

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

DECEMBER 2006 ISSUE

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RECENT PUBLICATIONS AND NEWS RELEASES

Bill C-33 - Proposed Amendments to the *Income Tax Act* Affecting Charities

by Theresa L.M. Man and Terrance S. Carter in *Charity Law Bulletin No. 104, December 7, 2006.*

The long-awaited action by the Department of Finance to move forward with proposed amendments to the *Income Tax Act* containing significant changes affecting charities were released by the Department of Finance on November 9, 2006, by way of a *Notice of Ways and Means of Motion*. The motion was introduced as Bill C-33, and received its first reading in the House of Commons on November 22, 2006, as the *Income Tax Amendments Act, 2006*. A number of the proposed changes contained in Bill C-33 will substantially impact registered charities in Canada. Some of the most significant proposed changes involve the introduction of split-receipting rules and rules to curtail abusive donation tax shelter schemes. Other proposed amendments include new definitions of charitable organizations and public foundations, rules affecting the revocation of charitable registrations, municipal or public bodies performing a function of government in Canada as new qualified donees, and new expanded disclosure of information concerning registered charities to the public. Proposed changes affecting charities are reviewed in this bulletin.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2006/chylb104.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2006/chylb104.htm>

Promotion of Ethical Tourism Not Considered Charitable

by Karen J. Cooper and Terrance S. Carter in *Charity Law Bulletin No. 105, December 19, 2006.*

This bulletin reviews the recent decision of the Federal Court of Appeal in *Travel Just v. Canada Revenue Agency* which represents an important decision concerning the definition of what is considered to be charitable at common law. *Travel Just* involved the refusal by Canada Revenue Agency to register a charity with the object “to create and develop model tourism development projects that contribute to the realization of international human rights and environmental norms.” The Court concluded that the organization’s objects were “vague and subjective” and were not sufficiently analogous to purposes already recognised by the Courts under the fourth category of charity: other purposes beneficial to the community. In addition, the language left open the possibility of the organization financing and operating luxury holiday resorts, activities with a strong commercial and/or private benefit aspect. The Court indicated that there was no evidence of a connection with Québec and that the issue of whether an organization is charitable for the purposes of the *Income Tax Act* is a public law concept, rendering the private law of Quebec irrelevant.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2006/chylb105.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2006/chylb105.htm>

Recommendations of the Standing Committee on Finance

by Karen J. Cooper

In its 2006 Pre-Budget Report entitled “Canada: Competing to Win,” the House of Commons Standing Committee on Finance recommends that the federal government amend the *Income Tax Act* to eliminate, on a five-year trial basis, the capital gains tax on donations of publicly listed securities and ecologically sensitive lands to private foundations. We understand that Finance is currently considering such a measure provided that some limits are imposed to deal with potential self-dealing. The Committee also recommended that the capital gains tax on donations of real estate and land to public charities, as well as to private foundations, should also be eliminated during the five-year trial period and beyond, if deemed to be appropriate. In addition, the government should allow donors to make charitable contributions for 60 days beyond the end of the calendar year for inclusion in the previous year’s income tax return. Finally, the Committee recommended that the federal government study the feasibility of a tax measure that would recognize and reward the hours of volunteer activity, which study should be completed no later than September 2007. The report is available online at <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?SourceId=187764>.

Khawaja Decision Affords Little Relief for Charities

by Terrance S. Carter and Sean S. Carter in *Antiterrorism and Charity Law Alert No. 11, December 20, 2006*.

Since the first wave of anti-terrorism legislation was declared in force in late 2001, its shadow has loomed large over Canadian charities and their foreign operations. The case of Mohammad Momin Khawaja, the first person to be charged under the core “terrorism” provisions in Part II. of the Criminal Code, presented essentially the first chance to judicially review this controversial law. In *R. v. Khawaja*, [2006] O.J. No. 4245, Mr. Justice Rutherford of the Ontario Superior Court of Justice struck down a portion of a definition of “terrorist activity” in the Code that dealt with purpose and motive. The decision, released on October 24, 2006, was met with mixed reviews by anti-terrorism legal commentators, some of whom initially heralded the case as a powerful blow to draconian legislation. However, the impact upon Canadian charities, which are particularly vulnerable to the sweeping “facilitation of terrorist activity” provision in section 83.19 of the Code, is not encouraging. The decision offers charities little relief from their susceptibility to unintentional contravention of the law. This bulletin reviews the impact of the decision on charities.

Read More:

[PDF] <http://www.carters.ca/pub/alert/ATCLA/atcla11.pdf>

CRA's Fall 2006 Registered Charities Newsletter

by Paula J. Thomas

The new Fall 2006 Registered Charities Newsletter from CRA has been released on December 14, 2006, and can be found online at: <http://www.cra-arc.gc.ca/tax/charities/newsletters-e.html>. Under the *What's New* section, information is included about the new intermediate sanctions for non-compliance of charities. CRA's Guidelines concerning these penalties will be made available on the Charity Directorate's website at: <http://www.cra-arc.gc.ca/charities/>. The newsletter also includes a series of *Q & A* with respect to receipts, enduring property, charitable gift annuities and charitable remainder trusts. In the *Experts Corner*, several issues are addressed, including debts incurred by charitable foundations, restrictions in private foundations, the definition of non-qualified investment under the ITA, and the gift of residue of an estate qualifying as a "gift by the individual's will." The decisions noted under Court News include *A.Y.S.A. Amateur Youth Soccer Association v. Canada Revenue Agency*, *Bayit Lepletot v. Minister of National Revenue* and *MacDonald Estate v. The Queen*. Further information about these topics will be available in the January 2007 issue of *Charity Law Update*.

Court of Appeal Update on Corporate Governance Compliance

by Terrance S. Carter, assisted by Paula J. Thomas, in *Charity Law Bulletin No. 106*, December 20, 2006.

Charity Law Bulletin No. 101, entitled "Non-Share Capital Corporations Must Adhere Strictly to Corporate Governance Procedures," discussed *Rexdale Singh Sabha Religious Centre v. Chattha*, a decision released by the Ontario Superior Court of Justice on January 24, 2006. The decision related to a disagreement over the corporate governance procedures of three inter-related non-share capital corporations. The three charitable organizations appealed the application judge's order to fix the membership of the three corporations as set out in an affidavit of one of the respondent directors, as well as to require the existing directors to convene a meeting within 30 days to elect new directors by means of a fair vote. The Ontario Court of Appeal decision was released on November 27, 2006, allowing the appeal. In the Court's opinion, there had been a failure to properly change the members of the corporation in accordance with the *Corporations Act* (Ontario), and that the application judge had incorrectly concluded that four of the five directors of Rexdale were permitted to have approved the creation of a list of new members. While the courts came to different conclusions, both decisions illustrate that non-share capital corporations must adhere as strictly to corporate governance procedures as for-profit corporations.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2006/chylb106.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2006/chylb106.htm>

CRA Policy Regarding Pending Legislation

by Karen J. Cooper

With respect to the recent re-introduction and application of the draft technical amendments to the *Income Tax Act* (see *Charity Law Bulletin* No. 104 and the November issue of the *Charity Law Update* for a detailed discussion of the amendments affecting charities and non-profit organizations), on November 28, 2006, at the Annual Conference of the Canadian Tax Foundation (the “CTF”) in Toronto, a representative of the Canada Revenue Agency (“CRA”) participated in a round-table discussion of the CRA’s policies on a variety of issues. CRA was asked whether it has any further comments regarding the position enunciated at the 2005 CTF Annual Conference concerning the filing of income tax returns in the context of pending legislation and responded that its administrative practice continues to be to ask taxpayers to file their returns based on proposed legislation. However, where proposed legislation increases government expenditures (such as an increase in refundable tax credits), the CRA’s practice is to wait for the legislation to be enacted. Where a taxpayer files a return in accordance with draft legislation and the implementation date for the legislation is subsequently postponed, the CRA will permit the taxpayer to refile its return in accordance with the unamended legislation.

New Auditing Requirements Under the *Corporations Act* (Ontario)

by Paula J. Thomas

On December 12, 2006, Bill 152 received Third Reading in the Ontario Legislature, but at the time of writing has not yet received Royal Assent. The *Corporations Act* (Ontario) is one among many provincial statutes to be amended by this Bill. The *Corporations Act* (Ontario) is to be amended so that all non-share capital corporations, including charitable corporations, with an annual income of less than \$100,000 will no longer require an audit. The Explanatory Notes for Bill 152 with respect to the amendments of these subsections provide as follows: “The Bill amends the audit requirements of the Act. At present, a company is exempt from the audit requirements only if its annual income is less than \$10,000. Under section 96.1 of the Act, this threshold is increased to \$100,000. Under section 133 of the Act, charitable corporations will be entitled to the same exemptions from the audit requirements of the Act as other companies.” These amendments to the *Corporations Act* (Ontario) will be welcome news for smaller provincially incorporated charitable and not-for-profit organizations that have limited funds and cannot afford the expense of a yearly audit.

List of Qualified Donees

by Karen J. Cooper

Revisions to the attachment to *IC 84-3R5: Gifts to Certain Charitable Organizations Outside Canada* were posted to the CRA website on November 23, 2006, expanding the list of qualified donees that Her Majesty in right of Canada has made gifts to since January 2000. The inclusion of an organization on this list means it is

a qualified donee for the purposes of the *Income Tax Act* and eligible to receive receiptable donations from donors claiming Canadian tax relief and gifts from Canadian registered charities..

CRA Warns That Tax Shelters Are Risky

by Paula J. Thomas

In late October 2006, coinciding with the surprise announcement by the Hon. Jim Flaherty, Minister of Finance, with respect to the new tax imposition on income trusts, the Canada Revenue Agency (“CRA”) released another warning about the risk related to participating in certain tax shelter gifting arrangements. This includes leveraged cash donations, gifting trust arrangements, and buy-low, donate-high arrangements. CRA evaluates all such arrangements to ascertain whether or not they comply with the *Income Tax Act*. A taxpayer can be reassessed for up to three years from the date of assessment, and the CRA can take up to one year to conduct the audit. According to the CRA news release, taxpayers should be wary of any media advertisements that focus on tax savings, a warning backed up by an Investor Watch warning issued in October 2006 by the Canadian Securities Administrators (“CSA”). The CSA urges investors to do their homework and to get professional advice before getting involved with a tax shelter type of investment. CRA has issued warnings, alerts and fact sheets on the subject of tax shelters every November since 2003. They can be found at www.cra-arc.gc.ca. The CSA news release can be found at: www.csa-acvm.ca.

NEW! Charities Legislation & Commentary, 2007 Edition

LexisNexis Butterworths. 2006. Co-edited by Elena Hoffstein, Terrance S. Carter and Adam M. Parachin.

The purpose of this new 2007 consolidation is to assist those undertaking research in the area of charity law. Anyone who has undertaken research in this field can attest to the fact that the statutory regime governing charities consists of numerous, complex and, in some cases, unexpected legislative requirements. There is no single statute that sets out all of the legislative requirements applicable to charities. The statutory provisions applicable to charities are instead set out in multiple federal and provincial statutes. The consequence is that an applicable statute or legislative amendment can all too easily be overlooked.

Having regard to this complicated legislative context, this consolidation aims to facilitate charity law research by setting out excerpts from or the entire text of the key federal and Ontario statutes that apply to charities. The preface to this resource book is now available on our website to download and preview at the link below.

Read More:

[Preview Preface] <http://www.carters.ca/books.html>

[Buy the Book] <http://www.lexisnexis.ca/bookstore/bookinfo.php?pid=605>

IN THE PRESS

Carters Lawyers recognized as leaders in their field. The *National Post* reported on the Estate and Trust Lawyer ratings from *The Best Lawyers in Canada*TM, which included recognition of Jane Burke-Robertson and Terrance S. Carter as leaders in the field, with an emphasis in the area of Charities and Not-For-Profit. Joining them is M. Elena Hoffstein, a partner at Fasken Martineau DuMoulin LLP, a law firm with which Carters Professional Corporation is affiliated and to which Mr. Carter acts as counsel on charitable matters.
The National Post, November 29, 2006.

NEW Charities Legislation & Commentary, 2007 Edition, co-edited by Elena Hoffstein, Terrance S. Carter and Adam M. Parachin, is now available from LexisNexis Butterworths.

[Link] <http://www.lexisnexis.ca/bookstore/bookinfo.php?pid=605>

Government Proposes Preventative Tax Bill on ‘Buy Low Donate High’ article written by Arnold Ceballos, includes quotes from Terrance S. Carter.

The Lawyers Weekly, Vol. 26 No. 31 December 15, 2006.

Canadian Fundraiser eNews included a link to “Canadian's Opinions About Charities” by Terrance S. Carter.

Canadian Fundraiser, Volume 16 No. 23, December 15, 2006.

[Link] http://www.canadianfundraiser.com/Newsletter/issue_viewer.asp?Issue_ID=149

Loss of competitive advantage is not identical to loss of earning capacity by Thelson Desamour.

The Lawyers Weekly, Vol. 26 No. 30 December 8, 2006.

[Link] http://www.carters.ca/news/2006/lawyerwkly/td_1208.pdf

Khawaja Does Not Adequately Protect Charities by Terrance S. Carter and Sean S. Carter.

The Lawyers Weekly, Vol. 26 No. 29 December 1, 2006.

[Link] <http://www.carters.ca/news/2006/lawyerwkly/tsscsc1201.pdf>

Canadian Fundraiser eNews included a link to “Donations of Premium Points” by Karen J. Cooper.

Canadian Fundraiser, November 29, 2006.

[Link] http://www.canadianfundraiser.com/Newsletter/issue_viewer.asp?Issue_ID=148

RECENT EVENTS AND PRESENTATION MATERIALS

Institute of Chartered Accountants of Ontario hosted a seminar in Ottawa, Ontario, on November 22, 2006, with Karen J. Cooper speaking on “Not-for-Profit Organizations and Registered Charities.”

Integrating Health Services, a conference hosted by Insight Information in Toronto, Ontario, included a presentation by Terrance S. Carter on November 23, 2006, entitled “Untangling the Underlying Legal Issues in the Transfer of Charitable Assets.”

[WEB] <http://www.carters.ca/pub/seminar/charity/2006/tsc1123.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2006/tsc1123.pdf>

2006 Planned Giving Counsel Symposium - The Business of Giving: What You Need to Know was held in Barrie, Ontario, on November 24, 2006, with Terrance S. Carter presenting “Recent Changes to the *Income Tax Act* Affecting Charities.”

[PDF] <http://www.carters.ca/pub/seminar/charity/2006/tsc1124.pdf>

United Way Simcoe County and the County of Simcoe hosted a seminar on November 28, 2006, with Terrance S. Carter presenting “Directors and Officers Liability and Beyond”

[PDF] <http://www.carters.ca/pub/seminar/charity/2006/tsc1128.pdf>

Institute of Chartered Accountants of Ontario hosted a seminar in Ottawa, Ontario, on December 7, 2006, with Karen J. Cooper speaking on “CRA Tax Litigation.”

Institute of Chartered Accountants of Ontario hosted a seminar in Markham, Ontario, on December 12, 2006, with Terrance S. Carter speaking on “Director and Officer Liability and Beyond” and “Recent Changes to the *Income Tax Act* Affecting Charities.”

UPCOMING EVENTS AND PRESENTATIONS

The United Way of Peel is hosting a seminar in Mississauga, Ontario, on January 8, 2007, with U Shen Goh speaking on “Employment Law, Legislation & Guidelines.”

Details available at

<http://www.unitedwaypeel.org/AgencyResources/TrainingandConsultingWorkshops/tabid/109/Default.aspx>.

Waterloo Regional Arts Council is hosting Board School on Saturday, January 13, 2007, at Kitchener City Hall, Conestoga Room, Kitchener, with Donald J. Bourgeois presenting “Grant Writing: What Convinces Funders?”

BDO 2007 National Tax Specialist Conference is being held on Sunday, January 14, 2007, at the Royal York Hotel, Front Street, Toronto, with Terrance S. Carter and Theresa L.M. Man presenting “Recent Tax Changes to the *Income Tax Act* and Use of Private Foundations.”

The United Way/Centraide of Windsor – Essex County is hosting a luncheon presentation at the Caboto Club, 2175 Parent Avenue, in Windsor, Ontario, on January 18, 2007, with Terrance S. Carter speaking on “Legal Risk Management for Charities & Not-for-Profit Organizations.”

General Insurance Issues for Charities and Not-for-Profit Organizations is being hosted by the Ontario Bar Association Charity & Not-for-Profit Law Section in Toronto, Ontario, on January 25, 2007, with Mervyn F. White presenting.

Details available at <http://www.softconference.com/oba/eventdetails.aspx?code=07CHA0125T>.

Ontario Bar Association 2007 Institute of Continuing Legal Education will include a talk by Terrance S. Carter entitled “Charity Law - the Year in Review” as part of the Trusts & Estates session “Gone..But Not Forgotten” being held on February 6, 2007, in Toronto, Ontario.

Details available at <http://www.softconference.com/oba/eventdetails.aspx?code=07TRU0206C>.

The Canadian Institute’s 7th National Summit on Institutional Liability for Sexual Assault & Abuse will include a talk entitled “Implementing an Effective Risk Management and Prevention Program” by Mervyn F. White and D. Ann Walters on February 19, 2007, at the Marriott Bloor Yorkville Hotel in Toronto, Ontario.

Details available at

http://www.canadianinstitute.com/Legal/Institutional_Liability_for_Sexual_Assault_Abuse.htm.

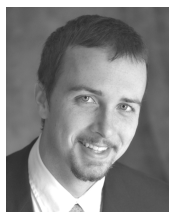
The Nuts and Bolts of Running Company Meetings, a Continuing Legal Education program being hosted by the Ontario Bar Association in Toronto, Ontario, on February 22, 2007, will include a talk by Terrance S. Carter and Theresa L.M. Man entitled “How To Conduct Board and Members’ Meetings of Non-Share Capital Corporations.”

Details available at <http://www.softconference.com/oba/eventdetails.aspx?code=07CHA0125T>.

CONTRIBUTORS



Terrance S. Carter – 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 Committee, 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 one of the leading experts in the area of charity and not-for-profit law 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.



Sean S. Carter – A second year law student at Osgoode Hall Law School, having obtained his Bachelor of Arts in Political Science and Philosophy from the University of Toronto, Sean has gained valuable experience as research assistant with Fasken Martineau DuMoulin LLP, as well as at Carters, with considerable experience writing on anti-terrorism law, including publications in *The International Journal of Not-for-Profit Law*, *The Lawyers Weekly*, *Charity Law Bulletin* and the *Anti-Terrorism and Charity Law Alert*.



Karen J. 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).



Theresa L.M. Man – Practices in the area of charity and not-for-profit law, with particular emphasis on tax issues. She is a member of the Taxation Section, an Executive Member of both the Charity and Not-for-Profit Sections of the Ontario Bar Association and the Canadian Bar Association, and is currently pursuing her LL.M. in Tax Law. In addition to being a regular speaker at the annual *Church & Charity Law™* Seminar, Mrs. Man has also written articles for *The Lawyers Weekly*, *Planned Giving Pulse*, *International Journal of Civil Society Law*, *The Bottom Line*, *Chinese Christian Herald Crusades*, and *Charity Law Bulletin*.



Paula J. Thomas – Articling at the Orangeville office of Carters Professional Corporation in the area of charity and not-for-profit law, Ms. Thomas received her law degree from Osgoode Hall Law School. After obtaining her B.A. at the University of Toronto, she worked in the area of sales and marketing, and later at a graduate school of theology. Ms. Thomas is actively involved in community service, including serving on the board of directors of the Dewdney Family Foundation, and for the Anglican Diocese of Toronto as Youth Chancellor and as a member of the Constitution and Canons Committee.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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