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CHARITY LAW UPDATE NOVEMBER/DECEMBER 2012

EDITOR: TERRANCE S. CARTER

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

NOVEMBER/DECEMBER 2012 HOLIDAY ISSUE

SECTIONS

Recent Publications and News	
Releases	2
In the Press	16
Recent Events and Presentations	16
Upcoming Events and Presentations	17
Contributors	17
Acknowledgements, Errata and other Miscellaneous Items	19

HIGHLIGHTS

Bill C-458 Supporting Canada's Charitable Sector Introduced Directors and Officers Insurance: Know Your Coverage and Options CRA News
Practical Considerations Involving the CRA Guidance on Fundraising CRA Update on NPO Audit Project
NPO Limits on Profit Earning
Federal Government Recognizes National Philanthropy Day
NPO Limits on Investment Income
Top Court to Hear Case on Withdrawal of Life-Sustaining Treatment
New CRA Guidance on Consequences of Returning Donated Property
Court Provides Comments to Trustees Pursuing Litigation
Supreme Court Decision on Workplace Computers and Privacy
Copyright Modernization Act Proclaimed Into Force
Proposed Income Tax Act Amendments Impacting Labour Organizations
FATF Plenary Calls for No Harm to Non-Profits' Legitimate Activities
U.S. Supreme Court Denies Certiorari for HL Five
19th Annual Church & Charity Law™ Seminar Materials Now Available Updated Risk Management Checklists for Charities and for Not-for-Profits

Ottawa Region Charity & Not-for-Profit Law Seminar

Hosted by Carters Professional Corporation in Nepean, Ontario.

Thursday, February 7, 2013.

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

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RECENT PUBLICATIONS AND NEWS RELEASES

Bill C-458 Supporting Canada's Charitable Sector Introduced

Terrance S. Carter.

Peter Braid, Member of Parliament for Kitchener-Waterloo, introduced Private Member's Bill C-458 *Supporting Canada's Charitable Sector* on October 31, 2012. If passed, the Bill would extend the tax deadline for charitable donations and would establish the last week of February each year to be National Charities Week. Bill C-458 proposes moving the tax deadline for charitable donations from December 31 to the end of February so that taxpayers who make charitable donations in the first 60 days of the new year can credit those donations against their income from the previous year. The expectation is that postponing the deadline from the time of year when people are thinking about holidays until the time when people are strategising about their finances would cause people to donate more. Meanwhile, MP Braid believes a National Charities Week would "highlight and celebrate our charitable sector and make Canadians proud to support the important work they do in our communities."

The bill can be accessed online at

http://www.parl.gc.ca/legisinfo/BillDetails.aspx?Language=E&Mode=1&billId=5794262.

Directors and Officers Insurance: Know Your Coverage and Options

Barry W. Kwasniewski in Charity Law Bulletin No. 293, November 27, 2012.

When people agree to serve as volunteers on charitable or not-for-profit boards of directors, potential liability issues are probably not forefront in their minds. Of course, this is understandable. If people were consumed with worry over potential legal liability issues, there would be many more vacant positions on charitable and not-for-profit boards across Canada. However, once a person volunteers to serve on a board and gets involved in the challenging issues and decisions that directors often face, potential liability for the decisions they make will become important. Directors and officers liability insurance is an important shield to protect directors, officers, and even other volunteers and employees, from potential personal legal liabilities.

Unlike some other common forms of insurance policies, such as automobile insurance, which are regulated by statute, D&O insurance is not standard, and coverage will vary substantially between insurers. This *Charity Law Bulletin* outlines some important matters to discuss with your insurance broker or consultant in securing the right D&O insurance policy for your organization.

Read More: [PDF] <u>http://www.carters.ca/pub/bulletin/charity/2012/chylb293.pdf</u> [WEB] <u>http://www.carters.ca/pub/bulletin/charity/2012/chylb293.htm</u>

CRA News

Karen J. Cooper.

The Animals' Charity Charitable Status Revoked

On November 10, 2012, The Animals' Charity (the "Organization") had its charitable status revoked pursuant to subsection 168(1) of the ITA, for failing to devote its resources exclusively to its own charitable activities when it participated in a promoted donation arrangement. Following a 2008 audit, Canada Revenue Agency determined that the Organization issued donation receipts in excess of \$9 million for cash and shares that had allegedly been traded on the Frankfurt Stock Exchange. The Organization was found to have paid fundraising fees to the donation arrangement promoter, Innovative Gifting Inc., that were equivalent to 90% of the cash donations the Organization had received. CRA stated in their reasons for revocation that the tax receipts issued were for non-qualifying property, that the Organization failed in demonstrating that it had received the tax-receipted property and that the Organization did not report the fair market value of the purportedly gifted property. The Organization was also found to have "operated for the non-charitable purpose of promoting a donation arrangement and for the private benefit of the donation arrangement promoters."

Charities are reminded of the importance of not participating in tax-shelter related donation arrangements. For more information on this decision see: <u>http://www.cra-</u>arc.gc.ca/nwsrm/rlss/2012/m11/nr121109c-eng.html

The Latitude Foundation Charitable Status Revoked

On November 10, 2012, The Latitude Foundation (the "Foundation") had its charitable status revoked pursuant to subsection 168(1) of the ITA. An audit of the Foundation revealed that it had participated in a promoted donation arrangement with the University of the West Indies, Mona Campus, a university prescribed in Schedule VIII of the Income Tax Regulations, resulting in over \$15.4 million of donation receipts being improperly issued. CRA determined that substantially all of the cash donated to the Foundation was used to purchase life insurance policies with proceeds benefitting persons related to the Foundation's directors. CRA took the view that the cash for which the tax receipts were issued did not legally qualify as gifts and that the Foundation operated for the private gain of its directors and the promoters of the donation arrangement. CRA revoked the Foundation's charitable status for not

devoting all of its resources to its charitable activities, failing to accept valid gifts and for failing to meet its disbursement quota.

For more information on this decision see: <u>http://www.cra-arc.gc.ca/nwsrm/rlss/2012/m11/nr121109-eng.html</u>

Universal Community Help Charitable Status Revoked

On November 10, 2012, Universal Community Help (the "Corporation") had its charitable status revoked pursuant to subsection 168(1) of the ITA. Pursuant to an audit by CRA, the Corporation was found to have failed to properly maintain their books and records as they did not maintain duplicate copies of donation receipts and they were unable to determine the total amount of receipts that they had issued. CRA's audit also revealed that the Corporation had \$448,023 more reported revenues than bank deposits for the 2009 and 2010 fiscal periods, and that they had failed to report \$347,435 worth of issued donation receipts for the 2007 to 2010 fiscal periods.

Charities are reminded of the importance of maintaining proper documentation and complying with all of the provisions set out under the ITA. For more information on this decision see: <u>http://www.cra-arc.gc.ca/nwsrm/rlss/2012/m11/nr121109b-eng.html</u>

CRA Committed to Preserving Integrity of Canada's Tax System

Canada Revenue Agency (CRA) is taking proactive steps to protect Canadian taxpayers from gifting tax shelter schemes. Since 2006, the number of participants in these schemes has decreased from approximately 50,000 to 10,000. Even so, this still represents an estimated \$300 million in annual "donations", and \$85 million in annual tax refunds. CRA is reminding taxpayers that if a charity is issuing a tax receipt that is of a higher value than the donation itself, the donation is most likely not valid. Starting with the 2012 tax year, CRA will be putting on hold the assessment of any taxpayer income tax returns where there is a claim for a credit by a participating gifting tax shelter scheme. This will allow for an audit of the tax shelter to occur, which CRA estimates will be a two year process. Individual taxpayers wishing to have their returns assessed sooner may do so by removing their claim for credit.

Charities are reminded of the possibility of incurring third-party penalties - fines imposed on anyone making false statements involving tax shelters and other schemes. These penalties can be applied if a charity has counseled or assisted someone in filing a false return or who chooses to ignore the

submission of false tax information. For more information on third party penalties, see online at: http://www.cra-arc.gc.ca/E/pub/tp/ic01-1/ic01-1-e.html.

For more information on gifting tax shelters, see online at: <u>http://www.cra-</u>arc.gc.ca/nwsrm/rlss/2012/m10/nr121030-eng.html

Updates to CRA Tax Shelter Forms

In order to aid in the identification of tax shelters, CRA has updated the information in their Tax Shelter Information Statements and Returns. Tax shelter promoters must apply for a tax shelter Identification Number before they may sell, issue or accept consideration using Form T5001 - Application for Tax Shelter Identification Number and Undertaking to Keep Books and Records (available online at: http://www.cra-arc.gc.ca/E/pbg/tf/t5001/). A Tax Shelter Promoter must also produce a Form T5003 -(available of Tax Shelter Information Statement online at: http://www.craarc.gc.ca/E/pbg/tf/t5003/README.html), and must file a T5003 Summary -Statement of Tax Shelter Information, for the calendar year of sales designated on their T5001, on or before the last day of the February of following calendar vear (available online at: http://www.craarc.gc.ca/E/pbg/tf/t5003sum/README.html).

Updates to CRA Publications

CRA has issued a new Guidance on "General Requirements for Charitable Status" (Reference #CG-017). The Guidance discusses the general requirements an organization must meet in order to qualify for charitable registration under the *Income Tax Act* and references several important CRA policy and guidance documents that all charities should be aware of. For more information, see online at: http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/gnrlrqrmnts-eng.html.

CRA – Charities and Giving, has updated its website with a more detailed description of the "Consequences of non-filing" of the Annual Information Return (Form T3010). Charities are reminded that non-filing can result in a revocation of their charitable status.

For more information, see online at: <u>http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rtrn/cnsqncs-eng.html</u>.

PAGE 6 OF 21 November/December 2012

Practical Considerations Involving the CRA Guidance on Fundraising

Terrance S. Carter in *Charity Law Bulletin* No. 296, November 29, 2012.

Fundraising is a major compliance and public relations issue for registered charities that has unfortunately received a disproportionate amount of attention from the media. As such, the charitable sector was anxiously awaiting the revised *Fundraising by Registered Charities Guidance: CG-013* (the "New Guidance"), which was released by Canada Revenue Agency ("CRA") in April, 2012. The New Guidance is a significant improvement over previous versions, but still remains a challenging document to work with. Now six months after its release, some of the practical considerations of the New Guidance are becoming clearer. This *Charity Law Bulletin* discusses some of those considerations, and specifically the importance of ensuring a proper allocation of financial expenditures with regards to tracking fundraising expenses, as well as the importance of understanding the nuances in calculating the fundraising ratio.

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[PDF] <u>http://www.carters.ca/pub/bulletin/charity/2012/chylb296.pdf</u> [WEB] <u>http://www.carters.ca/pub/bulletin/charity/2012/chylb296.htm</u>

CRA Update on NPO Audit Project

Karen J. Cooper.

CRA has provided its view on the NPO Audit Project (Document #2012-040885117), after an organization wrote to CRA requesting confirmation that CRA had changed its approach to auditing organizations claiming the exemption from tax provided by paragraph 149(1)(1) of the *Income Tax Act* ("ITA").

The three-year Non-Profit Organization Risk Identification Project began in 2010 in order for CRA to determine the level of compliance within the NPO sector. Following these audits, "education letters" were issued to some organizations in which CRA expressed concerns with the NPO status of the organization and reminded them of the need to comply with the criteria found in paragraph 149(1)(1) of the ITA. CRA has confirmed, however, that subsequent to discussions with the NPO sector, it has discontinued the issuance of the "education letters". Even so, NPO's must still remember CRA's concerns with compliance by the sector and act accordingly.

In order for the income of a paragraph 149(1)(l) organization to be tax exempt, an organization must be a club, society or association; not be a charity; be organized and operated exclusively for social welfare, civic improvement, pleasure, recreation or any other purpose except profit; and have its income not be

available for the personal benefit of a proprietor, member or shareholder, unless the proprietor, member or shareholder is an association which has as its primary purpose and function the promotion of amateur athletics in Canada.

For more information, see Interpretation Bulletin IT-496R, "Non-Profit Organizations" online at: <u>http://www.cra-arc.gc.ca/E/pub/tp/it496r/</u>.

NPO Limits on Profit Earning

Terrance S. Carter.

CRA recently expressed its views in respect to whether an organization met the requirements of paragraph 149(1)(1) of the *Income Tax Act* for a not-for-profit organization (NPO) when there was a concern whether they were indeed operating for a reason other than profit (document #2011-0427611I7). In order for an organization to qualify as an NPO under paragraph 149(1)(1), it must be exclusively organized and operated for a purpose other than profit.

In the case at hand, the Organization had been calculating its "reasonable reserves" using a calculation entitled the "Robertson Equity Reasonableness Calculation", which the Organization had been using since 1984 as per the direction given to them by the Director General of the Audit Directorate (note: the NPO in question had separately requested a review of the calculation by the Compliance Programs Branch, and CRA's view on this NPO's qualification under s. 149(1)(1) was being done outside of that review). After evaluating the information presented to it, CRA determined that the Organization's profits were consistently increasing every year, that its profits were not incidental, and that its profit margins were such that the Organization had a for profit purpose. The Organization's member's equity had also increased over the years such that CRA believed that the Organization could be accumulating funds in order to earn tax-exempt investment income. As such, CRA concluded that the Corporation had not been operating for a purpose other than profit and, thus did not meet the requirements of paragraph 149(1)(1) of the *Income Tax Act*.

NPOs are reminded that while they may earn a profit, the profit must be incidental and arise from activities directly connected to its not-for-profit objectives. Also, NPOs are reminded that they may not retain excess funds in order to invest the funds and earn income.

For more information on profit-earning see Interpretation Bulletin IT-496R, "Non-Profit Organizations" online at: <u>http://www.cra-arc.gc.ca/E/pub/tp/it496r/</u>.

PAGE 8 OF 21 November/December 2012

Federal Government Recognizes National Philanthropy Day Esther S.J. Oh.

Canada has become the first country in the world to recognize National Philanthropy Day. As reported in the October 2012 *Charity Law Update*, Senator Terry Mercer presented Bill S-201 – *An Act Respecting A National Philanthropy Day* to the Standing Committee on Canadian Heritage last month. Since then, the Bill has passed Third Reading in the House of Commons and received Royal Assent. November 15 will henceforth be an official day to honour the philanthropic work of charities, donors, volunteers, corporations and foundations in Canada.

Bill S-201may be viewed at:

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http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=5861802&File= <u>4</u>

NPO Limits on Investment Income

Terrance S. Carter.

CRA recently provided its views on whether an organization qualified as a non-profit-organization ("NPO") under paragraph 149(1)(1) of the *Income Tax Act* given that it earned investment income (document #2011-0408851I7). The organization in question was formed by its members to serve their interests. Money collected from users of the Organization was charged a commission, with the net profits being distributed to the Members at specified times throughout the year. Given that there was a difference in time between the inflow and outflow of money, the Organization invested the collected money until distribution to the Members occurred. Income from the investments was then used to defray the expenses of the Organization and to keep the commissions charged to its Members as low as possible. The concern of the Organization was whether the expectation of this income affected their ability to claim NPO status, especially with the organization's desire to minimize the commissions charged to its Members.

In order to qualify as an NPO under paragraph 149(1)(1), an organization must be organized and operated exclusively for a purpose other than profit, and none of its income can be available for the personal benefit of its members. Courts have allowed NPOs to earn a profit as long as it is incidental and arises from activities directly connected to the NPOs not-for-profit objectives. In this situation, CRA stated that since the Organization's reasons for distributing the amounts collected from users to Members was due to non-profit reasons, it was reasonable to expect that the funds would be invested.

However, the profit from these funds could only be used to help meet the operating expenses of the Organization and not for increasing the Organization's ability to generate investment income.

The Organization did not give CRA information on whether they had a reserve, but CRA advised that an NPO may maintain a reasonable reserve as long as it is used for a specific capital project or an identifiable operating purpose. Building a reserve for investment purposes would not qualify, but would be considered a for-profit purpose and would make an organization unable to meet the requirements for an NPO under paragraph 149(1)(1) of the *Income Tax Act*. If however, the investment income was the income of the members and not of the organization (i.e. the organization was an agent of the members with respect to the income), then the investment income would be taxed in the hands of the members and would not affect the tax status of the organization as an NPO.

Top Court to Hear Case on Withdrawal of Life-Sustaining Treatment

Jennifer M. Leddy.

On December 10, 2012, the Supreme Court of Canada will hear a significant case about who decides when life-sustaining treatment may be withdrawn. The patient's physicians maintain that they can withdraw life-sustaining treatment without the consent of the substitute decision maker if it is no longer medically indicated and that to hold otherwise would encourage patients to insist on treatments that are medically futile. The patient's wife, who is his substitute decision-maker, takes the position that the medical measures are of benefit to her husband because they are keeping him alive and that he is entitled to remain alive until she thinks that there is no hope for his recovery.

In the *Rasouli* case, the Supreme Court of Canada will determine whether the physicians can remove his life-sustaining treatment solely on the basis of their medical opinion or if they must obtain the consent of the substitute decision maker and, failing that, a ruling from the Consent and Capacity Board established under the Ontario *Health Care Consent Act*. The case is of particular interest to health care and religious charities and to those who are concerned about and reflect upon end-of-life decisions. For more background about the facts, the issues and decisions in the courts below, see *Charity Law Bulletin* No. 256 at http://www.carters.ca/pub/bulletin/charity/2011/chylb256.htm.

PAGE 10 OF 21 November/December 2012

New CRA Guidance on Consequences of Returning Donated Property Ryan M. Prendergast.

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On October 19, 2012, CRA recently released new guidance concerning the return of a gift to a donor titled CG-016 *Consequences of Returning Donated Property* (the "Guidance"). The Guidance relates to new provisions of the *Income Tax Act* (Canada) which were introduced when the 2011 federal budget was introduced on March 22, 2011 and reintroduced on June 6, 2011. The provisions came into effect on the date of the budget. The amendments to the ITA clarified the tax consequences where a gift is returned to a donor and expands CRA's ability to reassess those donors. The Guidance provides further details regarding how CRA will apply these provisions and steps qualified donees, including registered charities, must take when returning donated property if the value of that returned property is greater than \$50.

The Guidance states that qualified donees that have issued donation receipts for property, and have returned the property any time after March 21, 2011, must file an information return with CRA, if the fair market value of the returned property is greater than \$50. This information return must be filed within 90 days of the property being returned. The property returned may be the same property that was donated, property that is identical to the donated property, or a substitute for the donated property.

The Guidance also states that it does not address the issue of whether or not a qualified donee can legally return a gift. This is because the return of a gift could still amount to breach of trust at common law or under provincial legislation and may result in personal liability for the directors or trustees. Registered charities are also cautioned in the Guidance that they are generally not able to return a gift as CRA could consider the charity to be providing an undue benefit, or be found to be giving a gift to a non-qualified donee which could result in sanctions up to and including, the revocation of charitable status. In this regard, given the risks for both the directors and the charity itself, it is recommended that the charity seek legal advice prior to returning donated property. However, in circumstances where it is permissible to return a gift, the Guidance sets out the content of the information return and provide a helpful sample information return for reference where a qualified donee must file the information return. For more information see: http://www.cra-arc.gc.ca/chrts-gyng/chrts/plcy/cgd/rtrng-dntd-prpty-eng.html

Court Provides Comments to Trustees Pursuing Litigation

Ryan M. Prendergast and Terrance S. Carter in Charity Law Bulletin No. 294, November 28, 2012.

On May 7, 2012, the Ontario Superior Court of Justice issued an unreported decision concerning costs in the matter of *Highfield v. Murray* (the "Costs Decision"). The Costs Decision followed an earlier unreported decision of the Ontario Superior Court of Justice on November 25, 2011 in the same matter (the "Trial Decision"). The decisions involved a dispute concerning the trustees of an unincorporated rural church knows as Crossroads Christian Fellowship. Since the dispute involved an unincorporated church, the individuals involved in the dispute were trustees in accordance with the *Religious Organizations Land Act*, R.S.O.1990, c. R.23, which permits unincorporated religious organizations to hold land for purposes enumerated in the act. The decisions provide guidance concerning behaviour that would constitute a breach of trust, together with guidance for trustees involved in litigation which would apply equally to directors of incorporated charities. This *Charity Law Bulletin* summarizes the decisions and provides comments on what trustees or directors need to know as a result of these unreported cases.

Read More:

[PDF] <u>http://www.carters.ca/pub/bulletin/charity/2012/chylb294.pdf</u> [WEB] http://www.carters.ca/pub/bulletin/charity/2012/chylb294.htm

Supreme Court Decision on Workplace Computers and Privacy

Barry W. Kwasniewski in Charity Law Bulletin No. 295, November 29, 2012.

Do employees have a reasonable expectation of privacy with respect to their personal information stored on workplace computers? This is a complex legal question, affecting the rights of charities and not-forprofits in their capacities as employers. In the recently released Supreme Court of Canada decision *R. v. Cole*, Canada's highest court affirmed that employees can reasonably expect at least some privacy in the personal information they may generate on their workplace computers. As explained below, the *Cole* decision arose in relation to a criminal proceeding. As such, the decision does not have direct application to private sector employees, including those of charities and not-for-profits. However, the decision does provide useful insight regarding how courts in Canada may approach the issues of workplace computer privacy. This *Charity Law Bulletin* will review the *Cole* decision, and provide guidance on how employees may address the issues of workplace computers and employee privacy concerns.

Read More:

[PDF] <u>http://www.carters.ca/pub/bulletin/charity/2012/chylb295.pdf</u> [WEB] <u>http://www.carters.ca/pub/bulletin/charity/2012/chylb295.htm</u>

Copyright Modernization Act Proclaimed Into Force Colin J. Thurston.

On November 7, 2012, the Governor General in Council proclaimed into force most provisions of Bill C-11, *An Act to amend the Copyright Act (Copyright Modernization Act)*. For details on how Bill C-11 may affect charities, see the March 2012 *Charity Law Update*.

To read Bill C-11 in its entirety, go to: <u>http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=5697419</u>.

Proposed Income Tax Act Amendments Impacting Labour Organizations

Ryan M. Prendergast.

On March 14, 2012, Bill C-377, *An Act to amend the Income Tax Act (requirements for labour organizations* (the "Bill"), passed second reading at the House of Commons and has been referred to the Standing Committee on Finance (the "Committee"). The Bill is a private members bill being put forward by Russ Hiebert, Member of Parliament for South Surrey—White Rock—Cloverdale. The Bill will potentially impact not-for-profit associations which are currently exempt from tax on the basis that they are "labour organizations" under paragraph 149(1)(k) of the *Income Tax Act* (Canada) ("ITA").

The Bill will amend the ITA by adding a definition for "labour organization" to a new section 149.01, which will include "a labour society and any organization formed for purposes which include the regulation of relations between employers and employees, and includes a duly organized group or federation, congress, labour council, joint council, conference, general committee or joint board of such organizations." Subsection 149.01(2) of the ITA will require every "labour organization" as defined in subsection 149.01(1) to file a public information return with the Minister of Finance within 6 months of the end of its fiscal period in a manner similar to which registered charities are currently required to file a T3010 annual information return. The Bill will also allow the public information return to be made available to the public on Canada Revenue Agency's website, similar to the manner in which the T3010 is displayed to the public. Failure to file the information return can expose the labour organization to a fine of \$1,000 for each day that it fails to comply with amended section 149.01.

However, the public information return contemplated by the Bill is extremely broad including "gross salary... benefits, vehicles, bonuses, gifts, service credits...any other consideration provided..." to officers, directors, and trustees, as well as disbursements on political activities, lobbying activities, etc. The ITA currently contains no definition for "labour organization" but under paragraph 149(1)(k) of the ITA "labour organizations" are exempted from tax similar to non-profit organizations or boards of trade.

It is unclear how the new definition of "labour organization" will be interpreted in light of existing interpretations concerning the term under the ITA. It is anticipated that amendments will be made to the Bill in order to clarify its application. Organizations that could be impacted by the Bill should follow the legislation as it progresses through the legislature in order to determine if and when the legislation will apply to them.

The text of the Bill can be found online at: <u>http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Mode=1&billId=5295287&Language=E</u>.

FATF Plenary Calls for No Harm to Non-Profits' Legitimate Activities

Nancy E. Claridge.

The Financial Action Task Force Plenary held in Paris, France, October 17-19, 2012, called for ongoing dialogue with the private sector and civil society in its preparation for the implementation of the revised Recommendations and the fourth round of mutual evaluations. The mutual evaluation process is the process by which all countries in the FATF are assessed for compliance with the revised Recommendations. The next round of assessments is scheduled to commence in the fourth quarter of 2013. Many of the FATF Recommendations are criticized for inviting "excessive state regulation and surveillance, which restricts the activities and thus the operational and political space of civil society organizations." The Plenary indicated that "it will be important that regulations and actions in this area do not harm the legitimate activities" of non-profit organizations.

U.S. Supreme Court Denies Certiorari for HL Five

Nancy E. Claridge.

In a decision October 29, 2012, the United States Supreme Court denied certiorari for the so-called "Holy Land Five", five top officials of the U.S. charity Holy Land Foundation, effectively bringing an end to the appeal process of one of the most significant anti-terrorism prosecutions in U.S. history. Denying certiorari means the Court refused to accept the appeal and will not rule on it.

The Holy Land Five – Shukri Abu Baker, Mohammad el-Mazain, Ghassan Elashi, Mufid Abdulqader, Abulrahman Odeh – are currently serving sentences ranging from 15 to 65 years for providing "material support" for terrorism. The Holy Land Five claimed they were providing humanitarian aid. The case is significant in that it greatly expanded the scope of liability for charities and directors of charities in the U.S. working in conflict zones, as the government did not claim that the charity or the officials provided direct support to a terrorist group, but instead that they provided support to local "zakats" or charities that were alleged to be affiliated with a terrorist group. The Holy Land Five were convicted even though

the zakats were not on any watch list and were recipients of aid from the United States Agency for International Development.

In petitioning the Supreme Court, the Holy Land Five were hoping to challenge the prosecution's reliance on hearsay evidence, as well as the testimony of a foreign intelligence agent who used a pseudonym while testifying, denying the defendants the right to challenge the credibility of the witness.

19th Annual Church & Charity Law™ Seminar Materials Now Available

Mississauga, Ontario, Thursday, November 15, 2015.

The 19th Annual *Church & Charity Law*TM Seminar hosted by Carters Professional Corporation in Mississauga, Ontario, on November 15, 2012, sold out early and was attended by more than 900 representatives from the sector, including leaders of charities and churches, as well as government officials, accountants and lawyers. Designed to assist churches and charities in understanding developing trends in the law in order to reduce unnecessary exposure to legal liability, the *Church & Charity Law*TM Seminar has been held annually since 1994. Although the topics are directed at churches and charities, many aspects of the presentations will also be of interest to not-for-profit organizations. All handouts and presentation materials are now available free of charge at the links below in the order as presented, with the web links being Power Point slide shows.

Seminar and Speaker Details and Acknowledgements

[PDF] http://www.carters.ca/pub/seminar/chrchlaw/2012/handout.pdf

2012 Essential Charity Law Update

Ryan M. Prendergast, Carters Professional Corporation, Orangeville [WEB] <u>http://www.carters.ca/pub/seminar/chrchlaw/2012/rmp20121115.htm</u> [PDF] <u>http://www.carters.ca/pub/seminar/chrchlaw/2012/rmp20121115.pdf</u>

How to Get Ready for the New Ontario Not-for-Profit Corporations Act, 2010 Theresa L.M. Man, Carters Professional Corporation, Orangeville [WEB] <u>http://www.carters.ca/pub/seminar/chrchlaw/2012/tlm20121115.htm</u> [PDF] <u>http://www.carters.ca/pub/seminar/chrchlaw/2012/tlm20121115.pdf</u>

Use It or Lose It: How Churches and Charities Can Protect Their BrandColin J. Thurston, Carters Professional Corporation, Orangeville[WEB]http://www.carters.ca/pub/seminar/chrchlaw/2012/cjt20121115.htm[PDF]http://www.carters.ca/pub/seminar/chrchlaw/2012/cjt20121115.pdf

Playing by the Rules: Political Activities Fair Game for Charities

Karen J. Cooper, Carters Professional Corporation, Ottawa [WEB] http://www.carters.ca/pub/seminar/chrchlaw/2012/kjc20121115.htm [PDF] http://www.carters.ca/pub/seminar/chrchlaw/2012/kjc20121115.pdf

PAGE 15 OF 21 November/December 2012

CARTERS

Workplace Harassment: What Churches and Charities Need to KnowBarry W. Kwasniewski, Carters Professional Corporation, Ottawa[WEB] http://www.carters.ca/pub/seminar/chrchlaw/2012/bwk20121115.htm[PDF] http://www.carters.ca/pub/seminar/chrchlaw/2012/bwk20121115.htm

Understanding CRA's New Community Economic Development Policy *Terrance S. Carter, Carters Professional Corporation, Orangeville* [WEB] <u>http://www.carters.ca/pub/seminar/chrchlaw/2012/tsc20121115.htm</u> [PDF] <u>http://www.carters.ca/pub/seminar/chrchlaw/2012/tsc20121115.pdf</u>

Recent Judicial Developments in Fiduciary Duties for Charities *Kenneth R. Goodman, Director Legal Services, Office of the Public Guardian and Trustee* [WEB] http://www.carters.ca/pub/seminar/chrchlaw/2012/krg20121115.htm

[PDF] http://www.carters.ca/pub/seminar/chrchlaw/2012/krg20121115.pdf

Police Reference Checks and Other Practical Issues Regarding Child Protection

Esther S.J. Oh, Carters Professional Corporation, Mississauga [WEB] <u>http://www.carters.ca/pub/seminar/chrchlaw/2012/eso20121115.htm</u> [PDF] <u>http://www.carters.ca/pub/seminar/chrchlaw/2012/eso20121115.pdf</u>

Avoiding the Pitfalls of an Online Presence for Churches and CharitiesNancy E. Claridge, Carters Professional Corporation, Orangeville[WEB] http://www.carters.ca/pub/seminar/chrchlaw/2012/nec20121115.htm[PDF] http://www.carters.ca/pub/seminar/chrchlaw/2012/nec20121115.htm

CRA and Registered Charities: What You Need to Know *Cathy Hawara, Director General, Charities Directorate, Canada Revenue Agency* [WEB] <u>http://www.carters.ca/pub/seminar/chrchlaw/2012/ch20121115.htm</u> [PDF] http://www.carters.ca/pub/seminar/chrchlaw/2012/ch20121115.pdf

Updated Risk Management Checklists for Charities and for Not-for-Profits

by Terrance S. Carter and Jacqueline M. Demczur, updated October 2012.

The popular Legal Risk Management Checklist for Charities and Legal Risk Management Checklist for

Not-for-Profit Organizations, available free of charge through our websites, have been updated as of

October 2012.

Charity Checklist: <u>http://www.carters.ca/pub/checklst/charity.pdf</u> Not-for-Profit Checklist: <u>http://www.carters.ca/pub/checklst/nonprofit.pdf</u>



IN THE PRESS

Lawsuit against corporate sponsors dismissed by Barry Kwasniewski. Hilborn eNews, November 15, 2012.
[Link] http://charityinfo.ca/articles/Lawsuit-against-corporate-sponsors-dismissed

Foundation in Breach of Fiduciary and Trust Obligations by Ryan M. Prendergast and Terrance S. Carter.

Charitable Thoughts, Ontario Bar Association, *Vol 16, No. 1, November 2012*. [Link] http://www.oba.org/en/pdf/sec_news_cha_oct12_Foundation_Prendergast_Carter.pdf

Transfer of ownership of a new life insurance policy to a charity by Karen J. Cooper. *Gift Planning in Canada, October 2012 (Hilborn).*

RECENT EVENTS AND PRESENTATIONS

The 19th Annual *Church & Charity Law*TM **Seminar** was held on Thursday, November 15, 2012, at the Portico Community Church in Mississauga, Ontario, with several guest speakers. Designed to assist churches and charities in understanding developing trends in the law in order to reduce unnecessary exposure to legal liability, the *Church & Charity Law*TM Seminar has been held annually since 1994. Although the topics are directed at churches and charities, many aspects of the presentations will also be of interest to not-for-profit organizations. All handouts and presentation materials are now available free of charge at the link below

Materials available at http://www.carters.ca/pub/seminar/chrchlaw/2012/index.htm.

Canadian Construction Association (CCA) Conference held in Montreal on October 25, 2012, included a presentation by Karen J. Cooper entitled "Tax Policy Issues and Not-for-Profits: What Your Association Needs to Know."

[Web] <u>http://www.carters.ca/pub/seminar/charity/2012/kjc1025.htm</u> [PDF] <u>http://www.carters.ca/pub/seminar/charity/2012/kjc1025.pdf</u>

Imagine Canada's Charity Tax Tools Webinar was a presentation by Theresa L.M. Man on October 31, 2012, entitled "CNCA: Continuance and More."

Watch the webinar at <u>https://docs.google.com/open?id=0B_Y0ygc_-I1Sks4OHRIN0JpTjg</u>.

Canadian Society of Association Executives (CSAE) National Conference & Showcase on November 3, 2012, included a presentation by Karen J. Cooper entitled "Update and Maintaining Your NPO Status."

[Web] <u>http://www.carters.ca/pub/seminar/charity/2012/kjc1103.htm</u> [PDF] <u>http://www.carters.ca/pub/seminar/charity/2012/kjc1103.pdf</u>

An Ontario Bar Association Professional Development Program held in Toronto on November 13, 2012, included a panel discussion with Terrance S. Carter and M. Elena Hoffstein of Fasken Martineau DuMoulin LLP on Practical Issues Arising from the CRA Guidance on Fundraising.

[Web] <u>http://www.carters.ca/pub/seminar/charity/2012/tscmeh1113.htm</u> [PDF] http://www.carters.ca/pub/seminar/charity/2012/tscmeh1113.pdf

AFP Congress 2012 held in Toronto included Terrance S. Carter and M. Elena Hoffstein of Fasken Martineau DuMoulin LLP in informal "Ask the Expert" sessions on November 19 and 20, 2012.

World Vision Canada – Law Day 2012 included a presentation by Terrance S. Carter entitled "Essential Charity Law Update" on November 27, 2012.

[Web] <u>http://www.carters.ca/pub/seminar/charity/2012/tsc1127.htm</u> [PDF] <u>http://www.carters.ca/pub/seminar/charity/2012/tsc1127.pdf</u>

Institute of Corporate Directors – Breakfast Seminar on November 28, 2012, included Terrance S. Carter participating in a panel discussion on the CNCA and ONCA.

UPCOMING EVENTS AND PRESENTATIONS

Imagine Canada's Charity Tax Tools Webinar will be a presentation by Terrance Carter on December 4, 2012 (postponed from October 16), entitled "An Extended Overview of Directors and Officers Duties and Liabilities."

Register at http://www.imaginecanada.ca/civicrm/event/info?reset=1&id=153.

Chartered Accountants of Ontario PD Seminar - Not-for-Profit Organizations and Registered

Charities will include Karen J. Cooper as a course leader on January 15, 2013. Register at <u>https://ebusiness.icao.on.ca/pd/pdCourseFilter_Detail.aspx?coursecode=18205OT3</u>.

The Ottawa Region *Charity & Not-for-Profit Law*TM **Seminar** will be held in the Ottawa Region on Thursday, February 7, 2013.

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

PAGE 18 OF 21 November/December 2012

CONTRIBUTORS

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CARTERS

Dean E. Blachford – Mr. Blachford graduated from McGill University in 2012 with degrees in civil and common law. During his legal studies, Mr. Blachford coordinated McGill's High School Outreach Program which provides legal and civic education to underprivileged youth. He also proudly served on the board of directors for Montreal's Mile End Community Mission. Prior to his legal studies, he spent two years teaching grade four in Inukjuak, Nunavik. Before leaving the North, he co-founded a summer program, called Proud Reunions, for children and youth in the region. Mr. Blachford continues to oversee the program, which has affected hundreds of young people.











region. Mr. Blachford continues to oversee the program, which has affected hundreds of young people. **Tanya L. Carlton** – Ms. Carlton graduated from the University of Ottawa, Faculty of Law in 2011. Prior to attending law school, Tanya earned a B.Sc. (Hons.) in Biochemistry from Bishops University and a B.Ed. from the University of Western Ontario. After teaching high school math and chemistry for several years, she took a hiatus and started a family. Throughout this time, she maintained her status as an Ontario Certified Teacher and served as an elected Municipal Councillor. Before articling with Carters, Ms. Carlton gained legal experience during the summers as a research assistant for several Ottawa-based teaching lawyers.

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, Past Chair of the CBA National Charities and Not-for-Profit Section, is recognized as a leading expert by *Lexpert* and *The Best Lawyers in Canada*, is consulting editor of *Charities Legislation and Commentary* (LexisNexis, 2013), 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 a partner 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 is recognized as a leading expert by *Lexpert* and *Best Lawyers* practicing 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).

Kenneth R. Goodman - Deputy Public Guardian and Trustee - Director Legal Services, Ken was called to the Ontario Bar in 1982. He was in private practice before joining the Ministry in 1990 and joined the Office of the Public Guardian and Trustee in 1998. While in private practice Mr. Goodman was actively involved as a director and officer of several charities. He is a member of the OBA (Ontario Bar Association) Charity and Not-For-Profit Law Section Executive. In 2007, he received the AMS John Hodgson Award, from the OBA, for contribution and development of law in the charitable sector. He has written and lectured on family law, charity and trust law matters.

PAGE 19 OF 21 November/December 2012

CARTERS





Cathy Hawara –Director General, Charities Directorate with the CRA since October 2009. In this capacity, she is responsible for the overall management of the federal regulation of registered charities under the Income Tax Act. Prior to joining the CRA, Ms Hawara served as the Director of Appointments with the Senior Personnel Secretariat at the Privy Council Office from 2007 to 2009. She 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, including Deputy Ministers and heads of agencies.

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 (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 charity and not-for-profit law and is recognized as a leading expert by *Lexpert* and *Best Lawyers*. 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 seminars hosted by Carters, 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*.

Esther S.J. Oh – A partner with the firm, Ms. Oh practices in charity and not-for-profit at Carters' Mississauga office, and is recognized as a leading expert in charity and not-for-profit law by *Lexpert*. Ms. Oh is a frequent contributor to <u>www.charitylaw.ca</u> and the *Charity Law Bulletin*, and has spoken at the annual Church & Charity LawTM 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 board member and corporate secretary of a national umbrella organization, and a director at a local community organization.

Ryan Prendergast –Called to the Ontario Bar in 2010, Mr. Prendergast 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, Mr. Prendergast was a 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, he acquired experience in charity and not-for-profit law, and contributed to several *Charity Law Bulletins* and other publications.

Colin Thurston – Called to the Ontario Bar in 2011, Mr. Thurston joined Carters to practice in the area of intellectual property. A graduate of Queen's University, Faculty of Law, Mr. Thurston volunteered at the Queen's Legal Aid clinic throughout his 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. Mr. Thurston has litigation experience before numerous courts and tribunals and received numerous awards, including the Sabbath Prize in Wills and Estate Planning from Queen's Faculty of Law.









PAGE 20 OF 21 November/December 2012

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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PAGE 21 OF 21 November/December 2012

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