

Bill C-36 changes of little benefit to charities, OBA advised

By Richard Furness
Toronto

Federal anti-terrorism legislation is likely to be passed into law shortly, with little or nothing in the way of amendments that would allow charities to breathe easier, a meeting of the Ontario Bar Association was told last week.

Terrance Carter, chair of the Canadian Bar Association's charity and not-for-profit law section, told the meeting that although the government had tabled extensive amendments to Bill C-36 on Nov. 22, little relief was provided for charities, and the legislation continues to have serious implications for charities and for legal counsel who advise them.

For example, charities' past, present and future acts may still prejudice the charitable status of charities; they can still be charged with sweeping criminal offences, possible money laundering violations, their property can still be seized, their directors can still

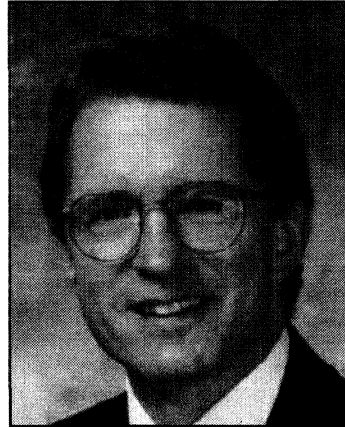
be charged with *Criminal Code* offences, as well as donors in some circumstances.

Also, the Bill still lacks procedural fairness, Carter told his audience. For example, where a charity is in danger of losing its charitable status, the legislation still limits access to information and the amount the government must disclose, still does not provide for either the normal rules of evidence or a right of appeal or review in such cases.

He gave examples of the kind of thing that could happen to charities that are not careful:

A charity that funds an agent that operates a hospital in the Middle East which might treat or give medicine to a member of a terrorist group, could be found to be a terrorist group for facilitating a terrorist activity, or by meeting the definition of a "listed entity."

The same would be true, he said, of a charity that funds a hospital which provides medical care to protesting students



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who erect a road block leading to an international economic summit — as a result of a combination of provisions of Bill C-35 with Bill C-36.

This same charity could also be found to have committed a separate criminal offence of facilitating a terrorist activity, and could also lose its charitable status under the deregistration provisions of the legislation.

Once C-36 is law, he said, charities with a political, religious or ideological purpose will be suspect and therefore more vulnerable to discrimination because they in part meet the first part of the definition of "terrorist group."

Carter said the legislation may have a negative impact on the general public perception of charities and creating serious penalties and liability for charities and their directors. He said it means:

- Directors could be exposed to *Criminal Code* offences;
- The actions of agents of charities involved in international operations could expose both the charity and its directors to liability; and
- Forfeiture of charitable property that was involved in terrorist activity and/or a terrorist group may involve a breach of fiduciary duty and could lead to personal liability for directors.

Since fines, penalties and *Criminal Code* charges are not normally included in insurance coverage, Carter said, charities will need to protect themselves by becoming proactive in avoiding violation of Bill C-36. They will need to:

- Conduct due-diligence review of their operations with the help of legal counsel to determine whether there is a risk and/or compliance with the Bill (due diligence being mandatory in accordance with the director's fiduciary obliga-

tion to protect charitable property);

- Review and monitor how and from whom monies are raised and whether the charity might be used as a conduit in contravention of the legislation;

- Review and monitor international relationships to protect against third-party agents directly or indirectly facilitating terrorist activities;

- Obtain appropriate releases and indemnities from third parties to get a measure of financial security, since insurance policies will not normally cover costs, fines and penalties for criminal charges;

- Develop comprehensive policies to ensure compliance with the legislation;

- Review all aspects of their operations for compliance purposes; and

- Be prepared to curtail some questionable charitable activities if prudence dictates.

Carter said all charities — not just international non-governmental organizations — will need to become familiar with the legislation's many provisions, to guard against becoming unwittingly caught by them, and to ensure compliance.