

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

### NOVEMBER 2009 ISSUE

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Charities Legislation & Commentary, 2010 Edition Now Available!
2009 Annual <i>Church &amp; Charity Law</i> ™ Seminar Materials are Now Available

### 2010 Ottawa Region *Charity & Not-for-Profit Law Seminar*

Hosted by Carters Professional Corporation in Ottawa, Ontario.

Thursday, February 18, 2010.

Details available soon at <http://www.charitylaw.ca>.

**Get on Our Mailing List:** To automatically receive the free monthly *Charity Law Update*, send an email to [info@carters.ca](mailto:info@carters.ca) with "Subscribe" in the subject line. Please feel free to forward this Update to anyone (internal or external to your organization) who may be interested in being put on our monthly mailing list.

## RECENT PUBLICATIONS AND NEWS RELEASES

### **Bill 212 Brings Significant Reform to the Regulation of Charities in Ontario**

Terrance S. Carter in *Charity Law Bulletin* No. 181, November 26, 2009.

On Wednesday, October 27, 2009, the Attorney General for Ontario introduced Bill 212, the *Good Government Act*, 2009, (“Bill 212”) in the Ontario Legislature, which passed second reading on November 18, 2009. Bill 212 is currently before the Standing Committee on Finance and Economic Affairs, and it is expected to return before the House by November 30, 2009. If Bill 212 passes, it will mean significant reform to the regulation of charities in Ontario by overcoming limitations that have for decade’s plagued charities operating in Ontario. Most of these changes are a direct result of an initiative by the Ontario Bar Association’s Charity and Not-for-profit Section in calling for reform in this area. The following *Charity Law Bulletin* reviews the many changes to be implemented by this Bill.

#### **Read More:**

[PDF] <http://www.carters.ca/pub/bulletin/charity/2009/chylb181.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2009/chylb181.htm>

### **Tax Court of Canada denies Leveraged Donation Tax Credit**

Karen J. Cooper.

On November 12, 2009, the Tax Court of Canada released its decision in *Maréchaux v. The Queen*, 2009 TCC 587, a decision related to the denial of a donation tax credit with respect to a leveraged gifting arrangement. The appellant in was one of 118 participants in the 2001 Donation Program for Medical Science and Technology (the “Program), marketed by Trinity Capital Corporation (the “Promoter”). On December 31, 2001, the appellant received an \$80,000 non-interest bearing loan, \$70,000 of which was added to \$30,000 of his own funds and transferred to a charity. The remaining \$10,000 of the loan was paid to the lender for the fees, insurance and security deposit. The appellant then received a donation receipt from the charity in the amount of \$100,000. CRA disallowed the tax credit in respect of the appellant’s \$100,000 donation in its entirety and the appellant appealed to the Tax Court of Canada (TCC). The TCC’s decision turned on whether the \$100,000 donation could be considered a gift. Because the *Income Tax Act* does not define the term “gift” the TCC examined briefly how the general meaning of the word gift has been expressed in case law, including the definition of “gift” that was stated in *The Queen v. Friedberg*, 92 DTC 6031(FCA), at 6032: “...a gift is a voluntary transfer of property owned by a donor to a donee, in return for which no benefit or consideration flows to the donor.” The TCC applied the *Friedberg* definition to the facts of the appeal and stated “it is clear that the appellant did not make a gift to the [charity] because a significant benefit flowed to the appellant in return for the donation.” The decision is significant because it is one of the first dealing with a

leveraged donation gifting arrangement from the donor's perspective. A more detailed discussion of the case will appear in a forthcoming *Charity Law Bulletin*.

## **Commercial activities and other issues involving non-profit organizations**

Theresa L.M. Man.

On November 5, 2009, CRA released a technical interpretation clarifying its position on various issues involving non-profit organizations (NPOs) defined under paragraph 149(1)(l) of the *Income Tax Act*, such as whether NPOs can earn a profit or engage in commercial activities, and whether CRA maintains a list of NPOs.

On the question of whether an NPO can compete against taxable entities, CRA responded, after referring to the BBM case (*BBM Canada v. Canada (Minister of National Revenue)*, 2008 TCC 341), that the *Income Tax Act* does not prohibit an NPO from engaging in certain types of activities, including commercial activities, and therefore it is permissible for NPOs to compete against taxable entities.

In relation to the question of whether an NPO can earn a profit, CRA's view is that an NPO can earn a profit, provided that it is unanticipated and incidental to carrying out the NPO's exclusively not-for-profit purposes. CRA is of the view that an NPO cannot *intentionally* earn a profit, even though the profits are used to fund the activities of the organization, because it does not matter what the profit is used for.

CRA also expressed its view that incorporation under federal or provincial not-for-profit corporate legislation does not necessarily mean that such corporation would qualify to be an NPO under the *Income Tax Act*, because the requirements under the corporate legislation and the *Income Tax Act* are different. Lastly, CRA indicated that it does not maintain a list of NPOs, since they are not required to register with CRA.

Technical Interpretations are only available through commercial subscription services or a direct request to CRA.

## **Charity Law Update for Estates and Trusts Practitioners: The Past Year in Review**

Presented by Terrance S. Carter at The 12th Annual Estates and Trusts Summit hosted by the Law Society of Upper Canada in Toronto, Ontario, on November 12, 2009.

The law of charities has always been an important area of practice for estates and trusts practitioners, whether it be with regard to drafting *inter vivos* or testamentary charitable gifts, administering estates which include gifts to charities, or advising trustees or boards of directors concerning the operations of a charity. As such, it is useful for estates and trusts practitioners to keep abreast of current developments in the law of charities.

In this regard, the charitable sector in Canada has seen a number of important regulatory and common law developments over the past 12 months at both the federal and provincial level which will have a significant impact on how charities operate. To this end, this paper provides an overview of some of the more important of these recent developments, including changes under the *Income Tax Act* (“ITA”), new Policies, Guidances, Commentaries and other publications from the Charities Directorate of the Canada Revenue Agency (“CRA”), technical interpretations from CRA, decisions of the Federal Court of Canada, as well as other federal and provincial legislative initiatives affecting charities, including the proposed repeal of the *Charitable Gifts Act* and the proposed changes to the *Charities Accounting Act* that were just introduced on October 27, 2009.

**Read More:**

[PDF] <http://www.carters.ca/pub/article/charity/2009/tsc1112.pdf>

## **Funding the Sector – The Need for Substantial Reform**

Donald J. Bourgeois in *Charity Law Bulletin* No. 179, November 25, 2009

While I was on a recent trip to Rome - marvelling at the heritage that surrounds you, the legacy of infrastructure dating back two millennia, of artistic expression and creativity that spans centuries, and of support for the charitable or not-for-profit sector – several newspaper articles were run which speak to the funding difficulties for the sector in Canada. One of the articles reported on the Canadian Heritage Minister’s speech that the arts and culture sector needed to find other sources of revenues than governments. This pronouncement, at least as it was reported, seemed to suggest that the charitable or not-for-profit sector – not just the arts and culture component – was oblivious to the risks of relying upon one primary source of revenue. Those risks are exacerbated by a government that is erratic in its approach to funding and to the sector, and one that has not defined its objectives, much less a clear public policy for the sector.

**Read More:**

[PDF] <http://www.carters.ca/pub/bulletin/charity/2009/chylb179.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2009/chylb179.htm>

## **Non-Qualifying Securities**

Karen J. Cooper.

In *Remai, e. AS Executrix of Estate of F. Remai v. The Queen*, 2009 FCA 340, a decision released November 19, 2009, the Federal Court of Appeal (FCA) upheld an earlier decision of the Tax Court of Canada (TCC) (see Charity Law Update September 2008 for a discussion of the TCC decision). Mr. Remai owned 100% of the shares of a management company, which paid him management fees in the form of interest bearing promissory notes. Prior to his death, he donated two of these promissory notes

to his private foundation. The foundation thereafter sold the notes to Sweet Developments Ltd., a corporation controlled by Mr. Remai's nephew. Sweet carried on business activities for and with Mr. Remai and was involved in partnerships with corporations owned and controlled by Mr. Remai. CRA reassessed Mr. Remai's terminal return and disallowed the deductions on the basis that the sale of the notes was not executed at arm's length and, therefore, the notes were non-qualifying securities as defined under subsection 118.1(18) of the *Income Tax Act* ("Act"). CRA also took the position that the sale of the notes constituted an avoidance transaction that resulted in a misuse or abuse of the provisions of the Act pursuant to the general anti-avoidance rule (GAAR).

The estate appealed the assessment to the TCC, which allowed the appeal. The FCA found that the Tax Court judge did not err when he found that (i) the disposition of the promissory notes by the Foundation to a third party was an arm's length transaction; and (ii) the disposition was not a misuse of provisions of the *Income Tax Act*, and thus was not caught by GAAR. With respect to the application of the GAAR, the parties agreed that the sale of the promissory notes by the Foundation to Sweet was an avoidance transaction because it was entered into primarily for tax avoidance reasons. However, the FCA agreed with the Tax Court judge's conclusion that to allow the tax benefit claimed by the taxpayer would not frustrate the legislative purpose of the provisions relating to non-qualifying securities. According to the FCA, the rationale behind disqualifying certain gifts from a charitable tax credit is because of the practical difficulty of assessing their fair market value. Paragraph 118.1(13)(c) of the *Income Tax Act* allows these non-qualifying securities to be redeemed if sold to a third party in an arm's length transaction, because the price paid by the third party indicates the fair market value of the security. The sale of the promissory notes by the Foundation to Sweet was consistent with this purpose. Therefore, the GAAR did not apply to disallow the charitable tax credit.

The full text of the Federal Court of Appeal's decision is available at:

<http://www.canlii.org/en/ca/fca/doc/2009/2009fca340/2009fca340.html>.

## **Waivers of Liability for Charity and Not-For-Profit Events: An Update of the Law**

Barry W. Kwasniewski in *Charity Law Bulletin* No. 178, November 25, 2009.

The use of written contractual waivers of liability has been a long standing practice among many charities and not-for-profit organizations. However, recent cases from trial courts in Ontario and British Columbia have highlighted the need for careful drafting of waivers to increase the likelihood that they will be declared enforceable by a court. This *Charity Law Bulletin* explains these recent court decisions and summarizes the lessons to be learned in preparing effective waivers as part of the risk management plan for charities and not-for-profits.

**Read More:**

[PDF] <http://www.carters.ca/pub/bulletin/charity/2009/chylb178.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2009/chylb178.htm>

**Measuring Comparative Worthiness: Striation of Charities in Canada**

Presented by Terrance S. Carter and Theresa L.M. Man at the New York University National Centre on Philanthropy and the Law's 21st Annual Conference on October 30, 2009.

This paper, prepared for the New York University National Centre on Philanthropy and the Law's 21st Annual Conference on the theme of “Measuring Comparative Worthiness,” examines the questions of whether activities directed at relieving poverty or benefiting the poor should be treated as more worthy than other types of charitable activity; and whether all charities (such as hospitals, universities, museums, and operas, etc.) should be required to provide at least some of their services for the poor free of charge or at low cost. In other words, should there be an interest not only in what a charity spends on, but also about whom the charity spends on?

The paper is available for download at the link below.

**Read More:**

[PDF] <http://www.carters.ca/pub/article/charity/2009/tsctlm1030.pdf>

**C.D. Howe Institute Proposes a Federated Canadian Council of Charities**

Terrance S. Carter.

On November 12, 2009, the C.D. Howe Institute released a paper, authored by Ottawa based charity lawyer Adam Aptowitzer, entitled “*Bringing the Provinces Back In: Creating a Federated Canadian Council of Charities*” (“the Paper”). The Paper proposes a new regulatory regime for Canadian charities, involving the provinces, together with the federal government in creating a hybrid federal-provincial “Charities Council.” The Paper points out that the provinces should be made part of a new federal-provincial regime, given their constitutional jurisdiction over charities mandated under the *British North America Act*.

The proposed “Charities Council,” which would be distinct from Canada Revenue Agency (“CRA”) and independent from the federal and provincial governments, would oversee the registration of charities in accordance with the common law, free from the fiscal considerations of CRA. The “Charities Council” would also draft new policies and guidelines; much like the CRA does now, as well as provide an opportunity for disputes to be heard before an independent tribunal. The Paper criticizes the appropriateness of CRA administering charities, given the conflict involved in CRA’s mandate to maintain the national tax base, while at the same time administering the registering and regulation of charities under the *Income Tax Act*, which lessens the tax base.

Although this call for reform is not new, given the success of similar independent regulators in other jurisdictions, like the United Kingdom, and the recent proposal for a body distinct from the tax regulator in Australia (as discussed in this November 2009 *Charity Law Update*), it is a topic worth discussing in the Canadian context. However, how practical the proposal will prove to be in the long run, given the constitutional structure of Canada, remains to be seen.

For more information, the full paper is available at: [http://www.cdhowe.org/pdf/commentary\\_300.pdf](http://www.cdhowe.org/pdf/commentary_300.pdf).

## **Privacy Commissioner Raises Concerns about Major National Security Programs**

Sean S. Carter

On November 17, 2009, Canada's Privacy Commissioner tabled the 2008-2009 Annual Report to Parliament on the *Privacy Act* (the "Report"). The Report contains audits of the major national security programs, including audits of the Financial Transactions and Reports Analysis Center of Canada ("FINTRAC") and Transport Canada's Passenger Protect Program. The Privacy Commissioner raises a variety of concerns in the Report and concludes that in the face of a "proliferation of new national security programs," it is "critical to integrate new privacy protections" into all of these programs.

The Privacy Commissioner's audit of the Passenger Protect Program, Canada's 'no-fly list,' raises privacy concerns because of its use of personal information without the knowledge of the individuals concerned. Other privacy concerns were raised in the audit, as it was revealed that officials did not always provide the Deputy Minister, who is ultimately in charge of who is on the list, with complete information to allow for informed decision making.

The Report also considers the audit of FINTRAC, an independent government agency in charge of collecting, analyzing and distributing information provided by various "reporting entities," such as financial institutions, accountants, and life insurance companies in order to combat terrorist financing and money laundering. The audit of FINTRAC found examples of several troubling situations, including one in which a report of a "suspicious transaction" was sent to FINTRAC by a reporting entity based solely on an individual's ethnic origin and the foreign countries recently visited by that person. The consequences of a "suspicious transaction" being reported to FINTRAC could be substantial because once FINTRAC receives information from the reporting entities, that information could be passed to other government agencies, such as the RCMP, CRA or even foreign law enforcement agencies.

The Privacy Commissioner's Report details many concerns with the implementation of Canada's national security programs that could impact both individuals and organizations. The Report is available at: [http://www.priv.gc.ca/information/ar/200809/200809\\_pa\\_e.pdf](http://www.priv.gc.ca/information/ar/200809/200809_pa_e.pdf). For more information regarding FINTRAC and the legislation that has greatly expanded its role in Canada's terrorist financing and

money laundering initiatives as it impacts charities, please see *Anti-terrorism and Charity Law Alert No. 12* available at <http://www.carters.ca/pub/alert/ATCLA/ATCLA12.pdf>.

## **Charity Commission Releases "Faith in Good Governance"**

Jennifer M. Leddy.

On November 20, 2009, The Charity Commission for England and Wales released "Faith in Good Governance," a guidance on aspects of legal requirements and good practice relating to governance which are most relevant to faith based charities. The Guidance is aimed at newer smaller charities that have a religious purpose "whose primary focus is religious worship and associated activities" rather than "wider social or pastoral activity." The Commission acknowledges, however, that "many charities with a religious purpose will undertake such wider activity as the outworking of that religious purpose," and (that) "there are also many charities which have a religious inspiration or ethos but are established for charitable purposes other than the advancement of religion." This neatly encapsulates the Commission's understanding of the charitable purpose of advancing religion that was set out in its Guidance, "The Advancement of Religion for the Public Benefit," and released almost one year ago. For a review of the Guidance, see *Church Law Bulletin* No. 25 (February 26, 2009) entitled "New U.K. Charity Commission Policy on the Advancement of Religion for the Public Benefit" available at <http://www.carters.ca/pub/bulletin/church/2009/chchlb25.htm>.

While the recently released Guidance relates to the English context, there are parts that might be borrowed for the Canadian context with appropriate adjustments. For example, it deals with areas such as "religious leaders and trusteeship" and provides a link to some model governing documents for new independent churches. It also provides a helpful summary and examples of the rules relating to private benefit for religious leaders. Any benefits must be "incidental," which means benefits that are "a necessary part of the process of carrying out the charity's aims or (are) received as a necessary consequence of carrying out the aims and the level of benefit given must be reasonable."

The Guidance was launched by the Commission's Faith and Social Cohesion Unit during National Inter-faith week in England. The Guidance was the result of on-going consultation with faith based charities who requested a publication tailor made for faith-based charities. The Guidance may be accessed at <http://www.charity-commission.gov.uk/>.



## Charity Commission Releases Compliance Toolkit on Charities and Terrorism

Nancy E. Claridge and Terrance S. Carter

On November 10, 2009, the Charity Commission of England and Wales released the first chapter of their online Compliance Toolkit on charities and terrorism (“the Guidance”), providing key information regarding anti-terrorism legislation in the United Kingdom. The Guidance recognizes that while proven instances of terrorism being associated with the charitable sector are rare, they are “completely unacceptable” and erode public confidence in the good work that many charities do.

In *Anti-Terrorism and Charity Alert* No. 17, we express concerns with respect to Canada Revenue Agency’s approach to providing guidance to charities through the release of their “Checklist for Charities,” which was overly simple and provided excessive recommendations, and referring to compliance documents other jurisdictions had produced rather than providing a “one-stop shop” document for charities. By comparison, the Guidance from the Charity Commission was produced in consultation with the charitable sector in England and Wales in response to demand from the sector for detailed advice for charities to remain in compliance with the U.K’s anti-terrorism legislation.

The Guidance aims to build greater awareness of the risks charities face from terrorist abuse; promote steps that can be taken to minimize this risk; and ensure operators of charities in England and Wales are aware of their legal obligations in relation to anti-terrorism legislation. In this regard, the Guidance provides a module on the different forms terrorist abuse of a charity may take, how terrorist financing operates, as well as what the Charity Commission expects of charities in England and Wales to remain duly diligent. Look for further information on the Guidance in a future *Charity Law Bulletin*.

The Guidance is available online at:

<http://www.charity-commission.gov.uk/investigations/toolkitintro.asp>.

## Australian Commission Proposes Overhaul of Charity and Not-For-Profit Regulation

Terrance S. Carter in *Charity Law Bulletin* No. 180, November 26, 2009.

On October 14, 2009, the Productivity Commission for the Government of Australia (“the Commission”) released a draft report entitled *Contribution of the Not-for-profit Sector* (“the Report”). The Commission was asked by the Australian government to measure the contribution of the not-for-profit sector in Australia, as well as to: examine ways to improve the efficiency and effectiveness of the sector, including the delivery of state sponsored services; review changes in the nature of the relationship between the government, business and the not-for-profit sector; and lastly, consider the issues related to effect of tax concessions available to not-for-profits on philanthropic and competitive neutrality. The Report notes that there is “considerable scope for measurement to assist the sector and its supporters in improving understanding of the effectiveness of NFP (not-for-profit) activities in achieving their

objectives and the contribution these outcomes make to community wellbeing.” The overview of issues facing the not-for-profit sector in Australia, as outlined in this *Charity Law Bulletin*, will be relevant for Canadian charities, whether it be advocating for change in the sector or operating a registered charity, since many of these issues are similar to those affecting Canadian charities.

**Read More:**

[PDF] <http://www.carters.ca/pub/bulletin/charity/2009/chylb180.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2009/chylb180.htm>

### **Updated Legal Risk Management Checklist for Not-for-Profit Organizations**

by Terrance S. Carter and Jacqueline M. Demczur, updated October 2009.

The popular *Legal Risk Management Checklist for Not-for-Profit Organizations*, available free of charge through our websites, has been updated as of October 2009.

**Read More:**

[PDF] <http://www.carters.ca/pub/checklst/nonprofit.pdf>

### **Charities Legislation & Commentary, 2010 Edition Now Available!**

Co-Edited by Maria Elena Hoffstein, Terrance S. Carter, and Adam M. Parachin (LexisNexis Butterworths, November 2009).

There is no single statute that sets out all of the legislative requirements applicable to charities. Rather, the relevant statutory provisions are found in multiple federal and provincial statutes. Additionally, with changes being introduced to increase accountability and the recent proclamation of the new *Canada Not-For-Profit Corporations Act*, having a concise and current guide to the law governing charitable organizations is critical.

Selected and prepared by charity law experts, Maria Elena Hoffstein, Terrance Carter and Professor Adam Parachin, this unique publication will be an invaluable reference tool for anyone involved, as an officer or advisor, in ensuring compliance of a charity with federal and Ontario statutes governing charitable organizations. This 2010 edition compiles, describes or otherwise takes account of approximately 145 statutes and 75 regulations, and includes the full text of and commentary on the new *Canada Not-For-Profit Corporations Act*.

**Order yours online now at:**

<http://www.lexisnexis.ca/bookstore/bookinfo.php?pid=1471>.

## **2009 Annual Church & Charity Law™ Seminar Materials are Now Available**

*Recent Developments in the Law, Toronto, Ontario, Tuesday, November 10, 2009.*

The 2009 Annual *Church & Charity Law™* Seminar, hosted by Carters Professional Corporation in Toronto on November 10, 2009, was sold out and attended by almost 700 members of the sector, including directors of charities, church leaders, government officials, accountants and lawyers. The seminar was designed to provide practical information to assist churches and charities in understanding and complying with recent developments in the law. The seminar has been held annually since 1994. All handouts and presentation materials are now available at the links below in the order as presented, with the web links being Power Point slide shows.

### **Seminar and Speaker Details and Acknowledgements**

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2009/handout.pdf>

### **Highlights in Charity Law: The Year in Review**

*Terrance S. Carter, Carters Professional Corporation, Orangeville*

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2009/tsc1110a.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2009/tsc1110a.pdf>

### **CRA's New Guidance on Fundraising: What it Means in Practice**

*Theresa L.M. Man, Carters Professional Corporation, Orangeville*

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2009/tlm1110.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2009/tlm1110.pdf>

### **CRA's Proposed New Guidance on Advancement of Religion and Its Implications for Churches and Religious Charities**

*Jennifer M. Leddy, Carters Professional Corporation, Ottawa*

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2009/jml1110.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2009/jml1110.pdf>

### **The Ins and Outs of the Canada Not-For-Profit Corporations Act**

*Jane Burke-Robertson, Carters Professional Corporation, Ottawa*

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2009/jbr1110.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2009/jbr1110.pdf>

### **CRA's Proposed New Guidance for Charities Operating Outside Canada and Its Implications**

*Karen J. Cooper, Carters Professional Corporation, Ottawa*

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2009/kjc1110.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2009/kjc1110.pdf>

### **Essential Employment Law Update for Charities**

*Barry Kwasniewski, Carters Professional Corporation, Ottawa*

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2009/bwk1110.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2009/bwk1110.pdf>

### **Tips and Traps of the T3010B**

*Barbara Wallace, Director, Legal Affairs, Canadian Council of Christian Charities, Elmira*

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2009/bw1110.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl原因/2009/bw1110.pdf>

**Investment Decision Making for Churches and Charities During Difficult Financial Times**

*Terrance S. Carter, Carters Professional Corporation, Orangeville*

[WEB] <http://www.carters.ca/pub/seminar/chrchl原因/2009/tsc1110b.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl原因/2009/tsc1110b.pdf>

**Managing Disbursement Quota Issues During Recessionary Times**

*M. Elena Hoffstein, Partner, Fasken Martineau DuMoulin LLP, Toronto*

[WEB] <http://www.carters.ca/pub/seminar/chrchl原因/2009/meh1110.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl原因/2009/meh1110.pdf>

**Facility Use Policies: What to Consider to Protect Your Church Or Charity**

*Esther S.J. Oh, Carters Professional Corporation, Mississauga, and*

*Barry Kwasniewski, Carters Professional Corporation, Ottawa*

[WEB] <http://www.carters.ca/pub/seminar/chrchl原因/2009/esobwk1110.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl原因/2009/esobwk1110.pdf>

**CRA Update including “What to Do If Your Charity Is Offside”**

*Cathy Hawara, Director General, Charities Directorate, Canada Revenue Agency*

[WEB] <http://www.carters.ca/pub/seminar/chrchl原因/2009/ch1110.htm>

[PDF] <http://www.carters.ca/pub/seminar/chrchl原因/2009/ch1110.pdf>

## **IN THE PRESS**

**Endowment Fund** by Theresa L.M. Man.

*Mon Sheong Foundation’s Guide to Planned Giving, October 2009.*

[Link to Chinese version] <http://www.monsheong.org/downloads/Pg%20Book.pdf>

**Federal government passes new legislation governing non-share capital corporations** by Jacqueline M. Demczur.

*Charity Talk, August 2009.*

[Link] [http://www.cba.org/CBA/newsletters-sections/2009/2009-08\\_charities.aspx#article5](http://www.cba.org/CBA/newsletters-sections/2009/2009-08_charities.aspx#article5)

## **RECENT EVENTS AND PRESENTATIONS**

**The New York University Law School National Centre on Philanthropy and the Law’s Annual Conference** titled “Shades of Virtue: Measuring The Comparative Worthiness of Charities,” include a presentation by Terrance S. Carter and Theresa L.M. Man entitled “Measuring Comparative Worthiness: Striation of Charities In Canada” on October 30, 2009.

[Paper] <http://www.carters.ca/pub/article/charity/2009/tsctlm1030.pdf>

**The 2009 Gathering of the Ontario Land Trust Alliance (OLTA), “Solid Foundation: Together We Can,”** in Barrie, Ontario, included a presentation by Karen J. Cooper entitled “Recent Tax Changes” on October 30, 2009.

[WEB] <http://www.carters.ca/pub/seminar/charity/2009/kjc1030.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2009/kjc1030.pdf>

**The Institute of Chartered Accountants (ICAO) Professional Development Seminars** included a presentation by Karen J. Cooper entitled “Directors & Officer Liability – The Essentials and Beyond” in Ottawa, Ontario, on November 9, 2009.

**The 2009 Annual Church & Charity Law Seminar** was held on Tuesday, November 10, 2009, at the Young-Nak Korean Presbyterian Church of Toronto, with several guest speakers. Held annually since 1994, this year’s event was sold out, with almost 700 attendees. This seminar is designed to provide practical information on current legal issues to assist churches and charities understand developing trends in the law and avoid unnecessary exposure to legal liability.

Materials available at <http://www.carters.ca/pub/seminar/chrchlaw/2009/index.html>.

**The 12<sup>th</sup> Annual Estates and Trusts Summit hosted by the Law Society of Upper Canada**, held in Toronto, Ontario, included a presentation by Terrance S. Carter entitled “Essential Charity Law Update” on November 12, 2009.

[WEB] <http://www.carters.ca/pub/seminar/charity/2009/tsc1112.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2009/tsc1112.pdf>

[Paper] <http://www.carters.ca/pub/article/charity/2009/tsc1112.pdf>

**The Canadian Association of Gift Planners (CAGP) Ottawa Roundtable** on November 19, 2009, included Terrance S. Carter and Karen J. Cooper speaking on “Essential Charity Law Update: What Every Gift Planner Needs to Know.”

[WEB] <http://www.carters.ca/pub/seminar/charity/2009/tsckjc1119.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2009/tsckjc1119.pdf>

## UPCOMING EVENTS AND PRESENTATIONS

**The Association of Fundraising Professionals (AFP) Congress 2009 - Enhancing Philanthropy Around the World** in Toronto, Ontario, November 30 through December 1, 2009, will include a presentation by Terrance S. Carter and Elena M. Hoffstein entitled “The Legal Track: Keeping Fundraisers in the Know.”

Details available at <http://afptoronto.org/index.php/congress>

**Certified General Accountants of Ontario Professional Development Seminar** entitled “The *Income Tax Act* and Charities: Current Issues” is being presented by Karen J. Cooper in Toronto, Ontario, December 3, 2009.

<http://www.cga-ontario.org/eventReg/eventListing.aspx?src=rss&eventid=PD2009&seminarid=2009-1203a> for details.

**Certified General Accountants of Ontario Professional Development Seminar** entitled “Directors' and Officers' Liability: The Essentials and Beyond” is being presented by Karen J. Cooper in Toronto, Ontario, December 3, 2009.

<http://www.cga-ontario.org/eventReg/eventListing.aspx?src=rss&eventid=PD2009&seminarid=2009-1203p#PD20092009-1203p> for details.

**The Institute of Chartered Accountants (ICAO) Professional Development Seminars** will include a presentation by Terrance S. Carter entitled “Directors & Officer Liability – The Essentials and Beyond” in Toronto, Ontario, on December 10, 2009.

Details at [https://ebusiness.icao.on.ca/pd/pdCourseFilter\\_Detail.aspx?coursecode=21302MS0](https://ebusiness.icao.on.ca/pd/pdCourseFilter_Detail.aspx?coursecode=21302MS0)

**The Institute of Chartered Accountants (ICAO) Professional Development Seminars** will include a presentation by Terrance S. Carter and Theresa L.M. Man entitled “Current Issues under the Income Tax Act Affecting Charities” in Toronto, Ontario, on December 10, 2009.

Details at [https://ebusiness.icao.on.ca/pd/pdCourseFilter\\_Detail.aspx?coursecode=23302MS0](https://ebusiness.icao.on.ca/pd/pdCourseFilter_Detail.aspx?coursecode=23302MS0)

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**Terrance S. Carter** – Managing Partner of Carters, Mr. Carter practices in the area of charity and not-for-profit law, is counsel to Fasken Martineau DuMoulin LLP on charitable matters, is a member of the Technical Issues Group of Canada Revenue Agency’s (CRA) Charities Directorate representing the Canadian Bar Association (CBA), a past member of CRA’s Charity Advisory Committee, Chair of the National Charities and Not-for-Profit Section of the CBA, and has been recognized as a leading expert by *Lexpert* and *The Best Lawyers in Canada*. Mr. Carter is also editor of [www.charitylaw.ca](http://www.charitylaw.ca), [www.churchlaw.ca](http://www.churchlaw.ca) and [www.antiterrorismlaw.ca](http://www.antiterrorismlaw.ca), and a consulting editor of *Charities Legislation and Commentary* (LexisNexis Butterworths, 2010).



**Sean S. Carter** – A graduate of Osgoode Hall Law School, having obtained his Bachelor of Arts in Political Science and Philosophy from the University of Toronto, Sean has gained valuable experience as a research assistant at Carters, with considerable experience writing 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*. Sean was called to the Ontario Bar in 2009 and is currently an associate with Fasken Martineau DuMoulin LLP.



**Nancy E. Claridge** – Called to the Ontario Bar in 2006 after articling with the firm, Ms. Claridge practices in the areas of charity, corporate and commercial law, 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* and Editor-in-Chief of the *Obiter Dicta* newspaper, and was awarded the Dean’s Gold Key Award and Student Honour Award.



**Karen J. Cooper** – A partner with the firm, Ms. Cooper practices charity and not-for-profit law with an emphasis on tax issues at Carters’ Ottawa office, having formerly been a Senior Rulings Officer with the Income Tax Rulings Directorate of Canada Revenue Agency, as well as former counsel for the Department of Justice in tax litigation. Ms. Cooper also has considerable teaching experience, including as part-time professor at the University of Ottawa, Faculty of Common Law, and is a contributing author to *The Management of Charitable and Not-for-Profit Organizations in Canada* (LexisNexis Butterworths).



**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, as well as wills, estate planning and estate administration. 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. Mrs. Demczur is also a regular speaker at the annual *Church & Charity Law™ Seminar*.



**Barry W. Kwasniewski** - Mr. Kwasniewski joined Carters’ Ottawa office in October 2008 to practice in the areas of employment law, charity related litigation, and risk management. Called to the Ontario Bar in 1990, Barry has a wide range of litigation experience, including in commercial disputes, personal injury, long-term disability, employment, insurance defence, and professional liability. Barry is a volunteer lawyer at Reach Canada, is on the Board of directors of the Vista Centre, and has assisted in several United Way campaigns.



**Jennifer M. Leddy** – Ms. Leddy joined Carters’ Ottawa office to practice charity and not-for-profit law following a distinguished career in both private practice and public policy. Her experiences include acting as a legal and policy advisor to the Canadian Conference of Catholic Bishops; and working with the Charities Directorate of the Canada Revenue Agency on the proposed “Guidelines on the Meaning of Advancement of Religion as a Charitable Purpose.” Ms. Leddy was also a co-director of the Catholic Organization for Life and Family, and a member of the Joint Regulatory Table of the Voluntary Sector Initiative on the legislative and regulatory environment of the sector.



**Theresa L.M. Man** – A partner with Carters, Ms. Man practices in the area of charity and not-for-profit law, with particular emphasis on tax issues. She is an Executive Member of both the Charity and Not-for-Profit Sections of the Ontario Bar Association and the Canadian Bar Association. In addition to being a regular speaker at the annual *Church & Charity Law™ Seminar*, Ms. Man has also written articles for *The Lawyers Weekly*, *The Philanthropist*, *Planned Giving Pulse*, *International Journal of Civil Society Law*, *The Bottom Line*, *Canadian Fundraiser eNews*, and *Charity Law Bulletin*.



**Ryan Prendergast** - Ryan graduated from the University of Ottawa, Faculty of Law, in 2009. Prior to attending law school, Ryan graduated from Glendon College at York University, First Class, with a B.A. in History and a Certificate in Law and Social Thought. While in law school, Ryan was a student caseworker for the Criminal Division at the University of Ottawa Community Legal Aid Clinic. He also completed a volunteer research project for Ecology Ottawa on municipal by-laws. Before articling with Carters, Ryan gained legal experience as a summer student working for the Crown Attorney’s Office in Toronto.

**Heather Reardon** - Heather graduated *cum laude* from Michigan State University College of Law in 2008 and from the University of Ottawa, Faculty of Law in 2009. Before attending law school, she obtained a B.A. from Mount Allison University with a major in International Relations and a minor in Religious Studies. During law school, Heather obtained legal experience as a clinician at the Michigan State University Rental Housing Clinic and was a member of Michigan State's Niagara International Law Moot Court team. Heather has also worked as an intern with the Department of Justice and a Member of Parliament.

## **ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS**

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