

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

OCTOBER 2014

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21st Annual Church & Charity Law™ Seminar

Hosted by Carters Professional Corporation in Greater Toronto, Ontario, on **November 13, 2014**.
Details and online registration available at <http://www.carters.ca/pub/seminar/chrchlaw/2014/brochure.htm>.

Save the Date: the Ottawa Region Charity & Not-for-Profit Law Seminar will be held on **Thursday February 12, 2015** at the Centurion Center, Nepean, Ontario. Watch for details on our website at www.carters.ca

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RECENT PUBLICATIONS AND NEWS RELEASES

Changes to List of Universities Outside Canada

By Linsey E.C. Rains and Terrance S. Carter

Although not generally known, on April 3, 2014, the Governor General in Council, on the recommendation of the Minister of National Revenue, and in accordance with section 221 of the *Income Tax Act* (“ITA”), amended Schedule VIII of the *Income Tax Regulations* (“Regulations”) by striking out and adding certain universities outside Canada and repealing sections 7 and 24. Universities from Israel were added and universities from France, Switzerland, Vatican City, Australia, South Africa, New Zealand, and India were removed. Universities from both the United Kingdom and United States were added and removed. Canada Revenue Agency’s (“CRA”) Assessment and Benefit Services Branch is responsible for making recommendations for the addition and removal of universities to Schedule VIII.

The effect of these amendments is twofold. First, Schedule VIII universities, i.e. universities outside Canada, may be able to issue certificates to their students who file Canadian income tax returns, which allow their students to claim credits for the non-refundable tuition, education, and textbook amounts on their tax returns. Second, Schedule VIII universities are eligible for qualified donee status, i.e. as prescribed universities, and are able to issue official receipts for donations received if they also appear on a publicly available list maintained by CRA. Qualified donee status falls under the purview of CRA’s Charities Directorate. The list of prescribed universities is available on CRA’s website at: <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/qd-lstngs/prscrbdnvrsts-lst-eng.html>. Accordingly, the addition or removal of a university from Schedule VIII and the associated changes in status can have a significant impact on the university’s students and potential donors. Additional information on the requirements for universities outside Canada and prescribed university status is found in CRA Information Sheets RC190, *Information for Educational Institutions outside Canada* and RC191, *Becoming a Prescribed University Outside Canada*, available online: <http://www.cra-arc.gc.ca/E/pub/tg/rc190/rc190-13e.pdf> and <http://www.cra-arc.gc.ca/E/pub/tg/rc191/rc191-13e.pdf>.

Although not formally part of the Regulations, the “Regulatory Impact Analysis Statement” (“Regulatory Statement”) annexed to the Regulations, sets out the issues, objectives, consultation efforts, and rationale of the most recent Schedule VIII amendments. The Regulatory Statement frames the issues as they relate to the impact of prescribed university status for donors, but not for students. The

objective of the amendments “is to ensure the integrity of the list” of prescribed universities. Universities that were removed “were contacted and either failed to respond or did not contest the proposed removal.” Donors interested in supporting a university outside Canada should confirm with CRA that their potential recipient appears on the CRA list of prescribed universities. Current students of universities outside Canada should also contact CRA to verify whether their university is eligible to issue certificates to allow them to claim the appropriate credits on their income tax returns.

CRA News

By Ryan M. Prendergast

Report Released on Ease of Understanding CRA Correspondence by the Public

In September 2014, CRA’s Audit, Evaluation, and Risk Branch released a report entitled External Administrative Correspondence (EAC) Evaluation (“Report”). The Report evaluates how CRA administers its EAC and whether CRA’s EAC is understood by taxpayers. With regard to charities related EAC, the Report considered the TX11D, Request for Return to be Filed by Registered Charities and the T2015A, Notice of Intention to Revoke a Charity’s Registration. 75% of English charity respondents found the EAC easy to understand, which was the highest rate of comprehension compared to other respondents, such as individuals and businesses. Comprehension by French charities was second highest at 68%. However, only 52% of English charity respondents said they would call CRA if they did not understand the EAC compared to 66% of French charity respondents. In addition, the Report includes recommendations and a response from CRA management indicating it plans to engage with stakeholders including charities to address the issues raised in the Report. The Report can be accessed at: <http://www.cra-arc.gc.ca/gncy/ntrnl/2014/eace-cae-eng.pdf>.

Tax Alert on Gifting Tax Shelter Arrangements

On October 3, 2014, CRA added a new webpage providing information concerning the objection process where donations made by a taxpayer through a tax shelter are reassessed. Like CRA’s existing webpage for tax shelter arrangements, the new webpage refers to three Federal Court of Appeal cases, which all found that in situations where the advantage for the taxpayer exceeded the taxpayer’s donation, the taxpayer’s donation tax credit was reduced to zero. Based on this position, CRA has issued reassessments to taxpayers to deny any donation tax credit claimed through a gifting tax shelter arrangement. Taxpayers who filed objections have received letters from CRA intended to resolve these objections. On the webpage, CRA clearly stated that it “is not considering changes to the terms it has

offered.” If taxpayers do not accept the terms set out in the letter concerning their objection, CRA stated that they will take further action without advance notice and the individual may end up disputing the process before the Tax Court of Canada.

CRA Revokes Skyway Foundation of Canada Charitable Registration

CRA has revoked the registration of the Skyway Foundation of Canada (the “Foundation”), effective October 18, 2014. CRA’s decision was based on a conclusion made following an audit that the Foundation operated for the non-charitable purpose of facilitating a tax planning arrangement. CRA alleged that an audit revealed that, in 2008, a private group of taxpayers engaged in transactions designed to artificially inflate the value of publically traded shares of OSE Corporation, a business engaging in the exploration and production of oil and gas. These shares were subsequently donated to the Foundation, which, in turn, issued official donation receipts totaling \$2.6 million. After the donation, the shares lost almost 95 percent of their value, resulting in a significant loss to the Foundation. Accordingly, CRA took the view that the transfers were not gifts at law.

Tax Tip: Get CRA Social Media Savvy

On October 21, 2014, CRA added a Tax Tip to its website on how to engage with CRA through social media. CRA has a social media presence on Twitter (@CanRevAgency) and maintains a YouTube channel that offers short videos on tax topics. Interested individuals can also subscribe to an electronic mailing list or to a RSS feed. Further, there is a CRA Business Tax Reminders mobile app, which can remind small and medium-sized businesses about key due dates for payments, returns, and deadlines.

Proposed Changes to Income Tax Act Tabled as Bill C-43

By Theresa L.M. Man

On October 20, 2014, the federal government tabled in the House of Commons a Notice of Ways and Means Motion to implement tax measures from the 2014 Federal Budget and other additional proposed changes. This motion includes the same measures tabled on October 10, 2014, as well as a new measure amending the trust loss restriction event rules to provide relief for investment trusts that meet specific conditions. These proposed changes are largely the same as the draft proposed amendments to the *Income Tax Act* (ITA) released on August 29, 2014, for consultation. These changes are now embodied in Bill C-43, which received first reading at the House of Commons on October 23, 2014.

As reported in our September 2014 Charity Law Update, the changes in Bill C-43 cover the balance of the proposed changes in the 2014 Federal Budget affecting charities that have not already been implemented by way of Bill C-31, which received Royal Assent on June 19, 2014. The changes implemented in June include extending the carry-forward period from 5 years to 10 years with respect to certain donations of ecologically sensitive land for donations made after February 10, 2014; and allowing the Minister of National Revenue to refuse to register, or revoke the registration of, a charity or Canadian amateur athletic association that accepts a donation from a state supporter of terrorism after February 10, 2014.

One of the key changes contained in Bill C-43 affecting the charitable sector is changes allowing greater flexibility in the income tax rules for recognizing charitable donations made by will or on death. These changes have been summarized in our September 2014 *Charity Law Update* at <http://www.carters.ca/pub/update/charity/14/sep14.pdf>. The Department of Finance news release, Notice of Ways and Means Motion and explanatory notes of these proposed changes are available on Department of Finance's website at <http://www.fin.gc.ca/n14/14-151-eng.asp>. For more details on the above provisions as proposed in Budget 2014, see *Charity Law Bulletin No. 330, Budget 2014: Impact on Charities* at <http://www.carters.ca/pub/bulletin/charity/2014/chylb330.pdf>

Volunteer Agreements: Managing Volunteer Relations and Reducing Risk

By Terrance S. Carter and Barry W. Kwasniewski in *Charity Law Bulletin* No. 351, October 29, 2014

Creating, implementing, and using volunteer agreements is emerging as a key part of effectively managing volunteer relations and reducing the risks associated with charities and not-for-profits working with volunteers. The recent rise in importance of volunteer agreements is part of a natural evolution in the risk management process for these organizations. A volunteer agreement is a consensual agreement that sets out the nature of the volunteer relationship and articulates the respective roles and responsibilities of both the volunteer and the organization. Since charities and not-for-profits are generally either directly or vicariously liable for harm caused by or to volunteers acting within the scope of their authority and duties, a well drafted volunteer agreement can be essential to limiting potential liabilities. This *Charity Law Bulletin* provides an overview of how volunteer agreements can help address liability and risk management issues associated with working with volunteers.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2014/chylb351.pdf>

Corporate Update

By Theresa L.M. Man

Canada Not-for-Profit Corporations Act

The October 17, 2014 deadline date has finally passed. As of October 25, 2014, 9097 corporations have continued from Part II of the *Canada Corporations Act* (CCA) to the new *Canada Not-for-profit Corporations Act* (CNCA). The number grew exponentially from 6504 by September 19, 2014. Obviously, many corporations were trying very hard to meet the deadline. Furthermore, this number reflects the number of certificates issued as of that date, and Corporations Canada continues to process a significant number of applications that have been filed. As noted on their website, Corporations Canada is currently processing a higher than usual volume of transactions and some corporations may experience a delay in the processing of the continuances (https://strategis.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs03925.html).

Failure to continue under the CNCA by the deadline may result in those corporations being dissolved. However, dissolution is not automatic. See *Charity Law Bulletin* No. 336 (<http://www.carters.ca/pub/bulletin/charity/2014/chylb336.pdf>) for an overview of the dissolution process and how to revive such dissolved corporations. As noted on Corporations Canada's website, corporations that have not continued and have not been dissolved can still apply to continue

Ontario Not-for-Profit Corporations Act

We provided an update on the status of the *Ontario Not-for-Profit Corporations Act, 2010* ("ONCA") in our September 2014 *Charity Law Update*. Again, there are no new updates on the progress of the ONCA at this time. As reported in September, Bill 85 amending portions of the ONCA died on the Order Paper as a result of the calling of the provincial election on May 2, 2014. The government had previously indicated that the ONCA would not be proclaimed until at least 6 months after the enactment of Bill 85 in order to allow Part III *Corporations Act* not-for-profit corporations to prepare for the transition. All transitions must be completed within three years of proclamation. At this time, we are waiting for a new bill to be re-introduced.

The Ontario Ministry of Government and Consumer Services' website still indicates that the ONCA is not expected to come into force before 2016. With the Ontario Liberal Party, which originally introduced the ONCA, winning the election, many in the sector are cautiously hopeful that there might be an earlier proclamation date. In this regard, it is encouraging to learn that in the Premier Wynne's September 25, 2014 "Mandate Letter" to Minister Oraziotti, outlining the key priorities for the Ministry, two of the priorities for

2014 are “continuing to review the province’s corporate and commercial statutes. Your goal is to ensure Ontario has modern laws that facilitate an efficient market and prosperous business climate” and “bringing forward legislation to enable the implementation of the *Not-for-Profit Corporations Act, 2010*. I ask that you actively support the non-profit sector through the transition.” The letter is available at <https://www.ontario.ca/government/2014-mandate-letter-government-and-consumer-services>.

With the ONCA being in a flux for the past number of months, corporations are facing the uncertainty of whether to start preparing for transitioning under the ONCA when they do not know when the ONCA will be proclaimed and how the ONCA might be amended in the new Bill yet to be tabled. Others that want to update their corporate objects, by-laws and policies for other reasons (such as re-aligning their mission, revising their corporate governance structures, etc.) are also faced with the dilemma of whether to wait for the proclamation of the ONCA first or to update them now. The problem with waiting is that they do not know how long the wait might be. On the other hand, the problem with updating them now is that since updates now will have to comply with the rules in the current *Corporations Act*, they may have to update them again after proclamation in order to comply with the new rules in the ONCA. Having the ONCA proclaimed as early as possible is certainly a priority for the sector. At a minimum, setting a definitive proclamation date for not-for-profit corporations to work towards and releasing the amendment Bill as early as possible would help corporations to strategically plan for their transition and other governance update initiatives.

Nevertheless, in the mean time, for corporations that are interested in collapsing their membership classes, the delay in the proclamation of the ONCA will give more time for corporations to amend their by-laws to do so, in particular in relation to collapsing voting membership classes. The following is the link to our comments in this regard from our August 2014 *Charity Law Update*: <http://www.carters.ca/pub/update/charity/14/aug14.pdf>.

Those interested in the progress of the ONCA are encouraged to monitor the Ministry’s website for updates at http://www.sse.gov.on.ca/mcs/en/pages/not_for_profit.aspx.

Court of Appeal Clarifies Approach in Religious Property Disputes

By Ryan M. Prendergast in *Church Law Bulletin* No. 47, October 29, 2014

On October 17, 2014, the Court of Appeal for Ontario released its reasons in *Pankerichan v. Djokic* (2014 ONCA 709). The decision concerned, in part, an application arising from a dispute over which

individuals had authority to manage the property of a religious organization pursuant to the *Religious Organizations Lands Act* (Ontario). In upholding the decision of the Superior Court of Ontario made on April 23, 2012, the Court of Appeal provided instructive comments concerning the interpretation of ROLA, together with an overview of the approach taken by Canadian courts when determining disputes between parties concerning religious property. The Court of Appeal also provided comments concerning the US “neutral principles of law” (NPL) doctrine and its application in the Canadian context.

This *Church Law Bulletin* provides a brief summary of the background to the decision of the Court of Appeal, together with an overview of the comments made by the Court in relation to ROLA and the NPL doctrine which will be applicable to unincorporated churches in Ontario.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2014/chchlb47.pdf>

Approved Research Institute Status

By Linsey E.C. Rains

On September 9, 2014, Canada Revenue Agency (“CRA”) released a technical interpretation (#2014-0537371E5) commenting on proposed changes to an applicant for charitable registration’s Letters Patent. The principal issue was whether the proposed changes required to obtain status as a registered charity under the *Income Tax Act* (“ITA”) would affect the applicant’s status as an approved research institute for the purposes of clause 37(1)(a)(ii)(B) of the ITA.

Section 37 of the ITA permits taxpayers carrying on a business in Canada to deduct certain amounts expended in relation to scientific research and experimental development (“SR&ED”) when computing their business income. In particular, clause 37(1)(a)(ii)(B) allows taxpayers to deduct payments made to “an approved university, college, research institute or other similar institution” and that otherwise meet the ITA’s SR&ED requirements. In this instance, the applicant for charitable registration had already been granted status as “an approved research institute” for SR&ED purposes by CRA. The applicant was applying for charitable registration in order to receive additional funding for its SR&ED activities and to issue official receipts to donors.

The proposed changes to the applicant’s Letters Patent were to amend its corporate objects to advance education by carrying on SR&ED within the meaning of the ITA and to “improve the capacity and efficiency of another registered charity by providing the administration and management of all its...[SR&ED] activities.” The dissolution clause also needed to be amended to reflect the ITA’s

requirement that a registered charity's assets must be transferred to another qualified donee upon dissolution.

This technical interpretation is noteworthy because it shows CRA will consider SR&ED activities as potentially charitable under advancement of education and because it shows that the administration and management of SR&ED activities for other registered charities can be an acceptable charitable purpose.

Defining “Disability”: It Is Broad, But It Is Not The Flu

By Barry W. Kwasniewski in *Charity Law Bulletin* No. 353, October 29, 2014

The legal duty to accommodate employees with illnesses or disabilities in accordance with the Ontario *Human Rights Code* (the “Code”) remains an ongoing challenge to employers, including charities and not-for-profits. One issue that may be raised in these reasonable accommodation situations is whether the employee is suffering or has suffered from a “disability”, within the meaning of the Code. In November 2013, the Human Rights Tribunal of Ontario (the “Tribunal”) clarified this issue. In *Burgess v College of Massage Therapists of Ontario* (“*Burgess*”), Candace Burgess (“Burgess”) alleged that the decision to cancel her employment contract because she was sick with the flu and therefore unable to attend a mandatory training session was discriminatory. Tribunal Vice-chair Eric Whist found that “the determinative issue in this case is that ... the applicant did not have a disability,” meaning that the Code did not provide protection from the termination of her employment. This decision clarifies that transitory ailments (such as the flu) are not “disabilities” under the Code. The decision also affirms that tribunals and the courts will continue to interpret “disability” in a way that will not trivialize its meaning under the Code. While this decision was released in late 2013, it is still a helpful reminder on a recurring issue for employers. This *Charity Law Bulletin* reviews and discusses this decision.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2014/chylb353.pdf>

Report on Mobilizing Private Capital for Public Good

By Terrance S. Carter in *Charity Law Bulletin* No. 354, October 29, 2014

In September 2014, Canada's National Advisory Board to the Social Impact Investment Taskforce, in conjunction with the MaRS Centre for Impact Investing, released "Mobilizing Private Capital for Public Good: Priorities for Canada," a thoughtful and comprehensive report directed at Canadian governments with recommendations to advance impact investment (the "Report"). The Report grew out of an international initiative launched in June 2013 at the G8 Social Impact Investment Forum in London, England. The Report by the Taskforce builds upon the 2010 Report "Mobilizing Private Capital for Public Good: Canadian Task Force on Social Finance," which had made seven recommendations to mobilize new sources of capital, create an enabling tax and regulatory environment, and build a pipeline of investment-ready social enterprises.

The Report is intended to improve the well-being of all Canadian communities through innovative public policy with four key recommendations. Underlying each of these recommendations is an emphasis on impact investment and the important role that Canadian governments need to play in furthering impact investment in Canada. Impact investment, or social finance, is generally defined in the Report as the practice of directing private capital into projects whose aim is to deliver measurable social outcomes. Two immediate priorities identified in the Report include enabling impact investment and social entrepreneurship in the non-profit organization (NPO) and charitable sector, and catalyzing impact investment through capital matching, investor incentives, and outcomes payments. This *Charity Law Bulletin* summarizes these and other recommendations made in the Report.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2014/chylb354.pdf>

Eligibility of Fundraising Event Concerning NPO Status

By Ryan M. Prendergast

In a CRA View dated May 30, 2014, (Document #2014-0518841E5), CRA responded to a taxpayer query concerning whether a particular fundraising event would be exempt from tax as a non-profit organization (NPO) under paragraph 149(1)(l) of the *Income Tax Act* (Canada) (the "Act"). The taxpayer indicated that it would organize an event to collect donations to enter a team in a particular event. While not all details were provided due to privacy restrictions, the facts indicated that leftover proceeds from the fundraising event were to be provided to a registered charity.

CRA reiterated the requirements of an NPO under the Act and as explained in Interpretation Bulletin ITR-496R, i.e., that it is organized as a club, society, or association and:

- It is not a charity;
- It is organized exclusively for social welfare, civic improvement, pleasure, recreation or any other purpose except profit with no income available for the personal benefit of its members or shareholder;
- It is in fact operated exclusively for the same purpose for which it was organized or for any of the purposes mentioned above; and
- It does not distribute or otherwise make available for the personal benefit of a member or shareholder any of its income, unless the organization is an association which has as its primary purpose and function the promotion of amateur athletics in Canada.

Although fundraising is generally considered a profit making activity, CRA repeated as in previous interpretations that NPOs may undertake certain fundraising activities, such as gaming or the sale of donated or inexpensive goods, without risking their tax-exempt status. However, where fundraising is so significant as to be considered the purpose of the organization, the NPO may risk its tax-exempt status.

Based on the information provided by the taxpayer, CRA appeared to conclude that the fundraising event would not qualify as an NPO because it was not organized as a club, society, or organization, and the scope of fundraising in relation to other activities was substantial. As well, the CRA View noted that the charity to which the taxpayer intended to donate any surplus proceeds from the event was not a Canadian registered charity, but a US charity.

The CRA View also examined whether the amounts received would not be taxable income, either as a non-taxable windfall, or gifts. While the CRA View did not determine whether the taxpayer was carrying on a business or whether the amounts received would be considered gifts, it appeared that the funds received were not gifts but rather payments made in exchange for participation in the fundraising event. While CRA's response may not have been surprising given the facts disclosed, the focus on the organization of the fundraising event, i.e., that it was not a club, society or association is instructive as an important point to review in determining whether or not a fundraising event may qualify as an NPO.

Preparing for New AODA Accessibility Requirements in Ontario

By Nancy E. Claridge in *Charity Law Bulletin* No. 352, October 29, 2014

January 1, 2015 is the next key compliance date for both “large” and “small” organizations, including charities and not-for-profits, under the Ontario *Integrated Accessibility Standards Regulation* (the “Integrated Accessibility Standards”). Together with the *Accessibility Standards for Customer Service*, the Integrated Accessibility Standards (jointly the “Accessibility Standards”) is meant to remove barriers addressed in the *Accessibility for Ontarians with Disabilities Act, 2005* (the “AODA” or the “Act”). Further, January 1, 2015, marks the first time that requirements under the new Design of Public Spaces Standards (Accessibility Standards for the Built Environment) (the “Built Environment Standard”), found in the Integrated Accessibility Standards, will begin to be implemented. This *Charity Law Bulletin* reviews how charities and not-for-profits in Ontario will be impacted by the January 1, 2015 deadline.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2014/chylb352.pdf>

Alberta’s Personal Information Protection Legislation Set to Lapse

By Sepal Bonni

In November 2013, the Supreme Court of Canada (SCC) released its decision in *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401* (UFCW), 2013 SCC 62 (UFCW), a decision which found Alberta’s *Personal Information Protection Act* (PIPA) unconstitutional. Similar to privacy legislation in other jurisdictions, PIPA was enacted to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes individuals’ privacy rights. As such, the SCC in UFCW had to weigh the privacy rights of individuals with the right to freedom of expression, and as a result came to the conclusion that PIPA would be struck down in its entirety one year from the date of the decision. For a complete summary regarding this case, see *Charity Law Bulletin No. 326, Alberta Privacy Legislation Found Unconstitutional by SCC*, by Colin J. Thurston, online at: <http://www.carters.ca/pub/bulletin/charity/2013/chylb326.pdf>.

With no amendments to PIPA tabled by the Alberta government, and the current session of the Alberta Legislature delayed until November 17, 2014, PIPA is set to expire on November 15, 2014 before the Legislature returns. In response, the Attorney General of Alberta has applied for a motion to extend the suspension and allow more time for the implementation of draft legislation.

Currently, UFCW only impacts the Alberta privacy legislation. However, the decision may impact other similar provincial privacy legislation, such as that legislation enacted in British Columbia, Québec and Manitoba. Further, the federal *Personal Information and Protection of Electronic Documents Act* (PIPEDA) has a similar framework to PIPA. As such, if PIPA does indeed lapse this may require a review of privacy legislation across the country.

Charities and not-for-profits should continue to monitor the status of PIPA, keeping in mind that the lapse of PIPA does not create a legislative void in privacy legislation, as PIPEDA will apply in Alberta if PIPA does lapse. In this regard, PIPEDA only applies to private sector rights where a substantially similar provincial privacy legislation is not in place. As such, if PIPA does lapse, PIPEDA will be the applicable privacy legislation in Alberta. In order to ensure compliance across Canada, charities and not-for-profits should aim to meet the highest standards imposed by privacy legislation.

The current *Personal Information Protection Act* is online at:

http://www.qp.alberta.ca/1266.cfm?page=P06P5.cfm&leg_type=Acts&isbncln=9780779762507

Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401 (UFCW), 2013 SCC 62 is online at: <http://canlii.ca/t/g1vf6>

US Department of Treasury Releases Guidance on Not-for-Profit Humanitarian Assistance

By Sean S. Carter

On October 17, 2014, the United States (US) Department of Treasury, through the Office of Foreign Assets Control (“OFAC”), issued *Guidance Related to the Provision of Humanitarian Assistance by Not-For-Profit Non-Governmental Organizations* (“Guidance”). OFAC administers and enforces economic and trade sanctions based on US foreign policy against targeted foreign countries and regimes, terrorists, and other groups that qualify as threats to national security, foreign policy or the economy of the US (i.e., those on the Specially Designated Nationals and Blocked Persons (“SDN”) list). US organizations operating abroad are severely restricted in their interaction with these designated entities, and are subject to OFAC penalties if found violating the restrictions. Prohibited interactions include transferring funds and importing supplies or services. However, OFAC also issues licenses to not-for-profit non-governmental organizations seeking to provide humanitarian assistance to countries subject to OFAC sanctions.

The Guidance intends to clarify the scope of the interaction that not-for-profit non-governmental organizations may engage in when providing humanitarian assistance in areas with designated individuals or groups, or takes place in areas under the control of designated individuals or groups. One of the points made by the Guidance is that if an entity is controlled by a designated individual, even if the entity itself is not designated, it is susceptible to sanctions. However, the Guidance further clarifies that in circumstances involving a dangerous and highly unstable environment, combined with urgent humanitarian need, OFAC recognizes that some humanitarian assistance may unwittingly end up in the hands of members of a designated group. This Guidance identifies that such benefits will be considered incidental, and therefore will not be the focus of OFAC sanctions enforcement. However, not-for-profit non-governmental organizations are not exempt from sanctions completely, and thus are still encouraged to exercise caution in providing any financial, material, technological, or other services to or in support of a designated entity.

The Guidance is online at:

http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/20141017_humanitarian.pdf

UK Law Commission Recommendations on Social Investment

By Esther S.J. Oh

On September 24, 2014, the Law Commission in the United Kingdom (“UK”) published a report entitled *Social Investment by Charities: The Law Commission’s Recommendations* (the “Report”). Specifically, the Law Commission recommended new rules to give charities in the UK a statutory power to make social investments, (i.e. use of funds to further a charity’s objects and also generate income for future initiatives). This Report is part of a larger project by the Law Commission to consider issues surrounding charity law in the UK.

The Report emphasized that charities in the UK already have the power to make social investments, but that there is confusion among many trustees on a number of issues, including whether charities can make social investments in situations where a social investment may generate a loss or a lower rate of return than a mainstream investment. Trustees of charities are otherwise held to a higher standard when investing charitable funds. The Report therefore made the following recommendations:

- Create a new statutory power for charity trustees to make social investments in order to eliminate any doubt created by the current laws;

- Make clear that charity trustees can use a permanent endowment to make social investments, provided they expect the capital value of the endowment to be preserved;
- Introduce statutory duties specific to social investment (which, in the case of trustees of charitable trusts, will replace the investment duties in the Trustee Act 2000); and
- Improve certain aspects of the Charity Commission’s guidance on social investment and relevant tax guidance.

The Law Commission also recommended that charity trustees should have the following duties:

- Be satisfied that making the social investment in question is in the charity’s best interests, having regard to the charity’s objects and the expected financial return;
- Review the charity’s social investments and consider when they should be varied; and
- Consider taking advice when making and reviewing social investments.

In Canada, the parameters within which charities can become involved in social investment are articulated in CRA’s Guidance entitled “Community Economic Development Activities and Charitable Registration” (CG-014), which can be found online at: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/cmtycnmcdvpmt-eng.html>

For a discussion on the future of where the law might go in Canada with regards to social investment, reference should be made to another recent report entitled “Mobilizing Private Capital for Public Good: Priorities for Canada,” authored by Canada’s National Advisory Board to the Social Impact Investment Taskforce, in conjunction the MaRS Centre for Impact Investing. This report is discussed in more detail in Charity Law Bulletin No. 354, *Report on Mobilizing Private Capital for Public Good*, by Terrance S. Carter, above.

The full copy of the Law Commission’s Report can be found online at:

http://lawcommission.justice.gov.uk/docs/cp216_charities_social_investment_recommendations.pdf

Legal Risk Management Checklist

By Terrance S. Carter and Jacqueline M. Demczur in *Legal Risk Management Checklist*, October 29, 2014

The popular *Legal Risk Management Checklist for Ontario-Based Charities*, available free of charge through our websites, has been updated as of October 2014.

The October 2014 Charity Checklist is now available at:

<http://www.carters.ca/pub/checklst/charity2014.pdf>.

Charities Legislation & Commentary, 2015 Edition Now Available!

Co-Edited by Terrance S. Carter, Maria Elena Hoffstein, and Adam M. Parachin (LexisNexis Butterworths, October 2014)

The 2015 Charities Legislation & Commentary, co-edited by Terrance S. Carter, M. Elena Hoffstein and Professor Adam Parachin, was released this past month. The purpose of this consolidation is to assist those undertaking research in the area of charity law. Anyone who has undertaken research in this field can attest to the fact that the statutory regime governing charities consists of numerous, complex and, in some cases, unexpected legislative requirements. There is no single statute that sets out all of the legislative requirements applicable to charities. The statutory provisions applicable to charities are instead set out in multiple federal and provincial statutes. The consequence is that an applicable statute or legislative amendment can all too easily be overlooked.

This consolidation aims to facilitate charity law research by setting out excerpts from, and in some cases the entire text of, the key federal and Ontario statutes that apply to charities current to August 28, 2014, including changes introduced by the 2014 federal budget.

Selected and prepared by charity law experts, Terrance S. Carter, Professor Adam Parachin and M. Elena Hoffstein, this unique publication provides a useful reference for anyone researching key federal and Ontario statutes governing charitable organizations. The 2015 edition compiles, describes or otherwise takes account of approximately 145 statutes and 75 regulations.

Order the book at:

http://store.lexisnexis.ca/store/ca/catalog/booktemplate/productdetail.jsp?&catId=cacat_22_en&prodId=prd-cad-00950

IN THE PRESS

Tax Court Disallows Charitable Donation Tax Credits, by Linsey E.C. Rains

Hilborn Charity eNews, October 11, 2014

<http://www.charityinfo.ca/articles/Tax-court-disallows-charitable-donation-tax-credits>

CRA Releases Guidance on Ineligible Individuals, by Terrance S. Carter and Ryan M. Prendergast

Charity Talk, CBA National Charities and Not-for-Profit Law Section Newsletter, October 2014

http://www.cba.org/CBA/sections_charities/news2014/cra.aspx

RECENT EVENTS AND PRESENTATIONS

St. Michael's College School and Carters Professional Corporation hosted a half-day Seminar on September 29, 2014. The following topics were presented:

- Anti-Spam Legislation: Practical Guidance for Compliance, by Ryan M. Prendergast
- Legal Issues in Managing Endowment Funds, by Terrance S. Carter
- Split Receipting Rule Pertaining to Special Events: A Refresher, by Theresa L.M. Man
- CRA Fundraising Guidance: What You Need to Know, by Terrance S. Carter

Brampton Arts Council hosted an evening session on October 8, 2014, at the Brampton Golf Club with Terrance S. Carter presenting on the topic of "The Changing Landscape of Ontario Corporations".

CEO Forum was held in Ottawa specifically for Healthcare CEOs on October 24, 2014 at the Royal College of Physicians and Surgeons of Canada. Terrance S. Carter presented on the topic of "Volunteer Agreements and Relations: A Selective Discussion".

Institute of Corporate Directors (ICD) Ontario Chapter (Peel Region) hosted a seminar at the Credit Valley Golf Course on October 30, 2014 entitled "NFP Board's Role versus NFP C.E.O./Executive Director's Role" with Terrance S. Carter participating in the panel discussion.

UPCOMING EVENTS AND PRESENTATIONS

The Canadian Bar Association and Ontario Bar Association will host a session on "CASL for Charities and Not-for-Profits" on November 11, 2014, presented in part by Ryan M. Prendergast.

Registration is available online at http://www.cbapd.org/details_en.aspx?id=ON_14CHA1111T

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 available at:

<http://www.carters.ca/pub/seminar/chrchl原因/2014/brochure.htm>.

AFP Congress will be held at the Metro Toronto Convention Centre from November 24 to 26, 2014. On November 24, 2014, Terrance S. Carter will be presenting on the topic “What You Need to Know but Were Afraid to Ask about Managing Endowed Funds”.

Registration is available at <http://afptoronto.org/congress/registration-information/>

Imagine Canada Sector Source will host a webinar entitled “Legal Issues in Managing Endowment Funds”, on November 25, 2014, presented by Terrance S. Carter.

Registration is available at:

[https://imaginecanada.webex.com/mw04011/mywebex/default.do?siteurl=imaginecanada&rnd=0.9708387759013173&utm_source=Caring+Company&utm_campaign=a1d3f2671c-Imagine Matters English Oct 28 2014 CC&utm_medium=email&utm_term=0_5c24c56bcb-a1d3f2671c-292000865](https://imaginecanada.webex.com/mw04011/mywebex/default.do?siteurl=imaginecanada&rnd=0.9708387759013173&utm_source=Caring+Company&utm_campaign=a1d3f2671c-Imagine+Matters+English+Oct+28+2014+CC&utm_medium=email&utm_term=0_5c24c56bcb-a1d3f2671c-292000865)

The Ottawa Region Charity & Not-for-Profit Law Seminar will be held on **Thursday February 12, 2015** at the Centurion Center, Nepean, Ontario. Watch for details on our website at www.carters.ca.

CSAE Trillium Chapter is offering a number of *Accessibility for Ontarians with Disabilities Act* (AODA) Workshops in various locations.

Details at: <http://www.csae.com/Chapters/Trillium/AODAResourcesWorkshopsandWebinars.aspx>.

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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, 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.



Bart Danko, B.Sc. (Hons.), M.E.S., J.D. – Before commencing his articles with Carters in 2014, Bart completed the MES/JD (Master of Environmental Studies/Juris Doctor) joint program at York University's Faculty of Environmental Studies and Osgoode Hall Law School. While at Osgoode, Bart worked for the Canadian Forum on Civil Justice. He also sat on the Board of Directors for the Canadian Institute for the Administration of Justice. Bart volunteers with Peel Regional Police as an Auxiliary Constable and is co-founder of a group that speaks about social justice at high schools in the Peel region.



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™* Seminar



Anna M. Du Vent, B.A., M.A., J.D. – Ms. Du Vent graduated from the University of Ottawa in 2014. Prior to attending law school, Anna completed a Master of Arts in International Development Studies. While in law school, Anna volunteered with the national and local levels of the Canadian Association of Refugee Lawyers. She was also a Research Assistant for the Legal Writing Academy, where she worked with first-year law students to develop their legal writing and research skills. Prior to law school, Anna worked in youth programming and community service organizations in Canada, the Philippines, the Marshall Islands, Peru, and Jamaica.



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.



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*, *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, B.A., LL.B. – 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 M. 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 on the topic of directors' and officers' liability for not-for-profit corporations, and has co-authored papers for Law Society of Upper Canada. In addition, Ryan has contributed to several *Charity Law Bulletins* and other publications on www.charitylaw.ca, and is a regular presenter at the annual *Church & Charity Law* Seminar.



Linsey E.C. Rains - Called to the Ontario Bar in 2013, Ms. Rains joined Carters Ottawa office 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.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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