

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

JUNE 2008 ISSUE

SECTIONS

Recent Publications and News Releases	2
In the Press	6
Recent Events and Presentation Materials	8
Upcoming Events and Presentations	9
Contributors	9
Acknowledgements, Errata and other Miscellaneous Items	11

HIGHLIGHTS

Bill C-62: Changes Afoot For Federal Non-Profit Corporations
Enactment of Bill C-50, *Budget Implementation Act, 2008*
Reform of Not-For-Profit Corporations Legislation in Ontario
Split-receipts - Political Fundraising Raffle
First Canadian Non-Profit Added To Terrorism List
More Donation Tax Shelter News
Constitutional Jurisdiction Over Charities
CRA Releases Information for Disaster Relief Organizations Applying For Charitable Status
B.C. Government Revises Policy on Naming Rights
Congratulations to Donald J. Bourgeois on receiving the AMS/John Hodgson Award
Lexpert Rankings

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RECENT PUBLICATIONS AND NEWS RELEASES

Bill C-62: Changes Afoot For Federal Non-Profit Corporations

by Jane Burke-Robertson, B.Soc.Sci., LL.B., in Charity Law Bulletin No. 139, June 25, 2008.

On June 13, 2008, Bill C-62, *An Act respecting not-for-profit corporations and certain other corporations*, was tabled in the House of Commons. Most people reading Bill C-62 ("Bill C-62" or the "Bill") for the first time will have a definite sense of déjà-vu. In fact, the Bill is almost a repeat of Bill C-21, which died on the order paper when the 38th Parliament dissolved in 2005. However, there are a few important differences between the bills. The purpose of this *Charity Law Bulletin* is to provide a general summary of the main provisions of Bill C-62 as they affect the establishment and operation of not-for-profit corporations. The *Bulletin* will also highlight some of the areas in which Bill C-62 differs from its predecessor, Bill C-21.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2008/chylb139.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2008/chylb139.htm>

Enactment of Bill C-50, *Budget Implementation Act, 2008*

by Theresa L.M. Man, B.Sc., M.Mus., LL.B., LL.M.

Following the release of the federal budget on February 26, 2008, some of the proposals contained in the federal budget were implemented by the enactment of Bill C-50, *Budget Implementation Act, 2008*, which received Royal Assent on June 18, 2008.

Certain proposals contained in the federal budget that relate to charities were contained in Bill C-50. These changes include extending the capital gains tax exemption for certain donations of listed securities to certain exchangeable shares and partnership interests, as well as providing tax incentives for donations of medicines that benefit recipients in developing countries. On May 16, 2008, Finance released proposed regulations relating to the donations of medicines, and further related changes to the Act. However, the proposed changes to the excess business holding rules are not contained in Bill C-50. In a press release dated March 11, 2008, Finance indicated that legislation to implement the remaining budget tax proposals is being developed for introduction at a later time. (see: <http://www.fin.gc.ca/news08/08-027e.html>).

Bill C-50 is available at http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Parl=39&Ses=2&Mode=1&Pub=Bill&Doc=C-50_3.

The May 16, 2008 proposed amendments to the Act and regulations are available at <http://www.fin.gc.ca/drleg/ITAmay08e.pdf>.

Reform of Not-For-Profit Corporations Legislation in Ontario

by Terrance S. Carter, B.A., LL.B., for the Law Society of Upper Canada on June 4, 2008.

In the spring of 2007, the Ontario Ministry of Government and Consumer Services (“Ministry”) announced that it was undertaking a project to review and revise the Ontario *Corporations Act* (the “OCA”). Currently, the OCA provides the statutory framework governing the creation, governance, and dissolution of not-for-profit corporations, including charitable corporations in Ontario. The Ministry has explained that it is planning to reform this area of the law and “develop a new legal framework to govern the structure and activities of charities and not-for-profit corporations” in Ontario.

The Ministry has not officially announced any new provisions or specific changes that will be made as part of this modernization process. It has, however, generally expressed its desire to make its recommendations on reform to the Ontario Cabinet in the summer of 2008, with the hopes of introducing new legislation to the Ontario Legislature as early as the spring of 2009. As the first step of this process, the Ministry has released three consultation papers which discuss a number of areas of potential reform. These consultation papers, entitled *Modernization of the Legal Framework Governing Ontario Not-For-Profit Corporations*, invited comments and suggestions from sector stakeholders, as well as the general public. The consultation papers highlight the issues that have been the focus of the reform process thus far. This paper will discuss some of those issues of reform and the potential impact they will have on Ontario’s charities and not-for-profit corporations.

Read More:

[PDF] <http://www.carters.ca/pub/article/charity/2008/tsc0604.pdf>

Split-receipts - Political Fundraising Raffle

by Karen J. Cooper, LL.B., LL.L., TEP.

In a recently released technical interpretation dated April 17, 2008 (CRA Document # 2007-024431), the Canada Revenue Agency (“CRA”) commented on the application of the proposed split-receipting rules to tickets purchased for a fundraising raffle held by a political party. Proposed subsection 248(31) of the *Income Tax Act* (Canada) (“Act”) defines the eligible amount of a monetary contribution or a gift as the amount by which the fair market value of the property that is the subject of the monetary contribution or gift exceeds the amount of advantage, if any, in respect of the contribution or gift. Under proposed subsection 248(32), the amount of the advantage in respect of a monetary contribution or gift is generally the total value of all property, services, compensation or other benefits the individual making

the contribution is entitled to. According to CRA, the advantage in respect of the monetary contribution or purchase price paid by a participant in a fundraising raffle is the chance to win the prize and the advantage received would usually equal the amount paid for the ticket. CRA indicated that a receipt should not likely be issued in these situations.

First Canadian Non-Profit Added To Terrorism List

by Terrance S. Carter, B.A., LL.B. and Sean S. Carter, B.A., LL.B. in Anti-terrorism and Charity Law Alert No. 15, June 25, 2008.

A growing aspect of the federal government's anti-terrorism initiative is the designation of organizations to a list established under the terrorism provisions of the *Criminal Code*. Until now, the entities on this list have primarily included widely-recognized foreign organizations, such as Hezbollah and Al-Qaeda. However, for the first time since the list was established in 2002, a Canadian non-profit organization, the World Tamil Movement, has been added to the list of over forty entities deemed to have facilitated or been associated with terrorist activities. Both not-for-profit organizations and registered charities, therefore, should take note of the federal government and its regulatory agencies' increasing scrutiny of fundraising activities and their willingness to utilize the considerable enforcement powers afforded to them by Canada's extensive anti-terrorism legislation. This Anti-terrorism and Charity Law Alert addresses the recent addition of the World Tamil Movement to the terrorism list and provides a brief overview of the listing process itself, its limitations and the ramifications generally for not-for-profit organizations and charities in Canada.

Read More:

[PDF] <http://www.carters.ca/pub/alert/ATCLA/ATCLA15.pdf>

More Donation Tax Shelter News

by Karen J. Cooper, LL.B., LL.L., TEP.

The Tax Court of Canada rendered a decision (recently reported at *Norton v. H.M.Q.*, 2008 DTC 2701) in a case involving an individual's participation in 1996 in a donation tax shelter involving an alleged charitable organization (The Association for the Betterment of Literacy and Education or "A.B.L.E.") organized and promoted by her spouse. In the calendar year following the alleged donations, the taxpayer received a payment, from a Bermudian company, representing 75% of the value of her donation. A.B.L.E.'s corporate promoter characterized the payment as a lottery winning that donors could potentially generate. The taxpayer claimed an income tax credit for the year of her charitable donation and a carryover for the following taxation year. In notices of assessment assessing the taxpayer for 1996 and 1997, the Minister disallowed the taxpayer's deductions, alleging that A.B.L.E. operated an illegitimate tax shelter scheme that issued receipts for income tax purposes in excess of the donors'

charitable donations. The taxpayer appealed to the Tax Court of Canada. The taxpayer's appeal was dismissed on the basis that the taxpayer had knowingly participated in an illegitimate tax shelter scheme, which reimbursed donors 75% of the value of their donations to artificially inflate their charitable donations tax credits, without any donative intent.

Constitutional Jurisdiction Over Charities

An excerpt from the forthcoming Halsbury's Laws of Canada charities title by Donald J. Bourgeois.

What level of government has jurisdiction over charities? That question, on the surface, is a simple one. Most individuals would probably expect that the answer would also be a simple one. But, as with much in the law of charities, the answer is far from simple. The following excerpt from *Halsbury's Laws of Canada's* title on charities and not-for-profit organizations, to be published in September 2008, illustrates some of the complexity around this simple question.

Read More:

[PDF] <http://www.carters.ca/pub/book/2008/halsbury08.pdf>

CRA Releases Information for Disaster Relief Organizations Applying For Charitable Status

by Terrance S. Carter, B.A., LL.B.

The Canada Revenue Agency ("CRA") has recently released a notice regarding the registration of disaster relief organizations. In it, the CRA explains that disaster relief organizations must "meet the same requirements as all other applicants for charitable registration", including the need to demonstrate how they will direct and control their resources and activities outside of Canada. However, the CRA notes that it will expedite consideration of disaster relief organizations' applications in urgent circumstances.

The CRA also warns of the danger and limited access to affected areas in the immediate aftermath of a disaster, and suggests that applicants should consider "donating money or goods, or offering services, to existing qualified donees (e.g., other registered charities) that have the experience, resources, and infrastructures already in place to respond rapidly and effectively in such locations."

Finally, the CRA notes that organizations that intend to provide direct relief in Burma may require a special permit issued by the Canadian Minister of Foreign Affairs in order to do so.

For more information, see: <http://www.cra-arc.gc.ca/tax/charities/relief-e.html>.

B.C. Government Revises Policy on Naming Rights

by Jacqueline M. Demczur, B.A., LL.B., assisted by Derek B. Mix-Ross, LL.B.

The Government of British Columbia has revised its Naming Privileges Policy (the “Policy”) which “governs the naming of physical assets in recognition of financial or in-kind contributions from individuals, businesses, organizations, and others”. The Policy applies to all government ministries and government bodies as defined in the *Financial Administration Act*, which include hospitals and health authorities, colleges and universities.

The Policy provides that naming recognition may be granted for the naming of buildings and other physical assets (such as wings, roads, and collections of books or art) but the naming must be approved by a Naming Committee identified by the Minister of Labour and Citizens’ Services, or, in certain circumstances, by the B.C. Cabinet. The Policy sets out the approval criteria for, as well as restrictions on, an opportunity for a naming recognition. Specifically, the government will not approve a naming opportunity that, among other things:

- implies the government’s endorsement of a partisan political or ideological position or of a commercial product;
- conveys a message that might be deemed prejudicial to race, religion, gender or sexual orientation; or
- presents demeaning or derogatory portrayals of communities or groups or, in light of generally prevailing community standards, could reasonably be expected to cause offence to a community or group.

For more information, see the Policy online at http://www.bcsolutions.gov.bc.ca/ipp/popt/B4_1_1_9naming_policy.htm.

Congratulations to Donald J. Bourgeois on receiving the AMS/John Hodgson Award

Congratulations to Donald J. Bourgeois, counsel to Carters, on receiving the 2008 AMS/John Hodgson Award of Excellence from the Ontario Bar Association (“OBA”) for charity and not-for-profit law. This Award recognizes exceptional contribution and/or achievement by members of the OBA in the following areas: development of the law, which is integral to the governance and accountability in the voluntary sector; enhancement of the practice of law in the charity arena; and leadership and service in the charitable sector, Charity and Not-for-Profit Law Section, government, Law Society of Upper Canada and the OBA, exemplifying individual lawyers and legal advisors to the voluntary sector.

For more information, see http://www.cbao.org/en/cha/cha_en/Award.aspx.

Lexpert Rankings

[Jane Burke-Robertson](#) and [Terrance S. Carter](#) were again recognized as leaders in the area of charities and not-for-profits in Canada by *The Canadian Legal Lexpert Directory 2008*. Jane has been recognized

since 2004, and now again in 2008, as a consistently recommended practitioner, and Terrance, Managing Partner of the firm, has also been recognized since 2004 and again in 2008 as one of the most frequently recommended practitioners in the area of charities and not-for-profits in Canada. In addition, Terrance Carter also co-authored the section summary for Charity & Not-for-Profit Law in the directory with [M. Elena Hoffstein](#) from our affiliated firm of Fasken Martineau DuMoulin LLP, who was also recognized by Lexpert as one of the most frequently recommended lawyers in the sector.

Read More:

[PDF] <http://www.carters.ca/news/2008/lexpert08.pdf>

[WEB] <http://www.lexpert.ca>

IN THE PRESS

Revenue agency gets tough with charities by Karen J. Cooper.

Lawyers Weekly, Volume 28, No. 8, June 20, 2008.

[Link] <http://www.thelawyersweekly.ca/index.php?section=article&articleid=706>

[PDF] <http://www.carters.ca/news/2008/lawyerwkly/kjc0620.pdf>

Canadian Privacy Legislation Requires Consent: U.S. Anti-Terrorism Legislation Takes Away Consent by U. Shen Goh.

Canadian Privacy Law Review, Volume 5 No. 7, June 2008.

[PDF] http://www.carters.ca/news/2008/cplr/usg_jun08.pdf

Inside Internal Control, a newsletter published by First Reference Inc., references a paper on the new *Not-for-Profit Corporations Act* presented by Jane Burke-Robertson at the 2005 National Charity Law Symposium entitled “Life After Bill C-21: How will it affect your organization?”

Inside Internal Control, Vol. 1, Iss. 5, June 2008.

[Link] http://www.firstreference.com/past_icl/vol1_issue5.html

New Rules Affecting Private Foundations by Terrance S. Carter appeared in the Greater Toronto Area Leave a Legacy™ charitable giving supplement “Your Guide to Giving Back,” which was included in the *Globe and Mail* and *Good Times* magazine.

Leave a Legacy™ GTA: Your Guide to Giving Back,

Globe & Mail Insert, Saturday, May 31, 2008, and

Good Times Magazine Insert, June 2008.

[PDF] <http://www.carters.ca/news/2008/LAL-GTA08.pdf>

CRA Imposes New Sanctions by Karen J. Cooper.

Charitable Thoughts, Volume 11, No. 3, May 2008.

[Link] http://www.oba.org/en/cha/newsletter_en/PrintHtml.aspx?DocId=31516

Gifts of Land Especially Sensitive, Many Alternative Scenarios reviews the presentation entitled “Gifts of Land – Changing Ground Rules!” made by Karen J. Cooper of Carters with Nora Layard of the Green Legacies Project and Carla Funk of the Land Conservancy of BC at the Canadian Association of Gift Planners Annual Conference, held in Vancouver on April 24, 2008.

Canadian FundRaiser, Volume 18, No. 10, May 31, 2008.

[Link] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=2653>

Canadian FundRaiser eNews included a link to the May 2008 Issue of the *Charity Law Update*.

Canadian FundRaiser, Volume 18 No. 10, May 31, 2008.

[Link] http://www.canadianfundraiser.com/Newsletter/issue_viewer.asp?Issue_ID=184

Charities / Not-for-Profit Law: Recent Developments of Importance by Terrance S. Carter and M. Elena Hoffstein.

The Canadian Legal Lexpert Directory 2008.

[PDF] <http://www.carters.ca/news/2008/lexpert08.pdf>

[WEB] <http://www.lexpert.ca>

RECENT EVENTS AND PRESENTATION MATERIALS

Six-Minute Business Lawyer 2008 on June 4, 2008, included a presentation by Terrance S. Carter on “Reform of Not-for-Profit Company Legislation.”

[WEB] <http://www.carters.ca/pub/seminar/charity/2008/tsc0604.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2008/tsc0604.pdf>

[Paper] <http://www.carters.ca/pub/article/charity/2008/tsc0604.pdf>

Vitalize 2008 – Annual Provincial Voluntary Sector Conference held in Edmonton, Alberta, on June 13, 2008, included a three part presentation from Terrance S. Carter on “Directors’ and Officers’ Liability: The Essentials and Beyond for Your Non Profit.”

“The Legal Duties of Directors and Officers of Charities and Not-for-Profits (Alberta),”

[WEB] <http://www.carters.ca/pub/seminar/charity/2008/tsc0613.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2008/tsc0613.pdf>

[Summary] <http://www.carters.ca/pub/article/charity/2008/tsc0613a.pdf>

“Due Diligence in Avoiding Liability for Directors and Officers of Charities and Not-for-Profit (Alberta),” and

[WEB] <http://www.carters.ca/pub/seminar/charity/2008/tsc0613b.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2008/tsc0613b.pdf>

[Summary] <http://www.carters.ca/pub/article/charity/2008/tsc0613b.pdf>

“How to Avoid Legal Liability in Fundraising (Alberta).”

[WEB] <http://www.carters.ca/pub/seminar/charity/2008/tsc0613c.htm>

[PDF] <http://www.carters.ca/pub/seminar/charity/2008/tsc0613c.pdf>

Danger to Dabble – Charity Law Hot Spots (Ottawa Joint CLE program), Chaired by Karen J. Cooper, was held at the HMCS Bytown Naval Officer’s Mess in Ottawa, Ontario, on Wednesday, June 18, 2008.

CAISAP Regional Professional Development Day – Appleby College was held on June 25, 2008, with Terrance S. Carter as keynote speaker presenting “Highlights in Charity Law: The Past Year in Review.”

UPCOMING EVENTS AND PRESENTATIONS

Update on Income Tax Issues Affecting Charities is being presented by Terrance S. Carter and Theresa L.M. Man for this workshop hosted by Canadian Fundraiser in Toronto, Ontario, on September 18th, 2008.

Canadian Council of Christian Charities Annual Christian Leadership/Stewardship Conference is being held in Calgary, Alberta, and will include a workshop on September 23, 2008, by Terrance S. Carter entitled “Strategies for Protecting Charitable Assets Through Multiple Corporate Structures”–

Details available at <http://www.cccc.org/contents.php?area=y&id=4001>

CONTRIBUTORS

Editor: Terrance S. Carter

Assistant Editor: Nancy E. Claridge



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.



Jane Burke-Robertson – A partner with Carters’ Ottawa office, Jane 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 leader in her field. 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 in this area 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 graduate of 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 summer student with Fasken Martineau DuMoulin LLP, as well as being a research assistant 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* 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 – A partner with the firm, Ms. 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 – A partner with the firm, Ms. 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. Mrs. Demczur is also a regular speaker at the annual *Church & Charity LawTM Seminar*.



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*, 2006 Edition, published by Butterworths.



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. In addition to being a regular speaker at the annual *Church & Charity LawTM 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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Affiliated With Fasken Martineau DuMoulin LLP

Terrance S. Carter B.A., LL.B.
(Counsel to Fasken Martineau DuMoulin LLP)
Jane Burke-Robertson B.Soc.Sci., LL.B.
Mervyn F. White B.A., LL.B.
Karen Cooper, B.Soc.Sci., LL.B., LL.L., TEP
Jeremiah A. Eastman, B.A., LL.B.
Theresa L.M. Man B.Sc., M.Mus., LL.B., LL.M.
Jacqueline M. Demczur B.A., LL.B.
Esther S.J. Oh B.A., LL.B.
U. Shen Goh LL.B., LL.M.
D. Ann Walters B.A., LL.B.
Nancy E. Claridge B.A., M.A., LL.B.
Paula J. Thomas B.A., LL.B.
COUNSEL:
Bruce W. Long B.A., LL.B.
Donald J. Bourgeois B.A., LL.B.

tcarter@carters.ca

janebr@carters.ca
mwhite@carters.ca
kcooper@carters.ca
jeastman@carters.ca
tman@carters.ca
jdemczur@carters.ca
estheroh@carters.ca
sgoh@carters.ca
awalters@carters.ca
nclaridge@carters.ca
pthomas@carters.ca

blong@carters.ca
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: (905) 306-2791
Fax: (905) 306-3434
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

Meeting Locations by Appointment

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

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

59 Woolwich Street
Guelph, Ontario
(519) 838-2004

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