

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

MARCH 2007 ISSUE

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RECENT PUBLICATIONS AND NEWS RELEASES

Federal Budget 2007 Highlights For Charities

by Karen J. Cooper and Terrance S. Carter in *Charity Law Bulletin No. 113, March 29, 2007.*

The Federal Budget released on March 19, 2007, introduced a number of measures which will have a substantial impact on tax planning for charities and their donors. The federal government upheld its commitment from the 2006 Budget to remove the capital gains tax on publicly listed securities donated to private foundations, effective March 19, 2007, but imposed a new excess business holdings regime for private foundations. In addition, the 2007 Budget measures provide an incentive for corporations to donate medicines to charities for international distribution and modify already complicated rules related to gifts of private corporation shares and “loan-backs.” This Bulletin provides an executive summary of some of the more important provisions of the 2007 Federal Budget which affect charities.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2007/chylb113.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2007/chylb113.htm>

How to Conduct Board and Members' Meetings of Non-Share Capital Corporations

by Theresa L.M. Man and Terrance S. Carter for the Ontario Bar Association Business Law Section, February 22, 2007.

Non-share capital corporations can be incorporated federally under Part II of the *Canada Corporations Act* (the “CCA”), or provincially under the applicable provincial corporations statute, e.g., Part III of the *Corporations Act* (Ontario) (the “OCA”) in Ontario. This paper reviews the requirements under the federal *Canada Corporations Act* and the Ontario *Corporations Act* involved in holding board and members' meetings of non-share capital corporations incorporated under those statutes. This paper will provide a helpful reference source for lawyers, board members, and executive staff of charities and not-for-profit organizations wanting to know more about how to prepare for and conduct board and members' meetings of non-share capital corporations.

Read More:

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

Business Contributions to Canadian Communities: Recent Survey Results

by Jacqueline M. Demczur and by Paula J. Thomas in *Charity Law Bulletin No. 112, March 28, 2007.*

Between October and December of 2006, Imagine Canada conducted a study through a nation-wide series of roundtable discussions with representatives from a broad range of Canadian businesses which are actively involved in investing in their communities. The survey, *Business Contributions to Canadian Communities:*

Findings from a qualitative study of current practices (the “Report”), was funded by the Calgary-based EnCana Corporation. The results were released on February 7, 2007 and a summary of the findings are set out in this *Charity Law Bulletin*. The Report represents the first stage in Imagine Canada’s wider study which will survey 2,500 Canadian companies, the goal of which is to illuminate the present gaps in knowledge with respect to community investment practices in Canada. Over the course of the next few months, Imagine Canada will be conducting research in this area. The findings, expected to be released this fall, will show both the economic value of employee volunteer programs and the impact of monetary and in-kind support of businesses toward charities and non-profits, activities to which the Report refers as “community investments.” This Bulletin provides an executive summary of the key findings of the survey.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2007/chylb112.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2007/chylb112.htm>

House of Commons Subcommittee Report on the *Anti-Terrorism Act* recommends Major Changes Anti-terrorism Laws Concerning Charities

by Sean S. Carter

The House of Commons Subcommittee on the Review of the *Anti-terrorism Act* (“House Subcommittee”) issued its final report, as mandated by the *Anti-Terrorism Act* (“ATA”), on March 27, 2007. Among the report’s recommendations are substantial changes to the *Charities Registration (Security Information) Act* (“Act”), legislation that was overhauled by the ATA. The recommended changes directly impacting charities are focused on reforming the process of issuing a ‘certificate’ pursuant to the Act, which is essentially the deregistration of a charity. These changes include:

- a) the addition of a ‘Due Diligence’ defence for charities facing deregistration under the Act
- b) the creation of Canadian ‘Best Practice Guidelines’ to assist charities in their due diligence assessments
- c) the inclusion of a knowledge requirement in relevant sections of the Act to establish a clear *mens rea* requirement.

The House Subcommittee report is a substantial departure from a Senate Subcommittee report, also on the ATA, that was released earlier this year. The Senate report, though recognizing many of the same problems with the Act as the House Subcommittee, recommended very little change to the substance of the Act. It remains to be seen what the ultimate impact of the House Subcommittee’s recommendations will be and whether these recommendations will translate into any legislative or regulatory changes. However, the House Subcommittee report does represent a substantial step forward in recognizing that Canada’s existing anti-terrorism legislation can have a considerable negative impact on charities and that, as a result, significant change needs to be made to this legislation.

An *Anti-terrorism and Charity Law Alert* assessing the House Subcommittee's report in more detail will follow shortly.

Court Says "Place of Worship" Property Tax Exemption Should Be Strictly Construed

by Nancy E. Claridge.

In refusing to exempt a convent property from payment of property taxes, Ontario's Superior Court of Justice has said that for public policy reasons, the exemption for a "place of worship" under the *Assessment Act* (Ontario) should be strictly construed. In its decision in *Holy Theotokos Convent v. Whitchurch-Stouffville* (Town), [2007] O.J. No. 542 (Sup. C.J.), the court confirmed that the proper test to apply in determining whether an exemption under the *Assessment Act* applies is the "primary purpose test." In other words, the party seeking the exemption must show that the primary or dominant purpose for which the property is being used is exempted under the *Assessment Act*. To establish the primary use of the entire property as a place of worship, the cloistered order relied on the evidence that the Sisters share a communal existence with an emphasis on a contemplative prayer life. For example, one prayer is repeated 6,000 times during the day in virtually every corner of the property. Although the Municipal Property Assessment Corporation conceded the two chapels and the baptistry fell within the exemption, the question of whether the remainder of the property was also entitled to be exempt from property taxes was at issue. In denying the exemption, the court held that the exemption "does not apply to the worship activities confined solely to the devotional life of members of a religious order whether that includes group or individual worship or prayers for the convent members. The exemption does apply to places of worship inside the convent grounds open to members of the public for some formal worship services." A bulletin on the issue of property tax assessment issues affecting charities is will be forthcoming.

New CRA Policy Statement on Associated Charities

by Theresa L.M. Man

Canada Revenue Agency ("CRA") released a Policy Statement (CPC-028) on February 26, 2007 to clarify that two unrelated charities that carry on a joint project can apply to CRA to be designated as associated charities pursuant to subsection 149.1(7) of the *Income Tax Act*. The effect of the designation would allow one charity to transfer over 50% of its annual income to the other charity so designated. An application would need to be submitted to CRA disclosing details regarding the joint project. The designation would be in effect for the duration of the joint project. If the joint project is not completed within the time frame specified, the charities can request to have the designation extended. On the other hand, if the joint project is completed earlier than the expected time frame, the charities should request the revocation of the designation. This policy statement is consistent with CRA's circular IC77-6 "Registered Charities: Designation as Associated Charities," April 18, 1977.

IN THE PRESS

Federal Budget will have Major Impact on Charitable Donations by Karen J. Cooper and Terrance S. Carter.

Lawyers Weekly, Volume 26 No. 44, March 30, 2007

[PDF] <http://www.carters.ca/news/2007/lawyerwkly/kjctsc0330.pdf>

Charity Law - How Court Decisions Can Make a Difference to the Sector by Terrance S. Carter and M. Elena Hoffstein.

Canadian Fundraiser, Volume 17 No. 5, March 15, 2007

[WEB] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=2245>

Canadian Fundraiser eNews included a link to Charity Law Bulletin No. 111 entitled "GST/HST on Membership Fees" by Karen J. Cooper.

Canadian Fundraiser, Volume 17 No. 5, March 15, 2007

[WEB] http://www.canadianfundraiser.com/Newsletter/issue_viewer.asp?Issue_ID=155

Charity Law - CRA policies, publications, and other legislative initiatives by Terrance S. Carter and M. Elena Hoffstein.

Canadian Fundraiser, Volume 17 No. 4, February 28, 2007

[WEB] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=2233>

Canadian Fundraiser eNews included a link to "Corporate Giving: A Tax Perspective" by Theresa L.M. Man.

Canadian Fundraiser, Volume 17 No. 4, February 28, 2007

[WEB] http://www.canadianfundraiser.com/Newsletter/issue_viewer.asp?Issue_ID=154

Charity Law - Looking Back at Legislative, Judicial Impacts on Charities by Terrance S. Carter and M. Elena Hoffstein.

Canadian Fundraiser, Volume 17 No. 3, February 15, 2007

[WEB] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=2216>

RECENT EVENTS AND PRESENTATION MATERIALS

Waterloo Regional Arts Council hosted 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 an Organizations Key Assets.”

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

[WEB] <http://www.carters.ca/pub/seminar/charity/2007/kjc0306.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2007/kjc0306.pdf>

York District Chartered Accountant Association hosted 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.”

United Way of Simcoe hosted a seminar in Barrie, Ontario, on March 14, 2007, with D. Ann Walters presenting a talk entitled “Insurance and Risk Management Issues for Volunteer Management.”

The Canadian Mental Health Association of Peel hosted a seminar on March 19, 2007, with U Shen Goh speaking on employment law.

“Diversity & Human Resources”

[WEB] <http://www.carters.ca/pub/seminar/charity/2007/usg0319a.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2007/usg0319a.pdf>

“Employment Law, Legislation & Guidelines”

[WEB] <http://www.carters.ca/pub/seminar/charity/2007/usg0319b.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2007/usg0319b.pdf>

UPCOMING EVENTS AND PRESENTATIONS

Canadian Association of Gift Planners (CAGP) Annual Conference is being held from April 11 to 13, 2007, in Halifax, Nova Scotia, with the following presentations from Carters and Fasken Martineau:

“Donation Tax Shelters: Past, Present and Future” Terrance S. Carter and Theresa L.M. Man;

“Alter Ego Trusts: An Effective Vehicle for Making Large Gifts” Karen J. Cooper and M. Elena Hoffstein;

“Asset Protection: Inspiring Donor Confidence in a Charity’s Legal Structure” Terrance S. Carter and Edgar A. Frechette; and

“Unusual and New Gifts” Karen J. Cooper, Edgar A. Frechette and M. Elena Hoffstein.

Details are available at http://www.cagp-acpdp.org/ancon_frame.htm.

Canadian National Hearings of the International Commission of Jurists - Eminent Jurists Panel will include submissions from Terrance S. Carter in Toronto, Ontario, on April 24, 2007.

Libraries and the Law is being hosted by the Southern Ontario Library Services at the Burlington Public Library, in Burlington, Ontario, on April 24, 2007, with U. Shen Goh presenting “Children, Libraries and the Law” and “Protection of Privacy.”

Details are available at <http://www.sols.org/librarydev/training/clinicsworkshops/workshop4.htm>

Marking your Territory – Creating and Protecting Your Non-Profit Brand Advantage is being hosted by Canadian Fundraiser on April 25, 2007, at Osgoode Hall in Toronto, Ontario, with Terrance S. Carter, U. Shen Goh and John Vanduzer presenting.

Details available at http://www.canadianfundraiser.com/workshop_Viewer.asp?workshop_ID=213.

Hospitals and Foundations Seminar Series: New Developments in Planned Giving and Charity Law is being hosted by Carters Professional Corporation and Fasken Martineau DuMoulin LLP at The Estates of Sunnybrook in Toronto, Ontario, on May 1, 2007. Speakers will include Terrance S. Carter, and Theresa L.M. Man of Carters Professional Corporation, with M. Elena Hoffstein of Fasken Martineau.

More details are available at <http://www.carters.ca/pub/seminar/notice/2007/CAFA0501.pdf>.

Libraries and the Law is being hosted by the Southern Ontario Library Services at the Aurora Public Library, in Aurora, Ontario, on May 1, 2007, with U. Shen Goh presenting “Children, Libraries and the Law” and “Protection of Privacy.”

Details are available at <http://www.sols.org/librarydev/training/clinicsworkshops/workshop4.htm>

Ottawa Estate Planning Council is hosting a seminar in Ottawa, Ontario, on May 1, 2007, with Karen J. Cooper presenting “To Be or Not To Be A Director/Trustee of a Charity.”

Professional Institute of the Public Service of Canada is hosting an event in Ottawa, Ontario, on May 3, 2007, with Karen J. Cooper presenting “Governance 101.”

County of Carleton Law Association (CCLA) 13th East Region Solicitors Conference 2007 – is being held in Ottawa, Ontario, on May 5, 2007, and will include a presentation by Karen J. Cooper on “When is a Donation Charitable?”

2007 National Charity Law Symposium is being hosted by the Canadian Bar Association May 10, 2007, and will include Theresa L.M. Man and Jane Burke-Robertson as speakers. Terrance S. Carter is co-chair.

More details can be found at http://www.cba.org/cba/cle/cle00/char_07.aspx

Association of Health Care Philanthropy is hosting a roundtable breakfast discussion facilitated by Terrance Carter on the topic of “Directors and Officers Liability and Beyond” on May 15, 2007.

PFC – 2007 Professional Development Program being held on May 15, 2007, will include a presentation by Terrance S. Carter on “The Year End Process.”

Law Society of Upper Canada – Advanced Roundtable in Estates and Trusts – is being held on May 15, 2007. One of the roundtable discussions will be lead by Terrance S. Carter on the topic of “Structuring Charitable Trusts as Endowment Agreements.”

Tax Law Update: CRA & Practitioners' Roundtables is being hosted by STEP Ottawa on May 16, 2007, with Karen J. Cooper presenting.

Details available at <http://www.step.ca/pdf/06.07.prelim.ottawa.pdf>

Arts Consultants Canada/Consultants canadiens en arts (ACCA) Symposium is being held on May 28, 2007, with Donald J. Bourgeois presenting "What Arts Consultants Need to Know About Copyright Law and Intellectual Property."

Employee Safety and Work-Related Injury: Recent Trends in the Law and Managing your Risk is being jointly hosted by Carters Professional Corporation and RTS Consulting Inc. at the Living Arts Centre in Mississauga, Ontario, on May 29, 2007.

Details are available at <http://www.carters.ca/pub/seminar/notice/2007/emphs.htm>.

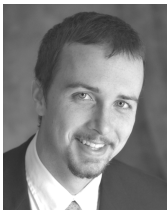
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Donald J. Bourgeois – Counsel to Carters in the area of charity and not-for-profit law, governance and fundraising, Mr. Bourgeois is author of *The Law of Charitable and Not-for-Profit Organizations, 1st, 2nd and 3rd Editions*, the *Charities and Not-for-Profit Fundraising Handbook*, *Charities and Not-for-Profit Administration and Governance Handbook* and *Public Law in Canada* published by LexisNexis Butterworths.



Terrance S. Carter – Managing Partner, Terrance 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 a leading expert in Canada by *Lexpert* and *Best Lawyers in Canada*. 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* 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*.



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 charity, corporate and commercial law, in addition to being the firm's research lawyer and assistant editor of *Charity Law Update*. After obtaining a Masters degree, 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*, Editor-in-Chief of the *Obiter Dicta* newspaper, and was awarded the Dean's Gold Key Award and Student Honour Award.



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*[™] 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.

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