

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

MAY 2010 ISSUE

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RECENT PUBLICATIONS AND NEWS RELEASES

Update on CRA's Actions to Respond to the New Disbursement Quota Rules

Theresa L.M. Man.

Since the release of the 2010 Federal Budget on March 4, 2010 announcing the proposal to repeal the 80% disbursement quota (DQ) and to enact other changes to simplify the DQ rules, the Charities Directorate of Canada Revenue Agency ("CRA") has been taking actions to respond to these changes.

In this regard, on March 31, 2010, CRA released a Message from the Director General (see <http://www.cra-arc.gc.ca/tx/chrts/bdgt2010/dgmssg-eng.html>), advising that CRA will revise the Registered Charity Information Return T3010B, but in the short term, CRA will include a page of instructions with the T3010B return packages that would be mailed to charities starting in April 2010. The T3010B instruction sheet was released by CRA on April 27, 2010 (see http://www.cra-arc.gc.ca/tx/chrts/bdgt2010/t3010_nsrt-eng.html). Detailed line-by-line instruction was provided on how to complete the T3010B for charities with a fiscal period ending on or after March 4, 2010. CRA's effort in providing interim instructions so quickly is to be commended. It is hoped that the revised T3010B will be fine-tuned to also include instructions on the following: "designated gifts" are to be excluded from their 3.5% DQ calculation; the *de minimis* threshold for charitable organizations for the 3.5% DQ has been increased to \$100,000; and accumulated property for which approval was obtained from CRA are to be excluded when calculating their 3.5% DQ.

On May 3, 2010, CRA released a list of 15 questions and answers in relation to the new DQ rules (see <http://www.cra-arc.gc.ca/gncy/bdgt/2010/chrt-eng.html>). For those who do not want to read a technical document such as the 2010 Budget, CRA's questions and answers provide a friendly version of the new DQ rules in layman terms.

Lastly, on May 4, 2010, a new CRA webpage (see <http://www.cra-arc.gc.ca/tx/chrts/bdgt2010/ddtns-eng.html>) was launched which now contains the above three documents and also advises that CRA will continue to provide updated information on the impact of the 2010 Budget through its webpage, forms and publications, phone enquires services, and other communication channels.

Many questions still remain regarding the application and implementation of the new DQ rules, such as what charities are required to do in order to "designate" a gift, whether charities are still required to make up DQ shortfall from previous years, would DQ shortfall be an issue if a charity is currently under a CRA audit, etc. It is hoped that in the weeks to come, CRA will be able to provide more guidance and clarification on how it intends to implement the new DQ rules and what charities are required to do in the mean time.

CRA News

Karen J. Cooper.

Revocations

CRA has revoked the charitable registration of **Henvey Inlet First Nation Community Support Organization**, effective May 8, 2010. A CRA audit concluded that from April 1, 2003 to March 31, 2008, the charity issued in excess of \$44 million in receipts for cash received through various tax shelter arrangements. The charity then transferred 99% of the receipted amount to the tax shelter promoters as fundraising fees and investments in off-shore accounts, retaining only \$464,181. CRA's position is that the charity has operated for the non-charitable purpose of promoting tax shelter arrangements in return for an accommodation fee of 1%. CRA also cited several other reasons for revocation, including failure to maintain sufficient books and records and improper receipting. The CRA News Release regarding Henvey Inlet First Nation Community Support Organization is available at: <http://www.cra-arc.gc.ca/nwsrm/rlss/2010/m05/nr100510c-eng.html>.

CRA has also revoked the charitable status of the **Orion Foundation**, effective May 8, 2010. A CRA audit concluded that from January 1, 2005, to December 31, 2007, the charity issued in excess of \$91 million in receipts for medicine units received through the Canadian International Aid Program tax shelter arrangement. CRA's position is that these receipts were issued for significantly inflated values, as the charity's records failed to substantiate that the values recorded on the receipts were accurate, or that the property was actually received, used, or distributed in the quantities reported. For its participation in the tax shelter arrangement, the charity received approximately \$1 million in cash, all but \$70,000 of which was paid out to another registered charity for its role in the arrangement and to related third party companies as administrative fees. The audit also revealed that the charity entered into collusive contractual arrangements with directors and related parties who are themselves promoting the tax shelter programs. CRA's position is that the charity has operated for the non-charitable purpose of promoting tax shelter arrangements and for the private benefit of its directors and the tax shelter promoters. CRA's News Release regarding the Orion Foundation is available at: <http://www.cra-arc.gc.ca/nwsrm/rlss/2010/m05/nr100510b-eng.html>.

T2082- Excess Corporate Holdings Regime for Private Foundations

The guide "Excess Corporate Holdings Regime for Private Foundations" (T2082) was updated on May 17, 2010. The latest version of this publication is available online at: <http://www.cra-arc.gc.ca/E/pub/tg/t2082/README.html>.

Charities and Giving: Web page addresses

CRA has announced that beginning in July 2010 there will be changes to some of the Charities and Giving webpage addresses (URLs). However, the URLs of the most popular pages will not change. CRA suggests that frequent visitors to the website bookmark the following pages as a convenient way to access the content related to charities:

- Charities and Giving landing page:
www.cra.gc.ca/charitiesandgiving
- Charities:
www.cra.gc.ca/charities
- Checklists for Charities:
www.cra.gc.ca/checklists
- Donors:
www.cra.gc.ca/donors
- Charities Listings (Search):
www.cra.gc.ca/charitylists

CRA Releases Final Guidance on Upholding Human Rights and Charitable Registration

Terrance S. Carter in *Charity Law Bulletin* No. 212, May 26, 2010.

On May 17, 2010, Canada Revenue Agency (“CRA”) released in final form its guidance on registering and operating a charity to uphold human rights entitled *Upholding Human Rights and Charitable Registration* (“the Guidance”). On May 28, 2009, CRA had released its draft guidance as part of the consultation process with the charitable sector (“the Draft Guidance”). The Guidance replaces CRA’s Summary Policy CSP-HO8, *Human Rights*, released on September 2, 2003. While the Guidance does not contain substantial amendments from the Draft Guidance, CRA has provided additional information with respect to political activities and anti-terrorism issues, as well as a helpful appendix containing questions and answers for both applicant and registered charities that wish to pursue charitable purposes that uphold human rights. This *Charity Law Bulletin* summarizes the highlights of the Guidance, particularly what has been added since the release of the Draft Guidance for charities considering registering for the purpose of upholding human rights, or those already involved in such activities. For commentary on the Draft Guidance see “CRA Draft Guidance on the Protection of Human Rights and Charitable Registration” *Charity Law Bulletin* No. 166 (May 28, 2009) available online at: <http://www.carters.ca/pub/bulletin/charity/2009/chylb166.htm>.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2010/chylb212.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2010/chylb212.htm>

Introduction of Bill 65, The *Ontario Not-For-Profit Corporations Act*

Jane Burke-Robertson and Terrance S. Carter in *Charity Law Bulletin* No. 210, May 25, 2010.

On May 17, 2010, Bill 65, also known as Ontario's proposed *Not-for-profit Corporations Act* (the "ONCA" or the "Bill"), was debated at the second reading stage in the Ontario Legislature. The ONCA previously passed its first reading on May 12, 2010. It will replace the *Corporations Act*, which currently regulates Ontario's not-for-profit corporations. The ONCA represents a significant improvement for Ontario non-share corporations and will, if passed, bring the Ontario non-share corporate laws into conformity with modern corporate statutes across the country.

In a press release issued May 12, 2010, the Ministry of Consumer Services indicates that Bill 65 will provide Ontario's 46,000 not-for-profit corporations with a "modern legal framework to enhance corporate governance and accountability, simplify the incorporation process, give more rights to members, and better protect directors and officers from personal liability."

This *Charity Law Bulletin* provides a glimpse of some of the highlights of Bill 65.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2010/chylb210.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2010/chylb210.htm>

Divisional Court Decision Provides Mixed Results in Christian Horizons Appeal

Jennifer M. Leddy and Terrance S. Carter in *Church Law Bulletin* No. 29, May 26, 2010.

On May 14, 2010, the Divisional Court of Ontario issued a significant decision in the Appeal brought by Christian Horizons from a ruling by the Human Rights Tribunal of Ontario on April 15, 2008. The case addresses the broad issue of religious organizations maintaining their religious identity while serving the public and the particular issue of when religious organizations can require employees to comply with a "Statement of Personal Lifestyle and Morality Standards Expected of Staff" ("Lifestyle Statement") when such statements contain discriminatory qualifications on their face. The decision also affirms an important principle that religious organizations, whether they provide services directly to their own members or to the public, are eligible for the statutory exemption in section 24 (1) (a) of the *Ontario Human Rights Code* that allows them to hire co-religionists. The findings on the definition of religion, particularly that social service is an expression of faith, will be helpful in other contexts. However, the decision that it is not a *bona fide occupational qualification* for Christian Horizons to require support workers to sign a Lifestyle Statement that includes a provision to abstain from same-sex relationships is problematic, given the clear findings of fact that Christian Horizons seeks to "establish a Christian home environment" for its residents and that many of its employees see their work as "Christian ministry." As well, the holding that Christian Horizons created a "poisoned work environment", independently of whether it came within the statutory exemption, is also concerning because little guidance about what

constitutes a “poisoned work environment” is provided and as such may open the door to allegations that could otherwise be defended on the basis of the statutory exemption.

This *Church Law Bulletin* provides a detailed analysis of the decision.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/church/2010/chchlb29.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/church/2010/chchlb29.htm>

Filing Requirements of Non-Profit Organizations

Karen J. Cooper.

CRA recently released a technical interpretation regarding the filing requirements of (non-profit organizations or NPOs). CRA notes that there are three ways that an NPO may structure its operations: (1) as a corporation with share capital; (2) as a corporation without share capital; or (3) as an unincorporated entity. The technical interpretation outlines the filing requirements for NPOs as follows:

- (1) Where the NPO is a corporation, a T2 Corporation Income Tax Return (or a T2 Short Return for eligible corporations) must be filed within 6 months from the end of the corporation’s taxation year;
- (2) Where subsection 149(5) of the ITA applies (generally to an NPO whose main purpose is to provide dining, recreational or sporting facilities for its members), an inter vivos trust is deemed to have been created for the NPO’s property income and a T3 Trust Income Tax Information Return must be filed within 90 days from the end of the deemed trust’s taxation year where the deemed trust has tax payable with respect to property income, or has disposed of any capital property that is not used directly in the course of providing dining, recreational or sporting facilities to its members.
- (3) An incorporated or unincorporated NPO must also file a Form T1044, Non-Profit Organization (NPO) Information Return within 6 months after the end of the NPO’s fiscal period in the following circumstances:
 - a. The total of all amounts received or receivable by the NPO in the fiscal period for taxable dividends, interest, rentals or royalties is more than \$10,000;
 - b. The total assets of the NPO at the end of its immediately preceding fiscal period exceeded \$200,000; or
 - c. The NPO had to file an NPO information return for a preceding fiscal period.

- (4) An NPO that is also a registered Canadian amateur athletic association (“RCAAA”) does not have to file a Form T1044. A RCAAA must file Form T2052, Registered Canadian Amateur Athletic Association Return of Information within 6 months of the RCAAA’s fiscal year end.

Certain NPOs may not be required to file any forms for a particular taxation year if none of the conditions outlined above are met. Technical Interpretations are only available through commercial subscription services or a direct request to CRA.

Canada Gazette Publishes Official Notice of Fee Proposal For Services under the *Canada Not-for-Profit Corporations Act*

Jane Burke-Robertson.

On May 8, 2010, the Canada Gazette published the official notice on the fees proposed under the new *Canada Not-for-profit Corporations Act* (Bill C-4). The *Canada Not-for-profit Corporations Act* (“the CNCA”) received Royal Assent on June 23, 2009. However, before the CNCA can come into force, the fees must be established for the various services available under the legislation. The proposed fees relate to services that include incorporations, obtaining certificates of amendment, amalgamation, continuance, and compliance, among other services.

Consultations on the proposed fees and services standards were held from January 4, 2010 to February 5, 2010. The official notice on the fees allows stakeholders to submit official complaints for a period of 20 days (from May 8, 2010 until May 28, 2010). After receipt of any complaints, an independent review panel will have the opportunity resolve them. Once the complaints have been resolved, the proposed fees will be tabled in the House of Commons and Senate for review. When this process is complete, the proposed regulations (including the fees) will go through the ordinary regulatory process.

The Official Notice is available on the Canada Gazette website at: <http://www.gazette.gc.ca/rp-pr/p1/2010/2010-05-08/html/notice-avis-eng.html#d114> and on the Corporations Canada website at: <http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04534.html>.

Environmental Issues Under The 4th Head Of Charity

Karen J. Cooper.

Environmental organizations have been playing an increasingly important role in society as the impact of the environment on human health and the economy has become clearer. Environment Canada’s website notes that “[i]ssues such as asthma, cardiovascular disease and waterborne illnesses underline linkages between the environment and human health. Environmental changes such as low water levels, pest infestations and intense storms also have economic impacts in such sectors as agriculture, forestry and tourism.” Governments have recognized the importance of environmental protection by

implementing legislation aimed at protecting the environment. For example, Canada has extensive federal legislation focused on pollution prevention and conservation, such as the *Canadian Environmental Protection Act*, the *Species at Risk Act* and the *Canada Wildlife Act*.

In the National Survey of Non-profit and Voluntary Organizations, Imagine Canada reported that there were 4,424 non-profit environmental organizations operating in Canada in 2003. Included in this number are “organizations promoting and providing services in environmental conservation, pollution control and prevention, environmental education and health and animal protection.” Forty-one percent of these environmental organizations are registered charities. However, the law related to what activities may be considered charitable in the context of environmental protection is not clear and the Canada Revenue Agency has a history of a restrictive understanding of what activities would be considered charitable in this context. This paper presents a review of the common law and statutory context of the protection of the environment as a charitable purpose in order to suggest that a modern understanding of the law in this area would permit a much broader range of activities, which may in turn assist in meeting the increasing challenges facing our environment today.

Read More:

[PDF] <http://www.carters.ca/pub/article/charity/2010/kjc0430.pdf>

Countdown to the *Canada Not-For-Profit Corporations Act*

Practice Tip #4: Discipline of Members and New Remedies Under CNCA

Jane Burke-Robertson in *Charity Law Bulletin* No. 213, May 27, 2010.

The decisions of not-for-profit organizations involving the expulsion, discipline or suspension of members have resulted in a number of cases over the last several years. In particular, the courts have on numerous occasions considered the application of natural justice rules in membership discipline cases. While historically there has been judicial reluctance to intervene in the affairs of a voluntary association, the courts have rationalized their intervention in membership cases in recent years on the basis of the “contractual” relationship of members to the non-profit corporation. The CNCA now provides a statutory basis for intervention and provides many new remedies previously unavailable to members of federally incorporated not-for-profit organizations.

This *Charity Law Bulletin* briefly reviews provisions of the CNCA governing the discipline of members and the new remedies available therein.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2010/chylb213.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2010/chylb213.htm>

Update: Workplace Violence and Harassment Law in Ontario Will Be In Force in June

Barry W. Kwasniewski.

The Ontario *Occupational Health and Safety Amendment Act, (Violence and Harassment in the Workplace)*, 2009 received Royal Assent on December 15, 2009. This law will be in force as of June 15, 2010. The summary of this legislation and the duties on employers is summarized in *Charity Law Bulletin* 189: <http://www.carters.ca/pub/bulletin/charity/2010/chylb189>. This important legislation requires employers in Ontario to create written policies on workplace violence and harassment. As well, employers are required to take precautions should they become aware of the potential of domestic violence occurring in the workplace. Therefore, employers must be proactive to make sure that appropriate policies are in place to meet the requirements of the new legislation by June 15, 2010.

No Entitlement to Director Indemnification for Bad Faith Acts

Nancy E. Claridge in *Charity Law Bulletin* No. 211, May 26, 2010.

The question of whether a corporation has the legal and financial capacity to provide its directors with an indemnity in relation to their duties for the corporation is a fundamental issue one should consider before accepting a position on the board of directors. While this is true whether it is a for-profit corporation or a not-for-profit/charitable corporation, the issue has special resonance for those acting in a volunteer capacity on the boards of charities, since there is a common law prohibition on remuneration of a charity's directors. Indemnification is the process by which the corporation agrees to cover the cost of, or compensate the director for, any loss or damage sustained as a result of the acts or omissions of the director in the course of his capacity as a director of the organization. The indemnity provides a measure of protection for the director and thereby enables charities to attract capable individuals to the position.

In a recent decision, the Ontario Superior Court of Justice has provided some necessary guidance on the issue of the availability of indemnification for directors of charities or not-for-profit organizations who incur costs in relation to their acts or omissions as directors of the charity. While not creating new law, the decision in *Deol v. Grewal*, confirms that the principles established in for-profit corporations are applicable to not-for-profit entities. This *Charity Law Bulletin* reviews the highlights of the decision.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2010/chylb211.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2010/chylb211.htm>

Ontario Court Affirms the Fiduciary Obligations Owed By Directors of Charitable Organizations

Terrance S. Carter in *Charity Law Bulletin* No. 209, May 25, 2010.

On April 13, 2010, Justice Brown of the Ontario Superior Court of Justice released the most recent decision in the ongoing litigation involving the Ontario Society for the Prevention of Cruelty to Animals (“OSPCA”) and the Toronto Humane Society (“THS”). This decision affirms that directors of charitable organizations have fiduciary duties toward the charity, and also emphasizes that with these enhanced duties comes an enhanced power of the courts to monitor and regulate charities.

In fact, the jurisdiction of the courts to oversee the management of charitable property extends so far as to provide them with the authority to order the destruction of charitable property, as the April 13, 2010 decision illustrates. This *Charity Law Bulletin* discusses the history of the dispute between OSPCA and THS, as related by the Court, and highlights Justice Brown’s observations about the fiduciary duties of directors of charities. The Bulletin concludes with a discussion of what lessons Justice Brown’s decision can teach the management of charities and their legal counsel.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2010/chylb209.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2010/chylb209.htm>

British Columbia Supreme Court Rules Employee Critical of Management Properly Dismissed For Cause

Barry W. Kwasniewski in *Charity Law Bulletin* No. 208, May 25, 2010.

In the recent British Columbia Supreme Court decision in *Chen v Sable Fish Canada Inc.*, Justice R. S. K. Wong ruled that an employee’s critical comments of the company’s management made in a letter to the board of directors, shareholders and others justified his dismissal with cause. This decision analyzes the difficult issue of determining when an employee’s comments, whether verbal or written, that criticize his or her superiors will be regarded at law as sufficient cause for dismissal. As charities and not-for-profits may from time to time need to deal with employees who criticize the management of the organization, this bulletin will provide guidance as to when an employee may have “crossed the line,” such that the employee may be terminated with cause.

This *Charity Law Bulletin* provides an analysis of the decision.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2010/chylb208.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2010/chylb208.htm>

Man Convicted in First Terrorism Financing Case

Sean S. Carter.

On May 14, 2010, the first man to be charged under Canada's anti-terrorism financing legislation was convicted and sentenced to six months in jail. Prapaharan Thambithurai was charged with committing an offence under section 83.03(b) of the *Criminal Code*, which makes it an offence to provide or make available property or services for terrorist purposes. After being convicted, the prosecution asked for two years in prison, while the defence asked for a three-year suspended sentence. Justice Powers of the British Columbia Supreme Court sentenced Mr. Thambithurai to six months in jail, a decision that has sparked significant commentary in several major Canadian newspapers. Mr. Thambithurai pled guilty to raising funds for the World Tamil Movement ("WTM"). The WTM was the first Canadian non-profit organization to be added as a listed entity under section 83.05 of the *Criminal Code*. The WTM, which describes itself as an ethno-cultural community association engaged in humanitarian work, is alleged to have raised funds for the Liberation Tigers of Tamil Eelam ("LTTE"). The LTTE itself was added as a listed entity in April 2006. The designation of the WTM as a listed entity came shortly after Mr. Thambithurai was arrested and charged.

The provisions in section 83 of the *Criminal Code* are in existence due to the *Anti-Terrorism Act* ("the ATA"), which received Royal Assent on December 18, 2001, as Bill C-36. The powers contained in the ATA have been highly debated, often due to the alleged incompatibility of those powers with the rights contained in the *Canadian Charter of Rights and Freedoms*.

The outcome of this case will be precedential with regard to subsequent terrorist financing prosecutions under the *Criminal Code*. Charities and their boards and staff are not immune from the ATA and, in fact, are particularly vulnerable to its provisions when the charity is working in "areas of conflict" susceptible to terrorist activities.

The text of the *Anti-Terrorism Act* can be located on the Parliament of Canada's website at: <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E>.

Organizations which have been categorized as "listed entities" under section 83.05(1) of the *Criminal Code* can be located online at: <http://www.publicsafety.gc.ca/prg/ns/le/cle-eng.aspx>.

Federal Government Introduces the *Combating Terrorism Act* in the House of Commons

Terrance S. Carter.

On April 23, 2010, Bill C-17, also known as the *Combating Terrorism Act*, received its first reading in the House of Commons. Bill C-17 proposes to reintroduce *Criminal Code* provisions relating to investigative hearings and recognizance with conditions that first came into force with Bill C-36, the *Anti-Terrorism Act*, in December 2001. However, the *Anti-Terrorism Act* contained a "sunset clause"

under which the provisions were set to expire on March 1, 2007 unless extended by a resolution passed by both houses of Parliament. A government motion to extend the measures for three years was defeated in the House of Commons on February 27, 2007, and as such, the provisions ceased to have any force or effect. Similarly, Bill C-17 contains a sunset clause, which provides that the reenacted provisions will cease to have effect at the end of the 15th sitting day of Parliament after the fifth anniversary of the coming into force of Bill C-17, unless both houses of Parliament resolve to extend the provisions.

One of the mechanisms which Bill C-17 proposes to re-enact is “investigative hearings”, the ability to compel individuals who may have information about a terrorism offence to attend before a judge for an investigative hearing, failing which that person can be arrested. Additionally, Bill C-17 proposes to re-enact “preventative detention”, by which a peace officer, with the consent of the Attorney General, would have the ability to present information before a judge if he or she believes that a terrorist act will be carried out and suspects that the imposition of a recognizance with conditions or the arrest of a person is required to prevent it.

Whether or not Bill C-17 will be passed into law remains to be seen. However, the introduction of Bill C-17 signals a trend by the Federal Government to revert back to the more draconian provisions originally contained in the *Anti-Terrorism Act* when it was first introduced shortly after 9/11. Bill C-17 is available on the Parliament of Canada website at: <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=4460308&file=4>.

A review of Bill C-36, the *Anti-Terrorism Act*, is available at: <http://www.carters.ca/pub/alert/ATCLA/atcla07.pdf> and <http://www.carters.ca/pub/bulletin/charity/2002/chylb12.htm>.

IN THE PRESS

Employers Be Aware: New Ontario Law Will Increase Reporting Obligations Regarding Child Pornography" by Barry Kwasniewski.

Employment Practices Risk Management Column, Imagine Canada, May 2010.

[Link] <http://nonprofitrisk.imaginecanada.ca/node/910>

Law must catch up with reality where environmental charities are concerned by Janet Gadeski refers to a presentation by Karen J. Cooper for the CBA/OBA 2010 National Charity Law Symposium held on Toronto, Ontario, in April 2010.

Canadian Fundraising & Philanthropy eNews, Volume 20, No. 9, May 15, 2010.

[Link] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=3315>

Non-Profit Groups Wary of CRA stance by Donalee Moulton includes quotes from an interview with Terrance S. Carter.

The Bottom Line, Volume 26, No. 6, May 15, 2010.

RECENT EVENTS AND PRESENTATIONS

2010 National Charity Law Symposium hosted by the Charity and Not-for-Profit Sections of the Canadian Bar Association and the Ontario Bar Association and co-chaired by Terrance S. Carter, in Toronto, Ontario, on April 30, 2010, include the following presentation by Karen J. Cooper:

“Environmental Issues Under the 4th Head of Charity.”

[Web] <http://www.carters.ca/pub/seminar/charity/2010/kjc0430.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/kjc0430.pdf>

[Paper] <http://www.carters.ca/pub/article/charity/2010/kjc0430.pdf>

Applying for Charitable Status was presented by Karen J. Cooper on May 4, 2010, as part of Imagine Canada’s Charity Tax Tuesdays, a free webinar series for Canadian charities.

[Web] <http://charitytax.imaginecanada.ca/demand-webinars>

County of Carlton Law Association - 16th East Region Solicitors Conference 2010 held in Montebello, Quebec, on May 7, 2010, included a presentation by Jane Burke-Robertson entitled “Ins and Outs of the *Canada Not-for-Profit Corporations Act*.”

[Web] <http://www.carters.ca/pub/seminar/charity/2010/jbr0507.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/jbr0507.pdf>

17th Annual National CAGP-ACPDP Conference being held in Edmonton, Alberta, May 12-14, 2010, will include the following presentations:

“Managing Endowments in Difficult Economic Times,” M. Elena Hoffstein of Fasken Martineau;

[Web] <http://www.carters.ca/pub/seminar/charity/2010/meh0513.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/meh0513.pdf>

“Basic Tax Considerations in Gift Planning,” Terrance Carter with Laura West of Fasken Martineau;

[Web] <http://www.carters.ca/pub/seminar/charity/2010/tsclw0513.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/tsclw0513.pdf>

“Implications of Disbursement Quota Reform,” Theresa L.M. Man; and

[Web] <http://www.carters.ca/pub/seminar/charity/2010/tlm0513.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/tlm0513.pdf>

“Navigating a CRA Audit and Living to Tell the Tale” by Karen J. Cooper.

[Web] <http://www.carters.ca/pub/seminar/charity/2010/kjc0513.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/kjc0513.pdf>

Employment Law, Legislation and Guidelines was presented by U. Shen Goh as part of the Regional Municipality of Halton's free seminar series "Leadership Matters: Building Your Legal Know How" in Georgetown, Ontario, on May 18, 2010.

[Web] <http://www.carters.ca/pub/seminar/charity/2010/usg0518.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/usg0518.pdf>

Certified General Accountants of Ontario's Not-for-Profit Symposium held in Toronto, Ontario, on May 20, 2010, included "Directors' & Officers' Liability – The Essentials and Beyond" presented by Karen J. Cooper.

Social Enterprise in Canada: Towards a New Paradigm was presented by Jane Burke-Robertson at the CSIED Social Enterprise Seminar in Ottawa, Ontario, on May 27, 2010.

[Web] <http://www.carters.ca/pub/seminar/charity/2010/jbr0527.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/jbr0527.pdf>

UPCOMING EVENTS AND PRESENTATIONS

2010 Church Protection Plus Risk Management Symposium hosted by Robertson Hall in Mississauga on May 27, 2010, will include a presentation by Bruce W. Long entitled "Criminal Charges and Regulation Offences."

Details available at <http://www.robertsonhall.com/pdf/2010SYMPOSIUMBROCHURE.pdf>.

Owen Sound Regional Hospital Foundation Workshop for Professional Advisors on May 27, 2010, will include a presentation by Terrance S. Carter entitled "Implications of Disbursement Quota Reform."

http://www.oshfoundation.ca/pages/news_events/Lunch%20&%20Learn%20poster%20May%2027%202010.pdf

Imagine Canada Charity Tax Tuesdays presented by Carters lawyers:

June 1 - Fundraising Activities and CRA Guidelines by Terrance S. Carter

June 15 - Filing the T3010B Registered Charity Information Return by Theresa L.M. Man

Details available at <http://charitytax.imaginecanada.ca/demand-webinars>.

Hamilton Law Association's CLE Round Table Session on Charity Law will include a presentation by Terrance S. Carter entitled "Implications of the 2010 Disbursement Quota Reform for Charities" on June 2, 2010.

Details available at <http://www.hamiltonlaw.on.ca/upcoming.asp>.

The 2010 Christian Legal Intervention Academy hosted by Faith and Freedom Alliance at St. Michael's College in Toronto, Ontario, will include the following presentations on June 5, 2010:

Human Rights Frameworks, an Overview by Mervyn F. White; and

Corporate Structure for Churches and Charities by Terrance S. Carter.

Details available at <http://faithandfreedomalliance.ca/Default.aspx?cat=2>

Thoughts on Child Protection Policies: How to Make them Work for your Non-Profit or Charity will be presented by Esther S.J. Oh as part of a risk management seminar series hosted by Imagine Canada on June 7, 2010.

http://nonprofitrisk.imaginecanada.ca/files/insuranceinfo/en/publications/webinars_winter_2010.pdf

Healthcare Philanthropy: Check-Up 2010, hosted by Carters Professional Corporation and Fasken Martineau DuMoulin LLP, is being held at The Estates of Sunnybrook in Toronto, Ontario, on June 10, 2010, and will include the following presentations:

“Charity Law Update: The Year in Review” by M. Elena Hoffstein of Fasken Martineau;

“What the Federal Budget Disbursement Quota Reform Will Mean to Your Charity” by Theresa L.M. Man of Carters;

“The Practical Implications of CRA’s Fundraising Guidance: One Year Later” by Terrance S. Carter of Carters; and

“The HST: The Impact on Charities and Not-for-Profits” by Paul V. Cassucio of Fasken Martineau.

Details and registration available at

<http://www.fasken.com/healthcare-philanthropy-check-up-2010-06-10-2010/>.

The Implications of the New CRA Fundraising Guidance for Not-for-Profits and Charities is being presented by Terrance S. Carter as part of the Regional Municipality of Halton’s free seminar series “Leadership Matters: Building Your Legal Know How” in Milton, Ontario, on June 15, 2010.

Details available at <http://www.halton.ca/cms/One.aspx?portalId=8310&pageId=40925>. Session full.

Colliers International Breakfast Meeting at the Ontario Heritage Centre on June 16, 2010, will include a presentation by Terrance S. Carter entitled “Investment Decision Making During Difficult Financial Times.”

Details at <http://www.carters.ca/pub/seminar/notice/2010/tsc0616.htm>

Directors’ and Officers’ Liability – The Essentials and Beyond for Charities and Not-for-Profits is being presented by Terrance S. Carter as part of the Regional Municipality of Halton’s free seminar series “Leadership Matters: Building Your Legal Know How” in Burlington, Ontario, on June 23, 2010.

Details available at <http://www.halton.ca/cms/One.aspx?portalId=8310&pageId=40925>.

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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 CBA National Charities and Not-for-Profit Section, and is recognized as a leading expert by *Lexpert* and *The Best Lawyers in Canada*. He is also consulting editor of *Charities Legislation and Commentary* (LexisNexis Butterworths, 2010), and editor of www.charitylaw.ca, www.churchlaw.ca and www.antiterrorism.ca.



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 joins Carters to practice in the areas of charity, anti-terrorism, real estate, corporate and commercial law, and wills and estates, 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 frequent speaker at the annual *Church & Charity Law™* Seminar, seminars hosted by the Canadian Bar Association and the Ontario Tax Foundation, 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*.



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.



Jennifer Schwass - Jennifer graduated from Osgoode Hall Law School in Toronto, where she was awarded the Samuel Rubinoff Prize for Legal Research and Writing, the Maritime Law Book Prize in Legal Ethics, and the Hyman Bergel Prize in Advanced Torts. While at Osgoode, she served as Treasurer and Secretary of Justlaw, and as the Legal and Literary Society Representative for the Women’s Caucus. Jennifer also has a B.A. in political science, graduating on the Dean’s List from the University of Western Ontario. Before articling with Carters, Jennifer gained experience at a legal aid clinic in Toronto and with a sole practitioner in rural Ontario.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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