

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

MAY / JUNE 2006 ISSUE

SECTIONS

Recent Publications and News Releases	2
In the Press	8
Recent Events and Presentation Materials	9
Upcoming Events and Presentations	10
Contributors	10
Acknowledgements, Errata and other Miscellaneous Items	12

HIGHLIGHTS

- Budget 2006: Elimination of Capital Gains Tax on Certain Gifts
- CRA Suspends Advisory Committees
- Intermediate Penalty for Charities: Improper Donation Receipts
- The What, Where and When of Canadian Anti-Terrorism Legislation for Charities in the International Context
- When is an Advantage not an Advantage: Issues Arising from the Proposed Split Receipting Regime
- CRA Granted Order to Require Disclosure of Donor List
- Privacy Legislation and its Application to Fundraising and Personal Health Information
- Charitable Organizations and Public Foundations: The Need for Re-categorization
- Carters Lawyers recognized as leaders in their field

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RECENT PUBLICATIONS AND NEWS RELEASES

Budget 2006: Elimination of Capital Gains Tax on Certain Gifts

by Karen J. Cooper in Charity Law Bulletin No. 94, May 30, 2006.

In the 2006 Federal Budget released on May 2, 2006, the Conservative government upheld its commitment to remove the capital gains tax on listed securities donated to charities and extended this measure to gifts of ecologically sensitive land, effective immediately. These measures will significantly impact the charitable sector. While these measures do not apply at present to private foundations, the government indicated in the Budget that it will consult with the sector to develop some self-dealing rules to safeguard against potential conflicts of interest. Both the Canadian Association of Gift Planners and the Association of Fundraising Professionals have applauded these changes indicating that they will encourage increased charitable giving in Canada. Most recently, the Toronto General Hospital received a donation of \$37 million and the UJA Federation of Greater Toronto received \$50 million, both donations a direct result of the new measures. The following provides a brief discussion of the current regime applicable to such donations in order to better understand the new measures and their impact on donors and charities.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2006/chylb94.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2006/chylb94.htm>

CRA Suspends Advisory Committees

by Terrance S. Carter

The Minister of National Revenue has announced that Canada Revenue Agency (“CRA”) is temporarily suspending the activities of all of its advisory committees while it reviews the role and mandate of these bodies. Among the suspended advisory committees is the Charities Advisory Committee (“CAC”), which was formed based upon a recommendation of the Joint Regulatory Table and was included in the March 2004 Federal Budget. The CAC has functioned well over the last two years in providing an effective bridge between the charitable sector and CRA, as well as the Minister of National Revenue, and it is therefore disappointing that the CAC has been put into a state of suspension. It is hoped that the CAC will be reactivated soon in order to let it continue its mandate. In a letter to members of the advisory committees, Minister Carol Skelton indicated that the review, which is expected to be completed by the end of this summer, is intended to ensure that the CRA gets the best possible value from the advisory committee process.

Intermediate Penalty for Charities: Improper Donation Receipts

by Theresa L.M. Man, posted June 2006.

New intermediate penalties and sanctions for registered charities that commit minor infractions of the requirements of the *Income Tax Act* (Canada) were implemented on May 13, 2005. These sanctions include monetary penalties and/or suspension of tax-receipting privileges. Two of the sanctions relate specifically to improper issuance of donation receipts containing incomplete information or false statements by registered charities. This paper reviews the background that led to the introduction of intermediate penalties relating to these two sanctions, as well as a general overview of the provisions imposing these penalties. Since the implementation of the intermediate penalties in 2005, there has not been any case law on how these provisions would be applied or interpreted by the courts. In general, the implementation of intermediate penalties on receipts by registered charities not in compliance with the Act or the Regulation is a welcome change. However, it remains to be seen how these provisions will be applied by CRA or interpreted by the courts.

Read More:

[PDF] http://www.carters.ca/pub/article/charity/2006/tlm_sanctions.pdf

The What, Where and When of Canadian Anti-Terrorism Legislation for Charities in the International Context

by Terrance S. Carter, May 11, 2006.

Charitable organizations remain a significant focus of the war on terror, being dubbed the “crucial weak point.” Yet, as the global war on terror develops, it becomes clear that it is imprudent to look at the matter from a purely domestic point of view. As such, charities and their advisors need to look at compliance with anti-terrorism measures from a global perspective; eg. the what, where and when of both Canadian and international anti-terrorism measures. This paper therefore endeavours to examine anti-terrorism measures developed in the post-September 11 world in Canada, the United States, the United Kingdom, Australia, as well as the Financial Action Task Force on Money Laundering, and reviews their impact on Canadian charities operating inside and outside of Canada as well as those who advise them.

Read More:

[PDF] <http://www.carters.ca/pub/article/charity/2006/tsc0511.pdf>

When is an Advantage not an Advantage: Issues Arising from the Proposed Split Receipting Regime

by M. Elena Hoffstein and Theresa L.M. Man, May 11, 2006.

With the new proposed split-receipting rules first proposed in 2002, which have since undergone various incarnations in 2003, 2004 and with the latest consolidation and amendments proposed on July 18, 2005, donors are now allowed to receive a donation tax receipt reflecting the “eligible amount” of a gift, that is equal to the fair market value of the property donated less any advantage received as a result of the gift. This paper reviews the meaning of the term “advantage.” Although what constitutes the “amount of an advantage” is set out in the proposed amendments, the statutory language is so broad in scope that it allows for a number of ambiguities that may have potentially troublesome implications. This paper also reviews the obligations that both donors and charities have in regard to the new split-receipting rules and the consequences that may result if such obligations are not met.

Read More:

[PDF] <http://www.carters.ca/pub/article/charity/2006/mehtlmlew0511.pdf>

CRA Granted Order to Require Disclosure of Donor List

by Karen J. Cooper

All Saints Greek Orthodox Church v. M.N.R., 2006 DTC 6264 (F.C.). In a recent decision of the Federal Court of Canada, the Court considered an application by CRA for an order authorizing it to require that the Church furnish a list of all persons who made donations to it of comic books and trading cards. CRA had already obtained the information during the course of an audit of the charity but for it to be able to use the information in the context of a tax avoidance investigation related to the donors, CRA could only obtain the information if the Court granted an order pursuant to section 231.2. While the order was granted by the Court, since CRA had already used the names provided to it in the context of the charity audit to reassess many of the donors without initially advising the Court of this fact, the Court penalized CRA by ordering solicitor and client costs.

Privacy Legislation and its Application to Fundraising and Personal Health Information

by U. Shen Goh in Charity Law Bulletin No. 95, June 14, 2006.

On November 1, 2004, the Ontario *Personal Health Information Protection Act* (“PHIPA”) came into effect. In general, the purpose of PHIPA was to establish rules for the collection, use and disclosure of personal health information about individuals that protect the confidentiality of that information and the privacy of

individuals with respect to that information, while facilitating effective provision of health care. Specifically, PHIPA also contains special rules that relate to fundraising activities in recognition of the need to facilitate the collection, use and disclosure of personal health information for fundraising purposes.

On November 28, 2005, PHIPA was ruled substantially similar to the federal *Personal Information Protection and Electronic Documents Act* (“PIPEDA”). As a result, health information custodians collecting, using or disclosing personal health information in Ontario were generally no longer subject to PIPEDA and were required to comply with the privacy standards set out in PHIPA instead. This Bulletin discusses which legislation applies in Ontario and how.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2006/chylb95.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2006/chylb95.htm>

Charitable Organizations and Public Foundations: The Need for Re-categorization

by *Theresa L.M. Man*, posted June 2006.

There are three types of registered charities, namely charitable organizations, public foundations and private foundations under the *Income Tax Act* (Canada), each of which are separately defined and regulated. Due to the implementation of the same disbursement quota rules for charitable organizations and public foundations on May 13, 2005, one of the key differences between these two categories of charities was removed. This paper reviews the differences between charitable organizations and public foundations under the Act, traces the tax policy behind the historical development of these differences, and proposes to combine these two categories of registered charities into one in order to achieve a simpler and more efficient regime for the regulation of charities.

Read More:

[PDF] http://www.carters.ca/pub/article/charity/2006/tlm_categories.pdf

OMB Quashes Bid to Locate Temple in Industrial Area

by *Nancy E. Claridge*

Concluding that it “does not represent good planning,” the Ontario Municipal Board (“OMB”) quashed a bid by the Sri Nagapooshani Ambika Temple (the “Temple”) to locate a temple in an industrial area of Scarborough that is described as home to the city’s highest concentration of industries in the biomedical/chemical cluster. The Temple had bought the vacant building on the basis that other places of worship had received permission to exist in industrial areas, but the city refused to enact a proposed amendment to the Official Plan to re-designate the lands to permit an exception to the “General Industrial Uses with High Performance Standards” designation.

Although recognizing that the low land costs make industrial areas an attractive location for places of worship, and that the city seems to have previously encouraged similar development, the OMB concluded that the Temple use was incompatible with the surrounding cluster of Class III industries, and represented a threat to the sustainable economic development in the area and a hindrance to the intensification of future employment. It would also lead to a greater potential for nuisance complaints by the Temple. The OMB further suggested that the previous policy of enabling places of worship to locate in industrial areas was more a response to the social needs of the time than the economic use of the land, but also that those places of worship were located in areas of mixed commercial industrial rather than Class III industries as was the case here. The decision can be found at <http://www.omb.gov.on.ca/e%2Ddecisions/pl040574%5F%231192.pdf>.

CRA Information Return Mail Outs Delayed

by *Theresa L.M. Man*

On April 18, 2006, Canada Revenue Agency announced that due to technical problems, there will be delays in the mail out of Registered Charities Information Return (T3010) packages to registered charities with fiscal periods that ended in March, April or May of 2006. CRA anticipated that the mail outs will be completed by the end of June 2006. CRA advises any organizations that are affected, and that do not receive their information packages by the middle of July 2006, to contact CRA at 1-800-267-2384.

Update on Parliamentary Review of Canada's Anti-terrorism Act

by *Sean S. Carter*

The House of Commons Committee mandated to review the *Anti-terrorism Act* has reconvened in the new session of Parliament with 10 out of the 12 members as new appointments. Though most of the new members did not participate in the past year and a half of extensive testimony, the report by the committee must now be tabled in Parliament by June 23, 2006. For further information concerning the review of the *Anti-terrorism Act* in the House of Commons and the Senate that has already taken place, please see *Anti-terrorism and Charity Law Alert No. 7 "The Three Year review of C-36 Anti-terrorism Act: the Ongoing Consequences and Impact for Canadian Charities"* available at <http://www.carters.ca/pub/alert/ATCLA/atcla07.pdf>.

Carters is pleased to announce Mervyn White has been admitted to the partnership and Karen J. Cooper has joined the firm on a permanent basis from the CRA

We'd like to congratulate Mervyn on becoming a partner, and welcome Karen as a permanent member of the charity team. Both of these lawyers bring a considerable amount of experience to the firm, and the change in their status is a positive step for the firm. See the announcement below for more information.

Read More:

[PDF] http://www.carters.ca/news/2005/local_news/Ottawa%20Office%20Announcement.pdf

Carters is pleased to announce the addition of Jeremiah A. Eastman to our litigation department

We'd like to welcome Jeremiah to our litigation team. With eleven years experience as litigation counsel for the Federal Department of Justice, Jeremiah will be practicing in the areas of immigration, human rights and general litigation. See his full bio at the link below.

Read More:

[PDF] <http://www.carters.ca/lawyers/jeastman.html>

Carters Lawyers recognized as leaders in their field

[Jane Burke-Robertson](#) and [Terrance S. Carter](#) were again recognized as leaders in their fields. Jane has been recognized by [The Canadian Legal Lexpert Directory 2006](#) since 2004, and now again in 2006, as one of the consistently recommended practitioners in the area of charities and not-for-profits in Canada, as well as being recognized by the first issue of [The Best Lawyers in Canada](#) as a leader in trusts and estates law. Terrance, Managing Partner of the firm, has been recognized by *Lexpert* again in 2006 as one of the most frequently recommended practitioners in the area of charities and not-for-profits in Canada, as well as also being recognized by *The Best Lawyers in Canada* as a leader in trusts and estates law. In addition to being recognized as one of the most frequently recommended lawyers, Terrance Carter also co-authored the section summary for Charity & Not-for-Profit Law in *The Canadian Legal Lexpert Directory 2006* with M. Elena Hoffstein from the affiliated firm of Fasken Martineau DuMoulin LLP.

IN THE PRESS

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, is now available from LexisNexis Butterworths.

[Link] <http://www.lexisnexis.ca/bookstore>

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>

Your Guide to Charitable Giving & Estate Planning, an invaluable booklet included in the Globe & Mail as an insert on May 25, 2006, featured articles by Terrance S. Carter of Carters as well as M. Elena Hoffstein of our affiliated firm Fasken Martineau DuMoulin LLP, among others.

[Link] http://www.carters.ca/news/2006/misc/lal_mag.pdf

Charities / Not-for-Profit Law: Recent Developments of Importance by Terrance S. Carter and M. Elena Hoffstein.

The Canadian Legal Lexpert Directory 2006.

[PDF] <http://www.carters.ca/news/2006/misc/2006Lexpert.pdf>

[WEB] <http://www.lexpert.ca>

Director and Officer Liability for Charitable Corporations by Terrance S. Carter.

Checkmark, Spring 2006.

[Link] <http://www.icao.on.ca/Resources/Publications/cmSpring2006.pdf>

Canadian Fundraiser eNews included a link to "CRA Releases New Policy on Meeting the Public Benefit Test" by Karen J. Cooper in *Charity Law Bulletin* No. 93.

Canadian Fundraiser Vol.16 No.8 April 30, 2006.

[Link] http://www.canadianfundraiser.com/Newsletter/issue_viewer.asp?Issue_ID=134

RECENT EVENTS AND PRESENTATION MATERIALS

Financial Officers Group hosted a seminar on June 9, 2006 with Theresa L.M. Man speaking on “New Disbursement Quota Rules and Proposed New Split-Receipting Rules, Due Diligence Inquiry and Private Foundations.”

ARMA International hosted their Toronto, Ontario, chapter conference on May 27 and 28, 2006. Terrance S. Carter spoke on “Directors’ and Officers’ Liability” on Saturday, May 27, 2006.

Christian Legal Fellowship hosted the Church Leadership & the Law Conference on Thursday, May 25th in Winnipeg, Manitoba, with Terrance S. Carter presenting.

More details can be found at <http://www.christianlegalfellowship.org/lawchurchleadership/index2006.htm>

The Canadian Bar Association – Continuing Legal Education hosted the 4th **National Symposium on Charity Law** on Thursday, May 11, 2006, in Toronto, Ontario, with Carters’ lawyers presenting the following:

- Karen J. Cooper - Control: Who, How, What, When and Why?
[PDF] <http://www.carters.ca/pub/seminar/charity/2006/kjc0511.pdf>
- Theresa L.M. Man and Elena Hoffstein (Fasken Martineau) - When is an Advantage Not an Advantage?
[PDF] <http://www.carters.ca/pub/seminar/charity/2006/mehtlm0511.pdf>
[Paper] <http://www.carters.ca/pub/article/charity/2006/mehtlmlew0511.pdf>
- Donald J. Bourgeois - Policy Structured By-Laws
<http://www.carters.ca/pub/seminar/charity/2006/djb0511.pdf>
- Terrance S. Carter - The What, Where and When of Anti-Terrorism Legislation
[PDF] <http://www.carters.ca/pub/seminar/charity/2006/tsc0511.pdf>
[Paper] <http://www.carters.ca/pub/article/charity/2006/tsc0511.pdf>

12th East Region Solicitors Conference hosted 2006 Hot Topics for Solicitors presented by the County of Carleton Law Association in Montebello, Québec, on May 5 - 6, 2006, with Karen J. Cooper presenting “Recent Tax Changes Affecting Charities.”

Canadian Fundraiser hosted a seminar entitled “Recent Tax Changes Affecting Charities: Stuff You Need to Know” on Tuesday, May 2, 2006, in Mississauga Ontario, with Terrance S. Carter and Theresa L.M. Man presenting.

For more details, see http://www.canadianfundraiser.com/workshop_viewer.asp?workshop_ID=122

Free Webcast of Charities and Not-for-Profits CLE Primer II is now available. This seminar was hosted by the Volunteer Lawyer Service on Wednesday, April 26, 2006, at the offices of Fasken Martineau DuMoulin LLP in Toronto, Ontario. Presentations by Terrance S. Carter and M. Elena Hoffstein on various topics relevant to charities were recorded and can be played back at any time.

View the webcast at <http://www.bar-ex.com>

“What are the Implications of Ontario’s New Health Legislation on Charities?” was hosted by the Ontario Bar Association Charity and Not-for-Profit Law Section on Monday, April 24, 2006, in Toronto, Ontario, with Terrance S. Carter presenting.

The 13th Annual National CAGP-ACPDTM Conference “Pipeline to the Future” was hosted by the Canadian Association of Gift Planners from April 18-21, 2006, in Calgary, Alberta. Lawyers from Carters provided the following sessions:

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

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

UPCOMING EVENTS AND PRESENTATIONS

Association of Health Care Professionals is hosting their 2006 Canada Regional Conference from June 18 to 20, 2006 in Whistler, B.C. Terrance S. Carter will be presenting a talk on ‘Directors’ and Officers’ Liability’ on June 20, 2006.

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

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 is being held from July 5 – 8, 2006 at Corner Brook, Newfoundland. Karen J. Cooper will be presenting the Changing Legal Environment on July 8, 2006.

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

CONTRIBUTORS



Donald J. Bourgeois – Counsel to Carters in the area of charity and not-for-profit law, governance and fundraising, Mr. Bourgeois is a member of the Liability Working Group of the Insurance Bureau of Canada and Voluntary Sector Forum, Legal Editor and member of the Editorial Advisory Board of *The Philanthropist*, and author of *The Law of Charitable and Not-for-Profit Organizations, 1st, 2nd and 3rd Editions*, the *Charities and Not-for-Profit Fundraising Handbook*, *Charities and Not-for-Profit Administration and Governance Handbook* and *Public Law in Canada* (Butterworths).



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*.



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 estate planning, 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 was also a consulting editor of *Charities Legislation & Commentary*, 2006 Edition, published by Butterworths.



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