

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

### NOVEMBER / DECEMBER 2010 ISSUE

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2010 Annual Church & Charity Law™ Seminar Materials Available

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

Hosted by Carters Professional Corporation in Toronto, Ontario.

**Wednesday, February 16, 2011.**

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

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**RECENT PUBLICATIONS AND NEWS RELEASES****Proposed Amendments to Bill C-470 Remove Compensation Cap**

Terrance S. Carter.

As reported in earlier *Charity Law Updates* (<http://www.carters.ca/pub/update/charity/10/oct10.pdf>), Private Members' Bill C-470, *An Act to Amend the Income Tax Act (revocation of registration)*, proposing a salary cap of \$250,000 for any executive or employee of a charity, and mandatory disclosure of compensation for its five highest-paid executives or employees, was referred to the Standing Committee on Finance for review. In this regard, the Committee commenced hearings on November 29, 2010, at which time amendments to the Bill were introduced by Albina Guarnieri, MP for Mississauga East – Cooksville, the sponsor of the Bill. The amendments to Bill C-470 proposed by Ms. Guarnieri include the elimination of the \$250,000 salary cap and the introduction of a threshold of \$100,000 for salary disclosure requirements.

During the meeting of the Standing Committee on Finance, Ms. Guarnieri explained to the Committee that as a result of reaction from the charitable sector she had “agreed to delete the section surrounding the cap” and to “create a disclosure floor of \$100,000.” It now appears that what remains of Bill C-470 is the requirement that charities would need to disclose the salaries of their five highest paid executives and employees who receive compensation in excess of \$100,000. The amended Bill C-470 has not yet been made available to the public as of the time of writing. The Standing Committee on Finance will next meet to discuss Bill C-470 on December 6, 2010, at which time representatives from the charitable sector will be appearing as witnesses before the Committee. Whether or not there will be further amendments to the legislation remains to be seen. However, it is a welcome development that the \$250,000 cap has been removed.

**CRA News**

Karen J. Cooper.

**CRA Revokes the Registered Status of Biathlon Canada**

On October 30<sup>th</sup>, 2010, Canada Revenue Agency (“CRA”) revoked the status of Biathlon Canada as a Registered Canadian Amateur Athletic Association (“RCAAA”). RCAAAs are organizations established for the primary purpose of promoting amateur athletics in Canada on a nationwide basis. The CRA found that the organization had issued more than \$25.9 million in donation receipts for abusive transactions arising from its role as a participant in tax shelter arrangements. As a result of the revocation of Biathlon Canada’s

status as a RCAA, it can no longer issue donation receipts and is no longer considered a qualified donee under the *Income Tax Act*. The CRA News release may be accessed at <http://www.cra-arc.gc.ca/nwsrm/rlss/2010/m10/nr101029-eng.html>.

## **Revision to CRA Policy on Loanbacks**

On November 19, 2010, the CRA published a revised version of Policy CSP-L07: "Loanback." A loanback occurs when a donor makes a gift to a qualified donee and within 60 months of making the gift, either (1) the qualified donee holds a non-qualifying security of the donor that it acquired after the time that is 60 months before the gift was made, or (2) the donor uses the qualified donee's property under an agreement that was made or modified after the time that is 60 months before the gift was made as long as the property was not used by the qualified donee in its charitable activities. These situations reduce the fair market value of the gift for income tax purposes. The key changes to the policy deal with receipting procedures for qualified donees when the loanback provisions apply. The CRA also created a new webpage dealing with this topic and it can be accessed at: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/lbcks-eng.html>.

## **CRA Comments on Gifts by Will to Charities**

The CRA released a technical interpretation (Document #2010-03631) on June 8, 2010 that involved two issues: (1) how to claim a gift made by will if the gift is not received by the charity by the due date for filing the terminal return, and (2) how to value the gift made if the property changes in value between the date of death and when the property is transferred to the charity. CRA indicates that according to its T4011 Guide, *Preparing Returns for Deceased Persons*, when gifts are going to be received right away, a donor can provide an official receipt from the recipient. However, for a gift that will be received later, copies should be provided to the CRA of the will, a letter from the estate to the charitable organization that will receive the gift advising of the gift and its value, and a letter from the charitable organization acknowledging the gift and stating that it will accept the gift. The CRA allows these actions to be taken based on the understanding that once the gift is actually transferred to the charity, a receipt will be provided. Regarding the second issue, pursuant to subsection 118.1(5) of the *Income Tax Act*, the CRA was of the opinion that the value used to determine the eligible amount of the gift will be the fair market value at the time the gift is made (which is deemed to be made on the date of death). It is important that donors take the necessary precautions, since these issues may become relevant for those who want to claim a gift by will that has not yet been received by a charity, or if the value of that gift is likely to change between the date of death and the date the property is

actually transferred. Technical interpretations are available through commercial subscription services or a direct request to CRA.

## **CRA Releases its Fifth Charities Connection**

On November 26, 2010, CRA released its fifth Charities Connection: CRA News, Information, and Events Specific to Registered Charities. CRA's focus in this issue is on the new form T3010-1 Registered Charity Information Return, which has recently undergone several changes. As a result of the disbursement quota changes in the 2010 federal budget, the Information Return was revised and the new forms will be mailed out in January 2011. Special forms will be sent out for private foundations and also those charities that are incorporated, amalgamated or continued in Ontario subject to the *Ontario Corporations Act*. In conjunction with the release of this new form, Guide T4033-1 will be updated on the CRA website in order to help charities complete the new Information Return.

CRA also provides a reminder for charities of the Charities' Directorate guidance documents provided on the website, which explains how CRA interprets and applies the *Income Tax Act* and the common law. CRA also provides a list of the recently released guidances and lists several examples of soon to be released guidance up for consultation, such as Promotion of Animal Welfare, Complementary and Alternative Health Services, Charitable Purposes and Activities for Protecting the Environment, and Arts Organizations. Finally, the CRA indicated that a Speaker's Kit for educating the public about giving to charity is now available. Information on how to obtain these kits is provided on the CRA website at <http://www.cra-arc.gc.ca/E/pub/xi/rc306-k/README.html>. For more information on the fifth issue of Charities Connection, please see <http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/nwsltr/cnnctn/cnnctn05-eng.html>.

## **Auditor General of Canada Fall 2010 Report**

Terrance S. Carter and Karen J. Cooper in *Charity Law Bulletin* No. 234, November 30, 2010.

The Auditor General of Canada recently completed and published her Fall 2010 Report ("Report") to Parliament on October 26, 2010. The report can be accessed on the Office of the Auditor General of Canada's website at [http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_201010\\_07\\_e\\_34290.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_201010_07_e_34290.html). One chapter of the Report was dedicated entirely to the performance of the Charities Directorate of the Canada Revenue Agency ("CRA") with regard to its oversight of registered charities. The Report examined several different issues relating to compliance with the *Income Tax Act* ("ITA"), tax shelter gifting arrangements, and communications of the CRA to the public. An audit of this kind from time to time is imperative, since

Canadians donate approximately 8 billion dollars to the 85,000 registered charities in Canada each year. Because of the role that CRA plays in regulating these charities, an audit by the Auditor General is an important means of ensuring that CRA is carrying out practices and methods which protect these donors and the tax base.

Overall, the Auditor General found that the CRA's procedures are effective and thorough. A majority of the areas examined received positive feedback from the Auditor General. However, there were also a number of recommendations proposed to bring improvements, with which the CRA has indicated it is in full agreement. This Bulletin discusses the findings of the Auditor General in more detail.

**Read More:**

[PDF] <http://www.carters.ca/pub/bulletin/charity/2010/chylb234.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2010/chylb234.htm>

## **CRA's Comments on New Disbursement Quota Rules for Charities**

Theresa L.M. Man.

In a recent CRA technical interpretation (2010-0370841E5, September 24, 2010), CRA was asked to comment on the newly proposed disbursement quota rules regarding inter-charity gifts. New disbursement quota rules were announced in the March 2010 federal budget and Notice of Ways and Means Motion was tabled on September 28, 2010. These new rules removed the 80% disbursement quota for charities and all related concepts, meaning that all charities are required to now meet only the 3.5% disbursement quota.

One of the new rules requires a registered charity that receives a gift of property from a non-arm's length charity to spend an amount equal to the fair market value of the gifted property on its own charitable activities or by way of gifts to arm's length qualified donees by the end of the next fiscal year. This disbursement is in addition to the transferee charity's own 3.5% disbursement quota requirement. However, if the transferor charity designates all or a portion of the gift of property as "designated gift," the designated portion will not be subject to the immediate disbursement requirement.

CRA was asked to comment on two hypothetical scenarios concerning the application of the "designated gift" designation. In the first scenario, a registered charity (the "Donor Charity") plans to gift real property that is used in its charitable activities to another registered charity that is a related charitable foundation (the "Recipient Charity"). The value of the real property is \$10 million. The Donor Charity will otherwise be able to meet its disbursement quota for the year and that the full value of the real property will be designated by the Donor Charity as a "designated gift". CRA confirmed that the Donor Charity will be precluded from

using the designated gift to satisfy its disbursement quota, and the Recipient Charity will not be subject to the immediate disbursement requirement in respect of the designated gift.

The second scenario involves the same facts, except that the Donor Charity will have a deficiency of \$100,000 in its disbursement obligation without taking into account the gift of real property. The Donor Charity intends to use \$100,000 of the value of the gifted property to meet its disbursement quota and designate the remaining value of \$9,900,000 as a "designated gift". CRA confirmed that the Donor Charity will be able to use the \$100,000 to meet its own disbursement quota, and the Recipient Charity will have to expend \$100,000 by its following fiscal year. However, the remaining gift of \$9,900,000 to the Recipient Charity will not be subject to the immediate disbursement requirement.

The charitable registration of a charity can be revoked if it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities. CRA commented that whether any purpose of a transaction is to avoid or unduly delay the expenditure of amounts on charitable activities is a question of fact and must be determined on a case-by-case basis.

### **CRA Releases Interpretation on Charitable Donations in a Deceased Spouse's Will**

Jacqueline M. Demczur.

Canada Revenue Agency ("CRA") released a technical interpretation (Document #2010-03726) on October 26, 2010, which answered the question of whether an individual can claim a tax credit for a charitable donation made by his/her deceased spouse's will in the year in which the spouse died. According to subsection 118.1(5) of the *Income Tax Act* ("ITA"), charitable gifts made by an individual in his or her will are deemed to have been made by the individual in the year of death. Subsection 118.1(3) of the ITA allows an individual to claim donation tax credits with respect to gifts made in the taxation year. CRA's administrative practice is to accept gifts made by the spouse or common law partner of that individual as part of the individual's "total charitable gifts." The CRA pamphlet, "P113, Gifts and Income Tax 2009", is a useful tool to decide whether or not a gift will qualify for the donation tax credit. For donation splitting, CRA allows a taxpayer to choose which spouse or common law partner will report a donation or gift and allows for the subsequent transfer of any carry-forward balances from one to another. As long as a spousal or common-law relationship existed at the time of death, the donation qualifies as a gift under the ITA, and the donation is made in accordance with the terms of a deceased's will, a tax credit claim will be available for the surviving spouse. This tax credit information is a useful source for those donors making or planning to

make charitable donations in their wills. Technical interpretations are available through commercial subscription services or a direct request to CRA.

## **Federal Court of Appeal Dismisses Appeal in Donation Tax Shelter Case**

Karen J. Cooper.

In the recent decision of *Marechaux, F.M.E. v. Her Majesty the Queen*, (2010 FCA 287), the Federal Court of Appeal (“FCA”) dismissed an appeal of a decision of the Tax Court of Canada (2009 TCC 587) in which Mr. Marechaux (the “Appellant”) had appealed his tax reassessment for the 2001 taxation year. The case was discussed in detail in *Charity Law Bulletin* No. 184 available at <http://www.carters.ca/pub/bulletin/charity/2009/chylb184.htm>. The Tax Court of Canada held that he had not actually made a ‘gift,’ since he made the payment to the foundation expecting to receive a benefit and the Appellant received a benefit of an \$80,000 interest-free loan from a lender that was repayable in twenty years. The Appellant submitted four arguments in support of the contention that the judge in the first instance had erred. First, he argued that the benefit provided did not disentitle the donation from being considered a ‘gift’ since it was provided by the lender, not the donee. The FCA ruled that the benefit could not be disregarded simply because it was provided by a third party. The second issue raised by the Appellant was that the interest-free loan did not constitute a significant benefit. The FCA concluded that when a person receives use of borrowed money which is not repayable for almost 20 years and is exempt from paying interest, this person has received a significant benefit. Thirdly, the Appellant disagreed that the services provided in return for the \$10,000 paid to the lender (security deposit, insurance, lender’s fees) should be considered to be benefits. The FCA disagreed, citing the fact that the Appellant actually received an insurance policy and, even if he did not, he had good reason to believe he would. The last issue raised by the Appellant was a submission that he should still receive a tax credit for his cash donation of \$20,000. The FCA held that in this instance no part of the donation could be considered to have been given in expectation of no return. This decision is an illustrative example of why donors must be cautious at the time of making a gift when there is a potentially perceived benefit for the donor, but donors and charities should note that the facts arose before the introduction of the split –receipting amendments. The decision can be accessed at <http://www.canlii.org/eliisa/highlight.do?text=marechaux+v.+the+queen&language=en&searchTitle=Search+all+CanLII+Databases&path=/en/ca/fca/doc/2010/2010fca287/2010fca287.html>.

## **Radcliffe Foundation Receives Penalty from the CRA**

Esther S.J. Oh.

The Radcliffe Foundation, a private foundation well known for its philanthropic work with over \$63.3 million in assets, was recently penalized by CRA for \$147,000 for "excessive corporate holdings" in contravention of the *Income Tax Act (Canada)* ("ITA"). This is the first known example where a private foundation has been penalized by CRA for non-compliance with ITA requirements that impose limitations on the business holdings that a private foundation can have in a for-profit company, which requirements were introduced in 2007. The Radcliff Foundation paid its penalty by transferring the amount to another registered charity.

Subsection 188.1(3.1) of the ITA outlines the allowable limitations that apply to private foundations that hold shares in the capital stock of a corporation and imposes penalties for non-compliance with the applicable requirements. The CRA Guide entitled "Excessive Corporate Holding Regimes for Private Foundations" T2082(E) dated May 17, 2010, available at <http://www.cra-arc.gc.ca/E/pub/tg/t2082/t2082-10e.pdf>, includes a detailed explanation concerning the restrictions on private foundations holding issued and outstanding shares of a class of shares in a corporation.

## **Charities Speaking Out: The Evolution of Advocacy and Political Activities by Charities In Canada**

by Terrance S. Carter and Theresa L.M. Man was prepared for the New York University School of Law National Centre on Philanthropy and the Law's Annual Conference "Nonprofit Speech in the 21st Century: Time for a Change?" on October 29, 2010.

Advocacy has been defined as the act of speaking or of disseminating information intended to influence individual behaviour or opinion, corporate conduct, or public policy and law. Many people believe that the act of advocacy as a form of free speech is an essential part of democracy.

There is a general misconception among registered charities in Canada that they are either unable to participate at all in any public policy debates involving political issues, or alternatively, that they can participate completely unrestrained. Both assumptions are incorrect. Registered charities can become involved in public policy debates as long as they do so within the limits imposed by Canadian law. This becomes an important and relevant topic for registered charities in Canada that are interested in impacting their world.

The focus of the following paper is to review the development of the *Income Tax Act* and Canada Revenue Agency's administrative policies in relation to the extent of political activities that may be engaged in by



registered charities in Canada. Through an analysis of the regulations and policies put in place as a result of the *Income Tax Act*, the common law and Canada Revenue Agency guidelines, the ability of charities to “speak out” in Canada will be addressed. Final reflections of the current regulatory regime will also provide some insight into the future for Canadian charities involved in advocacy.

**Read More:**

[PDF] <http://www.carters.ca/pub/article/charity/2010/tsc1029.pdf>

**Constructive Dismissal: Implications for Charities and Not-For-Profits**

Barry W. Kwasniewski in *Charity Law Bulletin* No. 233, November 29, 2010.

Employees who resign from their positions are generally not entitled to receive any compensation from their employer. However, an important exception to this rule is where an employee resigns because their employer had decided to unilaterally and fundamentally change the conditions of employment. Should this occur, the employee will have been considered in law to have been “constructively dismissed”. This means that the employer, while not directly dismissing the employee, fundamentally changed the job and the employment contract effectively came to an end. Should this occur, the employee would be entitled to be paid compensation on the same basis as if he or she had been wrongfully dismissed. This *Charity Law Bulletin* will discuss the principles of constructive dismissal and will provide guidance on how charities and not-for-profits may reduce the risk of such claims.

**Read More:**

[PDF] <http://www.carters.ca/pub/bulletin/charity/2010/chylb233.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2010/chylb233.htm>

**Case Comment: London Humane Society Case Affirms Directors of Charities Must Act In Good Faith**

Terrance S. Carter and Ryan M. Prendergast in *Charity Law Bulletin* No. 236, November 30, 2010.

On November 12, 2010, the Ontario Superior Court of Justice released its decision in *London Humane Society (Re)* (“the Decision”), which discusses fiduciary duties of directors of charitable corporations and their relationship with corporate members. The Decision relates to an application for direction from the court by the directors of the London Humane Society, (“LHS”) regarding who should constitute the membership of the charity for the purposes of a special meeting of members. LHS intended to significantly alter the voting privileges of its members pending the outcome a special meeting of members for the purpose of approving a new by-law. This *Charity Law Bulletin* provides an overview of the Decision, as well as a commentary concerning the outcome of the Decision.

**Read More:**[PDF] <http://www.carters.ca/pub/bulletin/charity/2010/chylb236.pdf>[WEB] <http://www.carters.ca/pub/bulletin/charity/2010/chylb236.htm>**New Pension Planning Opportunities for Charities and Not-For-Profits**By Richard E. Johnston in *Charity Law Bulletin* No. 232, November 23, 2010.

Proposed changes to the Ontario *Pension Benefits Act* (PBA) were introduced on October 19, 2010 under Bill 120. A small change that could be easily missed offers a new pension planning opportunity for any related group of charities and not-for-profits, making it simpler for the related companies to participate in a single registered pension plan. This *Charity Law Bulletin* reviews the implications of Bill 120 for charities and not-for-profit organizations in Ontario.

**Read More:**[PDF] <http://www.carters.ca/pub/bulletin/charity/2010/chylb232.pdf>[WEB] <http://www.carters.ca/pub/bulletin/charity/2010/chylb232.htm>**Ontario Charities and Not-For-Profits Will Need To Meet Accessibility Standards In 2012**Terrance S. Carter in *Charity Law Bulletin* No. 235, November 30, 2010.

Since January 1, 2010, government offices, ministries, and municipalities have been required to comply with the accessibility standards for customer service prescribed in Ontario Regulation 429/07 (“the Regulation”) entitled *Accessibility Standards for Customer Service* under the *Accessibility for Ontarians with Disabilities Act, 2005* (“the Act”). Beginning January 1, 2012, those standards will apply to all providers of goods and services within the province of Ontario, including charities and not-for-profit organizations. The Regulation requires that providers of goods and services establish policies, practices, and procedures governing the provision of its goods or services to persons with disabilities and mandates that reasonable efforts be taken to ensure that the provider’s policies are consistent with certain prescribed principles in this regard. This *Charity Law Bulletin* provides an overview of the implications of the Regulation upon charities and not-for-profit corporations.

**Read More:**[PDF] <http://www.carters.ca/pub/bulletin/charity/2010/chylb235.pdf>[WEB] <http://www.carters.ca/pub/bulletin/charity/2010/chylb235.htm>

## **Supreme Court to Hear Case on Freedom of Religion**

Jennifer M. Leddy

In the spring of 2011, the Supreme Court of Canada will hear a case on appeal from the Quebec Court of Appeal. The case concerns whether parents in a public school can exempt their children from participation in the Province's "Ethics and Religious Culture" course (the "ERC"), which is mandatory for all elementary and secondary students. The ERC course on ethics and world religions is required to be taught from a neutral perspective.

The issue in the case is whether the mandatory nature of the ERC course interferes with the freedom of religion of the Catholic parents who asked that their children be exempted from the course because it forced them to have premature contact with beliefs that were incompatible with those of the family. In another case this summer, a Catholic private school successfully challenged the Province's attempt to impose the course on private religious schools, receiving a decision from the Quebec Superior Court that allowed them to teach the course from a Catholic perspective.

It is expected that the case before the Supreme Court of Canada will have repercussions on freedom of religion and the rights of parents to direct the religious education of their children far beyond the province of Quebec. The name of the case is *S.L., et al. v. Commission scolaire des Chenes, et al.* and it is estimated that the case will be heard on May 18, 2011.

## **Combating Terrorism Act passes Second Reading in the House of Commons**

Terrance S. Carter.

On September 22, 2010 Bill C-17, also known as the *Combating Terrorism Act*, received its second reading in the House of Commons and has now passed through to the committee stage. Bill C-17, which was first introduced and received first reading on April 23, 2010 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 15<sup>th</sup> 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 Bill 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>.

### **Updated Legal Risk Management Checklist for Charities**

by Terrance S. Carter and Jacqueline M. Demczur, updated November 2010.

The popular *Legal Risk Management Checklist for Charities*, available free of charge through our websites, has been updated as of November 2010.

#### **Read More:**

[PDF] <http://www.carters.ca/pub/checklst/charity.pdf>

### **Charities Legislation & Commentary, 2011 Edition Now Available!**

Co-Edited by Maria Elena Hoffstein, Terrance S. Carter, and Adam M. Parachin (LexisNexis Butterworths, October 2010).

There is no single statute that sets out all of the legislative requirements applicable to charities. Rather, the relevant statutory provisions are found in multiple federal and provincial statutes. In addition, with the recently introduced Ontario Bill 65, many recent significant legislative changes that have an impact on charitable organizations, having a concise guide to the law governing charitable organizations is critical.

Selected and prepared by charity law experts, Professor Adam Parachin, Terrance Carter, and Maria Elena Hoffstein, this unique publication provides a useful reference for anyone researching key federal and

Ontario statutes governing charitable organizations. The 2011 edition compiles, describes or otherwise takes account of approximately 145 statutes and 75 regulations.

**Order yours online now at:**

<http://www.lexisnexis.ca/bookstore/bookinfo.php?pid=2015>.

## **2010 Annual Church & Charity Law™ Seminar Materials are Now Available**

*Recent Developments in the Law, Mississauga, Ontario, Thursday, November 18, 2010.*

The 2010 Annual *Church & Charity Law*™ Seminar, hosted by Carters Professional Corporation in Mississauga on November 18, 2010, was sold out and attended by over 800 members of the sector, including directors of charities, church leaders, government officials, accountants and lawyers. The seminar was designed to provide practical information to assist churches and charities in understanding and complying with recent developments in the law. The seminar has been held annually since 1994. All handouts and presentation materials are now available at the links below in the order as presented, with the web links being Power Point slide shows.

### **Seminar and Speaker Details and Acknowledgements**

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

### **Essential Charity Law Update**

*Karen J. Cooper, Carters Professional Corporation, Ottawa*

[WEB] <http://www.carters.ca/pub/seminar/chrchlaw/2010/kjc1118.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchlaw/2010/kjc1118.pdf>

### **What the Federal Budget Disbursement Quota Reform Will Mean for your Charity**

*Theresa L.M. Man, Carters Professional Corporation, Orangeville*

[WEB] <http://www.carters.ca/pub/seminar/chrchlaw/2010/tlm1118.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchlaw/2010/tlm1118.pdf>

### **Directors and Officers Liability: Real World Examples of Insurable Claims Against Charities in Canada**

*Kenneth A. Hall, President, Robertson Hall Insurance*

[WEB] <http://www.carters.ca/pub/seminar/chrchlaw/2010/kh1118.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchlaw/2010/kh1118.pdf>

### **Recent Corporate Law Reform: Overview and Practical Tips**

*Terrance S. Carter, Carters Professional Corporation, Orangeville*

[WEB] <http://www.carters.ca/pub/seminar/chrchlaw/2010/tsc1118.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchlaw/2010/tsc1118.pdf>

### **From Hiring to Firing: Practical Tips to Avoid Employer Liability**

*Barry Kwasniewski, Carters Professional Corporation, Ottawa*

[WEB] <http://www.carters.ca/pub/seminar/chrchlaw/2010/bwk1118.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchlaw/2010/bwk1118.pdf>

### **Fiduciary Considerations Involving Charitable Property**

*Kenneth R. Goodman, Deputy Public Guardian and Trustee - Director Legal Services*

[WEB] <http://www.carters.ca/pub/seminar/chrchlaw/2010/kg1118.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchlaw/2010/kg1118.pdf>

### **An Overview of Human Rights Issues for Charities and Not-for-Profits**

*Mervyn F. White, Carters Professional Corporation, Orangeville*

[WEB] <http://www.carters.ca/pub/seminar/chrchlaw/2010/mfw1118.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchlaw/2010/mfw1118.pdf>

### **Perspectives on the Christian Horizons Decision: Maintaining Religious Identity**

*Jennifer M. Leddy, Carters Professional Corporation, Ottawa*

[WEB] <http://www.carters.ca/pub/seminar/chrchlaw/2010/jml1118.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchlaw/2010/jml1118.pdf>

### **Maintaining Proper Books and Records: What You Need to Know**

*Teresa Douma, Senior Director, Legal Affairs, Canadian Council of Christian Charities, Elmira*

[WEB] <http://www.carters.ca/pub/seminar/chrchlaw/2010/td1118.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchlaw/2010/td1118.pdf>

[Article] <http://www.cccc.org/documents/freeresources/Bulletin%202-2005%20-%20For%20the%20Record.pdf>

### **What's New at the Charities Directorate**

*Cathy Hawara, Director General, Charities Directorate, Canada Revenue Agency*

[WEB] <http://www.carters.ca/pub/seminar/chrchlaw/2010/ch1118.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchlaw/2010/ch1118.pdf>

## **IN THE PRESS**

**Compliance: Countdown to the Canada Not-for-Profit Corporations Act** by Theresa L.M. Man and Jane Burke-Robertson.

*Canadian Fundraising & Philanthropy eNews, Vol. 20, No. 20, October 31, 2010.*

[Link] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=3471>

## **RECENT EVENTS AND PRESENTATIONS**

**The New York University School of Law National Centre on Philanthropy and the Law** annual conference “Nonprofit Speech in the 21st Century: Time for a Change?” included Terrance S. Carter in the Comparative Panel: 21st Century Nonprofit Speech Around the World presenting a paper entitled “Charities Speaking Out: The Evolution of Advocacy and Political Activities by Charities In Canada” on October 29, 2010.

[Paper] <http://www.carters.ca/pub/article/charity/2010/tsc1029.pdf>

**Imagine Canada's 2010 Risk Management Conference** held in Toronto, Ontario, on October 28, 2010, included the following:

“The HR Doctor Is In! - Bring your Issues for the Expert Panel” with Barry W. Kwasniewski on the panel, “You're Fired! - Terminations, Corrective Action and Dismissals” with Barry W. Kwasniewski speaking, and “Highlights of CRA Compliance Requirements for Charities” by Esther S.J. Oh.

[Web] <http://www.carters.ca/pub/seminar/charity/2010/eso1028.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/eso1028.pdf>

**Ontario Land Trust Alliance (OLTA) 2010 Gathering “Expanding Horizons”** in Peterborough, Ontario, included a presentation by Karen J. Cooper on “Recent Tax Changes” on October 29, 2010.

[Web] <http://www.carters.ca/pub/seminar/charity/2010/kjc1029.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/kjc1029.pdf>

**Certified General Accountants of Ontario Conference 2010** held in Toronto, Ontario, included a session by Karen J. Cooper entitled “Liability of Directors and Officers of Not-for-Profits” on November 11, 2010.

[Web] <http://www.carters.ca/pub/seminar/charity/2010/kjc1111.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/kjc1111.pdf>

**The 2010 Annual Church & Charity Law™ Seminar** was held on Thursday, November 18, 2010, at the Portico Community Church in Mississauga, Ontario, with several guest speakers. Held annually since 1994, this year's event was again sold out, with over 800 attendees. This seminar is designed to provide practical information on current legal issues to assist churches and charities understand developing trends in the law and avoid unnecessary exposure to legal liability.

Materials available at <http://www.carters.ca/pub/seminar/chrchlaw/2010/index.html>.

**Articling & Beyond: Finding Work That Works For You** hosted by the Law Society of Upper Canada in Toronto, Ontario, included Ryan M. Prendergast on a panel discussing “Life in a Small Firm or Small Community” on November 19, 2010.

## **UPCOMING EVENTS AND PRESENTATIONS**

**The Certified General Accountants of Ontario Annual Conference (Ottawa)** being held at the Fairmont Chateau Laurier in Ottawa, Ontario, will include presentations by Karen J. Cooper entitled “Liability of Directors and Officers” and “The *Income Tax Act* and Charities” on November 29, 2010.

Details at [http://www.cga-ontario.org/assets/file/PD\\_fall10.pdf](http://www.cga-ontario.org/assets/file/PD_fall10.pdf).

**The AFP Greater Toronto Congress 2010**, being held at the Metro Toronto Convention Centre, will include a presentation by Terrance S. Carter and M. Elena Hoffstein of Fasken Martineau entitled “Essential Charity Law Update: What Every Fundraiser Needs to Know” on November 30, 2010.

Details available at <http://www.afptoronto.org/index.php/congress>.

**The Orangeville Optimists Club Meeting** will include presentations by Terrance S. Carter on “Directors’ and Officers’ Liability for Not-for-Profits” and “Due Diligence” on December 1, 2010.

**The Greater Dufferin Area Estate Planning Council (GDAEPC)** will host a presentation by Terrance S. Carter entitled “Basic Tax Considerations in Charitable Giving” on December 7, 2010.

**The York Small Business Enterprise Centre’s Green Connections “Networking” Meeting** being held in Newmarket, Ontario, on December 13, 2010, will include a presentation by Ryan M. Prendergast on “Advantages and Disadvantages of Incorporation as a Not-for-Profit.”

Details available at <http://www.yorksmallbusiness.ca/events/>

**Imagine Canada’s Charity Tax Tuesdays** will include the following presentations by Carters lawyers:

December 14 - Implications of Disbursement Quota (DQ) Reform by Terrance S. Carter  
Details available at <http://charitytax.imaginecanada.ca/demand-webinars>.

**The Windsor Essex Estate Planning Council** is hosting a luncheon in Windsor, Ontario, on January 20, 2011, with Terrance Carter presenting “Tax Considerations in Gift Planning.”

**Canadian Association of Gift Planners Ottawa Roundtable** on January 26, 2011, will include a presentation by Karen J. Cooper with Michelle Osborne from the University of Toronto entitled “Endowments – Bird in the Hand or Two in the Bush?”

<http://www.cagp-acpdp.org/uploads/cagp-acpdp%20ottawa%20calendar%202010-2011.pdf>

**The Ottawa Region Charity & Not-for-Profit Law™ Seminar** will be held at Arlington Woods Free Methodist Church in Nepean, Ontario, on Wednesday, February 16, 2011.

Details and online registration will soon be available at  
<http://www.carters.ca/pub/seminar/chrchlaw/ott/11/brochure.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 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](http://www.charitylaw.ca), [www.churchlaw.ca](http://www.churchlaw.ca) and [www.antiterrorism.ca](http://www.antiterrorism.ca).



**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. Ms. Demczur is also a regular speaker at the annual *Church & Charity Law*<sup>TM</sup> Seminar.



**Teresa Douma** – Ms Douma is Senior Director, Legal Affairs at the Canadian Council of Christian Charities (CCCC). The CCCC is a Christian charity that works to integrate spiritual concerns of ministry with practical aspects of management, stewardship and accountability. She graduated with a law degree from the University of Western Ontario, and was called to the Bar in September 2002. Her B.A (Hon.) is from the University of Waterloo. Prior to joining CCCC, Teresa was a lawyer with Miller Thomson LLP in the Waterloo Region focusing on corporate and charity law.



**Kenneth R. Goodman** - Deputy Public Guardian and Trustee - Director Legal Services, received his B.A. from York University and LL.B. from the University of Windsor Law School. Called to the Ontario Bar in 1982, he was in private practice until joining the Ministry in 1990 and the Office of the Public Guardian and Trustee in 1998. While in private practice Mr. Goodman was actively involved as a director and officer of several charities. He is a member of the OBA Charity and Not-For-Profit Law Section Executive. In 2007, he received the AMS John Hodgson Award, from the OBA, for contribution and development of law in the charitable sector.



**Kenneth A. Hall** –President of Robertson Hall Insurance, Mr. Hall specializes in insurance protection and risk management advice for over 5,500 churches and Christian charities across Canada. He is a frequent presenter at national denominational conferences, para-church leadership gatherings and various regional seminars. His "Facing The Risk" series of articles highlights the current issues facing Christian charities and their leaders, including abuse prevention, board governance, counselling services and injury prevention.



**Cathy Hawara** – The Commissioner of the Legislative Policy & Regulatory Affairs Branch – Canada Revenue Agency (CRA) recently announced that effective October 5, 2010, Cathy Hawara has been appointed as Director General of the Charities Directorate of CRA. Ms. Hawara has been the Acting Director General of the Charities Directorate since September 2009, and is responsible for the overall management of the federal regulation of registered charities under the *Income Tax Act*. Prior to joining CRA, Ms. Hawara served as the Director of Appointments with the Senior Personnel Secretariat at the Privy Council Office from 2007 to 2009.



**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*<sup>TM</sup> 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*.



**Esther S.J. Oh** – A partner with the firm, Ms. Oh practices in charity and not-for-profit at Carters’ Mississauga office. Ms. Oh is a frequent contributor to [www.charitylaw.ca](http://www.charitylaw.ca) and the *Charity Law Bulletin*, and has spoken at the annual *Church & Charity Law*<sup>TM</sup> 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 was called to the Ontario Bar in 2010 and joined Carters to practice in the areas of charity and not-for-profit law, corporate and commercial law, and human rights law. A graduate of the University of Ottawa, Faculty of Law, Ryan was a student caseworker for the Criminal Division at the University of Ottawa Community Legal Aid Clinic, completed a research project for Ecology Ottawa on municipal by-laws, and worked for the Crown Attorney’s Office in Toronto as a summer student. During his articles, Ryan acquired experience in charity and not-for-profit law, and contributed to several *Charity Law Bulletins* and other publications



**Kate Robertson** - Kate graduated from the University of Ottawa, Faculty of Law, in 2010, and obtained her Bachelor of Arts (*cum laude*) in Philosophy, Politics and Law from Binghamton University. During her studies, Kate was recognized by the National College Athlete Honour Society, the East Coast Athletic Academic Award of Merit, and elected as a Vice President for the Common Law student council. She also has experience as a Policy Analyst and Charities Officer for the Charities Directorate of the Canada Revenue Agency where she reviewed charitable applications and assisted with legal research and writing.



**Colin Thurston**- A graduate of Queen’s University, Faculty of Law, in 2010, Colin volunteered at the Queen’s Legal Aid clinic throughout his three years at Queen’s and his responsibilities grew from hands-on legal research, writing, and litigation, to supervision and training of his fellow law students, to input on clinic operations from a policy level. Colin has gained litigation experience before numerous courts and tribunals and received numerous awards recognizing his work, including the Sabbath Prize in Wills and Estate Planning from Queen’s University, Faculty of Law.



**Jason Todoroff** - Jason graduated from the University of Western Ontario Faculty of Law with a Juris Doctorate after having completed a B.A. (Hons.) in Political Science and History from the University of Waterloo. Jason also holds an Airline Transport Pilot Licence and worked in the aviation industry as a commercial pilot and flight instructor. Before his articling term at Carters, Jason worked for the firm as a summer student for two years and gained experience in a number of practice areas at Carters, and contributed to articles published in the *Charity Law Bulletin* and the 2008 and 2009 editions of *Charities Legislation and Commentary* (LexisNexis).



**Mervyn F. White** –A partner with Carters, Mr. White practices litigation and dispute resolution in areas of the law including charity and not-for-profit law, human rights complaints, and risk management assessments relating to insurance law and human rights. Mr. White is a contributing author to *The Lawyers Weekly*, *Charity Law Bulletin* and *Church Law Bulletin*, and a regular speaker at the annual *Church & Charity Law*<sup>TM</sup> Seminar and guest speaker for organizations such as Canadian Fundraiser, the Association of Fundraising Professionals, and the Christian Legal Intervention Academy.

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

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