

---

# THE OTTAWA REGION CHARITY & NOT-FOR-PROFIT LAW SEMINAR

Ottawa – February 13, 2014

---

## Essential Charity and NPO Law Update

---

By Jennifer M. Leddy, B.A., LL.B.

[jleddy@carters.ca](mailto:jleddy@carters.ca)  
1-866-388-9596

© 2014 Carters Professional Corporation


**CARTERS**

Carters Professional Corporation / Société professionnelle Carters  
Barristers · Solicitors · Trade-mark Agents / Avocats et agents de marques de commerce  
[www.carters.ca](http://www.carters.ca)   [www.charitylaw.ca](http://www.charitylaw.ca)   [www.antiterrorismlaw.ca](http://www.antiterrorismlaw.ca)

Toronto · Ottawa  
Mississauga · Orangeville  
Toll Free: 1-877-942-0001

---





**CARTERS**  
BARRISTERS  
SOLICITORS  
TRADEMARK AGENTS

## THE OTTAWA REGION CHARITY & NOT-FOR-PROFIT LAW SEMINAR

Ottawa – February 13, 2014

### Essential Charity and NPO Law Update

By Jennifer M. Leddy, B.A., LL.B.  
jleddy@carters.ca  
1-877-942-0001

© 2014 Carters Professional Corporation

CARTERS PROFESSIONAL CORPORATION  
TOLL FREE: 1-877-942-0001

Ottawa Toronto Mississauga Orangeville  
[www.carters.ca](http://www.carters.ca) [www.charitylaw.ca](http://www.charitylaw.ca) [www.anti-terrorismlaw.ca](http://www.anti-terrorismlaw.ca)

---

---

---

---

---

---

---

---

---

---

2

### OVERVIEW OF SELECTED TOPICS

- A. Federal Budget 2013
- B. Other Recent Federal Initiatives
- C. Highlights of Recent CRA Publications
- D. Corporate Law Update
- E. Selected Case Law

[www.carters.ca](http://www.carters.ca)[www.charitylaw.ca](http://www.charitylaw.ca)

---

---

---

---

---

---

---

---


---

---

3

### A. FEDERAL BUDGET 2013

- On March 21, 2013 the federal government announced the 2013 Federal Budget (“Budget 2013”)
- The Budget included a “First-Time Donor’s Super Credit” (“FDSC”) to encourage new donors
- However, the Budget included little from the Standing Committee on Finance (“SCOF”) Report on tax incentives for charities
- Given the present economy, the charitable sector was fortunate that there were any new charitable donation tax incentives at all included in Budget 2013



[www.carters.ca](http://www.carters.ca) [www.charitylaw.ca](http://www.charitylaw.ca)

---

---

---

---

---

---

---

---

---

---

4

- Hopefully, some of the other recommendations from the SCOF Report will make their way into future federal budgets, such as the "Stretch Tax Credit for Charitable Giving" proposed by Imagine Canada
- A portion of Budget 2013 was implemented on June 26, 2013 through the enactment of Bill C-60, *Economic Action Plan 2013 Act, No. 1*
- Other provisions were implemented on December 12, 2013 through the enactment of Bill C-4, *Economic Action Plan 2013 Act, No. 2*

www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---

---

5

**1. Temporary One Time Donation Tax Credit for "First-Time Donors"**

TEMPORARY

- This new tax credit, implemented through Bill C-60, is designed to encourage donors who have not donated within the last five years to give to charity and is only available where neither a donor nor his or her spouse or common-law partner has claimed a charitable donation tax credit in the five previous tax years
- When applicable, there is to be an additional one time 25% tax credit for "first-time" donations of up to \$1,000 of a gift, provided that the gift is made in cash
- Therefore, for a gift of \$1,000, an additional tax credit of \$250 is available
- However, the FDSC can only be claimed once between 2013 and 2017 tax years
- See presentation by Karen J. Cooper

www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---

---

6

**2. Early Collection of Amounts Owning from Donation Tax Shelters**

- Bill C-60 permits CRA to proceed with collection actions on 50% of the disputed tax, interest or penalties that result from the disallowance of a donation claimed with respect to a tax shelter
- CRA will be able to proceed with these actions even before the ultimate liability of the donor has been determined through the objection and appeal process
- While donation tax shelter schemes should be discouraged, it is arguably unfair to permit CRA to collect taxes, fines, and penalties before the tax payer has exhausted all avenues of appeal

WHAT?  
I OWE YOU  
MONEY?

www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---

---

7

### 3. Extension of Reassessment Period for Donors to Registered Tax Shelters

- As part of its effort to balance the budget, the federal government has taken a hard line on various tax loopholes, particularly those involving tax shelters
- This change, set out in Bill C-4, extends the normal reassessment period with respect to participants in a tax shelter or "reportable transactions" where the information return required to be filed by the tax shelter or reportable transaction is not filed on time, or at all, by a period of a further 3 years after the date that the information return has been filed (for a total of 6 years)



www.carters.ca

www.charitylaw.ca

---

---

---

---

---

---

---

---

---

---

8

### 4. New Rules Concerning Collection of GST/HST on Paid Parking Affecting Charities

- On January 24, 2014 Finance Minister Jim Flaherty announced proposed amendments to the *Excise Tax Act* ("ETA") that exempt from GST/HST hospital parking for patients and visitors
- The proposed amendments also clarify that "the special GST/HST exemption for charity parking does not apply to parking provided by a charity set up or used by a municipality, university, public college or school"

www.carters.ca

www.charitylaw.ca

---

---

---

---

---

---

---

---

---

---

9

- The proposed amendments will exempt charities that are not public sector bodies under the ETA, and certain public sector bodies from GST/HST on the supply of paid parking in some instances, the proposed amendments contain detailed requirements that must be met in order for the exemption to apply
- Charities that will be impacted should carefully review the proposed changes to ensure that their existing practices concerning the supply of paid parking will be eligible for the exemption



www.carters.ca

www.charitylaw.ca

---

---

---

---

---

---

---

---

---


---

10

**B. OTHER RECENT FEDERAL INITIATIVES**

**1. Technical Tax Amendments Act 2012**

- Bill C-48 received Royal Assent on June 26, 2013, bringing into force the *Technical Tax Amendments Act*
- The amendments include those which administratively have been in effect since 2002 relating to:
  - The split receipting rules
  - Definitions of a charitable organization and charitable foundation,
  - Gifts to non-qualified donees



[www.carters.ca](http://www.carters.ca) [www.charitylaw.ca](http://www.charitylaw.ca)

---

---

---

---

---

---


---

---

11

**2. Bill S-14, Fighting Foreign Corruption**

- Bill S-14, *Fighting Foreign Corruption Act*, amending the *Corruption of Foreign Public Officials Act*, received Royal Assent on June 19, 2013
- It removed the words “for profit” from the definition of business in s.2 so that it is now defined as “any business, profession, trade, calling, manufacture or undertaking of any kind carried on in Canada or elsewhere”
  - The prohibition on bribery and books and records offences now apply to organizations involved in any business or undertaking in a foreign country, regardless of profit motivation or lack thereof



[www.carters.ca](http://www.carters.ca) [www.charitylaw.ca](http://www.charitylaw.ca)

---

---

---

---


---

---

---

---

12



- This modified definition could impact charities carrying on activities outside of Canada where their programs in a foreign jurisdiction include a “related business” activity permitted under the *Income Tax Act* (“ITA”), or a charitable program that involves an inherently commercial element, such as microfinance
- A second important amendment will repeal the “facilitation payment” exemption provision of the *Corruption of Foreign Public Officials Act* on a date to be fixed by order of the Governor in Council
  - Currently, such facilitation payments are excluded from the prohibition on bribery
  - As a result, in the future, charities could be exposed to possible criminal liability for activities which, up to now, have been permitted

[www.carters.ca](http://www.carters.ca) [www.charitylaw.ca](http://www.charitylaw.ca)

---

---

---

---

---

---

---

---

13

**3. Bill S-202 Could Eliminate Credit Card Acceptance Fees for Charities**

- Bill S-202, *An Act to Amend the Payment Card Networks Act (credit card acceptance fees)*, received first reading on October 17, 2013
- It proposes to limit credit card acceptance fees charged by "designated payment card networks" to merchants who accept payment by credit card, eliminating credit card acceptance fees being charged to charities
  - Currently, only MasterCard and Visa are proposed to be "designated payment card networks"
- If passed without amendments, Bill S-202 would benefit charities by allowing donations to be made by credit card without additional credit card acceptance fees

www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---

---

---

---

14

**4. Bill C-28 "Canada's Anti-Spam Legislation" (CASL)**

- CASL will come into force on July 1, 2014
- CASL will impact how charities and non profit organizations communicate with their donors, volunteers and members
- The regulations include a specific exemption from CASL for select messages sent by registered charities for fundraising purposes
- For more details, see presentation by Ryan Prendergast titled "Navigating Canada's New Anti-Spam Laws"

www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---

---

---


---

15

**C. HIGHLIGHTS OF RECENT CRA PUBLICATIONS**

**1. Guidance on How to Draft Purposes for Charitable Registration**

- On July 25, 2013, CRA released its Guidance on How to Draft Purposes for Charitable Registration
- The Guidance contains CRA's recommended approach to drafting charitable purposes, identifying three key elements of charitable purposes, including:
  - 1) The Charitable Purpose Categories
    - The purpose must be exclusively charitable (subject to limited exceptions) falling within one or more of the following four categories:
      - Relief of poverty
      - Advancement of education
      - Advancement of religion



www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---

---

---

---

16

**BENEFITS**

- Other purposes that are beneficial to the community in a way that the law regards as charitable and provide a benefit to the public or a sufficient segment of the public
  - It can be met by using the wording of the particular category, (e.g. “advancement of religion”)
  - For the fourth category, it is necessary to specify the particular purpose within that broad category

2) The Means of Providing the Charitable Benefit

- The purpose should define the scope of activities conducted to directly further the purpose and ensure the provision of a charitable benefit

3) The Eligible Beneficiary Group

- The charitable benefit should be provided to the public or a sufficient section of the public

www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---

---

17

**GUIDANCE**

- The Guidance provides definitions of the first three categories of charitable purposes which synthesize a complicated body of case law in each category
- This appears to be the first time that a CRA Guidance has provided a definition with respect to the charitable category of advancement of religion, defining it as:
  - “manifesting, promoting, sustaining, or increasing belief in a religion’s three key attributes, which are: faith in a higher unseen power such as a God, Supreme Being, or Entity; worship or reverence; and a particular and comprehensive system of doctrines and observances”
- The Guidance addresses various other factors regarding charitable purposes:

www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---

---

18

**REVIEW**

- Charitable purposes should not be too broad or vague so that CRA can access whether it is exclusively charitable and not open to interpretation
- Organizations pursuing unstated purposes through activities that are not charitable are not eligible for charitable registration or maintaining charitable registration if subject to an audit
- The CRA offers a one-time review of:
  - Proposed purposes in draft governing documents of organizations wishing to attain charitable status
  - Proposed amendments to governing documents and a detailed statement of activities of organizations wishing to amend such documents

www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---


---



19

## 2. Guidance on Purposes and Activities Benefiting Youth

- On June 24, 2013, CRA Charities Directorate released its Guidance dealing with organizations that benefit youth
- The Guidance replaces the earlier CPS-015 Registration of Organizations Directed at Youth
- The Guidance describes how CRA determines whether an organization that benefits youth is eligible to become a registered charity under the ITA or presumably can continue as a charity if subject to an audit by CRA



[www.carters.ca](http://www.carters.ca) [www.charitylaw.ca](http://www.charitylaw.ca)

---

---

---

---

---


---

---

---

20

- Whereas the former policy defined youth with respect to age, the new Guidance defines "Youth" as "young people, without restriction to a specific age range, which will now depend on the nature of the charitable purposes and activities in question."
- The Guidance also defines "at-risk youth" as "youth who are in danger of not making a successful transition to healthy and productive adulthood as a consequence of a range of possible issues, including, but not restricted to, learning difficulties, socio-economic environment, social relationships, and family/school situations."
- Purposes that benefit youth may fall under any of the four categories of charity described in the Guidance on How to Draft Purposes for Charitable Registration



[www.carters.ca](http://www.carters.ca) [www.charitylaw.ca](http://www.charitylaw.ca)

---

---

---

---

---


---

---

---

21

- Eligible beneficiaries are those people who may qualify to receive the benefits from the charitable purpose or from its respective activities
- Purposes may either allow all youth or particular youth to benefit
- The public benefit that is delivered by a charitable purpose needs to be "a reasonably direct result of the purpose and activities"
  - Incidental activities that do not further the purpose will not meet this public benefit requirement
- An organization must use "substantive evidence of a causal connection" to show that an activity can provide a public benefit by structuring and focusing activities to address the identified youth problem



[www.carters.ca](http://www.carters.ca) [www.charitylaw.ca](http://www.charitylaw.ca)

---

---

---

---

---



---

---

---

22

- An organization can demonstrate structure and focus through:
  - The activity's form (e.g. structured discussions);
  - The communications between qualified individuals and youth; and
  - Roles and responsibilities of youth in activities (e.g. allowing youth to participate in supervisory roles)
- The Guidance outlines various examples of charitable purposes and activities relating specifically to youth:
  - Purposes with a "teaching or learning component"
  - Social or recreational activities that further a charitable purpose
  - Sports activities designed to address youth problems, provided that there is a causal link between the activity and the charitable benefit



www.carters.ca www.charitylaw.ca

---

---

---

---

---

---


---

---

23

### 3. Guidance on the Promotion of Health and Charitable Registration

- On August 27, 2013, CRA released a new Guidance on the Promotion of Health and Charitable Registration (CG-021 replacing earlier policies)
- The Guidance states that the promotion of health is a charitable purpose upon which organizations may be eligible for charitable registration
- The Guidance defines the promotion of health as "directly preventing or relieving physical or mental health conditions by providing health care services or products to eligible beneficiaries"
- Promotion of health is a charitable purpose under the following two conditions:



www.carters.ca www.charitylaw.ca

---

---

---

---

---

---


---

---

24

- It provides services or products to the public, thereby directly preventing and/or relieving a physical or mental condition; and
- It must meet relevant requirements for quality and safety

- Additionally, to be eligible for charitable registration, promotion of health must:
  - Be provided only to eligible beneficiaries (the public or a sufficient section of the public)
  - Not provide unacceptable, non-incidental private benefits
- The Guidance divides health related purposes into four categories:



www.carters.ca www.charitylaw.ca

---

---

---

---

---


---

---

---

25

- Core health care
- Supportive health care
- Protective health care
- Health care products
- The Guidance discusses special topics related to healthcare which may further charitable purposes:
  - Complementary or alternative health care services
  - Physical fitness and wellness
  - Providing information as a charitable activity
  - Providing medical clinics
  - Providing health care services in underserved areas or areas of social and economic deprivation
- Charities may charge fees, as long as the fees do not further a profit purpose



www.carters.ca www.charitylaw.ca

---

---

---

---

---


---

---

---

26

- The Guidance states that some health-related activities may further other charitable purposes as well, such as relieving poverty, advancing education, and advancing religion in the charitable sense, as described below:
  - There must be "a clear and material connection between the activity and the religion's key attributes"
  - Eligible beneficiaries are the public at large
  - There are two situations in which health-related activities may further advancement of religion:
    - Providing health care to the public, and by doing so, promoting the doctrines of a religion
    - Providing health care to religious staff, including those retired, in support of religious contribution or service



www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---

---

27

#### 4. Guidance on Foreign Activities Changing Rules on Capital Property in a Foreign Country

- On an earlier date (likely in June 2012), Appendix B of CRA Guidance - CG-002 "Canadian Registered Charities Carrying Activities Outside of Canada" was amended
- It is now titled "What if a charity wants to transfer capital property to a non-qualified donee in a foreign country?"
- CRA has now made it much more challenging for a charity operating in a foreign jurisdiction to transfer ownership of capital property to a non-qualified donee:
  - Transferring such ownership is now only permitted in the following three circumstances:
    - If the jurisdiction in which the charity operates prohibits foreign ownership of capital property



www.carters.ca www.charitylaw.ca

---

---

---

---


---

---

---

---

28



- If the capital property is transferred to relieve poverty by assisting communities develop into self-sufficient communities
- If the charity has proof that it has unsuccessfully made every reasonable effort to gift the capital property to a qualified donee and to sell it at fair market value

- The amendment may also affect the basic elements of a written agreement between the parties in such situations situation, as set out in Appendix F of the Guidance
  - Appendix F will presumably now need to be read subject to the more onerous requirements above

www.carters.ca www.charitylaw.ca

---

---

---

---

---


---

---

---

29

### 5. New T3010(13) and T4033 Forms Released



- CRA released new T3010 forms for charities with fiscal periods ending on or after January 1, 2013 in response to Budget 2012 amendments (Bill C-38) requiring that charities give more details about their political activities
  - Bill C-38 amended the definition of “political activity” under s. 149.1(1) of the ITA to include “the making of a gift to a qualified donee if it can reasonably be considered that a purpose of the gift is to support the political activities of the qualified donee”
  - Bill C-38 also required that charities disclose more information concerning their political activities
- The new T3010(13) asks if the charity carried on any political activities during the fiscal year, including “gifts to qualified donees...intended for political activities.”

www.carters.ca www.charitylaw.ca

---

---

---

---


---

---

---

---

30



- A charity that participates in political activities must complete Schedule 7 and:
  - describe its political activities, including gifts made to qualified donees intended for political activities
  - explain how these political activities relate to its charitable purpose
  - disclose how it has conducted its political activities
  - disclose the political activity that the funds indicated on line 5032 were intended to support and the amount received from each country outside Canada
- Additionally, CRA has developed a number of pages on its website explaining key aspects of its Policy Statement CPS-022, Political Activities to help charities comply with its political activities requirements

www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---

---

31

**6. Gifts and Income Tax**

- CRA has updated its pamphlet on Gifts and Income Tax
- It includes information on the first time donor's super credit, the meaning of "gift" under the ITA, types of gifts, donations of property and appraisals, official donation receipts, gifts of capital property, capital gains and losses and fair market value

**7. CRA Website Updates**

- Two new webpages include helpful information on how to change a charity's directors and like officials and authorized representatives

www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---

---

32

**D. CORPORATE UPDATE**

**1. Canada Not-for-profit Corporations Act (CNCA)**

**a) Status of CNCA**

- Canada Corporations Act ("CCA") since 1917
- Enacted on June 23, 2009, in force October 17, 2011
- Replaced Part II of CCA
- Existing CCA corporations required to continue under the CNCA within 3 years - i.e., by October 17, 2014
- Failure will lead to dissolution of the corporation
- According to Industry Canada, there are an estimated 17,000 Part II CCA non-profit corporations.
- As of December 31, 2013, only 2600 or 15% of not-for-profit corporations incorporated under the CCA had continued under the CNCA

www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---

---

33

**2. New Ontario Not-for-Profit Corporations Act**

- The Ontario Corporations Act has not been substantially amended since 1953
- The new Ontario *Not-for-Profit Corporations Act* received Royal Assent on October 25, 2010
- For a variety of reasons it is not expected to be proclaimed into force before the first half of 2015
- For more details see presentation by Tanya Carlton titled "Update on the CNCA"

www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---

---

34

**3. Manitoba Bill 46, 2013**

- Bill 46 repeals Manitoba's *Charities Endorsement Act*, effective December 31, 2013
- As a result, charities that were once required to apply for authorization to solicit funds under the Act are no longer required to do so

**4. Ontario Bill 36 Local Food Act, 2013**

- This Bill provides a non-refundable tax credit to eligible persons involved in the business of farming in Ontario
- Eligible persons who donate agricultural products produced in Ontario to eligible community food programs (e.g. food banks) will receive a provincial tax credit worth 25% of the FMV of the donation

www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---

---

35

**5. Ontario Social Enterprise Strategy Announced**

- On September 26, 2013, the Ontario Ministry of Economic Development, Trade and Employment announced "Impact - A Social Enterprise Strategy for Ontario" to support social enterprises in Ontario
- Social enterprises "use business strategies to maximize [their] social and environmental impact"
- The Social Enterprise Strategy aims to:
  - Connect, co-ordinate and communicate information to, and about, social enterprise
  - Build the social enterprise brand
  - Create a vibrant social finance marketplace
  - Deliver service, support and solutions
- It is not known when enabling legislation will be introduced

www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---


---

36

**E. SELECTED CASE LAW**

**1. *Pal et al v Chatterjee et al*, 2013 ONSC 1329, March 3, 2013**

- The decision involved Toronto Kalibari, an incorporated religious organization governed by a board of nine directors referred to in its by-laws as "trustees"
- On October 10, 2012, a member of the corporation circulated a petition which made various allegations and requested a special meeting of members
  - Two trustees signed the petition
  - A third trustee, although not a signatory to the petition, supported the allegations
- The other six trustees attempted to orchestrate a show cause hearing to remove the three dissident trustees as members of the corporation

 **CASE LAW**

www.carters.ca www.charitylaw.ca

---

---

---

---

---


---

---

---

37

- The court examined the by-laws of the corporation and determined that there was no method available for the removal of the trustees
- The court found that the termination of the applicants as trustees warranted intervention and that the show cause hearing was being initiated for the improper and oblique purpose of their removal
- The decision is a reminder that corporate proceedings to discipline or terminate a member cannot be commenced for an improper or ulterior purpose



[www.carters.ca](http://www.carters.ca) [www.charitylaw.ca](http://www.charitylaw.ca)

---

---

---

---

---

---

---

---

38

**2. *Diaferia et al v Elliott et al*, 2013 ONSC 1363, March 7, 2013**

- *Diaferia v Elliott* was an application for an interlocutory injunction preventing a membership meeting discussing whether or not a church's pastor should be dismissed
- Church membership required members to complete a three-step process involving an interview, baptism, and confirmation by church membership vote
- Upon the elders announcing on February 10 a meeting of members to discuss the pastor's dismissal on March 3, the pastor called, with support of 5 members, a meeting of elders to be held on February 24 to consider membership of those that supported him

[www.carters.ca](http://www.carters.ca) [www.charitylaw.ca](http://www.charitylaw.ca)

---

---

---

---

---


---

---

---

39

- The elders, however, decided that only those who had met the qualification requirements for membership as of February 10, 2013 would be recommended for admission into membership
- Of 14 applicants, 12 were denied membership
- Three members of the Church sought and were granted an injunction to prevent the meeting called for March 3
- The court sought to ensure that there was a level playing field for both sides concerning the employment of the pastor
- This case is a reminder that if a procedure for admitting members is in the organization's governing documents, it should be followed, and should be made well known to those who want to become members



[www.carters.ca](http://www.carters.ca) [www.charitylaw.ca](http://www.charitylaw.ca)

---

---

---

---

---

---


---

---

40

**3. *Prescient Foundation v MNR, 2013 FCA 120, May 1, 2013***

- Pursuant to a CRA audit in 2008, CRA issued a notice of intention to revoke Prescient Foundation's charitable registration based on three key issues:
  - 1) Prescient donated \$500,000 to a foreign non-qualified donee
  - 2) Prescient was involved in the sale of a farm, where sale proceeds were routed on a tax-free basis "for the private benefit of certain taxpayers"
  - 3) Prescient had "failed to maintain adequate books and records" by only providing CRA with several relevant documents and not allowing CRA to verify information in the Foundation's financial statements and registered charity information returns



[www.carters.ca](http://www.carters.ca) [www.charitylaw.ca](http://www.charitylaw.ca)

---

---

---

---

---


---

---

---

41

- The Federal Court of Appeal ("FCA") held that the revocation of Prescient's registration for the gifts to the non-qualified donee was unfounded since there was no legislative basis at that time to enforce such position despite CRA's administrative position and proposed amendments not yet in force
- Regarding books and records, the FCA stated that CRA must "(a) clearly identify the information which the registered charity has failed to keep, and (b) explain why this breach justifies the revocation of the charity's registration thereby questioning CRA's determination of books and records"
- On November 28, 2013, the Supreme Court of Canada January dismissed Prescient's application for leave to appeal



[www.carters.ca](http://www.carters.ca) [www.charitylaw.ca](http://www.charitylaw.ca)

---

---

---

---

---

---


---

---

42

**4. *Guindon v The Queen, 2013 FCA 153, June 12, 2013***

- CRA assessed a penalty of \$564,747 against Guindon under section 163.2 of the ITA
  - Guindon had provided a legal opinion on the "The Global Trust Charitable Donation Program" charitable donation scheme
  - She also issued 134 charitable donation receipts
- S. 163.2 provides for monetary penalties assessable against third parties who knowingly, or through gross negligence, participate in, promote, or assist conduct that results in another taxpayer making a false statement or omission in a tax return
- The Tax Court of Canada ("TCC") held that the section 163.2 penalties to be applied were of a criminal nature, as per s. 11 of the *Charter*



[www.carters.ca](http://www.carters.ca) [www.charitylaw.ca](http://www.charitylaw.ca)

---

---

---

---

---

---


---

---



43

- The Tax Court's decision was overturned on appeal by the FCA on the basis that:
  - Guindon failed to serve a notice of constitutional question when she sought a finding that a section of the Act was invalid, inoperative or inapplicable
    - The TCC therefore had no jurisdiction to consider whether s. 163.2 created a criminal offence under s. 11 of the *Charter*
  - The FCA also held that proceedings under section 163.2 are in place to maintain discipline, compliance or order "within a discrete regulatory and administrative field of endeavour" and are, therefore, not criminal in nature
- On September 11, 2013, Guindon filed for leave to appeal to the Supreme Court of Canada



www.carters.ca www.charitylaw.ca

---

---

---

---

---

---


---

---

44

**5. *RC v District School Board of Niagara, 2013 HRTO 1382, August 13, 2013***

- This application was commenced by self-described atheists asking the Tribunal to consider whether materials explaining atheism should have the same protection and ability to be available to students as materials explaining or promoting religions, such as Christianity or Islam
- To answer this question, the Tribunal needed to decide whether atheism should be considered a "creed", and thus a protected ground under the Ontario Human Rights Code ("Code")
- The Tribunal decided that atheism is a "creed" under the Code for purposes of preventing discrimination on the basis of religious belief



**CASE LAW**

www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---

---

45

- However, the Tribunal did not have to decide whether atheism is a "religion" for purposes of the Code, since "creed" is a broad term that includes religion
- As such, the Tribunal decision is not expected to impact the definition of religion for purposes of "advancement of religion" under the common law in becoming a registered charity under the ITA
- Equally important is that the decision also confirmed that religious groups can be granted permission to distribute religious materials at schools, provided that such opportunity is offered to all creeds on an equal basis and that the materials are distributed outside the classroom

www.carters.ca www.charitylaw.ca

---

---

---

---

---

---

---

---

46

### 6. *Carson v The Queen* 2013 Tax Court of Canada

- The taxpayer claimed a charitable donation for a charity's use of two rooms in his wife's home
- What is noteworthy is the Court's disagreement with CRA's position that a transfer of property does not include a grant of a right to use property
- The Court said "CRA is presuming that a legal right acquired by lease is not property, only money actually transferring hands is a transfer of property eligible to qualify as a charitable gift."
- However, the taxpayer was not successful because it was not his house and there was no lease

www.carters.ca

www.charitylaw.ca

---

---

---

---

---

---

---

---

47

### 7. *Delicata v Incorporated Synod of Diocese of Huron Ont. C.A. 2013*

- The Court ruled that parish property stays with Diocese when members vote to leave the Diocese, rejecting the parishioners position that a parish is a fluid concept representing the people who are there at any one time
- The Court held that using parish funds to pay legal fees was a breach of trust and also awarded costs against the church wardens, as the unsuccessful parties in the litigation

www.carters.ca

www.charitylaw.ca

---

---

---

---

---

---

---

---

48

### 8. *Gour* Ontario Court of Appeal, January 20, 2014

- The Ontario Court of Appeal upheld the conviction and sentence of a fundraiser, Adam Gour, who employed commission based fundraisers to pose as volunteers to solicit donations and used images of sick children without their parents consent representing that donations would be going to them
- The Court of Appeal upheld the trial judge's sentence that Gour pay a fine of \$280,000.00 and be jailed for fifteen months
- The Court upheld the trial judge's finding that Gour had instructed his staff to mislead the public

www.carters.ca

www.charitylaw.ca

---

---

---

---

---

---

---

---