

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

## OCTOBER 2015

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## **RECENT PUBLICATIONS AND NEWS RELEASES**

### **“Politically Exposed Persons”: Should it Matter to Your Charity?**

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

The receipt of invasive questions from their bankers by the daughters of retired Supreme Court of Canada Justice Louise Arbour has raised not only the ire of Justice Arbour, but also the public focus on some little-known amendments to Canada’s money laundering and terrorist financing laws that may have far-reaching implications for charities and not-for-profit organizations (NFPs). In an October 15, 2015 interview with the [Globe and Mail](#), Justice Arbour reflected on the negative impact her former roles as a prosecutor for the international war crimes tribunals and United Nations human rights commissioner has had on her daughters’ personal financial transactions and what new amendments introduced by the federal government in 2014 by way of an omnibus budget bill will have on the Canadian public. Calling it a “useless bureaucratic nightmare”, the amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the “Act”) introduced by Bill C-31, *An Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures*, will expand the obligations of financial institutions, such as banks, insurance companies, investment dealers and real estate brokers, to identify “politically exposed persons” (“PEPs”), both foreign and domestic, their families and “close associates” and keep tabs on all of them, all in an effort to fight corruption, money laundering and terrorist financing. Please see [Anti-Terrorism and Charity Law Alert No. 44](#) for the balance of the discussion.

### **Corporate Update**

By Theresa L.M. Man

On October 16, 2015, Corporations Canada offered new online services. Not-for-profit corporations will now be able to file by-laws and financial statements through the Online Filing Centre. Once submitted, documents will be filed automatically. In this regard, corporations governed under the [Canada Not-for-profit Corporations Act](#) (CNCA) are required to file by-laws within 12 months of their adoption. As well, soliciting CNCA corporations are required to file financial statements and public accountant’s report, if any, not less than 21 days before each annual meeting of members or as soon as possible after a written resolution is signed. For an overview of reporting obligations of CNCA corporations, see Corporations Canada’s webpage: [Your Reporting Obligations under the Canada Not-for-profit Corporations Act \(NFP Act\)](#).

## Legislation Update

By Terrance S. Carter

### Budget 2015 Update

Our recent *Charity and NFP Bulletin No. 370*, [Draft Legislative Proposals Affecting Charities and RCAA's](#), focused on the potential application of two draft legislative proposals put forward by the Department of Finance on July 31, 2015, for sector consultation. The draft legislative proposals dealt with the implementation of two charity-related measures from the April 21, 2015 Federal Budget ("Budget 2015"), i.e. the enabling of registered charities and Canadian amateur athletic associations to acquire or hold interests in limited partnerships and the capital gains tax exemption for individual and corporate donors upon disposition of private shares and real estate. Although the consultation closed on September 30, 2015, it remains to be seen whether the newly elected government, and yet to be announced Minister of Finance, will make any changes to the draft legislative proposals as a result of the consultation.

Many in the sector anticipate that the proposal relating to limited partnerships will proceed without substantial amendment given Budget 2015's assurance that the proposed measure is intended to apply to investments that were made on or after the date of the 2015 Federal Budget on April 20, 2015, and that the expected cost of the measure was not significant, i.e. to "reduce federal revenues by a small amount each year." On the other hand, there might be a bit less certainty regarding the proposed capital gains exemption on the disposition of private shares and real estate, given the current economic climate and Budget 2015's estimate that "this measure will reduce federal revenues by about \$265 million over the 2016-17 to 2019-20 period", as well as the fact that the proposal was not scheduled to come into effect until 2017. Accordingly, registered charities may want to exercise caution before taking any steps to encourage donations of dispositions from the sale of private shares and real estate until clarification of the new government's position on these matters is made known.

### Bill C-51 Update

Bill C-51, short-titled the *Anti-Terrorism Act, 2015*, received Royal Assent on June 18, 2015 and is now law. Although Bill C-51 was officially supported by both the former and recently elected governments, the current Prime Minister-designate, Justin Trudeau, indicated his party's intention to make amendments to the Bill in his [Response Speech](#) given in the House of Commons on February 18, 2015. While the Response Speech gives a general indication concerning the potential amendments to be made, the specifics are not yet known. However, given the well-documented public engagement surrounding the potential impact of the *Anti-Terrorism Act, 2015* on Canadians, it is hoped that the new government will give consideration to constructive

comments made in various government submissions by groups interested in the work of charities and not-for-profits, such as the excellent submission by the [Canadian Bar Association](#).

## **Charitable and Religious Camps Exempted From PST in BC**

In September 2015, British Columbia's Ministry of Finance revised [Bulletin PST 120](#), which "explains how the [provincial sales tax] PST and the municipal and regional district tax (MRDT) apply to sales of accommodation" in the province. While the revision does not indicate a change in the law, the purpose of the revision was to clarify that "PST and MRDT do not apply to accommodation provided:

- by a religious or charitable organization at a summer camp or similar place, or
- without any of the following amenities: bed linen, electricity, indoor plumbing or heat."

## **CBSA Updates Memorandum on Charitable Goods**

By Linsey E.C Rains

The Canada Border Services Agency ("CBSA") updated [Memorandum D8-2-9, Tariff Item No. 9815.00.00 – Charitable Goods](#) ("Memorandum"), which "outlines the conditions under which donated goods qualify for customs duty free entry under tariff item No. 9815.00.00 ("Tariff") and for relief from the Goods and Services Tax/Harmonized Sales Tax (GST/HST) and excise duties for" certain goods on October 15, 2015. The purpose of the update is "to clarify what qualifies as a charitable good, and to update applicable references in the *Customs Tariff*."

With regard to customs duty free entry under the Tariff, the Memorandum indicates that donations of (a) "clothing and books for charitable purposes by residents to any organization in Canada" and (b) "any type of goods by non-residents to religious, charitable, and educational institutions in Canada" are generally customs duty free. The Memorandum further sets out a number of additional definitions and requirements that enable donations of these goods to qualify for duty free entry. As well, the Memorandum outlines the circumstances under which such donated goods will be exempt from GST/HST or excise duties under the [Excise Tax Act](#) and the [Charitable Goods Remission Order](#) and includes details relating to the type of supporting evidence required to document the legitimacy of the donations.

## **Donations of Charitable Gifts must be Supported by Receipts and Proof**

By Theresa L.M. Man

On May 12, 2015, the Tax Court of Canada (the "Court") disallowed an appeal by Mr. Sharma Bope ("Mr. Bope"), upholding the disallowance by the Minister of National Revenue (the "Minister") of charitable

donation tax credit claimed. The [\*Bope v The Queen\*](#) decision is similar to [\*Mapish v The Queen\*](#), which was decided by the same Court (reported in our [July/August 2015 Charity & NFP Law Update](#)). Mr. Bope claimed tax credits for cumulative cash donations of \$3,800 on his 2009 income tax return made to Revival Time Ministries International. During oral testimony, Mr. Bope claimed that he had, in fact, made a number of donations totalling over \$10,000 in cash and property, but that he had only received one receipt for \$3,800 donated. He stated that the substantial donations were possible, despite an income of \$40,000, because his wife also earned income.

The Court held that to be entitled to a charitable tax credit, there must have been a gift made and there must be a receipt to prove that it was a donation. Firstly, the Court held that the donation receipt in question did not meet all of the mandatory requirements. The requirements set out in [Income Tax Regulation 3501\(1\)](#) regarding information to be contained in a charitable donation receipt are mandatory. All these requirements must be met in order to be entitled to a charitable tax credit claim. The Court held that “it is not a matter of fault, liability, negligence, good faith or bad faith. These are mandatory requirements of the Act and Regulations.” Secondly, the Court held that Mr. Bope failed to provide objective evidence to rebut the Minister’s assumptions that he did not make the cash donations. The onus is on the taxpayer to provide proof on a balance of probabilities of the donations claimed to have been made. In this case, the Court held that only providing his own testimony and the receipt issued by the charity was not sufficient proof.

It is interesting to note that this is not the first time Mr. Bope was before the Court on the same issue. The Court noted that Mr. Bope was before Justice Paris in the same Court in [\*Afovia v. The Queen\*](#) for the same issues of alleged cash donations totalling \$4,600 in 2007 and \$5,600 in 2008 to a charity called Parole de Grace London. That appeal was dismissed. It is also interesting to note that there have been a number of cases involving alleged donations made to the same charity (Revival Time Ministries International) (such as [\*Imoh v The Queen\*](#) and [\*Bello v The Queen\*](#)). Its charitable status was revoked in January 2011. An investigation was conducted in respect of Daniel Mokwe, the pastor of the charity, but he fled Canada before criminal charges could be laid against him.

Although this case resulted from Informal Procedure appeals (i.e., the decisions hold no precedential value), it is a helpful reminder that shows the importance of donors being able to provide objective evidence to support charitable donation credits or deductions claimed – the evidence must be verifiable, and the donation receipt must meet all the requirements set out in the *Income Tax Regulations*.

## T4A Information Slips Required for Exempt Scholarships

By Linsey E.C. Rains

Canada Revenue Agency's ("CRA") technical interpretation [2015-0584221E5](#) confirms that "every payer of a scholarship, fellowship, bursary or certain prizes must issue an information return in prescribed form to report the payment." In this instance, the payer was a private school ("School") which provides scholarships to some of its elementary and secondary school students. The School was seeking clarification concerning whether it must provide [T4A, Statement of Pension, Retirement, Annuity, and Other Income](#) ("T4A") information slips to the recipients even though paragraph 56(3)(a) of the [Income Tax Act](#) ("ITA") exempts scholarship, fellowship or bursary income "received in connection with the taxpayer's enrolment...in an elementary or secondary school educational program."

In the technical interpretation, dated September 8, 2015, CRA referred to paragraph 200(2)(a) of the [Income Tax Regulations](#) ("Regulations") and Income Tax Folio [S1-F2-C3: Scholarships, Research Grants and Other Education Assistance](#) to conclude that:

- It is the recipient's responsibility to determine if the scholarship income should be included in his or her income, and
- "[T]here is currently no legislative provision or administrative position that waives the T4A reporting requirement when a scholarship or bursary is not required to be included in the recipient's income (that is, when a full scholarship exemption is available)."

The School also indicated that it had provided letters to the parents of the scholarship recipients in order to clarify why the scholarships were exempt. CRA stated that it "saw merit in the School taking a proactive approach by issuing, where applicable, the letters mentioned above for parents to keep in their records in case they need to submit them to the CRA at a later date." Accordingly, registered charities and not-for-profits that operate elementary and/or secondary schools and provide scholarships to their students should ensure they are properly issuing T4As for these amounts. In addition, it may be worthwhile for such organizations to consult their legal advisors to review whether it would be prudent to advise parents of the potential tax consequences relating to the scholarship income, as CRA appears to have recognized the practice as having some merit.

## Tax Court Considers Valuation of In-kind Gifts

By Jennifer M. Leddy

In April 2015, the Tax Court of Canada (“TCC”) released its English translation of [\*De Santis v The Queen\*](#), in which the TCC commented on fair market valuation of in-kind charitable donations. The appellant taxpayer (the “Appellant”) was successful in appealing the Minister of National Revenue’s (the “Minister”) reassessments of his 2009, 2010 and 2011 tax returns, in which the amount that the Appellant had claimed as a charitable tax credit for donations of rare bottles of wine had been reduced significantly.

Official donation receipts for in-kind gifts are calculated on the basis of fair market value, which is defined by [CRA Summary Policy CSP-F02](#) as:

...the highest price, expressed in dollars, that a property would bring in an open and unrestricted market, between a willing buyer and a willing seller who are both knowledgeable, informed, and prudent, and who are acting independently of each other.

In his initial tax returns, the Appellant had relied on a sommelier’s appraisal to arrive at values for rare wine he had donated to charitable auctions in 2009, 2010 and 2011 at \$1,050, \$1,100 and \$8,550, respectively. The Minister disputed these amounts, however, on the basis that fair market value should, more appropriately, be based on the amount that was paid for the bottles at the charitable auctions, as opposed to the international wine market, which would have resulted in lower values of \$328, \$344 and \$2,672, respectively.

In challenging the assessment, the Appellant was able to discharge the legal onus of “demolishing” the Minister’s assumptions in support of the assessment on the following grounds:

1. The Minister misinterpreted the Sommelier’s appraisal;
2. The Minister disregarded the impact of the mark-up that the Société des alcools du Québec applies to foreign wines;
3. The Appellant donated the bottles individually and the fact that they were sold in lots should not affect value;
4. The Minister did not correctly identify the property being sold; and
5. This particular charitable auction was not an accurate way of ascertaining fair market value because bidders had to pay an entrance fee of \$50, the bottles were sold in lots, and the charity was obliged to award all of the lots.

The Appellant having established a *prima facie* case, the onus shifted to the Minister who was unable to meet it because no evidence had been filed to establish that the assessment was well-founded. It was determined that the Appellant's initial appraisal was well-informed and credible and his appeal was allowed.

Although this case is not binding on future decisions, it is a reminder of the general importance of properly documenting the fair market value of charitable gifts in kind.

## **Tax Court re-affirms Denial of Tax Credits Claimed under Tax Scheme**

By Esther S.J. Oh

On October 19, 2015, the General Division of the Tax Court of Canada released its decisions in [\*Mariano v The Queen and Moshurachak v The Queen\*](#). The decisions involved appeals of reassessments by the Minister of National Revenue who had denied tax credits claimed through a tax shelter arrangement. The two cases were based on common evidence and were heard by the Court at the same time.

The case essentially involved a donation program called the Global Learning Gift Initiative, whereby the Phoenix Learning Corporation (a Bahamian corporation) acquired software licenses at nominal value from Infosource Inc. (a Florida corporation), which in turn gifted most of such licenses to Global Learning Trust 2004 (a Canadian trust), and directly or indirectly sold the balance to the Canadian trust in order to fund the purchase of licences from the Florida corporation. The Canadian trust then distributed the licenses to individuals, such as Mr. Mariano and Ms. Moshurachak ("Appellants") who were accepted as capital beneficiaries of the trust, who in turn donated the licenses to a charity. The Appellants then received charitable donation receipts reflected a highly inflated value that reflected roughly triple the amount originally paid for those licenses.

In arriving at its decisions, the court referenced *The Queen v Freidberg* with regard to the necessary elements of a gift. Specifically, the Court found that: 1. There was no voluntary transfer of property; 2. The transferred property was not owned by the donor; and, 3. There was a benefit to the donor, which later jurisprudence has found to be determinative of whether the donor had "donative intent" and whether a tax credit may be claimed. After hearing expert testimony, the Court found that the fair market value of the gifts was "next-to-nothing" compared to that claimed by the Appellants. Therefore, the necessary donative intent did not exist.

The scheme in the above cases was similar to one discussed in [\*Glover v The Queen\*](#) (See our [July/August Charity & NFP Law Update](#) at page 17) which involved another gifting arrangement whereby software

licenses were acquired at a nominal value in the U.S. and gifted to a Canadian trust in exchange for charitable receipts for triple the value of the cash donation and the purported value of the software licenses.

All of the above cases serve as an important reminder for charities and donors to avoid tax shelter schemes which purport to provide donors with inflated charitable donation receipts.

## **ONSC Upholds Case Management Agreement Restricting Number of Appointed Directors**

By Ryan M. Prendergast and Terrance S. Carter

The decision of [\*Dhadda v Dhaliwal\*](#), released by the Ontario Superior Court on June 16, 2015, concerned the appointment of directors to Nanaksar Satsang Sabha religious community under the Ontario [\*Corporations Act\*](#) (“OCA”). The corporation was established in 1994 by five members in order to administer the Temple, or Gurdwara, used by the religious community. All Gurdwaras worldwide follow the spiritual leader, his Holiness Baba Gurdev Singh Ji (“His Holiness”).

In 2013, a dispute arose between the members of the community over the management of the Gurdwara in Brampton, Ontario. Part of the dispute was resolved by the Court when the parties consented to an agreement that allowed each party to the dispute to choose a director to be appointed to the corporation, with the case management judge in this matter appointing the third director randomly from a list of four names, two names of which came from each party. At the end of this process, both parties and His Holiness agreed to the appointment of the three directors. However, shortly after the agreement was reached, an application was brought before the Court to have two more individuals appointed to the board of directors. These two additional directors were purportedly appointed by His Holiness after the applicants in the matter, who had only one of their directors on the newly constituted board of the Gurdwara, travelled to India to have him change his mind.

The Court held that the actions of the applicants were an attempt to regain control of the organization which they had lost by entering into the agreement, and that their position was that “there will be no peace in the Gurdwara unless we win” — a position the Court was not prepared to accept. As a result, the Court affirmed the original agreement reached in case management in order to preserve peace and trust, pending a further annual meeting of members, and was unwilling to appoint the other two directors.

In making its decision, the court noted the authority of the court under the OCA to provide directions in order to protect the membership of a corporation and ensure good governance in its operations in accordance with the bylaws of the corporation and applicable corporate law.

## Jail Time for Persistent Trade-mark Infringement in Canada

By Sepal Bonni

On September 23, 2015, the Federal Court, in [\*Trans-High Corporation v Hightimes Smokeshop and Gifts Inc.\*](#), ordered the sole director and officer of a corporation to be imprisoned for failing to comply with a court order. The decision is significant as it shows a rare exercise of discretion by the Federal Court to enforce an order against a corporation with imprisonment of an officer and director of the corporation.

In the original decision, dated November 26, 2013, the Court ruled that use of the trade-mark HIGH TIMES by Hightimes Smokeshop and Gifts Inc. (“Hightimes”) constituted trade-mark infringement and passing off of the HIGH TIMES trade-mark, which was owned by Trans-High Corporation (“Trans-High”). As a result, the Court ordered a permanent injunction to immediately stop use of the HIGH TIMES mark and awarded damages and legal costs. Following this judgment, Hightimes continued infringing the trade-mark and refused to pay the damages and costs ordered. In August 2014, Trans-High began contempt proceedings against both the corporation and its sole officer and director. Despite a settlement reached between the parties, Hightimes did not make the necessary payment and was very slow with removing all uses of the HIGH TIMES mark.

In the July 2015 contempt proceeding, the Court ordered fines payable by both Hightimes and its sole director and officer, and imprisonment for non-compliance with the previous judgement. Along with the original judgement of \$55,000 to Trans-High, the Court ordered payment of \$50,000 in fines to the Court, and an additional \$62,000 to Trans-High for costs related to the contempt proceeding. Furthermore, the order specified that if Hightimes did not comply within 30 days, the sole director and officer of the corporation could face imprisonment for a minimum of 14 days, and continuing until penalties were paid.

Despite this, Hightimes and its officer and director failed to comply with the order. As such, on September 23, 2015, the Court issued a warrant of committal to have the sole officer and director of the corporation imprisoned. From a policy perspective, the court emphasized that sanctions for contempt are enforced to “maintain public confidence in the administration of justice”. The Court noted that, “A person who is ordered by a court to pay money to another cannot be imprisoned for contempt if he or she is unable to pay the debt.” In this case, however, it was found that Hightimes was simply unwilling to pay its fines despite having the means to do so.

The case is a rarity in that civil proceedings rarely culminate in imprisonment. Although the non-compliance in this case was extreme, it may function as a reminder that such orders are certainly within the court’s jurisdiction, including matters involving trade-mark infringement. In order to avoid massive

litigation and rebranding costs, charities and not-for-profits should ensure they are not infringing another organization's trade-marks prior to using them and if they find that they may be, then to seek legal advice to determine what should be done before the matter degenerates into legal proceedings and a possible court order.

## **Oath to Allow Greatest Possible Freedom in Religious Solemnization**

By Jennifer M. Leddy

Recent decisions by the [Federal Court](#) and the [Federal Court of Appeal](#) concerning the right to wear face coverings while taking the citizenship oath received a great deal of attention during the recent federal election. At issue was the validity of a Ministerial policy which required citizenship candidates to remove face coverings to take the oath, failing which they would not receive their citizenship certificates and have to attend another ceremony. Should they not remove their face coverings at the next ceremony, they would have to reapply for citizenship.

Ms. Zunera Ishaq, a devout Muslim, challenged the policy because it was contrary to her faith to remove her face covering, known as a niqab, in public. Ms. Ishaq's application for citizenship was approved by a citizenship judge and she was granted citizenship pursuant to the [Citizenship Act](#). However, she could not be considered a citizen until she took the citizenship oath at a citizenship ceremony. Ms. Ishaq had no problem removing her niqab, when necessary, to verify her identity or for security reasons provided that it was done in private and in the presence of a woman. In fact, she had removed her niqab in front of a female citizenship official to verify her identity prior to taking the citizenship test.

While Ms. Ishaq, argued that the policy infringed her freedom of religion under the [Charter of Rights and Freedoms](#), both the Federal Court and the Federal Court of Appeal found it unnecessary to do a *Charter* analysis because the mandatory nature of the policy fettered the discretion of citizenship judges contrary to the [Regulations of the Citizenship Act](#) and was thus invalid on administrative law grounds. Paragraph 17(1)(b) of the *Regulations* requires citizenship judges to "administer the oath of citizenship with dignity and solemnity, allowing the greatest possible freedom in the religious solemnization or the solemn affirmation thereof." The Federal Court held that religious solemnization is not just about applicants using the holy book of their choice but about "how the oath is administered and the circumstances in which candidates are required to take it."

The former government appealed the decision of the Federal Court of Appeal to the Supreme Court of Canada but, in view of the recent election results, it remains to be seen whether it will be pursued.

## **Court Awards Substantial Pay in Lieu of Notice for Short Term Employee**

By Barry Kwasniewski

In [\*Brooks v Conference Board of Canada\*](#) (“Brooks”), released on June 26, 2015, the plaintiff Nicole Brooks (“Ms. Brooks”), who was employed as a senior manager, was terminated without cause after only 2.5 years of service with The Conference Board of Canada. Despite concerted efforts to find re-employment, the plaintiff remained unemployed for nearly two years. Dissatisfied with the termination payment provided to her, equivalent to 3.38 months compensation in lieu of notice, Ms. Brooks commenced a lawsuit for wrongful dismissal in the Ontario Superior Court of Justice. For the reasons to be reviewed, the court awarded the plaintiff six months’ compensation in lieu of notice, citing the evidence of a difficult and saturated reemployment market in the region. For the balance of this discussion please see [\*Charity & NFP Law Bulletin No. 373\*](#).

## **Compliance Agreements: Beware of Latent Pitfalls**

By Terrance S. Carter and Jacqueline M. Demczur

With 2425 audits of registered charities having been conducted by CRA in the past three years, resulting in about 1% of charities being audited each year, there is a about a one in ten chance every ten years that a charity may have an auditor coming to pay a visit. Audits can occur for a number of reasons, one of which may be to follow-up on compliance issues raised during a previous audit, particularly where those issues were addressed through a compliance agreement at the conclusion of the earlier audit. While there are a number of different ways that an audit can be concluded, such as an education letter, a monetary penalty, a suspension of receipting privileges or even revocation of charitable status where there is serious non-compliance, the requirement that a charity enter into a compliance agreement is the second most common method by which audits are resolved by CRA.

Given this fact, it is important that registered charities understand the consequences of entering into a compliance agreement with CRA, both now and in the future, as well as the impact that a compliance agreement may have upon the directors, officers, and managers of a charity. For the balance of the discussion, please see [\*Charity & NFP Law Bulletin No. 374\*](#).

## Use of Trade-marks in Keyword Advertising is Not Passing Off

By Sepal Bonni

On August 20, 2015, the British Columbia Supreme Court released its decision in [\*Vancouver Community College v Vancouver Career College \(Burnaby\) Inc.\*](#), in which it addressed the purchase of competitor trade-marks in the form of keywords for online advertising campaigns, and whether such practices could constitute trade-mark passing off. Keywords are search terms that can be purchased from search engines. It is an advertising technique that allows an organization to purchase very specific keywords that will direct Internet users to a specific advertisement when those specific keywords are searched online. It is common practice for organizations to purchase keywords relating to a competitor's trade-marks so that their own advertisement is displayed when an individual searches for a keyword that matches a competitor's trade-marks. This was the crux of the issue in this case.

In this case, Vancouver Community College (the "Plaintiff") claimed that Vancouver Career College (the "Defendant") was passing off its trademarks, including the mark "VCC", with its online keyword advertising campaign. The terms were purchased by the Defendant as keywords used in online advertisements such that searches of the Plaintiff's trade-marks would direct individuals to the Defendant's website. However, the Defendant's website did not use the Plaintiff's trade-marks, and the difference between the two websites was apparent.

The court found that the use of the Plaintiff's trade-marks in keyword advertising did not constitute passing off of the Plaintiff's trade-marks. The court held that although individuals may have been initially led to the Defendant's website, once on the website, it was obvious that the website was not the Plaintiff's. In this regard, the court held that the relevant time to assess confusion is when a user arrives at an advertiser's website and not when faced with search results. The court also commented that bidding for keyword advertisements is an established practice and to rule for the Plaintiff would preclude the Defendant from accessing an advertising opportunity that is readily afforded to others.

Despite the finding in this case, it is important for charities and not-for-profits to be aware that the law in this regard may not yet be settled. Vancouver Community College has appealed the decision and, therefore, it remains to be seen if the courts will balance the rights of trade-mark owners with online advertising.

## Canada Signs International Multilateral Agreement to Address Tax Evasion

By Esther S.J. Oh

On June 2, 2015, the Minister of National Revenue signed the [\*Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information\*](#) (“MCAA”) that commits Canada Revenue Agency (“CRA”) to participate in the exchange of financial information with 60 other signatory countries as part of an international effort to address cross-border tax evasion and improve tax compliance. Other jurisdictions that have signed the MCAA to date include Ghana, India, Korea, Spain, The United Kingdom and Switzerland. A full list of signatory jurisdictions as of June 4, 2015 is available at the following [link](#).

The above measure was part of the federal government’s [Economic Action Plan 2015](#), which included a commitment to work with international partners to improve tax compliance through adoption of the Organization for Economic Co-operation and Development (“OECD”)’s [Common Reporting Standard](#) (“CRS”). The CRS was developed as the new global standard for exchanging information to assist tax regulators co-operate to combat tax evasion and improve tax compliance, including abusive tax shelters.

The stated aim of the MCAA is to ensure co-operation between signatory states in the administration, assessment, and collection of taxes to prevent tax evasion while respecting the rights of taxpayers. Draft legislative proposals are expected to be released in the coming months, with the first exchange of information scheduled to occur in June of 2018. Charities operating in jurisdictions that have signed the MCAA would be well-advised to monitor the information arrangements to be put into place under that agreement.

## IN THE PRESS

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

## RECENT EVENTS AND PRESENTATIONS

[Charity Law Update](#) was presented by Terrance S. Carter at the 2015 Christian Legal Fellowship (CLF) National Conference on September 25, 2015, in Mississauga, Ontario.

[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 November:

- [Getting Ready 101: Considerations Before Calling a Board or Members’ Meeting](#) presented by Terrance S. Carter on October 1, 2015 at 1:00 pm
- [Board Meetings 101: Avoiding Directors’ Tribulations](#) presented by Theresa L.M. Man on October 29, 2015 at 1:00 pm

[Directors’ and Officers’ Duties and Liabilities: What You Need to Know](#) was presented by Terrance S. Carter at a morning seminar hosted by BDO and RBC on October 21, 2015.

**Basic Legal Risk Management for Charities and Non-Profits** was a session presented by Terrance S. Carter at the Older Adult Centres Association of Ontario (OACAO) Annual Conference held on October 27, 2015, in Mississauga, Ontario.

## 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

**22<sup>nd</sup> Annual Church & Charity Law™ Seminar** hosted by Carters Professional Corporation in Greater Toronto, Ontario, on **Thursday November 12, 2015**

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

[The Commons Institute](#) will host a live webinar entitled *Charities, Non-Profits and the Law* at which Terrance S. Carter will speak on the topic of “Preparing for and Surviving a CRA Audit” on November 24, 2015.

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**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** – Mr. Danko was called to the Ontario Bar in 2015 following the successful completion of his articles at Carters. He now practices in corporate and commercial law, anti-terrorism law, real estate law, charity and not-for-profit law, and wills and estates. Mr. Danko obtained his Juris Doctor from Osgoode Hall Law School and a Master of Environmental Studies from York University. Prior to this, he graduated with a Bachelor of Sciences (Honors) from the University of Toronto, with High Distinction. In his free time, Mr. Danko volunteers with Peel Regional Police as an Auxiliary Constable.



**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.



**Barry Kwasniewski** – Mr. Kwasniewski joined Carters’ Ottawa office in 2008 , 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.



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**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 in Canada*. She is chair of the Executive of the Charity and Not-for-Profit Section of the OBA and an executive member of the CBA Charities and Not-for-Profit Law Section. In addition to being a frequent speaker, Ms. Man is co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* published by Carswell. She has also written articles for numerous publications, including *The Lawyers Weekly*, *The Philanthropist*, *Hilborn:ECS eNews* and *Charity Law Bulletin*.



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**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. Ryan is a regular speaker and author on the topic of directors’ and officers’ liability and on the topic of anti-spam compliance for registered charities and not-for-profit corporations, and has co-authored papers for Law Society of Upper Canada. In addition, Ryan has contributed to *The Lawyers Weekly*, *Hilborn:ECS eNews*, Ontario Bar Association *Charity & Not-for-Profit Law Section Newsletter*, *Charity Law Bulletins* and publications on [www.charitylaw.ca](http://www.charitylaw.ca).



**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.



**Tom Baker** - Mr. Baker graduated from Osgoode Hall Law School and commenced his articles at Carters Professional Corporation in 2015. Prior to law school, he completed Bachelor degrees in Classical Studies and Psychology, as well as a Master's degree in Classical literature. He has published several scholarly articles in academic journals and was an associate editor for the *Osgoode Hall Law Journal*. During law school, he completed the mediation intensive program and was an executive member of the Entertainment and Sports Law Association. He also represented Osgoode in trial advocacy competitions at both the provincial and national levels.



**Shawn Leclerc** - Mr. Leclerc graduated from the University of Ottawa, Faculty of Law, in 2015. While attending his law studies, he gained legal experience through an internship with the Evangelical Fellowship of Canada where he researched various legislation and legal issues. Prior to attending law school he graduated with distinction from the University of Lethbridge with a B.A. in Anthropology. Mr. Leclerc has spent 11 years in automotive sales and finance, as well as over 15 years as a volunteer and board member in various charitable organizations. Mr. Leclerc has participated in overseas mission trips where he was engaged in humanitarian work.

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