

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

## MARCH 2014

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**RECENT PUBLICATIONS AND NEWS RELEASES****Canada Post Measures to Support Charities During Price Hike**

Jacqueline M. Demczur.

On March 19, 2014, Canada Post announced temporary and permanent measures to support charities that may face difficulties in the wake of Canada Post's new pricing structure that will see the price of stamps rise by over 30% as of March 31, 2014. According to the News Release from Canada Post, temporary measures will allow members of their VentureOne Program (a free program that provides small businesses with a postage discount) to receive a 5% discount between March 31 and December 31, 2014 when they purchase a minimum of 300 Permanent stamps (stamps that are always accepted at the current domestic postage price), in coils of 100 or more, in one single transaction. During that same period of time, a 5% rebate will also be available to meter customers on their Lettermail postage purchases (postage that meets Canada Post's Lettermail size and content requirements), with the maximum rebate value capped at \$250.

Canada Post will also permanently lower its minimum volume requirements. More charities will have access to Incentive Machineable (Short & Long [S/L] and Oversize [O/S]) Lettermail prices, as the minimum volume will be reduced from 5,000 pieces to 1,000 pieces. Charities that distribute promotional messages will have greater opportunity to qualify for lower postage rates for Machineable (S/L & O/S) Addressed Admail, as Canada Post will reduce the minimum volume threshold from 1,000 pieces to 500 pieces.

Canada Post's measures to support charities can be viewed on Canada Post's website: [http://www.canadapost.ca/cpo/mc/assets/pdf/business/final\\_measures\\_en.pdf](http://www.canadapost.ca/cpo/mc/assets/pdf/business/final_measures_en.pdf).

**Certain Budget 2014 Provisions to be Implemented**

Ryan M. Prendergast and Terrance S. Carter.

On March 24, 2014, the Department of Finance released the Notice of Ways and Means Motion to implement certain provisions of the 2014 Federal Budget ("Budget 2014") tabled in Parliament on February 11, 2014 and other measures (the "Notice of Ways and Means Motion"). The Notice of Ways and Means Motion implements certain tax provisions of Budget 2014, as well as introduces other tax measures not found in Budget 2014. A number of provisions affecting charities are contained in the Notice of Ways and Means Motion, including provisions implementing the doubling of the carry-forward period for donations of ecologically sensitive land to conservation charities, addressing tax shelter concerns related to gifts of certified cultural property, and new authority for CRA to refuse to register or revoke the

registration of a registered charity or Canadian amateur athletic association if it accepts a gift from a foreign state as defined in the *State Immunity Act*.

The Notice of Ways and Means Motion is available online at: <http://www.fin.gc.ca/drleg-apl/2014/nwmm-amvm-0314-eng.asp>.

For more information on provisions proposed in Budget 2014 affecting charities, see *Charity Law Bulletin No. 330, Budget 2014: Impact on Charities*, online at: <http://www.carters.ca/pub/bulletin/charity/2014/chylb330.pdf>.

## **CRA News**

Karen J. Cooper.

### **Non-Profit Organization Risk Identification Project – Questions and Answers**

CRA has released answers to various questions about its Non-Profit Organization Risk Identification Project. The project was a three-year review program that assessed tax compliance in the non-profit sector. The questions and answers webpage addresses questions such as, the main findings of the project, the number of non-profit organizations in Canada, whether CRA has audited the non-profit sector in the past, the consequences of losing non-profit organization status, and other questions about the sector and project. To access the Non-Profit Organization Risk Identification Project – Questions and Answers, see online at: <http://www.cra-arc.gc.ca/tx/nnprft/qa-eng.html>.

For information about the Non-Profit Organization Risk Identification Project Report, see *Charity Law Update February 2014* online at: <http://www.carters.ca/pub/update/charity/14/feb14.pdf>.

### **Guide on Registering a Charity for Income Tax Purposes**

CRA recently revised the T4063 *Registering a Charity for Income Tax Purposes*. The guide explains how to complete the form T2050 *Application to Register a Charity under the Income Tax Act*. The guide addresses matters such as whether registration is the correct choice for the organization, information about the application review process, and details about how to complete the questions found in Form T2050. To access this guide, see online at: <http://www.cra-arc.gc.ca/E/pub/tg/t4063/README.html>.

### **Charities Webinar registration**

CRA has a webpage for Charities Webinar registration. The webpage is available for those who wish to register for new webinars when they open, and also provides links to view past webinars. To access the webpage see online at: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/wbners/rgrstrtn-eng.html?rss>

## **CNCA Continuance Process - An Update**

Theresa L.M. Man in *Charity Law Bulletin* No. 336, March 26, 2014.

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 the end of February 2014, 2900 of approximately 17,000 Part II CCA corporations had 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 14,100 corporations that still need to apply for continuance by the deadline.

### **Read More:**

[PDF] <http://www.carters.ca/pub/bulletin/charity/2014/chylb336.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2014/chylb336.htm>

## **T3010 QuickPrep Helps Charities with Filing Tax Returns**

Jacqueline M. Demczur.

Charities filing their annual tax return this year may want to refer to Imagine Canada's free T3010 QuickPrep tool. The T3010 QuickPrep tool provides significant help with completing charity-specific forms, including the T3010-1 Registered Charity Information Return, the T1235 Directors/Trustees and Like Officials Worksheet, and the T1236 Qualified Donees Worksheet/Amounts Provided to Other Organizations. The software provides tips and instructions on how to fill out the T3010, has an auto-complete feature to speed up the process and automatically checks over 100 errors in filled-out forms. The T3010 QuickPrep tool is available to all organizations that register for an account rather than only to Imagine Canada members. This is clearly a welcome resource tool from Imagine Canada for the charitable sector.

The T3010 QuickPrep tool can be accessed online at:

[https://www.quickprep.ca/Account/LogOn?ReturnUrl=%2f%3futm\\_source%3dCaring%2bCompany%26utm\\_campaign%3d5730647fcd](https://www.quickprep.ca/Account/LogOn?ReturnUrl=%2f%3futm_source%3dCaring%2bCompany%26utm_campaign%3d5730647fcd).

## **Report On Impact Investing In Canada**

Terrance S. Carter in *Charity Law Bulletin* No. 335, March 26, 2014.

In March 2014, the MaRS Centre for Impact Investing and Purpose Capital jointly released a report entitled "State of the Nation: Impact Investing in Canada" (the "Report"). The Report is the first of its kind to provide an update on the state of the impact investing sector in Canada. The purpose of the Report

is to respond “to a need to better understand the nature of impact investing activity in Canada, the ways in which it is evolving and maturing, and the areas in which it could grow or falter.” Impact investing involves a broad range of approaches and organizations, encompassing foundations that supply capital on the one hand and “non-profits” (which would include registered charities and non-profit organizations under the *Income Tax Act*) and social enterprises (which the Report defines as “organizations that employ market-based strategies to accomplish a social or environmental mission”) that demand and receive capital on the other hand. This *Charity Law Bulletin* provides an overview of the findings of the Report, explains what impact investing is, and briefly comments on how impact investing may affect non-profits.

**Read More:**

[PDF] <http://www.carters.ca/pub/bulletin/charity/2014/chylb335.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2014/chylb335.htm>

## **Anti- Spam (CASL) Tip #2: CASL Compliance Policy**

Ryan M. Prendergast.

Bill C-28, which many readers will know as Canada’s Anti-Spam Legislation (CASL) will come into force on July 1, 2014. Charities and non-profit organizations which will be impacted by CASL now only have three months to prepare. Violations of CASL can potentially result in fines of up to \$1,000,000 for individuals and \$10,000,000 for corporations. As well, it is important for directors and officers of charities and non-profit organizations to be aware that section 52 of CASL imposes liability on them if the directors or officers direct, authorize, assent, acquiesce or otherwise participate in a breach of CASL. Employers may also be vicariously liable for any breaches of CASL by their employees.

CASL does, though, provide a defence where the directors or officers can establish that they exercised due diligence to prevent the breach. One method of establishing due diligence is to establish a policy with regard to how the charity or non-profit organization will comply with CASL. For many charities and non-profit organizations, compliance with CASL for the organization will fall upon employees and volunteers. Preparing a CASL compliance policy that outlines what types of electronic communications may be exempt from CASL, that contains the prescribed requirements and which will require that the organization has the necessary consent will assist employees and volunteers in ensuring they do not inadvertently breach CASL.

While having a CASL policy will be of assistance, it is equally important that the charity or non-profit organization make sure that the policy is being complied with. This will include educating employees and volunteers on what is required under CASL and monitoring compliance to ensure that the CASL policy is

understood and executed. The CASL policy should also be reviewed on a regular basis to ensure that any new guidance produced by the CRTC or Industry Canada is reflected in the policy. Otherwise, the CASL policy may not be of assistance in demonstrating that the directors and officers have been duly diligent in their efforts to comply with CASL.

## **Court Dismisses Appeal for Lack of Proof**

Karen J. Cooper.

The Tax Court of Canada (the “Court”) released its decision in *Ofori-Darko v R* (2014 TCC 54, available online at: <http://canlii.ca/t/g3rgk>) in which it concluded that the appellants did not prove the donations claimed on their returns. The appellants, hereinafter referred to as Mr. O and Ms. O, claimed charitable donations to the Redemption Faith Ministries/Church (“Redemption”), a registered charity at the time, for the 2006, 2007 and 2008 taxation years. The Minister of National Revenue disallowed the credits and asserted that the appellants had not donated the amounts as claimed and had not submitted adequate receipts as required by the *Income Tax Regulations*. Mr. O was the founder, pastor and director of Redemption and Ms. O was an assistant pastor and director of Redemption. In 2010, Redemption’s charitable status was revoked because of unconfirmed charitable activities and overstated charitable donation receipts.

The appellants claimed that they donated cash to Redemption at weekly church services by placing the donations into marked envelopes for the collection basket. They also claimed that a church member regularly recorded the cash donations in one of two record books and Mr. O deposited the donations into Redemption’s bank account. The donations recorded in the record books were less than the amounts claimed by Mr. and Ms. O, but Mr. O explained this discrepancy was due to the fact that he and Ms. O had donated gifts in kind to Redemption, such as new and used clothing for needy individuals. However, at trial there were no records of any gifts in kind or other cash donations.

The court found that the appellants did not prove on a balance of probabilities that they had made the donations as claimed on their tax returns. The appellants did not provide proof of the allegedly donated gifts in kind, and Ms. O did not prove the gifts of cash that were claimed but not recorded in the record book. The court also asserted that the amounts in the record book were not reliable since the church member who recorded the entries was not called as a witness, and the appellants did not provide bank records to show that the amounts deposited into Redemption’s bank account were equal to the amounts of donated cash. Upon examining the submitted charitable donation receipts, the court concluded that the

receipts did not contain the mandatory information as outlined in section 350(1) of the *Income Tax Regulations* to prove the making of a gift in kind.

## **Taxpayers' Ombudsman Releases Report on Tax Shelters**

Theresa L.M. Man

On March 19, 2014, the Taxpayers' Ombudsman, Mr. J. Paul Dubé, released an Ombudsman Special Report prepared in December 2013 titled "Donor Beware: Investigation into the sufficiency of the Canada Revenue Agency's warnings about questionable tax shelter schemes" (the "Report"). The Report was published as a result of the large amount of complaints received from donors claiming confusion over the distinction between tax shelter promoters and registered charities. The donors also complained that the Canada Revenue Agency ("CRA") has not sufficiently warned taxpayers of the dangers of participating in tax shelters. Donors who unknowingly participated in abusive donation tax shelters resulted in having their donation claims denied by the CRA and repaying tax refunds obtained together with interest and penalties if applicable.

The Report states that confusion is partially a result of the tax shelter identification number provided by the CRA when tax sheltered submitted a T5001, Application for Tax Shelter Identification Number and Undertaking to Keep Books and Records. Tax shelter numbers are only for tracking purposes. There is no registration or approval process for tax shelters. However, donors often thought the tax shelter identification number indicated the tax shelter's registration with the CRA and that the tax shelter has been approved by the CRA.

The Report also states that confusion arises as a result of "deceitful promoters" that set up tax shelters to look legitimate. Such promoters often use small or obscure registered charities to issue charitable receipts, and promise the charity an amount of money larger than the charity can raise on its own in exchange for inflated receipts issued by the charity. The Report identifies a list of very helpful "red flags" for taxpayers to watch for when considering donating to tax shelters.

In its investigation of CRA's measures against tax shelters, the Report states that the CRA is or will be reviewing all tax shelters. Additionally, legislation has been recently implemented to fight tax shelters through Bill C-48, Bill C-38, and Bill C-60, all of which have received Royal Assent. Although the CRA stated that it was prohibited under the *Income Tax Act* (Canada) from informing taxpayers of tax scheme audits, the Report states that the CRA is required to provide information about questionable tax schemes in a timely manner. The Report encourages the CRA to find effective ways to warn taxpayers while



maintaining the confidentiality of audited taxpayers. Currently, the CRA communicates information through its website, in public notices, in brochures, in mail-outs, during trade shows, and through media releases. As such, the Report states that the CRA has been warning the public about tax shelters for more than ten years.

The Report concludes with four recommendations for the CRA to follow. These include developing new communication strategies to warn taxpayers about the dangers of tax shelters; providing clear examples of tax schemes that do not conform to the *Income Tax Act*; providing timely warnings to taxpayer by monitoring questionable tax schemes; as well as preventing promoters of tax shelters from using CRA information to promote their products.

The Report is available online at: <http://www.oto-boc.gc.ca/rprts/spcl/dnrbrwr-eng.pdf>.

## **Gifts Made By a Will**

Tanya L. Carlton.

CRA recently released its view on whether the estate of a deceased individual (the “Trust”) is entitled to claim donation tax credits under subsection 118.1(3) of the *Income Tax Act* (“ITA”) (Document #2012-0472161I7). It is a question of fact whether or not a trust has the discretion to make a gift to a charity under a will. In this case, CRA determined that the will did not empower the Trust’s trustees to make a gift to the charities, and therefore the Trust was not permitted to “claim as gifts any of the trust distributions made to the charities.” Had the trustees been allowed to make the gift, “any trust income payable to the charities that would be accounted for under section 118.1 of the ITA as a gift from the Trust” could not have also been “deducted under subsection 104(6) of the ITA.” Subsection 104(6) of the ITA generally permits a trust to deduct any income payable to a beneficiary under the trust when computing its income for a taxation year.

Subsection 118.1(5) of the ITA states that if a person’s will makes a gift, then the gift is deemed to have been made immediately before the person’s death, and the deceased person is entitled to a deduction in the year of his or her death pursuant to subsection 118.1(3). When the wording in a will clearly shows that the deceased person intended to donate to a charity, and indicates an amount of the donation as a percentage of the person’s estate, then a gift will be deemed to have been made. Charitable donations made through a will can also be claimed if support is presented, such as an official receipt for gifts that are received without delay.



CRA also stated that where a charity is named as a discretionary income beneficiary of a testamentary trust, an analysis of the facts, including a will's wording and a trustee's intentions will determine whether section 118.1(3) or subsection 104(6) of the ITA applies. For *inter-vivos* trust arrangements involving the "distribution of capital property of the trust to discretionary capital beneficiaries," one must look to the facts of the case in deciding whether to apply section 118.1(3) or 104(6) of the ITA, and specifically whether the donation to the charity was a donation of capital property or settlement of a capital interest.

### **SCC Grants Leave to Appeal in *The Queen v Guindon***

Karen J. Cooper.

On March 2, 2014, the Supreme Court of Canada granted leave to appeal in *The Queen v Guindon* (Supreme Court of Canada docket #35519). The application for leave to appeal the Federal Court of Appeal's judgment delivered on June 12, 2013 was granted with costs.

The case was first heard by the Tax Court of Canada on October 12, 2012 which had set aside a penalty assessed against Ms. Guindon by CRA under section 163.2 of the *Income Tax Act*. CRA had conducted an investigation and assessed a penalty of \$564,747 against Ms. Guindon under section 163.2 of the Act for providing a legal opinion on a charitable donation scheme and issuing 134 charitable donation receipts. The Tax Court held that section 163.2 created "an offence", and as a result, she had the rights set out in section 11 of the *Canadian Charter of Rights and Freedoms*. The Tax Court overturned her penalty on the basis that her section 11 rights had not been respected by CRA in the investigation and assessment process. In June 2013, the Federal Court of Appeal overturned the Tax Court's decision asserting that Ms. Guindon should have been obligated to serve a notice of constitutional question and since she did not, the Tax Court was not permitted to consider the constitutional question of section 11. The Federal Court also reviewed the Tax Court's assessment of the criminal nature of the penalty under section 163.2 and concluded that section 163.2 was not criminal in nature.

The Supreme Court of Canada's website has information about docket #35519, such as a summary, information about the parties and counsel, and factums, online at: <http://www.scc-csc.gc.ca/case-dossier/info/dock-regi-eng.aspx?cas=35519>.

For further details about the Tax Court of Canada decision, see the *Charity Law Bulletin* No. 291 online at: <http://www.carters.ca/pub/bulletin/charity/2012/chylb291.pdf>, and for information about the Federal Court of Appeal decision, see the June 2013 *Charity Law Update* available online at: <http://www.carters.ca/pub/update/charity/13/jun13.pdf>.

## **CBCA Consultation Deadline Extended**

Theresa L.M. Man.

In the January 2014 *Charity Law Update*, it was reported that Industry Canada was seeking comments on its consultation on the *Canada Business Corporations Act* (“CBCA”), which it launched in order to ensure the effectiveness of the governance framework for CBCA corporations. The consultation looks 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, as well as socially responsible enterprises and the possible incorporation of hybrid enterprises under the CBCA. Industry Canada has now extended its deadline for comments, and interested parties will now have until May 15, 2014 to submit their comments to Industry Canada.

For further information on the Consultation, see January 2014 *Charity Law Update* online at: <http://www.carters.ca/pub/update/charity/14/jan14.pdf>.

The consultation is available from Industry Canada online at: [https://www.ic.gc.ca/eic/site/cilp-pdci.nsf/vwapj/CBCA\\_Consultation.pdf/\\$file/CBCA\\_Consultation.pdf](https://www.ic.gc.ca/eic/site/cilp-pdci.nsf/vwapj/CBCA_Consultation.pdf/$file/CBCA_Consultation.pdf).

## **SCC Rules: Do Not Deduct Pension Benefits from Wrongful Dismissal Damages**

Barry W. Kwasniewski in *Charity Law Bulletin* No. 334, March 26, 2014.

The Supreme Court of Canada (the “Court”) released its decision on December 13, 2013 in *IBM Canada Limited v Waterman* (“*Waterman*”), which ended a lengthy legal battle between the company and one of its long-term British Columbia employees. The decision clarifies that a dismissed employee’s pension benefits are not to be deducted from his or her wrongful dismissal damages. This decision, to be discussed in this *Charity Law Bulletin*, is important for charities and not-for-profits with employee pension plans, which may be considering terminating employees who have reached the age where they may be eligible to receive pension payments.

### **Read More:**

[PDF] <http://www.carters.ca/pub/bulletin/charity/2014/chylb334.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2014/chylb334.htm>

## **Common Law Duties and Liabilities of Directors in Fundraising**

Terrance S. Carter in *Charity Law Bulletin* No. 337, March 26, 2014.

Generally speaking, most directors and officers of charities, as well as non-profit organizations when such organizations are involved in raising funds for a charitable purpose, consider the legal responsibility for

fundraising to lie either with the professional fundraisers who are retained as independent contractors or employed by the charity, or with the management of the charity. Board evaluations of the charity's fundraising efforts may often be based upon monetary performance instead of exercising the necessary due diligence required of them at common law to review the appropriateness of the various fundraising vehicles that are utilized to achieve the monetary goals set by the boards of directors.

Directors and officers can face serious legal consequences if they allow a charity to become involved in an improper fundraising practice. It is therefore essential that the board of directors and officers of charities understand their legal obligations to ensure that the fundraising programs undertaken by a charity are carefully scrutinized in order to document that the board has exercised the due diligence required of it in its fiduciary capacity to manage and protect the charitable property that has been entrusted to the board members. This *Charity Law Bulletin* provides a brief overview of the common law duties and liabilities of directors and officers of charities in relation to fundraising.

**Read More:**

[PDF] <http://www.carters.ca/pub/bulletin/charity/2014/chylb337.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2014/chylb337.htm>

## **Ontario Court Rules Iranian Assets Subject to Seizure in Terrorist Case**

Sean S. Carter and Nancy E. Claridge in *Anti-Terrorism and Charity Law Alert* 35, March 27, 2014.

In the recent potentially precedent setting decision of the Ontario Superior Court of Justice released on March 17, 2014, *Edward Tracy v Iranian Ministry of Information and Security* ("Edward Tracy"), the court made an order ultimately enforcing a U.S. foreign judgment and ordering the seizure of \$7-million worth of property belonging to the Islamic Republic of Iran, The Iranian Ministry of Information and Security, and The Iranian Revolutionary Guard Corp. ("Iranian State Actors"). The original U.S. judgment which is being enforced in several Canadian provincial jurisdictions, including the Ontario enforcement, is a judgment from a case in the United States jurisdiction which awarded damages to be paid by Iran to victims of torture and kidnapping by Iranian State Actors. Edward Tracy is particularly unique and potentially precedent setting in its enforcement of foreign judgments against assets which would otherwise be protected by diplomatic immunity and lifting of a corporate veil instituted to avoid economic sanctions against Iranian State Actors. The enforcement against these types of assets and actors, which to date has failed in the U.S., is made possible by new Canadian legislation which lifts the protection of diplomatic immunity for state actors involved in terrorism related offences under the Criminal Code.

**Read More:**

[PDF] <http://www.carters.ca/pub/alert/ATCLA/ATCLA35.pdf>

## **UK Social Enterprise Investment Tax Incentives**

Terrance S. Carter.

To encourage more people to invest in social enterprises in the United Kingdom (“UK”), the UK government announced in its 2013 Budget that it was planning to introduce legislation to provide tax relief on social investment. In this regard, in the 2014 Budget released on March 19, 2014, the UK government announced that legislation would be introduced that would provide income and capital gains tax relief of to individuals who invest in qualifying social enterprises. Specified qualified individuals would receive relief of 30% of the amount invested. The 2014 Budget further added that, under the new legislation, eligible organisations would be able to receive up to €344,827 (approximately \$533,000 CAD) of tax-advantaged investment over a period of three years. “Draft guidance” will be published on March 27, 2014. The legislation is expected to come into effect on April 6, 2014.

It will be interesting to see if the Canadian government decides to follow the lead from the UK of providing some type of tax incentive for investors in various forms of social enterprise corporations being introduced in Canada, such as Community Contribution Companies under British Columbia’s *Business Corporations Act* and Community Interest Companies under Nova Scotia’s *Community Interest Companies Act* (yet to be proclaimed).

The Overview of Tax Legislation and Rates is available online at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/294190/OOTLAR\\_19\\_March\\_2014\\_1\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294190/OOTLAR_19_March_2014_1_.pdf).

The 2014 Budget Report is available online at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/293754/37630\\_HC\\_1104\\_Budget\\_2014\\_Complete\\_PRINT.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/293754/37630_HC_1104_Budget_2014_Complete_PRINT.pdf).

## **Australian Charities and Not-for-Profits Commission May Be Abolished**

Esther S.J. Oh.

The Australian government introduced *The Australian Charities and Not-for-Profits Commission (Repeal) (No. 1) Bill 2014* (the “ACNC Repeal Bill”) into Parliament which, if passed, would repeal the *Australian Charities and Not-for-Profits Commission Act, 2012*, which received Royal Assent on December 3, 2012 (“ACNC Act”).

The ACNC Act had newly established the Australian Charities and Not-for-Profits Commission (“ACNC”), Australia’s charities regulator similar to the Charity Commission in England and Wales. In

this regard, if the ACNC Repeal Bill is passed, the Bill would be the first step required to abolish the ACNC.

The ACNC Repeal Bill is the first of two Bills proposed to abolish the ACNC. The second Bill, which has not yet been released to the general public, is expected to transfer the ACNC's functions to other government agencies. In explanatory material released with the Repeal Bill, the Australian government has indicated that, in abolishing the relatively new charities regulator, it is "implementing an election commitment," and therefore that "there is no requirement to examine alternative options." However, a number of news sources have suggested that perceived inefficiencies resulting from the establishment of the ACNC are the underlying cause for the ACNC Repeal Bill.

The ACNC Repeal Bill is available online at: <http://www.comlaw.gov.au/Details/C2014B00045>.

## **Proposed "In Australia" Conditions for Tax Exempt Charities**

Ryan M. Prendergast.

Australian charities and other tax exempt entities in Australia may soon face stricter tax exemption regulations, as the Australian government is currently consulting on draft legislation that it plans to enact in order to implement portions of its 2009-10 Budget. The exposure draft for the Tax and Superannuation Laws Amendment (2014 Measures No. 3) Bill 2014 (the "Draft Bill") concerns the "in Australia" requirements. The explanatory memorandum concerning the Draft Bill states that the conditions concerning the "in Australia" requirement are being re-stated in response to recent case law in Australia which the government states reintroduces "a loop hole through which tax avoidance arrangements and other inappropriate conduct can be taken again".

As such, the Draft Bill will amend the applicable taxation laws in Australia so that exempt entities must "operate principally in Australia" and "pursue its purposes principally in Australia", in order to be exempt. Limited exceptions to the "in Australia" conditions are provided for certain medical research institutes, certain environmental organisations, and certain touring arts organisations. The accompanying explanatory memorandum explains that an entity's compliance with the "in Australia" rules will be based on factors such as "where the entity incurs its expenditure; where it undertakes its activities; where the entity's property is located; where the entity is managed from; where the entity is resident or located; where its employees or volunteers are located; and who is directly and indirectly benefiting from its activities." Fortunately, there are no equivalent rules for registered charities in Canada.

The Draft Bill, draft regulations and explanatory memorandum can be accessed online at:

<http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2014/Conditions-for-tax-concession-entities>.

## IN THE PRESS

**Charities are not above anti-corruption laws** by Terrance S. Carter.

*Lawyers Weekly*, Vol.33 No.40, March 7, 2014.

[Link] <http://www.lawyersweekly.ca/index.php?section=article&articleid=2090>

**Update on CNCA Continuance Process** by Theresa L.M. Man.

*Charitable Thoughts*, March 18, 2014.

[Link] <http://www.oba.org/Sections/Charity-and-Not-for-Profit-Law/Articles/Articles-2014/March-2014/Update-on-CNCA-Continuance-Process>

**Canada's Anti-Spam Legislation in force this July - will you be ready?** by Ryan Prendergast.

*Hilborn Charity eNews*, March 18, 2014.

[Link] <http://www.charityinfo.ca/articles/Canadas-anti-spam-legislation-in-force-this-july-will-you-be-ready/>

**Canada's Anti-Spam Legislation in force this July – will you be ready?** by Ryan Prendergast.

*Nonprofit Newswire*, Imagine Canada, March 18, 2014.

[Link] <http://nonprofitnewswire.wordpress.com/2014/03/25/canadas-anti-spam-legislation-in-force-this-july-will-you-be-ready/>

**FATF Mutual Evaluation of Canada's Anti-Money Laundering Measures** by Nancy E. Claridge and Terrance S. Carter.

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**Court Awards Human Rights Damages in Wrongful Dismissal Lawsuit** by Barry W. Kwasniewski.

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## RECENT EVENTS AND PRESENTATIONS

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

[Web] <http://sectorsource.ca/managing-organization/charity-tax-tools/charity-tax-tools-webinars>

**Halton Nonprofit Network** hosted 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."

[Web] <http://www.carters.ca/pub/seminar/charity/2014/tsc0226.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2014/tsc0226.pdf>

**Imagine Canada's Charity Tax Tools Webinar** held on March 25, 2014, featured a presentation by Barry W. Kwasniewski entitled "The Do's and Don'ts of Employee Acquisition and Termination for Charities and Non-Profit Organizations."

Materials will be available at <http://sectorsource.ca/managing-organization/charity-tax-tools/charity-tax-tools-webinars>.

## UPCOMING EVENTS AND PRESENTATIONS

**2014 National Charity Law Symposium**, hosted by the Canadian Bar Association, is being held in Toronto, Ontario, on May 23, 2014.

Details and registration at [http://www.cbapd.org/details\\_en.aspx?id=na\\_char14](http://www.cbapd.org/details_en.aspx?id=na_char14).

**CAGP (Canadian Association of Gift Planners) -ACPD Annual National Conference** will be held from April 9-11, 2014, in Vancouver, British Columbia, and will feature a presentation by Terrance S. Carter entitled "Issues Arising from Management of Endowment Funds" and a presentation by Karen J. Cooper entitled "There are Many Gifts in Kind in the Sea".

For more information on this event, please visit <http://www.cagp-acpd.org/?page=2014conference>.

**Orchestras Canada** will be hosting a webinar by Ryan M. Prendergast on April 23, 2014, on Preparing for Canada's Anti-Spam Legislation.

Details and registration available at <http://orchestrascanada.org/2014/03/26/orchestras-canada-webinar-preparing-for-canadas-anti-spam-legislation/>

**Distress Centres Ontario** will be hosting a webinar by Ryan M. Prendergast on April 29, 2014, entitled "Navigating Canada's New Anti-Spam Laws for Charities and Non-Profit Organizations."



**2014 National Charity Law Symposium** being held in Toronto on May 23, 2014, will include Karen J. Cooper in the Panel on Professional Responsibility and Ethics of Advising Donors and Charities: A Review of the Guindon Case, Class Actions and Penalties.

Details and registration at [http://www.cbapd.org/details\\_en.aspx?id=na\\_char14](http://www.cbapd.org/details_en.aspx?id=na_char14).

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**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](http://www.charitylaw.ca), [www.churchlaw.ca](http://www.churchlaw.ca) and [www.antiterrorismlaw.ca](http://www.antiterrorismlaw.ca).



**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*.



**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. Ms. Demczur is also a regular speaker at the annual *Church & Charity Law*<sup>TM</sup> Seminar.



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



**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](http://www.charitylaw.ca) and the *Charity Law Bulletin*. Ms. Oh is a regular speaker at the annual *Church & Charity Law*<sup>TM</sup> 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 with a practice focus of providing corporate and tax advice to charities and non-profit organizations concerning incorporation, ongoing corporate compliance, registration of charities, audits and internal appeals with CRA, as well as the amalgamation and merger of charities. Ryan is a regular speaker and author. In addition, Ryan has contributed to several *Charity Law Bulletins* and is a regular presenter at the annual *Church & Charity Law* Seminar.

## ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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