

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

MARCH 2006 ISSUE

SECTIONS

Recent Publications and News Releases	2
In the Press	6
Recent Events and Presentation Materials	7
Upcoming Events and Presentations	8
Contributors	9
Acknowledgements, Errata and other Miscellaneous Items	10

HIGHLIGHTS

Impact of New Health Legislation on Charities and Not-for-Profits
Proposed Elimination of Tax on Gifts of Public Company Shares
Supreme Court Gives Strong Endorsement to Freedom of Religion
New CRA <i>Guidelines for Registering a Charity: Meeting the Public Benefit Test</i>
False Receipts Case Summaries
Kempling Appeal Denied
Revised <i>Anti-terrorist Financing Guidelines: Voluntary Best Practices for US Based Charities</i> Released by the US Treasury Department
Exemption Added for Charities in Ontario's <i>Safe Streets Act</i>

See Upcoming Events for details on Carters' and Faskens' Health and Charity Law Seminar

Healthcare Philanthropy: Check-up 2006 **April 5, 2006**

Get on Our Mailing List: To automatically receive the free monthly *Charity Law Update*, send an email to info@carters.ca with "Subscribe" in the subject line. Please feel free to forward this Update to anyone (internal or external to your organization) who may be interested in being put on our monthly mailing list.

RECENT PUBLICATIONS AND NEWS RELEASES

Implications of New Ontario Health Legislation for Charities

by Terrance S. Carter, assisted by Nancy E. Claridge, in Charity Law Bulletin No. 90, March 16, 2006.

Significant changes were made to Ontario's health care system on March 1, 2006, with the passage of Bill 36, the *Local Health System Integration Act, 2006* ("Bill 36" or the "Act"). This "made in Ontario" model of health care is based on the principle of community-based care that is intended to be more capable of responding to local health care needs. As such, the management of local health services will devolve to a series of 14 local health integration networks ("LHINs"). Bill 36 recently passed third reading on March 1, 2006, with only limited opposition or discussion, despite the potential for significant impacts on health service providers, registered charities and non-profit organizations who work in the health care field in Ontario. This *Charity Law Bulletin* reviews Bill 36 and discusses the implications and outstanding issues that affect registered charities.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2006/chylb90.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2006/chylb90.htm>

Proposed Elimination of Tax on Gifts of Public Company Shares

by Karen J. Cooper in Charity Law Bulletin No. 89, March 9, 2006.

In a news release during the recent federal election campaign dated January 7, 2006, the Conservative Party of Canada announced that a Conservative government would remove the capital gains tax on listed securities donated to charities. Since the Conservative Party took office, many observers and members of the sector believe that this proposal will be included in the first budget this spring, since it would be generally popular and win the support of all parties in the fractured Parliament. This *Charity Law Bulletin* provides a brief discussion of the current regime applicable to donations of listed securities in order to better understand the proposal and its impact on donors and charities.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2006/chylb89.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2006/chylb89.htm>

Supreme Court Gives Strong Endorsement to Freedom of Religion

by Terrance S. Carter and Anne-Marie Langan, assisted by Nancy E. Claridge, in *Church Law Bulletin* No. 17, March 16, 2006.

The Supreme Court of Canada has sent a strong message that Canada's public education institutions must embrace diversity and develop an educational culture respectful of the right to freedom of religion. In its decision in *Multani v. Commission scolaire Marguerite-Bourgeoys* ("Multani"), the Court confirmed the right of an orthodox Sikh student to wear his ceremonial dagger at school. The Court concluded that the *Charter of Rights and Freedoms* establishes a minimum constitutional protection for freedom of religion that must be taken into account by the legislature and by administrative tribunals. Safety concerns must be unequivocally established for the infringement of a constitutional right to be justified. As such, the Court gave new guidance to administrative bodies dealing with *Charter* issues, declaring that administrative bodies must apply the principles of constitutional justification when a *Charter* right has been infringed. This *Church Law Bulletin* will review the decision and discuss its implications for future challenges before both administrative tribunals and the courts, particularly as it relates to freedom of religion.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/church/2006/chchlb17.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/church/2006/chchlb17.htm>

New CRA Guidelines for Registering a Charity: Meeting the Public Benefit Test - released March 10, 2006

Under current law, an organization is only charitable if it meets the definition of charity at common law. Part of that definition requires that in order for an organization to be considered charitable it must be established for public benefit. After having released proposed guidelines on how CRA interprets the public benefit test on July 29, 2005 for consultation, CRA finally released their official guidelines on March 10, 2006. The guidelines are intended to clarify the meaning of the term "public benefit" as CRA understands and how it would apply when CRA makes determinations of charitable status under the *Income Tax Act*. A *Charity Law Bulletin* discussing the implications for charities will be forthcoming. CRA's document is available at <http://www.cra-arc.gc.ca/tax/charities/policy/cps/cps-024-e.html>.

False Receipts Case Summaries

In a recent decision dated February 9, 2006 (*Nassar et al v. The Queen* (in French) 2006 CAF 58), the Federal Court of Appeal maintained the decision of the Tax Court of Canada disallowing charitable donation tax credits for 1990 to 1995 in respect of gifts allegedly made by the taxpayers to the Order *antonien libanais des maronites* ("the Order") and imposing penalties on the basis, in part, that the taxpayers participated with the Order in a scheme to generate receipts showing amounts not corresponding to donations actually made.

In *Her Majesty the Queen v. Mark Doubinin*, 2005 DTC 5624, the Federal Court of Appeal upheld a decision of the Tax Court of Canada considering the meaning of a gift in a complex donation scheme. The taxpayer was told by his financial planner that if he donated \$6,887 to a registered charity (“ABLE”), he would receive charitable donations receipts totalling \$27,548, if a non-resident trust (“PPF”) made a charitable donation to ABLE on his behalf equal to three times his donation of \$6,887. While the taxpayer initially claimed a donation tax credit in respect of the full amount of \$27,548, he reduced his claim to the \$6,887 cash amount that he had donated to ABLE after hearing from the Minister that PPF had not made the donation to ABLE on the taxpayer's behalf. The Tax Court allowed the claim in respect of \$6,887 on the basis that the taxpayer was not in any way involved with this scheme, that the required charitable intent was present, and that this was a genuine gift that was not given with any expectation of receiving a material benefit from PPF, because the PPF donation was just a “mere possibility.”

Kempling Appeal Denied

The Supreme Court of Canada, on January 19, 2006, denied leave to appeal to a British Columbia schoolteacher who was disciplined for writing letters to the local newspaper because they could “bring harm to the integrity of the school system as a whole.” In *Kempling v. British Columbia College of Teachers*, both the British Columbia Supreme Court and Court of Appeal supported the governing body’s decision to discipline the teacher by suspending him after he wrote letters to the editor associating homosexuals with immorality, abnormality, perversion and promiscuity. The College discipline panel found that the appellant’s writings were discriminatory and that they demonstrated that he was not prepared to accommodate the core values of the education system, one of which is non-discrimination. On judicial review, the court determined that whether the discipline panel was correct in concluding that the teacher was guilty of conduct that was unbecoming a member of the College of Teachers turned on two questions: (1) whether the teacher’s writings were discriminatory; and (2) whether they caused any harm. While the Court of Appeal determined that the teacher’s freedom of expression was infringed, it also found the teacher’s off-duty discriminatory remarks crossed the line from protected political speech by ignoring the inherent dignity of the individual.

This decision raises a number of issues, including where the courts will draw the line between protected and unprotected expression, reasoned debate and discriminatory rhetoric. It also leaves open the question of whether all expression by professionals can be scrutinized by their governing bodies, or whether a professional can indeed have a private life: all important considerations left unanswered by the unfortunate decision of the Supreme Court of Canada not to hear the appeal.

Revised *Anti-terrorist Financing Guidelines: Voluntary Best Practices for US Based Charities* Released by the US Treasury Department December 5, 2005

The U.S. Department of the Treasury issued revised *Anti-Terrorist Financing Guidelines, Voluntary Best Practices for U.S.-based Charities*, on December 5, 2005, to help the charitable sector protect itself from abuse by terrorist organizations. First issued in November 2002, the Treasury has since been working with the U.S. charitable and donor community to raise awareness of terrorist abuse and the steps charities can take to protect themselves. While the Guidelines are voluntary and do not supersede or modify legal requirements, they promote the development of a risk-based, transparent approach to guard against the threat of diversion of charitable funds for use by terrorists and their supporters. The Treasury invited further public comment on the Guidelines until February 1, 2006, and final revisions may be forthcoming. The original press release is available at <http://www.treas.gov/press/releases/js3035.htm>, and the Guidelines are available at http://www.treas.gov/offices/enforcement/key-issues/protecting/docs/guidelines_charities.pdf.

Exemption added for charities in Ontario's *Safe Streets Act*

Certain fundraising activities of registered charities may be exempt from Ontario's anti-panhandling legislation. The *Safe Streets Statute Law Amendment Act, 2005*, S.O. 2005, c. 32, added a new provision to the *Safe Streets Act, 1999*, S.O. 1999, c. 8, exempting fundraising activities that meet two conditions: (1) they are conducted by a charitable organization registered under the *Income Tax Act* (Canada) on a roadway where the maximum speed limit is 50 kilometres per hour; and (2) they are permitted by a by-law of the municipality in which the activities are conducted. A similar amendment was made to the *Highway Traffic Act*. The *Safe Streets Act, 1999*, applies the definition of "roadway" from the *Highway Traffic Act*, namely that a roadway means "the part of the highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder, and, where a highway includes two or more separate roadways, the term 'roadway' refers to any one roadway separately and not to all of the roadways collectively."

These amendments were intended to specifically address the problems faced by organizations, like firefighter associations, who had previously raised funds by soliciting money in the middle of a roadway. Charities and non-profit organizations engaging in other types of fundraising activities should be aware of the restrictions to other types of solicitations (aggressive and captive audience solicitations) that are contained in the *Safe Streets Act, 1999*, including prohibitions on soliciting near ATMs, pay telephones, public toilets, taxi stands, public transit vehicles or parking lots.

IN THE PRESS

Take a Close Look at Valuations by Promoters of Donation Tax Shelters by *Karen J. Cooper and Terrance S. Carter.*

The Lawyers Weekly, Vol. 25, No. 41 March 10, 2006.

[Link] <http://www.carters.ca/news/2006/lawyerwkly/kjctsc0310.pdf>

A Comparison of the Three Categories of Registered Charities by *Theresa L.M. Man and Terrance S. Carter.*

The Philanthropist, Vol. 20, No. 1 February 2006.

[Link] <http://www.thephilanthropist.ca>

New CRA Policy on Umbrella Organizations by *Jacqueline M. Connor and Terrance S. Carter.*

The Philanthropist, Vol. 20, No. 1 February 2006.

[Link] <http://www.thephilanthropist.ca>

Tax Shelters - Case judgement heightens concern about valuations of gifts by *Karen Cooper and Terrance Carter.*

Canadian Fundraiser Vol. 16 No. 4 February 28, 2006.

[Link] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=1894>

Canadian Fundraiser eNews included a link to "Beware of Donation Tax Shelter Valuations," by Karen J. Cooper and Terrance S. Carter.

Canadian Fundraiser Vol.16 No.3 February 15,2006.

[Link] http://www.canadianfundraiser.com/Newsletter/issue_viewer.asp?Issue_ID=129

Nonprofit Alert includes a reference to Church Law Bulletin No. 16

The January/February 2006 issue of the *Nonprofit Alert*, published by Gammon & Grange P.C., a firm that specializes in tax exempt organizations in the U.S. in Washington, D.C., included a note about *Church Law Bulletin* No. 16 entitled "Knights of Columbus and Religious Charities that Rent Out their Facilities."

Nonprofit Alert, January / February 2006.

[Link] <http://www.gg-law.com/Publications/NonProfitAlerts>

Gift Planning in Canada Reproduces Disbursement Quota Flow Chart from Charity Law Bulletin No. 67

The January 2006 issue of *Gift Planning in Canada* (The Hillborn Group), included the complex disbursement quota flow chart that first appeared in *Charity Law Bulletin* No. 67 entitled "Disbursement Quota Formula Under Bill C-33 (March 2004 Federal Budget Enabling Legislation). Request a copy from info@hilborn.com.

Gift Planning in Canada, January 2006.

RECENT EVENTS AND PRESENTATION MATERIALS

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

The Greater Dufferin Area Chamber of Commerce hosted a lunch seminar on 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, on February 9, 2006.

The 2006 National CLF Student Conference was hosted by the Christian Legal Fellowship on February 24, 2006, at the University of Western Ontario, with Terrance S. Carter participating in a panel discussion entitled "Integration of Faith & Practice / Law as a Ministry."

For more information, see <http://www.christianlegalfellowship.org/studentconference.htm>.

Directors and Officers Liability and Beyond was hosted by Canadian Fundraiser on Wednesday, March 1, 2006, at the Osgoode Professional Development Centre in Toronto, Ontario with Terrance S. Carter presenting.

Health and Charity Law Seminar hosted by Fasken Martineau DuMoulin LLP was held on March 8, 2006, at the Estates of Sunnybrook, Vaughan Estates in Toronto, Ontario. Terrance S. Carter spoke on the charitable implications of the new LHIN legislation.

[PDF] <http://www.carters.ca/pub/seminar/charity/2006/tsc0308.pdf>

[WEB] <http://www.carters.ca/pub/seminar/charity/2006/tsc0308.htm>

UPCOMING EVENTS AND PRESENTATIONS

Charity Law Update will be presented by Terrance S. Carter and David P. Stevens as part of “The Six-Minute Estates Lawyer” to be hosted by The Law Society of Upper Canada in Toronto, Ontario, on March 22, 2006.

Details available at <http://ecom.lsuc.on.ca/pdf/flyers/2006/sixMinuteEstatesLawyer.pdf>.

The Waterloo Regional Arts Council and Carters Professional Corporation are hosting a Board School program entitled “Charitable Registration and Compliance” to be held on March 25, 2006 in Kitchener, Ontario, with Donald J. Bourgeois from Carters presenting.

Register by email to wrac@golden.net.

The University of Waterloo Master of Taxation Program will be hosting a session on “Recent Changes to the *Income Tax Act* Affecting Charities,” presented by Terrance S. Carter on March 27, 2006, for students studying in the Master of Taxation Program.

Health and Charity Law Seminar “Healthcare Philanthropy: Check-up 2006” hosted by Carters Professional Corporation and Fasken Martineau DuMoulin LLP is being held on April 5, 2006, at the Estates of Sunnybrook, Vaughan Estates in Toronto, Ontario.

[Brochure] <http://www.carters.ca/pub/seminar/notice/2006/CAFA0405.pdf>

Recent Tax Changes Affecting Charities: Stuff You Need to Know is being hosted by Canadian Fundraiser on Wednesday, April 12, 2006, in Ottawa, Ontario. Terrance S. Carter and Karen J. Cooper will be presenting.

Details available at http://www.canadianfundraiser.com/workshop_viewer.asp?workshop_ID=116

The 13th Annual National CAGP-ACPDTM Conference “Pipeline to the Future” is being hosted by the Canadian Association of Gift Planners from April 18-21, 2006, in Calgary, Alberta. The following sessions will be presented on Friday, April 21, 2006:

Terrance S. Carter and M.Elena Hoffstein will be speaking on “The Do’s and Don’ts of Establishing and Managing Endowed Gifts”.

Karen J. Cooper, along with Blair Hammond and Thea Silver, will be presenting “A Green Legacy for Tomorrow – A Tax Break for Today”.

More information can be obtained at http://www.cagp-acpdp.org/ancon_frame.htm

Charities and Not-for-Profits CLE Primer II is being hosted by the Volunteer Lawyer Service on Wednesday, April 26, 2006, at the offices of Fasken Martineau DuMoulin LLP in Toronto, Ontario. Terrance S. Carter and M. Elena Hoffstein will be presenting on various topics throughout the morning.

For more details, please see <http://www.pblo.org/lawyers/index.cfm>

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).



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.



Jacqueline M. Connor – Practices in charity and not-for-profit law, including incorporation, corporate restructuring, and legal risk management reviews, as well as wills, estate planning and estate administration. She is a contributing author to Industry Canada’s *Primer for Directors of Not-For-Profit Corporations*, and has written numerous articles on charity and not-for-profit issues for the *Lawyers Weekly*, *The Philanthropist* and *Charity Law Bulletin*, among others. Ms. Connor is also a regular speaker at the annual *Church & Charity Law*TM Seminar.



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*.



Anne-Marie Langan – Practices at Carters in the areas of human rights, employment 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.



Theresa L.M. Man – Practices primarily in the area of charity and not-for-profit, with particular emphasis on 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*TM 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

Links not Working: If the above links do not work from your mail program, simply copy the link text and paste it into the address field of your internet browser.

Get on Our E-Mailing List: If you would like to be added to our electronic mailing list and receive regular updates when new materials are added to our site, send an email to info@carters.ca with "Subscribe" in the subject line. Feel free to forward this email to anyone (internal or external to your organization) who might be interested.

To be Removed: If you wish to be removed from our mailing list, please reply to this message with Remove in the subject line.

Privacy: We at Carters know how important your privacy is to you. Our relationship with you is founded on trust and we are committed to maintaining that trust. Personal information is collected solely for the purposes of establishing and maintaining client lists; representing our clients; and to establish and maintain mailing lists for the distribution of publications as an information service. Your personal information will never be sold to or shared with another party or organization. For more information, please refer to our Privacy Policy at <http://www.carters.ca/privacy.pdf>.

Copyright: All materials from Carters are copyrighted and all rights are reserved. Please contact us for permission to reproduce any of our materials. All rights reserved.

Disclaimer: This is a summary of current legal issues provided as an information service by Carters Professional Corporation. It is current only as of the date of the summary and does not reflect subsequent changes in the law. The summary is distributed with the understanding that it does not constitute legal advice or establish the solicitor/client relationship by way of any information contained herein. The contents are intended for general information purposes only and under no circumstances can be relied upon for legal decision-making. Readers are advised to consult with a qualified lawyer and obtain a written opinion concerning the specifics of their particular situation.

CARTERS PROFESSIONAL CORPORATION

Affiliated With Fasken Martineau DuMoulin LLP

Terrance S. Carter B.A., LL.B.
(Counsel to Fasken Martineau DuMoulin LLP)
Jane Burke-Robertson B.Soc.Sci., LL.B.
Mervyn F. White B.A., LL.B.
Karen Cooper, B.A., LL.B.
Theresa L.M. Man B.Sc., M.Mus., LL.B.
Jacqueline M. Connor B.A., LL.B.
Esther S.J. Oh B.A., LL.B.
Suzanne E. White B.A., LL.B.
U. Shen Goh LL.B., LL.M.
Anne-Marie Langan B.A., B.S.W., LL.B.
D. Ann Walters B.A., LL.B.
COUNSEL:
Bruce W. Long B.A., LL.B.
Donald J. Bourgeois B.A., LL.B.

tcarter@carters.ca

janebr@carters.ca
mwhite@carters.ca
kcooper@carters.ca
tman@carters.ca
jconnor@carters.ca
estheroh@carters.ca
swhite@carters.ca
sgoh@carters.ca
alangan@carters.ca
awalters@carters.ca

blong@carters.ca
dbourgeois@carters.ca

Main Office

211 Broadway, P.O. Box 440
Orangeville, Ontario, Canada, L9W 1K4
Tel: (519) 942-0001
Fax: (519) 942-0300
info@carters.ca

Toronto Meeting Location

(by appointment)
Toronto Dominion Bank Tower, Suite 4200
Toronto, Ontario, Canada
(416) 675-3766

Vancouver Meeting Location

(by appointment)
2100 - 1075 West Georgia Street
Vancouver, British Columbia
(877) 942-0001

Ottawa Office

70 Gloucester Street
Ottawa, Ontario, Canada
Tel: (613) 235-4774
Fax: (613) 233-3774

London Meeting Location

(by appointment)
100 Fullarton Street
London, Ontario, Canada
(519) 937-2333

Toll Free: 1-877-942-0001

www.carters.ca
www.charitylaw.ca
www.churchlaw.ca
www.antiterrorismlaw.ca