

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

JANUARY 2008 ISSUE

SECTIONS

Recent Publications and News Releases	1
In the Press	5
Recent Events and Presentation Materials	6
Upcoming Events and Presentations	6
Contributors	7
Acknowledgements, Errata and other Miscellaneous Items	9

HIGHLIGHTS

CRA'S First Notice of Suspension Upheld by Tax Court of Canada
2007 Charity Law Developments: The Year in Review
CRA Releases Proposed Policy on Research as a Charitable Activity
Imagine Canada's Revised *Ethical Fundraising and Financial Accountability Code* (2007)
Assessment Issues Affecting Charities and Not-For-Profit Organizations in Ontario
Accounting Standards Board Adopts New Standard and Proposes Changes to Another: The Effect on Not-for-Profit and Charitable Organizations
Bell Canada selected as National Do Not Call List Operator
More Changes Announced for UK Charities

Ottawa Region Church & Charity Law Seminar

Hosted by Carters Professional Corporation in Nepean, Ontario.

Wednesday, February 6, 2008.

To be held at Arlington Woods Free Methodist Church, Nepean. See Upcoming Events for details.

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RECENT PUBLICATIONS AND NEWS RELEASES

CRA'S First Notice of Suspension Upheld by Tax Court of Canada

by Karen J. Cooper and Kimberley A. Cunningham-Taylor in Charity Law Bulletin No. 133, January 25, 2008.

In the November 2007 *Charity Law Update*, it was reported that CRA had issued a Notice of Suspension to International Charity Association Network (ICAN), a registered charity under the *Income Tax Act* (the "ITA"), for a one-year period, commencing November 28, 2007. ICAN applied to the Tax Court of Canada (the "Tax Court") for a postponement of the suspension pursuant to subsection 188.2(4) of the ITA. In its decision released January 3, 2008, the Tax Court dismissed ICAN's application. The Tax Court held that ICAN did not introduce any evidence from its member agencies describing how the suspension of receipting privileges would cause them irreparable harm and the balance of convenience favoured CRA because if the suspension were postponed, CRA would be "handcuffed" in its ability to administer the charities' provisions of the ITA, to ensure compliance and to protect public interest.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2008/chylb133.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2008/chylb133.htm>

2007 Charity Law Developments: The Year in Review

by Terrance S. Carter and M. Elena Hoffstein (Fasken Martineau DuMoulin LLP) assisted by Kimberley A. LeBlanc in Charity Law Bulletin No. 131, January 23, 2008.

The charitable sector in Canada has seen a number of important legislative, regulatory and common law developments in 2007 which have significantly impacted how charities operate both in Canada and abroad. The following *Charity Law Bulletin* provides an up to date summary of some of the more important of these developments over the whole of 2007, including recent changes under the *Income Tax Act* ("ITA"), new policies and publications from the Charities Directorate of the Canada Revenue Agency ("CRA"), select federal legislative issues affecting charities, as well as a selection of some of the more significant court decisions during the past year.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2008/chylb131.pdf>

CRA Releases Proposed Policy on Research as a Charitable Activity

By Karen J. Cooper and Kimberley A. Cunningham-Taylor.

The Charities Directorate of Canada Revenue Agency ("CRA") has released a proposed policy relating to the legal and administrative requirements the CRA expects registered charities to fulfill in order to conduct or

fund research as a charitable activity. The draft policy will be of interest to organizations and registered charities that are established to conduct or fund research in any field and may assist organizations that have been established for other charitable purposes, such as relief of poverty or the promotion of health, and carry out research in furtherance of those purposes. The draft policy reviews the specific legal meaning of ‘research’ in the charitable context, how an organization might satisfy CRA’s requirements concerning research, the public benefit aspects of charitable research, and private benefit issues. The proposed policy may be found on CRA’s website at: http://www.cra-arc.gc.ca/tax/charities/consultations/research_guidelines-e.html. CRA has requested comments on the draft policy by February 29, 2008.

Imagine Canada’s Revised *Ethical Fundraising and Financial Accountability Code* (2007)

by Terrance S. Carter, assisted by Kimberley A. LeBlanc.

In October 2007, Imagine Canada released its revised Ethical Fundraising and Financial Accountability Code (the “Code”) to assist in addressing growing public concerns pertaining to Canadian charities and their financial accountability. The first version the Code was released in 1998, and set out standards to assist charitable organizations in managing and reporting their financial affairs. The 1998 version of the Code was revised based upon a review of “accountability issues and standards of practice” in relation to charitable organizations. This review was carried out by the Accountability Reference Group (“ARG”), which was convened by Imagine Canada to examine empirical research relating to fundraising issues, trends and regulation, and to conduct direct consultations with charities. The ARG determined that a voluntary code of conduct, or a set of best practices, may assist in “maintaining public trust and enhancing the effectiveness of Canadian registered charities.”

As of January 2008, a new compliance program in relation to the revised Code has been implemented based upon recommendations from the ARG. Charitable organizations may voluntarily apply to adhere to the guidelines set out within the Code in exchange for recognition as being in compliance with the Code, and the use of the “Ethical Code trustmark” as a sign of compliance to present and potential donors. Additional information pertaining to the Compliance Program is available online at <http://www.imaginecanada.ca/?q=en/node/21>, and a copy of the Code can be found at http://www.imaginecanada.ca/files/en/ethicalcode/updated_ethical_code_october_2007.pdf.

Accounting Standards Board Adopts New Standard and Proposes Changes to Another: The Effect on Not-for-Profit and Charitable Organizations

by Karen J. Cooper and Kimberley A. Cunningham-Taylor in Charity Law Bulletin No. 132, January 24, 2008.

In the September 2007 *Charity Law Update* it was reported that the Accounting Standards Board (the "AcSB"), a branch of the Canadian Institute of Chartered Accountants (the "CICA"), had issued a new section of the CICA Standards and Guidance Accounting Handbook (the "Handbook") entitled Financial Instruments – Recognition and Measurement (Section 3855). Section 3855 applies to not-for-profit organizations, as well as profit-oriented organizations and its effect will change the way entities recognize and measure financial instruments. It was also reported that the AcSB had posted an Exposure Draft containing proposals for the amendment to the existing standards and provisions of the Handbook relating to not-for-profit organizations.

The following *Charity Law Bulletin* provides a practical overview of these standards and the effect these standards have on not-for-profit and charitable organizations.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2008/chylb132.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2008/chylb132.htm>

Assessment Issues Affecting Charities and Not-For-Profit Organizations in Ontario

by D. Ann Walters and Nancy E. Claridge, in Charity Law Bulletin No. 130, January 23, 2008.

Charities and not-for-profit organizations are not always exempt from property taxes, despite being exempt from income tax under the *Income Tax Act* (Canada) ("ITA"). As such, the applicability of property taxes is an important issue for charities and not-for-profit organizations to consider. In Ontario, the property assessment and taxation system is comprised of four interrelated components: the legislative framework, municipalities, the Municipal and Property Assessment Corporation ("MPAC"), and the Assessment Review Board ("ARB"), each playing a pivotal role in how real property is assessed and taxed in Ontario. The *Assessment Act* (the "Act") is the enabling statute by which municipalities, MPAC and the ARB carry out their municipal property assessment functions. The premise of the Act is that all real property in Ontario is liable to assessment and taxation, and the municipality in which a property is located will assess and value all real property and tax the owner on its current value. To facilitate this underlying principle, MPAC conducts valuations and then classifies and assesses the combined tax on all real property in accordance with the statutes. While MPAC is responsible for determining the classifications and current value assessments, municipalities are responsible for setting the tax rates, calculating and issuing tax bills and collecting the taxes from property owners. To enhance the efficiency of the system, the ARB, an independent adjudicative tribunal provides property owners with the opportunity to have their property classification or assessment

concerns independently reviewed. Property owners may also make an application to the Ontario Superior Court of Justice.

This *Charity Law Bulletin* outlines the types of property uses by charities and not-for-profit organizations which are exempt from taxation under the Act, the conditions attached to these exemptions, the general scope of these exemptions as interpreted by the caselaw, the rebate programs available to charities under the *Municipal Act, 2001* in Ontario, and the assessment complaint process available to property owners through MPAC and the ARB.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2008/chylb130.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2008/chylb130.htm>

Bell Canada selected as National Do Not Call List Operator

by Nancy E. Claridge.

In an announcement made December 21, 2007, the Canadian Radio-television and Telecommunications Commission (“CRTC”) awarded a five-year contract to Bell Canada to operate the National Do Not Call List (“National DNCL”), which is to be launched by September 30, 2008. As discussed in *Charity Law Bulletin* No. 119 (July 30, 2007), the National DNCL operator will be responsible for establishing the National DNCL, providing up-to-date lists to telemarketers required to subscribe to the list, as well as receiving consumer complaints about telemarketing calls. *Prima facie* violations will be referred to the CRTC for the issuance of violation notices. Although charities registered pursuant to s. 248(1) of the *Income Tax Act* (Canada) are exempt from the National DNCL, other charities and not-for-profit organizations engaging in telemarketing will be required to subscribe to the National DNCL and abide by the restrictions. The exemption for registered charities does not apply to the general telemarketing rules set out by the CRTC, which amongst other things requires each telemarketer to maintain its own individual do not call list. Enforcement of the enhanced telemarketing rules discussed in *Charity Law Bulletin* No. 119 will come into effect once the National DNCL is established.

More Changes Announced for UK Charities

by Terrance S. Carter and Derek B. Mix-Ross.

Recent announcements have been made concerning bringing into force provisions of UK’s Charities Act 2006 (the “Act”), which will have a significant impact on UK Charities. The Act, which was discussed in a Charity Law Update in February of 2007, received Royal Assent in late 2006 and has come into force in various stages. The most recent changes came into force on November 28, 2007 and include new provisions dealing with mergers and incorporations of charities.

Further provisions, including those dealing with the remuneration of trustees, changes to *cy-près* occasions and schemes, and the rules surrounding fundraising statements, are scheduled to come into force from February to April 2008. Additionally, from late March, 2008, all UK charities will be required to demonstrate that they exist for the public benefit. More information about the Act and its latest changes can be obtained from the Bates Wells & Braithwaite website at www.bateswells.co.uk/charitiesact.htm.

IN THE PRESS

The Supreme Court should not be an arbiter of religion by Terrance Carter and Derek Mix-Ross.

The Lawyers Weekly, Vol. 27 No. 34, January 18, 2008.

[Link] <http://www.carters.ca/news/2008/lawyerwkly/tscdmr0118.pdf>

RECENT EVENTS AND PRESENTATION MATERIALS

AFP 2008 Webconferences on Canadian Legal Issues: Donation Tax Shelters & Flow Through Shares was the first of this series of seminars being offered by the Association of Fundraising Professionals with Terrance S. Carter and Theresa L.M. Man presenting on Thursday, January 24, 2008.

Details are available at http://www.afpnet.org/ka/ka-3.cfm?content_item_id=24300&folder_id=910.

UPCOMING EVENTS AND PRESENTATIONS

Ontario Bar Association Charities & Not-for-Profit Section Meeting will include a presentation by Terrance S. Carter and Theresa L.M. Man entitled "Donation Tax Shelters & Flow Through Shares" on Tuesday, January 29, 2008.

Details available at <http://www.softconference.com/oba/eventdetails.aspx?&code=08CHA0129T>

The Ottawa Region Church & Charity LawTM Seminar will be held at Arlington Woods Free Methodist Church in Nepean, Ontario, on Wednesday, February 6, 2008. Registration and speaker details are available at <http://www.carters.ca/pub/seminar/chrchlaw/ott/08/brochure.htm>.

Ontario Human Rights Code: Anti-Harassment and Anti-Discrimination Training will be presented by U. Shen Goh for the Canadian Mental Health Association of Peel in Brampton, Ontario, on February 15, 2008.

Institutional Liability for Sexual Assault, Abuse & Harassment-Proven Strategies for Managing Risk, Mitigating Liability and Litigating Claims, hosted by The Canadian Institute, is being held at the Sutton Place Hotel in Toronto, Ontario, on March 31, 2008, with Terrance S. Carter presenting "Effectively Protecting Charitable Assets through Multiple Corporate Structures."

Details available at https://www.canadianinstitute.com/legal/Institutional_Liability_for_Sexual_Assault_Abuse_Harassment.htm

CONTRIBUTORS



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.



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* and 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.



M. Elena Hoffstein – Director of the Wealth Management and Charities practice group at the Toronto office of Fasken Martineau DuMoulin LLP, Ms. Hoffstein practices in the area of charity and not-for-profit law and estate planning, and has been ranked by LEXPERT as one of the most frequently recommended Toronto private client practitioners and as one of the top 500 lawyers in Canada. Ms. Hoffstein was also a consulting editor of *Charities Legislation & Commentary*, 2008 Edition, published by Butterworths.



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*.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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