

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

JULY / AUGUST 2006 ISSUE

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New Mississauga Office Opened July 1, 2006

See news for more information.

2006 Annual Church & Charity Law Seminar

Hosted by Carters Professional Corporation in Toronto, Ontario.

Wednesday, November 8, 2006.

Will be held at the Young - Nak Korean Presbyterian Church of Toronto. More details will be available in the fall.

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RECENT PUBLICATIONS AND NEWS RELEASES

Applying For Federal Incorporation and Charitable Status

by *Esther S.J. Oh and Terrance S. Carter in Charity Law Bulletin No. 96, July 19, 2006.*

This Bulletin provides a brief overview of the general steps that are required in order to incorporate a federal corporation under the *Canada Corporations Act*, and apply for registration as a "charitable organization" under paragraph 149.1(1) of the *Income Tax Act* (Canada). This Bulletin assumes that the charity will carry out its activities in the Province of Ontario, and therefore this Bulletin provides some commentary on a few of the more important issues relevant to charities operating in that province.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2006/chylb96.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2006/chylb96.htm>

Operator's Licenses and Religious Freedom: A Case Comment

by *Mervyn F. White and Anne-Marie Langan in Church Law Bulletin No. 18, July 19, 2006.*

In a recent decision of the Alberta Court of the Queen's Bench, *Hutterian Brethren of Wilson Colony v. Alberta*, it was affirmed once again that the government has a duty to accommodate the religious beliefs and practices of its citizens to the point of undue hardship. In this decision, section 3 of Alberta Regulation 137/2003, a regulation passed under the Operator Licensing and Vehicle Control Regulation which requires all individuals to be photographed in order to obtain an operator's license, was declared unconstitutional. The Regulation was challenged by a Hutterian community that interprets the Bible's Second Commandment as prohibiting the willing capture of their image in photographs. The community successfully argued that the Regulation violated their guarantee of freedom of religion and equality under the *Canadian Charter of Rights and Freedoms* (the "Charter"). This *Church Law Bulletin* reviews the court's decision and discuss its implications for churches and religious charities in Canada.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/church/2006/chchlb18.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/church/2006/chchlb18.htm>

Update on Budget 2006

by *Karen J. Cooper*

Bill C-13, the *Budget Implementation Act, 2006*, received Royal Assent on June 22, 2006. The Department of Finance released on June 15, 2006 Explanatory Notes related to the amendments contained therein. As a consequence of amendments relating to the elimination of taxable capital gains on donations of publicly listed shares and ecological gifts, paragraph 110(10(d.01)) was also amended by Bill C-13 to ensure that donations

of securities acquired through an employee stock option agreement (or the donation of the proceeds of disposition of such shares) received similar treatment. The effect of the amendment is to eliminate any tax on the employment benefit associated with the acquisition of securities under an employee stock option where the securities or proceeds of disposition are donated to a registered charity.

Unprecedented Anti-Terrorism Due Diligence Standards Emerge For Charities Internationally

by Terrance S. Carter and Sean S. Carter, Anti-terrorism and Charity Law Alert No. 9, July 19, 2006.

One of the greatest challenges facing charities both in Canada and abroad is the prospect of complying with an ever-expanding body of domestic and international anti-terrorism law. An international campaign, led primarily by the United States, has been in progress to institute a series of “best practices” with regards to anti-terrorism due diligence procedures for charities. These “best practices” were purportedly created in part to assist charities in complying with complex and over-burdensome legislation. The level of information collection and due diligence set out in these “best practices” is not only unprecedented, but exceeds the current operational capability of most charities. Additionally, because of recent developments on the international stage, these “best practices” are perhaps better now understood as expected operating procedures. This *Anti-terrorism and Charity Law Alert* examines the “best practices” and examine its implications for charities.

Read More:

[PDF] <http://www.carters.ca/pub/alert/ATCLA/atcla09.pdf>

Update on the Application of PIPEDA to Municipalities, Universities, Schools and Hospitals

by U. Shen Goh in Charity Law Bulletin No. 97, July 20, 2006.

Since the coming into force of the federal *Personal Information Protection and Electronic Documents Act* ("PIPEDA"), on January 1, 2004, many charitable and non-profit organizations have asked whether PIPEDA applies to them, i.e., whether the activities they engage in constitute commercial activities. Commercial activity is defined by PIPEDA as "*any particular transaction, act or conduct, or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or fundraising lists.*" While it is obvious that the legislators consider charitable and non-profit organizations capable of engaging in commercial activities, it is not obvious which activities charitable and non-profit organizations engage in will be considered commercial and which will not. This Bulletin summarizes subsequently posted Fact Sheets from the Federal Privacy Commissioner to clarify their position in this regard and the implications for charities and not-for-profit organizations.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2006/chylb97.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2006/chylb97.htm>

Carters is pleased to announce that we're expanding our immigration and anti-terrorism practice as well as opening a Mississauga office.

With the addition of Jeremiah Eastman, formerly of the Department of Justice Canada, we are expanding our immigration law and anti-terrorism law practices to now include litigation services. As well, we have opened a Mississauga office to better server our clients with all of the same legal services being available as at our other locations. See the announcement below for more information.

Read More:

[PDF] http://www.carters.ca/news/2006/local_news/0701announcement.pdf

Private Foundations Investing in Limited Partnerships

by Karen J. Cooper

In a technical interpretation dated June 27, 2006 (2006-016742), CRA maintained its view that a private foundation which acquires a limited partnership interest will be subject to revocation pursuant to paragraph 149.1(4)(a) on the basis that the private foundation would be considered to be carrying on business.

Church Held Liable For "Quasi-Participation" In Lien Action

by D. Ann Walters

An Ontario court has found the Trustees of a Church jointly and severally liable for costs, as well as pre and post judgment interest, based on their conduct in a construction lien action brought by a sub-contractor against the contractor. In the case *Crownwood Construction Ltd v Omartech Construction Inc* ([2006] O.J. No. 2466) the plaintiff sub-contractor was successful at trial in establishing that payment was due to them for renovations performed for the benefit of the lands held by the Trustees on behalf of the Revivaltime Tabernacle Adelphi Church. Based on the contractor's conduct before and during trial, and the sub-contractor's achieving greater success at trial than settlement offers, the court awarded substantial indemnity costs in the amount of \$78,000.00. It was by virtue of the Trustees' failure to pay required holdback monies into court, and by failing to participate in the litigation, that the Trustees of the Church were held jointly and severally responsible for the costs that the sub-contractor was forced to incur in order to recover the payment that was due to them.

Charity Texas Hold'um Tournaments

by Karen J. Cooper

In another recent technical interpretation (2005-014243), CRA indicated that when determining the "eligible amount" of a gift for the purposes of a tax receipt for a "Texas Hold'um" poker tournament the amount of the "advantage" allocated to each participant will include the total prize money divided by the number of participants and an amount equal to what a participant would pay to play in a similar "Texas Hold'um" poker

tournament that is not sponsored by a charity. However, Charities should be aware that in many provincial jurisdictions, including Ontario, such tournaments may not be legal as they would not fall within the "charitable gaming" exception in the *Criminal Code*.

NEW : Branding & Trade Marks Handbook for Charitable and Not-for-Profit Organizations

Co-authored by Terrance S. Carter and U. Shen Goh of Carters Professional Corporation, this resource book for charities and not-for-profit organizations is now available from LexisNexis Butterworths at <http://www.lexisnexis.ca/bookstore/bookinfo.php?pid=1328>.

IN THE PRESS

Canada Revenue Agency: Suspension of Charities Advisory Committee Appears Ill-Advised by Terrance S. Carter.

Canadian Fundraiser Vol.16 No.12 June 30, 2006.

[Link] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=2003>

The Management of Non-Profit and Charitable Organizations in Canada, with a chapter by Terrance S. Carter and Karen J. Cooper of Carters Professional Corporation, is now available from LexisNexis Butterworths.

[Link] <http://www.lexisnexis.ca/bookstore/bookinfo.php?pid=1327>

Canadian Supreme Court Gives Strong Endorsement to Freedom of Religion, by Terrance S. Carter and Anne-Marie Langan.

International Journal of Civil Society Law, Volume IV Issue 2, April 2006.

[Link] <http://law.cua.edu/Students/Orgs/IJCSL/IJCSL-2006-04.pdf>

RECENT EVENTS AND PRESENTATION MATERIALS

Valuing Nature – Stewardship & Conservation of Canada 2006 is a joint program sponsored by the Newfoundland and Labrador Legacy Nature Trust and the Government of Newfoundland and Labrador and was held from July 5 – 8, 2006 at Corner Brook, Newfoundland. Karen J. Cooper presented the Changing Legal Environment on July 8, 2006.

For more information, please see http://www.stewardship2006.ca/welcome_e.html

Association of Health Care Professionals hosted their 2006 Canada Regional Conference from June 18 to 20, 2006 in Whistler, B.C. Terrance S. Carter presented a talk on ‘Directors’ and Officers’ Liability’ on June 20, 2006, with Edgar A. Frechette of the affiliated firm Fasken Martineau DuMoulin LLP.

More information can be found at <http://www.ahpcanada.com/2006conference/>

UPCOMING EVENTS AND PRESENTATIONS

Canadian Fundraiser will be hosting a seminar entitled “Recent Tax Changes Affecting Charities: Stuff You Need to Know” on Thursday September 21, 2006, from 9:00 am – 12:30 pm, in Toronto, Ontario. Terrance S. Carter and Theresa L.M. Man will be presenting.

Details available at http://www.canadianfundraiser.com/workshop_viewer.asp?workshop_ID=153.

The Canadian Council of Christian Charities is hosting their 2006 Conference in Richmond B.C. on September 26 & 27, 2006. Terrance Carter will be presenting a session on September 27 entitled “Directors’ and Officers’ Liability: The Essentials and Beyond.”

More details can be found at <http://www.cccc.org/contents.php?area=a&id=4161>.

Christian Legal Fellowship is hosting its Annual National Conference in Calgary, Alberta, from September 28 to October 1, 2006. Terry Carter will be speaking on the Highlights of Key Legal Issues Facing the Church on September 30.

Details at <http://www.christianlegalfellowship.org/Conference%202006/registration2006.htm>

Christian Legal Intervention Academy Training Event on September 30, 2006, will include a talk by Mervyn F. White entitled “Human Rights Code: Friend or Foe” and discusses the case of Kevin Kisilowsky, Marriage Commissioner.

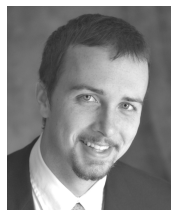
Details are available at http://www.christianlegalfellowship.org/Conference%202006/CLIA/2006_christian_legal_intervention_aca.htm.

2006 Annual Church & Charity Law Seminar will be held on Wednesday, November 8, 2006 at the Young-Nak Korean Presbyterian Church of Toronto. Registration and speaker details will be available soon.

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 Charities 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).



Sean S. Carter – A first year law student, having obtained his Bachelor of Arts in Political Science and Philosophy from the University of Toronto, Sean is currently a summer research assistant with Fasken Martineau DuMoulin LLP, and author at Carters, with experience writing on anti-terrorism law, including publications in *The International Journal of Not-for-Profit Law*, *The Lawyers Weekly*, and the *Anti-Terrorism and Charity Law Alert*.



Nancy E. Claridge – Articling with Carters, 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*.



U. Shen Goh – Ms. Goh practices in the area of intellectual property, focusing on trade-marks, privacy and information protection. She is a Registered Trade-mark Agent, has a Master of Law degree from the University of San Diego School of Law and an LL.B. from Osgoode Hall Law School. Ms. Goh has also been an invited speaker for the Greater Dufferin Area Chamber of Commerce and the Social Planning Council of Peel, and has also written on intellectual property and privacy issues for *The Lawyers Weekly* and *Charity Law Bulletin*.



Anne-Marie Langan – Practices at Carters Professional Corporation in the areas of human rights litigation and family law. Ms. Langan received her law degree from Queen’s University, where she was awarded the Legal Aid Ontario Award and the Community Commitment Award for her involvement in the Queen’s Legal Aid Clinic and the Family Law Project, and won an award for her paper entitled “Unrepresented Litigants in the Family Courts of Ontario” (*Queen’s Law Journal*, Spring 2005). Ms. Langan is a frequent contributor to the *Church Law Bulletin* at www.churchlaw.ca.



Esther S.J. Oh – Practices primarily in charity and not-for-profit law, as well as in immigration law. Ms. Oh is also a frequent contributor to www.charitylaw.ca and the *Charity Law Bulletin*, and has spoken at the annual *Church & Charity Law*TM Seminar as well as at the Canadian Bar Association/Ontario Bar Association's 2nd National Symposium on Charity Law.



Mervyn F. White – Practices litigation and dispute resolution in areas of the law including charity and not-for-profit law, human rights complaints, and risk management assessments relating to insurance law and human rights. Mr. White is a contributing author to *The Lawyers Weekly*, *Charity Law Bulletin* and *Church Law Bulletin*, and a regular speaker at the annual *Church & Charity Law*TM Seminar and guest speaker for organizations such as Canadian Fundraiser, the Association of Fundraising Professionals, and the Christian Legal Intervention Academy.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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