

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

JANUARY 2006 ISSUE

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RECENT PUBLICATIONS AND NEWS RELEASES

Changes to Sanctions, Penalties and Appeals Process for Charities

by Karen J. Cooper in *Charity Law Bulletin No. 82, January 11, 2006.*

Bill C-33, *A second Act to implement certain provisions of the budget tabled in Parliament on March 23, 2004*, received Royal Assent on May 13, 2005 and is now in force with a new regulatory regime for charities. Amendments to the *Income Tax Act* in Bill C-33 implement new rules concerning the taxation and administration of charities originally set out in the 2004 Federal Budget. The new rules generally apply to taxation years beginning after March 22, 2004, with some exceptions being in effect 30 days after Royal Assent, and include a more accessible appeals regime, new intermediate sanctions, improved transparency and more accessible information, as well as new disbursement quota rules for charities. This *Charity Law Bulletin* will outline the new penalties and sanctions now available to Canada Revenue Agency in the administration of charities, as well as the new appeals process, and the resulting implications for charities.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2006/chylb82.pdf>

Inquiries Still Required When Charities Issue Donation Receipts

by Theresa L.M. Man and Terrance S. Carter in *Charity Law Bulletin No.83, January 11, 2006.*

New rules were proposed to be included in the *Income Tax Act* (Canada) to permit a donor to receive a donation tax receipt even in situations where the donor or someone else received an advantage as a result of the gift. This is referred to as “split-receipting.” On July 18, 2005, the Department of Finance proposed a new obligation in this regard requiring charities to make “reasonable inquiries” of donors before issuing receipts over \$5,000 for gifts received after January 1, 2006. Although the Department indicated on November 22, 2005 that it is prepared to recommend to the Minister of Finance to withdraw this onerous proposed rule, charities are still required to exercise due diligence when issuing charitable donation receipts to ensure that the information on the receipts is accurate. This *Charity Law Bulletin* reviews the due diligence considerations that charities will need to be aware of in issuing charitable receipts.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2006/chylb83.pdf>

CRA Charities Newsletter Highlights: Fall of 2004 to Fall of 2005

by Terrance S. Carter, assisted by Derek Ross and Nancy E. Claridge in *Charity Law Bulletin No.84, January 12, 2005.*

This *Charity Law Bulletin* highlights the content of a number of Registered Charities Newsletters released by the Canada Revenue Agency over the last sixteen months from the fall of 2004 to the fall of 2005. The

Newsletters address a wide range of issues relevant to registered charities, including disbursement quotas, amalgamations, fundraising, guidelines for charities operating outside of Canada, and comments on relevant legislation and case law. This Bulletin provides a brief summary of these and other issues discussed in the Newsletters.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2006/chylb84.pdf>

2005 Charity and Not-For-Profit Law Developments: The Year in Review

by Terrance S. Carter and M. Elena Hoffstein in *Charity Law Bulletin No.85*, January 12, 2005.

In 2005, there were many important legislative, regulatory and common law developments that will significantly impact how charities operate in Canada and abroad. This *Charity Law Bulletin* discusses the changes relating to new policy statements from the Charities Directorate of Canada Revenue Agency; new legislation from the federal and provincial governments affecting charities; new model charitable fundraising legislation from the Uniform Law Conference of Canada; and a number of important court decisions affecting charities.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2006/chylb85.pdf>

B.C. Court of Appeal Affirms Lower Court Ruling Upholding CRA Split-Receipting Guidelines

On January 5, 2006, the British Columbia Court of Appeal rendered an oral judgment, dismissing an appeal from the decision of the British Columbia Supreme Court in the case of *Richert v. Stewards' Charitable Foundation*. Therefore, the lower court's decision continues to be good law in Canada, up-holding compliance with rules on split-receipting set out by Canada Revenue Agency in its Technical News No. 26, notwithstanding the fact that legislative provisions for split-receipting contained in the proposed amendments released on July 18, 2005 by the Department of Finance have yet to be enacted into law. For more information regarding the lower court's decision, refer to *Charity Law Bulletin* No. 68 available at <http://www.carters.ca/pub/bulletin/charity/2005/chylb68-05.pdf>.

National Do Not Call List Soon to be a Reality

Federal Parliament passed Bill C-37, *An Act to amend the Telecommunications Act*, on October 24, 2005, moving Canada one step closer to implementing a national Do Not Call list. When enacted, Bill C-37 will permit the Canadian Radio-television and Telecommunications Commission to administer databases for the purpose of establishing a national Do Not Call registry, which will prohibit or regulate the use by any person of Canadian telecommunications facilities for unsolicited telecommunications, to the extent considered necessary in order to prevent undue inconvenience or nuisance. Although registered charities are exempted

from the general prohibition, they are still required to maintain their own Do Not Call list and ensure that the organization and purpose for the call is identified at the beginning of the telecommunication.

IN THE PRESS

Charity Tax Rules have Evolved by *Theresa L.M. Man and Terrance S. Carter.*

The Lawyers Weekly Vol.25 No.32, December 23, 2005.

[PDF] <http://www.carters.ca/news/2005/lawyerwkly/tlmtsc1223.pdf>

Charities Legislation & Commentary, 2006 Edition (Butterworths) co-edited by *Elena Hoffstein, Terrance S. Carter, and Adam M. Parachin, and endorsed by Imagine Canada, is now available through Butterworths online catalogue at <http://www.lexisnexis.ca/bookstore/bookinfo.php?pid=605>. The full text of the preface outlining the legislation is available for free at the link below.*

[PDF] <http://www.carters.ca/pub/book/2005/CL06preface.pdf>

RECENT EVENTS AND PRESENTATION MATERIALS

The Institute of Chartered Accountants of Ontario hosted a workshop in Markham, Ontario, on January 10, 2006, with Karen J. Cooper presenting “Partnerships: From Soup to Nuts.”

The Institute of Chartered Accountants of Ontario hosted a workshop in Toronto, Ontario, on December 6, 2005; with Terrance S. Carter and Theresa L.M. Man presenting on “Director and Officer Liability and Beyond” and “Recent Changes to the *Income Tax Act* Affecting Charities.”

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc1206.pdf>

The Association of Fundraising Professionals Greater Toronto Chapter Congress 2005 included a presentation on “Recent Changes in the Law That You Need to Know” in Toronto, Ontario, on December 1, 2005; with M. Elena Hoffstein of Fasken Martineau DuMoulin LLP and Terrance S. Carter of Carter & Associates speaking.

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/mehtsc1201.pdf>

UPCOMING EVENTS AND PRESENTATIONS

The Waterloo Regional Arts Council is hosting a Board School program entitled “Incorporation: It's not as scary as you think” on January 14, 2006, at Kitchener City Hall (Conestoga Room), 200 King Street West, in Kitchener, Ontario.

Register by email to wrac@golden.net.

Compliance Issues for Charities and Not-for-Profit Organizations is a one-day conference being hosted by The United Way/Centreaide Windsor-Essex County at the Giovanni Caboto Club, Windsor, Ontario, January 19, 2006, with Terrance S. Carter presenting.

For more information, please contact nciampa@weareunited.com.

Privacy Essentials: Tips, Traps, and Hot Issues, hosted by The Ontario Bar Association Institute in Toronto, Ontario, on January 23, 2006, will include a panel discussion entitled “Tips from the Pros on Privacy” with Shen Goh from Carter & Associates participating along with other privacy law practitioners.

For more information, see <http://www.softconference.com/oba/eventdetails.aspx?code=06PRI0123C>.

Recent Tax Changes Affecting Charities That You Need to Know is being hosted by Canadian Fundraiser in Toronto, Ontario, on February 1, 2006, with Terrance S. Carter and Theresa L.M. Man of Carter & Associates presenting.

More information at http://www.canadianfundraiser.com/workshop_viewer.asp?workshop_ID=105.

The Greater Dufferin Area Chamber of Commerce is hosting a lunch seminar on February 9 entitled “Essential Employment Law Issues for Employers,” with Mervyn F. White presenting “New Criminal Liability in the Work Place (Bill C-45) – How to Avoid Liability;” Anne-Marie Langan presenting “Duty to Accommodate – Human Rights Issues for Employers;” and U. Shen Goh presenting “Wrongful Dismissal – What Employers Need to Know” at Hockley Valley Resort near Orangeville, Ontario.

More details will soon be available at <http://www.gdacc.ca>.

Nonprofit Performance Management Made Easy is being hosted by Canadian Fundraiser in Toronto, Ontario, on February 22, 2006, with a guest presentation by Mervyn White of Carter & Associates.

More information at http://www.canadianfundraiser.com/workshop_viewer.asp?workshop_ID=100.

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 Charity Advisory Committee and Technical Issues 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*. 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* (LexisNexis Butterworths, 2006).



Nancy E. Claridge – Articling with Carter & Associates, Ms. Claridge was a Senior Editor of the Osgoode Hall Law Journal and Editor-in-Chief of the *Obiter Dicta* newspaper. After obtaining her Masters degree in Political Science, she spent several years developing online Canadian legal databases for LexisNexis Canada, before attending Osgoode Hall Law School where she was awarded the Dean’s Gold Key Award for exceptional leadership, commitment and enthusiasm.



Karen J. Cooper – Practicing charity and not-for-profit law at Carters’ Ottawa office, with an emphasis on tax issues, while on leave from her position as Senior Rulings Officer with the Income Tax Rulings Directorate of Canada Revenue Agency. Ms. Cooper also has experience as counsel for the Department of Justice in tax litigation, as well as considerable teaching experience, including currently as part-time professor at the University of Ottawa, Faculty of Common Law. In addition, Ms. Cooper has contributed articles to *The Lawyers Weekly* and *The Bottom Line*.



M. Elena Hoffstein – From the affiliated firm, Fasken Martineau DuMoulin LLP - Toronto office, Ms. Hoffstein practices in the area of charity and not-for-profit law and has been ranked by *Lexpert* as one of the most frequently recommended Toronto private client practitioners and as one of the top 500 lawyers in Canada. Ms. Hoffstein is also a consulting editor of *Charities Legislation and Commentary* (LexisNexis Butterworths, 2006), as well as a frequent speaker on charitable and not-for-profit matters.



Theresa L.M. Man – Practices primarily in the area of charity and not-for-profit, with particular emphasis regarding tax issues. She is a member of the Taxation Section and the Charity and Not-for-Profit Section of the Ontario 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*.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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