

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

JULY/AUGUST 2013

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Half-Day Workshops on Transitioning to the ONCA

Hosted by Carters in Toronto and Ottawa on **October 2nd and 4th, 2013.**

Details and online registration available at <http://www.carters.ca/onca/index.htm>.

20th Annual Church & Charity Law™ Seminar

Hosted by Carters Professional Corporation in Greater Toronto, Ontario, on **Thursday, November 14, 2013.**

Details and registration available at www.charitylaw.ca.

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RECENT PUBLICATIONS AND NEWS RELEASES

CRA Guidance on How to Draft Purposes for Charitable Registration

Jennifer M. Leddy and Terrance S. Carter in *Charity Law Bulletin* No. 318, August 28, 2013.

Canada Revenue Agency (CRA) released on July 25, 2013, the very helpful and practical Guidance on *How to Draft Purposes for Charitable Registration* (the Guidance). It updates and replaces various policy statements with one comprehensive document. The Guidance outlines CRA's recommended approach to drafting charitable purposes and will benefit organizations that are applying for registration as charities, as well as registered charities wishing to change their existing charitable purposes. It is a companion piece to the Model Purposes released by CRA at the same time, but will be particularly helpful to those organizations with charitable purposes that do not fit neatly within the Model Purposes.

The Guidance confirms that CRA uses a "two-part test" to assess an applicant's eligibility for charitable status, asking: 1) are its purposes exclusively charitable and do they define the scope of its activities, and 2) subject to limited exceptions, does it devote its resources to charitable activities that further these purposes? The Guidance also reiterates that the applicant's stated purposes must 1) be exclusively charitable in that they must come within one or more of the four categories of charitable purposes established at common law, i.e. relief of poverty, advancement of education, advancement of religion, or other purposes that are beneficial to the community in a way that the law regards as charitable and provide a benefit to the public or a sufficient segment of the public, and 2) "define the scope" of the organization's activities. The Guidance offers specific recommendations on how charitable purposes should be drafted to meet these general requirements. This *Charity Law Bulletin* focuses on the key elements of a charitable purpose and the Guidance's examples of how to include these elements in drafting charitable purposes.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2013/chylb318.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2013/chylb318.htm>

CRA News

Karen J. Cooper.

CRA Guidance on the Promotion of Health and Charitable Registration

On August 27, 2013, CRA released a new guidance document on the *Promotion of Health and Charitable Registration* (CG-021), which replaces: CSP-A19, *Alcohol, Drug, Addiction*, CSP-A11, *Abortion (Medical Clinic) - Women*, CSP-C24, *Counselling*, CSP-C20, *Crisis Centre*, CSP-D11, *Relieving Sickness, Disability*, CSP-H02, *Provision of Health Care*, CSP-H03, *Health Clinic*, and CSP-M04, *Holistic Medicine*. The guidance explains that the promotion of health is a charitable purpose and an organization may be eligible for registration if its purposes and activities “directly prevent or relieve a physical or mental health condition by providing health care services or products” to the public in a way that it meets the “applicable effectiveness, and quality and safety requirements”. The guidance divides health related purposes into four categories: core health care, supportive health care, protective health care, and health care products. For a detailed discussion of this new Guidance, please see our forthcoming *Charity Law Bulletin*. The Guidance is available on the CRA website at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/hlth-eng.html?rss>.

Updated Donation Tax Credit Rates and Calculator

CRA has posted modified charitable donation tax credit rates. First time donors may receive an additional federal tax credit of 25% on the first \$1,000 of donations made after March 20, 2013. To view these rates, see: <http://www.cra-arc.gc.ca/chrts-gvng/dnrs/svngs/clmng1b3-eng.html>.

CRA also provides a charitable donation tax credit calculator on its website. Donors can use this calculator to determine the amount of their total tax credit for the donations claimed on tax and benefit returns. The updated calculator now computes the additional federal tax credit for first time donors. To access this calculator, see: <http://www.cra-arc.gc.ca/chrts-gvng/dnrs/svngs/clmng1b2-eng.html>.

Revised Model Purposes

CRA has posted revised model purposes online. Model purposes are useful examples for organizations that are applying for charitable registration or changing their existing purposes. This is a helpful tool as an organization’s purposes are important for charitable registration and maintaining that status. To view the new model purposes, see <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/mdl/mdl-bjcts-eng.html>.

For information about how to draft purposes for charitable registration, see *Charity Law Bulletin* No. 318 also in this update or available at <http://www.carters.ca/pub/bulletin/charity/2013/chylb318.htm>.

Rebate for Exports by Charities or Public Institutions

CRA released GST/HST Policy Statement P-132 on June 26, 2013. This policy statement describes the CRA's position on the 100% rebate for exports by a charity or a public institution. It indicates that a charity or public institution may claim a 100% rebate of the GST/HST on its tax-paid purchases of property or services that are exported from Canada by the charity or institution. The rebate is for the tax paid to buy the property and not for the tax paid to export that property. It does not apply to the GST/HST paid on property or services that are not exported, even if the purchases are used for activities that support other activities outside of Canada. The policy statement does mention that if this rebate is not available to the charity or institution, then the public service body rebate may be available to recover a percentage of the GST/HST paid on their eligible purchases. For more details about this policy statement and examples, see: <http://www.cra-arc.gc.ca/E/pub/gl/p-132/p-132-e.html>.

T3010 (13) Return

The CRA has posted the T3010 (13) returns for fiscal periods ending on or after January 1, 2013. The returns are displayed on the CRA's Charities Listings, which can be viewed online at: <http://www.cra-arc.gc.ca/chrts-gvng/lstngs/menu-eng.html>.

Charities Media Kit

The CRA has released a new "Charities Media Kit" online. The kit has links to information about charity-related topics that are useful for the media and public. For example, the kit has answers to questions regarding how the media can stay informed about charities, how to get information about charities, and facts and figures about registered charities. To access the Charities Media Kit, see: <http://www.cra-arc.gc.ca/chrts-gvng/md-kt/menu-eng.html>

Ontario Human Rights Tribunal Rules that Atheism is a Creed/Religion

Sean S. Carter and Terrance S. Carter.

On August 13th, 2013, the Human Rights Tribunal of Ontario (the "Tribunal") released an important decision on a human rights application, *R.C. v. District School Board of Niagara*, 2013 HRTO 1382, ("*Niagara Board*"). This application, commenced by self-described atheists against the District School Board of Niagara (the "Board"), centered around complaints regarding the Board's policy regarding the distribution of "religious publications" to students of the Board who expressed interest in receiving those materials and obtained parental consent.

In broad terms, this application asked the Tribunal to consider, among other things, whether materials explaining atheism should have the same protection and ability to be available to students as materials explaining or promoting mainstream religions, such as Christianity or Islam (and associations of their respective adherents). To answer this question at its core, the Tribunal needed to decide whether atheism should be considered a “creed” (interpreted by the Tribunal as being a religious creed or religion), and thus a protected ground under the *Ontario Human Rights Code* which may not be discriminated against. The Tribunal decided that atheism is in fact a “creed” for purposes of interpreting the *Ontario Human Rights Code*.

The Tribunal’s decision in *Niagara Board* arguably breaks new ground by bringing atheism under the protection of religious belief. The Tribunal achieved this by expanding the definition of creed/religion to include sincerely held non-diestic bodies of faith which may not necessarily have a belief in a deity or supreme being(s) as a prerequisite. The decision may possibly have a broader impact, as the definition of creed/religion is central in other legal contexts from everything to obtaining charitable status under the *Income Tax Act*, to the scope of the protection of freedom of religion under the *Canadian Charter of Rights and Freedoms*, or to what constitutes hate speech under the *Criminal Code*. A more substantive review of the Human Rights Tribunal’s decision in this case, and both the immediate and long-term potential impact for charities and not for profit organizations will be forthcoming in a future *Church and Charity Law Bulletin*.

The decision is available at

<http://www.canlii.org/en/on/onhrt/doc/2013/2013hrto1382/2013hrto1382.pdf>.

Donation Through Tax Shelter Disallowed

Tanya L. Carlton.

The Tax Court of Canada recently released their decision in *Bandi v. The Queen*, 2013 TCC 230 (<http://canlii.ca/t/fzvr9>). This decision was in regards to an appeal of a reassessment by the Minister of National Revenue which disallowed a claim by Mr. Bandi for a 2003 charitable donation tax credit for an alleged gift made to the Aurora Foundation (the “Foundation”) under their Charitable Technology Trust Gifting Program (the “Program”). The appellant, Hari Bandi, participated in the Program and made an alleged gift totalling \$5,996, which consisted of a cash payment of \$1,872 and a “purported” gift of four software licenses to the Foundation, with an alleged fair market value of \$4,124.

According to the tax deduction claim, following Mr. Bandi's cash gift to the Foundation, the Trust set up to supply the software licenses to investors, was to have provided the four software licences to Mr. Bandi, who was to have then gifted them to the Foundation. Mr. Bandi stated however, that he did not receive the software licences and he had no knowledge of whether they even existed. As a result, the Court held that the Program was not properly implemented and the reassessment by the Minister was valid.

The Court also assessed Mr. Bandi's claim that even if the reassessment was valid, he was still entitled to a tax credit for his alleged cash gift made to the Foundation. A gift, although not defined in the ITA, has been defined in previous court cases as "a voluntary transfer of property owned by a donor to a donee, in return for which no benefit or consideration flows to the donor." After examination of the tax shelter material, the Court concluded that the cash and non-cash elements of the transactions formed an integral part of the tax shelter arrangement, and that Mr. Bandi would not have paid any cash to the Foundation without having received the software licences. The expectation of an enhanced tax benefit thereby nullified Mr. Bandi's donative intent and the cash gift could not be considered separate from the overall plan.

For more information, see online at: <http://canlii.ca/t/fzvr9>.

New CRA Guidance on Purposes and Activities Benefiting Youth

Terrance S. Carter and Jacqueline M. Demczur in *Charity Law Bulletin* No. 319, August 28, 2013.

On June 24, 2013, Canada Revenue Agency Charities Directorate ("CRA") released a new guidance dealing with organizations that benefit youth. The guidance, referenced as CG-020, is entitled *Charitable Purposes and Activities that Benefit Youth* ("Guidance"), and replaces the earlier CPS-015 *Registration of Organizations Directed at Youth* ("Former Policy"). The new Guidance describes how CRA interprets the common law and *Income Tax Act* ("ITA") in determining whether an organization that benefits youth is eligible to become a registered charity under the ITA or presumably can continue as a charity if subject to an audit by CRA. While the Guidance and the Former Policy are similar in many respects, there are several differences between the two which are explained in this *Charity Law Bulletin*.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2013/chylb319.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2013/chylb319.htm>

Federal Court of Appeal Disallows Delayed Assessment

Karen J. Cooper.

The Federal Court of Appeal released its decision in *Ficek v Canada (Attorney General)* (2013 FC 502, available online at: <http://canlii.ca/t/fxj63>), in which it declared that the Minister of National Revenue failed to assess the applicant's tax return with "all due dispatch". According to subsection 152(1) of the *Income Tax Act*, the Minister must examine a taxpayer's income tax return with "all due dispatch", which the Court stated means within a reasonable time. According to the record, the standard CRA policy was to initially allow a claim for a charitable donation tax credit for a tax shelter donation, to pay the resulting refund, and then, after the tax shelter is audited, to reassess the taxpayer disallowing the credit and requiring repayment, if necessary. However, the Winnipeg Tax Centre ("Winnipeg") had created a new policy in March 2011, to delay the initial assessment until after the audit and before a refund was issued, which was distinct from the national policy.

The Global Learning Gifting Initiative ("GLGI"), a registered tax shelter, was audited by the CRA in 2004-2008. As a result, CRA denied the charitable donation credits for those audited years. CRA continued to view the GLGI activities as a "sham" well into 2010. The Court notes evidence before it that CRA's Appeals Division estimates that there were 27,000–28,000 Notices of Objection being processed in respect of GLGI for the 2004-2006 tax years alone. In 2010, the applicant made a donation through GLGI and was advised that due to Winnipeg's policy, her assessment would be delayed until the 2010 GLGI audit was completed.

The Court examined whether Winnipeg's new policy and the delayed assessments violated the requirement of the *Income Tax Act* to assess "with all due dispatch". The Court determined that although the Minister of National Revenue had discretion regarding the timing of the assessments, a delay must be reasonable and for a "proper purpose" related to the tax liability of the particular taxpayer. Winnipeg's actual purpose was revealed in email correspondences, which stated that Winnipeg's policy, and the delayed assessments, were created to deter taxpayers from participating in the GLGI tax shelter. Winnipeg had hoped that if it delayed assessments and withheld refunds, then it would discourage people from donating to tax shelters. The Court concluded that the delayed assessment was not truly related to the applicant's tax return and was in fact used as a tactic to discourage taxpayers from participating in the GLGI tax shelter scheme. As this was not an acceptable purpose, the Court declared that the Minister of National Revenue had not complied with the statutory duty to assess with "all due dispatch".

While this decision limits the capacity of CRA to delay initial assessments in tax shelter situations, recent changes to the *Income Tax Act* resulting from the last Budget and the packages of technical amendments in Bill C-48 demonstrate that the Department of Finance is serious about using legislative means to continue to discourage participation in tax shelters and CRA will likely continue to aggressively audit and reassess taxpayers involved with donation tax shelters.

Decision on Defence Costs Could Impact Directors of Not-For-Profits

Ryan Prendergast.

On July 4, 2013, the Ontario Court of Appeal released its decision in *Cytrynbaum v. Look Communications Inc.*, 2013 ONCA 455 (<http://canlii.ca/t/fzhtq>). The decision concerns an interpretation of section 123(4) of the *Canada Business Corporations Act* (“CBCA”) in relation to a director’s entitlement under the act for indemnification or advancement of funds to pay legal defence costs. In this regard, since both the current *Canada Not-for-profit Corporations Act* and the forthcoming *Not-for-profit Corporations Act, 2010* (Ontario) contain analogous provisions at subsections 151(4) and 46(4) respectively. The interpretation may also apply to directors of federal and Ontario not-for-profit corporations.

The decision involved an appeal by the former directors of Look Communications Inc. (“Look”) from a decision of the Superior Court of Justice refusing their claims for advance funding under the CBCA on the basis that they had not acted honestly and in good faith. The former directors argued that subsection 124(4) of the CBCA only applies to derivative actions, that is, actions brought on behalf of the corporation, and therefore their right to advanced funding under the by-laws of Look and separate indemnification agreements should apply. However, the Court of Appeal dismissed the appeal. While recognizing that issues of indemnity and advanced funding required “a balance to be struck between providing adequate protections and incentives ... and to encourage responsible behaviour”, the court held that the CBCA applies a “judicial filter” on advanced funding where there is evidence of bad faith alleged against the directors and officers sufficient to overcome the presumption of good faith.

If applied to not-for-profit corporations, former and current directors would have to pass through this “judicial filter” in order to receive advanced funding where the corporation sues them. While the presumption of good faith means this approval by the court for advanced funding should generally be available, where there is evidence of bad faith such directors would need to respond to the evidence with their own funds and not those of the corporation. Directors and officers of not-for-profit corporations

making decisions during difficult financial times may therefore want to seek legal advice prior to doing so in order to determine if allegations of bad faith may be raised after the fact which would restrict them from receiving advanced funding in a legal action.

Misrepresentation and Gross Negligence in Donations Results in Penalties

Tanya L. Carlton.

The Tax Court of Canada recently released their judgment in *Clarke v. The Queen*, 2013 TCC 191 (<http://canlii.ca/t/fzdm3>). This case concerned an appeal by a taxpayer of the Minister of National Revenue's reassessment of charitable donation tax credits and penalties assessed pursuant to subsection 163(2) of the ITA.

In the 2003, 2004 and 2005 taxation years, Ms. Clarke claimed to have made charitable donations with gross non-refundable tax credits of \$7,850, \$2,890 and \$1,933 respectively. Although the reassessment of Ms. Clarke's donations were completed after the normal reassessment period, the Minister argued that under subsection 152(4) of the Act, the Minister had the right to reassess due to the fact that Ms. Clarke made misrepresentations that were "attributable to neglect, carelessness or wilful default" or committed fraud.

Ms. Clarke acknowledged that she did not make the charitable donations claimed, did not provide charitable donation receipts and that "she or her tax preparer misrepresented the facts in relation to the charitable donation claims." In addition, the Court heard evidence that an investigation by the CRA determined that the individuals that prepared Ms. Clarke's tax returns had sold charitable donation receipts for tax purposes. Although a small percentage of the individuals' 7,000 clients were found to not have participated in the donation receipt scheme, the CRA determined that the charitable donations claimed by Ms. Clarke were an indication that she had paid the tax preparer for the fraudulent tax refund.

The Court held that since Ms. Clarke had not made the claimed donations and had not verified her tax return to determine why her refund was higher than expected, there was clear misrepresentation by her and the Minister was entitled to reassess Ms. Clarke beyond the normal reassessment period. Further, given "the magnitude of understatement of tax, as well as the carelessness demonstrated by the appellant in signing her tax returns", the Court held that Ms. Clarke knowingly claimed the tax credits and met the burden for proving gross negligence, the prerequisite for assessing a penalty under subsection 163(2) of the ITA.

For more information, see online at: <http://canlii.ca/t/fzdm3>.

Capital Gains from Sale of Property by NPO Tax Exemption

Ryan M. Prendergast.

On July 31, 2013, CRA released a technical interpretation addressing whether the capital gains from the sale of real property by a non-profit organization (“NPO”) were exempt from tax under s. 149(5)(e)(ii) of the *Income Tax Act* (Canada) (“ITA”). In Document #2012-0460901E5, CRA was asked to address a specific transaction involving a club that reported revenue from bar sales and hall rentals to non-members from a clubhouse. Although CRA did not comment on the specific transaction, the interpretation reviewed the statutory scheme for NPOs having a main purpose of providing dining, recreational, or sporting facilities to its members. In those cases, the ITA deems an *inter vivos* trust to exist and the NPO’s property is deemed to be property of the trust.

CRA noted that the ITA does not define “main purpose”, but that CRA will generally consider the main purpose of an NPO to be providing dining, recreational, or sporting facilities to its members where more than 50% of the NPO’s assets, time, revenue, attention and efforts are dedicated to providing such facilities to its members. CRA will also review the instruments used in creating the NPO, including the articles of incorporation, bylaws, and the organization’s constitution.

The CRA interpretation states that s. 149(5)(e)(ii) provides an exemption for capital gains that result from the disposition of property which was “used exclusively for and directly in the course of providing dining, recreation and sporting facilities” to the NPO’s members. The only exemptions under this section are therefore capital gains resulting from disposition of assets that are required and used to ensure that the NPO’s objects are met. While the interpretation confirms that occasional rental of property to non-members is not sufficient to void the exemption, active pursuit of rental income from non-members may disqualify the NPO from being exempt from tax under *ITA* s. 149(1)(l). In this regard, NPOs providing recreational facilities to their members should review whether or not they are devoting more than 50% of their resources to providing such facilities, and that they limit the pursuit of rental income from non-members in order to maintain their tax-exempt status.

Technical interpretations are only available by subscription or written request to CRA.

Employment Harassment by Facebook Posts

Barry W. Kwasniewski in *Charity Law Bulletin* No. 317, August 28, 2013.

With the popularity of social media sites, courts and tribunals continue to deal with disputes and claims regarding the harm that may be caused by online postings. The latest case in this developing area of law is the Ontario Human Rights Tribunal (the “Tribunal”) decision in *Perez-Moreno v Kulczycki*, 2013 HRTO 1074 (<http://canlii.ca/t/fzbk0>). In this application, the Tribunal dealt with the issue of an employee’s disparaging statements regarding a co-worker outside of the workplace, specifically on a virtual Facebook wall. The Tribunal found the respondent worker liable to the applicant co-worker for breach of the workplace harassment provisions of the Ontario *Human Rights Code*. This *Charity Law Bulletin* discusses this decision and its implications for charities and not-for-profits as employers.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2013/chylb317.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2013/chylb317.htm>

Individual Clergy Residence Deductions Possible for Spouses

Jacqueline M. Demczur.

On June 4, 2013, CRA released an interpretation addressing whether spouses who are both members of the clergy and who reside in different residences may individually claim separate clergy residence deductions. Section 8(1)(c)(iv) of the ITA provides that a member of the clergy who has met the status and function tests may claim a tax deduction only if the property is owned by the individual or his or her spouse or common-law partner.

CRA expressed the view that a principal place of residence under s. 8(1)(c)(iv) ought not to be confused with a principal residence as defined in s. 54. While any one property belonging to an individual could be designated as a principal residence, the individual’s principal place of residence remains a question of fact. This is determined based on factors such as where the individual generally sleeps and eats, where they store their belongings, where they receive their mail, and where their immediate family (*i.e.* spouse, common-law partner, and/or children) reside. As a result, where it can be demonstrated that each ordinarily resided in a separate residence, spouses who are both clergy and living separately can have separate principal places of residence. Consequently, each may therefore claim the full clergy residence deduction individually for their respective principal places of residence.

For information concerning CRA filing requirements for the clergy residence deduction, see the January 2013 *Charity Law Update* online at <http://www.carters.ca/pub/update/charity/13/jan13.pdf> and the April 2013 *Charity Law Update* online at <http://www.carters.ca/pub/update/charity/13/apr13.pdf>.

Ontario Decision Raises Issue of Liability for Subsidiaries' Conduct Abroad

Barry W. Kwasniewski.

Canadian for-profit companies that operate subsidiary companies in foreign jurisdictions have generally assumed that they would not be found directly liable for their foreign subsidiary's wrongful conduct. However, the Ontario Superior Court's recent decision in *Choc v Hudbay Minerals Inc.*, 2013 ONSC 1414, [2013] OJ No 3375, raises questions concerning whether Canadian courts may hold parent companies of for-profit corporations directly liable for their subsidiaries' or affiliates' misbehaviour abroad. This issue could eventually impact the not-for-profit sector in Canada as well.

The plaintiffs in the three lawsuits were indigenous Mayan Guatemalans, and the defendants included the Canadian mining company Hudbay Minerals Inc. ("Hudbay") and Hudbay's subsidiaries. Hudbay owned the Fenix mining project in Guatemala. The plaintiffs claimed that the security personnel working for Hudbay's subsidiary companies operating in Guatemala had committed abuses, such as shootings, killing and rapes in the Fenix project district.

On July 22, 2013, Superior Court Justice Carole Brown ruled on the defendants' motions to strike out the plaintiffs' lawsuits. The court dismissed the motions and determined that the plaintiffs' case could proceed. It is important to note that on this motion the court could only strike out the lawsuits if it was "plain and obvious" that the actions would not succeed, based on the allegations set out in the Statements of Claim. There has been no finding of any liability against any of the defendants. The result of the motion, absent any appeal, will be that the lawsuits may continue towards an eventual trial.

Therefore, absent any appeal of the ruling, the lawsuits will continue towards trial for a full analysis of the evidence and for the trial court to determine whether or not to establish a direct duty of care on parent corporations towards the citizens harmed by the wrongful acts of their foreign subsidiaries. The eventual trial decisions, and any subsequent appeals, which are likely, will no doubt be of interest to Canadian charities and other not-for-profit corporations in terms of their foreign operations and, as such, deserve to be monitored in the future.

Québec Government Encourages Cultural Philanthropy

Tanya L. Carlton.

The Québec government recently released an Information Bulletin entitled “New Fiscal Measures to Encourage Cultural Philanthropy,” outlining new fiscal measures the government will be implementing in order to stimulate donations to foster culture. To increase large cultural donations, the government will be giving an additional 25% tax credit, up to \$6,250, to individuals who make initial cultural donations of at least \$5,000 before January 1, 2018. For individuals who participate in patronage roles, a non-refundable tax credit calculated at a rate of 30% will be available in place of the regular and new additional donation tax credits. Patrons must donate at least \$250,000 in one year to meet a cultural organization’s specific need for capital or must undertake to pay at least \$250,000 to the organization over a period of ten years or less.

Individuals who wish to donate public art work, and have had the fair market value certified by the Minister of Culture and Communications, will have the eligible amount of their donation increased by 25% if the donation is made to the Province or to one of its municipalities, and increased by 50% if the donation is made to an educational institute or registered charity whose mission is education. Taxpayers donating land and buildings capable of housing artist’s studios and/or cultural organizations will also have their tax credits or deductions increased by 25%.

For more information, see online at:

http://www.finances.gouv.qc.ca/documents/bulletins/en/BULEN_2013-6-a-b.pdf.

Alberta Flood Recovery Program Available to Not- for- Profits

Terrance S. Carter.

The Government of Alberta has created a recovery program to assist, amongst others, eligible “not-for-profit organizations” (although not defined) that have been affected by Alberta’s June and July 2013 floods.

Loan Guarantee Program

The Alberta Flood Recovery Loan Guarantee Program (“Loan Guarantee Program”) allows eligible not-for-profit organizations to apply for loans of up to \$1 million with their financial institutions. The program will partially guarantee these loans. Applicants who demonstrate proof of loss from the flood will have 75% of their loans guaranteed by the province if they apply for the loan by December 31, 2013.

Interest Rebate Program

The Alberta Flood Recovery Interest Rebate Program (“Interest Rebate Program”) is only available to applicants participating in the Loan Guarantee Program or the Agriculture Financial Services Corporation (AFSC) Alberta Flood Recovery Loan Program who have submitted a rebate request and provided evidence of debt and that their loans remain in good standing with the lender. Under this program, eligible not-for-profit organizations will be able to choose a date between July and December 2013 for the commencement of their 24-month rebate period. New loans up to an aggregate of \$1 million can be added later at any time.

For more information on the Loan Guarantee Program, see the Alberta government website at:

<http://alberta.ca/Flood-Recovery-Loan-Guarantee-Program.cfm>.

For more information on the Interest Rebate Program, see the Alberta government website at:

<http://alberta.ca/Alberta-Flood-Recovery-Interest-Rebate-Program.cfm>.

US Treasury Expands Terrorist Financing Related Definitions

Nancy E. Claridge.

The US Department of Treasury (“Treasury”) published on July 5, 2013 “Technical Amendments to Counter-Terrorism Sanctions Regulations” (“Technical Amendments”). The Technical Amendments expanded the definitions of “prohibited transactions” and “charitable contributions” under the American *Global Terrorism Sanctions Regulations* (31 CFR 594) and *Terrorism Sanctions Regulations* (31 CFR 595).

As a result of the Technical Amendments, the new definitions have been brought into accord with those found in February 2005’s *Executive Order 13372*. This does not change the pre-existing ban on charitable donations to and for the benefit of terrorists, but creates an additional prohibition on all charitable donations received from terrorists. The regulations will continue to afford protection to charities that unknowingly provide funds, goods, services or technology to terrorists, as long as the terrorists are not listed as organizations that threaten the Middle East peace process, but is silent with respect to protection for charities receiving such funds goods, services or technology.

The Technical Amendments place an additional burden on charities operating in the United States, which now must ensure not only that their donations are not contributing toward terrorism, but also that all donations received are not of terrorist origins.

The Technical Amendments is available online at: http://www.treasury.gov/resource-center/sanctions/Programs/Documents/fr78_38574.pdf.

Charities Commission Issues Alert and Offers Tips In Preventing Fraud

Terrance S. Carter.

Following the release in June 2013 of the UK National Fraud Authority Annual Fraud Indicator , the Charity Commission of England and Wales (“Charity Commission”) released an Alert to warn charities of increasing level of fraud. The Annual Fraud Indicator states that charities across England, Scotland and Wales lose approximately £147.3 million annually as a result of fraud, with the most common forms of fraud being banking, accounting, and identity fraud.

The Charity Commission’s Alert advises charities to have financial controls and policies in place to prevent fraud and to deal with fraud should it arise. It also provides a brief list of “Top Tips” for charities regarding fraud prevention tactics. Some of these tips include ascertaining the identity and legitimacy of organizations with whom the charity works, increasing online protection through firewalls and anti-virus programs, maintaining proper vigilance and reporting suspicions, and developing a financial records system for receipt and use of all funds. These practice tips will be of benefit to any charity as opposed to only those based in England and Wales.

The Charity Commission’s alert is available online at:
http://www.charitycommission.gov.uk/media/522590/ccnews_issue43.pdf.

For a detailed look at the 2013 Annual Fraud Indicator, see online at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/206552/nfa-annual-fraud-indicator-2013.pdf.

Lexpert Rankings

Several partners of Carters Professional Corporation were recognized as leaders in the areas of charity and not-for-profit law, as well as Trusts and Estates Law in Canada by *The Canadian Legal Lexpert® Directory 2013, 16th Edition*. [Terrance S. Carter](#), Managing Partner of the firm, has been recognized as one of the most frequently recommended practitioners in the area of charities and not-for-profits in Canada since 2004. [Jane Burke-Robertson](#), who passed away on May 4, 2013, was recognized as a consistently recommended practitioner since 2004. [Karen J. Cooper](#) and [Theresa L.M. Man](#) have been recognized as consistently recommended practitioners in charity & not-for-profit law since 2011, and

[Jacqueline M. Demczur](#) and [Esther S.J. Oh](#) have been recognized as repeatedly recommended practitioners, also since 2011. In addition, Terrance co-authored the Directory's section summary for Charity & Not-for-Profit Law with [M. Elena Hoffstein](#) of Fasken Martineau DuMoulin LLP, who was also recognized by Lexpert as one of the most frequently recommended lawyers in Canada.

Read More:

[PDF] <http://www.carters.ca/news/2013/lexpert.pdf>

[WEB] <http://www.lexpert.ca>

Best Lawyers in Canada

Several partners of Carters Professional Corporation were again recognized as leaders in the area of Trusts and Estates Law in the Charity and Not-For-Profit Law subspecialty by the 2014 edition of *The Best Lawyers in Canada*. [Terrance S. Carter](#) has been recognized since 2006, and has also been named the Best Lawyers' 2014 Toronto Trusts and Estates "Lawyer of the Year." [Karen J. Cooper](#) and [Theresa L.M. Man](#) have been recognized since 2011, and [Jacqueline M. Demczur](#) has also been recognized.

Best Lawyer online: <http://www.bestlawyers.com>

IN THE PRESS

Speak up now on proposed changes to not-for-profit accounting by Terrance S. Carter.

Hilborn eNews, July 18, 2013.

[Link] <http://charityinfo.ca/articles/Speak-up-now-on-proposed-changes-to-not-for-profit-accounting>

Charity law complicated by new Ontario Legislation by Michael McKiernan includes quotes from Terrance S. Carter.

Law Times, July 8, 2013.

Accessing Corporate Records Under the CNCA by Terrance S. Carter.

FORUM Trillium Chapter, CSAE, June 2013.

[Link] <http://mediaedge.imirus.com/Mpowered/book/vforum13/i2/p1>

UPCOMING EVENTS AND PRESENTATIONS

CCCC Leadership & Stewardship Conference being held in Mississauga, Ontario, on September 24-26, 2013, will include the following presentations:

“Copyright Issues for Churches and Charities: What You Need to Know” by Colin J. Thurston;

“Community Economic Development Guidance – Social Enterprise for Charities” by Terrance S. Carter; and

“Getting Ready for the ONCA – Tough Issues to Consider” by Theresa L.M. Man.

Information and registration available at <http://www.cccc.org/conference>.

Ontario Association of Community Futures Development Corporations Annual Conference being held in Sarnia, Ontario, will include a presentation by Theresa L.M. Man entitled “Getting Ready for the ONCA – A Step by Step Guide” on September 26, 2013.

Details are available at <http://www.oacfdc.com/frame7b.asp>.

World Vision Law Day being held on September 26, 2013, will include a presentation by Terrance S. Carter entitled “Essential Update on Church Law in Canada.”

Christian Legal Fellowship National Convention being held on September 27, 2013, will include a presentation by Terrance S. Carter entitled “Update on Church Law in Canada.”

The Association of Treasurers of Religious Institutes (ATRI) 2013 Conference will include the following presentations by Karen J. Cooper on Sept 28, 2013:

“Essential Charity Law Update” and

“Here’s Your Chance to Ask Questions of a Lawyer.”

Half-Day Workshops on Transitioning to the Ontario *Not-for-Profit Corporations Act* will be held in Toronto and Ottawa on Wednesday, October 2nd and Friday, October 4th respectively.

Details and online registration are available at <http://www.carters.ca/onca/index.htm>.

The 20th Annual Church & Charity Law™ Seminar will be held at Portico Community Church in Mississauga, Ontario, on Thursday, November 14, 2013.

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

CONTRIBUTORS

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Assistant Editor: Nancy E. Claridge



Tanya L. Carlton – Called to the Ontario Bar in 2013, Ms. Carlton joined Carters to practice charity and not-for-profit law. A graduate from the University of Ottawa, Faculty of Law in 2012, Tanya also earned a B.Sc. (Hons.) in Biochemistry from Bishops University and a B.Ed. from the University of Western Ontario prior to attending law school. Ms. Carlton taught high school math and chemistry for several years, and also served as an elected Municipal Councillor. Ms. Carlton gained legal experience articling with Carters, as well as during the summers as a research assistant for several Ottawa-based teaching lawyers while at law school.



Sean S. Carter – Called to the Ontario Bar in 2009, Sean practices general civil, commercial and charity related litigation. Formerly an associate at Fasken Martineau DuMoulin LLP, Sean has experience in matters relating to human rights and charter applications, international arbitrations, quasi-criminal and regulatory matters, proceedings against public authorities and the enforcement of foreign judgments. Sean also gained valuable experience as a research assistant at Carters, including for publications in *The International Journal of Not-for-Profit Law*, *The Lawyers Weekly*, *Charity Law Bulletin* and the *Anti-Terrorism and Charity Law Alert*.



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), 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 a co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* to be published by Carswell in 2013, a co-editor of *Charities Legislation and Commentary* (LexisNexis, 2013), and editor of www.charitylaw.ca, www.churchlaw.ca and www.anti-terrorismlaw.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).



Jacqueline M. Demczur – A partner with the firm, Ms. Demczur practices in charity and not-for-profit law, including incorporation, corporate restructuring, and legal risk management reviews, as well as wills, estate planning and estate administration. Mrs. Demczur has been recognized as a leading expert in charity and not-for-profit law by *Lexpert*. 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.



Barry W. Kwasniewski - Mr. Kwasniewski joined Carters' Ottawa office in October 2008 to practice in the areas of employment law, charity related litigation, and risk management. Called to the Ontario Bar in 1990, Barry has a wide range of litigation experience, including in commercial disputes, personal injury, long-term disability, employment, insurance defence, and professional liability. Barry is a volunteer lawyer at Reach Canada, is on the Board of directors of the Vista Centre, and has assisted in several United Way campaigns.



Jennifer Leddy – Ms. Leddy joined Carters' Ottawa office in March 2009 to practice charity and not-for-profit law following a career in both private practice and public policy. Ms. Leddy practiced with the Toronto office of Lang Michener prior to joining the staff of the Canadian Conference of Catholic Bishops (CCCCB). In 2005, she returned to private practice until she went to the Charities Directorate of the Canada Revenue Agency in 2008 as part of a one year Interchange program, to work on the proposed “Guidelines on the Meaning of Advancement of Religion as a Charitable Purpose.”



Theresa L.M. Man – A partner with Carters, Ms. Man practices 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, and is recognized as a leading expert in charity and not-for-profit law by *Lexpert*. Ms. Oh is a frequent contributor to www.charitylaw.ca and the *Charity Law Bulletin*, and has spoken at the annual *Church & Charity Law*TM 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.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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