

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

NOVEMBER/DECEMBER 2013

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Ottawa Region *Charity & Not-for-Profit Law*™ Seminar

Hosted by Carters Professional Corporation in Ottawa, Ontario, on **Thursday, February 13, 2014.**

Details and registration available soon at www.charitylaw.ca.

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

RECENT PUBLICATIONS AND NEWS RELEASES

Directors Ordered to Attend Training Session and Denied Costs

Ryan M. Prendergast

On October 11, 2013, the Ontario Superior Court of Justice released a cost decision in the matter of *Singh v. Sandhu*. This cost decision followed an earlier decision of the court on June 3, 2013 concerning the Sikh Spiritual Centre Toronto (the “Centre”), which included an unusual twist in that the directors were ordered to attend a training session on corporate governance. In the June 3, 2013 decision, the court concluded that a director’s meeting of the Centre held July 24, 2012, in which 23 new members were admitted, was conducted in bad faith and the court declared the admission of these 23 new members invalid. As a result, the court further invalidated a meeting of members held on August 5, 2013, at which new directors of the Centre were elected, as well as the appointment of officers held at a directors meeting also on August 5, 2012.

As noted in the judgment, these decisions were not the first instance in which the Centre had been before the court as a result of governance disputes. The Centre had generated previous decisions concerning the governance of non-share capital corporations which have been covered in *Charity Law Bulletins* No. 101 and No. 211. Given the previous involvement of the court in supervising the governance of the Centre, Justice Brown indicated that he would scrutinize each corporate step the directors of the Centre took to ensure compliance with both the *Corporations Act* (under which the Centre was incorporated) and the by-laws of the Centre.

As a result, prior to ordering a special meeting of members to elect directors under the *Corporations Act*, Justice Brown made the unique order, among other conditions, that all members of the board of the Centre “must attend, together, at the same time and in the same room, a one-day training session on basic corporate governance conducted by a recognized corporate governance organization. If this order interferes with the travel plans of any director, he must change his travel plans.”

In determining that neither faction involved in the dispute was entitled to costs, given the history of factional disputes at the Centre, Justice Brown concluded that:

Both factions ignored their fiduciary duties as directors of a corporation, resulting in a course of conduct by both factions which brought the Centre back into this Court for the third time in less than a decade. There was no winner in this litigation. However, there was a loser – the Centre, because

its directors were not prepared to put the corporation's best interests before their own factional purposes.

Although this decision is unique given the circumstances and history of the Centre, the decision serves as an important reminder for directors of not-for-profit corporations to be aware of the governance provisions of their organization and adhere to them. It is also an important reminder that any dispute concerning the governance of a not-for-profit corporation ultimately costs the not-for-profit corporation important funds to carry out its charitable or non-profit purposes.

The text of the decision and cost reasons can be found online at:

<http://canlii.ca/t/fxrxn>

<http://canlii.ca/t/g0zgg>

CRA News

Karen J. Cooper.

Donations to Typhoon Haiyan

The Canadian government has made an initial allocation of \$30,000 to the International Federation of the Red Cross and Red Crescent Societies to help launch relief operations, and an initial \$5 million to support humanitarian organizations assisting people in need due to the recent typhoon in the Philippines and other affected countries. The \$5 million will be used to provide emergency shelter, food, water and vital services. The Canadian government will also donate one dollar to the Typhoon Haiyan Relief Fund for every dollar donated by a Canadian individual to a registered Canadian charity that meets certain donation criteria from now until December 23, 2013.

To learn about the donation criteria for individual Canadians and charities, see http://www.international.gc.ca/development-developpement/humanitarian_response-situations_crises/haiyan/Fund-Fonds.aspx.

To access the list of Canadian registered charities, see <http://www.cra-arc.gc.ca/chrts-gvng/lstngs/menu-eng.html>.

Helping Victims of a Disaster

CRA has posted information about how to help victims of a disaster. It provides answers to specific questions to help Canadians donate wisely, such as whether qualified donees may be involved in disaster relief, and which charities are involved in disaster relief. To access this information, see <http://www.cra-arc.gc.ca/chrts-gvng/dnrs/rcpts/dntn4-eng.html>. To learn about how Canadians can help during major

disasters and other emergencies abroad, see http://www.international.gc.ca/humanitarian-humanitaire/canadians_help-aide_canadien.aspx.

Revocation of Charitable Status

The registration of the charity New Horizon Charitable Foundation in Calgary, Alberta, was revoked for cause on November 16, 2013, which CRA defines as a charity that ceases to comply with the requirements for registration. Specifically, the charitable status was revoked for failing to meet paragraph 168(1)(d) of the *Income Tax Act*, which states the following: “issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information”. See the Notice in the Gazette for available information: <http://www.gazette.gc.ca/rp-pr/p1/2013/2013-11-16/html/commis-eng.html>.

Charitable Donations, Gifts, and Political Contributions – T5013, Schedule 2

CRA has posted the revised form T5013 Schedule 2 for partnerships that have made charitable donations; gifts to Canada, a province or a territory; gifts of certified cultural property; gifts of certified ecologically sensitive land; gifts of medicine; federal political contributions; or provincial, territorial or municipal political contributions. To access the form, see <http://www.cra-arc.gc.ca/E/pbg/tf/t5013sch2/README.html>.

Essential Charity Law Update

Terrance S. Carter. Presented at the Law Society of Upper Canada’s 16th Annual Estates and Trusts Summit on November 12, 2013.

Over the last 12 months, Canada’s charitable sector has experienced a number of important legislative and common law developments at the federal and provincial level that will significantly impact how charities operate in Canada and abroad. The purpose of this paper is to provide a brief overview of some of the more important developments in the last year, including changes introduced through the 2013 Federal Budget, changes to the *Income Tax Act* (“ITA”), new publications from the Charities Directorate of the Canada Revenue Agency (“CRA”), corporate updates under the *Canada Not-for-Profit Corporations Act* (“CNCA”) and the *Ontario Not-for-Profit Corporations Act* (“ONCA”), other federal and provincial initiatives, as well as recent court decisions affecting the charitable sector.

Read More:

[PDF] <http://www.carters.ca/pub/article/charity/2013/tsc1112.pdf>

Court Denies Claim for Charitable Donations

Theresa L.M. Man.

The Tax Court of Canada recently released its decision in *Vo v. The Queen* (2013 TCC 343, available online at <http://canlii.ca/t/g1pz5>), in which Mr. Vo appealed the Minister of National Revenue's assessment that denied charitable donation claims.

Mr. Vo claimed he made donations of \$13,612 and \$17,136 in the 2004 and 2005 taxation years, respectively. Mr. Vo was identified by CRA to have been part of a charitable donation scheme that prepared tax returns for false charitable donations. The CRA investigated this scheme in 2009 and determined that approximately \$10 million of false tax deductions and refunds were claimed by taxpayers. One of the tax preparers fled the jurisdiction, and the other one was sentenced to three years in prison.

Mr. Vo's appeal was dismissed because he failed to satisfy the burden to establish that gifts were made to a registered charity. The court found that no gifts were made in the taxation years in question. As well, the charity, to which he allegedly made the gift, was not a registered charity until one year after the taxation years in issue. There was no evidence to show that any of the cash donations went to the hands of the charity. The court also found that Mr. Vo's testimony was not reliable because he changed his position at the hearing when he claimed different amounts and made false representations, and he portrayed himself to have a charitable purpose to help poor children in Africa while having no knowledge of the tax implications of the scheme.

Gift of a Right to Use

Karen J. Cooper

The Tax Court of Canada released its decision in *Carson v The Queen* (2013 TCC 353, available online at: <http://canlii.ca/t/g1s50>) in which it determined that a gift for the purposes of the *Income Tax Act* had not been made since property in the form of a right to use had not been transferred by the donor to the registered charity. The appellant's wife was the President of the charity, which she operated in two rooms in her home. The appellant claimed a charitable donation of \$3,120 in 2009, which he asserted was an estimate of the fair market value of the use of the home by the charity. The appellant stated that the cost of the use of the two rooms by the charity was \$130/month, but there was no rental agreement or lease in place. The court indicated for a gift to be valid there must be a voluntary transfer of property. While CRA has commented that a charity can issue a receipt in similar circumstances if the charity pays

rent, later accepts a gift of this payment, and the donor reports the income, the court did not agree with CRA's position, as expressed in IT110R3 and the Charities Directorate's March 2005 Newsletter, that a transfer of property does not include a grant of a right to use the donor's property. The court indicated that "CRA is presuming that a legal right acquired by lease is not property, only money actually transferring hands is a transfer of property eligible to qualify as a charitable gift" and cites *Manrell v Canada* for the proposition that property includes an exclusive and legally enforceable right. However, the court determined that in this case the appellant's situation was not one where a landlord forgoes rent or returns payments of rent, since there was no lease, no legal obligation and the appellant did not own the home.

Application to Extend Time to File Objection with CRA Denied

Tanya L. Carlton.

On October 28, 2013, the Tax Court of Canada released their judgment in *Hanson v. The Queen* (2013 TCC 341). This case concerned an application by Mr. Hanson for an order to extend the time to file notices of objection relating to assessments by the Minister of National Revenue denying charitable donation claims.

In the 2005 and 2006 taxation years, Mr. Hanson claimed charitable tax credits for donations to the "Global Learning Donation Program", an illegitimate tax shelter. These donations were later reassessed by CRA, and although Mr. Hanson was given adequate time to file notices of objection, they were never received by the Minister. Mr. Hanson testified that during this time he was going through "very difficult family circumstances" and although both he and his wife had signed notices of objection, they were never filed by a representative of Global Learning (who subsequently refused to speak or help Mr. Hanson in regards to the matter). The Court was sympathetic to Mr. Hanson, but still held that subsection 166.2(5) of the ITA set out strict deadlines which had to be satisfied and could not therefore be extended by the Court. As Mr. Hanson did not meet those deadlines, the application had to be dismissed.

For more information, see online at: <http://canlii.ca/t/g1pz6>.

HST Obligations In Respect of Sponsorships

Karen J. Cooper

The Tax Court of Canada released its decision in *The Children's Clean Air Network Society v The Queen* (2013 TCC 352, available online at: <http://canlii.ca/t/g1s51>), in which it addressed the issue of

whether The Children’s Clean Air Network Society (“CCAN”) was entitled to input tax credits (“ITCs”) as a not-for-profit or a registered charity. CCAN appealed the assessments that were made under the *Excise Tax Act* (“Act”) for 2009 to 2012. CCAN was a not-for-profit during the first two years and a registered charity for the last two years. CCAN received funding from donors and sponsors. The sponsors were businesses that funded a specific project for CCAN and the project would then advertise the sponsor’s business. CCAN would collect HST on the sponsorship, buy the necessary items for the project and claim an ITC of the HST from the purchased items and would remit the difference to the CRA. CRA assessed to deny the ITCs.

The court examined whether the HST collected and remitted to CRA was incorrect since there must be a taxable supply made during a commercial activity. The court determined that the sponsor’s use was just to publicize its business name, and therefore, there was no taxable supply so taxes should have not been collected. The court then examined whether CCAN was able to claim ITCs based on the tax that was already collected. It determined that in order for a not-for-profit to claim ITCs, the items purchased by CCAN must have been obtained for the “use or supply in the course of commercial activities”. The court found that the majority of the supplies were used for non-commercial purposes, and approximately 30% were used for commercial purposes. During the period when CCAN was a charity, it was not able to claim ITCs to compensate for the amount spent on HST. CCAN contended that it was unfair for CRA to dispute the incorrectness of the past filings since CRA had accepted the filings for three years. The court disagreed with CCAN stating that the Minister acted correctly, and referred to section 299 of the Act, which does not hold the Minister of National Revenue accountable for incorrect assessments in the past. According to the court, when examining fairness, one cannot compare a charity with a commercial business. The court allowed the appeal for the first two periods when CCAN was a not-for-profit requiring a reassessment on the basis that CCAN can claim 30% of the tax paid for the items purchased for the sponsor projects.

Ontario Court of Appeal Rules That Parish Property Stays With Diocese

Jennifer M. Leddy.

In *Delicata v. Incorporated Synod of the Diocese of Huron* (2013 ONCA 540, available online at <http://canlii.ca/t/g0bg7>), the membership of a parish voted to leave the Anglican Diocese of Huron because of theological differences. Subsequently, the churchwardens requested a declaration that the current members of the parish were the beneficial owners of the parish property on the grounds that a parish is “a fluid concept that describes the people who comprise the congregation at any one time”, a

position that the Ontario Court of Appeal described as a “snapshot theory.” The Diocese took the position that the parish is “a static concept that continues in perpetuity regardless of changes in membership.” Both the trial judge and Court of Appeal accepted the Diocese’s position that when parishioners move on the parish and its property remain.

The canons of the Diocese, which are akin to by-laws, provide that the Bishop is the chief pastor of every parish and that reorganization of the parishes requires the Bishop’s approval. Canon 14 provides that the Diocese holds legal title to parish property in trust for the benefit of the parish. It also provides that the sale or other disposition of parish property requires the consent of the Diocesan Council and the Bishop. The decision turned on the interpretation of the word “parish.” The Court of Appeal was persuaded by the fact that disposition of the parish property required the consent of the Diocese because it underlined that the Diocese holds the property for the benefit of the Diocese as a whole. To accept the churchwardens “snapshot” interpretation of “parish” would “permit the Diocese to be splintered and its property distributed at the will of a single group of estranged congregants.”

Two other matters in this case will be of interest to churches and other charities. The Court held that the use of funds of a foundation, established to benefit the parish, to pay the legal fees of the Anglican Network in Canada, a group in opposition to the Anglican Church in Canada, was a breach of trust. Costs were also awarded against the church wardens as the unsuccessful parties. The Court noted that “as a matter of principle, in our justice system litigation over spiritual or religious convictions should not presumptively have a safe harbour from costs.”

Alberta Privacy Legislation Found Unconstitutional By SCC

Colin J. Thurston in *Charity Law Bulletin* No. 326, November 27, 2013.

On November 15, 2013, the Supreme Court of Canada released its decision in *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401* (“UFCW”), in which the Court determined that the *Alberta Personal Information Protection Act (PIPA)* violated the right to freedom of expression under section 2(b) of the *Canadian Charter of Rights and Freedoms* and was therefore unconstitutional. Although the case is specific to the legislation in Alberta, the decision may impact other provincial privacy statutes, as well as the federal *Personal Information Protection and Electronic Documents Act*, which applies in most provinces, including Ontario.

Additionally, in another recent case that will also be of interest to charities and non-profits, the Alberta Office of the Information and Privacy Commissioner (the “IPC”) confirmed in *Project Porchlight (Re)*

(“Project Porchlight”) that Alberta’s privacy legislation applies to out-of-province non-profit organizations that operate in the province. Although declared unconstitutional by the Supreme Court, the striking down of *PIPA* was postponed for one year to allow the province of Alberta to revise the legislation. This means that organizations are not relieved of their privacy obligations in Alberta, and organizations must therefore continue to comply with *PIPA*.

This *Charity Law Bulletin* reviews these two important cases regarding privacy regulation in Canada, and discusses their relevance to the privacy practices of charities and non-profits.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2013/chylb326.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2013/chylb326.htm>

Top Court Upholds Role of Family in Withdrawing Life Support

Jennifer M. Leddy in *Charity Law Bulletin* No. 324, November 26, 2013.

On October 18, 2013, the Supreme Court of Canada upheld the Ontario Court of Appeal’s decision that under Ontario’s *Health Care Consent Act, 1996* (“*HCCA*”) physicians cannot withdraw life support from an incapable patient without the consent of the substitute decision maker or an order from the Consent and Capacity Board (“Board”) established by the *HCCA*. The decision was a five to two split, with the Chief Justice writing the majority opinion. This *Charity Law Bulletin* reviews only the majority opinion, which will be of interest to the charitable and health care sectors, particularly those in Ontario.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2013/chylb324.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2013/chylb324.htm>

Ontario Social Enterprise Strategy Announced

Terrance S. Carter.

On September 26, 2013, the Ontario Ministry of Economic Development, Trade and Employment released a report entitled *Impact - A Social Enterprise Strategy for Ontario* (the “Strategy”), which outlines Ontario’s strategy to support social enterprises in the province in order for Ontario to become “the leading social enterprise jurisdiction in North America.” The report identifies social enterprises as organizations that use “business strategies to maximize [their] social and environmental impact” and praises them for their impact on Ontario, not only for tackling societal challenges that the public sector cannot solve alone, but also for, among other things, creating jobs, encouraging entrepreneurship, protecting the environment, empowering vulnerable people, and reducing poverty.

The Strategy aims to “achieve a wider understanding of the social business model and create a favourable climate in which social enterprises can flourish”. To do so, it has created four pillars: (1) to connect, co-ordinate and communicate information to, and about, social enterprise; (2) to build the social enterprise brand by increasing its online presence, e.g. through increased social media presence; (3) to create a vibrant social finance marketplace, e.g. through hosting an international impact investing conference; and (4) to deliver service, support and solutions in order to support social enterprises in Ontario. Notwithstanding the announcement of the Strategy at the end of September, there has not been any announcement concerning whether legislation in this regard will be introduced.

Impact - A Social Enterprise Strategy for Ontario can be found online at:

<http://www.ontario.ca/business-and-economy/impact-social-enterprise-agenda-ontario>

Late Notice of Claim Leads to No Insurance Coverage

Barry W. Kwasniewski in *Charity Law Bulletin* No. 325, November 26, 2013.

Insurance policies of all types require insured persons or organizations, including charities and not-for-profits, to notify their insurer of claims or potential claims. These notice requirements are contained in insurance policy wordings and must be followed. The failure to put an insurer on notice of a claim or even a potential claim may lead to the insurer denying coverage under the policy. The denial of coverage would result in the insured being required to defend a lawsuit and pay a judgment without any contribution from the insurer. The Ontario Superior Court of Justice decision in *Peel Law Association v Royal Insurance* (2013 ONCA 2312, available online at <http://canlii.ca/t/fx5gq>) highlights the importance of complying with the claim notice provisions in insurance policies. As will be discussed in this *Charity Law Bulletin*, this decision shows why charities and not-for-profits must understand their coverage and duties under insurance policies, and give notice of a claim or a potential claim without delay to their broker or insurer.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2013/chylb325.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2013/chylb325.htm>

Public Appeals Surplus Disposition Proposed in Saskatchewan Bill

Esther S.J. Oh.

On October 31, 2013, Bill 105, *The Informal Public Appeals Act*, received first reading in the Legislative Assembly of Saskatchewan. Bill 105 reflects, in part, provisions of the *Uniform Informal*

Public Appeals Act (“UIPAA”) model draft legislation, which was adopted by the Uniform Law Conference of Canada (“ULCC”) in August 2011. The ULCC recommended enactment of the UIPAA by the provinces and territories across Canada to assist individuals and organizations that informally raise funds for charitable or non-charitable purposes through “public appeals” to dispose of any surplus or unused donations. Otherwise, where a public appeals campaign raises more money than required for the intended purpose, organizers unfamiliar with their legal obligations may be unaware that returning the money to donors or applying the funds to a different cause may amount to a breach of trust in certain situations. For further information on the UIPAA, reference can be made to *Charity Law Bulletin* No. 270 at the link provided below.

Like the UIPAA, Bill 105 does not apply to “qualified donees” within the meaning of the *Income Tax Act*, including registered charities. As such, Bill 105, if adopted, would not apply to registered charities and would instead apply to public appeals campaigns that are carried out by organizers that are not registered charities.

Bill 105 provides that funds raised through a public appeal would be held in trust for the benefit of the object for which the public appeal was conducted, with administration of the trust account carried out through the execution of a trust document. In the event of a surplus, Bill 105 allows donors who have donated amounts that are in excess of the prescribed amount to request the trustee (i.e. the person who directs or has authority to direct the management and disbursement of a fund) to refund an amount “calculated in the prescribed manner” or to apply a portion of the donation “as the donor may direct”. However, any such request must be made by the donor at the time of the donation. Where the donor has not made any such requests or cannot otherwise be identified, Bill 105 states that no trust arises. Bill 105 further permits trust documents to contain a scheme to distribute such surplus without court approval, subject to certain requirements outlined in the Bill. These provisions mirror those found in the UIPAA. If passed in Saskatchewan, this legislation could become the standard for other provinces and territories to follow across Canada.

Bill 105 is available online from the Legislative Assembly of Saskatchewan at:

<http://docs.legassembly.sk.ca/legdocs/Bills/27L3S/Bill27-105.pdf>.

For an overview of the UIPAA’s provisions, see *Charity Law Bulletin* No. 270, online at:

http://www.carters.ca/pub/bulletin/charity/2011/chylb270.htm#_ftn2.

Imagine Canada Responds to Accounting Statement of Principles

Terrance S. Carter.

In the October 2013 *Charity Law Update*, we reported that the deadline to send feedback to the Accounting Standards Board (“AcSB”) and Public Sector Accounting Board of Canada (“PSAB”) regarding the Statement of Principles (“Proposed Principles”) was extended to December 15, 2013. The Proposed Principles recommend revisions that, if implemented, would amend not-for-profit accounting standards in order to address transactions and circumstances unique to charities and not-for-profits.

On November 5, 2013, Imagine Canada issued a response detailing its concerns with various recommendations made by the Proposed Principles that should be of interest to the charitable and not-for-profit sector. For instance, one concern raised is similar to the one mentioned in our October 2013 *Charity Law Update*, namely that the Proposed Principles treat an endowment where the capital is to be held in perpetuity as “revenue” for accounting purposes, notwithstanding that the principal amount of the endowment is not available to be spent.

It is hoped that the detailed submission made by Imagine Canada will be given serious consideration by the AcSB and PSAB in finalizing the Proposed Principles.

Imagine Canada’s full response is available online at:

http://www.imaginecanada.ca/files/www/en/publicpolicy/consultations/imagine_canada_sop_submission_10052013.pdf.

The October 2013 *Charity Law Update* on this topic is available online at:

<http://www.carters.ca/pub/update/charity/13/oct13.pdf>

“Cyberbullying Bill” Touches on Anti-Terrorism

Nancy E. Claridge

On November 20, 2013, the Minister of Justice introduced Bill C-13, cited as *Protecting Canadians from Online Crime Act*, for first reading in the House of Commons. Bill C-13 aims to strengthen federal legislation regarding online crime by amending various acts including the *Criminal Code*, the *Canada Evidence Act*, the *Competition Act* and the *Mutual Legal Assistance in Criminal Matters Act*. While the proposed changes primarily focus on cyber-bullying and the related distribution of non-consensual intimate images, the Bill include amendments to anti-terrorism laws in the *Criminal Code* and updates legislation regarding production orders, transmission data and warrants to account for technological and telecommunications advancements. The proposed changes to Canadian anti-terrorism law demonstrate

that the federal government views terrorism offences as being tied to online security and data communications. Interestingly, the government has been silent on the amendments providing investigative tools that go beyond cyberbullying, prompting critics to refer to the cyberbullying law as a “Trojan horse”.

Proposed amendments related to antiterrorism include *ex parte* applications for production orders to trace specified communications, which provides for a one-year time period for service of the order; *ex parte* applications for production orders for financial data; and warrants for tracking devices on individuals, transactions or things, which can be valid for up to a year. If passed without amendments, these sections would expand police access and power to track online and electronic data when concerns of terrorism arise.

The status of Bill C-13 can be monitored online at:

<http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=6301394>.

Report On Protecting the “Nonprofit Sector” From Terrorist Abuse

Sean S. Carter & Terrance S. Carter. *Anti-Terrorism and Charity Law Alert* No. 33, November 27, 2013.

In June 2013, the Centre on Global Counterterrorism Cooperation (“CGCC”), a nonpartisan policy institute based in Washington, D.C., published a report entitled “To Protect and Prevent: Outcomes of a Global Dialogue to Counter Terrorist Abuse and the Nonprofit Sector” (the “Report”). The Report summarizes the findings of a United Nations project to develop a common understanding of anti-terrorist financing practices in the “nonprofit sector”, and to prevent terrorist abuse of “nonprofit organizations” (“NPOs”). The Report outlines seven key findings and recommendations, many of which include the involvement and cooperation of the nonprofit sector, and therefore require the awareness of NPOs for successful mitigation of terrorist financing abuse. This *Anti-terrorism and Charity Law Alert* provides a summary of the Report’s findings and recommendations.

Read More:

[PDF] <http://www.carters.ca/pub/alert/ATCLA/ATCLA33.pdf>

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

by Terrance S. Carter and Jacqueline M. Demczur, updated November 2013.

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 November 2013.

Charity Checklist: <http://www.carters.ca/pub/checklst/charity.pdf>

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

Corporate and Practice Manual for Charitable and Not-for-Profit Corporations

Co-Authored by Jane Burke-Robertson, Terrance S. Carter, and Theresa L.M. Man (Carswell, December 2013).

The *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* examines the process of incorporating non-share capital corporations for federal, provincial, and territorial corporations. It covers all aspects of corporate maintenance, including membership issues; directors' and officers' duties and liability; corporate records; annual members' meetings; directors' meetings; audit requirements; record keeping and reporting; federal and provincial jurisdiction changes such as amalgamation, continuance, changing the charter and by-laws, and dissolution. And it examines select practice issues relevant to the operation of charitable and not-for-profit corporations, including charities operating outside of Canada; intellectual property; provincial investment power; privacy law; fundraising, issues when drafting restricted charitable purpose trusts; anti-terrorism and money laundering issues for charities; and a discussion on the need for a practice approach to advising charities.

Read More:

[Preview Preface] <http://www.carters.ca/pub/book/2013/PracticeManualPreface.pdf>

Pre-order the book at: <http://carswell.com/product-detail/corporate-and-practice-manual-for-charities-and-not-for-profit-corporations/>

20th Annual Church & Charity Law™ Seminar Materials Now Available

Mississauga, Ontario, Thursday, November 14, 2013.

The 20th Annual *Church & Charity Law*™ Seminar hosted by Carters Professional Corporation in Mississauga, Ontario, on November 14, 2013, 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*™ 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/chrchl/2013/handout.pdf>

2013 Essential Charity Law Update

Terrance S. Carter, Carters Professional Corporation, Orangeville

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2013/tsc1114.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2013/tsc1114.pdf>

Communicating with Donors: Navigating Canada's New Anti-Spam Law

Ryan M. Prendergast, Carters Professional Corporation, Orangeville

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2013/rmp1114.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2013/rmp1114.pdf>

Getting Ready for the ONCA: A Step-by-Step Guide

Theresa L.M. Man, Carters Professional Corporation, Orangeville

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2013/tlm1114.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2013/tlm1114.pdf>

Unique CNCA Issues for Churches and Charities

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[WEB] <http://www.carters.ca/pub/seminar/chrchl/2013/jmd1114.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2013/jmd1114.pdf>

Copyright Issues for Charities: What You Need to Know and Do

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[WEB] <http://www.carters.ca/pub/seminar/chrchl/2013/cjt1114.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2013/cjt1114.pdf>

The Basics of Charitable Donations Including the First-Time Donors Super Credit

Karen J. Cooper, Carters Professional Corporation, Ottawa

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2013/kjc1114.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2013/kjc1114.pdf>

Developing Effective Policies for Churches and Charities

Derek B.M. Ross, Director of Legal Affairs, Canadian Council of Christian Charities

http://www.cccc.org/documents/freeresources/developing_effective_policies_for_churches_charities.pdf

The Do's and Don'ts of Employee Terminations for Charities

Barry W. Kwasniewski, Carters Professional Corporation, Ottawa

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2013/bwk1114.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2013/bwk1114.pdf>

Top 10 Real Estate and Leasing Issues for Charities

Nancy E. Claridge, Carters Professional Corporation, Orangeville

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2013/nec1114.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchlaw/2013/nec1114.pdf>

The Regulator's Perspective: Steering Clear of Compliance Concerns

Cathy Hawara, Director General, Charities Directorate, Canada Revenue Agency

[WEB] <http://www.carters.ca/pub/seminar/chrchlaw/2013/ch1114.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchlaw/2013/ch1114.pdf>

IN THE PRESS

Copyright issues: what nonprofits need to know by Colin J. Thurston.

Hilborn Charity eNews, November 21, 2013.

[Link] <http://charityinfo.ca/articles/Copyright-issues-what-nonprofits-need-to-know>

Essential Charity Law Update by Terrance S. Carter.

Linex Canada Smart Alert, November 26, 2013.

http://ca.linexsystems.com/contents/transit/60805822?user_id=78342&log=a4d542f45dc4a87bbbfa863b90b925da&p=737484&m=1&s=29949&org_id=8043.

Company Fined for Criminal Negligence Causing Death by Barry W. Kwasniewski.

Linex Canada Smart Alert, November 5, 2013.

http://ca.linexsystems.com/contents/transit/58360505?user_id=78342&log=a4d542f45dc4a87bbbfa863b90b925da&p=698666&m=1&s=29949&org_id=8043.

Foreign Corruption Issues for Charities Operating Outside of Canada by Terrance S. Carter.

Linex Canada Smart Alert, November 5, 2013.

http://ca.linexsystems.com/contents/transit/58445488?user_id=78342&log=a4d542f45dc4a87bbbfa863b90b925da&p=698666&m=1&s=29949&org_id=8043.

The importance of contracts by Barry W. Kwasniewski.

Hilborn Charity eNews, October 31 2013.

[Link] <http://charityinfo.ca/articles/The-importance-of-contracts>

RECENT EVENTS AND PRESENTATIONS

OACAO (Older Adult Centre's Association of Ontario) Conference 2013 included a presentation by Theresa L.M. Man on October 21, 2013, entitled "Getting Ready for the ONCA: A Step By Step Guide"

[Web] <http://www.carters.ca/pub/seminar/charity/2013/tlm1021.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2013/tlm1021.pdf>

2013 Public Sector and Not-for-Profit Financial Reporting Conference hosted by Chartered Professional Accountants of Canada in Ottawa, Ontario, included Terrance S. Carter in a panel discussion October 24, 2013, on “Endowments: Understanding the Definition and the Accounting Issues.”

[Web] <http://www.carters.ca/pub/seminar/charity/2013/tsc1024.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2013/tsc1024.pdf>

‘Listed entities’, The Anti-Terrorism Act and Implications for Canadian NGOs, a full day discussion and learning forum held in Ottawa, Ontario, on November 6, 2013, included Sean S. Carter in a panel on the Act and legal implications.

Ukrainian Canadian Congress held on November 9, 2013, included a presentation by Theresa L.M. Man entitled “Essential Charity Law Update.”

[Web] <http://www.carters.ca/pub/seminar/charity/2013/tlm1109.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2013/tlm1109.pdf>

16th Annual Estates and Trusts Summit hosted by the Law Society of Upper Canada (LSUC) included a presentation by Terrance S. Carter on November 12, 2013, entitled “Essential Charity Law Update.”

[Web] <http://www.carters.ca/pub/seminar/charity/2013/tsc1112.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2013/tsc1112.pdf>

[Paper] <http://www.carters.ca/pub/article/charity/2013/tsc1112.pdf>

The 20th Annual Church & Charity Law™ Seminar was held on Thursday, November 14, 2013, 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™* 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/2013/index.htm>.

AFP Congress held on November 18, 2013, included a presentation by Terrance S. Carter with M. Elena Hoffstein entitled “Drafting Issues for Designated Gifts.”

[Web] <http://www.carters.ca/pub/seminar/charity/2013/tsc1118.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2013/tsc1118.pdf>

Imagine Canada’s FREE Charity Tax Tools Webinar held on November 26, 2013, was a presentation by Terrance S. Carter entitled “The 2013 Essential Charity Law Update – The Year in Review.”

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

UPCOMING EVENTS AND PRESENTATIONS

Institute of Corporate Directors (ICD) Conference being held on November 28, 2013, will include a presentation by Terrance S. Carter entitled “Navigating Changes for Not -for-Profit Corporations – Are you Ready?.”

Details at <http://www.icd.ca/Events/Upcoming-Events/Ontario-Chapter/2013/Navigating-Changes-For-Not-For-Profit-Organization.aspx>.

Imagine Canada’s FREE Charity Tax Tools Webinar being held on December 3, 2013, will be a presentation by Karen J. Cooper entitled “The Basics of Charitable Donations including the First-Time Donor’s Super Credit.”

Details at <http://charitytax.imaginecanada.ca/demand-webinars>

Imagine Canada’s FREE Charity Tax Tools Webinar being held on December 10, 2013, will be a presentation by Theresa L.M. Man entitled “Getting Ready for ONCA: A Step-by-Step Guide.”

Details at <http://charitytax.imaginecanada.ca/demand-webinars>

Redeemer University will be hosting a presentation by Terrance S. Carter January 9, 2014, on NFP Management Course.

The Ottawa Region Charity & Not-for-Profit Law™ Seminar will be held at Centurion Conference Centre in Ottawa on Thursday, February 13, 2014.

Details and online registration will be available soon 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 on charitable matters, a past member of the Technical Issues Working Group of Canada Revenue Agency's (CRA) Charities Directorate, Past Chair of the CBA National and OBA Charities and Not-for-Profit Law Sections, and is recognized as a leading expert by *Lexpert* and *The Best Lawyers in Canada*. He 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 Butterworths, 2014), and editor of www.charitylaw.ca, www.churchlaw.ca and www.antiterrorismlaw.ca, and a past co-chair of the CBA National Charity Law Symposium.



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).



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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*. She is co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* to be published by Carswell in 2013.



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.



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.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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