

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

MAY 2014

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Carters is Pleased to Welcome Two New Associates to Our Ottawa Office

21st Annual Church & Charity Law™ Seminar

Hosted by Carters Professional Corporation in Greater Toronto, Ontario, on **November 13, 2014.**

Details and online registration available soon.

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

New Ontario Mandatory Health and Safety Awareness Training

Barry W. Kwasniewski in *Charity Law Bulletin* No. 340, May 28, 2014.

The Government of Ontario has introduced a new regulatory requirement to ensure that workers receive proper health and safety training in the workplace. Subject only to a few exemptions, all workers and supervisors in Ontario must complete basic occupational health and safety awareness training programs by July 1, 2014. The mandatory training applies to most charities and not-for-profits in Ontario. This *Charity Law Bulletin* discusses the new health and safety training program and the actions that charities and not-for-profits will need to take in order to comply with this new workplace requirement.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2014/chylb340.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2014/chylb340.htm>

CRA News

Jacqueline M. Demczur

Guide on Completing the Registered Charity Information Return

CRA recently revised the T4033 *Completing the Registered Charity Information Return*. This guide explains how to complete the Form T3010, *Registered Charity Information Return* and Form TF725, *Registered Charity Basic Information Sheet*. The guide instructs on how to fill out the forms by referencing the sections, lines and schedules. The changes to Form T3010 include usage of the term “gifts in kind” instead of “non-cash gifts”, and the requirement to report life insurance premiums, which are described in more detail in the guide. To access this guide, see online at: <http://www.cra-arc.gc.ca/E/pub/tg/t4033/README.html>.

New CRA Webinars

On April 29, 2014, CRA posted two new webinars in CRA’s video gallery, which are accessible as video segments or written transcripts. The webinars are entitled “How to donate wisely – information for donors” and “What is a related business?” The series “How to donate wisely - information for donors” provides information on how to research a registered charity, how donors can use their donations to save at tax time and why donors should avoid tax shelters. This webinar can be accessed at: <http://www.cra-arc.gc.ca/vdglly/chrts-gvng/srs-dntwsly-eng.html>. The series “What is a related business?” explains

terms and concepts such as a related business, “carrying on”, and unrelated businesses. This webinar can be accessed at: <http://www.cra-arc.gc.ca/vdglry/chrts-gvng/srs-rltdbsnss-eng.html>.

Nominations for Prime Minister’s Volunteer Awards

The Government of Canada created the Prime Minister’s Volunteer Awards to recognize volunteers, innovative not-for-profit organizations and businesses committed to social responsibility. Award recipients will receive a grant of \$5,000 (regional award) or \$10,000 (national award), which will be donated to an eligible not-for-profit organization of their choice. Nominations will be accepted until June 23, 2014. For further information, see online at: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/whtsnw/pmvlntwrds-eng.html>

Charitable Donations and Gifts (2007 and later tax years) Form

On May 22, 2014, CRA posted an updated version of the form T2SCH2 Charitable Donations and Gifts (2007 and later taxation years). This form is to be used by corporations claiming the following: charitable donations to qualified donees; gifts to Canada, a province or a territory; gifts of certified cultural property; gifts of certified ecologically sensitive land; or additional deduction for gifts of medicine. To access the T2SCH2 form, see online at: <http://www.cra-arc.gc.ca/E/pbg/tf/t2sch2/README.html>.

Legislation Update

Terrance S. Carter.

Federal

Federal Bill C-31, Budget 2014 Implementation and *Trade-marks Act* Amendments

Federal Bill C-31, *Economic Action Plan 2014 Act, No. 1*, which proposes to implement portions of the 2014 Federal Budget, was introduced in the House of Commons on March 28, 2014 and received second reading on April 8, 2014. Both the Standing Committee on Finance and the Standing Senate Committee on National Finance have begun study of Bill C-31. Further study of Bill C-31 is scheduled in both Committees on May 29, 2014. Along with implementing portions of the 2014 Federal Budget, Bill C-31 also proposes significant amendments to the *Trade-marks Act*, which were discussed in our April 2014 *Charity Law Update* (available online at <http://www.carters.ca/pub/update/charity/14/apr14.pdf>).

Federal Bill S-4, the *Digital Privacy Act*

On May 8, 2014, Bill S-4, the *Digital Privacy Act*, underwent second reading and was referred to Committee. On May 28, 2014, the Senate Standing Committee on Transport and Communications began its study of Bill S-4. Bill S-4 proposes amendments to the *Personal Information Protection and Electronic*

Documents Act (“PIPEDA”) that would allow organizations to disclose personal information to other organizations or to the individual’s next of kin without the individual’s knowledge or consent under certain circumstances. If passed, Bill S-4 would also restrict organizations from informing individuals that their personal information was shared with enforcement and security agencies under certain circumstances. For further details, see *Charity Law Bulletin No. 341, Digital Privacy Act Proposes Amendments to PIPEDA*, below.

Federal Bill S-202, Credit Card Acceptance Fees

Federal Bill S-202, *An Act to amend the Payment Card Networks Act (credit card acceptance fees)*, which received Second Reading and was referred to Committee on March 25, 2014, is scheduled to undergo study by the Senate Standing Committee on Banking, Trade and Commerce on May 29, 2014. Bill S-202 proposes to limit credit card acceptance fees charged by “designated payment card networks” to merchants who accept payment by credit card and eliminating credit card acceptance fees being charged to charities.

Provincial

Ontario Bill 85 (Re: ONCA) Died on the Order Paper

Although Bill 85 amending portions of the *Ontario Not-for-Profit Corporations Act* (“ONCA”) began to show some progress after beginning its debate at second reading on April 10, 2014, the Bill has since died on the Order Paper. This came as a result of the rejection of Ontario’s 2014 Budget, which has led to a June 12, 2014 provincial election and stopped all currently proposed legislation from being carried over to the next Parliament. The Ministry of Consumer Services had previously announced that proclamation of the ONCA could not proceed without the amendments embodied in Bill 85 being passed. It is now anticipated that the ONCA will not be proclaimed until sometime in 2015.

Manitoba’s *Personal Information Protection and Identity Theft Prevention Act*

In Manitoba, the *Personal Information Protection and Identity Theft Prevention Act* (“PIPITPA”) received Royal Assent on September 13, 2013, but is still awaiting proclamation. The Act is a provincial private-sector privacy statute similar to PIPEDA and, much like PIPEDA, aims to protect all personal information. PIPITPA will be in addition to Manitoba’s *Privacy Act*, which creates a right of action for breach of privacy and sets out the available defences. For further information about PIPITPA, see “Manitoba Privacy Legislation Awaits Proclamation” below by Sepal Bonni.

Alberta Bill 12 Amends *Societies Act* to Foreign Jurisdiction Continuances

Alberta’s Bill 12, *Statutes Amendment Act, 2014* received Royal Assent on May 14, 2014 and comes into force on various dates. Bill 12 amends a number of provincial acts in Alberta, including the *Societies Act*

(RSA 2000 c S-14). In this regard, the *Societies Act* will be amended to include a new s. 36.2, which allows for “not-for-profit organizations” incorporated in any jurisdiction other than Alberta to be continued in Alberta. It also introduces a new s. 36.3, which contains provisions for Alberta societies to apply for continuance in other jurisdictions. This portion of Bill 12 is not currently in force, and will come into force upon proclamation.

Archived Web Content and Income Tax Folios

Linsey E.C. Rains

As part of a government-wide initiative to remove redundant, outdated, and trivial content from its websites, CRA is currently transforming how it releases technical information to tax professionals and the public. According to page 28 of its *2012-2013 Annual Report to Parliament*, CRA has started releasing income tax folios, described as a new type of “technical information publication that facilitates Web navigation by making use of hyperlinks.” As new income tax folios are introduced on a specific topic, CRA will cancel current income tax interpretation bulletins (ITs) and income tax technical news (ITTNs) on that topic. CRA has provided a table of concordance to document the changes, which can be accessed online at: <http://www.cra-arc.gc.ca/tx/tchncl/ncmtx/cncrdnc-eng.html>.

In the meantime, CRA has added an “Archived Content” notice to all current ITs on its website with the proviso that the “notice has no effect on the status or reliability of the ITs.” The CRA advises that tax professionals and the public “may continue to refer to the ITs for explanations of the CRA’s interpretation of federal income tax law, keeping in mind the caution that has always applied.” The full explanation of the meaning of the Archived Content notice is available online at: <http://www.cra-arc.gc.ca/menu/rchvt-eng.html>.

Further details about the government-wide initiative to remove redundant, outdated, and trivial content from its websites can be found online at: <http://www.tbs-sct.gc.ca/ws-nw/wu-fe/rot-rid/index-eng.asp>.

CRA’s *2012-2013 Annual Report to Parliament* can also be accessed online at: <http://www.cra-arc.gc.ca/gncy/nnnl/2012-2013/images/ar-2012-13-eng.pdf>.

For information on the most recently released income tax folio, see “S1-F5-CI, Related persons and dealing at arm’s length” by Linsey E.C. Rains below.

CNCA Continuance Update

Theresa L.M. Man

All corporations incorporated 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 April 2014, only 3795 or 22% of approximately 17,000 corporations have filed for continuance. This leaves approximately 13,200 corporations that still need to apply for continuance by the deadline. Failure to continue under by the deadline may result in those corporations being dissolved. However, dissolution is not automatic. See *Charity Law Bulletin* No. 336 for an overview of the dissolution process and how to revive such dissolved corporations at <http://www.carters.ca/pub/bulletin/charity/2014/chylb336.pdf>.

Corporations Canada is actively reminding Part II CCA corporations of the need to continue by the deadline, including posting website notices, sending social media announcements, conducting presentations, sending reminder notices to active corporations and mailing reminders to all corporations. In addition, they have also started a telephone campaign.

Corporations that want to collapse membership classes as part of the continuance process may require approval by class. Sometimes, class approval may be avoided by collapsing membership classes under the CCA at a separate members' meeting prior to continuance. With less than five months left before the deadline, time is fast running out to hold two separate meetings in this regard. As well, registered charities that want to revise their corporate objects should be aware that there is likely no longer sufficient time to obtain pre-approval from the Canada Revenue Agency of the revised objects. They may want to consider the option of first continuing using the same objects and then revising the objects afterwards.

Anti- Spam (CASL) Tip #4: Being Careful with Donor Recognition

Ryan M. Prendergast.

The implementation date for Canada's Anti-Spam Legislation ("CASL") is now little more than a month away. Portions of CASL dealing with the prohibition of sending or causing to be sent a commercial electronic message (CEM) will come into force on July 1, 2014. As many readers are aware, registered charities are exempted from the requirements of CASL where the electronic message "has as its primary purpose raising funds for the charity."

The application of this exemption to certain electronic messages, however, remains unclear. For example, a CEM is defined under CASL as being an electronic message where it would be reasonable to conclude it has as a purpose encouraging participation in a commercial activity. This may include one which

advertises or promotes a person or the “public image” of a person who sells a product or offers a business opportunity. As such, an electronic message sent by a registered charity that advertises or promotes a person engaged in a commercial activity in recognition of a donation made by them may inadvertently lead to the communication being interpreted as a commercial electronic message for the purposes of CASL.

Although not determinative, CRA’s guidance CG-013 *Fundraising* states that “CRA considers donor recognition to be associated with fundraising since it implies a solicitation for further support.” As a result, there is support for the argument that a donor recognition electronic message has as its primary purpose fundraising because CRA considers the same activity to be an indirect form of fundraising. It would be prudent, however, to ensure that the electronic message is not encouraging the recipient to participate in a commercial activity by advertising a person engaged in commercial activity, but is instead only incidentally doing so by recognizing the donor, in order that the electronic message has as its primary purpose the raising of funds.

CRA Income Tax Folio: Related Persons and Dealing at Arm’s Length

Linsey E.C. Rains.

CRA recently released a new income tax folio, entitled “S1-F5-C1: Related persons and dealing at arm’s length” (the “IT folio”) with an effective date of May 2, 2014. The IT folio replaces and cancels Interpretation Bulletin IT-419R2, *Meaning of Arm’s Length*. The IT folio contains a number of substantive technical and interpretive changes, but CRA’s fundamental interpretation of section 251 and the criteria used to determine whether persons deal with each other at arm’s length under the *Income Tax Act* (“ITA”) remains unchanged. A complete history of the changes can be accessed online at: <http://www.cra-arc.gc.ca/tx/tchncl/ncmtx/fls/s1/f5/s1-f5-c1-hstry-eng.html>.

Although CRA has included this new IT folio in its Series 1 for Individuals, rather than Series 7 for Charities and non-profit organizations, the IT folio will still help organizations and practitioners determine whether the arm’s length provisions of the ITA apply in certain circumstances. In addition to aiding in the determination of charitable designations, the IT folio will help organizations clarify whether arm’s length relationships exist in relation to such things as undue benefits, donations of non-qualifying securities, non-qualified investments, the excess corporate holdings regime for private foundations, transfers of property between charities, leasehold improvement transactions, loanbacks, and eligible donee status.

CRA has also indicated it will consider feedback from interested parties about the new IT folio for a three month period ending August 5, 2014. Until this date, the IT folio is to be “relied upon as an accurate summary of ... [CRA’s] interpretation of the law” and is available online at: <http://www.cra-arc.gc.ca/tx/tchncl/ncmtx/fls/s1/f5/s1-f5-c1-eng.html>.

Charitable Status Appeal Set Aside for Terrorist Listing Determination

Nancy E. Claridge

As reported in the April 2014 *Charity Law Update*, the Government of Canada added a Canadian aid organization, International Relief Fund for the Afflicted and Needy – Canada (“IRFAN”), to the list of terrorist entities under the *Criminal Code* on April 24, 2014. This announcement came just one week before the organization was to argue its appeal before the Federal Court of Appeal of the 2011 decision by Canada Revenue Agency to revoke IRFAN’s registered charitable status. The classification as a terrorist organization resulted in the freezing of its assets and consequently made it illegal for any person in Canada or any Canadian outside of Canada to deal with the organization.

In response to the listing of the organization as a terrorist entity, IRFAN sought a stay of the appeal of its loss of charitable status on May 6, 2014, notifying the court of its intention to contest the government’s decision to list it as a terrorist entity, arguing that the listing precludes a favourable outcome of the appeal. The Minister of National Revenue opposed the stay, arguing the appeal should go ahead, taking the illogical position that IRFAN could be a registered charity and a terrorist organization at the same time. Calling it an “extraordinary position”, the court granted IRFAN’s stay, adjourning the appeal “*sine die*”, which means it is adjourned for an indefinite period.

Non-Catholic Student Exempted from Catholic School Religious Programs

Jennifer M. Leddy.

The Ontario Divisional Court (the “Court”) released its decision in *Erazo v Dufferin-Peel Catholic District School Board* (“Board”) 2014 ONSC 2072, available online at: <http://canlii.ca/t/g6g0g>). The Court judicially reviewed an application by a parent asking the Board to exempt his son from attending programs in religious education, including liturgies and religious retreats. The application was brought pursuant to section 42(13) of the *Education Act* (R.S.O. 1990, c.E.2), which allows for exemptions from “any program or course of study in religious education on written application to the Board” from a parent or guardian. The Board had previously granted the student an exemption from attending religious courses. The Board now took the position that retreats and liturgies were not programs within the meaning of section 42(13).

As an application under section 42(13) raises a question of law, the standard of review was correctness, warranting less deference to the administrative decision-maker. In the Court's analysis, it examined whether liturgies and retreats would be a "program" and therefore within the language of section 42(13). The Court determined that liturgies and retreats fall under the Oxford Dictionary definition of "program" as a "planned series of future events, items, or performances" because they are a "series of events ... having as their central purpose the provision of religious experiences and education to the students who attend them." In the Court's opinion, the purpose of section 42(13) is to grant relief to students that prefer not to participate in Catholic worship. The Court clarified that "no Catholic school system that is required by law to admit non-Catholic students should have the right to require such participation from their students and, because of section 42(13), the [Board] does not." Therefore, the Court concluded that the student was entitled to the exemption from liturgies and retreats. This conclusion did not exclude "the alternative that they are also part of, or ancillary to, the 'courses in religious education' from which the student had already been exempted.

This decision clarifies that non Catholic students attending Catholic schools can be exempted not only from attending religious courses but also from participating in Catholic ritual, prayer and other liturgical expressions of the Catholic faith.

SCC Denies Leave to Appeal of *Kossow v Canada*

Theresa L.M. Man

The Supreme Court of Canada will not be hearing the appeal of *Kossow v Canada* (2013 FCA 283), in which the Federal Court of Appeal disallowed payments made to a leverage charitable donation program. On May 15, 2014, the Supreme Court of Canada dismissed the application for leave to appeal, with costs. See <http://scc-csc.lexum.com/scc-csc/scc-l-csc-a/en/item/13655/index.do?>

Tax Court Allows Partial Credit in Tax Preparation Scheme

Ryan M. Prendergast.

The Tax Court of Canada (the "Court") released its decision in *David v. The Queen* (2014 TCC 117, available online at: <http://canlii.ca/t/g6nqp>) on April 15, 2014. The Court allowed the appellants' claim for a charitable tax credit of 10 percent of the face amount of the tax receipts. The Court issued one set of reasons for six separate Informal Procedure appeals concerning the disallowance of tax credits for alleged charitable gifts made to CanAfrica International Foundation ("CanAfrica").

In 2006, a tax return preparer solicited the appellants to make donations to CanAfrica in exchange for inflated tax receipts. At the time of the transactions, CanAfrica was a registered charity under the *Income Tax Act*, until its status was revoked in 2007. The Court sought to figure out the actual amounts that were donated to CanAfrica. The Court's analysis began with the Minister's assumption that the appellants paid 10 percent of the face amount of the receipts and an additional amount as a commission, and sought evidence by the appellants to refute this assumption. The Court commented that the appellants did not provide any documentation to corroborate their own "self-interested testimony", nor did they provide evidence to support the valuation of the household goods they had allegedly donated. The Court then assessed the testimonial evidence, finding the testimonies "vague", "too brief to be convincing", and "implausible". The Court concluded that each appellant had actually donated only 10 percent of the face value of the tax receipts and accepted inflated tax receipts from CanAfrica.

The Court then examined whether the inflated tax receipt and corresponding credit negates the entire gift or entitles the donor to claim a donation tax credit for the actual amount donated. After reviewing the relevant jurisprudence, the Court determined an inflated tax receipt should not be regarded as a benefit that would negate a gift in these particular circumstances, and allowed the charitable tax credit for 10 percent of the receipt's face amount. As an Informal Procedure judgment, this decision holds no precedential value, but does recognize circumstances under which the Court will allow a partial charitable tax credit. As well, the Court's analysis did not consider the issue of donative intent as set out in the Federal Court of Appeal decision *The Queen v. Berg*, 2014 FCA 25, available online at: <http://canlii.ca/t/g2xg2>).

NPOs that are Agricultural Organizations

Theresa L.M. Man

In CRA document #2014-052209117 dated April 10, 2014, Canada Revenue Agency ("CRA") considered whether "aquaculture" is considered to be "farming" or "fishing" as defined in s. 248(1) of the *Income Tax Act*.

Concerns have been raised by the non-profit sector regarding the recent narrowing of CRA's administrative position regarding when an organization would qualify for tax-exempt status as non-profit organizations (NPOs) under paragraph 149(1)(l) of the Act, since it could severely affect the operations or the viability of many NPOs. Other than restructuring the organizations' operations (including activities,

level of reserves, etc.), one option is for organizations to review whether they could qualify under other categories of tax-exempt status in subsection 149(1) of the Act.

In this regard, agricultural organizations, boards of trade and chambers of commerce are tax-exempt under paragraph 149(1)(e) as long as no income was payable to, or was otherwise available for the personal benefit of, their proprietors, members or shareholders.

In CRA document #2012-044012, dated September 28, 2012, the CRA expressed that an agricultural organization is an entity organized and operated for one or more of the following purposes: the advancement or furtherance of agriculture; the betterment of the conditions of those engaged in such pursuits; the improvement of the grade or quality of their pursuits or the development of a higher degree of efficiency in their respective occupations.

In determining what “agriculture” encompasses, one would expect that it would include farming. Subsection 248(1) provides that “‘farming’ includes tillage of the soil, livestock raising or exhibiting, maintaining of horses for racing, raising of poultry, fur farming, dairy farming, fruit growing and the keeping of bees, but does not include an office or employment under a person engaged in the business of farming.” In this regard, it is interesting to note CRA’s recent view in 2014-0522091I7 that although this was a question of fact, aquaculture was generally considered to be farming because growing crops and raising fish form part of the common meaning of farming and as such fall within the non-exhaustive definition in the Act.

Digital Privacy Act Proposes Amendments to PIPEDA

Terrance S. Carter and Colin J. Thurston in *Charity Law Bulletin* No. 341, May 28, 2014.

In our April 2014 Charity Law Update, we reported that the Federal Government introduced Bill S-4, the *Digital Privacy Act*, in the Senate on April 8, 2014. Bill S-4 has since undergone second reading on May 8, 2014 and is scheduled to be debated by the Standing Committee on Transport and Communications on May 28, 2014. This *Charity Law Bulletin* expands upon the information on Bill S-4 provided in April 2014 *Charity Law Update* and provides greater detail about the provisions proposed in Bill S-4 that may affect charities and not-for-profits if it receives Royal Assent and is proclaimed into force.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2014/chylb341.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2014/chylb341.htm>

Manitoba Privacy Legislation Awaits Proclamation

Sepal Bonni.

Manitoba's *Personal Information Protection and Identity Theft Prevention Act*, SM 2013, c 17 ("PIPITPA"), a provincial private-sector privacy statute received Royal Assent on September 13, 2013 but is not yet in force. PIPITPA is similar to the federal *Personal Information Protection and Electronic Documents Act* ("PIPEDA") and aims to protect personal information by governing "the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of an individual to have his or her personal information protected and the need of organizations to collect, use or disclose personal information for purposes that are reasonable." The Act defines an organization as including corporations and unincorporated associations, and therefore extends to many charities and other not-for-profits. PIPITPA will be in addition to Manitoba's *Privacy Act* (CCSM c P125), which creates a right of action concerning breaches of privacy, as well as setting out available defences.

PIPITPA provides a broad definition of personal information, which it defines as "information about an identifiable individual." With limited exceptions, PIPITPA prohibits organizations from collecting, using and disclosing personal information without the individual's consent, whether it is collected directly from the individual or from a third party source. Under PIPITPA it is an offence to wilfully collect, use, disclose, attempt to gain or actually gain access to personal information.

PIPITPA also contains a unique notification requirement in the case of a breach of personal privacy. While similar legislation in British Columbia, Alberta and Quebec require organizations to notify a regulator when personal information has been stolen, lost or accessed without an individual's consent, organizations under PIPITPA must notify the affected individuals directly.

The legislation is awaiting proclamation. Once the federal government has confirmed the new legislation is "substantially similar" to PIPEDA, it will replace PIPEDA in Manitoba. Until then, PIPEDA will continue to remain in force in the province.

PIPITPA is available online at: <https://www.canlii.org/en/mb/laws/stat/ccsm-c-p33.7/latest/ccsm-c-p33.7.html>.

Report on Self-Regulation of Civil Society Organizations

Terrance S. Carter.

In April 2014, CIVICUS, an international alliance located in South Africa that nurtures the foundation, growth and protection of citizen action, published a report discussing the self-regulation of Civil Society

Organizations (“CSOs”). The report, entitled *Accountability for Civil Society by Civil Society: A Guide to Self-Regulation Initiatives* (the “Report”), is a helpful resource for CSOs on establishing and strengthening self-regulation initiatives.

The Report describes CSOs as “development actors in their own right”, in that CSOs provide benefits, services, or political influence to specific groups within society and engage in work such as supplementing the work of government agencies, advocacy, and providing aid programmes. CSOs include organizations, such as non-governmental organizations, community-based organizations, religious organizations, and community foundations. Many CSOs have developed their own self-regulation initiatives.

In order to establish a self-regulation initiative, the Report recommends that CSOs consider the context in which the initiative will be developed or exists. This includes understanding the setting and circumstances of the environment in which the self-regulation initiative will operate. CSOs would then establish principles and standards for their self-regulation initiative and select a “modality” for the initiative. The Report contains case studies of these modalities, including a case study on Imagine Canada’s “Standards Program for Charities and Public Benefit Non-Profits” (“Standards Program”) as an example of a certification scheme (available online at: <http://www.imaginecanada.ca/node/172>).

Under the Standards Program, applicants submit documentation to prove compliance with the standards. Imagine Canada and three peer reviewers review these documents. Successful organizations receive a 5-year accreditation, a trustmark, and are listed on Imagine Canada’s website. They pay annual license fees and submit annual compliance reports to Imagine Canada. Spot checks are conducted on accredited organizations.

The case studies also outline challenges faced in self-regulation initiatives. For example, beginning a certification program may be a lengthy process requiring sufficient buy-in from other CSOs. Smaller organizations may face challenges with joining a certification program, as application fees may be seen as expensive. Peer evaluators must be trained and updated on the standards and evaluation process. Additionally, certification programs require outreach from both the certification body and the certified organizations to raise awareness of the program. Notwithstanding these challenges, the Report concludes that self-regulation schemes are an effective vehicle for improving CSO transparency and public accountability.

To read the CIVICUS Report, visit CIVUCUS online at:

<https://civicus.org/images/stories/CIVICUS%20Self-regulation%20Guide%20Eng%202014.pdf>

Toronto City Council to Study Social Programs in Churches

Esther S.J. Oh.

On February 20, 2014, the Toronto City Council referred a Member Motion (“MM48.9”) to the Community Development and Recreation Committee. MM48.9 recognizes that churches have traditionally provided social programmes and services throughout Toronto to those in need, including child care facilities, parent-child resource centres, affordable housing units, meal and shelter programs, and other community supports. The provision of such services is often funded using monies received from the City of Toronto. However, as noted in MM48.9, many churches are now being put up for sale without steps being taken to ensure that these vital social services are continued after the sale of the churches.

MM48.9 contained two recommendations: 1) creation of an inventory of facilities and programs funded by the City located in churches across Toronto; and 2) presentation of a report to the Community Development and Recreation Committee concerning options for maintaining charitable and community services in their existing locations when a church is sold at a committee meeting on June 25, 2014.

On April 1, 2014, Toronto City Council adopted Agenda Item CD27.8, which approved both recommendations from MM48.9 without amendments.

While the contents of the report have not yet been made public, recommendations arising from the report may impact churches and other religious organizations in Toronto that provide social services to their communities. As such, churches and religious organizations in Toronto are encouraged to monitor the progress of the report in order to keep themselves informed of potential consequences that may impact their operations in Toronto.

Member Motion MM48.9 is available online at:

<http://www.toronto.ca/legdocs/mmis/2014/cd/bgrd/backgroundfile-67370.pdf>

Agenda Item CD27.8 is available online at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.CD27.8>

Supreme Court Upholds Use of Security Certificates

Sean S. Carter.

In a case with potentially wide-ranging ramifications, *Canada (Citizenship and Immigration) v Harkat* (“Harkat”), the Supreme Court of Canada unanimously upheld the use of the controversial security certificates, deeming both security certificate laws and the use of secret evidence to deport terrorist suspects born abroad to be constitutional and consistent with the Canadian Charter of Rights and

Freedoms . In the case, held on May 14, 2014, the Court upheld the use of a security certificate issued against Mohammed Harkat, a suspected al Qaeda sleeper agent born in Algeria and currently being detained in Canada, was reasonable, and brought Mr. Harkat one step closer to being deported to Algeria.

Security certificates are not criminal proceedings, but immigration proceedings issued under the *Immigration and Refugee Protection Act* (“IRPA”) by executive order of the Minister of Public Safety and the Minister of Citizenship and Immigration. Once signed, the security certificate is referred to the Federal Court, where the federal government may use, and judges may consider, classified information in a closed proceeding, i.e. a proceeding closed to the public. Only a summary of that information is given to the subject of the security certificate and a ‘special advocate’, who may dispute the government’s submissions and who may cross-examine witnesses and make submissions to the Court.

The impact of Harkat is potentially greater than just the immigration security certificate scheme, it may also set the tone for a future judicial review of other closed summary proceedings where the protection of national security is raised as an issue. A similar type of certificate process currently is also available under the *Charities Registration (Security Information) Act* whereby charities may be stripped of their charitable status by a very similar executive process – a process which is subject to a similarly limited judicial review with only a summary of evidence being available to the subject of the certificate. For further information regarding this certificate process, please see *Charity Law Bulletin* No. 16 available at <http://www.carters.ca/pub/bulletin/charity/2002/chylb16.pdf>.

New CBA Award Announced in Honour of Jane Burke-Robertson

On May 23, 2014 at the 2014 National Charity Law Symposium in Toronto, the Canadian Bar Association announced the establishment of the Jane Burke-Robertson Award of Excellence in Charity and Not for Profit Law. This award was established in honour of Jane Burke-Robertson, a former partner of Carters who passed away in May 2013. The remarks given about Jane’s many and distinguished accomplishments as one of Canada’s leading lawyers are available at the link below.

Read More:

[PDF] http://www.carters.ca/news/2014/re_jbr_0523.pdf

Carters is Pleased to Announce Two New Partners

Carters would like to congratulate Jennifer M. Leddy and Barry W. Kwasniewski of our Ottawa office on recently becoming partners with Carters. Jennifer, who joined the firm in 2009, brings her considerable experience from her distinguished career in private practice and public policy to her charity and not-for-

profit law practice. Barry, who joined the firm in 2008, brings considerable litigation experience which he draws on to serve the firm's charity and not-for-profit clients in relation to employment law, related litigation and risk management including providing opinions and advice on insurance coverage.. Please see the links below for more information.

Read More:

Jennifer M. Leddy Bio: <http://www.carters.ca/jleddy.html>

Barry W. Kwasniewski Bio: <http://www.carters.ca/bwk.html>

Carters is Pleased to Welcome Two New Associates to Our Ottawa Office

Carters is also pleased to welcome Linsey E C. Rains and Sepal Bonni to Carters Ottawa office. Linsey, joins Carters to practice charity and not-for-profit law with a focus on federal tax issues after more than a decade with Canada Revenue Agency (CRA), in the Charities Directorate since 2005. Sepal, joins the firm to practice intellectual property law and as a trade-mark agent having previously practiced with a trade-mark firm in Ottawa. Please see the links below for more information.

Read More:

Linsey E.C. Rains Bio: <http://www.carters.ca/lrains.html>

Sepal Bonni Bio: <http://www.carters.ca/sbonni.html>

IN THE PRESS

LEGISLATION - Digital Privacy Act proposes amendments to PIPEDA by Terrance Carter and Colin Thurston.

Hilborn Charity eNews, May 15, 2014.

[Link] <http://www.charityinfo.ca/articles/Digital-Privacy-Act-proposes-amendments-to-PIPEDA>

Can charities handle CASL's complexity? includes quotes from Ryan Prendergast of Carters Professional Corporation.

Canadian Lawyer InHouse, Vol. 9, Iss. 3, June/July 2014.

<http://www.canadianlawyermag.com/5137/Can-charities-handle-CASL-s-complexity.html>

RECENT EVENTS AND PRESENTATIONS

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

[Web] <http://www.carters.ca/pub/seminar/charity/2014/rmp0429.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2014/rmp0429.pdf>

UPCOMING EVENTS AND PRESENTATIONS

United Way of York Region will include Barry W. Kwasniewski in a panel discussion on Human Resources & Employment Law on May 30, 2014.

“Across The Country In 90 Minutes” - The Canadian Bar Association’s National Wills, Estates and Trusts Section’s inaugural 3-part webinar academy will include Terrance S. Carter presenting “Essential Charity Law Update” during Session III of the series on June 3, 2014 .

Details and registration available at http://www.cbapd.org/details_en.aspx?id=na_onjun114.

Healthcare Philanthropy: Check-Up 2014, being co-presented by Carters and Fasken Martineau for the 10th anniversary on June 13, 2014, will include the following topics:

“Essential Charity Law Update” by M. Elena Hoffstein;

“Legal Issues in Managing Endowment Funds” by Terrance S. Carter;

“Elderly and Vulnerable Donors: Issues to Consider” by Laura West; and

“Anti-Spam and Healthcare Philanthropy: Practical Guidance for Compliance” by Ryan M. Prendergast.

Details and registration available at <http://www.fasken.com/en/check-up-2014/>.

St. Paul’s University will feature Terrance S. Carter and Jennifer M Leddy speaking on “Religious Institutes as a Corporate Entity” at their event titled “Legal Education for Leadership of Religious Institutes” held on June 16, 2014.

Current Legal Issues for Independent Schools Advancement & Communication Departments, a free half day session being hosted by St. Michael’s College School on June 25, 2014, will include Terrance S. Carter as speaker.

Details and registration available at <https://www.mysmcs.com/event-registration---carters-professional-corporation-half-day-seminar->.

Imagine Canada’s FREE Charity Tax Tools Webinar will be held on June 25, 2014 featuring a presentation by Barry W. Kwasniewski entitled “Directors’ & Officers’ Insurance – Know Your Coverage and Your Options.”

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

Hong Fook Mental Health Association will feature two presentations by Theresa L.M. Man entitled “Directors’ and Officers’ Liability: The Essentials and Beyond” and “In’s and Out’s of the New Canada Not-for-Profit Corporations Act (CNCA) and New Ontario Not-for-Profit Corporations Act (ONCA)” on June 28, 2014.

The 21st Annual Church & Charity Law™ Seminar will be held at Portico Community Church in Mississauga, Ontario, on Thursday, November 13, 2014.

Details and online registration will be available soon at <http://www.charitylaw.ca>.

CONTRIBUTORS

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Assistant Editor: Nancy E. Claridge



Sepal Bonni - Called to the Ontario Bar in 2013, Sepal joined Carters' Ottawa office to practice intellectual property law after having articulated with a trade-mark firm in Ottawa. Sepal has practiced in all aspects of domestic and foreign trade-mark prosecution before the Canadian Intellectual Property Office, as well as trade-mark portfolio reviews, maintenance and consultations, and is increasingly interested in the intersection of law and technology, along with new and innovative strategies in the IP world.



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.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.



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*TM Seminar.



Barry W. Kwasniewski - Mr. Kwasniewski joined Carters' Ottawa office in October, becoming a partner in 2014, to practice in the areas of employment law, charity related litigation, and risk management. After practicing for many years as a litigation lawyer in Ottawa, Barry's focus is now on providing advice to charities and not-for-profits with respect to their employment and legal risk management issues. Barry has developed an expertise in insurance law, and provides legal opinions and advice pertaining to insurance coverage matters to charities, not-for-profits and law firms.



Jennifer Leddy – Ms. Leddy joined Carters’ Ottawa office in 2009, becoming a partner in 2014, 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.



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*.



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™ Seminar*, and has been an invited speaker to the Canadian Bar Association, Imagine Canada and various other organizations.



Linsey E.C. Rains - Called to the Ontario Bar in 2013, Ms. Rains joined Carters to practice charity and not-for-profit law with a focus on federal tax issues after more than a decade of employment with the Canada Revenue Agency (CRA). Having acquired considerable charity law experience as a Charities Officer, Senior Program Analyst, Technical Policy Advisor, and Policy Analyst with the CRA’s Charities Directorate, Ms. Rains completed her articles with the Department of Justice’s Tax Litigation Section and CRA Legal Services.



Colin Thurston- Called to the Ontario Bar in 2011, Mr. Thurston joined Carters to practice in the area of intellectual property. A graduate of Queen’s University, Faculty of Law, Mr. Thurston volunteered at the Queen’s Legal Aid clinic throughout his years at Queen’s and his responsibilities grew from hands-on legal research, writing, and litigation, to supervision and training of his fellow law students, to input on clinic operations from a policy level. Mr. Thurston has litigation experience before numerous courts and tribunals and received numerous awards, including the Sabbath Prize in Wills and Estate Planning from Queen’s Faculty of Law.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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