

Updating Charities and Not-For-Profits on recent legal developments and risk management considerations

NOVEMBER 2015

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Hosted by Carters Professional Corporation in Ottawa, Ontario, on Thursday **February 11, 2016**

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RECENT PUBLICATIONS AND NEWS RELEASES

Social Media Brings Privacy to the Forefront

By Sepal Bonni

Legal issues, such as privacy, follow innovation, and social media is no exception. Although many charities and not-for-profits are using social media networks as a tool in accomplishing their missions, it is important for those organizations to consider the privacy implications prior to launching a social media campaign.

Privacy legislation in Canada requires organizations to obtain consent for the use, collection or disclosure of personal information. Charities and not-for-profits should be aware that posting personal information on social media networks is no exception. As a result, such organizations should ensure that they have obtained informed and voluntary consent prior to the collection, use, or disclosure of any personal information posted on social media networks, including consent for any photographs or videos that an organization posts on its networks.

In order to help manage the risks associated with privacy breaches occurring on social media, charities and not-for-profits should ensure that appropriate policies and procedures are in place prior to launching their social media campaigns. Generally this should include the following:

- **Implementing a Social Media Policy** – A social media policy should be tailored to the organization and, amongst other considerations, should identify who is permitted to post “official” social media communications on behalf of the organization, as well as outlining any restricted behaviours, such as posting information that would compromise the practices of the organization, engaging in any form of harassment, and violating copyright or trade-mark laws.
- **Implementing a Privacy Policy** - A privacy policy should be implemented, which amongst other matters, should disclose the personal information handling practices of the organization, including any personal information that will be posted on social media pages.
- **Updating Employment Contracts and Policies** - Employment contracts and/or policies should cover the use of employees’ personal social media profiles and include prohibitions regarding what the employees do on social media, such as speaking on behalf of the employer, or using the organization’s trade-marks without written authorisation.

Although social media can help charities and not-for-profits accomplish their missions, there are many instances in which information shared on social media sites may breach applicable privacy legislation. As such, organizations need to be vigilant in taking a proactive approach to minimizing any potential privacy risks before embarking on a social media campaign.

Legislation Update

By Terrance S. Carter

Department of Finance Acknowledges Concerns regarding Tax Changes

On November 16, 2015, the Department of Finance (“Finance”) [responded to](#) submissions from the Joint Committee on Taxation of the Canadian Bar Association and Chartered Professional Accountants of Canada (“Joint Committee”), the Conference for Advanced Life Underwriting, and STEP Canada (the “Representatives”) regarding proposed amendments to the [Income Tax Act](#) (the “ITA”), which received Royal Assent on December 16, 2014. Finance’s response addressed the collective concerns of the Representatives, see e.g. [STEP Canada’s concerns](#) and [the Joint Committee’s concerns](#), relating to subsection 104(13.4) and other provisions of the ITA, which deal with the impact of a beneficiary’s death on the taxation of spousal, alter ego and joint partner trusts, all of which could potentially have a negative impact on charitable giving.

In particular, the response acknowledged two concerns raised by the Representatives about the amendments, which apply to the 2016 taxation year. The first concern is that the application of paragraph 104(13.4)(b) means that upon the death of the beneficiary, income tax liability will attach to the beneficiary’s estate, as opposed to the trust itself, despite the fact that the property of the trust will not necessarily be made available for the benefit of the estate’s beneficiaries.

Second, it is possible that donation tax credits may become “stranded” in the trust resulting in a “corresponding negative impact on charitable giving.” This would potentially be the case if a trust were to make a donation to a charity following the beneficiary’s death, as the income would be taxable in the estate, but the donation would have been made by the trust. Since the trust would likely have little or no income tax liability, the deduction would be of no effect, which would in turn discourage such donations from being made.

In its response to these concerns, Finance describes some of the options set out and supported by the Representatives in their submissions and subsequent discussions with Finance. In this regard, a key consideration to alleviate the possible stranding of donation tax credits would be to implement a provision

which would permit a trust “to allocate the eligible amount of a donation made by the trust after the beneficiary’s death, but during the calendar year in which the death occurs, to its taxation year in which the death occurs.”

Although Finance’s response clearly indicates that the purpose of the letter is to “express ... [its] appreciation for the engagement on this issue of interested members of the tax community” and confirm its understanding of the Representatives’ concerns and receptiveness to the proposed options to resolve the issues raised, the sector is hopeful that Finance will fully commit itself to ensuring that the changes will not have a negative impact on charitable giving. Even though the letter represents a step toward a possible solution, charities that anticipate receiving donations from trusts should seek professional advice about how they may be potentially impacted.

New Federal Lobbyist Code of Conduct

Earlier in 2015, the Commissioner of Lobbying (the “Commissioner”) proposed to amend the [Lobbyists’ Code of Conduct](#) (the “Code”), pursuant to section 10.2 of the [Lobbying Act](#) (the “Act”), which had originally come into effect on March 1, 1997. Following public consultation, the Code was referred to the Standing Committee on Access to Information, Privacy and Ethics in spring 2015 and was later published in the *Canada Gazette* on November 7, 2015 and will come into effect on December 1, 2015. The Code is meant to ensure that lobbying takes place in an ethical manner that respects the democratic institutions of Canada. Charities and not-for-profits that engage in any type of lobbying activities with the Federal Government need to be aware of the contents of the new Code and its enforcement procedures.

The Code begins with a preamble, which explains the purposes of the Code, and is followed by a set of four general principles (respect for democratic institutions; integrity and honesty; openness; and, professionalism). The specific rules that follow apply to any individual or organizations that are required to register for lobbying activities pursuant to sections 5 or 7 of the Act. Although the Code itself is not a statutory instrument, the Commissioner has the power to enforce both the principles and rules of the Code. If non-compliance is suspected, the Commissioner has the discretion to open investigations in accordance with the Act and subsequently produce a report on its conclusions to Parliament. Complaints about potential non-compliance with the Act may also be directed to the Commissioner.

Alberta Budget 2015 Maintains Charitable Tax Credit

On October 27, 2015, the Minister of Alberta Finance presented “[Budget 2015: Supporting Jobs, Supporting Families. The Alberta: Fiscal Plan](#)” (“Budget 2015”), consisting of its fiscal plan for 2015 to 2018. Within the Budget 2015, the provincial government committed to maintaining its charitable

donations tax credit at its present rate. Specifically, under the current legislative scheme, charitable donations of \$200 or more are eligible for a credit of 21%, provincially. In conjunction with a federal tax credit rate of 29%, for donations over \$200, taxpayers in Alberta will continue to receive a total non-refundable tax credit of 50%, one of the highest in Canada. For more information please see the following [Media Inquiry](#) by the Alberta Government.

CRA Explains Application of GRE Rules to Charitable Gifts

By Theresa L.M. Man

At the STEP Canada National Conference on June 18 and 19, 2015, Canada Revenue Agency (“CRA”) responded to various questions relating to CRA’s views on a number of provisions in the [Income Tax Act](#). A number of those questions are in relation to new tax rules regarding graduated rate estates (“GRE”) and charitable donations involving GREs. The new GRE rules apply to taxpayer deaths after 2015. Under the new tax rules, a GRE obtains graduated tax rates for a period of 36 months after the death of a taxpayer. The questions and CRA’s response are available [here](#) on STEP Canada’s website. They have also recently been released as technical CRA documents. The following is a summary of some of those questions that are of interests to the charitable sector. CRA’s view on estate administration involving GREs are not summarized, such as whether the 36-month period of a GRE can span over 4 taxation years of an estate, and what happens if the testator has multiple wills.

Charitable Donation of Substituted Property by GRE

The new rules in amended subsection 118.1(5.1) regarding charitable donations from a GRE contain a new requirement that the donation be a gift of “property that was acquired by the estate on and as a consequence of the death” or “property that was substituted for that property”. At the round table, CRA expressed its views in relation to whether donations made from cash dividends or process from cash received on the purchase for cancellation of shares received by a GRE constitute substituted property.

CRA was asked to consider a scenario where a GRE owns shares in an investment holding company (Holdco) that owns marketable securities, and the deceased’s will provides for a charitable donation to be made on death. If Holdco sells the securities and pays a dividend to the GRE and then the GRE makes a cash donation, CRA clarified that the cash dividend does not constitute substituted property for the shares received by the GRE. However, if the GRE transfers the Holdco shares to Newco, Newco sells securities and uses the proceeds to purchase for cancellation some of GRE’s shares, and then the GRE uses the cash

to make a charitable donation, CRA clarified that the cash received on the purchase for cancellation of shares by the GRE constitutes substituted property.

Charitable Donation of Non-Qualifying Security by GRE to Public Foundation

CRA commented that a gift of “non-qualifying security” (“NQS”) as defined in subsection 118.1(18) of the Act by a GRE to a public foundation would not qualify as an “excepted gift”. CRA explained that for a NQS to qualify as an excepted gift, the taxpayer, i.e., the estate in this instance, must deal at arm’s length with the donee, i.e., the public foundation, pursuant to paragraph 118.1(19). However, the estate and the public foundation are deemed not to deal at arm’s length pursuant to paragraph 251(1)(b) of the Act as a result of the inter-play between the new rules in paragraph 118.1(5)(a), and the rules in subsection 248(1) of the Act; and (3) under paragraph 251(1)(b) of the Act.

Specifically, (1) the new rules in paragraph 118.1(5)(a) of the Act provide that where an individual by the individual’s will makes a gift, the gift is deemed to be made by the estate; (2) an estate would typically be a personal trust by virtue of the definition of a “personal trust” in subsection 248(1) of the Act; and (3) under paragraph 251(1)(b), a personal trust is generally deemed not to deal at arm’s length with any person that is beneficially interested in the trust.

By way of background, a NQS is defined to include a share, a debt obligation or other security issued by a taxpayer or by a person not dealing at arm’s length with a taxpayer, but does not include publicly listed securities and deposit obligations of financial institutions. Changes introduced in the 2011 federal budget extended the application of donations of NQSS to all registered charities (rather than just private foundations and other registered charities not at arm’s length to the donor). Tax recognition for gifts of NQS is deferred until the recipient charity disposes of the NQS for consideration that is not another NQS of any person. If the NQS is not disposed of by the charity within five years following the date of the gift, there will be no tax recognition of the gift. However, these rules do not apply to an “excepted gift” which is a gift of a share to an arm’s length qualified donee that is a not a private foundation, and the donor deals at arm’s length with each of the directors, trustees, officers and like officials of the donee, if it is a charitable organization or a public foundation.

Minister of Finance Given Mandate by PM to Clarify Political Activities of Charities

By Jennifer M. Leddy

On November 13, 2015, Prime Minister Justin Trudeau released the Ministerial Mandate Letters on the PMO’s website: letters that are not usually made public. Of note to charities is the [mandate letter to the](#)

[Minister of Finance](#). Among a long list of priorities for the Minister’s office, the Prime Minister has asked the Minister of Finance to “[w]ork with the Minister of National Revenue to allow charities to do their work on behalf of Canadians free from political harassment, and modernize the rules governing the charitable and non-for-profit sectors. This will include clarifying the rules governing ‘political activity’.”

In his letter to the Minister of Finance, the Prime Minister recognizes that charities “make an important contribution to public debate and public policy,” and signals that a “new legislative framework to strengthen the sector will emerge” from the work of the Minister of Finance with the Minister of National Revenue.

Current definitions of political activities are outlined by the CRA in [CPS-022 Political Activities Policy Statement](#), as well as various educational resources such as [Distinguishing between charitable and political activities](#). For more information on current CRA policies regarding political activities see [Charity Law Bulletin No. 361](#).

FATF initiates Public Consultation of Interpretive Note to Recommendation 8

By Terrance S. Carter, Nancy E. Claridge and Sean S. Carter

On November 6, 2015, the Financial Action Task Force (“FATF”) issued a [call for a public consultation](#) (the “Consultation”) of its Interpretive Note to Recommendation 8 within [The FATF Recommendations](#) (the “Interpretive Note”). The FATF is an inter-governmental body responsible for setting and monitoring international standards for combating money laundering and the financing of terrorism. Recommendation 8 deals specifically with combating the abuse of non-profit organizations (“NPOs”). The Consultation is seeking to garner input from the non-profit sector internationally in order to revise the Interpretive Note, particularly to refine its terminology and application to the non-profit sector.

With regard to the role of non-profits in terrorist financing, the FATF previously released “[The FATF Typologies Report on Risk of Terrorist Abuse in Non-Profit Organizations](#)” (the “Typologies Report”) in June 2014, which identifies factors that contribute to abuse of non-profits (as discussed in our [July/August 2014 Charity Law Update](#)). The Typologies Report was a precursor for the preparation of a recently revised best practices paper published by the FATF in June 2015, “[Best Practices Paper on Combatting the Abuse of Non-Profit Organizations \(Recommendation 8\)](#)” (the “Best Practices Paper”) that discusses strategies for implementing the recommendation (as discussed in our [July/August 2015 Charity and NFP Law Update](#)).

The FATF advises that the Consultation is a reconsideration of Recommendation 8 in light of the Typologies Report and the Best Practices Paper, and recognizes that the non-profit sector, FATF member governments, and non-profit self-regulation mechanisms have evolved and resulted in a different threat environment. As well, the Consultation seeks to emphasize the importance of being able to identify the organizations that meet the FATF definition of a “non-profit organization” to which Recommendation 8 applies.

The Consultation is a valuable opportunity for stakeholders and practitioners to reinforce the reality that non-profits, as a sector, are not notably “more” vulnerable to abuse than other sectors that operate in the international arena. As such, the consultation provides an important opportunity for the non-profit sector to voice their opinion as to whether the sector, as a whole, is stigmatized as having an inherent weakness that makes it more vulnerable to terrorist financing or money laundering. Organizations that wish to express specific views or proposals on the Interpretive Note are asked to reply in English or French by November 27, 2015 to FATF.NPOconsultation@fatf-gati.org.

CASL Enforcement Results in \$200,000 Undertaking

By Ryan M. Prendergast

On November 20, 2015, the Canadian Radio-television and Telecommunications Commission (“CRTC”) announced that Rogers Media Inc. paid \$200,000 as part of an undertaking in resolution of a number of alleged violations of Canada’s anti-spam legislation (“CASL”).

Between the dates of July 2014, i.e., when CASL came into force, and July 2015 an investigation by the CRTC’s Chief of Compliance and Enforcement Officer alleged that Rogers had failed to adhere to a number of requirements under CASL including sending commercial electronic messages in which the unsubscribe option did not comply with the law. One of the issues with the unsubscribe mechanism was that it was not available for the user to unsubscribe for a period of 60 days following the initial sent message, and that unsubscribe requests were not acted upon within the minimum 10 day period. Included in this undertaking, Rogers agreed to ensure that its activities are compliant with CASL in the future.

CASL undertakings similar to this one have reported substantial amounts of money paid for violations, and have reached as high as \$400,000 since coming into effect in July of 2014. For those charitable and not-for-profits that rely on email subscriber lists, this undertaking serves as a reminder to ensure that mechanisms for unsubscribing are working effectively, in addition to other requirements under CASL. Otherwise, should a complaint reach the CRTC, the organization may face costly undertakings.

The CRTC provides a number of resources to organizations that come under CASL such as [how to know if CASL applies](#) to your charity or not-for-profit, as well as various [guidelines for compliance](#).

For more information on CASL and how it applies to your organization you can read [Charity Law Bulletin No. 328](#).

Federal Court of Appeal Disallows Charitable Receipts

By Esther S.J. Oh

On October 26, 2015, the Federal Court of Appeal (FCA) released its decision in [Canada v Castro](#) (“Castro”). The case, on appeal from the Tax Court of Canada, involved the disallowance of tax credits claimed by the respondents. As there were several cases involving credits claimed from the same charity, under similar circumstances, the submissions before the FCA were made with respect to the Castro case only and the outcome of the Castro case was applied to the other appeals.

In the above cases, the Minister of National Revenue disallowed tax credits claimed by the respondents for their respective gifts made to CanAfrica International (“CanAfrica”), formerly a registered charity. Each taxpayer was independently solicited by their tax preparer, Mr. Rodrigo Layco, to make donations to CanAfrica. While CanAfrica had valid status as a registered charity at the time the gifts were made in 2006, CanAfrica was under investigation by the CRA at the time and subsequently had its charitable status revoked in 2007.

In disallowing the tax credits, the Minister took the position that the respondents sought to enrich themselves through the alleged donations in exchange for the inflated charitable donation receipts. Therefore, the benefits (i.e. the inflated receipts) disentitled the taxpayers to the charitable tax credits because there was no donative intent, and because the taxpayers received a benefit exceeding 80% of the fair market value of their alleged donations contrary to section subsection 248(30) of the *Income Tax Act* (the “Act”). The Minister also took the position that the tax credits should be disallowed since the receipts issued by CanAfrica did not meet the requirements that apply to charitable donation receipts under of the Act and accompanying regulations.

After reviewing the evidence, the Federal Court of Appeal agreed with the Tax Court’s decision that the taxpayers did have donative intent and that an inflated donation receipt is not an advantage within the meaning of subsection 248(30) of the Act. However, the Court agreed with the Minister that the absence of the correct cash amount of the donation on the charitable receipts fails to meet the requirements of

subsection 118.1(2) of the Act and subparagraph 3501(1)(h)(i) of the *Income Tax Regulations*. Therefore, the claims to a tax credit in both Mr. Castro's appeal, and the companion appeals, were found to be invalid.

This case serves as an important reminder that charities must ensure that charitable donation receipts issued by them must reflect the correct eligible amount of a gift and must also include the other requirements outlined in *Income Tax Regulation* 3501(1). The case also reminds donors of the importance of avoiding donation schemes which involve provision of inflated receipts, as any tax credits claimed by such arrangements will be disallowed by CRA.

Hockey Injury Lawsuit Dismissed

By Barry Kwasniewski

A decision, released on September 1, 2015, of the Ontario Superior Court of Justice in [*Levita v. Crew and True North Hockey Canada*](#) ("Levita") highlights the importance of liability waivers as an effective liability shield. This is particularly true when charities and not-for-profits are engaged in activities, or even fundraising programs, that may involve the risk of harm or injury to participants or others. In *Levita*, an adult hockey player who was injured during the course of a hockey game sued both the opposing player, Alan Crew ("Mr. Crew"), who was alleged to have intentionally or negligently caused the injury, and the hockey league, for alleged negligence for allowing the opposing player to participate in league play.

For the reasons to be discussed, the lawsuit was dismissed against both defendants. While the dismissal of the claim as against Mr. Crew led the court to conclude that the claim as against the League could not succeed, the court nonetheless had instructive comments on the issue of the enforceability of liability waivers.

For charities and not-for-profits, an important part of risk management in relations to programs, events and activities is the consistent use of liability waivers. A well-drafted waiver may provide a complete defence to injury or property damage claims. For the balance of this discussion, please see [*Charity & NFP Law Bulletin No. 375*](#).

Non-Profit Organization Granted Public Body Rebate by Tax Court

By Linsey E.C. Rains

The Tax Court of Canada ("TCC") recently [held](#) in its November 10, 2015 decision in [*Elim Housing Society v The Queen*](#), that a non-profit organization ("NPO") that operates residential care facilities was entitled to claim an increased percentage of a public service body ("PSB") rebate under the *Excise Tax*

Act (“ETA”). The NPO had originally claimed PSB rebates for services provided through one of its long-term care facilities. These rebate claims were partially denied by Canada Revenue Agency (“CRA”), reducing the NPO’s entitlement to the PSB rebate from 83% to 50%, on the basis that the NPO’s supplies of services did not meet the definition of a “facility supply” as set out at subsection 259(1) of the ETA.

Subsection 259(1) of the ETA contains a number of definitions, which, in conjunction with subsections 259(2.1), 259(3), and section 1 of Part II of Schedule V, result in the NPO essentially having to demonstrate that the services provided through its long-term care facility involved:

- a medically necessary process of health care;
- the active direction, supervision or involvement of physicians;
- the residents being subject to medical management; and
- the residents receiving sufficient therapeutic health care services.

The NPO presented a wide range of evidence to support its position that the above factors had been met and the TCC ultimately agreed with its representations. In particular, the TCC found that the residents of the NPO’s long-term care facility were:

... elderly and the vast majority suffer from dementia. The residents are generally frail and usually have complex medical problems. Their life expectancy is generally between three months and three years. [...] All of the residents [...] have conditions that require “complex care”.

As well, the TCC acknowledged at the outset of the decision “that several long-term care facilities have outstanding tax disputes similar to this one which may be affected by the outcome of this appeal.” Accordingly, NPOs which provide services to residents of long-term care facilities requiring similar care should review their entitlements under the ETA’s PSB rebate provisions to ensure they are claiming their full entitlements.

TPP Treaty Could Change Copyright and Trade Secret Laws

By Sepal Bonni

On November 5, 2015, the federal government publicized details of the [Trans-Pacific Partnership Agreement](#) (“TPP”), which was signed on October 5, 2015, after seven years of negotiation. The TPP is a multi-national trade agreement where Canada is one of 12 signatories. If the TPP is ratified by Parliament, among other reforms, the intellectual property chapter will alter copyright and trade secret laws in Canada.

The two most relevant amendments with respect to copyright legislation include a new regime for online copyright infringement, and amendments to the term of copyright protection. More specifically, the current regime in Canada regarding online copyright infringement will be replaced with a harsher regime which will include a new requirement for Internet Service Providers (“ISP”) to immediately take-down any copyright infringing material on their networks, once the ISP becomes aware of the infringement.

Additionally, the current term of copyright protection which is the life of the author plus 50 years, will be extended to the life of the author plus 70 years.

If ratified, the TPP could also result in possible changes to trade secret laws in Canada. Unlike other types of intellectual property rights, trade secret rights are not governed by any particular statute. Rather, trade secret rights are governed by the common law. At common law, there are several different civil actions that a trade secret holder can rely on, which could include “breach of a non-disclosure agreement”, for example.

Ratification of the TPP could potentially alter the state of the law with respect to trade secrets such that it could impose otherwise unavailable criminal procedures and penalties in certain situations for the unauthorized, willful access, misappropriation, or disclosure of a trade secret. This will require Canada to enact laws criminalizing the willful theft of trade secrets, including by means of computer systems, e.g., cyber theft.

With the newly elected Federal Government reviewing the TPP, it remains to be determined if Canada will see changes to copyright and trade secret laws in Canada. Charities and not-for-profits should continue to monitor developments regarding the ratification of the TPP, and take proactive measures to mitigate any potential risks, including developing and implementing policies and training employees regarding the protection of intellectual property rights.

FCA Upholds Government Decision Not to Fund Canadian Arab Federation

By Terrance S. Carter, Nancy E. Claridge, and Sean S. Carter

On July 24, 2015, the Federal Court of Appeal released an important decision in [*Canadian Arab Federation v Canada*](#), that has implications for charities and not-for-profits receiving government funding. The Canadian Arab Federation (“CAF”) is a non-profit organization that provides language instruction to immigrants through the Language Instruction for Newcomers to Canada (“LINC”) program. From 2007 to 2009, CAF had a contribution agreement with the Department of Citizenship and Immigration to Canada (CIC), by which it received funding. During renewal negotiations, the Minister declined to enter

into a subsequent agreement with CAF, citing concerns about alleged statements made by the CAF that promoted hatred, anti-Semitism and support for Hamas and Hezbollah. The CAF brought an application for judicial review to the Federal Court which was dismissed and resulted in the present appeal and subsequent dismissal by the Federal Court of Appeal.

The CAF appealed, in part, on grounds that the Federal Court erred in not finding that CAF was owed a duty of procedural fairness and argued before the FCA that the Minister's decision created reputational harm to the organization which can be of significant harm to a non-profit organization. The Court found, however, that reputational interest was not "sufficient to trigger duties of procedural fairness.

The appeal also concerned whether the discontinuance amounted to an infringement of CAF's freedom of expression, as protected by the [*Canadian Charter of Rights and Freedoms*](#) ("Charter") The Court accepted that the CAF's advocacy activity does amount to expression but found that the Minister's decision was proportionate when taking into account the CIC mandate. Neither the *Charter* nor the [*Immigration and Refugee Protection Act*](#) place the Minister under a positive obligation to protect an organization's freedom of expression by renewing an expired agreement. Furthermore, the funding provided was for the purpose of carrying out the LINC program, and withdrawal of this funding did not affect CAF's advocacy work.

Finally, as with the lower court decision, the FCA upheld the Minister's decision as one that was reasonable. The court found that the Minister had statutory discretion to make a decision about using the CAF or another service provider. Given the statutory authorization, it would be unreasonable if it was made arbitrarily or for reasons unrelated to the statutory objectives. As Justice Dawson stated, however, "the decision not to select the Federation as a service provider because public statements made by its representatives appear to support terrorism and positions which are arguably ant-Semitic cannot be said to be contrary to the purpose and object of the relevant legislation."

Charities and not-for-profits that receive government funding should be aware of the fact that there is no certainty that funding arrangements will continue indefinitely. It is also important to realize the potential impact of public statements that an organization makes on their website, in publications to the public and donors etc., and the importance of carefully vetting and overseeing what is said. Moreover, it is important to understand the legislation and governing bodies through which funding is received and the purpose for which such funding is given. The *Charter* does not impose a positive obligation on the government to facilitate freedom of expression in these scenarios, nor does risk of reputational harm invoke a duty for procedural fairness by a government decision-maker with statutory discretion.

Legal Risk Management Checklists for Ontario-based Charities and Ontario-based Not-for-Profits

By Terrance S. Carter and Jacqueline M. Demczur

The popular [Legal Risk Management Checklist for Ontario-Based Charities](#), as well as the [Legal Risk Management Checklist for Ontario-Based Not-for-Profits](#) updated as of November 2015 are now available through our website at www.carters.ca.

The 22nd Annual Church & Charity Law™ Seminar Materials

Mississauga, Ontario, Thursday November 12, 2015

By Terrance S. Carter

The 22nd Annual Church & Charity Law™ Seminar hosted by Carters Professional Corporation in Mississauga, Ontario, on November 12, 2015, was attended by more than 900 representatives from the charitable and not-for-profit sector, including leaders of charities and churches, as well as government officials, accountants and lawyers. Designed to assist churches and charities in understanding developing trends in the law in order to reduce unnecessary exposure to legal liability, the Church & Charity Law™ Seminar has been held annually since 1994. Although the topics were directed at churches and charities, many aspects of the presentations were also of interest to not-for-profit organizations. All handouts and presentation materials are now available at the links below in the order as presented, with the web links being Power Point slide shows.

- [Seminar and Speaker Details and Acknowledgements](#)
- [2015 Essential Charity Law Update](#) presented by Esther S.B. Oh and Ryan M. Prendergast
- [Mysteries of the T3010: Focus on Special Issues](#) presented by Jacqueline M. Demczur
- [Be Careful What You Sign: Leasing and Related Issues for Churches and Charities](#) presented by Nancy E. Claridge
- [Challenging Issues for Religious Charities](#) presented by Cathy Hawara
- [Human Rights Challenges in the Workplace](#) presented by Barry W. Kwasniewski
- [Where are We Headed? Freedom of Religion in the Courts](#) presented by Jennifer Leddy
- [Membership Meeting Nightmares to Avoid](#) presented by Theresa L.M. Man

- [To Keep or Not to Keep: Books and Records Under the *Income Tax Act*](#) presented by Linsey E.C. Rains
- [Going Social: Using Social Media to Accomplish Your Mission](#) presented by Sepal Bonni and Sean S. Carter
- [Going into Business? Social Enterprise for Churches and Charities](#) presented by Terrance S. Carter

IN THE PRESS

[Charity & NFP Law Update – October 2015 \(Carters Professional Corporation\)](#) was featured on *TaxNet Pro* and is available to those who have subscription privileges. Future postings of the *Charity & NFP Law Update* will be featured in upcoming posts.

[Proclamation of Not-for-Profit Corporations Act an Urgent Priority](#) is an article by Theresa L.M. Man featured in *The Law Times* and is available to those who have subscription privileges.

RECENT EVENTS AND PRESENTATIONS

[2015 Fall Series - Your Guide to Holding Meetings 101: “Learning to Do It Right”](#), sessions one and two of a four-part series of webinars was presented by Imagine Canada Sector Source and will be posted for viewing early in December.

- [Getting Ready 101: Considerations Before Calling a Board or Members’ Meeting](#) presented by Terrance S. Carter on October 1, 2015 – recorded webinar will be available soon on Imagine Canada website.
- [Board Meetings 101: Avoiding Directors’ Tribulations](#) presented by Theresa L.M. Man on October 29, 2015 – recorded webinar will be available soon on Imagine Canada website.

[22nd Annual Church & Charity Law™ Seminar](#) was hosted by Carters Professional Corporation in Greater Toronto, Ontario, on Thursday November 12, 2015. Handouts are available at our website.

Preparing for and Surviving a CRA Audit was presented by Terrance S. Carter on November 24, 2015, as part of a live webinar hosted by The Commons Institute entitled Charities, Non-Profits and the Law.

UPCOMING EVENTS AND PRESENTATIONS

[2015 Fall Series - Your Guide to Holding Meetings 101: “Learning to Do It Right”](#), sessions three and four of the four-part series of webinars hosted by Imagine Canada Sector Source:

- [Members’ Meetings 101: Avoiding Members’ Machinations](#) presented by Jacqueline M. Demczur on November 26, 2015 at 1:00 pm
- [Meeting Minutes 101: Getting it Down Right and Keeping it There](#) presented by Ryan M. Prendergast on December 10, 2015 at 1:00 pm

Redeemer University College is hosting a session presented by Terrance S. Carter on the Legal Context of the Not-for-Profit Sector on January 7, 2016.

13th Annual Foundation, Endowment & Not-for-Profit Investment Summit will host a session on “Avoiding Pitfalls in Drafting Gift Agreements” presented by Terrance S. Carter at 9:30 am on January 20, 2016 (Day Two), at the Ritz-Carlton, Toronto.

Ontario Bar Association’s Institute 2016 will host a session on “Critical Issues for Investment by Charities” to be presented by Terrance S. Carter at 2:05 pm on Friday February 5, 2016.

The Ottawa Region Charity & Not-for-Profit Law™ Seminar hosted by Carters Professional Corporation in Ottawa, Ontario, on **Thursday February 11, 2016**

[Online registration](#) and [Brochure](#) available on our website

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ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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