

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

### APRIL 2005 ISSUE

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### 3<sup>rd</sup> National Symposium on Charity Law

Presented by the Canadian Bar Association and the Ontario Bar Association in Toronto, Ontario.

May 6, 2005.

Charity and not-for-profit law practitioners, gift planners, fundraisers, and directors and officers of charities or not-for-profits should try to attend this invaluable annual event. See Upcoming Events for registration details.

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## **RECENT PUBLICATIONS AND NEWS RELEASES**

### **Disbursement Quota Formula under Bill C-33 (March 2004 Federal Budget Enabling Legislation)**

by Theresa L.M. Man and Terrance S. Carter in *Charity Law Bulletin No.67, March 31, 2005.*

Draft amendments to the *Income Tax Act* implementing the March 2004 Federal Budget were released on September 16, 2004, and further amended and consolidated by a *Notice of Ways and Means Motion* tabled by the Minister of Finance in the House of Commons on December 6, 2004. As a result, Bill C-33, *A Second Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 23, 2004* was passed by Parliament on February 25, 2005 and received first reading in the Senate on March 7, 2005. These amendments introduced a new regulatory regime for charities, new intermediate sanctions, a more accessible appeals regime, improved transparency and more accessible information, as well as new disbursement quota rules for charities. The proposed new disbursement quota rules for charities are complicated and, as such, it is anticipated that they will be challenging for charities to comprehend and comply with. This *Charity Law Bulletin* is intended to summarize these new rules in both a table and flow chart format in order to assist charities and their advisors in developing a better understanding of the new rules.

#### **Read More:**

[PDF] <http://www.carters.ca/pub/bulletin/charity/2005/chylb67.pdf>

### **B.C. Court Upholds CRA Guidelines on Split-Receipting**

by Suzanne E. White and Terrance S. Carter in *Charity Law Bulletin No.68, April 7, 2005.*

The *Richert v. Stewards' Charitable Foundation* decision represents a novel civil action brought by a donor against a registered charity concerning the reduced amount reflected on a donation receipt. The Richert case is of importance, as it appears that it is the first time that a civil court has upheld Canada Revenue Agency's Technical News No. 26 concerning proposed new rules for split-receipting although the underlying legislation authorizing these rules is not yet law in Canada. This *Charity Law Bulletin* discusses the findings of the Richert case and the resulting implications in relation to a registered charity's right to issue "split-receipts."

#### **Read More:**

[PDF] <http://www.carters.ca/pub/bulletin/charity/2005/chylb68.pdf>

## Creating Enforceable Pledge Agreements

by Sarah Bradley of Fasken Martineau DuMoulin LLP in *Charity Law Bulletin No.66, March 31, 2005.*

Donors often make gifts in an indirect or deferred fashion that is best suited to his or her ability and estate plan. Charities are naturally very grateful for such intended donations, and may even access promised funds immediately by borrowing against such a pledge. However, in some instances the donor passes away before the entire donation can be made, and may not have amended his or her will to reflect the promised donation. The donor's executors are bound by a duty to preserve the assets of the estate for the beneficiaries and may be unwilling to honour the pledge on the basis that a mere promise to make a gift in the future is not enforceable at law, leaving the charity without the donation it had expected and relied upon and the donor's charitable intentions unrealized. This was the result in the recent Ontario case of *Brantford General Hospital Foundation v. Marquis Estate*, but is not necessarily unavoidable. This *Charity Law Bulletin* will discuss Brantford Hospital and the possibility of creating legally binding pledge agreements.

### Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2005/chylb66.pdf>

## Religious and Institutional Properties

by Terrance S. Carter and John M.C. Latham for the Ontario Bar Association, March 3, 2005.

This paper addresses some of the more important issues that real estate practitioners should consider when dealing with real estate owned or to be acquired by charitable and not-for-profit organizations, with a particular emphasis upon those properties owned by religious and institutional organizations. Although it is not possible to deal with every issue that should be addressed, this paper attempts to provide an overview of some of the more important issues to consider when acting for a charitable or not-for-profit organization. Accordingly, this paper is structured with a brief introduction, explaining the distinction between charities and not-for-profit organizations, and an overview of their organizational structures. The paper is then divided into sections representing issues on a jurisdictional level that real estate practitioners should consider when representing charities and not-for-profit organizations, i.e. at the federal, provincial and municipal level. Finally, the paper addresses some of the issues involving donor restricted charitable gifts and the doctrine of *cy-près*, which are essential for real estate practitioners to understand when dealing with property subject to a charitable purpose trust.

[LINK] <http://www.carters.ca/pub/article/charity/2005/tscjml0303.pdf>

## **Parliament continues its review of Bill C-21, *An act respecting not-for-profit corporations***

The Standing Committee on Industry, Natural Resources, Science, and Technology heard statements from several witnesses regarding the proposed legislation on March 21, 2005, and will continue study of the legislation when they convene again on May 30, 2005.

[LINK] <http://www.parl.gc.ca/infocomdoc/38/1/INDU/Meetings/Evidence/INDUEV25-E.HTM>

## **IN THE PRESS**

**Charities and Compliance with Anti-Terrorism Legislation: A Due Diligence Response**, by Terrance S. Carter in *The Philanthropist* (Vol. 19 No. 2).

Now available at <http://www.carters.ca/news/2004/Philanth/vol19no2.pdf>.

**Anti-terrorism Legislation Requires Due Diligence from Tsunami Relief Agencies**, by Terrance S. Carter and Sean S. Carter.

*The Lawyers Weekly* Vol. 24 No.41 Mar 11, 2005.

[PDF] <http://www.carters.ca/news/2005/lawyerwkly/tscsc0311.pdf>

**The Year in Review: 2004 Canadian Charity and Not-for-profit Law Developments Related to Planned Giving**, by Terrance S. Carter and Theresa Man.

*Planned Giving Pulse*, March 2005.

[PDF] [http://www.plannedgivingpulse.com/March05\\_article2.htm](http://www.plannedgivingpulse.com/March05_article2.htm)

**CharityVillage.com links to Legal Risk Management Checklists for Charities and Not-for-Profit Organizations** by Jacqueline M. Connor and Terrance S. Carter of Carter & Associates.

*Christian Legal Journal*, January 2005.

[PDF] <http://www.charityvillage.com/cv/charityvillage/lib11.html>

## **RECENT EVENTS AND PRESENTATION MATERIALS**

**Canadian Fundraiser Workshop** was held in Toronto, Ontario, on March 2, 2005, with lawyers from Carter & Associates presenting on the following topics.

“Employment & Human Rights in the Workplace,” by Mervyn F. White, and

“Employment Issues in the Termination of Employees,” by Mark J. Wong.

For more information on Canadian Fundraiser Workshops, go to <http://www.canadianfundraiser.com>.

**Volunteer Action Centre “Governance Flavour of the Month” Legal Risk Management for Directors** seminar was held in Kitchener, Ontario, on March 2, 2005, with Donald J. Bourgeois presenting on the duties and liability of Boards of Directors, and how to protect yourself.

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/djb0302.pdf>

[Web] <http://www.carters.ca/pub/seminar/charity/2005/djb0302.htm>

**Ontario Bar Association – Continuing Legal Education Workshop – Special Demands for Special Use Lands** was held in Toronto, Ontario, on March 3, 2005, with Terrance S. Carter and John M.C. Latham presenting on “Religious and Institutional Properties.”

[PDF] <http://www.carters.ca/pub/article/charity/2005/tscjml0303.pdf>

**Current Legal Issues in Health Research** was hosted by Fasken Martineau DuMoulin LLP and Carter & Associates at The Sunnybrook Estates in Toronto, Ontario, on March 3, 2005, as part of their Health and Charity Law Seminar Series.

[Brochure] <http://www.carters.ca/pub/seminar/notice/2005/health0303.pdf>

**University Of Ottawa Law School** invited Terrance S. Carter to be a guest lecturer on "Donor-Restricted Charitable Gifts" on March 8, 2005.

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc0308.pdf>

**Social Planning Council of Peel** held a workshop on March 9, 2005, with U. Shen Goh of Carter & Associates presenting on “Diversity and Human Resources Management.”

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/usg0309.pdf>

[Web] <http://www.carters.ca/pub/seminar/charity/2005/usg0309.htm>

**Health Philanthropy : Challenges and Solutions 2005** is being hosted by Fasken Martineau DuMoulin LLP and Carter & Associates at The Sunnybrook Estates in Toronto, Ontario, on March 10, 2005, as part of their Health and Charity Law Seminar Series with presentations on;

“Highlights of Proposed New Tax Rules Affecting Charities” by Terrance S. Carter,

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc0310.pdf>

[Web] <http://www.carters.ca/pub/seminar/charity/2005/tsc0310.htm>

“Penalties, Sanctions and Regulatory Reform Affecting Charities” by M. Elena Hoffstein,

“Privacy Legislation and its Impact on Charities” by Mark J. Wong,

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/mjw0310.pdf>

[Web] <http://www.carters.ca/pub/seminar/charity/2005/mjw0310.htm>

“Corporate Update Affecting Charities Including the New *Canada Not-for-Profit Corporations Act*” by Corina Weigl,

“Do’s and Don’ts on How to Structure and Endowment Agreement” by Terrance S. Carter, and

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc0310b.pdf>

[Web] <http://www.carters.ca/pub/seminar/charity/2005/tsc0310b.htm>

“Recent Case Law of Importance to Health Care Charities” by Sarah Bradley.

**United Way of Peel Region – Employment Issues for Non-Profit Organizations** seminar was held in Mississauga, Ontario, on March 22, 2005, with U. Shen Goh presenting.

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/usg0322.pdf>

[Web] <http://www.carters.ca/pub/seminar/charity/2005/usg0322.htm>

**Association of Fundraising Professionals International Conference on Fundraising** was held in Baltimore from April 2 to 6, 2005, with Terrance S. Carter speaking on “Recent Changes to the *Income Tax Act* (Canada) Affecting Charities.”

Materials will be available soon at [www.charitylaw.ca](http://www.charitylaw.ca).

**Ontario Bar Association Program on Charity and Not-for-Profit Law** was held in Toronto on April 7, 2005, with Terrance S. Carter and John M. Latham of Carter & Associates presenting “Religious and Institutional Properties: Practical Issues for Charities and Not-for-Profit Practitioners.”

Materials will be available soon at [www.charitylaw.ca](http://www.charitylaw.ca).

## **UPCOMING EVENTS AND PRESENTATIONS**

**12<sup>th</sup> National CAGP\*ACPD Conference is being held in Quebec City** from April 13 to 16, 2005, with Terrance S. Carter of Carter & Associates and M. Elena Hoffstein of Fasken Martineau DuMoulin LLP speaking on “Recent Income Tax Amendments Affecting Charities.”

[LINK] <http://www.cagp-acpdp.org/AnnCon2005Program.pdf>

**3<sup>rd</sup> National Symposium on Charity Law** is being presented by the National Charities and Non-for-Profit Law Section of the Ontario Bar Association and the Continuing Legal Education Committee of the Canadian Bar Association in Toronto, Ontario, on May 6, 2005.

[LINK] [http://www.oba.org/en/cle\\_pdf/05CHA0506J.pdf](http://www.oba.org/en/cle_pdf/05CHA0506J.pdf)

**Church Leadership & the Law** hosted by Christian Legal Fellowship is being held in London, Ontario, on May 11, 2005, with lawyers from Carter & Associates presenting practical instruction to churches and religious charities in response to legal developments regarding same-sex marriage and related issues.

[LINK] <http://www.christianlegalfellowship.org/lawchurchleadership/index.htm>

## CONTRIBUTORS



**Donald J. Bourgeois** – Counsel to Carter & Associates 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 Butterworth.



**Sarah Bradley** - Practicing in the area of wealth management, estate planning, trusts and charities with the Toronto office of Fasken Martineau DuMoulin LLP, Sarah's practice in the area of charities law includes advising individual and institutional clients on administrative matters, compliance and regulatory issues, taxation, gift planning, directors' duties and obligations and reorganization. Ms. Bradley has also spoken at the Institute of Law Clerks of Ontario Annual Conference on charities law.



**Terrance S. Carter** – Practices at Carter & Associates, primarily in the area of charity and not-for-profit law, Mr. Carter is member of the Charities Advisory Committee and the Technical Issues Committee advising Canada Revenue Agency, as well as a consulting editor of *Charities Law, 2003/2004 Ed.* published by Butterworths, contributing author to Industry Canada's *Primer for Directors of Not-For-Profit Corporations*, and editor of [www.carters.ca](http://www.carters.ca), [www.charitylaw.ca](http://www.charitylaw.ca) and [www.antiterrorism.ca](http://www.antiterrorism.ca).



**Sean S. Carter** – A final year student at the University of Toronto completing a joint specialist degree program in Political Science and Philosophy. Sean is a research assistant and author at Carters, with experience writing on anti-terrorism law, including publications in *The International Journal of Not-for-Profit Law*, *The Lawyers Weekly*, and the *Anti-Terrorism and Charity Law Alert*.



**Jacqueline M. Connor** – Practices at Carter & Associates in charity and not-for-profit law, including incorporation and corporate restructuring, 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 *Charity Law Bulletin*. Ms. Connor is also a regular speaker at the annual *Church & Charity Law<sup>™</sup> Seminar*.



**John M.C. Latham** – Practicing at Carter & Associates with a focus in charity and not-for-profit law, corporate and commercial law, leasing, franchising and real estate, Mr. Latham previously worked at a not-for-profit legal clinic in Brantford, Ontario, served at Legal Assistance Windsor during law school, was awarded the Harold G. Fox bursary for excellence in Business Associations, and has been involved in a variety of charitable works, from refugee resettlement to local church programs.





**Theresa L.M. Man** – Practices in charity and not-for-profit, real estate, corporate and commercial law, with particular emphasis surrounding tax issues. Mrs. Man is a regular speaker at the annual *Church & Charity Law*™ Seminar and has also written on various legal topics for *The Lawyers Weekly*, *Chinese Christian Herald Crusades*, *Charity Law Bulletin* and [www.charitylaw.ca](http://www.charitylaw.ca).



**Mervyn F. White** – Practices primarily in litigation and dispute resolution in areas of the law including charity and not-for-profit law, human rights complaints, and risk management assessments relating to insurance law and human rights. Mr. White is a contributing author to *Charity Law Bulletin* and *Church Law Bulletin*, and a regular speaker at the annual *Church & Charity Law* Seminar and guest speaker for organizations such as the Association of Fundraising Professionals, and the Christian Legal Intervention Academy.



**Suzanne E. White** – Ms. White practices at Carter & Associates in the areas of charity and not-for-profit law and human rights, as well as General Litigation. 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 regular contributor to [www.charitylaw.ca](http://www.charitylaw.ca) and has been published in the Canadian Journal of Law and Technology.



**Mark J. Wong** – Practices in intellectual property, focusing on trade-marks, copyrights, and privacy and information protection, employment law and general litigation. Mr. Wong has been an invited speaker for charitable organizations and also contributes regularly to [www.charitylaw.ca](http://www.charitylaw.ca) and the *Charity Law Bulletin*, having written articles ranging anywhere from Employment to Privacy and Trade-Mark Law.



## ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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