

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

JANUARY 2009 ISSUE

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Ottawa Region Charity Law Seminar

Hosted by Carters Professional Corporation in Ottawa, Ontario.

Wednesday, February 11, 2009.

Register online at <http://www.carters.ca/pub/seminar/chrchlaw/ott/09/brochure.htm>.

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RECENT PUBLICATIONS AND NEWS RELEASES

Charity Law 2008 – The Year in Review

by Terrance S. Carter, Theresa L.M. Man and Karen J. Cooper in Charity Law Bulletin No. 155, January 23, 2009.

The charitable sector in Canada has seen a number of important legislative, regulatory and common law developments in 2008 which have significantly impacted how charities operate in Canada and abroad. This *Charity Law Bulletin* provides a brief summary of some of the more important developments, including recent changes under the *Income Tax Act* (“ITA”), new policies and publications from the Charities Directorate of the Canada Revenue Agency (“CRA”), select federal and provincial legislative issues affecting charities, as well as a selection of some of the more significant court decisions during the past year.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2009/chylb155.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2009/chylb155.htm>

The Ins and Outs of Wrongful Dismissal for Charities and Non-Profits

by Barry W. Kwasniewski in Charity Law Bulletin No. 153, January 20, 2009.

The dismissal of an employee is never an easy or pleasant task. However, in these difficult economic times, the dismissal of an employee may be necessary to maintain the economic viability of your organization. The purpose of this *Charity Law Bulletin* is to set out the legal requirements for dismissing an employee and the risks and costs associated with a wrongful dismissal claim. Finally, the bulletin will provide some guidance on how to decrease the risk of facing a wrongful dismissal claim by a former employee.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2009/chylb153.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2009/chylb153.htm>

Taxpayer Jailed for Providing False Donation Tax Receipts

by Karen J. Cooper, LL.B., LL.L., TEP.

This past December, Ambrose Danso Dapaah was sentenced to 51 months in jail after pleading guilty of fraud related to providing false donation tax receipts. As indicated in the news release by Canada Revenue Agency (“CRA”), Dapaah helped his clients claim over \$21 million in false charitable donations which resulted in approximately \$6 million in non-refundable tax credits. He accomplished this by providing fictitious or overstated charitable donations receipts from several charities, including

one of which he was the president, CanAfrica International Foundation (“CIF”). For its role in these activities, CRA revoked the charitable registration of CIF in September 2007.

In the news release, CRA notes that individuals who have not filed returns for previous years or have not reported all of their income because of such donation receipts can still voluntarily correct their tax affairs. If the disclosures qualify under the Voluntary Disclosures Program, the individuals will not be penalized or prosecuted if full disclosure is made prior to CRA commencing any action or investigation against them, and individuals may only be required to pay the taxes owing, plus interest. More information on the Voluntary Disclosures Program may be found on CRA’s website (www.cra.gc.ca/voluntarydisclosures).

The CRA news release is available at <http://www.cra-arc.gc.ca/nwsrm/cnvctns/on/on081218-eng.html>.

Gifts of Marketable Securities – Enduring Property?

by Theresa L.M. Man, M.Mus., LL.B., LL.M.

In a recent technical interpretation (Document #2008-0268731E5, released January 15, 2009), Canada Revenue Agency (“CRA”) considers whether the donation of marketable securities to a registered charity may be characterized as a gift of enduring property and, if so, would the charity be prevented from disposing of the marketable securities and maintaining the substitute property as enduring property. The *Income Tax Act* defines enduring property to include a gift that is subjected to a trust or a direction that the property given or property substituted for the gift be held by the recipient for a period of not less than 10 years. This type of gift is also referred to as a 10-year gift. CRA confirms that gifts of marketable securities will qualify as enduring property if the donor provides written direction at the time of the donation that the securities are to be held by the charity for ten years or longer. Provided that the donor has given the charity permission to dispose of the securities within the 10-year period, property later substituted for the original securities will also be considered enduring property. Charities should remember that CRA requires that the written direction be executed at the time of the gift and, to be prudent, charities receiving gifts of marketable securities should ensure that donors include the permission to substitute property at the time of the donation.

The technical interpretation is only available through commercial subscription services or a direct request to CRA.

GST/HST Checklist for Charities

by Karen J. Cooper, LL.B., LL.L., TEP.

In an effort to assist charities to understand their goods and services tax/harmonized sales tax (“GST/HST”) obligations and entitlements, on December 12, 2008, Canada Revenue Agency (“CRA”)

released a publication entitled, “Goods and services tax/harmonized sales tax (GST/HST) checklist for charities” (“the Checklist”).

The first step in understanding an organization’s GST/HST obligations is determining whether it is a charity for GST/HST purposes. The tax status of the goods and services provided by the organization must then be considered, since some of them can be taxable for GST/HST purposes. Finally, if a charity makes taxable supplies, it will have to determine whether it must register for GST/HST purposes. CRA indicates that charities are subject to two small supplier tests which may exempt the organization from having to register: the \$250,000 gross revenue test and the \$50,000 taxable supplies test. Whether a charity is registered for GST/HST or not, it is generally entitled to claim a 50% public service bodies’ rebate of the GST/HST it paid on its purchases. The Checklist is available on CRA’s Web site at: <http://www.cra-arc.gc.ca/tx/chrts/chcklsts/gsthst-cfc-eng.html>. For more information on GST/HST compliance issues for charities, see Terrance S. Carter, “Charities and the GST/HST”, in *Charity Law Bulletin No. 52* (September 22, 2004), online: <http://www.carters.ca/pub/bulletin/charity/2004/chylb52-04.pdf> and recent 2008 Annual *Church & Charity Law Seminar* PowerPoint presentation, entitled “GST for Charities: A Primer”, by Karen J. Cooper, available online at: <http://www.carters.ca/pub/seminar/chrchlaw/2008/kjc1106.pdf>.

The CRA news release is available at <http://www.cra-arc.gc.ca/nwsrm/cnvctns/on/on081218-eng.html>.

CRA Releases Publication Outlining Important Changes for Registered Charities

by Terrance S. Carter, assisted by Pamela Shin in Charity Law Bulletin No. 154, January 22, 2009.

In light of the many regulatory obligations that registered charities are required to meet, Canada Revenue Agency’s (“CRA”) Charities Directorate has recently released a publication entitled “What’s the Scoop? – Important Changes for Registered Charities”, which highlights a number of important changes that registered charities need to be aware of. In this regard, over the past two years, CRA has engaged in consultations with the charitable sector and developed new tools and resources to provide registered charities with enhanced support services, and promises a number of new products for 2009, which are also briefly described in this *Charity Law Bulletin*.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2009/chylb154.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2009/chylb154.htm>

Revocation of Millennium Charity Foundation

by Karen J. Cooper, LL.B., LL.L., TEP.

After the Millennium Charity Foundation (“Foundation”) lost its appeal at the Federal Court of Appeal this past December, Canada Revenue Agency (“CRA”) announced on January 10, 2009, that its charitable registration had been revoked.

According to CRA’s news release and the Court decision, the Foundation participated in two donation tax shelter structures, the Insured Giving Program by Insured Donations Inc. and the Global Learning Gifting Initiative by Global Learning Group Inc., issuing approximately \$168 million worth of donation tax receipts, but could account for only \$2,200 directed towards charitable works. Consequently, CRA concluded that the organization had been operating to promote a tax shelter arrangement and for the benefit of the tax shelter promoters. On April 2, 2008, CRA issued a notice of intent to revoke the charitable registration of the Foundation in accordance with subsection 168(1) of the *Income Tax Act*. Generally, after the expiration of 30 days from the day of mailing of the notice to the Foundation, CRA would publish the notice in the *Canada Gazette* and this would have the effect of revoking the organization’s charitable registration.

Before the expiration of the 30 days, the Foundation applied to the Federal Court of Appeal to prohibit CRA from publishing the notice in the *Canada Gazette* until its rights of objection and appeal had been exhausted. At the hearing of the appeal, the Foundation urged the Court to characterize its application as a “reasonable exercise of the Court’s discretion” under paragraph 168(2)(b) of the *Income Tax Act*, and argued that the test in *RJR-MacDonald Inc. v. Canada (Attorney General)* did not apply in the circumstances (see *Charity Law Bulletin* 133 for detailed discussion of the test in the context of the ICAN situation (available at <http://www.carters.ca/pub/bulletin/charity/2008/chylb133.htm>).

In its decision, the Court disagreed that granting an extension would be a reasonable exercise of the Court’s discretion, as the revocation does not provide any legal impediment to the exercise by the Foundation of its objection and appeal rights in respect of the notice. The Court reaffirmed that the test in *RJR-MacDonald Inc. v. Canada (Attorney General)* was applicable to such applications and determined that the Foundation would not suffer irreparable harm as the Foundation itself decided to cease fund-raising activities.

Following the Federal Court of Appeal decision, CRA revoked the Foundation’s status as a registered charity effective January 10, 2009.

The CRA news release is available at <http://www.cra-arc.gc.ca/nwsrm/rlss/2009/m01/nr090112-eng.html> and the decision, *Millennium Charitable Foundation v. Canada (National Revenue)*, 2008 FCA 414, is available on CanLII at <http://www.canlii.org/en/ca/fca/doc/2008/2008fca414/2008fca414.html>.

Revocation of Little League Baseball Canada

by Karen J. Cooper, LL.B., LL.L., TEP.

Also on January 10, 2009, another organization to lose its status as a registered Canadian athletic association (“RCAAA”) is Little League Baseball Canada. Readers of the *Charity Law Update* may recall that the Canadian Amateur Football Association recently lost its status as a RCAAA (see September 2008 Issue, available at www.carters.ca/pub/update/charity/08/sep08.pdf). RCAAAs are generally established for the primary purpose of promoting amateur athletics in Canada on a nationwide basis and have the authority to issue donation tax receipts. In its news release, Canada Revenue Agency (“CRA”) cites the involvement of Little League Baseball Canada in a donation tax shelter arrangement as the basis of its deregistration. As indicated by CRA in its news release, more than \$82 million in donation tax receipts were issued for donations that did not qualify as gifts pursuant to paragraph 168(1)(d) of the *Income Tax Act*.

The CRA news release is available at <http://www.cra-arc.gc.ca/nwsrm/rlss/2009/m01/nr090112b-eng.html>.

Motorcycle Helmets and Religion: Case Comment on the Badesha Decision

by Terrance S. Carter, assisted by Jeremy Tam in *Church Law Bulletin No. 24, January 23, 2008*

On March 6, 2008, the Ontario Court of Justice released its decision in *R. v. Badesha* (“*Badesha*”), a noteworthy case for churches and faith-based organizations because of its discussion of religious freedom. In the context of recent decisions by appellate courts which upheld freedom of religion and accommodation, *Badesha* is significant as it indicates that religious freedom remains subject to limitations, particularly when matters of health and safety are involved.

As in many legal disputes, *Badesha* required the court to balance competing interests of the state and the individual. In this case, the court decided that the government’s interest in protecting individuals by requiring motorcycle helmets on Ontario’s roads was a reasonably necessary limitation to an individual’s freedom to not wear a helmet due to religious convictions.

This *Church Law Bulletin* reviews the court’s decision in *Badesha* and discusses why it may be of interest to churches and other religious organizations.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/church/2009/chchlb24.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/church/2009/chchlb24.htm>

International Anti-terrorism Law Update*

by *Terrance S. Carter, B.A., LL.B.*

Recently, two member states of the British Commonwealth have experienced developments in their anti-terrorism legal frameworks, highlighting the continuing fluctuation in international anti-terrorism measures, even amongst democratic nations.

In India, in the wake of the November 2008 terrorist attacks that resulted in almost 200 deaths, the lower house of Parliament passed two bills that will increase the state's power to combat terrorism and establish a national investigation agency. In doing so, Indian lawmakers are:

- changing procedures for trying individuals accused of terrorism;
- allowing longer periods for suspects to be detained without charges being laid;
- denying bail to foreigners; and
- reversing the legal burden of proof for many situations.

On the other hand, in Australia, anti-terrorism laws may be heading towards greater public oversight and restrictions. Following an incident wherein a suspected terrorist was arrested and detained, a judicial inquiry fully exonerated the individual of any links to terrorism and recommended sweeping changes to Australian anti-terrorism laws. These recommendations include:

- independent reviews of Australia's anti-terrorism laws;
- a case management system for major police investigations;
- clearer guidelines regarding terrorism charges; and
- more cooperation between police and intelligence agencies.

* Source: *International Journal of Civil Society Law Newsletter*, January 2009

IN THE PRESS

Canada Revenue Agency Notes by Karen J. Cooper and Theresa L.M. Man.
Charitable Thoughts, Vol. 12, No. 3, January 2009.

[Link] http://www.oba.org/En/cha_en/Newsletter_EN/v12n3.aspx#Article_5

Timing of the Donation of Shares by Edudzi A. Ofori and Karen J. Cooper.
Charitable Thoughts, Vol. 12, No. 3, January 2009.

[Link] http://www.oba.org/En/cha_en/Newsletter_EN/v12n3.aspx#Article_3

Linex Legal - Canada Legal Highlights included a link to *Charity Law Bulletin* No. 152 by Terrance Carter entitled “What Canadians Think About Charities: Highlights of Muttart’s “Talking About Charities 2008” Report.”

Linex Legal - Canada Legal Highlights, January 19, 2009.

[Link] http://www.linexlegal.com/transit.php?content_id=77676&id8=1

Linex Legal - Canada Legal Highlights included a link to *Charity Law Bulletin* No. 151 by Terrance Carter entitled “Highlights of CRA Registered Charities.”

Linex Legal - Canada Legal Highlights, January 19, 2009.

[Link] http://www.linexlegal.com/transit.php?content_id=77674&id8=1

Linex Legal - Canada Legal Highlights included a link to *Charity Law Bulletin* No. 150 by entitled “Calculation of 3.5 per cent Disbursement Quota for All Registered Charities.”

Linex Legal - Canada Legal Highlights, January 19, 2009.

[Link] http://www.linexlegal.com/transit.php?content_id=77672&id8=1

UPCOMING EVENTS AND PRESENTATIONS

Imagine Canada is hosting a one-day workshop for child & youth serving nonprofits “Managing Risk With Confidence” in Toronto, Ontario, on January 27, 2009, with Esther S.J. Oh presenting “New Thoughts on Child Protection Policies: How to Make Them Work for Your Charity or Non-Profit Organization.”

Details and online registration are available at

<http://www.easywebcanada.ca/site/imaginecanada/index.php?s=7&t=1&conferenceID=7>.

Canadian Association of Gift Planners (CAGP) Ottawa Chapter is hosting a session in Ottawa, Ontario, on February 5, 2009, with Karen J. Cooper presenting “Gifts of Land – Changing Ground Rules!”

Details and online registration are available at

<http://www.regonline.com/Checkin.asp?EventId=688695>.

The Ottawa Region Charity Law Seminar will be held at Arlington Woods Free Methodist Church in Nepean, Ontario, on Wednesday, February 11, 2009.

Details and online registration are available at

<http://www.carters.ca/pub/seminar/chrchlaw/ott/09/brochure.htm>.

Directors’ and Officers’ Liability: The Essentials and Beyond for Your Nonprofit will be presented by Terrance S. Carter for a workshop being hosted by Canadian Fundraiser in Toronto, Ontario, on February 19, 2009.

Register online at http://www.canadianfundraiser.com/workshop_viewer.asp?workshop_ID=352.

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Terrance S. Carter – Managing Partner, Terrance practices primarily in the area of charity and not-for-profit law and is counsel to Fasken Martineau DuMoulin LLP. Mr. Carter is a member of Canada Revenue Agency’s Technical Issues Group, past member of CRA’s Charities Advisory Committee, past Chair of the National Charity and Not-for-Profit Section of the Canadian Bar Association, and has been recognized as a leading expert in Canada by *Lexpert* and *Best Lawyers in Canada*. Mr. Carter is also editor of www.charitylaw.ca, www.churchlaw.ca and www.antiterrorism.ca, and a consulting editor of *Charities Legislation and Commentary* 2007 Ed.



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



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



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



Pamela Shin – A graduate of the University of Western Ontario Faculty of Law, Pamela was active in the client counselling, contract drafting, and mooted competitions, as well as a number of programs and clubs, including Pro Bono Students Canada, Negotiation/Mediation practice and the Christian Legal Fellowship executive council. Pamela was nominated by her peers at Western Law for the Malcolm J. McKinnon Award and was awarded the Gold Medal for achieving the highest GPA in her undergraduate degree program. Currently articling with Carters, Pamela also gained experience as a summer student at a management counsel labour and employment boutique in Toronto.



Jeremy I. Tam – Jeremy graduated from the University of Western Ontario, Faculty of Law. Prior to his legal studies, he graduated with an Honours Bachelor of Arts from the University of Toronto, focusing on Urban Studies, History, and Sociology. Outside of law school, Jeremy gained experience as a summer student at two Hong Kong law firms, interning at International Justice Mission Canada, researching and writing for Pro Bono Students Canada, and serving as President of the UWO Christian Legal Fellowship.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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