

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

SEPTEMBER 2006 ISSUE

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2006 Annual <i>Church & Charity Law</i> ™ Seminar Details Now Available

New Mississauga Office Opened July 1, 2006

See the News section for more information.

2006 Annual *Church & Charity Law*™ Seminar

Hosted by Carters Professional Corporation in Toronto, Ontario.

Wednesday, November 8, 2006.

At the Young - Nak Korean Presbyterian Church of Toronto. See Upcoming Events for more information.

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RECENT PUBLICATIONS AND NEWS RELEASES

Donations of Premium Points

by Karen J. Cooper, assisted by Kim Cunnington-Taylor in Charity Law Bulletin No. 99, September 21, 2006.

On July 18, 2006, the Canada Revenue Agency (“CRA”) released its most recent technical interpretation with respect to donations of airline tickets obtained through the redemption of airline reward points. With the increasing use of such reward or “premium” points in conjunction with customer loyalty programs, many individuals and charities have been presented with various opportunities to benefit from donations of premium points. This bulletin will discuss CRA’s policies with respect to donations of premium points and will explore the options for such donations.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2006/chylb99.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2006/chylb99.htm>

Tax Shelters and Charitable Donations – a Miss-Match

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

Both the Department of Finance and Canada Revenue Agency have been attempting to shut down tax shelter donation arrangements, including buy-low donate-high arrangements, leveraged cash donations, and gifting trust arrangements with various amendments to the *Income Tax Act* (Canada) since 2003, and reassessing taxpayers involved with such donation tax shelters. This paper makes the case that these donation tax shelters should be shut down because there is no justification to support tax concessions that exceed the value of the donations being given to taxpayers, whether it is gifts-in-kind or cash gifts, and resulting in a net economic benefit to the taxpayer. The paper also reviews the status of draft legislative amendments made to curtail these tax shelter arrangements, the consequences of non-compliance with the proposed changes, and their impact on those involved in donation tax shelters, including taxpayers, promoters, advisors, appraisers, and charities. Further, the paper also reviews the various steps taken by Canada Revenue Agency to shut down abusive donation tax shelters schemes and their effectiveness.

Read More:

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

CRA News for Charities

by Karen J. Cooper

The revised *Registered Charities: Application for Re-Designation* (form T2095) and the revised *Registered Charities: Application to Reduce Disbursement Quota* (form T2094) are now available at the CRA website: <http://www.cra-arc.gc.ca/tax/charities/>. Also, on August 25, 2006, CRA announced a new process for re-registration of charities whose status has been revoked for failure to file their annual return (T3010). As of September 1, 2006, organizations re-applying for registration as Canadian charities may be subject to a penalty depending upon their taxation year and when they received their Notice of Intention to revoke. Please see their website for further details: <http://www.cra-arc.gc.ca/tax/charities/newregistration-e.html>.

Canadian Charities: The Forgotten Victims of Canada's Anti-Terrorism Legislation

by Terrance S. Carter, assisted by Nancy E. Claridge and Sean S. Carter in *Charity Law Bulletin No. 98*, September 20, 2006.

Charities, both in Canada and worldwide, have become one of the silent victims of the global anti-terrorism initiatives that have been carried out during the past five years. Part of the impact of Canada's anti-terrorism legislation may have as much to do with coping with a fear of the law as it will with coping with the law itself. This "shadow of the law" effect has already created a chill upon charitable activities in Canada, as charities hesitate to undertake programs that might expose them to violation of anti-terrorism legislation, and with it the possible loss of their charitable status. This Bulletin will help charities and their advisors to understand the basics of Canada's anti-terrorism legislation so that charities will be able to better understand what due diligence steps should be taken in order to avoid violations of the legislation.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2006/chylb98.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2006/chylb98.htm>

Supreme Court of Canada News

by Karen J. Cooper

On September 21, 2006, the Supreme Court of Canada granted leave to appeal in the case of *A.Y.S.A. Amateur Youth Soccer Association v. Canada Revenue Agency* (F.C.A.) (31476). In that case, the organization, which was established to promote amateur youth soccer in Ontario, was refused registration as a charitable organization on the basis that the promotion of sport is not recognized as a charitable purpose at common law. The applicant lost its appeal to the Federal Court of Appeal (see the related notice in the April 2006 Issue of *Charity Law Update* available at <http://www.carters.ca/pub/update/charity/06/apr06.pdf>) but its appeal of that decision will now be heard by the Supreme Court of Canada.

Legal Risk Management Checklists – Revised September 2006

by Terrance S. Carter and Jacqueline M. Demczur.

The popular Legal Risk Management Checklist for both Charities and Not-for-Profit Organizations has been significantly updated as of September 2006 and can be accessed at the links below.

Charities: <http://www.carters.ca/pub/checklst/charity.pdf>

Not-for-Profit Organizations: <http://www.carters.ca/pub/checklst/nonprofit.pdf>

Split-Receipting

by Karen J. Cooper

With respect to the application of the proposed split-receipting legislation, CRA recently issued an advance income tax ruling in a situation involving the donation of a work of art to a Museum which provided a loanback of the work to the donor for the remainder of his or her life. While CRA could not rule on the application of the proposed legislation, it provided an opinion to the effect that the advantage resulting from the loanback would not invalidate the gift, that the eligible amount of the gift would be its certified fair market value of the work less the amount of the advantage accorded in respect of the loanback, and that, assuming the work qualified as cultural property within the meaning of the definition of "total cultural gifts" in subsection 118.1(1), proposed subsection 248(35) (new deemed fair market value rules) would not apply (CRA Document 2006-017039, in French).

Budget 2006 Update: Provincial Harmonization

by Karen J. Cooper

In an announcement dated August 3, 2006 (<http://www.fin.gov.on.ca/english/tax/2006/infdonate.html>), the Ontario Ministry of Finance indicated that it would introduce legislative measures to ensure that the provincial tax treatment of donations of publicly-traded shares and ecological gifts would parallel the federal measures announced in the 2006 federal Budget (<http://www.carters.ca/pub/bulletin/charity/2006/chylb94.htm>), and that both would be exempt from the provincial Corporate Minimum Tax (CMT). Similarly, the Quebec Government confirmed that it would ensure that measures are introduced to eliminate the provincial tax on capital gains resulting from gifts of publicly-traded shares and ecological gifts (<http://www.finances.gouv.qc.ca/fr/documents/bulletin/pdf/bi2006-2-f-b.pdf>). In addition, as part of the 2006-2007 provincial budget, the Government extended similar capital gains treatment to gifts of musical instruments to educational institutions and added a new category of organizations authorized to issue provincial donations receipts: cultural or communications organizations. For details, please see http://www.revenu.gouv.qc.ca/eng/ministere/centre_information/nf/nf2006/in-136_72/bonif_traitement_fiscal_admissible_dons.asp.

B.C. Law Institute to Study Not-For-Profit Incorporation Statute

by Paula J. Thomas

The British Columbia Law Institute began a major project this past summer to look at reform of the *Society Act* – the provincial not-for-profit incorporation statute. The last enactment of the current statute was nearly 30 years ago, with only minor changes since then in connection with procedural and reporting requirements. As there have been few changes to the legislation since it was enacted 30 years ago, this reform should take into account a wide array of changes in both corporate law and the voluntary sector. British Columbia recently enacted the *Business Corporations Act*: a new and streamlined for-profit corporation statute which its not-for-profit counterpart must now attempt to emulate. Federally, the *Canada Corporations Act* may be replaced by the *Canada Not-For-Profit Corporations Act*. (Bill C-21 died on the order paper when Parliament prorogued for the 2006 federal election and there is presently no indication if and when the bill will be reintroduced.) Provinces which have not already begun legislative reform to not-for-profit corporations would do well to follow British Columbia's example, as a new legal framework is required in the voluntary sector where a myriad of changes have taken place over the past three decades.

Carters is Pleased to Announce the Addition of Two New Lawyers

Nancy E. Claridge: Ms. Claridge was called to the Ontario Bar in 2006 and joins Carters, after articling with the firm, to practice in the areas of corporate and commercial law, in addition to being the firm's research lawyer. Ms. Claridge graduated from Osgoode Hall Law School in 2005, where she received the Dean's Gold Key Award and the Legal & Literary Society's Student Honour Award. While at Osgoode Hall, Ms. Claridge was a Senior Editor for the *Osgoode Hall Law Journal*, Editor-in-Chief of the *Obiter Dicta*, and participated in the Innocence Project. Previously, Ms. Claridge spent several years developing online Canadian legal research databases for LexisNexis Canada, and also contributed to texts on legal research, as well as writing for various online and print publications focusing on personal injury law, criminal law (young offenders), and human rights. As a research assistant at Osgoode Hall, Ms. Claridge conducted research for *Canadian Conflict of Laws*, 5th ed., and assisted in editing *The Civil Litigation Process*, 6th ed.

Thelson Desamour: Mr. Desamour was called to the Ontario Bar in 2006 and joins Carters, after having articulated with the firm, to practice in civil litigation and mediation, family law and personal injury law. Mr. Desamour attended the University of Windsor Faculty of Law, where he was awarded the Delos Rogest Davis award and spent 2 years as a National Vice-president of the Black Law Students Association of Canada. Mr. Desamour also worked in and taught with the University of Windsor's Mediation Clinic. Mr. Desamour has also published "From Backpack to Briefcase, Articling the Next Frontier" *Black Law Students Association of Canada National Magazine* (Issue 2) February 23, 2006, "Understanding the limits and

benefits of Mediation" *The Lawyers Weekly* March 26, 2004, and "In sight... In mind" *Black Law Students Association of Canada National Magazine* (inaugural issue) February 21, 2004.

Karen Cooper to teach Charities Course at the University of Ottawa, Faculty of Common Law

The only course of its kind in Canada, Studies in Public Law: Introduction to the Law of Charitable and Non-Profit Organizations is again being offered by the Faculty of Common Law at the University of Ottawa with Karen J. Cooper from Carters Ottawa office providing instruction along with several guest speakers from Carters and CRA.

Carters is pleased to announce that we've expanded our immigration and anti-terrorism practice as well as opened a Mississauga office.

With the addition of Jeremiah Eastman, formerly of the Department of Justice Canada, we have expanded 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

IN THE PRESS

NEW Charities and Not-for-Profit Fundraising Handbook, 2nd Edition, by Donald J. Bourgeois, counsel to Carters Professional Corporation, is now available from LexisNexis Butterworths.

[Link] <http://www.lexisnexis.ca/bookstore/bookinfo.php?pid=93>

Minister's decision to suspend CAC needs to be reconsidered by Terrance S. Carter.

The Lawyers Weekly, Vol. 26 No. 15, August 25, 2006.

[Link] <http://www.carters.ca/news/2006/lawyerwkly/tsc0825.pdf>

Driver's Licence Photo Requirement Found to Violate Freedom of Religion by Anne-Marie Langan, assisted by Derek Ross.

The Lawyers Weekly, Volume IV Issue 15, August 25, 2006.

[Link] <http://www.carters.ca/news/2006/lawyerwkly/aml0825.pdf>

Unprecedented Anti-Terrorism Due Diligence Standards Emerge for Charities by Terrance S. Carter and Sean S. Carter.

Charitable Thoughts, Volume 10 Issue No. 1, August 2006.

Ministers Decision to Suspend CAC Needs to be Reconsidered by Terrance S. Carter.

Charitable Thoughts, Volume 10 Issue No. 1, August 2006.

Book Review by Ronald F. MacIsaac calls *Charities Legislation & Commentary 2006 Edition* “a great time saver.” In his review of the book co-edited by Terrance S. Carter of Carters Professional Corporation, and Elena Hoffstein and Adam Parachin of Fasken Martineau DuMoulin LLP, Mr. MacIsaac describes the book as a “useful guide for lawyers helping to guide both the donors and the donees in handling tax credits to the private sector.”

The Verdict, Issue 109, June 2006.

RECENT EVENTS AND PRESENTATION MATERIALS

Canadian Fundraiser hosted a seminar entitled “Recent Tax Changes Affecting Charities: Stuff You Need to Know” on Thursday September 21, 2006, in Toronto, Ontario, with Terrance S. Carter and Theresa L.M. Man presenting.

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

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

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 in Calgary, Alberta, on September 30, 2006, will include a talk by Mervyn F. White entitled “Human Rights Code: Friend or Foe” which 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.

Association of Treasurers of Religious Institutes (ATRI) is hosting their Annual Conference in Winnipeg, Manitoba from September 29 to October 2, 2006. Terrance Carter will be presenting “Charities Update 2005 – 2006: Selected Topics” on October 1st.

Details are available at <http://www.atri.on.ca/page5.html>

Board School is being hosted by the Waterloo Regional Arts Council on Saturday, October 7, 2006, at The Registry Theatre, 122 Frederick Street, Kitchener, Ontario, with Donald J. Bourgeois presenting “Governance 101: The Foundation Seminar.”

6th Annual Foundation, Endowment & Not-for-Profit Investment Summit is being held on October 12, 2006, with Karen Cooper presenting “Key Legal Issues Regarding Foundations, Endowments and Not-for-Profit Organizations: Practical Highlights of What You Need to Know to Safeguard Your Organization”

Details available at http://strategyinstitute.com/101106_foundations_2006/dsp_foundations_2006.php.

Institute of Chartered Accountants will be holding professional development courses on October 16, 2006, in Toronto, Ontario, with Terrance Carter presenting on “Director and Officer Liability and Beyond” and “Recent Changes to the *Income Tax Act* Affecting Charities.”

See <https://ebusiness.icao.on.ca/eso/source/Calendar/Index.cfm?CALMONTH=10&CALYEAR=2006>

Ryerson’s Voluntary Sector Management Program will include a guest lecture by Terrance Carter on the legal aspects of “Strengthening Non-profit Organizations” at 6:30 p.m. on October 16, 2006 at Ryerson University in Toronto, Ontario.

The Ontario Tax Foundation Conference is being held on October 16 & 17, 2006, with Karen J. Cooper and Theresa L.M. Man presenting “Planned Giving for High Net Worth Clients.”

Details available at <http://www.ctf.ca/profDev/06otcprogram.asp>.

Seventh Annual Global Conference on Environmental Taxation: Instruments of Change for a Sustainable Economy is being hosted by the Faculty of Law, University of Ottawa, at the Château Laurier in Ottawa, Ontario, on October 22-24, 2006, with Karen J. Cooper chairing the session entitled “Reforming Subsidies to Advance Environmental Objectives.”

Details are available at <http://www.environmental-tax-conference.uottawa.ca/>

Diversity & Human Resources Workshop is being hosted by the United Way of Peel Region on October 30, 2006, at 5170 Dixie Road, Suite 300, Mississauga, Ontario, with U. Shen Goh presenting.

Contact the United Way office directly for more information.

Ontario Land Trust Alliance Gathering 2006 is being held on November 3, 2006, with Terrance Carter speaking on “Directors’ and Officers’ Duties Regarding Conflicts of Interest” and Karen Cooper speaking on “Recent Tax Changes.”

Details available at <http://www.ontariolandtrustalliance.org/events.htm>.

Board School is being hosted by the Waterloo Regional Arts Council on Saturday, November 4, 2006, at the Waterloo Memorial Recreation Complex, Room 200, Waterloo, Ontario, with Donald J. Bourgeois presenting “Privacy: What You need to Know is Not A Secret.”

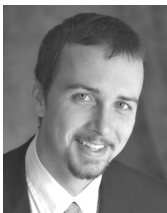
The 2006 Annual Church & Charity Law Seminar will be held on Wednesday, November 8, 2006 at the Young-Nak Korean Presbyterian Church of Toronto, with expert guest speaker Elizabeth Tromp, Director General of the Charities Directorate from the Canada Revenue Agency, among others. Held annually since 1994 for over 500 attendees, this seminar is designed to provide practical information on current legal issues to assist churches and charities understand developing trends in the law and avoid unnecessary exposure to legal liability.

Details available at <http://www.carters.ca/pub/seminar/chrchlaw/2006/brochure.htm>.

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.antiterrorismlaw.ca, and a consulting editor of *Charities Legislation and Commentary* (LexisNexis Butterworths, 2006).



Sean S. Carter –A second year law student, 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*.



Nancy E. Claridge – Called to the Ontario Bar in 2006 after articling with the firm, Ms. Claridge joins Carters to practice in the areas of corporate and commercial law, in addition to being the firm's research lawyer., After obtaining a Masters degree in Political Science, she spent several years developing legal databases for LexisNexis Canada, before attending Osgoode Hall Law School where she was a Senior Editor of the *Osgoode Hall Law Journal* and Editor-in-Chief of the *Obiter Dicta* newspaper, and was awarded the Dean’s Gold Key Award for exceptional leadership, commitment and enthusiasm..



Jacqueline M. Demczur (formerly 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. Mrs. Demczur 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 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.



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*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*.

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.

Kim Cunnington-Taylor – A research student with the Ottawa office of Carters Professional Corporation, Kim is currently pursuing her LL.B. at the University of Ottawa School of Law.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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