

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

JANUARY 2011 ISSUE

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

Hosted by Carters Professional Corporation in Toronto, Ontario.

Wednesday, February 16, 2011.

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

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RECENT PUBLICATIONS AND NEWS RELEASES

Bill C-47 Implementing Changes in Disbursement Quota Rules Receives Royal Assent

Theresa L.M. Man.

Following the announcement of the elimination of the 80% disbursement quota, among other changes, in the March 2010 federal budget, draft amendments to the *Income Tax Act* were released in August 2010 and a Notice of Ways and Means Motion was tabled in September 2010. These new changes are now contained in Bill C-47, which was enacted by Parliament and received Royal Assent on December 15, 2010.

As a result of the elimination of the 80% disbursement quota and related concepts, such as enduring property, the capital gains reduction, the capital gains pool and specified gifts, these new changes have greatly simplified the disbursement requirement that registered charities have to comply with. As a result, charities are now only required to meet the 3.5% disbursement quota. In addition, the existing threshold for charitable organizations to which the 3.5% disbursement quota applies is increased from \$25,000 to \$100,000. This means that only charitable organizations with investment assets over \$100,000 would be subject to the 3.5% disbursement requirement. The threshold for charitable foundations remains at \$25,000. A new disbursement requirement on gifts received from non-arm's length charities and expanded anti-avoidance rules were enacted to prevent charities from abusing these new rules. The *Income Tax Regulations* have also been revised to reflect calculation of the new disbursement requirements. Although the implications of these new rules are still not entirely clear, the simplicity of the new disbursement requirements is certainly a welcomed change.

Bill C-47 can be accessed online at:

<http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Chamber=N&StartList=A&EndList=Z&Session=23&Type=0&Scope=I&query=7100&List=stat>.

Amendments made to Bill C-470 by Standing Committee on Finance

Terrance S. Carter.

As reported in earlier *Charity Law Updates* (<http://www.carters.ca/pub/update/charity/10/oct10.pdf>), Private Members' Bill C-470, *An Act to Amend the Income Tax Act (revocation of registration)*, which proposed a salary cap of \$250,000 for any executive or employee of a charity, and mandatory disclosure of compensation for its five highest-paid executives or employees, had been referred to the Standing Committee on Finance for review in November 2010. In this regard, the Committee commenced hearings on November

29, 2010, at which time amendments to the Bill were introduced by Albina Guarnieri, MP for Mississauga East – Cooksville, the sponsor of the Bill. The amendments to Bill C-470 proposed by Ms. Guarnieri included the elimination of the \$250,000 compensation cap, and the introduction of a threshold of \$100,000 for compensation disclosure requirements.

On December 6, 2010, a further hearing commenced before the Standing Committee on Finance, at which time members of the charitable sector voiced strong opposition to the Bill. Nonetheless, the Committee reported an amended version of Bill C-470 to the House of Commons on December 10, 2010. The amended Bill C-470 no longer includes a compensation cap provision, and a disclosure floor of \$100,000 has been added, as was proposed by Ms. Guarnieri. The Committee also made further amendments to the Bill, which were not recommended by Ms. Guarnieri. The amended Bill C-470 expands the compensation disclosure requirement to all executives or employees of a charity who receive \$100,000 in compensation or more, rather than only the five highest-paid employees receiving \$100,000 or more. The \$100,000 disclosure floor is to be indexed, in respect of 2012 and following taxation years as if it were referred to in ss.117.1(1). The Committee also made it mandatory for the Minister to make salary disclosures available to the public, but added an allowance for Ministerial discretion not to do so where "it is otherwise justified."

Bill C-470, as amended by the Standing Committee on Finance, can be viewed online at <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=4873932&file=4>.

CRA News

Karen J. Cooper.

CRA Announces the Development of a New Form T3010-1 for Charities

As a result of the new changes affecting charities that were introduced in the 2010 Federal Budget, CRA developed and released on January 18, 2011, a new Form T3010-1, *Registered Charity Information Return* and also made amendments to Guide T4033-1, *Completing the Registered Charity Information Return*. The most significant changes to the Federal Budget included changes to the disbursement quota calculation and also to the definitions of 'specified gifts' and 'enduring property.' For more details concerning the Budget changes, please see *Charity Law Bulletin* No. 221 available at <http://www.carters.ca/pub/bulletin/charity/2010/chylb221.htm> and the article in this Charity Law Update titled "Bill C-47 Implementing Changes in Disbursement Quota Rules Receives Royal Assent." Changes to Form T1242, *Registered Charity Information Return Summary* have also been made and will be sent out to charities once their annual returns have been processed. All of these changes will affect those charities with

fiscal periods ending on or after March 4, 2010. The guide and the new form are now available on the CRA website at <http://www.cra-arc.gc.ca/E/pbg/tf/t3010-1/README.html>.

CRA Revokes the Registration of Revival Time Ministries

On November 16, 2010, Canada Revenue Agency (“CRA”) issued a notice of intention to revoke the charitable registration of Revival Time Ministries International (the “Organization”). The charity was audited by CRA and it found that there were significant receipting discrepancies occurring. For example, the Organization could not provide a complete record of donation receipts issued to the public, several duplicate copies of receipts were missing, and there were serious discrepancies amongst receipts of gifts of services, such as car and facility rentals. CRA’s audit also concluded that the Organization was not devoting all of its expenditures to charitable activities after analyzing the financial statements from the 2006 and 2007 fiscal years. CRA’s news release indicates that the revocation was effective on January 8, 2011. The CRA news release may be accessed at <http://www.cra-arc.gc.ca/nwsrm/rlss/2011/m01/nr110107-eng.html>.

CRA Revokes the Charitable Registration of Operation Save Canada’s Teenagers

On November 23, 2010, “CRA” issued a notice of intention to revoke the charitable registration of Operation Save Canada’s Teenagers (the “Organization”), which became effective on January 15, 2011 (the date of publication of the notice). After CRA conducted an audit of the Organization, it was found that there were significant receipting discrepancies occurring, such as missing and unmaintained receipts. Also, CRA discovered that the Organization was providing falsified bank statements to substantiate the revenues and expenditures of the Organization. The CRA news release may be accessed at <http://www.cra-arc.gc.ca/nwsrm/rlss/2011/m01/nr110114-eng.html>.

CRA Revokes the Charitable Registration of Metro Street Focus Organization

Also, on November 1st, 2010, “CRA” issued a notice of intention to revoke the charitable registration of Metro Street Focus Organization (the “Organization”). During the audit of the Organization, CRA discovered that there were more than one million dollars in donations that the Organization issued tax receipts for that could not be substantiated through the Organization’s financial records. Further, the Organization was unable to prove that the property was distributed for charitable purposes or that the property actually existed. Also, the audit by CRA revealed that a significant portion of the cash received by the Organization was being used for the improper personal benefit of the program director, including payments made for personal expenses at the Organization’s expense. The revocation became effective on

December 11, 2010. The CRA news release may be accessed at <http://www.cra-arc.gc.ca/nwsrm/rlss/2010/m12/nr101210-eng.html>.

Registration for the Charities Directorate Information Webinar Registration Opens

CRA has recently released information surrounding the presentation of information webinars by the Charities Directorate. In 2011, the Charities Directorate will be presenting the following topics: T3010-1: Line by Line Review (February 2), Activities Outside of Canada (February 23), and Political Activities (March 16). More questions and answers about Charities Directorate webinars and registration are available on CRA's website at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/wbns/fq-eng.html>.

CRA Warns Taxpayers of Gifting to Tax Shelters

CRA recently released another Tax Alert for Canadian taxpayers warning them of the risks of donating to tax shelters and reminding them of the auditing process for these gifting arrangements. According to CRA statistics, over 4.5 billion dollars in tax shelter gifting arrangement donations have been denied and up to 130,000 taxpayers who have made donation claims through a gifting scheme have been reassessed to date. CRA notes that tax shelter identification numbers are for identification purposes only and do not necessarily guarantee that donations will result in tax benefits. Also, it is important for donors who are interested in investing in a tax shelter gifting arrangement to obtain independent legal and tax advice from a tax professional (who is unconnected to the gifting arrangement). CRA also warns taxpayers that many of these tax shelters will use promotions and incentives to participate in these arrangements. For example, many promoters promise a defence fund in the event a taxpayer is reassessed, or they make false claims that your tax refund can be considered a low interest loan from CRA, even when you lose a reassessment challenge. To read this tax alert, please see <http://www.cra-arc.gc.ca/nwsrm/lrts/2010/1101223-eng.html?eml20101223>.

Charity Law 2010 – Year In Review

Terrance S. Carter, Karen J. Cooper and Theresa L.M. Man in *Charity Law Bulletin* No. 240, January 27, 2011.

The charitable sector in Canada has again seen a significant number of important regulatory and common law developments in 2010 at both the federal and provincial level that will have a significant impact on how charities operate in Canada and abroad. To this end, this *Charity Law Bulletin* is intended to provide a brief overview of some of the more important of these recent developments, including changes to the *Income Tax Act*, new guidance, commentaries and other publications from the Charities Directorate of the Canada

Revenue Agency, court decisions, as well as other federal and provincial initiatives affecting charities, including the new *Canada Not-for-profit Corporations Act* and the Ontario *Not-for-profit Corporations Act*. For those readers who would like more details concerning any of the topics discussed below, reference to source documents and other resource materials are included throughout the *Bulletin*.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2011/chylb240.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2011/chylb240.htm>

CRA Comments on Donations to a U.S. Charity under the Canada-US Tax Convention

Theresa L.M. Man

Canada Revenue Agency (CRA) released a technical interpretation (Document #2010-0380811E5) on November 4, 2010, to clarify the issue of whether a Canadian resident corporation would receive the same tax relief in Canada for a charitable donation made to a U.S. charity as it would have received had it donated to a Canadian registered charity.

Under the *Income Tax Act*, a corporation is permitted to claim a deduction up to 75% of its net income in respect of an eligible amount of a gift made by the corporation to a “qualified donee.” Qualified donee is a term defined in the *Income Tax Act*, which includes registered charities, the federal/provincial/municipal governments, the United Nations and its agencies, prescribed universities recognized by CRA, etc. In certain situations, a US charity may meet the definition for “qualified donee” and enable the Canadian donor to this tax benefit. However, after reviewing the definition for “qualified donee” and the facts, CRA determined that the US charity in question did not meet that definition and therefore is not a qualified donee.

However, under paragraph 7 of Article XXI of the Canada-US Tax Convention, gifts made by a Canadian resident to an organization that is resident in the U.S. that is generally exempt from U.S. tax, and that could qualify in Canada as a registered charity if it were created or established and resident in Canada, will be treated as gifts to a registered charity. Under this provision, the benefit is only limited to the Canadian donor’s US-source income. In this case, this means that the Canadian corporation in question may claim a deduction of such gifts up to 75% of its income from U.S. sources, but not from Canadian or other sources.

CRA then considered the issue of what charities in the US would meet the requirement that it is resident in the U.S. and generally exempt from U.S. tax, and that could qualify in Canada as a registered charity if it were created or established and resident in Canada. In this regard, CRA clarified its position that any

organization that is exempt under section 501(c)(3) of the US *Internal Revenue Code* will meet this requirement and qualify for the purposes of paragraph 7 of Article XXI of the Convention.

CRA Comments on Alter Ego Trusts

Karen J. Cooper.

Canada Revenue Agency (“CRA”) released a technical interpretation (Document # 2010-0369261E5) on November 22nd, 2010, which dealt with the question of whether the restriction in subsection 118.1(13) of the *Income Tax Act* (“ITA”) would apply to limit an individual’s claim for a donation tax credit under subsection 118.1(3) of the ITA if a registered charity holds a beneficial interest in a trust (eg. an alter ego trust) that is, immediately after the time of the gift, affiliated with the individual who made the gift. According to CRA, the answer to this question is a question of fact and will depend on whether the property held by the donor was a non-qualifying security of the donor within the meaning of subsection 118.1(18). CRA’s IT-226R discusses subsection 118.1(3) of the ITA and how it applies in situations where the property of the donor is not the same property as that received by the charity at that time (which is the equitable interest in the trust). CRA decided that the nature of the property to the donor (as a non-qualifying security) is what will determine whether the restriction will apply in respect of a gift. There are two situations in which this restriction would apply: when a donor transfers a share of a corporation to an alter ego trust and was immediately after that time not dealing with the corporation at arm’s length, and when a donor transfers a beneficial interest of the donor into a trust that was immediately after that time affiliated with the donor. Technical interpretations are available through commercial subscription services or a direct request to CRA.

New Rules for Spam Impacts Registered Charities and Not-For-Profits

Ryan M. Prendergast in *Charity Law Bulletin* No. 238, January 27, 2011.

On December 14, 2010, Bill C-28, the *Fighting Internet and Wireless Spam Act* (“FISA”) received Royal Assent. FISA is a revived version of Bill C-27, the *Electronic Commerce and Protection Act*, which died on Order Paper during the 2nd Session of the 40th Parliament due to the prorogation of Parliament on December 30, 2009. FISA creates a new regulatory scheme for spam and related unsolicited electronic messages, as well as amending four existing statutes dealing with privacy and telecommunications. These include the *Personal Information Protection and Electronic Documents Act* (“PIPEDA”), of which organizations with existing privacy obligations may already be aware. However, FISA will also expand on the privacy and confidentiality obligations of registered charities and not-for-profits, particularly if they carry out commercial activities.

This *Charity Law Bulletin* provides an overview of FISA, along with the impact it may have on registered charities and not-for-profit organizations.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2011/chylb238.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2011/chylb238.htm>

Countdown to the *Canada Not-For-Profit Corporations Act*

Practice Tip #8: Corporate Records

By Jane Burke-Robertson and Theresa L.M. Man in *Charity Law Bulletin* No. 239, January 27, 2011.

Most corporate statutes require a corporation to retain certain records at its head office and provide rights to certain individuals to have access or inspect those records. The *Canada Corporations Act* (CCA) contains requirements for a corporation to maintain certain corporate, financial and accounting records at its head office. The CCA also provides limited rights of access to these records. Although the type of records that are required under the new *Canada Not-for-profit Corporations Act* (CNCA) to be retained are similar to those required under the CCA, the CNCA provides more extensive rights in relation to who has access to those records. This Bulletin reviews the requirements of the CNCA regarding corporate records.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2011/chylb239.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2011/chylb239.htm>

Imagine Canada Releases its Guide to Giving

Esther S.J. Oh.

On December 9, 2010, Imagine Canada released its *Guide to Giving*, a four page guide produced by Imagine Canada's Ethical Code Program with the objective of assisting potential donors make informed decisions vis-à-vis the charities they are considering donating to. In this regard, the Guide provides helpful information concerning several basic questions donors should ask themselves about a charity's operations, its fundraising practices and related matters, as follows:

1. What should I look for before giving to a charity?
2. How can I find out how much a charity spends on fundraising? Is this regulated?
3. How much does Imagine Canada recommend a charity spend on fundraising? How can I be certain that a charity's fundraising costs are reasonable?
4. What are outside fundraiser? Should charities use them?
5. Why do charities spend money on administrative costs or overhead?

6. How can I find out more about charity salaries?

The Guide encloses links to additional resources that would be of interest and assistance to potential donors, including links to Imagine Canada's Ethical Code, the Canada Revenue Agency website and other helpful links.

The Guide also notes that Canada has one of the largest charitable sectors in the world, having more than 85,000 registered charities that help address economic, social and environmental issues within Canada and provide important community services, and contribute to the quality of life for Canadian through arts and culture, sports, religious practice, environmental protection, health and education.

The Imagine Canada *Guide to Giving* is available online at:

<http://www.imaginecanada.ca/files/www/en/ethicalcode/guide-to-giving-2010.pdf>.

Fraser Institute Releases Generosity Index Concerning Private Giving In Canada and the U.S.

Ryan M. Prendergast.

On December 20, 2010, the Fraser Institute, an independent non-profit research organization that studies the impact of competitive markets and government interventions on individuals and society, released its annual report entitled, *Generosity in Canada and in the United States: The 2010 Generosity Index* ("the Generosity Index").

The Generosity Index compares the private giving of individuals in Canada and the U.S., based on data recorded on their personal income tax returns from 2008. The authors of the Generosity Index acknowledge that since taxpayers can carry forward charitable donations for a period of 5 years, donations reported by Canadian taxpayers on their 2008 tax returns could include donations from previous years as well. The Generosity Index measures the percentage of taxpayers who filed returns in 2008 and had donated to charity, as well as the percentage of aggregate personal income donated to charity ("aggregate personal income" is defined as the sum of the total income earned by every individual in each jurisdiction considered for purposes of the Generosity Index). It should be noted that the Generosity Index does not include donations to organizations not listed as registered charities with Canada Revenue Agency or that are not 501(c)(3) organizations registered with the US Internal Revenue Service.

Highlights of the Generosity Index include the finding that Prince Edward Island had the highest percentage of taxpayers that donated to charity, and that Manitoba remains the province in which Canadians donated the highest percentage of aggregate personal income to charity in 2008. The Generosity Index also found that the

depth of generosity, i.e., the percentage of aggregate personal income donated, was less in all Canadian provinces and territories than in all but four of the U.S. states during the 2008 tax year. As well, the Generosity Index noted that “the extent of generosity is well over three percentage points higher in the U.S. with 27.3% of U.S. tax filers having donated to charity, compared to 23.6% of Canadians.” In noting the “generosity gap” in the difference in giving between Canadians and Americans, the Generosity Index concludes that it, “undoubtedly limits the power and potential of charities to improve the quality of life in Canada.”

The full report is available online at: <http://www.fraserinstitute.org/research-news/display.aspx?id=17110>.

New Brunswick Court Awards Dismissed Employee Punitive Damages

Barry W. Kwasniewski in *Charity Law Bulletin* No. 237, January 26, 2011.

In the recent New Brunswick Court of Queen’s Bench decision of *MacDonald-Ross v. Connect North America Corp.* an employee was terminated after five and a half years of service. While she was initially terminated without cause, the employer changed its position after the employee filed a wrongful dismissal lawsuit, alleging that the employee misappropriated company funds. It also contacted the police to file a criminal complaint against the former employee. The court found that the employer had no reasonable basis to allege misappropriation, or any other wrongful conduct. The employer’s decision to deal with the employee in this manner was considered by the court to warrant a punitive damage award of \$50,000, in addition to an eight month pay in lieu of notice judgment. This Bulletin reviews this decision which highlights the risks of terminating employees “for cause”, and serves as a lesson to charities and not-for-profit organizations that alleging cause without proper evidence may be a costly decision should the matter end up before the courts.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2011/chylb237.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2011/chylb237.htm>

Update on Bill 120 (Ontario) and Changes to Rules Regarding Pension Plans

Esther S.J. Oh.

On December 8, 2010, Bill 120, the *Securing Pension Plan Benefits Now and for the Future Act, 2010*, received Royal Assent. The changes will make it easier and less expensive for employees of several related charities to participate in a single pension plan. The amendments contained in the Bill will also allow those employees the protection provided by the Pension Benefits Guarantee Fund, which generally pays minimum

guaranteed pension benefits in certain situations where the pension plan is not able to pay the promised pension benefits in full. Bill 120 was the topic of *Charity Law Bulletin* No. 232 by Richard E. Johnston of Fasken Martineau DuMoulin available at <http://www.carters.ca/pub/bulletin/charity/2010/chylb232.htm>.

The full text of Bill 120 can accessed online at:

http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2418&isCurrent=&BillStagePrintId=4859&btnSubmit=go.

Australian Political Lobbyist Group Wins Fight to Keep Charitable Status

Terrance S. Carter in *Charity Law Bulletin* No. 241, January 27, 2010.

On December 1, 2010, the High Court of Australia released its decision in *Aid/Watch Incorporated v. Commissioner of Taxation*. At issue was whether or not the appellant, Aid/Watch Incorporated (“Aid/Watch”), qualified as a charity. Specifically, Aid/Watch claimed that its political lobbying was for the purpose of relieving poverty and for the advancement of education. Aid Watch also claimed that its objectives fell under the fourth heading in the U.K. House of Lords decision in *Pemsel*, “other purposes beneficial to the community.” This *Charity Law Bulletin* provides a brief outline of the case, including its reference to the law in Canada.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2011/chylb241.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2011/chylb241.htm>

Ontario Court of Appeal Restores Motive Requirement in Definition of Terrorist Activity

Nancy E. Claridge and Terrance S. Carter in *Anti-terrorism and Charity Law Alert* No. 23, January 27, 2011.

In a decision released December 17, 2010, the Ontario Court of Appeal overturned a lower court ruling which called into question the constitutionality of the “motive clause” contained in the definition of “terrorist activity” in the *Criminal Code* (Canada). The Court of Appeal in *R. v. Khawaja* (the “Khawaja decision”) backed the federal government’s definition of “terrorist activity” to include violent acts that are committed for “political, religious or ideological purpose, objective or cause,” concluding that although violent activity may convey meaning, it is excluded from constitutional protection “because violence is destructive of the very values that underlie the right to freedom of expression and that makes this right so central to both individual fulfillment and the functioning of a free and democratic society.” This Anti-terrorism Alert briefly reviews this component of the Khawaja decision.

Read More:

[PDF] <http://www.carters.ca/pub/alert/ATCLA/ATCLA23.pdf>

Online Petition Launched to Reform Anti-terrorism Laws That Hinder Charities

Nancy E. Claridge.

Marking the 62nd anniversary of the United Nations General Assembly's adoption of the Universal Declaration of Human Rights, a network of U.S. charities, grantmakers, faith-based groups and advocacy groups has launched a petition seeking changes to security laws in the United States that negatively affect charities.

The Charity and Security Network (<http://www.charityandsecurity.org>), whose mission it is to eliminate unnecessary and counterproductive barriers to legitimate charitable work found in current counterterrorism measures, is addressing the online petition to President Barack Obama, the U.S. Senate and the U.S. House of Representatives. The Network argues that the laws governing "material support" and "designated organizations" offend First Amendment freedoms of speech and association, and Fifth Amendment guarantees of due process, saying "they sweep too broadly, criminalizing efforts at peacebuilding and life saving humanitarian aid to civilians, even where that aid furthers no terrorist acts whatsoever.

The text of the petition reads:

"It is imperative that constitutional human rights principles guide the U.S. government's approach to national security rules and policies. We are committed to fighting terrorism and upholding the United States' constitutional freedoms. We call on the U.S. government to work with the charitable community to:

1. Reform the prohibition on material support to preserve the right to provide humanitarian assistance to civilians, and to protect free speech, association and peacebuilding.
2. Reform the process for designating groups and individuals to terrorist lists to ensure that they have sufficient notice and a meaningful opportunity to respond to the charges against them, and to ensure that the system includes sufficient checks and balances on executive discretion."

The petition can be found online at:

http://www.change.org/petitions/view/reform_security_laws_that_hinder_charities. It will be interesting to see if other countries follow through with similar petitions.

Australian Taxation Office Issues Warning about Leveraged Tax Schemes

Terrance S. Carter.

On December 6, 2010, the Australian Taxation Office issued a media release warning donors about donation schemes which promise charitable receipts for amounts which exceed the amount actually given by the donor. In particular, the media release warns about arrangements promoting a tax deduction for gifts of pharmaceutical items to charities for use overseas. With these types of arrangements, the donor makes a cash deposit for the purchase of pharmaceuticals from low cost suppliers overseas, which drugs are then valued for gifting purposes at a higher amount. The Australian Taxation Office warns donors that “We are of the view that these arrangements are not legitimate, and that those involved may face a large tax debt, substantial penalties or even prosecution.” These warnings are similar to ones that Canada Revenue Agency has been issuing in Canada since 1999.

More information is available in Media Release 2010/43 from the Australian Taxation Office, which can be accessed online at: <http://www.ato.gov.au/corporate/content.asp?doc=/content/00264034.htm>.

U.S. Court Decides that a Church Denomination’s Names Can be Trademarked

Terrance S. Carter.

In August, 2010, the Sixth Circuit Court of Appeals upheld the Tennessee District Court’s Decision that the term *Seventh-Day Adventists* was a valid trademark. A dispute over the use of the name arose when a splinter group started using the name *A Creation Seventh Day & Adventist Church*. Two things worked in favour of the Seventh-Day Adventist Church. First, it had registered the names *Adventist* and *Seventh Day Adventist* as trademarks with the U.S. Patent and Trademark Office in 1981. Second, it had maintained exclusive use of the Seventh Day Adventist name. The court stated that if this exclusive use had not been maintained, then it is possible that the term *Seventh Day Adventist* could have been considered a generic term and therefore the trademark protection would not have applied. The case emphasizes the importance of obtaining trademark protection and maintaining it through exclusive use.

The full decision is available online at: <http://csda-adventistchurch.to/PDF/Opinion.pdf>.

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

by Terrance S. Carter and Jacqueline M. Demczur, updated December 2010.

The popular *Legal Risk Management Checklist for Not-for-Profit Organizations*, available free of charge through our websites, has been updated as of December 2010.

Read More:

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

Charities Legislation & Commentary, 2011 Edition Commentary Available for Download

Co-Edited by Adam M. Parachin, Terrance S. Carter, and Maria Elena Hoffstein (LexisNexis Butterworths, October 2010).

Selected and prepared by charity law experts, Professor Adam Parachin, Terrance Carter, and Maria Elena Hoffstein, this unique publication provides a useful reference for anyone researching key federal and Ontario statutes governing charitable organizations. The 2011 edition compiles, describes or otherwise takes account of approximately 145 statutes and 75 regulations. The entire chapter providing commentary from the co-editors has been made available to download from our website for free.

Read More:

[PDF] <http://www.carters.ca/pub/book/2010/CL11commnt.pdf>

[Order the Book] <http://www.lexisnexis.ca/bookstore/bookinfo.php?pid=2015>

IN THE PRESS

IJCSL Newsletter listed Carters' November/December 2010 *Charity Law Update* under Miscellaneous Matters.

IJCSL Newsletter, Vol. 8, Iss. 1, January 2011.

[Link] http://www.iccsl.org/pubs/11-01_IJCSL-N.pdf

Constructive Dismissal: Implications for Charities and Not-for-Profits by Barry W. Kwasniewski.

Canadian Fundraising & Philanthropy eNews, Vol. 20, No. 24, December 31, 2010.

[Link] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=3527>

Constructive Dismissal: Implications for Charities and Not-For-Profits by Barry Kwasniewski.

Employment Practices Risk Management Column, Imagine Canada, December 2010.

[Link] <http://nonprofitrisk.imaginecanada.ca/node/910>

The Directors Manual Chapter 17-078 entitled "Changes to Bill 65, Pending Third Reading" was reproduced from *Charity Law Bulletin* No. 228 by Jane Burke-Robertson and Terrance S. Carter.

The Directors Manual, Update Number 48, November 2010 (CCH Canadian Limited).

Charities Directorate Passes Inspection by Terrance S. Carter & Karen J. Cooper.
Canadian Fundraising & Philanthropy eNews, Vol. 20, No. 22, November 30, 2010.
[Link] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=3501>

The End of Mandatory Retirement: Legal Implications for Employers by Barry Kwasniewski.
Employment Practices Risk Management Column, Imagine Canada, November 2010.
[Link] <http://nonprofitrisk.imaginecanada.ca/node/910>

Recent Ontario Decisions Highlight Risks of Terminating Disabled Employees by Barry Kwasniewski.
Employment Practices Risk Management Column, Imagine Canada, October 2010.
[Link] <http://nonprofitrisk.imaginecanada.ca/node/910>

RECENT EVENTS AND PRESENTATIONS

The Certified General Accountants of Ontario Annual Conference (Ottawa), held at the Fairmont Chateau Laurier in Ottawa, Ontario, included presentations by Karen J. Cooper entitled “Liability of Directors and Officers” and “The *Income Tax Act* and Charities” on November 29, 2010.

The AFP Greater Toronto Congress 2010, held at the Metro Toronto Convention Centre, included a presentation by Terrance S. Carter and M. Elena Hoffstein of Fasken Martineau entitled “Essential Charity Law Update: What Every Fundraiser Needs to Know” on November 30, 2010.

[Web] <http://www.carters.ca/pub/seminar/charity/2010/tscmeh1130.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/tscmeh1130.pdf>

The Greater Dufferin Area Estate Planning Council (GDAEPC) hosted a presentation by Terrance S. Carter entitled “Basic Tax Considerations in Charitable Giving” on December 7, 2010.

[Web] <http://www.carters.ca/pub/seminar/charity/2010/tsc1207.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/tsc1207.pdf>

The York Small Business Enterprise Centre’s Green Connections “Networking” Meeting, held in Newmarket, Ontario, on December 13, 2010, included a presentation by Ryan M. Prendergast on “Advantages and Disadvantages of Incorporation as a Not-for-Profit.”

[Web] <http://www.carters.ca/pub/seminar/charity/2010/rmp1213.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2010/rmp1213.pdf>

Implications of Disbursement Quota (DQ) Reform was presented by Terrance S. Carter on December 14, 2010, as part of Imagine Canada’s Charity Tax Tuesdays, a free webinar series for Canadian charities.

[Web] <http://charitytax.imaginecanada.ca/demand-webinars>

The Windsor Essex Estate Planning Council hosted a luncheon in Windsor, Ontario, on January 20, 2011, with Terrance Carter presenting the following:

“Basic Tax Considerations in Charitable Giving,”

[Web] <http://www.carters.ca/pub/seminar/charity/2011/tsc0120a.htm>

- [PDF] <http://www.carters.ca/pub/seminar/charity/2011/tsc0120a.pdf>
“Essential Charity Law Update,” and
[Web] <http://www.carters.ca/pub/seminar/charity/2011/tsc0120b.htm>
[PDF] <http://www.carters.ca/pub/seminar/charity/2011/tsc0120b.pdf>
“Practical Implications of CRA’s New Fundraising Guidance.”
[Web] <http://www.carters.ca/pub/seminar/charity/2011/tsc0120c.htm>
[PDF] <http://www.carters.ca/pub/seminar/charity/2011/tsc0120c.pdf>

Canadian Association of Gift Planners Ottawa Roundtable on January 26, 2011, included a presentation by Karen J. Cooper with Michelle Osborne from the University of Toronto entitled “Endowments – Bird in the Hand or Two in the Bush?”

UPCOMING EVENTS AND PRESENTATIONS

Risk Management Directors’ and Officers’ Liability Workshop hosted by Volunteer Ottawa at the C3 Centre in Ottawa will be presented by Karen J. Cooper on February 9, 2011.

Details available at

http://www.volunteerottawa.ca/vo-clean/index.php?/eng/membership_services/workshops_training/risk_management_directors_officers_liability

The Ottawa Region Charity & Not-for-Profit Law™ Seminar will be held at Arlington Woods Free Methodist Church in Nepean, Ontario, on Wednesday, February 16, 2011.

Details and online registration at <http://www.carters.ca/pub/seminar/chrchlaw/ott/11/brochure.htm>.

The Canadian Society of Association Executives (CSAE) Ottawa-Gatineau Chapter February Luncheon will have Barry W. Kwasniewski as guest speaker on the topic of Social Networking Risk Management at the RA Centre in Ottawa on February 23, 2011.

<http://www.csae.com/public/public.asp?WCE=C=56|K=229780|CAL=220579>

First Annual Canadian Society of Association Executives (CSAE) Trillium Chapter Winter Summit being held in Hamilton, Ontario will include the following presentations in the “Legal Update 101: What You Need to Know” session on February 25, 2011.

Essential Charity & Not-for-Profit Law Update by Terrance S. Carter, and

Key Legal Compliance Issues for Charities and Not-for-Profits by Theresa L.M. Man.

Details at <http://www.csae.com/public/public.asp?WCE=C=56|K=230893|CAL=220579>

Hiring to Firing: How to Avoid Employer Liability Workshop hosted by Volunteer Ottawa will be presented by Barry W. Kwasniewski on March 1, 2011.

C.D. Howe Conference “Strengthening Charity Finance in Canada” will include a presentation by Terrance S. Carter entitled “Issues to Consider in Financing Charities: Thinking Outside of the Box” on March 8, 2011.

Emerging Issues in Directors' and Officers' Liability 2011, a professional development course from the Law Society of Upper Canada, will include a talk on D&O Exposure at Non-Profits and Charities by Terrance S. Carter on March 29, 2011.

<http://ecom.lsuc.on.ca/cpd/product.jsp?id=CLE11-0030701>

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Assistant Editor: Nancy E. Claridge



Jane Burke-Robertson – A partner with Carters' Ottawa office, Ms. Burke-Robertson practices in the area of charity and not-for-profit law and has been ranked by *Lexpert* and *The Best Lawyers in Canada* as a leader in her field. She is co-author of *Non-Share Capital Corporations* published by Carswell, and a contributor to Industry Canada's *Primer for Directors of Not-for-Profit Corporations*. Ms. Burke-Robertson is a frequent speaker and lecturer on charitable and not-for-profit matters and recently taught an advanced seminar on the law of charities and non-profit organizations at the Faculty of Law, University of Ottawa.



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 CBA National Charities and Not-for-Profit Section, and is recognized as a leading expert by *Lexpert* and *The Best Lawyers in Canada*. He is also consulting editor of *Charities Legislation and Commentary* (LexisNexis Butterworths, 2010), and editor of www.charitylaw.ca, www.churchlaw.ca and www.antiterrorism.ca.



Nancy E. Claridge – Called to the Ontario Bar in 2006, Ms. Claridge is an associate with Carters practicing in the areas of charity, anti-terrorism, real estate, corporate and commercial law, and wills and estates, in addition to being the firm's research lawyer and assistant editor of *Charity Law Update*. After obtaining a Masters degree, she spent several years developing legal databases for LexisNexis Canada, before attending Osgoode Hall Law School where she was a Senior Editor of the *Osgoode Hall Law Journal*, Editor-in-Chief of the *Obiter Dicta* newspaper, and was awarded the Dean's Gold Key Award and Student Honour Award.



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. Ms. Demczur is also a regular speaker at the annual *Church & Charity Law*TM 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.



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 frequent speaker at the annual *Church & Charity Law*TM Seminar, seminars hosted by the Canadian Bar Association and the Ontario Tax Foundation, 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*.



Esther S.J. Oh – A partner with the firm, Ms. Oh practices in charity and not-for-profit at Carters' Mississauga office. Ms. Oh is a frequent contributor to www.charitylaw.ca and the *Charity Law Bulletin*, and has spoken at the annual *Church & Charity Law*TM Seminar as well as at the Canadian Bar Association/Ontario Bar Association's 2nd National Symposium on Charity Law. Ms. Oh's volunteer experience includes formerly serving as director and corporate secretary of the Evangelical Fellowship of Canada, and involvement with speaking engagements to various university student groups across Ontario.



Ryan Prendergast - Ryan was called to the Ontario Bar in 2010 and joined Carters to practice in the areas of charity and not-for-profit law, corporate and commercial law, and human rights law. A graduate of the University of Ottawa, Faculty of Law, Ryan was a student caseworker for the Criminal Division at the University of Ottawa Community Legal Aid Clinic, completed a research project for Ecology Ottawa on municipal by-laws, and worked for the Crown Attorney's Office in Toronto as a summer student. During his articles, Ryan acquired experience in charity and not-for-profit law, and contributed to several *Charity Law Bulletins* and other publications



Kate Robertson - Kate graduated from the University of Ottawa, Faculty of Law, in 2010, and obtained her Bachelor of Arts (*cum laude*) in Philosophy, Politics and Law from Binghamton University. During her studies, Kate was recognized by the National College Athlete Honour Society, the East Coast Athletic Academic Award of Merit, and elected as a Vice President for the Common Law student council. She also has experience as a Policy Analyst and Charities Officer for the Charities Directorate of the Canada Revenue Agency where she reviewed charitable applications and assisted with legal research and writing.



Colin Thurston - A graduate of Queen's University, Faculty of Law, in 2010, Colin volunteered at the Queen's Legal Aid clinic throughout his three years at Queen's and his responsibilities grew from hands-on legal research, writing, and litigation, to supervision and training of his fellow law students, to input on clinic operations from a policy level. Colin has gained litigation experience before numerous courts and tribunals and received numerous awards recognizing his work, including the Sabbath Prize in Wills and Estate Planning from Queen's University, Faculty of Law.



Jason Todoroff - Jason graduated from the University of Western Ontario Faculty of Law with a Juris Doctorate after having completed a B.A. (Hons.) in Political Science and History from the University of Waterloo. Jason also holds an Airline Transport Pilot Licence and worked in the aviation industry as a commercial pilot and flight instructor. Before his articling term at Carters, Jason worked for the firm as a summer student for two years and gained experience in a number of practice areas at Carters, and contributed to articles published in the *Charity Law Bulletin* and the 2008 and 2009 editions of *Charities Legislation and Commentary* (LexisNexis).

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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