CHARITY LAW UPDATE

JUNE 2011

Barristers Solicitors Trademark Agents

LARTERS

EDITOR: TERRANCE S. CARTER

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

JUNE 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

Minister of Finance Reintroduces Budget 2011

CARTERS

Theresa L.M. Man, Karen J. Cooper and Terrance S. Carter and Ryan M. Prendergast in *Charity Law Bulletin* No. 253, June 23, 2011.

On June 6, 2011, the 2011 federal Budget (the "Budget") was reintroduced by the Minister of Finance and was subsequently passed by the House of Commons on June 7, 2011. 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 original Budget was tabled by the government on March 22, 2011, but it was not adopted as a result of the dissolution of Parliament on March 26, 2011. The 2011 Budget proposes sweeping changes to the regulatory regime affecting registered charities and qualified donees, and in particular Canadian Registered Amateur Athletic Associations ("RCAAAs"). For an overview of the various proposals contained in the Budget, please refer to *Charity Law Bulletin No. 245* available online at http://www.carters.ca/pub/bulletin/charity/2011/chylb245.pdf. This *Charity Law Bulletin* outlines the few differences in the recent Budget of June 6, 2011 compared to the proposed Budget from March 22, 2011, as well as providing a brief summary of Canada Revenue Agency's recent commentary on the Budget.

Read More:

[PDF] <u>http://www.carters.ca/pub/bulletin/charity/2011/chylb253.pdf</u> [WEB] <u>http://www.carters.ca/pub/bulletin/charity/2011/chylb253.htm</u>

CRA News

Karen J. Cooper.

Gifts made by Her Majesty to Charitable Organizations Outside of Canada

CRA has updated the attachment to IC84-3R, *Gifts to Certain Charitable Organizations Outside Canada*, effective May 5, 2011, which lists the charitable organizations outside of Canada to which a gift has been made since January 1, 2000 by her Majesty in the right of Canada. Charitable organizations outside Canada whose names appear on the list are deemed qualified donees and are therefore eligible to receive gifts from Canadian registered charities or donors. Some new additions to the list are Education Africa in South Africa and the Christchruch Earthquake Appeal Trust in New Zealand.



The circular and updated attachment are available on the CRA website at <u>http://www.cra-arc.gc.ca/E/pub/tp/ic84-3r6/README.html</u>.

Tax Preparer Found Guilty of Fraud in Charitable Donations Scheme Sentenced to Three Years in Jail

An update from the May 2011 *Charity Law Update* on Mr. Eric Armah's charitable donations scheme: on June 8, 2011, CRA announced that Eric Armah who plead guilty in the Ontario Court of Justice in Brampton on April 29, 2011 for one count of fraud over \$5,000 for setting up false charitable donation claims has been sentenced to three years imprisonment.

For more information on Mr. Armah's conviction please visit the Media Room on the CRA website at: www.cra.gc.ca/convictions.

Updates to the Charities and Giving Web Pages

The following additions have been made to the Charities and Giving Web pages at <u>http://www.cra-arc.gc.ca/chrts-gvng/</u>:

- Budget 2011 Changes for registered charities and other qualified donees.
- Enhancements have been made to CRA's Policies and Guidance pages. The Alphabetical index now includes all of its charities related policies and guidance products.
 - Three new webcasts (videos) have been added to the Charities Webcasts page:
 - o Activities outside Canada
 - Political activities
 - T3010-1: Line by line review (For fiscal period ending on March 4, 2010 or later)

CRA Releases New Guidance on Working with Intermediaries

Terrance S. Carter and Ryan M. Prendergast.

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 will assist charities and applicants for charitable status who are intending on conducting charitable activities through an intermediary within Canada. For the Guidance, an intermediary is defined by CRA as an individual or non-qualified donee. The Guidance clarifies that CRA's administrative guidance concerning operating outside Canada applies equally within Canada as well.

As such, the Guidance is a modified version of Guidance CG-002, *Guidance for Canadian Registered Charities Carrying Out Activities Outside Canada*. While the Guidance contains relatively little new

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information, the Guidance modifies certain provisions of CG-002. Specifically, the Guidance modifies the examples provided in CG-002 with respect to intermediaries, such as agents and contractors so that they are localized within Canadian borders.

It is recommended that charities, even if they do not conduct any activities outside Canada, that are conducting any activities through an intermediary review the Guidance to ensure that they are able to document the necessary direction and control over their charitable resources. A more detailed commentary on the Guidance will follow in a future *Charity Law Bulletin*.

The Guidance can be accessed online at: <u>http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/ntrmdry-eng.html</u>.

Non-profit Organizations Cannot Carry On Unrelated Retail Activities

Theresa L.M. Man.

In a recent CRA document (CRA #2011-0394251I7), CRA was of the view that an association that engages in a retail operation that is not related to the association's non-profit objectives was in fact operating with a profit purpose and therefore does not qualify as a non-profit organization under paragraph 149(1)(1) of the *Income Tax Act*.

Relying on the Supreme Court of Canada decision in *Woodward's Pension Society v. HMQ* 62 DTC 1002 and *Tourbec (1979) Inc. v. The Minister of National Revenue*, 88 DTC 1442, CRA was of the view that the association was operating in a manner similar to the organizations described in those two decisions, that is, it is operating for a profit purpose rather than earning incidental profits in the course of operating exclusively for a purpose other than profit.

Based on the decision of the federal court in *Gull Bay Development Corporation v. HMQ, 84 DTC 6040*, CRA acknowledged that it is possible for an organization to earn a profit in the course of meeting its not-for-profit objectives, and to use that profit in support of those objectives, but the profit should be incidental and cannot constitute a purpose of the organization. However, CRA was of the view that the association in question was a for-profit enterprise, operating in direct competition with taxable businesses, "within the guise" of a not-for-profit organization.

CRA further indicated that the "destination of funds" test has been rejected by courts for both charities and not-for-profit organizations. It matters not that profit earning by a corporation is for a very valid and legitimate cause, it only matters what the purpose of the existence of the association is.

Lastly, CRA was asked to comment on the application of *The Canadian Bar Insurance Association v. The Queen*, 99 DTC 653 (TCC) decision to the association in question. In this regard, CRA responded that the court accepted that CBIA did not have a profit purpose on the basis that its involvement in commercial and investment activities was directly connected to its not-for-profit objective of providing insurance at cost to members (the nature of the organization as an insurer was relevant). However, CRA was of the view that the organization in question was earning significant profits from activities that are not directly connected to its not-for-profit objectives.

For a more detailed explanation, this technical interpretation is available through commercial subscription services or a direct request to CRA.

Federal Court of Appeal Rules "Dissemination of News" is Not Charitable

Karen J. Cooper.

On June 7, 2011 the Federal Court of Appeal released its ruling in *News to You Canada v. Minister of National Revenue*. News to You Canada was incorporated on September 19, 2006 as a corporation without share capital under Part II of the *Canada Corporations Act*. One of its corporate objects is: To fund, develop and carry on activities to research and produce in-depth news and public affairs programs designed to provided unbiased and objective information concerning significant issues and current events that are relevant to a large sector of the general public and to disseminate these programs by publishing, broadcasting, cable, satellite, Internet and any other distribution method available now or developed in the future in order to encourage a well-informed general public for the benefit of society. The Canada Revenue Agency refused its application for charitable registration and this refusal was confirmed following an Objection. The Corporation appealed these decisions on the basis that its purposes fell within two heads of charity, the advancement of education and other purposes beneficial to the community as a whole in a way which the law regards as charitable.

With respect to the advancement of education, the Court determined that while the production and dissemination of in-depth news and public affairs programs may improve the sum of communicable knowledge about current affairs, such activities are not sufficiently structured to meet the test established in *Vancouver Society* for educational purposes. Regarding the fourth head, the Court reviewed the decision in *Native Communications* and concluded, in part because the corporation identified its audience as the general public and not any group or community in need of charitable assistance and that the corporation's purposes were already being carried out on a commercial basis, that the mere dissemination of news was not charitable

at law. Finally, the Court stated that, in order to be charitable, the Corporation's purposes must be of special benefit to the community, with an eye to society's current social, moral, and economic context. The Court did not accept the Corporation's contention that presenting the news in an "unbiased and objective" form met this requirement.

The Federal Court of Appeal's decision is available at: <u>http://decisions.fca-caf.gc.ca/en/2011/2011fca192/2011fca192.pdf</u>.

CRA Comments on Gifts Made To Public Bodies Performing a Function of Government

Ryan M. Prendergast

On June 1, 2011, Canada Revenue Agency ("CRA") released a technical interpretation (Document #2011-0405881E5) concerning directed gifts to an entity that is a public body performing a function of government in Canada as described at paragraph 149(1)(c) of the *Income Tax Act* (Canada) ("ITA"). Since a public body performing a function of government in Canada is a "qualified donee" under the ITA for purposes of the definition of "total charitable gifts" in subsections 118.1(1) and 110.1(1) of the ITA, when it receives a gift from an individual or corporation, the public body may issue an official donation receipt for the eligible amount of the gift.

CRA had been asked whether or not a donation receipt can be issued by a public body performing a function of government in Canada where the donor directs the gift to a specific program or organization operating under the authority of the public body. In this regard, CRA stated that it is their general view that "donations can be receipted by a qualified donee such as a public body performing a function of government in Canada on behalf of an organization which operates under its authority provided the public body retains discretion as to how the donated funds are to be spent". As such, public bodies which are "merely collecting funds from donors on behalf of the organization and the latter is legally or otherwise entitled to the property so transferred, the public body performing a function of government in Canada is not in receipt of a gift and cannot issue an official donation receipt." In this situation, CRA considers that the public body was merely acting as a "conduit" for the other organization.

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

CRA Considers a Split-Receipted Ecological Gift of a Servitude

Karen J. Cooper.

CARTERS

In a recently released advance income tax ruling (Document #2009-033887), CRA considered the situation of an ecological gift of a servitude in Quebec within the meaning of the definition in subsection 118.1(1). The donor acquired land and a perpetual logging right in respect of adjoining land from one corporation and the underlying land subject to the perpetual logging rights from a different corporation for environmental protection purposes and intended to log the property in accordance with an approved forest management plan, rent part of the property to a non-profit hunting and fishing organization, and enter into an arrangement with a conservation organization to ensure the continued protection of the ecological feature of the property. The donor is proposing to sell part of the property to an eligible recipient, a charitable organization whose main purpose is the conservation and protection of Canada's environmental heritage, so that it may serve as the dominant land in respect of which a servitude will also be established. The servitude will be created and published in compliance with articles 1177 and 2938 of the Civil Code of Quebec and would be considered a servitude within the meaning of the term used in the definition of "ecological gifts" in subsection 118.1(1). The servitude will then be transferred by the donor to the eligible recipient for consideration below its fair market value. CRA assumes for the purposes of the ruling that the property is capital property of the donor and not inventory. Further, the Quebec Ministry of the Environment has issued a Visa pour dons de terrains ou de servitudes ayant une valeur écologique in respect of the property.

CRA ruled that the partial disposition rules in subsection 43(1) of the *Income Tax Act* would apply to the initial sale of the dominant land and that an ecological gift was being made for which the eligible recipient could issue a receipt. CRA also provided its opinion that the proposed split-receipting rule in proposed subsection 248(30) would apply to the gift, that the receipt should reflect the eligible amount of the gift within the meaning of proposed subsection 248(31), that the deemed fair market value rule in proposed subsection 248(35) would not apply, that the proposed rule regarding the allocation of the capital gain in section 38.1 between the gifted and sold portions of the servitude would apply, and that the receipt of a tax credit in accordance with the Quebec *Income Tax Act* would not constitute an advantage within the meaning of proposed subsection 248(32).

How CCA Corporations Continue Under the Canada Not-For-Profit Corporations Act

Presented by Theresa L.M. Man at an Ontario Bar Association legal education program on June 7, 2011.

Part II of the *Canada Corporations Act* ("CCA") governs the incorporation and governance of federal nonshare capital corporations. This framework has remained essentially unchanged since 1917. The CCA sets out very few rules on corporate governance, and corporations are required to comply with Corporations Canada's policy statements on these matters. After various attempts of corporate reform, the *Canada Not-For-Profit Corporations Act* ("CNCA") was finally enacted by Parliament and received Royal Assent on June 23, 2009. The CNCA is modelled after the *Canada Business Corporations Act* and provides a very detailed set of rules for the governance of federal corporations.

The CNCA has not yet been proclaimed in force. It was originally scheduled to come into force in mid-2011. With the recent federal election in May 2011, it is now anticipated to come into force in the fall of 2011. Draft regulations were released by Corporations Canada on June 25, 2010, and published in the Canada Gazette on February 26, 2011.

The new rules in the CNCA do not apply automatically to corporations incorporated by letters patent under Part II of the CCA. These corporations will be required to continue under the CNCA within 3 years of proclamation of the CNCA by completing a continuance process. Failure to continue within this time frame will result in dissolution of the corporation. Once the CNCA comes into force, it will no longer be permissible for corporations to be incorporated under Part II of the CCA.

This paper reviews the steps involved in the process for CCA corporations to continue under the CNCA, including preliminary steps and issues that CCA corporations will need to consider before drafting continuance documents, issues concerning the drafting of articles of continuance and new by-laws that comply with the CNCA, and practical steps that CCA corporations can take in preparing these documents. This paper is not intended to review the rules contained in the CNCA or the incorporation process under the CNCA, unless those rules are relevant in terms of preparing documents for the continuance process.

Read More:

[PDF] http://www.carters.ca/pub/article/charity/2011/tlm0607.pdf

Deduction for Vow of Perpetual Poverty Extended to All Religious Orders

Jacqueline M. Demczur.

CRA released a technical interpretation (Document #2011-0399551M4) on April 21, 2011 related, in part, to the issue of availability of the deduction from income by individuals of all religions under the *Income Tax*

Act as it relates to the vow of perpetual poverty. A letter had been sent to CRA by a taxpayer suggesting that the deduction for a vow of perpetual poverty may currently only applies to Christian religions and should therefore be expanded to include Buddhist monks. In response, CRA advised that any individual who is a member of a religious order, has taken a vow of perpetual poverty, and has paid over to his or her religious order their entire income and/or pension benefits for a tax year, is permitted under section 110(2) of the *Income Tax Act* to deduct all of the amounts paid from their taxable income for the said year. CRA confirmed that this deduction is not based on the individual's particular religion, Christian or otherwise, but instead is related to the fact that the individuals in question "have given away all of their earned income and…pension benefits to a religious order and do not have any money for personal use." Where such an income give away to a religious order by an individual. Otherwise, it is not available, although CRA states that a charitable donation credit to the individual may be possible to obtain instead, depending on the particular facts of the situation.

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

Church Diocese Liable for Volunteer's Injuries - New Brunswick C. of A.

Barry W. Kwasniewski in Church Law Bulletin No. 35, June 22, 2011.

In the recent New Brunswick Court of Appeal Decision in *Moreau v. The Roman Catholic Bishop of Edmundston*, the Court affirmed a trial judgment which had found the defendant Diocese liable for personal injuries suffered by a volunteer choir director as a result of a fall while on church premises. This decision provides an example of a type of liability risk to which charities and not-for-profits which own or lease property are exposed on a daily basis. This *Charity Law Bulletin* explains the decision, and summarizes the lessons to be learned from a risk management perspective.

Read More:

[PDF] <u>http://www.carters.ca/pub/bulletin/church/2011/chchlb35.pdf</u> [WEB] <u>http://www.carters.ca/pub/bulletin/church/2011/chchlb35.htm</u>

Refugee Claim Turned Down Because Claimant Unable To Prove Sincerity of Religious Belief

Jennifer M. Leddy in Church Law Bulletin No. 34, June 22, 2011.

On May 26, 2011, the Federal Court upheld the decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) that the applicant in question was not entitled to protection as a

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refugee because his claims alleging that he had attended an underground Christian Church in China and was wanted by the Public Security Bureau (PBS) were not credible. The Federal Court agreed with the Board that the Claimant had not adequately proven the sincerity of his religious beliefs. This *Charity Law Bulletin* outlines the facts of the case and explains its relevancy to religious charities.

Read More:

PDF] <u>http://www.carters.ca/pub/bulletin/church/2011/chchlb34.pdf</u> [WEB] <u>http://www.carters.ca/pub/bulletin/church/2011/chchlb34.htm</u>

Imagine Canada to Launch Its Standards Program In 2011

Terrance S. Carter in Charity Law Bulletin No. 254, June 23, 2011.

By the end of 2011, Imagine Canada will be launching its Standards Program, which will provide a nationwide guideline to charities and nonprofit organizations in the areas of fundamental governance, paid-staff management, financial accountability, fundraising and volunteer involvement. Part of this Program is a voluntary accreditation program where organizations wishing to publically demonstrate their compliance with the Program's standards may do so through a third-party peer review system in place.

The Standards Program will be piloted in 2011 with the founding members of the program followed by a public launch with charities and public benefit nonprofits in 2012. This *Charity Law Bulletin* provides an overview of the Imagine Canada Standards Program.

Read More:

[PDF] <u>http://www.carters.ca/pub/bulletin/charity/2011/chylb254.pdf</u> [WEB] <u>http://www.carters.ca/pub/bulletin/charity/2011/chylb254.htm</u>

Supreme Court of Canada Refuses To Grant Leave in Anglican Synod Decision

Ryan M. Prendergast.

The Supreme Court of Canada has refused to grant leave to appeal by four break-away Anglican parishes from the B.C. Court of Appeal's decision in *Bentley v. Anglican Synod of the Diocese of New Westminster* [2010 BCCA 506]. The June 16, 2011 decision does not provide reasons. The December 2009 *Charity Update* reported on the November 25, 2009 decision of the B.C. Supreme Court which ruled that the properties of four incorporated parishes were to remain within the Anglican Church of Canada ("ACC"). The four parishes had left the ACC in February of 2008 due to a dispute over doctrinal matters.

The B.C Supreme Court based its 2009 decision on the statute under which the parishes were incorporated. While the parishes were separate corporations, the act of incorporation, the making and amending of by-

laws, rules and regulations and mortgage, sale or other disposition of the property required the consent of the Executive Committee and the local bishop of the ACC. These limitations led the trial judge to conclude that they "are intrinsically part of the Diocese and must be approached in that context."

On November 14, 2010, the B.C. Court of Appeal upheld the decision of the B.C. Supreme Court on the basis that the purpose of the trusts on which the parish corporations held the church buildings and other assets is to further "Anglican ministry in accordance with Anglican doctrine." The B.C. Court of Appeal held that the General Synod of the ACC has the final word on doctrinal matters and the definition of "Anglican ministry."

This dismissal of the appeal at the Supreme Court of Canada means that the decision of the B.C. Court of Appeal remains the law. Given the B.C. Court of Appeal's reasons that the final determination of doctrine rests with the ACC, and the court's willingness to make a determination as to who has the final say in doctrinal matters where it involves a dispute over property, other Episcopal denominations within Canada will need to review and be aware of these decisions.

SCC Confirmation of Rights of Prior Trade-mark Users

Terrance S. Carter and Colin Thurston

On May 26, 2011, the Supreme Court of Canada released its decision in *Masterpiece Inc. v. Alavida Lifestyles Inc.* (2011 SCC 27), in which the court ordered that Alavida Lifestyles Inc.'s ("Alavida") registered trade-mark be expunged based on the finding that the registered trade-mark was similarly confusing to the unregistered trade-mark of Masterpiece Inc. ("Masterpiece") which had been in use since an earlier date.

Masterpiece and Alavida are both in the retirement residence industry. Alavida, operating in Ontario, had registered the trade-mark "MASTERPIECE LIVING" with the Canadian Intellectual Property Office, claiming exclusive rights to the trade-mark as of the filing date of its application, December 1, 2005. Prior to this date, Masterpiece, operating in Alberta, was already using a number of similar trade-marks, including "Masterpiece the Art of Living" and "Masterpiece the Art of Retirement Living," though none of these trade-marks were registered. Masterpiece eventually learned of Alavida's trade-mark registration for "MASTERPIECE LIVING" and brought an application in Federal Court to have the registration expunged on the grounds that the mark was confusingly similar to the unregistered trade-marks already used by Masterpiece.

In the Supreme Court's decision, Justice Rothstein clarified the test for determining confusion under the *Trade-marks Act*, and the Court unanimously overturned the decisions of the Federal Court and the Federal Court of Appeal, concluding that Alavida's registered trade-mark for "MASTERPIECE LIVING" was confusingly similar to Masterpiece's unregistered trade-marks. Because Masterpiece's use preceded Alavida's proposed use, Alavida was not entitled to registration of its trade-mark. Accordingly, it was ordered that Alavida's trade-mark registration be expunged.

For charities and not-for-profits, the case demonstrates the consequences of registering a trade-mark which is already in use by another organization, even if the organization has not registered its trade-mark with the Canadian Intellectual Property Office. In this regard, it is important that charities and not-for-profits take proactive steps to avoid unknowingly adopting another organization's trade-mark, such as ordering comprehensive trade-mark searches, which include common-law trade-marks, trade-names and domain names, prior to the registration of a proposed trade-mark.

Ontario Government Website Provides Info on the New Ontario Not-for-Profit Corporations Act, 2010

Theresa L.M. Man.

The Ontario Ministry of Consumer Services is now posting information for the non-profit sector on its website concerning the new Ontario *Not-for-Profit Corporations Act, 2010* (athttp://www.sse.gov.on.ca/mcs/en/Pages/Not_For_Profit.aspx). The Act received Royal Assent on October 25, 2010 but has not yet been proclaimed into force. Once proclaimed, the new Act will provide a modern legal framework for Ontario's approximately 46,000 not-for-profit corporations and make it easier for them to operate.

The website has five specific links to provide more information on the Act:

- the not-for-profit reform objectives;
- key features of the Act;
- organizations affected by the not-for-profit reform;
- impact on charities; and
- information for directors and officers.

Vatican adopts Laws to Prevent Terrorism Financing and Money Laundering

Terrance S. Carter.

CARTERS

On January 6, 2011 the Vatican City State announced initiatives to ensure financial transparency in accordance with international requirements. An apostolic letter signed by the Pope announced four new laws that would crack down on terrorism financing, counterfeiting, as well as money laundering, and would set up the Autorita di Informazione Finanziaria, (Financial Information Authority) to implement the new laws.

The Vatican Bank had been subjected to a freeze in September, 2010 by Italian authorities after an investigation into compliance with the European money laundering laws. The new Vatican laws came into effect on April 1, 2011. On June 2, 2011, Italian authorities released 23 million Euros (\$33 million) of frozen funds of the Vatican Bank. The initiative by the Vatican concerning these new laws underscores that no body or government is exempt from having to comply with antiterrorism and money laundering legislation and related international protocols, not even the Vatican. For more details concerning Canada's anti-terrorist legislation and the need to comply, reference should be made to <u>www.antiterrorismlaw.ca</u>.

See more at: <u>http://www.zenit.org/article-31379?l=english</u>, and http://www.zenit.org/rssenglish-32737.

IN THE PRESS

A Lasting Gift by Terrance S. Carter.

Canadian Capital Magazine, Summer 2011. [Link] <u>http://www.capitalmagazine.ca</u>

 Governments must support social enterprise: policy experts by Terrance S. Carter. Canadian Fundraising & Philanthropy, Vol. 21, No. 10, May 31, 2011. Hilborn eNews, June 7, 2011.
 [Link] http://www.charityinfo.ca/articles/governments-must-support-social-enterprise

Ontario Charities and Not-for-Profits Will Need to Meet Accessibility Standards in 2012 by Terrance S. Carter.

Charitable Thoughts, Ontario Bar Association, Vol. 14, No. 3, June 2011. [Link] <u>http://www.oba.org/en/pdf/sec_news_cha_jun11_a1_carter_access1.pdf</u>

Ontario Court of Appeal Considers Employee Expectations of Privacy in Information Stored on Work Computers by Barry Kwasniewski.

Charitable Thoughts, Ontario Bar Association, Vol. 14, No. 3, June 2011.

[Link] http://www.oba.org/en/pdf/sec_news_cha_jun11_a3_kwasniewski_privacy.pdf

RECENT EVENTS AND PRESENTATIONS

Volunteer Ottawa. n May 31, 2011, Karen Cooper shared her experience on the topic of Environment Canada's Ecological Gifts Program at an experimental 90-minute session organized across the country by Give Green Canada / Patrimoine Vert.

[Web] http://www.carters.ca/pub/seminar/charity/2011/kjc0531.htm

[PDF] http://www.carters.ca/pub/seminar/charity/2011/kjc0531.pdf

Healthcare Philanthropy: Check-Up 2011, hosted by Carters Professional Corporation and Fasken Martineau DuMoulin LLP, was held at the offices of Fasken Martineau in Toronto, Ontario, on May 31, 2011, and included the following presentations:

"Essential Charity Law Update (including the 2011 Federal Budget)" by Terrance S. Carter of Carters;

[Web] http://www.carters.ca/pub/seminar/charity/2011/tsc0531.htm

[PDF] <u>http://www.carters.ca/pub/seminar/charity/2011/tsc0531.pdf</u>

"Broader Public Sector Accountability Act, 2010 - Implications for Ontario Hospital Foundations" by Laura West of Fasken Martineau;

[Web] http://www.carters.ca/pub/seminar/charity/2011/lw0531.htm

[PDF] http://www.carters.ca/pub/seminar/charity/2011/lw0531.pdf

"The In's and Out's of the New Canada Not-for-Profit Corporations Act (CNCA) and the New Ontario Not-for-Profit Corporations Act (ONCA)" by Theresa L.M. Man of Carters; and

[Web] http://www.carters.ca/pub/seminar/charity/2011/tlm0531.htm

[PDF] http://www.carters.ca/pub/seminar/charity/2011/tlm0531.pdf

"Intercharity-Transfers Between Hospitals and Foundations - What You Need to Know" by M. Elena Hoffstein of Fasken Martineau.

[Web] http://www.carters.ca/pub/seminar/charity/2011/meh0531.htm

[PDF] http://www.carters.ca/pub/seminar/charity/2011/meh0531.pdf

Canada and Ontario Not-for-Profit Law – **How Will the Historical Changes Impact Not-for-Profit Corporations?,** an Ontario Bar Association legal education program held in Toronto on June 7, 2011, included a presentation by Theresa Man entitled "How CCA Corporations Continue Under the CNCA."

[Web] http://www.carters.ca/pub/seminar/charity/2011/tlm0607.htm

[PDF] http://www.carters.ca/pub/seminar/charity/2011/tlm0607.pdf

[Paper] http://www.carters.ca/pub/article/charity/2011/tlm0607.pdf

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

"Is a Corporate Foundation for You?" Karen J. Cooper

Environment, Gift Planning and Cutting Edge Technology. On June 9th, Karen Cooper shared her experience on the topic of Environment Canada's Ecological Gifts Program at an experimental 90-minute session organized across the country by Give Green Canada / Patrimoine Vert.

[Web] http://www.carters.ca/pub/seminar/charity/2011/kjc0609.htm

[PDF] http://www.carters.ca/pub/seminar/charity/2011/kjc0609.pdf

Canadian Association of Gift Planners (CAGP) London Roundtable hosted a talk by Terrance S. Carter entitled "Charity Law Highlights" on June 10, 2011.

[Web] http://www.carters.ca/pub/seminar/charity/2011/tsc0610.htm

[PDF] http://www.carters.ca/pub/seminar/charity/2011/tsc0610.pdf

Not-For-Profit Law Seminar hosted by RLB LLP – Chartered Accountants and Business Advisors in Guelph, Ontario, on June 22, 2011, included the following presentations:

"Update on Tax Exempt Status for Not-for-Profits" by Theresa L.M. Man, and

[Web] <u>http://www.carters.ca/pub/seminar/charity/2011/tlm0622.htm</u>

[PDF] <u>http://www.carters.ca/pub/seminar/charity/2011/tlm0622.pdf</u>

"Directors' & Officers' Liability – The Essentials and Beyond for Charities and Not-for-Profits" by Terrance S. Carter.

[Web] http://www.carters.ca/pub/seminar/charity/2011/tsc0622.htm

[PDF] http://www.carters.ca/pub/seminar/charity/2011/tsc0622.pdf

UPCOMING EVENTS AND PRESENTATIONS

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

Details and registration available at http://www.haltonnonprofitnetwork.ca/.

Canadian Society of Association Executives (CSAE) Trillium Chapter – 6th Annual Summer Summit will include a presentation 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.

http://www.csae.com/CoursesEvents/Details/tabid/176/ArticleId/1264/6th-Annual-Summer-Summit.aspx

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

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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 <u>http://www.charitylaw.ca</u>.

CONTRIBUTORS

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Terrance S. Carter –Managing Partner of Carters, Mr. Carter practices in the area of charity and not-forprofit 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 <u>www.charitylaw.ca</u>, <u>www.churchlaw.ca</u> and <u>www.antitemorismlaw.ca</u>.



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-forprofit 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*TM 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.

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Jennifer Leddy – Ms. Leddy joined Carters' Ottawa office in March 2009 to practice charity and notfor-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 (CCCB). 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-forprofit law. She is an Executive Member of both the Charity and Not-for-Profit Sections of the Ontario Bar Association and the Canadian Bar Association. In addition to being a frequent speaker at the annual *Church & Charity Law*[™] Seminar, seminars hosted by the Canadian Bar Association and the Ontario Tax Foundation, Ms. Man has also written articles for *The Lawyers Weekly*, *The Philanthropist*, *Planned Giving Pulse*, *International Journal of Civil Society Law*, *The Bottom Line*, *Canadian Fundraiser eNews*, and *Charity Law Bulletin*.







Ryan Prendergast - Ryan 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- 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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