

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

JULY/AUGUST 2011 ISSUE

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2011 Annual Church & Charity Law Seminar

Hosted by Carters Professional Corporation in Toronto, Ontario.

Thursday, November 10, 2011.

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

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RECENT PUBLICATIONS AND NEWS RELEASES

Finance Releases Draft Legislative Proposals for 2011 Federal Budget

Theresa L.M. Man, Karen J. Cooper and Terrance S. Carter.

On August 16, 2011 the Department of Finance released for consultation draft legislative proposals to implement tax measures from the 2011 federal Budget (the “Budget”). The news release and draft legislation can be found online at <http://www.fin.gc.ca/drleg-apl/bia-leb-0811-eng.asp>.

The Budget was passed by the House of Commons on June 7, 2011, after being reintroduced by the Minister of Finance on June 6, 2011 following the federal election in May. The Budget proposes sweeping changes to the regulatory regime affecting registered charities and qualified donees, and in particular Canadian Registered Amateur Athletic Associations (“RCAAAAs”). The stated purpose of the Budget is to equip Canada Revenue Agency (“CRA”) as the administrator of the tax system related to the charitable sector with “an effective set of compliance tools to safeguard the donation of Canadian taxpayers and act against any organization that does not follow the rules.”

The draft legislative proposals released on August 16, 2011, will be the subject of a more detailed commentary in an upcoming *Charity Law Bulletin* in September 2011. More information regarding the proposals contained in the 2011 Budget can be found in *Charity Law Bulletin* No. 245 available online at <http://www.carters.ca/pub/bulletin/charity/2011/chylb245.pdf> and in *Charity Law Bulletin* No. 253 available online at <http://www.carters.ca/pub/bulletin/charity/2011/chylb253.pdf>.

CRA Guidance on Working through Intermediaries in Canada

Ryan M. Prendergast and Terrance S. Carter in *Charity Law Bulletin* No. 259, August 19, 2011.

On June 20, 2011, CRA released Guidance CG-004, *Using an Intermediary to Carry out a Charity’s Activities within Canada* (the “Guidance”). The Guidance was previously referenced in the June 2011 *Charity Law Update*. The Guidance will assist charities and applicants for charitable status who are intending on conducting charitable activities through an intermediary within Canada, such as a non-profit organization or a for-profit partner. As previously indicated in our June 2011 *Charity Law Update*, an individual or “non-qualified donee”, is referred to as an intermediary by CRA for definitional purposes in the Guidance. While the Guidance contains relatively few changes from CRA’s previous guidance, CG-002, *Guidance for Canadian Registered Charities Carrying Out Activities Outside Canada* (“Foreign Activities

Guidance), the Guidance clarifies that the principles discussed in the Foreign Activities Guidance concerning operating outside Canada apply equally within Canada.

This *Charity Law Bulletin* summarizes the new information or clarifications contained in the Guidance, together with a brief review of the information already set out in the Foreign Activities Guidance. For commentary concerning the previously released Foreign Activities Guidance, see Charity Law Bulletin No. 219 *CRA's Revised Guidance for Canadian Registered Charities Carrying Out Activities Outside Canada*.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2011/chylb259.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2011/chylb259.htm>

CRA News

Karen J. Cooper.

Charities Connection #7

In June, the CRA issued Charities Connection #7, which can be viewed at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/nwsltr/cnnctn/cnnctn07-eng.html>. This issue contains information on: the 2011 Budget and its effects on RCAAAs, registered charities, and other registered donees; a training program on the *Income Tax Act* for charity volunteers; a “Charities and Giving” webpage update; new guidance on using an intermediary to carry out a charity’s activities within Canada; a reminder to charities with a year end of December 30, 2010 to file form T3010 by June 30, 2011; and the Prime Minister’s Volunteer Awards.

Charities Connection 8

In August, the CRA issued Charities Connection #8, which can be viewed <http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/nwsltr/cnnctn/cnnctn08-eng.html>. This issue contains information on: fundraising, tax receipts and split-receipting; corporate purchases and sponsorships; third party fundraisers; and the first call for nominations for the Prime Minister’s Volunteer Awards for exceptional contributions of volunteers, local businesses and non-profit organizations.

East Africa Drought Relief Fund

On July 22, 2011, the Government of Canada announced the East Africa Drought Relief Fund, through which it will match every dollar donated by an individual to certain Canadian registered charities that are responding to the drought. In order for donations to qualify for matching, they must be made between July 6 and September 16, 2011. Further, donations must be made to registered charities receiving donations in

response to the drought and must be made specifically for the purpose of responding to the drought. Donations must be monetary, to a maximum of \$100,000, and they must be made by individuals (not corporations).

Money raised through fundraising events specifically for drought relief efforts may also qualify, so long as the money is raised from individuals by registered charities, regardless of whether donation receipts are issued. Charities receiving eligible donations from individuals or through fundraising must complete and submit the *East Africa Drought Relief Fund Declaration Form* to CIDA by September 30, 2011. More information on the East Africa Drought Relief Fund is available at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/drghtlffnd-eng.html>. Individuals and charities seeking to ensure that the organization to which they are considering a donation is a registered charity can consult <http://www.cra-arc.gc.ca/chrts-gvng/lstngs/menu-eng.html>.

Service Standards for Charities Directorate

In order to effectively promote compliance with income tax legislation through consistency, education, quality service and responsible enforcement, the Charities Directorate has set the following service targets:

1. Respond to a telephone call waiting in the queue within two minutes, 80% of the time;
2. Review and respond to a simple application for charitable registration (e.g. exclusively charitable purpose and activity) within two months of receiving the complete application, 80% of the time; and
3. Review and respond to a regular application for charitable registration within six months of receiving the complete application, 80% of the time.

More information on the new service standards is available at http://www.cra-arc.gc.ca/chrts-gvng/chrts/bt/tlphn_srv-eng.html.

Residency and the Public Service Body Tax Rebate

The CRA recently released a GST/HST Info Sheet (CRA #GI-121) explaining the rules for determining the provincial residency of a Public Service Body (“PSB”). For the purpose of the Info Sheet, PSBs include non-profit organizations and registered charities, as well as other bodies such as municipalities, hospitals and schools. Determining residency is important for charities because residents in participating provinces may be eligible to claim a PSB rebate for the provincial part of the HST on eligible expenses, at the applicable provincial rate.

For greater detail and a helpful flowchart and worksheet, the Info Sheet can be found at <http://www.cra-arc.gc.ca/E/pub/gi/gi-121/README.html>.

CRA Comments on the Issuance of a T2202A from a Registered Charity

The CRA recently issued some general comments (CRA technical interpretation #2010-038401) in response to a request by a registered charity seeking confirmation as to its ability to issue T2202A Tuition, Education and Textbook Amount Certificates. Generally, in order for an individual to make use of such a certificate and claim the associated tax credit, the following three criteria must be met: (1) the individual must be enrolled in a university, college or other educational institution in Canada, (2) the courses must be at the post secondary level, and (3) the fees paid must have exceeded \$100. A registered charity's ability to issue a T2202A Certificate depends on the specific facts of each particular situation and on fulfilling the requirements in section 118.5(1)(a)(ii) of the *Income Tax Act*.

Update on Motion 559 Concerning Tax Incentives for Charitable Donations

Terrance S. Carter.

In the June 23, 2011, *Charity Law Bulletin* No. 253 entitled "Minister of Finance Reintroduces Budget 2011," reference was made to the inclusion in the Budget of Motion 559 calling for the Standing Committee on Finance to study tax incentives for charitable donations. As reported in *Hansard* (November 19, 2010 at 1330), Motion 559, sponsored by the Honourable Peter Braid, reads as follows:

That the Standing Committee on Finance be instructed to undertake a study of the current tax incentives for charitable donations with a view to encouraging increased giving, including but not limited to (i) reviewing changes to the charitable tax credit amount, (ii) reviewing the possible extension of the capital gains exemption to private company shares and real estate when donated to a charitable organization, (iii) considering the feasibility of implementing these measures; and that the Committee report its findings to the House.

In the debate on the Motion that followed on November 19, 2010 and again on February 17, 2011, concerns were raised regarding the current national deficit and the "imperative of being fiscally responsible at a time of financial duress." (*Hansard*, November 19, 2010 at 1350) However, at the same time there was a general consensus concerning the need to support charities. During the right of reply by the Mr. Braid, he emphasized that: "I was pleased to hear the widespread agreement on the value that charitable organizations bring to all aspects of our communities [...] We agree that the sector needs the support of government and individual donors." (*Hansard*, February 17, 2011 at 1750)

Budget 2011 included a commitment for the Government to ask the Standing Committee on Finance to undertake the requested study in the first session of this Parliament. The Assistant to the Clerk of the Standing Committee of Finance has recently confirmed that the Committee has received the “Order of Reference” to proceed but has not yet met to address the study. Once the study is “open”, witnesses may be invited to appear before the Committee. However, if not invited, communication with the Committee is possible by presenting a brief to the Clerk. For more information in this regard, refer to the House of Commons Standing Committee on Finance’s (FINA) website www.parl.gc.ca/FINA-e for scheduled meetings, which the public will be allowed to attend, or to view webcasts or read minutes of these meetings.

Given the current challenging economic climate in Canada, it is unclear what results will come from the Committee’s study of tax incentives for charitable donations. This is all the more reason that the charitable sector should become actively involved in the ensuing discussion concerning Motion 559.

Finance Invites Comment on Proposal to Strengthen Regulation of RCAAAs

Jacqueline M. Demczur.

The Department of Finance is inviting stakeholders to comment on the initiatives in the 2011 Budget intended to strengthen the regulatory framework that applies to registered Canadian amateur athletic associations (RCAAAs). Specifically, feedback is sought relating to the proposed changes that would bring RCAAAs under the same regulatory requirements as registered charities. Among such changes are that RCAAAs would be required to operate for the “exclusive purpose and exclusive function” of promoting amateur athletic, rather than “primarily” for this purpose and RCAAAs would be subject to the same accountability as registered charities regarding the use of tax-assisted funds. However, consistent with the regime for registered charities, RCAAAs would still be permitted to stage or engage in events, competitions and other activities consistent with their mandate, as well as carrying on related business activities, such as selling merchandise related to their sport, and engaging in limited non-partisan political activities.

Stakeholders are able to provide feedback until August 31, 2011. Comments may be submitted to ConsultationsRCAAA-ACESA@fin.gc.ca or by mail to:

RCAAA Consultation
Tax Policy Branch
Department of Finance
140 O’Connor Street
Ottawa, Ontario
K1A 0G5

More information can be found at <http://www.fin.gc.ca/n11/11-054-eng.asp>.

Recent CRA Views on NPOs Involving Cottages and Co-Op Housing

Theresa L.M. Man.

In a recent technical interpretation (CRA #2011-0397881E5), CRA expressed its views with respect to a corporation with objects to purchase, maintain and manage a property for use by its shareholders, and whose shareholders have built and personally own cottages on this property. CRA has previously expressed the view that gains realized from the sale of a particular piece of the property would likely not be taxable to the corporation, which would be able to make payments to its shareholders without jeopardizing its NPO status, as long as those payments were made from the gains realized from the sale. Upon receiving additional information CRA expressed further views that though shareholders may have acquired a right to use the property along with their shares (or as a share right), there may be a shareholder benefit if the shareholders are only paying a cost amount for the use of the property, unless separate fair market value consideration was paid for the use of the property either at the time of purchase or subsequently. The shareholder benefit would be the difference between the current annual cost to the shareholders and the fair market value of the use of the property.

In another recent technical interpretation (CRA #2011-0394981I7), CRA expressed its views regarding whether a cooperative housing corporation (co-op) will qualify as an NPO while operating under a particular agreement with the Canada Mortgage and Housing Corporation (CMHC). Generally, housing co-ops do not qualify as NPOs, since cooperatives are usually required to make surplus available to members by way of allocations commonly referred to as patronage dividends. Although co-ops do not qualify for NPO tax-exemption, CRA pointed out that there are special rules under sections 135 and 136 of the *Income Tax Act* that allow co-ops to reduce their taxable income by the amount of patronage dividends paid to their members, thereby potentially reducing tax payable to zero. Sections 135 and 136 do not preclude the co-op from having a profit purpose and they do not restrict payments to members. The CRA document also reviewed other possible tax-exemption options under the *Income Tax Act* that might be available for co-ops depending on the facts, such as low-income housing projects operated by a municipality, either directly or through a separate municipal organization under paragraphs 149(1)(c) or 149(1)(d.5), low-cost housing accommodation for the aged under paragraph 149(1)(i), or low-income housing charities.

For a more detailed explanation, these technical interpretations are available through commercial subscription services or a direct request to CRA.

NPOs Earning a Profit

Karen J. Cooper.

The CRA recently offered its views (CRA technical interpretation # 2011-039866) on whether an educational institution qualified for the income tax exemption under section 149(1)(l) of the *Income Tax Act*. The organization's objects and by-laws suggested that it is organized in a manner that would meet the exemption requirements, but in this particular situation, the CRA's view was that the organization did not qualify for the exemption because it appeared to have a profit purpose and income had been made available for the personal benefit of one of its members. Specifically, the organisation earned profits every year in increasing amounts and held investments and unallocated reserves, all of which suggested that the profits were more than incidental to the purpose of the organization. Further, the organization had a sister corporation that was wholly-owned by one of the organization's members. The relationship between these two corporations was such that the sister corporation increased its value and the value of its assets, therefore personally benefiting a member of the non-profit corporation. In addition, CRA suggested that there is a possibility that the organization might actually be an unregistered charity because education is generally a charity object. If the corporation was determined to be an unregistered charity, the corporation would also be disqualified from the exemption on this ground.

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

Recent CRA Views on Condo Corporations as Non-Profit Organizations

Theresa L.M. Man.

Recently, CRA released a number of technical interpretations expressing its view concerning whether condominium corporations qualify as non-profit organizations (NPOs). The following provides a brief summary of these documents.

In a situation involving a condominium operating a golf course, pro shop and restaurant (CRA #2010-0379561I7), CRA was of the view that the condo did not qualify as an NPO because the golf course was operated with a profit motive and income of the condo was available to the members. Regarding the profit purpose of the corporation, the golf course had net income in an amount that was more than incidental when compared to the overall budget of the corporation. Further, the operation of the golf course did not appear to support the not-for-profit objective of a condo corporation. Regarding the shareholder benefit issue, not only did the condo owners play free rounds of golf, but the income from the golf course was used to reduce the condo owners' condo fees. CRA also expressed concern about an additional reserve fund not required under

the applicable provincial condo legislation and questioned whether the reserve fund was reasonable under the circumstances. CRA also raised the possibility that the condo might be recognized to be an NPO whose main purpose was to provide dining, recreational or sporting facilities, thereby subjecting its income from property to be liable for income tax.

Another scenario (CRA #2010-0380451E5) involved a condo intending to install solar panels on its roof in order to generate electricity which would be sold to the Ontario Power Authority under its “Feed in Tariff” program. The revenues would be used by the condo to cover general operational and financing costs, which are normally paid by members’ fees. CRA indicated it is generally of the view that the solar panel project may be connected to the not-for-profit objectives of the condo. If this is the case, and the profit related to the project is incidental, then participation in the “Feed-in Tariff” program would not prevent the condo from meeting the requirements to be an NPO.

In a different situation (CRA # 2011-0405541I7), CRA considered the situation where a condo rents space to telecommunication providers to set up and maintain a telecommunications tower (cell tower) on space that forms part of the common area of the condominium building or premises. The telecommunication providers pay fairly significant amount in rents, which is used to reduce members’ condo fees. CRA was of the view that incidental income from the rental of common areas may be treated as income of the condo corporation and generally will not affect the tax-exempt status of the condo. Incidental, in this context, means both minor and directly related to activities undertaken to meet the condo’s not-for-profit objectives of managing and maintaining the condo property and required reserves. However, where applicable provincial condo legislation supports that the common area rented out does not belong to the condo corporation, but belongs to the condo owners as tenants in common, then the income is not the income of the corporation but is instead the income of the unit owners. In that situation, CRA was of the view that the condo may be better viewed as acting as an agent for the unit owners in entering into any cell tower arrangements. If this is the case, then such arrangements generally would not jeopardize the tax-exempt status of the condo, although the related profit would have to be allocated appropriately among unit owners for tax purposes. On the other hand, where the relevant provincial law indicates that the income is the income of the condo corporation, and the income generated is not incidental, then the corporation may not qualify as an NPO, since the income from a cell tower arrangement would likely be available for the personal benefit of members of the condo through a material reduction in members’ condo fees.

For a more detailed explanation, these technical interpretations are available through commercial subscription services or a direct request to CRA.

Regulations for Anti-Spam Legislation Released for Consultation

Ryan M. Prendergast in *Charity Law Bulletin* No. 257, August 18, 2011.

In *Charity Law Bulletin* No. 238, we reported on Bill C-28, concerning new legislation creating a regulatory scheme for spam and related unsolicited electronic messages (the “Anti-spam Legislation”). Although the Anti-spam Legislation will not apply to electronic messages — i.e., email or other electronically distributed messages — that a charity may send requesting donations or other solicitations for volunteers, charities and non-profit organizations which send “commercial electronic messages” as it is defined in the Anti-spam Legislation will need to ensure they are in compliance with the new legislation. In this regard, charities and non-profit organizations which send emails or other electronic messages which, for example, contain offers concerning goods, products or services, or that advertise or promote such opportunities will want to review the Anti-spam Legislation and the draft regulations described in this *Charity Law Bulletin*. According to a press release from the Minister of Industry released on August 1, 2011, the Anti-spam Legislation will likely come into force early in 2012.

While the Anti-spam Legislation outlined the general prohibitions against the sending of commercial electronic messages, certain elements of the Anti-spam Legislation were to be further detailed in regulations to be released by Industry Canada and the Canadian Radio-television and Telecommunications Commission (“CRTC”). As such, both organizations have now released draft regulations, collectively referred to as the Electronic Commerce Protection Regulations, for comment from the public.

This *Charity Law Bulletin* summarizes the information contained in the draft regulations released by Industry Canada and the CRTC.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2011/chylb257.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2011/chylb257.htm>

No Cap on Dismissal Damages for Clerical or Unskilled Workers

Barry W. Kwasniewski in *Charity Law Bulletin* No. 255, August 18, 2011.

At common law, employees who are dismissed without cause are entitled to receive reasonable notice or pay in lieu of notice. In the past, courts have grappled with the issue as to whether employees who occupy clerical or unskilled positions should be subject to a “hard cap” or ceiling on the notice or pay in lieu of notice they are entitled to receive. In the recent decision of *Di Tomaso v. Crown Metal Packaging Canada LP*, the Ontario Court of Appeal rejected the employer’s argument that there is, or ought to be, a twelve month cap on reasonable notice for unskilled, non-managerial employees. This Bulletin reviews this

decision, which is an important statement of the law as to reasonable notice entitlements for many workers, including those who work for charities and not-for-profit organizations.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2011/chylb255.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2011/chylb255.htm>

Significant Court Of Appeal Decision on Withdrawing Life Support

Jennifer M. Leddy in *Charity Law Bulletin* No. 256, August 18, 2011.

In a judgment released on June 29, 2011, the Ontario Court of Appeal decided that doctors must obtain the consent of the substitute decision maker to withdraw life support and move the patient to palliative care, failing which the doctors' proposed action must be referred for determination to the Consent and Capacity Board, established under the Ontario *Health Care Consent Act*. The judgement will be of particular interest to hospitals and other health care charities, as well as many religious charities.

This *Charity Law Bulletin* summarizes the judgement and explains the importance of the decision.

Read More:

PDF] <http://www.carters.ca/pub/bulletin/charity/2011/chylb256.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2011/chylb256.htm>

Limitations on Director's Due Diligence Defence under ITA & ETA

Terrance S. Carter in *Charity Law Bulletin* No. 258, August 19, 2011.

In the recent decision of *Buckingham v. Canada*, a sole director was found personally liable for failure to remit source deductions and taxes for the corporation and its various subsidiaries notwithstanding that considerable business measures had been taken to address the financial difficulties being faced by the corporation, including working on a proposed equity issue, attempting to secure a line of credit, reducing expenditures, and attempting to merge with another company.

This *Charity Law Bulletin* provides an overview of the decision and its relevance to charities and not-for-profit organizations.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2011/chylb258.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2011/chylb258.htm>

Domain Name Protection Opportunities for Charity and Not-for-Profit Brand Owners

Colin Thurston

On June 20, 2011, Internet Corporation for Assigned Names and Numbers (ICANN) announced its plan to increase the number of generic top-level domains (internet address endings) from the current 22, which includes such domains as .com, .org and .net., with the new top-level domains expected to become operational beginning in late 2012. Brand owners should monitor this development as new information becomes available and be prepared to secure any new domain names that they would not want a third party to register, since it can be very difficult to obtain the right to a domain name after it has been registered by another party. More information can be found online at <http://www.icann.org/en/tlds/select.htm>.

In addition, the new sponsored top-level domain name “.xxx” will be launching in late 2011 for members of the adult entertainment industry. A unique opportunity is being offered by ICM Registry, which is the registry for the new .xxx domain, to allow registered trade-mark owners to block their trade-marks from being registered as .xxx domain names by third parties. A benefit of this “blocking” process is that the trade-mark owner would not have to actually register the domain name, and would therefore not appear as the registered owner of [www.\[yournamehere\].xxx](http://www.yournamehere.xxx) in a WHOIS search.

The application period to block .xxx domain names is open to owners of registered Canadian or international trade-marks from September 7, 2011 until October 28, 2011. This process may be of interest to many charity and non-profit organizations, but particularly to religious charities. For assistance with the application process, contact your domain name registrar, or alternatively, Colin Thurston (cthurston@carters.ca) or Gisele White (gwhite@carters.ca) at Carters.

Infrastructure Ontario Announces Expanded Loans Program

Ryan M. Prendergast

On July 11, 2011, Infrastructure Ontario, a provincial crown corporation established by the *Ontario Infrastructure and Lands Corporation Act, 2011*, announced that it expanded its loans program to include community health and social services hubs, aboriginal health access centres and non-profit sports and recreation organizations in Ontario. Not-for-profit organizations that own or operate community hubs where both community health and social services are located together are now eligible for the loan program.

The provincial government hopes that access to the loan program will better enable community health and social services hubs to meet their infrastructure needs and continue to offer health care and wellness programs.

The press release can be found online on: <http://news.ontario.ca/moi/en/2011/07/infrastructure-ontarios-loan-program-expansion.html>

Information on applying to the loan program can also be found at:
<http://www1.infrastructureontario.ca/en/loan/index.asp>.

Small Hope For Improvement To U.S. Anti-Terror Laws For Charities?

Nancy E. Claridge.

The U.S. Treasury Department's process for shutting down charities it believes support terrorism has been repeatedly criticized as being constitutionally deficient, with the courts previously analogizing that the process "blindfolds" and ties the hands of charities behind its back in attempting to respond to allegations of terrorist support. The Treasury Department's process has far-reaching implications, not only for U.S. charities, but also for Canadian charities operating in the U.S. or partnering with U.S. charities that are being audited by Canada Revenue Agency. However, there is some small hope for improvement to these U.S. anti-terror laws in light of recent moves on Capitol Hill.

Prior to the expiry of the 111th Congress on January 3, 2011, two bills were introduced to address a number of the constitutional deficiencies. Although both bills died at the end of the Congressional session, their introduction brings hope for future action on due process rights for charities.

On December 16, 2010, U.S. Representative Keith Ellison (D-MN) introduced the *Procedures for Sanctions Against Charities Act* (HR 6532) (the "Ellison Act"). The Ellison Act proposed to amend the *International Emergency Economic Powers Act* to establish certain procedures with respect to blocking property of charities. This would include allowing a sanction to be imposed that would block the property of a charity only pursuant to a warrant obtained in the same manner as provided for a search warrant under the *Federal Rules of Criminal Procedure*. The act also set forth appeal procedures for affected charities. The act was referred to the House Committee on Foreign Affairs prior to the end of Congress.

On December 20, 2010, Senator Benjamin Cardin (D-MD) introduced the *Classified Information Procedures Reform and Improvement Act of 2011* (S. 4050) (the "Cardin Act"). The Cardin Act proposes to amend the *Classified Information Procedures Act* with respect to the use and disclosure of classified information in legal proceedings. It is believed that these procedures could impact charities either in potential prosecutions for providing material support to terrorist organizations or challenging a Treasury designation to a terrorist list. The Cardin Act was reintroduced on February 15, 2011, and has been referred to the Senate Committee on the Judiciary, which is chaired by Senator Patrick Leahy (D-VT).

Both pieces of proposed legislation are seen as welcome and needed improvements to the due process rights afforded charities in addressing anti-terrorism allegations and will need to be monitored by charities on both sides of the border.

Patriot Act: Continued Concerns for Canadian Charities

Nancy E. Claridge and Terrance S. Carter in *Anti-Terrorism and Charity Law Alert No. 25*, August 19, 2011.

Canadian charities working in the United States or in conjunction with U.S. charities in conflict zones will need to keep abreast of recent legislative and judicial developments in the U.S., with the extension of controversial provisions of the *Patriot Act* and the U.S. Supreme Court's decision on the material support laws. This *Anti-terrorism and Charity Law Alert* will review these developments in relation to their impact on Canadian charities.

Read More:

[PDF] <http://www.carters.ca/pub/alert/ATCLA/ATCLA25.pdf>

U.S. Anti-Terror Policies: Effects Felt Around the World

Terrance S. Carter.

The Center for Human Rights and Global Justice published a report on July 18, 2011, that studied the effects of the U.S. Government's counter-terrorism policies on women and sexual minorities both domestically and abroad. The report, *A Decade Lost: Locating Gender in U.S. Counter-Terrorism*, comprehensively examined "how the gender features and impacts of the USG's [U.S. Government's] counter-terrorism efforts relate to gendered patterns in failures to protect women and LGBTI [Lesbian, Gay, Bisexual, Transgender, Intersex] communities against terrorist violence." The report brought attention to the differential impacts of counter-terrorism on women, men, and sexual minorities, and the ways in which such measures use and affect stereotypes which hampers both counter-terrorism and equality goals.

Among its keys findings was that development assistance for reducing violent extremism in young men is leaving women behind; anti-terrorist finance laws prevent critical resources from reaching women and sexual minorities; immigration bars are re-victimizing victims of trafficking, terrorism and anti-gay violence in Iraq; and securing the government's relationship with Muslim communities is making women in these communities unsafe. The report's recommendations call on the Obama Administration to make public its first-ever policy on the role of development in countering violent extremism and release its new policy on engaging with communities in the United States to prevent extremism.

To read the report, see <http://www.chrgj.org/projects/docs/locatinggender.pdf>.

IN THE PRESS

CRA says no unrelated retail activities for nonprofits by Theresa L.M. Man.

Hilborn eNews, August 8, 2011.

[Link] <http://www.charityinfo.ca/articles/CRA-says-no-unrelated-retail-activities-for-nonprofits>

“2011 Budget - The Sequel” keeps changes for charities by Terrance S. Carter.

Canadian Fundraising & Philanthropy, Vol. 21, No. 12, June 30, 2011.

Hilborn eNews, July 7, 2011.

[Link] <http://www.charityinfo.ca/articles/2011-budget-the-sequel>

Make Sure You Don’t Lose Your Nonprofit Tax Status by Theresa L.M. Man.

Forum Trillium Chapter, CSAE, June 2011, Quarter 2.

[Link] <http://mediaedge.imirus.com/Mpowered/book/vforum11/i2/p1>

RECENT EVENTS AND PRESENTATIONS

Imagine Canada and Volunteer Canada’s 2011 Business & Community Partnership Forum & Awards, held at the Fairmont Le Chateau Montebello in Montebello, Quebec, included the following presentations on June 9, 2011.

“Donation or Sponsorship? Know the Rules Reap the Rewards” *Terrance S. Carter*

[English] <http://www.carters.ca/pub/seminar/charity/2011/tsc0609en.pdf>

[French] <http://www.carters.ca/pub/seminar/charity/2011/tsc0609fr.pdf>

“Is a Corporate Foundation for You?” *Karen J. Cooper*

[English] <http://www.carters.ca/pub/seminar/charity/2011/kjc0609en.pdf>

[French] <http://www.carters.ca/pub/seminar/charity/2011/kjc0609fr.pdf>

The Art of Advocacy: An Action Learning Session hosted by the Halton Nonprofit Network in Burlington, Ontario, on June 28, 2011, include a presentation by Terrance S. Carter on “Advocacy/Political Activity and the Canada Revenue Agency.”

[Web] <http://www.carters.ca/pub/seminar/charity/2011/tsc0628.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2011/tsc0628.pdf>

Canadian Society of Association Executives (CSAE) Trillium Chapter – 6th Annual Summer Summit included presentations by Theresa L.M. Man and Terrance S. Carter entitled “The Top Five Legal Issues That Association CEO’s Need to Know and Why” on July 14, 2011.

“Maintaining NPO Status” by Theresa L.M. Man, and

[Web] <http://www.carters.ca/pub/seminar/charity/2011/tlm0714a.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2011/tlm0714a.pdf>

“Identifying and Reducing Risks from the Discipline and Expulsion of Members” by Terrance S. Carter.

[Web] <http://www.carters.ca/pub/seminar/charity/2011/tsc0714a.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2011/tsc0714a.pdf>

“How to Prevent Losing Charitable Status as a Charity” by Terrance S. Carter.

[Web] <http://www.carters.ca/pub/seminar/charity/2011/tsc0714b.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2011/tsc0714b.pdf>

“How to Effectively Transition Through Corporate Reform under the Federal CNCA and the Ontario ONCA” by Theresa L.M. Man.

[Web] <http://www.carters.ca/pub/seminar/charity/2011/tlm0714b.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2011/tlm0714b.pdf>

“Effective Identification and Protection of an Association’s Brand” by Terrance S. Carter.

[Web] <http://www.carters.ca/pub/seminar/charity/2011/tsc0714c.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2011/tsc0714c.pdf>

UPCOMING EVENTS AND PRESENTATIONS

13th Annual Corporate Governance Conference being hosted by the Canadian Society of Corporate Secretaries (CSCS) in Quebec City, will include Karen J. Cooper as a speaker in the workshop entitled “*The Canada Not-for-Profit Corporations Act: How do I get there from here?*” on August 22, 2011.

<http://www.cscs.org/13thConference>

The OBA Charity & Not-for-Profit Law Section is hosting a luncheon on September 12, 2011, at which Theresa Man will be speaking on a panel discussing “What Happened Over the Summer? An update on interesting cases and developments for charity and not-for-profit law practitioners.”

Philanthropy, Law and Social Enterprise: New Direction or Distraction? This conference hosted by The Winnipeg Foundation and Robson Hall, Faculty of Law – University of Manitoba, on September 21, 2011, will include a presentation by Terrance S. Carter entitled “The Legal Environment for Social Enterprise and Social Finance in Canada.”

Details available at <http://www.wpgfdn.org/programsprojects-law.php>.

2011 Canadian Land Trust Annual Conference being held in Kingston, Ontario, will include the following presentations by Karen J. Cooper on September 22, 2011.

“Recent Tax Changes and How They Affect Your Land Trust” and

“Recent Federal and Ontario Corporate Law Changes and How They Affect Your Land Trust.”

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

The Association of Treasurers of Religious Institutes (ATRI) Conference 2011 being held in Calgary, Alberta, will include the following presentations.

“In’s and Out’s of the New *Canada Not-for-Profit Corporations Act* for Religious Congregations” by Karen J. Cooper, and

“Key Legal Compliance Issues for Religious Congregations” by Terrance S. Carter.

Details available at <http://www.atri.on.ca/conference-2011>.

Canadian Council of Christian Charities (CCCC) 2011 Annual Conference being held in Mississauga, Ontario, will include a presentation by Terrance S. Carter entitled “Getting Ready for the New Ontario Not-for Profit Corporations Act” on September 28, 2011.

Details available at <http://www.cccc.org/conference>.

Osgoode Hall Law School CLE Program Legal and Risk Management for Charities and NPOs on October 5 & 6, 2011, will include the following presentations.

“The Practical Impact of the Canada Not-for-Profit Corporations Act (CNCA)” by Theresa L.M. Man,

“Its Back! Federal Government Budget and Its Implications for Charities and NPOs” by Karen J. Cooper, and

“Charities and the Anti-Terrorism Financing/Money Laundering Regime” by Terrance S. Carter.

Details available at http://www.osgoodepd.ca/cle/2011-2012Fiscal/2011_charities/index.html.

The 2011 Annual Church & Charity Law™ Seminar will be held at Portico Community Church in Mississauga, Ontario, on Thursday, November 10, 2011.

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

CONTRIBUTORS

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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.antiterrorismlaw.ca.



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



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



Jacqueline M. Demczur – A partner with the firm, Ms. Demczur practices in charity and not-for-profit law, including incorporation, corporate restructuring, and legal risk management reviews, as well as wills, estate planning and estate administration. She is a contributing author to Industry Canada's *Primer for Directors of Not-For-Profit Corporations*, and has written numerous articles on charity and not-for-profit issues for the *Lawyers Weekly*, *The Philanthropist* and *Charity Law Bulletin*, among others. 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 Leddy – Ms. Leddy joined Carters' Ottawa office in March 2009 to practice charity and not-for-profit law following a career in both private practice and public policy. Ms. Leddy practiced with the Toronto office of Lang Michener prior to joining the staff of the Canadian Conference of Catholic Bishops (CCCCB). In 2005, she returned to private practice until she went to the Charities Directorate of the Canada Revenue Agency in 2008 as part of a one year Interchange program, to work on the proposed "Guidelines on the Meaning of Advancement of Religion as a Charitable Purpose."



Theresa L.M. Man – A partner with Carters, Ms. Man practices in the area of charity and not-for-profit law and is recognized as a leading expert by Lexpert. She is an Executive Member of both the Charity and Not-for-Profit Sections of the Ontario Bar Association (OBA) and the Canadian Bar Association (CBA). In addition to being a frequent speaker at the annual *Church & Charity Law*™ Seminar, seminars hosted by the CBA and the OBA, Ms. Man has also written articles for numerous publications, including *The Lawyers Weekly*, *The Philanthropist*, *Planned Giving Pulse*, *International Journal of Civil Society Law*, *The Bottom Line*, *Canadian Fundraiser*, and *Charity Law Bulletin*.



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.



Colin Thurston- Colin was called to the Ontario Bar in 2011 and joined Carters to practice in the area of intellectual property. A graduate of Queen's University, Faculty of Law, 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.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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