

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

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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 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

Canada's Anti-Spam Legislation: Is Your Organization Prepared?

Ryan M. Prendergast in *Charity Law Bulletin* No. 328, January 28, 2014.

Bill C-28, commonly referred to as “Canada’s Anti-Spam Legislation” (CASL) received Royal Assent on December 14, 2010. As previously discussed in earlier *Charity Law Bulletins* and *Updates*, CASL will impact how charities and non-profit organizations communicate with their donors, volunteers and members. Since CASL received Royal Assent, there has been much speculation concerning when CASL would come into force. However, on December 4, 2013, the Minister of Industry, James Moore, announced that CASL will come into force on July 1, 2014. This announcement was followed by the publication of final regulations under CASL in the *Canada Gazette*, Part II, Vol. 147, No. 26 on December 18, 2013. Most notably, the final form of regulations includes a specific exemption from CASL for select electronic messages sent by registered charities for fundraising purposes.

This *Charity Law Bulletin* reviews the exemption under CASL for registered charities in the recently published final regulations, together with a summary of information contained in earlier *Charity Law Bulletins*, as well as a brief review of practical steps charities and non-profit organizations can take to prepare for CASL.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2014/chylb328.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2014/chylb328.htm>

CRA News

Karen J. Cooper.

Announcement for charities with fiscal periods ending in October, November and December

On January 29, 2014, CRA posted an announcement that affects charities under the Ontario *Corporations Act* that have fiscal periods ending in October, November, and December 2013. Due to a software error, CRA will be sending these charities a second annual information return package and they must use the forms in this package to file their annual information return, which includes Form *RC2320WS*, *Director/Officer Worksheet* and *Ontario Corporations Information Act Annual Return*. To view this posting on the CRA website, see online at: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/whtsnw/menu-eng.html?rss>.

Municipal or public bodies performing a function of government

Municipal bodies and public bodies performing a function of government in Canada that want to receive gifts from registered charities and to issue tax deductible donation must apply for registration and be added to a list of qualified donees by the CRA. To maintain qualified donee status, the municipal or public body must keep adequate books and records and can only issue official donation receipts that comply with certain requirements. If a qualified donee engages in prohibited conduct, it may have its status revoked or receipting privileges suspended. For more information about qualified donees, issuing donation receipts, and how to apply for registration, see online at: <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/mncplpblcbds-eng.html?rss>.

First-time donor's super credit

The Honorable Kerry-Lynne D. Findlay, Minister of National Revenue, is encouraging Canadians to donate to charities and take advantage of the first-time donor's super credit. The first-time donor's super credit was implemented to encourage new donors to give to charities, and to support families, communities and the charitable sector. The credit was launched in the Economic Action Plan 2013 and will continue until 2017. To read what Minister Findlay and others have said about the credit, see online at: <http://www.cra-arc.gc.ca/nwsrm/rlss/2013/m12/nr131210-eng.html>.

For more details on the credit and a helpful webinar with Imagine Canada see:

<http://charitytax.imaginecanada.ca/files/charitytax/imce/docs/Charity%20Tax%20Tools%202013%20Charitable%20Donations.pdf>.

Convictions

On January 10, 2014, in the Ontario Court of Justice, David Ajise was sentenced to a 30-month jail term for fraud over \$5000. In the same case, Eto Ekpenyong Eto was sentenced to a conditional sentence of two years less a day for fraud over \$5000. Mr. Ajise was a proprietor of Datronix Solutions, which was a tax preparation service in Toronto. The two individuals were involved in a charitable donation scheme in the 2003 to 2005 tax years, which produced \$5,023,456. This fraudulent scheme was completed by Mr. Ajise charging his clients a \$30 to \$50 fee to prepare a tax return, and then 10% of the face value of a fake charitable donation receipt. The clients claimed the fake charitable donation receipts on their tax returns. Mr. Eto was also a director of the Tractors for Our Daily Bread Canada charity, which issued charitable donation receipts to donors for amounts that were larger than the actual donation. Mr. Eto did not personally gain from the scheme, however, he still assisted in the fraud. For further details, see online at: <http://www.cra-arc.gc.ca/nwsrm/cnvctns/on/on140114-eng.html>.

Canadian amateur athletic trust group information return

CRA has made available on its website the Canadian Amateur Athletic Trust Group Information Return. An international sports federation (“ISF”) may need a registered Canadian amateur athletic association (“RCAAA”) to hold, control and administer certain funds, such as prizes or endorsements, in order for an athlete to be eligible to compete in sports events that are authorized by an ISF. In these instances, the RCAAA is the trustee and the athlete is the beneficiary for this “amateur athlete trust”, as defined in the *Income Tax Act*. To access the T1061 Canadian Amateur Athletic Trust Group Information Return with further details, see online at: <http://www.cra-arc.gc.ca/E/pbg/tf/t1061/README.html>.

Gifts and income tax pamphlet

CRA has updated its pamphlet entitled “P113 – Gifts and Income Tax” that provides information about making gifts in the year 2013. The pamphlet provides information about: new additions, such as the first-time donor’s super credit, the meaning of a “gift” under the *Income Tax Act*, the types of gifts that permit a taxpayer to claim a tax credit, donations of property and appraisals, official donation receipts, gifts of capital property, fair market value, capital gains and losses, and the method to calculate one’s total donation limit. To access the P113 - Gifts and Income Tax pamphlet, see online at: <http://www.cra-arc.gc.ca/E/pub/tg/p113/README.html>.

CRA website updates

On its website, CRA has reported several new changes to donations and gifts. There now exists the first-time donor’s super credit (see online at: <http://www.cra-arc.gc.ca/gncy/bdgt/2013/qa01-eng.html>); gifts to foreign charitable organizations (see online at: <http://www.cra-arc.gc.ca/gncy/bdgt/2012/qa02-eng.html>); taxes in dispute and charitable donation tax shelters (see online at: <http://www.cra-arc.gc.ca/gncy/bdgt/2013/qa13-eng.html>); and the extended reassessment period for tax shelters and reportable transactions (see online at: <http://www.cra-arc.gc.ca/gncy/bdgt/2013/qa12-eng.html>).

Two new web pages concerning the process for charities to change certain information were added to the CRA Charities Directorate website in late November 2013. The first, titled “Changing a charity’s authorized representative information”, indicates that Charities Directorate requires the consent of charities in order to communicate with an authorized representative, such as an employee, volunteer, lawyer, accountant or bookkeeper. The page provides three methods to change a charity’s authorized representative: (1) through form RC59; (2) online; or (3) through a written request. See <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/chngs/thrzdprsrnttv-eng.html>.

The second, titled “Changing a charity’s director, trustee, and like official information”, indicates that the Charities Directorate can only discuss files with individuals indicated in the file. While information about directors, trustees and like officials is submitted in the annual registered charity information return, CRA provides a list of relevant information to send to the Charities Directorate if changes occur between filings. This information includes the charity’s name and registration number; the individual’s name, position, date of birth, contract information, and whether they are at arm’s length with other directors, trustees or like officials; and the effective date of the changes. See <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/chngs/drctr-trst-eng.html>.

These pages serve as a reminder that charities must ensure that all information filed with the Charities Directorate is up to date and accurate, as outdated information may result in difficulty when attempting to communicate with the Charities Directorate.

Legislation Update

Terrance S. Carter and Ryan M. Prendergast.

A number of important Federal and Provincial government legislative measures over the last six months will continue to have an impact on the charity and not-for-profit sector. A brief update on the status of these measures as of January 29, 2014, as well as upcoming measures, is set out below:

Federal Budget 2014 Date Announced

Finance Minister Jim Flaherty announced on January 27, 2014 that he will present the Federal Budget for 2014 (“Budget 2014”) on February 11, 2014. Budget 2014 comes early compared to previous years, and is expected to update the federal government’s fiscal forecast and propose new legislative updates, many of which have, in the past, affected the not-for-profit sector.

Federal Bill C-4, Economic Action Plan 2013 Act, No. 2

Bill C-4, *Economic Action Plan 2013 Act, No. 2* received Royal Assent on December 12, 2013. Bill C-4 implements certain provisions of Budget 2013 that were not implemented through Bill C-60, *Economic Action Plan 2013 Act, No. 1*.

Of note, Bill C-4 amends the ITA by extending the reassessment period for “reportable tax avoidance transactions and tax shelters” when information returns are not filed properly and on time, or at all. This extended reassessment period will apply to all future taxation years that end after March 21, 2013.

Bill C-4 can be accessed online at

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6388214&File=4>:

Proposed Amendments to Excise Tax Act Regarding Paid Parking Exemptions

On January 24, 2014, Finance Minister Jim Flaherty announced proposed amendments to the *Excise Tax Act* (“ETA”) that exempt from GST/HST hospital parking for patients and visitors. The proposed amendments also clarify that “that the special GST/HST exemption for charity parking does not apply to parking provided by a charity set up or used by a municipality, university, public college or school”. In this regard, while the clarifications will exempt charities that are not public sector bodies under the ETA, and certain public sector bodies from GST/HST on the supply of paid parking in some instances, the proposed amendments contain detailed requirements that must be met in order for the exemption to apply. As such, charities that will be impacted by the amendments should carefully review the proposed changes to ensure that their existing practices concerning the supply of paid parking will be eligible for the exemption.

The January 24, 2014 announcement, with links to the legislative proposal, is available online at: <http://www.fin.gc.ca/n14/14-009-eng.asp>.

Ontario Bill 36, Local Food Act, 2013

Although Ontario Bill 36, *Local Food Act, 2013* received Royal Assent on November 6, 2013, it will not come into force until a day to be named by proclamation of the Lieutenant Governor. Bill 36 provides a non-refundable tax credit to eligible persons, including individuals, their spouses or common-law partner, or corporations, involved in the business of farming in Ontario. Under the scheme, eligible persons who donate agricultural products produced in Ontario to eligible community food programs, i.e., programs that provide food to the public in Ontario without charge such as food banks, or other registered charities under the *Income Tax Act*, will receive a non-refundable provincial tax credit worth 25% of the fair market value of their donation. Although not yet proclaimed, this tax credit will apply to donations made after January 1, 2014.

Bill 36 can be accessed at: http://www.ontla.on.ca/bills/bills-files/40_Parliament/Session2/b036ra.pdf.

Ontario Bill 105, An Act to amend the Employer Health Tax Act

On December 12, 2013, Ontario Bill 105 received Royal Assent, implementing various amendments to the *Employer Health Tax Act* that affect registered charities. Bill 105 includes a new subsection 2.1(9)

that states that the exemption amount for an employer that is a registered charity is to be determined without reference to its total remuneration in Ontario. Similarly, new subsection 2.1(10) allows employers who are associated with a registered charity to have any remuneration paid by the charity to be exempt. Both of these subsections apply to taxation years beginning after December 31, 2013. In spite of these provisions, subsection 2.1(11) provides the Minister of Finance with powers to make special regulations regarding registered charities and employers associated with registered charities, including rules that would revoke the exemption. Additionally, as a result of these new additions regarding registered charities, Bill 105 amends the definition section by adding the definition of “registered charity”, which it defines in accordance with registered charities under section 248(1) of the ITA.

Bill 105 can be accessed at http://www.ontla.on.ca/bills/bills-files/40_Parliament/Session2/b105ra.pdf.

Manitoba Bill 46, The Statutes Correction and Minor Amendments Act, 2013

Manitoba Bill 46, *The Statutes Correction and Minor Amendments Act, 2013* received Royal Assent on December 5, 2013. Bill 46 repeals Manitoba’s *Charities Endorsement Act*, effective December 31, 2013. As a result, charities that were once required to apply for authorization to solicit funds under *The Charities Endorsement Act* will no longer be required to do so.

Bill 46 is available online at: <http://web2.gov.mb.ca/bills/40-3/pdf/b046.pdf>.

Status of Continuances under the CNCA

Theresa L.M. Man.

All corporations under Part II of the *Canada Corporations Act* (CCA) have until October 17, 2014, to continue under the new *Canada Not-for-profit Corporations Act* (CNCA). As of December 31, 2013, 2,600 of approximately 17,000 Part II CCA corporations have filed for continuance. According to Corporations Canada, the exact number of existing Part II CCA corporations is not available because many of them do not regularly file their annual corporate returns. This leaves approximately 14,400 corporations that still need to apply for continuance by the deadline.

Failure to continue under the CNCA by the October 17, 2014, will result in those corporations being dissolved. Since the October 17, 2014 deadline is mandated by the CNCA, this date cannot be changed without an amendment to the CNCA. However, dissolution of corporations that fail to continue by the deadline is not automatic. Section 297(5) of the CNCA provides that Corporations Canada may dissolve

corporations that fail to continue by the deadline in accordance with the process in section 222 of the CNCA. Under section 222, before dissolving a corporation, Corporations Canada will give notice to the corporation and to each director and publish the notice in a publication generally available to the public. Unless cause for the contrary has been shown, a certificate of dissolution may be issued after 120 days of giving notice.

According to Corporations Canada, after the October 17, 2014, deadline, they will start sending out notices to corporations. However, corporations may still file for continuance after having received the notice. Although a process is available to revive the corporation, it would be prudent to file for continuance on time to avoid the time, costs and hassle (let alone embarrassment to stakeholders, donors and the public) to reviving a dissolved corporation. We understand that Corporations Canada will soon be releasing a communications in this regard.

To assist Part II CCA corporations to move forward with the continuance process, Corporations Canada has a number of useful tools on their website at http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs04954.html. As well, Corporations Canada recently posted on its website two informational videos to help not-for-profit corporations complete the transition process at http://www.corporationscanada.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs03925.html. The first video highlights the key elements of this transition process, while the second video takes the viewer step-by-step through Form 4031 - Articles of Continuance. An information sheet was also released by Corporations Canada which has been made available from our website at http://www.carters.ca/pub/bulletin/charity/2014/CNCA_Info_Sheet.pdf. Corporations Canada will be holding Client Outreach Sessions in Ottawa on February 3, 2014, and in Toronto on February 19, 2014, which would include a CNCA transition update and transition deficiencies.

Given the serious consequences associated with failing to continue by the deadline, it is essential that the remaining Part II CCA corporations take appropriate steps to continue under the CNCA as soon as possible. The continuance process will require the preparation of articles of continuance and a new by-law which complies with the CNCA. Drafting these documents and having them approved by the board and the members at meetings called for that purpose before filing with Industry Canada can take a number of months, subject to the governance process and polity of the organization. There is no mandatory requirement that a lawyer be retained to assist in this process because there are a number of self-help tools available on Industry Canada's website. However, because of the complexities surrounding the new CNCA provisions, it is generally advisable to obtain assistance from a lawyer who

is knowledgeable concerning the CNCA and experienced in charity and not-for profit law matters in order to ensure that the new articles and by-law are compliant with the complex rules in the CNCA.

Leveraged charitable donation decision

Karen J. Cooper

The Federal Court of Appeal (the “Court”) released its decision in *Kossow v. Canada* (2013 FCA 283, available online at: <http://canlii.ca/t/g2772>) in which it upheld the disallowance of payments made to a leveraged charitable donation program. In 2000, 2001 and 2002, the appellant donated money to a registered charity, Ideas Canada Foundation, by combining her own money (20%) with the proceeds of a 25-year interest free loan from Talisker (80%). According to the decision, 88% of the funds given to Ideas Canada Foundation “flowed through an escrow account with a law firm” which was then spent to acquire artwork for the MacLaren Art Centre. MacLaren Art Centre only had control over 0.5% of the donations and the promoters of the donation program made the decisions about the artwork. In its analysis, the Court indicates that the earlier decision in *Maréchaux v. Canada* (2010 FCA 287) (“*Maréchaux*”) stands for two propositions: (1) “a long-term interest free loan is a significant financial benefit to the recipient [borrower]” and (2) “a benefit received in return for making a gift will vitiate the gift.” The Court then compared the appellant’s donation program to the program in *Maréchaux* and concluded that both involved interest free loans and similar facts. Therefore, the appellant’s case should not depart from the decision in *Maréchaux*.

CRA Guidance on Promotion of Health and Charitable Registration

Terrance S. Carter and Karen J. Cooper in *Charity Law Bulletin* No. 329, January 29, 2014.

Canada Revenue Agency (“CRA”) released its guidance dealing with promotion of health and charitable registration on August 27, 2013. The guidance, referenced as CG-021, is entitled Promotion of Health and Charitable Registration (“Guidance”), and replaces the following Charities Summary Policies: 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 describes how CRA interprets the common law and *Income Tax Act* (“ITA”) when determining whether an organization created for the purpose of promoting health is eligible to become a registered charity under the *ITA*.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2014/chylb329.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2014/chylb329.htm>

Status of the ONCA

Theresa L.M. Man.

Many Ontario not-for-profit corporations are anxious to know when the Ontario *Not-for-Profit Corporations Act, 2010*, (ONCA) will be proclaimed in order to strategize the timing of their organization to transition under the new ONCA.

The new ONCA received Royal Assent on October 25, 2010, but it is not yet in force. Once proclaimed into force, it will apply to all non-share capital corporations incorporated under Part III of the OCA. The ONCA was originally anticipated to be proclaimed on July 1, 2013. Key amendments to the ONCA embodied in Bill 85 received first reading on June 5, 2013. The Ministry of Consumer Services announced that proclamation of the ONCA cannot proceed without these amendments.

In September 2013, the Ministry announced that Bill 85 was anticipated to be debated in the Legislature in fall 2013. The Ministry advised at that time that once Bill 85 is enacted, the ONCA is anticipated to come into force no earlier than six months afterwards in order to ensure adequate time for the Ministry and the sector to prepare for transition. As of the adjournment of Ontario Legislature on December 12, 2013, Bill 85 had not progressed beyond first reading. The Ontario Legislature is scheduled to reconvene on February 18, 2014. The Ministry has not provided an update on the anticipated proclamation date of the ONCA in this regard but an announcement is expected to be released soon based upon recent communications with officials at the Ministry. As it is not known how fast Bill 85 will proceed through the Legislature once it resumes sitting, it is possible that proclamation of the ONCA may not happen before the first half of 2015. We will have to wait until an official announcement is made by the Ministry to gain greater insight.

CRA Ruling Regarding A Charity's Interest In A Taxable Corporation

Karen J. Cooper

CRA recently issued a ruling regarding a charity's interest in a taxable corporation (Document # 2011-0431051R3). The stated purpose of the proposed business structure was to enable the charity to diversify its services through a new corporation without losing its charitable status and to allow a portion of Newco's profits to be used to support the charity's charitable activities. The structure consisted of a registered charity, a share capital corporation referred to as Aco, and a new for-profit share capital corporation referred to as Newco. The charity and Aco would be the shareholders of Newco. Newco would have unlimited shares comprised of Common Shares with equal voting rights, and Class A, B,

and C Special Shares. The charity and Aco would each contribute an undisclosed amount for the shares. The charity and Aco would transfer employees and assets into Newco for undisclosed purposes. The three entities would enter into a Unanimous Shareholders Agreement and a separate Board would oversee Newco. The charity and Aco would each have a specific number of persons on the Board, provided they owned the required number of Common Shares. The Board's directors would include nominees from Aco and the charity; however, no directors on Newco would be directors of the charity. Following the transfer of assets to Newco, the charity would only be involved in "passive management of an investment asset; it would not take an active role in day-to-day management of Newco," except for administrative functions. CRA confirmed that the charity's ownership of interest in the Common Shares of Newco and the charity's representation on Newco's Board of Directors, "would not be considered activities that would constitute the carrying on of a business that is not a related business of the charity" under 149.1(2)(a) of the *Income Tax Act*.

For further information, see online at: <http://taxinterpretations.com/?p=21906>.

NPO Tax-Exempt Status May Be Preserved While Renting Property

Theresa L.M. Man.

On August 2, 2013, the Canada Revenue Agency ("CRA") released its views on whether the rental of vacation properties by a club to non-members would jeopardize its tax exempt status as a non-profit organization (NPO) under paragraph 149(1)(l) of the *Income Tax Act* (Canada) ("Act"). If not, then the CRA commented whether the rental income would be subject to tax under subsection 149(5) of the Act. (Document #2013-0475041E5).

Organizations that meet the requirements under paragraph 149(1)(l) are exempt from Part I tax. However, if the main purpose of an organization is to provide dining, recreational or sporting facilities to its members, the property of the organization is deemed to be the property of the trust and income tax is payable by the trust on its property income and certain capital gains pursuant to subsection 149(5) of the Act. The CRA's general views regarding subsection 149(5) are set out in Interpretation Bulletin IT-83R3.

The CRA expressed that the active pursuit of rental income from non-members could indicate a profit purpose resulting in an organization losing its NPO status. Relevant issues to be considered in this regard are: (1) the circumstances and purposes for which the property was acquired and previously used; (2) the duration of the profitable rental situation; (3) the amount of profit; and (4) whether the income

earned from the rentals to non-members is used for the organization's not-for-profit objectives. In this regard, the CRA distinguishes between business income and property income, where the "degree of the lessor's activity associated with the rental" is determinant. The active pursuit of rental income from non-members as business income could result in the loss of the organization's NPO status. This is because NPOs may not have a profit purpose, and active pursuit of rental income from non-members could indicate such a profit purpose.

In this particular case, the CRA indicated that renting vacant property to non-members would likely not affect the club's NPO status if the rental income was incidental, used for the NPO's not-for-profit objectives and not made available for members' personal benefit, and if the rental was infrequent or for a short period of time during a transition period. Conversely, if these requirements are not met, then the organization would likely lose its NPO status. Although the Document uses the term "vacation property" and "vacant property" interchangeably, the facts disclosed in the Document do not appear to make a difference to the end result.

Taking this one step further, if the above conditions are met (and therefore does not affect the NPO status) and the main purpose of the club is to provide dining, recreational or sporting facilities to its members, then rental income would likely be considered income from property and taxed in the deemed trust pursuant to subsection 149(5).

Canadian Charities Operating Outside of Canada: What You Need to Know

Terrance S. Carter..

The following article published in *Canadian International Lawyer Journal*, Vol.9 No.2, (Canadian Bar Association, 2013) provides an overview of the various issues charities must consider before embarking on foreign operations in order to ensure appropriate compliance with the requirements for charities operating outside of Canada.

Read More:

[PDF] http://www.carters.ca/pub/article/charity/2013/TSC_CIL_vol9_no2_Oct2013.pdf

SCC Denies Leave to Appeal of *Prescient Foundation v MNR*

Karen J. Cooper

The Supreme Court of Canada will not be hearing the appeal of *Prescient Foundation v Minister of National Revenue*, 2013 FCA 120, which concerned the revocation of a Foundation's charitable status for not maintaining adequate books and records. On November 28, 2013, the Supreme Court of Canada

dismissed the application for leave to appeal from the judgment of the Federal Court of Appeal. To view the Supreme Court of Canada docket, see online at: <http://www.scc-csc.gc.ca/case-dossier/info/dock-regi-eng.aspx?cas=35456>.

CRA Interprets “Member” of a Not-For-Profit Corporation

Karen J. Cooper

In a recent technical interpretation (Document # 2013-0473771E5), CRA considered a request to interpret the status of a member of a not-for-profit corporation without share capital in relation to the *Income Tax Act* (“ITA”). Specifically, CRA was asked whether a member of a not-for-profit corporation without share capital is considered a “shareholder” in subsection 248(1) of the ITA for the purposes of subsection 15(1) of the ITA. The question pertained to a not-for-profit corporation that owned family recreational property and provided recreational services to its members. The term “shareholder” in subsection 248(1) of the ITA means “a member or other person entitled to receive payment of a dividend.” In answering the question, CRA referenced technical interpretation 2011-0415831E5 which stated that “a member of a society incorporated or continued under the *Canada Not-for-profit Corporations Act*, under Part II of the *Canada Corporations Act*, under a provincial societies act or equivalent legislation would generally be considered a shareholder under subsection 248(1), and therefore subject to the application of subsection 15(1) of the Act, notwithstanding that the society or corporation is prohibited from paying dividends to its members.” CRA confirmed that this interpretation from 2011 continues to apply. In addition, CRA stated that Part II of the *Canada Corporations Act* did not allow a member of a not-for-profit corporation to receive a dividend, and as a result, the portion of the definition of shareholder that states “entitled to receive a dividend” does not apply to a member of a not-for-profit corporation. CRA also confirmed that a member of a not-for-profit corporation without share capital is considered a shareholder under subsection 15(1) of the ITA, with the exception that this member cannot receive dividends. For further information see online at: <http://taxinterpretations.com/?p=22149>.

Top Court Will Hear Appeal on Assisted Suicide

Jennifer M. Leddy.

As widely predicted, the Supreme Court of Canada has granted leave to appeal from the B.C. Court of Appeal split decision in *Carter v. Canada*, which upheld the *Criminal Code* provisions against assisted suicide on the basis that it was bound to follow the *Sue Rodriguez* case that was decided by the Supreme

Court of Canada twenty years ago. The trial judge, instead of following the *Rodriguez* case, had held that the ban on physician-assisted suicide infringed the Canadian *Charter of Rights and Freedoms* by discriminating against disabled persons who are denied access to the assistance they need to commit suicide while able bodied individuals can commit suicide without assistance. The trial judge also held that prohibiting physician assisted suicide breached the *Charter* right to life because some people would end their lives sooner than they might wish at a time when they would not need assistance.

Anticipating that the case could end up at the Supreme Court of Canada, where the *Rodriguez* case would be front and centre, the B.C. Court of Appeal offered some brief comments, in a “by the way” fashion, on the remedy of a constitutional exemption as an alternative to striking down the *Criminal Code* prohibition of assisted suicide. The Court of Appeal suggested that a constitutional exemption could be granted to a person on whom the “otherwise sound” law, which is intended to protect those who are vulnerable, has an “extraordinary and even cruel effect.” The constitutional exemption would require court approval, two medical opinions and the request of a rational applicant free of outside influence. In the Court’s view, a court of law would be better equipped to assess individual cases from a “perspective outside the (often overstressed) health care regime.”

The Court has tentatively scheduled the hearing of the appeal for October 14, 2014, almost one year after the B.C. Court of Appeal decision was delivered.

Required Characteristics of Religious Orders for Clergy Residence Deduction

Jacqueline M. Demczur.

On November 25, 2013, CRA released income tax ruling 2013-0494611I7 determining whether a particular unnamed organization was a religious order for purposes of the clergy residence deduction under s. 8(1)(c) of the *Income Tax Act (Canada)* (“ITA”). CRA outlined the six common law characteristics of religious orders that it accepts and follows when determining whether or not an organization is a religious order. These characteristics are summarized as follows:

1. The organization’s purpose should be primarily religious;
2. The members must agree to adhere to and in fact adhere to a strict moral and spiritual regime of self-sacrifice and dedication to the goals of the organization to the detriment of their own material well-being;

3. Members should be committed full-time for a long term, although a lifelong commitment is not essential. The commitment must not be short term, temporary or part-time;
4. The members' spiritual and moral discipline and regime must be markedly stricter than that of the lay church members' regime;
5. Individuals must be admitted to the order in accordance with strict standards of spiritual and personal suitability; and
6. There should generally be a sense of communality.

The income tax ruling provides CRA's understanding and interpretation of the second, fourth, fifth and sixth characteristics. In relation to the second characteristic (the strict moral and spiritual regime), CRA explained that both it and the courts have adopted an approach of examining financial sacrifice when considering this characteristic. Financial self-sacrifice exists when a member's salary is substantially lower than the salary of an employee performing a similar job in a non-religious organization.

Regarding the fourth characteristic (spiritual and moral discipline), CRA indicated that there should be a formalized code of conduct for members in place and set out in their employment contracts. Among other things, this code of conduct should be clear that members must live a markedly stricter lifestyle than other employees or lay members. Additionally, CRA looks for rules or norms that unite all members, a policy that members may be dismissed for non-adherence, and a requirement that members commit to life as a member of a religious order and abandon a secular lifestyle.

In relation to the fifth characteristic (strict standards of spiritual and personal suitability), CRA stated that there should be evidence of a documented assessment of methodology, probationary period, religious training period, and public worship or prayer. In this regard, organizations should provide information to indicate their screening standards for the suitability of potential members.

Regarding the sixth characteristic (a sense of communality), CRA relies on the plain meaning of "communality". Referring to dictionary definitions, CRA defines communality as meaning "relating or belonging to a community" where a community may be "a body of people having a religion, a profession etc., in common". However, while CRA states that this characteristic holds minimal weight, it also states that it must be considered along with the other characteristics.

Organizations must possess all six characteristics in order to be considered religious orders by CRA in order for their members to declare a clergy residence deduction under s. 8(1)(c) of the ITA.

New WSIB Policies for Construction Work Impact Charities and NFPs

Barry W. Kwasniewski in *Charity Law Bulletin* No. 327, January 28, 2014.

As of January 1, 2013, the Government of Ontario made coverage under the *Workplace Safety and Insurance Act, 1997*, mandatory for most workers in the construction industry. These important changes will affect all charities and not-for-profits which engage contractors for construction work in Ontario. Although the new rules for construction work were in place as of January 1, 2013, actual enforcement of these rules only commenced as of January 1, 2014. This *Bulletin* reviews the legislative requirements now in force, which are mandatory for any charity or not-for-profit which hires contractors to carry out construction work.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2014/chylb327.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2014/chylb327.htm>

FCA Upholds Minister's Decision to Stop Funding over Terrorist Concern

Nancy E. Claridge

The Federal Court of Canada released a judgment December 29, 2013, upholding the Minister of Citizenship and Immigration's (the "Minister") decision not to enter into a \$1 million funding agreement with the Canadian Arab Federation ("CAF"), citing serious concerns about public statements appearing to reflect CAF's support for terrorist organizations, including Hamas and Hezbollah.

The Minister's decision was made notwithstanding CAF's participation in the Language Instruction for Newcomers to Canada ("LINC") program for twelve consecutive years and Citizenship and Immigration Canada's ("CIC") positive response to CAF's funding proposal.

Justice Russel Zinn focused on four questions: (a) Did the Minister owe CAF a duty of procedural fairness? (2) Was the Minister's decision tainted by a reasonable apprehension of bias? (3) Was CAF's freedom of expression infringed? and (4) Was the Minister's decision reasonable?

The Court held that the Minister did not owe a duty of fairness to CAF because their relationship was strictly commercial and contractual. However, if such duty existed, the Minister's decision would have to be impartial and unbiased. If a duty of fairness was owed, the Court stated that it would have held that the Minister's decision could not be considered to be impartial, but rather was tainted by a reasonable apprehension of bias, based on an examination of the Minister's internal emails in which his "private actions revealed that he would not truly consider CAF's submissions...[and] his mind was closed."

Regarding the issue of whether CAF's section 2(b) *Charter* right to freedom of expression had been infringed, the Court found the claim to funding to be a positive rights claim, which exists "if the government has to legislate or otherwise act to support or enable an expressive activity" in part because the LINC program was created by the government and requires government enablement. CAF's access to LINC funding was "a particular platform created by the government, not a fundamental freedom." Additionally, the Court stated that there was no link between the termination of a contract for funding the LINC program and CAF's pro-Palestine advocacy.

Finally, the Court held that the Minister's decision to end funding to CAF's LINC program was reasonable on the ground that CAF *appeared* to be *arguably* anti-Semitic and to support terrorist organizations. Despite CAF's arguments that it did not endorse or approve any of the specific incidents of hatred, anti-Semitism or terrorist support mentioned above, the Court stated that "one is known by the company one keeps" and that CAF could not completely disassociate itself from these incidents.

The case is important not only in relation to confirming that government funding will not be guaranteed year-to-year, but also that organizations must be vigilant about protecting its public perception in order to ensure the private actions of its members do not taint the organization's reputation.

Appeal Court Upholds Sentence for Fundraiser Accused of Fraud

Ryan M. Prendergast

In the September 2012 *Charity Law Update*, it was reported that Adam Gour was convicted of fraud over \$5,000 for defrauding the public in relation to a fundraising business he operated. Mr. Gour employed commission-based fundraisers to pose as volunteers to solicit donations from the public and also used images of sick children without the consent of their families, representing that the funds would be going to these children. In November 2013, Mr. Gour was ordered to pay over \$300,000, and sentenced to jail for 15 months.

On January 20, 2014, the Ontario Court of Appeal denied leave to appeal Gour's fraud conviction and jail sentence. The Court found that less than 3% of the approximately \$288,000 raised was used for charitable purposes, while 62-83% was retained by Gour. It upheld the trial court's finding that Gour had instructed employees to mislead the public about their status as volunteers and about any profit made by the organization.

While the Court's decision may raise some concern for commission-based fundraisers, the Court of Appeal was careful to say that non-disclosure of whether a canvasser is a volunteer or employee "will

not be relevant in every charitable fundraising context.” In the case at hand, however, the Court of Appeal upheld the trial court’s finding that Gour’s failure to disclose such information was a relevant consideration, as Gour had “operated his team of canvassers in a manner calculated to mislead the public.” As such, the Court will look to the motivation behind a fundraiser’s non-disclosure of the status of their canvassers in determining whether there has been fraud committed on the public.

Details on the trial court decision are available online at:

<http://www.carters.ca/pub/update/charity/12/sep12.pdf>.

The Court of Appeal decision is available online at:

<http://www.ontariocourts.ca/decisions/2014/2014ONCA0051.htm>.

BC Court Prohibits Sale of Specific Purpose Charitable Trust Property

Terrance S. Carter.

The Supreme Court of British Columbia released a judgment on January 22, 2014 that will be of interest to charities that receive or hold restricted charitable trust property. The decision is complicated, but in essence dealt with the sale of property given to a society in Vancouver that operates as a land trust, The Land Conservancy of British Columbia Inc. (“TLC”). TLC had received a culturally significant property, the Binning House, from the Binning Heritage Property Society (“BHPS”), and a Deed of Gift was executed at that time to effect a transfer of the property. As TLC was faced with significant debt, it accepted an offer to sell the Binning House for \$1.6 million on the condition that it received court approval in order to pay its creditors. In its decision, the Court considered whether TLC was restricted from selling the Binning House by virtue of the B.C. *Charitable Purposes Preservation Act* (the “CPPA”) and common law trust obligations.

The Court stated that, in the absence of a specific purpose charitable trust, TLC would own the Binning House beneficially and could sell it to advance TLC’s general purposes. However, if a specific purpose charitable trust was found to be imposed by BHPS, the Binning House would have to be used for that purpose and not be sold. In this regard, although the Deed of Gift did not use the term “trust” or “trustee”, the Court found that the Deed of Gift created a specific purpose charitable trust under the common law through its language, which stated that Binning House was gifted to TLC “for the purpose of restoring, developing and preserving the Binning House ... for historical purposes with a view to educating the public and commemorating the site.” The Court further held that the “overall circumstances” of the transfer demonstrated that BHPS had intended, and TLC had treated, the

transaction as a specific purpose charitable trust. Additionally, “by necessary implication,” it found that BHPS had intended for Binning House to be kept and administered separately and for TLC to use it to advance specific charitable purposes. Thus, Binning House was also found to be a “discrete purpose charitable property” under the CPPA.

The Court recognized that the CPPA’s purpose was to ensure that property donated to a charitable organization for a specific charitable purpose be preserved exclusively for that charitable purpose, and that the property be protected from being used to satisfy the debts, liabilities or other legal obligations in certain circumstances. However, the Court stated that the CPPA does not allow a trustee holding discrete purpose charitable property (i.e. a specific purpose charitable trust at common law) to avoid future trust obligations by simply selling the property contrary to the terms of the trust. It would be “anomalous” to allow a trustee to escape its statutory obligations under the CPPA or its common law obligations by simply disregarding the terms of the trust.

Based on its findings above, the Court saw “no basis at this time” for TLC to argue that it would be “impossible to continue to abide by the terms of the trust in preserving the Binning House.” The Court adjourned TLC’s application for approval of the sale and allowed TLC to reset its application with further evidence or to amend its application and seek other relief. This decision, although complicated in its facts and analysis of the law, underscores the importance of charities ensuring compliance with the terms of restricted purpose charitable trusts, including when such trusts are used in the context of real property. There will no doubt be further judicial pronouncement in this case and, as such, updates will be provided as further developments occur.

The Muttart Foundation Publishes 2013 Report on the Charitable Sector

Esther S.J. Oh.

In November 2013, The Muttart Foundation, a foundation dedicated to helping charities increase their ability to fulfil their mission, released its fifth edition of *Talking About Charities*, a report which provides information on Canadian perspectives regarding the charitable sector. *Talking About Charities* (the “Report”) examines Canadian public opinion about charities and issues affecting charities based on data collected from Canadians. The Report is released for the purpose of encouraging discussion regarding issues relating to the charitable sector between charities, policymakers, regulators and the general public and providing information concerning the realities in which charities operate. The latest

edition of the Report is based on telephone interviews conducted with just over 3,800 people in the year 2013. The following is a summary of some of the highlights from the Report:

- The Report indicates that a significant majority of Canadians continue to believe that charities are important and trustworthy, although the levels of trust have declined over the past 13 years in certain types of charities, including environmental organizations, churches and other places of worship, and international charities.
- Canadians also demonstrated a lower level of trust in charity leaders than in 2000, with only 17% of Canadians surveyed responding that the trust charity leaders “a lot”. However, trust levels in various types of leaders (including religious leaders, lawyers, federal and provincial politicians) also declined over the past 13 years.
- While there are concerns amongst Canadians regarding perceived inadequate disclosure by charities concerning usage of donated resources and inadequate communication with the public on how the work of charities is effecting the country, charities remain the second most trusted form of societal institution behind only small businesses and ranking ahead of governments and large corporations. In addition, 93% of the Canadian population consider charities to be important and 88% believe charities generally improve the quality of life for Canadians. Canadians generally indicated support for expanding the role of charities in Canadian society.

Almost 90% of those surveyed felt that operating a business was a good way for charities to raise funds that they are otherwise unable to raise, and believe that such business earnings should be treated on a tax-free basis if they are used to support a charitable cause.

For further information, reference can be made to *Talking About Charities 2013*, available online at <http://www.muttart.org/sites/default/files/survey/3.Talking%20About%20Charities%202013.pdf>.

Industry Canada Considers Socially Responsible Enterprises in CBCA

Terrance S. Carter.

On December 11, 2013, Industry Canada launched a consultation on the *Canada Business Corporations Act* (“CBCA”) in order to ensure that the governance framework for CBCA corporations remains “effective, fosters competitiveness, supports investment and entrepreneurial activity, and instills investor and business confidence.” Among other topics, the consultation is to look at issues raised by a review of the CBCA conducted in 2009-2010 by the House of Commons Standing Committee on Industry,

Science and Technology (the “Committee”), including: (1) rules relating to disclosure of executive compensation; (2) rules applicable to shareholder voting and participation rights; (3) rules regarding the holding and transfer of shares and insider trading; and (4) rules applicable to the incorporation of socially responsible enterprises. The consultation provides a discussion paper (“Discussion Paper”) to elaborate upon these issues.

Following the Committee’s recommendation, the consultation will review socially responsible enterprises and, in particular, the possible incorporation of hybrid enterprises under the CBCA. Socially responsible enterprises are entities with both profit-making and non-profit goals and use a commercial business model to encourage social change. The discussion paper notes the existence of similar entities, such as low-profit limited liability corporations in the United States, community interest companies in the United Kingdom, and community contribution companies in British Columbia. Further, it notes that Nova Scotia has passed the *Community Interest Companies Act*, which is to come into force on a date to be determined.

As such, the Discussion Paper highlights the Committee’s recommendation to further discuss whether the CBCA, as it currently stands, can support socially responsible enterprises, or whether amendments will need to be made in order to facilitate the development of socially responsible enterprises under the CBCA. Interested parties will have until March 11, 2014 to provide comments to Industry Canada.

Further information on British Columbia’s community contribution companies is available in the March 2013 *Charity Law Update* at <http://www.carters.ca/pub/update/charity/13/mar13.pdf>.

Further information on the Nova Scotia *Community Interest Companies Act* is available in the January 2013 *Charity Law Update* at <http://www.carters.ca/pub/update/charity/13/jan13.pdf>.

HMRC Releases New Guidance on “Fit and Proper Persons Test” (UK)

Tanya L. Carlton.

Her Majesty’s Revenue and Customs (HMRC) has updated its “Detailed guidance on the fit and proper persons test.” The guidance is for use by ‘managers’ of charities, Community Amateur Sports Clubs (CASCs) or other organizations that are entitled to tax relief under the United Kingdom’s *Finance Act 2010*. The guidance applies to trustees of charities, directors of corporate charities and corporate trustees, CASC officials, and “any other persons having general control and management over the running of the charity or the application of its assets.” This definition of ‘managers’ is much more comprehensive than the one outlined in the United Kingdom’s *Charities Act 2011*, which had only

applied to trustees of charities. This wider application of the definition will affect organizations in the United Kingdom, especially larger ones, as they will now have to include any employees, who have significant control over the use of the organization's funds, under the fit and proper persons test. Canadian charities interested in developing operating policies around CRA's "ineligible individual" requirement for Directors, may wish to consult this guidance, as it is a relevant resource tool.

For further information on the new guidelines, see online at <http://www.hmrc.gov.uk/charities/guidance-notes/chapter2/fp-persons-test.htm>.

Mexico Passes Anti-Money Laundering Legislation that Impacts NPOs

Terrance S. Carter.

In an attempt to combat money laundering and terrorist financing, Mexico enacted the *Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita* (the "Federal Law for the Prevention and Identification of Transactions with Proceeds of Illicit Origin" or the "Act"), which came into force on July 17, 2013. The Act establishes a list of "Vulnerable Activities", such as gambling, entering into real estate leasing contracts, and donations received by "non-profit organizations." The Act further legislates a ceiling price for cash transactions conducted with respect to Vulnerable Activities. Those who engage in cash transactions that surpass a legislated ceiling amount are required to verify the identity and occupation of individuals with whom they are transacting and inquire about and obtain official documents of any beneficial owners. Any information gathered must be retained for five years. Cash transactions surpassing a second ceiling amount must be reported to the Federal Department of Finance. For example, non-profit organizations must identify the donor if they receive cash donations over approximately \$8,100 US and must inform the Federal Department of Finance for cash donations over approximately \$16,000 US.

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/>

IN THE PRESS

Ontario's Not-for-Profit Corporations Act – coming soon, so get ready! by Theresa L.M. Man.
Hilborn Charity eNews, January 16, 2014.

[Link] <http://charityinfo.ca/articles/Ontario-s-not-for-profit-corporations-act-coming-soon-so-get-ready>

Report On Protecting the “Nonprofit Sector” From Terrorist Abuse by Sean S. Carter and Terrance S. Carter.

Linex Canada Smart Alert, December 3, 2013.

<http://ca.linexsystems.com/contents/transit/61297111>.

Company Fined for Criminal Negligence Causing Death by Jacqueline M. Demczur and Terrance S. Carter.

Linex Canada Smart Alert, December 3, 2013.

<http://ca.linexsystems.com/contents/transit/61297113>.

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

Law Times, Vol.29 No.40, December 9, 2013.

[Link] <http://www.lawtimesnews.com/>

CRA registration looms for municipal charity status, by Donalee Moulton, includes quotes from Terrance S. Carter.

Lawyers Weekly, Vol.33 No.27, November 15, 2013.

[Link] <http://www.lawyersweekly.ca/>

Just 10 months to CNCA deadline by Terrance C. Carter.

Hilborn Charity eNews, December 19, 2013.

[Link] <http://www.charityinfo.ca/articles/Just-10-months-to-CNCA-deadline>

RECENT EVENTS AND PRESENTATIONS

Institute of Corporate Directors (ICD) Conference held on November 28, 2013 included a presentation by Terrance S. Carter entitled “Navigating Changes for Not-For-Profit Organizations – Are You Ready?”

[Web] <http://www.carters.ca/pub/seminar/charity/2013/tsc1128.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2013/tsc1128.pdf>

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

[Web] <https://vimeo.com/81110080>

<http://charitytax.imaginecanada.ca/files/charitytax/imce/docs/Charity%20Tax%20Tools%202013%20-Charitable%20Donations.pdf>

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

[Web] <https://vimeo.com/81618184>

[PDF] <http://charitytax.imaginecanada.ca/files/charitytax/imce/docs/ONCA%20-%20Final%20-%20TLM.pdf>

Mohawk College Foundation – Charity Law Seminar held on December 17, 2013 featured three sessions presented by Terrance S. Carter which included;

“2013 Essential Charity Law Update”,

[Web] [http://www.carters.ca/pub/seminar/charity/2013/tsc1217\(1\).htm](http://www.carters.ca/pub/seminar/charity/2013/tsc1217(1).htm)

[PDF] [http://www.carters.ca/pub/seminar/charity/2013/tsc1217\(1\).pdf](http://www.carters.ca/pub/seminar/charity/2013/tsc1217(1).pdf)

“The Basics of Charitable Donations Including the First-Time Donors Super Credit”, and

[Web] [http://www.carters.ca/pub/seminar/charity/2013/tsc1217\(2\).htm](http://www.carters.ca/pub/seminar/charity/2013/tsc1217(2).htm)

[PDF] [http://www.carters.ca/pub/seminar/charity/2013/tsc1217\(2\).pdf](http://www.carters.ca/pub/seminar/charity/2013/tsc1217(2).pdf)

“Getting Ready for the ONCA: A Step-by-Step Guide.”

[Web] [http://www.carters.ca/pub/seminar/charity/2013/tsc1217\(3\).htm](http://www.carters.ca/pub/seminar/charity/2013/tsc1217(3).htm)

[PDF] [http://www.carters.ca/pub/seminar/charity/2013/tsc1217\(3\).pdf](http://www.carters.ca/pub/seminar/charity/2013/tsc1217(3).pdf)

Etobicoke District CA Association held a Professional Development event which featured Terrance S. Carter presenting a session entitled “The Changing Landscape for Not-for-Profit Corporations under the CNCA and ONCA.”

Redeemer University had Terrance S. Carter as a guest lecturer during their Not-for-Profit Management course on January 9, 2014 with his session entitled “Legal Context of the Not-for-Profit Sector.”

[Web] <http://www.carters.ca/pub/seminar/charity/2014/tsc0109.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2014/tsc0109.pdf>

McMaster University had Terrance S. Carter as a guest lecturer on January 20, 2014 during their “Strategic Philanthropy and Leadership” course speaking on “Charities & Foundations 101.”

Imagine Canada's Charity Tax Tools Webinar held on January 28, 2014 featured a presentation by Terrance S. Carter entitled "Drafting Issues for Restricted Gift Agreements Including Endowments."

UPCOMING EVENTS AND PRESENTATIONS

CSAE Trillium Chapter 4th Annual Winter Summit being held on January 30, 2014, will include presentations by Terrance S. Carter, Theresa L.M. Man and Ryan M. Prendergast entitled "Legal Update on Maintaining NPO Status" and "Complying with Canada's Anti-Spam Legislation: Legal Updates for Associations." For full details on this event please visit CSAE's website at: <http://www.csae.com/CoursesEvents/Details/tabid/176/ArticleId/1983/4th-Annual-Winter-Summit.aspx>.

The OBA Institute – The Latest Developments in Charity & Not-For-Profit Law being held on February 7, 2014, will include a presentation from Karen J. Cooper entitled "NPOs Making Money....and Other Compliance Issues".

For more information, see <http://www.oba.org/Legal-Community/Events/Institute-2014>.

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

Details and registration available at <http://www.carters.ca/pub/seminar/chrchlaw/ott/14/brochure.htm>.

Imagine Canada's FREE Charity Tax Tools Webinar will be held on February 25, 2014 featuring a presentation by Ryan M. Prendergast entitled "Navigating Canada's New Anti-Spam Laws for Charities and Non-Profit Organizations."

Register at <http://sectorsource.ca/training-and-events/webinar/navigating-canada%E2%80%99s-new-anti-spam-laws-charities-and-non-profit>.

Halton Nonprofit Network is hosting an event on February 26, 2014 featuring a presentation by Terrance S. Carter entitled "Directors and Officers Liability: The Essentials and Beyond for Charities and Not-for-Profits."

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.



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. Mr. Carter is a co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* (Carswell 2013, and a co-editor of *Charities Legislation and Commentary* (LexisNexis Butterworths, 2014). He is recognized as a leading expert by *Lexpert* and *The Best Lawyers in Canada*, and is Past Chair of the CBA National and OBA Charities and Not-for-Profit Law Sections. He is editor of www.charitylaw.ca, www.churchlaw.ca and www.antiterrorismmlaw.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. 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 in the area of charity and not-for-profit law and is recognized as a leading expert by *Lexpert* and *Best Lawyers*. She is vice chair of the Executive of the Charity and Not-for-Profit Section of the OBA and an executive member of the CBA. In addition to being a frequent speaker, Ms. Man has also written articles for numerous publications, including *The Lawyers Weekly*, *The Philanthropist*, *Planned Giving Pulse*, *Canadian Fundraiser eNews* and *Charity Law Bulletin*. She is co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* published by Carswell in 2013.



Esther S.J. Oh – A partner with Carters, Ms. Oh practices in charity and not-for-profit law, and is recognized as a leading expert in charity and not-for-profit law by *Lexpert*. Ms. Oh has written numerous articles on charity and not-for-profit legal issues, including incorporation and risk management for www.charitylaw.ca and the *Charity Law Bulletin*. Ms. Oh is a regular speaker at the annual *Church & Charity Law*TM Seminar, and has been an invited speaker to the Canadian Bar Association, Imagine Canada and various other organizations.



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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