

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

DECEMBER 2004 ISSUE

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RECENT PUBLICATIONS AND NEWS RELEASES

New Disbursement Quota Rules in September 16, 2004 Draft Amendments to the *Income Tax Act*

by Theresa L.M. Man, and Terrance S. Carter in *Charity Law Bulletin No. 59*, November 26, 2004.

On September 16, 2004, the Department of Finance released draft amendments to the *Income Tax Act* (the “Act”) that, when adopted, will implement the initiative of the Federal Government in rewriting the rules concerning the taxation and administration of charities as set out in the Federal Budget announced on March 23, 2004 (“the 2004 Budget”). The changes to the Act are voluminous, and have been covered in a series of four *Charity Law Bulletins*, the last of which is reported in this update. This *Charity Law Bulletin* summarizes proposed amendments to the disbursement quota rules that will have a significant impact on how charities operate.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2004/chylb59.pdf

Worldwide Implications of America’s Emerging Policies Concerning NGOs, Non-Profits and Charities

by Terrance S. Carter and Sean S. Carter in *Anti-Terrorism & Charity Law Alert No. 5*, November 30, 2004.

Charities that operate internationally face a complex and often confusing set of circumstances in terms of compliance with domestic and international laws. This situation has only been compounded since the fall of 2001 and the variety of anti-terrorism legislation that has subsequently been instituted. Much of this legislation has focused significantly on money laundering and terrorist financing, which impacts the operations of charities and non-profit organizations. Canada Revenue Agency (CRA) has recently published “Charities in the International Context” to assist in determining the responsibilities of charities that operate internationally. In publishing this document, CRA has taken an important step in acknowledging that charities need to be aware of both international anti-terrorism initiatives and those in other key jurisdictions such as the United States and the United Kingdom. This article discusses the emerging reality for charities, non-profits and NGOs internationally in light of important developments, particularly in the United States.

Read More:

[PDF] <http://www.carters.ca/pub/alert/atcla/atcla05.pdf>

Advancing Religion as a Charity: Is it Losing Ground?

by Terrance S. Carter and Jacqueline M. Connor in Charity Law Bulletin No. 58, November 10, 2004.

How broadly advancement of religion as a head of charity can be defined has historically been unclear. However, the recent Supreme Court of Canada decision in *Syndicat Northcrest v. Amselem* has, for the first time, provided a definition for freedom of religion, and stated that religious practice, in addition to religious belief, is equally as important in defining religion. This case is an important turning point in the evolving landscape of advancement of religion as a head of charity. This *Charity Law Bulletin* first provides the reader with a general outline of the historical caselaw concerning the definition of advancement of religion. Ongoing parallel activities in other jurisdictions, the most recent Canadian caselaw and the latest proposed policy statements of the Charities Directorate addressing the definition of advancement of religion are also summarized. Finally, a brief overview of the possible implications of these recent trends in relation to the definition of advancement of religion is provided, together with a review of their potential impact on both existing and future religious and para-religious charities in Canada.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2004/chylb58.pdf

Essentials of Operational Risk Management for Churches and Charities

by Mervyn F. White.

Churches and charities operate in an increasingly litigious and regulated environment. The Supreme Court of Canada has ruled that there are no special exemptions available to charities for liability, such that charities are held accountable in the same manner and to the same extent that for-profit organizations are. As a result, charities can no longer ignore the potential for liability. Exposure to liability goes further than simply the loss of charitable assets, and can include increased personal exposure for directors, officers, members and even volunteers. Given these legal realities, there is an ever increasing need for charities to take all appropriate steps to implement necessary procedures and mechanisms to deal with the legal risks they face.

Read More:

[PDF] <http://www.carters.ca/pub/checklst/opriskman.pdf>

New Legislation to Govern Federal Not-for-Profit Corporations

New legislation to govern federal not-for-profit corporations was announced by the Minister of Industry on November 15, 2004. The proposed new *Canada Not-for-Profit Corporations Act* will replace Parts II and III of the *Canada Corporations Act* with a leading-edge, modern corporate governance framework for not-for-profit organizations incorporating at the federal level. A *Charity Law Bulletin* commenting on the Proposed Act will be forthcoming. In the meantime, see the link below for more information.

<http://www.ic.gc.ca/cmb/welcomeic.nsf/cdd9dc973c4bf6bc852564ca006418a0/85256a5d006b972085256f4d0052b5ef!OpenDocument>

Senate Banking Committee to study methods for stimulating increase in Canadians' charitable giving

Click on the link below to view the Committee News Release. Ottawa, November 19, 2004.

[LINK] <http://www.parl.gc.ca/38/1/parlbus/commbus/senate/com-e/bank-e/press-e/19nov04-e.htm>

The 2004 Annual *Church & Charity Law* Seminar was well received

With over 620 people in attendance, this seminar, which has been held annually since 1994, was well received. We'd like to thank all of our guest speakers: Elizabeth Tromp and Terry DeMarch from the Charities Directorate of Canada Revenue Agency, Elena Hoffstein of Fasken Martineau DuMoulin LLP, and Dr. Janet Epp Buckingham of The Evangelical Fellowship of Canada, for their participation and making the seminar the success it was. Presentation materials are now available on our site at the link below.

Read More:

[WEB] <http://www.carters.ca/pub/seminar/chrchlaw/2004/index.html>

IN THE PRESS

Canadian Fundraiser eNews includes coverage of Mervyn White's presentation at the 2004 Annual *Church & Charity Law Seminar* on operational risk management.

"Risk Management – It's a wild and scary world out there – be on guard" Vol. 14 No. 22, November 30, 2004, available at <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=1533>.

Emerging International Information Collection and Sharing Regimes: The Consequences for Canadian Charities, by Terrance S. Carter and Sean S. Carter.

The International Journal of Not-for-Profit Law, Vol. 7 Issue 1, November 2004.

[Link] http://www.icnl.org/JOURNAL/vol7iss1/ar_carter.htm

Canadian Fundraiser eNews includes coverage of Terrance Carter's presentation at a Canadian Fundraiser workshop in September on Directors' Liability.

"Directors' Liability – Litigation, prosecution – boogeymen with real substance" *Canadian FundRaiser eNews*, Vol. 14 No. 21, November 15, 2004, available at

<http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=1523>.

RECENT EVENTS AND PRESENTATION MATERIALS

The 2004 Annual *Church & Charity Law Seminar* hosted by Carter & Associates was held on November 10, 2004, in Toronto, Ontario, and included presentations by the both the Director General, Elizabeth Tromp, and the Director of Policy and Communications, Terry DeMarch, from the Charities Directorate, Canada Revenue Agency, among others. The seminar is designed to provide practical information to assist churches and charities in understanding and complying with recent developments in the law and has been held annually since 1994. More than 620 people were in attendance. Presentation materials are now available, links provided below.

NOTE: Please see speaker information in the Contributors section.

“Essential Employment Issues for Churches and Charities” by Mark J. Wong

[PDF] <http://www.carters.ca/pub/seminar/chrchlaw/2004/mjw1110.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchlaw/2004/mjw1110.htm>

“The Essentials of Operational Risk Management for Churches and Charities” by Mervyn F. White

[PDF] <http://www.carters.ca/pub/seminar/chrchl原因/2004/mfw1110.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl原因/2004/mfw1110.htm>

Supplementary Material:

“Essentials of Operational Risk Management” by Mervyn F. White.

[Checklist] <http://www.carters.ca/pub/checklst/opriskman.pdf>

“Highlights of Proposed Changes to the *Income Tax Act* Affecting Charities” by Terrance S. Carter

[PDF] <http://www.carters.ca/pub/seminar/chrchl原因/2004/tsc1110a.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl原因/2004/tsc1110a.htm>

“Implications of Regulatory Reform Under the New Budget Proposals” by M. Elena Hoffstein

[PDF] <http://www.carters.ca/pub/seminar/chrchl原因/2004/meh1110.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl原因/2004/meh1110.htm>

“Hate Propaganda Under Bill C-250: What to do in Response to the New Law” by Bruce W. Long

[PDF] <http://www.carters.ca/pub/seminar/chrchl原因/2004/bw1110.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl原因/2004/bw1110.htm>

“Advancing Religion as a Charity: Is it Losing Ground?” by Terrance S. Carter

[PDF] <http://www.carters.ca/pub/seminar/chrchl原因/2004/tsc1110b.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl原因/2004/tsc1110b.htm>

Supplementary Material:

“Advancing Religion as a Charity: Is it Losing Ground?” *Church Law Bulletin* No.6 Nov. 10, 2004

[PDF] <http://www.carters.ca/pub/bulletin/church/2004/chchl原因06.pdf>

“Pending Changes to the *Canada Corporations Act* and How it will Impact Churches and Charities”

by Jane Burke-Robertson

Supplementary Material:

“Reform of the *Canada Corporations Act*: ‘A Sneak Preview’ at the New Process of Incorporation”

[PDF] <http://www.carters.ca/pub/article/charity/2004/jbr0414.pdf>

“Freedom of Religion in Canada and the Changing Judicial Landscape” by Dr. Janet Epp Buckingham

[PDF] <http://www.carters.ca/pub/seminar/chrchl原因/2004/jeb1110.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl原因/2004/jeb1110.htm>

“Practical Governance Issues: Making Accountability Work for your Church or Charity” by Donald J. Bourgeois

[PDF] <http://www.carters.ca/pub/seminar/chrchl原因/2004/djb1110.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl原因/2004/djb1110.htm>

“Regulatory Reform and the New Approach of CRA in Administering Charities” by Elizabeth Tromp

[PDF] <http://www.carters.ca/pub/seminar/chrchlaw/2004/etromp.pdf>
[WEB] <http://www.carters.ca/pub/seminar/chrchlaw/2004/etromp.htm>

“Emerging Policy Initiatives from CRA, Including Advancement of Religion” by Terry DeMarch
[PDF] <http://www.carters.ca/pub/seminar/chrchlaw/2004/tdemarch.pdf>
[WEB] <http://www.carters.ca/pub/seminar/chrchlaw/2004/tdemarch.htm>

Brantford General Hospital Foundation Seminar was held in Brantford, Ontario, on November 17, 2004, with Terrance S. Carter presenting “Looking a Gift Horse in the Mouth – The Do’s and Don’ts of Fundraising.”

Institute of Chartered Accountants of Ontario - Director & Officer Liability & Beyond was held in London, Ontario, on November 26, 2004, with Terrance S. Carter presenting on the following topics;

"The Legal Duties of Directors of Charities and Not-for-Profits,"

[PDF] <http://www.carters.ca/pub/seminar/charity/2004/tsc1126a.pdf>

[Appendix A] <http://www.carters.ca/pub/seminar/charity/2004/tsc1126aa.pdf>

"Good Governance in Meeting the Duties of Directors of Charities and Not-for-Profits,"

[PDF] <http://www.carters.ca/pub/seminar/charity/2004/tsc1126b.pdf>

[Appendix B] <http://www.carters.ca/pub/seminar/charity/2004/tsc1126ab.pdf>

"Due Diligence in Avoiding Risks for Directors of Charities and Not-for-Profits,"

[PDF] <http://www.carters.ca/pub/seminar/charity/2004/tsc1126c.pdf>

[Appendix C] <http://www.carters.ca/pub/seminar/charity/2004/tsc1126ac.pdf>

"How to Avoid Liability in Fundraising," and

[PDF] <http://www.carters.ca/pub/seminar/charity/2004/tsc1126d.pdf>

"Recent Changes to the *Income Tax Act* and Policies Relating to Charities and Charitable Gifts."

[PDF] <http://www.carters.ca/pub/seminar/charity/2004/tsc1126e.pdf>

UPCOMING EVENTS AND PRESENTATIONS

Philanthropic Foundation Canada is being held in Toronto, Ontario, on December 1, 2004, with Terrance S. Carter presenting “Duties and Obligations of Directors: Basics for Foundations.”

Seventh Annual Estates & Trusts Law Summit, hosted by the Law Society of Upper Canada, is being held in Toronto, Ontario, on December 1, 2004, with Terrance S. Carter presenting “Essential Recent Developments in Charity Law.”

Association of Fundraising Professionals 2004 Congress is being held in Toronto, Ontario, on December 2, 2004, with lawyers from Carter & Associates and our affiliated firm Fasken Martineau DuMoulin LLP presenting on the following topics:

- “Proposed New Tax Rules Affecting Fundraising,” by Terrance S. Carter;
- “Proposed 2004 Budget Provisions Affecting Charitable Giving,” by M. Elena Hoffstein;
- “New Privacy Legislation and its Impact on Fundraising,” by Mark J. Wong;
- “Estate Administration Issues with Charitable Gifts,” by M. Elena Hoffstein; and
- “Legal Liabilities in Fundraising,” by Terrance S. Carter.

See link below for details.

<http://www.afptoronto.org/congress2004/index.htm>

Toronto Estate Planning Council is holding a seminar at the Albany Club in Toronto, Ontario, on December 7, 2004, with Terrance S. Carter presenting “Recent Changes to the *Income Tax Act* Affecting Charities and Donations.”

Institute of Chartered Accountants of Ontario - Director & Officer Liability & Beyond to be held in Ottawa, Ontario, on December 7, 2004, with Terrance S. Carter presenting on the following topics;

- "The Legal Duties of Directors of Charities and Not-for-Profits",
- "Good Governance in Meeting the Duties of Directors of Charities and Not-for-Profits",
- "Due Diligence in Avoiding Risks for Directors of Charities and Not-for-Profits",
- "How to Avoid Legal Liability in Fundraising", and
- "Recent Changes to the *Income Tax Act* and Policies Relating to Charities and Charitable Gifts".

See link below for details.

<https://ebusiness.icao.on.ca/eso/source/Calendar/Index.cfm?CFID=356928&CFTOKEN=65230381#21301015>

Chamber of Commerce (Greater Dufferin Area) is being held in Orangeville, Ontario, on December 17, 2004, with U. Shen Goh presenting “Recent Developments on the *Personal Information Protection and Electronic Documents Act* and its Impact on Ontario Businesses.”

United Way Distinguished Speaker Luncheon (Windsor – Essex County), is being held in Windsor, Ontario, January 19 2005, with Terrance S. Carter presenting “Director and Officer Liability and Beyond.”

See link below for details and to register.

<http://www.weareunited.com/distinguish.php>

Directors' and Officers' Liability: The Essentials and Beyond for Your Nonprofit, hosted by Canadian Fundraiser, is being held in Toronto, Ontario, on January 26 2005, with Terrance S. Carter presenting.

See link below for details and to register.

http://www.canadianfundraiser.com/workshop_viewer.asp?workshop_id=28

Legal Issues for Associations, a one-day conference hosted by the Canadian Society of Association Executives, is being held in Ottawa, Ontario, on January 27, 2005, with lawyers from Carter & Associates presenting on the following topics.

“Identification and Management of Key Legal Compliance Issues,” by Terrance S. Carter;

“Intellectual Property Issues,” by Terrance S. Carter; and

“Reducing Board Liability and Transferring Risk,” with Jane Burke-Roberston (Counsel);

See link below for details.

<http://www.csae.com/client/csae/NationalCapitalChapterDB.nsf/30b091c48e61cbe485256d9800684596/9d9d9d655905507985256f400068b91a?OpenDocument>

CONTRIBUTORS



Elizabeth Tromp - Ms. Tromp joined the Canada Revenue Agency as the Director General, Charities Directorate in June 2004, after having worked in a variety of policy and executive positions since 1987 including, Indian and Northern Affairs Canada, Director of Aboriginal Policy at Solicitor General Canada and Director General of Enforcement at Citizenship and Immigration Canada. Ms. Tromp also worked at Financial Transactions and Reports Analysis Centre (FINTRAC), where she implemented their planning and reporting regime.



Terry DeMarch – Director of Policy and Communication, Charities Directorate, Canada Revenue Agency, Terry has worked broadly in the policy, legislation and regulatory reform area in his current and previous positions of Director, Legislation Development, Income Security Programs, Human Resources Development Canada, and, Director Innovations, Analysis and Integration, Programs Branch, Justice Canada, where he managed innovative and pilot programs for non-traditional solutions to Justice-related problems.



Dr. Janet Epp Buckingham - Serving as the Director, Law and Public Policy for the Evangelical Fellowship of Canada, Dr. Buckingham addresses a wide variety of issues from an evangelical Christian perspective; including religious freedom, marriage and family, sanctity of life and care for the vulnerable in our society. She also writes regular commentaries for the Christian and secular press as well as being interviewed on Canada AM, CBC Newsworld, Sunday Morning (CBC) and Christian radio and television.



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 Law, 2003/2004 Ed.* published by Butterworths.



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, www.charitylaw.ca and www.antiterrorism.ca.



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.



Jane Burke-Robertson – Counsel to Carter & Associates in the area of Charity and Not-for-Profit Law, Ms. Burke-Robertson is agent of the Attorney General of Canada and outside counsel to the Corporate Law Policy Directorate of Industry Canada to provide legal advice on the reform of the *Canada Corporations Act* effective March 12, 2004, as well as co-author of *Non-Share Capital Corporations* published by Carswell and contributing author to Industry Canada's *Primer for Directors of Not-For-Profit Corporations*.



Bruce W. Long – Counsel to Carter & Associates, Mr. Long practices out of his office in London, Ontario, on Hearings, Tribunals, Inquests and Enforcement Matters, and is the former Regional Director of Crown Attorneys for South-western Ontario and Assistant Deputy Attorney General (Acting), as well as the author of "Prosecutors Handbook" published by the Attorney General of Ontario.



Mervyn F. White – Practices at Carter & Associates, 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 & the Law™* Seminar and guest speaker for organizations such as the Association of Fundraising Professionals, and the Christian Legal Intervention Academy.



Theresa L.M. Man – Practices at Carter & Associates 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.



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*™ Seminar.



Mark J. Wong – Practices at Carter & Associates 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 and the *Charity Law Bulletin*, having written articles ranging anywhere from Employment to Privacy and Trade-Mark Law.

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*.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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www.antiterrorismlaw.ca

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