

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

OCTOBER 2010 ISSUE

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2010 Annual Church & Charity Law Seminar

Hosted by Carters Professional Corporation in Toronto, Ontario.

Thursday, November 18, 2010.

Details and online registration available at <http://www.charitylaw.ca>.

Get on Our Mailing List: To automatically receive the free monthly *Charity Law Update*, send an email to info@carters.ca with "Subscribe" in the subject line. Please feel free to forward this Update to anyone (internal or external to your organization) who may be interested in being put on our monthly mailing list.

RECENT PUBLICATIONS AND NEWS RELEASES

Auditor General of Canada Releases Fall 2010 Report on CRA and Registered Charities

Terrance S. Carter and Karen J. Cooper.

The Auditor General of Canada's Fall 2010 Report released on October 26, 2010 ("Report") includes a chapter on the performance of the Charities Directorate of Canada Revenue Agency ("CRA") with regard to its oversight of registered charities. The Report examines how the CRA encourages and enforces compliance with the provisions of the *Income Tax Act* that relate to registered charities, as well as looks at how the CRA deals with tax shelter gifting arrangements.

In general, the Auditor General found that the CRA's practices are working well, with high marks given to the CRA for its communication with charities and donors. The Report, however, includes a number of recommendations for improvement, with which the CRA has indicated it is in full agreement. These recommendations include:

- 1) evaluating whether the CRA's current process for dealing with annual information returns meets the CRA's objective of increasing compliance and receiving information returns on time;
- 2) developing and executing a random audit sampling plan in order to meet the CRA's commitment to report a compliance rate for registered charities;
- 3) evaluating the effectiveness of the CRA's use of various enforcement tools available to it, such as sanctions and compliance agreements; and
- 4) developing and implementing a formal process to ensure that the CRA monitors whether a charity has transferred its assets as required on revocation of its charitable status.

The Auditor General's Report represents an important commentary on the performance of the CRA with regard to its role as the regulator of registered charities in Canada and therefore should be carefully studied by those interested in the sector. The Report will be the subject of a more detailed commentary in an upcoming *Charity Law Bulletin* in November 2010. The full Report can be accessed on the Office of the Auditor General of Canada's website at http://www.oag-bvg.gc.ca/internet/English/mr_20101026_e_34351.html.

Countdown to the *Canada Not-For-Profit Corporations Act* Practice Tip #7: Importing, Exporting, and Amalgamation

Jane Burke-Robertson and Theresa L.M. Man in *Charity Law Bulletin* No. 231, October 27, 2010.

When the *Canada Not-for-profit Corporations Act* (CNCA) comes into force, charities and not-for-profits will have more flexibility on their fundamental changes as a result of provisions governing the importation, exportation, and amalgamation of corporations under the CNCA.

Under the *Canada Corporations Act* (CCA), there is no provision to permit corporations from another jurisdiction to continue under the CCA (i.e. to be imported into the CCA), to allow a CCA corporation to be continued into another jurisdiction (i.e. to be exported out of the CCA), or to allow two non-share capital corporations to amalgamate. Sections 156 and 159 of the CCA allow a corporation incorporated by Special Act of Parliament to apply to obtain letters patent continuing it under Part II of the CCA as if it had been incorporated under the CCA.

Once the new CNCA is in force, it will replace the CCA. The CNCA contains new provisions which will permit the importation, exportation, and amalgamation of corporations, and will thus provide new options regarding the way not-for-profits and charities structure their organizations. This Bulletin provides some practical tips in this regard.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2010/chylb231.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2010/chylb231.htm>

Appointment of Cathy Hawara as Director General Approved

Terrance S. Carter

The Commissioner of the Legislative Policy & Regulatory Affairs Branch – Canada Revenue Agency recently announced that effective October 5, 2010, Cathy Hawara has been appointed as Director General of the Charities Directorate of Canada Revenue Agency. Ms. Hawara had been the Acting Director General of the Charities Directorate since September 2009, when then-Director General Terry de March stepped down from that position. Ms. Hawara joined the public service in 2002 and has since that time held positions of increasing responsibility, including positions as Executive Assistant to the Deputy Minister of Social Development and Director of Appointments in the Privy Council Office. As Director of Appointments, Ms. Hawara was responsible for providing advice and support to the Clerk of the Privy Council, the Prime Minister and his Office on all matters related to selection processes and appointments to Governor in Council positions. The announcement of Ms. Hawara's appointment is a welcome development for the charitable sector, as she has been well received by the sector during the past year that she has held the position of Acting Director General.

CRA News

Karen J. Cooper.

CRA Policy on Acquiring Taxpayer Information

On May 31, 2010, a new CRA Policy Statement was released titled, “Acquiring Information from Taxpayers, Registrants, and Third Parties.” The purpose of this policy is to document the CRA’s approach to acquiring information and documentation from taxpayers, registrants and third parties, for the purpose of administering the *Income Tax Act* (ITA) and *Excise Tax Act* (ETA). CRA takes the view that in addition to the usual books and records of a taxpayer, it is entitled to any document of the taxpayer that relates or may relate to the information in a taxpayer’s books and records and any document of any other person that relates or may relate to the information in a taxpayer’s books and records. In most cases, this will include the working papers of charitable and not-for-profit auditors and accountants. This Policy Statement applies to civil matters, not criminal matters, and sets out the process CRA will follow when requesting information in a number of different circumstances and the basis for its authority to do so, including its approach to privileged documents. For anyone that is involved in the tax return process or the auditing or reviewing of financial statements for charitable and not-for-profit organizations, this policy should be thoroughly reviewed. The Policy Statement is available at <http://www.cra-arc.gc.ca/tx/tchncl/cqrngnfrmn/menu-eng.html>.

IC84-3R – Gifts to Certain Charitable Organizations Outside Canada

On October 15, 2010, a revised attachment was added to CRA Publication *IC84-3R, Gifts to Certain Charitable Organizations Outside of Canada*. This attachment provides an updated list of all of the gifts made to organizations outside of Canada that Her Majesty in right of Canada has made since January 1, 2000. A few countries mentioned on the list include Switzerland, England, the United States and Russia. To learn more about this revision, please visit: <http://www.cra-arc.gc.ca/E/pub/tp/ic84-3r-attach/README.html>.

Electronic Filing for the Public Service Bodies’ Rebate

CRA has confirmed that effective October 4, 2010, if you are a GST/HST registrant, you can file your public service bodies’ rebate applications electronically with your GST/HST returns using GST/HST Netfile. CRA recommends that users of GST/HST Netfile review the links and topics. To obtain further information about GST/HST Netfile, please visit <http://www.cra-arc.gc.ca/esrvc-srvce/tx/bsnss/gsthst-tpstch-ntfl/menu-eng.html>.

CRA Declines to Comment on Charitable Gifts Involving Tax Shelters

A recently published CRA Technical interpretation (Document #2010-037231) dealt with an individual requesting information surrounding the recapture of capital cost allowance and capital gains on property donated to a registered charity. According to CRA, when a request for a technical interpretation relates to a specific proposed transaction, an advance income tax ruling rather than a technical interpretation must be requested. However, where all of the relevant facts cannot be stated prior to the date of the transactions described in the ruling, rulings will not be provided. In this case, the transaction involved marketed tax shelters with numerous potential purchasers, which meant it was not necessarily possible to know enough about the valuations of the properties or the intentions of the purchasers to make a ruling. As a result, CRA was unable to provide more information to the individual.

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

Amendments to Income Tax Regulations Add a New Prescribed Donee

On September 23, 2010, an amendment to the *Income Tax Regulations* (P.C. 2010-1112) with respect to charitable donations was promulgated and subsequently published in the *Canada Gazette*, Part II on October 13, 2010 (available at <http://gazette.gc.ca/rp-pr/p2/2010/2010-10-13/html/sor-dors197-eng.html>). The amendment deals with the addition of American Friends of Canadian Land Trusts (AFCLT) to section 3504 of the *Income Tax Regulations*. More specifically, the U.S. charity (which was created by a group of Canadian registered charities to facilitate cross-border gifts of land) is now designated as a “prescribed donee.” This amendment allows non-resident owners of Canadian real property to make a gift to a U.S. charity (resulting in U.S. donation tax benefits) and still benefit from a reduction in the amount of capital gains subject to Canadian tax. The amendment provides the description and rationale of the organization, as well as the implementation and enforcement standards that will be followed. The federal Minister of Finance will also be making an announcement regarding the importance of cross-border land donations for the continued protection of Canada’s important natural spaces (see press release available at <http://nsnt.ca/af/>).

Potential Tax Liability of Unincorporated Associations

When an unincorporated association believes that it may qualify as a non-profit organization in Canada, it is up to the members of the organization to make the appropriate tax filings with CRA. However, this can result in potential tax liability for the members of some organizations. There is a risk that the organization does not actually qualify as a non-profit under paragraph 149(1)(1) of the *Income Tax Act* and, in this situation, the organization and its members may be faced with considerable tax liabilities. On

July 30, 2010, CRA released a technical interpretation (Document #2010-036970), which deals with the question of what will happen to an organization that claims tax exempt status and is found to not actually qualify. CRA will determine its liability by examining whether an organization is a “person” for income tax purposes, by looking at the definition in section 248 of the ITA. CRA explains that because of the language in the definition of a “person” an unincorporated association is a “person” as long as it qualifies for exemption under paragraph 149(1)(l). Once CRA determines that the organization no longer qualifies for exemption, the unincorporated association is no longer considered a “person” or a separate legal entity for tax liability purposes. Consequently, the tax liability must fall with either a taxable entity such as a trust, partnership, joint venture or sole proprietorship, or with an individual. Generally, because an unincorporated association cannot be considered one of these taxable entities, the income it earned may be taxed as income to the association’s members if the income is income from a taxable source set out in the *Income Tax Act*. This CRA technical interpretation raises important implications for non-profit unincorporated associations and their members in Canada that have any doubts or reservations about fulfilling the criteria for non-profits under the *Income Tax Act*.

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

Update of Private Member’s Bill C-470

Terrance S. Carter

As explained in previous *Charity Law Updates*, Bill C-470, *An Act to Amend the Income Tax Act (revocation of registration)* is a private member’s bill introduced in the House of Commons on March 3, 2010, that proposes to give the Revenue Minister discretion to revoke the status of any registered charity that pays any executive or employee more than \$250,000 a year in compensation, as well as requiring the disclosure of the name, job title, and compensation of its five highest-paid employees. As previously discussed in the September 2010 *Charity Law Update*, the Standing Committee on Finance requested an additional thirty days to consider Bill C-470 on September 23, 2010. A week later, on September 29, 2010, a report to the House of Commons concurred with the recommendation to grant the thirty-day extension. It is expected that the Finance Committee will convene hearings on Bill C-470 in late November, 2010. Members of the Finance Committee have already started to question witnesses as part of pre-budget hearings. The most controversial aspect of Bill C-470 is that it places a \$250,000 compensation cap on any employee or executive of any registered charity in Canada. If a charity exceeds this cap, it could result in the loss of its charitable status. Opponents of the Bill are concerned that the compensation cap and the onerous salary disclosure requirements will hinder charities in recruiting senior staff for larger charities and will be an administrative burden to charities, particularly small charities. The National Charities and Not-for-Profit Law Section of the Canadian Bar Association

(CBA) has made a detailed submission to the government explaining why Bill C-470 should not be adopted. The CBA submission can be found online at <http://www.cba.org/cba/submissions/pdf/10-56-eng.pdf>.

Court Reviews the Process for Appealing a Revocation of Charitable Status

Karen J. Cooper.

The Federal Court of Appeal released its judgment in *Christ Apostolic Church International-Canada v. The Queen*, 2010 FCA 252, on October 1, 2010. On July 16, 2010, the Minister of National Revenue notified Christ Apostolic Church of its intention to revoke the organization's status as a registered charity. The letter indicated, and the *Income Tax Act* provides, that upon receiving such a notice a charity is entitled to object to the Minister's decision by providing a written notice of objection to the Charities Redress Section of the Appeals Branch of CRA within 90 days, pursuant to subsection 168(4) of the *Income Tax Act*. Instead of filing a written notice of objection, the Church chose to file a notice of appeal with the Federal Court of Appeal challenging the revocation of its registration, which can only occur once a notice of objection has been served. Since the Church chose not to file a notice of objection, the Minister brought a motion for an order quashing the appeal, contending that the Church had not fulfilled the conditions required under paragraph 172(3)(a.1) of the *Income Tax Act* for initiating an appeal. The court granted the motion and dismissed the appeal by the Church, without prejudice to the Church's rights to submit a notice of objection. The full text of the Court's decision is available at <http://www.canlii.org/en/ca/fca/doc/2010/2010fca252/2010fca252.html>.

Exemption for Charities under New Regulation to the *Land Transfer Tax Act* (Ontario)

Theresa L.M. Man in *Charity Law Bulletin* No. 230, October 27, 2010.

On October 1, 2010 the Ontario Ministry of Finance filed Ontario Regulation 386/10 (the "Regulation") made under the *Land Transfer Tax Act* (Ontario) ("Act"), which permits the exemption from land transfer tax for certain transfers of property between charities, implementing the proposal announced as part of the March 2010 Ontario Budget. The Regulation is deemed to have come into force as of March 26, 2010 and therefore all qualifying transfers of land since that date may claim an exemption from the tax payable under the Act. The new rules are explained in *Tax Bulletin* LTT 2-2010, October 2010. This *Charity Law Bulletin* provides an overview of the new regulation.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2010/chylb230.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2010/chylb230.htm>

B.C. Ministry of Finance Releases Consultation Letter Regarding Proposal for Community Interest Companies

Jacqueline M. Demczur.

The B.C. Ministry of Finance announced on October 20, 2010, that it is “considering amendments to the *Business Corporations Act* that would allow for a new hybrid type of company — the community interest company.” Community interest companies (or CICs) have existed in the UK since 2005 and have been used as a model for the proposal in the Ministry of Finance’s consultation letter available online at http://www.fin.gov.bc.ca/prs/cicc/CIC_Consultation_letter.pdf.

According to the Ministry, the proposed CIC model “would combine the dual missions of benefitting the larger community and allowing limited investor returns within the context of a traditional for-profit company.” Some of the key features of the proposal include a cap on investor returns to ensure that profits stay with the CIC or are funnelled to the community benefit, and a lock on the assets of CICs such that upon dissolution the companies’ assets could only be distributed to other CICs, charities or other asset-locked entities. A company that wishes to become a CIC must “self-select” and once that selection is made, it would be irrevocable. The Ministry has approached the federal government to discuss the possibility of implementing tax incentives related to CIC investment.

The Ministry is seeking input on this proposal. The deadline for feedback is December 1, 2010. For more information, please see the Ministry’s website at <http://www.fin.gov.bc.ca/prs/cicc/index.htm>.

Update on Ontario’s Bill 65

Terrance S. Carter and Jane Burke-Robertson.

The new Ontario *Not-for-Profit Corporations Act, 2010*, (“Bill 65”) passed third reading in the Ontario Legislature on October 19, 2010 and received Royal Assent on October 25, 2010. However, the Ministry of Consumer Services has advised that Bill 65 is not expected to be proclaimed until sometime in 2012. Bill 65 represents a significant modernization of not-for-profit legislation in Ontario and the first major statutory change in Ontario not-for-profit corporate law in decades. In this regard, the new Act, once it is proclaimed into force, will serve as a replacement for the *Corporations Act*, R.S.O. 1990, c. C.38. The new legislation replaces the discretionary letters patent system of the *Corporations Act* with a statutory right of incorporation.

For more information on Bill 65, see previous *Charity Law Bulletins* No 210 and No 228 available at:

<http://www.carters.ca/pub/bulletin/charity/2010/chylb228.htm> and

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

The End of Mandatory Retirement: Legal Implications for Employers

Barry W. Kwasniewski in *Charity Law Bulletin* No. 229, October 27, 2010.

Since the Province of Quebec became the first province in Canada to abolish mandatory retirement in 1982, all Canadian provinces and territories have now enacted similar legislation. Several provinces, including Ontario, Nova Scotia, Newfoundland and Labrador, British Columbia, Saskatchewan and Alberta passed laws during this decade eliminating mandatory retirement. Consequently, employers, including charities and not-for-profits, face potential challenges and liability risks in dealing with older workers. These issues will become even more important as Canada's baby boom generation ages. The purpose of this Bulletin is to highlight these risks and outline strategies that employers can implement to deal with an aging workforce.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2010/chylb229.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2010/chylb229.htm>

Veiled Testimony: Reconciling Competing Charter Rights

Jennifer M. Leddy in *Church Law Bulletin* No. 31, September 28, 2010.

On October 13, 2010, the Ontario Court of Appeal released a decision that will be of interest to faith based groups because of its treatment of the constitutional right to freedom of religion. In the case of *R. v. N.S.* the Court of Appeal affirmed that there is no hierarchy of rights under the *Canadian Charter of Rights and Freedoms* (the "Charter"), that no right is absolute or superior to another and that when rights appear to collide, the court must first attempt to reconcile them, having regard to the specific factual context and possible "constructive compromises."

The complainant in a criminal trial, a Muslim woman, invoked freedom of religion to wear a niqab, a veil covering her face other than her eyes, while testifying in a criminal trial concerning historical sexual assaults. She asserted that her religious beliefs require that she must be covered in public or in the presence of men who are not direct relatives. The accused responded by asserting that his constitutional right to make full answer and defence required the complainant to uncover her face when testifying.

At the preliminary inquiry, the judge conducted an informal examination of the complainant's religious beliefs. In ordering her to testify without the niqab, he concluded that her religious beliefs were not particularly strong, given that she had uncovered her face to have her driver's licence photo taken and that she merely expressed herself to be "more comfortable" testifying while wearing the niqab.

The complainant brought a proceeding before a Superior Court justice to quash the order that she remove her niqab when testifying. The Superior Court justice quashed the ruling of the preliminary inquiry judge, returning the matter to him to be determined according to the procedure set out in the

Superior Court justice's reasons. The Ontario Court of Appeal upheld the decision of the Superior Court but on different grounds. This Bulletin is focused on the reasons and procedure for reconciling competing *Charter* rights that are outlined in the decision of the Ontario Court of Appeal delivered by Justice D.H. Doherty.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/church/2010/chchlb31.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/church/2010/chchlb31.htm>

New Procedures to Apply to Criminal Background Checks Expected to Result In Delays

Esther S.J. Oh.

In December 2009, the Canadian Police Information Center ("CPIC") released a policy concerning the Dissemination of Criminal Record Information (the "Policy," available at <http://www.cpic-cipc.ca/English/crimrec.cfm>). The Policy is stated to constitute a set of interim measures in response to breaches of CPIC policies and related federal legislation that occurred as a result of certain practices being undertaken. Canadian police agencies (that are authorized to access CPIC) had been working with private third party companies for the purpose of conducting criminal record checks on behalf of members of the general public. In particular, criminal record information was being disseminated without confirming the identity of the applicant by means of a fingerprint comparison. In accordance with the directives under the Policy, the Ontario Provincial Police (OPP) is now modifying its procedures that apply to requests for criminal record checks.

Criminal record checks are commonly obtained in order to support an application for an employment or volunteer position involving interaction with children or other vulnerable persons. In the past, these background checks would take one to two weeks to obtain. Under the new procedures, applicants may be required to submit fingerprints in support of their request for a criminal record check where the applicant has an identical name to another person who has a criminal record. In such a situation, the RCMP would require the submission of fingerprints. The fingerprints would be needed in order to verify that the person receiving the clear background check is not the same person who has a criminal record. In addition, police are now checking the police databases in areas where an applicant has lived within the past five years. As such, the lengthier processing time is expected to impact those people with common names or those who have moved several times within the past five years.

The fingerprinting would be conducted at a local police station, and then the fingerprints would be sent to the RCMP for verification. Under the new procedure, the process could take up to approximately four months to have a criminal record check request completed.

Charities and non-profit organizations that require criminal records checks for their employees or volunteers through the OPP should expect delays to occur in the turnaround time to receive the results and should therefore plan accordingly. As a further consideration, charities and non-profit organizations should keep in mind that there are normally a higher number of criminal record check requests conducted in the fall with the commencement of the new academic year and sports season, which could also result in further delays.

Ontario Auditor-General's Report Proposes New Rules On Transparency For Public Sector Institutions

Ryan M. Prendergast.

On October 20, 2010, the Ontario Auditor-General, Jim McCarter, released his *Special Report on Consultant Use in Selected Health Organizations*. In the report the Auditor-General studied the use of consultants by the Ministry of Health and Long-Term Care, three Local Healthcare Integration Networks ("LHINs"), and 16 Ontario hospitals at the request of the Standing Committee on Public Accounts. Among the various findings of the report, 8 hospitals were found to have spent \$1.6 million to lobby the provincial government, and in some cases the federal government, using funding provided by the Ministry of Health and Long-term Care for clinical and administrative activities. In response, the provincial government unveiled on the same day new rules that will prohibit the public sector from using public funds to hire lobbyists. The new rules will be brought forth in the form of proposed legislation. If the legislation is passed, the new rules would also apply to school boards, colleges, universities, hydro entities, community care access centres, Children's Aid Societies and other public sector institutions that receive more than \$10 million in funding from the government. Additionally, the new rules would require hospitals and LHINs to post the expenses of their executive staff online and report annually on their use of consultants. The Auditor-General's report can be found online at: http://www.auditor.on.ca/en/reports_en/consultantuse_en.pdf

Considerations When Drafting Restricted Charitable Purpose Trusts

Presented by Terrance S. Carter at the Ontario Bar Association CLE Program Trusts, Trustees, Trusteeships 2010, held in Toronto, Ontario, October 1, 2010.

As donors become more sophisticated with their giving and demand more accountability from charities, the use of restricted charitable purpose trusts is becoming a more frequent fundraising vehicle, particularly for donors making large gifts to charities. Many charities in Canada, though, do not fully appreciate the legal implications of accepting restricted charitable purpose trusts. Failing to honour the restrictions imposed by such trusts could expose the charity, and its directors or trustees, to liability for breach of trust. As well, failure to comply with the restrictions has the potential to erode donor

confidence and undermine the credibility of the recipient charity, as well as the charitable sector in general. This paper provides an understanding of charitable purpose trusts that are subject to restrictions in the context of *inter vivos* and testamentary trusts, as well as practical tips to consider when drafting restricted charitable purpose trusts.

Read More:

[PDF] <http://www.carters.ca/pub/article/charity/2010/tsc1001.pdf>

Supreme Court Will Rule Whether Successful Human Rights Complainants Can Be Awarded Their Legal Costs

Barry W. Kwasniewski.

On April 22, 2010, the Supreme Court of Canada granted leave to the Canadian Human Rights Commission (the “Commission”) to appeal the decision of the Federal Court of Appeal in *Canada (Attorney General) v Mowat*, [2009] F.C.J. No. 1359, released October 26, 2009. The Federal Court of Appeal decision was discussed in *Charity Law Bulletin* 195, available at <http://www.carters.ca/pub/bulletin/charity/2010/chylb195.htm>. The Supreme Court of Canada will consider whether the Canadian Human Rights Tribunal has the authority to award legal costs to a successful complainant under the *Canadian Human Rights Act* (the “Act”). The Federal Court of Appeal ruled that the Tribunal did not have the statutory authority to award legal costs. This will be an important decision for charities and not-for-profit organizations, as it will not only affect the interpretation of the *Act*, but potentially will impact upon how similar provincial human rights laws, such as the Ontario *Human Rights Code*, will be interpreted in the future in relation to the award of legal costs.

IN THE PRESS

Ontario Government Seeks to Enhance the Work of Charities and Not-for-Profits by Esther S.J. Oh.

Charitable Thoughts, Vol. 14, No. 1, October 2010.

[Link] http://www.oba.org/En/cha_en/Newsletter_EN/v14n1.aspx#Article_2

Ontario Court Affirms the Fiduciary Obligations Owed by Directors of Charitable Organization by Terrance S. Carter.

Charitable Thoughts, Vol. 14, No. 1, October 2010.

[Link] http://www.oba.org/En/cha_en/Newsletter_EN/v14n1.aspx#Article_8

Looking a Gift Horse in the Mouth: What to Do With Gifts from Tainted Donors by Ryan Prendergast.

Canadian Fundraising & Philanthropy, Vol. 20, No. 18, September 30, 2010.

[Link] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=3446>

RECENT EVENTS AND PRESENTATIONS

The 2010 Canadian Land Trust Annual Conference held in Banff, Alberta, included the following presentations by Karen J. Cooper on October 1, 2010.

“Recent Changes in Tax Law: Part I,” and

[Web] <http://www.carters.ca/pub/seminar/charity/2010/kjc1001.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/kjc1001.pdf>

“Tax Law Part II: The Implications of the New CRA Fundraising Guidance for Land Trusts.”

[Web] <http://www.carters.ca/pub/seminar/charity/2010/kjc1001b.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/kjc1001b.pdf>

Trusts, Trustees, Trusteeships 2010, an Ontario Bar Association CLE Program held in Toronto, Ontario, on October 1, 2010, included a presentation by Terrance S. Carter entitled “Considerations When Drafting Restricted Charitable Purpose Trusts.”

[Paper] <http://www.carters.ca/pub/article/charity/2010/tsc1001.pdf>

Record Keeping: Maintaining Books and Records was presented by: Theresa L M Man on October 5, 2010, as part of Imagine Canada’s Charity Tax Tuesdays, a free webinar series for Canadian charities.

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

Colliers International Not-for-Profit Advisory Group Breakfast Meeting at the Ontario Heritage Centre on October 7, 2010, included a presentation by Terrance S. Carter entitled “Investment Decision Making During Difficult Financial Times.”

[Web] <http://www.carters.ca/pub/seminar/charity/2010/tsc1007.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/tsc1007.pdf>

The Impact of Anti-terrorism Legislation on Charities was presented by Terrance S. Carter at the University of Ottawa on October 18, 2010.

[Web] <http://www.carters.ca/pub/seminar/charity/2010/tsc1018.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/tsc1018.pdf>

Valuation Principles: How to Determine the Value of Gifts-in-Kind and Donor Benefit was presented by Karen J. Cooper on October 19, 2010, as part of Imagine Canada’s Charity Tax Tuesdays, a free webinar series for Canadian charities.

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

Demander l'enregistrement à titre d'organisme de bienfaisance was presented by Karen J. Cooper on October 26, 2010, as part of Imagine Canada's Charity Tax Tuesdays, a free webinar series for Canadian charities.

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

UPCOMING 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?" will include Terrance S. Carter in the Comparative Panel: 21st Century Nonprofit Speech Around the World on October 29, 2010.

Details available at <http://www1.law.nyu.edu/ncpl/conferences/upcoming.html>.

Imagine Canada's 2010 Risk Management Conference being held in Toronto, Ontario, on October 28, 2010, will include 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
Manage Your CRA Compliance Risk in 5 Minutes Per Month by Esther S.J. Oh

Details on this sold out event are available at <http://www.riskconferenceimaginecanada.ca/>.

Ontario Land Trust Alliance (OLTA) 2010 Gathering "Expanding Horizons" in Peterborough, Ontario, will include a presentation by Karen J. Cooper on "Recent Tax Changes" on October 29, 2010.

Details available at <http://www.olta.ca/>.

Certified General Accountants of Ontario Conference 2010 being held in Toronto, Ontario, will include a session by Karen J. Cooper entitled "Liability of Directors and Officers for Not-for-Profits" on November 11, 2010.

Details available at <http://conference.cga-ontario.org/index.htm>.

The 2010 Annual Church & Charity Law™ Seminar will be held at Portico Community Church in Mississauga, Ontario, on Thursday, November 18, 2010.

Details and online registration are available at
<http://www.carters.ca/pub/seminar/chrchl/2010/brochure.htm>.

The Certified General Accountants of Ontario Annual Conference (Mississauga) being held at the Delta Meadowvale Conference Centre in Mississauga, Ontario, will include presentations by Karen J. Cooper entitled "Liability of Directors and Officers" and "The *Income Tax Act* and Charities" on November 19, 2010.

Details at http://www.cga-ontario.org/assets/file/PD_fall10.pdf.

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.

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 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.

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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.



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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*[™] Seminar.



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*.



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 and the *Charity Law Bulletin*, and has spoken at the annual *Church & Charity Law*[™] Seminar as well as at the Canadian Bar Association/Ontario Bar Association's 2nd National Symposium on Charity Law. Ms. Oh's volunteer experience includes formerly serving as director and corporate secretary of the Evangelical Fellowship of Canada, and involvement with speaking engagements to various university student groups across Ontario.



Ryan Prendergast - Ryan 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).

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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