

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

SEPTEMBER 2007 ISSUE

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2007 Annual Church & Charity Law Seminar

Hosted by Carters Professional Corporation in Toronto, Ontario.

Wednesday, November 7, 2007.

Register online at <http://www.carters.ca/pub/seminar/chrchlaw/2007/brochure.htm>.

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RECENT PUBLICATIONS AND NEWS RELEASES

CRA Issues Advisory on Partisan Political Activities

by Karen J. Cooper.

On September 24, 2007, the CRA once again issued an advisory to remind registered charities that there are limitations on certain types of political activities (available at <http://www.cra-arc.gc.ca/tax/charities/policy/advisory-e.html>). The Advisory indicates that during election campaigns, the CRA steps up monitoring of activities of registered charities and that it will take appropriate measures if a registered charity undertakes partisan political activities. Partisan political activities are those that involve direct or indirect support of, or opposition to, any political party or candidate for public office. Registered charities are prohibited from partisan political activity, because supporting or opposing a political party or candidate for public office is not a charitable purpose at law. Charities should be aware of the Advisory and CRA's more detailed policy statement, *CPS - 022: Political Activities*, available at <http://www.cra-arc.gc.ca/tax/charities/policy/cps/cps-022-e.html>. For additional background information, also see *Church Law Bulletin* No. 15 entitled "Political Activities: What Churches and Charities Can and Cannot Do" (15 December 2005) available at <http://www.carters.ca/pub/bulletin/church/2005/chchl15.pdf>.

CRA Registered Charities Newsletter: Summer 2007

by Terrance S. Carter and Kimberley A. LeBlanc in Charity Law Bulletin No. 124, September 25, 2007.

The Canada Revenue Agency released the Summer 2007: Registered Charities Newsletter No. 28 in August of this year. This Newsletter focuses on information with respect to public education and compliance issues within the regulatory environment for charities. It also addresses legislative changes that have been implemented with respect to re-registration, the objection and appeals process for charities and capital gains exemptions on gifts of securities. The Newsletter also discusses recent technological advancements at the Charities Directorate. Specifically, the creation of a new electronic mailing list promises to assist charities in keeping informed about important CRA information. In addition, a fillable T3010A, Registered Charity Information Return has been developed to facilitate the filing process for charities. The following Bulletin provides a brief summary of these and other issues discussed in the Newsletter.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2007/chylb124.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2007/chylb124.htm>

Tax Shelter Warning

by Karen J. Cooper.

In conjunction with a News Release issued by the Minister of National Revenue (see <http://www.cra-arc.gc.ca/newsroom/releases/2007/august/nr070813-e.html>), the Canada Revenue Agency ("CRA") issued a Tax Alert on August 13, 2007 warning taxpayers about the consequences of participating in a tax shelter gifting arrangement (see <http://www.cra-arc.gc.ca/newsroom/alerts/2007/a070813-e.html>). In the Tax Alert, CRA urges taxpayers to avoid tax shelter gifting arrangements and warns that it intends to audit all such arrangements. To date, the CRA has reassessed over 26,000 taxpayers who participated in these schemes, and denied about \$1.4 billion in donations claimed. Audits of another 20,000 taxpayers involving \$550 million in donation claims are just about complete and audits on other arrangements involving over 50,000 taxpayers are about to begin.

Originally, tax shelter gifting arrangements involved donations of gifts-in-kind (artwork) and leveraged charitable donations. Later, donation of other property was involved, such as comic books, figurines, plates, stamps, jewellery, medical supplies, computer programs, educational products, food, clothing and pharmaceutical products. Common forms of these donation tax shelters also involve "buy-low donate-high" tax shelters (where the donation tax receipt is sometimes 3 to 4 times the initial outlay of cash), gifting trust arrangements and leveraged charitable donation arrangements (see *Charity Law Bulletin* No. 116 for a general discussion of such arrangements and a detailed discussion of arrangements involving "flow-through shares": <http://www.carters.ca/pub/bulletin/charity/2007/chylb116.htm>). Both charities and donors alike are advised to exercise caution when considering any involvement in such schemes and should consider obtaining independent professional advice before participating in a tax shelter gifting arrangement.

Decision Is Warning To Sham Corporations

by Terrance S. Carter and Nancy E. Claridge in *Charity Law Bulletin* No. 123, September 25, 2007.

An Ontario appeal decision has provided useful guidelines for determining when the corporate veil can be pierced, leaving directors liable for costs in litigation. In reversing a lower court decision, the Ontario Court of Appeal in *The St. James' Preservation Society v. Toronto (City)*, 2007 ONCA 601, suggested that the determination that The St. James' Preservation Society was a sham or "man of straw" corporation resulting in the individual directors being held liable for court costs in excess of \$100,000 was premature and required a full hearing on the costs issue. The Court of Appeal concluded that the individual members of the Society did not receive adequate warning in this case that costs would be sought against them personally and that the exceptional circumstances did not exist for a personal costs award to be made against them. This *Charity Law Bulletin* reviews the decision and discusses its implications for not-for-profit organizations and their directors.

Read More:[PDF] <http://www.carters.ca/pub/bulletin/charity/2007/chylb123.pdf>[WEB] <http://www.carters.ca/pub/bulletin/charity/2007/chylb123.htm>**A Primer on the Law of Defamation in Ontario**by *Suzanne E. White in Charity Law Bulletin No. 125, September 26, 2007.*

While the Canadian *Charter of Rights and Freedoms* guarantees the right of freedom of expression, this right has always been of a limited nature. One of those limitations can be found in Ontario legislation through the *Libel and Slander Act*, which prohibits the dissemination of defamatory comments, specifically, spoken or written words that discredit an individual in the estimation of right-thinking members of society generally. Every province and territory in Canada has enacted similar legislation to protect the victims of either spoken or written communication that can disparage that person's reputation. In this electronic age, communication is packaged in a variety of formats allowing individuals, organizations, government agencies, non-governmental agencies and charitable and not-for-profit organizations the ability to communicate their positions on a plethora of topics, and therefore increasing the opportunity for statements to be misunderstood, and objected to. The purpose of this *Charity Law Bulletin* is to provide a brief overview of the framework of the *Act* in the province of Ontario specifically, as well as an overview of important court decisions that have been made pursuant to the *Act*.

Read More:[PDF] <http://www.carters.ca/pub/bulletin/charity/2007/chylb125.pdf>[WEB] <http://www.carters.ca/pub/bulletin/charity/2007/chylb125.htm>**Accounting Standards Board Adopts New Standard – Section 3855 In Effect October 1, 2007**by *Karen J. Cooper and Kimberley A. Cunnington-Taylor.*

In recent years, there has been a heightened demand for transparency and accountability of corporations, including not-for-profit organizations. On April 1, 2005, the Accounting Standards Board (the "AcSB") a branch of the Canadian Institute of Chartered Accountants (the "CICA"), issued Section 3855, a new section of the *CICA Standards and Guidance Accounting Handbook* (the "Handbook"). Section 3855 is entitled *Financial Instruments – Recognition and Measurement* and applies to not-for-profit organizations as well as profit-oriented organizations. The effect of Section 3855 is to change the way entities recognize and measure financial instruments. Essentially, organizations will now have to classify each financial instrument (i.e. assets, liabilities, loans, etc.) into one of the categories prescribed in Section 3855; then, each financial instrument must be measured, either at fair value or at its cost, depending on the type of financial instrument it is. The mandatory effective date for Section 3855 was deferred for many entities, not including not-for-profits for whom the changes were effective October 1, 2006, and the new standard now applies to annual

financial statements of all entities relating to fiscal years beginning on or after **October 1, 2007**. A summary of Section 3855 will be discussed in a forthcoming *Charity Law Bulletin*.

Accounting Standards Board Proposes Additional Fundraising Disclosure Requirement for Some Not-For-Profit Organizations

by Karen J. Cooper and Kimberley A. LeBlanc.

In 2003, the AcSB established an ongoing project to improve the accounting standards applicable to not-for-profit organizations. The AcSB appointed the Not-For-Profit Advisory Committee (the “AdCom”) to review the provisions of the Handbook applicable to not-for-profit organizations (including charities) and to make recommendations for changes. The AcSB recently posted an Exposure Draft (the “Draft”) containing the proposals for amendment to the existing standards and provisions of the Handbook related to not-for-profit organizations (the 4400 series of Handbook sections). Of significant note is Topic 9 of the Draft, which proposes to add a new section to the Handbook relating to the disclosure of allocated fundraising and general support costs by not-for-profit organizations. If implemented, this section would require not-for-profit organizations that classify their expenses by function and allocate a portion of their fundraising and general support costs to another function, to disclose the following: the amounts that have been allocated; the functions that they have been allocated to; the policies adopted for the allocations; the nature of the expenses being allocated; and the basis on which the allocations have been made. This section would begin to apply to financial statements relating to fiscal years beginning on or after January 1, 2009. The AcSB has requested comments relating to the Draft from individuals and organizations. The deadline for submitting these comments is November 15, 2007. Additional information relating to the Draft and the background for the proposed amendments can be found on the AcSBs website (<http://www.acsbcanda.org/1/1/2/5/2/index1.shtml>). A summary of this proposed additional standard, as well as the other proposed amendments to the 4440 series of Handbook sections will be discussed in a forthcoming *Charity Law Bulletin*.

Meaning of Related Business

by Karen J. Cooper.

CRA recently issued a ruling with respect to the meaning of related business for the purposes of paragraph 149.1(3)(a) of the *Income Tax Act*. In the ruling, CRA considered a situation involving a public foundation which owned 50% of the common voting shares of a private corporation. The public Foundation also owned all of the shares of one class of dividend paying preferred shares. CRA ruled that the receipt of dividends on the preferred shares did not in and of itself amount to a business activity which was not a related business activity within the meaning of the Act. In addition, CRA ruled that the ownership of 50% of the common

shares in the context of the proposed activities of the corporation did not amount to an acquisition of control of the private corporation within the meaning of paragraph 149.1(3)(c). CRA Document # 2007-021848.

Supreme Court Refuses to Hear Appeal of Three Parent Family Decision

by *Derek B. Mix-Ross*.

In a decision released on September 13, 2007, the Supreme Court of Canada refused to grant standing to the Alliance for Marriage and Family to appeal the Ontario Court of Appeal's decision in *A. (A.) v. B. (B.)*, also known as the "Three Parent Family" case. The decision issued by the Ontario Court of Appeal earlier this year held that same-sex partners could both be recognized as mothers of a child born to one of them, along with the child's biological father. The Alliance made submissions as an intervener at both the Superior Court and the Ontario Court of Appeal with respect to its concern about the potentially adverse social and legal implications of recognizing a "three parent family". The Supreme Court denied the Alliance leave to appeal the Court of Appeal's decision on the basis that the Alliance "had no specific interest in the outcome of the litigation," noting however that it was not expressing its views on "whether the Court of Appeal's judgment [was] well founded." Since neither the immediate parties nor the Attorney General for Ontario contested the Court of Appeal's decision, the Ontario Court of Appeal's decision allowing for three parent families currently stands as the law of Ontario.

Carters is Pleased to Announce the Addition of a New Lawyer

Paula J. Thomas, B.A., LL.B. - Called to the Ontario Bar in 2007, Ms. Thomas joined Carters after having articulated with the firm. Her practice is primarily focused in the area of charity and not-for-profit law, as well as related litigation. A graduate of Osgoode Hall Law School, Ms. Thomas gained experience while articling with Carters in the areas of charity and not-for-profit law and civil litigation, and also contributed to a variety of publications, including Carters' *Charity Law Bulletin* and *The Lawyers Weekly*. She also has a broad range of volunteer experience with charitable organizations, currently serving on the Constitution and Canons Committee for the Anglican Diocese of Toronto and as a Board Member of the Dewdney Family Charitable Foundation. Ms. Thomas is a welcome addition to our team.

IN THE PRESS

Alta. C.A. Upholds Province's Obligation to Accommodate Religious Beliefs by Terrance Carter and Nancy Claridge.

Bar-Ex News, 17 August 2007, *Bar-Ex.com* (log-in required).

[WEB] <https://www.bar-ex.com/barex/appmanager/bx/on?nfpb=true&pageLabel=P1200147941184946050061&pageLocation=/wkly/20070814/ar2000176.jsp>

Donation Tax Shelters Involving Flow-Through Shares by Theresa Man, Karen Cooper and Terrance Carter.

Bar-Ex News, 17 August 2007, Bar-Ex.com (log-in required).

[WEB] https://www.bar-ex.com/barex/appmanager/bx/on?_nfpb=true&_pageLabel=newsResources_article&articleId=ar2000177

Don't Conscript Lawyers to this War by Terrance Carter and Sean Carter.

The Lawyers Weekly, Vol. 27 No. 15, August 24, 2007.

[Link] <http://www.carters.ca/news/2007/lawyerwkly/tcsc0824.pdf>

Guidelines for Applying the New Intermediate Sanctions for Charities by Karen Cooper and Paula Thomas.

Bar-Ex News, 29 August 2007, Bar-Ex.com (log-in required).

[WEB] https://www.bar-ex.com/barex/appmanager/bx/on?_nfpb=true&_pageLabel=newsResources_article&articleId=ar2000203

Gifts In Trust: British Columbia Tackles the Challenge of Protecting Designated Gifts by Nancy E. Claridge and Terrance S. Carter, assisted by Derek B. Ross.

Canadian FundRaiser eNews, Vol. 17 No. 16, August 31, 2007.

[WEB] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=2396>

RECENT EVENTS AND PRESENTATION MATERIALS

Highlights of CRA Compliance Requirements was presented by Terrance S. Carter and Karen J. Cooper for St. Paul University, in Ottawa, Ontario, on August 15, 2007.

[WEB] <http://www.carters.ca/pub/seminar/charity/2007/tsckjc0815.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2007/tsckjc0815.pdf>

Doing Business on the Internet was presented by U. Shen Goh for the Greater Dufferin Area Chamber of Commerce Women in Business luncheon in Orangeville, Ontario, on August 23, 2007

[WEB] <http://www.carters.ca/pub/seminar/charity/2007/usg0823.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2007/usg0823.pdf>

Libraries and the Law was hosted by the Southern Ontario Library Services at the Collingwood Public Library, in Collingwood, Ontario, on August 29, 2007, with U. Shen Goh presenting:

“Children, Libraries and the Law”, and

[WEB] <http://www.carters.ca/pub/seminar/charity/2007/usg0829a.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2007/usg0829a.pdf>

“Protection of Privacy.”

[WEB] <http://www.carters.ca/pub/seminar/charity/2007/usg0829b.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2007/usg0829b.pdf>

Current Issues Under the *Income Tax Act* was presented by Terrance S. Carter and Theresa L.M. Man for this workshop hosted by Canadian Fundraiser in Toronto, Ontario, on September 19, 2007.

Does Your Will Reflect Your Intentions was presented by Jane Burke-Robertson and Karen J. Cooper at an Estate Planning Seminar sponsored by the CNIB, the Canadian War Museum, the National Arts Centre Foundation, the Ottawa Humane Society, the Perley and Rideau Veterans' Health Centre Foundation, Saint Paul University and The Ottawa Mission held in Ottawa, Ontario, on September 24, 2007.

[WEB] <http://www.carters.ca/pub/seminar/charity/2007/jbrkjc0924.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2007/jbrkjc0924.pdf>

UPCOMING EVENTS AND PRESENTATIONS

CCCC Conference 2007, being held in Mississauga, Ontario, from September 25th to 27th, will include the following presentations by Terrance S. Carter:

“Pro-Active Legal Audits: What They Are and How to Benefit From One” and

“Do's and Don'ts of Establishing and Managing Endowed Gifts.”

Conference Brochure http://www.cccc.org/conference/2007/Brochure_2007.pdf.

The American Bar Association's Taxation Section 2007 Joint Fall CLE Meeting –being held in Vancouver, B.C., from September 27th to 29th, 2007, will include a Panel Discussion on Cross Border Anti-Terrorism Issues with Terrance S. Carter as a panellist on September 28th.

More details at https://meetings.abanet.org/meeting/tax/FALL07/gen_info.cfm.

CLF 2007 National Conference, being held in Mississauga, Ontario, will include a presentation by Terrance S. Carter entitled “How to Advise your Charitable Clients on Multiple Corporate Structures” on September 29th, 2007.

Details available at <http://www.christianlegalfellowship.org>.

Navigating a CRA Audit and Living to Tell the Tale will be presented by Karen J. Cooper at the 20th Annual General Conference of ATRI being held in Saint John, New Brunswick, on September 29th and 30th, 2007.

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

Charity Law: The Past Year in Review will be presented by Terrance S. Carter at the Canadian Association of Gift Planners (CAGP) Golden Horseshoe Seminar being held in Burlington, Ontario, on October 19th, 2007.

Seminar brochure at https://www.cagp-acdp.org/uploads/roundtable%20events/ngh%20-%202007%20cagp%20brochure_tph%20final.pdf.

Recent Tax Changes and How They Affect Your Land Trust will be presented by Karen J. Cooper at the Canadian Land Trust Conference 2007 being held in Ottawa, Ontario, on October 19th, 2007.

Details available at <http://www.clta.ca/clta/events.htm>.

2007 Annual Church & Charity Law Seminar will be held on Wednesday, November 7, 2007 at the Young-Nak Korean Presbyterian Church of Toronto.

Register online at <http://www.carters.ca/pub/seminar/chrchlaw/2007/brochure.htm>.

Employee Safety & Work-Related Injury: Recent Trends in the Law and Managing Your Risks is a half day workshop being hosted by Carters Professional Corporation and RTS Consulting at the Living Arts Centre in Mississauga, Ontario, on November 29, 2007.

Register online at <http://www.carters.ca/pub/seminar/notice/2007/emphs.htm>.

CONTRIBUTORS



Jane Burke-Robertson – A partner with Carters’ Ottawa office, Ms. Burke-Robertson practices in the area of charity and not-for-profit law and has been ranked by *Lexpert* and *The Best Lawyers in Canada* as a leading expert. She is co-author of *Non-Share Capital Corporations* published by Carswell, and a contributor to Industry Canada’s *Primer for Directors of Not-for-Profit Corporations*. Ms. Burke-Robertson is a frequent speaker and lecturer on charitable and not-for-profit matters and recently taught an advanced seminar on the law of charities and non-profit organizations at the Faculty of Law, University of Ottawa.



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 Group, 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.antiterrorismlaw.ca, and a consulting editor of *Charities Legislation and Commentary* 2007 Ed.

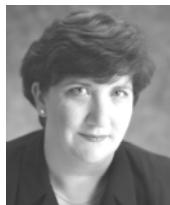


Sean S. Carter – A third year law student at Osgoode Hall Law School, having obtained his Bachelor of Arts in Political Science and Philosophy from the University of Toronto, Sean has gained valuable experience as research assistant with Fasken Martineau DuMoulin LLP, as well as at Carters, with considerable 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 joined 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).



Kimberley A. Cunnington-Taylor – Having obtained her LL.B from the University of Ottawa, Kim is currently articling with the Ottawa office of Carters. Kim participated in the 2006 Canadian Corporate/Securities Law Moot Competition in a team of four representing the University of Ottawa, placing 2nd overall in the factum in a field of 9 teams, and was also the tutor and peer advisor for first year mature students. Prior to law school, Kim worked with a national law firm as a law clerk, specializing in business law, tax, and not-for-profit law.



U. Shen Goh – Ms. Goh practices in the area of 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 Greater Dufferin Area Chamber of Commerce and the Social Planning Council of Peel, and has also written on privacy issues for *The Lawyers Weekly* and *Charity Law Bulletin*.



Kimberley A. LeBlanc - Kimberley graduated from Osgoode Hall Law School, and is articling with Carters. Kim has participated in a number of volunteer programs, including Best Buddies Canada, the Canada Revenue Agency's Community Volunteer Income Tax Program at Queen's University, and ARCH: A Legal Resource for Persons with Disabilities, as well as with Pro Bono Students Canada's Family Law Project at Osgoode, where she later became the school's Project Coordinator for the 2006 – 2007 program.



Theresa L.M. Man – A partner with Carters, Mrs. Man practices in the area of charity and not-for-profit law, with particular emphasis on tax issues. She is 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*TM Seminar, Mrs. Man has also written articles for *The Lawyers Weekly*, *The Philanthropist*, *Planned Giving Pulse*, *International Journal of Civil Society Law*, *The Bottom Line*, *Canadian Fundraiser eNews*, and *Charity Law Bulletin*.



Derek B. Mix-Ross - A graduate of the University of Western Ontario Faculty of Law, Derek received the Janet Stewart Award in Immigration and Refugee Law, was active in the moot program and received a CALI Award for Excellence while studying on exchange at Southwestern Law School in Los Angeles. Currently articling with Carters, Derek also gained experience as a summer research student with the firm in 2005 and 2006 and contributed to articles for *The Lawyers Weekly*, the *Charity Law Bulletin* and the *Church Law Bulletin*.



Paula J. Thomas – Called to the Ontario Bar in 2007 after articling with the firm, Ms. Thomas joined Carters to practice in the area of charity and not-for-profit law. She has contributed to a variety of publications, including the *Charity Law Bulletin* and *The Lawyers Weekly*. Ms. Thomas is also actively involved in community service, currently serving on the Constitution and Canons Committee for the Anglican Diocese of Toronto and as a Board Member of the Dewdney Family Charitable Foundation.



Suzanne E. White – Ms. White practices at Carters in the areas of personal injury, corporate / commercial, defamation and estate litigation, in addition to the area of church disputes and obtaining provincial denominational recognition. Ms. White graduated from the Faculty of Law at the University of Windsor in 2003 where she was a Student Editor at the Canadian American Research Centre for Law and Policy. She is a frequent contributor to www.charitylaw.ca and has been published in the *Canadian Journal of Law and Technology* and the forthcoming 22nd edition of *ADR & the Law*.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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