

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

APRIL 2014

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2014 National Charity Law Symposium

Hosted by the Canadian and Ontario Bar Associations in Toronto, ON, on **May 23, 2014**.

Details and online registration available at http://www.cbapd.org/details_en.aspx?id=na_char14.

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RECENT PUBLICATIONS AND NEWS RELEASES

Legislation Update

Terrance S. Carter and Theresa L.M. Man.

Federal Bill C-31 to Implement Budget

Portions of legislation proposed in the 2014 Federal Budget (“Budget 2014”) that will affect charities have been tabled in Bill C-31, *Economic Action Plan 2014 Act, No. 1*. Bill C-31 was introduced to the House of Commons for First Reading on March 28, 2014, and received Second Reading on April 8, 2014. For further information about Bill C-31’s Budget 2014 provisions, see *Charity Law Bulletin No. 330 – Budget 2014: Impact on Charities* in the February 2014 *Charity Law Update*.

Federal Bill C-31 Amendments to Trade-marks Law

Bill C-31, *Economic Action Plan 2014 Act, No. 1*, which received Second Reading on April 8, 2014, proposes key legislative amendments to trade-mark law in Canada. Among the more significant changes would be an expansion of the definition for “trade-mark”, the adoption of an international goods and services classification system under the *Nice Agreement*, a requirement for trade-mark renewals to be made every 10 years, and simplified and streamlined requirements for Canadian trade-mark applications. For further information about Bill C-31’s proposed trade-marks law amendments, see “Significant Changes to Trade-marks Act Proposed” by Colin J. Thurston below.

Federal Bill S-4, the Digital Privacy Act

On April 8, 2014, the Federal Government introduced Bill S-4, the *Digital Privacy Act*, in the Senate. Bill S-4 proposes amendments to the *Personal Information Protection and Electronic Documents Act* (“PIPEDA”). These amendments would allow organizations to disclose personal information to other organizations or to the individual’s next of kin without the individual’s knowledge or consent under certain circumstances, and would restrict organizations from informing individuals that their personal information was shared with enforcement and security agencies under certain circumstances. For further information about Bill S-4’s proposed amendments to PIPEDA, see “Digital Privacy Act Proposes Amendments to PIPEDA” by Colin J. Thurston below.

Federal Bill S-202 Amendments to Credit Card Acceptance Fees

Federal Bill S-202, *An Act to amend the Payment Card Networks Act (credit card acceptance fees)* received Second Reading on March 25, 2014. Bill S-202 proposes to limit credit card acceptance fees charged by “designated payment card networks” to merchants who accept payment by credit card and

eliminating credit card acceptance fees being charged to charities. Currently, only MasterCard and Visa are proposed to be “designated payment card networks”. If passed without amendments, Bill S-202 would benefit charities by allowing donations to be made by credit card without additional credit card acceptance fees.

Ontario Bill 85, Companies Statute Law Amendment Act, 2014 (ONCA)

Ten months after it received First Reading on June 5, 2013, Ontario Bill 85, *Companies Statute Law Amendment Act, 2014* was finally debated at Second Reading on April 10, 2014. Bill 85 contains key amendments to the *Ontario Not-for-Profit Corporations Act* (“ONCA”) that must be passed before the ONCA can be proclaimed. The debate was deemed to be adjourned on April 10, 2014, and was scheduled to continue at Second Reading on April 28, 2014, but has since been delayed. As it is not known how quickly Bill 85 will proceed through the Legislature, it is possible that proclamation of the ONCA may not happen before the first half of 2015. The not-for-profit sector in Ontario will have to wait until an official announcement is made by the Ministry to gain greater insight.

Saskatchewan Bill 105, Informal Public Appeals Act

On March 12, 2014, Saskatchewan Bill 105, *Informal Public Appeals Act* received Royal Assent. The *Informal Public Appeals Act* assists individuals and organizations that informally raise funds for charitable or non-charitable purposes through “public appeals” to dispose of any surplus or unused donations. Otherwise, where a public appeals campaign raises more money than required for the intended purpose, organizers unfamiliar with their legal obligations may be unaware that returning the money to donors or applying the funds to a different cause may amount to a breach of trust in certain situations. The *Informal Public Appeals Act* reflects, in part, provisions in the *Uniform Informal Public Appeals Act* (“UIPAA”) model draft legislation, which was adopted by the *Uniform Law Conference of Canada*. The *Informal Public Appeals Act* is not currently in force, and will come into force at a future unknown date upon proclamation. For more details on the UIPAA, see “ULCC Adopts Revised Draft of *Uniform Informal Public Appeals Act*” in the November/December 2011 *Charity Law Update* at <http://www.carters.ca/pub/update/charity/11/nov-dec11.pdf>.

CRA News

Ryan M. Prendergast

CNCA Continuance Update

CRA is reminding charities and registered Canadian amateur athletic associations incorporated under Part II of the *Canada Corporations Act* about the upcoming *Canada Not-for-Profit Corporations Act* continuance deadline on October 17, 2014, which is quickly approaching. On April 4, 2014, CRA released an update, entitled “What you should know about the upcoming deadline that could affect the status of federally incorporated registered charities and registered Canadian amateur athletic associations”, reminding charities that they have less than seven months to apply for continuance.

For further information on the continuance process, CRA refers users to its “Transition to the Canada Not-for-profit Corporations Act (NFP Act)” web page, which can be accessed online at: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/nfpc/menu-eng.html>.

Charities and their Participation in Political Activities Video Series

CRA launched a new video series on April 26, 2014 entitled “Charities and their participation in political activities”. There are currently three short videos in the series, “Overview of political activities”, “What is a political activity?” and “Charities must always be non-partisan”. The video series can be accessed at: <http://www.cra-arc.gc.ca/vdglry/chrts-gvng/srs-pltclctvts-eng.html?rss>.

Charities Media Kit Updated

On April 25, 2014, CRA updated the Charities Facts and Figures page in the Charities Media Kit with information from the 2013-2014 fiscal year. According to the Charities Facts and Figures, the number of registered charities grew from 86,159 on December 31, 2012 to 86,617 by December 31, 2013. More updated details are available on the Charities Facts and Figures, online at: <http://www.cra-arc.gc.ca/chrts-gvng/md-kt/fcts-fgrs-eng.html>

Tax Court Reminder for Accurate Tax Returns

Jacqueline M. Demczur.

On April 4, 2014, the Tax Court of Canada released its judgment in *Holst, A et al v The Queen* (2014 TCC 84), in which it considered an appeal by Holst and Hillier (the “appellants”) regarding the disallowance of charitable tax credits for donations they had made to the Israelite Church of Christ Canada (“Israelite”) and Liberty Parish Celestial Church of Christ (“Celestial”) (collectively, the “Churches”) between 2006 and 2008. The Court noted that it appeared that Celestial was the successor church to Israelite.

As a result of audits, the Churches had their charitable registration revoked in part because CRA could not verify donations for which receipts were issued as a result of poor record keeping, and in part because a tax return preparer who was convicted of preparing false donation receipts was in possession of pre-signed receipts from Celestial. Additionally, the Churches' charitable status was revoked because CRA found that receipts for goods allegedly shipped by Israelite to Nigeria were forgeries. The Churches' charitable status was revoked after the period to which the appellants' tax receipts applied.

The Court stated that the appellants did not provide any evidence to specific amounts donated. Further, the appellants acknowledged that information the Churches provided to support their tax credit claims was inaccurate. While the Court accepted that the appellants had attended the Churches and made some donations, it dismissed their appeals because they did not provide evidence of the amounts they claimed to have donated.

Although the appellants argued that it was unfair to penalize them for the illegal conduct of the Churches, the Court stated that the appellants appeared to have claimed higher donations on their tax returns than they had actually made. In this regard, the Court provided a reminder that tax returns must be accurate, stating that "taxpayers must ensure that their income tax returns are accurate, and the appellants bear responsibility for failing to do so".

Tax Court Denies Fraudulent Charitable Receipts

Theresa L.M. Man

On March 18, 2014, the Tax Court of Canada released its judgment in *Johnson v. R.* (2014 TCC 84), in which it considered Johnson's appeal of the Minister of National Revenue's reassessment of his claims for non-refundable tax credits for donations made in 2002 and 2003. The appeal was dismissed.

According to Johnson, he donated \$18,500 in 2002 and \$15,500 in 2003 to Canadian Foundation for Child Development ("CFCD"). His tax returns for the reassessed years were prepared and filed by ADD Accounting Services ("ADD"). The sole proprietor of ADD was also the president of a charity named CanAfrica International Foundation (CanAfrica) and was a director and officer of CFCD. The sole proprietor of ADD, in a separate case, had entered a guilty plea to selling false charitable donation receipts by charging his clients a fee equal to 10% of the false donation for the charitable receipts.

According to Johnson's tax returns that were found on ADD's computer, Johnson donated to CanAfrica in 2002 and 2003, although this was denied by Johnson. CRA found that included in his 2002 return was

a donation receipt issued to Johnson by CanAfrica for \$1,550 for 2003, which equated to 10% of his alleged \$15,500 donation for that year.

The court held that Johnson did not make any donations in 2002 and 2003. In spite of the fact that his tax returns indicated that he had donated to CanAfrica, Johnson stated that his donations were made to CFCD instead but he had no records to support such donations. The court found that he was not credible, as he gave conflicting and inconsistent evidence.

The court also held that even if the court had found Johnson to be credible, the receipts submitted by Johnson were not valid because they did not contain the information prescribed by section 3501 of the *Income Tax Regulations*. The court stated that the prescribed information was “not frivolous but...absolutely necessary for ensuring that a gift was actually made.” Conversely, had all of the prescribed information been included, the court reiterated that Johnson did not provide any credible evidence to demonstrate that he made a gift. The court found that he did not donate \$18,500 and \$15,500 gift, but he had purchased the donation receipts for 10% of their face value.

Johnson alleged that he was led astray by CRA’s acceptance of his donation of \$15,400 made in 2001 and that his donations for 2002 and 2003 were not reassessed until 2009. However, the court found that Johnson and ADD had made misrepresentations that were attributed to fraud in the 2002 and 2003 tax returns. Accordingly, the Minister could reassess Johnson at any time pursuant to subparagraph 152(4)(a)(i) of the Act.

Taxation of Gifts from Parents to Teachers

Ryan M. Prendergast.

On March 26, 2014, CRA released a technical interpretation (#2013-0490621E5) concerning donations from parents to a private charitable foundation associated with a private school to assist teachers in paying for tickets to a fundraiser that benefited that school. The question it addressed was whether the teachers of that school who received such gifts were in receipt of a taxable benefit.

CRA explained that, while amounts received as gifts are generally not taxable to the recipients, voluntary payments or other valuable transfers or benefits are included as income under s. 5(1) or 6(1)(a) of the *Income Tax Act* (“ITA”) if they are received by employees either from their employers or from any other persons by virtue of an office or employment. In this regard, gifts received by employees are taxable, unless they are received in the employee’s capacity as an individual or fall under CRA’s gifts, awards, and social events policy. Four requirements must be met for an amount to be received in a person’s

capacity as an individual, rather than as an employee. The amount must be philanthropic; voluntary; not based on employment factors such as performance, position, or years of service; and not made in exchange for employment services.

CRA further explained that amounts received by individuals may also be non-taxable if they are received as “windfalls”. CRA listed factors that are indicative of a windfall as follows:

- The taxpayer had no enforceable claim to the payment,
- The taxpayer made no organized effort to receive the payment,
- The taxpayer neither sought after nor solicited the payment,
- The taxpayer had no customary or specific expectation to receive the payment,
- The taxpayer had no reason to expect the payment would recur,
- The payment was from a source that is not a customary source of income for the taxpayer,
- The payment was not in consideration for or in recognition of property, services or anything else provided or to be provided by the taxpayer, and
- The payment was not earned by the taxpayer as a result of any activity or pursuit of gain carried on by the taxpayer and was not earned in any other manner.

It concluded by stating that whether an amount is received in a person’s capacity as an employee, their capacity as an individual, or as a windfall is a question of fact. In this particular case, regarding donations from parents to the private charitable foundation to benefit teachers would likely be considered a windfall or a gift received in the teachers’ capacity as individuals. However, since the document was a technical interpretation as opposed to advanced income tax ruling, the income tax treatment of this particular transaction was not being confirmed.

CRA’s gifts, awards, and social events policy is available online at: <http://www.cra-arc.gc.ca/gifts/>.

Religious Order Characteristics for Clergy Residence Deduction

Jacqueline M. Demczur.

On March 26, 2014, CRA released a technical interpretation (#2012-0467711E5) determining whether an organization was a religious order for purposes of the clergy residence deduction under s. 8(1)(c) of the *Income Tax Act* (“ITA”) and whether its executive director was eligible to claim the clergy residence deduction. The clergy residence deduction under paragraph 8(1)(c) of the ITA allows for individuals who

meet both a status and function test to claim a deduction from their employment income in respect of their residence.

In this technical interpretation, CRA affirmed that individuals must be members of the clergy or of a religious order, or be regular ministers of a religious denomination in order to meet the status test. Specifically regarding religious orders, which are not defined in the ITA, CRA identified six common law characteristics that indicate whether an organization is a religious order. These characteristics are as follows:

- The purpose of the organization should be primarily religious, although it may have other objects within the overall context of that religious purpose;
- A strict moral and spiritual regime involving dedication to the organization's goals and self-sacrifice of their own material wellbeing;
- Full-time and long-term service;
- The spiritual and moral discipline under which the members live must be markedly stricter than that of lay members;
- The admission of members must be based on strict standards of spiritual and personal suitability; and
- A general sense of communality.

In order for an organization to be considered a religious order and for their members to declare a clergy residence deduction under paragraph 8(1)(c) of the ITA, organizations must possess all six of the above characteristics. The technical interpretation indicated that the Executive Director in question did not meet the 2nd, 3rd, 4th, or 5th characteristics based on the information that was provided to CRA. As a consequence, the individual was not eligible to claim the clergy residence deduction.

This technical interpretation is consistent with CRA's income tax ruling (#2013-0494611I7) concerning religious orders as reported in "Required Characteristics of Religious Orders for Clergy Residence Deduction" in the January 2014 *Charity Law Bulletin*. As such, CRA's interpretation of "religious orders" has not changed.

For further details on the six characteristics of religious orders, see "Required Characteristics of Religious Orders for Clergy Residence Deduction" in the January 2014 *Charity Law Update*, online at: <http://www.carters.ca/pub/update/charity/14/jan14.pdf>.

Management of Endowment Funds

Terrance S. Carter.

There is considerable confusion with regard to the management of endowment funds. This is, in part, due to the fact that there is generally no clear understanding of what is meant by an “endowment”, nor what the legal obligations associated with endowments are. While the term “endowment” is not a well understood legal term, it generally is used to describe the holding of the capital of a gift on a permanent basis in order to generate income for a charitable purpose. As such, endowments are in essence extreme forms of time-restricted charitable purpose trusts. In this regard, it is important for charities to recognize when they have received endowments, how to properly manage the acceptance of endowment funds, and how to develop endowment policies in order to properly comply with the restrictions accompanying an endowment.

A recent seminar presentation that provides a brief overview of the numerous and complex issues involving the management of endowment funds is available at the links below.

[PDF] <http://www.carters.ca/pub/seminar/charity/2014/tsc0410.pdf>

[WEB] http://www.carters.ca/pub/seminar/charity/2014/tsc0410_files/frame.htm

Statistics Canada Report on Charitable Donations

Jennifer M. Leddy.

On March 27, 2014, Statistics Canada released a report on charitable donations in Canada entitled *Charitable donors, 2012*. The survey found that the amounts donated to charities fell 1.9% to \$8.3 billion between 2011 and 2012 across Canada. In Ontario specifically, donations fell 2.0% to almost \$3.7 billion in 2012. The report also found that the number of people reporting charitable donations fell 1.4% to 5.6 million between 2011 and 2012 across Canada. Individually, every province and territory saw a decrease in the number of people reporting charitable donations, with the exception of Nunavut and Alberta, which had an increased number. Ontario saw a decrease of 1.5%, with 2.2 million reporting charitable donations province-wide.

The national median charitable donation amount, on the other hand, rose from \$260 in 2011 to \$270 in 2012 (*i.e.* half of those claiming donations in 2012 donated more than \$270 and half donated less than \$270). Nunavut topped the provinces and territories for the thirteenth year in a row, with its median charitable donation amount at \$490. Ontario’s median charitable donation amount for 2012 was \$320.

Charitable donors, 2012 can be accessed online at: <http://www.statcan.gc.ca/daily-quotidien/140327/dq140327c-eng.pdf>

Unpaid Internships under Ontario Ministry Of Labour Scrutiny

Barry W. Kwasniewski in *Charity Law Bulletin* No. 339, April 29, 2014.

The Ontario Ministry of Labour is presently carrying out “workplace inspection blitzes” between the months of April and June, 2014, which will focus on the issue of employer use of unpaid interns. Media reports have confirmed that as a result of these inspections, Toronto Life magazine and The Walrus magazine (which is a registered charity), have ended their unpaid internship programs. Other employers may follow in either ending or modifying their internship programs in light of this increased attention to the issue. For charities and not-for-profits, the labour of volunteers is crucial to achieving organizational goals. However, in light of the increased attention by the government to the issue of unpaid work, charities and not-for-profits need to be mindful and aware of the limits imposed by law for unpaid work, and take appropriate steps to protect themselves from claims that the people who carry out the work need to be compensated in accordance with employment standards laws.

This Bulletin will discuss this evolving and important issue, and will review the *Employment Standards Act, 2000* (the “ESA”) requirements for retaining an unpaid intern, as well as the differences between interns and volunteers.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2014/chylb339.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2014/chylb339.htm>

Anti- Spam (CASL) Tip #3: Compliance Issues for RCAAAs

Ryan M. Prendergast.

As many readers will now know, Canada’s Anti-Spam Legislation (“CASL”) prohibits the sending of a commercial electronic message (CEM) unless the sender has consent and the CEM contains certain required information (subject to any exemptions under CASL or regulations). Consent may arise through an “existing non-business relationship” where the sender of a CEM is a registered charity and the receiver either donated or volunteered with the charity in the preceding two years. Implied consent is also available where the sender is a “club, association or voluntary organization” as defined in the regulations under CASL and the receiver has been a member of the organization within the same two-year period. As well, CEMs from registered charities are exempted from CASL requirements if they are sent for the “primary purpose” of fundraising.

Registered Canadian amateur athletic associations (“RCAAAs”) are similar to registered charities in that they are also exempt from tax and can provide donation tax receipts for gifts made to them. There are only

120 RCAAAs listed on the publicly available list of RCAAAs CRA began to maintain following the 2011 Federal Budget. This is in contrast to the approximately 86,617 registered charities. As such, RCAAAs are a small but important part of the non-profit sector. However, it is important for RCAAAs, which rely heavily on donations and voluntary support, to note that they do not have implied consent for situations where they have received a gift or where an individual has volunteered for them in the preceding two year period. As well, where RCAAAs send messages that are for the purpose of fundraising but which may contain commercial content that would otherwise make the electronic message a CEM, RCAAAs may not use the exemption that is available for registered charities sending CEMs with a “primary purpose” of raising funds.

Whether or not RCAAAs are able to rely on implied consent in sending CEMs to their members is debateable since it is not clear if the definition of “club, association, or voluntary organization” would apply to RCAAAs but should be explored further. The apparent oversight concerning the application of CASL to RCAAAs may be due in part to the size that RCAAAs encompass within the broader non-profit sector. However, CASL interestingly does provide implied consent and specific exemptions for political parties, organizations, or candidates for office which is a similarly small group of entities.

Significant Changes to *Trade-Marks Act* Proposed

Colin J. Thurston in *Charity Law Bulletin* No. 338, April 29, 2014.

In the March 2013 *Charity Law Update*, potential legislative updates to Canada’s *Trade-marks Act* were discussed, as Canada appeared to be moving toward greater conformity with international trade-mark laws and related international treaties. Though this previously reported legislation did not succeed in becoming law, the Government of Canada has taken numerous steps in 2014 to reintroduce similar and more extensive legislation which strongly suggests that many long-anticipated changes to Canada’s trade-mark laws are finally coming. This *Charity Law Bulletin* reviews these recent actions by the Government and provides a summary of changes expected for Canada’s *Trade-marks Act*.

On January 27, 2014, the Government of Canada tabled various international intellectual property treaties in the House of Commons, including the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (“*Madrid Protocol*”), the *Singapore Treaty on the Law of Trademarks* (“*Singapore Treaty*”) and the *Nice Agreement Concerning the International Classifications of Goods and Services for the Purposes of the Registration of Marks* (“*Nice Agreement*”). Following this, on March 28, 2014, Bill C-31, *An Act to implement certain provisions of the budget tabled in Parliament on February*

11, 2014 and other measures was introduced in the House of Commons where it underwent first reading. Bill C-31 subsequently underwent second reading on April 8, 2014. If passed, Bill C-31 would implement portions of these international intellectual property treaties into Canadian law. Some of the key changes proposed in Bill C-31 are discussed in Charity Law Bulletin # below..

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2014/chylb338.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2014/chylb338.htm>

Ontario Public Guardian and Trustee Appointments

Terrance S. Carter.

On February 19, 2014, Kenneth Goodman, who has been in an acting role, was officially appointed as Public Guardian and Trustee in Ontario. Additionally, Nicholas Hedley continues in his position as acting head of Charitable Property for the Public Guardian and Trustee in Ontario. Both Mr. Goodman and Mr. Hedley are well known and highly respected in the charitable sector so their appointments will no doubt will be seen as a positive development for charities in Ontario. Congratulations to both Mr. Goodman and Mr. Hedley in their new positions.

Digital Privacy Act Proposes Amendments to PIPEDA

Colin J. Thurston.

On April 8, 2014, the Federal Government introduced Bill S-4, the *Digital Privacy Act*, in the Senate. The Bill is very similar to previous legislation intended to amend the *Personal Information Protection and Electronic Documents Act* (“PIPEDA”), such as the former Bill C-12 (September 2011) and Bill C-29 (May 2010), as reported in Carters’ November 2011 *Charity Law Update*.

Similar to the previous legislation, Bill S-4 includes amendments which will affect personal information disclosure by charities and not-for-profits. In particular, proposed amendments would:

- Permit organizations to disclose personal information to another organization without the knowledge or consent of the individual where the disclosure is necessary to investigate a breach of an agreement, a contravention of the laws of Canada, or in order to “prevent, detect or suppress fraud”
- Permit organizations to disclose personal information to an individual’s next of kin, authorized representative or to a government institution without the knowledge or consent of the individual where the organization believes that the individual has been the victim of financial abuse

- Restrict organizations from informing individuals that their personal information has been shared with enforcement and security agencies where the government institution to whom the information was disclosed objects. This includes situations involving government institution requests for information under the national security, law enforcement or policing services exemptions, including a request for disclosure under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

Bill S-4 also re-introduces new responsibilities, such as notification requirements which require reporting of breaches of security safeguards involving personal information. Also of note, the bill would grant greater authority for enforcement of *PIPEDA* to the Federal Privacy Commissioner, providing it the authority to enter into compliance agreements with organizations to ensure compliance with the provisions of *PIPEDA*.

As technological means continue to be utilized by charities and non-profits in their collection and handling of individuals' personal information, the evolution of privacy laws will require continued compliance efforts and monitoring of the organization's information practices.

Further details and the full text of Bill S-4 can be found online at

<http://www.parl.gc.ca/LEGISInfo/BillDetails.aspx?Language=E&Mode=1&billId=6524311>.

Canadian Aid Organization Labelled Terrorist Organization

Nancy E. Claridge.

The Government of Canada has added a Canadian aid organization to the list of terrorist entities under the *Criminal Code*. As a consequence of the listing made April 24th and announced April 28th, the International Relief Fund for the Afflicted and Needy – Canada (IRFAN) has had its assets frozen and it is now illegal for any person in Canada or any Canadian outside of Canada to deal with the organization.

IRFAN's legal counsel, Yavar Hameed, noted that the threshold for declaring an organization a terrorist entity is low and the process lacks procedural fairness, as it does not allow the organization to respond. No reasons were provided by the government for the listing.

The classification as a terrorist organization comes just a week before the organization was to argue its appeal before the Federal Court of Appeal of the 2011 decision by Canada Revenue Agency to revoke IRFAN's registered charitable status. According to news sources, a court spokeswoman indicated that

the government may file a motion to do away with the appeal over IRFAN's charitable status now that the organization has been formally named a terrorist entity.

Transparency International's Anti-Bribery Guidance for Not-for-Profits

Sean S. Carter.

In late January 2014, the United Kingdom ("UK") branch of Transparency International, a global anti-corruption coalition, released an anti-bribery guidance entitled "Anti-Bribery Principles for Not-for-Profit Organisations" (the "Guidance"). The Guidance aims to help educational, arts and heritage organisations and other "not-for-profits" prevent and tackle bribery by implementing a good practice anti-bribery programme. It gives advice for governance bodies and management on the consideration they should give to bribery risk; identifies the types of bribery risk that can apply to not-for-profits and provides methods for not-for-profits to identify and counter them; and provides checklists to help not-for-profits benchmark their anti-bribery programmes against good practice.

The Guidance highlights the importance of compliance with anti-bribery practices, stating that both large and small charities and not-for-profits may operate in countries with high levels of corruption where bribery is a regular occurrence, and they may therefore be affected by bribery. The Guidance provides various examples of instances where bribery may not be obvious, including where parents offer to make a substantial gift to a school with the proviso that their child is guaranteed admission, or where an official at an overseas education ministry is given disproportionately lavish hospitality and travel expenses for a visit to the UK during negotiations by a UK university.

The Guidance then provides steps to implement an anti-bribery program. This begins with the top level (*i.e.* the Board of Trustees or equivalent body) committing to a policy of zero tolerance towards bribery. Charities and not-for-profits must then regularly perform risk assessments. In this regard, the Guidance provides a detailed guideline concerning identification and assessment of the severity of bribery risks. After identifying and assessing risks, charities and not-for-profits must design and implement detailed policies and procedures to counter these risks. The Guidance outlines particular areas for which detailed policies and procedures should be considered, including, for example, gifts, hospitality and travel expenses; fundraising; human resources; bidding for contracts or projects; and facilitation payments. The next step of the anti-bribery program involves conducting due diligence on third-party associates before entering into contracts with them and implementing procedures to manage any associated risks. Charities and not-for-profits must then build awareness of its anti-bribery program among its Board, employees,

volunteers and stakeholders through effective communication and training. Finally, the Guidance states that charities and not-for-profits must continually monitor and evaluate their anti-bribery programmes to ensure effectiveness and compliance with anti-bribery legislation.

While the Guidance focuses specifically on compliance with the UK's *Bribery Act, 2010*, it provides useful advice that is generally applicable to good anti-bribery practice and that may be a helpful resource to Canadian charities implementing an anti-bribery program.

The Guidance is available online at: <http://www.transparency.org.uk/our-work/publications/10-publications/826-anti-bribery-principles-for-not-for-profit-organisations>.

UK Social Investment Tax Relief Legislation

Terrance S. Carter.

In the March 2014 *Charity Law Update*, it was reported that the UK government had announced in its 2014 Budget that it would be introducing new legislation to provide income tax, capital gains hold-over, and capital gains disposal tax relief to qualified individuals who invested in qualifying social enterprises. On March 27, 2014, the UK government published Finance Bill 2014, which contained draft legislation for the social investment tax relief and which, upon receiving Royal Assent, will bring the legislation into force.

Under the proposed legislation, for investors to claim the tax relief, the social enterprise in which they invest must meet eligibility requirements. To be a qualifying social enterprise, at the time of the investment, the organization must be a community interest company, community benefit society, or a charity, must have fewer than 500 full-time equivalent employees, and no more than £15 million in gross assets immediately before the investment and £16 million immediately after the investment. There are also requirements that must be continuously met from the date of investment, such as not controlling non-qualifying subsidiaries. Importantly, all money raised from investments must be employed for the purpose of the chosen "trade" within 28 months of the investment date. If not, investors will lose their tax relief.

For an investment to qualify, it must be in newly issued shares or new qualifying debt investments in the social enterprise, must be paid in full, made in cash, and paid at the time the investment is made. To be eligible for the tax relief, investors must meet a number of requirements. For example, during the four-year period spanning from one year before the investment to the third anniversary of the investment, investors must not own more than 30% of the social enterprise's ordinary share capital, loan capital, or voting rights.

Individuals will need to invest for a period of three years to be eligible for income tax relief of 30% of the amount invested. Income tax relief will not be restricted to UK residents, but will be available to all qualifying investors who have UK tax liabilities. Capital gains hold-over relief will allow individuals to defer their capital gains tax liability if they reinvest their gain in shares or debt investments that qualify for income tax relief. Gains can arise from the disposal of any kind of asset, but must arise between April 6, 2014 and April 5, 2019. Capital gains disposal relief will provide relief on the capital gains arising from the disposal of the social enterprise investment, and will only be available to those who have received income tax relief on the cost of the investment and who held the investment for a minimum of three years before disposal.

The UK government has released a draft Guidance providing greater detail about the proposed legislation. For more details on the proposed social investment tax relief, see the draft Guidance online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298220/Social_investment_tax_relief_SITR_draft_guidance.pdf.

Finance Bill 2014 is available online at: <http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0190/14190.pdf>

It will be interesting to see whether the Canadian government may eventually entertain the notion of some type of similar tax relief as part of their announced initiative to support social enterprise in Canada.

IN THE PRESS

CRA Guidance on Charities that Provide Housing by Theresa L.M. Man.

Charity Talk, Canadian Bar Association, April 2014.

[Link] http://www.cba.org/CBA/sections_charities/news2014/housing.aspx

BUDGET - Canada's 2014 federal budget and its impact on charities by Terrance Carter and Ryan Prendergast.

Hilborn Charity eNews, April 17, 2014.

[Link] <http://www.charityinfo.ca/articles/Canadas-2014-federal-budget-and-its-impact-on-charities>

Common Law Duties and Liabilities of Directors from Fundraising by Terrance S. Carter.

Linex Canada Smart Alert, April 1, 2014.

<http://beta.linexsystems.com/contents/transit/73818187>

Charity Law Update - March 2014.

Linex Canada Smart Alert, April 1, 2014.

<http://beta.linexsystems.com/contents/transit/73918441>

Ontario Court Rules Iranian Assets Subject to Seizure in Terrorist Case by Sean S. Carter and Nancy E. Claridge.

Linex Canada Smart Alert, April 1, 2014.

<http://beta.linexsystems.com/contents/transit/73918440>

Public Legal Education and Information (PLEI) for Non-Profits includes resource links to materials from Carters lawyers Terrance S. Carter, Jacqueline M. Demczur and Barry W. Kwasniewski. plei for Non-Profits website, accessed April 2014.

<http://www.plei.publiclegaled.bc.ca/pages/what-is-plei-for-np/>

Navigating Canada's New Anti-Spam Laws makes Top 5 Resource List by Ryan Prendergast. Presenters Toolkit Website, accessed March 2014.

[Link] http://presenterstoolkit.ca/resource/316/navigating_canada_s_new_anti-spam_laws.html

RECENT EVENTS AND PRESENTATIONS

CAGP (Canadian Association of Gift Planners) -ACPDP Annual National Conference held from April 9-11, 2014, in Vancouver, British Columbia, featured the following presentations:

“Issues Arising from Management of Endowment Funds” by Terrance S. Carter, and

[Web] <http://www.carters.ca/pub/seminar/charity/2014/tsc0410.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2014/tsc0410.pdf>

“There are Many Gifts in Kind in the Sea” by Karen J. Cooper.

[Web] <http://www.carters.ca/pub/seminar/charity/2014/kjc0410.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2014/kjc0410.pdf>

Orchestras Canada hosted a webinar by Ryan M. Prendergast on April 23, 2014, on Preparing for Canada's Anti-Spam Legislation.

[Audio & PDF] <http://orchestrascanada.org/resource/preparing-for-canadas-anti-spam-legislation/>

Distress Centres Ontario hosted a webinar by Ryan M. Prendergast on April 29, 2014, entitled “Navigating Canada's New Anti-Spam Laws for Charities and Non-Profit Organizations.”

UPCOMING EVENTS AND PRESENTATIONS

2014 National Charity Law Symposium, hosted by the Canadian Bar Association and Ontario Bar Association, is being held in Toronto, Ontario, on May 23, 2014.

Details and registration at http://www.cbapd.org/details_en.aspx?id=na_char14.

Directors' Risks of Personal Liability: Limiting Your Liability as a For-Profit or NFP Director, sponsored by Carters, is an Institute of Corporate Directors (ICD) Ontario Chapter (Peel Region) afternoon session being held on May 13, 2014.

http://www.icd.ca/getmedia/38841a4c-8604-4197-9a94-bb0469a57612/20140513_ON_PM.aspx.

"Across The Country In 90 Minutes" - The Canadian Bar Association's National Wills, Estates and Trusts Section's inaugural 3-part webinar academy will include Terrance S. Carter presenting on recent developments in charity law during Session III of the series on June 3, 2014 .

Details and registration available at http://www.cbapd.org/details_en.aspx?id=na_onjun114.

Healthcare Philanthropy: Check-Up 2014, being co-presented by Fasken Martineau and Carters for the 10th anniversary on June 13, 2014, will include the following topics:

"Essential Charity Law Update" by M. Elena Hoffstein;

"Legal Issues in Managing Endowment Funds" by Terrance S. Carter;

"Elderly and Vulnerable Donors: Issues to Consider" by Laura West; and

"Anti-Spam and Healthcare Philanthropy: Practical Guidance for Compliance" by Ryan M. Prendergast.

Details and registration available at <http://www.fasken.com/en/check-up-2014/>.

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Terrance S. Carter – Managing Partner of Carters, Mr. Carter practices in the area of charity and not-for-profit law, is counsel to Fasken Martineau on charitable matters. Mr. Carter is a co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* (Carswell 2013), and a co-editor of *Charities Legislation and Commentary* (LexisNexis Butterworths, 2014). He is recognized as a leading expert by *Lexpert* and *The Best Lawyers in Canada*, and is Past Chair of the CBA National and OBA Charities and Not-for-Profit Law Sections. He is editor of www.charitylaw.ca, www.churchlaw.ca and www.antiterrorismlaw.ca.



Sean S. Carter – Called to the Ontario Bar in 2009, Sean practices general civil, commercial and charity related litigation. Formerly an associate at Fasken Martineau DuMoulin LLP, Sean has experience in matters relating to human rights and charter applications, international arbitrations, quasi-criminal and regulatory matters, proceedings against public authorities and the enforcement of foreign judgments. Sean also gained valuable experience as a research assistant at Carters, including for publications in *The International Journal of Not-for-Profit Law*, *The Lawyers Weekly*, *Charity Law Bulletin* and the *Anti-Terrorism and Charity Law Alert*.



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. 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. 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.



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



Theresa L.M. Man – A partner with Carters, Ms. Man practices in the area of charity and not-for-profit law and is recognized as a leading expert by *Lexpert* and *Best Lawyers*. She is vice chair of the Executive of the Charity and Not-for-Profit Section of the OBA and an executive member of the CBA. In addition to being a frequent speaker, Ms. Man has also written articles for numerous publications, including *The Lawyers Weekly*, *The Philanthropist*, *Planned Giving Pulse*, *Canadian Fundraiser eNews* and *Charity Law Bulletin*. She is co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* published by Carswell in 2013.



Ryan Prendergast –Called to the Ontario Bar in 2010, Mr. Prendergast joined Carters with a practice focus of providing corporate and tax advice to charities and non-profit organizations concerning incorporation, ongoing corporate compliance, registration of charities, audits and internal appeals with CRA, as well as the amalgamation and merger of charities. Ryan is a regular speaker and author. In addition, Ryan has contributed to several *Charity Law Bulletins* and is a regular presenter at the annual *Church & Charity Law Seminar*.



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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