

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

## MAY 2016

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### Upcoming Carters Events – Not to be Missed

**Carters Webinar Series - Spring 2016** - The next session is entitled “**The ABC’s of GST/HST for Charities and NPOs**” on Wednesday, June 8, 2016 from 1:00 – 2:00 pm ET. [Brochure](#) and [Registration](#) available at [www.carters.ca](http://www.carters.ca)

**Healthcare Philanthropy: Check-Up 2016**, is being co-presented by Carters and Fasken Martineau on Thursday, June 23, 2016. Two topics will be presented as follows: “When is a Gift Not a Gift” presented by Terrance S. Carter and “What to Do When Gifts Go Bad” presented by Theresa L.M. Man. Click here for [Registration](#).

**23<sup>rd</sup> Annual Church & Charity Law™ Seminar** - Hosted by Carters Professional Corporation in Greater Toronto, Ontario, on Thursday **November 10, 2016**. Details and online registration available soon

**Get on Our Mailing List:** To automatically receive the free monthly *Charity Law Update*, click [here](#) or send an email to [info@carters.ca](mailto:info@carters.ca) with “Subscribe” in the subject line.

## RECENT PUBLICATIONS AND NEWS RELEASES

### **NFP in Norway Found Liable for Employee Taken Hostage in Conflict Area**

By Sean S. Carter & Terrance S. Carter

In November 2015, an Oslo District Court in Norway found that the not-for-profit Norwegian Refugee Council (“NRC”) was liable for gross negligence in failing to meet its duty of care to its employee, Steve Dennis, who had been injured and kidnapped. NRC is an organization that provides food, shelter and education to refugees all over the world, including conflict zones in Asia, the Middle East and Africa. However, while working for the NRC in 2012, Mr. Dennis was shot and taken hostage for four days in Dabaab, Kenya. Since the time of his rescue, the court found that Mr. Dennis has suffered significant physical and psychological injuries, including post-traumatic stress disorder and depression, for which the court awarded \$695,000 in damages. A resource link to an English translation of the decision can be found [here](#), as posted by the Oslo District Court.

In its decision, which has received significant international attention, the court found that “aid organizations are major employers with the same responsibility for their employees as other employers.” In this particular case, NRC had sent Mr. Dennis to Kenya despite expert reports about increased possibility of kidnappings and violence in the area. Furthermore, NRC had previously conducted an internal security review and had found internal weaknesses in its own capabilities to respond to those threats. Although NRC is a widely respected not-for-profit organization in Norway, the court found that despite its “good deeds” the organization’s employees “must however know that their employer covers their back with a satisfactory handling of their security and that they will be taken care of if anything happens.” No appeal of the court’s decision has been announced to date.

Canadian charities and not-for-profits need to be aware of this developing case law, as it is not inconceivable that a similar finding could be reached in Canada if similar facts were to arise. Not-for-profits and charities alike owe their employees, volunteers and potentially agents a duty of care and could be found to be liable in negligence as NRC was in this case. This duty of care to employees and volunteers (among others) exists and needs to be managed effectively, particularly when an organization’s purpose is delivering often life-saving aid and resources in potentially dangerous areas of the world. Addressing the inherent risks associated with many international not-for-profit’s programs must be adequately addressed through due diligence and risk assessment procedures to protect the organization, its charitable property (if it is a charity) and its volunteers, employees and agents. Failing to take proactive action to

address varying risks present in different areas of operations exposes an organization and its directors to potentially both civil (like the situation of NRC) and even criminal liability. Just as in the case of NRC, the liability of the organization is ultimately based on how it addressed (or failed to address) risk and liability prior to an event such as kidnapping or injury. There is no defence or leniency for organizations simply because of the organization's highly laudable and potentially life-saving programs, and the liability cannot be addressed simply 'after the fact' in responding to situations. The risks are there, and must be addressed in advance, just as any other for-profit organization, particularly those operating internationally and in zones of varying level of risk and danger.

## CRA News

By Theresa L.M. Man

### Updated Charities Audit Statistics for 2015-2016

On May 12, 2016, CRA updated its webpage titled [The audit process for charities](#) (the "webpage"). The webpage generally describes the reasons that CRA undertakes audits for charities on a yearly basis and notes that it audits roughly 1% of the registered charities in Canada each year.

CRA's compliance approach is described as an "education-first" approach, and the outcomes that a charity can receive as a result of an audit include education letters, compliance agreements, sanctions, and revocation of registration. In addition, the webpage lists the types of recourse available to charities during and after the audit.

The updated webpage reflects the following audit outcomes in 2015-2016:

No Change	40
Education	444
Compliance Agreement	111
Voluntary Revocation	22
Penalty/suspensions	4
Notice of intent to Revoke issued	21
Annulment	59
Other (includes other audit activities such as pre-registration and Part V audits)	25
Total	726

### Tax Preparers Sentenced to 51 Months of Jail Time

On May 11, 2016, CRA [announced](#) the conviction of Fareed and Saheem Raza (the "Razas"). As reported in our February 2016 [Charity and NFP Law Update](#), the Razas were convicted under paragraph 380(1)(a)

of the [Criminal Code](#) for defrauding the federal and provincial governments of amounts exceeding \$5,000 between December 31, 2002, and June 24, 2011. The Razas were sentenced on May 10, 2016, to 51 months in jail for defrauding the government when they forged charitable receipts for a registered charity. Another individual, Faiz Kahn, was also convicted with the Razas, but received an absolute discharge.

## **Q&A Webpage for Assisting People and Charities Affected by the Alberta Wildfires**

On May, 16, 2016, CRA published a Q&A style webpage titled [Assisting people and charities impacted by the wildfires in Alberta](#). On the one hand, topics covered for charities affected by the wildfires include: what to do if charities were not able to file their T3010, *Registered Charity Information Return* (“T3010”) in time; what to do if their records were destroyed in the fires; what to do if they did not receive their T3010; what to do about meeting filing requirements for incorporating authorities. On the other hand, for charities that wish to assist those affected by the wildfires, CRA addresses topics such as raising funds to assist those affected by the wildfires; whether carrying out that activity comports with their charitable purposes; and what to do in the event their purposes do not comport with these efforts. For donors wishing to get involved to help out, CRA covers a range of questions dealing with how to discover which charities may issue official receipts; whether it is better to donate money or supplies; where an individual can find out more information about registered charities; and when donations can be claimed.

## **New Guidance on Becoming a Qualified Donee**

On April 23, 2016, CRA released new guidance CG-025, [Qualified Donee: Low-cost housing corporations for the aged](#). The new guidance replaces an Income Tax Rulings Directorate letter which was dated March 18, 2013.

According to the guidance, a low-cost housing corporation for the aged (“LCHCA”) that seeks qualified donee status must be resident in Canada and meet the criteria of paragraph 149(1)(i) of the ITA. Paragraph 149(1)(i) states that an LCHCA is “a corporation that was constituted exclusively for the purpose of providing low-cost housing accommodation for the aged, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof.” CRA interprets this to mean an organization that is constituted exclusively for the purpose of providing low-cost housing accommodation for the aged and operated only for that purpose. CRA has also interpreted “aged” to mean 55 years of age and over.

The guidance also explains that such accommodation “includes comfortable but modest rental accommodation, at rents that are low relative to rents generally available for similar accommodations in the same community (other than subsidized or non-profit accommodations).” An LCHCA may also

provide housing related services such as “meals, laundry services, home furnishings, medical/nursing care, house-keeping services, resident aides’ services, and general assistance with matters of daily living.” As well, an LCHCA must not distribute income, either directly or indirectly, to, or for the personal benefit of, any member or shareholder. It also should not have the power to declare and pay dividends out of income.

The guidance also sets out how a corporation can seek QD status, as well as the documentation that the Charities Directorate will expect of an LCHCA when applying.

## **Testamentary Charitable Giving: The New Regime (Revised)**

M. Elena Hoffstein – Guest Contributor, *Charity & NFP Law Bulletin* No. 386, May 25, 2016

*Editor’s Note: This Bulletin is an update of our [Charity & NFP Law Bulletin No. 380](#) that was previously posted on February 25, 2016, and reflects changes introduced by the 2016 Federal Budget.*

On December 16, 2014, Bill C-43 received Royal Assent. The new rules introduced by the Bill affect the manner in which testamentary trusts are taxed and, in addition, change significantly the manner in which testamentary charitable gifts will be dealt with under the [Income Tax Act](#), RSC 1985, c.1 (5<sup>th</sup> Supp.) (“ITA”).

In order to better appreciate the significance of the changes and their impact on testamentary charitable giving, it is important to review briefly the law as it was prior to 2016.

In the past, income and capital gains retained in *inter vivos* trusts were taxed at a different rate than testamentary trusts. *Inter vivos* trusts have always been taxed at the top marginal rates of tax. On the other hand, testamentary trusts and certain pre-1971 *inter vivos* trusts have enjoyed access to progressive rates of tax and other benefits not available to *inter vivos* trusts. Bill C-43 has eliminated the various differences between *inter vivos* and testamentary trusts commencing in 2016. There are two exceptions to these new rules. Firstly, the progressive tax rates will continue to apply to the first thirty-six (36) months of an estate that arises as a consequence of the death of an individual and that is a testamentary trust. This type of trust has been given a new name, the graduated rate estate or GRE, as it is now affectionately named. The second exception is for trusts that qualify as qualified disability trusts or QDTs for disabled individuals. It is not intended to discuss QDTs in this *Bulletin*.

For the balance of the Bulletin, please see [Charity and NFP Law Bulletin No. 386](#).

## Tax Court Comments on CRA's Timeliness in Detecting Fraud

By Esther S. J Oh

On April 22, 2016, the Tax Court of Canada released its decision in the case of [Wynter v The Queen](#), which dismissed a taxpayer's appeal of a gross negligence penalty imposed under subsection 163(2) of the [Income Tax Act](#) ("ITA") for the 2009 taxation year.

While the facts in this case are lengthy and complicated, in summary, the taxpayer became involved in a charitable donation program that was promoted by the tax preparer, DSC Lifestyle Services ("DSC"). Although both counsel for the taxpayer and the respondent effectively agreed that the evidence "did not establish that [the taxpayer] set out to cheat the administration of justice or knowingly participated in a scheme to evade tax," the taxpayer hired DSC to prepare her tax returns and in doing so ended up filing false statements regarding charitable donations made in 2006, and business losses incurred in 2009. These false statements gave rise to the reassessment of those tax years, and the resulting gross negligence penalty imposed by CRA for the 2009 return.

In determining whether the penalties under subsection 163(2) applied to the taxpayer, the Court noted that the Minister had to establish "1. a false statement in a return; and 2. knowledge or gross negligence in the making of, assenting to or acquiescing in the making of the false statement." The Court relied upon a number of the factors set out in [Torres v The Queen](#) to make this determination. The factors present in this case included the taxpayer's education and experience; suspicion or need to make an inquiry about the tax preparer; the tax preparer's fee structure, anonymity, unusual requests, and lack of acknowledgement in preparing the returns; whether a blatantly false statement was readily detectable; lack of inquiries of professionals or officials at CRA; and, the appellant's trust in the tax preparer and his or her cohort. Ultimately, the Court noted that, unfortunately, the taxpayer "chose not to undertake ... reasonable steps to verify the accuracy of the information she was submitting to CRA and was willfully blind." As a result, the Court found that "in the context of all the evidence" that the taxpayer was "grossly negligent as defined by the relevant provision."

Of particular interest is the Court's critique of CRA's fraud detection procedures. While it is unusual for the Court to comment on CRA's procedures in this regard, the comments highlight the procedural gaps that allow fraudsters to evade responsibility for their actions. More specifically, the Court stated:

The problem arising from these long delays in contacting taxpayers and the lack of a meaningful early-warning system at CRA is that it provides fodder to the scam artists who have assured their clients that they are on top of the problem and that their experts will battle CRA so effectively there will be nothing to worry about. The absence of prompt follow-up and the issuance of form-



letter reminders months later is in effect a golden opportunity for the fraudsters to say, “I told you we would fix your problem with CRA.” Then, by the time CRA issues an assessment and the collection department takes over, the con artists are long gone or – in some cases – have been arrested or convicted and – rarely, I suspect – sent to prison for any significant period. [...] Human nature being what it is, there will always be con artists and no shortage of potential victims ready and eager to obtain the golden ticket to wealth but there has to be better detection techniques put into place by CRA as soon as possible to reduce the incidence of these tragedies. Perhaps, it is already underway. I hope so.

It will be of interest to note how CRA responds to the Court’s statements encouraging CRA to implement better fraud detection techniques.

## **CRA View on FMV of Receipts for Gifts of Property to a Municipality**

By Jacqueline M. Demczur

On May 18, 2016, CRA released technical interpretation 2015-0593921 in response to an email request for comments on “whether an official receipt for a gift of property to a municipality can be made out for an amount other than the fair market value of the gifted property.” For the purposes of the response, CRA made the following assumptions about the gifting arrangement: “the donor is an individual, the gifted property is capital property, and the municipality is a qualified donee.”

CRA points out that the provision that allows a taxpayer to claim a tax credit is found in section 118.1 of the [Income Tax Act](#) (“ITA”) if the eligible amount is made to a qualified donee (“QD”), and is supported by an official receipt. According to subsection 118.1(2) of the ITA, this means that the official receipt must be in the prescribed form which is found in section 3501 of the [Income Tax Regulations](#) (the “Regulations”). For a gift which is a “gift of property other than cash,” the official receipt “must contain the fair market value of the property at the time that the gift was made.” If the QD cannot reasonably determine the fair market value (“FMV”) at the time the gift is made, then the official receipt for the donation may not be issued.

CRA also points out that generally, when subsections 118.1 (5.4) and (6) are considered together, “if an individual donates capital property to a qualified donee, the individual may designate an amount between the adjusted cost base and the fair market value of the donated property to be treated both as the proceeds of disposition for the purpose of calculating the individual’s capital gain and the fair market value of the donated property for the purpose of determining the eligible amount of the gift in calculating the donation tax credit.” In addition, CRA notes that if an individual designates an amount, that amount may not exceed the FMV of the property. Likewise, the designated amount cannot be less than whichever of the following

three is greater: the amount of advantage, the adjusted cost base (“ACB”) of the property, or (for depreciable properties) the undepreciated capital cost. In any case, CRA notes that, for the purpose of determining the eligible gift amount, a designation under subsection 118.1(6) still requires that the FMV of the property at the time the gift was made is included on the official receipt.

Finally, CRA notes that there may be situations in which the deeming provision of subsection 248(35) may be relevant. The effect of this deeming provision is that, for the purpose of the eligible amount of the gift, “the fair market value of the gifted property is deemed to be the lesser of its fair market value otherwise determined and its cost, or in the case of capital property, its adjusted cost base, or in the case of a life insurance policy in respect of which the taxpayer is a policyholder, its adjusted cost basis, of the property immediately before the gift is made.”

## **CRA Responds to Question on Spousal Sharing of Charitable Gifts by Will**

By Ryan M. Prendergast

On April 27, 2016, CRA released 2016-0624851C6, a French language response to a question made on January 21, 2016, at the Ordres des CPA du Québec — Table ronde sur la fiscalité des particuliers. The question posed to CRA was “Whether the existing administrative position to allow a charitable gift made by will to be included in the “total charitable gifts” of the deceased individual’s spouse or common law partner will continue to apply as of the 2016 taxation year?” CRA responded that the current administrative position will not continue to apply.

According to CRA’s response letter, donations shared between spouses are now covered under clause (c)(i)(A) of the definition of “total charitable gifts” found at subsection 118.1(1) of the [Income Tax Act](#) (“ITA”), and only apply to donations made during that individual’s lifetime. CRA notes that where an individual is not a trust, clause (c)(i)(C) of the proposed definition of “total charitable gifts” in subsection 118.1(1) — the section dealing with graduated rate estates — states that the total charitable gifts of the individual for a particular tax year includes the “eligible amount of the gift” with the following conditions.

- the gift is made by the individual’s estate;
- subsection 118.1(5.1) applies to the gift; and
- the year of the gift is the deceased’s taxation year or the previous taxation year.

Finally, CRA notes that since clause (c)(i)(C) of the proposed definition of “total charitable gifts” in subsection 118.1(1) does not include donations from an estate of a spouse or common-law partner, it is



CRA's position that the total charitable gifts of the surviving spouse for the taxation year, or the five preceding taxation years, may not include the eligible amount of a gift made by the estate. As a result of these changes, CRA will not be continuing with the administrative practice relating to gifts made in the context of a deceased individual for deaths after 2015.

For more information on the effects of the draft legislative proposals released by the Department of Finance on January 15, 2016, see [Charity Law Bulletin No. 386](#) by Elena Hoffstein in this update.

## **CRA Rules Tribal Council is Exempt from Part I Tax**

By Linsey E.C. Rains

Canada Revenue Agency's ("CRA") Income Tax Rulings Directorate publicly released ruling 2013-049471 on May 4, 2016. The ruling dealt with the issue of whether a Tribal Council was "a public body performing a function of government within the meaning of paragraph 149(1)(c)" of the federal [Income Tax Act](#) ("ITA"). Paragraph 149(1)(c) of the ITA exempts "a municipality in Canada, or a municipal or public body performing a function of government in Canada" from Part I tax.

The ruling also confirms that a public body ruling is a distinct process from registration as a qualified donee ("QD") and that a separate application for QD status must be submitted to CRA's Charities Directorate. Public bodies that are registered as QDs are publicly listed on CRA's website and "eligible to issue official donation receipts and to receive gifts from registered charities."

In this case, after setting out some key definitions and listing a number of facts relevant to its consideration, CRA ruled that the Tribal Council was "considered to be a public body performing a function of government." The facts considered relevant by CRA included the Tribal Council's:

- corporate status;
- membership structure;
- corporate purposes;
- distribution of its assets upon winding up;
- activities and services; and
- relationships with provincial and federal authorities.

Accordingly, entities which think they might qualify as public bodies performing a function of government in Canada may wish to review all of the facts relied on by CRA in this ruling to gain a better understanding of their potential eligibility.

## Woman Commits Fraud with Not-for-profit Organization

By Ryan M. Prendergast

On May 11, 2016, the Ontario Superior Court of Justice (the “Court”) released its decision in [R v Mamoon](#), in which it found that Nuzhat Mamoon (the “Accused”) was guilty of committing fraud after hearing testimony from eight individuals, some of whom had approached the Accused believing that she was a wealthy, religious businessperson who ran a charitable organization. She received money from these individuals with respect to non-existent business operations and never reimbursed the investments she guaranteed.

In May 2012, the Accused claims to have started a not-for-profit organization called “Umme Rabab”. The Court, however, found that she used the organization to meet and interact with financially vulnerable individuals, holding herself out as a successful businessperson. Although the Accused plead not guilty and testified that she did not profit from the organization, eight Crown witnesses testified that she obtained amounts varying from \$1,000 to \$38,000 from them, promising profits of at least 100% within 30 days. Justice Edwards found the Crown witness testimony credible but did not find the Accused’s evidence to be either believable or consistent.

As a result of the evidence against the Accused, the Court found that all of the elements of the offence of fraud, pursuant to s. 380(1)(a) of the [Criminal Code of Canada](#) (the “Code”), had been met beyond a reasonable doubt. Specifically, the Accused (1) deprived the public of something of value; (2) that the Accused’s deceit, falsehood or other fraudulent means caused the deprivation; (3) the Accused intended to defraud the public; and (4) the value of the property exceeded \$5,000.

In this case, the Accused was found guilty of one count of fraud and may be sentenced to up to 14 years pursuant to the Code. The case stands as a stark reminder of the importance of charitable registration and establishing charities and not-for-profit organizations for *bona fide* purposes. Fraudulent abuse of such vehicles will result in harsh criminal sanctions.

## Finance Introduces Legislation to Implement OECD Common Reporting Standards

By Linsey E.C. Rains

On April 15, 2016, the federal Department of Finance [released](#) draft legislative proposals to amend the [Income Tax Act](#) (“ITA”) and Income Tax Regulations (“Regulations”). The [draft proposals](#) are designed to “implement the [Organisation for Economic Co-operation and Development’s (“OECD”)] Common

Reporting Standard (CRS), which will ensure tax fairness and improve Canada’s ability to detect and address tax evasion.”

The draft proposals were accompanied by [explanatory notes](#), which clarify that the changes to the ITA and Regulations to implement the CRS, namely the addition of Part XIX to the ITA, will introduce “rules that require financial institutions to report certain information to the Canada Revenue Agency and to follow due diligence procedures as set out in” Part XIX and will come into force July 1, 2017. The public has until July 15, 2016 to provide the Department of Finance with feedback on the proposed amendments to the ITA and Regulations.

Stay tuned for our analysis of the draft legislation and its potential impact on registered charities and non-profit organizations in the June 2016 *Charity & NFP Law Update*.

## **New Extra-Provincial Registration Chapter Released in Corporate and Practice Manual**

By Theresa L.M. Man

On March 8, 2016, Chapter 11A “Extra-Provincial Registration”, was released for the *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations*, published by Carswell. When not-for-profit corporations carry on activities in a province or territory different from the jurisdiction in which they were incorporated, there are often registration requirements in the jurisdictions in which they operate. These are generally referred to as “extra-provincial registrations.” There are three common types of extra-provincial registrations – corporate registrations, business name registrations, and charitable fund-raising registrations. Given the diverse nature of the registration requirements in each province and territory, not-for-profit corporations carrying on activities across Canada need to carefully review the applicable requirements in each province and territory to ensure that they are compliant. The new chapter provides an overview of the diverse approaches to registering a not-for-profit seeking to operate extra-provincially, as well as a description of the various registration requirements unique to each province or territory.

To read more, the *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* by the late Jane Burke-Robertson, Terrance S. Carter, and Theresa L.M. Man may be ordered at: <http://carswell.com/product-detail/corporate-and-practice-manual-for-charities-and-not-for-profit-corporations>.

## Nova Scotia Introduces Food Bank Tax Credit for Farmers

By Terrance S. Carter

On May 19, 2016, Nova Scotia Agriculture Minister Keith Colwell issued a [press release](#) outlining a new tax credit that will be available to farmers who donate food to food banks. The measure was first discussed in the Nova Scotia [Budget 2016-2017](#) and is to be implemented as part of the [Financial Measures \(2016\) Act](#) (the “Act”), which passed first reading in the Nova Scotia legislature on May 3, 2016.

The Food bank tax credit for farmers (the “Credit”) will be available to “eligible persons” who make donations of fresh surplus produce to registered food banks and will amount to a tax credit of 25 percent of the fair market value of the donation. The Act defines “eligible person” as an individual or corporation that carries on the business of farming in Nova Scotia, whereas an “eligible food bank” is a person or entity that distributes food for the relief of poverty that is a federally registered charity and satisfies conditions prescribed by the regulations. The Credit will be retroactive to January 1, 2016 and, as the Minister points out, further details will be clarified with future regulations.

## Two New Leaves of Absence in the Works for Ontario

By Barry W. Kwasniewski, *Charity and NFP Law Bulletin* No. 385, May 25, 2016

Two Bills were recently introduced in the Ontario Legislature, which, if passed, will grant new leave of absence provisions under the [Employment Standards Act, 2000](#) (“ESA”). Bill 175, [Jonathan’s Law \(Employee Leave of Absence When Child Dies\), 2016](#), (“Jonathan’s Law”) and Bill 177, [Domestic and Sexual Violence Workplace Leave, Accommodation and Training Act, 2016](#) (“DSVL”) were introduced on March 8, 2016. While these Bills are in the early stages of the legislative process, charities and not-for-profits will want to follow their development given their potential impact should they become law. This *Charity & NFP Bulletin* explores each of these Bills in their current form and discusses the potential implications to charities and not-for-profits.

For the balance of the Bulletin, please see [Charity and NFP Law Bulletin No. 385](#).

## Quebec Proposes Draft Regulations Regarding Trademarks on Signage

By Sepal Bonni

On May 4, 2016, the Government of Quebec published [draft regulations](#) proposing various amendments to the [Charter of the French Language](#) which would “ensure the presence of French when a trade mark in a language other than French is displayed outside.” Charities and not-for-profits operating in Quebec

should take notice of these proposed amendments, as they will impose new obligations on organizations that do not currently display French language signage.

When a trade mark is displayed “outside an immovable” in a language other than French, a “sufficient presence of French” must accompany the trade-mark. This requirement may be accomplished by including “(1) a generic term or a description of the products or services concerned; (2) a slogan; (3) any other term or indication, favouring the display of information pertaining to the products or services to the benefit of consumers or persons frequenting the site.” As currently drafted, the definition of “outside an immovable” would apply to several situations, including signs displayed *inside* a shopping mall, and signs that are located inside a storefront, but intended to be seen from the outside.

Further, with regard to the “sufficient presence of French” requirement, signs or posters must also give the French portion permanent visibility, similar to that of the non-French trade-mark displayed and ensure its legibility in the same visual field as that mainly covered by the trade-mark signs or posters. For example, if the non-French trade-mark is illuminated at night, the French addition must also be illuminated at the same time.

The draft regulations will be under public consultation for a period of 45 days, i.e, until June 18, 2016. If the amendments come into force, they will apply to new signage, as well as pre-existing signage. However, in certain circumstances, including where a trade-mark is used outside of Quebec as part of a franchise system, organizations will have three years to comply with the legislation. Therefore, charities and not-for-profits operating in Quebec that publicly display trade-marks will need to carefully monitor the new requirements.

## **Carters is Pleased to Announce a New Partner**

Carters would like to congratulate Sean S. Carter on becoming a partner with Carters. As the head of the litigation practice group at Carters, Sean has broad experience in civil litigation, including matters involving charities. Sean joined Carters in 2012 after having articulated with and been an associate with Fasken Martineau DuMoulin LLP (Toronto office) for three years. Sean has published extensively, co-authoring several articles and papers on anti-terrorism law, including publications in *The International Journal of Not-for-Profit Law*, *The Lawyers Weekly*, *Charity Law Bulletin* and the *Anti-Terrorism and Charity Law Alert*, as well as presentations to the Law Society of Upper Canada and Ontario Bar Association CLE learning programs.

Read More: [Sean S. Carter Bio](#)

## IN THE PRESS

[Charity & NFP Law Update – April 2016 \(Carters Professional Corporation\)](#) was featured on *TaxNet Pro* and is available online to those who have subscription privileges. Future postings of the *Charity & NFP Law Update* will be featured in upcoming posts.

The article entitled [Hockey Injury Lawsuit Dismissed](#) by Barry W. Kwasniewski was featured in *Facility Forum*, the magazine of the Ontario Recreation Facilities Association Inc., published by Naylor Association Solutions in their Spring 2016 edition.

## RECENT EVENTS AND PRESENTATIONS

Carters is currently hosting its [Spring 2016 Webinar Series](#) to assist charities and not-for-profits with current and essential legal issues. Available as “On Demand / Replay” webinars, the following complimentary webinars are available at our website:

[Going Into Business? The Social Enterprise Spectrum for Charities](#) was presented by Terrance S. Carter on April 21, 2016 from 1:00 – 2:00 pm ET. [On Demand / Replay](#) available.

[Going Social: Using Social Media to Accomplish Your Mission](#) was presented by Sepal Bonni on May 4, 2016 from 1:00 – 2:00 pm ET. [On Demand / Replay](#) will be available shortly.

[Human Rights Challenges in the Workplace](#) was presented by Barry W. Kwasniewski on May 18, 2016 from 1:00 – 2:00 pm ET. [On Demand / Replay](#) will be available shortly.

**Canadian Council for International Co-operation (CCIC)** hosted **International Cooperation Days 2016** on May 11, 2016. Terrance S. Carter presented on the topic of “Preparing for and Surviving a CRA Audit”.

**Canadian Council of Christian Charities (CCCC)** hosted **The Pursuit '16 Conference** from April 27 to 29, 2016, in London, Ontario. Terrance S. Carter presented two sessions on Thursday April 28 as follows:

- [12 Steps to Effective Legal Risk Management for Churches and Charities](#)
- [Pitfalls in Drafting Gifting Agreements](#)

## UPCOMING EVENTS AND PRESENTATIONS

[National Charity Law Symposium](#) will be held on Friday, May 27, 2016 and is being held at the Toronto Region Board of Trade in Toronto Ontario. [Registration](#) is available online. Theresa Man will be participating in a panel discussion on “**Accounting for and Allocating Costs**”

**York Entrepreneurship Development Institute** will be held on Monday May 30, 2016, at Vaughan City Hall. Theresa L.M. Man will join a roundtable discussion on the topic of “Tax and Legal Implications for Charities and NPOs in Ontario.”

[Carters Webinar Series - Spring 2016](#) is a series of four complimentary one-hour webinars designed to provide a detailed and practical explanation of current and essential legal issues for charities and not-for-profits. The last session is entitled “[The ABC’s of GST/HST for Charities and NPOs](#)” and will be presented by Linsey E.C. Rains on Wednesday, June 8, 2016 from 1:00 – 2:00 pm ET. [Registration](#) is available at [www.carters.ca](http://www.carters.ca)

[Endowment and Foundation Investment Conference for Western Canada](#) will be held in Vancouver, B.C. Terrance S. Carter will be presenting on the topic of “Avoiding Pitfalls in Drafting Gift Agreements” on June 15, 2016.

[Healthcare Philanthropy: Check-Up 2016](#), is being co-presented by Carters and Fasken Martineau on Thursday, June 23, 2016. Two topics to be presented are as follows:

- “When is a Gift Not a Gift?” presented by Terrance S. Carter
- “What to Do When Gifts Go Bad” presented by Theresa L.M. Man

Click here for [Registration](#)

[11<sup>th</sup> Annual CSAE Trillium Chapter Summer Summit](#) will be held July 6 to 8, 2016 at Blue Mountain Resort, Ontario. Terrance S. Carter and Theresa L.M. Man will present on the topic “Considerations in Drafting a Books and Records Policy” on Thursday, July 7, 2016 from 4:00-5:30 pm.



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**Sean S. Carter**, B.A., LL.B. – Sean Carter is a partner with Carters and the head of the litigation practice group at Carters. Sean has broad experience in civil litigation and joined Carters in 2012 after having articulated with and been an associate with Fasken Martineau DuMoulin LLP (Toronto office) for three years. Sean has published extensively, co-authoring several articles and papers on anti-terrorism law, including publications in *The International Journal of Not-for-Profit Law*, *The Lawyers Weekly*, *Charity Law Bulletin* and the *Anti-Terrorism and Charity Law Alert*, as well as presentations to the Law Society of Upper Canada and Ontario Bar Association CLE learning programs.



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**Bart Danko**, B.Sc. (Hons.), M.E.S., J.D. – 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**, B.A., LL.B. – A partner with the firm, Ms. Demczur practices in charity and not-for-profit law, including incorporation, corporate restructuring, and legal risk management reviews. Ms. Demczur has been recognized as a leading expert in charity and not-for-profit law by *Lexpert* and *The Best Lawyers in Canada*. She is a contributing author to Industry Canada’s *Primer for Directors of Not-For-Profit Corporations*, and has written numerous articles on charity and not-for-profit issues for the *Lawyers Weekly*, *The Philanthropist* and *Charity Law Bulletin*, among others. Ms. Demczur is also a regular speaker at the annual *Church & Charity Law*<sup>TM</sup> Seminar.



**M. Elena Hoffstein**, B.A., M.A., LL.B., as our guest contributor, is a partner with the national firm of Fasken Martineau and is engaged in personal tax and estate planning, family business succession planning, wills and trusts, corporate reorganizations, marriage contracts and charities and not for profit law. Ms. Hoffstein has been ranked by *Lexpert* as one of the most frequently recommended Toronto private client and charity law practitioners and as one of the top 500 lawyers in Canada. Martindale-Hubbell has given her a rating of AV. In 2006, she received the Ontario Bar Association Award of Excellence in Trusts and Estates in recognition of her leadership and contribution to estates and trusts.



**Barry Kwasniewski**, B.B.A., LL.B. – 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 and not-for-profits.



**Jennifer Leddy**, B.A., LL.B. – Ms. Leddy joined Carters’ Ottawa office in 2009, becoming a partner in 2014, to practice charity and not-for-profit law following a career in both private practice and public policy. Ms. Leddy practiced with the Toronto office of Lang Michener prior to joining the staff of the Canadian Conference of Catholic Bishops (CCCCB). In 2005, she returned to private practice until she went to the Charities Directorate of the Canada Revenue Agency in 2008 as part of a one year Interchange program, to work on the proposed “Guidelines on the Meaning of Advancement of Religion as a Charitable Purpose.”



**Theresa L.M. Man**, B.Sc., M.Mus., LL.B., LL.M. – 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* and *Charity Law Bulletin*.



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**Ryan Prendergast, B.A., LL.B.** - 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 the Law Society of Upper Canada. In addition, Ryan has contributed to *The Lawyers Weekly*, *Hilborn:ECS*, 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, B.A., J.D.** - 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. Ms. Rains is also a student member of STEP Canada and the Ottawa Branch's student representative on the STEP Canada Student Liaison Committee.



**Tom Baker, B.A. (Hons.), M.S., J.D.** - 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, B.A., J.D.** - Mr. Leclerc graduated from the University of Ottawa, Faculty of Law, in 2015. While attending his law studies, Shawn 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. Shawn spent 11 years in automotive sales and finance, as well as over 15 years as a volunteer and board member in various charitable organizations. Shawn has participated in overseas mission trips where he was engaged in humanitarian work.

## ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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