

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

JANUARY 2007 ISSUE

SECTIONS

Recent Publications and News Releases	2
In the Press	4
Recent Events and Presentation Materials	4
Upcoming Events and Presentations	5
Contributors	7
Acknowledgements, Errata and other Miscellaneous Items	9

HIGHLIGHTS

2006 Charity and Not-For-Profit Law Developments: The Year in Review
CRA Registered Charities Newsletter Highlights From 2006
New Anti-Terrorist Financing Law has Direct Impact for Charities
Are Camp Fees subject to G.S.T.?
Business Support for Employee Volunteers in Canada: Results of a National Survey
Update on Gifts of Securities
CRA's Revised <i>Gifts and Income Tax Guide</i>

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

2006 Charity and Not-For-Profit Law Developments: The Year in Review

by Terrance S. Carter and M. Elena Hoffstein, assisted by Paula J. Thomas in Charity Law Bulletin No. 107, January 15, 2007.

The charitable sector in Canada has seen a number of important legislative, regulatory and common law developments during the last year which have significantly impacted how charities will operate both in Canada and abroad. The following Bulletin provides a brief summary of some of the more important of these developments, including recent changes under the *Income Tax Act*, new policies and publications from the Charities Directorate of the Canada Revenue Agency, select federal and provincial legislative issues affecting charities, as well as a selection of some of the more significant court decisions over the past year.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2007/chylb107.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2007/chylb107.htm>

CRA Registered Charities Newsletter Highlights From 2006

by Theresa L.M. Man and Paula J. Thomas in Charity Law Bulletin No. 109 January 25, 2007.

Canada Revenue Agency released two Registered Charities Newsletters in 2006. This *Charity Law Bulletin* highlights the content of the two Newsletters for Winter 2006 and Fall 2006. The Newsletters address a broad array of topics related to registered charities, including guidelines for maintaining adequate books and records and related case law. There is also various questions and answers regarding receipts, enduring property and planned giving, a link to CRA's policy for registered charities meeting the "public benefit test", and guidance with respect to restrictions on private foundations. The following Bulletin provides a brief summary of these and other issues discussed in the Newsletters."

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2007/chylb109.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2007/chylb109.htm>

New Anti-Terrorist Financing Law has Direct Impact for Charities

by Terrance S. Carter and Sean S. Carter in Antiterrorism and Charity Law Alert No. 12, January 24, 2007.

Charities face an escalating due diligence and compliance burden as a result of domestic and international anti-terrorism efforts. As charities have specifically been targeted as a "crucial weak point" in the "war on terror," their directors and advisors need to understand the increasingly expanding body of Canadian anti-terrorism legislation that directly impacts charities. Bill C-25, *An Act to amend the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and the Income Tax Act and to make a consequential*

amendment to another Act, which received Royal Assent on December 14, 2006, represents one of the most invasive and complex pieces of anti-terrorism legislation to be passed since 2001. Bill C-25 represents a concerted effort to increase the monitoring and oversight of the charitable sector and has a significantly negative impact on charities that transfer funds internationally.

Read More:

[PDF] <http://www.carters.ca/pub/alert/ATCLA/ATCLA12.pdf>

Are Camp Fees subject to G.S.T.?

by Karen J. Cooper

In a recent decision of the Federal Court of Appeal, *Camp Mini-Yo-We Inc. v. H.M.Q.*, 2006 F.C.A. 413 released December 18, 2006, the Court considered whether fees charged by a religious camp were subject to the G.S.T. As a general rule, the *Excise Tax Act*, R.S.C. 1985, E-15, exempts most services offered by charities from the application of the G.S.T. This appeal deals with an exception to that rule: namely, the supply by a charity of any “service involving supervision or instruction in any recreational or athletic activity.”

The appellant submitted that because of the evangelical Christian character of the camp and its programs the exception does not apply. In addition, it could be argued that the fee was paid for two services, the religious component and the recreational component, and that providing the recreational component was "incidental" to the overall religious purpose of the services and, therefore, exempt on this basis. The Court determined that the religious, athletic and recreational services were too closely intertwined for separate fees to be charged and the incidental supply rules to apply. As a result, registered charities that operate camps for children and youth that include supervision or instruction in any recreational or athletic activity should consider charging G.S.T. unless they fall within further exceptions to the exception above related to day camps or camps for "individuals who are underprivileged or who have a disability."

Business Support for Employee Volunteers in Canada: Results of a National Survey

by Jacqueline M. Demczur and Paula J. Thomas in *Charity Law Bulletin No.108* January 24, 2007.

Late in 2005, Imagine Canada and the University of Lethbridge commissioned Pollara Inc. to conduct a nation-wide survey in order to examine the level and quality of business support for employee volunteers in Canada. The results of the survey, entitled *Business Support for Employee Volunteers in Canada: Results of a National Survey*, were released in 2006 and the key findings are highlighted in this *Charity Law Bulletin*. All told, 990 companies and dozens of employee volunteers participated in the survey, in focus groups and in detailed interviews, which culminated in “the first comprehensive portrait of business support for employee volunteers in Canada.”

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2007/chylb108.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2007/chylb108.htm>

Update on Gifts of Securities

by Karen J. Cooper

In answer to a question posed at the 2006 Conference of the Association de planification fiscale et financière in Quebec, CRA clarified that a donation of securities which qualifies for the exemption from taxable capital gains in accordance with paragraph 38(a.1) of the *Income Tax Act* could be considered to be part of a tax shelter within the meaning of the definition in subsection 237.1(1) of the Act if the tax benefit produced by the donation deduction exceeds the cost to the taxpayer of the particular property (Document #2006-0197051C6 dated October 6, 2006).

CRA's Revised Gifts and Income Tax Guide

by Paula J. Thomas

In December 2006, the Canada Revenue Agency ("CRA") released its revised *Gifts and Income Tax Guide* (P113(E) Rev. 06) (the "Guide"). It can be found online at: <http://www.cra-arc.gc.ca/E/pub/tg/p113/README.html>. The Guide is a helpful resource for individuals who are planning to donate property to a registered charity, such as land, a building, stocks or bonds. Individuals planning to donate an oil painting, stamp collection, etching, sculpture, antique or coin set to a gallery or museum will also find the Guide to be a valuable resource. As CRA indicates, whether the property donated is "personal property, real property or intangible property, donors and qualified donees are encouraged to contact a professional appraiser, valuator, or other individual who is accredited in the field of valuation." Unless the deemed fair market value rules apply, it is necessary to have gifts properly appraised in order to determine the fair market value of the property, thereby enabling the donor to comply with the provisions of the *Income Tax Act*.

IN THE PRESS

Bill C-33 – Proposed Amendments to the Income Tax Act Affecting Charities by Theresa L.M. Man and Terrance S. Carter.

Charitable Thoughts, Vol. 10 No. 2 December 2006.

Advancing Religion as a Head of Charity: What Are the Boundaries? by Terrance S. Carter.

The Philanthropist, Volume 20 No. 4, December 2006.

New Disbursement Quota Rules Under Bill C-33 by Maria Elena Hoffstein and Theresa L.M. Man.

The Philanthropist, Volume 20 No. 4, December 2006.

RECENT EVENTS AND PRESENTATION MATERIALS

The United Way of Peel hosted a seminar in Mississauga, Ontario, on January 8, 2007, with U Shen Goh speaking on employment law.

“Diversity & Human Resources”

[WEB] <http://www.carters.ca/pub/seminar/charity/2007/usg0108a.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2007/usg0108a.pdf>

“Employment Law, Legislation & Guidelines”

[WEB] <http://www.carters.ca/pub/seminar/charity/2007/usg0108b.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2007/usg0108b.pdf>

Waterloo Regional Arts Council hosted Board School on Saturday, January 13, 2007, at Kitchener City Hall, Conestoga Room, Kitchener, with Donald J. Bourgeois presenting “Grant Writing: What Convinces Funders?”

BDO 2007 National Tax Specialist Conference was held on Sunday, January 14, 2007, at the Royal York Hotel, Front Street, Toronto, with Terrance S. Carter and Theresa L.M. Man presenting.

“Recent Tax Changes to the *Income Tax Act*”

[WEB] <http://www.carters.ca/pub/seminar/charity/2007/tsc0114.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2007/tsc0114.pdf>

“Use of Private Foundations”

[WEB] <http://www.carters.ca/pub/seminar/charity/2007/tlm0114.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2007/tlm0114.pdf>

General Insurance Issues for Charities and Not-for-Profit Organizations was hosted by the Ontario Bar Association Charity & Not-for-Profit Law Section in Toronto, Ontario, on January 25, 2007, with Mervyn F. White presenting.

[WEB] <http://www.carters.ca/pub/seminar/charity/2007/mfw0125.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2007/mfw0125.pdf>

UPCOMING EVENTS AND PRESENTATIONS

Ontario Bar Association 2007 Institute of Continuing Legal Education will include a talk by Terrance S. Carter entitled “Charity Law - the Year in Review” as part of the Trusts & Estates session “Gone..But Not Forgotten” being held on February 6, 2007, in Toronto, Ontario.

Details available at <http://www.softconference.com/oba/eventdetails.aspx?code=07TRU0206C>.

The Canadian Institute’s 7th National Summit on Institutional Liability for Sexual Assault & Abuse will include a talk entitled “Implementing an Effective Risk Management and Prevention Program” by Mervyn F. White and D. Ann Walters on February 19, 2007, at the Marriott Bloor Yorkville Hotel in Toronto, Ontario.

Details available at

http://www.canadianinstitute.com/Legal/Institutional_Liability_for_Sexual_Assault_Abuse.htm.

The Nuts and Bolts of Running Company Meetings, a Continuing Legal Education program being hosted by the Ontario Bar Association in Toronto, Ontario, on February 22, 2007, will include a talk by Terrance S. Carter and Theresa L.M. Man entitled “How To Conduct Board and Members’ Meetings of Non-Share Capital Corporations.”

Details available at <http://www.softconference.com/oba/eventdetails.aspx?code=07CHA0125T>.

Waterloo Regional Arts Council is hosting Board School on Saturday, March 3, 2007, at Kitchener City Hall, Conestoga Room, Kitchener, with Donald J. Bourgeois presenting “Human Resources: Investing in and Managing and Organizations Key Assets.”

Governance 101, a Professional Development program being hosted by the Certified General Accountants of Ontario Ottawa Chapter on March 6, 2007, will include Karen J. Cooper presenting on governance and directors and officers liability.

Details available at <http://www.cga-ontario.org/contentfiles/chapters/ottawa/events.aspx> .

York District Chartered Accountant Association is hosting a dinner seminar on March 13, 2007, with a presentation by Terrance S. Carter entitled “Not-for-Profit Organizations – Directors and Officers Liability: The Essentials and Beyond.”

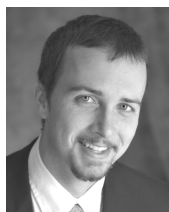
Vancouver Church & Charity Law Seminar is being hosted by Carters Professional Corporation and Fasken Martineau DuMoulin LLP in the Greater Vancouver Area, British Columbia, at the end of March 2007, and will feature Terrance S. Carter and Edgar Frechette as speakers.

Details will soon be available at www.charitylaw.ca and in the next *Charity Law Update*.

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 Technical Issues Committee, past member of CRA’s Charities Advisory 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* and *Best Lawyers in Canada*. 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* 2007 Ed.



Sean S. Carter – A second year law student at Osgoode Hall Law School, 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*.



Karen J. Cooper – Practices charity and not-for-profit law with an emphasis on tax issues at Carters’ Ottawa office, having formerly been a Senior Rulings Officer with the Income Tax Rulings Directorate of Canada Revenue Agency, as well as former counsel for the Department of Justice in tax litigation. Ms. Cooper also has considerable teaching experience, including as part-time professor at the University of Ottawa, Faculty of Common Law, and is a contributing author to *The Management of Charitable and Not-for-Profit Organizations in Canada* (LexisNexis Butterworths).



Jacqueline M. Demczur – 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. Demczur is also a regular speaker at the annual *Church & Charity Law*TM Seminar.



U. Shen Goh – Ms. Goh practices in the areas of employment law, intellectual property, focusing on trade-marks, privacy and information protection. She 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 United Way, Greater Dufferin Area Chamber of Commerce and the Social Planning Council of Peel, and has also written 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 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 in the area of charity and not-for-profit law, with particular emphasis on tax issues. She is a member of the Taxation Section, an Executive Member of both the Charity and Not-for-Profit Sections of the Ontario Bar Association and the Canadian 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*.



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. After obtaining her B.A. at the University of Toronto, she worked in the area of sales and marketing, and later at a graduate school of theology. Ms. Thomas is actively involved in community service, including serving on the board of directors of the Dewdney Family Foundation, and for the Anglican Diocese of Toronto as Youth Chancellor and as a member of the Constitution and Canons Committee.



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*[™] 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

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)	tcarter@carters.ca
Jane Burke-Robertson B.Soc.Sci., LL.B.	janebr@carters.ca
Mervyn F. White B.A., LL.B.	mwhite@carters.ca
Karen Cooper, B.Soc.Sci., LL.B., LL.L., TEP	kcooper@carters.ca
Jeremiah A. Eastman, B.A., LL.B.	jeastman@carters.ca
Theresa L.M. Man B.Sc., M.Mus., LL.B.	tman@carters.ca
Jacqueline M. Connor B.A., LL.B.	jconnor@carters.ca
Esther S.J. Oh B.A., LL.B.	estheroh@carters.ca
Suzanne E. White B.A., LL.B.	swhite@carters.ca
U. Shen Goh LL.B., LL.M.	sgoh@carters.ca
D. Ann Walters B.A., LL.B.	awalters@carters.ca
Nancy E. Claridge B.A., M.A., LL.B.	nclaridge@carters.ca
Thelson Desamour B.A., LL.B.	tdesamour@carters.ca
COUNSEL:	
Bruce W. Long B.A., LL.B.	blong@carters.ca
Donald J. Bourgeois B.A., LL.B.	dbourgeois@carters.ca

Main Office

211 Broadway, P.O. Box 440
Orangeville, Ontario, Canada L9W 1K4
Tel: (519) 942-0001
Fax: (519) 942-0300
Toll Free: (877) 942-0001

Mississauga Office

2 Robert Speck Parkway, Suite 750
Mississauga, Ontario, Canada, L4Z 1H8
Tel: (416) 675-3766
Fax: (416) 675-3765
Toll Free: (877) 942-0001

Ottawa Office

70 Gloucester Street
Ottawa, Ontario, Canada
Tel: (613) 235-4774
Fax: (613) 235-9838
Toll Free: (866) 388-9596

info@carters.ca

Toronto Meeting Location

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

London Meeting Location

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

Vancouver Meeting Location

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

www.carters.ca

www.charitylaw.ca

www.churchlaw.ca

www.antiterrorism.ca