Need To Know Their Legal Responsibilities

Barry W. Kwasniewski in *Charity Law Bulletin* No. 183, December 18, 2009.

On October 28, 2009, the Human Rights Tribunal of Ontario released its decision in *Maciel v. Fashion Coiffures*. The tribunal found the employer hair salon liable for breaching the Ontario *Human Rights Code*, (the “Code”) for dismissing a newly hired pregnant employee, ordering it to pay her over \$35,000.00 in damages and requiring that it implement an “accommodation of pregnant employees program.” This Bulletin will discuss the decision and outline the duties of employers (including charities and not-for-profit organizations) with respect to pregnant employees under Ontario law.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2009/chylb183.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2009/chylb183.htm>

Federal Court of Appeal Dismisses Motion to Extend Appeal Period

Karen J. Cooper.

In *Faith Assemblies Mission International v. the Queen*. 2009 FCA 318, delivered November 2, 2009, the Federal Court of Appeal dismissed both the applicant’s motion seeking an extension of time to appeal the Minister of National Revenue’s (the “Minister”) Notice of Confirmation to revoke its charitable registration and the Minister’s motion seeking to quash a judicial review application filed by the applicant. The applicant, Faith Assemblies Mission International, was a registered charity. On

October 3, 2007, it received a Notice of Intention to Revoke its charitable registration. After filing a Notice of Objection, the applicant filed an application for judicial review seeking “a stay of execution of the revocation pending hearing and disposition of the objection process and the appeal process.” However, on August 7, 2009, the Minister issued a Notice of Confirmation of his intention to revoke the applicant’s charitable registration. The applicant had not appealed the Notice of Confirmation and the time limit within which to appeal had expired. The FCA dismissed the Minister’s motion because the applicant’s judicial review application had been rendered moot by the issuance of the Notice of Confirmation.

In support of its motion, the applicant had filed evidence showing that counsel for the applicant had been unable to contact their client for several months to obtain instructions regarding the Notice of Confirmation. The pastor who had been giving the applicant’s instructions had been out of the country and had left no information about where he could be reached, nor had he taken any steps to remain in contact with his attorney. The FCA applied the factors to be considered when deciding whether to grant an extension of time to commence an appeal as indicated in *Pharmascience Inc. v. Minister of Health*, 2003 FCA 333. These factors are: (1) whether there is an arguable case on appeal; (2) whether there are special circumstances that justify the delay in commencing the appeal; (3) whether there is a continuing intention to appeal; (4) whether the delay has been excessive; and (5) whether the respondent will be prejudiced if the extension of time is granted. Although the delay had not been excessive and there was no evidence that the respondent would be prejudiced by an extension of time, the FCA found that the other factors dictated that the time to appeal should not be extended. The Court was not satisfied that the applicant had an arguable case on appeal. With respect to the second factor, the Court found that there were no special circumstances which would justify the delay. The inability of the applicant’s council to obtain instructions to appeal the Notice of Confirmation had been the result of the pastor’s own lack of diligence. Finally, with respect to the third factor, the FCA found that the pastor’s conduct did not denote a continuing intention to appeal.

Report on Policy Frameworks for Social Enterprises and Non-Profits in Ontario and Quebec Released

Terrance S. Carter.

In December 2009, Peter R. Elson of Mount Royal University, in collaboration with the Ontario Nonprofit Network, released the second of three comparative studies entitled, *Renovating the House that Law Built: A Comparative Analysis of Proposed Changes to Governance of Nonprofits and Social Enterprises in Ontario and Quebec* (“the Report”). In July 2009, a similar report comparing access to capital for social enterprises and nonprofits in Ontario and Quebec had also been released entitled *Building Capital, Building Community: A Comparative Analysis of Access to Capital for Social*

Enterprises and Nonprofits in Ontario and Quebec. The Report offers a contextual comparison of the history of social enterprise in Ontario and Quebec, followed by a profile of the proposed changes to the legislation governing social enterprise and not-for-profit corporations in the two provinces.

The Report provides a summary of the consultation papers between the government and nonprofit sector in each province, as well as the response from the nonprofit sector to the proposed legislation. In addition, the Report highlights where issues unique to each province caused the nonprofit sectors in Ontario and Quebec to agree, or take different perspectives, on corporate governance issues raised by their respective consultation papers. The authors of the Report note that there is no doubt that the current corporate legislative regime for nonprofits in each province is a complex web of regulations and statutes that create a host of difficulties, which make it complicated for nonprofits to register, change their corporate structure, amalgamate or modify their operations to sustain long-term viability. The Report concludes that while neither province is currently well situated to put through major reforms to their nonprofit governance legislation, the challenge is well worth meeting.

The full report, which also contains a discussion by Whitney Manfro of the University of Windsor, Faculty of Law, on the unrelated business rules for registered charities, as well as the first report on access to capital, is available at: http://sec.oise.utoronto.ca/english/project_pages/project_33.php.

B.C. Supreme Court Rules That Disputed Parish Properties Remain Part of the Anglican Diocese of New Westminster

Jennifer M. Leddy.

On November 25, 2009, Mr. Justice Stephen Kelleher of the B.C. Supreme Court ruled that the properties of four incorporated parishes, which had voted to leave the Anglican Church of Canada, remain within the Anglican Diocese of New Westminster (*Bentley v. Anglican Synod of the Diocese of New Westminster*, 2009 BCSC 1608). While ruling that the Bishop had no jurisdiction to appoint or dismiss trustees of the parish corporations, he also held that they are required to exercise their authority in accordance with their incorporating Act, as well as the Constitution, Canons, Rules and Regulations of the Diocese.

In February 2008, the four parishes voted to leave the Anglican Church of Canada because of doctrinal differences. They also chose to affiliate with the Anglican Network in Canada and to request on an emergency and pastoral basis Episcopal oversight from the Anglican province of the Southern Cone in South America. Their clergy relinquished their ministry licences from the Bishop of New Westminster and left the Anglican Church of Canada but continued to use the parish buildings and assets with the apparent agreement of the trustees. The Bishop of the Diocese subsequently dismissed the trustees of the

four parishes who then brought the court action on the basis that it would be in the best interests of the parish corporations to maintain Anglican ministry in accordance with historical Anglican doctrines.

Justice Kelleher based his decision on the Statute under which the parishes were incorporated, *An Act to Incorporate the Anglican Synod of the Diocese of New Westminster* ("the Act"). While the parishes were corporations, the act of incorporation, the making and amending of by-laws, rules and regulations and mortgage, sale or other disposition of the property required the consent of the Executive Committee and Bishop. These limitations of the autonomy of the parish corporations plus the name of the Act under which they were incorporated led Justice Kelleher to conclude that they "are intrinsically part of the Diocese and must be approached in that context."

Mr. Justice Kelleher held that "A parish does not have authority to unilaterally leave the Diocese, and it is consequently *ultra vires* for it to pass a resolution purporting to do so. Additionally, while parish corporations may hold title to real property, the effect of s. 7 (4) (a) [of the Act] is that property effectively remains within the Diocese unless the Executive Committee and Bishop agree to mortgage, sell or otherwise dispose of it." Using the parish properties for purposes related to the Anglican Network in Canada would require the consent of the Executive Committee and Bishop which were not forthcoming.

The plaintiffs' main argument was based on trust law, that the parish properties were held in trust for "historical, orthodox, Anglican doctrine and practice." While he did not have to decide the issue, Mr. Justice Kelleher found that if he had approached the case from a trust perspective, he would have concluded that the parish properties are held in trust for Anglican ministry as defined by the Anglican Church of Canada.

While this case concerned the ownership, control and possession of church property as between the diocese and the parishes, the decision will likely have an impact on other church property related cases.

The full ninety-eight page Judgment may be accessed at

<http://www.canlii.org/en/bc/bcsc/doc/2009/2009bcsc1608/2009bcsc1608.html>.

Charity Commission of England and Wales Releases Compliance Toolkit on Charities and Terrorism

Nancy E. Claridge and Terrance S. Carter in *Anti-terrorism and Charity Law Alert* No. 20, December 18, 2009.

On November 10, 2009, the Charity Commission of England and Wales ("the Commission") launched the first chapter of their online toolkit, *Protecting Charities from Harm*, with guidance entitled *Charities and Terrorism* ("the Guidance"). Chapters covering the topics of safeguarding charity funds, people, property and reputation, as well as a case studies and best practices archive are to be released in the

future. The Guidance is broken into 11 Modules, each covering a different topic. The Commission aims to have trustees, who in Canada would occupy the same position as the board of directors, become familiar with the legal framework in the United Kingdom dealing with terrorism affecting the work of charities. Although the Guidance has no direct legal effect in Canada, it can be a useful reference for Canadian charities in establishing good due diligence practices based on the case studies and recommendations of the Commission, and like other foreign guidance, may be relied upon by Canada Revenue Agency (“CRA”) in the future.

Read More:

[PDF] <http://www.carters.ca/pub/alert/ATCLA/ATCLA20.pdf>

U.S. Report on the Impact of Terrorism Laws on Charities and How the Work of Charities Can Counter Terror

Terrance S. Carter and Sean S. Carter in *Anti-terrorism and Charity Law Alert* No. 19, December 17, 2009.

On December 10, 2009, the Washington based Charity and Security Network (“the Network”), a collaboration of charities, grant-makers and advocacy groups, released a report based on a March 20, 2009 panel discussion entitled, *How the Work of Charities Can Counter Terror: And How U.S. Laws Get in the Way* (“the Report”). The Report argues that charities, foundations, development groups, human rights advocates and other nonprofits have all been targeted by anti-terrorism legislation and that there is little recourse for those organizations whose operations have been shut down by these laws. The Report urges, particularly in the context of anti-terrorism legislation in the United States, that legislators stop viewing charities and non-profits as potential collaborators in terrorist activities and instead take advantage of “the experience, capabilities and willingness of non-profit organizations to address the key factors that contribute to global terrorism.” The Report recognizes that the roots of terrorism are complex, including poverty, identity and cultural domination issues, as well as frustration resulting from being unable to participate in political processes. In light of this, the Report seeks to highlight the role that charities and non-profits can play in directly combating the very roots of terrorism, thereby improving security. The Report also focuses on illustrating how anti-terrorism laws in the United States have “complicated program operations” for nonprofits and how U.S. national security laws have been “abused as vehicles for suppressing political opposition and human rights activities.” The Report brings to light the reality of the impact of anti-terrorism laws on the work of charities, a reality that is very similar to that which is faced by Canadian charities and non-profits.

Read More:

[PDF] <http://www.carters.ca/pub/alert/ATCLA/ATCLA19.pdf>

IN THE PRESS

Ontario Legislation: Bill 212 Reforms Ontario Charities Regulation by Terrance S. Carter.

Canadian Fundraising & Philanthropy eNews, Volume 19, No. 23, December 15, 2009.

[Link] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=3169>

Non-Qualifying Securities by Karen J. Cooper.

Charitable Thoughts, Volume 13, No. 2, December 2009.

[Link] http://www.oba.org/En/cha_en/Newsletter_EN/PrintHTML.aspx?DocId=40083#Article_4

Commercial Activities and Other Issues Involving Non-Profit Organizations by Theresa L.M. Man.

Charitable Thoughts, Volume 13, No. 2, December 2009.

[Link] http://www.oba.org/En/cha_en/Newsletter_EN/PrintHTML.aspx?DocId=40083#Article_3

Omnibus Bill Introduces Changes for Charities in Ontario includes a link to *Charity Law Bulletin* No. 181 entitled “Bill 212 Brings Significant Reform to the Regulation of Charities in Ontario” by Terrance S. Carter.

Inside Internal Control, Volume 2, Issue 11, December 11, 2009.

[Link] http://www.firstreference.com/past_icl/Vol2_Issue11.html

Tips on Charitable Fundraising includes a link to *Charity Law Bulletin* No. 176 entitled “Ontario Public Guardian and Trustee Provides Tips on Charitable Fundraising” by Terrance S. Carter.

Inside Internal Control, Volume 2, Issue 11, December 11, 2009.

[Link] http://www.firstreference.com/past_icl/Vol2_Issue11.html

Leveraged Donations: Tax Court Of Canada Denies Leveraged Donation Tax Credit by Karen J. Cooper.

Canadian Fundraising & Philanthropy eNews, Volume 19, No. 22, November 30, 2009.

[Link] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=3157>

Bill 212 Introduces Significant Reform to Charities Regulation by Terrance S. Carter.

Law Times, Volume 20, No. 38, November 30, 2009.

[Link] <http://lawtimes.clbmedia.dgtlpub.com/2009/2009-11-30/home.php>

RECENT EVENTS AND PRESENTATIONS

The Association of Fundraising Professionals (AFP) Congress 2009 - Enhancing Philanthropy Around the World in Toronto, Ontario, included the following presentations by Terrance S. Carter and Elena M. Hoffstein on November 30, 2009:

“Essential Charity Law Update,”

[WEB] <http://www.carters.ca/pub/seminar/charity/2009/tscmeh1130.htm>

[PDF] <http://www.carters.ca/pub/article/charity/2009/tscmeh1130.pdf>

“New CRA Policy on Foreign Activities,” and

[WEB] <http://www.carters.ca/pub/seminar/charity/2009/tscmeh1130b.htm>

[PDF] <http://www.carters.ca/pub/article/charity/2009/tscmeh1130b.pdf>

“Maximizing a Charitable Gift.”

[WEB] <http://www.carters.ca/pub/seminar/charity/2009/mehtsc1130.htm>

[PDF] <http://www.carters.ca/pub/article/charity/2009/mehtsc1130.pdf>

Certified General Accountants of Ontario Professional Development Seminar entitled “The *Income Tax Act* and Charities: Current Issues” was presented by Karen J. Cooper in Toronto, Ontario, December 3, 2009.

<http://www.cga-ontario.org/eventReg/eventListing.aspx?src=rss&eventid=PD2009&seminarid=2009-1203a> for details.

Certified General Accountants of Ontario Professional Development Seminar entitled “Directors' and Officers' Liability: The Essentials and Beyond” was presented by Karen J. Cooper in Toronto, Ontario, December 3, 2009.

<http://www.cga-ontario.org/eventReg/eventListing.aspx?src=rss&eventid=PD2009&seminarid=2009-1203p#PD20092009-1203p> for details.

The Institute of Chartered Accountants (ICAO) Professional Development Seminars included a presentation by Terrance S. Carter entitled “Directors & Officer Liability – The Essentials and Beyond” in Toronto, Ontario, on December 10, 2009.

Details at https://ebusiness.icaocan.ca/pd/pdCourseFilter_Detail.aspx?coursecode=21302MS0

The Institute of Chartered Accountants (ICAO) Professional Development Seminars included a presentation by Terrance S. Carter and Theresa L.M. Man entitled “Current Issues under the Income Tax Act Affecting Charities” in Toronto, Ontario, on December 10, 2009.

Details at https://ebusiness.icaocan.ca/pd/pdCourseFilter_Detail.aspx?coursecode=23302MS0

UPCOMING EVENTS AND PRESENTATIONS

Current Issues Under the *Income Tax Act* Affecting Charities will be presented by Terrance S. Carter and Theresa L.M. Man as part of the Canadian Fundraising & Philanthropy Key to the Sector Workshop series in Toronto, Ontario, on January 20, 2010.

Details available at http://www.canadianfundraiser.com/workshop_viewer.asp?workshop_ID=373

Understanding CRA's New Guidance on Fundraising will be presented by Terrance S. Carter as part of the Catholic Archdiocese of Toronto – ShareLife Agencies session to be held on Thursday Jan 28, 2010.

Lawyers on Non-Profit & Charity Boards: Prestige, Reward, Pro Bono, Anxiety, Conflicts of Interest and other Pitfalls will be presented as part of a panel discussion at the OBA Institute by Terrance Carter and Bill Pashby on Tuesday February 16, 2010.

The Ottawa Region Charity & Not-for-Profit Law™ Seminar will be held at Arlington Woods Free Methodist Church in Nepean, Ontario, on Thursday, February 18, 2010.

Details and online registration will soon be available at

<http://www.carters.ca/pub/seminar/chrchlaw/ott/10/brochure.htm>.

Divine Perspectives on Your Career will be presented by Jennifer Leddy at the 2010 National Christian Law Student Conference at the University of Ottawa on February 19, 2010.

Details available at

<http://www.christianlegalfellowship.org/Conferences/2010/StudentConference/2010studentconferenceindex.htm>

CONTRIBUTORS

Editor: Terrance S. Carter

Assistant Editor: Nancy E. Claridge



Jane Burke-Robertson – A partner with Carters’ Ottawa office, Ms. Burke-Robertson practices in the area of charity and not-for-profit law and has been ranked by *Lexpert* and *The Best Lawyers in Canada* as a leader in her field. She is co-author of *Non-Share Capital Corporations* published by Carswell, and a contributor to Industry Canada’s *Primer for Directors of Not-for-Profit Corporations*. Ms. Burke-Robertson is a frequent speaker and lecturer on charitable and not-for-profit matters and recently taught an advanced seminar on the law of charities and non-profit organizations at the Faculty of Law, University of Ottawa.



Terrance S. Carter – Managing Partner of Carters, Mr. Carter practices in the area of charity and not-for-profit law, is counsel to Fasken Martineau DuMoulin LLP on charitable matters, is a member of the Technical Issues Group of Canada Revenue Agency’s (CRA) Charities Directorate representing the Canadian Bar Association (CBA), a past member of CRA’s Charity Advisory Committee, Chair of the National Charities and Not-for-Profit Section of the CBA, and has been recognized as a leading expert by *Lexpert* and *The Best Lawyers in Canada*. Mr. Carter is also editor of www.charitylaw.ca, www.churchlaw.ca and www.antiterrorism.ca, and a consulting editor of *Charities Legislation and Commentary* (LexisNexis Butterworths, 2010).



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 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*. Sean was called to the Ontario Bar in 2009 and is currently an associate with Fasken Martineau DuMoulin LLP.



Nancy E. Claridge – Called to the Ontario Bar in 2006 after articling with the firm, Ms. Claridge practices 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).



Barry W. 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.



Jennifer M. Leddy – Ms. Leddy joined Carters’ Ottawa office to practice charity and not-for-profit law following a distinguished career in both private practice and public policy. Her experiences include acting as a legal and policy advisor to the Canadian Conference of Catholic Bishops; and working with the Charities Directorate of the Canada Revenue Agency on the proposed “Guidelines on the Meaning of Advancement of Religion as a Charitable Purpose.” Ms. Leddy was also a co-director of the Catholic Organization for Life and Family, and a member of the Joint Regulatory Table of the Voluntary Sector Initiative on the legislative and regulatory environment of the sector.



Theresa L.M. Man – A partner with Carters, Ms. 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*[™] Seminar, Ms. 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*.



Esther S.J. Oh – A partner with the firm, Ms. Oh practices in charity and not-for-profit at Carter’s Mississauga office. Ms. Oh is a frequent contributor to www.charitylaw.ca and the *Charity Law Bulletin*, and has spoken at the annual *Church & Charity Law*[™] Seminar as well as at the Canadian Bar Association/Ontario Bar Association’s 2nd National Symposium on Charity Law. Ms. Oh’s volunteer experience includes formerly serving as director and corporate secretary of the Evangelical Fellowship of Canada, and involvement with speaking engagements to various university student groups across Ontario.



Ryan Prendergast - Ryan graduated from the University of Ottawa, Faculty of Law, in 2009. Prior to attending law school, Ryan graduated from Glendon College at York University, First Class, with a B.A. in History and a Certificate in Law and Social Thought. While in law school, Ryan was a student caseworker for the Criminal Division at the University of Ottawa Community Legal Aid Clinic. He also completed a volunteer research project for Ecology Ottawa on municipal by-laws. Before articling with Carters, Ryan gained legal experience as a summer student working for the Crown Attorney’s Office in Toronto.

Heather Reardon - Heather graduated *cum laude* from Michigan State University College of Law in 2008 and from the University of Ottawa, Faculty of Law in 2009. Before attending law school, she obtained a B.A. from Mount Allison University with a major in International Relations and a minor in Religious Studies. During law school, Heather obtained legal experience as a clinician at the Michigan State University Rental Housing Clinic and was a member of Michigan State’s Niagara International Law Moot Court team. Heather has also worked as an intern with the Department of Justice and a Member of Parliament.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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**CARTERS PROFESSIONAL CORPORATION
SOCIÉTÉ PROFESSIONNELLE CARTERS**

PARTNERS:

Terrance S. Carter B.A., LL.B.
(Counsel to Fasken Martineau DuMoulin LLP)
Jane Burke-Robertson B.Soc.Sci., LL.B.
Mervyn F. White B.A., LL.B.
Karen Cooper B.Soc.Sci., LL.B., LL.L., TEP
Theresa L.M. Man B.Sc., M.Mus., LL.B., LL.M.
Jacqueline M. Demczur B.A., LL.B.
Esther S.J. Oh B.A., LL.B.

tcarter@carters.ca

janebr@carters.ca
mwhite@carters.ca
kcooper@carters.ca
tman@carters.ca
jdemczur@carters.ca
estheroh@carters.ca

ASSOCIATES:

Jennifer M. Leddy B.A., LL.B.
Barry W. Kwasniewski B.B.A., LL.B.
U. Shen Goh LL.B., LL.M.
Nancy E. Claridge B.A., M.A., LL.B.

jleddy@carters.ca
bwk@carters.ca
sgoh@carters.ca
nclaridge@carters.ca

COUNSEL:

Bruce W. Long B.A., LL.B.
Donald J. Bourgeois B.A., LL.B.

blong@carters.ca
dbourgeois@carters.ca

Main Office

211 Broadway, P.O. Box 440
Orangeville, Ontario, Canada L9W 1K4
Tel: (519) 942-0001
Fax: (519) 942-0300
Toll Free: (877) 942-0001

Meeting Locations by Appointment

Toronto Dominion Bank Tower, Suite 4200
Toronto, Ontario, Canada
(416) 675-3766

59 Woolwich Street
Guelph, Ontario
(519) 838-2004

Mississauga Office

2 Robert Speck Parkway, Suite 750
Mississauga, Ontario, Canada, L4Z 1H8
Tel: (905) 306-2791
Fax: (905) 306-3434
Toll Free: (877) 942-0001

2100 - 1075 West Georgia Street
Vancouver, British Columbia
(877) 942-0001

Ottawa Office

70 Gloucester Street
Ottawa, Ontario, Canada
Tel: (613) 235-4774
Fax: (613) 235-9838
Toll Free: (866) 388-9596

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