

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

JUNE 2013

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20th Annual *Church & Charity Law*TM Seminar

Hosted by Carters Professional Corporation in Greater Toronto, Ontario.

Thursday, November 14, 2013.

Details and registration available soon.

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RECENT PUBLICATIONS AND NEWS RELEASES

Bill 85 to Amend Ontario *Not-For-Profit Corporations Act, 2010*

Theresa L.M. Man in *Charity Law Bulletin* No. 315, June 26, 2013.

Following the announcement by Ontario's Ministry of Consumer Services at the end of March 2013, delaying the proclamation of the Ontario *Not-for-Profit Corporations Act, 2010* ("ONCA") from July 1, 2013, to January 2014 at the earliest, new amendments to the ONCA embodied in Bill 85 were released on June 5, 2013. These new proposed changes to the ONCA will have significant impact on the application of the ONCA to Ontario corporations.

Bill 85 proposes technical amendments to a number of corporate law statutes, including the ONCA and the *Corporations Act* ("OCA"), *Business Corporations Act*, the *Business Names Act*, the *Corporations Information Act*, the *Extra-Provincial Corporations Act*, the *Limited Partnerships Act*, as well as 79 other Acts consequential to the ONCA. The majority of the amendments are of an administrative nature or are to ensure consistent wording across the various statutes. Some more substantive amendments are also made, including amendments to the OCA that are complementary to the ONCA. The Ministry's June 5, 2013 email announcing the release of Bill 85 states that proclamation of the ONCA cannot proceed without these legislative amendments. It also states that Bill 85 will enable the government to deliver on its commitment to modernize the legal framework that will govern the not-for-profit sector.

This *Charity Law Bulletin* highlights key amendments to the ONCA proposed by Bill 85, some of which may prove problematic to not-for-profit corporations in Ontario. Proposed amendments to other statutes are outside the scope of this Bulletin.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2013/chylb315.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2013/chylb315.htm>

CRA News

Karen J. Cooper.

CRA Conviction

Doreen Tennina, a director and owner of 1517069 Ontario Inc., also known as Executive Accounting, a provider of tax preparation and accounting related services, was found guilty in the Ontario Superior Court of Justice on two counts of fraud over \$5,000 under the *Criminal Code* and was sentenced to the

maximum period of 10 years in jail on each count to be served concurrently. Ms. Tennina was also ordered to pay a fine of \$699,608 for causing her company to fail to report income from a tax evasion scheme. Ms. Tennina is currently under arrest in Spain and awaiting extradition to Canada. A CRA investigation discovered that for the 2003 to 2005 tax years Ms. Tennina fraudulently claimed carrying charges and charitable donations totalling \$58,500,000 on 4,200 income tax returns that she prepared on behalf of her clients, which reduced the amount of federal taxes owed by over \$10,000,000. Ms. Tennina's corporation also failed to report taxable income of \$2.8 million for the 2003 to 2005, resulting in the evasion of \$699,608 in federal taxes.

For more information, see online at: <http://www.cra-arc.gc.ca/nwsrm/cnvctns/on/on130604-eng.html>.

CRA Limits Advanced Tax Rulings on Leveraged Donation Arrangements

CRA recently released its response to a 2010 Canadian Tax Foundation Roundtable discussion question on what the CRA's views are on providing advance income tax rulings on leveraged donation arrangements (Document #2010-0389111C6). Given the *Maréchaux* decision in 2009 and CRA's plan to audit all tax shelter gifting arrangements, including leveraged donation arrangements, the CRA stated that it would not be appropriate to consider requests for advanced income tax rulings on these types of arrangements when:

- Financing is available to fund the donation, with the result being that only a small percentage of the receipted amount has been paid by the taxpayer;
- The charity receives only a small percentage of the total receipted donation upfront;
- The arrangement involves preordained transactions involving several entities;
- It is unlikely that the taxpayer will have to repay the loan because the lender's recourse to collect is limited, or there is a provision to settle all or part of the loan by means other than cash;
- The arrangement involves long-term loans such that there is uncertainty about the impact of future events;
- The funds loaned to the taxpayer are circled back to the lender;
- The use of a limited partnership or other structure permits losses or other deductions to flow through to investors;
- Offshore money managers or investment accounts are used; or
- There is uncertainty about certain aspects (i.e. valuation) and questions of fact (i.e. arm's length issues)

CRA Guidance on Charitable Purposes and Activities that Benefit Youth

On June 26, 2013, CRA released a new guidance document on *Charitable Purposes and Activities that Benefit Youth* that replaces CPS-015, *Registration of Organizations Directed at Youth*. This guidance

explains CRA's interpretation of the relevant common law and the *Income Tax Act* when determining whether an organization established to benefit youth is eligible for registration as a charity under the Act. For a detailed discussion of this new Guidance, please see our forthcoming *Charity Law Bulletin*. The Guidance is available on the CRA website at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/yth-eng.html?rss>.

Federal Legislation Update

Terrance S. Carter.

A number of important Federal government legislative measures over the last month continue to have an impact on the charity and not-for-profit sector. A brief update on the status of some of these measures as of June 26, 2013, is set-out below:

Bill C-60, *Economic Action Plan 2013 Act, No. 1*

Bill C-60, *Economic Action Plan 2013 Act, No. 1* received Royal Assent June 26, 2013, after being adopted without amendments by the Senate. This Bill will implement certain provisions of the 2013 Federal Budget tabled in Parliament on March 21, 2013 and other measures.

For a previous discussion on the implications of the 2013 Federal Budget on charities, see *Charity Law Bulletin* No. 306 online at: <http://www.carters.ca/pub/bulletin/charity/2013/chylb306.pdf>

Bill C-60 and the recent debates of the Bill are available online at:

<http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=6108103>

Bill C-48, *Technical Tax Amendments Act 2012*

Bill C-48, *Technical Tax Amendments Act 2012*, received Royal Assent June 26, 2013, after being adopted without amendments by the Senate. The Bill includes amendments to the *Income Tax Act* that would affect split receipting and were first proposed back in December of 2002, but have not been passed to date.

More analysis of the proposed amendments can be found in the October 2012 *Charity Law Update*: <http://www.carters.ca/pub/update/charity/12/oct12.pdf>.

Bill C-48 and the recent debates of the Bill are available online at:

<http://www.parl.gc.ca/legisinfo/BillDetails.aspx?Language=E&Mode=1&billId=5839600>

Bill S-14, *Fighting Foreign Corruption Act*

Bill S-14, *Fighting Foreign Corruption Act*, amending the *Corruption of Foreign Public Officials Act*, received Royal Assent on June 19, 2013, without amendments, notwithstanding submissions by interested stake holders, including the Canadian Bar Association.

For information on how this legislation could hinder charities and not-for-profits that deliver humanitarian aid in foreign countries, see the February 2013 *Charity Law Update*: <http://www.carters.ca/pub/update/charity/13/feb13.pdf>.

Bill S-14 can be accessed online at:

<http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&Bill=S14&Parl=41&Ses=1>.

Bill C-458, the *National Charities Week Act*

Bill C-458, *National Charities Week Act* is still before the House Finance Committee after its second reading. The Bill would make the last week of February each year “National Charities Week.” The Bill would also amend the *Income Tax Act* to extend the deadline for people claiming charitable gifts for tax purposes by 60 days from year end to coincide with the deadline for RRSP contributions.

For more information on Bill C-458, see the November/December 2012 *Charity Law Update*: <http://www.carters.ca/pub/update/charity/12/novdec12.pdf>

The Bill’s status can be monitored at:

<http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=5794262>

Bill C-377, *An Act to Amend the Income Tax Act (Requirements for Labour Organizations)*

Bill C-377, *An Act to Amend the Income Tax Act (Requirements for Labour Organizations)*, received its third reading in the Senate and was adopted with one amendment. The amendment will increase the mandatory disclosure on union spending from \$5,000 to \$150,000, increase mandatory employee salary disclosure from \$100,000 to \$444,000 and will now only apply to unions with 50,000 or more members. Bill C-377 with its amendment will now go back to the House of Commons in the fall. Labour organizations are entitled to tax-exempt status under section 149(1)(k) of the *Income Tax Act*.

Bill C-377 and the recent debates of the Bill are available online at:

<http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=5295287>.

Federal Court of Appeal Overturns Decision in Guindon

Karen J. Cooper.

On June 12, 2013, the Federal Court of Appeal (FCA) released their judgment in *Guindon, J. v. The Queen* (2013 FCA 153). This was an appeal by the Crown of a judgment of the Tax Court of Canada (TCC), which set aside a penalty assessed against Ms. Guindon by CRA under section 163.2 of the *Income Tax Act*. As a result of an investigation, CRA assessed a penalty of \$564,747 against Ms. Guindon under section 163.2 of the Act after she provided a legal opinion on the “The Global Trust Charitable Donation Program” charitable donation scheme and in respect of which she issued 134 charitable donation receipts. The TCC held that section 163.2 created an “offence” such that Ms. Guindon had the rights set out in section 11 of the *Charter* and her penalty was overturned on the basis that these rights had not been respected by CRA in its investigation and assessment process (see *Charity Law Bulletin* No. 291 online at: <http://www.carters.ca/pub/bulletin/charity/2012/chylb291.pdf> for a detailed discussion of the TCC decision).

Given the constitutional nature of the argument, however, the FCA held that Ms. Guindon should have been obligated to serve a notice of constitutional question when she sought a finding that a section of the Act was invalid, inoperative or inapplicable. Since she failed to do so, the FCA held that the TCC had no jurisdiction in this instance to consider whether section 163.2 if the Act created a criminal offence and her penalty should not have been overturned. In the alternative, the FCA reviewed the TCC’s assessment of the criminal nature of the penalty under section 163.2. The FCA compared the penalty and offence provisions in the Act in order to determine whether a penalty in the Act could be a criminal offense. The Act contains approximately sixty penalty provisions, including section 163.2, which prescribe non-discretionary fixed amounts or non-discretionary formulae for the calculation of a penalty to be included in an assessment. The FCA determined that these provisions provided no evaluation of the “moral blameworthiness or turpitude on the conduct.” In comparison, the FCA established that offence provisions were punishable by fines, imprisonment or both, and none were fixed or calculated by a rigid formula. According to the FCA, 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.

To access the case online see: <http://canlii.ca/t/fz581>.

CRA Guidance on Foreign Activities Changes Rules on Capital Property in a Foreign Country

Terrance S. Carter and Jacqueline M. Demczur in *Charity Law Bulletin* No. 316, June 27, 2013.

CRA Guidance – CG-002 “Canadian Registered Charities Carrying Activities Outside of Canada” (“The Guidance”) has been amended by replacing Appendix B entitled “What if a charity helps build capital property in a foreign country?”, with a new Appendix B now entitled “What if a charity wants to transfer capital property to a non-qualified donee in a foreign country?” The Guidance was originally released on July 8, 2010. The exact date that Appendix B was replaced by CRA is not known, but it would appear that the amendment may have occurred on June 14, 2012, being the “date modified” indicated in the online version of the Guidance accessed on June 27, 2013. To our knowledge, no notice was given by CRA concerning this amendment, which is surprising given the fact that the changes in the wording set out in Appendix B, as explained below, are not of an insignificant nature.

This *Charity Law Bulletin* provides a comparison of the old and new Appendices, as well as commentary on the changes and the impact on charities.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2013/chylb316.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2013/chylb316.htm>

Application Procedures for Other Listed Qualified Donees

Ryan Prendergast and Terrance Carter.

In *Charity Law Bulletin* No. 311, commentary was provided on a CRA Views issued by the Income Tax Rulings Directorate concerning the development of an application for registration as a qualified donee by corporations that are a housing corporation resident in Canada and exempt from tax under paragraph 149(1)(i) of the *Income Tax Act* (Canada) (“ITA”) (“low-cost housing corporations”). As a result of amendments to the ITA which came into force on January 1, 2012, not only must low-cost housing corporations apply for registration with CRA in order to be listed as a qualified donee, but entities which are exempt under 149(1)(c), i.e., “municipal or public bodies performing a function of government in Canada”, must also apply (“municipal or public bodies”). This requirement, though, does not apply to municipalities as qualified donees, since CRA has already listed them on its website.

In this regard, CRA now has available on its website details concerning the application process to be listed for both entities. The list is expected to be posted on CRA’s website as of January 1, 2014 and

only those organizations that are listed will be entitled to claim status as a qualified donee. The application process can be found at the below link.

Details concerning the application process for municipal or public bodies is available online at:

<http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/mncplpblcbds-eng.html>.

Details concerning the application process for low-cost housing corporations is also available online at:

<http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/lwesthsng-eng.html>

CNCA Continuance Deadline Looming

Terrance S. Carter and Esther S.J. Oh.

By January 2013, approximately only 500 not-for-profit corporations incorporated under the *Canada Corporations Act* (“CCA”) had continued under the new *Canada Not-for-Profit Corporations Act* (“CNCA”). As of March 2013, this increased to 700. Most recently, as of June 10, 2013, approximately 1,200 had continued under the CNCA. According to Industry Canada, there is an estimated 17,000 Part II CCA non-profit corporations. The exact number of existing Part II CCA corporations is not available because many of those corporations do not regularly file their annual corporate returns with Industry Canada. This leaves approximately 15,000 corporations that still need to apply for continuance under the CNCA by the deadline of October 17, 2014. Failure to continue under the CNCA by the deadline will result in those corporations being dissolved.

Given the serious consequences associated with dissolution as a corporation, it is essential that the remaining Part II CCA corporations take appropriate steps to continue under the CNCA as soon as possible. The continuance process will require the preparation of articles of continuance and a new by-law which complies with the CNCA. Drafting these documents and having them approved by the board and the members at meetings called for that purpose before filing with Industry Canada can take a number of months, subject to the governance process and polity of the organization. There is no mandatory requirement that a lawyer be retained to assist in this process because there are a number of self-help tools available on Industry Canada’s website. However, because of the complexities surrounding the new CNCA provisions, it is generally advisable to obtain assistance from a lawyer who is knowledgeable concerning the CNCA and experienced in charity and not-for profit law matters in order to ensure that the new articles and by-law are compliant with the complex rules in the CNCA.

Recent CRA Views on Non-Profit Organizations Whose Main Purposes are to Provide Dining, Recreational or Sporting Facilities under subsection 149(5)

Theresa L.M. Man.

CRA recently released several views in relation to taxability of income earned by non-profit organizations (NPOs) whose main purposes are to provide dining, recreational or sporting facilities for its members pursuant to subsection 149(5) of the *Income Tax Act*. Although an NPO under paragraph 149(1)(l) of the Act is generally not taxable under Part I of the Act on its taxable income, subsection 149(5) of the Act provides an exception to an NPO whose main purpose is to provide dining, recreational or sporting facilities. Under subsection 149(5), an *inter vivos* trust is deemed to be created and the NPO's income from property and certain taxable capital gains are income of the deemed trust and are subject to tax.

In Document #2012-0437651I7, the NPO in question engaged in an extensive renovation project by transferring funds from its operating fund to its building fund. At the same time, interest earned from its GICs was taxed in a deemed trust under subsection 149(5) of the Act. CRA was of the view that the interest expense charged to the renovation project could not be taken as a deduction in calculating taxable income for purposes of subsection 149(5). CRA stated that in order for an NPO to deduct interest from interest income, there must be a direct link between the borrowed money and the eligible use. In this situation, these conditions were not met because interest was incurred on borrowed money used to renovate the building, which was used in the club's ongoing day-to-day business-type activities, and no part of the borrowed money was used to acquire the GICs which generated the interest income.

In Document #2011-0419931I7, the CRA reviewed whether an NPO whose main purpose is to provide dining, recreational or sporting facilities for its members can be taxed on the capital gain arising from certain dispositions. Subsection 149(5) of the Act contains an exception whereby capital gains arising from the disposition of property that was used exclusively for and directly in the course of providing dining, recreation and sporting facilities to the members of the organization are not taxable. In this situation, the CRA was of the view that capital gains realized by the NPO on the sale of its property were taxable because the property was not used exclusively for and directly in the provision of facilities to its members. As well, interest income earned by the NPO was also taxable in the deemed trust because interest income earned by a club, irrespective of source, is considered income from property for the purpose of subsection 149(5).

Similarly, in Document #2012-0462861C6, the CRA was asked to provide guidance in respect of the characterization of income earned from various types of possible payment plans for membership fees, monthly dues and fees for the use of club resources. CRA again confirmed its view that interest income, regardless of its source, earned by an NPO is considered income from property for the purpose of subsection 149(5) of the Act. The CRA does not make a distinction between interest income that is earned from the deposit of surplus funds received as a result of prepaid membership dues and interest income earned from overdue membership dues. The determination of whether any particular payment plan offered to members includes income from property is a question of fact that can only be determined on a case by case basis.

Ontario Labour Relations Board Clarifies “Workplace Harassment”

Barry W. Kwasniewski in *Charity Law Bulletin* No. 314, June 26, 2013.

With the enactment of Bill 168 in June, 2010, Ontario employers, including charities and not-for-profits, are subject to legal duties to develop and maintain policies and programs to address workplace harassment and violence. However, employers and employees still face issues as to what types of behaviour or incidents are “harassment”, as opposed to legitimate management conduct. In the Ontario Labour Relations Board (the “Board”) decision in *Amodeo v. Craiglee Nursing Home Limited*, the Board provides guidance as to what is and is not workplace harassment. This *Charity Law Bulletin* discusses this decision and its implications for employers.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2013/chylb314.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2013/chylb314.htm>

Passive Directors Now Passé

Ryan M. Prendergast and Terrance S. Carter.

There is frequently an attitude taken on the boards of charitable and non-profit organizations that directors have a right to abstain from voting on a particular matter. This may occur, for example, where a director feels that he or she does not agree with their fellow board members on the issue and wishes to voice a silent protest, or alternatively, where they feel they may not have enough information available to them to vote one way or the other. However, for those charities or non-profit organizations which are incorporated under either the *Canada Not-for-profit Corporations Act* (the “CNCA”), or the *Not-for-profit Corporations Act, 2010*, in Ontario, yet to be proclaimed (the “ONCA”), the ability for a director to abstain by not voting on matters at meetings of the board of directors will no longer be available.

Under section 147 of the CNCA and 45 of the ONCA, a director who is present (in person or by telephone, etc.) at a meeting of directors (or a committee of directors, i.e., an executive committee) will be deemed to have consented to any resolution passed or action taken at the meeting unless they take certain steps to lodge their dissent with the corporation. These steps including having their dissent entered in the minutes of the meeting; sending a written dissent to the meeting secretary before the meeting has ended; or submitting their dissent to the corporation immediately after the termination of the meeting. In addition, if a director does not attend a meeting, they will be deemed to have consented to any resolution or action taken at a meeting, unless they cause their dissent to be placed in the minutes or submit their dissent to the corporation within seven days of becoming aware of the resolution or action. For this reason, it will be particularly important that directors who do not attend a meeting review the minutes of that meeting as soon as possible to verify if they need to record their dissent to any resolution or action taken.

By no longer permitting directors to have a passive role during meetings, directors of federal and Ontario not-for-profit corporations under the CNCA and ONCA respectively, will need to play an active role in meetings by voting on resolutions as presented. They must do so by ensuring that they no longer abstain on matters and make certain that their dissent is in the minutes of the meeting where they do not agree with the resolution or action taken. By requiring directors of incorporated charities and non-profit organizations to clearly take a position, directors will be actively demonstrating that they are exercising the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances. The deemed consent of a director under the CNCA and ONCA who does not vote at a meeting or does not attend a meeting will later prevent those directors from objecting to a resolution or action that the rest of the board took. If the conduct of a director is later reviewed by a court where action taken by the board resulted in the board's exposure to personal liability, it will not be an excuse from liability for the abstaining director to say that he or she abstained on the matter. Both current and future boards under the CNCA, and eventually the ONCA when it is proclaimed, will want to ensure that all existing and future directors are familiar with these procedures when recording votes.

Proposed Accounting Statement of Principles for Not-for-Profit Organizations

Terrance S. Carter.

The Accounting Standards Board ("AcSB") and Public Sector Accounting Board ("PSAB") of Canada jointly issued a Statement of Principles on April 10, 2013, that proposes to revise Part III in the Canadian Institute of Chartered Accountants ("CICA") Handbook – Accounting, and the CICA Public

Sector Accounting (PSA) Handbook, including the PS 4200 series of Sections, respectively, to improve the existing standards for financial reporting by not-for-profit organizations. The objectives behind these new standards are to review and amend not-for-profit accounting standards in order to address transactions and circumstances unique to not-for-profit organizations and to be more in line with existing reference accounting standards. The proposals are also directed at enhancing the comparability and understandability of the financial statements prepared by not-for-profit organizations. The proposed improvements would result in changes in how not-for-profit organizations account for and report their revenues from contributions and pledges, capital assets, and expenses. Individuals or organizations interested in commenting on the Statement of Principles may submit comments to the recently amalgamated Chartered Professional Accountants Canada (“CPA Canada”) by September 15, 2013. It will be important for accountants and other persons knowledgeable in accounting matters involving the not-for-profit sector to carefully review and comment on the Statement of Principles to ensure that the final revisions adopted will reflect the unique reality of the law that guides organizations within the not-for-profit sector, such as the need to physically segregate externally restricted funds from general funds of a charity. As such, this initiative will be of significant interest to the broader not-for-profit sector.

The AcSB/PSAB Statement of Principles, which includes information on how to provide comment, is available online at: <http://www.frascanada.ca/standards-for-not-for-profit-organizations/documents-for-comment/item73780.pdf>

Some Charities Could Lose Brand Protection upon Official Marks Review

Colin J. Thurston.

On June 17, 2013, the Government delivered its response to the Standing Committee on Industry, Science and Technology’s report on the subject of *The Canadian Intellectual Property Regime*. While the document addresses a wide range of IP-related issues, a particular matter which will be of importance to charities is the Government’s promise to review the current Official Marks regime, which many charities have used to their advantage in protecting their trade-marks in Canada.

Under Canada’s *Trade-marks Act*, an entity which qualifies as a “public authority” is eligible to protect a badge, crest, emblem or mark as an “Official Mark” upon successful application to the Canadian Intellectual Property Office (“CIPO”). Obtaining Official Mark status grants broad protection which is not only wider in scope than a typical trade-mark registration, but also never expires or requires renewal. Canadian registered charities were generally able to qualify as public authorities in order to obtain Official Mark protection for their trade-marks until a number of court decisions stated otherwise during

the early 2000s. Prior to this change in the law, many charities were advised to also apply for Official Mark protection in addition to applying for protection of their trade-marks under the normal registered trade-mark regime. Of course, not all charities obtained or maintained the normal trade-mark registration, leaving some organizations with only invalid or unenforceable Official Marks in place to protect their brand. Although the law changed approximately ten years ago, Official Marks advertised before that time still appear in the CIPO database and, while technically unreliable, have not been invalidated or removed because of the onerous and cumbersome process involved in challenging an Official Mark. The continued existence of Official Marks has been criticized as restricting innovation and providing disproportionate protection for some marks. Therefore, in its June 17, 2013 report, the Government has responded by promising that it will “*review the current issues around official marks and will consult with provinces, territories and stakeholders on possible changes to the official marks regime in order to remove barriers faced by Canadian companies seeking trademark registration.*”

Many charities still hold Official Marks, and many of these have still not applied for parallel normal registered trade-marks. Some organizations are surprised to learn that an Official Mark obtained in the past is not in fact a registered trade-mark, and may not be enforceable if challenged. Based on the recent comments from the Government, even though it is not certain when or if specific changes will be implemented, charities would be well-advised to seek advice from legal counsel regarding what steps can be taken now to prepare for such changes in the future.

Uniform Law Conference of Canada Adopts New *Uniform Trustee Act*

Terrance S. Carter.

At its last annual meeting, the Uniform Law Conference of Canada (ULCC) adopted a new *Uniform Trustee Act*, with commentary, and recommended that the the model legislation be enacted by provincial and territorial governments. The *Uniform Trustee Act* is a modernized model statute that addresses the administration of trusts in general, as well as charitable and non-charitable purpose trusts in particular. The *Uniform Trustee Act* is not intended to be a code of trust law, but rather is proposed as enabling and supplementary legislation to the general and largely non-statutory law of trusts, and its provisions would only apply when trust instruments did not make other provisions or were silent.

In addition to including provisions that would have general application to all trusts, including charitable trusts (such as establishing a prudent investor standard), the *Uniform Trustee Act* includes a number of remedial provisions that would directly assist charities. Such remedial provisions would include a power

of the court to vary charitable gifts (s. 70), authority and direction concerning the application of a surplus fund from a public appeal (s.71), the power of the court to order the sale of charitable trust property if it can no longer be advantageously used for its charitable purpose (s.72), and protection of charitable trust property from seizure (s.76). As such, the *Uniform Trustee Act* represents an important initiative to assist in the administration of charitable property. It is hoped that provincial and territorial governments will take notice of the model legislation and consider its future enactment within their respective jurisdictions.

For more information on the *Uniform Trustee Act* and Final Report of the Working Group see online at: <http://www.ulcc.ca/en/uniform-acts-en-gb-1/619-uniform-trustee-act-2012/1254-uniform-trustee-act-final-report-of-the-working-group>.

Carters is Pleased to Welcome Two New Associates

Tanya L. Carlton, OCT, B.SC., B.ED., J.D. – Tanya joins Carters to practice charity and not-for-profit law, having articulated with the firm before her Call to the Ontario Bar in 2013. A graduate from the University of Ottawa Faculty of Law in 2012, Tanya also earned a B.Sc. (Hons.) in Biochemistry from Bishops University and a B.Ed. from the University of Western Ontario prior to attending law school. After teaching high school math and chemistry for several years, Tanya took a hiatus and started a family. Throughout this time, she maintained her status as an Ontario Certified Teacher and served as an elected Municipal Councillor. While in law school, Tanya gained legal experience during the summers as a research assistant for several Ottawa-based teaching lawyers.

While articling with Carters, Tanya gained experience in Charity and Not-for-Profit Law, Employment Law and Wills and Estates, as well as contributing to several *Charity Law Bulletins*. Tanya currently sits as the Chair of the Board of “The Mental Health Project for Youth”, a not-for-profit organization run by youth that focuses on educating, empowering and engaging young people in good mental health practices and providing comprehensive support to those suffering with mental illness.

Kristen D. van Arnhem, B.A. (Hons.), J.D. – Kristen joins Carters to practice exclusively in the area of family law at the firm’s Orangeville office. After having articulated with Carters, Kristen joined a Guelph firm where she focused on all areas of family law including separation, divorce, child custody and grandparent custody/access, child/spousal support, domestic contracts, including cohabitation agreements, and has appeared in the various levels of family court.

Kristen attended the University of Guelph where she graduated with Distinction with an Honours Bachelor of Arts in Sociology. She obtained her Juris Doctor from the University of Ottawa where she graduated in the top ten percent of her class. She has participated in two international law school exchanges in Australia and Puerto Rico. During law school, Kristen worked at a family law firm and volunteered with Ottawa's Supervised Access Program, Legal Aid Clinic in Ottawa, and was a note taker for students with disabilities. Kristen was called to the Ontario Bar in 2012.

Kristen was born and raised in Orangeville and has returned to her roots and is looking forward to practising and assisting her hometown community.

IN THE PRESS

The benefits of volunteer agreements by Barry W. Kwasniewski.
Hilborn eNews, June 20, 2013.

[Link] <http://charityinfo.ca/articles/The-benefits-of-volunteer-agreements>

Federal Legislation Update by Terrance S. Carter.

Charitable Thoughts, Vol. 16, No. 3, Ontario Bar Association, June 2013.

[Link] http://www.oba.org/en/pdf/sec_news_cha_jun13_car_fed.pdf

RECENT EVENTS AND PRESENTATIONS

Ontario Hospital Association's Workshop for Foundation Boards included a presentation by Terrance S. Carter and Malcolm Burrows entitled "Financial Accountability and Internal Controls" on May 27, 2013.

[Web] <http://www.carters.ca/pub/seminar/charity/2013/tscmb0527.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2013/tscmb0527.pdf>

NonProfit Centers Steering Committee held in Denver, Colorado, included a presentation by Theresa L.M. Man entitled "Canadian Rules: Legal Structures, Taxation, and Financing" on June 4, 2013.

[Web] <http://www.carters.ca/pub/seminar/charity/2013/tlm0604.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2013/tlm0604.pdf>

Imagine Canada's Charity Tax Tools Webinar on June 4, 2013, was a presentation by Karen J. Cooper entitled "Update on Maintaining NPO Status - Revisited."

[Webinar] https://docs.google.com/file/d/0B_Y0ygc_-I1dGRVUI12XzRfMVU/edit?

[Handout] http://charitytax.imaginecanada.ca/files/charitytax/webinars/imagine_canada_ctt-npo_20130604.pdf

Healthcare Philanthropy: Check-Up 2013 hosted by Fasken Martineau and Carters on June 11, 2013, included the following presentations:

“Considerations in Drafting and Managing Restricted Gifts” by Terrance S. Carter;

[Web] <http://www.carters.ca/pub/seminar/charity/2013/tsc0611.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2013/tsc0611.pdf>

“Essential Charity Law Update” by M. Elena Hoffstein of Fasken Martineau;

[PDF] Available at <http://www.fasken.com/en/check-up-2013/>

“Thorny Issues Arising from the ONCA/CNCA” by Theresa L.M. Man; and

[Web] <http://www.carters.ca/pub/seminar/charity/2013/tlm0611.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2013/tlm0611.pdf>

“Gifts by Wills” by Laura West of Fasken Martineau.

[PDF] Available at <http://www.fasken.com/en/check-up-2013/>

Canadian Baptists of Ontario and Quebec Assembly 2013 held in Etobicoke, Ontario, included a presentation by Terrance S. Carter entitled “The In’s and Out’s of the CNCA and the ONCA for Churches” on June 15, 2013.

[Web] <http://www.carters.ca/pub/seminar/charity/2013/tsc0615.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2013/tsc0615.pdf>

York Region Community Investment 2013 Professional Development Curriculum on June 21, 2013, included a presentation by Theresa L.M. Man and Terrance S. Carter entitled “How to Get Ready for the Ontario *Not-for-Profit Corporations Act, 2010*.”

[Web] <http://www.carters.ca/pub/seminar/charity/2013/tlmtsc0621.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2013/tlmtsc0621.pdf>

UPCOMING EVENTS AND PRESENTATIONS

CCCC Leadership & Stewardship Conference being held in Mississauga, Ontario, on September 24-26, 2013, will include the following presentations:

“Copyright Issues for Churches and Charities: What You Need to Know” by Colin J. Thurston;

“Community Economic Development Guidance – Social Enterprise for Charities” by Terrance S. Carter; and

“Getting Ready for the ONCA – Tough Issues to Consider” by Theresa L.M. Man.

Information and registration available at <http://www.cccc.org/conference>.

The 20th Annual Church & Charity Law™ Seminar will be held at Portico Community Church in Mississauga, Ontario, on Thursday, November 14, 2013.

Details and online registration will be available soon at <http://www.charitylaw.ca>.

CONTRIBUTORS

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Tanya L. Carlton – Ms. Carlton graduated from the University of Ottawa, Faculty of Law in 2011. Prior to attending law school, Tanya earned a B.Sc. (Hons.) in Biochemistry from Bishops University and a B.Ed. from the University of Western Ontario. After teaching high school math and chemistry for several years, she took a hiatus and started a family. Throughout this time, she maintained her status as an Ontario Certified Teacher and served as an elected Municipal Councillor. Before articling with Carters, Ms. Carlton gained legal experience during the summers as a research assistant for several Ottawa-based teaching lawyers.



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, Past Chair of the CBA National Charities and Not-for-Profit Section, is recognized as a leading expert by *Lexpert* and *The Best Lawyers in Canada*, is consulting editor of *Charities Legislation and Commentary* (LexisNexis, 2013), and editor of www.charitylaw.ca, www.churchlaw.ca and www.antiterrorismlaw.ca.



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



Karen J. Cooper – A partner with the firm, Ms. Cooper is recognized as a leading expert by *Lexpert* and *Best Lawyers* practicing 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. Mrs. Demczur has been recognized as a leading expert in charity and not-for-profit law by *Lexpert*. She is a contributing author to Industry Canada's *Primer for Directors of Not-For-Profit Corporations*, and has written numerous articles on charity and not-for-profit issues for the *Lawyers Weekly*, *The Philanthropist* and *Charity Law Bulletin*, among others.



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 charity and not-for-profit law and is recognized as a leading expert by *Lexpert* and *Best Lawyers*. She is an Executive Member of both the Charity and Not-for-Profit Sections of the Ontario Bar Association (OBA) and the Canadian Bar Association (CBA). In addition to being a frequent speaker at seminars hosted by Carters, the CBA and the OBA, Ms. Man has also written articles for numerous publications, including *The Lawyers Weekly*, *The Philanthropist*, *Planned Giving Pulse*, *International Journal of Civil Society Law*, *The Bottom Line*, *Canadian Fundraiser*, and *Charity Law Bulletin*.



Esther S.J. Oh – A partner with the firm, Ms. Oh practices in charity and not-for-profit, and is recognized as a leading expert in charity and not-for-profit law by *Lexpert*. 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 board member and corporate secretary of a national umbrella organization, and a director at a local community organization.



Ryan Prendergast – Called to the Ontario Bar in 2010, Mr. Prendergast 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, Mr. Prendergast was a 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, he acquired experience in charity and not-for-profit law, and contributed to several *Charity Law Bulletins* and other publications.



Colin Thurston – Called to the Ontario Bar in 2011, Mr. Thurston joined Carters to practice in the area of intellectual property. A graduate of Queen's University, Faculty of Law, Mr. Thurston volunteered at the Queen's Legal Aid clinic throughout his 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. Mr. Thurston has litigation experience before numerous courts and tribunals and received numerous awards, including the Sabbath Prize in Wills and Estate Planning from Queen's Faculty of Law.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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